



LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:

Mr PS Russo MP—Chair
Ms SL Bolton MP
Ms JM Bush MP
Mrs LJ Gerber MP
Mr JE Hunt MP
Mr AC Powell MP

Staff present:

Ms R Easten—Committee Secretary
Ms K Longworth—Assistant Committee Secretary
Ms M Telford—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO SERIOUS VILIFICATION AND HATE CRIMES

TRANSCRIPT OF PROCEEDINGS

MONDAY, 24 MAY 2021

Brisbane

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The committee met at 9.03 am.

CHAIR: Good morning. I declare open the public briefing for the Legal Affairs and Safety Committee's inquiry into serious vilification and hate crimes. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all share.

My name is Peter Russo, the member for Toohey and chair of the committee. The other committee members here with me today are Mrs Laura Gerber, member for Currumbin and deputy chair; Ms Sandy Bolton, member for Noosa; Ms Jonty Bush, member for Cooper; Mr Jason Hunt, member for Caloundra; and Mr Andrew Powell, member for Glass House.

On 21 April the Legislative Assembly agreed that this committee inquire into and report to the Legislative Assembly on serious vilification and hate crimes. The purpose of today's briefing is to assist the committee with this inquiry. Only the committee members and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence.

These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the briefing at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. A copy of the transcript will be provided to you. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from the committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent mode.

I remind committee members that officials are here to provide factual and technical information. Any questions seeking an opinion about policy should be directed to the relevant minister or left to debate on the floor of the House. I also ask that responses to any questions taken on notice are provided to the committee by 4 pm on Monday, 7 June.

BRISCOE, Mr Wayne, Executive Director, Multicultural Affairs, Department of Children, Youth Justice and Multicultural Affairs

CONNORS, Ms Kate, Deputy Director-General, Strategy, Department of Children, Youth Justice and Multicultural Affairs

DERMODY, Ms Keiryn, Acting Assistant Commissioner, Security and Counter-Terrorism Command, Queensland Police Service

DOYLE, Mr Peter, Inspector, Security and Counter-Terrorism Command, Queensland Police Service

HONEYWOOD, Ms Jacqui, Acting Inspector, First Nations and Multicultural Affairs Unit, Queensland Police Service

PEARCE, Mr Murray, Acting Inspector, Security and Counter-Terrorism Command, Queensland Police Service

CHAIR: I invite each agency to provide an opening statement, after which committee members will discuss with you aspects of the inquiry's terms and references as they relate to your organisation.

Assistant Commissioner Dermody: For the purpose of the record, I am Acting Assistant Commissioner Keiryn Dermody from the Security and Counter-Terrorism Command of the Queensland Police Service. Thank you for the invitation to appear before the committee. Serious vilification and
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hate crime are very important issues and the Queensland Police Service welcomes the opportunity to contribute to your inquiry. With me today are colleagues from the Security and Counter-Terrorism Command and the First Nations and Multicultural Affairs Unit. The responsibilities and capabilities of the Queensland Police Service with respect to vilification and hate behaviour, which is outlined in the written briefing, span across multiple parts of the organisation. We invite the committee to write to the departmental contact officer should the committee require any additional information that may be of assistance.

Although our response to vilification and hate behaviours spreads across multiple parts of the Queensland Police Service, we all work towards the same vision to make Queensland the safest state by preventing, disrupting, responding to and investigating crime. The Queensland Police Service is committed to achieving this vision by upholding our core values of integrity, professionalism, respect and fairness and community.

The Queensland Police Service is the primary law enforcement agency in Queensland. Our police respond to a wide range of criminal offending, which may contain characteristics of hate crime and vilification. Where there is a call for service related to vilification and hate conduct in the community, the primary responders will be general duties uniformed police. General duties uniformed police have a broad range of skills and training to respond to threats and disorder type complaints. The Queensland Police Service community engagement addresses concerns which occur at regional policing levels but also through the First Nations and Multicultural Affairs Unit. In the case of more extreme conduct, the Security and Counter-Terrorism Command can apply specialist capabilities to respond to and prevent more extreme conduct. Prevention is the dominant focus of the command and the whole of the Queensland Police Service.

Section 131A of the Anti-Discrimination Act is one of many offences which could capture offending involving characteristics of vilification or hate behaviour. Others include, for example, assault, wilful damage, threatening violence or public nuisance, even homicide. It goes without saying that each of these offences has varying severity in terms of penalty. Section 131A requires written consent of a Crown Law officer before criminal proceedings can be commenced, while the other offences I have mentioned do not.

It is clear from the Queensland Police Service data that section 131A is not frequently used, with only eight offences recorded against this offence code for section 131A. I also note the material provided by the Department of Justice and Attorney-General which states that only three people have been convicted of the offence since its commencement. Police consider all available evidence and the individual circumstances of each case to determine an appropriate charge. Whether proceedings are instituted involves consideration of whether there is sufficient evidence and whether the public interest requires a prosecution. The sufficiency of evidence test requires there to be more than a prima facie case and for a prosecution not to proceed if there is no reasonable prospect of conviction.

While the Queensland Police Service QPRIME system allows officers to input whether an offence contains a characteristic of hate or vilification, there are limitations with this data and it should be treated with caution. It is difficult to ascertain from the Queensland Police Service data the exact volume of criminal offending that could be classified as containing characteristics of hate or vilification. The Queensland Police Service data only includes those incidents which come to the attention of police or are reported to police and relies upon an individual officer's assessment of whether the offending involves characteristics of hate or vilification. There is also no verification process for categorisations made. Without manually checking each occurrence, we recommend the figures be interpreted broadly and not as an accurate representation of the rate of offending involving characteristics of hate or vilification.

The data provided also does not elaborate on the context of each offence, such as the nature of the offending or the extent to which the characteristics form part of the motivation for the offending. When looked at broadly, however, it can be seen that over the past five years there has been a steady increase in such classifications. For example, in 2020 there were 30 per cent more recordings of the racial vilification category, with the number up to 158 from 114 in 2019. The Queensland Police Service is also aware of the reports of increased experiences of racially based vilification occurring in the context of COVID-19, and the Queensland Police Service has responded appropriately to address the concerns and the needs of culturally and linguistically diverse communities.

The Queensland Police Service takes all reports of antisocial and criminal conduct seriously and strongly encourages people to report all incidents to police so that we take the appropriate action to keep the community safe. The Queensland Police Service recognises there can be barriers for certain people and communities to reporting to police. To improve access to policing services, police have a number of police liaison officers and also operate the LGBTI Liaison Officer Program.

To strengthen and enhance the way the Queensland Police Service engages with First Nations people and people from multicultural backgrounds, the Queensland Police Service has also established the First Nations and Multicultural Affairs Unit. Engagement with culturally and linguistically diverse and First Nation communities also occurs at the local station level to strengthen ties between the community and police. Championing community engagement and collaboration assists police to improve understanding and create positive outcomes for the communities we serve.

The Queensland Police Service also maintains specialist policing capabilities with respect to ideological and religiously motivated violent extremism. Ideological and religiously violent extremism presents a growing risk to the safety of the community; nevertheless, it remains only a small portion of conduct that may involve hate or vilification characteristics. The Queensland Police Service works with its law enforcement and security partners to promote harmony and social cohesion, in line with the Queensland Counter-Terrorism Strategy, by actively working to counter hate and vilification type conduct in the community. Thank you. We welcome questions from the committee.

Ms Connors: Thank you for the opportunity to appear before you alongside our colleagues from QPS this morning. My name is Kate Connors. I am the Deputy Director-General, Strategy, in the Department of Children, Youth Justice and Multicultural Affairs. I have with me Wayne Briscoe, Executive Director of Multicultural Affairs in the department. I would like to begin by acknowledging the traditional custodians of the land on which we are meeting today and pay my respects to elders past and present.

We have provided you with a written brief and we are very happy to elaborate on any material in the brief or support the committee or secretariat in any way we can in relation to your work on this significant inquiry. Our department is well placed to connect the committee to our contacts across Queensland's many culturally, linguistically and religiously diverse communities, and we have separately provided you with our public listing of contacts. The offer is there to communicate information on your behalf to stakeholders who have requested not to have their contact details shared.

The minister's Multicultural Queensland Advisory Council has previously met with the secretariat of parliamentary committees to discuss how best to engage with culturally and linguistically diverse communities on any matter referred. We have provided for your consideration guides on how to engage with Queensland's multicultural communities on this inquiry. We are very happy to work with the secretariat on how best to connect with individuals who might face cultural and other significant barriers in responding to your call for submissions in this inquiry.

We believe hearing the voices of people with lived experience will be vital to the committee's appreciation of the impact of vilification and hate crimes. Accessing some of those voices will be a challenge but not an insurmountable one. There have been significant lessons learned during the COVID-19 pandemic on how to best connect with vulnerable people across culturally and linguistically diverse communities which we can assist you with.

Our multicultural affairs officers engage with a broad range of culturally, linguistically and religiously diverse stakeholders on a regular basis, and we are well aware of the devastating impact of racism, discrimination and ignorance, which are invariably behind incidents of serious vilification and hate crimes. The direct cumulative intergenerational impact these incidents have on the mental health and wellbeing of individuals, families and whole communities is clearly apparent.

These incidents are largely under-reported for various reasons. When victims speak to our department, we strongly encourage the reporting of incidents through formal channels such as to the Queensland Police Service or the Queensland Human Rights Commission. We have highlighted the importance of reporting even where individuals do not have confidence that their matters can be resolved if only to build an evidence base on the extent and impact of such incidents. From our experience it is apparent that some of the reluctance to report includes a lack of trust in the system including with the process and the likelihood of a successful prosecution. This is especially the case for Queenslanders born overseas in non- or less democratic countries.

My department is represented on the national and state bodies dedicated to countering violent extremism, and it is now acknowledged at state and federal government levels that there is a concerning rise in right wing extremism in Australia evidenced by increasing incidents of hate speech and serious vilification aimed at particular groups of people, including but not limited to people of African, Muslim, Asian or Jewish backgrounds. The impacts of such behaviour on communities and individuals are devastating. The local impact of antisocial behaviour in other parts of the world can be equally devastating. We saw this very clearly during the unfolding of and following the Christchurch massacre.

Given the absolute necessity to work towards a Queensland where everyone belongs, the advisory council has included in its 2021 work plan a focus on combating racism and improving social cohesion in Queensland. Last Wednesday, the advisory council met in Cairns and hosted a community consultation, led by the Australian Human Rights Commission, on the draft National Anti-Racism Framework. At Minister Linard's request, the advisory council will be making a submission to this inquiry which will draw on council members' views and learnings from their respective areas of influence and community engagement. We will be available to provide any further advice and assistance on this matter if needed. I thank the committee for the opportunity to make this statement at the public briefing.

Mrs GERBER: I am interested in hearing from the acting assistant commissioner and the inspector, whoever is best placed to answer the question. Why do you think the law in Queensland is currently inadequate to deal with serious vilification and hate crimes in Queensland?

Assistant Commissioner Dermody: I think that is a matter for government as to whether or not it is inadequate.

Mrs GERBER: I am happy to rephrase the question.

CHAIR: Are there gaps in the current legislation?

Assistant Commissioner Dermody: As I previously said, there are a number of options that are available for police and a number of other offences that are available for us to use, depending on the facts and circumstances of each case.

Mr POWELL: We have been asked to consider the options paper *Serious vilification and hate crime: the need for legislative reform*. It is implying that there is inadequacy in the current legal framework. Is there a view from your department that the laws are inadequate and would need to be extended?

Mr Briscoe: Obviously we cannot make any statements in relation to government policy. What we can say from our experience is that we are quite often in conversation with people, particularly from a non-English-speaking background or from particular religions, who do not believe that the current system adequately engages them in these types of discussions. There is a reticence, for example, to approach authorities. That might be from the belief that our institutions are not set up to welcome complaints from certain people, but also there is a belief of 'why bother to complain?'. The evidence may not be there, for example.

I have personally heard of an incident at a traffic light where the driver's window is down and the lady driving is wearing a hijab. The passenger in the car beside them winds down their window, spits at the woman and hurls racially or religiously motivated comments. What can they do in those circumstances? I think there are many incidents and the circumstances for each incident will be different. A lot of it gets back to the confidence of the victim in going forward to the authorities with what they have and anticipating an outcome. I think that is very different depending on people's different circumstances.

Mr POWELL: Unpacking that a bit further—again, I appreciate that you cannot comment on government policy and so on—what that indicates to me is that there is a concern around the threshold a situation needs to hit before serious action is taken or that the evidence needs to be quite substantial—far more than, say, a numberplate of a car from which people have hurled abuse at an individual. Is the issue more one of threshold and evidence than necessarily the laws not being in place?

Mr Briscoe: It may well be, but people who have been subject to hate or racially motivated behaviour are probably not thinking about evidentiary thresholds. They are more thinking about: 'Is this serious enough for me to take forward?' The minister's advisory council met in Cairns, as Kate mentioned, last week and sat down with members of the local mosque. We heard stories where people probably did not categorise the behaviour that was directed to them as serious, but when we heard it it was serious. These stories were of stones thrown at windows of the mosque and comments made to people as they were passing by in the street. In my eight years at Multicultural Affairs, I have heard many instances of that. It is almost like—I do not want this to come across in the wrong way—a level of acceptance which should not be there that this type of behaviour just goes with the fact that 'I am wearing a hijab' or 'I am wearing a burqa' or 'my skin is a different colour' or 'I have an accent'.

Mr POWELL: Do the police want to comment, given that there are laws and that, from what we have just heard, there sometimes might be a reticence to come forward, not necessarily processing whether there is a threshold or they have enough evidence to bring to the police. It is more a concern that it may not be well received. Is there anything you want to comment on in that regard?

Assistant Commissioner Dermody: The Queensland Police Service strongly encourages anyone who is exposed to any kind of criminal behaviour to come forward and all of those matters will be investigated. Of course police will gather the evidence. Then it is a case of the sufficiency of evidence test as to whether or not there is sufficient evidence to substantiate a charge. As I previously said, there are a number of different offences depending on the circumstances that could be available, provided the evidence supports those charges.

Ms BUSH: I am interested in the evidentiary threshold issue. I think there is something there. My question perhaps to the assistant commissioner or to the inspector—and you have touched on it—is elaborating on that spectrum of behaviours. At one end we have ideological intentional actions through to throwing rocks at a mosque or hurling racial abuse on a bus. Can you give me the landscape of what we are looking at in terms of hate crime and vilification and that spectrum of behaviours that you would see reported to you?

Insp. Doyle: I have not had any direct community contact with people who have reported that sort of conduct, but I have had some feedback through colleagues who have had community contact. There is a broad spectrum of behaviour out there that people have reported to my colleagues or that community representatives have reported concerns about. It can be the simplest of things. The report that you are examining touches on some of that behaviour, but there is a huge range of things that people can do, from making a comment about ‘go back to where you came from’ right through to throwing objects or water or whatever at people in a park. There is probably a fairly likely connection with their cultural, ethnic background. You do see a range.

In terms of the offences available, for people in those situations who do report it, the best solution is an immediate response. Often police will turn to an offence that allows them an immediate response to that. If it is behaviour that amounts to an assault or disorderly type conduct, public nuisance type conduct, that will be an immediate solution or an outcome potentially as opposed to an offence under section 131 of the Anti-Discrimination Act, which does not allow an immediate response.

The feedback that colleagues have given in relation to that type of response, of going towards a more mainstream offence, is that the community feedback can be that it does not reflect the gravity of the situation. It does not bring in the fact that there was an underlying attitude or approach. An assault can be many things. An assault with a particular hate or vilification type aspect to it is a different context.

Ms BOLTON: We are hearing that there are two things—there was the characteristics of what is vilification or a hate crime and also you said ‘no immediate response’ in relation to section 131. Is that because there has to be that written authorisation?

Insp. Doyle: Yes, of course. You have to get that written authorisation before you commence a prosecution for that particular offence.

Ms BOLTON: Why is that needed? Is it because of how it is placed in the legislation?

CHAIR: It is legislation, Sandy.

Ms BOLTON: Thank you.

Mrs GERBER: Kate, I just want to touch on something you mentioned in your opening address. You said that you encourage people who are victims of either serious vilification or hate crimes to report to the Human Rights Commissioner or to police. Do you consider this to be a police matter, a human rights matter or both? In terms of encouraging those reportings, there are two avenues. Can you explain that a bit further to us?

Ms Connors: I suppose it depends on which part of the act people are complaining under. If it is a serious vilification that is an offence, we would encourage people to go to the police because it is an offence; otherwise they may have an avenue with the Human Rights Commission. We would talk to them on the basis of the characteristics of what happened to them.

Mrs GERBER: How often do they not have an avenue with police?

Mr Briscoe: It is very hard to say. We are not a body that people would normally report to, but we pick up on incidents through our engagement with diverse communities. When we hear of a matter, we will encourage people to refer matters. It might be every few weeks that we hear about a particular incident, but that is no indication of what is out there. We are very aware, through our engagement, that particular communities are subject to a significant level of racial hatred and vilification, just from our regular interactions. We are also aware that a number of people within particular communities are very hesitant to report.

In my view, from speaking to people, there is I guess a mistrust in many cases with the institutions of government or with what people perceive are the institutions of government, for example, the media. For example, a few months ago we saw on the front page of the *Courier-Mail* photos of two Brisbane

young African women under the headline ‘Enemies of the state’. These were people who had not been convicted of any offence at that point and it was obvious that these people were from an African background. We were very aware what the ramifications were going to be. That was very distressing, obviously, for members of the various African communities but also for people working with those communities. It is very real.

Ms BUSH: If somebody states to a person on the street, ‘Go back to where you came from,’ what is the policing response? That victim then has an option of walking into a station and making a report; is that correct? Can you talk me through what that response from police would look like?

Insp. Doyle: There is a whole range of different possible responses to that. The ideal response would be some sort of engagement between police and that individual—explaining what had occurred, being able to identify the other party involved, and then actually going and engaging with that other party and talking to them. As to whether that actually results in any sort of prosecution, I would think not—probably—but at least there would be that engagement. That communication, that presence, I think has an impact on the other party, potentially. Part of that is also trying to establish what occurred. There is always going to be potential for different perspectives, different recollections, about what actually occurred. That is another factor, of course.

Ms BUSH: If they were to proceed with a charge, what kind of charge would that be?

Insp. Doyle: If it was some offensive type behaviour, it would be a summary offence—public nuisance.

Ms BUSH: Like a public nuisance?

Insp. Doyle: Yes.

Ms BUSH: Would the person from police responding to that type of statement, probably a general constable, typically have gone through some kind of unconscious bias training? Is that something that is rolled out to frontline officers as a matter of mandatory training for police?

Insp. Doyle: Certainly information about bias is communicated to our police at various stages. I would have to check what the preservice training looks like and whether it touches on those things. Certainly, it is a characteristic or a behaviour, in a whole range of different contexts, that you have to be cautious about.

Mr HUNT: Assistant Commissioner, you mentioned at the outset that there was some difficulty in accurately capturing the data around the reporting of these instances. Can we confidently assert that the instances are on the rise, despite the difficulty in capturing the data?

Assistant Commissioner Dermody: Yes, there are difficulties in capturing the data. It would require us to go through multiple occurrences individually and look at all of the facts and circumstances of those incidents. Yes, there is an indication that there is a rise in the figures.

Mr HUNT: On the strength of that, then, is there scope to look at how the data is captured on QPRIME to examine whether or not that can be done in a different way?

Assistant Commissioner Dermody: I am not a QPRIME specialist, I am sorry. I would have to take that question on notice as to whether or not the system is capable of doing that and what that would look like.

Mr POWELL: Assistant Commissioner, in terms of your command, do you look into online vilification? Are you monitoring that or is it very much complaint driven? Is there anything you would like to comment on with regard to online vilification?

Assistant Commissioner Dermody: Yes, we do. Murray Pearce works specifically in that area.

Insp. Pearce: Yes. We and our partner agencies are actively monitoring and looking for incidents of hate speech, particularly in that online environment. The anonymity that the online environment provides makes it a very challenging environment to work in, but it is something that we are very much aware of.

Mr POWELL: If you identify instances and you are able to break through the anonymity of online comments, are they the kinds of things that then lead to offences under 131A?

Insp. Pearce: There are a number of other Commonwealth offences that would come into play—using a carriage service to menace or harass. Again, it just gives that immediacy to any enforcement action and works to actually exclude those people at very short notice.

Mr POWELL: What I am hearing from both you and Inspector Doyle is that often the police will take a more mainstream offence, whether a Commonwealth act or a state act, to get the immediate effect of shutting it down, but that is not necessarily picking up the gravity of the hate crime or the vilification?

Insp. Pearce: Yes, those facts are still put before the court which again prevents the pursuing of the vilification offences under double jeopardy. The same facts are put before the courts. We certainly do not detract from the nature of the offending. It is just the instrument to put it before the courts that is considered.

Mr POWELL: Kate and Wayne, is there any comment you want to make on online vilification?

Mr Briscoe: Not really. Kate mentioned that we are involved in the state and national bodies that oversee the work in that space. The feeling is that that type of behaviour is on the increase, but what can be done about it is a very significant issue. What we do know, though, is that what happens online can have a direct impact at community level. We saw that, for example, during and after the Christchurch massacre. The impact on the local Muslim community was very significant. As things were unfolding over that day in Christchurch and immediately after, we had one or two calls from people concerned about leaving their children in school in Queensland because of what the ramifications were feared to be in Queensland. When something significant happens in that space anywhere in the world, because of social media the impact locally can be devastating.

CHAIR: I know that graffiti comes in many forms, but sometimes there is graffiti that is designed to vilify and is probably even a hate crime. What type of offence is available to the police in those situations at present?

Insp. Pearce: Wilful damage comes immediately to mind. Again, that is something that can be acted on very quickly. That is an offence we have previously considered as a vilification offence. Where the offence has occurred, if the offender can be identified, that is a choice we would probably make under those circumstances, particularly in relation to religious premises, buildings and that type of thing.

CHAIR: Do the police gather any intelligence on that type of graffiti?

Insp. Pearce: Yes. Most of those offences are referred to the Security and Counter-Terrorism Command through our QTASIG process.

CHAIR: Often—I do not know the right way to term it—with run-of-the-mill graffiti they often tag their graffiti which, obviously, from a policing point of view, makes it a lot easier too, whereas it would appear that people who are using hate crime or vilification for certain symbols are not tagging their artwork?

Insp. Pearce: Generally not. I cannot think of an instance where it has been tagged; it is purely a racial or hate statement.

CHAIR: Do they broadcast it through social media when they are doing or have done it, or do they just rely on the public to react to it?

Insp. Pearce: The majority relies on the public. There is a group that does post. That is more a right-wing group.

Ms BOLTON: My question is to the Acting Assistant Commissioner and the Inspector. Do you have any suggestions as to how section 131A could be improved?

Assistant Commissioner Dermody: I think it is a matter for the government as to whether or not they want to improve the legislation. As we have previously said, there are many offences—depending on the facts and circumstances—that can be used to address the behaviour, and if there are characteristics of hate or vilification they are included in the facts that are put before the court, depending on what the charge is.

Ms BOLTON: Given that the CCC has said the legislation is in place but it is not being used, I think we are looking for some guidance as to what could be improved so it will be used.

CHAIR: To be fair, it has already been stated that it is not the position of the panel to give their opinion on things. Part of the inquiry asked us to look at the Cohesive Communities Coalition's options paper *Serious vilification and hate crime: the need for legislative reform*. Have you had an opportunity to look at the opinion paper? I know it is an unfair question, but I am just trying to get a feel for—

Assistant Commissioner Dermody: No.

Mrs GERBER: In relation to a hate crime or vilification, Wayne gave a scenario of a window being wound down and someone spitting across the car at someone. What charges would police lay in that circumstance? What charge is available to police in that circumstance?

Assistant Commissioner Dermody: Depending on the evidence and depending on what witnesses tell us, it could be a multitude of things. If you are throwing something at someone—

Mrs GERBER: Spitting.

Assistant Commissioner Dermody: That could be an assault; it could be—

Mrs GERBER: Spitting can be an assault?

Assistant Commissioner Dermody: Yes, depending on the facts and circumstances. As I say, when police investigate, it depends on what witnesses have seen, what the complainant is able to tell us, even in some circumstances what offenders admit to.

Ms BUSH: Just coming back to the chair's question around graffiti and hypothetically a Nazi symbol, what would it take to investigate and prosecute that? Would you need a complainant to come forward and make a statement?

Insp. Pearce: Yes, it is complainant based.

Ms BUSH: If it was done in a public space it is likely that it may not, unless the council or someone was the complainant?

Insp. Pearce: Obviously there is a cost involved to rectify that so, yes, definitely we would approach the owner, be it the council or the Queensland government. As long as we have a complaint, we would pursue it.

Ms BUSH: In your experience, would the majority of those services make a complaint for insurance reasons or something? Would they often proceed with a complaint?

Insp. Pearce: Yes, we do generally get a complaint, more so from the government agencies or owners of premises. We would get a complaint, yes, because of the cost involved in cleaning it up.

CHAIR: That brings to a conclusion this part of the session. I understand there was one question taken on notice about QPRIME. Could you have the response to the secretariat by 4 pm on Monday, 7 June? If there is an issue with the time line, please ring the secretariat and discuss it with them. Thank you for coming along. Thank you for your input this morning.

Proceedings suspended from 9.49 am to 10.01 am.

CASTLEY, Mrs Christine, Chief Executive Officer, Multicultural Australia

FABRE, Ms Vanessa, Executive Manager, Multicultural Australia

JABRI-MARKWELL, Ms Rita, Co-Chair, Cohesive Communities Coalition

CHAIR: I invite you to make an opening statement, after which the committee members will discuss with you aspects of the inquiry's terms of reference as they relate to your organisation. I place on the record that Mr Andrew Powell, the member for Glass House, is an apology at the moment.

Mrs Castley: Thank you, Chair, for the opportunity to brief the committee on this important issue. I am co-chair of the Cohesive Communities Coalition, together with Ms Rita Jabri-Markwell. The coalition represents over 20 organisations that are passionate about creating an inclusive and safe Queensland. I am also the chief executive officer of Multicultural Australia, which is a member of the Cohesive Communities Coalition. Rita is the legal director at the Australian Muslim Advocacy Network and is one of the authors of the options paper that forms part of the committee's terms of reference for the inquiry.

In my opening statement I do not intend to go into the detailed content of the options paper, because that is available to the committee, other than to say that the paper sets out the case for strengthening the law in response to hate crime and serious vilification: firstly, by identifying the gaps in the current law, because current legislation does not capture many of the negative behaviours experienced by targeted communities nor are the penalties appropriate; and, secondly, by highlighting the ways in which the current law is under-utilised, which goes to questions about current operational practices in policing and prosecution of hate crime and how those can undermine community confidence and willingness to report hate crime incidents.

Multicultural Australia works with diverse communities: newly arrived refugees, asylum seekers, migrants, international students. We hear from our clients and the communities we work with about their experiences of racism, harassment and intimidation. We know that hateful acts and language have profound negative consequences on a person's settlement journey, including social inclusion and mental and physical health, especially when they come from a background of trauma and violence. Those incidents happen in many places: on our streets, on public transport, in shops, at work, at school, by neighbours and virtually, through online communities. Hateful acts and language often isolate a person from being part of the Queensland and Australian story. It leads to fractured identities and has a direct impact on their life trajectories and on the broader community.

We are committed to proactively supporting the work of the committee by raising the profile of the current inquiry with our clients and community networks across Queensland. We especially want to thank the committee for agreeing to accept audio and video submissions from the community as part of the submissions process. We will be engaging in a public campaign across Queensland and providing community spaces for individuals to come to where they will be supported to provide their voices and experiences into this inquiry. The ability to record those voices through different mediums will ensure the inclusion of voices that are often missing from those conversations.

Before I conclude, I would like to highlight a recent incident that we at Multicultural Australia are responding to related to a young person who was racially harassed at school, leading to just last week a significant physical assault by a group of students on that victim in a school bathroom. The incident was filmed and later uploaded as a video on TikTok. The matter has been reported to police, who advise that the young person should not return to school for personal safety reasons. The parents have sought to meet with the school, with meetings postponed several times because an interpreter was not available. The matter came to our attention through a member of the community who is supporting the family, who are struggling in their dealings with the school.

Rita is similarly aware of tragic stories such as those from the Australian Muslim community where students have withdrawn from school, and outside life for years after, due to post-traumatic stress disorder and the lack of appropriate acknowledgement or justice. This case is not unique. I raise it today because it highlights some of the significant challenges that will arise in the committee's consideration of hate crime and serious vilification, including less than optimal operational responses to serious incidents that undermine community confidence in the law; the reality that those incidents involve both adults and children as victims and as offenders and can involve physical and cyber crime; the systemic challenges including lack of interpreters and lack of cultural understanding, which significantly delay and undermine the delivery of justice; and the compounding impact of physical and verbal racial abuse on a young victim who comes from a background of trauma with a real possibility that the justice system's response under the current law will not be proportionate to the long-term physical and emotional impact on the young person and their family.

I would like to again acknowledge the collaborative work that went into the options paper, drawing from good practice in Australia and overseas. A range of community based lawyers analysed the evidence coming from the coalition and worked through ideas with lawyers in the Queensland Human Rights Commission. We reiterate our commitment to supporting the committee in its inquiry.

CHAIR: Rita or Vanessa?

Ms Jabri-Markwell: I am happy just to be here to answer any questions.

Mrs GERBER: I want to touch on what you mentioned in your opening statement about the difficulties that we as the committee will face in trying to come up with some solutions to this problem. I will use the example that you just provided of the schoolchild being the subject of a hate crime or serious vilification. Referring to the options paper, can you talk me through how the legislative amendments that are proposed might address that situation? I am struggling to conceive of how they are going to help in that situation. Is it more of a legislative instrument that is needed or is it education? Is it more systemic than that?

Mrs Castley: I would say both. I will defer to Rita shortly as the author of that paper. Certainly we are looking at legislative solutions. We are advocating for consideration about whether a standalone crime offence is justified or a circumstance of aggravation. That is why we make the point about penalties potentially needing to be proportionate to the impact on a victim. To be effective, any law must be enforced and operationally understood and then implemented. Education in responder agencies as well as amongst the community is fundamentally important.

Ms Jabri-Markwell: In relation to the offence, I think it would probably be assault or battery normally. The problem is that, because there is not any aggravation for an element of there being discriminatory hatred connected to that offence, if that student was charged under the Youth Offenders Act they would probably be released very soon, which is appropriate given that they are a young person. We would be arguing here that, even if that person is a young person—and laws should be appropriate for a young person, making sure that we are not criminalising and creating more problems by throwing young people in jail—it is still appropriate to acknowledge the discriminatory hate element to the crime because, for the victim, having it just called an assault without recognising that it was a hate crime leads to really deep psychological problems. Basically it means that they feel as though their humanity has been completely ignored in the situation. We have seen that in examples throughout multiple different communities of not just young people but people of all ages feeling like they have been dehumanised by the criminal justice system not acknowledging the hate element to the crime.

Mrs GERBER: I have a follow-up question in relation to that being an extra element of an offence. In relation to hate crime in legal terms or in the way it might be prosecuted, if it was added as an element of the offending, would that make it more difficult in some circumstances for prosecution and police to meet the bar because they would then have to prove that it has an element of the intention of a hate crime, particularly when talking about youth and the category of offending that you are addressing there?

Ms Jabri-Markwell: This will come down to whether you go with the standalone offence, which is a racially aggravated assault, or if you just add a penalty enhancement provision onto existing offences. If you go with the penalty enhancement, we have seen in other jurisdictions police have dropped that enhancement as a way of quickly negotiating a plea bargain, which can have a counterproductive effect for community victim justice.

If we were looking at the bar, there are things that your committee will probably consider—whether to require a motivation for hatred or to require the US style intention, which is just looking for evidence of discrimination because they have selected a person from a group that is a racial or religious minority. There are different ways of defining ‘intent’. The US is discrimination based. The UK relies on evidence of hatred, which is a higher bar. We will be discussing what we as a coalition think is the most appropriate threshold. That will be something for you to consider.

Mrs Castley: Having that as an element also goes to the heart of how evidence is collected at the point the incident occurs, which is often a barrier. That sends a clear message, for example, to police in their operational procedures that you need to collect information about these dimensions of the behaviour which then get factored into the prosecution of the offence, which is often a missing piece in terms of how it is operationalised.

CHAIR: Rita, in a perfect world, what is the best solution in relation to the type of legislation you believe would work in Queensland?

Ms Jabri-Markwell: I feel it is probably a bit too early for me to say that without consulting with the whole coalition. I can express some personal views.

CHAIR: Your personal views would be appreciated, Rita.

Ms Jabri-Markwell: I personally think the discriminatory intent used in the US legislation is preferable because it does not require pulling together all the evidence to show beyond a reasonable doubt that that person hated that group.

CHAIR: On that point, because we are a Commonwealth country, are there limitations on applying that to our system of law?

Ms Jabri-Markwell: The US system is a bit more complicated because they do not have a combined statute where everything just sits neatly like in the UK. That is really helpful with the UK model and the Scottish model, but the US I still think is quite transportable. What I like about it is that it covers all types of criminal offences so it includes as breaches of public order, public nuisance—so those verbal abuse attacks on people on public transport or outside a synagogue or mosque. They have some way of capturing that as opposed to waiting for it to involve an imminent death threat or physical assault.

CHAIR: What about graffiti?

Ms Jabri-Markwell: Yes, and vandalism. The US covers vandalism. Most jurisdictions do as well.

Ms BOLTON: Within other jurisdictions, and within your discussions and the options paper, has restorative justice been utilised in relation to hate crimes?

Mrs Castley: Not as far as I am aware. I am looking at Rita to see if she is aware of that.

Ms Jabri-Markwell: It is an underdeveloped area, but I do know of experts within the Australian Hate Crime Network—there is a working group—who are looking specifically at restorative options in overseas jurisdictions.

Ms BUSH: Christine, I am interested in reporting broadly. Of course people always have the option to report to police, but what we know is that often people do not report to police; they report to other people. You have mentioned teachers. Can you talk me through some of the other people victims might be reporting to before they get to police?

Mrs Castley: I suppose it depends on where the incident occurs. We highlighted the range of different situations in which that can happen. That comes down to who has witnessed the incident and then reported it and then where that person is supported to go to. What we see in the reporting is: often there are challenges around language and the availability of interpreters. That is something we have seen as being a real issue: where a person has gone to report and there has been no interpreter readily available and then you have that delay of time in terms of the matter being reported. It just gets a bit too exhausting for the person who is dealing with the trauma of the issue.

Certainly it is schools, police and hospitals. What we find with the example I gave to you, which is not an isolated incident, is that victims will go to a hospital because of their injuries. Certainly that is an important source, potentially, of reporting. It is also just generally community support groups. Certainly for us in Multicultural Australia, because we have a number of case managers, these matters often get reported to our case managers, who then facilitate the access to police. Even our case managers sometimes experience difficulties in terms of trying to have that reporting occur in a credible way that can actually then lead to a brief of evidence that can lead to prosecution.

I think from our perspective in terms of how this happens, it is going through those steps that predate—and I imagine the committee will be looking at the existing suite of offences and processes that are available to see to what extent those are sufficient or not. It is about the elements of those existing offences and whether they are sufficient in terms of laying charges and particularly where, as Rita has said, there is a hate crime issue where you need to establish that almost subjective state of mind that overlays the offence. Then there is the penalties piece, which is about the evidence that then leads to that compounding impact that should be considered in determining the penalty that applies to the person.

Ms BUSH: You mentioned in your opening statement that the penalties are too low. Can you expand on that?

Mrs Castley: I suppose it comes down to the nature of the particular offence that the person is charged with at the time and the extent to which it is treated in a way that acknowledges that long-term trauma on that person. Peter's question goes to the heart of graffiti, for example. We know of examples where there has been quite explicit stuff put on mosques which is then just treated as a public nuisance offence, without factoring in any of the impact on that community, on the individuals, who have seen some quite vile and offensive symbols and language put on their place of worship. There is the public nuisance offence and then that long-term impact on the community who feel vilified.

Ms Jabri-Markwell: Damaged.

Mrs Castley: Yes, but in this instance that we know of the charge was public nuisance. This is how it gets operationalised. It is about how you then have a very clear, explicit element in terms of factoring in that element of the behaviour that can then factor into the seriousness of the offence. Rita has just said you could have wilful damage as a slightly higher level offence, but the choices that are made by police in the first instance to lay charges and then the prosecution are about a clear message. If there was a clear offence that related to that form of behaviour that puts it in that slightly different category in terms of considering the other elements that should be in there that compound the community impact and a person's feeling of safety, that is where I think the clarity is needed in the legislation that we are advocating for.

Ms Jabri-Markwell: Can I clarify: I thought the police had charged the Holland Park—

Mrs Castley: This was a different one.

Ms Jabri-Markwell: Sorry. You were referring to a different one. In the Holland Park Mosque situation, the police referred to it as a wilful property damage case. That caused a lot of community concern, because they were calling for the expulsion and murder of Muslims on the front of the mosque. On the penalty issue, there are some suggestions in this paper about different ways to offer protection to victims beyond jail time. We are also very open to talking with police about what would be most workable. We have to get that balance right in terms of things that are workable that are going to deliver justice more often but also recognise the hate element.

CHAIR: In an ideal world, a standalone piece of legislation or something included in the Criminal Code?

Mrs Castley: Or a circumstance of aggravation. There is a whole gradation of all of those three which we are keen for the committee to consider and work through which works best in the overall scheme of what is available and will be most effective. A standalone piece of legislation that sits side by side with the Criminal Code potentially might get missed.

CHAIR: If there was a section in the code.

Mrs Castley: Or a compounding impact as an aggravation. Those are alternatives that we think require careful and detailed consideration.

Ms Jabri-Markwell: You can either introduce a bunch of different standalone offences for racially aggravated assault, racially aggravated property damage—the list goes on—or you can have a penalty enhancement provision which says that any offence committed under the Criminal Code that has an element of discriminatory hatred will incur a further penalty of X, Y or Z.

Mrs Castley: What we think is really important during the course of the committee's inquiry—and this is why we are so keen to convene those community spaces—is to hear the stories of what is happening on the ground to then ensure that the legislation is going to tackle the behaviour that is the subject of the final legislative piece.

I come back to the member for Noosa's question about restorative justice. This would seem to be the area that is absolutely ripe to achieve the cohesion, inclusion and connection which is the ultimate objective that we want to achieve here. The right social infrastructure needs to be in place for that to be effective as a penalty in terms of ensuring it actually works, in accordance with whatever the objects of the legislation you are seeking are.

I think what we are speaking of here is to be really clear about the objects of what we are trying to achieve in legislation. Our view, I think quite firmly, is that there needs to be some form of legislative reform, but we are not saying it has to be a standalone act or a standalone offence or a circumstance of aggravation. We are saying: consider each of those options in terms of what might work best. We are really conscious that the Anti-Discrimination Act is also available to people, but there is a certain degree of response that probably does not address the extreme level of behaviour that we are discussing here in terms of criminal offending.

CHAIR: You need the consent.

Mrs Castley: Yes, that is exactly right.

CHAIR: That would be one area that could be cleared up quite easily by removing that.

Mrs Castley: That is right. You also need, I think—I cannot remember whether it is in the legislation or the process—to have met with the other party prior to have discussed the issue. An example is that school incident, where those meetings take a long time and keep being postponed because of lack of interpreters or because the person is too busy dealing with the trauma and the injury in hospital to actually get around to doing that bit, so you cannot take that next step to then put in your complaint.

CHAIR: There is also provision in the Criminal Code, when there is an issue of domestic violence, for there to be restraint clauses.

Mrs Castley: Absolutely, yes.

CHAIR: Or a good behaviour aspect to any court order.

Ms Jabri-Markwell: This paper refers to an idea of an apprehended or good behaviour bond as another tool in the toolkit of police to provide longer term protection for victims. Say you went with a racially aggravated public nuisance charge and it ended up with just a big fine. The downside is that the victim protection element is not there. Providing that bond gives extended victim protection.

CHAIR: Some sort of restraining order.

Ms Jabri-Markwell: Yes. The other idea we have in here is the civil hate crime injunction which is borrowed from the US, in Vermont. That is where a community can seek protection against an individual continuing to harass the entire community on the basis of their racial, religious or other protected attribute. That can be particularly useful for online situations where you have a serial offender or pest.

Ms BUSH: I am interested in the victim element. Victims are not a homogeneous group. In fact, what they want from justice might range from prosecution through to the harassment to stop. You have said that.

Mrs Castley: In terms of the harassment stopping, it is about that immediacy of response: something happens to you where you are physically injured but you have to go back into that place, you have to catch that bus in subsequent days or you have to go back into your school. Often to keep the person safe, as with the example I gave, the advice has been for the student not to go back to school. That is a disrupted education. School is a bit more complex, but if in a public space there was some form of order that was available, for example, that prevented contact or distance, that might keep the individual safe until the matter makes its way through courts and you have some form of repercussion. It is that length of time and the need for immediacy of response as well.

Ms BUSH: Depending on the charge, if it is not a personal offence that might preclude them from accessing victim support provisions as well.

Mrs Castley: Correct. That is right, absolutely.

Mrs GERBER: You would still need a complainant in that circumstance. You would still need the victim willing to come forward and be the complainant in order for some sort of an order like a DVO in the circumstance of vilification or hate crime.

Mrs Castley: Absolutely, yes. That is where your resources and your support infrastructure come into play—availability of interpreters but also the support that is given around the reporting itself. Someone who has been subject to a hate crime—and this is the case for a lot of our clients—are wary of authority structures, about not doing the wrong thing. There is a fear of deportation, even if they are Australian citizens and it is 10 years after they have arrived. It is also just trying to then navigate what to them is a foreign infrastructure of reporting. That lack of familiarity can be really intimidating. That is why we think it is really important that we provide support and community forums. For example, for a lot of our clients to walk into a parliamentary committee such as this would be highly intimidating in terms of telling their stories. Writing a submission is simply too difficult a process for them to navigate. That is why we think the role of the coalition and the support we give to them in terms of getting those stories to the committee will be fundamentally important during this process.

Ms BOLTON: You touched on education. Within the Cohesive Communities Coalition has there been discussion of what can be introduced into all schools as part of bringing everyone together as part of prevention, because often hate crimes and vilification come from fear and a lack of understanding?

Mrs Castley: Yes, completely. We are talking with the coalition, and certainly Multicultural Australia is doing work with Multicultural Affairs Queensland in the department looking at education in schools. We also are currently working with the Department of Education around that whole cultural capability piece. It is at multiple levels, so it is around who sits in the central office and the staff in terms of teachers, but it is also education within the student body itself and how you might think about smart ways to get each of those levels engaged in this conversation about understanding difference, respectful behaviours, right behaviours and what is right and wrong. What helps us in that is if there is clear legislation, clear messaging from government and clear messaging from the community about what is right and what is wrong, what is acceptable and what is not acceptable. That is why we think there is a real urgency and importance to this issue that the committee is looking at.

Ms BOLTON: That would extend right down to religious education and all of those components so that that element of fear is taken away and they are understanding?

Mrs Castley: Yes.

Ms BUSH: Christine, you touched on the availability of and access to interpreters in Queensland. Are you able to shed any light on that for the committee?

Mrs Castley: Yes. It is a perennial challenge—it is for all services—and one that we continue to advocate on from a multicultural affairs perspective. It is something we see in all domains, from health services right through to court services to police reporting and school services. It is in all parts and it is something we have to navigate between the Commonwealth and the state governments in terms of who is responsible.

We have a significant number of different nationalities and there are some who are newly arrived. For example, there is a large cohort of Yazidi in Toowoomba and not many interpreters. They are a fairly newly arrived community, so we have real struggles. We often see matters in courts adjourned multiple times simply because a translator or interpreter is not available. Therefore, there is that timeliness issue in terms of how that might happen. We are trying to think through different ways to get members of the community accredited and supported to provide that evidence.

The Translating and Interpreting Service—a Commonwealth service—is limited in terms of numbers of interpreters available. It is expensive as well, because it is on a user-fees basis. We are continuing to work with service provider agencies such as Health and Education about what can be done to try and tackle those issues, but it is a very real challenge.

We also find, quite apart from interpreters, a lack of understanding about the importance of having a qualified interpreter. A number of times we have our clients go to have a conversation or to report a matter and whoever is at the receiving end says, 'Can we just use Google Translate?' Our response is no, because that is simply not going to work in terms of getting the right translation and it is not how you are going to be able to have a proper conversation, particularly when you are having a conversation with someone who is traumatised by a recent physical or verbal assault and grappling with the issues that come with that.

CHAIR: That concludes this session. Thank you for your attendance and we look forward to working with you as the inquiry unfolds.

Mrs Castley: Thank you very much for having us here.

BALL, Ms Julie, Principal Lawyer, Queensland Human Rights Commission

HOLMES, Ms Neroli, Deputy Commissioner, Queensland Human Rights Commission

McDOUGALL, Mr Scott, Commissioner, Queensland Human Rights Commission

CHAIR: I welcome representatives from the Queensland Human Rights Commission. I invite you to make an opening statement, after which the committee will have some questions.

Mr McDougall: Thank you for the opportunity to brief you today. I am joined here today by the deputy commissioner and principal lawyer, both of whom have considerable experience working on these issues since about 2015. Therefore, I will make my opening statement quite brief so that you get an opportunity to benefit from their experience.

The commission does not usually appear at briefings of committees. We have provided a written briefing that you would be aware of. We have attempted to confine that to our experience with the act, particularly section 124A. You may be aware that the Attorney-General recently tasked the commission with the responsibility for reviewing the entirety of the Anti-Discrimination Act, save for these provisions that are subject to this inquiry, so we therefore respectfully ask the committee to take a comprehensive approach to this inquiry, given that it will not be part of the terms of reference of our review.

The work that has been done by the Cohesive Communities Coalition is obviously to be commended. However, it involved a process that did not engage with other members of the community who also have a stake in this inquiry. In particular I refer to the LGBTI community. Also, the Indigenous community has been represented to some extent in the Cohesive Communities Coalition, but I think the committee needs to engage with the Indigenous community as well throughout this process.

Picking up on one of the issues that has been discussed this morning about the impediments with the criminal offence—I note that there was discussion about the need to obtain the consent of the prosecuting authority before a prosecution could proceed—another important practical impediment, particularly with online abuse, is the inadequacy of the penalty provision to enable police to obtain a warrant to secure particularly online evidence. That is a real issue, and I suspect that goes to the preference as expressed by Murray Pearce in his evidence of using the Telecommunications Act.

We did not intend today to make recommendations about what we think the state of the law should be. Obviously we will make a submission to this inquiry and that will be considered as part of our review of the entire act, so we will be in a position at that point to offer you our suggestions and what we think the laws should be. We are here to answer questions about our experience with the act to date.

CHAIR: Does anyone else want to address the committee before we go on to questions?

Ms Holmes: I might just add that the other group that might wish to also speak to this committee is people with disability. The attribute groups that are covered at the moment are race, religion, sexuality and transgender or gender identity. If you are looking holistically at both 131A and 124A in terms of whether they are adequate, if you are doing a comprehensive review, given that the commission will not be doing that, looking at those broader groups to see if the category groups that are covered by the legislation should be broadened is an issue I think this committee should also be open-minded to as you are doing your consultations and hopefully inviting members of other groups that are minority groups that experience vilification to also come forward with their experiences to the committee so you hear their stories as well. It would include people with disability and, some would argue—and we do not have a view on this—sometimes women say that they are a group also that are worthy of protection from vilification. That is a pretty tricky area to work out the answer to, but they certainly should be heard from.

Mrs GERBER: I just want to touch on something that I raised with Kate Connors, the Deputy Director-General of Strategy, in relation to the report that has been given to the committee. Perhaps, Commissioner McDougall, you are better placed to answer this. She talked about how she directs complaints either to the Human Rights Commissioner or to police. I asked her whether she thinks this is more of a human rights matter or more of a policing matter. I would like to ask the same question of you, considering a lot of complaints in relation to serious vilification or hate crimes are directed to either yourself or police.

Mr McDougall: Certainly anything that falls within the criminal provisions should be referred to the police.

Mrs GERBER: Some of this is not captured, though.

Mr McDougall: Anything that threatens physical harm should definitely go to the police. There is a real limitation with the civil provision in that it requires victims to go through what can be a very elaborate process and expensive process, financially and emotionally. It would be far preferable, in my view, that we have modern laws that police feel confident and comfortable using on a day-to-day basis. If that necessitates taking the criminal provision out of the Anti-Discrimination Act—let's face it, the police do not carry around copies of the Anti-Discrimination Act with them and police are very familiar with the Summary Offences Act and the Criminal Code. I think there should be a provision in either of those that the police feel confident in using. Obviously, there are some important evidential issues that need to be addressed and there are some difficulties that police would experience in proving the offences, and I think one of the tasks of the committee is to work through that.

Ms BOLTON: How often and in what way would you be involved in 131A and 124 in practical terms?

Mr McDougall: In our written briefing, at appendix 1, we have a copy of the vilification complaints accepted by the commission since 2001, so that information is available to you. In terms of the criminal prosecutions, it was my understanding at the time we did the briefing that we were only aware of two and, as I understand it, having heard the evidence this morning, it is three. We were only aware of two, so I guess that demonstrates the fact that we are not plugged into what happens in the criminal area necessarily and we rely on finding out through the media et cetera. I have to say that we have a very good working relationship with QPS and there have been instances where we have referred particular reports to police and they have actioned them, but there is no formal mechanism for us to monitor the 131A prosecutions.

Ms BOLTON: Do you believe there should be?

Mr McDougall: I think that would be helpful. I will not take that on notice because we will have to get back to you, but I think it is something that could be given consideration to. I am loath to create more bureaucracy—police have enough work to do as it is—but if there could be some easy mechanism for doing that at an operational level without having to put it into the law, that might be a better solution.

Ms BUSH: Commissioner, the QHRC manages the complaints and conciliation process under the ADA; is that correct?

Mr McDougall: Yes.

Ms BUSH: I am tempted to wait until you make a further submission, but can you maybe talk us through the nature of some of the complaints as they relate to vilification?

Ms Holmes: There is a broad range, so some of the things that you heard about this morning—that is, people being shouted at in shopping centres and on the street. If the commission can find the alleged respondent, we will bring them to the commission and try to have a conciliation conference. Often that is very challenging, because people do not know the name of the person who yelled at them or shouted at them. We can sometimes use our investigative powers to find out the name of the respondent. We sometimes can look at security cameras and do that sort of thing. Very occasionally we can look at numberplates to trace people that way and bring people before us.

It can be shouting on the streets. It can be online vilification. There are examples of that in the Cohesive Communities Coalition's material. There can be neighbourhood disputes. Neighbourhood disputes often turn into vilification type situations. We know that neighbourhood disputes happen between people quite frequently, but if it merges into vilification there does need to be a line and a law that says that is out of order and the public understands that. That is part of a neighbourhood dispute which really does have that impact that we heard the previous speakers talk about.

There can be letters sent. That is sometimes a difficult one because it is not in public. It has to have that public element. There is a whole range. Schoolkids can vilify each other. It is a very broad range of conduct.

Some of the examples you saw in the briefing—and this is the more serious vilification, the criminal vilification—were of people going into shops and vilifying the shopkeepers. The example in West End—and this is not one we would deal with in terms of civil laws—was of someone trying to set alight a woman's hijab. That is criminal behaviour. It ranges from what some people would consider quite minor civil conduct right through to criminal conduct. If it is criminal conduct we would generally refer it on to the police. On occasions there have been cases that have gone through on a civil basis that have criminal elements in them, and QCAT has occasionally commented that they could have been a case of criminal vilification as well as civil.

Ms BUSH: Would you adopt a restorative justice approach to resolving some of these matters?
Brisbane

Ms Holmes: That is the approach. Again, some people are receptive to that and through a conciliation process do get a deeper knowledge and understanding of the effect their conduct has had on the person who was the victim of it. That can be a very therapeutic process for people. There is the other end of the spectrum where there are quite intransigent people who are not at all minded to change their minds and often will not even turn up at a conciliation conference. Even though they are invited to or ordered to, they do not always turn up. That will also occur at QCAT: they will not turn up to defend the case. I am aware of one that is going through QCAT at the moment where that is the situation.

Ms BUSH: In those particular matters where they are not engaging, do you have the option to refer it back to the police?

Ms Holmes: Not if it is just a civil standard, no.

Ms BOLTON: Commissioner, you spoke of a couple of the impediments we have heard mentioned throughout these hearings, including consent. Are there any other stand-outs, from your perspective, that are impeding the ability of the police to either identify characteristics or meet criteria that is leading to where the charges are either not laid or are referred to a different type of charge that does not acknowledge that it is a hate crime?

Mr McDougall: To be honest, I think that question would be better directed to police. I would be speculating about the impediments that police face, other than the two major ones that are apparent on the face of the legislation itself. In that respect, one of the positive initiatives that I understand is underway is that the Cohesive Communities Coalition is meeting with police to work through some of these practical issues and how they think an effective response could work. The outcome of those discussions will be valuable for the commission to consider. I hope that answers your question.

Ms BOLTON: It does, thank you.

Ms Ball: There are a lot of elements to the offence of serious vilification. There are quite a few elements to the civil standard. There are a lot of elements to the offence of serious vilification. There are probably three things: the consent of the public law officer, the low penalty and the inability to use it to secure evidence. There are also an awful lot of elements to establish to prove beyond reasonable doubt.

Ms BOLTON: Would you say that the criteria that the police need to follow would be one of the issues?

Ms Ball: Again, it is probably a matter for the police, but there are a lot of factors going against them using that. There is also the fact that it is in the Anti-Discrimination Act as opposed to something they are familiar with.

Ms Holmes: We have heard from the police, when we have had conversations with them, that the lack of familiarity with the vilification provision is an inhibition for them to use it, as well as the elements. You use the tools that you are familiar with. This is a tool that they are not familiar with and do not use very often. As the previous speakers have said, it is about having the toolkit available to the police that fits what is required but also takes into account the seriousness of the conduct.

Ms BUSH: I read in your submission about the meaning of public act and perhaps extending that to workplaces of more than two people. Is my understanding correct? That would obviously be to capture statements made in a semi-public space?

Mr McDougall: There was a decision in New South Wales in the last year or so, I believe, where consultants delivering cultural awareness programs in a school felt that they were being vilified by teachers at the school. There was a finding that it did not amount to a public place and therefore was not vilification.

Ms BUSH: So your recommendation would be to make that quite an explicit statement in the act?

Mr McDougall: We will make our recommendations when the time comes, but there is a question, in terms of when it is a public place like a school, whether it is sufficiently public to engage the provision. In a small town where schools are so important and they are very public and you are in your workplace, I think there would be a lot of people who would expect that they should be protected from vilification in those circumstances.

Ms BUSH: You are currently doing a review of the entire ADA. What are the time frames around that?

Mr McDougall: We have to report by 30 June next year.

Ms BUSH: Do you have other milestones or things along the way that we can get a copy of?

Mr McDougall: We will be putting out some communications in next few weeks, hopefully, outlining our consultation program. We are very keen to ensure that the community does not confuse the two processes. If you go to our website, we have the information about both processes. We are doing our best to ensure they run separately so that people do not get confused.

Mrs GERBER: Is there anything you would like to add in relation to the options paper? From my understanding of it, there are really two separate ways this is going. We have a policing/legislative approach that we need to consider in order to possibly shore up the gaps and possibly create another element or more serious penalties in order to allow victims to feel like they have achieved something out of the justice system. Then there is the human rights aspect under you, Commissioner. Did you want to comment on the options paper further in relation to your portfolio?

Mr McDougall: Not really. I would just say that, whatever the outcome of this process, we need laws that the community has confidence in and that act as a deterrent to people where they need to. That is critical. I think it is quite apparent that the existing laws are not doing that. I will leave it at that at this point and then the detail will flow in our submission.

CHAIR: Are there any programs that the Human Rights Commission rolls out in relation to vilification?

Ms Holmes: Since last year we have had an extra reporting tool on our webpage which is called 'Report racism'. This was rolled out last year, after we became aware that with the COVID issues certain sectors of the multicultural community were experiencing a great deal more racism. We now have an online racism reporting tool. Since June last year we have had 67 reports. A lot of people are not minded to make a complaint but do want the authorities to know what is going on out there. We have data on that. We can provide further information to you on that if you would like. We will have to de-identify it, but we could give some ideas about what is coming through.

Some people do not wish to make complaints and proceed with them but do want the government or the authorities to know what is going on in the community so that other parts of the response, which are not necessarily the legislative response but community cohesion and education in schools, can be developed. They are wanting those numbers counted. We do a lot of training and community engagement of both the community and also people who are in powerful positions—schools and workplaces—to try to educate them about vilification. This is only one tiny part of the Human Rights portfolio and the anti-discrimination portfolio so it does not get a lot of attention in our general training, but it is mentioned.

CHAIR: What would be the best way to get that information before the inquiry? Would it be best sent in your submission or separately? How would you like to proceed?

Ms Holmes: It depends what the committee needs. We can put that in our submission, which is not too far away, if that would be helpful to you. In terms of the reporting under the racism reporting tool, we can summarise what we are seeing and give you a bit of an overview without breaching any confidentiality.

CHAIR: One of the issues that I have been struggling with is how you identify what conduct you want to prohibit in relation to vilification.

Mr McDougall: Hopefully you will be getting a submission from Professor Kath Gelber, who is a fairly well regarded expert in this area. I think her answer to that question would be building thresholds around the concepts of harm. In the criminal space at the moment it is physical harm. In the civil space at the moment we have concepts of inciting. I assume you are aware that the Victorian committee produced a major report recently that will no doubt be of interest to this committee. They have recommended lowering the threshold to 'likely to incite'. That is going to be a key question for the committee. You have correctly identified the issue of where you draw the line on what engages the provision.

Ms Holmes: That is taking into account that we do have freedom of speech. That is that balancing act. The Human Rights Act does protect freedom of speech. It is always getting the balancing act right between when it is causing harm to vulnerable individuals and when you retain that right to speak and what you are thinking.

Ms BOLTON: Has the Human Rights Commission previously put in either submissions or recommendations regarding the existing laws?

Ms Holmes: Yes, we have written to the Attorney-General at various stages when we have noticed that the law has not been working as well as the commission would have hoped. We made suggestions around where it could be strengthened. We have written to the Attorney on a couple of occasions over a couple of years.

Ms BOLTON: Are we able to access that at all?

CHAIR: Probably not, because that is confidential communication between the commission and the Attorney-General. My understanding is that broadly any direct conversation would be covered by confidentiality. Anyhow, that is the answer.

Ms BUSH: You may not be able to answer this, but you have touched on alternative reporting options. Obviously you have places where people can flag instances of hate crime without reporting it to police. Are you aware of any jurisdictions that run an effective alternative reporting option—not with police but perhaps with another entity such as yours?

Mr McDougall: No, I am not.

Ms BUSH: I was hoping you could do my work for me. That is fine.

CHAIR: That concludes this briefing. I thank you for coming along. I acknowledge that this has been very helpful to the committee. I know that this was probably not the normal course in terms of the way things are done, but the committee is very keen to make sure we get this right. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public briefing for the committee's inquiry into serious vilification and hate crimes closed.

The committee adjourned at 11.00 am.