ACT HUMAN RIGHTS COMMISSION
Australian Capital Territory

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Dear Hate Crime review team

HRC Submission to the Justice and Community Safety Directorate: Hate Crime and Vilification Review

Thank you for inviting the ACT Human Rights Commission to provide feedback in relation to the review into hate crimes and vilification and associated discussion paper (the discussion paper).

The ACT Human Rights Commission welcomes the review into ACT vilification and hate crime protection. Regular evaluation and monitoring of laws and policy settings against their stated aims and objectives and ensuring that limits on rights are proportionate and demonstrably justified in our free and democratic society is an essential element of maintaining effective responses to the harms posed by violence, racism, prejudice and intolerance and cultivating a community where our values are embedded and strengthened in the everyday conduct of debate, dialogue and respectful relationships.

As noted in the discussion paper, the ACT has a strong existing framework of criminal and civil protections and pathways for resolution and remedies for people subject to vilification, violence, discrimination and hate speech. These protections have resulted from decades of advocacy by the Commission, local and national civil society organisations and international bodies arguing for the benefit of strong articulations of human rights principles and systems that help promote individual rights and freedoms and guide the balancing of legitimate social interests, policy objectives and communal responsibilities. The ACT has legislated a framework in the introduction of the *Human Rights Act 2004* that enables this balancing exercise to be conducted consistently and transparently, while providing a clear statement about the values which the ACT community holds.

These legislative protections are a valuable framework for providing guidance to the community and its institutions about the pillars of our community being equality, respect, inclusion and safety through protection of individual rights. They build on international agreements, to which Australia is a party, that recognise fundamental human rights, including as a core treaty, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) which includes in article 4 an explicit requirement that all signatory states:

> "undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination… and declare an offence punishable

> by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof".[1]

Criminal offences such as the prohibition on serious vilification in s 750 of the *Criminal Code 2002* send clear signals about behaviour that is not welcome or acceptable in our community. As set out in the responses to questions about the drafting or development of amendments to respond to the harms of offending where that is driven by ideology, prejudice or hate and hostility, the Commission is open to working with Government to ensure that any amendments make clear to the community that our society is built on values and will protect respect for common humanity, dignity and right to safety and security, while also ensuring that responses are proportionate, rationally connected to their objectives and demonstrably justified.

Civil pathways under the *Discrimination Act 1991* and *Human Rights Commission Act 2005* help community members raise concerns or bring complaints about similar conduct that corrodes community relationships, silences and intimidates marginalised groups and impacts the dignity of individuals. By providing a less formal and more accessible forum for the resolution of disputes and the redress of actions that are unlawful the Commission and the ACT Civil and Administrative Tribunal support community cohesion and safety. These laws and functions are underpinned by the Human Rights Act which establishes ways of navigating the sometimes conflicting individual rights in equality, freedom from discrimination, freedom of expression and public interests in democratic tenets, rule of law and safety.

However, the framework cannot itself sustain the culture of respect in the absence of education about both how the law operates and an embedded understanding of the values that support and are maintained by the laws. The Commission considers that for the strong laws we have to remain effective we need sustained focus, commitment to and resourcing of community and agency understanding of human rights and the operation and impacts of discrimination and vilification, not just amendments in reaction to exceptional events.

The Commission provides the following comments in response to the discussion paper questions:

1. **Is the list of protected attributes currently covered by section 67A(1) of the Discrimination Act 1991 sufficient? Are there any other protected attributes that should be included?**

The Commission considers that the current list of protected attributes covered by the scope of s 67A(1) which makes vilification unlawful is generally appropriate, and any additional coverage should be considered on an attribute by attribute basis given the distinction noted in the discussion paper about the different focuses of the treatment of discrimination and vilification under the Discrimination Act.

[1] Article 4, United Nations Office of the High Commissioner for Human Rights, International Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 December 1965 by UN General Assembly resolution 2106(XX) available at International Convention on the Elimination of All Forms of Racial Discrimination | OHCHR.

The Commission notes that the protected attribute of age is the only one of the attributes covered under the Commonwealth anti-discrimination framework (comprising the Race, Sex, Age and Disability Discrimination Acts[2]) which is not reflected in the vilification protections of the Discrimination Act. The Commission would be open to the inclusion of age in the vilification protections as an adjunct to the increasing focus and workload of the Commission on the regulation and investigation of complaints and concerns about retirement villages, supported accommodation, elder abuse, and abuse of vulnerable people.

2. Are the current criteria for establishing unlawful vilification appropriate?

The Commission considers that the current criteria or threshold test is appropriate. The Discrimination Act provides that it is "unlawful for a person to incite hatred toward, revulsion of, serious contempt for, or severe ridicule of a person or group of people on the ground of any of the following, other than in private".

From the case law, here in the ACT or in decisions of superior courts applying the same or substantially similar tests of other Australian states the following general observations about the test can be noted.[3]

- An objective test must be used.[4]
- 'incite' means "to rouse, to stimulate, to urge, to spur on, to stir up or to animate and covers conduct involving commands, requests, proposals, actions or encouragement".[5]
- It is not necessary to establish any one was incited or an intention to incite.[6]
- A breach… occurs if the words or conduct has the tendency to incite that response.[7]
- Vilification provides a form of redress for members of groups who are potentially subject to hatred... There is no need to establish [an individual] was personally targeted or the subject of the posts in question.[8]
- The incitement threshold does not prohibit slurs or abuse directly addressed to members of a particular race or religion or other protected attribute.[9]
- It is not sufficient that the impugned public act conveys hatred towards, serious contempt for, or serious ridicule of the person or group of persons with the protected characteristic. The act must be capable of inciting the prescribed reactions in an ordinary member of the class to whom the act is directed/the audience or likely audience.[10]

[2] *Race Discrimination Act 1975, Sex Discrimination Act 1984; Disability Discrimination Act 1992; Age Discrimination Act 2004.*
[3] *DLH v Nationwide News Pty Ltd* (No 2) [2018] NSWCATAD 217 at [10].
[4] *Clinch v Rep (No. 2)* [2020] ACAT 68 at [38].
[5] *Bottrill v Sunol (Bottrill No 1)* [2017] ACAT 81 at [25] which cites *Catch the Fire* at [13] and *Sunol v Collier (No 2)* at [26].
[6] *Clinch v Rep (No. 2)* [2020] ACAT 68 at [38].
[7] *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc*[2006] VSCA 284 at [160].
[8] *Sunol v Kerslake (Appeal)* [2024] ACAT 35 (24 May 2024) at [45].
[9] *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc*[2006] VSCA 284 at [67] & [80].
[10] *Clinch v Rep (No. 2)* [2020] ACAT 68 at [38].

- It is a question of whether the natural and ordinary effect of the conduct is to incite hatred or other relevant emotion in the circumstances of the case.[11]
- The context in which the act occurred must be used to assess the capacity of the public to incite / be incited into the relevant reaction.[12]
- The persons to who the act is directed, the audience or likely audience must be identified and considered.[13]
- The assessment must be made by reference to the 'ordinary' member of the relevant audience.[14]
- The question of whether conduct has the capacity to incite the requisite emotion is ultimately one of fact in the context in which the public act takes place. ... The particular class to whom the public act is directed may be taken to be aware of various matters which contextualise the public act. ... It is an assessment based upon the characteristics of the ordinary member of the particular audience to whom the public act is directed.[15]
- The context of the conduct can include consideration of temporal and geographical factors.[16]
- The context may be changed by the public profile or prominence of the person speaking or publishing and the likelihood of those statements being reposted, or responded to in online spaces.[17]

The test is established, relatively well articulated in the jurisprudence and has been proven in a number of ACAT decisions:

***Rep v Clinch (Appeal)* [2021] ACAT 106 (3 November 2021)**

A vilification complaint by a trans woman residing in Queensland about social media posts (and third party comment responses to those posts) published in the ACT and accessible to ACT residents on the grounds of the protected attribute of gender identity was upheld in respect of a number of social media posts. The Appeal Tribunal clarified that:

"in our view in order to amount to vilification, it is necessary that there be more than insults, invective, abuse or even expression of hatred, revulsion, contempt or ridicule. The post needs to incite hatred toward, revulsion of, serious contempt for, or severe ridicule of, a person or group of people, objectively assessed".[18]

Further the Tribunal noted that:

[11] *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc*[2006] VSCA 284 at [19].
[12] *Clinch v Rep (No. 2)* [2020] ACAT 68 at [38].
[13] *Clinch v Rep (No. 2)* [2020] ACAT 68 at [38].
[14] *Clinch v Rep (No. 2)* [2020] ACAT 68 at [38].
[15] *Margan v Manias* [2015] NSWCA 388 at [77]- [78].
[16] *Margan v Manias* [2015] NSWCA 388 at [97].
[17] *Dow Jones & Co Inc v Gutnick* [2002] HCA 56 at [124].
[18] *Rep v Clinch (Appeal)* [2021] ACAT 106 (3 November 2021) at [9].

in order to amount to vilification it is necessary that the post incite hatred toward, revulsion of, serious contempt for, or severe ridicule of Ms Clinch or the group of trans women on the ground of gender identity. This can involve words which command, request, propose, advise or encourage hatred etc. But it can also involve words which incorporate strong and abusive language about the person or group which is likely to incite hatred etc. In particular where the words indicate that because of being a trans woman a person is inherently inferior, a threat, or a criminal, the issue of vilification will arise. Words directed at the physical attributes of trans women can be vilification, if they meet this test. Generally, we do not think that referring to a trans woman as a man will necessarily do so.[19]

Kerslake v Sunol (Discrimination) **[2022] ACAT 40 (16 May 2022)**

A complaint about vilifying social media posts on the basis of sexuality was established in ACAT (and latter upheld on appeal). The Tribunal confirmed the extra-territorial application of the vilification protections where there was some link to the ACT.[20]

The Tribunal held that while some postings were insulting or offensive, or even just express hatred, revulsion, contempt or ridicule they did not meet the threshold of vilification by objectively having the effect of inciting others, so as to rise to the vilification threshold. For those posts that did, the respondent argued that his religious convictions and freedom of expression acted as exceptions to the operation of the provisions.

The Tribunal found:

that if statements do incite hatred etc., they must fall within the exception for reasonable discussion or debate in section 67A(2)(c) not to be vilification. The use of political or religious language does not of itself prevent a statement from inciting hatred etc. or make it a reasonable discussion or debate.[21]

The Commission notes that while the test is established in law, there may be a deficit in public awareness about what constitutes vilification, particularly that people posting on social media may be liable for vilifying comments of replies by third parties.

3. **Do the exceptions to unlawful vilification strike the right balance between protecting the right to freedom of expression and preventing vilification? Are there other types of activity that should fall within an exception?**

The Commission considers the exceptions are established, have been tested, articulated and applied effectively in the case law and represent a proportionate balance that is demonstrably justifiable between preventing vilification (to the incitement threshold) and freedom of expression.

[19] *Rep v Clinch (Appeal)* [2021] ACAT 106 (3 November 2021) at [10].
[20] *Kerslake v Sunol (Discrimination) [2022]* ACAT 40 (16 May 2022) at *[63-67].*
[21] *Kerslake v Sunol (Discrimination)* [2022] ACAT 40 (16 May 2022) *a*t [8].

In Rep v Clinch the Appeal Tribunal noted:

> *In order to come within the exception to vilification for discussion or debate in the public interest (section 67A(2)(c) of the Discrimination Act) the comment must be reasonable, that is objectively rational and proportionate. Generally, it must also be in the context of a discussion or debate on an issue; we do not think that generally insults, invective or abuse is such reasonable discussion or debate.*[22]

Vorchheimer v Tayeh **[2026] VCAT 134 (26 February 2026)**

Recently the Victorian Civil and Administrative Tribunal heard a matter and determined that the chant lead by the respondent "All Zionists are terrorists" at a pro-Palestine rally and protest march rose to the level of vilification against Jewish people under the *Racial and Religious Tolerance Act 2001* (Vic), and that the conduct was not engaged in reasonably and in good faith so as to fall within an exception.[23]

The Tribunal considered the history of the term 'Zionist' and found that despite having multiple related meanings could be said to have a very strong association with Jewish people in the minds of the ordinary rally participants, particularly when accompanied by the use of the word 'all' which was found to serve to strengthen that association, and its potential for inciting hatred against Jewish people.[24] In the context of the rally, the Tribunal held that "when what is chanted is the attachment of a heinous label (terrorist) to an undifferentiated group of people (All Zionists) it normalises and encourages extreme emotions such as hatred towards the targets of the chant".[25] The Tribunal found " the natural and ordinary effect of thousands of people united in chanting "All Zionists are terrorists" at the Rally would be to tip many rally participants over the threshold into hatred directed towards Jewish people".[26]

The Tribunal noted that there is no right to a catchy rally statement.[27] Further although exceptions exist to the prohibition on vilification for conduct engaged in reasonably and in good faith 'in the public interest' or 'in making or publishing a fair and accurate report of any matter in the public interest", the Tribunal found that the conduct was not engaged in reasonably or in good faith.

The Commission notes that similar limitations on freedom of expression and religious belief have been found proportionate and justifiable in the context of discriminatory statements (not amounting to vilification) made by health and legal practitioners regulated by professional standards and codes of conduct.[28]

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[22] *Rep v Clinch (Appeal)* [2021] ACAT 106 (3 November 2021) at [11].
[23] *Vorchheimer v Tayeh* [2026] VCAT 134 (26 February 2026).
[24] *Vorchheimer v Tayeh* [2026] VCAT 134 (26 February 2026) [63-67].
[25] *Vorchheimer v Tayeh* [2026] VCAT 134 (26 February 2026) [76].
[26] *Vorchheimer v Tayeh* [2026] VCAT 134 (26 February 2026) [121].
[27] *Vorchheimer v Tayeh* [2026] VCAT 134 (26 February 2026) [111].
[28] *Pocock v Psychology Board of Australia (Occupational Discipline)* [2014] ACAT 54 (13 August 2014); Law Society of New South Wales re Constantine Karageorge (Karageorge) (No 12 of 1987).

4. **Are there any barriers that you have observed, or experienced to making a complaint about unlawful vilification to the Human Rights Commission (HRC)? Do you have any case studies or examples?**

The Commission consistently reviews its process to reduce barriers, and improve accessibility of its complaints process. The Commission has a range of practices in place that reflect a setting of beneficial interpretation of the Discrimination Act and other relevant legislation, accepting complaints across multiple jurisdictions, flexible and informal process requirements and a resolution focus. The regulatory stance embodied by the Commission is visible in its active engagement with all government service and policy development areas, collaborative approach to obtain practical solutions, and in the feedback it receives from complainants and clients.

The Commission acknowledges however that despite its best efforts, barriers remain. The Commission's discrimination complaint jurisdiction has grown from 166 in 2018/19 to 345 in 2024/25, a 107% increase in matters. Over the same period the total complaints received by the Commission has grown from 683 to 1706, a 149% increase. The increase volume of matters also reflects the increased number of jurisdictions the Commission administers as a one stop shop for community members with concerns or complaints about a range of issues.

The Commission has been undertaking radio and print adds including advertising on mainstream & community radio promoting a safe and inclusive community and the complaint process. The Commission has had ads on multicultural community radio in community languages for a number of years to promote rights & responsibilities and the accessibility of the complaint process. The Commission works with community groups across other groups protected by the legislation such as disability, LGBTIQ+ groups to promote the legislative protections and the complaint process.

The Commission participates in community events and projects and undertakes community education and information sessions to promote the accessibility of the complaint process. Information about Commission complaint processes is available online and in other formats in community-based languages.

The Commission acknowledges that for some people making a complaint is not necessarily the path they wish to take as they do not want to confront or engage with a respondent, or wish to move on from a particular incident or event. In the 1991 Report of the National Inquiry into Racist Violence in Australia it was observed that many incidents of racist violence go unreported to authorities. For some communities such as the Aboriginal and Torres Strait Islander participants it was fatigue, other groups raised that reporting incidents would make the situation worse by highlighting the issues creating an enabling environment.[29] In our experience these barriers to reporting remain. During the pandemic concerns were raised by some in the Chinese community that the reporting of racism or vilification created an enabling environment and could have contributed to making the issues worse for the community.

In some matters where a community member may be reluctant to bring a concern forward, or where a matter has been brought to our attention by a witness or an ally, the Commission may initiate a Commission Initiated Consideration (CIC) where the Commissioner is the complainant to try and address the issues with the respondent directly. Following a CIC the Commissioner can

[29] Australian Human Rights and Equal Opportunity Commission, National Inquiry into Racist Violence in Australia (Australian Government Publishing Services, Canberra 1991, available at NIRV.pdf, p 18.

take a matter to ACAT if the matter has not been able to be resolved or addressed adequately. The Commission can also take an educative approach by contacting the respondent party with information about the law and offering to discuss the issues with the person or organisation rather than formalising a complaint.

We note with vilification matters a barrier to reporting or to a successful outcome to a complaint may be the identification of a respondent. Where vilification occurs online by anonymous or unknown people, in public spaces like public transport or in drive-by situations, it can be frustrating for people that limited action can be taken other than generalised community messaging about the ACT being a safe, diverse and inclusive community. Recent events reported in the media regarding police describing some 'White Australia' pamphlets as not being covered by the relevant Criminal Code provisions, [30] then subsequently seizing satirical posters from a cafe,[31] can lead to reduced confidence in the legal frameworks and so become a barrier to reporting racial vilification or hate speech.

Case study – display of white supremacist bumper stickers

A person approached the Commission with concerns about white supremacist stickers on a vehicle in the parking lot of her unit complex and provided photos of the vehicle and the stickers. The Commission obtained the contact details of the person who owned the car and wrote to them outlining the vilification provisions in the ACT Discrimination Act asking them to remove the stickers and provide evidence the stickers had been removed. The Commission later followed up with the initial notifier who confirmed similar stickers had not re-appeared on the vehicle.

In relation to vilification in particular - vilification laws, as described by Nettle JA in *Catch the Fire,* are "prophylactic" in that they are "focused on preventing or warding off conduct rather [than] redressing its effects".[32] The laws of themselves can have a deterrence effect but do not operate in isolation from other efforts by the ACT community and government such as the ACT *Multiculturalism Act 2023,* the various Ministerial Advisory Committees on Multiculturalism, Disability and LGBTIQ+, a dedicated Minister for Multiculturalism and Minister for Disability, funding of relevant community organisations to undertake community building activities, government and community partnerships like the National Multicultural Festival all of which contribute to social cohesion and visibility of the ACT 's commitment to a safe, diverse, inclusive community.

[30] Canberra Times, 10 October 2025, available at Canberra police not prosecuting right-wing leaflets | The Canberra Times | Canberra, ACT

[31] Canberra Times, 20 February 2026 available at Canberra bar raided over Trump and Netanyahu posters | The Canberra Times | Canberra, ACT

[32] *Farah v Sandilands (Discrimination)* [2021] ACAT 92 (28 September 2021).
at [53] summarising *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc*[2006] VSCA 284 at [14].

5. **Are there any barriers that you have observed, or experienced to making or progressing a complaint about unlawful vilification in ACT Civil and Administrative Tribunal (ACAT)? Do you have any case studies or examples?**

As noted above the ACAT process is intended to be accessible and informal. However, because of the complex nature of the vilification assessment proceedings can still take significant time and often involve or benefit from legal representation.

There are limited legal assistance avenues available for civil claims, and most applicants in the ACAT end up self-representing against respondents (who may have more public profile, influence or litigation support). For example, a number of vilification complaints in other jurisdictions have been about national radio show hosts, who build audience, revenue and wealth off broadcasting controversial, uncivil and potentially vilifying remarks about minority groups or individuals, and then using that wealth and influence to defend vilification complaints (not always successfully).[33]

6. **Is the list of protected attributes currently covered by section 750 of the Criminal Code 2002 sufficient?**

The Commission considers that the list of protected attributes under s 750 of the Criminal Code should remain aligned with Discrimination Act vilification provisions.

To the extent that the Commission is open to consideration of including age as a protected attribute to which vilification protections could be expanded, it would be the position of the Commission that that attribute is also included in the Criminal Code serious vilification offence.

The scope of the offences should stay consistent to avoid confusion or ambiguity about the nature and scope of potential liability for vilifying conduct.

In circumstances where a person has intentionally made threatening acts, with recklessness as to likely incitement of hatred, the Assembly has determined those additional 'aggravating' elements makes the vilification 'serious' and warranting of a criminal justice response as opposed to remaining a civil matter.

If the protected attributes listed in the two sections, or indeed the test itself diverges significantly, the logical link between the protections in the civil jurisdiction and the treatment of aggravated breaches breaks down. It risks an increased focus on the criminal elements of threatening or causing harm, and policing that, rather than addressing any and all vilification as a social and communal issue that affects whole communities, whether or not there is specific violence evidenced.

To focus a response to vilification on police and prosecutorial responses to vilification in criminal courts is to potentially forgo the educative, restorative and cohesion functions of a conciliation, investigation and civil law balancing of competing but fundamental human rights and social interests, including freedom of expression, freedom of thought, conscience, religion and belief, privacy and reputation, rights of minorities and equality of opportunity. It may be that criminal courts can effectively allow for the development and hearing of arguments about the appropriate

[33] See *Farah v Sandilands (Discrimination)* [2021] ACAT 92 (28 September 2021)**;** *Burns v Radio 2UE Sydney Pty Ltd* **[2004] NSWADT 267**.

balancing of those rights and interests, but given that it is likely such matters would enter general summary offences lists of the Magistrates court, giving full hearing to these issues on a regular basis within full list and limited court allocations for contested trials may be difficult.

Further, we know the criminal jurisdiction can be less responsive to the interests of the affected victim, or provide them space to be heard in instructing on aspects of any claimed offence, and to give evidence as to the impact on them, outside of the confines of victim impact statements and rights to be informed as set out in the Charter of Rights for Victims of Crime.[34]

Criminal offences are framed and driven by police and prosecution imperatives that may not respond to the types of arguments that any civil vilification complainant would want to bring. Police and prosecutors must triage and assess prospects of success for a large number of serious and more routine offences, meaning that 'lineball' cases where it may be difficult for a court to readily be satisfied beyond a reasonable doubt about the incitement element (whether or not recklessness is the lower standard) are not prioritised as an appropriate use of scarce prosecution and court resources.

Likewise, the avenues for tailored redress or outcomes that respond to what the complainant is seeking such as conciliated financial settlements, public apologies, removal of published vilifying statements, orders prohibiting future publication in the same or similar terms or general awards of damages would not be available in the criminal justice process.

There are many offences, and court ordered administrative schemes that already can respond to the violent aspects of what could be otherwise capture within the ambit of serious vilification including:

- Common assault[35]
- Stalking[36] (which can include harassment and intimidation)
- Breach of personal or workplace protection orders (PPO)/(WPO)[37]
- Using a carriage service to menace, threaten or harass[38]
- Urging violence against groups or members of a group[39]

Case study - neighbourhood disputes

The Commission received a complaint of vilification based on sexuality by a neighbour. The Commission wrote to the neighbour and requested they desist from engaging in the alleged course of conduct. The complainant reported that it didn't completely stop the behaviour and they were considering a PPO instead and the Commission was not able to reengage C effectively after that.

Other complaints have arisen where offensive and potentially vilifying slurs have allegedly been made by public housing tenants against other tenants on the grounds of sexuality. In those circumstances, the respondent may be unwilling to engage in the Commission's complaint

[34] Part 3A *Victims of Crime Act 1994.*
[35] s 26 *Crimes Act 1900.*
[36] s 35 *Crimes Act 1900.*
[37] s 35 *Personal Violence Act 2016*.
[38] s 474.17 *Criminal Code 1995 (*Cth).
[39] s 80.2A&B *Criminal Code 1995* (Cth).

investigation or conciliation process, and agencies responsible for managing breaches of tenancy contracts have not been able or willing to take action, creating situations where there is limited recourse for a complainant except to seek to take out a PPO.

As noted above offensive remarks made person to person are unlikely to incite hatred or contempt or revulsion, to rise to the vilification or serious vilification, but can still be threatening and contribute to ongoing sense of being harassed, targeted or at risk of violence, especially where circumstances mean antagonists will remain in close proximity to the complainant, such as in allocated public housing, where alternative accommodation is unlikely to be available.

7. **Do you have any feedback on the way that the offence is formulated, including its elements?**

The Commission does not support changes to the construction of the serious vilification offence at this time. As noted above, it is important that the basic elements of the serious vilification offence align with the definition of vilification in the Discrimination Act, and that only the aggravating criminal elements are treated as additional, and appropriately targeted and proportionate within the criminal framework, which is based on presumption of innocence and a burden of proof on the prosecution to the 'beyond a reasonable doubt' criminal standard.

8. **Do you have views on the current maximum penalties for serious vilification offences in the ACT, and if so, what is the basis for these views?**

The absence of prosecutions for this offence to date suggests that increasing penalties alone would not be an appropriate course of action. Rather what would support protection against vilification and hate based crimes would be greater community awareness and education within ACT Policing about what constitutes vilification, and what does not.

Case study – white supremacist propaganda pamphlet

For example, the public made the Commission aware of the public distribution in mid-2025 of what the Commission considers materials articulating statements and implied communications vilifying people of colour, by an explicitly stated white nationalist organisation. Despite the community raising this with ACT Policing, it appeared that any substantive investigation with a view to determining whether a case under the s 750 Criminal Code offence had merit was ruled out summarily.

In this case the individual complainant who raised the concern with the Commission didn't want to proceed with the complaint, so it was closed. The parallel Commission initiated Consideration was also closed without action, after discussions with representative from ACT Policing indicated ACT Policing were not prepared to take action on the stated basis that it was unclear how the thresholds were met or how the pamphlets impacted members of the community in a way which contravened the vilification provisions.

The apparent absence of any public statement from ACT Policing engaging with the analysis of why and how the pamphlet was not considered to fall within the scope of the vilification offence, may have been seen within the targeted communities as an unwillingness to engage with the issues, or

to make a determination about what kinds of communication would be acceptable or not for the purposes of the offence.

The Commission acknowledges that rarely will such assessments be straightforward or clearcut, and that there may well be many reasons why communications which at face value appear to be vilifying, and which cause discomfort, anxiety and consternation within the community, are not assessed by ACT Policing or prosecutors to have a reasonable case if taken to court, but silence around such issues does signal that these issues are taken seriously by those with ability to respond.

9. What do you think about 'incitement-based tests' and 'harm-based tests' for serious vilification?

As noted above the Commission is not in favour of a change to the test or threshold criteria for the vilification components of the serious vilification offence in s 750 of the Criminal Code. By that we mean the threshold of "incites hatred toward, revulsion of, serious contempt for, or severe ridicule of, a person or group of people on the ground of" one of the listed protected attributes.

The definition of threatening act comprises elements of both incitement and (threatened) harm. There is a clear requirement for intention to do an act, and a slightly lower threshold of recklessness about whether the act incites hatred toward, revulsion of, serious contempt for, or severe ridicule of, a person or group of people on the ground of the listed attributes, and whether the act was done other than in private.

To the extent that any threat or incitement of physical harm toward a person, members of a group their or their property, we consider that the offence would be made out where that physical harm was carried out following the threat or any incitement, noting that other charges may also be pressed as a result and more readily prosecuted. Other offences are also more likely to be supported by a maximum penalty that reflects actual violence or harm, noting that the maximum penalty for serious vilification is 50 penalty units or $8000.

We note that where physical harm is threatened, but not carried out, yet the target experiences mental harm as a result, the offence would still be made out.

10. Do you consider that the current offence, including relevant thresholds, properly balances protection against serious vilification and the right to freedom of expression?

Yes, in light of the discussion of the case law for vilification described above, it is clear that the threshold for serious vilification, or for vilification as an unlawful act under the Discrimination Act does not prevent reasonable, genuine or in good faith discussion, debate, dialogue, commentary, reporting or expression as that will not have the effect of inciting hatred toward, revulsion of, serious contempt for or severe ridicule of a person or group on the ground of any protected attribute. The threshold has been seen as reflecting a "high bar"; [40] where the "public act must be capable of inciting intense dislike or hostility towards a person or group of persons, or grave scorn for a person or group of persons, or extreme derision of a person or group of persons. The use of

[40] *Clinch v Rep (Discrimination*) [2020] ACAT 13 (20 February 2020) at [10].

the adjectives "serious" and "severe" call for an evaluative judgment on the part of the tribunal of fact, within a broad discretion.[41] Expression in private is also not regulated.

The effect of the communication assessed in the context, must be to cause a particular effect in an audience that is beyond what would be generated in the course of regular communication or debate. Typically, that would require words that reduce social or community issues to single cause statements that portray the target individual or group as less than human, a threat to society or essentially and inherently criminal or immoral. This is a higher threshold than exists under s 18C of the Racial Discrimination Act, where the test of vilification being reasonably likely to *offend, insult humiliate or intimidate* have been observed to be "profound and serious effects, not to be likened to mere slights".[42] Satire or attempts at humour may be "deeply offensive and dehumanising" "in poor taste and completely devoid of empathy or sensitivity "and not "cross the line especially in relation to its capacity to evoke emotions of severe ridicule".[43]

The Commission notes that the serious vilification offence was never accompanied by the same defences as attach to the vilification offence in the Discrimination Act. This appears to have resulted from amendments being made in the Assembly during debate on the Human Rights and Equal Opportunity Bill 1991, which was passed on 28 November 1991 and notified as the Discrimination Act 1991 on 13 December 1991.[44]

Referring to the Hansard from 28 November 1991, Mr Collaery MLA moved the insertion of a new part in the bill dealing with racial vilification, adopted with 'very little variation, the amendments made on 9 October 1990 to the Western Australian Criminal Code" (also based on NSW provisions) introduced in response to the "activities of a prolonged, highly organised and large-scale racist propaganda and graffiti campaign that developed in Perth during the 1980s. That campaign had a very damaging effect on individuals, community groups and businesses - and I stress businesses - which were its targets. Those businesses, as members know, were largely Vietnamese and Jewish businesses".[45]

These amendments were in response to amendments moved by Mr Stevenson MLA who was reported to have earlier attended a far right meeting in Victoria under the banner of the 'League of Rights' pushing an ethic of "peddling populist theories - the Jewish conspiracy in banking, the pornography issue, the security and integrity of the nation, and the treasonous instincts that elements of the community are seen to have".[46]

What followed was consternated debate about the potential implications for freedom of speech. Significantly for understanding the intention of the Assembly in passing the amendments to give effect to the racial vilification provisions, Mr Connolly MLA noted:

> *This is treading a fine line between allowing full freedom of speech and saying when it is appropriate for the law to move in.*

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[41] V*eloskey v Karagiannakis* [2002] NSWADTAP 18 at [29].
[42] *Creek v Cairns Post Pty Ltd* [2001] FCA 1007 at [16] per Kiefel J.
[43] *DLH v Nationwide News Pty Ltd (No 2)* [2018] NSWCATAD 217 (18 September 2018) at [55].
[44] See Human Rights and Equal Opportunity Bill 1991 | Bills
[45] ACT Legislative Assembly, Hansard, 1st Assembly, 1991, week 16 p 5209-5211 available at Page 5209 week16 1991 - 1st Assembly Hansard - ACT Legislative Assembly
[46] ACT Legislative Assembly, Hansard, 1st Assembly, 1991, week 16 p 5213.

There are two key things to say. One is that this provision is structured in two categories. It makes unlawful something which gives rise to a civil action under the Discrimination Act and the conciliation procedures and the complaint procedures. In the proposed section 63B provisions it is not creating a criminal offence for mere racial vilification. The only time a criminal offence is created is under proposed section 63C, which is the severe racial vilification that is the actual incitement to physical harm towards another person.

The other key point to make is that the test is not that a person finds something offensive. Rather, the test is that the doing of the thing incites hatred towards, or contempt for, or ridicule of a group. I think Mr Duby gave a good example where the waving of a flag, a national emblem, would fall on one side of that line. That may cause offence to another, but it cannot be said to incite hatred or contempt. If we were to take the Balkans conflict, the waving of one or other national flag, Serbian or Croatian, would not be racial vilification; but the holding of a sign accusing one of the other racial groups of brutality or atrocity or saying "Serbs" or "Croats", or whatever, would fall within this provision.

The Government is satisfied that this is not an unjustifiable infringement on a person's civil liberties, but Mr Duby is quite right in raising the concern.[47]

Mr Connolly further noted:

A swastika outside a synagogue would, I think, fall across the line. The circumstances always are necessary. Alternatively, filming a motion picture on World War II with people running around in German uniforms would not, I think, be likely to be caught. Again, this is not creating a criminal offence so that someone is going to say, "You have infringed section 63B. You are fined". It is creating the basis for a complaint action through the civil process of the Discrimination Commission. So, the making of a film would not be covered. It is not the giving of offence; it is the inciting to serious contempt. So, it depends on the circumstances. While we respect your concerns, Mr Duby, we think they are probably met in the legislation as it stands.

There are some references to the defence of reasonable and in good faith acts,[48] but it is not clear why the defences were not replicated in the serious vilification offence.

Given that there have never been explicit or express defences for serious vilification in the ACT, it might be argued that they have not been seen as necessary, given that any threat of harm or violence would move acts or conduct beyond what is acceptable expression in the public interest of dialogue or debate as protected by the defences to vilification in the Discrimination Act. However, noting recent events reported in the media it may be appropriate for clarification to be provided in the s 750 with respect to similar defences to those provided in the Discrimination Act or in the Code with respect to the display of Nazi symbols.

[47] ACT Legislative Assembly, Hansard, 1st Assembly, 1991, week 16 p 5224.
[48] ACT Legislative Assembly, Hansard, 1st Assembly, 1991, week 16 p 5225.

11. **Do you have any suggestions for reform of the serious vilification offence? Does it properly address all types of vilification or incitement of hatred including the circumstances in which these acts might occur?**

As noted above the Commission is not in favour of a change to the test or threshold criteria for the vilification components of the serious vilification offence in s 750 of the Criminal Code.

The Commission is also not in favour of creating new offences with elements of imputation of hate motivation for expression that would otherwise be covered by the offence of serious vilification. The commission considers that proposals being progressed in Queensland that would prohibit certain expressions, phrases or combination of words in the same terms as bans on prohibited symbols risks an unnecessary limitation on freedom of expression particularly where there is little agreement on what some of those sentences mean.

We note the systematic analysis of a chant in Vorchheimer indicates the courts and tribunals have sufficient tools available to them to consider the balancing of freedom of expression and vilification.

12. **Are there any barriers that you have observed, or experienced to the prosecution of the offence of serious vilification? Do you have any suggestions to address them?**

As outlined in the cases summarised in the discussion paper and outlined above core issues coming up in complaints about vilification generally include:

- demonstrating incitement to serious or severe hate, revulsion, ridicule or contempt (as opposed to general in poor taste comedy, satire or causing offence) is a high bar
- attributing responsibility to the respondent for vilifying remarks or reactions by third parties on platforms or pages managed or moderated by the respondent can be difficult and require high level of engagement with evidence
- enforcing outcomes or orders for take down or retraction of vilifying material that is hosted on international social media platforms, particularly where the identity of the person positing vilification is not apparent or anonymised.

Case study - social media bullying and vilification

The Commission received a complaint about transphobic hate speech on TikTok targeting the complainant's child on the basis of her gender identity. In investigating the Commission was unable to identify the identity of the respondent through request to TikTok. ACT Policing also sought to obtain the information and were unable to. Despite not being able to progress the complaint in relation to a particular respondent, the Commissioner wrote to TikTok to have the content removed which was achieved.

These difficulties are exacerbated by general lack of engagement or understanding by some organisations with their responsibilities under the Discrimination Act generally, which cannot be addressed by the criminal justice system.

Case study - race discrimination in sport

A parent lodged a race discrimination complaint on behalf of their child against a community sporting organisation for failing to take steps to address a complaint that their child had been treated unfavourably by a coach because of their race. It was alleged that the coach made adverse comments to the child about their race in front of the team, which included statements about the child's race being 'lazy', among other things. The child subsequently withdrew from the team and game, and the complainant asserted that the community sporting organisation did not take steps to independently investigate the matter or address the allegations raised. The matter was referred to ACAT. The Commissioner also wrote to the national sporting body raising concerns about the team's lack of understanding of its responsibilities under the ACT Discrimination Act noting the potential vicarious liability issues for the league as a whole.

13. Is the offence for prohibiting the public display of Nazi symbols appropriately framed (including its scope and relevant exemptions)?

The Commission considers that the offence as drafted remains appropriate at this time. The offence has only been recently introduced and as far as we are aware not prosecuted to a conviction.

The Commission is aware and made a statement,[49] in relation to the widely reported intervention under Commonwealth hate laws by ACT Policing to establish a crime scene and close the Canberra bar Dissent which had displayed caricature posters of various national leaders and highly influential public figures wearing uniforms associated with Nazi Germany.[50]

That statement noted the incident would test how the new Commonwealth laws about displaying prohibited symbols will be prosecuted and applied in the Courts.

The ACT laws in part 7.2A of the *Criminal Code 2002* are narrowly confined to the display of the Hakenkreuz (also known as the swastika) only and contains exceptions including where the person displayed the symbol reasonably and in good faith for genuine academic, artistic, religious or scientific purpose or in in opposition to fascism, Nazism, neo-Nazism or other related ideologies.

The Commission considers that any proposals to change the ACT offences or to include new aspects relating to the motivation must maintain clear protections for reasonable expression including satire and artistic works.

[49] ACT Human Rights Commission, Comment on Dissent bar closure, (20 February 2026) available at Comment on Dissent bar closure - HRC.

[50] ABC News, *Canberra bar declared a crime scene as police seize 'clearly satirical' posters under new Commonwealth hate laws,* (Thursday 19 February 202) available at Canberra bar declared a crime scene as police seize 'clearly satirical' posters under new Commonwealth hate laws - ABC News

14. Do you have a views on the desirability, and likely impact of introducing:

a. an aggravated offence for hate motivated actions; or

b. a provision which requires the Court to consider an offender's motivations as an explicit consideration at sentencing?

Establishing a motivation of hate in order to make out an aggravating circumstance for an offence or as an explicit sentencing consideration may be difficult. We are not aware of any ACT legislation that defines or references 'hate' in terms of motivation or intention.

Further, any attempt to define an objective state of 'hate' is likely to be better understood and sanctioned in relation to any conduct that results from the state, or in relation to impact on the specific and objectively established characteristics of the victim(s)' or their identity or attributed identity.[51] For example in Aotearoa New Zealand, aggravating factors related to hate motivation require a Court to take into account where an offender committed the offence partly or wholly because of hostility toward a group of persons with a protected attribute and the hostility is because of the common characteristic.[52] Inclusion as an aggravating factor, does not create a new offence or increase the maximum penalty, instead being considered in the overall exercise of sentencing discretion in dispensing individualised justice.[53]

The *Human Rights Act 2004* includes recognition of the right to freedom of opinion, treated in international law as an absolute, non-derogable right,[54] that goes to the essence of self and individual personhood, which permits a person to hold an opinion of strong dislike or disdain for something or someone. The state's jurisdiction to regulate that opinion, belief or state of mind is only enlivened if it results in conduct that causes or threatens some kind of harm to someone else or the community more broadly. Similarly, there is no aggravating offence or consideration for example of 'greed' in relation to corporate offences or fraud, though those moral judgments may be inferred in submissions on the nature and circumstances of the offence in any trial, or subsequently in sentencing for the act or conduct that resulted in harm.

It is likely that any attempt to define as 'hateful', 'hate-based' or 'hate motivated' a person or ideology or act would be contested and defended on the basis of those views aligning with or expressing political conviction or religious belief, requiring the relevant Court to take evidence about the basis of any state of mind in political or religious philosophy or doctrine.

Obviously, regulating specific acts as a manifestation of hate e.g. where property damage or physical assault follows, rather than requiring a court or jury to be satisfied beyond reasonable doubt that hate was a, or the, motivation for the offence would be much more straightforward and demonstrably justifiable in promoting and protecting rights to life, rights to privacy and rights to security of person along with community safety more generally understood.

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[51] See discussion in Te Aka Matua o te Ture Law Commission, Consultation paper - Hara ngākau kino. Hate crime [February 2025] NZLCIP 5; 5 available at Hara ngākau kino. Hate crime [2025] NZLCIP 5; Hara ngākau kino. Hate crime [2025] NZLCIP 55, [2.4].

[52] s (9)(1)(h) *Sentencing Act 2002* (NZ).

[53] Te Aka Matua o te Ture Law Commission, Consultation paper - Hara ngākau kino. Hate crime [February 2025] NZLCIP 5; 5 available at Hara ngākau kino. Hate crime [2025] NZLCIP 5; Hara ngākau kino. Hate crime [2025] NZLCIP 55, [2.8].

[54] Article 4(2) International Covenant on Civil and Political Rights, 23 March 1976, 999 U.N.T.S. 171.

It is understandable to seek to attach more moral culpability to particular factors in offending in the drafting and legislating of new offences that respond to harm, especially in response to devastating offences such as the Bondi terror attack. However, there is a risk that attempting to do so in the legislative drafting of new classes of criminal offending is likely to be incompatible with fundamental criminal justice principles and precedent, inconsistent with other human rights and generally incoherent or ineffective in practice or lead to unintended consequences downstream. Such an approach is likely to render those prosecutions more tenuous, unwieldy and less obviously in the public interest than proceeding with charges for well understood and applied criminal offences where motivation and aggravating factors can and are already addressed in sentencing.

Value judgments in the exercise of judicial discretion and independence in sentencing are already part of the process for sentencing. While it may not necessarily be an explicit consideration for sentencing, judicial regard can be had to the 'reason or reasons why the offender committed the offence', [55] along with the 'nature and circumstances of the offence', [56] and the harm resulting.[57] More generally the sentencing process is governed by the purposes of sentencing which include "ensuring offender is adequately punished in a way that is just and appropriate'; to prevent crime and to denounce the conduct of the offender".[58] These factors and purposes clearly enable consideration of motivation driving any offence, and are explicitly stated not to be exhaustive of what may be considered.[59]

Other jurisdictions have similar provisions which have enabled consideration of racial abuse in sentencing.[60] NSW and Victoria also have included express and mandatory consideration of "whether the offence was motivated (wholly or partly) by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated.[61]

If there was to be an amendment to address 'hate motivation' the Commission would favour the inclusion of specific hate, hostility or prejudice factors to be considered in sentencing as in Victoria, NSW or New Zealand model, rather than attempting to create a new offence.

15. Are there further offences that should be added to ACT criminal law to protect against hate crimes that are not already covered by existing offences?

The Commission considers that better enforcement and education around existing laws and jurisprudence would be preferable over attempting to design or develop new criminal offences. If the Government determines to take more direct legislative response based on recent examples of 'hate-based' crime the Commission considers that 'hate motivation' be considered in sentencing for existing offences would be a more appropriate course of action, as discussed above.

[55] s 33(1)(v) *Crimes (Sentencing) Act 2005.*
[56] s 33(1)(a) *Crimes (Sentencing) Act 2005.*
[57] s 33(1)(e) *Crimes (Sentencing) Act 2005.*
[58] s 7(1) *Crimes (Sentencing) Act 2005.*
[59] S 33(3) *Crimes (Sentencing) Act 2005.*
[60] R v Palmer (Unreported, Supreme Court of Victoria, Court of Appeal, Winneke ACJ, Charles and Callaway JJA, 13 September 1996), 12 (Charles JA).
[61] s 5(2)(daaa) *Sentencing Act 1991* (Vic); s 21A(2)(h) *Crimes (Sentencing Procedure)* Act 1999.

16. If criminal offences other than serious vilification are more likely to be used by the police and prosecution to prosecute hate crimes, what changes to the law, if any, would help ensure that it can properly respond to criminal acts motivated by hatred?

As noted above, the Commission considers that more benefit could be gained improving awareness and education in the general community, and among police, prosecutors and other frontline staff about discrimination and vilification, so that it can be identified, articulated, reported, investigated and prosecuted.

The Commission conducts discrimination training with staff at the AMC, at the Dhulwa Secure Mental Health Unit, and with the Education Directorate. The Commission ran a series of community information sessions on recent changes to the Discrimination Act including the positive duties for community organisations, business and interested individuals through 2024 and 2025.

In 2017 the Commission published Everyone can Play, Guidelines for local clubs on best practice for inclusion of transgender and intersex participants,[62] responding to community demand for resources to assist community sporting organisations in addressing concerns about issues of discrimination on the basis of gender identity, sex characteristics and sexuality. These guidelines are currently being revised and updated to reflect the introduction of the positive duties referred to above.

The Commission is also a longstanding member of the Play by the Rules consortium which provides resources, training and support for inclusive, safe and fair practice in community sporting organisations.

The Commission also runs recurring anti-discrimination campaigns on mainstream and community multicultural radio stations and in community print products, attends and presents at community events and supports community processes such as the Canberra Multicultural Community Forum (CMCF) Inc report on Racism in the ACT CALD Perspectives: evidence, impacts and collective actions.

Where we see more education being of value is in those tasked with investigating complaints and enforcing offences - that is agency complaints handling and incident review teams, and ACT Policing and Director of Public Prosecutions staff.

17. Are there any barriers to reporting hate crimes to police in the ACT that you have observed, or experienced? Do you have any case studies or examples?

As discussed above ACT Policing may not be well placed to assess and respond where hate or prejudicial attitudes may be driving vilification or other offending. This is because in many cases, determining what is vilification can be difficult and turns on detailed analysis of evidence and context of any conduct, even for Tribunals with the benefit of hearing from parties, witness and experts in the structured setting of a Tribunal hearing.

[62] ACT Human Rights Commission, Everyone can Play, Guidelines for local clubs on best practice for inclusion of transgender and intersex participants, (April 2017) available at https://www.hrc.act.gov.au/__data/assets/pdf_file/0007/2305483/Everyone-Can-Play.pdf

Similarly identifying hate as the basis for an offence can be difficult where the motivations may be multiple, overlapping and obscured by other circumstances in the context of the case, including mental health, disability and psychosocial factors. For example, the Commission regularly deals with clients who are dysregulated, exhibiting complex and challenging behaviours that include threats of harm, offensive statements, and non-engagement with services and would be concerned that in some circumstances these behaviours may be perceived to be vilification while pamphlets issued by the National Socialist Network are not considered to meet the thresholds under the Criminal Code.

Often the actions of individuals come from a place of the person having little to no agency, influence or ability to control themselves or their life. In this context statements or acts might said to be motivated by hate generally, against any and all identifiable groups with protected attributes, would not match up with the types of conduct sought to be prohibited by vilification provisions, which is using position, influence or power to incite others to hatred, revulsion, contempt or ridicule of the target group.

In some matters reported to the Commission there has been a lack of understanding by other agencies that while the harm presented to an identifiable or specific individual may appear minor or too diffuse to warrant a criminal justice response, such acts create or contribute to significant harm in the form of fear, anxiety, marginalisation or exclusion of members of a group generally. In one example of pamphlet distribution in 2025 it was not understood that community members felt individually targeted and therefore threatened by the 'Australia for the white man' pamphlet distribution. Specific community members were initially concerned they had been followed or individually identified, until it became apparent it was a widespread distribution. In that case, other community members responded with their own pamphlet promoting a welcoming, inclusive community recognising that legal responses are not always or only the vehicle for responding to vilification or hate speech.

18. Do you have any feedback on the support services available for people who want to report hate crimes?

A number of community legal services, advocacy groups and community groups support people to report hate crime and vilification. Resources in the community legal sector are limited and that can limit supports available for people. Recent events reported in the media can have a chilling effect on people wishing to report, and there can also be a self-selecting out process where people think a matter is not serious enough or worth bringing to the attention of authorities.

The Commission encourages people to report incidents of alleged hate crimes or hate speech to the Commission so we can assist people to understand the options available to them or where appropriate refer them to other appropriate avenues in a supported way.

The Commission notes that Victim Support ACT within the Commission is the primary support service for victims of crime in the ACT. The Commission notes many of those people who may seek to report hate crime, may also be affected by the chilling and silencing effect of crimes targeting individuals and groups for particular attributes.

Individuals subject to serious vilification are likely to be *victims* under the Charter of Rights for Victims of Crime [63] and may access help from advocates in Victim Support ACT to assist them in promoting their agency, safety and rights in reporting serious vilification. Financial assistance under the *Victims of Crime (Financial Assistance) Act 2016* ('VOCFA Act'), is not available for serious vilification on its own. An individual may be eligible for financial assistance where aspects of the conduct associated with the serious vilification also constitutes an offence listed in Schedule 1 of the VOCFA Act (for example, common assault or stalking).

19. Do you have any other suggestions for the prevention of hate crime?

The Commission notes that criminal and civil law are part of a preventive framework making clear to the community the values the community had regarding a safe, diverse and inclusive Canberra. Other preventive work is undertaken by community groups, programs in schools and online, media commentary etc promoting diversity & inclusion as values we collectively hold.

We have had reports to us of particular events such as the referendum on the Voice to Parliament, the events in Gaza and the Middle East, the Bondi tragedy, Ms Pauline Hanson's comments about Muslims all creating an enabling environment for vilification and expressions of hate of particular groups in our community.

It is critical that proactive programs in schools and education settings, community sport etc are resourced to ensure early intervention prevents the adoption of negative attitudes toward multiculturalism, pluralism and diversity.

We have also had reports of increased harassment and vilification of diversity groups among young people and note that civil and criminal laws are limited in their ability to identify and respond to these emerging trends. Community voices raising these concerns need to be appropriately resourced to ensure all opportunities to address those trends are addressed early in a proactive rather than reactive response.

The Commission would welcome being consulted on the development and drafting of any legislation proposals following this consultation process.

Should you wish to discuss this matter further or provide feedback regarding our advice, the contact in my office is Alex Jorgensen, who may be reached on 6205 2222.

Yours sincerely

Dr Penelope Mathew	Jodie Griffiths-Cook	Karen Toohey	Juliette Ford
President and Human Rights Commissioner	Public Advocate and Children and Young People Commissioner	Discrimination, Health Services, and Disability and Community Services Commissioner	Victims of Crime Commissioner

[63] Pt 3A *Victims of Crime Act 1994.*