

13 July 2021

MULTICULTURAL QUEENSLAND ADVISORY COUNCIL:**Submission to the Legal Affairs and Safety Committee Inquiry into Serious Vilification and Hate Crimes****MINISTER'S FOREWORD**

The inquiry into serious vilification and hate crimes in Queensland is a timely and necessary step towards ensuring Queensland is a place where everyone can thrive and contribute.

The Queensland Government is committed to the Multicultural Queensland Charter, a statement of principles established by the *Multicultural Recognition Act 2016*, which speaks of a shared commitment among members of the Queensland community to mutual respect, fair treatment and valuing diversity. It states the people of Queensland should be able to express and celebrate their cultural, linguistic and religious diversity. It highlights that a unified and harmonious community promotes a sense of belonging among its people.

Acts of serious vilification and hate crime undermine the Charter principles. Inciting hatred or making threats towards people on the basis of their race, religion, culture or linguistic background is simply unacceptable. This type of behaviour results in physical, mental and emotional harm, and takes a significant toll on individuals, their families and the broader community. It creates fracture and fear, and fosters isolation and disharmony. That is not the kind of Queensland we want to live in.

That is why I support the Multicultural Queensland Advisory Council making a submission to this inquiry. The Council advise me on opportunities and barriers facing people from culturally and linguistically diverse backgrounds and how to promote the Charter. The 11-member Council live in locations across the state, from Gladstone to Mount Isa, Cairns, the Gold Coast and throughout Greater Brisbane. Members come from a range of culturally diverse backgrounds, have extensive networks and strong links with migrants, refugees and people seeking asylum across the state.

Council members are therefore extremely well placed to provide advice to the Legal Affairs and Safety Committee on the nature and extent of vilification and hate crimes as they impact culturally diverse cohorts. This includes the shortcomings of current legislation and how it plays out in practical terms at the community level.

I would like to thank the Council for working together on this submission, which represents the views and learnings of members based on their respective areas of influence and the culturally diverse Queenslanders they engage and work with. These are their words.

I look forward to reading the Committee's report, and with the Council, continuing to work towards a more inclusive Queensland where all Queenslanders feel safe and supported.

Leanne Linard MP
Minister for Children and Youth Justice and
Minister for Multicultural Affairs

SUBMISSION

1. Who the Council are and what we do

The Multicultural Queensland Advisory Council advises the Minister for Children, Youth Justice and Multicultural Affairs on issues facing people from culturally and linguistically diverse backgrounds. Its culturally diverse members include community leaders and professionals from a variety of fields, each with unique connections to the communities in which they live and work. The Council works to genuinely listen to the needs of multicultural Queenslanders, and convey those to the Minister to ensure that they are heard, seen and acted upon.

2. Importance on the issue to Council

The prevalence of serious vilification and hate crimes is of particular concern to the Council. Its effect on the people whose views the Council represents cannot be understated.

For far too many Australians, and those living in Australia who come from culturally and linguistically diverse backgrounds, racism remains a part of everyday life. It takes many overt forms, from discrimination in the workplace, to online bullying and harassment, to outright public abuse and assault. The Options Paper by the Cohesive Communities Coalition, *Serious vilification and hate crime: The need for legislative reform*, detailed some reported instances of this conduct:

A woman of Indian descent was walking along a main road in Brisbane when a car approached her and slowed down. She was hit by pebble like rocks which were thrown from the car, and verbally abused. She didn't know the perpetrators. – Brisbane, 2014

'I was entering my apartment building, when I was pushed out. A fellow resident had pushed me and told me that I was not allowed to enter the building unless I was quarantined and cleared of the coronavirus. I said that I don't have it and that resident replied that 'all Asians have it because of our disgusting eating habits.' – Brisbane, 2020

As a Sikh gentleman was about to exit a lift in the █████ Centre, 3 young men pushed past him and called him Bin Ladin. He asked what they meant, and they started laughing and calling him a terrorist and to go home. This experience was very disturbing as these young men had no fear of calling the Sikh man names in a busy shopping centre with so many people around. – Brisbane, date unknown

Being the subject of any of the above instances of racial or religious hatred, even on one occasion, would illicit profound feelings of distress, fear, and embarrassment. Unfortunately, these instances are not isolated incidents, and compound many instances of microaggressions or subtle discrimination.

This is especially so in light of the pernicious impact of online harassment. Social media applications like Facebook, Instagram and TikTok allow anonymous accounts to be created, from which perpetrators of vilification can skirt accountability for their actions. With these apps being an invaluable form of connection, communication and expression, they are no longer spaces from which people can reasonably be expected to simply opt out. For people of culturally and linguistically diverse backgrounds, the threat of vilification or hate speech remains a risk of being on those platforms.

The Council see the impact of racism, vilification and hate crimes on the individuals, families and communities from culturally and linguistically diverse backgrounds we work with. These

experiences compound the harmful impacts of past trauma, cause psychological distress, and negatively influence their sense of belonging to people, place and country.

We often hear stories of young people from diverse backgrounds who are in public spaces such as shopping centres and are treated as if they have done something wrong, sometimes being falsely accused of stealing. When police are called in to investigate, they find it has been a case of mistaken identity. This type of situations cause embarrassment, distress and can be very traumatic for young people. At train stations or other public spaces some young people have been shouted at, called offensive names, and told to 'speak in English!' or 'go back to your country'.

In July 2020, three young women from African background breached COVID-19 restrictions when they came back to Brisbane after visiting Victoria. The way these young women were named and shamed by some media, calling them 'enemies of the state' and publishing their photographs, has caused substantial harm to communities from African backgrounds. Young people in particular have told us how traumatic this experience has been and continues to be. They feel they are treated as second class citizens without the same rights other Australians are entitled to. This experience has also impacted on young people's trust towards police and health department representatives, and has overall diminished the effectiveness of public health messaging to address the COVID-19 pandemic.

Again, these types of experiences seriously impact the wellbeing of diverse communities. But most damaging, is the sense of powerlessness and the generalised perception among the culturally and linguistically diverse communities we work with that nothing can be done. That the existing legislation is not strong enough to protect them from experiences of vilification and hate crimes. 'What's the point of complaining if nothing will be done' is a very common response from our clients and communities when we hear their stories and encourage them to seek recourse through the legal justice system. A stronger legislation will empower people from diverse communities to seek justice and feel they are respected and valued as Australian citizens, with equal rights and responsibilities.

While the Council is aware that racism cannot be tackled through legislative reform alone, it believes that strengthening the protections against serious vilification and hate speech represents a necessary and important step in making justice for its victims accessible and worthwhile.

3. Shortcomings of laws

3.1 Queensland

In Queensland, the *Anti-Discrimination Act 1991* (Qld) deals with two types of vilification: unlawful vilification and serious vilification.

The first type is a civil action. Section 124A states that a person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, religion, sexuality or gender identity of the person or members of the group. Where the vilification involves a threat of harm to a person or to property, or incites others to threaten same, the vilification can be a criminal offence pursuant to section 131A.

Once a complaint has been made, either to the Queensland Human Rights Commission (QHRC) or the police, the complainant faces a number of practical and legal challenges to reaching a just resolution.

The first legal challenge for many complainants is naming the respondent. Where the vilification occurs in public or online, the perpetrator is often a stranger or anonymous. This makes identifying them a potentially insurmountable hurdle to pursuing a complaint. It is the exception, not the rule, that the complainant or a witness is able – during or after the vilification – to obtain enough identifiable information about the perpetrator to be able to name them in proceedings.

Where the complaint is of serious vilification, a complainant faces a further, more explicit legal challenge. As it is an offence, a complaint may be made to the QHRC or to the police. However, only the police can commence proceedings, and subsection 131A(2) states that the consent of either the Attorney-General or Director of Public Prosecutions must be obtained beforehand. This is a very high bar to meet. As noted in the Options Paper, this additional requirement may provide a disincentive for the police to lay charges, and may slow down the complaint process significantly. As the QHRC cannot investigate or commence proceedings, a decision by the police to not pursue charges – even for serious instances of vilification – may mean the end of the road for a complainant.

The issue of timeframes presents one of the major practical challenges of engaging with the current processes. The Council is aware that currently, the QHRC is experiencing significant delays in processing complaints, in the order of up to six months. That means complainants are required to wait that period of time before their complaint is even accepted (or rejected), and inevitably, a further period of time before any conciliation is scheduled and a resolution achieved. This wait time alone is likely to provide a significant deterrent to complainants engaging with the process, especially if their complaint is not of a particularly serious nature. The inevitable result is that those who experience unlawful vilification are turned off complaining, the event is not counted in our statistics, and our understanding of the prevalence of vilification in our community is hampered.

Finally, the Council takes issue with the available remedies and penalties. A complaint of vilification under section 124A does not carry any penalty and does not establish criminal liability. Accordingly, the majority of complaints are resolved at compulsory conciliation through an agreed settlement. If the matter proceeds to a Tribunal hearing, the likelihood of obtaining an award for punitive or aggravated damages is slim. This means that a perpetrator will rarely be punished for their actions (above and beyond compensating the victim for the harm caused) irrespective of the outcome of the complaint.

The offence of serious vilification under section 131A does carry a penalty. The maximum for an individual is \$9,341.50 or six months in prison. This, for the offence of knowingly inciting hatred towards someone because of their race, including inciting others to threaten physical harm to them. As the Options Paper aptly notes, in light of the above challenges – e.g. identifying the perpetrator, obtaining consent to commence proceedings, long wait times – this maximum penalty may simply not be worth the resources necessary to achieve it. The plainly inadequate ways these crimes are punished is illustrated in the following example, taken from the Options Paper:

A Muslim woman was accosted by a man in an unprovoked attack on a West End street in Brisbane, when he threatened to set her hijab on fire with a cigarette lighter. He was fined \$500. – Brisbane, 2014

3.2 Australia

In considering the laws in Queensland, it is useful to briefly consider what protections are offered federally. If sufficiently enforceable and expansive protections are afforded there, significant reform in Queensland may not be as critical. Unfortunately, this is not the case.

Section 18C of the *Racial Discrimination Act 1975* (Cth) makes it unlawful for a person to publicly do an act that is '*reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of people*', where that act is done because of the victim's race, colour, or national or ethnic origin. The cause of action under section 18C gives rise to several issues.

The first is that the speech must be made '*not in private*'. Increasingly, hate speech and vilification is taking place online, both in public comments sections, but also by way of private messages. The recent case involving sports star Latrell Mitchell receiving racially abusive messages on social media is one high profile instance of this sort of speech. For the purposes of section 18C, it remains unclear whether private messages would be considered acts done '*not in private*'.

A second issue is that breaching section 18C does not constitute a criminal offence, but gives rise to a civil cause of action. That action can be pursued by making a complaint to the Australian Human Rights Commission. If the matter cannot be resolved through a process of conciliation, it must be referred to the Federal Court of Australia or Federal Circuit Court of Australia. Only those Courts have the power to decide whether the conduct is unlawful discrimination. Inevitably, Court proceedings become very costly very quickly, and can be long and legally technical. This presents a further barrier to those seeking to obtain a finding that their experience was unlawful discrimination under the federal legislation.

For online vilification, the federal *Criminal Code* makes it a criminal offence to use a carriage service to '*menace, harass or cause offence*'. It carries a maximum penalty of three years. Again, this cause of action has limitations. Firstly, as a criminal offence, it requires a higher standard of proof than a civil action, being beyond a reasonable doubt. This is a high bar to meet. Secondly, it is not specific to hatred or vilification on racial, ethnic or religious grounds, so does not deal with the specific impact that racially-motivated abuse or threats can have on an individual. Thirdly, the narrow wording of the offence means that actions that cause distress may not be sufficient to constitute harassment. Finally, this cause of action again requires that the perpetrator is identified. The use of anonymous accounts to perpetrate hate speech would therefore remain impervious to the law.

4. Why we need changes

At present, Queensland's vilification laws contain legal and practical challenges at every step in the complaints process. For a person without legal representation, any of these might be insurmountable. Even with legal representation, they are still likely to prolong the complaint, or make the outcome unsatisfying. Not even lawyers can speed up lengthy processing wait times.

For the rule of law to function properly, it is crucial that those it seeks to protect feel confident to engage with the legal processes. Available data indicates that this is not the case. In 2019-2020, the number of vilification complaints accepted by the QHRC were more than double that of the previous year.¹ However, the total number was still only 34 complaints. Further, as noted in the Options Paper, two thirds of those who reported incidents to the QHRC that year were unsatisfied or very unsatisfied with the outcome.

¹ QHRC, *Annual Report 2019-20*:

https://www.qhrc.qld.gov.au/data/assets/pdf_file/0010/28369/QHRC_AnnualReport2019-20.pdf

The COVID-19 pandemic and the stark rise in anti-Asian racism that accompanied it, provides a useful case study in this area. In a national report authored by the Asian Australian Alliance,² respondents were surveyed over a period of two months in 2020. Of note, the survey found that 84 per cent of perpetrators were unknown to the victim, and concerningly, the overwhelming majority of instances took place in public or in supermarkets. Over 90 per cent of victims surveyed did not report their incident to the police.

The state of the current vilification and hate speech laws in Queensland speaks to a deeper issue: that acts of racial vilification and hate are not taken seriously enough. We know this not just by listening to our multicultural community, but also by looking at how the law in other areas reflects our values. As an example, where an assault is perpetrated on a police officer or a paramedic, our laws rightly provide for significantly increased sentences and penalties. This is because we as a society recognise that violence against our first responders poses a particular risk to their health and wellbeing, and is therefore something that should be especially deterred and punished.

It is important to consider the impacts of hate speech and vilification on a victim. At the very least, it can cause feelings of anger, of hurt and distress, as well as embarrassment or shame. At the recent Royal Australian and New Zealand College of Psychiatrists 2021 Congress in Hobart, mental health professionals were warned of rising harms of hate speech for individuals and society³. Most vilification or hate speech is also likely to give rise to fear for a person's safety. It is only inevitable, then, that this conduct can have a financial impact on a person. It may cause them to take personal leave from work, and to see a doctor. In extreme cases, the person may no longer feel safe enough to continue living or working where they are, and may feel the need to relocate for their safety or wellbeing.

Additionally, victims of this conduct are often already the most marginalised, disadvantaged or oppressed in our society. They are more likely to face numerous practical challenges to integrating into society, such as linguistic or cultural barriers. Depending on their residency status, they may even have limited access to health or social services. On top of that, most will face some form of vilification throughout their lives, whether that be in microaggressions or outright abuse. It is well known that people of linguistically diverse backgrounds have more difficulty navigating the justice system and communicating with law enforcement than those for whom English is a first language. We also know that these people are not represented in the ranks of law enforcement, nor legal institutions or the judiciary. They face invisible obstacles to justice at every turn. That those people, having experienced an incident of serious vilification – which may include a physical threat of violence to their person or property – do not feel empowered to report it, and are unlikely to obtain a satisfactory result, represents yet another grave injustice.

It is the Council's view that those people should be afforded strong and accessible protections and recourse through the legal justice system. To continue to fail to do so will only act to further entrench inequality, injustice and their sense of isolation, and pose a threat to the rule of law in Queensland and Australia.

²Asian Australian Alliance, *COVID-19 Coronavirus Racism Incident Report*.

<http://diversityarts.org.au/app/uploads/COVID19-racism-incident-report-Preliminary-Official.pdf>

³ Croakey Health Media, *Mental health specialists warned of rising harms of hate speech for individuals and society*, viewed 23 June 2021: <https://www.croakey.org/mental-health-specialists-warned-of-rising-harms-of-hate-speech-for-individuals-and-society/>