



Queensland  
**Human Rights  
Commission**

# Review of the *Online Safety Act* 2021 (Cth)

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Submission to the Australian Government  
Department of Infrastructure, Transport, Regional  
Development, Communication and the Arts

## Table of Contents

About this submission.....	2
About the Queensland Human Rights Commission .....	3
Vilification and hate speech .....	4
Queensland protections for online hate and vilification .....	5
Criminal offences .....	5
General prohibition .....	5
Civil remedy.....	6
Conclusion .....	7
Appendix 1 – Serious vilification (offence) .....	9
Appendix 2 – Vilification (civil remedy).....	10

## About this submission

1. This submission by the Queensland Human Rights Commission (the **Commission**) focuses on achieving better protection for people who are the subjects of online hate and online vilification.
2. The Commission notes:
  - The objects of the *Online Safety Act 2021* (Cth) are to improve and promote online safety for Australians.
  - The Office of the eSafety Commissioner administers four complaint and content-based removal schemes for specific types of harmful online material: the child cyberbullying scheme; the adult cyber-abuse scheme; the non-consensual sharing of intimate images scheme; and the online content scheme.
  - For each scheme, the eSafety Commissioner can issue a removal notice requiring harmful content to be removed.
  - The eSafety Commissioner also has power to require a website or hosting service to block material depicting abhorrent violent conduct.<sup>1</sup>
  - Complaints under the schemes may be made by the targeted individual or a person authorised by the targeted individual (or responsible person for a child).
  - The schemes may not cover a person affected by an abusive post targeted at a group of people (such as a race or people with a religious belief), or complaints by someone other than the targeted individual.
3. The Commission recommends that:
  - A. A new scheme is created for reporting online hate and online vilification.
  - B. The scheme and powers of the eSafety Commissioner include dealing with hate and vilification about a group of people as well as individuals.
  - C. Any person, including entities and bystanders, can report offending material to the eSafety Commissioner.

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<sup>1</sup> Abhorrent violent material is defined in the *Criminal Code Act 1995* (Cth) to include certain terrorist acts. Failure to comply with a notice may constitute a criminal offence.

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## About the Queensland Human Rights Commission

4. The Commission deals with complaints of alleged contraventions of the *Anti-Discrimination Act 1991* (the **AD Act**). These include complaints of discrimination and vilification. The Commission's role is to assist the parties to resolve the complaint through conciliation. If a complaint is not resolved, it may be referred to a tribunal where it can be heard and determined.<sup>2</sup>
5. It is also a function of the Commission to consult with organisations to ascertain means of improving services and conditions affecting groups that are subjected to contraventions of the AD Act.
6. The Commission has consulted with community representatives and other stakeholders about the effectiveness of current laws in addressing vilification and hate crimes. This has included:
  - In 2015, holding a seminar of academics, police, and Commission officers about the effectiveness of vilification laws;
  - In 2016, consulting with Translink<sup>3</sup> and the Queensland Police Service to improve the transport service experiences of groups subjected to vilification. Outcomes included the Commission developing and delivering tailored training for bus operators; and
  - In 2020, facilitating the development and advocacy of a group, the Cohesive Communities Coalition (the **Coalition**). The Coalition is a group of representatives of Queensland diverse ethnic and religious communities. The Coalition has advocated for strengthening laws to better protect people who experience hate crimes and serious vilification.
7. With the Commission's assistance, the Coalition developed an Options Paper, *Serious vilification and hate crime: The need for legislative law reform* that was presented to the Queensland Government. Consequently, an Inquiry into serious vilification and hate crimes was conducted by the former Queensland Parliamentary Legal Affairs and Safety Committee.
8. The Commission participated in the Parliamentary Inquiry by briefing the Committee and appearing at a public briefing. The Commission also provided a submission, a supplementary submission, and gave evidence at a public hearing before the Committee.
9. The Committee's report to Parliament on the Inquiry included 17 recommendations,<sup>4</sup> some of which were implemented in the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Bill 2023. The Commission provided submissions to the Committee on the Bill and gave evidence to the Committee at a public hearing. The Bill

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<sup>2</sup> For work-related complaints the tribunal is the Queensland Industrial Relations Commission. For all other complaints the tribunal is the Queensland Civil and Administrative Tribunal.

<sup>3</sup> Translink is the public transit agency for Queensland that is responsible for providing an integrated transport network.

<sup>4</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Serious Vilification and Hate Crimes* (Report No. 22, 2022).

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was passed on 12 October 2023 and the relevant provisions came into effect on 29 April 2024.

## Vilification and hate speech

10. There is no universally accepted meaning of the term ‘hate speech’, however it is generally understood as any means of communication that expresses hostility towards, or contempt for, a person or group because of common characteristics, such as race or religion.
11. Vilification and hate speech attack the human dignity of the targeted person or group. Targets are attacked for being who they are, impacting their sense of self and often resulting in fear and withdrawal from society. While the effect on individuals who are targeted is devastating, it also adversely affects the community as a whole.
12. Social media is a powerful communication tool which has unfortunately provided a platform for some people to do harm to others. In its report on the Inquiry into serious vilification and hate crimes, the Queensland Parliamentary Committee noted there is a proliferation of online hate speech, and that regulating social media and other platforms that enable online vilification must be addressed by the governments of Australia working together.<sup>5</sup>
13. The report of the Royal Commission of Inquiry into the terrorist attack on Christchurch mosques in March 2019 noted that research shows there is a link between hate speech and hate crimes. A study in London indicated ‘a consistent positive association between Twitter hate speech targeting race and religion and offline racially and religiously aggravated offences’, demonstrating that ‘online hate victimisation is part of a wider process of harm that can begin on social media and then migrate to the physical world’.<sup>6</sup>
14. The United Nations warns that globally there is a ‘disturbing groundswell of xenophobia, racism and intolerance’ with ‘public discourse being weaponised for political gain with incendiary rhetoric that stigmatizes and dehumanises’ many vulnerable groups, and the result that ‘Hate is moving into the mainstream – in liberal democracies and authoritarian systems alike.’<sup>7</sup> In July 2020, the UN Security Council Counter-Terrorism Committee Executive Directorate (CTED) published a ‘Trends Alert’ that noted that ‘extreme right-wing terrorists are using COVID-19-related conspiracy theories and disinformation to radicalize, recruit and fundraise, as well as seeking to inspire plots and attacks.’<sup>8</sup>
15. Research shows that anti-crime Facebook groups in Australia ‘have the effect of legitimating racial vilification, vigilantism and violence against racialized “others” and that the current regulation of online racism and racial vilification appears to be profoundly

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<sup>5</sup> Ibid vii.

<sup>6</sup> Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019, *Ko tō tātou kāinga tēnei* (Report, 26 November 2020) Part 9, 4.1 [13]–[14].

<sup>7</sup> United Nations, *Strategy and Plan of Action on Hate Speech* (May 2019) 1.

<sup>8</sup> United Nations Security Council. Counter-Terrorism Committee, ‘Member States concerned by the growing and increasingly transnational threat of extreme right-wing terrorism’ *CTED Trends Alert*, July 2020.

inadequate for addressing these concerns'. It includes examples of direct links between Facebook groups and incidence of violence, and states that the constant reinforcement of racist violence is most troubling.<sup>9</sup>

16. Anti-discrimination legislation has an important role in setting standards of behaviour that are expected in a free and democratic society, and in providing avenues for redress for unacceptable conduct. Criminal sanctions contribute to the regulation of behaviour. However, more can be done to regulate online behaviour and protect those who are subjected to hate speech and vilification.

## Queensland protections for online hate and vilification

17. Protections in Queensland include a prohibition of vilification in the AD Act, a criminal offence of serious vilification, and circumstances of aggravation attaching to several other offences.
18. Queensland's prohibitions on racial and religious vilification commenced on 7 June 2001,<sup>10</sup> long before the rise of online hate speech.

### Criminal offences

19. The criminal offence of serious vilification is where a person knowingly or recklessly vilifies a person or group in a way that includes threatening physical harm to person or property, or inciting others to threaten physical harm to person or property. The offence of serious vilification is now contained in the *Criminal Code Act 1899* (Qld) ('*Criminal Code*') and is set out in **Appendix 1**.
20. Certain offences under the *Summary Offences Act 2005* (Qld) and the *Criminal Code* now carry greater penalties where there are circumstances of aggravation of race, religion, sexuality, sex characteristics or gender identity.<sup>11</sup>

### General prohibition

21. In Queensland it is unlawful to incite, by a public act, hatred for, serious contempt or severe ridicule of, a person or group on the ground of certain attributes.<sup>12</sup> Incite has

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<sup>9</sup> Chris Cunneen and Sophie Russell, 'Vilification, vigilantism and violence: Troubling social media in Australia' in Kim D Weinert, Karen Crawley and Kieran Tranter (eds), *Law, Lawyers and Justice* (Routledge, 2020) ch 5. See also media report of vigilantism in Townsville: Sofie Wainwright, 'Vigilantes chasing stolen cars, patrolling streets, as youth crime rises in Townsville' *ABC News* (online), 29 September 2020, <<https://www.abc.net.au/news/2020-09-29/townsville-vigilantes-hit-the-streets-amid-spike-in-crime/12696864>>.

<sup>10</sup> When the Act commenced in June 1992, it included a provision making it an offence to incite unlawful discrimination or another contravention of the Act by advocating racial or religious hatred or hostility. That provision was repealed when the prohibitions of vilification on the grounds of race and religion were inserted and took effect from 7 June 2001. The inclusion of the grounds of sexuality and gender identity commenced 31 March 2002.

<sup>11</sup> The relevant offences in the *Criminal Code* are: Going armed so as to cause fear (s 69); Threatening violence (s 75); Disturbing religious worship (s 207); Common assault (s 335); Assaults occasioning bodily harm (s 339); Threats (s 359); Punishment of unlawful stalking, intimidation, harassment or abuse (s 359E); and Wilful damage (s 469). The relevant offences in the *Summary Offences Act 2005* are: Public nuisance (s 6); and Trespass (s 11).

<sup>12</sup> *Anti-Discrimination Act 1991* s 124A.

been interpreted by courts and tribunals as meaning to urge on or encourage. It is not necessary that any one was actually incited. There are exceptions that balance the protections against the right to freedom of speech, including the implied right to freedom of political communication.<sup>13</sup> The current provision is set out in **Appendix 2**.

22. The attributes that are currently protected from vilification are: race, religion, sexuality, gender identity, and sex characteristics.<sup>14</sup>
23. Hate speech has been the vehicle for incitement in most cases of vilification proved at tribunal hearing in Queensland.

## Civil remedy

24. Proceedings for the civil remedy for online vilification start with a written complaint to the Commission. The Commission's primary function in relation to a complaint is to try to resolve the complaint through conciliation with the parties. Complaints of vilification can be challenging to conciliate particularly where there is ongoing animosity and where the complaint is about online conduct.
25. In Queensland, a complaint of vilification may be made by an entity that has the primary purpose of promoting the interests or welfare of persons of a particular race, religion, sexuality, gender identity or having particular sex characteristics. The entity has the burden of pursuing the complaint through the tribunal in the hope of obtaining appropriate orders.
26. Pursuing a complaint through the tribunal hearing process requires commitment and can be taxing on the individual, and the outcome might be unrewarding.<sup>15</sup>
27. Community representatives have informed the Commission that people subjected to vilification are often reluctant to make a complaint because the process involves engaging with the person who has vilified them, or the person doesn't participate in the conciliation and the complainant is left to refer the complaint to the tribunal and proceed to a hearing. This places the onus and burden on the person subjected to the vilification to take action.
28. Evidence before the United Nations Special Rapporteur on minority issues suggested that minorities hesitate to complain of hate speech for a number of reasons, including that authorities will not intervene, there will be no consequences for those who breach the legislation, or that the use of complaint mechanisms for social media is unlikely to remedy the situation.<sup>16</sup>

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<sup>13</sup> *Owen v Menzies* [2013] 2 Qd R 327; [2012] QCA 170.

<sup>14</sup> The Respect at Work and Other Matters Amendment Bill 2024 introduced into the Queensland Parliament on 14 June 2024 would replace the attribute of 'sexuality' with 'sexual orientation' and extend the attributes protected from vilification to include age, impairment, and sex.

<sup>15</sup> For example, in a case where a woman experienced verbal abuse and insults over a period of time, the tribunal found that the woman had been vilified and ordered the perpetrator not to make any remark that may constitute racial vilification of the woman. See *Donovan v Tobin* [2015] QCAT 332.

<sup>16</sup> Fernand de Varennes, *Report of the Special Rapporteur on minority issues*, UN Doc A/HRC/46/57 (3 March 2021) [46].

29. In the Queensland Inquiry into serious vilification and hate crimes, the Committee considered the appropriateness of a conciliation-based framework and effectiveness of the prohibition against vilification. The report of the Committee outlined some of the evidence and submissions, including for example, that the focus of the complaint process is redress rather than protecting victims from ongoing vilification, and the process doesn't work where the perpetrator is unknown.<sup>17</sup>
30. An example of a complaint about social media posts and other online material is a complaint brought by the Australian Muslim Agency Network and the Islamic Council of Queensland against Fraser Anning. The respondent, Mr Anning, did not engage in the process and after a hearing in his absence the tribunal made orders requiring Mr Anning to remove a large volume of online material identified in lists.<sup>18</sup> After obtaining the orders, the complainant entities were left to try to convince the hosting services to remove the material. They were successful in convincing Twitter to remove the account and Facebook geo-blocked the material.
31. A complaint by the Australian Muslim Agency Network Ltd about twitter posts is currently before the Queensland Civil and Administrative Tribunal. The respondent X Corp challenged the jurisdiction of the tribunal and the application of the AD Act to it as a foreign corporation. The tribunal has recently held that both X Corp and Twitter Australia Holdings Pty Limited are subject to the jurisdiction of the tribunal as respondents to a complaint of contravention of the AD Act.<sup>19</sup>
32. The decision determined a preliminary issue, and the complaint is yet to be heard. It demonstrates the potential complexity and burden of pursuing a complaint of vilification relating to online material.

## Conclusion

33. While the complaint-based civil remedy and the criminal offence regimes have necessary roles in relation to online hate and vilification, in the Commission's experience, people who are subjected to online harm just want it to stop. To achieve this, the complaint and removal schemes under the *Online Safety Act 2021* (Cth) need to be extended.
34. As well as providing an option for victims of online hate and vilification, a scheme that empowers the eSafety Commissioner to direct the removal of online hate and vilification material will help reduce hate speech and the harm it causes and limit the escalation of hate speech to hate crime and terrorism.
35. Online hate and vilification are often directed to a class or group of people, for example by their race, religion, or other attributes. It is no less harmful than hate or vilification directed at an individual. This type of content needs to be covered by the scheme and

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<sup>17</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Serious Vilification and Hate Crimes* (Report No. 22, 2022) 34-37.

<sup>18</sup> Reasons for the decision were subsequently published by the tribunal at *Australian Muslim Advocacy Network & Islamic Council of Queensland v Anning* [2021] QCAT 452.

<sup>19</sup> *Australian Muslim Advocacy Network Ltd v Twitter Australia Holdings Pty Limited & Anor* [2024] QCAT 201.



members of a group or entities that represent them need to be able to make a complaint or notification to the eSafety Commissioner.

36. Given that online hate speech and vilification is harmful for society as a whole, there is no justification to limit standing to make a complaint or notification to the individual who is targeted. Bystanders should also be able to report online hate and online vilification.

Queensland Human Rights Commission

19 June 2024

## Appendix 1 – Serious vilification (offence)

### Criminal Code (Qld)

#### 52A Offence of serious racial, religious, sexuality or gender identity vilification

- (1) A person must not, by a public act, knowingly or recklessly incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, religion, sexuality or gender identity of person or members or group in a way that includes—
- (a) threatening physical harm towards, or towards any property of the person or group of persons; or
  - (b) inciting others to threaten physical harm towards, or towards any property of the person or groups of persons.

Maximum penalty—3 years imprisonment.

- (2) In this section—

***public act***—

- includes—
  - (i) any form of communication to the public, including by speaking, writing, printing, displaying notices, broadcasting, telecasting, screening or playing of tapes or other recorded material, or by electronic means; and
  - (ii) any conduct that is observable by the public, including actions, gestures and the wearing or display of clothing, signs, flags, emblems or insignia; but
- does not include the distribution or dissemination of any matter by a person to the public if the person does not know, and could not reasonably be expected to know, the content of the matter.

## Appendix 2 – Vilification (civil remedy)

### ***Anti-Discrimination Act 1991 (Qld)***

#### **124A Vilification on grounds of race, religion, sexuality or gender identity unlawful**

- (1) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of race, religion, sexuality or gender identity of the person or members of the group.
- (2) Subsection (1) does not make unlawful –
  - (a) the publication of a fair report of a public act mentioned in subsection (1);  
or
  - (b) the publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or
  - (c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.
- (3) In this section—

***public act***—

  - (a) includes—
    - (i) any form of communication to the public, including by speaking, writing, printing, displaying notices, broadcasting, telecasting, screening or playing of tapes or other recorded material, or by electronic means; and
    - (ii) any conduct that is observable by the public, including actions, gestures and the wearing or display of clothing, signs, flags, emblems or insignia; but
  - (b) does not include the distribution or dissemination of any matter by a person to the public if the person does not know, and could not reasonably be expected to know, the content of the matter.