



# **A SAFER NSW FOR LGBTIQ+ COMMUNITIES**

SUBMISSION BY EQUALITY AUSTRALIA TO THE INDEPENDENT REVIEW OF  
CRIMINAL LAW PROTECTIONS AGAINST THE INCITEMENT OF HATRED  
(AUGUST 2025)

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## INTRODUCTION

Equality Australia welcomes the opportunity to contribute to the independent review into criminal hate speech led by the Honourable John Sackar AM KC (**Review**). Unfortunately, lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) people remain vulnerable to vilification and harm motivated by prejudice, and evidence suggests that vilification and violence against our communities are on the rise. Anecdotally, we have been hearing from community members who feel less safe and more targeted, online and in person.

The frequency and forms of hate endured by our communities underline the urgency of reforms for our community and the need to ensure that any reforms respond properly to the kinds of hate we experience.

Equality Australia generally supports carefully framed criminal prohibitions on hate-based conduct against LGBTIQ+ people, if they contain appropriate safeguards to avoid the risk of overcriminalisation and do not unreasonably limit speech on matters in the public interest. However, we consider that criminal responses need to be only one part of a full toolkit of options to address hate in New South Wales.

Our key recommendations include that the government should:

- expand and refine section 93ZAA of the *Crimes Act 1900* (NSW) (**Crimes Act**).
- update protected attributes in the Crimes Act.
- introduce aggravated offences where hate is demonstrated (or an offence is motivated by hate), applying to a selection of existing offences.
- introduce Stop Vilification Orders.
- create improved pathways for reporting criminal offences.
- Increase support for victims is through a combined legal and social worker model
- Improve access to victims of crime compensation following hate crimes or speech.

## TRIGGER WARNING

This submission contains real examples of hate speech, including direct quotes with offensive and violent language. We have chosen to include these examples to accurately illustrate the nature and severity of the harm caused. We acknowledge that this content may be distressing or triggering for some readers. We suggest that readers who wish to avoid this content in particular do not read **Appendices A and B**.

## BACKGROUND

Equality Australia has consistently advocated for comprehensive, human rights-based laws to protect people from vilification and hate-based conduct, regardless of the form that hate takes. This commitment is evident in our recent engagements with law reform processes in New South Wales:

- **August 2023:** We made a [preliminary submission](#) to the New South Wales Law Reform Commission's (NSWLRC) review of the *Anti-Discrimination Act 1977* (NSW), emphasising the need for updated civil protections that reflect contemporary community standards.

- **April 2024:** We made a [submission](#) to the NSWLRC on the effectiveness of section 93Z of the Crimes Act highlighting the necessity of laws that effectively address serious vilification and hate-based conduct targeted at LGBTIQ+ individuals and communities.
- **February 2025:** In response to the New South Wales government's introduction of strengthened hate crime laws focusing on antisemitism, we made [public comment](#) on the need for the inclusion of all vulnerable minorities, including the LGBTIQ+ community, in these protections.

Across each of these processes, Equality Australia has consistently argued for comprehensive, consistent and human rights-based laws that more effectively protect communities from hate, while safeguarding freedom of expression.

## EXTENT AND IMPACT OF HATRED ON VULNERABLE COMMUNITIES (Q1)

### Extent and impact of hatred

Regrettably, the need for effective protections against serious vilification and hate-based conduct targeting LGBTIQ+ people is greater than ever. Harassment, discrimination and violence on the basis of sexual orientation, gender identity or sex characteristics remains a lived experience for members of our communities, often finding expression in attacks borne out of prejudice, fear or ignorance in our physical and online neighbourhoods.<sup>1</sup> Our communities continue to curb the expression of their identities, their lives and their love in an effort to avoid public attacks.<sup>2</sup>

In 2020, a national survey of LGBTIQ+ people conducted by the Australian Research Centre in Sex, Health and Society (ARCSHS) revealed that more than one third of participants had experienced verbal abuse, one quarter had faced harassment and one in 10 had experienced sexual assault in the year leading up to the survey due to their sexual orientation or gender identity.<sup>3</sup>

Private Lives 3 also documented alarming rates of violence and harassment against our communities. The 6,835 LGBTIQ+ participants in Private Lives 3 reported the following experiences of violence and harassment due to sexual orientation or gender identity in the year leading up to the survey:

- 34.6% – verbal abuse (including hateful or obscene phone calls)

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<sup>1</sup> See e.g. Adam O. Hill et al, 'Private Lives 3: The health and wellbeing of LGBTIQ people in Australia' (Australian Research Centre in Sex, Health and Society, La Trobe University, 2020) 37-41; William Leonard et al, 'Private Lives 2: The second national survey of the health and wellbeing of gay, lesbian, bisexual and transgender (GLBT) Australians' (Australian Research Centre in Sex, Health and Society, La Trobe University, 2012) 47-8; Australian Human Rights Commission, 'Resilient Individuals: Sexual orientation, gender identity and intersex rights' (2015) 15-16; William Leonard and Dr Rosemary Mann, 'The Everyday Experience of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People Living with Disability' (GLHV@ARCSHS, La Trobe University, 2018) 54; Tiffany Jones, 'The needs of students with intersex variations' (2016) *Sex Education* 1, 13-14; Centre for Social Research in Health, *Stigma Indicators Monitoring Project: People living with HIV* (University of New South Wales, June 2021) 1.

<sup>2</sup> William Leonard et al, 'Private Lives 2: The second national survey of the health and wellbeing of gay, lesbian, bisexual and transgender (GLBT) Australians' (Australian Research Centre in Sex, Health and Society, La Trobe University, 2012) 45-7; Australian Human Rights Commission, 'Resilient Individuals: Sexual orientation, gender identity and intersex rights' (2015) 18.

<sup>3</sup> Adam O. Hill et al, 'Private Lives 3: The health and wellbeing of LGBTIQ people in Australia' (Australian Research Centre in Sex, Health and Society, La Trobe University, 2020) 41.

- 23.6% – harassment such as being spat at and offensive gestures
- 22.1% – written threats of abuse via emails, social media
- 14.6% – threats of physical violence, physical attack or assault without a weapon
- 11.4% – receiving written threats of abuse in other ways
- 4.8% and 3.7% respectively – deliberate damage to property or vandalism of a house and/or car
- 3.9% – physical attack or assault with a weapon (knife, bottle, stones). 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 is increasing over time.

In the words of a community member who had described repeated harassment in a number of settings, including experiencing slurs like ‘hairy dyke’, ‘paedophile’ and ‘child abuser’:

*The verbal slurs and disgust expressed toward me because of my sexual orientation had potential to escalate – but even the abuse I experienced was harmful. Does the government really want to leave a door open for discrimination to bloom into hate crime?*

For transgender people in Australia, evidence suggests that rates of hate and violence are even higher than other parts of our community, and continue to intensify.<sup>4</sup> In 2023, the Trans Justice Project and Victorian Pride Lobby conducted a large survey with 3,099 adults targeted at investigating anti-trans hate in Australia. It revealed that over 50% of trans participants had experienced anti-trans hate. In the 12 months prior, 16% of trans participants had experienced anti-trans violence and 1 in 3 participants had seen anti-trans violence.<sup>5</sup> 34% of trans participants said they had experienced more or significantly more in-person anti-trans abuse, harassment, or vilification in 2023 than in 2020.<sup>6</sup> 85% of all participants had seen significantly more online anti-trans hate since 2020.<sup>7</sup>

LGBTIQ+ people experience particular kinds of vilification and hate-based conduct. They include:

- the direct targeting of LGBTIQ+ people, particularly gender non-conforming people or drag artists
- the slurring of LGBTIQ+ people as ‘groomers’ or a ‘risk to children’
- repeated trolling and harassment of trans and gender diverse people, including online
- attacks on allies, such as librarians or councillors, who are supportive of events like Drag Story Time.

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<sup>4</sup> See e.g. Badge et al *Fuelling Hate: Abuse, harassment, vilification and violence against trans people in Australia* (Trans Justice Project and Victorian Pride Lobby, 2023) <https://transjustice.org.au/wp-content/uploads/2023/08/Fuelling-Hate-Anti-Trans-Abuse-Harassment-and-Vilification-WEB-SINGLES-1-1.pdf>.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

We continue to receive reports from community members indicating an increase in the number of incidents and a diminished sense of safety. One individual told us:

*I have noticed a sharp uptick in homophobia and hate. Personally, I've been called a 'faggot' by strangers in public multiple times in the last year. Recently on Oxford Street, I was followed by a man who kept calling me 'disgusting' and a series of other slurs. I was terrified. I managed to run across the road and jump into a taxi, but I know I was in genuine danger.*

*Seeing alerts from ACON about recent attacks on gay men on Grindr who are being lured and attacked by straight men is terrifying and exhausting. Quite frankly, I'm feeling beaten down. Please protect us.*

Recently, LGBTIQ+ events have also been cancelled because community-based organisations have not been able to guarantee the safety of people involved, including because they cannot afford to, because police have advised that they cannot guarantee protection, or because the threat of attack undermines the sense of community and celebration that the event is intended to foster.<sup>8</sup>

This hate conduct is a key driver of LGBTIQ+ people experiencing poorer health outcomes overall than the general population. This is acknowledged in the government's 2022-2027 LGBTIQ+ Health Strategy, which states that 'Mental and emotional distress is the most prevailing issue faced by LGBTIQ+ people, with persistent exposure to stigma, discrimination, social isolation, and environments that create social anxiety being the key causes. Exposure to and experiences of violence, abuse and neglect, and harmful patterns of alcohol and other drug use, are also connected to these causes.'<sup>9</sup>

Much has been said about the emotional distress caused by experiences of hate, but one of our community members described the ongoing anxiety and hypervigilance like this:

*Do you think it's acceptable to walk along any street in our beautiful city of Sydney, holding hands with your partner to be called a 'faggot' by people driving past you? Do you understand what it feels like to experience micro anxiety every single time you need to leave the house?*

*Constantly checking how I'm walking, how I'm talking, wondering whether we shouldn't hold hands here... these are the daily micro-aggressions that happen for gay people as a result of politicians not putting in place sufficient legal protections that not only protect us formally; but more importantly send a clear message to say that our state government values and respects us as individuals.*

Reflecting on real-life examples of serious vilification and hate-based conduct against LGBTIQ+ people is essential when considering whether the law adequately responds to these experiences. To illustrate the issue, we have included case studies in **Appendices A and B** to this submission.

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<sup>8</sup> See Schedule 1.

<sup>9</sup> NSW Government, NSW LGBTIQ+ Health Strategy 2022-2027: For people of diverse sexualities and genders, and intersex people, to achieve health outcomes that matter to them (2022) 8.

## Online abuse

Online hate speech is a particularly pervasive and growing problem globally, and its impacts are acutely felt by people in New South Wales. The reach of online content means that hate can be disseminated widely, rapidly, and with devastating effect. People in New South Wales are not only victims of this hate but also, at times, the perpetrators. Concerningly, we are aware of anti-trans actors who have also engaged in stalking and intimidating behaviours against LGBTIQ+ people following an escalating pattern of online hate that has been left unchecked.

According to eSafety, the LGBTIQ+ community experiences online hate speech at more than twice the rate of the general population in Australia.<sup>10</sup> Harassment on dating apps is markedly higher for LGBTIQ+ people (63.4%) compared with the general population (43.4%).<sup>11</sup>

Research commissioned by eSafety in 2021 found that 8 in 10 LGBTIQ+ teens had seen potentially harmful content in the past year, including sites showing hate messages (60% as compared with 40% in the broader population). Similarly to the study on adults, LGBTIQ+ teens had experienced hate speech at twice the national average, and even more concerningly 1 in 4 had been threatened with physical harm.<sup>12</sup>

This year alone, we have observed a concerning proliferation of social media posts, blogs, and online forums that incite hatred and violence against LGBTIQ+ people. These include posts that:

- call for the genocide or for the ‘end’ of trans people
- imply or encourage that trans people should be assaulted, hanged or even subject to genocide (i.e. incorporating imagery of a wood chopper, or a hanging man)
- liken the LGBTIQ+ movement to the Ku Klux Klan or Nazis, or fascism generally including concepts from 1984 such as ‘Newspeak’ or ‘Wrongthink’
- portray gay men as paedophiles or sexual predators
- refer to trans people as ‘sex deceptionists’ or claim they should be institutionalised
- describe trans women as predators, paedophiles, ‘trannies’, or inherently evil.

These forms of vilification target both the broader LGBTIQ+ community and specific individuals, including high-profile figures such as community advocates, politicians and athletes. Once a person becomes the focus of online hate, it can spiral into a sustained campaign, sometimes involving hundreds or thousands of posts that fixate on their identity, appearance, and personal life. We are aware that this has caused major anxiety and fear in some individuals, who become scared to even leave their own homes.

Targeted hate against trans people often combines violent or inciting messages with the deliberate use of incorrect pronouns and names (commonly referred to as ‘deadnaming’), or posting pictures pre-transition, as a means of dehumanisation and psychological harm. Posts are

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<sup>10</sup> eSafety Commissioner (Cth), ‘Fighting the tide: Encounters with online hate among targeted groups’ (Report, February 2025) 19; see also ‘Online Hate and Discrimination’, eSafety Commissioner (Web Page, 14 June 2023) <https://www.esafety.gov.au/lgbtiq/learning-lounge/dealing-with-online-abuse/online-hate-discrimination>.

<sup>11</sup> Kerrie Albury et al, ‘Safety, Risk and Wellbeing on Dating Apps: Final Report’ (Swinburne University of Technology, 2019).

<sup>12</sup> eSafety Commissioner, *Tipping the balance: LGBTIQ+ teens’ experiences negotiating connection, self-expression and harm online* (Aussie Kids Online, June 2024) 12.



rarely isolated; they are frequently reposted, commented on and amplified through coordinated campaigns, often with the intent to harass or incite action against the individuals, but with the wider goal of trying to end movements that advocate on behalf of LGBTIQ+ people.

A particularly alarming trend involves identifying and sharing real-world locations where the targeted person might be found, such as their place of work, a sporting event, or a public appearance. This form of doxxing raises serious safety concerns, especially when paired with incitement to confront, film, or intimidate the person. An example of this is Case Study 4, involving coordinated online abuse directed at trans footballers, which is continuing at the time of writing.

Since X Corp (formerly Twitter) was purchased by Elon Musk in October 2022, the frequency of posts containing homophobic, transphobic and racist slurs has significantly increased. A recent analysis found that there has been a doubling of ‘likes’ on posts containing hate speech and increased engagement on those posts.<sup>13</sup> While most major social media platforms have been heavily criticised for the high levels of online hate against LGBTIQ+ communities in the GLAAD Social Media Safety Index, X Corp received the worst rating.<sup>14</sup>

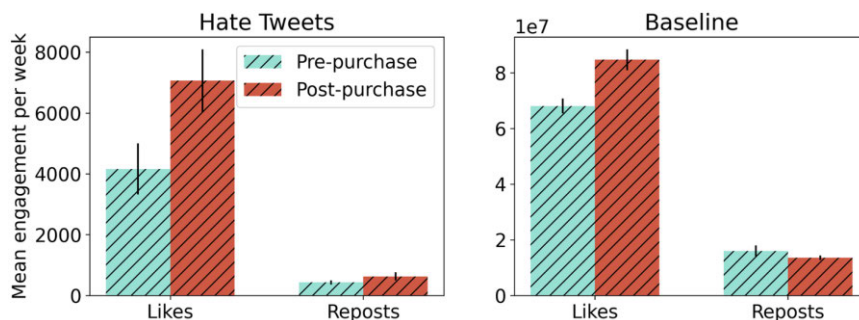


Fig 3. Increases in hate speech for different dimensions of hate.<sup>15</sup>

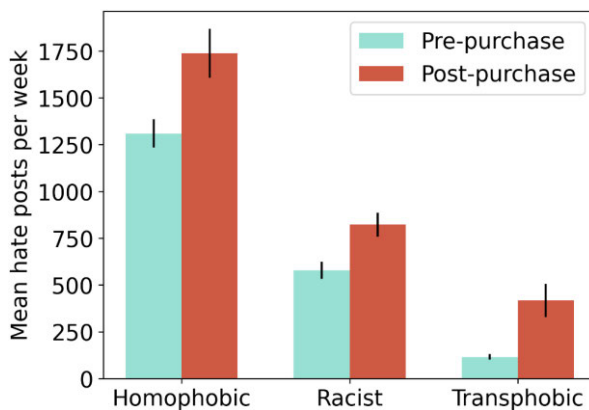


Fig 2. Mean likes and reposts of (a) hate posts and (b) baseline posts before and after Musk's takeover.<sup>16</sup>

Recent Australian research on anti-trans mobilisation has confirmed what we have directly observed: that online hate can involve spikes in activity surrounding particular events, for example, high-profile court cases related to gender identity. Drawing from a large sample of

<sup>13</sup> Daniel Hickey et al, 'X under Musk's leadership: Substantial hate and no reduction in inauthentic activity' (2025) 20(2) *PLoS ONE* 1, 1.

<sup>14</sup> See GLAAD, *Social Media Safety Index 2025* (2025). <https://glaad.org/smsi/social-media-safety-index-2025/>.

<sup>15</sup> Daniel Hickey et al, 'X under Musk's leadership: Substantial hate and no reduction in inauthentic activity' (2025) 20(2) *PLoS ONE* 1, 10.

<sup>16</sup> Daniel Hickey et al, 'X under Musk's leadership: Substantial hate and no reduction in inauthentic activity' (2025) 20(2) *PLoS ONE* 1, 11.

86,000 tweets and data from other platforms, the report found a significant increase in both online hate and offline mobilisation during the speaking tour of an anti-trans activist in Australia, coordinated and amplified by Australian far-right groups. Tweets were most concentrated in New South Wales and Victoria. Language captured included references to ‘dyke’, ‘pervert’, ‘mutilating children’, ‘grooming’, and ‘paedophilia’.<sup>17</sup>

Community members have consistently reported that even posts which clearly incite hatred or violence are routinely left online, despite breaching X Corp’s own policies. Consistent with the research described above, LGBTIQ+ community members have observed that content moderation on the platform has significantly deteriorated, and protections for vulnerable groups have been weakened as a result.

Meanwhile, the federal eSafety Commissioner, one of the few regulatory mechanisms available to victims of online abuse in Australia, has had their authority undermined in a recent successful legal challenge brought by X Corp and a prominent anti-trans campaigner against a removal notice issued to him by the Commissioner.<sup>18</sup> This case raises real concerns about the limits of Australia’s current digital regulatory framework and whether eSafety will remain willing and able to act decisively in future cases of online hate.

## Defining hatred

Equality Australia acknowledges the complexities involved in developing effective legislative responses to hate. Any legal framework must:

- be grounded in objective criteria that enable consistent application and enforcement
- capture specific forms of conduct that reflect or incite hatred, bias, and prejudice
- intervene early, addressing harmful speech and behaviour before it escalates into real-world violence
- include robust safeguards to protect freedom of expression, ensuring laws are not used to suppress legitimate debate or dissent
- be practical and workable – not only for victims seeking justice, but also for police, prosecutors, and the courts who must enforce the law.

We do not agree with the view expressed by the New South Wales Law Reform Commission (NSWLRC) that ‘hatred’ and other relevant terms (e.g. revulsion, ridicule, contempt) are too difficult to define and prove to the criminal standard.<sup>19</sup>

As Gelber and McNamara observe, the words “‘hatred’, ‘serious contempt’ and ‘severe ridicule’ – are based on the common law definition of defamation, with the threshold raised by the inclusion of the adjectives ‘serious’ and ‘severe’ to qualify contempt and ridicule respectively. The case law confirms that these words are to be given their ordinary meanings...”<sup>20</sup>

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<sup>17</sup> Matteo Vergari, Andrea Giovannetti, Dan Goodhardt, *Tracking the 2023 Wave of Anti-Trans and Anti-Drag Mobilisation in Australia*, (2025) Deakin University.

<sup>18</sup> X Corp v e-Safety Commissioner (2024/2582); Elston v e-Safety Commissioner (2024/2583) (unpublished decision) as reported in Alexander Darling and Erin Pearson, *Sydney Morning Herald*, “Elon Musk’s X wins ‘free speech’ fight against eSafety Commissioner” (1 July 2025).

<sup>19</sup> NSW Law Reform Commission, *Serious racial and religious vilification* (Report 151, September 2024) 51-53 at [4.30]-[4.40].

<sup>20</sup> Katharine Gelber and Luke McNamara, ‘Anti-vilification Laws and Public Racism in Australia: Mapping the Gaps between the Harms Occasioned and the Remedies Provided’ (2016) 39(2) *UNSW Law Journal* 488, 492.

The term ‘hatred’ has been in New South Wales legislation since 1989 and has been used in civil and criminal legislation across Australia<sup>21</sup> and internationally.<sup>22</sup>

‘Hatred’, when referred to in the context of vilification law, is not merely a ‘psychological dislike’ for a person, but holds a deeper meaning of ‘hatred manifested as prejudice; systematic and institutionalised marginalisation which can be identified via considerable historical evidence.’<sup>23</sup>

While there is much discourse about whether emotions like ‘hate’ are precise enough for both civil and criminal settings, it is worth noting that other countries use terms such as ‘bias’, ‘prejudice’, ‘intolerance’, or ‘hostility’ in criminal laws, with several of these terms arguably setting a lower threshold than the term ‘hatred’.<sup>24</sup> Given the well-established case law interpreting hatred (and other terms such as contempt and ridicule) in Australia, we do not propose any changes to the current terminology.

Our preference is that there is no attempt to define ‘hatred’ under the Crimes Act, leaving it up to the court to flexibly interpret its meaning depending on the facts and circumstances through traditional statutory interpretation, with the starting point being the term’s ordinary meaning.

## ADEQUACY OF CRIMINAL LAW IN PROTECTING AGAINST INCITEMENT OF HATRED (Q2)

In this section, we explain how criminal laws in New South Wales are currently insufficient to effectively address hatred against vulnerable groups in New South Wales. To improve the law, we suggest:

- that section 93ZAA to be refined and expanded
- improvements to the framing of protected attributes in the Crimes Act
- the introduction of factors (‘circumstances of aggravation’) to make existing offences more serious if hate-motivated
- the introduction of Stop Vilification Orders.

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<sup>21</sup> For use of “hatred” in a civil context: *Discrimination Act 1991* (ACT) s 67A; *Anti-Discrimination Act 1977* (NSW) ss 20B(c), 20C, 38R(c), 38S, 49ZD(c), 49ZE, 49ZS(c), 49ZT, 49ZXA(c), 49ZXB; *Anti-Discrimination Act 1991* (Qld) s 124A; *Anti-Discrimination Act 1998* (Tas) s 19; *Criminal Code* (WA) ch XI.

For use of “hatred” in a criminal context, see: *Criminal Code* (Cth) ss 80.2H, 80.2HA, 80.2K; *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(h); *Criminal Code 1899* (QLD) ss 52A, 52B; *Sentencing Act 2017* (SA) s 11(1)(ca); *Sentencing Act 1977* (Tas) s 11B.

<sup>22</sup> For example, the *Prohibition of Incitement To Hatred Act, 1989* (Ireland) uses the term (undefined) in the context of prohibitions against stirring up hatred against a group of people because of their protected attributes. Strengthened and expanded hate crime prohibitions in the *Criminal Justice (Hate Offences) Act 2024* in Ireland also use the term “hatred”. Canadian law uses the term “bias, prejudice or **hate**” (emphasis added) in its criminal provisions - *Criminal Code* (R.S.C, 1985, c. C-46).

<sup>23</sup> Katharine Gelber, *Hate Speech in Australia: Emerging Questions*, *Forum: Freedom of Speech* (2005), 866. See also *Kazak v John Fairfax publications Limited* [2000] NSWADT 77 at [40].

<sup>24</sup> E.g. Cyprus uses “motivation of prejudice” - *Criminal Code* (amended 2017) Article 35A. South Africa uses “motivated by that person’s prejudice or intolerance” - *Prevention and Combating of Hate Crimes and Hate Speech Act 2023* (South Africa) s 3.

## REFINING AND EXPANDING SECTION 93ZAA

As noted in the Discussion Paper, New South Wales is one of three states that have or will imminently have criminal prohibitions based on incitement of hatred (and similar).<sup>25</sup> Of these states, only Victoria has passed legislation to include LGBTIQ+ attributes. Section 93ZAA and the new Victorian provisions have not yet commenced at the time of writing.

Significant criticism has been levelled at the New South Wales government for only including the attribute of ‘race’ in the scope of new 93ZAA, which on one view, may send a message that other forms of hatred are less of a concern, or are somehow excusable. One member of the community put it this way:

*Our government must include protections for the LGBTIQ+ community in anti-hate laws. Just like some ethnic and religious groups have been targeted recently by extremist political groups attempting to foment social division, the LGBTIQ+ community has a long history of being targeted by extremists, also as a tactic to seed division and unrest.*

*The extremists exploiting the rise in antisemitic and anti-Islamic (sic) will attempt the same marginalisation based on gender and sexuality. If our government is serious about combating divisiveness, laws must be inclusive.*

A potential solution to resolving the disparity currently in the law is to extend 93ZAA to include those who are in need of protection from serious vilification, including but not limited to LGBTIQ+ people, as well as their associates.

However, we consider that there could be further improvements to the elements of 93ZAA before it is expanded further to include LGBTIQ+ attributes. Our position on the provision, including what should be retained and what should be improved, follows below.

### Intention

We support the requirement for a fault element of intention in section 93ZAA.

Whereas section 93Z targeting conduct involving violence or threats of violence requires a fault element of either intention or recklessness, section 93ZAA as drafted requires intent. This distinction appropriately reflects the differing levels of severity between the two offences.

A new criminal prohibition against vilification in Victoria requires either that the person ‘intends conduct to incite’ or ‘believes that conduct will probably incite’.<sup>26</sup> This offence does not require the conduct to amount to incitement to *violence*, but to incitement to ‘hatred against, serious contempt for, revulsion towards or serious ridicule of’ of a person or group. This reflects the broadest criminal offence targeting hate-motivated conduct in Australia at present, considering the range of attributes that it protects.

We do not support a shift towards the Victorian model. Instead, we consider it important that section 93ZAA retains a requirement for intent, rather than adopting a lower standard e.g.

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<sup>25</sup> Crimes Act 1900 (NSW) s 93ZAA (uncommenced), Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025 (Vic) s 195N (uncommenced), Criminal Code Act Compilation Act 1913 (WA) schedule, The Criminal Code (‘Criminal Code (WA)’) ss 77.

<sup>26</sup> Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025 (Vic) s 195N.

recklessness. Requiring intent helps ensure that the offence is reserved for the most serious and deliberate forms of vilification, and avoids capturing a broader range of conduct that could raise freedom of expression concerns, or lead to overcriminalisation of marginalised groups.

### Harm-based element [section 93ZAA(1)(b)]

We support the continued inclusion of the harm-based element in 93ZAA.

One of the strengths of the current framing of section 93ZAA is that it seeks to address a long-standing concern in vilification law: that incitement-based tests place too much emphasis on how a hypothetical ordinary reasonable listener/observer might be urged to hate. This fails to reflect how members of the targeted community actually perceive and are impacted by the conduct.

While harm-based tests have been criticised for a perceived lack of objectivity, they in fact require an objective assessment based on a reasonable person – though this reasonable person is drawn from a smaller, more specific group within society, rather than the broader societal standard, which is implicitly modelled on a white, able-bodied, cisgender, heterosexual, middle-class individual.

While broader ‘reasonable person’ tests have a role in the law, they can be particularly problematic when addressing bias against marginalised communities – especially where there is widespread ignorance or misunderstanding of their lives and experiences.

### ‘On the ground of’ (nexus requirement)

Section 93ZAA, as well as 93Z (the offence of threatening or inciting violence), require a nexus between the conduct and a protected attribute, through the use of the term ‘on the ground(s) of’.

While having a sufficient nexus to a protected attribute is obviously a necessary element, it must be clearer that hate speech can occur because of one or more *characteristics* of a protected attribute, including where conduct is based on a stereotype or assumption that is imputed to the attribute. A helpful model for drafting this clarification can be found in section 124A of the *Respect at Work and Other Matters Amendment Act 2024* (Qld) (not yet commenced). That section makes clear that a reference to a relevant attribute includes:

- characteristics generally associated with the attribute
- characteristics often imputed to the attribute
- an attribute presumed to be held (past or present), or
- an attribute the person formerly held.

This approach would prevent defendants from artificially separating a person’s characteristics from their protected attribute. For example, it would avoid arguments that conduct was directed at ‘drag queens’ rather than LGBTQ+ people,<sup>27</sup> or at ‘people who cover their head’ rather than Muslim women.

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<sup>27</sup> This was the issue that arose in *Valkyrie and Hill v Shelton* [2023] QCAT 302, [302], where the conduct was determined not to be on the ground of the attribute of sexuality or gender identity but because of a concern that drag queens shouldn’t be around children, since not all drag queens are trans or gay [313]. We note that this argument may not hold up under appeal, and the appeal decision has yet to be handed down.

## Expand to incorporate contempt, revulsion and ridicule

We consider that if intent is required for the offence in 93ZAA as a safeguard to prevent overreach, there is a rationale for broadening the type of emotions that the inciting behaviour may provoke – beyond hatred – to include serious contempt, severe ridicule and revulsion.<sup>28</sup>

These terms are already used in comparable legislation. For example, Western Australia’s criminal vilification provisions (currently limited to race) incorporate similar language.<sup>29</sup> Importantly, concerns about overreach in any state or territory with criminal laws have not materialised in practice. As the NSWLRC has pointed out, sections 77 and 78 of the *Criminal Code* (WA) have been used sparingly, with only six proven charges since 2004.<sup>30</sup> The inclusion of additional emotional states in the offence definition would not, on its own, lead to overcriminalisation.

Instead, it would provide greater flexibility to capture a broader range of harmful conduct that can seriously damage the dignity and safety of targeted individuals and communities – particularly when the intent to provoke such responses can be established.

## Clarification that proven offence may involve a course of conduct

There is merit in clarifying that conduct constituting an offence under section 93ZAA may involve a course of conduct, rather than being limited to a single act. Vilification often escalates over time, and the cumulative impact of repeated behaviour may be crucial to establishing the intent to incite hatred, serious contempt, revulsion, or severe ridicule. While a single act should still be sufficient where the threshold is met, recognising that a pattern of conduct can form the basis of the offence would reflect the reality of how vilification frequently occurs.

The recently passed Victorian law confirms that conduct can be constituted by a single occasion or by a number of occasions over a period of time.<sup>31</sup> This approach is also reflected in the Scottish hate crime legislation, which clarifies that hate conduct can consist of a single act, or a course of conduct.<sup>32</sup>

## Directly quoting or referencing a religious text

While we understand the intention behind the exemption in 93ZAA(2) is to protect freedom of religion and recognise that some historical religious texts may contain outdated language, we are concerned that the provision, as currently drafted, goes well beyond this justification. The exemption applies not only to direct quotations from religious texts, but also to conduct that ‘otherwise references’ a religious text in the context of religious teaching or discussion. This broad and vague language significantly weakens the protection the law is intended to provide against vilification.

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<sup>28</sup> The term ‘revulsion’ appears in the current *Racial and Religious Tolerance Act 2001* (Vic), and in the recently passed *Justice Legislation Amendment (Anti-Vilification and Social Cohesion) Act 2025* (Vic).

<sup>29</sup> *Criminal Code* (WA) ss 77 and 78 refer to creating, promoting or increasing animosity, which is defined to mean ‘hatred of or serious contempt for’ and to harassing a person or group, which is defined to include ‘severely ridiculing’ a person.

<sup>30</sup> NSW Law Reform Commission, *Serious racial and religious vilification* (Report No 151, September 2024) table 4.1 – Volume of proven charges, select WA vilification offences (8 December 2004–31 July 2024).

<sup>31</sup> *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* (Vic) s 195N.

<sup>32</sup> *Hate Crime and Public Order (Scotland) Act 2021* s 4.

The phrase ‘otherwise referencing’ opens the door to a wide range of potentially harmful conduct being shielded from scrutiny. It could capture paraphrasing, selective reinterpretations, or commentary that distorts or weaponises religious doctrine in ways that promote hatred of people on the basis of protected attributes. This undermines the purpose of vilification protections by allowing individuals to frame prejudiced views as religious commentary.

In recent years, we have seen increasing instances of religious texts or teachings being invoked as justification for hostile or degrading speech about LGBTIQ+ people and people of minority faiths. Without clear limits, this exemption risks providing cover for modern-day hate speech that masquerades as religious teaching. For example, a person may refer to a religious passage out of its context to suggest that a particular group is inherently immoral or diseased to avoid accountability under vilification laws. Additionally, violent extremist groups have justified their attacks with reference to religious passages.<sup>33</sup>

We strongly recommend redrafting the exemption to ensure it does not create a broad loophole that undermines the protective purpose of the law. One option is to narrow it to directly quoting a text (removing the reference to broadly ‘referencing’). If the objective is to ensure that good faith discussion on religious texts falls outside the reach of the criminal law, then this could be achieved with a narrower exemption requiring elements of reasonableness and good faith, and a clarification that the speech must be in conformity with doctrines, beliefs or principles of the religion.<sup>34</sup>

## Prosecution

An amendment to section 93Z of the Crimes Act in 2023 enabled either a police officer or the Director of Public Prosecutions (DPP) to commence a prosecution. As noted in the Issues Paper, the previous requirement for police to refer matters to the DPP for approval caused delays and discouraged the use of the provision. The newly inserted section 93ZAA is consistent with this approach, also allowing police to initiate prosecutions directly.<sup>35</sup>

Criminal vilification provisions across the country have been chronically underutilised, with the requirement for DPP involvement as one key unnecessary barrier,<sup>36</sup> and so we support this approach.

## RECOMMENDATIONS

In relation to section 93ZAA we recommend:

- expanding the protected attributes to include LGBTIQ+ people (as per our recommendations in the following section)
- retaining intent as the required fault element

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<sup>33</sup> For example, the couple who killed police officers in Wieambilla in 2023 were inspired by the Book of Revelation, in committing what was considered to be Australia’s first Christian terrorist attack. See Joe Hinchliffe, ‘Wieambilla shootings labelled Australia’s first Christian terrorist attack’ The Guardian (online, 16 February 2023).

<sup>34</sup> This is the approach in Victoria to the civil exemption - *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* (Vic) s 102G.

<sup>35</sup> See *Crimes Amendment (Inciting Racial Hatred) Act 2025* (NSW) s 93ZAA(4)(b).

<sup>36</sup> In Queensland, a parliamentary committee looking at this issue commented that an additional step for Crown Law officer approval is an unnecessary impediment to police expeditiously prosecuting serious vilification matters. See Legal Affairs and Safety Committee, Parliament of Queensland, *Inquiry into Serious Vilification and Hate Crimes* (Report No. 22, 57<sup>th</sup> Parliament, 31 January 2022) 48. As a result, the requirement was also removed in Queensland in the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023*.

- retaining the harm-based element in section 93ZAA(1)(b)
- clarifying that conduct may be ‘on the ground of’ an attribute where it relates to imputed or presumed characteristics, formerly held attributes or characteristics generally associated with the attribute
- expanding the relevant emotions to include serious contempt, revulsion, or severe ridicule, alongside hatred
- confirming that the offence can be committed by a single act or a course of conduct
- redrafting the religious text exemption to limit it to direct quotations only (by removing ‘otherwise referencing’) or by introducing a requirement of reasonableness and good faith, and ensuring the expression is in conformity with doctrines, beliefs or principles of the religion
- retaining the ability for police officers to initiate prosecutions.

## PROTECTED ATTRIBUTES

The current protected attributes in the Crimes Act that are directly relevant to our communities are sexual orientation, gender identity and intersex status.

Consideration should be given to making the attributes consistent across all civil and criminal vilification laws, but we understand that this could take some time, since the civil protections under the *Anti-Discrimination Act 1977 (AD Act)* are the subject of an NSWLRC review being conducted concurrently with this review.

### Variations of sex characteristics (intersex communities)

Consistent with Yogyakarta Principles plus 10<sup>37</sup> and the ongoing advocacy of the intersex community, including in the Darlington Statement,<sup>38</sup> both the Crimes Act and the AD Act should protect people from vilification on the basis of ‘sex characteristics’ rather than ‘intersex status’.<sup>39</sup>

The best model for the attribute and its definition comes from Queensland, which only recently amended its laws to ensure protections from civil and criminal vilification based on the protected attribute of ‘sex characteristics’.<sup>40</sup>

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<sup>37</sup> International Panel of Experts in International Human Rights Law and Sexual Orientation and Gender Identity, *Yogyakarta Principles plus 10: Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics* (2017).

<sup>38</sup> InterAction for Health and Human Rights, *Discrimination* (Web Page, updated February 2021) <https://interaction.org.au/discrimination/>. Refer to commentary on the position as set out in the 2017 Darlington Statement, a community consensus statement by intersex organisations and advocates in Australia and Aotearoa/New Zealand.

<sup>39</sup> *Crimes Act 1900 (NSW)* s 93Z(5).

<sup>40</sup> *Criminal Code Act 1899 (Qld)* sch 1, *Anti-Discrimination Act 1991 (Qld)* sch 1.



## Sexual orientation

The sexual orientation definition in the Crimes Act is preferable over the ‘homosexual’ attribute in the New South Wales civil law,<sup>41</sup> but it could be further refined to ensure that it covers people who are asexual. The need for this reform arises from results from studies such as one by Ace & Aro Collective AU, which found that, in relation to their asexual identity:

- 18.74% of respondents had experienced some form of sexual violence (of all respondents, 18.36% experienced sexual harassment, 5.88% stalking, 7.98% rape threats, 11.82% sexual assault and 5.16% rape);<sup>42</sup>
- 22.26% of respondents had experienced some form of physical violence and threats (of all respondents, 6.12% experienced assault, 11.64% threats of violence, 13.62% online threats, 4.08% property damage, 10.74% self harm/suicide baiting).<sup>43</sup>

These statistics underscore the need for legal protections for asexual people, who often face a unique form of discrimination rooted in the denial of their identities or the harmful belief that not experiencing sexual or romantic attraction makes them emotionally deficient or incomplete. The drafting of Queensland amendments to civil and criminal provisions, not yet commenced, provides a potential model for this, whereby the term is defined as ‘the person’s capacity, or lack of capacity, for emotional, affectional and sexual attraction to, or intimate or sexual relations with, persons of a different gender or the same gender or more than one gender’.<sup>44</sup>

## Gender identity

The gender identity definition in the Crimes Act<sup>45</sup> is also preferable to the ‘transgender’ attribute in civil law.<sup>46</sup> The definition is consistent with the federal discrimination law. While not as high a priority as refining the attributes for sex characteristics (presently called ‘intersex status’) and sexual orientation, consideration could be given to updating the attribute to align with the definition in the Yogyakarta Principles, which is the direction in which most other Australian state-based jurisdictions have headed in recent years.<sup>47</sup>

## Associates

In contrast with New South Wales discrimination law,<sup>48</sup> sections 93ZAA and 93Z do not currently protect people from conduct that occurs because they are *associated* with LGBTIQ+ people. This leaves non-LGBTIQ+ people vulnerable to incitement of hatred, violence or threats against them because of their association with LGBTIQ+ people or causes.

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<sup>41</sup> *Anti-Discrimination Act 1977* (NSW) ss 49F, 49ZT.

<sup>42</sup> *Ibid* 130, 132.

<sup>43</sup> *Ibid* 145, 147.

<sup>44</sup> *Respect at Work and Other Matters Amendment Act 2024* (Qld) s 52, definition of sexual orientation.

<sup>45</sup> *Crimes Act 1900* (NSW) s 93Z(5).

<sup>46</sup> *Anti-Discrimination Act 1977* (NSW) s 38A, 38S.

<sup>47</sup> See for example, *Equal Opportunity Act 2010* (Vic) s 4, definition of gender identity, which defines gender identity as ‘a person’s gender-related identity, which may or may not correspond with their designated sex at birth, and includes the personal sense of the body (whether this involves medical intervention or not) and other expressions of gender, including dress, speech, mannerisms, names and personal references’.

<sup>48</sup> For example, *Anti-Discrimination Act 1977* (NSW) s 38B(1) protects people who are an ‘associate of the aggrieved person’.

In particular, the following kinds of hate-based conduct would not be captured:

- conduct directed at local councillors or council staff because of their support for (or seen to be ‘condoning’) local Pride events<sup>49</sup> or drag storytime,<sup>50</sup> or because of objections to library books<sup>51</sup>
- conduct towards a child in a rainbow family (such as a child of two dads), or towards the parent or sibling of a trans child
- conduct towards owners of or workers at an inclusive / known LGBTIQ+ venue or shop, who are themselves not LGBTIQ+.

We recommend that both s 93Z and 93ZAA are amended to include associates. We do not think that the limited meaning of an ‘associate’ in the discrimination law<sup>52</sup> is effective because it only captures close personal, business, or social relationships, dependents and household members. Sometimes hate conduct can be levelled at someone because of their job, role or position (e.g. a librarian, politician, or owner of a gay bar) which has nothing to do with associating closely with a particular LGBTIQ+ person in a personal or business capacity.

The better approach is to add the attribute of ‘association’ to the list of grounds already protected, and then separately define it.

*E.g. Offence of publicly inciting hatred on the grounds of race, sexual orientation (etc), association*

The most appropriate definition is:

‘Association with, or in relation to, a person identified on the basis of race, sexual orientation (etc).’<sup>53</sup>

## RECOMMENDATIONS

In relation to protected attributes / grounds, we recommend:

- consistency between the attributes protected by civil and criminal laws that protect people in New South Wales from vilification and hate conduct Including by expanding the attributes In s 93ZAA
- updating the attributes in the Crimes Act by changing the name of the attribute ‘intersex status’ to ‘sex characteristics’, defining it consistently with Queensland law
- amending the attribute of ‘sexual orientation’ to ensure it includes asexual people
- considering updating the gender identity attribute to reflect the definition in the Yogyakarta Principles

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<sup>49</sup> AAP, ‘Abuse and threats put at risk Melbourne Shrine of Remembrance rainbow plans’ *SBS News* (online, 30 July 2022) <https://www.sbs.com.au/news/article/abuse-and-threats-put-at-risk-melbourne-shrine-of-remembrance-rainbow-plans/we63aqi7c>.

<sup>50</sup> Sophie Aubrey, “Disappointing”: Monash Council cancels drag queen story time event’ *The Age* (4 May 2023) <https://www.theage.com.au/national/victoria/monash-council-cancels-drag-queen-story-time-event-20230504-p5d5jn.html>; Joanna Woodburn, ‘Drag queen Betty Confetti’s story time event cancelled after threats to council staff’ *ABC News* (online, 16 May 2023) <https://www.abc.net.au/news/2023-05-16/drag-queen-betty-confetti-regional-kids-show-cancelled/102350198>. See also, Elise Thomas, *A Year of Hate: Anti-Drag Mobilisation Efforts Targeting LGBTIQ+ People in Australia* (Report, Institute of Strategic Dialogue, 2024) [https://www.isdglobal.org/wp-content/uploads/2024/04/A-Year-of-Hate\\_Anti-Drag-Mobilisation-Australia.pdf](https://www.isdglobal.org/wp-content/uploads/2024/04/A-Year-of-Hate_Anti-Drag-Mobilisation-Australia.pdf).

<sup>51</sup> Caitlin Cassidy and Catie McLeod, ‘Western Sydney councillor doubles down on same-sex parent book ban as residents express outrage over move’, *The Guardian* (online, 8 May 2024) <https://www.theguardian.com/australia-news/article/2024/may/08/cumberland-city-council-sydney-steve-christou-same-sex-book-ban>.

<sup>52</sup> *Anti-Discrimination Act 1977* (NSW) s 4.

<sup>53</sup> This is drawn from the *Anti-Discrimination Act 1991* (Qld) s 7(q).

- including ‘association’ as a further protected ground in the Crimes Act, defining it broadly e.g. association with, or in relation to, a person identified on the basis of one of the grounds.

## CIRCUMSTANCES OF AGGRAVATION

Another approach to strengthening protections against hate-based conduct, other than focusing on criminal prohibitions against incitement of hatred, is to consider the inclusion of additional circumstances of aggravation applying to existing criminal offences.<sup>54</sup> The benefit of this approach is that it may recognise demonstrations of hate or hate motivations behind *existing* criminal offences, without the need to create new standalone offences.

Circumstances of aggravation increase the seriousness of an offence and can lead to a higher maximum penalty. In practice, this allows police and courts to respond more seriously to crimes that are motivated by prejudice, including racism, ableism, misogyny, homophobia, transphobia or religious intolerance.

This approach must be distinguished from aggravating factors that only apply to sentencing, which are already in place in New South Wales.

The approach of creating circumstances of aggravation for existing offences has several benefits:

- **Familiarity for police and prosecutors:** Police are already trained in applying existing commonly charged criminal offences such as assault or destroying or damaging property. In our experience, police often lack clarity or training on how to respond to hate crimes and may fail to act, or default to using familiar charges without recognising the hate element. Incorporating a circumstance of aggravation allows the hate motivation to be reflected in the charge without requiring new or unfamiliar offences.
- **Better data and early recognition:** Including the hate element at the charging stage ensures that hate crimes are properly recorded and visible from the outset. This helps build a more accurate dataset of hate-based offending. In contrast, when hate is only considered as part of sentencing, it is often too late in the process. Many matters never proceed to sentencing, so we lose critical information about the scale and nature of hate crime.
- **Improved victim recognition and justice:** Victims are more likely to feel that their experience is being taken seriously when the hate motivation is acknowledged directly in the charge. For example, charging graffiti on a pub as simple wilful damage sends a very different message than charging it as hate-motivated damage when the graffiti includes homophobic threats. For many victims, the harm lies not only in the conduct itself, but in the sense of being targeted for who they are. When this is ignored or treated as a minor offence, it compounds the trauma and undermines trust in the justice system.

New South Wales should legislate to introduce a circumstance of aggravation where an offence is motivated, wholly or partly, by hatred or serious contempt for a person or group on the basis of a

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<sup>54</sup> Circumstances of aggravation are currently set out in section 105A of the *Crimes Act 1900* including circumstances such as being armed or in company.

protected attribute under the Crimes Act or the *Crimes (Domestic and Personal Violence) Act 2007* (**Crimes (DPV) Act**). This aggravating factor should apply to a defined set of existing offences, including:

- Common assault<sup>55</sup>
- Assault occasioning bodily harm<sup>56</sup>
- Intentional or reckless destruction of property<sup>57</sup>
- Threats<sup>58</sup>
- Affray<sup>59</sup>
- Riots<sup>60</sup>
- Stalking or intimidating<sup>61</sup>
- Offensive conduct / language<sup>62</sup>
- Sexual assaults and assaults with intent to have sexual intercourse<sup>63</sup>
- Sexual touching<sup>64</sup>
- Sexual acts<sup>65</sup>
- Incitement to commit sexual assault<sup>66</sup>
- Recording and distributing intimate images.<sup>67</sup>

Where a prescribed offence is committed in circumstances of hate or serious contempt, it should be charged as an aggravated offence attracting a higher maximum penalty. If the aggravating factor is not established, the person may still be convicted of the underlying offence.

### Focus on demonstration of hatred, not hate motivation

While Queensland has enacted a model which relies on proving a hate motivation,<sup>68</sup> we recommend a different approach based on the approach of England and Wales that allows for either motivation *or* an objective test based on the defendant's actions, rather than what they intended, i.e. a *demonstration* of hatred (or other relevant emotions).

It is difficult to establish the motivation of an offender. Since state of mind cannot be observed directly, prosecutors have to rely on indirect or circumstantial evidence, particularly where the offender does not express their motivation explicitly through words or slurs during the course of the offending. Circumstantial evidence could include things like social media posts showing prior

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<sup>55</sup> *Crimes Act 1900* (NSW) s 61. Referred to further as Crimes Act.

<sup>56</sup> Crimes Act s 59.

<sup>57</sup> Crimes Act s 195.

<sup>58</sup> Crimes Act s 199.

<sup>59</sup> Crimes Act s 93C(1).

<sup>60</sup> Crimes Act s 93B(1).

<sup>61</sup> Crimes (DPV) Act s 13.

<sup>62</sup> *Summary Offences Act 1988* (NSW) s 4A(1).

<sup>63</sup> Crimes Act part 3 div 10, sub div 2.

<sup>64</sup> Crimes Act div 10, sub div 3.

<sup>65</sup> Crimes Act div 10, sub div 4.

<sup>66</sup> Crimes Act s 80G.

<sup>67</sup> Crimes Act div 15C.

<sup>68</sup> It is a circumstance of aggravation for a prescribed offence that the offender was wholly or partly *motivated* to commit the offence by hatred or serious contempt for a person or group of persons based on (protected attributes) – see *Criminal Code Act 1899* (Qld) s 52B.

expressions of prejudice, patterns of behaviour (such as attacking only gay men), or timing and context (such as attacking people entering and existing a Pride festival).

Case law research conducted by Kay Goodall and Mark Walters<sup>69</sup> suggests that jurisdictions (including Canada, Cyprus, Malta, New South Wales and the Northern Territory) which include a test of only motivation within their legislative framework have very few successful prosecutions for hate crime. Other research in England and Wales found that the motivation part of the test in English law is rarely used.<sup>70</sup>

Comparing the jurisdictions of England and Wales, Guernsey, Isle of Man, Northern Ireland, and Scotland, which allow for consideration of a *demonstration* of hostility,<sup>71</sup> as opposed to Canada which has a *motivation* test, the former has been proven to be much more effective, based on the number of successful prosecutions. In England and Wales over 11,000 sexual orientation hate crimes were officially recorded between 2017 and 2018, resulting in 1,436 completed prosecutions, with 781 cases ending in a conviction where the hate crime sentence enhancement was applied. By contrast, in Canada police recorded 195 anti-LGBT hate crimes, which amounts to just 1.5% of the total number of anti-LGBT crimes recorded in England and Wales, despite the population of Canada being over half the size of the UK's.<sup>72</sup>

Case studies on hate crime from the UK indicate how this approach may work in practice. In one case, a man was out celebrating after Pride when he was attacked with a glass, and based on the evidence the police were able to show hostility by the offender based on sexual orientation. The sentence was increased from 24 to 27 months on the basis it was established to be a hate crime. In another example, the offender sent transphobic texts to a trans man, and then on another day assaulted him twice in person. The existence of the texts showed a demonstration or motivation of hostility based on gender identity. The police asked for a longer sentence, and the judge extended the sentence by 2 months, telling the offender that transphobic nature of the attacks was wholly inappropriate.<sup>73</sup>

Another benefit of focusing on demonstration is that it captures cases where the offender may not have initially been motivated by hate, but nonetheless expressed hatred during the commission of the offence. For example, if a person begins an armed robbery and, upon discovering that the shop owner is a trans woman, proceeds to physically assault her while yelling transphobic slurs.

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<sup>69</sup> See Kay Goodall and Mark Walters, *Legislating to Address Hate Crimes against the LGBT Community in the Commonwealth* (Report, 5 August 2019) 60 <https://www.humandignitytrust.org/wp-content/uploads/resources/Legislating-to-Address-Hate-Crimes-against-the-LGBT-Community-in-the-Commonwealth-Final.pdf>.

<sup>70</sup> See Kay Goodall and Mark Walters, *Legislating to Address Hate Crimes against the LGBT Community in the Commonwealth* (Report, 5 August 2019) 60 <https://www.humandignitytrust.org/wp-content/uploads/resources/Legislating-to-Address-Hate-Crimes-against-the-LGBT-Community-in-the-Commonwealth-Final.pdf>.

<sup>71</sup> While 'hostility' is used in the law of England and Wales do not propose to replace 'hatred' or other emotions as the relevant term. We acknowledge that there may be some genuine concerns that 'hostility' is a concept that is potentially too broad if literally interpreted, particularly as at this stage it does not appear in Australian legislation in a relevant context.

<sup>72</sup> Kay Goodall and Mark Walters, *Legislating to Address Hate Crimes against the LGBT Community in the Commonwealth* (Report, 5 August 2019) <https://www.humandignitytrust.org/wp-content/uploads/resources/Legislating-to-Address-Hate-Crimes-against-the-LGBT-Community-in-the-Commonwealth-Final.pdf>.

<sup>73</sup> 'Prosecuting homophobic and transphobic hate crime: case studies', *Crown Prosecution Service* (Web page) <https://www.cps.gov.uk/crime-info/hate-crime/prosecuting-transphobic-hate-crime-case-study>.

The best of both worlds can be achieved by referring to both motivation and demonstration limbs, and we set out in the recommendation below how this may appear in legislation, including how it may also be the preferred model for aggravating factors on sentencing.

## Inclusion of sexual crimes

While similar models have been adopted in other jurisdictions, previous reforms have failed to include sexual offences in the list of prescribed crimes.<sup>74</sup> LGBTIQ+ people experience particularly high rates of sexualised forms of violence.<sup>75</sup> LGBTIQ+ people are especially susceptible to sexual violence when they are visibly LGBTIQ+, including non-conforming gender expressions.<sup>76</sup>

Examples of the intersection between sexualised violence and bias-motivated abuse are reflected in Queensland case law. In one matter, a complaint of vilification and sexual harassment was upheld, where a group of people gathered outside the house of a trans woman late at night, calling out abuse such as ‘You fucking faggot, you have your fucking dick in a jar’, and threatening to ‘burn the fucking faggot’s place down’.<sup>77</sup> In another example, a same-sex couple experienced ongoing verbal abuse from neighbours, which was found to amount to both vilification and sexual harassment, because of the sexualised nature of the constant insults thrown at them.<sup>78</sup>

Another example is digital sexual violence involving the distribution of intimate images of people accompanied by threats, slurs with the intent to ‘out’ or ‘shame’ them. One example is reflected in Case Study 5 in this report, involving catfishing gay men, forcing them to strip and taking sexualised images of them.

At the most extreme end, hate crimes may take the form of ‘corrective rape’, where lesbian or queer women are sexually assaulted with the express intent of ‘changing’ their sexuality. This form of violence represents a deeply gendered and sexualised form of hate.

Incorporating sexual offences into hate crime frameworks is essential to recognising and addressing these harms.

## RECOMMENDATIONS

We recommend that:

- New South Wales introduces circumstances of aggravation for criminal offences where the offender, at the time of committing the offence, or immediately before or after doing so:
  - demonstrates hatred, serious contempt, severe ridicule or revulsion, or
  - is motivated, wholly or partly, by hatred, serious contempt, severe ridicule or revulsion,

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<sup>74</sup> This is an issue raised by Equality Australia previously in our submission to the Queensland Legal Affairs and Safety Committee Inquiry into the Criminal Code (Serious vilification and hate crimes) and other Legislation Amendment Bill 2023.

<sup>75</sup> For example, 1 in 5 women, compared to 1 in 21 men, experienced sexual violence since the age of 15. See Australian Institute of Health and Welfare *Family, domestic and sexual violence* (Report, 2023). See also Adam O. Hill et al, ‘Private Lives 3: The health and wellbeing of LGBTIQ people in Australia’ (Australian Research Centre in Sex, Health and Society, La Trobe University, 2020) 40-41; Denton Callander et al, *Australian Trans and Gender Diverse Sexual Health Survey* (Kirby Institute, 2018) 10. Both surveys reveal that LGBTIQ+ people experience particularly high rates of sexual violence, with 1 in 10 reporting they had experienced sexual assault due to their sexual orientation or gender identity. This statistic is significantly higher for trans people, who are 4 times more likely to experience sexual violence or coercion compared to the general Australian public.

<sup>76</sup> In a study on safety at gay and lesbian public events, gay men were more likely to be exposed to physical violence, while lesbian women were more likely to experience sexually harassing behaviours in public space, suggesting that there are gendered patterns in the occurrence of heterosexual violence: see Australian Centre for the Study of Sexual Assault, *Sexual Violence and gay, lesbian, bisexual, intersex and queer communities* (2012) 4-5.

<sup>77</sup> *Brosnahan v Ronoff* [2011] QCAT 439.

<sup>78</sup> *Wilson and McCollum v Lawson and Anor* [2008] QADT 27.

- on the basis of a person's actual or perceived sexual orientation, gender identity or sex characteristics (as well as other relevant protected attributes).
- Section 21 of the Crimes Act, which deals with hate motivation as an aggravating factor on sentencing, is also updated to include a demonstration limb.
- The circumstance of aggravation applies to a prescribed list of offences, including sexual offences.
- These select offences would have a higher maximum penalty where the circumstance of aggravation can be proven.
- The amendments be drafted in such a way that base offences can still be made out even if the hate element cannot be proven beyond a reasonable doubt.

## STOP VILIFICATION ORDERS / INJUNCTIVE RELIEF

Often, people who experience vilification are not looking for financial compensation or even for the perpetrator to face a criminal charge – they just want the behaviour to stop. This is especially the case for people who fall victim to online abuse, which can be just as devastating as offline stalking, intimidating and harassment. We have seen many instances of high-profile gay and trans people, activists, community advocates and sports competitors falling prey to sustained campaigns of online harassment, which can then spill over into offline harassment, threatening personal safety and participation in public life.

A powerful example is the case of Stephanie Blanch, a trans footballer, who has been persistently targeted by Kirralee Smith of Binary Australia. As explained in more detail in Case Study 4 (Appendix A), the court ultimately issued an Apprehended Personal Violence Order (**APVO**) against Ms Smith. This prohibited her from assaulting, threatening, stalking, harassing, or even naming (including deadnaming) Ms Blanch. While APVOs provide some protection in certain cases, there are serious limitations to relying on them to address vilification, especially in the online environment:

- **They are not nationally enforceable.** Unlike Apprehended Domestic Violence Orders (**ADVOs**), which are automatically recognised across all states and territories (if made after 25 November 2017), APVOs only apply in New South Wales unless individually registered elsewhere. This is completely impractical when harassment occurs online across jurisdictions, often by multiple actors working in different states.
- **They are designed around traditional concepts of physical safety.** APVOs are granted only when necessary for a person's protection from violence, threats, or intimidation. They do not address broader forms of harm caused by vilifying conduct such as reputational damage or mental and emotional distress.
- **They fail to respond to the cumulative, networked nature of online vilification.** Orders target individual perpetrators, but vilification often comes from coordinated or sustained activity by multiple actors across multiple platforms, including anonymous or pseudonymous accounts.

### A proposal: Stop Vilification Orders

We recommend the introduction of Stop Vilification Orders – a quasi-criminal mechanism designed to stop ongoing vilifying conduct, particularly in online settings. These orders pose less of a constraint on free expression compared to other legal responses (such as immediate criminal

prosecution), as the relevant conduct is not criminalised unless the person breaches the order after being put on notice to stop.

These orders could operate similarly to ADVOs or APVOs, but be specifically tailored to address the unique harms caused by vilification, especially hate-motivated harassment against LGBTIQ+ people and other marginalised groups.

Key features of these orders could include:

- **Broader definition of harm:** The threshold for issuing an order should include serious emotional, psychological, or reputational harm caused by sustained or public vilification, not just threats of violence, property damage or intimidation.
- **Flexible terms tailored to vilification:** Orders could include conditions such as:
  - Prohibition on naming or referring to the targeted individual
  - Restrictions on publishing certain content
  - Requirements to remove vilifying material
  - Bans on communicating with or approaching the victim, including online contact.
- **Standing and process:**
  - A low-cost, trauma-informed application process (e.g. via tribunal or lower court) should be established, with options for urgent interim orders.
  - An option should also be in place for police to be the applicant for these orders.
- **Consequences for breach:** As with ADVOs and APVOs, breaching a Stop Vilification Order should be a criminal offence, enforceable by police.
- **Protection of identity:** Orders should include safeguards to prevent further harm to the complainant, recognising that the very act of applying for protection may escalate the situation or trigger further harassment. These safeguards could include the ability to seek name suppression, protections against retaliatory publicity, and restrictions on the disclosure of proceedings.
- **National enforceability:** Like ADVOs, orders should be automatically recognised and enforceable across all states and territories, avoiding the administrative burden of registration. We accept that this would involve some negotiation with other states.

Stop Vilification Orders would provide a victim-centred response to hate that prioritises safety, agency, and dignity, without requiring the criminalisation of every instance of harmful speech. For people who just want the attacks to stop, this could offer meaningful, practical relief.

## RECOMMENDATIONS

We recommend that:

- New South Wales introduce Stop Vilification Orders, similar to Apprehended Personal Violence Orders, to provide timely protection for people who are being targeted by hate, including online abuse



- Orders could be sought by individuals, by authorised support organisations, or the police, with courts empowered to prevent ongoing hate-based conduct and harassment by issuing time-limited orders with appropriate conditions
- Breaching a Stop Vilification Order should be a criminal offence, enforceable by police.

## Assessing effectiveness of criminal laws

As recognised by the High Court, '[t]he purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform'.<sup>79</sup> These purposes provide a benchmark when assessing the effectiveness of criminal law. At a high level, s 93ZAA does seek to achieve these aims by protecting communities from the incitement of hatred, which has broader benefits in preventing division in the community.

The provision has a maximum penalty of 2 years imprisonment or 100 penalty units or both, which is not disproportionate to the seriousness of the offence or outside of the range of penalties to be expected from the conduct. This strikes a balance, sending a strong message to deter people from inciting hatred while still allowing courts to take individual circumstances into account and focus on rehabilitation where appropriate.

Also relevant to evaluating the effectiveness of criminal laws, we must consider the alternative options of civil laws against vilification or harassment, such as in those in the *Anti-Discrimination Act 1977* (NSW). Civil complaints processes play an important role in sending a signal to the community that discrimination is not consistent with an egalitarian society. However, we note there are many matters that are wholly unsuitable for a civil complaints process involving conciliation, particularly when the perpetrator has engaged in conduct that could seriously *endanger* the complainant or the community/ies to which they belong. Power dynamics at play will often make conciliation unsuitable or unsafe. Further, in such circumstances the critical issue is addressing the perpetrator's underlying behaviour and seeking to deter it in the broader community, which cannot be achieved by a process where the most likely outcome is a small amount of compensation. From our experience, civil remedies have little to no deterrent effect against the most egregious forms of hate.

Another key consideration is whether the conduct being targeted is already captured by other, existing laws. There are no other current criminal laws in New South Wales in relation to the incitement of hatred. Further, section 93ZAA has the value of sending a message that the impugned conduct is unacceptable<sup>80</sup> and its primary objective is its deterrent and educative effect.

For criminal laws to work effectively, the people they are designed to protect need to have confidence that they will be taken seriously when making complaints, and that those laws will be enforced. Trust needs to be built between communities like ours and the police so that people feel comfortable to report breaches. We welcome the active engagement that the New South Wales Police Force has been taking with the LGBTIQ+ community, including with their GLLO/LGBTIQ+ liaison program and the work of their Hate Crimes Unit, we urge the government to continue

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<sup>79</sup> *Veen v The Queen (No 2)* (1988) 164 CLR 465, 476.

<sup>80</sup> NSW Law Reform Commission, *Serious racial and religious vilification* (Report No 151, September 2024) 40.

facilitating these operations. In response to Question 6 we outline further ways to build trust and improve reporting to authorities.

## **BALANCING CRIMINAL LAW PROTECTIONS WITH CIVIL LIBERTIES (Q3)**

We recognise that criminal law protections need to be balanced with broader civil liberties. We undertake an analysis below of the prospective interaction of s 93ZAA with civil liberties.

### **Existing protections for freedom of expression**

#### **Implied freedom of political communication**

The implied freedom of political communication is recognised by the High Court of Australia as an implied constitutional constraint to legislative powers.<sup>81</sup>

Whether a given law infringes the implied freedom requires a three-staged inquiry:<sup>82</sup>

1. Whether the law effectively burdens freedom of political communication in its legal or practical operation
2. If so, whether its purpose is legitimate in the sense of being compatible with the maintenance of the constitutionally prescribed system of representative government
3. If so, whether it is reasonably appropriate and adapted to advance that purpose in a manner that is compatible with maintenance of the constitutionally prescribed system of representative government.

Each of these aspects relevant to context of hate speech laws are examined in further detail below.

#### *Burden*

The first stage of the inquiry is into the ‘the character of the law assessed and expressed by reference to its tendency’ to burden political communication, and this assessment is qualitative not quantitative.<sup>83</sup> A law effectively burdening the freedom of political communication is ‘nothing more complicated than that the effect of the law is to prohibit, or put some limitation on, the making or the content of political communications’,<sup>84</sup> and ‘[t]he question at this point is simply whether the freedom is in fact burdened’.<sup>85</sup>

The Queensland Court of Appeal found in *Owen v Menzies* that civil vilification laws do not give rise to a burden. The Court remarked that section 124A of the *Anti-Discrimination Act 1991* (Qld) does not seek to prevent or burden public discussion, but rather it sets parameters to enhance

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<sup>81</sup> *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1 and *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106; confirmed in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

<sup>82</sup> *Ravbar v Commonwealth of Australia* [2025] HCA 25, [27] (Gageler CJ) citing *Coleman v Power* (2004) 220 CLR 1 and *McCloy v New South Wales* (2015) 257 CLR 178.

<sup>83</sup> *Tajjour v New South Wales* (2014) 254 CLR 508, 579 [145]–[146].

<sup>84</sup> *Monis v The Queen* (2013) 249 CLR 92, 142 [108].

<sup>85</sup> *Unions NSW v New South Wales* [2013] FCA 58, [40] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

communications about government and political matters in a civilised, diverse democracy which values all its members, irrespective of race, religion, sexuality or gender identity.<sup>86</sup>

We consider that 93ZAA and similar criminal provisions do not burden the freedom of political communication, but if they do, we are of the view that they serve a legitimate end of protecting members of the community from hatred and are reasonably appropriate and adapted to this purpose, as explained below.

#### *Legitimate in its purpose*

The approach taken by the Court is to consider whether the purpose advanced by a challenged law is compatible with the constitutionally prescribed system of representative and responsible government.<sup>87</sup>

In a matter involving offensive communications, the High Court considered the constitutional validity of a criminal offence in relation to offensive communications. In this case, the appellant had ‘written letters to parents and relatives of soldiers killed on active service in Afghanistan which were critical of Australia’s involvement in that country and reflected upon the part played in it by the deceased soldiers’ and was subsequently ‘charged under s 471.12 of the *Criminal Code* (Cth), which prohibits the use of a postal or similar service in a way that reasonable persons would regard as being, in all the circumstances, “offensive”’.<sup>88</sup> The High Court was split evenly (3:3) in this proceeding, on the question of whether a legitimate end was served by a provision which made it an offence to use a postal service in a manner that a reasonable person would regard as offensive. However, it is useful to consider the decision of Hayne J in that judgment, which provides an open list of purposes found to be a legitimate end in previous decisions, being:

‘the protection of reputation, the prevention of physical injury, the prevention of violence in public places, the maintenance of a system for the continuing supervision of some sexual offenders who have served their sentences, “community safety and crime prevention through humane containment, supervision and rehabilitation of offenders”, and “the imposition of conditions [a parole board] considers reasonably necessary to ensure good conduct and to stop [a] parolee committing an offence”’.<sup>89</sup>

‘[T]he prevention of violence in public places’<sup>90</sup> is instructive for this Review in that the prevention of the incitement of hatred on the basis of their protected attributes, which could lead to people fearing harassment, intimidation, violence or fear for their safety, is compatible with the system of representative and responsible government. Addressing these fears goes hand in hand with ensuring people’s public participation in a democratic society.

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<sup>86</sup> *Owen v Menzies* [2012] QCA 170, [72].

<sup>87</sup> *Ravbar v Commonwealth of Australia* [2025] HCA 25, [140] (Gordon J) citing *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 561-562, 567; *Unions NSW v New South Wales* (2013) 252 CLR 530, 556 [46]-[47]; *McCloy v New South Wales* (2015) 257 CLR 178, 194 [2]; *Brown v Tasmania* (2017) 261 CLR 328, 363-364 [102]-[104], 375-376 [156], 398 [236], 413 [271], 432 [319]-[320]; *Unions NSW v New South Wales* (2019) 264 CLR 595, 612 [32], 624 [73]-[74], 653 [160]; *Clubb v Edwards* (2019) 267 CLR 171, 186 [5], 294 [354]; *LibertyWorks Inc v Commonwealth* (2021) 274 CLR 1, 22 [45], 53 [134], 71 [183], 79 [203]; *Farm Transparency International v NSW* (2022) 277 CLR 537, 553-554 [33]-[34]. cf *Levy v Victoria* (1997) 189 CLR 579, 619.

<sup>88</sup> *Monis v The Queen* [2013] HCA 44, [1].

<sup>89</sup> *Monis v the Queen* [2013] HCA 44, [129].

<sup>90</sup> *Coleman v Power* (2004) 220 CLR 1.

### *Reasonably appropriate and adapted*

The Victorian Court of Appeal found that even if a provision ‘does burden political communications...it is compatible with the requirements of a representative democracy to place reasonable limits on the freedom to communicate views which incite hatred or other relevant emotions against people because of their religious beliefs’.<sup>91</sup> Civil laws rendering vilification unlawful on the grounds of religion were considered to be reasonably appropriate and adapted by the court.<sup>92</sup>

Further, the NSWLRC considered in its recent Report on Serious Racial and Religious Vilification, the NSW Court of Appeal’s finding in *Sunol v Collier (No 2)* that s 49ZT of the *Anti-Discrimination Act 1977* (NSW), which renders ‘homosexual vilification’ unlawful, burdened the implied freedom but that:

- the aim of preventing this vilification was a legitimate end of government and compatible with the maintenance of the constitutionally provided system of government; and
- was reasonably appropriate and adapted to serve this end.<sup>93</sup>

While criminal laws targeting hate speech or hateful conduct have not been specifically tested against the constitutionally implied freedom of political communication, their use against the incitement of hatred, which can risk violence against certain segments of the community, is likely to be reasonably appropriate and adapted, particularly because the criminal versions contain much higher thresholds than the civil law.

It is also notable that reforms similar in nature to s 93ZAA, made in Victoria, prescribe a longer maximum penalty of up to 3 years of imprisonment.<sup>94</sup>

### **Freedoms of expression and thought, conscience and religion**

The *International Covenant on Civil and Political Rights* (ICCPR),<sup>95</sup> while not being fully incorporated into New South Wales law, was ratified by Australia on 13 August 1980<sup>96</sup> and should, in principle, be applied by this review, in order to strike the right balance between limitations on speech and the need to protect the liberty and security of people in the state, along with other key rights.

The ICCPR provides for the freedoms of thought, conscience and religion,<sup>97</sup> and of expression.<sup>98</sup>

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<sup>91</sup> *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc* [2006] VSCA 284, [210] (Neave JA).

<sup>92</sup> *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc* [2006] VSCA 284, [113] (Nettle JA), [210] (Neave JA).

<sup>93</sup> *Sunol v Collier (No 2)* [2012] NSWCA 44, [42]-[53] cited in NSW Law Reform Commission, *Serious racial and religious vilification* (Report 151, September 2024) 27, [2.73].

<sup>94</sup> See *Justice Legislation Amendment (Anti-Vilification and Social Cohesion) Act 2025* (Vic) s 195N(3) (not yet commenced).

<sup>95</sup> International Covenant on Civil and Political Rights, 999 UNTS 171 (entered into force 23 March 1976) (‘ICCPR’).

<sup>96</sup> United Nations Treaty Collection, *Depositary: Status of Treaties*, “Chapter IV: Human Rights, 4. International Covenant on Civil and Political Rights” (web page) [https://treaties.un.org/PAGES/ViewDetails.aspx?chapter=4&clang=en&mtsq\\_no=IV-4&src=TREATY](https://treaties.un.org/PAGES/ViewDetails.aspx?chapter=4&clang=en&mtsq_no=IV-4&src=TREATY).

<sup>97</sup> ICCPR art 18

<sup>98</sup> ICCPR art 19.

However, the ICCPR also sets out that:

- the freedom to manifest one's beliefs being subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others (ICCPR, art 18(3))<sup>99</sup>
- the freedom of expression carries certain special duties and responsibilities and therefore may be subject to certain restrictions as provided by law and which are necessary for the respect of the rights or reputations of others, and for the protection of national security or of public order or of public health or morals (ICCPR, art 19(3))<sup>100</sup>
- any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law (ICCPR, art 20(2)).<sup>101</sup>

The United Nations Human Rights Committee has set out the following limitations to the right to freedom of expression, that it:

- must comply with the principles under ICCPR art 18(3);
- must conform to the test of necessity and proportionality; and
- must be directly related to the specific need on which they are predicated.<sup>102</sup>

The UN's Rabat Plan of Action, arising from expert workshops held by the Office of the High Commissioner for Human Rights, grappled with the balance between freedom of expression and laws aimed at targeting hate speech and outlines a six-part threshold test for defining restrictions on freedom of expression:<sup>103</sup>

1. Context of the statement
2. Speaker's position of status
3. Intent to incite the audience against a target group
4. Content and form of the speech
5. Extent of its dissemination, and
6. Likelihood of harm, including imminence.

The Rabat Plan set out that criminal sanctions 'related to unlawful forms of expression should be seen as last resort measures to be applied only in strictly justifiable situations'.<sup>104</sup> We agree with this approach, and in line with our prior submissions to other inquiries regarding criminal law responses to hate speech, are of the view that criminal offences should be reserved for the most serious forms of vilification and must not stifle legitimate expression.<sup>105</sup>

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<sup>99</sup> ICCPR art 18(3).

<sup>100</sup> ICCPR art 19(3).

<sup>101</sup> ICCPR art 20(2).

<sup>102</sup> Human Rights Committee, *General Comment No.34 on Article 19: Freedoms of Opinion and Expression*, CCPR/C/GC/34 (29 July 2011) [21]–[22].

<sup>103</sup> Human Rights Council, *Annual report of the United Nations High Commissioner for Human Rights*, UN Doc A/HRC/22/17 (11 January 2013) 11, [29].

<sup>104</sup> Human Rights Council, *Annual report of the United Nations High Commissioner for Human Rights*, UN Doc A/HRC/22/17 (11 January 2013) 12, [34].

<sup>105</sup> Equality Australia, Submission No 38 to the Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Inquiry into the Criminal Code Amendment (Hate Crimes) Bill 2024 [Provisions]* (7 November 2024) 7.

However, hate speech is pervasive in New South Wales and continues to escalate, spurred on by online communication. Civil options have not been shown to effectively address the worst kinds of hate or the increasing levels and seriousness of online hate speech. These circumstances warrant a criminal law response. Section 93ZAA only places restrictions on the freedom of expression for the purposes envisaged under the ICCPR, which is to safeguard public order against the incitement of hatred, a precursor to violence. In relation to the freedom of thought, conscience and religion, section 93ZAA seeks to protect public safety and order, and enable marginalised communities to freely participate in society without fearing harassment, intimidation, violence or for their safety.

We acknowledge and recognise that freedom of religion will likely be a key consideration in this Review and note that the drafting of s 93ZAA accounts for this freedom in providing for a religious texts exception. We refer you to our analysis and recommendations at page 14 above in relation to this exception, which we strongly believe needs to be narrowed in order to strike an appropriate balance of rights.

### **Rights to dignity and freedom from discrimination**

Under Article 26 of the ICCPR, states have positive obligations to promote equality before the law and under Article 2, all individuals should be assured the protection of laws, without distinction of any kind based on protected statuses.<sup>106</sup>

Where there is clear evidence, as set out in this submission, that LGBTIQ+ people are experiencing levels of hate comparable to that faced by people targeted because of their race, governments have a duty to extend equivalent legal protections to our communities. This includes taking reasonable and proportionate steps to protect our communities from the most serious harms perpetrated by private actors, particularly when those harms undermine the safety, dignity and participation of marginalised groups.

## **PROMOTING SOCIAL COHESION (Q4)**

The promotion of social cohesion, which is to hold society together as a whole, is inherently tied to ensuring the personal safety and security of community and ensuring a balance of interests between various communities that form our society.<sup>107</sup>

Vilification laws are in part symbolic – they set the standard for what behaviour is tolerated and send a message to the broader community that certain conduct is not acceptable.

These laws also contribute to a sense of safety for individuals and communities (and in some cases can improve actual safety), by creating conditions in which people feel enabled to participate in public life. They therefore have a role in combatting the loneliness and social isolation that marginalised groups may experience, when they don't feel confident to go out in public, go to school or work etc.

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<sup>106</sup> ICCPR arts 2, 26.

<sup>107</sup> See James Jupp, John Nieuwenhuysen and Emma Dawson, *Social Cohesion in Australia* (Cambridge University Press, 19 September 2007) 62.

Hate speech and conduct laws also influence media (including social media), setting the appropriate standard for public discourse on sensitive issues. Respectful discourse also ensures that diverse voices can be heard and can shape the public narrative.

## Potential impact of criminal reforms on social cohesion

The NSWLRC's Serious Racial and Religious Vilification report canvassed a variety of opinions on the impact of criminal reforms on social cohesion in the context of s 93Z, including the destructive effect of vilification to social cohesion and polarising impacts of vilification which can give rise to social unrest and conflict.<sup>108</sup> However, the report also received submissions raising concerns about the negative impacts of expanding s 93Z being the potential limitation of 'fundamental freedoms, particularly the freedom of expression and the freedom of religion' and that it could increase societal mistrust.<sup>109</sup>

However, these concerns are in our view overblown and reactionary. A textbook example of resentment from some groups over hate crime laws is the negative reaction to calls for such laws in the wake of the Cronulla Riots in 2005.<sup>110</sup> Our experience has not been that hate crime laws have been used in inappropriate circumstances, but rather that they are underutilised.

One way of mitigating resentment and mistrust against s 93ZAA is for the government to communicate to the public the interests of all communities in New South Wales in being protected from hate speech, which in turn can enable the participation of all in society, free from intimidation. A sense of civic awareness needs to be built that while a certain set of communities may be at the receiving end of hate crimes today, this can spread to other communities over time. The message needs to be that protecting marginalised groups is not about special treatment – it's about safeguarding the dignity, safety and freedom of everyone in our society.

Additionally, the wording of s 93ZAA targets conduct that is deliberately designed to incite hatred, which is a high threshold to meet and represents intentions inimical to free and fair democratic society. Capturing this conduct under criminal law is consistent with the concept of criminalisation being a last resort, explored above at page 28. It needs to be communicated and reiterated by the government that section 93ZAA – ideally one amended to capture the other protected attributes recommended by this submission – has a high evidentiary threshold and designed to prevent the spreading of hatred rather than infringing on legitimate political discourse.<sup>111</sup>

### RECOMMENDATION

We recommend that:

- the government engages in a public education campaign to ensure there is clarity on the scope of s 93ZAA and its distinction from ordinary political discourse.

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<sup>108</sup> NSW Law Reform Commission, *Serious racial and religious vilification* (Report No 151, September 2024) 32, [3.17].

<sup>109</sup> NSW Law Reform Commission, *Serious racial and religious vilification* (Report No 151, September 2024) 42-43.

<sup>110</sup> See, eg, Mark Walters, 'Changing the Criminal Law to Combat Racially Motivated Violence' (2006) 5 *University of Technology Sydney Law Review* 66, 66.

<sup>111</sup> See NSW Law Reform Commission, *Serious racial and religious vilification* (Report No 151, September 2024) 43.

## CONSEQUENCES OF CRIMINAL LAW REFORMS AGAINST THE INCITEMENT OF HATRED (Q5)

### Negative or unintended consequences of criminal law reforms

While criminal law reforms provide much-needed protections for communities like ours, we also acknowledge the potential unintentional consequences. The NSWLRC had regard to submissions regarding the disproportionate impact of hate speech laws on vulnerable communities, in its report regarding Serious Racial and Religious Vilification. One of the key arguments was the concern that laws could be weaponised by majority groups against minorities, e.g. white people against Aboriginal people. In particular, the risk is that vilification offences would capture interactions between Aboriginal people and the police, such as in heightened situations involving arrest. Other concerns involved potential further criminalisation of people with disability who are overrepresented in the criminal justice system.<sup>112</sup>

The high threshold of 93ZAA, as well as 93Z guards against overreach. The evidentiary threshold **of intentionally inciting hatred in 93ZAA** is relatively high when compared to other offensive language laws such as that seen in the *Summary Offences Act 1988* (NSW).<sup>113</sup> Incitement of hatred does not merely involve insulting or offensive words; rather, it must be established that a reasonable person of the targeted group would, in those particular circumstances, have feared harassment, intimidation or violence, or feared for their safety. Unlike in relation to section 93Z, being reckless to one's actions causing incitement is insufficient to fulfil the elements of section 93ZAA which requires intention.

In considering the validity of a charge of insulting language against a person protesting police corruption, the High Court has acknowledged that police should be expected to be able to resist the 'sting of insults directed to them', and are expected to be 'thick-skinned'.<sup>114</sup>

It seems implausible to suggest that, for example, a reasonable person from a targeted group placing themselves in the position of an armed police officer during an arrest would likely experience the genuine fear or intimidation contemplated by the provision. This implausibility is further heightened where the officer is white, and the subject of the alleged conduct is a person from a racially or socially marginalised background. Any fair application of the provision must recognise the inherent power asymmetries in such interactions.

Concerns about misuse have also not borne out in cases where aggravated factors based on hate-motivation have been applied by courts on sentence. A study of Australian provisions (in New South Wales, Victoria and Northern Territory) found three key features in almost all cases:

- evidence of group difference between offenders and victims where the latter are largely, although not exclusively, members of subjugated and harmless minority groups;

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<sup>112</sup> NSW Law Reform Commission, *Serious racial and religious vilification* (Report No 151, September 2024) 43-44, [3.71]-[3.74].

<sup>113</sup> See *Summary Offences Act 1988* (NSW) s 4A.

<sup>114</sup> *Coleman v Power* [2004] HCA 39, [200], [258].



- evidence of group hostility on the offender's part, manifested either by derogatory and hostile statements about the victim's group or, alternatively, by the offender's violent conduct alone or accompanied by psychological evidence; and
- the absence of evidence from which to infer another motive.<sup>115</sup>

This indicates that victim / perpetrator misidentification has not been an issue, at least on sentencing for hate-motivated offences.

In practice, police already rely on more familiar, lower-threshold offences such as offensive language,<sup>116</sup> hindering or resisting arrest (or inciting others to do the same),<sup>117</sup> or obstructing police from executing warrants,<sup>118</sup> where a person is said to be 'abusive' during an interaction. We cannot see a major likelihood of police using criminal vilification offences in this manner, when other offences are better known, easier to prosecute, and commonly used.

## Safeguards to reduce risks of adverse consequences

A balance needs to be struck between ensuring that much-needed protections are provided by hate speech laws whilst also preventing the over-policing of marginalised groups. We suggest this Review take into account the recommendation of the UTS Faculty of Law's Criminal Justice Cluster in relation to the NSWLRC's review into s 93Z of the *Crimes Act*, that '[c]omprehensive police training is needed on the elements of [the offence], including instances in which this provision should be used instead of alternative charges (such as offensive behaviour, offensive language, intimidation or common assault)'.<sup>119</sup>

During the review of the operation of s 93ZAA 2 years after its commencement,<sup>120</sup> specific consideration should be given to conducting an analysis of quantitative and qualitative data on the extent of the use of the provision involving Aboriginal and Torres Strait islander people. This will require data collection from the outset, prior to commencement of the provision.

Another option to further allay these concerns is to draft a specific exclusion to ss 93Z and 93ZAA, for conduct which only involves the use of words by a member of the public in circumstances where a police officer is conducting their operational policing duties, in order to prevent an actual or perceived misuse of these provisions by law enforcement.

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<sup>115</sup> Gail Mason and Andrew Dyer, 'A Negation of Australia's Fundamental Values': Sentencing Prejudice Motivated Crimes' (2013) 36(871) *Melbourne University Law Review* 871, 913.

<sup>116</sup> *Summary Offences 1998* (NSW) s 4A.

<sup>117</sup> *Crimes Act 1900* (NSW) ss 60, 60A.

<sup>118</sup> *Law Enforcement (Powers and Responsibilities) 2002* (NSW) ss 52, 84, 96, 143.

<sup>119</sup> Criminal Justice Cluster at the Faculty of Law, University of Technology Sydney, Submission No 20 to NSW Law Reform Commission, *Serious Racial and Religious Vilification* (19 April 2024) 43.

<sup>120</sup> See *Crimes Act 1900* (NSW) sch 11, pt 45.

## OTHER MEASURES RELATED TO CRIMINAL LAW REFORM THAT MAY PROMOTE SOCIAL COHESION (Q6)

Earlier sections of this submission deal with the substantive criminal law reforms at the heart of this Review. This section outlines several other measures that would support our community to access criminal protections and that would prevent or eliminate vilification in other ways.

### PROVIDE SPECIALIST SUPPORT TO VICTIMS

#### Victims need a reliable, centralised reporting mechanism

Currently, each victim is expected to report to their local police station, which creates significant barriers and inefficiencies. The experiences we have heard about in reporting crimes locally have been often very unsatisfactory – police not understanding that the threshold has been met for crimes, victims not hearing back for months at a time, or at worst feeling like they are treated as a ‘bother’ for following up on their cases.

An online reporting tool exists for sexual assaults in New South Wales.<sup>121</sup> A similar mechanism should be developed for hate speech and hate crimes, particularly given the unique dynamics of online offending. Hate crimes often originate from a single perpetrator but affect multiple victims across different parts of the state, interstate, and even overseas. However, requiring each victim to report separately to their local police station fragments the information provided, making it difficult to identify patterns, serial offenders, or offenders at risk of escalation into violent acts, ultimately allowing many cases to fall through the cracks.

The situation is particularly unworkable when the conduct occurs online but is treated as though it must be addressed through localised police responses. Officers often lack the specialised knowledge or training to recognise and respond to online hate or vilification, especially where it intersects with complex social dynamics, coded language, or fringe ideologies.

A centralised online tool would allow for streamlined reporting and improved data collection, enabling police to identify repeat offenders and coordinate targeted responses. Allowing for anonymous reporting would further reduce barriers for victims, many of whom are fearful of retaliation or reluctant to engage directly with police due to past negative experiences. Centralised tools also take the burden off individual complainants and allow for a more systemic and proactive law enforcement approach.

In our view, escalation to specialist police will be necessary to effectively address these crimes in most cases. Specialist police should be adequately trained in the relevant legislation, online hate dynamics, and community engagement with impacted groups. They should also work in partnership with community organisations to ensure that victims are supported and that public confidence in hate crime enforcement is strengthened.

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<sup>121</sup> See ‘Sexual assault reporting option’, *NSW Police Force Community Portal* (Web page) [https://portal.police.nsw.gov.au/adultsexualassault/s/sexualassaultreportingoption?language=en\\_US](https://portal.police.nsw.gov.au/adultsexualassault/s/sexualassaultreportingoption?language=en_US).

## RECOMMENDATIONS

We recommend that the New South Wales police:

- establish a centralised, hate speech and crimes reporting tool to allow victims to make online reports, including anonymously if desired, to enable early identification of serial perpetrators, and improve the coordination of police response.
- maintain a specialist, centralised Hate Crimes Unit that is empowered to receive and triage both online and in-person reports, proactively investigate linked incidents, and provide expert support to local police districts, in partnership with community organisations.

### Victims need expert advice about their options

Criminal responses to hatred are just one option for victims to pursue. Our community should have access to legal advice and social work support so they can make decisions about what pathway might be best for them at the time.

Inner City Legal Centre has a specialist LGBTIQ+ legal and social work service but is an under-funded community legal centre that does not have capacity to give advice to all those who need it. Organisations like this, which are already embedded in the community with high levels of trust, could be approached with funding to provide specialist services on these issues.

The Australian Law Reform Commission recently reported on Justice Responses to Sexual Violence and while not all hate crimes involve sexual violence, there are many parallels, so some of the findings and recommendations are pertinent to this review. Importantly, that Review noted, ‘Critical to an effective first-engagement mechanism will be the capacity to provide access to legal advice and information about the rights and entitlements of a person who has experienced sexual violence, and the advantages and disadvantages of the various justice pathways that are available (including civil and restorative justice pathways).’<sup>122</sup> In the same way, victims of hate need access to advice to make an informed decision about the best path forward – whether that be applying for an APVO (or a Stop Vilification Order if our recommendation is taken up), complaining to police, or making a civil claim.

### Victims need support through the criminal justice pathway

Even if a victim is inclined to commence the criminal justice process, there are many barriers to LGBTIQ+ victims reporting hate crimes to police, including lack of trust in authorities, fear of being outed, the normalisation of harmful behaviour due to the volume of experience, reticence to ‘waste police resources’, and unfamiliarity with reporting mechanisms.<sup>123</sup> Having expert support through the process helps to overcome some of those barriers. This support could be through a lawyer and social worker working together, as noted above.

The Australian Law Reform Commission report also recommended the funding of Justice System Navigators, who are one-on-one support people who assist once a victim decides to embark on the

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<sup>122</sup> Australian Law Reform Commission, *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (Report No 143, 11 February 2025) 106, [3.62].

<sup>123</sup> Neil Chakraborti and Stevie-Jade Hardy, *LGBT Hate Crime Reporting: identifying barriers and solutions* (Equality and Human Rights Commission, 2015) 12.

criminal complaint process.<sup>124</sup> While similar to the legal and social work support noted above, this Navigator role is most suited to support a person who has decided to report and should not be seen as a complete replacement of legal and social work support in the earlier stages of decision-making.

## RECOMMENDATIONS

We recommend that the government:

- funds specialist support to victims through a legal/social work model.
- in consultation with affected communities, develops a model for Justice System Navigators to provide one-on-one support for victims of hate crimes.

## Improve access and take heed of recommendations to improve police culture

We welcome work already being done by New South Wales Police in the GLLO/LGBTIQ+ liaison program and the work of their Hate Crimes Unit, and support increased access to those specialist services. We encourage these services to be made available to victims on an appointment basis to improve accessibility. Unfortunately, we hear from community members that there aren't liaison officers available at all stations, and even where they are, they may have a limited role in supporting victims. For instance, we have heard of situations where a liaison officer greets the victim but then simply hands over the case to another officer, who doesn't have the cultural competence required.

We note the cultural issues that are being addressed in the recently commenced Independent Cultural Review into New South Wales Police Force.<sup>125</sup> While the review is not specific to LGBTIQ+ communities, the complaints that led to this review taking place indicate a lack of sensitivity within the organisation that affects its ability to properly work with marginalised communities. Other similar reviews of police services around the country have indicated that fundamental cultural change is needed for police to be able to do their increasingly complex job, which includes policing hate crimes.<sup>126</sup>

We note the funding given to New South Wales Police for 'boosted engagement and communication with the community' outlined in the Issues paper<sup>127</sup>. While increased engagement by those specialist units may be of benefit, and we have recommended elsewhere in this submission that the New South Wales government take responsibility for broader community education on these topics, there is also a need for trusted community organisations to be funded to deliver messaging to the LGBTIQ+ community specifically.

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<sup>124</sup> Australian Law Reform Commission, *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (Report No 143, 11 February 2025) 132, [3.91] - [3.98].

<sup>125</sup> See 'Independent Cultural Review into New South Wales Police Force', *NSW Police Review* (Web page) <https://www.nswpolice.com.au/review/>.

<sup>126</sup> See the outcomes of 2024 Queensland review set out in Queensland Human Rights Commission, *Strengthening the Service: Independent review of workplace equality in the Queensland Police Service* (Report, 2024) <https://www.ghrc.qld.gov.au/about-us/reviews/qps> and the outcomes of the 2014-19 Victorian review in the reports found at 'Independent review of Victoria Police', *Victorian Equal Opportunity & Human Rights Commission* (Web page) <https://www.humanrights.vic.gov.au/legal-and-policy/research-reviews-and-investigations/police-review/>.

<sup>127</sup> Department of Communities and Justice (NSW), *Review of criminal law protections against the incitement of hatred: Issues Paper* (June 2025) 9.

## RECOMMENDATIONS

We recommend that:

- New South Wales police address cultural issues that may hinder access to justice for LGBTIQ+ people and take meaningful steps to improve the liaison program through improving availability of the service, allowing for appointments to be made.
- LGBTIQ+ community organisations are funded for community engagement to provide community education and to communicate the options available to victims.

## Ensure victims of crime financial assistance schemes are accessible

The Australian Law Reform Commission's report also commented extensively on the value of victims of crime financial assistance schemes in responding to sexual violence. It discussed the benefits over other justice system remedies as being, broadly:

- These schemes meeting the victims' needs more than other parts of the justice system
- The schemes avoiding interaction between the perpetrator and victim
- Lower standard of proof than criminal justice
- Relatively quick outcomes.

These benefits can also be seen to be relevant to victims of hate crimes.

We support the report's recommendation that the Schemes review their processes and requirements to:

- make processes more trauma-informed and safe
- provide for more suitable awards
- enhance mechanisms that help recognise and acknowledge the offending experienced and its impact; and
- remove requirements that are not justified and that cause disadvantage.<sup>128</sup>

## RECOMMENDATION

We recommend that:

- the government implements ALRC recommendations to review the *Victims Rights and Support Act 2013* to make processes more trauma-informed and safe; provide for more suitable awards; enhance mechanisms that help recognise and acknowledge the offending experienced and its impact; and remove requirements that are not justified and that cause disadvantage.

## Enact a positive duty to prevent or eliminate vilification

The civil protections, including vilification, under the *Anti-Discrimination Act 1977 (AD Act)* are the subject of a current NSWLRC review. The Consultation Paper published in May 2025 outlines several options for a positive duty. A positive duty is generally understood to require duty holders

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<sup>128</sup> Australian Law Reform Commission, *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (Report No 143, 11 February 2025) 502, [16.22].

to take reasonable and proportionate steps to prevent or eliminate discrimination and other forms of unlawful behaviour under the AD Act including vilification.

We support the introduction of a positive duty in the AD Act, and agree with the four key reasons outlined in the Consultation Paper:

- reduce the burden that currently falls on victims having to make a complaint to address, or stop, a specific incident of discrimination or ongoing discrimination
- more effectively address the causes of discrimination than the current model of individual remedies, for example by requiring duty holders to change discriminatory policies
- improve understanding of the impact of discrimination and help to change prejudiced views, and
- help duty holders avoid the costs arising from unlawful conduct, including complaints, reduced productivity, and reputational damage.<sup>129</sup>

While we understand this issue is outside the scope of the current Review, enacting a positive duty would promote social cohesion and so should be supported in principle as part of these reforms.

## Hate incident register

Without a clear understanding of the prevalence and nature of hate incidents in New South Wales, it is very difficult to create relevant policy solutions, so more effort needs to be directed to collecting data about those incidents. While we appreciate that data is maintained by police, the dataset is currently limited to matters where hate speech or conduct is reported, which is the vast minority of cases.

For a variety of reasons, victims may be reluctant to individually report their experiences in-person to police or even through a third-party alternative.<sup>130</sup>

A federal hate incident register is being contemplated, and the New South Wales government should be involved in this federal initiative if it commences. A federal response is particularly important because hate incidents often occur online and are not limited to one state or territory jurisdiction. However, even if a federal register does not eventuate, a state-based option would still be valuable.

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<sup>129</sup> New South Wales Law Reform Commission, *Review of the Anti-Discrimination Act 1977 (NSW): Unlawful conduct* (Consultation Paper No 24, May 2025) 236.

<sup>130</sup> Neil Chakraborti and Stevie-Jade Hardy, *LGBT Hate Crime Reporting: identifying barriers and solutions* (Equality and Human Rights Commission, 2015) 31.

## APPENDIX A: EXAMPLES OF HATE FROM MEDIA REPORTING

### CASE STUDY 1: Vandalism of the ‘Saint George Michael’ mural

**January 2017** After the death of the musician and gay icon George Michael on 25 December 2016, a Sydney man – who was friends with the late musician – commissioned Scott Marsh, a well-known street artist, to paint a mural celebrating George Michael on the wall of his terrace in Erskineville, New South Wales. The mural, which was painted in January 2017 and entitled ‘Saint George’, was valued at \$22,000.<sup>131</sup> It depicted Michael as a Christian saint, with a rainbow stole, rainbow halo, a joint and a bottle of amyl nitrate:



**14 November 2017** Several months later, the results of the Australian Marriage Law Postal Survey were released, revealing that Australia had voted ‘yes’ in favour of marriage equality.

**17 November 2017** Christian Lives Matter founder Charlie Bakhos posted a photo of the mural to the public Facebook group ‘Christian Lives Matter.’<sup>132</sup> At 1:20pm on the same day, Jonathan Bechara left a comment on the post appearing to be creating a plan to paint over the mural. Numerous people replied.

According to *The Guardian*, later that day, a man wearing an ‘Azztek Stone’ shirt defaced the mural. Azztek Stone later released a statement that they had stood the man down and offered to pay for the artwork to be reinstated.<sup>133</sup>

The post, included below, was still publicly accessible on the Christian Lives Matter Facebook page on 17 April 2024 (when these screenshots were taken).

<sup>131</sup> *Gittany v R* [2019] NSWDC 800, [2].

<sup>132</sup> Christian Lives Matter (Public Group, Facebook) <https://www.facebook.com/groups/1852494475018627>.

<sup>133</sup> Naaman Zhou, ‘Love won: vandalised George Michael mural in Sydney gets a makeover’, *The Guardian* (online, 19 November 2017) <https://www.theguardian.com/australia-news/2017/nov/19/vandalised-george-michael-mural-sydney-makeover>.



Charlie Bakhos

17 November 2017 · 🌐

WE CALL UPON all the people of Australia from ALL RACES, RELIGIONS, SEXUALITY and GENDER to ACT URGENTLY & CALL Sydney City Council ON 0292659333 REQUEST FOR THE IMMEDIATE REMOVAL of the OFFENSIVE, DISCRIMINATORY, and PORNOGRAPHIC murals which are being painted on the Walls of Newtown, Erskineville and Sydney.

DEMAND REMOVAL AND PROTECT THE EYES OF INNOCENT CHILDREN!

DEMAND REMOVAL TO PREVENT A DIVIDE BETWEEN PEOPLE OF ALL RACES, SEXUALITY AND RELIGION!

The addresses of these paintings are:

Cnr of Concord and Devine st Erskineville

597 King st Newtown

HATE SPEECH AND OFFENSIVE ILLUSTRATIONS ARE A RECIPE FOR DISASTER!

WE CALL FOR YOU TO ACT ON THIS URGENTLY!

THE MORE COMPLAINTS, THE MORE VOICES WILL BE HEARD!

THERE IS NO DA APPROVAL FOR THESE PAINTINGS THEREFORE WHY IS IT BEING ALLOWED TO OCCUR WITHOUT COUNCIL CONSENT?

IF WE HAVE TO PLAY BY THE RULES, EVERYONE ELSE SHOULD!

pic: Cnr Devine and Concord st Erskineville

please share



👍👎👤 677

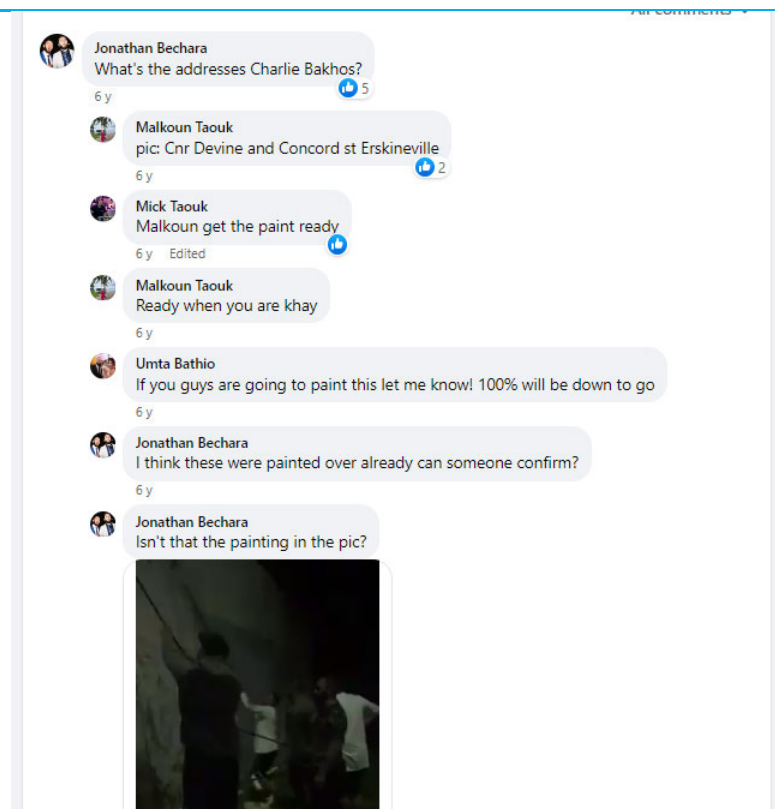
612 comments 285 shares

👍 Like

💬 Comment

➦ Share





**18 November  
2017**

The next day, a different man, Mr Ben Gittany, purchased black block-out paint and painting apparatus from Bunnings with cash and painted over the mural.<sup>134</sup>

*The Guardian* reported that when police were called, he threw the black can of paint at the mural before being arrested on the scene, claiming, 'I'm defending my religion, that's exactly what I'm doing'.<sup>135</sup>

<sup>134</sup> *Gittany v R* [2019] NSWDC 800, [2]-[4].

<sup>135</sup> Naaman Zhou, 'Love won: vandalised George Michael mural in Sydney gets a makeover', *The Guardian* (online, 19 November 2017) <https://www.theguardian.com/australia-news/2017/nov/19/vandalised-george-michael-mural-sydney-makeover>.



A video of Mr Gittany defacing the mural, was posted to the public Christian Lives Matter Facebook page on 18 November 2017. As at 19 April 2024, this post had 966 comments and was publicly accessible [here](#).<sup>136</sup> Here is a screenshot from that post:



Shane Michael  
November 18, 2017 · 🌐

What a legend. This man has covered most of the painting which is clearly offending our religion. We need more people like this. Our religion comes first. Everything else is number 2! God bless!



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<sup>136</sup> Shane Michael, Unnamed Video, *Christian Lives Matter* (Public Group, Facebook, 18 November 2018) <https://www.facebook.com/shane.michael.5832/videos/717724828424273?idorvanity=1852494475018627>.

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19 November  
2017

According to The Guardian, by Sunday 19 November, residents had written pro-marriage equality messages on the defaced mural. Messages included 'Too late, love won' and 'No to hatred and intolerance'.<sup>137</sup>



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September  
2018

Mr Gittany was charged with intentionally or recklessly damaging property. In September 2018, he was sentenced to 300 hours of community service and handed a \$14,000 fine in an ex tempore judgment.

The *Star Observer* reported that in handing down the sentence, Local Court Magistrate Carolyn Huntsman told Gittany 'What was left [on the wall] was a large area of black paint which arguably was a disturbing message of rejection to the community and arguably a contempt for other people'.<sup>138</sup>

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2 May 2019

In May 2019, Gittany appealed the order for 300 hours of community service before Judge Neilson in the District Court of New South Wales. The appeal was dismissed.<sup>139</sup>

In his Honour's judgement, Neilson DCJ commented that the offending 'appears to be a form of religious vigilantism',<sup>140</sup> and cited the significant value of the mural and the fact that it was a privately commissioned piece as reasons for upholding Magistrate Huntsman's original sentence.

No reference was made to hate or any harm caused to the public/LGBTIQ+ community in the appeal judgment.

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<sup>137</sup> Naaman Zhou, 'Love won: vandalised George Michael mural in Sydney gets a makeover', *The Guardian* (online, 19 November 2017) <https://www.theguardian.com/australia-news/2017/nov/19/vandalised-george-michael-mural-sydney-makeover>.

<sup>138</sup> Laurence Barber, 'George Michael mural vandal cops \$14,000 fine and community service', *Star Observer* (online), 4 September 2018 <https://www.starobserver.com.au/news/national-news/new-south-wales-news/george-michael-mural-vandal-cops-community-service-14000-fine/171537>.

<sup>139</sup> *Gittany v R* [2019] NSWDC 800.

<sup>140</sup> *Gittany v R* [2019] NSWDC 800, [10].

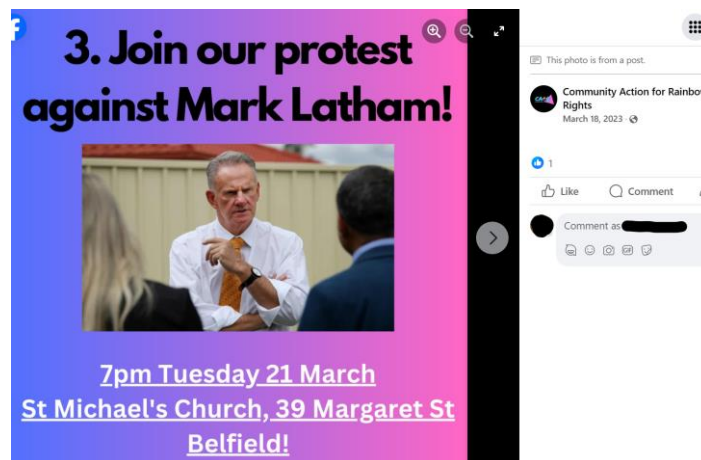
## CASE STUDY 2: Christian Lives Matter protest at St Michael's Belfield Church

Early March  
2023

### Trans rights activists arrange a peaceful protest

Community Action for Rainbow Rights (CARR), a grassroots campaign group for LGBTIQ+ rights, organised a protest for 21 March 2023 outside St Michael's Belfield church on the grounds of St Michael's primary school, where well known politician One Nation MP Mark Latham was scheduled to speak about religious freedoms and parental rights. According to police reports, the protest was registered with the police.<sup>141</sup>

The following Facebook post advertising the protest was made by Community Action for Rainbow Rights on 18 March 2023:<sup>142</sup>



20 March 2023

### Video posted to Facebook encourages violence

Christian Lives Matter protestor Christian Sukkar shared a video on social media in relation to the protest saying: 'There is only one way and that way is to grab them and you drag them by their f\*cking hair and you f\*cking get them out of there'. He also says: 'To the real boys, to the real motherf\*cking G's, you go there tomorrow and you fucking shake them up and you drag them by the fucking head... time to rise, time to let them know where we stand.'

At the time of writing, the video is still available online [here](#).<sup>143</sup>

21 March 2023

### Christian Lives Matter protesters attend the protest, which becomes violent

According to reports on ABC News and 7 News, around 10-15 protestors from the group Community Action for Rainbow Rights gathered in protest outside St Michael's Belfield church. There was a small police presence at the event. Following the event, Superintendent Waldau from the New South Wales Police reported that:

<sup>141</sup> 7NEWS Australia, 'Violent protests outside church in Belfield, One Nation's Mark Latham invited to church' (YouTube, 22 March 2023) .

<sup>142</sup> Community Action for Rainbow Rights (Facebook, 18 March 2023) <https://www.facebook.com/photo/?fbid=586529780190741&set=pcb.586530663523986>.

<sup>143</sup> Community Action for Rainbow Rights (Facebook, 22 March 2023) <https://www.facebook.com/watch/?v=3098251083810158>.

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- during the protest, a mob of about 250 people from the church event rushed down the street to the group of around 10 protestors;
  - it was understood that the mob were mostly made up of members of the group Christian Lives Matter;
  - there was a 'violent confrontation';
  - several projectiles were thrown at the police and members of the public, all of which appeared to have come from the crowd;
  - the group of 10 protestors appeared to be peaceful and they were standing and being shielded by the police;
  - it took around 30 minutes to get the incident under control;
  - following the incident, Mr Latham was asked by police whether he wanted to proceed with his speech 'and he decided that he still wished to do that'.<sup>144</sup>

Speaking to *The Guardian*, one of the organisers of the protest reported that the mob 'grabbed one of the protestors by the hair and threw them to the ground, they punched people in the face, they threw bottles, handfuls of gravel'.<sup>145</sup>

Footage of the event was broadcast across most mainstream media platforms and on social media. Examples of coverage still available online as at 6 November 2024 include:

- A Facebook video shared by Community Action for Rainbow Rights [here](#).<sup>146</sup>
- Video taken by a cameraman named Chris Coveries, showing him being knocked to the ground by the mob during the protest, was posted to Twitter [here](#).<sup>147</sup>
- 9 News coverage [here](#).<sup>148</sup>

On or around the time of the protest, Mr Latham posted the following on his X account @RealMarkLatham, which had a large following:

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<sup>144</sup> 7NEWS Australia, 'Violent protests outside church in Belfield, One Nation's Mark Latham invited to church' (YouTube, 22 March 2023); Kathleen Calderwood and others, 'Man charged over encouraging Sydney 'mob' church brawl says he's 'sorry'', *ABC News* (online, 23 March 2023) <<https://www.abc.net.au/news/2023-03-23/nsw-christian-sukkar-charged-over-protest/102130742>>.

<sup>145</sup> Martin Farrer and Christopher Knaus, 'Two arrested as mob sets upon protesters outside Mark Latham event in Sydney', *The Guardian* (online, 22 March 2022) <https://www.theguardian.com/australia-news/2023/mar/21/two-arrested-after-mob-charges-rights-activists-outside-mark-latham-event-in-sydney>.

<sup>146</sup> Community Action for Rainbow Rights, 'More frightening footage from the violence attack on LGBTI+ activists by the far right tonight showing when they started punching and assaulting...', *Facebook* (online, 22 March 2023) <https://www.facebook.com/watch/?v=534348962149446>.

<sup>147</sup> Chris Coveries, 'Live Christian Lives Matter Mark Latham Counter Protest', *Twitter* (online, date unknown) <https://x.com/i/broadcasts/1DXxyvOjOrbKM>.

<sup>148</sup> Adam Vidler, 'Third man charged after violence outside One Nation speaking event in Sydney', *9 News* (Embedded, 23 March 2023) <https://www.9news.com.au/national/mark-latham-protest-south-west-sydney-protesters-police-allegedly-attacked/b8798e2e-143c-4baa-abe2-de9508b2544a>.



Later that evening, following the protests, he posted the following:



**22 March 2023** Mr Latham posted the following on his X account @RealMarkLatham:



**23 March 2023** Speaking to the ABC, Mr Sukkar, who posted the video the night prior to the protest, apologised, saying: 'I was just singing the song, when you watch these rappers...they don't literally mean go shoot up, go knock people out, its just a song' and 'I'm very apologetic if my message turned very harmful... if they took my comments as an incitement of hate'.<sup>149</sup>

<sup>149</sup>Kathleen Calderwood and others, 'Man charged over encouraging Sydney 'mob' church brawl says he's 'sorry'', *ABC News* (online, 23 March 2023) <https://www.abc.net.au/news/2023-03-23/nsw-christian-sukkar-charged-over-protest/102130742>; Miriah Davis, 'Christian activist charged after violent attack on LGBTQ protesters outside St Michael's Church in Belfield', *Sky News Australia* (online, 23 March 2023) <https://www.skynews.com.au/australia-news/christian-activist-charged-after-violent-attack-on-lgbtq-protesters-outside-st-michaels-church-in-belfield/news-story/e1dbb7716d0e96563f18015b3b3458b6>.



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He was charged with encouraging the commission of crimes, granted conditional bail and set to appear before Bankstown Local Court on Tuesday, 11 April 2023.<sup>150</sup>

He does not appear to have been charged under section 93Z, despite his comments specifically calling on the 'real boys' to 'drag them by their f\*king hair and you f\*king get them out of there'. It does not appear that these gendered and incitement to violence references were enough to charge Mr Sukkar under section 93Z. It is not clear why not.

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**11 April 2023**

Mr Sukkar indicated that he would plead guilty to the charge of encouraging the commission of crimes.

Outside the Bankstown Court House it is reported that he double down on this conduct by stating:

'It sends the right message. I don't want to be fighting I want to go about my life but stay away from our church, stay away from our kids. Surely we can find a truce. (You) go your way, (we) go our way. Very simple.'<sup>151</sup>

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### CASE STUDY 3: Vandalism of rainbow steps outside Pitt St Uniting Church

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In February 2023, a video was published online documenting the vandalism of Pitt Street Uniting Church in Sydney. In the video, the man filming approaches an elderly pair, who are painting the steps of the church rainbow on the eve of Sydney WorldPride. He asks what they are doing, and whether it can be considered Christian. The lady in the video explains 'We're painting rainbow on the steps'. When asked 'Is God for this' she says 'Absolutely – God is for love, for welcome, hospitality. God is very positive towards this – we feel'. The man then continues to ask questions and makes statements including:

- 'This is an abomination to God.'
  - 'Do you read your bible?'
  - 'A Christian is a Christ Follower – you're not really following Christ.'
  - 'This is disgusting – you need to repent.'
  - 'Without Christ, you're going to a devil's hell, you know that? You need the Lord.'
  - 'This is crazy. This is not Christian. This is an abomination and God is going to judge those people. It's wrong.'
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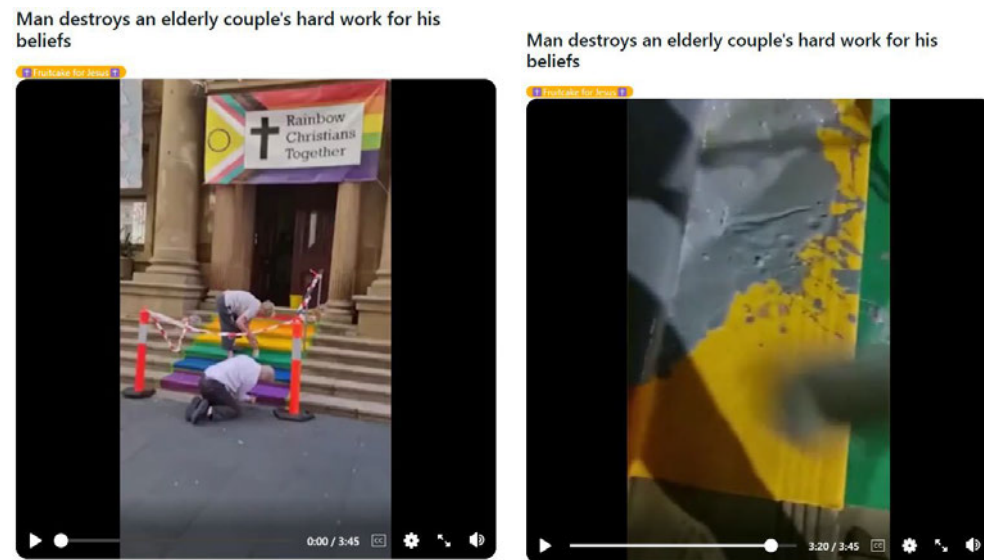
<sup>150</sup> Martin Farrer and Christopher Knaus, 'Two arrested as mob sets upon protesters outside Mark Latham event in Sydney', *The Guardian* (online, 22 March 2022) <https://www.theguardian.com/australia-news/2023/mar/21/two-arrested-after-mob-charges-rights-activists-outside-mark-latham-event-in-sydney>.

<sup>151</sup> Remy Varga, 'Hardline Christian activist unrepentant over violence church protest', *The Australian* (online, 11 April 2023) <https://www.theaustralian.com.au/nation/hardline-christian-activist-unrepentant-over-violent-church-protest/news-story/0544695f144a54974f89899fab502c39>.

The video then cuts and shows, at a different time at night, the sound of men and footage of the camera operator and potentially others throwing grey paint on the same steps, and spreading it with a paint roller. One man can be heard saying ‘Yeah boys... F\*ck LGB.’<sup>152</sup>

As at 5 November 2024, the video was still accessible online [here](#).

According to comments on the post, the video was originally posted to the Instagram of the leader of Christian Lives Matter. He has since deleted his account.



## CASE STUDY 4: Personal attacks on trans people on social media

### Campaign against Football Australia/Football NSW that resulted in anti-vilification proceedings

In November/ December 2022, Binary Australia posted a petition page entitled ‘Keep blokes out of women’s sport!’, which used an automated petition platform requesting national governing bodies to change their policies on the inclusion of transgender players. It has been reported that over 12,000 complaint emails were sent to Football NSW and around 2,700 emails were sent to Football Australia via this platform.<sup>153</sup>

Around the same time, the director of Binary Australia, Kirralie Smith, made social media posts in support of the campaign which publicised the names of several transgender football players in Australia.

Some of the defining features of these posts are that they:

- personally target specific trans and gender diverse people by publishing their name and/or image

<sup>152</sup> Religiousfruitcake, ‘Man destroys an elderly couple’s hard work for his beliefs’ (Reddit, 2023) [https://www.reddit.com/r/religiousfruitcake/comments/12ifcx8/man\\_destroys\\_an\\_elderly\\_couples\\_hard\\_work\\_for\\_his/?utm\\_source=share&utm\\_medium=android\\_app&utm\\_name=androidcss&utm\\_term=1&utm\\_content=share\\_button](https://www.reddit.com/r/religiousfruitcake/comments/12ifcx8/man_destroys_an_elderly_couples_hard_work_for_his/?utm_source=share&utm_medium=android_app&utm_name=androidcss&utm_term=1&utm_content=share_button).

<sup>153</sup> Cindy Lever, ‘Transwomen in female sport critic Kirralie Smith hit with AVO to ‘protect’ trans activist player’, *Daily Mail* (online, 4 May 2023) <https://www.dailymail.co.uk/news/article-12040505/Transwomen-female-sport-critic-Kirralie-Smith-hit-AVO-protect-trans-activist-player.html>.



- consistently misgender the subjects of the posts
- have reached thousands of people
- have been reposted or commented on by hundreds of X users, speaking about the subject of the post, or trans and gender diverse people in general, in derogatory terms.

In April 2023, *ABC Sport* reported that New South Wales Police confirmed an investigation into Ms Smith was underway amid allegations she had used multiple online platforms to ‘organise the harassment and abuse of women players and footballing organisations, including Football NSW and Football Australia’.<sup>154</sup>

In the same article, the eSafety Commissioner issued a statement stating:

*‘We’re acutely aware of the serious mental health impacts of online abuse, especially when part of a broader pattern of abuse and discrimination. As part of our compassionate, wrap-around support for targets of online abuse, our investigations team provides referrals to appropriate counselling services.’*

*‘In cases when the content doesn’t meet the legislated threshold for removal, we may approach online companies on an informal basis to have the harmful content removed when the content breaches a platform’s own terms of service.’*

*‘eSafety has civil powers, not criminal powers. If someone is the target of criminal abuse, such as threats of harm or violence, doxing or ongoing and sustained abuse, this can be reported to the police.’*

Smith’s posts from around this time are the subject of two separate anti-vilification complaints in New South Wales, which were referred to NCAT.<sup>155</sup> In both applications, it was determined that NCAT did not have the jurisdiction to determine the proceedings because Smith had raised questions as to whether section 38S of the *Anti-Discrimination Act 1977* (NSW) imposed an unjustified burden on the implied freedom of political communication, which is a constitutional matter of federal jurisdiction. Decisions in relation to these matters are yet to be handed down at the time of writing.

However, a separate proceeding under an APVO was successful in relation to one of the two footballers, after the court dismissed the application for an order at first instance.<sup>156</sup>

Even though Ms Smith is unable to directly harass the footballer protected under the APVO, supporters of hers who do not have the same legal restrictions have re-posted similar material in her place.

## CASE STUDY 5: DATING APP ATTACKS

Since 2022, New South Wales has seen an increase in attacks on gay and bisexual men using popular dating and hookup apps such as ‘Grindr’, ‘Scruff’, and ‘Snapchat’.<sup>157</sup>

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<sup>154</sup> Samantha Lewis, ‘Football Australia to accelerate trans-inclusive high performance policy following anti-trans harassment cases in NSW’, *ABC News* (online, 1 April 2023) <https://www.abc.net.au/news/2023-04-01/football-australia-trans-inclusive-high-performance-policy-anti-102167056>.

<sup>155</sup> *Blanch v Smith* [2024] NSWCATAC 20; *Dennis v Smith* [2024] NSWCATAD 91.

<sup>156</sup> *Blanch v Smith* [2024] NSWDC 631.

<sup>157</sup> Thorne Harbour, ‘Thorne Harbour Urges Communities to Exercise Caution on Gay Apps Following Attacks’ (Media release, 4 September 2024) <https://thorneharbour.org/news-events/media-releases/thorne-harbour-urges-communities-to-exercise-caution-on-gay-apps-following-attacks/>.

These attacks involve gay and bisexual men being lured or catfished to meet-ups through fake profiles, only to be violently bashed and robbed<sup>158</sup> by one person or a group of people<sup>159</sup>. Victims were sometimes stripped naked before intimate images were published online. In some cases, victims were filmed and videos of the attack posted on social media as a ‘shaming process’ with threats to out victims for their sexuality.<sup>160</sup>

Attacks have occurred across regional and metropolitan New South Wales, including Sydney’s Northern and Western Suburbs, the Central Coast and Northern New South Wales.<sup>161</sup>

Last year, suspected hate crime attacks by ‘pedo-hunting’ youth gangs occurred in Bradbury, Campbelltown, Auburn and Strathfield. Further attacks were also reported in October 2024 in Guilford and Seaford, with one attack foiled by police at Wollongong Train Station.<sup>162</sup>

In March and April this year, four teenagers allegedly carried out a series of attacks against three men in the New South Wales Central Coast. All of the victims thought they were meeting someone for a date organised through Grindr and found a group waiting to ambush them.<sup>163</sup>

## CASE STUDY 6: Targeting regional pride events

There has been a marked uptick in anti-LGBT hate in regional areas surrounding LGBTIQ+ events. Last year neo-Nazis demonstrated outside a queer film festival in Albury holding a ‘destroy paedo freaks’ banner.

In a separate incident, festival goers in northern New South Wales were attacked with fireworks and smoke flares by a group of young men who yelled homophobic slurs and urinated on some tents.<sup>164</sup>

## CASE STUDY 7: Mobilisation against drag storytime events

A volunteer at an organisation that hosts drag story time events was forced to relocate to a Sydney hotel for a week after receiving terrifying calls from a satellite phone. The caller – who

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<sup>158</sup> Josh Taylor, ‘Pair jailed for using dating app Grindr to launch spree of robberies of gay men in Sydney’, *The Guardian* (online, 21 May 2025) <https://www.theguardian.com/australia-news/2025/may/21/sydney-men-jailed-gay-dating-app-grindr-robberies-ntwnfb>.

<sup>159</sup> Josh Taylor, ‘A spate of attacks on gay men have been linked to dating apps. Are ‘influencers’ fostering hate in Australia?’, *The Guardian* (online, 19 October 2024) <https://www.theguardian.com/australia-news/2024/oct/19/australia-gay-men-hate-attacks-grindr-comment-ntwnfb>. Are ‘influencers’ fostering hate in Australia?’, *The Guardian* (online, 19 October 2024) <https://www.theguardian.com/australia-news/2024/oct/19/australia-gay-men-hate-attacks-grindr-comment-ntwnfb>.

<sup>160</sup> Jason Om, ‘New wave of homophobic attacks targets users of gay dating apps like Grindr’, *ABC News* (online, 6 July 2025) <https://www.abc.net.au/news/2025-07-06/gay-dating-app-users-lured-into-violent-homophobic-attacks/105464048>.

<sup>161</sup> Tileah Dobson, ‘NSW Police hate crime unit investigate assaults across northern beaches, western and southwestern Sydney’, *The Daily Telegraph* (online, 18 December 2024) <https://www.dailytelegraph.com.au/newslocal/north-shore/nsw-police-hate-crime-unit-investigate-assaults-across-northern-beaches-western-and-southwestern-sydney/news-story/516284408c00ff3f2b2551fa8601a5a0>.

<sup>162</sup> Perry Duffin, ‘Pedo hunts’: Gay-bashing teen gangs in wave of Sydney attacks’, *Sydney Morning Herald* (online, 11 December 2024) <https://www.smh.com.au/national/nsw/pedo-hunts-gay-bashing-teen-gangs-in-wave-of-sydney-attacks-20241129-p5kulk.html>.

<sup>163</sup> Satria Dyer-Darmawan and Hannah Farrow, ‘Central Coast teens arrested for allegedly robbing men from dating apps’, *The Daily Telegraph* (online, 24 April 2025) <https://www.dailytelegraph.com.au/newslocal/central-coast/central-coast-teens-arrested-for-allegedly-robbing-men-from-dating-apps/news-story/e48cc27d5c3fb6bbe6dca474c1d3f9ac>.

<sup>164</sup> Michael McGowan, ‘Very real risk of violence’: The growing fear within NSW’s LGBTQ community’, *Sydney Morning Herald* (online, 10 February 2025) <https://www.smh.com.au/politics/nsw/very-real-risk-of-violence-the-growing-fear-within-nsw-s-lgbtq-community-20250209-p5lanp.html>.

knew her home address and daughter's name – told the volunteer they were outside and wanted to 'save' her daughter.

The organisation also received dozens of online comments and private messages containing extreme homophobic and threatening language. Language directed at families planning to attend the event included words like 'predators', 'paedophiles', 'sickos', 'polluting the earth', 'sick people', 'homo' and 'fag'. A more direct threat was made from a person online who threatened to 'crash' the event to stop the 'paedophiles touching kids'. Another person said 'Stay away from our kids. You've been warned.'

While these instances were reported to police, no further action was taken, in part because of non-traceability of the satellite call.<sup>165</sup>

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<sup>165</sup> Michael McGowan, "Very real risk of violence": The growing fear within NSW's LGBTQ community', *Sydney Morning Herald* (online, 10 February 2025) <https://www.smh.com.au/politics/nsw/very-real-risk-of-violence-the-growing-fear-within-nsw-s-lgbtq-community-20250209-p5lanp.html>.

## APPENDIX B: EXAMPLES OF HATE PROVIDED BY OUR COMMUNITY MEMBERS

In this section we provide recent examples of hate speech and conduct reported to us by members of our community between the months of March and July 2025.

### CASE STUDY 8: Experiences of sexual orientation vilification in regional New South Wales

During the plebiscite, which was already a deeply traumatising time, I was walking down a main street in Newcastle holding hands with my girlfriend and a man spat on us, called us 'fat dykes' and said that he would have raped us to 'fix us' but he 'probably wouldn't be able to find the holes'.

This is only one of several instances where men in NSW (usually strangers) have threatened or attempted to sexually assault me as a result of my queerness.

On two occasions in NSW, I have had parents become confrontational about me holding hands with and resting my head on my girlfriend's shoulder in vague proximity to their child (once on public transport and once waiting for food at a casual dining establishment). It is unbelievable that in 2025 I am still having to be hypervigilant about how others perceive me simply existing around my partner in a queer relationship. To be honest, I'm more scared about this now than I have been in the past couple of years and these protections are more important than ever.

Lastly, I have attended several Pride events in Newcastle where 'Christian' protesters have been allowed to show up with incredibly derogatory signs about us being 'abominations' and 'bringing about the end of the world', making wildly defamatory claims equating being queer to paedophilia, apparently with the protection of 'freedom of religion' and being in a public place. These things are hate speech and should be treated as such. If we turned up to churches with equivalent behaviour, there would be outrage.

Our events are small and family focused so it's very distressing for everyone, but especially the kids who deserve a safe space to be themselves in our community. This particular group wears body cameras and film the interactions to post on YouTube to mock our community and promote hatred. It is disgusting and posting it online literally puts our lives at risk, especially in this increasingly hostile environment.

The world is very intense right now and these places allow us to look after each other. They're sacred to us. If they can't be safe, then none of us are.

### CASE STUDY 9: Hate-motivated assault in Wollongong

On the 23<sup>rd</sup> of February I was walking west along Crown St in Wollongong from the train station to attend a meeting. I was dressed casually in a skirt and pink T shirt with the words 'Protect Trans Kids' in black writing on the front of the shirt.

As I was walking along the road a woman approached me walking in the opposite direction and started shouting abusive phrases including 'What are you, you sick (expletive)' As she continued to shout at me she aggressively pushed and hit my chest approximately half a dozen times as well as raising her right hand in a fist and threatening to 'bash' me.

I asked the woman multiple times to please not touch me and tried to continue to walk past her however she stepped in front of me directly, continuing to push and hit me in the chest.

Eventually I was able to move past her and I continued walking, she did not attempt to follow me any further.

I did not know this woman. She did not seem to be intoxicated or under the influence of any kind of drug. This woman deliberately and consciously abused and assaulted me purely because I am trans and was wearing a T-shirt that had a statement she disagreed with.

I did not report the incident to the police immediately. Why not? I was on my own, I had no support people, I had commitments that I had to make and a part of me deep down in my psyche said 'you're trans, you were bound to get assaulted eventually'.

When I reported this to police the next day the police officer who took the report was professional and considerate, however the report merely goes down as a common assault, there is no note of the unprovoked hatred of the assault. At this point the attacker has not been able to be identified.

I am 52 years old, I have a stable job, a supportive family and in my day-to-day life I am as safe and secure as anyone can be in our society. Despite all of this, I was assaulted and though thankfully I did not get physically injured it is hard not to think 'what is going to happen next time someone decides they can assault me purely because I am trans? What if they are capable of actually injuring me?'. Nobody should have to live with that anxiety, that worry, that fear. Our society should protect everyone, regardless of gender, sexuality, disability, race, culture or belief. I am speaking up about this not particularly because I want to, reliving trauma is not something I enjoy by any means, but because I can and if me speaking up protects someone else who isn't able to, then it is worth having to recount and relive that experience as difficult as that may be.

## **CASE STUDY 10: Street-based transphobic hate speech in central Sydney**

About 9 months ago, when I first started my transition, I had just come out at work.

I worked as a bank teller and my uniform was very formal. As I was walking to Newtown station to get to work, I passed a primary school at drop off time. I deliberately walked on the other side of the road from the school to avoid the crowds of families and was listening to music through my headphones.

Out of nowhere, one of the parents walked up to me and told me to not go past her daughter's school ever again. I froze a bit and was quite confused. I was then told 'I don't want your type around children, you tranny'.

I didn't talk back as I was embarrassed, afraid - I just kept walking to work. I was just shocked to have open hate directed at me unprompted while walking to work at one of the busiest times of day. I felt mortified, physically unsafe and fearful for who I am.

## **CASE STUDY 11: Hate-motivated graffiti in South West Sydney**

Over the last year, I have started seeing increasing amounts of graffiti in Cabramatta on signs and on the sides of apartment complexes saying 'PERVERTS HERE'.

I don't know what group this is targeting but I have some sensitivity to this because it's been used as a dog whistle to target LGBT people.

## **CASE STUDY 12: Abuse outside a place of worship**

I got called a 'shemale' when entering the synagogue which I attend (I'd prefer not to name which one). I was extremely taken aback and found it very difficult to process that such a thing could happen in such a place. It was very upsetting. The person who called me that was just someone leaving from synagogue who I had never met before.

## **CASE STUDY 13: Threats of violence against a young person on a train in inner city Sydney**

I was in a train headed to Town Hall for my first ever night out at the club, and as I entered the vestibule from the lower carriage as the train stopped at Redfern, a young man with a bicycle asked me 'Why are you wearing a dog collar?'

I was attending emo night so I was wearing a spiked emo collar, along with full getup, My Chemical Romance shirt, flannel pants, converse, a very obvious early 2000s emo fit.

He began recording me on his phone, I said 'I think it looks cool'.

He, sitting down behind me said 'It's not cool, it looks gay'. Taken aback, as I don't usually experience direct homophobic treatment I responded very nonchalantly 'I am gay'.

Cutting straight to the point he replied 'I hate gay people'. 'Why?' A surprising moment of honesty from someone very hostile: 'I'm scared of gay people', I was very surprised by this and said 'Fair enough, gay people can be scary sometimes'. He then said 'You're not scary, I could bash you right now cunt'.

I got off the train at Town Hall after ignoring him recording and mocking me, and proceeded to have a panic attack waiting for my friends at the Burdekin Hotel after the police on foot brushed me off.

## **CASE STUDY 14: Abusive language against a trans teacher**

Repeatedly assaulted by students at the school I taught at. Including: misgendering, direct insults like 'faggot', being told to fuck off, had items thrown at me, doors slammed in my face, lessons interrupted by students shouting insults through the window or open door, boys banging on the door and windows to my classroom or just staring at me through the window as I taught, asked personal questions like 'are you wearing a g-string?' or 'Are you a prostitute?', assaulted in public while leaving the school, assaulted in local shopping centre, stopped by large group of teenage boys as I cycled home and abused, videoed while being abused by a group of students, had pictures of me posted to social media identifying me as transgender, my name and the school I worked at by PARENT of a student in my class, had many many complaints made to employer by people I work with for being transgender and teaching children, had people I work with complaining because they had to share a bathroom with me. And ... so so so much more.

I am no longer a teacher after 36 years in public high schools.

## CASE STUDY 15: Assault on men holding hands in Sydney central

I've had quite a few things happen to me over the years. One of the most serious things that has happened to me occurred in February 2021, where I was walking up George Street in Sydney and holding my partner's hand whereby I had a group of men who were walking on the same footpath as me walking towards me. One of them had pointed at us saying 'oh boys social distancing please!' (This was still around covid times hence the remark).

The next thing I knew he had slapped my hand off my partner's hand and I stopped and immediately turned around and I gave him like a 'Did you actually just do that?' look???

I was absolutely frozen and I couldn't even comprehend that such a thing just happened and then immediately when I turned to look at him, he lashed out at me. He cited 'oh yeah what cunt? You wanna go? You little faggot! I'll f\*\*\*\*\* kill you!!!'

And he lashed out trying to kick me and thankfully, at the same time the other group of friends that he had stopped him and had to pull him away. I was absolutely frozen in fear.

My whole day was ruined and I felt so violated. What was really disgusting was that this was in the middle of George Street with hundreds of people walking by and nobody even stopped. I've had a few other things happen to me as well over the years. Not as serious as that... Usually, it's happened when I've been holding my partner's hand. I've been called a 'faggot' Multiple times by passing vehicles... I was assaulted as well in 2019 walking up Oxford street... Somebody had elbowed me and said 'fucking faggot'. I was just walking normally up the street by myself.

## CASE STUDY 16: Anti-trans online and offline stalking and intimidation by Neo-Nazi

(This example has been adapted to remove personal, identifying details, and uses a pseudonym).

Susie experienced stalking and intimidation because of her gender identity. It started after she posted an advertisement for her business in a regional newsletter, and then soon after received an email saying 'Fuck off ya degenerate pig!' with a meme featuring trans women saying 'Femininity is not a costume'.

The next day, Susie received a more threatening image of a person with trans flag socks hanging above a chair with the words 'was/were' and the subject matter 'A day of the rope is coming for you.'

A further email was received including a further meme comparing being trans to blackface, using the term 'womanface'.

Three months later, seemingly in response to her advertisement on a community Facebook page, she received a private Facebook message saying 'Fuck off ya degenerate scum! Go back to Lismore or Newtown or from whatever rock you crawled out from. You're not a woman just a disgusting fat man in women's clothing'. That same month, she attended a community event. Outside the venue, a man she didn't recognise said 'Hello Susie'. The man was standing in the dark. Through Facebook she was able to identify this as the same person who had been harassing her – we will call him Tom.

The following month, Susie's partner was confronted by Tom at a petrol station, where he used the term 'degenerate' to describe her. A couple of days later, Tom drove up and down past their home at least twice.

Susie attended the local police station and reported that Tom had been doing 'drive-bys'. She also applied for an Apprehended Personal Violence Order.

A week later, Tom drove did 'drive-bys' 8 times in three days, including late at night. Tom also left 'laughing' emojis on her Facebook posts in several groups she was a member of.

She then reported to the local police station again that the drive-bys were continuing.

As the police had not served Tom properly, the AVPO matter was adjourned for another month.

Drive-bys continued to occur, on one night around 9 times, and this was captured on video. These videos also show Tom slashing their car tyres. This was again reported to police.

The day after, confirmation was provided by police that the police AVPO had been served, which would be enforceable from around 1 month later.

Nonetheless, Tom drove past her home again, which Susie then reported to police. However, for the next week, Tom drove past her house once or twice every day.

On the date of the hearing, Tom stood outside the court and took photos of Susie and her support team, despite the interim order requiring that no electronic devices could be used to stalk or intimidate her.

Around this time, Susie's matter was reallocated to another officer. She made several attempts to report the Facebook incidents and the photo incident outside court.

In the following days, Susie's partner saw Tom driving past their home and locking eyes with her partner.

The same month, Susie read an article about members of a neo-Nazi group facing court, which included Tom.