



Inquiry into serious vilification and hate crimes

**Report No. 22, 57th Parliament
Legal Affairs and Safety Committee
January 2022**

Legal Affairs and Safety Committee

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Acknowledgements

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All web address references are current at the time of publishing.

Dedication

This report is dedicated to the memory of Mr Duncan Pegg (1980 –2021), the former colourful and ‘colourblind’ Member for Stretton, who believed that all people should be treated as equal, regardless of the colour of their skin, their ethnic background or their religious belief.

Mr Pegg was well known for his commitment to supporting the people of Stretton, the most multicultural electorate in Queensland.



The story below of Mr Pegg standing up for a person experiencing vilification is from the submission by the Australian Muslim Advisory Network and the Islamic Council of Queensland:

Nadia Saeed was on the phone ... when a stranger confronted her in the street.

"I don't care that your people were killed in Christchurch, you should have been shot too," he allegedly said.

...

Seeing Ms Saeed in distress, Mr Pegg [the former Member for Stretton] approached the man and threatened to call the police if he did not leave.

"He was aggressive and angry," Mr Pegg said.

"It was distressing enough for me let alone her who was the target of it ...

Nadia's case was unusual in that a bystander intervened. She knew the bystander, the late Mr Pegg, an elected representative.¹

The committee hopes that this report will be a genesis for reform that embodies the spirit of equality, community, acceptance and inclusivity for which Mr Pegg was so well renowned in his electorate.

Vale Duncan.

¹ AMAN and ICQ, submission 52, p 15.

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Abbreviations

ACT	Australian Capital Territory
ADA / AD Act	<i>Anti-Discrimination Act 1991 (Qld)</i>
ADLEG	Australian Discrimination Law Experts Group
ALA	Australian Lawyers Alliance
ALHR	Australian Lawyers for Human Rights
AMAG	Australian Muslim Advocacy Group
AMAN	Australian Muslim Advocacy Network
ATSILS	Aboriginal and Torres Strait Islander Legal Service
CALD	culturally and linguistically diverse
Caxton	Caxton Legal Centre Inc
CISA	Council of International Students
commission	Queensland Human Rights Commission
commissioner	Queensland Human Rights Commissioner
Commonwealth Code	Commonwealth Criminal Code under the <i>Criminal Code Act 1995 (Cth)</i>
DCYJMA	Department of Children, Youth Justice and Multicultural Affairs
DJAG	Department of Justice and Attorney-General
DPP	Director of Public Prosecutions
ECAJ	Executive Council of Australian Jewry
HRA	<i>Human Rights Act 2019 (Qld)</i>
ICQ	Islamic Council of Queensland
IHRA	Intersex Human Rights Australia
LAQ	Legal Aid Queensland
NSW	New South Wales
OSCE ODIHR	Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR)
PAGBO	Peace and Good Behaviour Order

PICQ	Pacific Islands Council Qld Inc
QACC	Queensland African Communities Council
QAI	Queensland Advocacy Incorporated
QC	Queensland Council for LGBTI Health
QCAT	Queensland Civil and Administrative Tribunal
QCCL	Queensland Council for Civil Liberties
QCOSS	Queensland Council of Social Services
QHRC	Queensland Human Rights Commission
QJBD	Queensland Jewish Board of Deputies
QLS	Queensland Law Society
QPASTT	Queensland program of assistance to survivors of torture and trauma
QPRIME	Queensland Police Records and Information Management Exchange
QPS	Queensland Police Service
RFQ	Rainbow Families Queensland
SNSA	Sikh Nishkam Society of Australia
TCL	Townsville Community Law
UK	United Kingdom
VHP Australia	Vishva Hindu Parishad Australia

Chair's foreword

Queensland does not have a piece of legislation dedicated to serious vilification and hate crimes. There are legislative provisions in various pieces of state and commonwealth legislation that seek to respond to these issues, but it is clear from the evidence received in the course of this inquiry that people are still experiencing the devastating effects of vilification and hate crimes, and more needs to be done to address these insidious problems in our society.

It is equally clear that what is needed is cultural change in our approach to such matters: unblinking recognition that such problems exist in our society and at levels that are wholly unacceptable. The recommendations made by the Committee in this report recognise that a multi-faceted and concerted approach is what is needed in order to combat the pernicious, destructive thinking and behaviour which manifests in serious vilification and hate crimes.

To that end, the recommendations made by the Committee are intended to achieve change by a combination of education, community empowerment, and inter-governmental cooperation.

While each of us have a moral responsibility to ensure that our conduct is appropriate, and to ensure that we teach our children to behaviour properly towards others, the unfortunate reality in our society is that there will be some people who will traverse the bounds of proper behaviour. For those persons, a deterrent sanction is needed.

As stated by Dr Martin Luther King "it may be true that morality cannot be legislated, but behaviour can be regulated. The law may not change the heart, but it can restrain the heartless." As such, the recommendations of this Committee include recommendations for legislative change which broadens the rubric of both criminal and civil law to capture these behaviours, and impose sanctions in respect of same. The Committee also recognises that what is sometimes needed for healing and a different tomorrow is restorative practices, and to that end includes a recommendation that the Queensland government develop a restorative justice strategy, in consultation with affected communities.

Social media is a powerful communication tool in modern society. While it is frequently used for good, it has also unfortunately provided a platform for those who seek to do harm to others, very often without fear or real threat of consequences. Heartless, foolish, unintelligent, damaging content can be posted by cowards, who cloak themselves in the anonymity of the internet, knowing that they will likely never be held accountable for what they say, or the damage that they do.

It is not enough that we each make sure our own media content is appropriate, the ever increasing prominence of social media platforms in society means that "Big Tech" also needs to step up to the plate and moderate abhorrent and offensive content.

The proliferation of online hate speech is not solely a Queensland problem. It is a national and global problem. Regulating social media and other platforms which enable online vilification must be addressed by the governments of Australia working together. In recognition of this, the committee has recommended that the Queensland government work with the Commonwealth and other states and territories to look at ways to address online vilification, including ensuring law enforcement officers are empowered to secure admissible and probative evidence of online vilification.

I take this opportunity to thank every individual who contributed to this inquiry. Without these individuals sharing their experiences, the Committee would not have been able to understand, in quite the same way, the very personal and devastating impacts, that vilification and hate crimes has had on members of our community. I also thank the many organisations who provided thoughtful and considered briefing materials to this inquiry, including the Queensland Human Rights Commission, Multicultural Australia, the Cohesive Communities Coalition, the Department of Children, Youth Justice and Multicultural Affairs, the Queensland Police Service, the Department of Justice and Attorney-General, the Commonwealth Director of Public Prosecutions, the eSafety Commissioner, the

Queensland Parliament Library, the UK's TellMAMA organisation, and Queensland Advocacy Incorporated.

Covid pandemic restrictions limited the amount of face to face, community consultation that was possible. We did however facilitate video and recorded submissions to be taken, thus permitting contributions to the inquiry that may not otherwise have been able to be made. I am very grateful to the team who worked so tirelessly to ensure that these contributions could be made. In this I wish to express my gratitude to the Secretariat staff, led by Ms Renee Easten, including Mary Westcott, Margaret Telford, Lorraine Bowden, Kelli Longworth, Lynda Pretty and Meredith Freiburg, and to our social media team, led by Lyneta Darlington.

I am hopeful that this pivot to video and recorded submissions will be something that can continue into the future, thus facilitating and encouraging increased input into the work of committees, particularly from First Nations communities, culturally and linguistically diverse communities, and remote and regional communities.

I extend a big thank you to the other members of the Committee – our Deputy-Chair Mrs Laura Gerber, Member for Currumbin, Ms Sandy Bolton, Member for Noosa, Ms Jonty Bush, Member for Cooper, Mr Jason Hunt, Member for Caloundra and Mr Andrew Powell, Member for Glasshouse. These members are kept very busy by committee work and work tirelessly representing their electorates. I am very grateful to the members for their considerable hard work in this inquiry and I extend my particular gratitude to the Member for Cooper and the Member for Caloundra for their thoughtful consideration and conversation as we grappled with the very important issues that this enquiry canvassed.

This report is dedicated to the memory of Duncan Pegg, the former Member for Stretton. In his time as Member for Stretton, Duncan fought fearlessly for the very multicultural community he loved so dearly. I hope the dedication does him justice. I extend my sincere gratitude to Duncan's family for allowing the Committee to include the dedication in this report. I also thank James Martin, the Member for Stretton, for his assistance.

My wish is that this report is a precursor to real social change, and that all individuals in our society take on this challenge of making our community one which treats serious vilification and hate crimes with the condemnation it deserves, and which continues to strive towards standards where we show each other respect and understanding. Sadly, the reality of the human condition is that not all will come on this journey, and legislative expression of society's condemnation of vilification and hate will be necessary. Returning to, and completing, Dr King's words of wisdom extracted above:

"so while the law may not change the hearts of men, it does change the habits of men. And when you change the habits of men, pretty soon the attitudes and hearts will be changed. And there is a need for strong legislation constantly to grapple with the problems we face."

I commend this report to the House.



Peter Russo MP

Chair

Recommendations

- Recommendation 1** **13**
 The committee recommends that the Queensland Government work with the Commonwealth and other states and territories to address online vilification, including the means for police to secure evidence of online vilification.
- Recommendation 2** **28**
 The committee recommends that the Queensland Police ensure standardisation of record-keeping for reports of hate crime and serious vilification.
- Recommendation 3** **29**
 The committee recommends that the Queensland Government encourage and support third party (community-led) reporting mechanisms in trusted community organisations to report vilification and hate crimes to relevant authorities.
- Recommendation 4** **45**
 The committee recommends that the Queensland Government ensures anti-vilification provisions (in both civil and criminal laws) cover the attributes of:
- a. race
 - b. religion
 - c. gender and/or sex
 - d. sexual orientation
 - e. gender identity and/or gender expression
 - f. sex characteristics and/or intersex status
 - g. disability
 - h. medical status, including HIV/AIDS status
- Recommendation 5** **45**
 The committee recommends that the Queensland Government investigate lowering the threshold of the civil incitement test.
- Recommendation 6** **48**
 The committee recommends that the Queensland Government adopt the definition of ‘public act’ in section 93Z(5) of the *Crimes Act 1900* (NSW), which incorporates social media and other electronic methods, and ensure it applies to civil and criminal incitement-based and harm-based provisions in Queensland’s anti-vilification laws.
- Recommendation 7** **49**
 The committee recommends that the Queensland Government investigate the viability of removing the requirement for the written consent of a Crown Law officer before commencing a prosecution for serious vilification.
- Recommendation 8** **49**
 The committee recommends that the Queensland Government introduce a statutory aggravation regarding hate/serious vilification into the *Criminal Code Act 1899* (Qld) and *Summary Offences Act 2005* (Qld) to apply to criminal conduct.
- Recommendation 9** **50**
 The committee recommends that the Queensland Government relocate section 131A from the *Anti-Discrimination Act 1991* (Qld) into the *Criminal Code 1899* (Qld).
- Recommendation 10** **52**
 The committee recommends that the Queensland Government establish a hate crime scrutiny panel involving police and community advocates as an ongoing mutual education process to guide improvements in practice and increase communication on cases.
- Recommendation 11** **52**
 The committee recommends that the Queensland Government develop a restorative justice strategy concerning hate crimes, in consultation with affected communities.
- Recommendation 12** **52**

The committee recommends that the Queensland Government look into viable programs to support organisations to navigate the system for reporting serious vilification.

Recommendation 13 **52**

The committee recommends that the Queensland Government investigate funding organisations such as Legal Aid Queensland and the Aboriginal Torres Strait Islander Legal Service to have the ability to initiate civil actions on vilification matters.

Recommendation 14 **52**

The committee recommends that the Queensland Government support specialist advocacy services and legal clinics dedicated to hate crime, human rights, discrimination and vilification for CALD clients of limited socio-economic means.

Recommendation 15 **52**

The committee recommends that the Queensland Government support the Queensland Police Service in the effective utilisation of vilification provisions in the criminal jurisdiction.

Recommendation 16 **55**

The committee recommends that the Queensland Government establish a criminal offence that prohibits the display of hate symbols, including those relating to Nazi and ISIS ideology, with considered exceptions to the prohibition.

Recommendation 17 **58**

The committee recommends that the Queensland Government develop community education campaigns in conjunction with organisations such as the Queensland Human Rights Commission and Multicultural Australia to educate the community about vilification and hate conduct.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.²

The committee's primary areas of responsibility are:

- Justice and Attorney-General
- Women and the Prevention of Domestic and Family Violence
- Police and Corrective Services
- Fire and Emergency Services.

The committee also has oversight responsibility for:

- Electoral Commissioner
- Information Commissioner
- Ombudsman
- Queensland Family and Child Commission.

1.2 Inquiry referral

On 21 April 2021 the Legislative Assembly agreed:

That the Legal Affairs and Safety Committee inquire into and report to the Legislative Assembly on:

- the nature and extent of hate crimes and serious vilification in Queensland and whether there is evidence of increasing instances of serious vilification in Queensland
- the effectiveness of section 131A of the *Anti-Discrimination Act 1991* (ADA) and other existing Queensland laws responding to hate crimes.

That the committee consider:

- the Options Paper: *Serious vilification and hate crime: The need for legislative reform*
- the interaction of Queensland and Commonwealth legislation in relation to online vilification
- the effectiveness of activities and programs of the Queensland Government (including the Queensland Police Service and Office of the Director of Public Prosecutions) and the Commonwealth Government responding to hate crime, including record keeping practices
- the *Human Rights Act 2019* (HRA) and any rights which are engaged by the current law and any proposals for reform, including a human rights analysis under section 13 of the HRA for any recommended legislative amendments, as well as constitutional limitations
- the current legal framework and relevant reports, reviews and inquiries in other Australian and international jurisdictions
- the appropriateness of the conciliation-based anti-discrimination framework (section 124A of the ADA).

That the committee report to the Legislative Assembly by 31 January 2022.

² *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

1.3 Inquiry process

The committee commenced a communication campaign to facilitate broad consultation and engagement across Queensland. The goal of this campaign was to share information about the inquiry, call for submissions, and encourage people and organisations to respond to the terms of reference for the inquiry via submission or direct communication with the committee.

The committee invited stakeholders, subscribers and the general public to make written, video or audio submissions on the inquiry. The committee received 82 written submissions and 40 video and audio submissions. Of these submissions, Multicultural Australia was responsible for facilitating the provision of 41 video, audio and written submissions to the inquiry.³

In its submission, Multicultural Australia explained how the 'Inquiry's willingness to accept video and audio submissions provided a significant boost to our effort to engage diverse cultural communities across Queensland'.⁴ Multicultural Australia further detailed how it had assisted with the collation of video testimony from witnesses: 'A range of locations (Safe Spaces) were identified where community members could drop in to share experiences that would be recorded for the Inquiry'.⁵

Distribution channels for the communication campaign throughout the inquiry included:

- Social media – including Facebook and Instagram posts with graphics and videos featuring the committee
- Newspapers – including Cairns Post, Townsville Bulletin, Koori Mail, QNews, calling for submissions
- Radio – interview with the Chair of the committee
- Queensland Parliament website and subscriber updates
- Electorate offices – including newsletter updates and targeted social media
- Promotional material – including printed flyers for distribution in South East Queensland and a printable e-flyer for email distribution to remote stakeholders.

The committee received written briefings from the Department of Children, Youth Justice and Multicultural Affairs (DCYJMA), the Department of Justice and Attorney-General (DJAG), the Queensland Human Rights Commission (QHRC / commission), the Queensland Police Service (QPS) and the eSafety Commissioner.

The committee received a public briefing about the inquiry from the DCYJMA, the QPS, Multicultural Australia, Cohesive Communities Coalition and the QHRC on 24 May 2021. See Appendix B for a list of the 5 organisations and 12 officials who attended the public briefing.

The committee held a private meeting with the Commonwealth Director of Public Prosecutions on 24 May 2021 and with the Australian Federal Police on 18 June 2021.

The committee also held the following 4 public hearings in Brisbane:

- 3 September 2021 attended by 35 witnesses representing 15 organisations and one witness attending in a private capacity
- 9 September 2021 attended by 32 witnesses representing 19 organisations
- 10 September 2021 attended by 15 witnesses representing 9 organisations

³ Submission 37, p 11.

⁴ Submission 37, p 10.

⁵ Submission 37, p 10.

- 15 October 2021 attended by 3 witnesses representing one organisation and 2 attending in their private capacities.

See Appendix C for a list of the total of 44 organisations and 85 witnesses who attended these 4 public hearings.

The written submissions, published committee correspondence and transcripts of the public briefings and public hearings are available on the committee's webpage.

1.4 Comment on inquiry terms of reference

The terms of reference for the inquiry refer to serious vilification, not vilification more generally.⁶ The committee nevertheless considers it is important not to ignore the considerable evidence it received of vilification that would not meet the criteria of serious vilification.

Vilification can, amongst other things, cause the victim distress, fear and alienation. The committee is of the view that a society that ignores or is accepting of vilification is only a short step away from one in which serious vilification and hate crimes occur.

In this report, the committee focuses on hate crimes and serious vilification, but, where appropriate, also considers vilification more generally.

1.5 Non-inclusion of offensive words and images

The committee redacted unparliamentary language, such as swearing, and certain images from submissions⁷. In addition, witnesses at the public hearings were asked to refrain from using unparliamentary language, even if quoting a third party.

The committee recognises that these rules regarding unparliamentary language mean that, for the reader of this report, some of the harshness of the vilification suffered by members of our community is muted.

In this regard, the committee particularly draws readers' attention to part 4 of this report which looks at the impact of hate crimes and serious vilification on the victims.

⁶ The terms of reference for the inquiry are set out in part 1.2 of this report. 'Serious vilification', 'vilification' and 'hate crimes' are defined in part 2 of this report.

⁷ The Standing Orders of the Legislative Assembly prohibit use of offensive and 'unparliamentary' language.

2 What are hate crimes, vilification and serious vilification?

The terms of reference for the inquiry required the committee to inquire into and report to the Queensland Legislative Assembly on matters relating to hate crimes and serious vilification. Definitions of 'hate crimes' and 'serious vilification' are set out below. A definition of 'vilification' is also provided because, as noted above, much of the evidence received by the committee during the inquiry would be categorised as vilification rather than as serious vilification. In addition, research has shown there is a link between vilification (hate speech) and hate crime. Regarding this, the QHRC drew the committee's attention to an extract from the report of the Royal Commission of Inquiry into the terrorist attack on Christchurch mosques on 15 March 2019.

13. Research shows that there is a link between hate speech and hate crime. A recent study investigated whether there is a link between hate speech online and hate crime offline. Researchers collected Twitter and Police-recorded hate crime data over an eight-month period in London and built a series of statistical models to identify whether there is a significant association. The results of the study indicated 'a consistent positive association between Twitter hate speech targeting race and religion and offline racially and religiously aggravated offences in London'. What this demonstrates is that 'online hate victimisation is part of a wider process of harm that can begin on social media and then migrate to the physical world'. The study notes that if 'we are to explain hate crime as a process and not a discrete act, with victimisation ranging from hate speech through to violent victimisation, social media must form part of that understanding'. There is value therefore in seeking to reduce hate speech online and offline, not only to prevent the direct harm it causes but also to limit escalation of hate speech to hate crime.

14. It is also plausible to see a link between hate crime and terrorism. Another recent study concluded:

Through the use of multiple data sources, this study uncovers the positive associations between hate crime and terrorism. In the context of intergroup conflict, there appears to be a continuum between the bias-motivated actions of non-extremists to the hate crimes and terrorist acts committed by far-rightists, with the presence of one type of activity seeing an escalation in the next type. As a result, it appears that hate crime and terrorism may be more akin to close cousins than distant relatives.⁸

2.1 Hate crimes

Hate crimes are 'criminal acts committed with a bias motive'.⁹

The 'bias motive' element of a hate crime means that the perpetrator intentionally chose the target of the crime, or their property, because of some protected characteristic. A 'protected characteristic' is 'a characteristic shared by a group, such as "race", language, religion, ethnicity, nationality, or any other similar common factor',¹⁰ such as sexual orientation or being transgender.¹¹

To be considered a hate crime, the act must be a criminal offence such as 'intimidation, threats, property damage, assault, murder'.¹²

A stakeholder explained how a hate crime differs from a crime without a bias motive:

A person may spit on another person just because they do not like that person. That is quite a different thing from it being targeted at a person because of a personal characteristic like their race, their disability

⁸ QHRC, submission 36, pp 6-7. Italics in submission omitted. See also Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019, *Ko tō tātou kāinga tēnei*, report, 2020, Part 9, 4.1 [13]–[14].

⁹ Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), *Hate crime laws: a practical guide*, 2009, p 16, <https://www.osce.org/files/f/documents/3/e/36426.pdf>.

¹⁰ OSCE Office for Democratic Institutions and Human Rights, *Hate crime laws: a practical guide*, 2009, p 16.

¹¹ Jenny Paterson, Mark A Walters, Rupert Brown and Harriet Fearn, *The Sussex hate crime project: final report*, University of Sussex, January 2018, p 4.

¹² OSCE ODIHR, *Hate crime laws: a practical guide*, 2009, p 16.

or some other characteristic. I think that is always the distinguishing feature to keep in mind: this is about conduct that has a link to a personal characteristic that the person cannot control and it is an expression of some sort of contempt or hatred or disgust or some other form of prejudice based conduct.¹³

The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) explains that a hate crime is not a specific offence:

The term “hate crime” or “bias crime” ... describes a type of crime, rather than a specific offence within a penal code. A person may commit a hate crime in a country where there is no specific criminal sanction on account of bias or prejudice. The term describes a concept, rather than a legal definition.¹⁴

The ODIHR states that hate crimes are different to other crimes in that the perpetrator is sending a message about the victim and those like them and their right to belong to that society:

Hate crimes are designed to intimidate the victim and the victim’s community on the basis of their personal characteristics. Such crimes send a message to the victim that they are not welcome; they have the effect of denying the victim’s right to full participation in society. They also send a message to members of the community sharing the characteristic that they also do not belong, and could equally be a target. Hate crimes, therefore, can damage the fabric of society and fragment communities.¹⁵

Multicultural Queensland Advisory Council described effects of hate crime:

Hate crimes spread fear and anger throughout communities that impact upon people’s actions and their perceptions of the criminal justice system. Individuals themselves do not have to be targeted to be impacted: simply knowing someone who has been victimised is sufficient to cause these effects. Hate crimes have the potential to cause injury and distress both at the individual and community level. They affect individuals’ emotional wellbeing - predominantly causing anger and anxiety. These emotions are linked to certain behavioural responses, both proactive and avoidant.¹⁶

2.2 Vilification

Vilification is sometimes termed ‘hate speech’.¹⁷ There is no universally accepted definition for hate speech¹⁸ but it has been defined as ‘any kind of communication ... that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor’.¹⁹

The Human Rights Law Centre simply defines vilification as ‘speech which expresses hatred of a group of people in our society’.²⁰

The following example is typical of many the committee was told about:

¹³ Australian Discrimination Law Experts Group (ADLEG), public hearing transcript, Brisbane, 9 September 2021, p 15.

¹⁴ OSCE ODIHR, *Hate crime laws: a practical guide*, 2009, p 16.

¹⁵ OSCE ODIHR, *Hate crime laws: a practical guide*, 2009, p 17.

¹⁶ Equality and diversity forum, *Hate crime: cause and effect – a research synthesis*, October 2018, p 6.

¹⁷ Katharine Gelber, submission 19, p 1.

¹⁸ QHRC, submission 36, p 6.

¹⁹ Nicholas Aroney and Paul Taylor, submission 21, p 4. The definition is the working definition proposed in the United Nations’ *Strategy and plan of action on hate speech*, June 2019. See also Townsville Community Law (TCL), submission 67, attachment, p 1.

²⁰ Equality Australia, submission 71, attachment, p 3.

There were quite several times that local people yelled at me when I was waiting for traffic light or just walking on the street. Something bad towards my ethnic group and nationality including 'go back to your F country' 'F asian' 'F Chinese' 'get out of Australia you are stealing jobs'.²¹

Even some elite athletes are subject to vilification. Brisbane Lions provided the committee with examples of racist social media posts.²²

The ADA prohibits vilification on the grounds of race, religion, sexuality or gender identity. That is, 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.²³

Examples of potential acts of vilification include:

- someone shouting threats or comments at you
- leaflets, stickers, graffiti or posters
- written articles or comments online or in the media
- flags, emblems and symbols
- t-shirts or other clothing
- making gestures.²⁴

The QHRC makes it clear that vilification and discrimination are not the same:

Vilification is different to discrimination. Vilification is more serious and involves someone expressing hatred, disrespect, or ridicule for people because of who they are, and encouraging other people to think and do the same.²⁵

2.3 Serious vilification

Serious vilification is an offence under the ADA. The ADA provides that a person must not, by a public act, knowingly or recklessly 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 in a way that includes:

- threatening physical harm towards, or towards any property of, the person or group of persons, or
- inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

The maximum penalty for an individual is 70 penalty units (\$9,649.50²⁶) or 6 months imprisonment.²⁷

²¹ Queensland Chinese Forum, tabled paper, public hearing, Brisbane, 3 September 2021, p 1.

²² See Brisbane Lions, submission 78, pp 1-3.

²³ ADA, s 124A(1).

²⁴ QHRC, 'Vilification and hate crimes inquiry consultation kit fact sheet: What is vilification, and what do we know about it?', https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0019/32833/QHRC_factsheet_Vilification_WhatIsVilification.pdf.

²⁵ QHRC, 'Vilification and hate crimes inquiry consultation kit fact sheet: What is vilification, and what do we know about it?'

²⁶ The value of a penalty unit is \$137.85: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, s 5A.

²⁷ ADA, s 131A.

3 Nature of hate crimes and serious vilification in Queensland

Many Queenslanders are subject to vilification, and some to serious vilification and hate crimes. These Queenslanders include people from culturally and linguistically diverse backgrounds, people with disabilities, Aboriginal and Torres Strait Islander peoples and members of the LGBTIQ+ community.

In some instances, vilification is intersectional. A person may, for example, be vilified on the basis of both their sexuality and their race.²⁸ Legal Aid Queensland (LAQ) described the vilification experienced by one of their clients, a gay man of Chinese ethnicity. Over a few months in early 2020, his neighbour yelled abuse at him, including ‘You [redacted] gay, you will die alone. No one will [redacted] you. You will never have children’ and ‘go back to China you coronavirus carrier’.²⁹ She also stretched her eyelids in a mocking manner, threw coffee grounds and a vinegar-smelling liquid on his car causing approximately \$500 damage, spat at him, threw a plate, grapefruit and rubbish at him, hosed him with water, placed a brick under his car, and left a timber pallet and bricks on his driveway.³⁰

Vilification and hate crimes occur online and in a wide range of physical settings throughout Queensland, such as on public transport and on the street, and in workplaces, shops and schools.³¹

3.1 Offline vilification

The committee heard many examples of serious vilification and hate crimes in physical settings. The Queensland Jewish Board of Deputies Inc (QJBD) described one such instance:

Only six days ago a member of our community was walking with his young son to the Brisbane Synagogue. He was abused by someone shouting ‘Heil Hitler’ and giving him the Nazi salute. When approached, the perpetrator attacked and punched the Jewish man simply because he was identified as Jewish—he was wearing a skullcap or a yarmulke.³²

Multicultural Australia recounted the experiences of a person in the Toowoomba community:

A couple of weeks ago I met with a woman from Iraq who arrived in Toowoomba as an international student. She disclosed that, when she was walking on the street with a young child, a particular person in the community threw a soiled diaper at her and told her, ‘We don’t want you here.’³³

The Queensland Chinese Forum provided the committee with examples of hate crimes reported by the community. In answer to their request to provide a brief description of hate crimes they have experienced, a respondent wrote:

Very aggressive passengers on the street throw cigarette butts [at] me and asked me to go back to home country. My friend was called [redacted] Asian by random passengers. A friend from student association was beaten because [she] shouted back. Some random people threw eggs [at] Asian students.³⁴

²⁸ See for example, Rainbow Families Queensland (RFQ), submission 74, p 6.

²⁹ LAQ, submission 55, pp 6-7.

³⁰ LAQ, submission 55, pp 6-7. The victim of the vilification reported incidents to the police about 33 times, obtained a Peace and Good Behaviour Order, and was successful in a complaint to the QHRC regarding vilification on the basis of race and sexuality by his neighbour.

³¹ See for example, Queensland Council for LGBTI Health (QC), submission 77, pp 7-9; RFQ, submission 74, p 3; Multicultural Australia, public hearing transcript, Brisbane, 3 September 2021, p 16.

³² QJBD, public hearing transcript, Brisbane, 3 September 2021, p 30.

³³ Multicultural Australia (Toowoomba), public hearing transcript, Brisbane, 9 September 2021, p 53.

³⁴ Queensland Chinese Forum, tabled paper, public hearing, Brisbane, 3 September 2021, p 2.

Elijah Buol OAM was one of a number of stakeholders who shared personal experiences of vilification and hate crime. In Mr Buol's case these experiences included numerous instances of insulting him on account of his colour and race, and an egg thrown at him at the same time as a racist insult.³⁵

A stakeholder whose name was withheld submitted that a group of teens blocked him in a booth table at a café, made comments about his appearance (he is a Sikh and wears a turban), called him a terrorist, asked him if he had a bomb under his turban, yelled at him to leave the country and threw a full can of drink at him which bounced off him and broke his laptop.³⁶

Mr Ali Kadri, chief executive officer, Islamic College of Brisbane, and committee member, Holland Park Mosque, spoke of some recent incidents of hate crimes and vilification:

... graffiti outside the Holland Park Mosque where somebody painted a swastika and wrote the name of the terrorist who killed 52 people in Christchurch, with 'Saint' at the beginning.³⁷

... at the Islamic College of Brisbane when a pig's head with a swastika drawn on it was left at the school. This was right before the children were to come into the school.³⁸

We were at Southbank Parklands with my sister, her two children—one is seven years old and one is a two-year-old boy—my mother and my sister's husband. An intoxicated person came in and started abusing us for being Indians. He used words like 'slaves'. He used words like, 'We rightfully colonised you', and so on and so forth. I responded to the person by saying, 'Leave us alone.' He then spilled wine on me.³⁹

Mr Habib Jamal, president of the Islamic Council of Queensland (ICQ), described similar experiences on the Gold Coast:

... quite often we get damage to our property, especially the fence that is surrounding the mosque area. On a few occasions we have had a pig's head thrown into the car park. ...

On a very personal basis, ... my wife takes regular walks and she dresses like sister Galila [another witness at the hearing] with the hijab. On an average, I would say, once a week a passing motorist or a group in a car will either hurl abuse or throw something out of the window. Invariably it is a McDonald's bag.⁴⁰

The Sikh Nishkam Society of Australia (SNSA) described the vilification and hate crimes faced by Sikh taxi and rideshare drivers:

Sikh Taxi / Uber drivers experience racism on almost a daily basis. They are called names and even injured and their money stolen. They said it was pointless reporting to police as nothing is done even when there is camera footage of the incident. Worse still, they report that their turbans are touched, and rowdy passengers have tried to take them off. To touch a Sikh's turban or beard is very disrespectful, and they are left feeling very hurt and disheartened.⁴¹

The QHRC described the circumstances of 2 prosecutions under section 131A of the ADA:⁴²

³⁵ Submission 39, pp 1-2.

³⁶ Name withheld, submission 41, p 1.

³⁷ Islamic College of Brisbane and Holland Park Mosque, public hearing transcript, Brisbane, 10 September 2021, p 2. See also AMAN and ICQ, submission 52, p 8.

³⁸ Islamic College of Brisbane and Holland Park Mosque, public hearing transcript, Brisbane, 10 September 2021, p 2.

³⁹ Islamic College of Brisbane and Holland Park Mosque, public hearing transcript, Brisbane, 10 September 2021, p 3.

⁴⁰ Islamic Council of Queensland, public hearing transcript, Brisbane, 10 September 2021, p 3.

⁴¹ SNSA, submission 44, p 16.

⁴² Section 131A of the ADA provides an offence of serious racial, religious, sexuality or gender identity vilification.

The first prosecution related to serious racial vilification of a guard on a train in Brisbane in late 2014, and the person was convicted on a plea of guilty in September 2015. The offender was sentenced to two months imprisonment, wholly suspended for 12 months.

... The other prosecution known to the Commission was a charge of serious gender identity vilification in Townsville, where the offender was convicted on a plea of guilty, and sentenced on 11 April 2018 to 40 hours of community service.⁴³

Other examples of serious vilification and hate crimes included a carload of men yelling out a derogatory term at a member of the LGBTIQ+ community and throwing a glass bottle at them as they walked along the street.⁴⁴

Australian Muslim Advocacy Network (AMAN) and the ICQ provided an example that occurred in regional Queensland in 2020:

An elderly women attacked me with her walking stick and verbally. She approached me by saying to go [redacted] off out of this country, no one wants me here and I didn't [redacted] belong here. She continued with more verbal and offensive words, and at the end she ask me to go back where I came from and take my virus/disease (she thinks I am Asian even though I am Latin).⁴⁵

Rainbow Families Queensland (RFQ) described situations in which people in the LGBTIQ+ community are most likely to experience vilification:

- random verbal attacks on the street, public transport, at the shops etc. (might also be accompanied by a physical attack) and can occur in all public spaces;
- ongoing hate speech from neighbours;
- online – and particularly social media interactions; and
- traditional media – including newspapers.⁴⁶

Sometimes, what some people may think is humorous can be upsetting to the group at the butt of the joke. Referring to references to Hinduism made by Federal Treasurer, Josh Frydenberg MP, the Queensland Chapter of Vishva Hindu Parishad (VHP) Australia submitted:

Although it may sound funny and harmless to some but making such statements without understanding Hindu culture, the deep meaning, significance and science behind such practices that have been upheld for thousands of years does not go down well with the Hindu community.⁴⁷

Multicultural Youth Queensland similarly submitted:

Majority of the young people reported they experienced vilification during their school years. The attitude of the other students and often teachers was that it is a joke or satire. Students/teachers would make remarks such as “stop being a snowflake” or “it’s just a joke” to minimize these harmful behaviours. This has reformed the identities of these young people as they have grown up desensitised to such remarks and they have accepted racism as part of their lives.⁴⁸

⁴³ QHRC, correspondence dated 20 May 2021, p 5.

⁴⁴ QC, submission 77, p 8.

⁴⁵ AMAN and ICQ, submission 52, p 17.

⁴⁶ RFQ, submission 74, p 3.

⁴⁷ VHP Australia, Queensland Chapter, submission 51, p 4.

⁴⁸ Multicultural Youth Queensland, submission 54, pp 2-3.

3.2 Online vilification

Online vilification, sometimes called online hate speech or cyberhate, is common, especially for certain groups in our community. Research into online hate speech commissioned by eSafety, published around the time of the onset of the COVID-19 pandemic, found:

... around 1 in 7 adult Australians aged 18–65 (14%) were the target of online hate speech in the 12 months to August 2019: this is around 2 million people. ...

People identifying as LGBTQI or Aboriginal or Torres Strait Islander experience online hate speech at double the national average. In general, people experiencing online hate speech identify their political views (21%), religion (20%) and gender (20%) as the top three reasons for being targeted. However, terms like race, ethnicity and nationality can be interchangeable from a respondent's perspective. Taken together, these reasons account for 32% of people experiencing online hate speech.

The findings were particularly stark in relation to sexual orientation. Sixty-one per cent of those who identify as LGBTQI report that their sexual orientation was the reason for being the target of online hate speech, compared to their gender (35%) or political views (30%). Most people were unable to attribute responsibility for their online hate speech experience to a specific person, with 47% assigning blame to a stranger and 13% reporting that they didn't know who is responsible (13%). People identifying as LGBTQI (76%) are considerably more likely to identify a stranger as the source of online hate speech than any other group. An estimated 58% of those personally experiencing online hate speech report a negative impact from their experience. Thirty-seven per cent report mental or emotional stress as a result of their experience, while 10% report reputational damage. People identifying as LGBTQI were more likely to report mental or emotional stress from online hate speech than other groups.⁴⁹

The committee received evidence illustrating the type of online hatred faced by some Queenslanders including:

... the vilification of Muslims and Islam online is horrific. I've been told to "[redacted]", "go kill yourself" (these comments are tame compared to other comments). The worst thing about the online vilification is that it's made by (generally) men who have their full name, including pictures of their wife and kids which just shows how accepted the comments are online and how they know that there won't be any consequences. I've reported comments to facebook where a man said, "give me a gun and I'll sort the Muslims out" ...well Facebook said it didn't go against their community standards. Surely, encouraging violence against a minority group should be illegal and not encouraged by online social media companies. In certain areas of Australia, there is an acceptance that islamophobia and bigotry is a valid political opinion and that "you can't stop them, that's their opinion". I, and many people in the QLD community think that we can and should stop those people from expressing their opinion especially if it is vilifying or encouraging violence against a group of people. It harms the vibrant multicultural society that many of us have worked hard for, and people of ethnic minority background should be able to move anywhere in QLD whether it is Cloncurry, the Burdekin, St George or Brisbane; all residents of QLD are welcome.⁵⁰

And another:

In the early days of COVID early last year, there were a lot of incidents around COVID and targeting Chinese-looking people. A lot of those instances we found on social media.⁵¹

⁴⁹ eSafety Commissioner, submission 10, p 2. See also eSafety, *Online hate speech: findings from Australia, New Zealand and Europe*, February 2020, pp 6-14, <https://www.esafety.gov.au/sites/default/files/2020-01/Hate%20speech-Report.pdf>.

⁵⁰ James/Yaqub Phillips, submission 16, p 1.

⁵¹ Chinese Community Crime Prevention Consultative Committee, public hearing transcript, Brisbane, 3 September 2021, p 3.

The QJBD told the committee that survey results revealed that 30% of Jewish people in Queensland have experienced online hatred⁵² and that anti-Semitic comments on social media have a negative impact on the community.

The number of anti-Semitic comments on social media is literally through the roof. It is impacting on our communal members because they will put up a post about something and it will get hammered by trolls. That does not make our community feel welcomed or our community members feel safe. I think it is a real challenge not just for Queensland but nationally as well for us to be able to deal with that in a way that stops people peddling hate online.⁵³

Respect Inc and Australian Sex Workers Association expressed concern about vilification of sex workers online:

The online vilification of sex workers is prevalent, under-protected, unreported and can take many forms. Individuals can target workers by 'outing' them online, identifying their address and advertisements and publicising this information to the workers family and friends and the broader community. This is done to mobilise 'contempt' against the sex worker and can be exacerbated if the worker is also a parent, carer or a worker in another industry (such as education or child care) or because of their gender or sexuality. Online vilification of sex workers also takes the form of groups of people, including so-called 'radical feminists' targeting sex workers ridiculing them for their choice of work, referring to their children and that they know where the person lives. There are also countless facebook groups that crop up with the intent of vilifying sex workers.⁵⁴

In response to a question from the committee seeking an example of what would be posted regarding vilification or hate crime against a person with a disability, representatives from Queensland Advocacy Inc (QAI) advised:

I can [provide you with an example] but not without using unparliamentary language. All the examples are quite—if you do a Google search for 'jokes about people with disability', there are so many jokes that call people with a disability 'vegetables'. I do not want to—

...

This type of language is reported to us very frequently by clients. It is part of their experience of life, unfortunately. We do know that people with disability are over-represented in terms of the reporting of discrimination. That has certainly been one aspect of that.⁵⁵

This latter point, that online vilification can form just one part of the vilification and hate crime picture, was also raised by Multicultural Australia:

... 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.⁵⁶

Australian Muslim Advocacy Group (AMAG) advised that disinformation online is a major problem for the Muslim community.⁵⁷ AMAG continued:

We are most often dehumanised online through information campaigns that try to portray all Muslims as acting as some kind of homogenous and hostile mass. We cannot do anything really about those campaigns except make a vilification complaint under our current existing civil laws. We made a

⁵² QJBD, public hearing transcript, Brisbane, 3 September 2021, p 33.

⁵³ QJBD, public hearing transcript, Brisbane, 3 September 2021, p 33.

⁵⁴ Respect Inc and Australian Sex Workers Association, submission 81, p 7.

⁵⁵ QAI, public hearing transcript, Brisbane, 9 September 2021, p 25.

⁵⁶ Multicultural Australia, public briefing transcript, Brisbane, 24 May 2021, p 9.

⁵⁷ AMAG, public hearing transcript, Brisbane, 3 September 2021, pp 35-36.

complaint against Fraser Anning. The Australian Muslim Advocacy Network made that complaint which was the first successful complaint against a politician in Australia.⁵⁸

AMAN and ICQ submitted that hatred from social media users includes:

- a. expressions of disgust towards Muslims,
- b. iteration of extreme right narratives about Muslims (demographic invasion and replacement),
- c. expressions of wanting to expunge Muslims,
- d. expressions or wanting to kill or see Muslims dead,
- e. as well as fantasies of violence or genocide against entire Muslim populations.⁵⁹

The QHRC drew the committee's attention to comments made by the United Nations Special Rapporteur on minority issues about dehumanising language, stating:

The Special Rapporteur ... expressed concerns that dehumanising language normalises violence against the minority groups to which it is directed, and makes their persecution and elimination acceptable. He considered that individuals can become enmeshed in confirmation bias in social media, which is an incubating environment conducive to the expression, strengthening, and confirmation of racist, intolerant, and violent viewpoints against certain scapegoated minorities.⁶⁰

The QHRC also referred to research about anti-crime Facebook groups:

Research shows that anti-crime Facebook groups in Australia 'have the effect of legitimating racial vilification, vigilantism and violence against racialized 'others' and that the current regulation of online racism and racial vilification appears to be profoundly inadequate for addressing these concerns'. It includes examples of direct links between Facebook groups and incidence of violence, and states that the constant reinforcement of racist violence is most troubling.⁶¹

Christian Schools Australia identified one of the key differences between online vilification and that in the physical world, being that posts online can be anonymous:

Social media has clearly been identified as not helping traditional conversations. There is the ease of being a keyboard warrior, of hiding behind an anonymous name on social media, particularly on Twitter. We have seen numerous examples of some extraordinarily offensive campaigns being run on social media against public figures, MPs and others. There is absolutely abhorrent behaviour there but it is easy to do because you can hide; you can be brave behind the keyboard, with the anonymity of not being targeted for that. When you actually have face-to-face conversations—when you can eyeball people—it is much harder to have that same level of vitriol.⁶²

An article provided to the committee by Multicultural Australia identifies other key differences between online and offline hate speech as ease of access, size of audience, and instantaneousness.⁶³ All these factors contribute to online hate speech being an important source of vilification and hate crime to address.

Committee comment

The committee is appalled by the online and offline hatred inflicted on certain members of our society. The committee recognises, however, that the Queensland Government alone cannot address online

⁵⁸ AMAG, public hearing transcript, Brisbane, 3 September 2021, pp 35-36.

⁵⁹ AMAN and ICQ, submission 52, pp 8-9.

⁶⁰ QHRC, submission 36, p 8. Footnotes in original omitted.

⁶¹ QHRC, submission 36, p 8. Footnotes in original omitted.

⁶² Christian Schools Australia, public hearing transcript, Brisbane, 9 September 2021, p 8.

⁶³ See Alexander Brown, 'What is so special about online (as compared to offline) hate speech?' *Ethnicities*, 2018, 18(3), pp 297-326 in Multicultural Queensland, correspondence dated 6 September 2021, pp 63-92.

vilification. As discussed below in part 6.3.3.3 of this report, police need to access communications held by a carrier to establish who is responsible for offensive online communications. A stored communications warrant issued under the *Telecommunications (Interception and Access) Act 1979* (Cth), is necessary for police to access and preserve the communications. Those warrants are only available for the investigation of a serious offence (typically one subject to at least 3 years imprisonment). This means that to support a section 131A complaint, there must also be a complaint of an associated 3 year imprisonment offence (for example, a telecommunications offence referred to below) to allow for the search and seizure of electronic evidence of the vilification.

Recommendation 1

The committee recommends that the Queensland Government work with the Commonwealth and other states and territories to address online vilification, including the means for police to secure evidence of online vilification.

4 Impacts of hate crimes and vilification

The committee considers that simply describing the nature and extent of hate crimes and vilification faced by members of the community is not sufficient to capture the whole story; it is important to also consider the impact of the vilification on the victims. This helps explain why something has to be done to reduce the instances of hate crimes and vilification in Queensland.

A sample of the impacts described to the committee include:

The victims of vilification and hate crimes are left feeling intimidated, vulnerable, in fear of their own safety and the safety of their families and often feel like an outsider—feeling as though they do not belong in the Queensland community. The psychological impacts of these experiences leave victims with ongoing trauma. In some cases Sikhs have resigned from work, are afraid to go out or are diagnosed and medicated for mental health illnesses whereas the perpetrators have walked away with no ramification, no remorse and no understanding of the impact their actions have had on the victim.⁶⁴

I experience stress, difficulty sleeping, heart palpitations and feelings of hopelessness.⁶⁵

Suicide ideation⁶⁶

Feeling less than. Increased anxiety.⁶⁷

Mental health affected, feeling isolated and sad, and angry.⁶⁸

Don't feel safe don't feel valued and certainly not respected.⁶⁹

Depression and anxiety.⁷⁰

... a video was circulated online in July this year which depicted two females and one male of Asian appearance being viciously attacked by a group of people in Inala. One of the victims was pushed to the ground and kicked repeatedly, while the attackers can be heard to shout racial slurs. The video was shared with me by an international student. While we are unsure if the victims are international students, we remain very concerned as many international students are of Asian descent or are people of colour. It is very difficult to put into words how much fear that footage instilled in me and my fellow students. We feel vulnerable due to our skin colour and the accents that we speak in. We feel helpless because, like many issues that international students face, our experiences are often not validated in public discourse and are sometimes even met with the response of 'go back to your countries'.⁷¹

... more than half of the respondents in our survey reported experiencing heightened fear as well as changing their behaviours because of this fear. This includes avoiding high amounts of contact with strangers, avoiding speaking in non-English languages and even changing their appearance to look less 'ethnic'.⁷²

⁶⁴ SNSA, public hearing transcript, Brisbane, 3 September 2021, p 43.

⁶⁵ QC, submission 77, p 19.

⁶⁶ QC, submission 77, p 19.

⁶⁷ QC, submission 77, p 20.

⁶⁸ QC, submission 77, p 20.

⁶⁹ QC, submission 77, p 20.

⁷⁰ QC, submission 77, p 21.

⁷¹ Council of International Students Australia (CISA), public hearing transcript, Brisbane, 9 September 2021, p 2.

⁷² CISA, public hearing transcript, Brisbane, 9 September 2021, p 2.

... the pain, mental health, social and economic impacts that these sorts of targeted racial attacks cause on our people is absolutely enormous.⁷³

I felt helpless [at] the time because there was no strong law to protect me. It damages my dignity and sense of worthiness in the society that I should feel belong and be part of!⁷⁴

The impact of racial vilification and hate crime is a far-reaching consequence. It instils a sense of non-belonging for victims and creates a feeling of being an outsider. As a result, people of all ages, not just children, “always try to fit in”, and this need to assimilate has left many Sikhs with the inability to embrace and accept their own culture and heritage. Others report a tendency to work harder than anyone else to get somewhere, and to be always cautious of their actions; since even a small misstep labels the whole community as the offender. Other respondents mentioned feeling “alien, or outsider” and cited the impacts of shame, humiliation.⁷⁵

Routine vilification, especially face to face encounters and lack of action by employers and enforcement services results in a deficit in the justice system. This in turn leaves a society that has no faith in a justice system that cannot deter, apprehend and punish those inflicting such behaviours.⁷⁶

We felt scared, threatened and upset. We felt shame and humiliation and being discriminated against, and hurt. This experience made me feel different. This happened because of my skin colour and religion. This experience also made me try not to judge others.⁷⁷

In summary, the impacts of hate crimes and vilification for the victim at the time of the incident can include feeling scared, vulnerable, helpless, unsupported, confused, embarrassed, shocked, angry, horrified and being disappointment at the failure of others around to stand up for them.

Subsequent impacts can include depression, anxiety, feeling humiliated, pain from physical injury, feeling inferior, feeling insecure in driving (such as following an incident in a car park), becoming cynical, warier of other people, not wanting to return to work (if it is the location of the vilification), feeling unsafe⁷⁸ and unwelcome.⁷⁹

Victims sometimes change their behaviour after an incident to lessen the chances of another incident occurring. These actions included altering times of visiting certain places such as shopping centres,⁸⁰ and public spaces,⁸¹ avoiding busy areas and being hypervigilant about their surroundings.⁸²

However, not all later impacts on victims are negative. Some stakeholders drew strength from the experience, with more than one saying that they now try to stand against such incidents.⁸³ Some stakeholders were generous about those who vilified them, putting their words and actions down to their lack of understanding and knowledge.⁸⁴

⁷³ Queensland African Communities Council (QACC), public hearing transcript, Brisbane, 3 September 2021, p 7.

⁷⁴ Elijah Buol OAM, submission 39, p 2.

⁷⁵ SNSA, submission 44, p 3. See also Access Community Services, submission 53, p 2.

⁷⁶ SNSA, submission 44, p 4.

⁷⁷ Access Community Services, submission 53, p 5.

⁷⁸ Chinese Crime Prevention Consultative Committee, public hearing transcript, Brisbane, 3 September 2021, p 2; Queensland Chinese Forum, submission 42, p 1; QC, submission 77, p 19.

⁷⁹ See for example SNSA, submission 44, pp 6-13.

⁸⁰ Yarraka Bayles, public hearing transcript, Brisbane, 15 October 2021, p 7.

⁸¹ See for example QAI, public hearing transcript, Brisbane, 9 September 2021, p 23.

⁸² Name withheld, submission 41, p 1.

⁸³ See for example SNSA, submission 44, p 13; Sharon Were, submission 63, pp 1-2.

⁸⁴ SNSA, submission 44, p 13. This report discusses education in Chapter 8.

4.1 Bystanders

Some stakeholders told the committee that if bystanders did nothing when a person was vilified, it exacerbated the distress felt by the victim.

Ms Abiba Andria told the committee how, in the evening on consecutive weeks, a bus driver made comments to her about her skin colour as she got onto the bus. As a result:

I did not want to catch a bus ever again after that. I did not think we still lived in a world where people still looked at us like that. I called the transport department and was online for a minute but quickly hung up because my thought was: what are they going to do? They are not [going] to do anything about it. They would most likely just say, 'We will forward your complaint to whoever', and then apologise. That is not enough.⁸⁵

When a committee member asked whether there was any bystander intervention, Ms Andria said:

Everybody kept quiet. There was an old lady who was sitting at the front and I could see her face change, but nothing was said. That is where that feeling of embarrassment came in. The fact that no-one stood up, it was like did anyone even care?

...

I would have appreciated if someone told the bus driver that what he said was not appropriate and was not nice. When we see incidents of racism on buses or public transport you do see some people stand up and make sure the person is all right rather than them walking away thinking in that moment they were not human. For people to not stand up, it seems like that comment to them was okay and they did not see any harm in it. The effect on me was more severe.⁸⁶

After recounting a case study involving serious vilification on public transport, AMAN and ICQ submitted:

The train had many passengers, but not a single person felt comfortable or knew what to do to support the family. Bystander education would be beneficial. The Islamophobia in Australia Report has found that witness support reduced the traumatic impacts of hate incidents on the victim, whereas a failure to act exacerbated the victim's trauma, as it inadvertently gave the impression that the expression of hatred is endorsed or emblematic of a broader community feeling towards people of that race or religion.⁸⁷

AMAN and ICQ presented a case in which a bystander intervened. It is included in the Dedication on page ii of this report.

⁸⁵ Public hearing transcript, Brisbane, 3 September 2021, p 8.

⁸⁶ Public hearing transcript, Brisbane, 3 September 2021, p 9.

⁸⁷ AMAN and ICQ, submission 52, p 14.

5 Extent of hate crimes and serious vilification in Queensland

Hate crimes and serious vilification occur in many places throughout Queensland.⁸⁸ There is, however, no central data collection point on hate crimes and serious vilification in Queensland so the prevalence of serious vilification and hate crimes in Queensland is unknown. Even the data that is available is of limited value for reasons including under-reporting and under-recording.⁸⁹

This part of the report summarises the data that is available, examines the reasons for under-reporting and under-recording, considers whether rates of serious vilification are increasing in Queensland, explains why data about hate crimes and serious vilification is important, and recommends improvements to data collection.

5.1 Data on hate crimes and serious vilification in Queensland

There is limited data on hate crimes and serious vilification in Queensland.

The QPS records offences against section 131A of the ADA (Offence of serious racial, religious, sexuality or gender identity vilification). The QPS also records some, but not all, instances in which offences, such as wilful damage, also include hate or vilification behaviour.

In addition, surveys and other data collected by community organisations and others provide information relating to particular groups.

5.1.1 Queensland Police Service

From 2015 to 2020, QPS data shows 8 offences against section 131A of the ADA.⁹⁰ The QPS elaborated:

In this period, one offence was recorded against the offence code per calendar year for all years except for 2017, when three offences were recorded. The data does not show the outcome and is not an indication of the number of offenders.⁹¹

5.1.1.1 *Under-recording*

The QPS advised that other criminal offences, such as common assault, wilful damage, threatening violence and public nuisance may also include hate or vilification type behaviour, but there is 'no wholly reliable data extraction method of determining whether a crime reported to police involved characteristics of hate or vilification for the purposes of statistical analysis without looking at cases individually'.⁹²

The QPS database QPRIME (Queensland Police Records and Information Management Exchange) allows an officer to record within an incident if there were characteristics of hate or vilification involved. However, this source of data has limitations and, according to the QPS, the figures must be treated with caution.⁹³

The categories that may be recorded are: age, disability, ethnicity (cultural), gender identity, language, political/union/activist groups, racial, religion, sexuality, skin colour, social background, and other. The number of reported offences where one of these hate or vilification characteristics was recorded is provided at Table 1 below. The limitations with this data are also discussed below.

⁸⁸ The committee received evidence of hate crimes and serious vilification in locations in both metropolitan and regional Queensland. These locations included Brisbane, Gold Coast, Toowoomba, Townsville, and central Queensland.

⁸⁹ See for example, TCL, submission 67, p 4.

⁹⁰ QPS, correspondence dated 20 May 2021, attachment, p 2.

⁹¹ QPS, correspondence dated 20 May 2021, attachment, p 2.

⁹² QPS, correspondence dated 20 May 2021, attachment, pp 2-3.

⁹³ QPS, correspondence dated 20 May 2021, attachment, p 3.

Table 1 below provides an overview of the number of reported offences where a characteristic of hate or vilification was inputted. These categorisations are based on an officer's individual assessment and are not subject to any quality assurance checking. Verifying their accuracy would require manual review of each individual occurrence to examine the context of the offending. This is particularly relevant with respect to the broad category of 'other.' The QPS notes the potential for officers, out of human error, to incorrectly select 'other' instead of 'not hate crime'.

The categorisation also does not allow police to record where a person has been the subject of more than one characteristic of vilification or hate. Like all data, it has its limitations, requiring the figures to be treated with caution.⁹⁴

The table referred to in the quote is presented below.

Table 1: Number of reported offences with hate or vilification characteristic, Queensland, 1 January 2015 to 31 December 2020						
Characteristic	2015	2016	2017	2018	2019	2020
Age	1	1	1	6	9	16
Disability	-	2	1	2	2	3
Ethnicity (cultural)	9	3	5	8	10	19
Gender identity	-	-	4	-	3	2
Language	-	8	1	4	13	4
Political/union/activist groups	-	-	-	7	44	16
Racial	33	61	50	105	114	158
Religion	12	8	6	15	12	4
Sexuality	-	2	4	12	12	12
Skin colour	-	2	6	6	11	3
Social background	1	-	1	1	1	8
Total	56	87	79	166	231	245
Other (see Note 1)	6	3	13	81	114	305
Overall Total	62	90	92	247	345	550
Note 1. May include no hate or vilification conduct.						

As the QPS explained, there are some constraints with using the QPRIME to record data about hate crimes and instances of serious vilification. This includes that only one characteristic can be inputted, even though it may be a case of intersectionality.⁹⁵ In addition, the categorisation is dependent on the officer's assessment and is not checked.

When asked whether there is scope to look at how the data is captured on QPRIME to examine whether or not that can be done in a different way, the QPS advised:

Yes. However, the existing statistical classification function in QPRIME is likely the most reliable method of capturing whether an offence involves characteristics of hate or vilification type conduct. Without this

⁹⁴ QPS, correspondence dated 20 May 2021, attachment, p 3. Footnote in original omitted.

⁹⁵ 'Intersectionality' is discussed above in Part 3 of this report.

function, the only way to determine whether an offence involved such characteristics would be to manually examine the information recorded under individual QPRIME occurrences.⁹⁶

5.1.1.2 Under-reporting

Multicultural Australia submitted that research indicates bias crime is less likely to be reported to police than non-bias crime.⁹⁷

Stakeholders identified numerous reasons why people do not report hate crimes and instances of serious vilification including:

- members of targeted communities are unaware of the relevant laws⁹⁸
- discrimination and vilification are so normalised that it does not occur to people that they could complain about the behaviour⁹⁹
- a lack of awareness/knowledge on how to report and where to report¹⁰⁰
- lack of trust in the system¹⁰¹
- the process of reporting matters to police is a ‘tedious and time consuming process’¹⁰²
- language barriers,¹⁰³ such as no interpreter available,¹⁰⁴ or cultural barriers¹⁰⁵
- lack of trust that the police will act appropriately and believe the victims¹⁰⁶
- do not believe any real action would be taken by the police¹⁰⁷
- consider it a waste of time telling anyone in authority (especially the QPS)¹⁰⁸
- a belief that police cannot do anything¹⁰⁹

⁹⁶ QPS, response to question taken on notice during briefing on 24 May 2021, p 1.

⁹⁷ Multicultural Australia, submission 37, p 14.

⁹⁸ ADLEG, submission 72, pp 3, 10; Multicultural Australia, submission 37, p 14; Access Community Services, submission 53, p 2; LAQ, submission 55, p 10; Queensland Chinese Forum, submission 42, p 2.

⁹⁹ LAQ, submission 55, p 10. See also Access Community Services, submission 53, p 2; SNSA, submission 44, p 3.

¹⁰⁰ SNSA, submission 44, p 3. See also Multicultural Australia (Toowoomba), public hearing transcript, Brisbane, 9 September 2021, p 53; Queensland Chinese Forum, public hearing transcript, Brisbane, 3 September 2021, p 5.

¹⁰¹ DCYJMA, public hearing transcript, Brisbane, 24 May 2021, p 3. See also Multicultural Australia (Toowoomba), public hearing transcript, Brisbane, 9 September 2021, p 55.

¹⁰² Multicultural Youth Queensland, submission 54, p 2. See also Townsville Islamic Society, public hearing transcript, Brisbane, 9 September 2021, p 63.

¹⁰³ SNSA, submission 44, p 3.

¹⁰⁴ Multicultural Australia (Toowoomba), public hearing transcript, Brisbane, 9 September 2021, p 55.

¹⁰⁵ LAQ, submission 55, p 10. See also Multicultural Australia, submission 37, p 14; Access Community Services, submission 53, p 2.

¹⁰⁶ Multicultural Youth Queensland, submission 54, p 2.

¹⁰⁷ SNSA, submission 44, pp 11-12; PICQ, submission 46, p 1. See also Pacific Islands Council Queensland Inc. (PICQ), public hearing transcript, Brisbane, 3 September 2021, p 10.

¹⁰⁸ PICQ, submission 46, p 1.

¹⁰⁹ QJBD, submission 30, p 12; Access Community Services, submission 53, p 2. See also Queensland Chinese Forum, submission 42, p 2.

- nothing good would come out of reporting¹¹⁰
- authorities unlikely to act¹¹¹
- fear of consequences, such as losing their job;¹¹² being outed (for LGBTIQ+ communities);¹¹³ affecting their visa status (for refugees and migrants);¹¹⁴ losing family or carer support (for people living with a disability);¹¹⁵ further anti-Semitism¹¹⁶
- experience was ‘too personal’ to share publicly¹¹⁷
- delay between reporting and an outcome¹¹⁸
- previous experience of authority acts as a deterrence¹¹⁹
- no consequences for those who committed the act.¹²⁰

5.1.2 Office of the Director of Public Prosecutions

DJAG advised that the Office of the Director of Public Prosecutions ‘does not keep statistics in relation to criminal offences that may have been committed in circumstances of racial, religious, sexuality or gender identity vilification’.¹²¹

5.1.3 Other data on serious vilification and hate crimes

Surveys and other data collected by community groups and others indicate that the level of hate crimes and serious vilification in the community is higher than that reported to the QPS.

Australian Lawyers for Human Rights (ALHR) and Equality Australia referred the committee to the findings of the 2020 report *Private lives 3: the health and wellbeing of LGBTIQ people in Australia (Private lives 3)*:

This large-scale survey found that 34.6% of LGBT respondents experienced ‘verbal abuse (including hateful or obscene phone calls)’ due to their sexual orientation or gender identity in the previous 12 months, while 23.6% experienced ‘harassment such as being spat at and offensive gestures’.

More seriously, 22.1% reported that they had ‘received written threats of abuse via emails, social media’, and 14.6% reported ‘threat of physical violence, physical attack or assault without a weapon.’

¹¹⁰ RFQ, submission 74, p 3.

¹¹¹ QHRC, submission 36, p 9.

¹¹² SNSA, submission 44, pp 11-12

¹¹³ TCL, submission 67, p 8; RFQ, submission 74, p 3.

¹¹⁴ TCL, submission 67, p 8; SNSA, submission 44, p 3.

¹¹⁵ TCL, submission 67, p 8.

¹¹⁶ QJBD, submission 30, pp 5, 12; Australian Muslim Advocacy Group, public hearing transcript, Brisbane, 3 September 2021, p 34.

¹¹⁷ Access Community Services, submission 53, p 2.

¹¹⁸ Queensland Program of Assistance to Survivors of Torture and Trauma, public hearing transcript, Brisbane, 3 September 2021, p 14. See also Multicultural Australia (Toowoomba), public hearing transcript, Brisbane, 9 September 2021, p 55; QAI, public hearing transcript, Brisbane, 9 September 2021, p 24.

¹¹⁹ Yarraka Bayles, public hearing transcript, Brisbane, 15 October 2021, p 4; Multicultural Australia, submission 37, p 14.

¹²⁰ QHRC, submission 36, p 9.

¹²¹ DJAG, correspondence dated 20 May 2021, p 3.

Almost 1 in every 25 LGBT respondents (3.9%) reported that they had experienced ‘physical attack or assault with a weapon (knife, bottle, stones)’ due to their sexual orientation or gender identity in the previous 12 months alone.¹²²

The Council of International Students (CISA) referred to survey results which, amongst other things, showed that 16% of instances of discrimination on the basis of race involved physical altercations.¹²³

AMAG drew attention to a survey published in March 2021 which surveyed mosques around Australia. It found that 58% of the surveyed mosques had experienced targeted violence between 2014 and 2019. AMAG added, ‘A lot of mosques prefer to not publicise it out of fear of making themselves more of a victim’.¹²⁴

The Executive Council of Australian Jewry (ECAJ) and the QJBD compiled a tally of antisemitic incidents in Queensland 2014-2021. It is reproduced below.¹²⁵

Incident	2014	2015	2016	2017	2018	2019	2020	YTD 2021
Physical assault	1	-	-	-	-	-	-	1
Abuse, harassment,		-	-	-	-	7	5	3
Vandalism		-	-	-	1	-	-	-
Graffiti	2	1	1	5	1	6	2	6
Email		-	6	-	4	3	1	2
Postal mail		-	-	-	-	4	-	-
Telephone, text, fax		-	-	-	-	3	4	-
Leaflets, posters, stickers		-	-	15	43	2	2	2
TOTAL	3	1	7	20	49	25	14	14

5.2 Are instances of serious vilification increasing in Queensland?

As is clear from the discussion above, it is not possible to definitively state whether instances of serious vilification are increasing in Queensland because there is no comprehensive data collected and people who experience serious vilification may not report it.

Some stakeholders contended that instances of serious vilification are on the rise, but other stakeholders were reticent to make such statements.

¹²² ALHR, submission 69, p 2.

¹²³ CISA, public hearing transcript, Brisbane, 9 September 2021, p 2.

¹²⁴ AMAG, public hearing transcript, Brisbane, 3 September 2021, p 34.

¹²⁵ QJBD, submission 30, p 10. The dates are for 12 month periods from 1 October to 30 September each year. The high level of incidents in 2018 is attributed to one neo-Nazi group that was most present in Queensland in that year.

It is clear from the evidence received by the committee, however, that certain events can trigger increased instances of vilification. The COVID-19 pandemic (early 2020 to present), the marriage postal survey (2017) and the Courier Mail article headlined ‘Enemies of the State’ (2020) are key recent events that led to an increase in instances of vilification and hate crimes for certain members of our community.

This part of the report discusses the available evidence regarding the rate of serious vilification in Queensland then addresses the impact of the triggers mentioned above on the level of vilification.

5.2.1 Rate of instances of serious vilification

While there are some acknowledged limitations to the data collected by the QPS on hate crimes, the QPS concluded that the data shows an increase in hate crime reflecting the trend identified in public commentary.¹²⁶

The data provided ... 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 ...¹²⁷

Equality Australia referred to the survey results in *Private lives 3* and *Private lives 2: The second national survey of the health and wellbeing of GLBT Australians (Private lives 2)* to show there had been an increase in the vilification faced by the LGBTIQ community.

When compared with the 2012 national *Private Lives 2* survey of 5,476 LGBT Australians, the 2020 results suggest that the incidence of violence and harassment has in fact increased over time.

...

This data suggests both an increase in the proportion of LGBTIQ people reporting recent experiences of violence and harassment based on their sexual orientation (and in 2020 also based on their gender identity), and also a significant number of LGBTIQ people (almost 1 in 5) who are now experiencing harassment online.¹²⁸

The committee also received anecdotal evidence that the level of vilification has increased, such as that from LAQ:

It is our experience that vilification occurs regularly in Queensland. While instances of hate crimes and serious vilification are less common than other forms of discrimination, they appear to have been increasing in frequency over the past five years.

...

From our anecdotal observations, we note that instances of serious vilification on the basis of race, religion, sexuality and gender identity appear to have increased in Queensland in recent years. In part, this increase seems to be attributable to the availability of social media and other internet platforms which provide opportunities for persons to engage in vilification to large audiences, often using pseudonyms to post anonymously and avoid public accountability. In particular, noticeable rises in online vilification have occurred in response to current events and subsequent media reporting ...

¹²⁶ QPS, correspondence dated 20 May 2021, attachment, p 3.

¹²⁷ QPS, public briefing transcript, Brisbane, 24 May 2021, p 2.

¹²⁸ Equality Australia, submission 71, pp 2-4. Footnotes in original omitted. See also QC, public hearing transcript, Brisbane, 3 September 2021, p 37.

Research commissioned by eSafety found that 7 in 10 adult Australians believe that online hate speech is spreading.¹²⁹

But not all stakeholders gave evidence of increasing serious vilification in Queensland. A long-serving guidance officer in Queensland schools, for example, could not definitely say whether vilification has increased in recent times,¹³⁰ and a witness from Multicultural Australia (Toowoomba), Ms Buckingham, stated:

We do not have evidence to show that there has been an increase. As I stated before, there was an increase, by 35 per cent, in 2019-20 in the number of refugees coming into Toowoomba. That has surpassed the number of refugees coming into Brisbane. I do not have evidence to show that there has been an increase, but that is something that we can certainly look into through the police if there has been.

We know that we have had issues with young people in the past being discriminated against by the non-refugee community. We have seen an increase in that. I am not sure if that is as a result of the number of refugees that we have coming in compared to what we had previously. It is a difficult one to answer.¹³¹

5.2.2 Triggers for increased vilification

Many stakeholders identified particular actions as triggers for increased vilification in their communities. Three key recent triggers are discussed below.

5.2.2.1 COVID-19

The QPS commented on the impact of the COVID-19 pandemic on hate crimes and vilification.

The QPS is aware indirectly through public commentary, and directly through requests for assistance, of increased experiences of hate crime and vilification during the COVID-19 pandemic.

The QPS has noted racially based vilification occurring in the context of COVID-19, through police engagement with culturally and linguistically diverse (CALD) communities, business as usual policing and policing as part of the public health response and representations made to the QPS by stakeholder bodies.¹³²

Caxton Legal Centre Inc (Caxton) advised that there has been an increase in client complaints about racial vilification in the context of the pandemic:

We are aware of increasing instances of vilification in Queensland, and in particular have noticed a distinct rise in client complaints about racial vilification in the context of the COVID-19 pandemic. While many of those instances may not meet the definition of “serious vilification” under section 131A of the AD Act, those clients may also experience barriers in accessing the civil complaint mechanism under section 124A of the AD Act.¹³³

The QHRC was among those stakeholders who gave evidence that racially based vilification has increased since the commencement of the COVID-19 pandemic, stating ‘Reports indicate that racially based vilification and discrimination has significantly increased in Australia with the onset of COVID-19’.¹³⁴

¹²⁹ QPS, correspondence dated 20 May 2021, p 6. See also eSafety, *Online hate speech: findings from Australia, New Zealand and Europe*, February 2020, p 7, <https://www.esafety.gov.au/sites/default/files/2020-01/Hate%20speech-Report.pdf>.

¹³⁰ Courage to care, submission 35, p 2.

¹³¹ Multicultural Australia (Toowoomba), public hearing transcript, Brisbane, 9 September 2021, pp 56-57.

¹³² QPS, correspondence dated 20 May 2021, p 5.

¹³³ Caxton, submission 50, p 1.

¹³⁴ QHRC, submission 36, p 7.

A person from the LGBTIQ+ community commented on vilification relating to COVID-19:

Now with covid, the blame somehow is on the shoulders of the Chinese and being of Singaporean Chinese descent, you hear things like go back to where you came from and lots of anti-Chinese sentiments is very stressful and upsetting.¹³⁵

Various submitters also provided evidence of vilification relating to COVID-19:

- A patient appeared disgusted by being around Asian clinicians and refused to receive her injection by Asian nurses, openly stated she fears of CV-19 and will receive her treatment by Caucasians only.¹³⁶
- ... the COVID-19 pandemic has further worsened the situation as we have seen increasing instances of racist incidents and vilification targeted at people of Asian descent in Australia since the start of the pandemic, including international students.¹³⁷
- Ever since Trump kept on referring to COVID19 as the China virus, there have been a marked increase in vilification and aggressive incidents against people of Chinese and Asian appearances in Australia. I have several friends who have had similar experiences to me – they been called derogatory names in public, they have been physically assaulted (pushed) and some have been spat at, absolutely disgusting.¹³⁸

5.2.2.2 *'Enemies of the State' Courier Mail article*

Some stakeholders commented on the vilification that was triggered by the publishing in the Courier-Mail of photos of women with African backgrounds under the heading 'Enemies of the State' with an accompanying article about their breaching of border restrictions.¹³⁹

The President of the Queensland African Communities Council (QACC), Mr Beny Bol OAM, set the background to the article and commented on its effect.

As you probably know, over the past few years the African community in Queensland, and indeed in Australia as a whole, has endured extraordinary and horrific serious incidents of racial vilification, hate speech, workplace discrimination, harassment and intimidation. Those incidents occurred and continue to occur in both private and public spaces—on social media, in mainstream media, on public transport, at workplaces, on the streets and sometimes in neighbourhoods.

The level of vilification and hate speech has increased significantly since 2018 during which some of our young people were involved in criminal offending in Victoria and here in Queensland, especially after the tragic incident that took place at Zillmere and when the two African girls returned to Queensland from Melbourne and breached the COVID-19 rules in 2020.

When the Courier-Mail made a warlike declaration of 'enemies of the state', that immediately triggered an avalanche of racist attacks against members of the African community.¹⁴⁰

Caxton described the effect of the Courier Mail article on people in the affected community:

Coverage throughout the covid-19 pandemic has reinforced concerns about traditional media, most notably the now notorious July 2020 'Enemies of the State' Courier Mail front page headline accompanying a story about three young women of various African backgrounds who returned to Queensland and moved around in the community whilst ill with covid-19. Unlike prior cases, including those originating in Aspen and spreading in Noosa and those coming from cruise ship passengers, the young women in this case were identified by name and their photos were used in the article. A large

¹³⁵ QC, submission 77, p 14.

¹³⁶ QHRC, submission 36, pp 10, 51.

¹³⁷ CISA, submission 38, p 2. Footnotes in original omitted.

¹³⁸ Confidential, submission 26, p 1.

¹³⁹ See for example, Queensland program of assistance to survivors of torture and trauma (QPASTT), submission 34, p 3; Multicultural Queensland Advisory Council, submission 64, p 3.

¹⁴⁰ QACC, public hearing transcript, Brisbane, 3 September 2021, p 7.

number of media outlets followed the Courier Mail in making similar reports. The reporting of these cases has been described as “an invitation to vigilantism.” In the aftermath of this reporting, Caxton gave advice to numerous distressed and fearful individuals, families and groups worried for their personal safety as a result of the community anger towards minority communities sparked by the media reporting. Many had experienced direct vilification and threats of violence on the basis of their race.¹⁴¹

It is important to note, however, that this media article is not the only one to result in increased instances of vilification and hate crimes.¹⁴² A stakeholder, for example, stated:

... of late and for quite some time we have noticed that we are, as a community, being targeted with hate crimes and this has increased, especially as we find a lot of news articles coming up in the media recently with the delta strain outbreak in India. There were a lot of those news items coming up.¹⁴³

5.2.2.3 *Marriage equality*

The marriage equality postal survey was the impetus for much vilification against the LGBTIQ+ community. A person from the LGBTIQ+ community provided the following reflection on vilification at the time of the marriage equality postal survey:

During the plebiscite for marriage equality, there was so much debate and hate speech from the No campaign and to feel like such a second-class citizen in this country where people get to vote whether you deserve the same rights is destroying and demeaning.¹⁴⁴

RFQ submitted:

Our households received multiple pamphlets saying that our families were at the least inferior, or at worst, that as parents we were child abusers or paedophiles. Some of the households had children who were old enough to read and understand the content at that time and the conversations went on in our schools and communities in front of our vulnerable children and young people. Those of us with younger children felt a sense of relief that the burden did not yet have to be carried by them, but still experienced significant stress and anxiety that impacted on us at home, at work and in the community.

Anecdotally we can report that this coincided with more hate speech occurring in public settings including schools, workplaces and neighbourhoods. Being up for ‘critique’ as a family unit was incredibly damaging to our families at this time.¹⁴⁵

5.3 Importance of accurate data on hate crimes and serious vilification

Stakeholders encouraged the collection of better data on hate crimes and serious vilification.¹⁴⁶

The SNSA argued that collecting data enables adequate resources to be allocated towards safeguarding the affected community because the government knows what crimes are occurring and against whom.¹⁴⁷ A similar point was made by Multicultural Youth Australia.¹⁴⁸ The SNSA provided the following example of how the reporting data could be used:

¹⁴¹ Caxton, submission 50, p 6. Footnote in original omitted.

¹⁴² See also the discussion about online vilification in part 3.2 of this report.

¹⁴³ Vishva Hindu Parishad (VHP) Australia, Queensland Chapter, public hearing transcript, Brisbane, 3 September 2021, p 40.

¹⁴⁴ QC, submission 77, p 14.

¹⁴⁵ RFQ, submission 74, p 4. See also QC, submission 77, p 12.

¹⁴⁶ See for example QPASTT, submission 34, p 8; Multicultural Australia, submission 37, pp 17, 18; Katharine Gelber, submission 19, p 4; Multicultural Youth Queensland, submission 54, p 3; AMAN and ICQ, submission 52, p 3.

¹⁴⁷ SNSA, submission 44, p 4.

¹⁴⁸ See Multicultural Youth Queensland, submission 54, p 3.

That might create a shift to say to education ministers that perhaps we do need to educate our children about racism and other faith—that is, if we have that data that there are X number of hate crimes committed in Queensland per year. At the moment we do not have that data ...¹⁴⁹

Townsville Community Law (TCL) supported the call from the Queensland Law Society (QLS) for better data collection and publication by the QPS (or other government crime and statistical research agency). Like the QLS, it considered this should be ‘a priority reform’.¹⁵⁰ TCL further submitted that it agreed with QLS’ ‘assertion that data gaps compromise the ability of the Government to reach an informed understanding of hate crime and vilification, its impact on the community and the extent of the need for legislative reform’.¹⁵¹

Professor Gelber was in favour of the QPS recording and reporting on hate crimes:

What I would like to see and what we do not yet have is the Queensland police having a database of hate crimes—conduct that reaches the threshold of criminality—and then monitoring it and reporting on it. In the United States, for example, which has the strongest free speech provisions in the world, the FBI both prosecutes and monitors hate crimes and releases annual reports on hate crime statistics around the country. We do not have the statistics in Australia because we do not have a monitoring mechanism. Absolutely, I think it would be better for there to be an explicit requirement that the Queensland police monitor and provide annual data on hate crime statistics on specified grounds.¹⁵²

In its submission, the SNSA supported the central collection of data on hate crimes and vilification but left open the decision on who should collate the data:

Reporting mechanisms of hate crimes and vilifications should be overhauled. A system such as a central database should be implemented, which collects all reported incidents independently. This could be achieved either through an advocacy group or through law enforcement.¹⁵³

With respect to the collection of data, young people interviewed by Multicultural Youth Queensland made suggestions including: the creation of a hotline or app for reporting racism; the establishment of a community led body to support those who have experienced racism; and the establishment of a body that collects data and provides that information to the Queensland government to inform its lawmaking.¹⁵⁴

A stakeholder whose experience of racism was included in the Access Community Services submission recommended the establishment of ‘an independent reporting and investigatory body’.¹⁵⁵ She described this body as ‘[a] place where reporting racism is core business, rather than an additional piece of work that is out of scope for existing entities’.¹⁵⁶ She added: ‘It is critical to not feel like how stories are a burden, otherwise people won’t speak up’.¹⁵⁷

5.4 Existing data collection on racism and on online and offline hate directed at Muslims

The committee heard about some existing sources of data collection that could be used as inspiration for developing a vilification and hate crime reporting mechanism in Queensland.

¹⁴⁹ Public hearing transcript, Brisbane, 3 September 2021, p 44.

¹⁵⁰ TCL, submission 67, p 16. See also Queensland Law Society, submission 73, p 4.

¹⁵¹ TCL, submission 67, p 16. See also Queensland Law Society, submission 73, p 4.

¹⁵² Katharine Gelber, public hearing transcript, Brisbane, 9 September 2021, p 51.

¹⁵³ SNSA, submission 44, p 5.

¹⁵⁴ Multicultural Youth Queensland, submission 54, pp 6-7.

¹⁵⁵ Access Community Services, submission 53, p 20.

¹⁵⁶ Access Community Services, submission 53, p 20.

¹⁵⁷ Access Community Services, submission 53, p 20.

5.4.1 Queensland Human Rights Commission online form for reporting racism

So as to gain a better awareness of the level of racism in the community, the QHRC launched an online form for people wanting to report racism without making a complaint.¹⁵⁸

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. ...

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.¹⁵⁹

Between 9 June 2020 and 30 June 2021, there were 61 reports of incidents in Queensland. The majority of in-person incidents occurred in South-East Queensland. Nineteen of the reports related to targeting of an Asian person or people and in 13 of the reports the target was an Aboriginal or Torres Strait Islander person or people.¹⁶⁰

5.4.2 Islamophobia Register Australia

AMAN and ICQ told the committee about the Islamophobia Register Australia, a national online register which offers support to victims in New South Wales (NSW) after receiving funding from the NSW Government:

The Islamophobia Register Australia (IRA) is a national online register that captures incident reports from victims and witnesses concerning online and offline hate directed at Australian Muslims. It is a community-based and operated third-party reporting mechanism. It refers matters to police with victim permission, and is starting to offer victim support in NSW after receiving funding from the NSW Government. Culturally appropriate victim support includes an advocacy worker who understands Islamophobia and can connect the victim with allied health (psychology) and legal aid and support them to complain to police and, if applicable, anti-discrimination bodies. The Islamophobia Register Australia has been operating for more than five years to collect hate incident data by working in partnership with Charles Sturt University. They have published two national reports with a highly developed methodology for analysing patterns and trends in hate online and offline. These reports have garnered international attention.¹⁶¹

AMAN and ICQ then outlined the position in Queensland:

There is no funding to support victims of hate incidents from Queensland. IRA refers Queensland-based complaints to AMAN volunteers who also lean on ICQ volunteers. The support provided is very minimal. AMAN and ICQ are not equipped for this work and tend to refer to World Wellness Group for allied health and sometimes Caxton Legal Service. It sometimes refers to police where permission is provided in the original report, but cannot properly follow up with police due to resourcing constraints. Advocacy support needs boosting and much better coordination for culturally and linguistically [diverse] (CALD) communities.¹⁶²

5.4.3 Tell MAMA UK

Dr Omar Shareef, a volunteer at Townsville Islamic Society, described an online portal in the United Kingdom for reporting hate crimes:

¹⁵⁸ QHRC, submission 36, p 9.

¹⁵⁹ QHRC, public briefing, Brisbane, 24 May 2021, p 18.

¹⁶⁰ QHRC, submission 36, p 10. Further details about the reported incidents are available on page 10 and Appendix 1 of the QHRC submission.

¹⁶¹ AMAN and ICQ, submission 52, p 1.

¹⁶² AMAN and ICQ, submission 52, p 1.

In the UK there is something called Tell MAMA UK where hate crime can be reported on an online portal. That becomes a kind of legal evidence when you go to the police and make a case. It is kind of a data collection as well.¹⁶³

Tell MAMA is ‘an independent and confidential support service for those who face anti-Muslim hatred and prejudice across the United Kingdom’.¹⁶⁴ Its caseworkers ‘support individuals who have experienced anti-Muslim hate, racism and discrimination’.¹⁶⁵ The support includes counselling to victims of anti-Muslim hate or Islamophobia, as well as ‘casework, emotional support, legal signposting, advocacy, and court attendance support’.¹⁶⁶ Tell MAMA also publishes reports, including *Islamophobia and Anti-Muslim Hatred in North East England* (June 2020) and *The Impact of Christchurch Terror Attack: Tell MAMA Interim report 2019* (March 2020)

In response to a question from the committee about how the community knows to use the Tell MAMA site, Dr Shareef advised:

Basically there are people from the government who encourage the people. They talk to the community members, the community activists, the imams. They were informed about this particular portal being available. Hence, the imams and the other community members were able to cascade this to the common people that if there is any hate crime then this is the portal to go for. That instilled some kind of confidence. It is also helping in changing the policy and legislation to protect people who are vulnerable.¹⁶⁷

Dr Shareef added:

Tell MAMA is a portal that actually collates all the stats, all the data: how many crimes or how many hate crimes happen in any given time, if any kind of spikes happen, if there are any particular patterns to it.¹⁶⁸

Committee recommendations

The committee considers it is important to collect accurate data on hate crimes and serious vilification so that government and other resources can be allocated most appropriately to address the problems.

The committee recommends a two-pronged approach to dealing with the current situation of incomplete data collection:

- That the Queensland Police ensure standardisation of record-keeping for reports of hate crime and serious vilification.
- That the Queensland Government encourage and support third party (community-led) reporting mechanisms in trusted community organisations to report vilification and hate crimes to relevant authorities.

Recommendation 2

The committee recommends that the Queensland Police ensure standardisation of record-keeping for reports of hate crime and serious vilification.

¹⁶³ Townsville Islamic Society, public hearing transcript, Brisbane, 9 September 2001, p 62.

¹⁶⁴ Tell MAMA Measuring Anti-Muslim Attacks, <https://tellmamauk.org/>.

¹⁶⁵ Tell MAMA Measuring Anti-Muslim Attacks, <https://tellmamauk.org/>.

¹⁶⁶ Tell MAMA Counselling services, <https://tellmamauk.org/our-services/>.

¹⁶⁷ Townsville Islamic Society, public hearing transcript, Brisbane, 9 September 2001, p 62.

¹⁶⁸ Townsville Islamic Society, public hearing transcript, Brisbane, 9 September 2001, p 62.

Recommendation 3

The committee recommends that the Queensland Government encourage and support third party (community-led) reporting mechanisms in trusted community organisations to report vilification and hate crimes to relevant authorities.

6 The laws in Queensland applicable to vilification and hate crime

6.1 Queensland legislative protections – an overview

6.1.1 *Anti-Discrimination Act 1991 (Qld)*

The key legislative protections against vilification in Queensland are found in the ADA, specifically section 131A which makes serious racial, religious, sexuality or gender identity vilification a criminal offence, and section 124A (the ‘civil’ provision) which makes vilification on the grounds of race, religion, sexuality or gender identity unlawful, subject to some limited exceptions.

The applicability and use of these provisions are discussed in more detail further below at 6.3.

6.1.2 *Work Health and Safety Act 2011 (Qld)*

As noted in the submission from the QLS, the *Work Health and Safety Act 2011* (Qld) imposes a positive duty on employers to ensure, so far as is reasonably practicable, that the health and safety of other persons is not jeopardised by the conduct of the business or undertaking, including a requirement to take preventative steps in relation to psychiatric injuries. This may include taking steps to ensure the workplace is free from vilification that could result in psychiatric illness.¹⁶⁹

6.1.3 *Peace and Good Behaviour Order Act 1982 (Qld)*

The Peace and Good Behaviour Order (PAGBO) system is intended to respond to, and restrain, acts or threats of violence or property damage. The PAGBO system requires specific threats to cause a particular harm (to person or property) to have been made. Thus many acts of vilification by general intimidation (eg parking outside someone’s house) may be insufficient to ground a PAGBO. As noted by Caxton in their submission, in a PAGBO application the unsuccessful party is typically liable for the legal costs of the other party, with costs risks serving as a major deterrent to bringing a PAGBO application.¹⁷⁰

6.2 Commonwealth legislative protections

Key Commonwealth protections apply to vilification against an individual in Queensland where the vilification occurs using a telecommunications medium.

6.2.1 **Criminal law - Commonwealth Criminal Code – telecommunications and online content**

The Commonwealth Criminal Code under the *Criminal Code Act 1995* (Cth) (Commonwealth Code) prohibits some hate speech in telecommunication offences, abhorrent violent material offences and offences of urging violence and advocating terrorism or genocide.

6.2.1.1 Use of a carriage service

Part 10.6 subdivision C of the Commonwealth Code includes general offences relating to the use of telecommunications. Offences include using a carriage service to threaten to kill, or cause serious harm to, a person; or using a carriage service in a way that reasonable persons would regard as being menacing, harassing or offensive. The maximum penalties for those Commonwealth offences are 10, 7 and 3 years imprisonment respectively.

In respect of the applicability of the Commonwealth Code provisions to instances of hate speech in Queensland, the QHRC advised that in its experience police have been unable to use these provisions when threats over a carriage service are made towards groups (eg people of a particular religion) rather than individuals.¹⁷¹ In respect of the prohibition against using a carriage service to menace,

¹⁶⁹ Submission 73, p 7.

¹⁷⁰ Submission 50, p 7.

¹⁷¹ Submission 36, p 20.

harass or cause offence,¹⁷² the submission from the QLS noted that ‘[w]hile this provision may serve to capture instances of online vilification, it does not have specific regard to elements of hatred or vilification’.¹⁷³

6.2.1.2 *Urging violence*

Where a person intentionally urges violence against a targeted group, or a member of a group, with the intention that force or violence will occur, and where the targeted group is distinguished by race, religion, nationality, national or ethnic origin, or political opinion, they commit an offence attracting a maximum penalty of 5 years imprisonment. This penalty increases to a maximum 7 years imprisonment when the use of force or violence would threaten the peace, order and good government of the Commonwealth.

In its submission, the QHRC observed that ‘these offences have a limited coverage because of the elements of intent, and the designation of limited target groups’.¹⁷⁴

6.2.2 *Broadcasting Services Act 1992 (Cth)*

Schedules 5 and 7 of the *Broadcasting Services Act 1992 (Cth)* provide for a reporting scheme about illegal and offensive online content, called the Online Content Scheme. Hate speech that incites violence against a particular societal group may be considered to be prohibited content. The eSafety Commissioner is empowered to give takedown notices to the relevant site hosting company where the content is hosted in Australia.¹⁷⁵

6.2.3 *General federal provisions – racial discrimination, workplace harassment*

6.2.3.1 *Racial Discrimination Act 1975 (Cth)*

Section 18C of the *Racial Discrimination Act 1975 (Cth)* prohibits a public act, done because of a victim’s race, colour or national or ethnic origin, that is ‘reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of people’. This provision give rise to a civil cause of action, pursued by way of a complaint to the Australian Human Rights Commission.

The submission from Professor Katherine Gelber observes that:

Section 18C of the *Racial Discrimination Act 1975 (Cth)* is a useful adjunct to the Queensland civil law on vilification because it relies on a different conception of harm. The harm threshold in the Commonwealth legislation is conduct likely to offend, insult, humiliate or intimidate members of the targeted group. The courts have held that the standard to be met is conduct that has ‘profound and serious effects, not to be likened to mere slights’.¹⁷⁶

The Commonwealth provision is unique among racial vilification statutes in Australia, and indeed internationally. This is because it focusses on the harms incurred by the target group, as opposed to the capacity of the conduct to incite hatred amongst reasonable members of an ordinary audience. This means that it is the only legislation of its kind that focusses on the targets’ experiences as a way of determining the harm incurred by an allegation of vilification. In this sense, Commonwealth vilification law provides a useful counterpoint to Queensland’s civil law and it is very helpful to have both in place. This provides better coverage for communities targeted by vilification.¹⁷⁷

The submission from Professor Nicholas Aroney and Dr Paul Taylor¹⁷⁸ advises that:

¹⁷² Commonwealth Criminal Code, s 474.17.

¹⁷³ Submission 73, p 7.

¹⁷⁴ Submission 36, p 20.

¹⁷⁵ eSafety Commission, sub 10, p 1.

¹⁷⁶ *Creek v Cairns Post Pty Ltd* (2001) 112 FCR 352, 356 [16] (Kiefel J)

¹⁷⁷ Submission 19, p 3.

¹⁷⁸ Submission 21, pp 4-5.

One common criticism of section 18C of the *Racial Discrimination Act 1975* (Cth) is the disparity between the lay and judicial meanings of the words ‘offend’ and ‘insult’. The ALRC Review of Commonwealth Laws for Consistency with Traditional Rights, Freedoms and Privileges reported in December 2015 that section 18C –

would benefit from more thorough review in relation to implications for freedom of speech. In particular, there are arguments that s 18C lacks sufficient precision and clarity, and unjustifiably interferes with freedom of speech by extending to speech that is reasonably likely to ‘offend’. In some respects, the provision is broader than is required under international law, broader than similar laws in other jurisdictions, and may be susceptible to constitutional challenge.¹⁷⁹

A number of respected commentators agree that this wording is problematic. For example, Julian Burnside QC has noted that “[t]he mere fact that you insult or offend someone probably should not, of itself, give rise to legal liability.”¹⁸⁰ Similarly, in the context of examination of the complaints handling processes of the Australian Human Rights Commission by the Parliamentary Joint Committee on Human Rights, Professor Sarah Joseph stated that “although the right to freedom of speech/freedom of expression is not an absolute right, and may be subject to permissible limitations, the right to freedom of expression cannot be displaced by the right to be free from offence or insult”.¹⁸¹

In respect of its usefulness for racial vilification cases when contrasted with section 124A of the ADA, LAQ contended that:

As an alternative to bringing a QHRC complaint under s 124A, clients who have experienced racial vilification may consider bringing a complaint to the Australian Human Rights Commission (AHRC) under section 18C of the *Racial Discrimination Act 1975*. Section 18C(1) offers broader protections because it prohibits acts, other than those done in private, that are:

- reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
- done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

Under section 18C, it is only necessary to show that the acts complained of were “reasonably likely... to offend, insult, humiliate or intimidate”, which is a lower threshold than the definition of vilification under s 124A, which requires the act to “incite hatred...serious contempt... or severe ridicule”.

.....

The ADA ... requires a “public act” to be a communication to the public and/or conduct that is observable by the public, whereas the RDA recognises that it is sufficient to show that the act occurred in a public place (whether or not other persons were able to observe the incident).

In cases involving racial vilification, it is often easier for complainants to show that the conduct complained of meets the definition of “offensive conduct” under s 18C, as contrasted with “vilification” under s 124A.¹⁸²

Observing that section 18C is not necessarily a panacea however, LAQ commented:

However the AHRC complaints process may not be recommended for complainants for other reasons, namely:

¹⁷⁹ ALRC Report 129, Final Report, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws* [4.176].

¹⁸⁰ Sydney Morning Herald, ‘Human rights lawyer says 18C went too far,’ 29 March 2014.

¹⁸¹ Parliamentary Joint Committee on Human Rights, Freedom of speech in Australia, Inquiry into the operation of Part IIA of the *Racial Discrimination Act 1975* (Cth) and related procedures under the *Australian Human Rights Commission Act 1986* (Cth), 28 February 2017, p. 135

¹⁸² Submission 55, pp 15-16.

- the prohibition on offensive conduct under section 18C only prohibits offensive racist conduct, and there is no equivalent Commonwealth prohibition on offensive conduct in relation to other attributes that are protected by s 124A (religion, sexuality or gender identity);
- the time limit for bringing a complaint to the AHRC is 6 months from the date of the conduct (compared to 12 months with the QHRC), this means that complainants may often be out of time before they have had the opportunity to obtain legal advice;
- for complainants located in Queensland, AHRC conciliation conferences are typically conducted via telephone;
- if the AHRC complaint is not resolved at conciliation and progresses to the Federal Court or Federal Circuit Court, it can be more difficult for self-represented complainants to navigate that process (compared to QCAT, where the jurisdiction is designed for self-represented litigants and the rules of evidence do not apply); there is a higher risk of costs being ordered against the complainant if the complainant is unsuccessful in the Federal Court or Federal Circuit Court (as costs usually follow the event in the Federal jurisdiction).

This can be extremely intimidating for complainants who are self-represented and do not have the financial resources to meet those potential costs.

In practice, this means that most matters will progress through the QHRC rather than the AHRC, because complainants are simply unable to risk a costs order being made against them in the Federal jurisdiction.¹⁸³

6.2.3.2 *Fair Work Act 2009 (Cth)*

A worker who reasonably believes that he or she has been bullied at work may apply under the *Fair Work Act 2009* (Cth) to the Fair Work Commission for a ‘stop bullying order’. This may be appropriate where repeated vilifying or harassing comments or conduct are evidence of ‘bullying’ but a single incident of vilification or harassment may be insufficient to ground and substantiate an allegation of bullying which typically requires evidence of repeated incidents showing a pattern of inappropriate behaviour.

6.3 Queensland’s *Anti-Discrimination Act 1991* – sections 124A and 131A

6.3.1 Section 124A and conciliation

Section 124A(1) of the ADA makes vilification on the grounds of race, religion, sexuality or gender identity unlawful. It prohibits a person from, by a public act, inciting 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.

Subsection (2) provides that subsection (1) does not make unlawful –

- (a) the publication of a fair report of a public act mentioned in subsection (1); or
- (b) the publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or
- (c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.

The remedy for a breach of section 124A is a civil claim commenced by complaint to the QHRC. The commission then assists the parties to resolve the complaint through a conciliation conference.

¹⁸³ Submission 55, pp 16-17.

6.3.1.1 *Conciliation conferences*

Chapter 7, Division 3 of the ADA (sections 158-164AA) provides for a conciliation process and Division 4 (sections 164A-167) covers what happens to unconciliated complaints.

Section 158(1) requires the Queensland Human Rights Commissioner (the commissioner) to try to resolve complaints that he or she believes may be resolved by conciliation, in that way. To this end, section 159(1) authorises the commissioner to direct a person to take part in a private¹⁸⁴ and confidential¹⁸⁵ conciliation conference. Failure to attend a conciliation conference without reasonable excuse may make a non-attending complainant or respondent liable to pay costs to the other party.¹⁸⁶ Interpreters may be used at conciliation conferences¹⁸⁷ or a person may be represented by another person at the conference with the commissioner's permission.¹⁸⁸

If the complaint is resolved by conciliation, the commissioner records the terms of the agreement and it is signed by both parties and filed with the Queensland Civil and Administrative Tribunal (QCAT) to be enforceable as if it were a QCAT order.¹⁸⁹

Where a conciliation conference has been held and the complaint remains unresolved the complainant may, by written notice, require the commissioner to refer the complaint to (where it is or includes a work-related matter) the industrial relations commission or, otherwise, to QCAT.¹⁹⁰ Similarly, if the commissioner believes that a complaint cannot be resolved by conciliation, the commissioner must inform the parties in writing of that (whether or not conciliation has been attempted).¹⁹¹ Within 28 days of such notification, the complainant may, by written notice, require the commissioner to refer the complaint (as above) to the industrial relations commission or QCAT.¹⁹² For unresolved complaints of 6 months+ duration, either party may, by written notice, request the commissioner to refer the complaint (as above) to the industrial relations commission or QCAT.¹⁹³

6.3.1.2 *The appropriateness of the conciliation-based anti-discrimination framework for section 124A of the ADA*

One of the terms of reference for the committee to consider for this inquiry was the appropriateness of the conciliation-based anti-discrimination framework (for section 124A of the Act).

The QHRC has provided statistics on vilification referrals, advising that 326 vilification complaints under section 124A have been accepted since the provisions were introduced.¹⁹⁴ In respect of the conciliation of section 124A complaints, the QHRC advises:

¹⁸⁴ ADA, s 161.

¹⁸⁵ ADA, s 164AA.

¹⁸⁶ ADA, s 160.

¹⁸⁷ ADA, s 162.

¹⁸⁸ ADA, s 163.

¹⁸⁹ ADA, s 164.

¹⁹⁰ ADA, s 164A.

¹⁹¹ ADA, s 165.

¹⁹² ADA, s 166.

¹⁹³ ADA, s 167.

¹⁹⁴ QHRC, correspondence dated 19 May 2021, Appendix 1. Note Racial and religious vilification prohibition commenced 7 June 2001 with the additional grounds of sexuality and gender identity commencing 31 March 2003.

In the period from 1 January 2009 to 30 June 2021, the Commission accepted 209 complaints of vilification. Of the 209 accepted vilification complaints in that period, 83 were resolved through conciliation (approximately 40%) and 61 were referred to the tribunal (approximately 29%).¹⁹⁵

In respect of challenges for conciliation success, the QHRC advised:

Commission conciliators report that complaints of vilification between neighbours can be challenging to conciliate due to ongoing animosity. Also challenging are complaints where there are other issues between the parties, for example parenting proceedings between the parties.

The statistics indicate a level of success in resolving complaints through conciliation, and conciliators also report that the conciliation process has been effective in increasing understanding as to conduct that is unlawful and the impacts of vilification on persons subjected to it.¹⁹⁶

...

However, despite the effectiveness of conciliation, community representatives say that people subjected to vilification are often reluctant to make a complaint because the process involves engaging with the person who has vilified them, or the person doesn't participate in the conciliation, and the complainant is left to refer the complaint to the tribunal and proceed to a hearing. This places the onus and burden on the person subjected to the vilification to take action.

Pursuing a complaint through the tribunal hearing process requires commitment and can be taxing on the individual, and the outcome might be unrewarding.¹⁹⁷

6.3.1.3 How effective is s 124A in addressing vilification?

Conciliation conferences

A number of submitters commented about their (and their clients') experiences with conciliation conferences. A sample of those comments is below.

The QLS observed that:

Conciliation can provide victims with a valuable opportunity to be heard and reach a private outcome. Conciliation supports diversion from the criminal justice system and, in some cases, represents a highly beneficial and restorative process for both victims and perpetrators. However, we note there is a lack of resources for alternative dispute resolution processes. In our view, the Government should consider increasing resourcing for the Queensland Dispute Resolution Centre and the QHRC.

We strongly consider that conciliation conferences should be carefully selected for appropriate matters only. In cases involving self-represented individuals, threats of violence or actual violence and/or an imbalance of power, conciliation will be an inappropriate, and potentially dangerous, forum. In these cases, there is a need for early diversion to an adjudicated dispute resolution process that will better give effect to the needs, including the safety needs, of the parties.¹⁹⁸

Similarly, the submission of Caxton observed that:

The current system relies heavily on conciliation conferences. Many clients value the conciliation process because it provides them with an opportunity to be heard and may result in a settled outcome. Some people also appreciate the fact that conciliation occurs out of the public eye and thus protects them from targeted backlash.

...

¹⁹⁵ Submission 36, p 36. See also sub 36, Appendix 5 which outlines 9 Queensland vilification decisions where the complaint succeeded (2005-2015) and Appendix 6 which outlines 11 Queensland vilification decisions where the complaint was dismissed.

¹⁹⁶ Submission 36, p 36.

¹⁹⁷ Submission 36, p 37.

¹⁹⁸ Submission 73, p 7.

We have persistent concerns that conciliation is generally unsuitable for some people, including self-represented individuals when there is a heavy imbalance of power or when the respondent party presents a risk to the safety of the complainant. Whilst these cases are not necessarily less likely to resolve at the conciliation stage we are concerned that the outcomes achieved do not always meet the needs, including safety needs, of the vulnerable party. Conciliated outcomes are also unsuitable for meeting the needs of any wider group, as they focus primarily on individual outcomes and in particular on compensation.¹⁹⁹

LAQ submitted its concerns about the QHRC complaints process under section 124A, observing that it:

... places the onus on the individual to pursue the complaint and, unless the respondent is willing to participate in that process in good faith, the two stages of conciliation conferences (at both the QHRC and later QCAT) may only serve to further distress the complainant and delay the final resolution of the matter. The primary focus of the QHRC complaint process is to provide complainants with redress, rather than protecting victims from ongoing vilification (although there is some scope for QCAT to make orders restraining vilifying conduct). In addition, the tendency for complaints to be settled on a confidential basis means that there is little public accountability or awareness of the anti-vilification provisions of the ADA.²⁰⁰

Echoing those concerns about the impact on the vilified individual, the submission from the AMAN and ICQ notes that:

The current vilification law (s124A) does not work in scenarios where the perpetrator is unknown or when the victim doesn't feel safe to meet the perpetrator. Section 124A does not recognise the intimidation element of vilification, whether online or offline.²⁰¹

TCL submitted:

A legal citator reveals that no section 124A cases involved what might be considered online hate acts or hate speech. Overwhelmingly, complaints under section 124A relate to personal interactions in the physical world. Townsville Community Law is concerned that this means section 124A has been wholly ineffective at moderating online hate acts including hate crimes and hate speech.²⁰²

The QHRC submission observed that '[i]nconsistencies and questions have emerged in the application of section 124A', including with the meaning of incite and the "public" nature of gatherings of people in workplaces and educational settings.²⁰³ The QHRC commented:

While the civil prohibition of vilification in section 124A has worked well, there is opportunity to improve its operation by making aspects of the provision clearer. Some recent decisions have departed from the intended meaning of 'incite' and have restricted the meaning of 'public act'.²⁰⁴

The complaints-based nature of section 124A

The submission from Caxton noted that many of its clients chose not to pursue legal action for vilification they had experienced for a range of reasons that include:

1. The prospect of direct retaliatory action – personally/at other members of the affected group
2. The prospect of adverse, and possibly sustained, media coverage of either them personally or of the affected group

¹⁹⁹ Submission 50, p 4, referencing Dominique Allen, 'Behind the Conciliation Doors Settling Discrimination Complaints in Victoria', *Griffith Law Review*, 10 August 2009, vol 18, No. 3, p. 778.

²⁰⁰ Submission 55, p 3.

²⁰¹ Submission 52, pp 12-13.

²⁰² Submission 67, p 6.

²⁰³ Submission 36, p 39.

²⁰⁴ Submission 36, p 3.

3. Personal financial risks such as adverse legal costs orders
4. Difficulties in securing legal representation
5. Difficulties with the legal system, legal tests and the time taken to reach a resolution.²⁰⁵

Further, the submission from Caxton advised:

We have noted that for our clients it is generally much easier to take private civil legal action in relation to 'lower level' vilification behaviours (such as racist comments at work) than those that seriously threaten physical safety such as sustained street harassment and online campaigns. If there is a real and imminent risk to physical safety, making a complaint is likely to exacerbate that risk. Many clients, particularly those from easily identifiable minority racial and religious communities are justifiably concerned about their own and their communities' physical safety and will often decline to pursue civil action if they cannot be guaranteed safety through that process.

...

A complaint-based approach to regulating hate speech and vilification places a significant unmanaged risk onto individual complainants. By its very nature hate speech and serious vilification invite threats to life and safety. The pressure on these individuals is compounded by free legal representation services only being available to low income and vulnerable people....²⁰⁶

6.3.2 Section 131A

Section 131A of the ADA criminalises serious racial, religious, sexuality or gender identity vilification.

It provides that:

- (1) A person must not, by a public act, knowingly or recklessly 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 in a way that includes—
 - (a) threatening physical harm towards, or towards any property of, the person or group of persons; or
 - (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty—

- (a) for an individual—70 penalty units or 6 months imprisonment; or
 - (b) for a corporation—350 penalty units.
- (2) A Crown Law Officer's written consent must be obtained before a proceeding is started by complaint under the *Justices Act 1886* in relation to an offence under subsection (1).
 - (3) An offence under subsection (1) is not an offence for section 155(2) or 226.
 - (4) In this section—
Crown Law Officer means the Attorney-General or Director of Public Prosecutions.

6.3.3 Investigations and prosecutions under section 131A

6.3.3.1 *Statistics*

Key submitters commented about the perceived 'under-utilisation' of section 131A to prosecute serious vilifying conduct. This perception appears to be borne out on the statistics presented to the committee regarding the number of attempted investigations and prosecutions under section 131A.

²⁰⁵ Submission 50, p 3.

²⁰⁶ Submission 50, p 3

The QPS advised the committee that there have been 1,386 reported offences with hate or vilification characteristics from 2015 to 2020.²⁰⁷ DJAG data indicates that 5 people have been charged and 3 people convicted of an offence against section 131A from the commencement of the provision in 2001 to 30 April 2021.²⁰⁸

The limited number of convictions in Queensland does not appear to be particularly out of step with reported national figures. The submission from vilification academic Professor Gelber outlined 7 successful criminal prosecutions nationally, being 3 from Western Australia - possession of racist material (2005); conduct likely to racially harass (2016); and 'conduct intended to incite racial animosity or racial harassment' and 'conduct likely to racially harass' (2009). Two from Queensland - racial abuse (2015) and a verbal threat of physical harm to a transgender woman (2018); and 2 from Victoria (in 2017 and 2021).²⁰⁹

In respect of those Queensland convictions, the submission from the QHRC notes that the 2015 conviction related to serious racial vilification of a train guard and the person was convicted on a guilty plea and sentenced to two months imprisonment, wholly suspended for 12 months. The second was a charge of serious gender identity vilification, for which the offender plead guilty and was sentenced to 40 hours community service.²¹⁰ DJAG had advised the committee that the third conviction received a prison sentence of 1 month, and 'in relation to the remaining two charges the prosecution advised they had no evidence to offer and the charges were dismissed.'²¹¹

The QHRC submission laments:

Five charges of serious vilification in twenty years does not reflect the extent of relevant conduct that occurs in the community. In some cases the offender is charged with other offences, such as public nuisance or trespass.²¹²

6.3.3.2 *QPS utilisation of section 131A*

The discrepancy in number between reported offences and prosecutions will, for any offence, be at least partially attributable to the practical reality that not all complaints that are made to police will be able to be substantiated on the available evidence.

When dealing with reports of possible vilification one hurdle faced by police is in trying to establish what has actually occurred, noting the potential for different recollections and different perspectives between the victim and the alleged perpetrator.²¹³

In respect of allegations of vilifying conduct there will also be instances where the conduct complained of is simply not grave enough to reach the threshold to support a charge of serious vilification under section 131A.

At the committee's public briefing, QPS Acting Assistant Commissioner Dermody advised that only 8 offences have been recorded by QPS against the section 131A offence code, and he explored likely reasons for the QPS' apparent under-utilisation of section 131A:

²⁰⁷ QPS correspondence, 20 May 2021, p 3.

²⁰⁸ DJAG, briefing correspondence of 19 May 2021, p 2.

²⁰⁹ Submission 19, p 2. NB: the QHRC's submission, sub 36, advises that there have been two prosecutions in New South Wales for publicly threatening or inciting violence (s 93Z of the *Crimes Act 1900* (NSW)). Both defendants were convicted on pleas of guilty, but the convictions had to be annulled because the (required) prior consent of the DPP had not been obtained (QHRC sub 36, pp 17-19)

²¹⁰ Submission 36, p 13.

²¹¹ DJAG, briefing correspondence of 19 May 2021, p 2

²¹² Submission 36, p 13.

²¹³ Public briefing transcript, 24 May 2021, p 6.

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.²¹⁴

At that same briefing, QPS Inspector Doyle observed that the requirement for the written authorisation of a Crown Law officer²¹⁵ before commencing a section 131A prosecution removes the capacity for an immediate response to be made to the offending conduct and therefore to be more responsive police may charge an alleged perpetrator with a more mainstream offence²¹⁶ such as 'public nuisance', 'wilful damage' or another summary offence.²¹⁷ He advised:

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.²¹⁸

²¹⁴ Public briefing transcript, 24 May 2021, p 2.

²¹⁵ *Crown Law Officer* is defined as the Director of Public Prosecutions or the Attorney-General (s 131A(4)).

²¹⁶ Public briefing transcript, 24 May 2021, p 6.

²¹⁷ Public hearing transcript, 9 September 2021, p 29.

²¹⁸ Public briefing transcript, 24 May 2021, p 5.

6.3.3.3 *Other impediments to section 131A charges*

Submitters²¹⁹ also identified other impediments to police pursuing charges under section 131A. These include that:

- The low maximum penalty under section 131A means charging a different offence (eg assault) with a higher penalty might be more appropriate in the circumstances of the offence;
- In respect of online vilification, police are unable to secure a warrant to preserve the online evidence and to determine who authored the content as the maximum penalty is less than the 3 years imprisonment required to support the warrant application (see below);
- It can be difficult to satisfy all of the elements needed to substantiate the offence;
- The location of the offence in the ADA rather than the *Criminal Code* means QPS officers are not as familiar or comfortable with it as an option for vilifying conduct.

Charging other offences in preference to a section 131A charge

The QHRC submission observed that rather than charge offenders with a section 131A offence, they are often charged with offences in the *Summary Offences Act 2005* or the *Criminal Code (Qld)*.²²⁰ Appendix 2 of their submission noted that common charges include:

- Assault (common)
- Assault occasioning bodily harm
- Disturbing religious worship
- Going armed so as to cause fear
- Grievous bodily harm
- Public nuisance
- Serious vilification
- Stalking
- Threatening violence
- Trespass
- Wilful damage (to property)

The QHRC submission observed that '[w]hen offenders are charged with alternate offences, people impacted by the conduct are often left feeling that justice has not been done';²²¹ and 'When charges are laid against a perpetrator, the communities often consider the charge does not reflect that the crime was based on hatred and that the consequences are inadequate'.²²²

Similarly, Multicultural Australia observed that:

Legislative reform is needed to address the additional culpability arising from the direct mental harm and trauma to the victim's inherent sense of safety and human dignity and the broader harm to the sense of safety and wellbeing in affected communities arising from a range of actions, whether it be physical or verbal abuse or attacks on buildings or places of worship.

²¹⁹ See for example submission 36, p 14; submission 73, p 3; submission 52, p 24.

²²⁰ Submission 36, p 19.

²²¹ Submission 36, p 3.

²²² Submission 36, p 14.

The insidious impact of the offending behaviour warrants a justice system response that provides options beyond simple offences such as public nuisance or trespass, or general property offences such as wilful damage or graffiti.²²³

Online evidence warrants

As noted above, a key barrier to prosecuting section 131A offences is how to secure evidence of stored communications. While commonwealth legislation²²⁴ provides for stored communications warrants, given the privacy implications, these warrants are only available for serious offences punishable by a minimum 3 years imprisonment.

In this regard, the QHRC submission notes the difficulty for police in securing online evidence:

The low maximum penalty of six months imprisonment also poses difficulties for police in investigating and laying charges under section 131A. Where the conduct involves the use of telecommunications (for example, Facebook, Twitter) the Crown must prove beyond reasonable doubt the person who was responsible for the communication. Six month imprisonment offences do not meet the threshold for Facebook preservation requests, stored communication requests, and the issuing of a warrant required to secure digital evidence for court proceedings. For online offences, police need to access communications held by a carrier to establish who is responsible for the communication. A stored communication warrant is necessary for police to access and preserve communications. A stored communications warrant is issued under the *Telecommunications (Interception and Access) Act 1979* (Cth), and is only available for the investigation of a serious contravention. In general, the offence must be a serious offence, or an offence punishable for a maximum period of (sic) [at least] three years.

This means that in addition to a section 131A complaint, there must also be a complaint of an associated three-year imprisonment offence (for example, a telecommunications offence referred to below) to allow for the search and seizure of evidence where the vilification is by electronic means.

Members of minority groups are often reluctant to make a complaint to police for fear of further reprisals against them. Although a third party might be a complainant for the issue of a summons, the third party cannot be the complainant for an associated telecommunications offence, as the online vilification is not directed at the third party. This means that police would not be able to secure evidence to support a criminal prosecution under section 131A.²²⁵

Impediments to vilification reporting and offence substantiation

Various other impediments to the successful prosecution of a section 131A serious vilification offence were also identified by submitters and witnesses.²²⁶

These include:

- many people are not aware that the current protections exist or how to access them
- the complaint system is confusing, especially for people for whom English is not their first language
- the legal system and processes are complex and challenging for lay persons, particularly for those for whom English is not their first language
- people may not report vilification to police for a number of reasons including shame, language barriers, a fear of the consequences and accessibility issues

²²³ Submission 37, p 13.

²²⁴ *Telecommunications (Interception and Access) Act 1979* (Cth) sections 116(1)(d)(i), 5E

²²⁵ Submission 36, pp 14-15.

²²⁶ See submission 25, p 4; submission 37, pp 12-13; public briefing transcript 24 May 2021, p 6.

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- people from immigrant and refugee backgrounds may have had poor experiences or persecution from authorities in their country of origin and consequently are not comfortable in approaching or reporting to police
 - it can be unclear whether the offending conduct supports a section 124A complaint to the QHRC or if it is serious enough to ground a section 131A serious vilification complaint to police
 - bias motivated assaults, property damage, harassment etc. are not prosecuted for the bias element behind the incidents leaving no acknowledgment of the hate element of the crime for a victim (or their identified group) which can cause disillusionment with the system
 - low community confidence in the system leads to low reporting levels as people do not perceive a benefit to them in making a complaint to the QHRC or to police
 - not all complaints made to police will be able to be substantiated on the available evidence
 - the alleged vilifying incident/conduct might occur as part of a separate matter (eg neighbour conflicts) where multiple or complex motivations might make it difficult for police to establish what has actually occurred due to conflicting accounts from the parties involved as to who is 'in the wrong'.

6.3.4 Reforming vilification laws

Having identified a number of barriers to the successful application of vilification laws, submitters suggested several reforms that might improve the legal systems' capacity to respond to incidents of vilification. These included:

- expanding the range of attributes that are protected under section 124A and section 131A of the ADA
- clarifying what is a 'public act'
- lowering the threshold for what amounts to incitement under section 124A
- removing the requirement for the written consent of a Crown law officer (the Director of Public Prosecutions (DPP) or the Attorney-General) before a prosecution can be commenced
- making hate speech/vilification an aggravating factor for other criminal offences
- relocating section 131A from the ADA to the *Criminal Code*
- funding and other support for organisations to help them report serious vilification incidents
- providing support for legal clinics and advocacy services to help vilified clients of limited means
- further support and training for the QPS in the availability, and use of, vilification laws.

The committee considered these (and other) suggestions for reform and discusses some in greater detail below.

6.3.4.1 Expanding the attributes protected under sections 124A and 131A

The attributes currently protected under sections 124A and 131A are race, religion, sexuality and gender identity. A number of submissions recommended expanding or clarifying the list of protected

attributes for sections 124A and 131A and the varying expansions suggested can be found in those submissions.²²⁷

Having reviewed all of the submitted suggestions, the committee considered that some very obvious omissions from protection, which can be the basis for people suffering from (in some cases, extreme) vilification, are ‘disability/impairment’,²²⁸ ‘medical status-including HIV/AIDS status’²²⁹ and the intersex community.²³⁰

The submission from Australian Lawyers Alliance (ALA) called for protection for both disability and HIV/AIDS status, noting that disability is a protected attribute in the Australian Capital Territory (ACT) and Tasmania, and that HIV/AIDS status is protected in the ACT and New South Wales.²³¹

QAI also called for expanding the protected attributes to include disability, observing that:

People with disability face ongoing vilification and harassment on the basis of their disability. This includes physical and verbal abuse and can be perpetrated by strangers, organised groups or people known to them. One in four people with disability aged over 15 experience discrimination and nearly half of AHRC complaints relate to disability, including by strangers in public. Disability discrimination affects the participation of people with disability in public life. It is understood that disability is the attribute with the highest number of discrimination complaints in Queensland.²³²

A number of submitters²³³ called for expanding the protected attributes to cover HIV/AIDS status, being the ALA, Queensland Council of Social Service (QCOSS), QHRC, LGBTI Legal Service Inc, Equality Australia, the Australian Discrimination Law Experts Group (ADLEG), RFQ, Queensland Council for LGBTI Health, Rainbow on the Reef, Respect Inc and the Scarlet Alliance. Comments included:

Another opportunity for reform is to expand the grounds of protection (race, religion, sexuality or gender identity) to include other groups, notably people with disability and people with HIV+ status. Expanding the grounds of protection in this way would provide legal recourse to individuals who often experience public ridicule and contemptuous treatment as a result of their HIV status or their physical and/or mental impairment.²³⁴

... a person’s HIV/AIDS status, needs recognition as a protected attribute. HIV/AIDS is a significant health issue that disproportionately impacts the LGBTIQ+ community. La Trobe University reported that more than half of the participants in their 2019 study of HIV/AIDS had experienced stigma or discrimination in the past 12 months.²³⁵

The submission from ALHR observes that all states which have vilification protections for the LGBTI community, except Queensland, also offer protection to intersex people. They acknowledge that there is disagreement about the appropriate terminology for intersex as a potential protected attribute, noting the options of ‘intersex variations of sex characteristics’, ‘sex characteristics’ or ‘intersex status’.

²²⁷ See submission 6, p 5; submission 25, p 2; submission 40, p 3; submission 67, p 15; submission 71, pp 4, 8; submission 75, p 2; submission 77, p 5; submission 82, p 2.

²²⁸ Supported specifically by submissions 6, 25, 75 and 82.

²²⁹ Supported specifically by submissions 6, 40 and 57.

²³⁰ Supported specifically by submissions including 57, 67 and 69.

²³¹ Submission 6, pp 7-8. The ALA submission also noted that disability and HIV/AIDS status is protected in South Africa and mental or physical disability is protected in Canada.

²³² Submission 75, p 2.

²³³ See submission 6, p 7; submission 40, p 3; submission 36, p 17 and p 24; submission 57, p 3; submission 71, p 6; submission 72; submission 74; submission 77, p 9; submission 79; submission 81, pp 4, 6.

²³⁴ QCOSS, submission 40, p 3.

²³⁵ LGBTI Legal Service Inc, submission 57, p 3.

ALHR advises that Intersex Human Rights Australia (IHRA) is the primary voice in Australia for intersex human rights advocacy and defers to IHRA's expertise on this issue, advising its understanding that 'sex characteristics' is the preferred attribute from the perspective of intersex advocates.

On this basis, ALHR advised that it supports the inclusion of 'sex characteristics' as a protected attribute in sections 124A and 131A, defined as:

'sex characteristics-

(a) means a person's physical features relating to sex; and

(b) includes-

(i) genitalia and other sexual and reproductive parts of the person's anatomy; and

(ii) the person's chromosomes, hormones, and secondary physical features emerging as a result of puberty.'²³⁶

Human rights implications of expanding the categories of protected attributes

Whilst the right to freedom of expression is a fundamental tenet of a democratic society, and protected by section 21(2) of the HRA, that right is not unlimited.²³⁷ As observed by the ALA in its submission:

... anti-vilification legislation also attempts to ensure that all people are able to exercise their freedom of expression, recognising that hateful conduct diminishes that right for people and groups of people who are targeted by vilifying conduct.

...

The preponderance of views in the authorities support the position that antivilification or antidiscrimination legislation does not burden the freedom of communication about government and political matters, but rather promotes civil political discourse.

.... The ALA submits that anti-vilification legislation strikes an appropriate balance that does not unreasonably limit the right to freedom of expression. Such legislation seeks to prohibit hateful conduct, not to suppress political dialogue. People are free to express their views about political matters or activities of others, in any way as long as such communication is done in a way that does not incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the basis of one or more protected attributes.²³⁸

Committee comment

The committee considers expanding the range of protected attributes to include disability, medical status, including HIV/AIDS status, and sex characteristics and/or intersex status, will help protect particularly vulnerable members of the community.

²³⁶ Submission 69, pp 6-8.

²³⁷ See HRA, s 13.

²³⁸ Submission 6, pp 13-14.

Recommendation 4

The committee recommends that the Queensland Government ensures anti-vilification provisions (in both civil and criminal laws) cover the attributes of:

- a. race
- b. religion
- c. gender and/or sex
- d. sexual orientation
- e. gender identity and/or gender expression
- f. sex characteristics and/or intersex status
- g. disability
- h. medical status, including HIV/AIDS status

Lowering the threshold for a section 124A complaint

The ALA submitted that section 124A should be amended to provide that a person must not engage in conduct that expresses or is reasonably likely in the circumstances to incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the basis of one or more of the protected attributes.²³⁹

The ALA also submitted that there is a need for a separate harm-based protection against hate-based conduct that makes it unlawful for a person to do an act, otherwise than in private, if the act:

(a) is reasonably likely, in all of the circumstances, to offend, insult, humiliate or intimidate another person or group of people; and

(b) is done because of one or more protected attribute of the other person or of some or all of the people in the group.

The ALA contended that the aim of this would be a focus on the impact of hate-based conduct, and the harm caused by that conduct, not whether a third party has been incited to hatred, noting:

Whether a provision like this is contravened would be judged by a court according to the test of a reasonable person of the targeted group (as per the Federal Court decision in *Eatock v Bolt*²⁴⁰ which looked at the interpretation of the equivalent federal provision).

Under such a provision a person or persons wishing to rely on the harm-based test would no longer need to demonstrate that a third party has been incited to hatred, but would be required to show that it was likely that a reasonable person of the targeted group would have been offended, insulted, humiliated or intimidated by the conduct. This is important because it is people from targeted groups who suffer the impacts of hate, not the Australian community as a whole.²⁴¹

Committee comment

The committee considers that the civil test under section 124A should be changed to reflect a focus on the impact that vilification has on the victim.

Recommendation 5

The committee recommends that the Queensland Government investigate lowering the threshold of the civil incitement test.

²³⁹ Submission 6, pp 8-9.

²⁴⁰ (2011) 197 FCR 261.

²⁴¹ Submission 6, p 9.

Changing the current definition of 'public act'

As noted above by the QHRC, recent decisions in respect of section 124A have restricted the meaning of 'public act'.

Some submitters²⁴² recommended adopting a broader definition of 'public act' that clearly encompasses social media posts.

The ALA recommended amending the section 4A(1)(a) ADA definition of 'public act' to explicitly include 'broadcasting and communicating through social media and other electronic methods', extending the prohibition to 'the distribution or dissemination of any matter to the public' and clarifying that 'an act may be a public act even if it occurs on private land'.²⁴³

Similarly, the LGBTI Legal Service Inc, recommended widening the definition of 'public act' so as to specifically include social media and other conduct that is observable by the public. Their submission noted that a 'public act' in the ADA 'does not currently apply in the diverse situations and locations where vilifying conduct may occur and should therefore be broadened.' They recommended amending the ADA definition of a 'public act' to include that any form of communication to the public, any conduct or gestures observable by the public and any distribution or dissemination of any matter to the public be considered a 'public act' and that communication via social media and online social platforms be specifically included as examples of a 'public act'.²⁴⁴

To this end, they recommended adoption of the wording for 'public act' as used in section 93Z of the *Crimes Act 1900* (NSW). They opined that, by adopting that wording, the current ambiguity as to the scope and meaning of a 'public act' in Queensland will be removed.²⁴⁵

The offence of publicly threatening or inciting violence was inserted into the *Crimes Act 1900* (NSW) in 2018, replacing the offences of serious racial vilification, serious transgender vilification, serious homosexual vilification and serious HIV/AIDS vilification from the NSW *Anti-Discrimination Act 1977*.

Section 93Z of the *Crimes Act 1900* (NSW) provides:

93Z Offence of publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status

(1) A person who, by a public act, intentionally or recklessly threatens or incites violence towards another person or a group of persons on any of the following grounds is guilty of an offence—

- (a) the race of the other person or one or more of the members of the group,
- (b) that the other person has, or one or more of the members of the group have, a specific religious belief or affiliation,
- (c) the sexual orientation of the other person or one or more of the members of the group
- (d) the gender identity of the other person or one or more of the members of the group,
- (e) that the other person is, or one or more of the members of the groups are, of intersex status,
- (f) that the other person has, or one or more of the members of the groups have, HIV or AIDS.

Maximum penalty —

²⁴² See for example, ALA, submission 6, p 10; LGBTI Legal Service Inc, submission 57, pp 3-4; Equality Australia, sub 71, pp 7-8; and Queensland Council for LGBTI Health, submission 77, p 5.

²⁴³ Submission 6, p 10.

²⁴⁴ Submission 57, pp 3-4.

²⁴⁵ Submission 57, p 3.

(a) in the case of an individual — 100 penalty units or imprisonment for 3 years (or both), or

(b) in the case of a corporation — 500 penalty units.

(2) In determining whether an alleged offender has committed an offence against this section, it is irrelevant whether the alleged offender's assumptions or beliefs about an attribute of another person or a member of a group of persons referred to in subsection (1)(a)-(f) were correct or incorrect at the time that the offence is alleged to have been committed.

(3) In determining whether an alleged offender has committed an offence against this section of intentionally or recklessly inciting violence, it is irrelevant whether or not, in response to the alleged offender's public act, any person formed a state of mind or carried out any act of violence.

(4) A prosecution for an offence against this section is not to be commenced without the approval of the Director of Public Prosecutions.

(5) In this section—

gender identity means the gender related identity, appearance or mannerisms or other gender related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.

intersex status means the status of having physical, hormonal or genetic features that are—

(a) neither wholly female nor wholly male, or

(b) a combination of female and male. Or

(c) neither female nor male.

public act includes—

(a) any form of communication (including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods) to the public, and

(b) any conduct (including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia) observable by the public, and

(c) the distribution or dissemination of any matter to the public.

For avoidance of doubt, an act may be a public act even if it occurs on private land.

race includes colour, nationality, descent and ethnic, ethnoreligious or national origin.

religious belief or affiliation means holding or not holding a religious belief or view.

sexual orientation means a person's sexual orientation towards—

(a) persons of the same sex, or

(b) persons of a different sex, or

(c) persons of the same sex and persons of a different sex.

violence includes violent conduct and violence towards a person or a groups of persons includes violence towards property of the person or a member of the group, respectively.

Importantly, the New South Wales offence of publicly threatening or inciting violence clarifies that:

(a) it is irrelevant whether an alleged offender's assumptions or beliefs about another person or group were correct or incorrect;

and

(b) it is irrelevant whether or not anyone formed a state of mind or carried out an act of violence in response to the public act.

Committee comment

The committee notes the proliferation of vilifying commentary on various social media platforms and considers that the public nature of social media usage needs to be recognised in the definition of 'public acts' for the purpose of anti-vilification legislation.

Recommendation 6

The committee recommends that the Queensland Government adopt the definition of ‘public act’ in section 93Z(5) of the *Crimes Act 1900* (NSW), which incorporates social media and other electronic methods, and ensure it applies to civil and criminal incitement-based and harm-based provisions in Queensland’s anti-vilification laws.

Remove requirement for Crown law officer’s consent before prosecuting under section 131A

Most submitters²⁴⁶ were in favour of removing the section 131A precondition to prosecution of requiring a Crown law officer’s consent, with the QLS observing that the requirement ‘presents a notable practical obstacle’. The QLS considered that alternative safeguards should be put in place to guide prosecution such as better guidance in the police operational procedure manuals.²⁴⁷

The QHRC submission considers the section 131A crown law officer approval requirement is relevant to the under-utilisation by police of the offence provision, noting that the summary offence of public nuisance carries the same maximum imprisonment penalty of 6 months but does not require prior approval to start a proceeding. It noted that: ‘The delays in completing and submitting a brief for approval potentially allows the offending to continue, and the time delay may lessen the impact of a prosecution’.²⁴⁸

The QHRC submission also backgrounds the history of the requirement. In conclusion it noted that:

... there is no valid rationale for the requirement of prior DPP approval, and it is not consistent with the prosecution of most criminal offences in Queensland. The removal of the prior consent requirement would likely result in greater utilisation of the offence.²⁴⁹

AMAN and ICQ recommended removing the requirement for Crown law officer approval to prosecute, noting that the (federal) criminal offence of using a carriage service to cause offence, menace or harass does not require Crown Law approval. They submitted:

In our discussions with police, it was very clear that waiting several months, for such approval, posed an unacceptable risk to the community. Police might select other offences that allow them to intervene sooner. This does result, however, in community being denied the recognition that a hate crime has occurred.²⁵⁰

Committee comment

The committee considers that the requirement for Crown Law officer approval that is currently in section 131A is an unnecessary impediment to police expeditiously prosecuting serious vilification matters.

²⁴⁶ See for example – QACC, submission 1, p 4; Katherine Gelber, submission 19, p 3; TASC National Ltd submission 25, p 2; QHRC, submission 36, pp 15-16; QJBD, submission 30, p 6; ADLEG, submission 72, p 8; QLS, submission 73, p 3. The submission from ALA, submission 6, p 12, opposed the suggestion, considering it ‘necessary for the DPP or Attorney-General to retain the responsibility for commencing prosecution under s 131A. The ALA is concerned of the potential for police to use a prosecution against the very marginalised communities who would expect to receive protection from this provision, namely people in Aboriginal or Torres Strait Islander communities’.

²⁴⁷ Submission 73, p 3.

²⁴⁸ Submission 36, p 15.

²⁴⁹ Submission 36, pp 15-16.

²⁵⁰ Submission 52, p 25.

Recommendation 7

The committee recommends that the Queensland Government investigate the viability of removing the requirement for the written consent of a Crown Law officer before commencing a prosecution for serious vilification.

6.3.4.2 Miscellaneous reforms

Aggravation

Some submissions supported making bias motivations a circumstance of aggravation on existing offences.²⁵¹

Of the options presented in the Cohesive Communities Coalition Options Paper (Options Paper),²⁵² QLS supported consideration of vilification and hate speech as a circumstance of aggravation on existing offences, such as assault, public nuisance and wilful damage, noting that there ‘may be merit in introducing an aggravating factor in other offences for acts or omissions which involve serious vilification and hate, which would provide avenues for more serious penalties in appropriate circumstances’.²⁵³ They submitted that:

When compared with other options, this approach may have practical and operational benefits for police who are already familiar with charging, investigating and prosecuting existing laws. Introducing a circumstance of aggravation also serves to recognise the experiences of victims and acknowledges the serious and unacceptable nature of vilification and hate crime.²⁵⁴

Committee comment

The committee considers that providing that a bias motivation is an aggravating factor for certain criminal offences acknowledges the psychological harm caused by vilification and reflects that by way of an increased sanction for offending conduct.

Recommendation 8

The committee recommends that the Queensland Government introduce a statutory aggravation regarding hate/serious vilification into the *Criminal Code Act 1899* (Qld) and *Summary Offences Act 2005* (Qld) to apply to criminal conduct.

Moving section 131A from the ADA into the Criminal Code

A number of submitters²⁵⁵ were in favour of moving section 131A from the ADA into the Criminal Code, with the QHRC noting that moving it would be a means of increasing police awareness and use of the offence.²⁵⁶

Committee comment

²⁵¹ See for example, QACC, submission 1, p 4; ALA, submission 6, p 11; QLS, submission 73, p 4.

²⁵² *Serious vilification and hate crime: The need for legislative reform*, Cohesive Communities Coalition, p 6.

²⁵³ Submission 73, p 4.

²⁵⁴ Submission 73, p 4.

²⁵⁵ See for example Katherine Gelber, submission 19, p 3; QHRC, submission 36, p 16; Multicultural Australia, submission 37, p 17.

²⁵⁶ QHRC, submission 36, p 16.

The committee considers that moving section 131A from the ADA into the *Criminal Code* better reflects the gravity of the unlawful serious vilification conduct that it addresses.

Recommendation 9

The committee recommends that the Queensland Government relocate section 131A from the *Anti-Discrimination Act 1991 (Qld)* into the *Criminal Code 1899 (Qld)*.

6.3.5 Hate crime scrutiny panels

Recommendation 7 of the options paper recommends introducing a hate crime scrutiny panel based on the United Kingdom (UK) model.

The UK model requires the police service to create local hate crime scrutiny panels in each of the UK's 43 policing services areas that regularly review a random sample of hate crimes reported in the area. These panels consist of police and volunteer members of the victim communities.²⁵⁷

The options paper identifies the following benefits of the proposal:

- It brings scrutiny to all aspects of the police response.
- It allows for generalist or specialist scrutiny panels.²⁵⁸
- It provides additional contact with victims and builds trust between the police and the victim communities and thereby increases the willingness of vulnerable victims to report crimes to the police.
- It allows for addressing cultural and operational obstacles which may be inhibiting enforcement of laws.
- It overcomes the drawbacks of the current Queensland Police Service Muslim Reference group model or the Police Ethnic Advisory Group models.²⁵⁹

Support for hate crime scrutiny panels

The ALA supported recommendation 7 of the options paper to introduce hate crime scrutiny panels based on the UK model. Further, the ALA considered that 'it is important for the police response to anti-vilification and race hate offences to attract a strong level of scrutiny and accountability'.²⁶⁰

The QLS was also supportive of the introduction of scrutiny panels, commenting:

QLS considers that civil law reform, including a civil hate crime injunction and introducing a new Order scheme to target vilification and hate crimes may offer victims redress where their experiences fall short of meeting the threshold of the criminal offence. Given this, civil orders, in particular an injunctive power (for example, through QCAT) and scrutiny panels, may prove useful to stop harmful behaviour.²⁶¹

²⁵⁷ Cohesive Communities Coalition, *Serious vilification and hate crime: the need for legislative reform*, p 23. See A Asquith and I Bartkowiak-Theron (eds), *Policing Vulnerability*, Federation Press, 2012, p 155.

²⁵⁸ For example, a generalist panel may look at all forms of hate crime, whereas a specialist panel may just look at race hate crime.

²⁵⁹ Cohesive Communities Coalition, *Serious vilification and hate crime: the need for legislative reform*, pp 23-24.

²⁶⁰ Submission 10, p 13.

²⁶¹ Submission 73, p 6.

Many stakeholders, including AMAN and ICQ, Multicultural Australia and QPASTT, included a recommendation in their submissions for the introduction of a hate crime scrutiny panel involving both police and community advocates.²⁶²

In its submission, AMAN and ICQ explained in detail why it supported the introduction of a hate crime scrutiny panel involving police and community advocates:

This approach brings scrutiny to all aspects of police response. It involves a detailed outline of individual cases, procedures taken by responding officers and commanders, and a critical discussion of the problems encountered in operationalising the hate crime policies and standard operational procedures.

We raised this idea in our discussion with police and there were positive indications that this could be helpful if treated as a mutual education process to guide improvements in practice and increase communication on highly sensitive cases. The scrutiny panel proposal is a safeguard for all concerned and continues to be high on the agenda of affected communities. Real change happens over time and that necessitates purposeful, ongoing collaboration.²⁶³

The QACC also supported the introduction of hate crime scrutiny panels based on the UK model.²⁶⁴

While noting that certain aspects of hate crime scrutiny panels can be effective, the Aboriginal and Torres Strait Islander Legal Service (ATSILS) did raise the following concern:

These panels have seemingly proven effective in assisting police to understand the significance of symbols to properly identify witnesses and to follow up with inquiries, and to assist with referrals to appropriate sources of expertise such as academic experts or to assistance available from the affected community itself.

One concern however is that the actual make-up of the group could have a disproportionate effect. For example if individuals from the far right or the far left made it their business to endeavour gaining panel membership – and in so doing, influence what is or is not considered acceptable. “Political correctness” is already seen in some quarters as a form of social engineering – and via such, an instrument of public control. It is absolutely crucial to appropriate levels of free speech that a fair, equitable and balanced approach is adopted.²⁶⁵

There were also some submitters that did not support the introduction in Queensland of hate crime scrutiny panels. For example, ADLEG noted its view that the suggested new forms of redress are not necessary, with the redress to QCAT being adequate.²⁶⁶

Freedom for Faith also did not support the idea of introducing hate crime scrutiny panels and commented on the UK experience to date:

These panels have proven to be contentious after several years in operation, where ‘non-crime hate incidents’ are placed on the permanent records of citizens on the basis of allegations alone.²⁶⁷

Roland Killick also did not agree with this recommendation and noted:

Diverting Police resources to more administrative activities is an exercise in political correctness. Police already do not have enough resources to investigate burglaries or fraud or other crimes.

If Parliament chooses to fund an independent group with the charter to collect and report on alleged “hate” events, prosecutions and outcomes that should be considered on its own merits separately.²⁶⁸

²⁶² See, for example, submission 34, p 9, submission 37, p 18 and submission 52, p 4.

²⁶³ Submission 52, p 39

²⁶⁴ Submission 1, p 4 and submission 34, p 8.

²⁶⁵ Submission 58, p 8.

²⁶⁶ Submission 72, p 8.

²⁶⁷ Submission 68, p 3.

²⁶⁸ Submission 70, p 2.

Committee comment

The committee considers that adoption of a hate crime scrutiny panel with police and community representatives should assist in creating better mutual understanding between the groups and assist in overcoming many of the current deterrents to reporting acts of hate speech and vilification.

Recommendation 10

The committee recommends that the Queensland Government establish a hate crime scrutiny panel involving police and community advocates as an ongoing mutual education process to guide improvements in practice and increase communication on cases.

6.3.6 Other reforms

Having heard evidence from a large number of submitters and witnesses as to flaws in the current vilification complaint and prosecution system, as well as a substantial number of suggestions for reform, the committee also recommends the following:

Recommendation 11

The committee recommends that the Queensland Government develop a restorative justice strategy concerning hate crimes, in consultation with affected communities.

Recommendation 12

The committee recommends that the Queensland Government look into viable programs to support organisations to navigate the system for reporting serious vilification.

Recommendation 13

The committee recommends that the Queensland Government investigate funding organisations such as Legal Aid Queensland and the Aboriginal Torres Strait Islander Legal Service to have the ability to initiate civil actions on vilification matters.

Recommendation 14

The committee recommends that the Queensland Government support specialist advocacy services and legal clinics dedicated to hate crime, human rights, discrimination and vilification for CALD clients of limited socio-economic means.

Recommendation 15

The committee recommends that the Queensland Government support the Queensland Police Service in the effective utilisation of vilification provisions in the criminal jurisdiction.

7 Hate symbols

The QJBD submitted that the public display and sale of hate symbols, such as the Nazi symbol:

... impacts the sense of safety and security of all Queenslanders, including those who are members of groups and communities that have historically been the targets of Nazi policies of genocide, mass murder and other forms of persecution, such as Jews, Roma people, the disabled and LGBTIQ people.²⁶⁹

The QJBD referred to the findings of the Plus61J survey, released in 2021, which found that:

... a majority of Queenslanders indicated support for action against antisemitism in response to the statement that 'To protect Jewish people from antisemitism, the Nazi symbol should be banned in Australia'; just 10% disagreed, 27% indicated that they neither agreed nor disagreed, while a substantial majority of 61% agreed.²⁷⁰

The QJBD also referred to the ECAJ's Annual Report on Antisemitism in Australia in 2020 which noted a rise in the number of incidents involving the public display of Nazi symbols and the public sale of Nazi memorabilia.²⁷¹ The committee notes that during the period of its inquiry, a Nazi flag was flown over a synagogue in Brisbane.²⁷²

The QJBD called for a legislative ban on the public display of hate symbols and to give power to the police to remove and confiscate hate paraphernalia. The QJBD was of the view that such legislation 'would be a useful tool in countering the proliferation of extremist ideologies'. Nevertheless, they contended that it would 'only scratch the surface of the problem'.²⁷³ The QJBD was of the view that any legislation 'would need to be flexible enough to accommodate the constant evolution of new hate symbols'.²⁷⁴

The QHRC contended that before drafting such legislation it is necessary to determine the reasons for it:

The first step in considering the criminalisation of the possession of symbols and insignia and the dissemination of symbols and insignia, is to determine the objective of doing so. The objectives might range from preventing or interrupting the spread of harmful extremist ideology to reduce the risk of terrorist acts, to preventing the harm to groups and individuals who may feel threatened, intimidated, or insulted by symbols or insignia.²⁷⁵

Professor Katharine Gelber was open to the creation of a legislative offence but cautioned on the wording of a ban:

There is an argument—and here is where I would actually be sympathetic to the introduction of one new criminal provision if it was considered necessary by the parliament—that you could criminally prohibit the use of those symbols. You would have to be really specific, though. As I am sure some other religious communities have told you, the swastika itself is not the same as the Nazi swastika. You need to be very careful about how you phrase that kind of a provision so that you were not overly broad and you did not accidentally capture things that you did not want to capture.²⁷⁶

²⁶⁹ QJBD, submission 30, p 34. Footnotes in original omitted.

²⁷⁰ QJBD, submission 30, p 34. Footnotes in original omitted.

²⁷¹ QJBD, submission 30, p 34. Footnotes in original omitted.

²⁷² See for example, 'Queensland police seize Nazi flag flown near Brisbane synagogue', *The Guardian*, 30 October 2021, <https://www.theguardian.com/australia-news/2021/oct/30/queensland-police-seize-nazi-flag-flown-near-brisbane-synagogue>

²⁷³ QJBD, submission 30, p 34. Footnotes in original omitted.

²⁷⁴ QJBD, submission 30, p 35. Footnotes in original omitted.

²⁷⁵ QHRC, submission 36, p 33.

²⁷⁶ Katharine Gelber, public hearing transcript, Brisbane, 9 September 2021, p 51.

If legislation is drafted, the QHRC similarly stated that it must include exceptions:

Any regulation of the possession and display of symbols and insignia must contain appropriate exceptions that include the historical, cultural, and religious significance of some symbols. Of concern is the appropriation of the term 'swastika' in relation to the Nazi Party and its association with genocide, racism, and white supremacy.

... The swastika is an ancient and revered symbol with profound meaning in Hinduism, Buddhism, and Jainism. These communities feel strongly that the appropriation of this important religious symbol by the Nazi Party, and by other organisations such as the Carlsberg brewery, is highly offensive and cultural theft.²⁷⁷

ATSILS stated, 'As with everything else, context is everything. The context in which that symbol is used is what would make that criminal'.²⁷⁸

The QJBD advised:

A small number of countries, particularly those which historically suffered most at the hands of Nazi tyranny, have banned the public display of Nazi and other hate symbols. These countries include Germany, Austria, France, Lithuania, Latvia, Poland, Ukraine, Brazil and Israel.²⁷⁹

Most of these jurisdictions, which have introduced banning legislation provide exemptions or exclusions for the display of certain symbols when the purpose is clearly not to promote hatred. For example, the swastika in certain formats has, for centuries, been a religious and cultural symbol in several eastern and European traditions.

The QJBD added:

Similarly, the use of Nazi symbols to educate the public about the appalling history of Nazism or for other genuine academic, research, scientific or artistic purposes, or other purposes in the public interest, should not be proscribed.²⁸⁰

The QLS did not support the creation of an offence to deal with the display of offensive material.²⁸¹ Its President stated: 'I think essentially our point is that complex social problems are rarely solved by a new standalone criminal offence. It is a matter of complex system changes'.²⁸²

Committee recommendation

The committee considers that the display of symbols of hate, such as the Nazi swastika and symbols of ISIS ideology, should be banned. These hate symbols can cause distress to Queenslanders, particularly those from persecuted communities. The committee stresses that such a ban should include exceptions so that, for example, symbols from Hinduism, Buddhism, and Jainism are not inadvertently prohibited.

²⁷⁷ QHRC, submission 36, p 34.

²⁷⁸ ATSILS, public hearing transcript, Brisbane, 9 September 2021, p 31.

²⁷⁹ QJBD, submission 30, p 35. Footnotes in original omitted.

²⁸⁰ QJBD, submission 30, p 35. Footnotes in original omitted.

²⁸¹ QLS, public hearing transcript, Brisbane, 9 September 2021, p 44.

²⁸² QLS, public hearing transcript, Brisbane, 9 September 2021, p 45.

Recommendation 16

The committee recommends that the Queensland Government establish a criminal offence that prohibits the display of hate symbols, including those relating to Nazi and ISIS ideology, with considered exceptions to the prohibition.

8 Education

Education was widely supported by stakeholders as a way to address vilification and hate crimes.²⁸³

The Queensland Chapter of VHP Australia considers that lack of knowledge about Hindu culture contributes to the hatred and vilification faced by the Hindu community.²⁸⁴

Another stakeholder submitted:

I'm from Colombia and one of the things that most people think is I am, somehow, related or following the steps of Pablo Escobar the infamous drug lord. I feel offended and very uncomfortable when it happens, people should educate themselves a bit better and not base their opinions on movies and TV shows like Narcos (Netflix).²⁸⁵

A man who had experienced vilification considered that education is key to addressing vilification.

Education would likely be foundational to addressing this problem. When I see young people touting problematic or racist ideas on social media or in public, I think that these young people are simply parroting/reproducing these words, these racist ideas. I think that at first they are just carrying on the messages of their ancestors. I think these young people don't really know what they are saying yet, but the problem is they are beginning to speak these wrong ideas. Teaching and learning from history is important and powerful.²⁸⁶

Stakeholders recommended education for numerous groups in society as well as the general public.²⁸⁷ These groups included primary and secondary school students,²⁸⁸ potential victims,²⁸⁹ newcomers to Australia,²⁹⁰ perpetrators of vilification offences,²⁹¹ bystanders, police,²⁹² workers,²⁹³ and international students.²⁹⁴ The education proposed was wide-ranging.

The SNSA recommended that '[p]eople should be educated about the positive aspects of a multicultural society'.²⁹⁵

The Pacific Islands Council Qld Inc (PICQ) submitted that there needs to be 'education on how one deals with online bullying, vilification and hate crimes'.²⁹⁶

²⁸³ See for example, Access Community Services, tabled paper, public hearing, Brisbane, 9 September 2021, p 1, and their submission (submission 53); Donnie Lee, submission 17, p 1; Mohammad Saad Khan, submission 24, p 1; RFQ, submission 74, pp 3, 7; Rainbow on the Reef Ltd, submission 79, p 2; Alisha DeAraugo, submission 80, p 2.

²⁸⁴ VHP Australia, Queensland Chapter, submission 51, p 2.

²⁸⁵ Diana Zappone, submission 48, p 1.

²⁸⁶ Access Community Services, submission 53, pp 6-7.

²⁸⁷ See for example Access Community Services, submission 53, p 3.

²⁸⁸ See for example Access Community Services, submission 53, p 11.

²⁸⁹ Access Community Services, submission 53, p 14.

²⁹⁰ Access Community Services, submission 53, p 14.

²⁹¹ Access Community Services, submission 53, p 11.

²⁹² Access Community Services, submission 53, p 3.

²⁹³ Multicultural Youth Queensland, submission 54, p 7.

²⁹⁴ CISA, submission 38, p 3.

²⁹⁵ SNSA, submission 44, p 14.

²⁹⁶ PICQ, submission 46, p 2.

RFQ recommended that it should be mandatory in schools to teach students ‘about the meaning of hate speech and the harm that it causes’.²⁹⁷ Rainbow on the Reef Ltd advised that it received feedback including that ‘LGTBQIA+ education and history in schools would assist in combatting vilification and hate crimes’.²⁹⁸ It added: ‘Education of the broader community is also required, especially public venues which have particularly been a place of concern’.²⁹⁹

Both the QJBD and the SNSA recommended education that teaches about difference and that it is all right to be different, but it is not all right to vilify someone or subject them to a hate crime.

We need to make people understand that any type of hate needs to be eliminated, and we need to educate, at a very young age, on differences. We need education in the schools, talking about the differences of people and their culture, and the diversity of everyone.³⁰⁰

We need to educate wider communities and schools, especially young people (teens and young adults), about different religious groups and that it’s okay if people are other, but it is not okay and not a reason to be targeted.³⁰¹

According to ADLEG, improved awareness of relevant laws would help decrease instances of vilification and increase reporting of such instances.

Providing information enables people whose rights are breached to seek appropriate legal redress.

Community engagement, education programs and awareness raising may also deter would-be-vilifiers from engaging in such conduct, by making people more aware of vilification laws and the consequences of breaching them. Community education regarding vilification laws also serves the broader purpose of reinforcing norms of behaviour by clarifying what types of conduct are (and are not) socially acceptable. Improved community education would also promote the sense, particularly in members of target communities, that making a complaint is worthwhile.³⁰²

The PICQ expressed support for ‘continuous education of all communities around these laws, what the laws mean and how these laws are applied’.³⁰³

CISA called for education of the community generally and international students specifically of any reforms to the vilification and hate crime laws.³⁰⁴

A person who was subject to vilification suggested:

I ... believe there should be sessions for those who have experienced racism to sit together and talk about their experiences. We could also talk about resilience and invite external providers to educate us on how we can report incidents, and the benefits of reporting. Because at the moment we see these acts as normal and cope by minimising them.³⁰⁵

A couple of stakeholders recommended education for potential bystanders so they know what to do if they witness an instance of vilification.³⁰⁶ AMAN and ICQ submitted that the education could

²⁹⁷ RFQ, submission 74, p 7. See also QPASTT, submission 34, p 9; Multicultural Australia, submission 37, p 19; AMAN and ICQ, submission 52, p 5.

²⁹⁸ Rainbow on the Reef Ltd, submission 79, p 2.

²⁹⁹ Rainbow on the Reef Ltd, submission 79, p 2.

³⁰⁰ Queensland Jewish Board of Deputies, submission 30, p 16.

³⁰¹ SNSA, submission 44, p 14. See also SNSA, submission 44, p 5.

³⁰² ADLEG, submission 72, pp 12-13. Footnotes in original omitted.

³⁰³ PICQ, submission 46, p 2. The Council also recommended the vilification and hate crime laws be strengthened.

³⁰⁴ CISA, submission 38, p 3.

³⁰⁵ Access Community Services, submission 53, p 8.

³⁰⁶ Access Community Services, submission 53, p 8; AMAN and ICQ, submission 52, p 15.

‘encourage community witnesses of hate crime to support victims at the time while maintaining their safety – thereby reducing the impacts of the incident on the victim and reinforcing to perpetrators that it is not acceptable behaviour’.³⁰⁷

RFQ and the LGBTI Legal Service recommended training for police regarding LGBTIQ+ issues³⁰⁸ while AMAN and ICQ recommended introducing ‘religious diversity and cultural diversity awareness into training for new police officers, including meeting with members of the Muslim community and other CALD communities to dismantle biases’.³⁰⁹

Multicultural Youth Queensland recommended:

Compulsory Culturally Responsive Practice training like Workplace Health and Safety Training in ... workplaces, so that a culture of having a no tolerance on hate crime and vilification is normalized and handled as seriously as other misconduct within the workplace.³¹⁰

The SNSA similarly recommended ‘[m]andatory onboarding for places of employment that address racism and hate crimes’.³¹¹

At least one stakeholder, though, was disillusioned with education as a tool to help combat vilification and hate crimes, stating, ‘There is no point having another “education campaign” because quite frankly they don’t work, or I have yet to see evidence that they do’.³¹²

Committee recommendation

The committee strongly believes that education can play an important role in combatting hate crimes and vilification in Queensland. The more people learn about other cultures and ways of life and the types of behaviour that are or are not acceptable, the more likely it is that instances of vilification and hate crimes will decrease.

Recommendation 17

The committee recommends that the Queensland Government develop community education campaigns in conjunction with organisations such as the Queensland Human Rights Commission and Multicultural Australia to educate the community about vilification and hate conduct.

³⁰⁷ AMAN and ICQ, submission 52, p 5.

³⁰⁸ RFQ, submission 74, p 7; LGBTI Legal Service, public hearing transcript, Brisbane, 10 September 2021, p 23.

³⁰⁹ AMAN and ICQ, submission 52, p 4.

³¹⁰ Multicultural Youth Queensland, submission 54, p 7.

³¹¹ SNSA, submission 44, p 14. See also SNSA, submission 44, p 5.

³¹² Marina Chand, submission 22, p 4.

Appendix A – Submitters

Sub #	Submitter
001	Queensland African Communities Council (QACC)
002	Chloe Brockett
003	Dr Kachina Allen
004	Name withheld
005	Confidential
006	Australian Lawyers Alliance
007	Isobel Barker
008	Ranjit Singh
009	Alessandra Prado Rezende
010	eSafety Commissioner
011	Confidential
012	Joint submission – Christian Schools Australia and Adventist Schools Australia
013	Peter Lloyd
014	Imraan Khan
015	Confidential
016	James (Yaqub) Phillips
017	Donnie Lee
018	Department of Education
019	Professor Katharine Gelber
020	Confidential
021	Professor Nicholas Aroney and Dr Paul Taylor
022	Marina Chand
023	Confidential
024	Dr Mohammad Saad Khan
025	TASC National Limited
026	Name withheld
027	Name withheld
028	Maurice Blackburn
029	Name withheld
030	Queensland Jewish Board of Deputies Inc (including amendments x 2)
031	Queensland University of Technology
032	Fair Go for Queensland Women
033	IWD Brisbane Meanjin

034 Queensland Program of Assistance to Survivors of Torture and Trauma
035 Courage to Care
036 Queensland Human Rights Commission
037 Multicultural Australia
038 Council of International Students Australia
039 Elijah Buol OAM
040 QCOSS
041 Name withheld
042 Queensland Chinese Forum
043 Chinese Community Crime Prevention Consultative Committee
044 Sikh Nishkam Society of Australia
045 Queensland University of Technology Digital Media Research Centre
046 Pacific Islands Council of Queensland Inc
047 Name withheld
048 Diana Zappone
049 Name withheld
050 Caxton Legal Centre Inc
051 Vishva Hindu Parishad (VHP) Australia, Queensland Chapter
052 Australian Muslim Advocacy Network
053 Access Community Services
054 Multicultural Youth Queensland
055 Legal Aid Queensland
056 Queensland Council for Civil Liberties
057 LGBTI Legal Service Inc
058 Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd
059 Confidential
060 Confidential
061 Singapore Business Group (Australia) Inc
062 Con Christopoulos
063 Sharon Were
064 Multicultural Queensland Advisory Council
065 Confidential
066 FamilyVoice
067 Townsville Community Law Inc
068 Freedom for Faith

- 069 Australian Lawyers for Human Rights
- 070 Roland Killick
- 071 Equality Australia
- 072 Australian Discrimination Law Experts Group
- 073 Queensland Law Society
- 074 Rainbow Families Queensland
- 075 Queensland Advocacy Incorporated
- 076 Townsville Islamic Society
- 077 Queensland Council for LGBTI Health
- 078 Brisbane Lions
- 079 Rainbow on the Reef
- 080 Alisha DeAraugo
- 081 Joint submission – Scarlet Alliance - Respect Inc and Australian Sex Workers Association
- 082 Queensland Human Rights Commission Supplementary Submission (refer submission 36)

Appendix B – Officials at public departmental briefing

24 May 2021

Department of Children, Youth Justice and Multicultural Affairs

- Ms Kate Connors, Deputy Director-General, Strategy
- Mr Wayne Briscoe, Executive Director, Multicultural Affairs

Queensland Police Service

- Ms Keiryn Dermody, Acting Assistant Commissioner, Security and Counter-Terrorism Command
- Mr Peter Doyle, Inspector, Security and Counter-Terrorism Command
- Ms Jacqui Honeywood, Acting Inspector, First Nations and Multicultural Affairs Unit
- Mr Murray Pearce, Acting Inspector, Security and Counter-Terrorism Command

Multicultural Australia

- Mrs Christine Castley, Chief Executive Officer
- Ms Vanessa Fabre, Executive Manager

Cohesive Communities Coalition

- Ms Rita Jabri-Markwell, Co-Chair

Queensland Human Rights Commission

- Mr Scott McDougall, Commissioner
- Ms Neroli Holmes, Deputy Commissioner
- Ms Julie Ball, Principal Lawyer

Appendix C – Witnesses at public hearing

3 September 2021

Chinese Community Crime Prevention Consultative Committee

- Dr Kee Cheung OAM, Adviser
- Mr Clement Sham, Deputy Chair
- Ms Vicky Yu, Chairperson

Queensland Chinese Forum

- Mr Daniel Wong, President
- Mr Clement Sham, Vice President
- Mr Johnson Chen, Past President

Queensland African Communities Council

- Mr Beny Bol OAM, President
- Mr Faysel Ahmed Selat, Vice Secretary
- Ms Abiba Andria, Public Relations Coordinator, Queensland African Communities Council; and Coordinator, African Youth Support Council

Pacific Islands Council Queensland Inc

- Mr Michael Gorogo, Vice President
- Ms Salome Swan, Community Leader, Elder and PICQ Member
- Mrs Ema Vueti, President

Queensland Program of Assistance to Survivors of Torture and Trauma

- Ms Rima Flihan, Engagement and Connection Practitioner

Multicultural Australia

- Ms Christine Castley, Chief Executive Officer
- Mr Butrus Haider, Youth Engagement Officer, Migrant Youth Vision Project
- Ms Azin Khodadadi, Program Manager, Settlement Engagement and Transition Support

Multicultural Queensland Advisory Council

- Mr Nkosana Mafico, Member
- Mr Giri Sivaraman, Member
- Ms Vicky Yu, Member

Equality Australia (via teleconference)

- Mr Ghassan Kassisieh, Legal Director

Rainbow Families Queensland

- Ms Heather Corkhill, Member, Steering Committee
- Mr Trevor Kanapi, Member, Steering Committee

Queensland Jewish Board of Deputies Inc

- Mr Jason Steinberg, Vice President
- Ms Libby Burke, Chair, Public Affairs
- Mr Howard Posner, Member, Public Affairs Subcommittee

Australian Muslim Advocacy Group

- Ms Rita Jabri-Markwell, Legal Adviser

Queensland Council for LGBTI Health

- Mr Peter Black, President
- Ms Rebecca Reynolds, Chief Executive Officer

Vishva Hindu Parishad of Australia, Queensland Chapter

- Dr Krrishna Kandui, Volunteer
- Mr Vikas Mittal, Volunteer

Sikh Nishkam Society of Australia

- Mrs Kamaljit Kaur Athwal
- Ms Manpreet Kaur Bains
- Mr Gurshej Singh

University of Technology (via teleconference)

- Dr John Byron, Principal Policy Adviser to the Vice Chancellor

Private Capacity

- Professor Nicholas Aroney (via teleconference)

9 September 2021

Council of International Students Australia (via teleconference)

- Mr Lloyd Calimag, Equity Officer
- Ms Belle Lim, National President
- Mr Keven Tanaya, National Secretary

FamilyVoice Australia (via teleconference)

- Mr David D’Lima, spokesperson
- Mr Jerome Appleby

Christian Schools Australia (via videoconference)

- Mr Mark Spencer, Director of Public Policy

Australian Lawyers for Human Rights

- Ms Ella Furlong, Queensland Co-Chair

Australian Discrimination Law Experts Group (via videoconference)

- Ms Robin Banks, member
- Mr Bill Swannie, member

Australian Lawyers Alliance

- Ms Melia Benn, Convenor, National Human Rights Special Interest Group

Townsville Community Law

- Mr Bill Mitchell OAM, Principal Solicitor

Queensland Advocacy Inc

- Ms Matilda Alexander, Chief Executive Officer
- Dr Emma Phillips, Principal Solicitor and Deputy Chief Executive Officer

Legal Aid Queensland

- Ms Brittany Smeed, Senior Lawyer, Human Rights and Anti-Discrimination

Aboriginal and Torres Strait Islander Legal Service

-
- Ms Kate Greenwood, Barrister, Prevention, Early Intervention and Community Legal Education Officer

Caxton Legal Centre

- Ms Bridget Burton, Director, Human Rights and Civil Law

TASC National

- Mr David Manwaring, Principal Solicitor and Legal Services Manager
- Mr Jake Fuentes, Solicitor

Access Community Services

- Ms Gail Ker, Chief Executive Officer

Multicultural Youth Queensland

- Miss Marisha Tuialii, Queensland Council Leader
- Mr Ahsin Waris, Multicultural Youth Queensland Council Leader

Queensland Law Society

- Ms Elizabeth Shearer, President
- Mr Dan Rogers, Chair, Human Rights and Public Law Committee
- Ms Irene Gallagher, Graduate

Queensland Council for Civil Liberties

- Mr Michael Cope, President

University of Queensland (via videoconference)

- Professor Katharine Gelber, Head of School, Professor of Politics and Public Policy

Multicultural Australia (Toowoomba) (via videoconference)

- Ms Kelly Buckingham, Regional Manager, South West Region
- Mrs Jamie-Lee Wagner, Refugee Health Officer

Townsville Islamic Society (via videoconference)

- Dr Shahead Chowdhury, President
- Mr Nazeer Mohammad Nazir, Vice President
- Mr Addin Pranowo, Treasurer
- Dr Omar Shareef, volunteer

10 September 2021

Islamic Women's Association of Australia

- Ms Galila Abdelsalam OAM, Chief Executive Officer

Islamic Council of Queensland

- Mr Habib Jamal, President
- Mr Ali Kadri, Chief Executive Officer, Islamic College of Brisbane; committee member, Holland Park Mosque

Football Queensland

- Mr Dan Birrell, Senior Manager, Participation, Clubs, Community and Competitions
- Mrs Ana Croger, State Integrity Manager

Brisbane Lions (via videoconference)

- Mr Andrew Crowell, Player Excellence and Wellbeing Manager
- Mr Andrew Wellington, Chairman

Netball Queensland and Queensland Firebirds

- Ms Ana Croger, General Counsel, Head of Policy and Integrity
- Mr Lee Wilson, Manager, Diamond Spirit, Diversity and Inclusion

Gold Coast Titans (via videoconference)

- Ms Renee Cohen, General Manager, Community and Game Performance

Respect Inc

- Ms Janelle Fawkes, DecrimQLD Campaign Leader
- Dr Elena Jeffreys, State Coordinator

Australian Sex Workers Association (via videoconference)

- Ms Jules Kim, Chief Executive Officer, Scarlet Alliance

LGBTI Legal Service (via videoconference)

- Ms Ellie Hansson, Administration, Law Reform
- Ms Polly Richardson, Solicitor

15 October 2021

Townsville Community Justice Group

- Mr Karl McKenzie, Chair

Private Capacity

- Ms Yarraka Bayles
- Mrs Journee Casabuena

