

LEGAL AFFAIRS AND SAFETY COMMITTEE
Report No. 22, 57th Parliament
Inquiry into serious vilification and hate crimes
QUEENSLAND GOVERNMENT RESPONSE

On 31 January 2022, the Legal Affairs and Safety Committee (the Committee) tabled in the Legislative Assembly its Report (No. 22, 57th Parliament).

The Committee undertook an extensive communication campaign to facilitate engagement with the Queensland community and encourage people and organisations to respond to provide a submission.

Distribution channels for the communication campaign throughout the inquiry included social media, newspapers, radio, the Queensland Parliament website, electorate offices and a promotional flyer for email distribution to remote stakeholders. The Committee received 82 written submissions and 40 video and audio submissions.

The Committee also 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. A public briefing was held on 24 May 2021 in Brisbane. Four public hearings were held by the Committee in Brisbane on 3 September 2021, 9 September 2021, 10 September 2021 and 15 October 2021.

The Committee tabled its report, containing 17 recommendations, on 31 January 2022.

On 23 April 2021, the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence (Attorney-General), wrote to the Queensland Human Rights Commissioner requesting the Queensland Human Rights Commission (QHRC) undertake a review of the *Anti-Discrimination Act 1991* (the AD Act) and consider whether there is a need for any reform to enhance and update the AD Act (AD Act review).

The AD Act review is considering Australian and international best practices to protect and promote equality, and non-discrimination and the realisation of human rights.

Section 124A of the AD Act makes vilification on the grounds of race, religion, sexuality or gender identity unlawful. Section 131A of the AD Act creates the offence of serious racial, religious, sexuality or gender identity vilification (the vilification provisions). The Terms of Reference for the AD Act review precluded examination of these provisions because of the Committee's concurrent examination.

The QHRC is to provide the report on the on the AD Act review to the Attorney-General by 30 July 2022.

Queensland Government response to the Committee's 17 recommendations

The Queensland Government response to the Committee's Report and recommendations is provided as follows:

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.

Queensland Government response

Recommendation 1 - Supported.

The Government is committed to working with the Commonwealth and other States and Territories to address online vilification and will seek opportunities to engage on these important matters.

Recommendation 2.

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

Queensland Government response

Recommendation 2 - Supported.

The Queensland Police Service (QPS) will review how reports of hate crime and serious vilification are recorded (including in QPRIME) to ensure a standardised approach and ensure the results of the review are effectively communicated to frontline staff.

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.

Queensland Government response

Recommendation 3 - Supported.

The QPS will examine how it can encourage and support third-party and community-led reporting mechanisms, to ensure vilification and hate crimes are reported to relevant authorities.

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; and h) medical status, including HIV/AIDS status.

Queensland Government response

Recommendation 4 - Supported in-principle.

The Government is committed to exploring additional attributes protected under these provisions. It is noted that the QHRC, as part of its review of the AD Act, is considering whether there is a need for any reform regarding the current attributes of discrimination in section 7 of the AD Act. The recommended expansion of sections 124A and 131A to capture additional attributes will be considered in the context of any broader reforms relevant to attributes recommended by the QHRC.

Recommendation 5.

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

Queensland Government response

Recommendation 5 - Supported.

The Government is committed to further investigating the viability of lowering the threshold for the civil incitement test in section 124A of the AD Act.

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.

Queensland Government response

Recommendation 6 - Supported in-principle.

The Queensland Government will further consider this recommendation in the context of the QHRC's report on its review of the AD Act.

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.

Queensland Government response

Recommendation 7 - Supported.

The Government is committed to further investigating the viability of removing this requirement and will consult with key legal and community stakeholders.

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.

Queensland Government response

Recommendation 8 - Supported in-principle.

As noted in response to **Recommendation 4**, the QHRC as part of its review of the AD Act, is considering whether there is a need for any reform regarding the current attributes of discrimination in section 7 of the AD Act. As the LASC Report did not identify attributes which are to be captured by the recommended statutory aggravation, it is appropriate that any recommendation(s) of the QHRC be used to inform the development of the statutory aggravation in the future.

The Queensland Government will further consider this recommendation in the context of the QHRC's report on its review of the AD Act to ensure that it most effectively captures criminal conduct.

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).

Queensland Government response

Recommendation 9 - Supported.

The Queensland Government notes that implementation will occur in the context of anticipated amendments reflecting other recommendations impacting the operation of section 131A of the AD Act.

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.

Queensland Government response

Recommendation 10 - Supported.

The Queensland Government will leverage existing advisory bodies and structures to ensure police and community advocates engage in ongoing mutual education to improve police responses to hate crime and vilification. In 2022, the QPS is establishing a First Nations Advisory Group and a Police Multicultural Advisory Group, which will meet quarterly, to provide strategic advice and support to the QPS on matters impacting First Nations and Multicultural communities around Queensland. These groups replace and build on the previous Police Ethnic Advisory Group (PEAG). Each group will maintain a standing agenda item to discuss recent cases of hate crime or vilification

and the QPS response to this offending. The advice received from the two advisory groups will be used to shape and inform future policing responses.

Recommendation 11.

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

Queensland Government response

Recommendation 11 - Supported in-principle.

The Queensland Government is committed to ensuring our laws and practices meet community expectations and continue to protect all Queenslanders from serious vilification and hate crime.

The AD Act establishes a two-tier framework: 1) a civil-based dispute resolution process regarding discrimination, sexual harassment, victimisation, vilification and requests for unnecessary information; and 2) the criminalisation of certain objectionable conduct including section 127 (Discriminatory advertisements), section 129 (Victimisation) and 131A (Offence of serious racial, religious, sexuality or gender identity vilification) of the AD Act.

The terms of reference for the review of the AD Act by the QHRC are broad and enable a holistic consideration of the operation of the AD Act. The review will consider whether Queensland's anti-discrimination law protects and promotes equality to the greatest extent possible. Sections 124A and 131A of the AD Act do not operate in isolation and are part of the overall legislative protections offered by the AD Act.

Although the QHRC was precluded from considering the vilification provisions as part of the AD Act review, the otherwise broad Terms of Reference for the AD Act review mean that some of the QHRC recommendations may impact upon sections 124A and 131A of the AD Act (the vilification provisions). Similarly, the QHRC's AD Act review may impact the Government's consideration of the recommendations of the Committee.

In this regard, the QHRC's consideration of whether the list of attributes protected under section 7 of the AD Act should be expanded is relevant. Also relevant is consideration of whether the functions, processes and powers given to the QHRC are appropriately suited to produce outcomes that further the objective of eliminating discrimination and other objectionable conduct under the AD Act.

Based on the above, the Government supports in-principle **Recommendation 11**; and will give the recommendation detailed consideration in the context of considering the report of the AD Act review. This will provide the Government and stakeholders the opportunity to consider the reforms holistically and ensure consistency in the Government's approach on these important issues.

Recommendation 12.

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

Queensland Government response

Recommendation 12 - Supported in-principle.

For the reasons outlined in the Government's response to **Recommendation 11**, the Government supports in-principle **Recommendation 12**. The Government will give the recommendation detailed consideration in the context of considering the report of the AD Act review. This will provide the Government and stakeholders the opportunity to consider the reforms holistically and ensure consistency in the Government's approach on these important issues.

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.

Queensland Government response

Recommendation 13 - Supported in-principle.

For the reasons outlined in the Government's response to **Recommendation 11**, the Government supports in-principle **Recommendation 13**. The Government will give the recommendation detailed consideration in the context of considering the report of the AD Act review. This will provide the Government and stakeholders the opportunity to consider the reforms holistically and ensure consistency in the Government's approach on these important issues.

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 culturally and linguistically diverse clients of limited socio-economic means.

Queensland Government response

Recommendation 14 - Supported in-principle.

For the reasons outlined in the Government's response to **Recommendation 11**, the Government supports in-principle **Recommendation 14**. The Government will give the recommendation detailed consideration in the context of considering the report of the AD Act review. This will provide the Government and stakeholders the opportunity to consider the reforms holistically and ensure consistency in the Government's approach on these important issues.

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.

Queensland Government response

Recommendation 15- Supported.

The Queensland Government is supportive of initiatives to achieve the effective utilisation of vilification provisions by the QPS. Implementation of **Recommendation 15** will be undertaken in the context of the response to the LASC inquiry and the QHRC AD Act review. The QPS will continue to support the utilisation of vilification provisions by reviewing and updating operational policies and procedures as necessary and communicating any changes to the vilification provisions arising out of this report and the AHRC AD Act review.

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 Islamic State of Iraq and Syria (ISIS) ideology, with considered exceptions to the prohibition.

Queensland Government response

Recommendation 16 - Supported.

The Queensland Government acknowledges the public display of hate symbols can cause great distress to all Queenslanders, particularly members of those groups who have been historically persecuted. The Queensland Government is investigating options to implement this recommendation.

As noted in the submission of the QHRC and acknowledged by the Committee, the swastika is a symbol with profound meaning in some religions including Hinduism, Buddhism and Jainism. Further, there are a number of circumstances where hate symbols may be used legitimately, such as in genuine academic, research, scientific, artistic or other purposes in the public interest which should be considered in the development of any offence prohibiting their display. Subject to the outcomes of consultation with key stakeholders, it is intended to introduce legislation reflecting **Recommendation 16** in the second half of 2022.

Recommendation 17.

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

Queensland Government response

Recommendation 17 - Supported in-principle.

For the reasons outlined in the Government's response to **Recommendation 11**, the Government supports in principle **Recommendation 17**. The Government will give the recommendation detailed consideration in the context of considering the report of the AD Act review. This will provide the Government and stakeholders the opportunity to consider the reforms holistically and ensure consistency in the Government's approach on these important issues.
