



ADDRESSING HATE AGAINST LGBTIQ+ PEOPLE IN THE ACT

SUBMISSION TO THE ACT JUSTICE AND COMMUNITY SAFETY DIRECTORATE'S
HATE CRIME AND VILIFICATION REVIEW

27 March 2026

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INTRODUCTION

Equality Australia welcomes the opportunity to contribute to the ACT Justice and Community Safety Directorate's (**Directorate**) Hate Crime and Vilification Review (**Review**) in response to the Discussion Paper provided.

Since the ACT Government committed to review and strengthen hate crimes and serious vilification laws in 2024, there has been media reporting of the homophobic incidents 'happening every day' in Canberra.¹ This Review is timely and provides an opportunity for the ACT Government to better protect LGBTIQ+ people in the territory in the context of escalating hate across Australia, and internationally.

We welcome this Review being informed, in part, by the *ACT LGBTIQ+ Legal Audit: Reforms for an inclusive ACT* which we had conducted and published in 2019.² Our thinking has since developed further on the issue, and we are in the process of developing a detailed blueprint for how to address the challenging social problem of anti-LGBTIQ+ hate across Australia.

Experiences of hate crimes and vilification for LGBTIQ+ communities

LGBTIQ+ communities across Australia continue to face hate crimes and vilification, caused in part by hateful online content and narratives originating from both domestic and foreign actors that demonise and denigrate our communities. Most recently, documents obtained by the ABC under freedom of information laws show that NSW Police recorded 197 incidents of LGBTIQ+ hate-related violence between January 2023 and October 2025.³

The ACT is not immune to these concerning trends, with reports of homophobic attacks involving users of dating and hook-up apps being lured and violently attacked, robbed, filmed, and the content shared online.⁴

Further, 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 previous year due to their sexual orientation or gender identity.⁵

The Private Lives 3 study 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)
- 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

¹ Monte Bovill, 'Experiences of homophobia 'happening every day' in Australia's most progressive city', *ABC News* (online, 23 November 2025) <https://www.abc.net.au/news/2025-11-23/homophobia-in-canberra-australias-most-progressive-city/106004910>.

² Equality Australia, *ACT LGBTIQ+ Legal Audit: Reforms for an Inclusive ACT* (Report, 2019) https://www.act.gov.au/_data/assets/pdf_file/0006/1663611/act-lgbtiq-legal-audit-report-2019.pdf.

³ Alexander Lewis and Sean Rubinsztein-Dunlop, 'Teenage boys drive homophobic anti-LGBTQIA+ attacks NSW Police data shows', *ABC News* (online, 27 February 2026) <https://www.abc.net.au/news/2026-02-27/nsw-lgbt-hate-data-released-ahead-of-mardi-gras/106394004>

⁴ Monte Bovill, 'Experiences of homophobia 'happening every day' in Australia's most progressive city', *ABC News* (online, 23 November 2025) <https://www.abc.net.au/news/2025-11-23/homophobia-in-canberra-australias-most-progressive-city/106004910>.

⁵ 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.

- 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.

Transgender Australians face even higher rates of hate and violence than other parts of the LGBTIQ+ spectrum, and the risks they face continue to intensify, with online radicalisation and negative political rhetoric frequently targeting them.⁶ In 2023, the Trans Justice Project and Victorian Pride Lobby conducted a large survey of 3,099 adults to investigate anti-trans hate in Australia. It revealed that over 50% of trans participants had experienced anti-trans hate.⁷ In the 12 months prior, 16% of trans participants had experienced anti-trans violence and 1 in 3 participants had seen anti-trans violence.⁸ 34% of trans participants said they had experienced more or significantly more in-person anti-trans abuse, harassment, or vilification in 2023 than in 2020.⁹ 85% of all participants had seen significantly more online anti-trans hate since 2020.¹⁰

Defining hate conduct

When discussing ‘hate crimes’ and ‘hate speech’ we adopt the meanings used in the Discussion Paper:

HATE CRIME	HATE SPEECH
<p>Conduct that:</p> <ul style="list-style-type: none"> • causes harm (including violence) as well as crimes including common assault or property damage), • towards a person or group of people identifiable by (or believed to hold) certain characteristics, and • is motivated by prejudice. 	<p>Includes:</p> <ul style="list-style-type: none"> • Vilification (civil): conduct that incites hatred, revulsion, serious contempt, or serious ridicule of a person or group of people • Serious vilification (criminal): Vilification that can adversely impact the actual or perceived sense safety of people through the incitement of hatred or violence • Public display of Nazi symbols

UNLAWFUL VILIFICATION - CIVIL LAW

ATTRIBUTES

Question 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?

⁶ See e.g. Hiero Badge, Jackie Turner, Austin Fabry-Jenkins and Nevena Spirovska, *Fuelling Hate: Abuse, harassment, vilification and violence against trans people in Australia* (Trans Justice Project and Victorian Pride Lobby, 2023) 5 <https://transjustice.org.au/wp-content/uploads/2023/08/Fuelling-Hate-Anti-Trans-Abuse-Harassment-and-Vilification-WEB-SINGLES-1-1.pdf>.

⁷ Ibid.

⁸ Ibid 19.

⁹ Ibid 6.

¹⁰ Ibid.

In our view, the attributes and their definitions currently covered in s 67A(1) largely reflect LGBTIQ+ communities well. The legislation includes sexuality, gender identity and sex characteristics, and also provides protection on the basis of association, which is broadly defined and important for families, carers and allies.

At present, the *Discrimination Act 1991* (**Discrimination Act**) defines sexuality as ‘including heterosexuality, homosexuality and bisexuality.’ While the use of ‘includes’ means this is a non-exhaustive definition that may encompass asexual people, the government could consider explicitly recognising asexuality to ensure clarity and inclusivity.

The Queensland Human Rights Commission’s Review of Queensland’s *Anti-Discrimination Act 1991* (Qld) in 2022 recommended changes to ensure that asexual people are clearly covered by the law, given evidence of experiences of discrimination and stigma for this group.¹¹

This suggestion was adopted by the then Queensland Government in its *Respect at Work and Other Matters Amendment Act 2024* (Qld), which sought to amend the *Anti-Discrimination Act 1991* (Qld), including by defining ‘sexual orientation’ to mean (emphasis added):

a 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.

Unfortunately, in 2025, the subsequent Queensland Government indefinitely delayed the commencement of most of the amending legislation, including this revised definition.¹²

In NSW, while the *Anti-Discrimination Act 1977* (NSW) may be modernised soon, the more recent *Conversion Practices Ban Act 2024* (NSW) sets out that sexual orientation (emphasis added):

- (a) means an individual’s sexual orientation towards –
 - (i) individuals of the same sex, or
 - (ii) individuals of a different sex, or
 - (iii) individuals of the same sex and individuals of a different sex, and
- (b) includes **having a lack of sexual attraction of any individual of any sex**.¹³

RECOMMENDATION

Amend the definition of sexuality in the *Discrimination Act 1991* to expressly include a lack of sexual attraction, ensuring that asexual people are clearly and consistently protected under the Act.

CRITERIA TO ESTABLISH VILIFICATION

Question 2: Are the current criteria for establishing unlawful vilification appropriate?

The current criteria for establishing unlawful vilification in the ACT reflects the standard model of incitement-based vilification, where a person incites hatred toward, revulsion of, serious contempt for, or severe ridicule of a person or group on the basis of a protected attribute. Incitement-based provisions remain an important protection and should be retained.

However, modern vilification frameworks increasingly recognise that two forms of civil vilification require protection: incitement-based vilification and harm-based vilification. Incitement-based vilification occurs where a person encourages others to hate, ridicule or treat with contempt a person or group because of who they are. Tribunals and courts can become distracted with complex considerations of who the hypothetical

¹¹ Queensland Human Rights Commission, *Building Belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Final Report, July 2022) 285 <https://www.qhrc.qld.gov.au/our-work/major-reviews2/review-of-queenslands-anti-discrimination-act>.

¹² *Crime and Corruption (Restoring Reporting Powers) and Other Legislation Amendment Act 2025* (Qld) s 53.

¹³ *Conversion Practices Ban Act 2024* (NSW) sch 2, Dictionary (definition of ‘sexual orientation’).

audience may comprise and/or whether they might have been incited.¹⁴ Harm-based provisions operate more directly by focusing on whether the conduct itself is harmful toward the targeted person or group. They are also easier for ordinary members of the public to understand.

Harm-based protections have existed in Australian law for several decades. For example, section 18C of the *Racial Discrimination Act 1975* makes it unlawful to do an act, otherwise than in private, that is reasonably likely to offend, insult, humiliate or intimidate another person or group because of their race, colour, or national or ethnic origin. Similar harm-based protections exist in Tasmania,¹⁵ and have been included in Victorian law (commencing this year).¹⁶ Queensland has also legislated harm-based protections through amendments in 2024 (uncommenced).¹⁷

Protecting people from both forms of vilification is important as they address different kinds (but sometimes overlapping) conduct:

- Traditional incitement-based vilification addresses the risk of bringing others along to perpetuate hateful views that create a climate of fear and hostility for marginalised communities.
- Harm-based provisions recognise the effect of hateful conduct on the victim or victim group. For the person or group targeted, the harm is experienced, whether or not a third party would have been incited to participate in that hatred.

The most recent versions of harm-based models (such as in Victoria, and drafted but not commenced in Queensland) retain an objective test but assess the conduct from the perspective of a reasonable person who belongs to the relevant group, rather than a broader reasonable person test of an ordinary, reasonable observer from the community at large. This reflects the reality that language, symbols and conduct can have very different meanings and impacts depending on whether a person belongs to the group being targeted. A reasonable-person-within-the-group test better captures the lived experience of vilification.

Failure to include a harm-based model can allow perpetrators to intentionally use coded language that they know will cause real fear and intimidation for a person from a marginalised community, where they know a particular phrase will not be known or experienced in the same way by a broader audience.

For example, a person directing homophobic slurs at a same-sex couple in public may cause significant humiliation and distress to that couple, and disproportionately affect gay people more broadly, even if the words would not have provoked others to join in. Assessing the conduct from the perspective of a reasonable member of the targeted group ensures the law captures this harm, recognising that language which might seem merely rude or offensive to outsiders can carry a far deeper and more threatening meaning for those within the group.

RECOMMENDATION

Retain incitement-based vilification while introducing harm-based protections, assessed from the perspective of a reasonable person within the targeted group, to ensure the law more effectively captures and responds to the real impact of vilifying conduct.

¹⁴ See 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, 493.

¹⁵ Under section 17 of the *Anti-Discrimination Act 1998* (Tas).

¹⁶ Through the *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* (Vic), which inserted new section 102D into the *Equal Opportunity Act 2010* (Vic).

¹⁷ Amendments made by the *Respect at Work and Other Matters Amendment Act 2024* (Qld), which inserted a new chapter on vilification into the *Anti-Discrimination Act 1991* (Qld). These provisions have not commenced yet.

EXCEPTIONS

Question 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 current exceptions to unlawful vilification strike the right balance between protecting freedom of expression and preventing harm to vulnerable groups. The exemptions in s 67A provide standard protections for speech in the public interest, including reporting, academic, artistic, scientific, research, and other public interest purposes.

The requirement for conduct to be 'reasonable' provides an objective standard that acknowledges that speech can be seen as offensive by some yet still falls within legitimate public discourse. Consideration of reasonableness incorporates proportionality, ensuring that the conduct is not excessive in relation to its legitimate aim. It effectively moderates certain types of speech claimed to be in the public interest, taking context into account. What may be considered reasonable in a private religious or academic environment may be deemed unreasonable or lacking in good faith when shared more broadly, as illustrated in *Bropho v Human Rights and Equal Opportunities Commission*,¹⁸ and *Toben v Jones*.¹⁹

We note that the wording of the exception could be further improved by using the term 'good faith' in addition to, or instead of, 'honestly.' The broader concept of good faith is well-established in other jurisdictions and case law, including *Owen v Menzies*²⁰ and *Faruqi v Hanson*,²¹ and aligns with the principle that conduct must be undertaken with a genuinely held and honest belief that it is necessary or desirable to achieve a legitimate purpose. This approach helps distinguish conduct intended to vilify from speech that genuinely aims to contribute to public debate.

Religious speech

There has been some commentary on the need to separately protect religious speech, particularly during the passage of Victorian reforms in 2025. However, we do not think it is necessary to create a separate exception for religious discussion or debate, as this is already covered under the existing public interest provision. Discussion about religion, or a lack of religion, is clearly in the public interest when conducted reasonably and honestly. We believe this is the best interpretation of the law, given the *Human Rights Act 2004* (ACT) requires an interpretation that is compatible with human rights, including the right to freedom of thought, conscience, religion, or belief.²²

We do not think an exception like the one introduced in NSW last year, which allows for quoting or referring to religious texts, is needed either.²³ Simply stating words from scripture will not meet the threshold for vilification, but commentary that follows can cross the line into vilifying speech. For example, citing scripture such as 'You shall not lie with a male as with a woman; it is an abomination' would not be vilification on its own, but adding that 'as Christians we need to go out and rid the world of all gay men' would likely be vilifying

¹⁸ *Bropho v Human Rights & Equal Opportunity Commission* [2004] FCAFC 16, [80].

¹⁹ *Toben v Jones* [2003] FCAFC 137, [41]-[47].

²⁰ *Owen v Menzies* [2012] QCA 170, [78]-[81].

²¹ *Faruqi v Hanson* [2024] FCA 1264, [292]-[307].

²² *Human Rights Act 2004* (ACT) ss 14, 30, 31.

²³ *Crimes Act 1900* (NSW) s 93ZAA(2). We note that a similar provision appeared for the racial vilification offence at cl 22, section 80.2BF(4) in the initial exposure draft of the federal Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth) in January 2026. However, the racial vilification offence was removed in its entirety from the final bill addressing hate crimes, as passed, being the Combatting Antisemitism, Hate and Extremism (Criminal and Migration Laws) Bill 2026.

speech. We note that some religious stakeholders also object to the message that such an exemption sends, implying that established faiths in Australia are inherently discriminatory or harmful.²⁴

RECOMMENDATION

Retain the current exceptions, with minor refinement to incorporate a 'good faith' standard.

BARRIERS TO MAKING COMPLAINTS

Question 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?

We note the statistics provided by the ACT Human Rights Commission on vilification inquiries and complaints. While these numbers are relatively low, this pattern is consistent with what is observed in other Australian jurisdictions. Previous inquiries and reviews of anti-discrimination laws have consistently found that significant barriers exist for people seeking to make complaints about discrimination and vilification.²⁵

Vilification disproportionately affects people who already experience marginalisation, which can compound these barriers. As a result, low complaint numbers should not be interpreted as an indication that vilification is rare, but rather that most incidents go unreported.

Barriers to making complaints can include:

- **Limited community awareness** of the ability to make a complaint, and limited trust that legal systems will effectively recognise and address the harm experienced.
- **Relatively short time limits** (2 years), when the reality is it can take victims a long time to come to terms with what has happened, find out their options, and then make a complaint.
- **Outcomes sought don't align with outcomes most likely through complaints process**, where many complainants just want the conduct to stop, not be repeated, or for the respondent to be educated, but where the process is mostly oriented towards financial compensation.
- **Fear of retaliation, reprisal, or escalation** of the situation, particularly where the vilification occurs between people who know each other, such as neighbours.
- **Concerns about the process itself**, and the risk of re-traumatisation, including whether conciliation is the most appropriate mechanism for resolving these matters.
- **Lack of practical support**, including uncertainty about where or how to make a complaint and limited access to free legal or social support services to assist victims to consider their options.
- **Stigma and shame**, including the internalisation of blame or the feeling that the person should have somehow avoided the situation.

²⁴ See Joint Committee on Intelligence and Security, Parliament of Australia, *Review of the Exposure Draft Legislation: Combatting Antisemitism, Hate and Extremism Bill 2026* (Report, January 2026) 6 [1.30]-[1.32].

²⁵ Victorian Parliamentary Committee, *Inquiry into Anti-Vilification Protections* (Report, Victorian Legislative Assembly, 2021) <https://www.vic.gov.au/inquiry-into-anti-vilification-protections>; Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, Queensland Human Rights Commission, 2022) <https://www.qhrc.qld.gov.au/our-work/major-reviews2/review-of-queenslands-anti-discrimination-act/about-the-anti-discrimination-act-review>; Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (Report, Australian Human Rights Commission, 2020) <https://humanrights.gov.au/resource-hub/by-resource-type/publications/respectwork-sexual-harassment-national-inquiry-report-2020>; Australian Human Rights Commission, *Free and Equal: A Reform Agenda for Federal Discrimination Laws* (Report, Australian Human Rights Commission, 2021) <https://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/free-and-equal-reform-agenda-federal-discrimination-laws>; Australian Law Reform Commission, *Equality Before the Law: Justice for Australians* (Report No 69, ALRC, 1994) <https://www.alrc.gov.au/inquiry/anti-discrimination-laws/previous-inquiries/>.

- **Competing priorities**, where people experiencing marginalisation may be focused on immediate issues such as safety, housing or employment, placing complaint-making lower on their list of priorities.

Further, there are serious examples of vilification that are inappropriate to be dealt with through a civil process, particularly where there are ongoing safety concerns or where a recalcitrant respondent is unlikely to engage in conciliation. In these cases, the options of stop vilification orders (discussed at page 24) or making a report about a criminal offence (discussed at page 25) will be preferable for many victims.

Question 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?

The barriers described in relation to question 4 continue to apply here, but if anything, are compounded once a complaint reaches the Tribunal stage. Tribunal proceedings can be complex, time-consuming and stressful, particularly for complainants who may already be experiencing the impacts of vilification. While ACAT is intended to be accessible, most complainants need legal assistance to prepare evidence, understand legal tests, and respond to procedural requirements. Access to free or affordable legal support is limited, which can discourage complainants from progressing matters beyond the complaints stage.

There may also be concerns about the adversarial nature of tribunal proceedings. For people who have experienced vilification, the prospect of being cross-examined or having to repeatedly recount the incident can be very distressing. The time involved in progressing a matter to hearing, and the uncertainty of outcomes, can also discourage complainants from pursuing a claim.

The misalignment between the outcomes sought by complainants and those that can realistically be achieved through the legal process is often even more pronounced at the Tribunal stage. Creative, educative or systemic remedies are rarely pursued by tribunals in Australia, which tend to focus on more conventional individual remedies, and particularly insignificant awards of financial compensation, that are not worth the effort of pursuing a claim. Even in successful cases, we are aware of instances of complainants receiving no compensation even after a Tribunal has ordered it to be paid.

These barriers mean that some complainants may choose not to proceed to the Tribunal stage or quite often drop out of the process, even where they have experienced serious harm. While we do not have the data on hand for the ACT, we are aware of significant drop out rates at the Tribunal, particularly for unrepresented complainants.

RECOMMENDATION

Increase access to specialised legal support for victims of hate speech to reduce barriers to making complaints and minimise attrition at the Tribunal stage, including by expanding access to free legal and social support services.

SERIOUS VILIFICATION - CRIMINAL LAW

STANDALONE HATE SPEECH OFFENCES

Criminal vilification offences are intended to target extreme cases of hate speech rather than less serious incidents that can be dealt with under civil law. However, standalone serious vilification offences are rarely used in practice. Data from the National Hate Crimes Database regarding hate crimes charges in the 2024-2025 financial year, alongside the experience across Australian jurisdictions with similar offences, suggests

that these provisions are underutilised.²⁶ In November 2025, The Guardian reported that only two prosecutions have been launched under the ACT's serious vilification laws since 2020, accordingly to the territory's police data.²⁷

This reflects a broader pattern nationally, where criminal vilification offences exist but are seldom charged or prosecuted.

The requirement to establish intention, high thresholds for proving incitement, combined with evidentiary challenges around demonstrating a link to the protected attribute, may contribute to the limited use of these provisions.

A further barrier is the lack of police familiarity with these offences, with police tending to charge offences they know better and are more commonly used. For example, a threat to a person's life through an email is more likely to be charged as a 'threatening violence' offence or unlawful use of a carriage service offence instead.²⁸ Further, police may also be reluctant to charge an offender, and prosecutors might hesitate to proceed to trial due to concerns that it could embolden the offender and provide a public platform for further hateful speech.

Standalone offences raise valid questions about where the appropriate line is in protecting speech on one hand, while protecting minority communities from harm on the other. This legitimate concern particularly arises in relation to protest rights.

Given these challenges, while there are some benefits to considering reformulating or strengthening standalone hate speech offences, we think that this is a lesser priority compared with creating aggravated offences, which we discuss in detail in response to question 14 of this submission. We further respond in relation to a new potential approach to a standalone criminal offence in response to question 9.

ATTRIBUTES

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

We refer to our response to question 1. The list of protected attributes currently covered by section 750 of the *Criminal Code 2002* is sufficient to protect LGBTIQ+ communities. Key attributes such as sexuality, gender identity and sex characteristics are already well reflected in the legislative framework, but clarity that asexual people are covered would be beneficial.

We also note positively the alignment between the attributes linked to historically marginalised groups protected under the criminal provisions and those covered by civil vilification protections. Maintaining consistency between civil and criminal frameworks is important for clarity, accessibility and public understanding of the law. It also avoids gaps in protection that can arise where different attributes are recognised in different parts of the legal framework, as is currently the case in some other jurisdictions.

²⁶ As seen in the National Hate Crimes Database, there have been no charges made under s 750 in the 2024-2025 financial year. In that same period, there were: 3 charges for serious racial vilification in NSW under s 93Z of the *Crimes Act 1900* (NSW); and 1 charge under the federal offence of threatening force or violence against members of groups/close associates under s 80.2BB of the *Criminal Code Act 1995* (Cth) sch The Criminal Code (*Criminal Code 1995* (Cth)); 5 charges for serious vilification under Queensland's s 52A; 2 charges for serious racial vilification in South Australia under s 4 of the *Racial Vilification Act 1996* (SA); 1 charge for racial vilification in Victoria under s 24 of the *Racial and Religious Tolerance Act 2001* (Vic), noting that the offence of serious vilification for a wider range of protected attributes under s 195N of the *Crimes Act 1958* (Vic) was not yet in effect during the relevant period; and 1 charge for serious racial vilification in Western Australia under s 77 of the *Criminal Code Act 1913* (WA) sch The Criminal Code (*Criminal Code 1913* (WA)). See 'National Hate Crimes Database', *Australian Institute of Criminology* (website) <https://www.aic.gov.au/statistics/national-hate-crimes-database>.

²⁷ Nino Bucci and Adeshola Ore, 'Everyone says they are worried about hate crimes. But Australia's laws to combat them are all over the place', *The Guardian* (online, 2 November 2025) <https://www.theguardian.com/society/2025/nov/01/hate-crimes-australia-laws-police>.

²⁸ See *Criminal Code Act 1995* (Cth) sch The Criminal Code ss 474.15, 474.17.

ELEMENTS OF OFFENCE

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

Section 750 of the *Criminal Code 2002* (ACT) sets out the serious vilification offence as occurring where a person intentionally carries out a threatening act, other than in private and is reckless about whether the act incites hatred towards, revulsion of, serious contempt for, or severe ridicule of a person or a group of people based on their protected attribute or association with someone with a protected attribute.²⁹

A ‘threatening act’ means an act by a person where the act intentionally threatens physical harm to or harm to the property of one or more members of a protected attribute, or if the person is reckless about whether the act incites others to threaten the harm.³⁰

We do not consider that changes are necessary to the current offence in s 750 of the *Criminal Code 2002* (ACT), but instead recommend that a second, additional offence be created – we discuss this in response to question 9 in this submission.

Question 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?

Criminal vilification penalties vary significantly across Australian jurisdictions. Most states, including Queensland, New South Wales, Victoria, and South Australia,³¹ prescribe imprisonment for up to 3 years. The Commonwealth provisions have higher penalties, ranging from 7 to 10 years and are directed towards advocacy or threatening force or violence, rather than incitement of hatred.³² Western Australia has the highest penalties, with sentences of 3 to 14 years, but these only apply to racial vilification and are significantly out of step with other jurisdictions in relation to prescribed sentences at the higher end of the scale.³³ In contrast, the Australian Capital Territory is the only jurisdiction with a maximum penalty of just a fine, making it significantly out of step with the rest.

Given what we said in response to question 7 about the limited take up of these kinds of offences in general, it’s possible that the low maximum penalty in the ACT makes it even less likely for police and prosecutors to charge them, preferring instead to rely on other offences.

A maximum penalty of 1 to 3 years’ imprisonment seems more appropriate and consistent with other jurisdictions.

RECOMMENDATION

Allow for a short period of imprisonment to be applied to the offence in s 750 of the *Criminal Code 2002*.

INCITEMENT AND HARM-BASED TESTS

Question 9: What do you think about ‘incitement-based tests’ and ‘harm-based tests’ for serious vilification?

and

²⁹ *Criminal Code 2002* (ACT) s 750(1).

³⁰ *Criminal Code 2002* (ACT) s 750(2) (definition of ‘threatening act’).

³¹ See *Crimes Act 1900* (NSW) s 93Z, *Crimes Act 1958* (Vic) s 195N, *Racial Vilification Act 1996* (SA) s 4, *Criminal Code 1899* (Qld) s 52A. We note that South Australia’s criminal vilification protection is limited to race and does not cover anti-LGBTIQ+ hate speech.

³² *Criminal Code 1913* (WA) ch XI.

³³ *Criminal Code 1995* (Cth) ss 80.2A to 80.2BE.

Question 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?

Incitement-based tests for criminal vilification are currently the most common approach both in Australia and internationally. These tests focus on whether the conduct or speech actively encourages others to hate people based on a protected attribute. By targeting the act of inciting others, this approach emphasises the danger of spreading hatred and the potential for broader public harm.

While harm-based approaches are well-established in civil anti-discrimination law, their use in the criminal context has been limited. One notable exception is the relatively new offence of s 93ZAA of the *Crimes Act 1900* (NSW), which includes consideration of whether a reasonable person who was the target of incitement of hatred would fear harassment, intimidation, violence or safety – this has not been extended beyond the attribute of race.

Critics have raised concerns about their appropriateness in criminal law, arguing that harm-based tests can be less objective, may overlap with protected forms of expression, and could create uncertainty about the threshold for criminal liability.³⁴ We note that the federal government attempted to introduce a criminal hate speech model earlier this year – one of the major criticisms, before it was withdrawn from the finalised legislation, was the adoption of a harm-based test, and whether this was appropriate within the criminal context or might draw in conduct that should not be criminalised.

To entirely avoid the risks of a harm-based approach in criminal law, we suggest an alternative model:

- **Retain the current offence of intentional incitement of hatred through threatening acts (s 750)** in its existing form, ensuring that established protections against public, threatening conduct remain intact; and
- **Introduce a new offence of incitement of hatred with likelihood of causing serious harm**, designed to capture the most egregious forms of intentional advocacy of hatred that create a real risk of serious harassment, violence, or intimidation against protected groups. This offence would apply a high-threshold test, requiring proof of intent and an objective assessment of the likelihood that the conduct would result in serious harm, while avoiding criminalisation of speech that is offensive but unlikely to cause significant harm. We outline the proposed approach in detail in this section.

This approach preserves existing protections, aligns with international guidance such as the Rabat Plan of Action, and ensures that criminal liability is appropriately confined to the most serious conduct.

Rabat Plan of Action

The Rabat Plan of Action is the United Nation’s guidance in distinguishing between permissible speech and speech that incites discrimination, hostility and violence.³⁵ The Plan was made to deal with national, religious or race hatred. No plan yet exists for hatred against LGBTIQ+ people but we can look to this plan to assist with the balancing between free speech and protection from hate.

The Plan suggests a high bar, using a six-part threshold test before behaviour is designated as criminal. The six-part test consists of: context of the speech, speakers position/status, intent, content and form of the speech, extent of the speech act and likelihood, including imminence. We have considered this test and suggest that ‘intent’ and ‘likelihood’ are the parts that require some elaboration here:

³⁴ See NSW Law Reform Commission, *Serious racial and religious vilification* (Report No 151, September 2024) 57-58.

³⁵ This relates to Article 20 of the *International Covenant on Civil and Political Rights* and can be found at: https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf.

- **Intent:** Negligence and recklessness are not sufficient for an act to be an offence under article 20 of the International Covenant on Civil and Political Rights, as this article provides for *advocacy* and *incitement* rather than the mere distribution or circulation of material. This means that only deliberate acts would be captured.
- **Likelihood:** Action advocated through incitement speech does not have to be committed for that speech to amount to a crime but some reasonable probability that the speech would succeed in inciting actual action against the target group must exist. This means that an act must be assessed as being reasonably likely to incite hate, which brings an element of objectivity to the situation.

In our view, there is merit in considering an alternative formulation that better captures serious intentional conduct based on hate-motivations that creates a real risk of harm, based on the Rabat Plan of Action.

Proposed new offence: incitement of hatred with likelihood of causing serious harm

The government should consider introducing a second, narrowly framed offence which captures the most serious forms of intentional incitement of hatred that creates a real risk of serious harassment, violence or intimidation against protected groups.

Such an offence could be designed to apply only where a high threshold is met, including proof of intent and an objective assessment of the probability of harm arising from the conduct. This approach would ensure that criminal liability is confined to the most serious conduct, while maintaining appropriate protection for legitimate political expression and protest.

The offence would remain a high-threshold offence which avoids criminalising merely offensive speech that has a low or no risk of likely, imminent harm.

We propose that a person would commit this offence where the following elements are present:

- **intentional incitement of hatred**

The person intentionally incites hatred towards a person or group of persons on the basis of a protected attribute.

- **public communication**

The conduct occurs through public communication, including speech, publication, broadcast, or online communication.

- **reasonable likelihood of harm**

The conduct created a reasonable likelihood³⁶ of serious harassment, violence or intimidation against the targeted group. The actual violence or intimidation need not have been carried out for the offence to apply.

In assessing likelihood, the court may consider:

- context
- speaker's position or influence
- content and form of the communication
- extent of dissemination.

Example of what would fall under this provision:

³⁶ Reasonable likelihood means a real chance that isn't a remote chance, but is more than merely plausible. An alternative framing is a 'substantial likelihood', which would indicate a meaningful probability that harm would occur, but it may be too high a threshold and might deter policing and prosecutions.

A large online forum publishes posts encouraging members to ‘hunt down’ trans people attending a public event and ‘make them afraid to show their faces in public again’. The post is shared thousands of times and encourages followers to gather at the location of the event, providing the names and identifying details of trans people who are expected to attend.

Example of what would fall out of this provision:

A religious organisation holds a protest outside Parliament expressing opposition to marriage equality or gender identity laws. Peaceful protestors carry signs and chant slogans advocating changes to the law. The signs and slogans show strong disapproval of LGBTQ+ people and call people ‘immoral’ or ‘sick’.

RECOMMENDATION

The government should introduce a new offence as follows:

Incitement of hatred with likelihood of causing serious harm

- A person commits an offence if:
 - the person intentionally incites hatred towards another person or a group of persons on the basis of a protected attribute; and
 - the incitement occurs through public communication, including speech, publication, broadcast, or online communication; and
 - the conduct creates a reasonable likelihood of serious harassment, violence, or intimidation against the targeted person or group.
- For the removal of doubt, a person may commit this offence even if no actual harassment, violence or intimidation occurs.
- In assessing whether the conduct creates a reasonable likelihood of serious harassment, violence or intimidation, a court may consider:
 - the context of the communication;
 - the speaker’s position, influence, or reach;
 - the content and form of the communication;
 - the extent of dissemination.

BALANCING PROTECTION AND FREEDOMS

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

We recognise that criminal law protections need to be balanced with the freedom of expression and are of the view that the existing offence, even with additional changes as recommended in this submission in relation to the probability of harm test (from page 11-14) and the potential introduction of a custodial penalty (at page 11), will strike the right balance.

Freedom of expression

The key protection for free expression in ACT law is found in the *Human Rights Act 2004* (ACT) s 16, which states that:

- (1) *Everyone has the right to hold opinions without interference.*

(2) *Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by them.*³⁷

The same legislation further provides at s 28 that human rights may be subject only to reasonable limits set by laws that be demonstrably justified in a free and democratic society, and for a determination as to whether a limit is reasonable, the relevant factors to be considered includes:

- the nature of the right affected,
- the importance of the purpose of the limitation,
- the nature and extent of the limitation,
- the relationship between the limitation and its purpose, and
- any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.³⁸

It is consistent with the protection of a free and democratic society to deter the incitement of hatred against people on the basis of a protected attribute, as such conduct may inhibit the ability of affected groups to participate fully and openly in society and may undermine social cohesion.

This conclusion is consistent with international human rights law as we explain in the following section.

Limitations on speech for a legitimate purpose

It is permissible under human rights law to limit speech, including with criminal penalties, where restrictions are:

clearly and narrowly defined and respond to a pressing social need; are the least intrusive measure available; are not overly broad, so that they do not restrict speech in a wide or untargeted way; and are proportionate so that the benefit to the protected interest outweighs the harm to freedom of expression.³⁹

The *International Covenant on Civil and Political Rights (ICCPR)*,⁴⁰ provides for the freedoms of thought, conscience and religion,⁴¹ and of expression⁴²

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))⁴³
- 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

³⁷ *Human Rights Act 2004* (ACT) s 16.

³⁸ *Ibid* s 28.

³⁹ Human Rights Council, *Annual report of the United Nations High Commissioner for Human Rights*, UN Doc A/HRC/22/17/Add.4 (11 January 2013) [18] https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf, referring to Article XIX, *Camden Principles on Freedom of Expression and Equality* (London, April 2009) principle 11.

⁴⁰ *International Covenant on Civil and Political Rights*, opened for signature on 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (ICCPR).

⁴¹ *Ibid* art 18

⁴² *Ibid* art 19.

⁴³ *Ibid* art 18(3).

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))⁴⁴

- 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)).⁴⁵

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.⁴⁶

The Rabat Plan of Action sets 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’.⁴⁷ We agree with this approach and are of the view that criminal offences should be reserved for the most serious forms of vilification and must not be used stifle legitimate expression or political dissent.

However, hate speech is pervasive in the ACT and continues to escalate. 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. Current ACT provisions, and those recommended by us in this submission, are consistent with the purpose of the ICCPR, which is to safeguard public order against the incitement of hatred, a precursor to violence.

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.⁴⁸

Where there is clear evidence, as set out in this submission, that LGBTIQ+ people are experiencing escalating levels of hate, governments have a positive obligation to take reasonable and proportionate measures to address and prevent this harm.

Maximum penalties

While the present law only prescribes a fine, we have noted above at page 11 that most equivalent laws in other jurisdictions in Australia (where enacted) have penalties of up to 3 years’ imprisonment and call for a reconsideration of the current penalty under s 750.

We emphasise that stopping serious vilification and hate should not start and end with criminalisation, including punishment through periods of imprisonment. While criminal laws are necessary to deal with the most serious conduct, we need to also focus on restorative justice, prevention, and de-radicalisation programs to tackle the root causes of offending.

Non-carceral approaches are appropriate in many situations, but they cannot be applied in a one-size-fits-all way. Imprisonment should remain an option for the most extreme cases – to ensure justice, protect individuals and the community from harm, and provide opportunities for targeted rehabilitation. In these

⁴⁴ Ibid art 19(3).

⁴⁵ Ibid art 20(2).

⁴⁶ Human Rights Committee, *General Comment No.34 on Article 19: Freedoms of Opinion and Expression*, CCPR/C/GC/34 (29 July 2011) [21]–[22].

⁴⁷ 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].

⁴⁸ ICCPR arts 2, 26.

instances, imprisonment should be paired with specialised de-radicalisation programs to address offending behaviour and reduce the risk of reoffending.

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.⁴⁹

Whether a given law infringes the implied freedom requires a three-staged inquiry:

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.

There has been more commentary on civil laws at this stage in Australia, which have been more widely used and therefore more subject to challenge.

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 communications about government and political matters in a civilised, diverse democracy which values all its members, irrespective of race, religion, sexuality or gender identity.⁵⁰

The NSW Court of Appeal found in *Sunol v Collier (No 2)* that although s 49ZT of the *Anti-Discrimination Act 1977* (NSW), which renders ‘homosexual vilification’ unlawful, burdened the implied freedom, this was permissible since:

- the aim of preventing this form of 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.⁵¹

Based on our analysis of human rights compatibility (as set out in detail in the section above), we consider it likely that similar conclusions would apply to the criminal laws.

The application of the implied freedom in the context of criminal law was explored in *Monis v The Queen*, where the High Court considered the constitutional validity of a criminal offence in relation to offensive communications.⁵² 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 1995* (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”’.⁵³ 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

⁴⁹ *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.

⁵⁰ *Owen v Menzies* [2012] QCA 170, [72].

⁵¹ *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].

⁵² *Monis v The Queen* [2013] HCA 44.

⁵³ *Ibid.*, [1].

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”’.⁵⁴

BARRIERS TO PROSECUTION

Question 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?

Hate crime laws are ineffective if police understanding of these laws, and their ability to effectively investigate hate crimes, are inadequate. These two potential barriers to effective enforcement of the serious vilification offence (and future hate crimes laws) may be addressed through:

- a **specialist, hate crimes unit** within ACT Policing or the Australian Federal Police, which engages marginalised communities and has specialist skills and autonomy to investigate hate crimes, and
- introducing a **hate crimes scrutiny panel**.

Specialist hate crimes unit in ACT Police

We hear anecdotally about victims going to the police to report serious vilification but being told that it is a ‘civil matter’, a case of defamation, or can’t be dealt with because of ‘free speech’, instead of it being taken seriously as a criminal hate speech offence. In the context of hate crimes that have been carried out through victims being lured over dating or hook-up apps, victims may feel shame or guilt, or may fear being outed, which deters them from reporting these incidents.

It is unclear whether ACT Policing or the Australian Federal Police have a dedicated hate crimes unit. We have seen sustained efforts by the NSW Police Force’s Hate Crimes Unit to engage and build trust with LGBTIQ+ communities to report hate crimes, with the NSW HCU seeking to connect complainants with their local police area command. Trust in the police and enforcement of hate crime laws could both be improved by ACT Policing or the AFP having a hate crimes unit operating with a combination of the roles played by the NSW HCU as well as the WA Police Hate Crimes Unit (WA HCU) which has autonomy, dedicated investigative powers and a specialisation in hate crimes.

Hate crimes scrutiny panel

We note there is an LGBTQIA+ Liaison Officer in ACT Policing, but a more in-depth model than community engagement extends into oversight and discussions regarding responses to hate crimes. One avenue for this is the introduction of a Hate Crimes Scrutiny Panel such as the ones in place in some county police forces in the United Kingdom, including in West Yorkshire,⁵⁵ and Leicester, Leicestershire and Rutland.⁵⁶

⁵⁴ Ibid, [129].

⁵⁵ ‘Hate Crime Scrutiny Panels’, *West Yorkshire Police* (web page) <https://www.westyorkshire.police.uk/advice/abuse-and-anti-social-behaviour/hate-crime/hate-crime-hate-incidents/hate-crime-scrutiny-panels>.

⁵⁶ ‘Hate Crime Scrutiny Panel’, *Police & Crime Commissioner for Leicester, Leicestershire & Rutland* (web page) <https://www.leics.pcc.police.uk/what-we-do/meetings/hate-crime-scrutiny-panel/>

Hate Crimes Scrutiny panels are structures within a police service that provide oversight over designated crimes. They consist of police members and members of the public (particularly individuals who belong to community against whom hate is directed), and as a group they meet regularly to review policing responses to and investigations of hate crimes and offer suggestions for improvement, based on their life experience.

RECOMMENDATIONS

- Introduce a specialised hate crimes unit within ACT Policing, or advocate for there to be one within the Australian Federal Police
- Introduce a Hate Crimes Scrutiny Panel within ACT Policing, involving stakeholders from marginalised communities, to review and suggest improvements to policing responses to hate crimes

DISPLAY OF NAZI SYMBOLS

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

Banning symbols is not a high priority in our view. While such measures may have symbolic value, they are unlikely to address the underlying drivers of hatred or prevent the spread of extremist movements.

There are also significant practical challenges in framing these offences appropriately.

Scope of the offence

There are inherent difficulties in identifying which symbols should be captured. Extremist movements frequently adapt, adopting new imagery, coded references, or ambiguous symbols when existing ones are prohibited. Queensland's approach of allowing symbols to be prescribed by regulation attempts to address this flexibility, but it also raises rule-of-law concerns, including uncertainty and the risk of overreach. Once symbol bans are expanded beyond a narrow and historically fixed category such as Nazi imagery, there is pressure to continually add new groups and symbols.

Symbol bans risk capturing conduct that is not actually harmful in context, including legitimate protest, artistic expression, satire, historical use, or religious practice. Broad prohibitions may therefore have a chilling effect on lawful expression and freedom of association, particularly where intent and context are difficult to assess in practice.

An obvious example of this was ACT Policing's enforcement of the new Commonwealth offence regarding the display of Nazi symbols, whereby posters negatively depicting political figures such as Elon Musk and Donald Trump, were seized by ACT Policing on the basis of those figures were wearing Nazi uniforms and symbols. However, as stated by legal and community commentators, the posters appeared to send an *anti*-fascist message in that they were denigrating the respective political figures,⁵⁷ and there is a clear exception for this at the Commonwealth level and in the ACT *Criminal Code*. This suggests that even where legislation is relatively well-balanced on its face, there remains a risk of misapplication in practice. This points to the need for clear guidance and training, rather than further expansion of offences to take in a broader range of symbols.

We would support a minor expansion to cover ISIS-inspired symbols. If the justification for prohibition is that a symbol is associated with violence, extremism, or the targeting of minority groups, there may be a principled basis to include symbols associated with established groups such as ISIS, which have explicitly

⁵⁷ Tahlia Roy, James Tugwell and Lily Nothling, 'Prominent arts lawyer labels Commonwealth hate speech laws 'problematic' for artists, democracies', ABC News (online, 20 February 2026) <https://www.abc.net.au/news/2026-02-20/shock-police-seized-canberra-posters-under-hate-laws/106364938>.

targeted LGBTIQ+ people. Reporting, including by ABC News's 7.30, has highlighted online extremist networks linked to ISIS encouraging violence against LGBTIQ+ people.

Banning phrases

We strongly oppose the banning of specific phrases, as is the case under new Queensland laws. Such measures criminalise often contested phrases out of context and carry a high risk of incompatibility with human rights, particularly freedom of expression.

Operation of current offences

The ACT offence is relatively straightforward, requiring proof of the public display of a prohibited symbol with knowledge (or reasonable knowledge) of its character. By contrast, the Commonwealth offence introduces an additional element requiring an assessment of whether a reasonable member of a targeted group would consider the conduct capable of inciting hatred. Queensland adopts a different approach again, requiring that the conduct could reasonably be expected to cause a member of the public to feel menaced, harassed, or offended.

These additional elements introduce greater legal complexity and higher evidentiary thresholds. The ACT's simpler formulation is appropriate given the currently narrow category of prohibited symbols. Expanding the list of symbols would likely require more complex tests, increasing uncertainty and enforcement challenges.

These additional elements are not required in the ACT when such a small range of symbols are subject to criminal prohibitions. Legal complexity would increase if a broader range were to be incorporated.

Enforcement and penalties

While we note there were 22 charges using the Commonwealth offence, 20 in Queensland, and none in the ACT offence in the 2024-25 Financial Year,⁵⁸ this may be partially due to ACT Policing being more inclined to rely on the Commonwealth offence and the significantly smaller size of the ACT jurisdiction.

The ACT offence nonetheless provides a workable mechanism for addressing the public display of Nazi symbols, including in a way that recognises the historical persecution of multiple groups, including LGBTIQ+ people.⁵⁹

ACT's penalty is 12 months' imprisonment and/or 120 penalty units (\$19,200),⁶⁰ which is broadly consistent with the Commonwealth laws at 12 months' imprisonment and/or 150 penalty units (\$49,500),⁶¹ and we see no obvious merit in increasing the sentence since higher sentences do not necessarily produce a higher deterrent effect.⁶²

RECOMMENDATION

We recommend retaining the current ACT offence for the public display of Nazi symbols, including its existing scope, fault elements and penalty, and consider whether there is merit in banning of ISIS symbols.

⁵⁸ 'National Hate Crimes Database', *Australian Institute of Criminology* (website) <https://www.aic.gov.au/statistics/national-hate-crimes-database>.

⁵⁹ 'Gay People', *Holocaust Memorial Day Trust* (web page) <https://hmd.org.uk/learn-about-the-holocaust-and-genocides/nazi-persecution/gay-people/>.

⁶⁰ *Legislation Act 2001* (ACT) s 133(2)(a), where 1 penalty unit is \$160 for an offence committed by an individual.

⁶¹ *Crimes Act 1914* (Cth) s 4AA (definition of 'penalty unit'), where 1 penalty unit is \$330.

⁶² Donald Richtie, 'Does Imprisonment Deter? A Review of the Evidence' (April 2011) *Sentencing Advisory Council (Vic)* 2. [https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Does Imprisonment Deter A Review of the Evidence.pdf](https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Does%20Imprisonment%20Deter%20A%20Review%20of%20the%20Evidence.pdf).

OTHER OPTIONS FOR CRIMINAL LAW REFORM

Question 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?

We strongly support both creating a scheme of aggravated offences for hate motivated conduct, as well as considering an offender’s motivations in targeting one or more victims on the basis of their actual, perceived or association with protected attributes, as a factor at sentencing.

The distinction between aggravated offences and aggravated sentences can be lost, and for clarity we refer to the following terms:

- **Aggravated offences:** those where a criminal offence already exists (a ‘**base offence**’), and where a person commits the base offence because of hate, it is elevated and treated as a more serious (aggravated) offence from the outset. Only select offences would be elevated by an aggravating factor, so it is important to ensure those most often perpetrated against the LGBTIQ+ community are included.
- **Aggravated sentences:** when a person has been convicted of a criminal offence, and at sentencing the decision-maker moves the penalty towards the upper threshold because the crime was committed as a result of hatred.

According to the National Hate Crimes Database⁶³, while in the same period there were no criminal hate speech charges laid by police there were 33 charges in Queensland for a range of offences where circumstances of aggravation were applicable, which comprise instances where offending was motivated by hatred or prejudice on the basis of one or more protected attributes of, or associated with the victims.⁶⁴

Our preference is that hate-motivated conduct is identified and charged as an aggravated offence from the outset. However, where the hate element is not captured at the charging stage, courts should still be able to recognise it at sentencing where there is evidence that the offender targeted one or more victims on the basis of a protected attribute.

It should be made clear in the legislative framework that double punishment is to be avoided. The sentencing consideration should operate as a safeguard to ensure that hate motivation is not overlooked, rather than resulting in cumulative punishment where an aggravated offence has already been established.

Aggravated offences

We recommend the introduction of a circumstances of aggravation provision, similar to the approach in Queensland,⁶⁵ which would include higher sentences to a prescribed set of base offences.

Section 52B of Queensland’s *Criminal Code*,⁶⁶ as extracted below, with additional details of base offences provided in square brackets is our recommended starting point:

52B Circumstances of aggravation for particular offences

⁶³ ‘National Hate Crimes Database’, *Australian Institute of Criminology* (website) <https://www.aic.gov.au/statistics/national-hate-crimes-database>.

⁶⁴ *Criminal Code 1899* (Qld) s 52B.

⁶⁵ *Ibid* s 52B.

⁶⁶ *Criminal Code 1899* (Qld) s 52B.

(1) 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—

(a) in relation to a person—the race, religion, sexuality, sex characteristics or gender identity of the person, or presumed race, religion, sexuality, sex characteristics or gender identity of the person; or

(b) in relation to a group of persons—the race, religion, sexuality, sex characteristics or gender identity shared, or presumed to be shared, by the members of the group.

(2) In this section— prescribed offence means an offence against any of the following sections—

(a) section 69 [going armed so as to cause fear];

(b) section 75 [threatening violence];

(c) section 207 [disturbing religious worship];

(d) section 335 [common assault];

(e) section 339 [assaults occasioning bodily harm];

(f) section 359 [threats against a person from doing a thing they are lawfully entitled to do, or compelling them to do a thing, they can lawfully abstain from];

(g) section 359E [unlawful stalking, intimidation, harassment or abuse];

(h) section 469 [wilful damage].

The list of offences under s 52B(2) of the Queensland *Criminal Code* are tailored to include offences that usually underpin hate-motivated offences. The respective provisions for each of the prescribed offences above, includes a separate sub-section setting out a higher penalty where circumstances of aggravation are applicable, enabling law enforcement to press charges using that sub-provision. For example, the base offence of going armed so as to cause fear, attracts a penalty of 2 years' imprisonment, but where the offender commits the offence with the s 52B circumstance of aggravation, they are liable to imprisonment for 3 years.⁶⁷

A similar approach may be adopted, should a circumstance of aggravation provision be introduced in the ACT, which would necessitate corresponding amendments to the provisions of the prescribed base offences.

The key benefits of introducing specific aggravated offences include:

- **Ease of implementation:** There is no need to draft entirely new criminal offences, seen with the 'circumstances of aggravation' approach in Queensland as described above, and the United Kingdom,⁶⁸ on which the Queensland provision was based.
- **Improved victim recognition and justice:** 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 the offence is treated as though it were not aggravated by hate, it compounds the trauma and undermines trust in the justice system.
- **Familiarity for police and prosecutors:** Incorporating a circumstance of aggravation allows the hate motivation to be reflected in the charge without requiring new or unfamiliar offences, reducing the need for a more sophisticated policing response.

⁶⁷ See *Criminal Code 1899* (Qld) ss 69(1), (2).

⁶⁸ *Crime and Disorder Act 1998* (UK) s 28(1).

- **Better data collection and early recognition:** Including the hate element at the charging stage ensures that hate crimes are properly identified and recorded from the outset. This improves visibility and support the development of a more accurate and reliable dataset of hate-based offending.
- **Reduced likelihood of prosecution failing if hate not proven:** If the aggravating factor is not proven, the person can still be found guilty of the non-aggravated base offence. This is in contrast to the standalone offences approach, where if the hatred element is not made out, the whole prosecution fails.

Queensland’s circumstances of aggravation provision was applied in 33 charges in the 2025 financial year, according to the National Hate Crimes Database.⁶⁹ While this figure does not indicate how many of these charges resulted in convictions or acquittals, it demonstrates that the existence of an aggravated offence helps to improve data capture at the outset.

Further improvements from Queensland scheme

While we suggest Queensland’s model as a starting point, there are key improvements that should be made:

- Incorporate that hate-motivation can be found when an offender **demonstrated** or **expressed** hatred for or prejudice against a group of people to which the offender believed the victim belonged
- Careful **reconsideration of the base offences** to ensure that the most common hate-motivated crimes are captured – this can include for LGBTIQ+ people sexual offences and robberies – these do not appear on the Queensland prescribed base offences list.

RECOMMENDATION

Introduce a new scheme of hate-based aggravated offences that incorporates:

- a prescribed list of offences which captures the crimes most often experienced by LGBTIQ+ people; and
- for the listed offences, an aggravating circumstance that the perpetrator was wholly or partly motivated by or demonstrated hostility, hatred, or other relevant emotions in respect of a victim’s protected attributes.

Aggravated sentencing

Aggravated sentences come into play after a person pleads guilty or has been found guilty of an offence. A sentencing judge can determine that the person who committed the offence did so because of the victim’s protected attributes, and so the sentence handed down should be higher than might otherwise have been the case (though it must remain within the range for that offence).

The courts in the ACT have discretion to consider including the personal circumstances of the victim and whether they were known to the offender when the offence was committed.⁷⁰ However, s 33 of the *Crimes (Sentencing) Act 2005* (ACT) has no explicitly stated sub-provisions setting out an aggravating factor for offending motivated by hate or prejudice.

Last year, Tasmania amended its sentencing laws and incorporated a formulation based on UK law.⁷¹ Aggravated sentencing can now be imposed if the offender was motivated by hatred or prejudice. Importantly, the amendments mean this motivation element can be met if the offender *demonstrated*, or

⁶⁹ ‘National Hate Crimes Database: Queensland’, *Australian Government: Australian Institute of Criminology* (web page) <https://www.aic.gov.au/statistics/national-hate-crimes-database>.

⁷⁰ *Crimes (Sentencing) Act 2005* (ACT) s 33(1)(d).

⁷¹ *Sentencing Act 1997* (Tas) s 11B.

expressed, hostility, malice or ill-will in respect of one of the protected characteristics during or immediately around the time of the offence.

Most recently, the NSW Government has introduced a Bill to amend its criminal laws to respond to the revelations of high levels of anti-LGBTIQ+ hate crimes, which clarifies its aggravated sentencing factor in relation to hate or prejudice, to state:

“For the purposes of subsection (2)(h), if, at the time of committing the offence or immediately before or immediately after committing the offence, the offender demonstrated or expressed hatred for or prejudice against a group of people to which the offender believed the victim belonged, the offence is taken to have been motivated by hatred or prejudice.”⁷²

The existing aggravating factor in NSW to which this applies, states “ the offence was partially or wholly motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, gender identity, sexual orientation or age, or having particular variations of sex characteristics or a particular disability).”⁷³

More recently, the Commonwealth Parliament passed hate crime reforms which also included an aggravating sentencing factor for offending motivated wholly or partly by hatred of a person or a group, based on the offender’s belief that the victim/s was distinguished by race, national or ethnic origin.⁷⁴ This reform has disappointingly excluded all protected attributes other than race. This leaves a gap in protection for LGBTIQ+ communities and others in the ACT.

Aggravated sentencing is important to have in the mix of options available. However, it is a less effective mechanism than aggravated offences discussed above as the sentencing factors do not become part of an offender’s criminal record. This means the aggravating factor will not be able to be part of the record available to a sentencing judge if there are subsequent offences by that individual. It also makes it more difficult for policy makers, legislators and the broader community to understand the prevalence of hate-related crime through convictions data because the conviction itself does not have a hate element attached.

RECOMMENDATION

Amend the *Crimes (Sentencing) Act 2005* (ACT) to include an explicit hate-based aggravating factor, aligned with recent changes in New South Wales and Tasmania, so that offences motivated by prejudice are clearly recognised and consistently applied in sentencing.

Question 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?

In many cases, the people who experience vilification simply want the harmful behaviour to stop. This includes both online and offline conduct, such as stalking, intimidation and harassment, on the basis of protected attribute/s.

We recommend the introduction of Stop Vilification Orders (**SVOs**), similar to Personal Protection Orders (**PPOs**) in the ACT,⁷⁵ to provide timely and accessible protection for people targeted by hate, including online abuse.

⁷² Crimes Legislation Amendment (Hate Crimes) Bill 2026 (NSW) cl 1; see *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A.

⁷³ see *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(h). s

⁷⁴ *Crimes Act 1914* (Cth) s 16A(2)(mb).

⁷⁵ *Personal Violence Act 2016* (ACT) ss 12, 30.

While PPOs are useful in protecting their applicants from dangers, they have significant limitations in the context of vilification:

- PPOs are primarily designed to address immediate physical threats and do not cover other forms of harm caused by vilification, such as reputational damage or mental and emotional distress, and
- PPOs do not respond to the cumulative, networked nature of online vilification, which can involve coordinated or sustained attacks by multiple actors across platforms, often using anonymous or pseudonymous accounts.

We propose establishing an SVO framework, allowing orders to be sought by individuals, authorised support organisations or the police. Courts would have the power to prevent ongoing hate-based conduct and harassment by issuing time-limited orders with tailored conditions. Any breach of an SVO would constitute a criminal offence enforceable by police.

Other key features of SVOs could potentially 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, where the 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, similarly to PPOs.⁷⁶
- Protection of identity: Orders should incorporate safeguards to protect the complainant from further harm, recognising that simply applying for protection can sometimes escalate the situation or provoke further harassment. Such safeguards could include name suppression, protections against retaliatory publicity, and restrictions on the disclosure of court proceedings.

SVOs would offer a victim-centred response to hate that prioritises safety, agency and dignity, without needing to criminalise every instance of harmful speech. For people seeking simply to have the attacks end, this framework could offer meaningful and practical relief.

RECOMMENDATION

Introduce a Stop Vilification Orders framework to provide timely, accessible, and victim-centred protection against ongoing hate-based conduct, including online abuse, with flexible conditions and enforceable consequences for breach.

⁷⁶ See *Personal Violence Act 2016* (ACT) s 12(2).

Question 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?

Where general criminal offences are relied on to prosecute hate crimes, additional structural and procedural changes are needed in policing agencies to ensure the hate element is properly identified, investigated and reflected in outcomes. Recognition of hate-motivated offences would be greatly improved by creating a circumstance of aggravation scheme as detailed in response to question 14 of this submission.

One key reform would be the establishment of a specialist, centralised hate crime unit as described at pages 18-19. Relying on reporting through local police stations can lead to inconsistent responses and missed identification of hate motivations, as well as failure to identify repeat offenders. A dedicated unit, with appropriate expertise and training, would support more consistent recognition of hate crimes and serious vilification, improve the quality of investigations, and increase the likelihood of charges and successful prosecutions. It would also provide a more trusted and accessible reporting pathway for affected communities.

A further option is the development of a dedicated hate crime reporting mechanism, such as a standardised reporting form. This can assist in systematically capturing the hate-motivation element of offending from the outset. We note that specialised reporting tools are already in use in Western Australia, and the unit there also engages with local LGBTIQ+ groups to discuss trends and issues.

There is also value in enabling anonymous reporting. While such reports may not often lead to prosecution, they can provide important intelligence about patterns and emerging trends, particularly in online environments where threatening and violent hate speech is increasingly normalised. Collecting this data can support more proactive and targeted policing responses, even where individual matters cannot proceed.

RECOMMENDATION

Introduce a dedicated, standardised hate crime reporting form with the option to make complaints anonymously.

PREVENTION, ENFORCEMENT AND RESOLUTION

Question 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?

There are well-documented barriers to reporting hate crimes to police for LGBTIQ+ communities,⁷⁷ many of which are likely to be present in the ACT. These include low confidence that reports will be taken seriously, fear of being dismissed or misgendered, concerns about being 'outed' through the reporting process, and a perception or actual past experience that police lack the training or cultural competency to respond appropriately. For some people, particularly those with intersecting experiences of marginalisation such as First Nations or culturally diverse LGBTIQ+ people, there is a broader mistrust of policing institutions that can compound the issues.

⁷⁷ Human Rights Law Centre, *End the Hate: Responding to prejudice motivated speech and violence against the LGBTI community* (Report, 2018) 15 <https://www.hrlc.org.au/app/uploads/2025/04/1809-End-The-Hate-Report.pdf>; Matthew Mitchell, Joel Anderson, Natalie Amos et al, 'Anti-Queer Violence in Australia: An Intersectional Analysis of Victimization among LGBTQA+ Adults' (2025) *Journal of Homosexuality* 1, 2.

Underreporting is therefore a significant issue. Many incidents are either not reported at all, or are reported without the hate element being clearly identified or recorded.

While not specific to ACT Policing, we consistently hear from LGBTIQ+ communities that reports of physical violence or property damage are more likely to receive an appropriate response than non-physical forms of harm, such as online hate speech, threats, stalking and intimidation. This points to both a lack of familiarity with these types of offences, and a broader uncertainty about how hate-motivated conduct manifests for LGBTIQ+ people.

There are parallels between hate-motivated crime and responses to domestic and family violence, where harm is not always physical and may present differently across diverse relationships. Without a clear understanding of these dynamics, there is a risk that non-physical but serious forms of harm are minimised or not recognised as part of a broader pattern of targeted abuse.

The Discussion Paper notes the lack of formal referral pathways between the ACT Human Rights Commission and police. It is probable that a lack of clear referral pathways limits the ability of victim-survivors to move safely and confidently between complaint mechanisms, and risks people falling through the cracks. It may mean that people choose a civil pathway or criminal pathway when the other option may well be better suited to their circumstances.

RECOMMENDATION

Improve police responses to hate-based conduct by strengthening LGBTIQ+ cultural competency, recognising non-physical forms of harm, addressing barriers to reporting, and establishing clear, trauma-informed referral pathways between police and the ACT Human Rights Commission.

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

LGBTIQ+ communities would greatly benefit from a dedicated mechanism, equivalent to the Islamophobia Register or the register maintained by the Executive Council of Australian Jewry,⁷⁸ to record and respond to instances of hate crimes that our communities face. Reliable data and statistics on hate-related incidents is essential for informed policy development and the effective allocation of resources to counter hate.

While some police data exists on reported hate crimes, it does not capture the full extent of the LGBTIQ+ community's experience. Many people are understandably reluctant to report incidents to police, and there remains a significant risk that hate motivation is not identified or recorded accurately at the point of reporting.

However, we need more than simply a reporting mechanism. It must also connect victims with meaningful, wrap-around supports. This includes legal advice on next steps such as making a police report, lodging a vilification complaint, applying for an apprehended violence order, or accessing victims of crime compensation – alongside social work and wellbeing support to assist in the aftermath of the incident.

This could be done by:

- Resourcing existing, trusted services such as community legal centres to fulfil the role, or
- Specialised, multi-disciplinary, holistic and coordinated service provision that may not provide every form of assistance directly, but ensures victims are supported to navigate the system and access the full range of help they need.

⁷⁸ 'Report incidents of Islamophobia: Tracking and Tackling Islamophobia', *Islamophobia Register Australia* (web page) <https://islamophobia.com.au/>; 'Antisemitism reporting hub', *Executive Council of Australian Jewry* (web page) <https://www.ecaj.org.au/report/>.

The Discussion Paper sets out that Canberra Community Law assists with human rights issues, including around racial discrimination for Aboriginal and Torres Strait Islander people, and provides services regarding disability discrimination matters.⁷⁹ We urge the ACT Government to consider funding Canberra Community Law or another community legal service in the ACT which provides legal services to assist with hate crimes and vilification for marginalised groups, including LGBTIQ+ communities.

RECOMMENDATION

Establish and resource a dedicated, community-led hate incident reporting and support mechanism for LGBTIQ+ communities that captures accurate data and provides integrated, wrap-around legal and social supports.

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

Deradicalisation and community building

We note the existence of the Countering Violent Extremism Strategy (2023–2026), which aims to prevent violence before it occurs. However, significant portions of the publicly available strategy are redacted, making it difficult to assess what objectives have been set and what actions have been taken.

To strengthen this framework, a dedicated LGBTIQ+ strategy should be developed within it. This would enable a more targeted response to the specific ways hate crime is directed at, and experienced by, LGBTIQ+ communities.

We recommend that the ACT continue to take a preventative approach, including by reviewing and evaluating its existing diversionary and de-radicalisation program, the ACT Support and Intervention Program (ACT-SIP).⁸⁰ This program should provide genuine pathways out of extremist ideologies, particularly for young men, who are disproportionately responsible for hate crimes against LGBTIQ+ communities. Such programs should be capable of addressing the full range of pathways into extremism, including religiously motivated radicalisation (often based on distorted interpretations of Christianity or Islam) as well as other forms such as right-wing extremism (e.g. Neo-Nazis).

We note that new Commonwealth offences regarding adults seeking to influence and radicalise a person under the age of 18 towards violent or extremist conduct, will likely have a deterrent effect. However, the sources of radicalisation are widespread given the prevalence of social media, the well-documented pattern of social media algorithms driving users (particularly, younger men) towards more radical content (including anti-LGBTIQ+ content) and ever-expanding numbers of online forums.⁸¹

RECOMMENDATION

Strengthen the Countering Violent Extremism Strategy (2023–2026) by embedding a dedicated LGBTIQ+ prevention stream, and continue to fund and expand de-radicalisation programs such as the ACT Support and Intervention Program to address pathways into hate and extremism.

⁷⁹ Discussion Paper, 26-27.

⁸⁰ 'ACT Support and Intervention Program', *Step Together* (web page) <https://steptogether.gov.au/national-programs/act-support-and-intervention-program.html>; ACT Government, *Counter Terrorism Framework* (October 2025) 12 <https://www.act.gov.au/open/act-counter-terrorism-framework>.

⁸¹ Alex Russell, 'YouTube Video Recommendations Lead to More Extremist Content for Right-Leaning Users, Researchers Suggest: UC Davis Researchers Tested YouTube's Recommendations Over Time', *UC Davis* (online, 13 December 2023) <https://www.ucdavis.edu/curiosity/news/youtube-video-recommendations-lead-more-extremist-content-right-leaning-users-researchers>. See also Daniel Hickey et al, 'X under Musk's leadership: Substantial hate and no reduction in inauthentic activity' (2025) 20(2) *PLoS ONE* 1.