Hate Crimes and Vilification Review

Final Report

ACT Government

Acknowledgement of Country

The Justice and Community Safety Directorate acknowledges the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region.

We respect the Aboriginal and Torres Strait Islander people, particularly our Aboriginal and Torres Strait Islander staff, and their continuing culture and contribution they make to the Canberra region and the life of our city.

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Contents

Final Report **1**
Acknowledgement of Country 2

Contents **3**

Executive Summary **5**
Recommendations 5

1. Introduction **7**
A. Background 7
B. Scope of the Review 7
i. Terms of Reference 7
ii. ACT Law and Policy 8
C. Conduct of the Consultation and Acknowledgement 8
i. Targeted Consultation 8
ii. Submissions and Meetings 8
iii. Acknowledgement 8
D. Key Concepts 9
i. Terminology 9
ii. Human Rights Considerations 10
iii. Closing the Gap Priority Reforms 11

2. Hate Speech and Hate-Motivated Conduct in the ACT **12**
A. Groups Impacted by Hate Speech and Conduct Motivated by Hate 12
i. Religious Groups 12
ii. Racism 13
iii. People with Disability 13
iv. LGBTIQA+ Community 13
v. Intersectional Identities 14
B. Where Hate Speech and Conduct Motivated by Hate is Happening 14
i. Online 15
ii. Schools 15

3. Legal Protections **16**
A. Civil Law Protections 16
i. Unlawful Vilification 16
ii. Positive Duties 21
B. Criminal Law Protections 23

i. Serious Vilification....23
ii. Display of Nazi Symbols....30
iii. Aggravated Offence for Crimes Motivated by Prejudice....35
iv. Explicit Sentencing Considerations of Prejudice Motivation....36
v. Additional Offences....38
vi. Other Reforms to Respond to Crimes Motivated by Prejudice....42

4. Enforcement....45

A. Complaints about Unlawful Vilification....45
i. Complaints to the ACT Human Rights Commission....45
ii. Complaints to the ACT Civil and Administrative Tribunal....54
B. Reports of Serious Vilification....57
i. Reporting Offences to Police....57

5. Support Services....62

A. Legal Support....62
i. Legal Assistance for Discrimination and Vilification....62
ii. What We Heard....63

6. Prevention....64

A. Law Alone Not Enough....64
B. Education....64
C. Government Campaigns....64
Appendix A – Submissions Received During Consultation....66
Appendix B – Comparison of Australian civil vilification protections....67
Appendix C – Comparison of Australian serious vilification offences and penalties (individual)....68
Appendix D – Comparison of Australian Nazi symbol offences....71

Executive Summary

Background and purpose

The ACT Government committed to reviewing its hate crime laws in 2024. Following the terror attack on Jewish Australians which took place at Bondi Beach in New South Wales in December 2025, the ACT Government prioritised the review to inform further legislative reform to strengthen laws in order to better address hate crime and vilification, including anti-Semitism, Islamophobia and abuse directed at LGBTIQA+ people.

The Review has examined the adequacy of ACT laws, enforcement mechanisms and support systems addressing hate speech, vilification and hate-motivated conduct. The Review included targeted consultation with community organisations, legal stakeholders, advocacy groups and government agencies, undertaken in the first half of 2026.

Key Findings

Stakeholders reported rising hate speech and prejudice-motivated conduct affecting religious communities, multicultural communities, Aboriginal and Torres Strait Islander peoples, people with disability and LGBTIQA+ communities. Online environments and schools were identified as key settings for hate-based conduct. The ACT already has one of Australia's broadest civil vilification frameworks and is the only jurisdiction with a positive duty to eliminate unlawful vilification. However, serious vilification offences are rarely prosecuted, with stakeholders advising that legislative complexity and the relatively low penalty create structural barriers to investigation, enforcement and prosecution.

Systemic Issues

Stakeholder submissions to the Review identified substantial underreporting of incidents. Major barriers include low awareness of rights and complaint pathways, language and accessibility challenges, fear of retaliation, mistrust of institutions, limited legal support, procedural complexity, delays and re-traumatisation. Stakeholders also highlighted difficulties navigating the ACT Human Rights Commission, ACT Civil and Administrative Tribunal and policing processes.

Conclusion

The Review has concluded that the ACT has a strong legislative foundation but requires targeted reforms to improve clarity, enforcement and accessibility. The changes the Review recommends seek to strengthen protections against hate-motivated conduct while maintaining an appropriate balance with human rights and freedom of expression.

Recommendations

Recommendation 1: Section 67A of the *Discrimination Act 1991* should be amended to clarify that unlawful vilification includes vilification on the grounds of a protected attribute that a person is thought to have.

Recommendation 2: Section 750 of the *Criminal Code 2002* should be amended to clarify that serious vilification includes vilification on the grounds of a protected attribute that a person is thought to have.

Recommendation 3: Section 750 of the *Criminal Code 2002* should be amended to remove the recklessness element for 'other than in private' in the serious vilification offences to simplify the offence and better align it with other jurisdictions.

Recommendation 4: To better align with similar offences in the ACT and in other jurisdictions, section 750 of the *Criminal Code 2002* should be amended to increase the penalty for the serious vilification offence.

Recommendation 5: Amend Part 7A.2 of the *Criminal Code 2002*, which makes it an offence to publicly display Nazi symbols, to include the Nazi double-sig rune ('SS bolts') and Nazi salutes.

Recommendation 6: To better recognise the impact of crimes motivated by hate, the *Crimes (Sentencing) Act 2005* should be amended to include hate motivation towards a relevant protected attribute as a mandatory sentencing consideration by courts.

Recommendation 7: Subject to further consultation with key stakeholders, amend the *Criminal Code 2002* to introduce a new offence of procuring victims by making false and misleading representations, to better protect the community, especially LGBTIQA+ people, against attacks using deception to lure victims to attack, rob and film them.

Recommendation 8: The ACT Government should work with ACT Policing and the ACT Human Rights Commission to ensure that all publicly facing information is up to date and those agencies have processes to refer matters to the other where appropriate.

Recommendation 9: The ACT Government should consider developing accessible materials for key ACT communities impacted by hate speech and vilification, to ensure greater understanding of the scope of legal protections and how to seek appropriate assistance.

1. Introduction

A. Background

The ACT Government committed in 2024 to review and strengthen laws regulating hate crimes and serious vilification. Part of this commitment was informed by the 2019 *ACT LGBTIQA+ Legal Audit: Reforms for an inclusive ACT* published by Equality Australia which made recommendations in relation to violence motivated by prejudice.[1]

Following the terror attack on Jewish Australians which took place at Bondi Beach in New South Wales, resulting in the loss of 15 lives and injury of an additional 40 people, jurisdictions around Australia have been considering the effectiveness and appropriateness of civil and criminal laws designed to protect individuals and communities from hate speech, vilification and violent crimes motivated by prejudice.

In 2026, the Chief Minister announced that the ACT review of laws regulating hate crimes and serious vilification ("the Review") would be prioritised to inform further legislative reform to strengthen laws in order to better address hate crime and vilification including anti-Semitism, Islamophobia and abuse directed at LGBTIQA+ people.

B. Scope of the Review

i. Terms of Reference

The terms of reference of the review were to examine and report on the following issues:

1. Current ACT civil and criminal law, including:
    a. the *Discrimination Act 1991,*
    b. the *Criminal Code 2002*, and

    whether civil and criminal law tests are appropriately framed and the scope of protection is sufficient.
2. The adequacy of existing enforcement mechanisms.
3. Recent developments in Commonwealth law and other states and territories.
4. Options for law reform, including:
    a. strengthening of offences,
    b. clarifying language/tests/thresholds,
    c. aggravated or additional offences,
    d. penalties,
    e. civil remedies and resolution pathways, and
    f. additional sentencing considerations.
5. Extremism, radicalisation and online hate.
6. Any other opportunities for improving protections against vilification which may be raised through consultation.

[1] Equality Australia, *ACT LGBTIQ+ Legal Audit: Reforms for an inclusive ACT*, 30 June 2019.

ii. ACT Law and Policy

While laws and law reforms in other jurisdictions have informed this review, the review was not specifically examining the Commonwealth legislative responses to hate crime and vilification. Rather, the focus of the review was ACT law and policy, as well as local factors which may be driving vilification and violent crimes motivated by prejudice, together with community and justice responses to those issues.

C. Conduct of the Consultation and Acknowledgement

i. Targeted Consultation

Given the complex and technical nature of the legislation and principles considered by the review, as well as the sensitivity of the issues covered by the review, the consultation portion of the review was conducted as a targeted consultation.

Led by the Justice and Community Safety Directorate (JACS), the targeted consultation commenced on 26 February 2026 and a discussion paper was provided to approximately 100 key stakeholders inviting submissions. Stakeholders included individuals and organisations from the legal profession, Aboriginal and Torres Strait Islander communities, LGBTIQA+ Communities, multicultural communities, the disability sector and communities, faith-based organisations, the youth sector, older person communities, academics, human rights and social justice organisations and ACT Government agencies.

The discussion paper included 19 questions about current ACT civil and criminal law protections, options for criminal law reform and questions about prevention, enforcement and resolution of vilification and violent crimes motivated by prejudice.

Submissions closed on Friday 27 March 2026.

ii. Submissions and Meetings

JACS received 26 submissions from individuals and organisations. A list of stakeholders who made submissions is included at **Appendix A.**

JACS also attended 10 consultation meetings in person and online with 11 different stakeholders including Ministerial Advisory Councils, multicultural organisations, a disability organisation and justice stakeholders.

iii. Acknowledgement

The Review acknowledges that while the consultation specifically referred to anti-Semitism, Islamophobia and abuse directed at LGBTIQA+ people, vilification, hate speech and violent crimes motivated by prejudice is experienced by many other groups of people in the community, including groups already recognised under ACT vilification laws on the grounds of 'HIV/AIDS status', 'race', 'religious conviction' and 'sex',[2] as well as other groups not currently covered by current ACT vilification laws.

The Review thanks everyone who took the time to prepare a submission and to meet with officers from JACS. The Review also acknowledges the stakeholders who shared case studies

[2] Section 67A, *Discrimination Act 1991*; section 750(1), *Criminal Code 2002*.

and personal examples of vilification, hate speech and violent crimes motivated by prejudice. The Review recognises that doing so is often difficult and risks re-traumatisation.

D. Key Concepts

i. Terminology

(a) Hate Crime

Although the term 'hate crime' has become widely used in recent decades and was used by many of the submissions to this review, its exact meaning is uncertain, inconsistent and evolving.[3]

'Hate crime' is not defined under ACT legislation and there is no community consensus on what behaviours may be considered a hate crime.

For the purposes of this report, a hate crime is conduct that:

- causes harm (including violence)
- toward a person or group of people identifiable by (or believed to hold) certain characteristics, and is
- motivated by prejudice.[4]

The key types of hate crimes which are the focus of this report are:

- hate speech
- vilification
- the public display of certain symbols, and
- violent crimes motivated by prejudice.

The National Hate Crimes Database reports on legislated hate-related offences across all Australian jurisdictions, including the Commonwealth.[5]

(b) Hate Speech

It is generally accepted that hate speech:

- includes "not only words, written or oral, but also symbols, pictures, gestures, music, moving images, or other conduct that is intended to express or is reasonably regarded as expressive meaning"[6] and

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[3] Gail Mason, 'Violence as Hate Crime: The Emergence of a Discourse' in Julie Stubbs and Stephen Tomsen (eds), *Australian Violence: Crime, Criminal Justice and Beyond*, (The Federation Press, 2016), 130-1.
[4] See e.g. Gail Mason, 'Violence as Hate Crime: The Emergence of a Discourse' in Julie Stubbs and Stephen Tomsen (eds), *Australian Violence: Crime, Criminal Justice and Beyond*, (The Federation Press, 2016), 126-7; Mark Austin Walters, *Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms* (Oxford University Press, 2014); Nathan Hall, 'Hate crime offending and victimisation: some considerations for public protection', in Mike Nash and Andy Williams (eds), *Handbook of Public Protection*, (Willan Publishing, 2010), 361.
[5] https://www.aic.gov.au/statistics/national-hate-crimes-database.
[6] Alexander Brown, *Hate Speech Law: A Philosophical Examination* (Routledge, 2015), 5.

- "attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor".[7]

In the ACT, protections against hate speech include laws prohibiting unlawful vilification, serious vilification and the public display of Nazi symbols.

(c) Vilification

In the ACT, vilification refers to conduct that incites hatred, revulsion, serious contempt or serious ridicule of a person or group of people, other than in private.[8]

'Unlawful vilification' is dealt with by civil protections under section 67A of the *Discrimination Act 1991*. 'Serious vilification', which includes the additional criteria of an intentional threatening act, is an offence under section 750 of the *Criminal Code 2002*.

(d) Violent Crimes Motivated by Prejudice

Violent crimes motivated by prejudice are the same types of offences against the person already recognised by the criminal justice system, such as common assault or property damage, that are motivated by prejudice towards or bias against a person or group of people identified by certain characteristics.

There are currently no specific laws that deal with violent crimes motivated by prejudice in the ACT. Other jurisdictions recognise prejudice as a motivation in criminal law through aggravated offences, as a specific consideration at the time of sentencing or through standalone offences.

ii. Human Rights Considerations

Stakeholders were invited to consider whether the current serious vilification offence, in particular, properly balances human rights, and many submissions also discussed human rights considerations, including territory and international human rights law, in responses to other consultation questions.

(a) ACT Human Rights Act

The ACT *Human Rights Act 2004* was the first legislative charter of rights to be enacted in an Australian state or territory. The Preamble of the Human Rights Act notes the following:

1. Human rights are necessary for individuals to live lives of dignity and value.
2. Respecting, protecting and promoting the rights of individuals improves the welfare of the whole community.
3. Human rights may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society.

Rights promoted by statutory protections against hate crimes include:

- recognition and equality before the law (section 8)
- right to life (section 9)
- freedom of thought, conscience, religion and belief (section 14), and
- cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities (section 27).

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[7] United Nations, *United Nations Strategy and Plan of Action on Hate Speech* (May 2019), 2
[8] Section 67A, *Discrimination Act 1991*; section 750(1), *Criminal Code 2002*.

However, if these laws are expressed too broadly, they may unduly limit rights relating to:

- peaceful assembly and freedom of association (section 15), and
- freedom of expression (section 16).

The relevant factors that must be considered in deciding whether a limit is reasonable include 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 available to achieve the purpose.[9]

International law relevant to a human right may be considered in interpreting human rights.[10] Relevant sources of internal law may include the *International Covenant on Civil and Political Rights* (ICCPR),[11] the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD),[12] the *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence* (Rabat Plan of Action), [13] and the Camden Principles.[14]

An important consideration is Article 20.2 of the ICCPR which requires that any "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". This recognises that there are some circumstances in which the right to freedom of expression must be limited to protect against incitement of hatred towards certain groups.

iii. Closing the Gap Priority Reforms

The ACT Government is a party to the National Agreement on Closing the Gap. Priority Reform Three: Transforming Government Organisations requires government parties to commit to identifying and eliminating racism experienced by Aboriginal and Torres Strait Islander people.[15] It also includes the transformation element that governments will identify and eliminate racism.

Reforms to strengthen legal protections against vilification and hate crimes, including on the grounds of race which includes Aboriginal and Torres Strait Islander people, will therefore support Priority Reform Three.

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[9] Section 28(2), *Human Rights Act 2004*.
[10] Section 31(1), *Human Rights Act 2004*.
[11] opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
[12] International Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 Dec 1965, UN General Assembly resolution 2106, Article 4.
[13] Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2013), https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf.
[14] The Camden principles on freedom of expression and equality (2009) https://www.article19.org/wp-content/uploads/2009/04/Camden-Principles-ENGLISH-web.pdf.
[15] Closing the Gap Priority Reforms, https://www.closingthegap.gov.au/national-agreement/priority-reforms.

2. Hate Speech and Hate-Motivated Conduct in the ACT

A. Groups Impacted by Hate Speech and Conduct Motivated by Hate

Stakeholders provided detailed examples of hate speech and hate-motivated conduct experienced by marginalised groups in the ACT and Australia more broadly, especially by:

- religious groups, including the Muslim and Jewish communities
- the multicultural community
- people with disability
- Aboriginal and Torres Strait Islander people
- the LGBTIQA+ community and
- groups with intersectional and overlapping identities, including Muslim women, people with differing races and religions, and LGBTIQA+ people with multiple marginalities.

The Review acknowledges that these experiences detailed here are not exhaustive of all the experiences of hate speech and conduct motivated by hate in the community. The Review also acknowledges that although many of these examples are connected to and exacerbated by discourse and events that take place outside the ACT and even Australia, the impact is nevertheless very real for Canberrans who are subjected to hate.

i. Religious Groups

(a) Muslim Community

Stakeholders raised concerns about an increase in reports of Islamophobia in the ACT, especially since the terrorist attack in Bondi. Australia's Special Envoy to Combat Islamophobia reported a 740% increase in reports of Islamophobia since December 2025 and that Islamophobia frequently takes place through the targeting of visible religious practices and markers.[16] Dr Sara Abdelmawgoud advised that the safety of Muslim communities is impacted by both the domestic and the international landscape, with reporting on conflict in the Middle East and anti-immigration rhetoric and policy both "fuelling social tension" and contributing to "hatred toward Arab and Muslim Australians".[17]

(b) Jewish Community

Australia's Special Envoy to Combat Antisemitism also identified a significant rise in hatred, reporting a 738% rise in anti-Jewish incidents after attacks on Israel by Hamas on 7 October

[16] *Submission S12*, 1, 2.
[17] *Submission S15*, 3.

2023.[18] Australia's Special Envoy to Combat Antisemitism provided several examples of hate-motivated conduct in the period since, including:

- assaults, and threatening and offensive conduct
- harassing and offensive phone calls
- antisemitic incidents and hate speech at the Australian National University, and
- graffiti and stickers.

ii. Racism

(a) Aboriginal and Torres Strait Islander People

The Aboriginal Legal Service (NSW/ACT) acknowledged that Aboriginal and Torres Strait Islander communities "disproportionately experience racism" and the "impact of racial vilification and racism on Aboriginal and Torres Strait Islander people in the ACT".[19]

(b) Multicultural Community

Stakeholders also flagged examples of racism experienced by the multicultural community. Particularly highlighted was the impact on young people, resulting in fears of a rise in suicide and radicalisation,[20] and the Australian-Palestinian community, including "attempts to dehumanise Palestinians, deny or diminish their human rights, justify violence against them, or delegitimise their identity and experiences".[21]

iii. People with Disability

Advocacy for Inclusion provided detailed examples of harm experienced by people with disability, ranging from microaggressions, to being treated as a burden, to being subjected to violence, including even being killed.[22] Advocacy for Inclusion specifically referred to the impact of public discourse on community attitudes, including debate of public issues such as people with disability being "acceptable losses" from COVID-19, the National Disability Insurance Scheme (NDIS) as a budget problem and commentary around people with disability being killed by their carers.[23] The impact of ableism encompasses psychological harm, erosion of social fabric – including informal networks – that people with disability rely on, and the fact that people with disability are significantly more likely to be victims of violence than people without disability.[24]

iv. LGBTIQA+ Community

Stakeholders also reported high rates of vilification and discrimination among LGBTIQA+ communities,[25] with a significant proportion of LGBTIQA+ people experiencing verbal abuse, harassment, threats of abuse and violence, property damage, physical violence and sexual assault due to their sexual orientation or gender identity.[26] Equality Australia noted this rate of

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[18] *Submission S14*, 4.
[19] *Submission S22*, 1, 4.
[20] Meeting with Australian Multicultural Action Network and Multicultural Hub Canberra and Queanbeyan, 10 March 2026.
[21] Canberra Palestinian Community, *Submission S18*.
[22] *Submission S06*, 3.
[23] Ibid, 2-3.
[24] Ibid, 3-4.
[25] A Gender Agenda, *Submission S21*, 1.
[26] Equality Australia, *Submission S14*, 3-4.

hate and violence is even higher for transgender Australians, exacerbated by online radicalisation and negative political rhetoric.[27]

v. Intersectional Identities

(a) Muslim Women

Several stakeholders identified that Muslim women are particularly impacted by Islamophobia. Australia's Special Envoy to Combat Islamophobia raised specific concerns that "Muslim women and girls were the victims of 79% of Islamophobic attacks in Australia in 2025" and that "women who wear a hijab are particularly targeted often experiencing harassment and abuse, simply by virtue of a physical marker".[28] In Canberra specifically, stakeholders raised concerns that a group of Muslim women are frightened to leave their homes due to a rise in Islamophobic incidents.[29] Dr Sara Abdelmawgoud shared personal examples of racist and misogynistic comments specifically targeting her as a Muslim woman, including "verbal abuse with sexual overtones and threats, such as being told 'your husband should lock you down', along with other offensive language".[30]

(b) LGBTIQA+ and Other Identities

Several stakeholders noted that intersectionality is particularly significant for LGBTIQA+ people experiencing hate. A Gender Agenda said that LGBTIQA+ individuals "with identities that intersect multiple marginalities, like First Nations, Culturally and Linguistically Diverse, People with Disabilities, and people of faith, report experiences of hate crime or vilification at increased frequency – with such crimes often targeting multiple aspects of intersectional identity – such as being both an immigrant and being queer".[31] Advocacy for Inclusion advised that LGBTIQA+ people with disability face higher rates of violence and abuse than either group in isolation.[32] Forcibly Displaced People Network described how LGBTIQA+ forcibly displaced people "find themselves excluded from both their ethnic communities and LGBTIQA+ communities" and whose experiences are "often marked by ongoing settlement challenges, including violence, discrimination and social exclusion".[33]

(c) Race and Religion

Some stakeholders also acknowledged that racism can overlap with Islamophobia,[34] and Dr Sara Abdelmawgoud shared an example of being called an 'Iranian terrorist' while wearing a hijab, despite being Egyptian.[35]

B. Where Hate Speech and Conduct Motivated by Hate is Happening

While stakeholders provided examples of hate speech and conduct motivated by hate happening in many different types of public spaces such as workplaces, public transport, sports

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[27] Ibid, 4.
[28] *Submission S12,* 2.
[29] Meeting with Australian Multicultural Action Network and Multicultural Hub Canberra and Queanbeyan, 10 March 2026; Meeting with Multicultural ACT, 10 March 2026.
[30] *Submission S15*, 1.
[31] *Submission S21*, 1.
[32] *Submission S06*, 4.
[33] *Submission S17*, 6.
[34] Canberra Palestinian Community, *Submission S18*.
[35] *Submission S15*, 1.

and other types of places like shopping malls or streets, the two key areas raised by stakeholders as being of particular concern were online spaces and schools.

i. Online

Multiple stakeholders described hate speech taking place online, including online abuse, harassment and doxxing.[36] Australia's Special Envoy to Combat Islamophobia reported online Islamophobic incidents have risen by more than 250%, and described "elements such as anonymity, invisibility and lack of eye contact [as] the main contributors that cause people to act and disclose more freely online engaging in toxic, flaming and hostile comments".[37]

ii. Schools

Multiple stakeholders identified schools as being another area where hate speech is taking place, and the challenges experienced by victims reporting and schools responding to such incidents.[38] Dr Sara Abdelmawgoud observed both the normalisation of 'racist jokes' and a fear of students reporting incidents due to the 'peer effect' and desire to be accepted in their school environment.[39] A Gender Agenda noted that despite the application of the Discrimination Act to school environments, responses vary and rarely follow the typical complaint pathways.[40]

Further stakeholder feedback about barriers to enforcement of existing protections against vilification and hate crimes is discussed in greater detail below.

[36] See e.g. Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 7; ACT Human Rights Commission, *Submission S16*, 8; Forcibly Displaced People Network, *Submission S17*, 9; DecrimACT, *Submission S23*, 3.
[37] *Submission 12,* 7-8.
[38] See e.g. Dr Sara Abdelmawgoud, *Submission S15*, 4-5; Canberra Palestinian Community, *Submission S15*; A Gender Agenda, *Submission S21*, 2.
[39] *Submission S15*, 4.
[40] *Submission S21*, 2.

3. Legal Protections

A. Civil Law Protections

Civil protections against hate speech are set out in the *Discrimination Act 1991* and include unlawful discrimination, unlawful vilification and a positive duty to eliminate vilification.

i. Unlawful Vilification

Civil protections against vilification vary considerably across Australia. A detailed jurisdictional comparison of civil vilification laws is at **Appendix B**.

In the ACT, under section 67A(1) of the Discrimination Act, 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 protected attributes:

- disability
- gender identity
- HIV/AIDS status
- race
- religious conviction
- sex (commenced in February 2026)
- sex characteristics
- sexuality, and
- association (whether as a relative or otherwise) with a person who is, or a group of people who are, identified by reference to one of the above attributes.

Unlawful vilification is limited to conduct that takes place other than in private which does not fall within one of the following exceptions:

- making a fair report about unlawful vilification
- communicating, distributing or disseminating any matter consisting of a publication that is subject to a defence of absolute privilege in a proceeding for defamation; or
- doing something that would amount to unlawful vilification reasonably and honestly for academic, artistic, scientific or research purposes or for any other purpose in the public interest, including discussion or debate about and presentations of any matter.

(a) What We Heard

1. Protected Attributes

Aside from the Northern Territory, the ACT currently has the broadest range of protected attributes covered by unlawful vilification.

Stakeholders had considerable feedback about the protected attributes currently protected by unlawful vilification including suggestions for expansion, clarification of definitions and other potential gaps.

A. Additional Protected Attributes

Several stakeholders made recommendations to expand the list of protected attributes under section 67A(1) of the Discrimination Act to broaden the scope of unlawful vilification

protections including with respect to 'age', 'immigration status', 'profession, trade, occupation or calling', 'sex work', all protected attributes covered by the Discrimination Act and a protected attribute that someone is thought to have, regardless of whether or not they have it.

However, stakeholders also acknowledged that any expansion should be evidence-based, must be compatible with the Human Rights Act and should not unduly limit legitimate political discourse or public debate, or other rights under the Human Rights Act such as the right to freedom of expression and religion.[41] The ACT Human Rights Commission recommended that any additional coverage should be considered on an attribute-by-attribute basis.[42]

While the Review recognises the need to ensure that the scope of coverage of vilification laws meets community needs, any expansion would require each proposed new protected attribute to be individually assessed to ensure it would meet the test in section 28(2) of the Human Rights Act including that it would be a reasonable, proportionate and justifiable limitation on the right to freedom of expression. The Review does not recommend this approach at this time.

B. Protected Attribute Someone is Thought to Have

Sections 7(2)(e) and (f) of the Discrimination Act makes it clear that 'protected attribute' includes an attribute that a person is thought to have, whether or not the person has the attribute, and an attribute that a person is thought to have had in the past, whether or not the person has had the attribute in the past.

While this applies to the Discrimination Act as a whole, in their submissions, the Australian Human Rights Commission and Dr Abdelmawgoud raised concerns that it does not specifically apply to unlawful vilification under section 67A.[43] Section 67A refers to a list of 'grounds' rather than 'protected attributes' so it is unclear whether sections 7(2)(e) and (f) also apply to unlawful vilification.

Other jurisdictions have specific provisions that explicitly state that attributes that a person is thought to have are included in unlawful vilification protections.[44]

RECOMMENDATION 1: Section 67A of the ***Discrimination Act 1991*** should be amended to clarify that unlawful vilification includes vilification on the grounds of a protected attribute that a person is thought to have.

C. Definitions of Protected Attributes

Some stakeholders proposed that definitions of protected attributes could be further clarified to promote community understanding.

i. Asexuality

Equality Australia recommended amending the definition of 'sexuality' (which is defined under the Dictionary of the Discrimination Act as including heterosexuality, homosexuality and

[41] Australian Multicultural Action Network, *Submission S01*, 2; Legal Aid ACT, *Submission S09*, 1; Australian Christian Lobby, *Submission S20,* 3.
[42] ACT Human Rights Commission, *Submission S16*, 2.
[43] Australian Human Rights Commission, *Submission S08,* 5-6; Dr Abdelmawgoud, *Submission S15*, 2.
[44] See e.g. section 102F, *Equal Opportunity Act 2010* (Vic).

bisexuality) to expressly include a lack of sexual attraction, ensuring that asexual people are clearly and consistently protected under the Discrimination Act.[45] While acknowledging that the use of 'includes' in the existing definition means that this is a non-exhaustive definition that may encompass asexual people, Equality Australia proposed that explicitly recognising asexuality would ensure clarity and inclusivity. The Review recognises that although this may provide a broader benefit in the operation of the Discrimination Act, it is beyond the scope of the Review. Nevertheless, the ACT Government will continue to consider opportunities for ensuring that legislation is suitable for contemporary circumstances.

ii. Nationality

Similarly to 'asexuality' above, Australia's Special Envoy to Combat Antisemitism has proposed that 'nationality' be encompassed within section 67A(1) of the Discrimination Act (and section 750 of the Criminal Code) to "enhance public awareness and understanding of the provision".[46] The definition of 'race' under the Dictionary of the Discrimination Act includes 'colour, descent, ethnic and national origin and nationality'. Australia's Special Envoy to Combat Antisemitism elaborated on this proposal further and raised concerns about "a significant increase of antisemitic attacks carried out against the Australian Jewish community using terms which also promote hatred of Israelis".[47]

However, given that 'race' already includes 'national origin and nationality', the Review does not propose separating 'nationality' out as a separate protected attribute at this time.

2. Criteria to Establish Unlawful Vilification

Currently, civil protections against unlawful vilification are limited to conduct that *incites* hatred towards, 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 other than in private.

The Australian Human Rights Commission noted that the "legal test for establishing unlawful vilification should carefully balance protecting individuals and groups from hate-based conduct against other rights and freedoms. In particular, care should be taken to not improperly limit the right to freedom of expression".[48] The Australian Human Rights Commission reflected that while section 67A of the Discrimination Act "sets a high threshold for unlawful conduct" and "provides greater protection for the right to freedom of expression", "a higher threshold can lead to barriers to individuals and groups establishing claims of unlawful vilification, impacting on the right to equality and non-discrimination".[49] However, it also noted that the exceptions to unlawful vilification are appropriate and provide further protection of the right to freedom of expression.[50]

Multiple stakeholders supported the introduction of a second form of unlawful vilification that would encompass hate speech that, while not necessarily inciting others, nevertheless causes harm to individuals and groups.

AMAN noted that many harmful acts fall below the current threshold of unlawful vilification,[51] and Australia's Special Envoy to Combat Antisemitism noted that incitement is often difficult to

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[45] Equality Australia, *Submission S14*, 5.
[46] Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 5.
[47] Ibid, 7.
[48] *Submission S08*, 6.
[49] Ibid, 7.
[50] Ibid.
[51] Australian Multicultural Advocacy Network, *Submission S01*, 2.

prove.[52] Women's Legal Centre stated that "a harms-based test would more effectively capture the emotional impact of vilification and better promote social cohesion" and identified that there is currently a gap for clients, particularly Aboriginal and Torres Strait Islander clients, who may experience deeply offensive and personally harmful comments that do not currently meet the threshold for vilification.[53]

Equality Australia noted that modern Australian civil law frameworks are increasingly recognising both incitement-based and harm-based vilification, and that benefits of harm-based provisions include directly considering whether the conduct itself is harmful toward the targeted group or person and being easier for ordinary members of the public to understand.[54]

The Online Hate Prevention Institute also recommended expanding unlawful vilification to better acknowledge the impact on victims, and noted circumstances where vilification is either so coded that victims are unable to recognise or report it, or happens in a public situation where incitement is impossible because of the make up of the group of people.[55]

Some hate speech may instead be captured by protections against unlawful discrimination which is where someone directly or indirectly discriminates against another person on the ground of a protected attribute in an area of public life (e.g. work, education, access to premises and goods, services and facilities).[56]

However, some submitters pointed to a gap for harmful public conduct that does not meet the threshold of incitement required for unlawful vilification but does not take place in one of the recognised areas of public life required to establish unlawful discrimination. Equality Australia provided the example of "a person directing homophobic slurs at a same-sex couple in public which 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".[57]

Harm-based tests have been introduced in civil vilification frameworks in some other jurisdictions. In Victoria, public conduct reasonably likely to be considered by a reasonable person with the protected attribute to be hateful or seriously contemptuous of, or reviling or severely ridiculing, the other person or group of persons is unlawful.[58] This is a similar approach to as-yet uncommenced amendments to Queensland vilification protections.[59]

The wording of the new harm-based Victorian and Queensland approaches align the closest with the wording of the existing unlawful vilification provision in the ACT, that is, conduct which is 'hateful', 'reviling', 'seriously contemptuous' and 'seriously ridiculing'. Both jurisdictions have retained an additional provision for conduct that is likely to incite.

In comparison, in Tasmania, it is prohibited to engage in conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of a relevant protected attribute.[60]

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[52] Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 5.
[53] Women's Legal Centre, *Submission S07*, 2.
[54] Equality Australia, *Submission S14*, 5-6.
[55] Online Hate Prevention Institute, *Submission S19*, 6-7.
[56] Section 8, *Discrimination Act 1991*.
[57] Equality Australia, *Submission S14*,
[58] Section 102D, *Equal Opportunity Act 2010* (Vic).
[59] Section 23, *Respect at Work and Other Matters Amendment Act 2024* (Qld) introducing new section 124C.
[60] Section 17, *Anti-Discrimination Act 1998* (Tas).

This more closely mirrors the wording of the Commonwealth harm-based approach which is limited to race, colour or national or ethnic origin.[61]

Other stakeholders recommended caution when considering a harm-based test and were supportive of maintaining the existing test. Tim Kerslake stated that "I think it is entirely appropriate for this threshold to remain where it is. The need to balance this provision against other important rights has been, and must continue to be, carefully considered".[62]

Legal Aid ACT considered that the current test is appropriate, did not view the recent Victorian amendments as necessary and stated that "the 'higher' threshold is intended to distinguish vilification from merely offensive, insulting or hurtful actions or speech which is more appropriately managed under other sections of the *Discrimination Act 1991*".[63]

Similarly, the ACT Human Rights Commission indicated that the current ACT test for vilification is "established, relatively well articulated in the jurisprudence and has been proven in a number of ACAT decisions."[64] They suggested that barriers may relate instead to "a deficit in public awareness about what constitutes vilification", especially via social media.[65]

Given this, while the Review considers that there may be merit in considering reform to introduce a harm-based test, the Review also notes that several stakeholders provided strong feedback that the current test in section 67A of the Discrimination Act appropriately balances protecting the right to equality and non-discrimination without unduly limiting the right to freedom of expression. Additionally, there is not yet sufficient evidence about the effectiveness of the approach in other Australian jurisdictions that have implemented harm-based tests or clear evidence in the ACT that conduct that does not meet the threshold of unlawful vilification is not being adequately captured by other provisions in the Discrimination Act. Further detailed consultation would be required to understand the need for such an amendment, whether an amendment would be effective and any potential human rights implications. As such, on balance, the Review has concluded that it is not appropriate to recommend the introduction of a harm-based test in the ACT at this time.

3. Exceptions to Unlawful Vilification

Stakeholders did not have extensive feedback on the current framing of the exceptions.

Several submissions considered the 'public interest' exception, cautioning that it should not be a shield for concerning commentary,[66] allow political figures to make untruthful and erroneous comments[67] or exempt conduct that vilifies.[68]

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[61] Section 18C, *Discrimination Act 1975* (Cth).
[62] *Submission S03*, 6.
[63] *Submission S09*, 2.
[64] *Submission S16*, 4-5.
[65] Ibid.
[66] Australian Multicultural Action Network, *Submission S01*, 2; Advocacy for Inclusion, *Submission S06*, 6.
[67] Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 2.
[68] Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 5.

However, the majority of stakeholders submitted that the current exceptions strike an adequate balance between the right to freedom of expression and preventing vilification.[69]

There were some minor suggestions for amendments to the exceptions. For the exception in section 67(2)(c) of the Discrimination Act, relating to acts done reasonably and honestly for academic, artistic, scientific or research purposes or for other purposes in the public interested, Equality Australia recommended replacing 'honestly' with the broader 'good faith'.[70]

The Online Hate Prevention Institute suggested that there could be a specific exception to cover anti-hate education to allow people to be shown specific examples of unlawful vilification to promote recognition and rejection of hate, however acknowledged that it is likely that 'other purposes in the public interest' would apply.[71]

The Australian Christian Lobby recommended an additional exception to "explicitly protect religious texts, teaching, theological discourse and faith-informed commentary within the exceptions to vilification laws,"[72] similar to the religious purpose exception under Victorian or civil vilification law.[73] Equality Australia recommended against such an exception, noting that simply "stating words from scripture will not meet the threshold for vilification" but rather it is commentary that may follow which "can cross the line into vilifying speech".[74]

Given this, the Review does not propose amending the exceptions to unlawful vilification at this time.

ii. Positive Duties

Section 75 of the Discrimination Act imposes a positive duty on organisations and businesses not to engage in unlawful vilification and to take reasonable and proportionate steps to eliminate unlawful vilification. This provision will apply to all conduct, including online conduct.

The duty under section 75 commenced for government entities on 11 April 2025 and will commence for private and non-government entities on 11 April 2027. The positive duty in relation to unlawful vilification is an Australian first, and the ACT remains the only jurisdiction with a positive duty to eliminate unlawful vilification.

While a person will not be able to make a standalone complaint about a breach of a positive duty, the ACT Civil and Administrative Tribunal (ACAT) will be able to consider whether the duty has been met in the context of an existing vilification complaint under section 53DB of the Discrimination Act.

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[69] Australian Human Rights Commission, *Submission* S08, 7; Legal Aid ACT, *Submission S09*, 2; Victims of Terrorism Australia*, Submission S11*, 5; Equality Australia, *Submission S14*, 7; ACT Human Rights Commission, *Submission S16*, 5-6; Online Hate Prevention Institute, *Submission S19,* 7; A Gender Agenda, *Submission S21*, 2.
[70] Equality Australia, *Submission S14*, 7.
[71] Online Hate Prevention Institute, *Submission S19*, 7-8.
[72] Australian Christian Lobby, *Submission S20*, 3.
[73] Section 102G(1)(b) and (2), *Equal Opportunity Act 2010* (Vic).
[74] Equality Australia*, Submission S14*, 7.

(a) What We Heard

While stakeholders were not specifically asked for feedback on the new positive duty, some expressly welcomed its introduction.[75]

Advocacy for Inclusion stressed the importance of the positive duty being enforceable,[76] and the Catholic Archdiocese of Canberra and Goulburn and Australia's Special Envoy to Combat Antisemitism queried whether the duty could be expanded to include prevention of vilification.[77]

[75] Advocacy for Inclusion, *Submission S06*, 5; Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 3; Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 2.
[76] Advocacy for Inclusion, *Submission S06*, 5.
[77] *Submission S13*, 3; *Submission S25*, 2.

B. Criminal Law Protections

There are currently two criminal offences under the ACT Criminal Code which deal with crimes motivated by hate:

- serious vilification (section 750), and
- display of Nazi symbols (section 752).

Stakeholders were also asked about:

- an aggravated offence for crimes motivated by prejudice
- explicit sentencing considerations of prejudice motivation
- additional possible offences, and
- other reforms to respond to crimes motivated by prejudice.

i. Serious Vilification

The ACT offence of serious vilification is similar to unlawful vilification in that it requires incitement of hatred toward, revulsion of, serious contempt for, or severe ridicule of, a person or group of people on the ground of the same protected attributes. However, the offence requires proof of the following additional elements:

- the person intentionally carried out the act
- the act was a threatening act
- the person was reckless about whether the act incited hatred etc.
- the act was done other than in private, and
- the person was reckless about whether the act was done other than in private.

The protected attributes currently covered by serious vilification are the same as those covered by unlawful vilification, namely:

- disability
- gender identity
- HIV/AIDS status
- race
- religious conviction
- sex (commenced in February 2026)
- sex characteristics
- sexuality, and
- association (whether as a relative or otherwise) with a person who is, or a group of people who are, identified by reference to one of the above attributes.

A 'threatening act' is defined in section 750(2) of the Criminal Code to mean an intentional threat of physical harm toward, or toward any property of, a person with a relevant protected attribute, or recklessness about whether the act incites others to threaten the harm.

The maximum penalty for serious vilification is 50 penalty units.

A vilification offence is "intended to target extreme cases of hate speech rather than less serious incidents that can be dealt with under civil law".[78]

[78] Equality Australia, *Submission S14*, 9.

Information provided by ACT Policing and the Office of the Director of Public Prosecutions (DPP) indicates that there has been only a very small number of serious vilification matters charged with no successful prosecution of the offence.

(a) What We Heard

Several stakeholders reflected on how rarely the serious vilification offence has been used,[79] and concluded that it is therefore difficult to assess the effectiveness of the serious vilification offence.[80] Equality Australia identified that this "reflects a broader pattern nationally, where criminal vilification offences exist but are seldom charged or prosecuted".[81]

1. Protected Attributes

There was strong support from stakeholders for the existing protected attributes covered by serious vilification and for protected attributes to remain consistent between civil and criminal law protections.[82]

The other feedback in relation to the protected attributes largely mirrored the feedback provided in relation to the protected attributes covered by unlawful vilification, set out under the discussion of unlawful vilification above.

RECOMMENDATION 2: Section 750 of the ***Criminal Code 2002*** should be amended to clarify that serious vilification includes vilification on the grounds of a protected attribute that a person is thought to have

2. Elements to Prove Serious Vilification

Several submissions provided feedback that the framing of the current serious vilification offence is complex.

AMAN noted that several fault elements are required, namely for the threatening act (intent), incitement (recklessness) and the conduct taking place other than in private (recklessness).[83] Australia's Special Envoy to Combat Islamophobia considered that these fault elements represent "a high threshold that most Islamophobic conduct does not meet on its face, even when that conduct is severe, targeted and repeated".[84] ACT Policing advised that "charging for serious vilification presents a significantly higher degree of legal complexity, requiring Police to meet specific, and inherently subjective elements".[85]

Criminal vilification laws and the elements required to prove them vary considerably across Australian jurisdictions and a jurisdictional comparison is set out at **Appendix C**.

A. Intentional Threatening Act

A key element of the ACT serious vilification offence is an intentional threatening act.

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[79] Australian Multicultural Action Network, *Submission S01*, 3; Equality Australia, *Submission S14*, 9-10.
[80] Australian Human Rights Commission, *Submission S08*, 9.
[81] *Submission S14*, 10.
[82] Australian Multicultural Action Network, *Submission S01*, 3; ACT Policing, *Submission S04*, 3; Women's Legal Centre ACT, *Submission S07*, 4; Equality Australia, *Submission S14*, 10; ACT Human Rights Commission, *Submission S16*, 9; Online Hate Prevention Institute, *Submission S19*, 8.
[83] Australian Multicultural Action Network, *Submission S01*, 3.
[84] *Submission S12*, 6.
[85] ACT Policing, *Submission S04,* 3.

As outlined above, several stakeholders noted that requiring both a threatening act and incitement of hatred, revulsion, serious contempt or severe ridicule is a high threshold.

The ACT Human Rights Commission advised that the element of an intentional threatening act is part of what makes "the vilification 'serious' and warranting of a criminal justice response as opposed to remaining a civil matter."[86]

Australia's Special Envoy to Combat Antisemitism considered that a reason why the serious vilification offence has been inadequate is because it "requires proof that the conduct involved '*a threatening act*'" and recommended a reformulation of the offence.[87] ANU Law Reform and Social Justice recommended "broadening the definition of threatening act to protect against other forms of harm".[88]

Professor Luke McNamara noted that both Victoria and New South Wales have recently "legislated so as to shift the line that distinguishes between civil and criminal regulatory responses to vilification" and that "some forms of vilification may now attract criminal punishment, even if they do not threaten or encourage violence".[89]

Victoria has a new standalone offence of threatening physical harm or property damage on the ground of a protected attribute.[90] The fault element of the offence is either intending that the other person or a person of the group will believe the threat will be carried out, or believes the other person or a person of the group will probably believe the threat will be carried out.

Similarly, New South Wales has an offence of publicly threatening or inciting violence which requires an intentional or reckless threat or incitement of violence towards another person or group of persons on the ground of a relevant protected attribute.[91] Unlike the Victorian offence, the New South Wales offence requires the threat or incitement to be a public act.

However, creating a second vilification offence would likely have significant human rights implications. The Rabat Plan of Action noted that "[c]riminal sanctions related to unlawful forms of expression should be seen as last resort measures to be applied only in strictly justifiable situations".[92]

At this stage, reforms in other jurisdictions are still relatively recent and provide limited guidance on how successful they have been. In light of this, and the significant human rights implications of introducing a second offence, the Review considers there would be benefit in the ACT considering the framing of the existing serious vilification offence further with the benefit of greater understanding of the longer-term impact of the changes in other jurisdictions.

B. Reckless Incitement

The second element of the ACT serious vilification offence requires that a person is reckless about whether the act incites hatred toward, revulsion of, serious contempt for, or severe

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[86] *Submission S16*, 9.
[87] *Submission S25*, 7-8.
[88] *Submission S24*
[89] *Submission S10,* 1.
[90] Section 195O, *Crimes Act 1958* (Vic).
[91] Section 93Z, *Crimes Act 1900* (NSW).
[92] Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2013), [34], https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf.

ridicule of, a person or group of people on the ground of one of the relevant protected attributes.

i. Recklessness

Some stakeholders considered that the fault element of recklessness for inciting hatred, revulsion, serious contempt or severe ridicule was too low and should be increased to intent.[93]

Victoria has a standalone incitement offence which requires a fault element of either intention that the conduct incite, or belief that the conduct will *probably* incite, hatred against, serious contempt for, revulsion towards or severe ridicule of the other person or the group.[94]

In comparison, New South Wales has an incitement offence which simply requires intentional incitement of hatred towards another person or a group of persons.[95] The New South Wales incitement offence only applies to the protected attribute of race.

The United Nations Commission for Human Rights has indicated in the Rabat Plan of Action that the preferred fault element for an incitement to hatred criminal offence is intent, and that "[n]egligence and recklessness are not sufficient for an act to be an offence under article 20 of the [ICCPR]".[96]

Increasing the fault element for incitement from recklessness to intent may better align with international human rights law and represent a more proportionate limit on the right to freedom of expression under section 16 of the Human Rights Act by ensuring only deliberate acts of incitement are captured.

However, some stakeholders noted that the existing test overall is already a high threshold.[97] Given this, the Review does not recommend any changes to this element at this time.

ii. Hatred toward, revulsion of, serious contempt for, or severe ridicule of

Some stakeholders raised concerns about the current drafting of 'hatred toward, revulsion of, serious contempt for, or severe ridicule of' in the serious vilification offence, including that the terms are too broad and, without specific definitions, are unclear in meaning for both the community and the police, prosecution and courts applying them.[98]

However, these terms mirror those of the unlawful vilification provision in section 67A of the Discrimination Act and the approach in several other jurisdictions including Victoria.[99]

While there is no binding case law about the meaning of these terms, there are several ACAT decisions which provide guidance about how they should be interpreted.[100] Additionally, there is relevant case law in other jurisdictions about the meaning of these terms in a criminal

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[93] Legal Aid ACT, *Submission S09*, 4; Australian Christian Lobby, *Submission S20*, 10; Aboriginal Legal Service (NSW/ACT), *Submission S22*, 2.
[94] Section 195N(1)(c), *Crimes Act 1958* (VIC).
[95] Section 93ZAA, *Crimes Act 1900* (NSW).
[96] Human Rights Council, *Annual report of the United Nations High Commissioner for Human Rights*, UN Doc A/HRC/22/17 (11 January 2013) 11, [29].
[97] Australia's Special Envoy to Combat Islamophobia, *Submission* S12, 6; Equality Australia, *Submission S14*, 10; ACT Human Rights Commission, *Submission S16*, 12.
[98] Legal Aid ACT, *Submission S09*, 4; ANU Law Reform and Social Justice, *Submission S24*, 6.
[99] See e.g. section 195N, *Crimes Act 1958* (Vic).
[100] See e.g. *Rep v Clinch (Appeal)* [2021] ACAT 106 (3 November 2021), [58]-[62].

context which can be relied upon to assist with interpretation.[101] On balance, the Review has concluded that given this, there is not a sufficient justification to consider changing these elements of language in the serious vilification offence at this time.

C. Reckless About Other Than in Private

i. Recklessness

To establish the offence of serious vilification, it must be proven that the accused was reckless about the conduct happening other than in private. The ACT is unique in Australia in requiring a specific fault element for the conduct happening other than in private. Incitement offences in New South Wales, Queensland and South Australia simply require the conduct to be 'by a public act' with no fault element attached to this element of the offence,[102] whereas Victoria does not have an 'in public' element for its incitement offence at all.[103]

While stakeholders did not have extensive feedback on this element of the offence, there was a recommendation that the recklessness fault element be removed.[104]

Removing recklessness from the element of 'other than in private' would simplify the new offences and bring the ACT into closer alignment with other jurisdictions. This could also help to promote understanding and use of the offence by victims, police and the prosecution.

Reframing the 'other than in private' element as a physical element only may limit the right to the presumption of innocence under section 22(1) of the Human Rights Act by making that element of the offence subject to strict liability. However, this would mean that the defence of mistake of fact under section 36 of the Criminal Code is available, in relation to that element, providing a safeguard for situations where a person had, for example, a reasonable belief that the conduct was in private.

RECOMMENDATION 3: Section 750 of the *Criminal Code 2002* should be amended to remove the recklessness element for 'other than in private' in the serious vilification offence to simplify the offence and better align it with other jurisdictions.

ii. Other than in Private

Some stakeholders provided feedback that the construction of the serious vilification offence, including that the conduct happen 'other than in private', either excludes or does not specifically address serious vilification that happens online.[105]

However, the examples of 'other than in private' in section 750(1) of the Criminal Code include "writing a publicly viewable post on social media". The inclusion of this example does not

[101] See e.g. discussion of the meaning of 'serious contempt for, or revulsion or severe ridicule of' in *Cottrell v Ross* [2019] VCC 2142 [36]-[38].
[102] Section 93ZAA, *Crimes Act 1900* (NSW); section 52A, *Criminal Code Act 1899* (Qld); s 4, *Racial Vilification Act 1996* (SA).
[103] Section 195N, *Crimes Act 1958* (Vic).
[104] Australian Multicultural Action Network, *Submission S01*, 4.
[105] DecrimACT, *Submission S23*, 6; ANU Law Reform and Social Justice, *Submission S24*, 5

mean that 'other than in private' is restricted to conduct that happens on social media as examples may extend, but do not limit, the meaning of the provision.[106]

Furthermore, 'other than in private' has clearly been interpreted in the civil context in the ACT to include serious vilification that takes place online.[107]

Given this, the Review does not consider that the serious vilification offence either excludes or fails to specifically address conduct that takes place online.

3. Defences for Serious Vilification Offence

There are no specific defences to serious vilification in section 750 of the Criminal Code. However, general circumstances where there is no criminal responsibility which are set out under Part 2.3 of the Criminal Code, such as lack of capacity—mental impairment and mistake of fact, nevertheless apply which means that the law acknowledges that there may be situations where someone should not be found guilty.

There was little discussion of defences throughout the consultation, with only the ACT Human Rights Commission raising the issue in its submission.[108] The ACT Human Rights Commission stated that "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".

Given this, the Review is not proposing to consider introducing any new defences to the serious vilification offence. However, were the offence to be broadened, or additional serious vilification offences introduced, it would be appropriate to consider whether further defences should be included as a safeguard against any possible associated limitations on human rights.

4. Penalties for Serious Vilification

The current maximum penalty for serious vilification under section 750 of the Criminal Code is 50 penalty units.

There were diverse views from stakeholders about the current maximum penalty, with strong support both for supporting an increase to the penalty,[109] as well as for maintaining the existing penalty.[110]

Several stakeholders pointed out that the maximum penalty for serious vilification in the ACT is much lower than similar penalties in other jurisdictions.[111] A full jurisdictional comparison of

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[106] Section 132, *Legislation Act 2001*.
[107] See e.g. *Sunol v Kerslake (Appeal)* [2024] ACAT 35; *Rep v Clinch (Appeal)* [2021] ACAT 106.
[108] *Submission S16*, 14.
[109] Australian Multicultural Action Network, *Submission S01*, 4; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 4; Equality Australia, *Submission S14*, 16; Online Hate Prevention Institute, *Submission S19*, 8-9; Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 11-12.
[110] Legal Aid ACT, *Submission S09*, 4; Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 3; ACT Human Rights Commission, *Submission S16*, 11; Australian Christian Lobby, *Submission S20*, 10; Aboriginal Legal Service (NSW/ACT), *Submission S22*, 2; ANU Law Reform and Social Justice, *Submission S24*, 7.
[111] Australian Human Rights Commission, *Submission S08*, 10; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 4; Equality Australia, *Submission S16*, 16; Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 11-12.

the various penalties for serious vilification offences and penalties across Australia is set out at **Appendix C**.

Of note, the ACT is the only Australian jurisdiction without any maximum penalty of imprisonment for a serious vilification offence. The next lowest penalty is 100 penalty units, imprisonment of 2 years or both for the NSW offence of publicly inciting hatred on the ground of race.[112] Other penalties range from 5 years all the way to 14 years imprisonment.

Several stakeholders also drew the Review's attention to discrepancies in penalty levels within the Criminal Code, including the difference in penalties between serious vilification and the offence of displaying a Nazi symbol under section 752 of the Criminal Code which has a maximum penalty of a fine of 120 penalty units, imprisonment for 12 months or both.[113] The Australian Human Rights Commission noted that it "is not apparent why inciting hatred against a Jewish person under s 750 carries a lower penalty than displaying a Nazi symbol under s 752".[114]

Additionally, despite including the element of an intentional threatening act, the serious vilification offence has a lower penalty than other offences involving threats under the Criminal Code such as a threat to cause property damage under section 407 of the Criminal Code which has a maximum penalty of 200 penalty units, imprisonment for 2 years or both.

Despite having no strong views, ACT Policing noted that a maximum penalty can impact police's ability to investigate matters and provided the example that police powers in relation to a particular offence under section 180(4)(b) of the *Telecommunications (Interception and Access) Act 1979* (Cth) are restricted by the offence being punishable by imprisonment for at least 3 years.

Article 4(a) of the CERD requires that States "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 groups of persons of another colour or ethnic origin, and also the provision of any assistance to racists activities", however does not provide any guidance about appropriate penalties for such an offence.

In addition to the existing limitation on the right to freedom of expression, introducing a new penalty of imprisonment for serious vilification would limit the right to liberty and security of person under section 18 of the Human Rights Act. Penalties should be relative to the seriousness or prevalence of the behaviour, and a penalty of imprisonment should ordinarily be limited to offences involving behaviour or conduct such as violence, serious breaches of a person's human rights, endangering life or property or intentional damage to property.[115]

Some stakeholders reflected that penalties should remain proportionate to the relative seriousness of the offence and higher maximum penalties should be reserved for more serious offences.[116] The Australian Christian Lobby specifically referred to Article 19(3) of the ICCPR which requires that the right to freedom of expression may be subject to certain restrictions,

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[112] Section 93ZAA, *Crimes Act 1900* (NSW).
[113] Australian Multicultural Action Network, *Submission S01*, 4; Australian Human Rights Commission, *Submission S08*, 10; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 4.
[114] *Submission S08*, 10.
[115] Justice and Community Safety Directorate, *Guide for Framing Offences*, April 2010.
[116] Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 3; Australian Christian Lobby, *Submission S20*, 10.

but only such as are provided by law and are necessary.[117] Other stakeholders noted that other offences with a higher maximum penalty that reflect actual violence or harm are available for police to charge in relation to the relevant conduct.[118] ANU Law Reform and Social Justice stated that for most offenders, a fine is an adequate deterrent, and imprisonment should be avoided due to harsh environments in prison which are shown not to be supportive of rehabilitation.[119]

However, other stakeholders argued that serious vilification offences are objectively serious and increasing the penalty would "align with [the] seriousness of harm" and "[s]ignal moral gravity",[120] and "demonstrate publicly…the seriousness of this offence".[121] The Online Hate Prevention Institute explained that social vilification "harms social cohesion and destroys the sense of safety for entire communities", that there "are also communities that are more vulnerable and require greater protection due to their history of being harmed" and that "the risk to the victim and to society is further increased through the incitement of others".[122]

Increasing the penalty for serious vilification may better support the right to equal and effective protection against discrimination on any ground under section 8(3) of the Human Rights Act by facilitating more effective investigation and therefore prosecution of the offence under the Telecommunications (Interception and Access) Act. This may be particularly relevant for serious vilification that takes place online where, without appropriate investigative powers, it can be challenging to identify perpetrators.

Additionally, increasing the penalty would bring the offence into closer alignment with penalties for similar offences in the ACT as well as serious vilification offences in other jurisdictions, sending a strong message that threatening conduct in public that incites hatred against people with protected attributes is unacceptable.

RECOMMENDATION 4: To better align with similar offences in the ACT and in other jurisdictions, section 750 of the *Criminal Code 2002* should be amended to increase the penalty for serious vilification.

ii. Display of Nazi Symbols

The only other offence under ACT legislation which responds to crimes motivated by hate is the public display of Nazi symbols.[123] The ACT offence only applies to the Hakenkreuz (also known as the Swastika).[124]

There are a range of approaches to banning Nazi symbols and gestures in Australia which are set out in **Appendix D**.

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[117] Australian Christian Lobby, *Submission S20*, 10.
[118] ACT Human Rights Commission, *Submission S16*, 12; Aboriginal Legal Service (NSW/ACT), *Submission S22*, 2.
[119] ANU Law Reform and Social Justice, *Submission S24*, 7.
[120] Australian Multicultural Action Network, *Submission S01*, 4.
[121] Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 4.
[122] *Submission S19*, 8.
[123] Section 752, *Criminal Code 2002*.
[124] Section 751(1), *Criminal Code 2002*.

(a) What We Heard

1. Framing of Display of Nazi Symbol Offence

Stakeholders were broadly supportive of how the display of Nazi symbol offence is currently framed.[125] Areas of feedback about the framing of the offence included the scope of the offence, the fault element of the offence and the requirement that the offence take place in public.

A. Scope of the Offence

Several stakeholders recommended reviewing the scope of the display of Nazi symbol offence.

i. Expanding to Other Symbols and Gestures

There was support for expanding the scope of the current display of Nazi symbol offence to include other symbols and gestures.[126] The ACT currently prohibits the narrowest range of Nazi and symbols in Australia, with the display of Nazi symbols offence limited solely to the Hakenkreuz (Swastika). As set out in the jurisdictional comparison at **Appendix D**, other jurisdictions prohibit the double-sig rune (SS bolts)[127], prohibit Nazi symbols generally,[128] and prohibit additional specific symbols associated with Nazi ideology.[129]

Additionally, the Commonwealth, South Australia, Tasmania, Victoria and Western Australia all prohibit Nazi salutes.

ANU Law Reform and Social Justice recommended that the offence be expanded to specifically include the Nazi salute and SS bolts due to "the potential for these actions to create the same harm as the display of the Hakenkreuz".[130] Australia's Special Envoy to Combat Antisemitism recommended adopting a broader approach, prohibiting Nazi symbols and gestures both specifically and generally.[131]

AMAN cautioned that any "[e]xpansion to other extremist symbols should be evidence-based" and "[a]void overreach that chills legitimate political speech".[132] While the Online Hate Prevention Institute prefers the approach of capturing Nazi and neo-Nazi symbols more generally, allowing courts to decide whether "a particular symbol in a particular context counts",[133] Equality Australia noted the challenges in identifying which symbols to ban, responding to adaptations by extremist movements flexibly while avoiding uncertainty and overreach, and ensuring symbol bans are not inadvertently capturing conduct that is not actually harmful.[134]

Expanding the display of Nazi symbol offence to include the clearly defined symbols and gestures of double-sig runes and Nazi salutes would be a lesser limit on the right to freedom of expression than banning Nazi symbols and gestures generally, or introducing a new power to

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[125] Australian Multicultural Action Network, *Submission S01*, 5;
[126] Victims of Terrorism Australia, *Submission S11*, 7; Online Hate Prevention Institute, *Submission S19*, 10; ANU Law Reform and Social Justice, *Submission S24*, 7; Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 16.
[127] Commonwealth, Queensland and Western Australia.
[128] New South Wales, South Australia, Tasmania and Victoria.
[129] Queensland, South Australia and Western Australia.
[130] *Submission S24*, 7.
[131] *Submission S25*, 16.
[132] *Submission S01*, 5.
[133] *Submission S19*, 10.
[134] *Submission S14*, 19.

prescribe symbols and gestures by way of subordinate legislation. It would also bring the ACT into closer alignment with other jurisdictions.

RECOMMENDATION 5: Amend Part 7A.2 of the *Criminal Code 2002*, which makes it an offence to publicly display Nazi symbols, to include the Nazi double-sig rune (SS bolts) and Nazi salutes.

The only other suggestion to expand the scope of the display of Nazi symbol offence was a "minor expansion to cover ISIS-inspired symbols" to "include symbols associated with established groups such as ISIS, which have explicitly targeted LGBTIQ+ people", noting reporting which has highlighted extremist networks connected to ISIS encouraging violence against LGBTIQA+ people.[135]

The Review does not propose expanding prohibited symbols beyond specific Nazi symbols at this time, and notes that terrorism and prohibited organisation symbols are already dealt with comprehensively under Commonwealth law which applies in the ACT.[136]

ii. Modifying Prohibited Symbols

ACT Policing reported that it has "encountered groups manipulating prohibited symbols, such as the swastika, to effectively circumvent the legislation, evade detection and signal ideology" and that "[m]odifying prohibited symbols is not unlawful" and "this loophole has been exploited across Australia".[137]

However, the Review considers that the definition of 'Nazi symbol' under section 751(1)(b) of the Criminal Code, which includes a symbol that so nearly resembles a Hakenkreuz that it is likely to be confused with or mistaken for a Hakenkreuz, strikes a better balance between limiting the right to freedom of expression and promoting the right to equal and effective protection against discrimination.

iii. Banning Phrases

Only one stakeholder raised the issue of banning phrases, arguing that "such measures criminalise often contested phrases out of context and carry a high risk of incompatibility with human rights, particularly freedom of expression".[138]

The Review does not propose banning any phrases.

B. Fault Element

There were some suggestions in relation to the fault element for the display of Nazi symbol offence: one to amend it to make an intention to incite a clearer element of the offence,[139] and one to remove the fault element of knowledge that the symbol is associated with Nazi ideology and replace it with a lesser fault element of recklessness.[140]

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[135] Equality Australia, *Submission S14*, 19-20.
[136] See e.g. ss 80.2C, 80.2HA and Part 5.3, *Criminal Code Act 1995*.
[137] *Submission S04*, 5.
[138] Equality Australia, *Submission S14*, 20.
[139] Legal Aid ACT, *Submission S09*, 6.
[140] Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 17.

The Review is not proposing to change the fault element of the display of Nazi symbol offence at this time.

C. In Public

The only stakeholder to comment on the requirement that the display of Nazi symbols be 'other than in private' was Australia's Special Envoy to Combat Antisemitism who suggested expanding the examples in the provision to include situations, such as meetings, open only to particular sections of the community, such as ticketed events or groups only open to a segment of the public.[141]

Section 752(1)(c) of the Criminal Code sets out four examples of 'other than in private':

1. displaying the symbol at an event that is open to the public, even if privately organised
2. including the symbol in a publicly viewable post on social media
3. displaying the symbol during a video-recorded interview that is intended to be broadcast, and
4. wearing the symbol on a piece of clothing in a public place, or within sight of a person who is in a public place.

The Review notes that the examples of 'other than in private' are not exhaustive, and does not propose to amend them at this time.

2. Exceptions

A. Current Exceptions

The offence of displaying a Nazi symbol does not apply in the following circumstances:

- tattoos
- for a genuine academic, artistic, religious or scientific purpose
- for a genuine cultural or educational purpose
- in making or publishing a fair and accurate report of an event or matter of public interest, or
- in opposition to fascism, Nazism, neo-Nazism or other related ideologies.

Submissions included specific feedback about inadequate definition of the exceptions,[142] risk of misapplication in practice,[143] a lack of examples relating to genuine artistic purposes or for those in opposition to fascism,[144] or where Nazi symbols purportedly used in opposition to fascism, Nazism or neo-Nazism may promote hatred against vulnerable groups.[145]

However, the Review notes that the offence only commenced in 2023, and that the Bill was carefully formulated with a detailed consideration of the rights promoted and limited under the Human Rights Act.[146]

The operation of exceptions to the display of Nazi symbols was raised by multiple stakeholders in the context of recent events at local Canberra venue Dissent Bar, where ACT Policing

[141] Ibid.
[142] Legal Aid ACT, *Submission S09*, 6.
[143] Equality Australia, *Submission S14*, 19.
[144] ANU Law Reform and Social Justice, *Submission S24*, 8.
[145] Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 17-18.
[146] Explanatory Statement, Crimes Legislation Amendment Bill 2022 (ACT).

removed several posters depicting global figures wearing Nazi regalia, although ultimately no charges were laid.[147]

ACT Policing considered whether the posters breached new Commonwealth legislation regarding hate symbols[148] however ultimately decided not to progress charges for an offence.[149]

While the incident involved application of the Commonwealth offence of public display of prohibited Nazi symbols or giving Nazi salute under section 80.2H of the *Criminal Code Act 1995* (Cth), several stakeholders referred to this incident as an example of how better community understanding of the operation of the ACT exceptions may be required.

Equality Australia stated that this incident suggests that "even where legislation is relatively well-balanced on its face, there remains a risk of misapplication in practice", pointing to "the need for clear guidance and training".[150] ANU Law Reform and Social Justice suggested that, given such conduct maybe similarly charged under ACT legislation, "additional legislative guidance to the interpretation of these sections would be of assistance to the community".[151]

B. Firearms

ACT Policing raised a potential additional exception based on concerns raised by firearms dealers about the way section 752 of the Criminal Code interacts with section 252 of the *Firearms Act 1996.* The latter provision prohibits the defacing, altering or removal of identification marks from a firearm or barrel for a firearm, particularly in relation to historic World War II-era firearms which may possess e.g. a Hakenkreuz as part of its identification mark.[152]

The Review considers this situation would likely be covered under a 'genuine cultural' purpose and does not propose introducing new exceptions at this time.

3. Penalties

The maximum penalty for the display of Nazi symbols is 120 penalty units, imprisonment for 12 months or both.

There was minimal feedback from stakeholders on the appropriateness of the current penalty. While Australia's Special Envoy to Combat Antisemitism recommended increasing the penalty to a mandatory minimum sentence of 12 months' imprisonment to reflect the gravity of the conduct,[153] Equality Australia noted that the current penalty is broadly consistent with that of the Commonwealth and that there was "no obvious merit in increasing the sentence since higher sentences do not necessarily produce a higher deterrent effect".

As detailed above, the offence and associated penalty only recently commenced in August 2023, and the Bill was subject to a detailed human rights analysis including a consideration of

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[147] Tahlia Roy and James Tugwell, 'Police will not charge Canberra bar owner after seizing posters under new Commonwealth hate laws', *ABC News*, (online, 25 February 2026).
[148] ACT Policing, 'Statement regarding possible hate imagery', *ACT Policing website*, (online, 19 February 2026).
[149] ACT Policing, 'Update to the removal of posters from City bar', *ACT Policing website*, (online 25 February 2026).
[150] *Submission S14*, 19.
[151] *Submission S24*, 8.
[152] ACT Policing, *Submission S04*, 5.
[153] Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 19.

proportionality of the penalty and alignment with other analogous offences under ACT law.[154] Given the minimal feedback received about the appropriateness of the penalty of this offence, the Review does not propose increasing the penalty for display of Nazi symbols at this time.

Mandatory minimum sentences are not a feature of ACT law and are also likely to raise human rights compatibility issues. The Review does not propose including a mandatory minimum sentence for this offence.

4. Power to Direct Removal

There was very little feedback on the power for police officers to direct a person to remove a Nazi symbol from display under section 753 of the Criminal Code. The Australian Christian Lobby recommended "clear definitions and imagery available [about what] constitutes Nazi symbolism. Otherwise, symbol offences could unfairly occur where police view a symbol might reasonably indicate support for Nazism, irrespective of the actual intent or imagery".[155]

However, the Review notes section 753(6) of the Criminal Code states that a person is not required to comply with such a direction where they have a reasonable excuse and therefore does not propose amendments to this provision at this time.

iii. Aggravated Offence for Crimes Motivated by Prejudice

Stakeholders were asked about the desirability and likely impact of introducing an aggravated offence for crimes motivated by hate. This type of offence would be where existing base offences under ACT legislation are given a more serious penalty where it can be established that the offender was motivated by prejudice towards people or groups of people with a particular protected attribute. There are two aggravated offences under the *Crimes Act 1900* (ACT): offences against a pregnant person (section 48A) and offences involving family violence (section 48D).

Currently the only jurisdictions with circumstances of aggravation for offences motivated by prejudice are Queensland[156] and Western Australia.[157] Queensland's laws apply to 'race', 'religion', 'sexuality', 'sex characteristics' and 'gender identity' (including presumptions about those protected attributes) whereas Western Australia's laws only apply to 'race'.

There was considerable support for a new aggravated offence in the ACT where the offence was motivated by prejudice towards a person or group of people with a particular protected attribute.[158] The benefits identified by stakeholders for an aggravated offence included:

- validating victims by naming hate[159]
- acting as an appropriate deterrent[160]
- acknowledging harm caused to the individual victim, the minority group, the community and society[161] and

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[154] Explanatory Statement, Crimes Legislation Amendment Bill 2022 (ACT).
[155] Australian Christian Lobby, *Submission S20*, 12.
[156] Section 52B, *Criminal Code Act 1899*.
[157] Section 80I, *Criminal Code Act Compilation Act 1913*.
[158] Australian Multicultural Action Network, *Submission S01*, 5; ACT Policing, *Submission S04*, 7; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 6; Equality Australia, *Submission S14*, 21; Forcibly Displaced People Network, *Submission S17*, 12; Online Hate Prevention Institute, *Submission S19,* 11; Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 20.
[159] Australian Multicultural Action Network, *Submission S01*, 5.
[160] ACT Policing, *Submission S04*, 7.
[161] Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 6.

- allowing data to be captured within the Australian Institute of Criminology's National Hate Crimes Database.[162]

However, there was also significant opposition to the introduction of an aggravated offence.[163] Reasons why stakeholders did not support a new aggravated offence for crimes motivated by prejudice included:

- significant practical difficulty in establishing 'hate' as a motivator for criminal conduct beyond reasonable doubt
- requiring a high enough penalty to allow ACT Policing to engage appropriate resourcing and powers[164]
- increased complexity and number of cases going to disputed hearing or trial
- fewer guilty pleas, leading to cases becoming unnecessarily prolonged
- increased trauma to victims due to longer engagement with the justice system
- increased costs to an "already strained" justice system[165]
- a limit on the non-derogable right to hold an opinion under section 16(1) of the Human Rights Act "which permits a person to hold an opinion of strong dislike or disdain for something or someone"[166]
- overcriminalisation
- "potential to be in conflict with freedom of religion and expression"[167]
- limited additional protection, if any[168] and
- the serious vilification offence becoming superfluous.[169]

Given the views set out above, the Review does not propose introducing an aggravated offence for crimes motivated by prejudice at this time.

iv. Explicit Sentencing Considerations of Prejudice Motivation

Stakeholders were also consulted on the introduction of an explicit sentencing consideration of hate towards a person or group of people on the ground of a relevant protected attribute.

Section 33 of the *Crimes (Sentencing) Act 2005* sets out matters a court must consider in deciding how an offender should be sentenced (if at all) for an offence. While an offender's motivations may be considered under section 33(1)(a) (the nature and circumstances of the offence) and section 33(1)(v) (the reason or reasons why the offender committed the offence), there is no explicit requirement to consider whether the offence was motivated by prejudice towards a person or group of people on the ground of a relevant protected attribute.

Additionally, there is no clear case law indicating that these considerations have been or are being effectively used in the ACT to respond to crimes motivated by prejudice.

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[162] Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 20.
[163] Legal Aid ACT, *Submission S09*, 7; ACT Human Rights Commission, *Submission S16*, 17; Australian Christian Lobby, *Submission S20*, 12, Aboriginal Legal Service (NSW/ACT), *Submission S22*, 3; ANU Law Reform and Social Justice, *Submission S24*, 9.
[164] ACT Policing, *Submission S04*, 6.
[165] Legal Aid ACT, *Submission S09*, 7.
[166] ACT Human Rights Commission, *Submission S16*, 17.
[167] Australian Christian Lobby, *Submission S20*, 12.
[168] Aboriginal Legal Service (NSW/ACT), *Submission S22,* 3.
[169] ANU Law Reform and Social Justice, *Submission S24*, 9.

Many Australian jurisdictions explicitly require courts to consider hate or prejudice motivation in sentencing, namely New South Wales,[170] Northern Territory,[171] South Australia,[172] Tasmania,[173] and Victoria.[174]

There was very strong support from stakeholders to introduce a similar explicit sentencing consideration in the ACT.[175]

The benefits to an explicit sentencing consideration identified by stakeholders included:

- better aligning with other jurisdictions
- operating on cases already before the courts
- sending a clear signal about how the ACT values disabled lives[176]
- providing a practical and symbolic response to hate crimes
- sending a strong message denouncing hate motivated actions and reaffirming social values, tolerance and respect for minority communities[177]
- capturing a broader range of crimes than an aggravated offence would[178]
- the approach being readily applied in other jurisdictions[179] and
- supporting data collection about the prevalence of crimes motivated by prejudice.[180]

An explicit sentencing consideration would ensure that sentencing for crimes, such as homophobic assaults or racially-motivated property damage intended to intimidate members of a particular ethnic group, would specifically be required to take into account the offender's prejudice motivation when determining the appropriate sentence.

Additionally, an explicit sentencing consideration would allow Victim Impact Statements to raise this specific issue and provide acknowledgement to victims, and their communities, of the particular harms of crimes motivated by prejudice.

Three stakeholders did not support a new explicit sentencing consideration, providing reasons including:

- consideration of an offender's motivations is already captured under sections 33(1)(v) and 33(1)(a) of the Crimes (Sentencing) Act[181]
- the challenge in determining motivation,[182] and

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[170] Section 21A(2)(h), *Crimes (Sentencing Procedure) Act 1999* (NSW).
[171] Section 6A(1)(e), *Sentencing Act 1995* (NT).
[172] Section 11(1)(ca), *Sentencing Act 2017* (SA).
[173] Section 11B, *Sentencing Act 1997* (Tas).
[174] Section 5(2)(daaa), *Sentencing Act 1991* (Vic).
[175] Australian Multicultural Action Network, *Submission S01*, 5; ACT Policing, *Submission S04*, 6; Advocacy for Inclusion, *Submission S06*, 6; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 6; Equality Australia, *Submission S14*, 23-24; ACT Human Rights Commission, *Submission S16*, 18; Forcibly Displaced People Network, *Submission S17*, 12-13; Online Hate Prevention Institute, *Submission S19*, 11; Aboriginal Legal Service (NSW/ACT), *Submission S22*, 3; Special Envoy to Combat Antisemitism, *Submission 25*, 22.
[176] Advocacy for Inclusion, *Submission S06*, 6.
[177] Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 6.
[178] Online Hate Prevention Institute, *Submission S19*, 11.
[179] Aboriginal Legal Service (NSW/ACT), *Submission S22*, 3.
[180] Special Envoy to Combat Antisemitism, *Submission 25*, 22.
[181] Legal Aid ACT, *Submission S09*, 7.
[182] Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 4.

- such an amendment would not make any practical differences to the current sentencing process.[183]

According to the common law principle of 'double counting', "it is a fundamental principle of sentencing which needs no statute to support its existence that a matter may not be taken to account in aggravation of sentence if it is already an element of the crime, for that would necessarily amount to double counting of the same matter".[184]

Given the feedback from stakeholders set out above, the Review proposes introducing an explicit sentencing consideration of prejudice motivation rather than an aggravated offence for crimes motivated by prejudice.

RECOMMENDATION 6: To better recognise the impact of crimes motivated by hate, the *Crimes (Sentencing) Act 2005* should be amended to include hate motivation towards a relevant protected attribute as a mandatory sentencing consideration by courts.

AMAN also suggested that sentencing remarks could be required to explicitly address hate motivation.[185] While this may be achieved indirectly through introducing a mandatory explicit sentencing consideration of prejudice motivation, specifying what courts must include in sentencing remarks may represent an overreach into judicial discretion. As such, the Review does not recommend this approach.

v. Additional Offences

Stakeholders were asked whether there are further offences that should be added to ACT criminal law to protect against hate crimes that are not already covered by existing offences. Submissions discussed:

- a standalone hate crime offence
- an intimidation offence
- an infringement notice scheme for lower-level online vilification, and
- a doxxing offence.

The Review also considered the new proposed offence of procuring victims by making false and misleading representations in clause 1 of the *Crimes Legislation Amendment (Hate Crimes) Bill 2026* (NSW) which was introduced into the New South Wales Legislative Assembly on 17 March 2026 and passed the New South Wales Parliament on 24 June 2026.

(a) Standalone Hate Crime Offence

Recommendation 53 of the 2019 *ACT LGBTIQA+ Legal Audit: Reforms for an inclusive ACT* was to insert a standalone 'hate crime' offence in the Crimes Act.[186]

A standalone hate crime offence is a type of offence that specifically targets particular types of conduct motivated by prejudice or hatred towards people or groups of people, with one or

[183] ANU Law Reform and Social Justice, *Submission S24*, 9.
[184] *R v Johnson* [2005] NSWCCA 186, [22].
[185] Australian Multicultural Action Network, *Submission S01*, 6.
[186] Equality Australia, *ACT LGBTIQ+ Legal Audit: Reforms for an inclusive ACT*, 30 June 2019.

more protected attribute. This is a different approach to an aggravated offence which creates a higher penalty for an existing base offence (e.g. assault) that is motivated by prejudice.

A key international example of a standalone hate crime offence is the American federal offence of causing bodily injury to any person using particular types of weapons because of the actual or perceived race, colour, religion or national origin of that person.[187]

There are also some Australian examples of standalone offences which criminalises specific conduct motivated by prejudice towards people or groups of people with a relevant protected attribute, including:

- conduct intended to or likely to racially harass[188]
- threatening physical harm or property damage on the ground of a protected attribute[189] and
- threatening force against, violence against or damage or destruction of property or motor vehicles of groups or members of groups distinguished by a protected attribute.[190]

There is overlap with the discussion of serious vilification above, especially for jurisdictions which have introduced a new standalone offence for publicly threatening violence towards a person or group of people on the grounds of a protected attribute as distinct from serious vilification offences of inciting hatred on the grounds of a protected attribute.

Several stakeholders were supportive of introducing a new standalone hate crime offence.[191]

Stakeholders identified benefits of a standalone offence including:

- improving data collection about the prevalence of crimes motivated by prejudice (including through the National Hate Crimes Database)[192]
- increasing visibility and providing legal recognition that hate-based violence causes a distinct form of harm[193]
- enhancing deterrence[194]
- addressing a legislative gap, for example an assault on a woman due to her visible Muslim identity being sentenced as an ordinary assault without formal recognition of the broader harm the attack causes to the entire Canberra Muslim community[195]
- offering better protection to communities
- adding clarity to situations where grey areas currently exist, for example experiences of bullying by individuals within school environments; and

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[187] 18 U.S. Code § 249 - Hate crime acts; 'Matthew Shepard and James Byrd Jr Hate Crimes Prevention Act' 2009, https://www.law.cornell.edu/uscode/text/18/249.
[188] Sections 80A and 80B, *Criminal Code Act Compilation Act 1913* (WA).
[189] Section 195O, *Crimes Act 1958* (Vic).
[190] Sections 80.2BA, 80.2BB and 80.2BD, *Criminal Code Act 1995* (Cth).
[191] Australian Multicultural Action Network, *Submission S01*, 6; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 7; Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 4; Forcibly Displaced People Network, *Submission S17*, 13-14; A Gender Agenda, *Submission S21*, 3.
[192] Australian Multicultural Action Network, *Submission S01*, 6; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 7.
[193] Australian Multicultural Action Network, *Submission S01*, 6; Forcibly Displaced People Network, *Submission S17*, 13-14.
[194] Australian Multicultural Action Network, *Submission S01*, 6.
[195] Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 7.

- enabling greater scope for intervention, harm removal and redress than currently exists.[196]

However, multiple stakeholders were either not in favour of or did not see the necessity of introducing new offences, including standalone hate crime offences.[197] Reasons against a new offence included:

- the risk of blurring legal definitions, particularly regarding the distinction between antisemitism and anti-Zionism
- legitimate political expression or criticism of state ideologies being treated as criminal conduct[198]
- preference towards better enforcement and education around existing laws and jurisprudence[199]
- lack of evidence of a clear gap in protection in the ACT
- serious conduct already being addressed by existing criminal law (e.g. assault, threat, property damage)[200]
- proven risk of criminalisation leading to disproportionate harms flowing to Aboriginal and Torres Strait Islander communities, and
- significant risk any new offence will be disproportionately charged against marginalised groups, including Aboriginal people and people with disability, during interactions with police.[201]

In light of the significant concerns identified above, the Review does not recommend a standalone hate crime offence at this time. In addition to existing robust protections in the ACT, other recommendations of the Review will assist to ensure that the law can respond appropriately to crimes motivated by hate or prejudice.

(b) Intimidation Offence

Some stakeholders suggested the Review could consider introducing an offence of intimidation.

Legal Aid ACT referred to the new offence of intimidation or annoyance by violence or otherwise in section 545B of the *Crimes Act 1900* (NSW) as an example of an intimidation offence that "is able to capture a broader range of conduct than vilification offences".[202]

Australia's Special Envoy to Combat Islamophobia proposed a "specific offence of coordinated religious intimidation or online anti-mosque targeting" to address the gap where coordinated online targeting of Muslim institutions in Canberra may not satisfy the threshold of serious vilification, which requires a 'threatening act'.[203]

The DPP also identified that a standalone offence of intimidation which covers a broad range of offending could address a gap in the legislation for offences that are not quite common

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[196] A Gender Agenda, *Submission S21*, 3.
[197] ACT Policing, *Submission S04*, 6; Dr Sara Abdelmawgoud, *Submission S15*, 3; ACT Human Rights Commission, *Submission S16*, 15, 18; Australian Christian Lobby, *Submission S20*, 13; Aboriginal Legal Service (NSW/ACT), *Submission S22*, 3.
[198] Dr Sara Abdelmawgoud, *Submission S15*, 3.
[199] ACT Human Rights Commission, *Submission S16*, 18.
[200] Australian Christian Lobby, *Submission S20*.
[201] Aboriginal Legal Service (NSW/ACT), *Submission S22*, 3.
[202] Legal Aid ACT, *Submission S09*, 5.
[203] Australia's Special Envoy to Combat Antisemitism, *Submission S12*, 7.

assault or stalking, but might cover things that are more than nuisance.[204] The DPP referred to an example of 'intimidation' in New South Wales domestic and personal violence legislation which also includes 'outing' someone on the basis of their sexual orientation, gender history, variation of sex characteristics, living with HIV or that they are or have been a sex worker.[205]

Given that such an offence would be more broadly applicable to the entire community, rather than just to violent crimes motivated by prejudice, the Review considers that it may have benefits but will need to be the subject of further consideration.

(c) Infringement Notice Scheme

The Online Hate Prevention Institute, in recognition of how vilification has changed due to the evolving online world, recommended a scheme to better address vilification that falls short of vilification through civil penalties or fines.[206] The Online Hate Prevention Institute proposed a low level criminal offence which would "prove useful in empowering police to use existing tools to identify those responsible for less serious online hate".[207]

The Review notes that less serious online vilification is currently covered by unlawful vilification under section 67A of the Discrimination Act. The ACT Human Rights Commission is also able to contact social media platforms to request that vilifying content be removed.[208] Given this, the Review does not propose introducing a new civil fine or infringement notice scheme for vilification at this time.

(d) Doxxing Offence

Another suggestion was to introduce a specific offence of 'doxxing', that is, publishing identifying personal information about someone online without their consent.[209]

While there is no specific offence of doxxing in the ACT, the Review notes that using a carriage service to make available etc. personal data of one or more individuals, including names, telephone numbers and addresses, is now an offence under section 474.17C of the *Criminal Code Act 1995* (Cth) which applies in the ACT.

(e) Procuring Victims by Making False Representations

As set out above, the review also considered the New South Wales offence passed by the New South Wales Parliament of procuring victims by making false and misleading representations. The purpose of this amendment is to "protect gay men, particularly, from being ambushed, lured and bashed by groups of homophobes".[210]

Despite not being part of the terms of reference or the consultation questions due to the New South Wales offence being introduced after the Discussion Paper was circulated to stakeholders, several stakeholders raised the issue of victims, especially gay and bisexual men,

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[204] Meeting with the ACT Office of the Director of Public Prosecutions, 18 March 2026.
[205] Sections 7, 13, *Crimes (Domestic and Personal Violence) Act 2007* (NSW).
[206] *Submission S19*, 4, 10.
[207] Ibid, 10.
[208] *Submission S16*, 15.
[209] DecrimACT, *Submission S23*, 6.
[210] New South Wales, *Parliamentary Debates*, Legislative Assembly, 17 March 2026, 19 (Michael Daley, Attorney General).

being lured via dating or hook-up apps and attacked, robbed and filmed, with content shared online due to hatred and prejudice towards LGBTIQA+ people.[211]

While there were no specific recommendations for an offence to mirror the offence recently introduced in New South Wales (noting it was only introduced 10 days prior to the closing date of the targeted consultation), Tim Kerslake stated that in this context, "it is appropriate to discuss whether laws with respect to physical violence need to be strengthened" and Forcibly Displaced People Network said that these attacks "serve as an example to" the recommendation of introducing an aggravated offence for hate-motivated conduct.[212]

In July 2024, three victims were lured to vacant properties by a fake profile on a dating app and were subsequently attacked by a group of people.[213] ACT Policing identified 10 people of interest and executed 10 search warrants, but did not to proceed to court after the victims advised they did not want the matter to proceed.[214]

Stakeholders identified many barriers to reporting to police, which are outlined in detail below, however Equality Australia specifically noted that in these circumstances, "victims may feel shame or guilt, or may fear being outed, which deters them from reporting these incidents".[215]

While it is likely that this type of conduct would be captured by other offences under ACT legislation such as assault and conspiracy, introducing a specific offence targeting this conduct would send a clear message to the community that there is zero tolerance for these types of prejudice-motivated attacks in the Canberra community.

RECOMMENDATION 7: Subject to further consultation with key stakeholders, amend the *Criminal Code 2002* to introduce a new offence of procuring victims by making false and misleading representations, to better protect the community, especially LGBTIQA+ people, against attacks using deception to lure victims to attack, rob and film them.

vi. Other Reforms to Respond to Crimes Motivated by Prejudice

Stakeholders were invited provide suggestions for additional reforms to better respond to crimes motivated by hate. Three legislative proposals in addition to reforming or introducing new offences put forward included:

- a "stop vilification order" scheme
- a community advisory panel for police, and
- statutory protection of victim identity.

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[211] Equality Australia, *Submission S14*, 3; Forcibly Displaced People Network, *Submission S17*, 12; Tim Kerslake, *Submission S03*, 6.
[212] *Submission S17*, 12.
[213] Charlie Gore, 'Police investigating third alleged homophobic assault of men lured to vacant Canberra houses via dating app and assaulted by group', *ABC News*, (online, 26 July 2024).
[214] Monte Bovill, 'Experiences of homophobia 'happening every day' in Australia's most progressive city', *ABC News*, (online, 23 November 2025).
[215] Equality Australia, *Submission S14*, 19.

(a) Stop Vilification Order

Equality Australia proposed the introduction of a stop vilification order (SVO) scheme that would operate in a similar manner to personal protection orders in the ACT.[216] They proposed that the scheme would allow for orders to be sought by individuals, authorised support people or police and courts would have "the power to prevent ongoing hate-based conduct and harassment by issuing time-limited orders with tailored conditions", such as requirements to remove vilifying material including online posts.[217]

It is unclear how such a scheme would fit alongside the existing complaints mechanism for unlawful vilification, where ACAT is already able to direct that vilifying content be removed, and the criminal law pathway for serious vilification. Additionally, contested orders and enforcing breaches could be very complex and costly.

The Review is not proposing to progress this suggestion at this time.

(b) Community Advisory Panel

Ron Levy, Selen A. Ercan and John Dryzek proposed "the establishment of a standing, community-based panel to advise police and prosecutors on the application of federal or ACT laws relating to vilification and related matters".[218]

They proposed that the community panel would be made up of people of various backgrounds, refreshed annually and would need to be informed by experts at law.[219] The panel "could first reach a finding of lack of guilt or liability, in light of the whole context and content of speech" or "make a non-binding but informative recommendation to prosecute". [220]

However, there would be complexities with a panel which may result in extrajudicial decision-making regarding lack of guilt and may encroach upon the functions of the DPP under the *Director of Public Prosecutions Act 1990*. The ACT Government does not propose progressing this option at this time.

Equality Australia provided an example of another type of community panel, and referred to hate crimes scrutiny panels in some county police forces in the United Kingdom, including West Yorkshire, and Leicester, Leicestershire and Rutland.[221] These panels consist of police members and members of the public who "meet regularly to review policing responses to and investigations of hate crimes and offer suggestions for improvement".[222]

There are no analogous citizen oversight mechanisms for police decisions or investigations in Australia, and responsibility for oversight of, and investigation of complaints about ACT Policing sits with the ACT Ombudsman.

Given the novelty and complexity of this recommendation in the ACT context, the Review does not recommend this approach.

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[216] Ibid, 24-25.
[217] Ibid.
[218] *Submission S02*, 1.
[219] Ibid, 4.
[220] Ibid, 4-5.
[221] *Submission S14,* 18.
[222] Ibid, 19.

(c) Statutory Protection of Witness Identity

Australia's Special Envoy to Combat Antisemitism identified that "hatred and/or harassment following disclosure of their identity in the media in the context of criminal proceedings" is a significant barrier to victims reporting crimes motivated by prejudice and engaging in the criminal process.[223]

Australia's Special Envoy to Combat Antisemitism proposed "a statutory protection which prohibits the disclosure of the identity of victims and witnesses of *relevant incidents*, similar to that provided for complainants in prescribed sexual offence proceedings".[224]

Section 21(2) of the Human Rights Act provides that everyone has the right to have criminal charges decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Section 21(2) also contains some caveats, including where "the interest of the private lives of the parties require the exclusion" of the press and public.

Under common law, the ACT Supreme Court may make non-publication orders or suppression orders as an exception to the principle of open justice, but only where it is in the interests of justice to do so.[225]

ACT courts also have statutory discretion to forbid the publication of the name of a party or witness to proceedings, including a victim of a crime, where it is in the interests of justice to do so.[226]

A blanket requirement to suppress the names of victims in criminal proceedings relating to crimes motivated by prejudice would be a significant limit on the right to fair trial, which would require careful consideration. In light of this, the Review does not recommend this approach at this time.

[223] *Submission S25*, 24.
[224] Ibid.
[225] *Eastman v Director of Public Prosecution* [No 2] (2014) 9 ACTLR 178 [151]–[154].
[226] Section 111, *Evidence (Miscellaneous Provisions) Act 1991* (ACT).

4. Enforcement

Stakeholders were asked to provide feedback about barriers to enforcing the current civil and criminal protections against vilification, namely complaints to the ACT Human Rights Commission and ACAT, reports of crimes to ACT Policing and the prosecution of offences.

A. Complaints about Unlawful Vilification

Complaints about unlawful discrimination and vilification may be made to the ACT Human Rights Commission under the *Human Rights Commission Act 2005*.

Complaints that are unable to be resolved through this process may be referred to the ACAT for a determination.

i. Complaints to the ACT Human Rights Commission

The ACT Human Rights Commission may investigate and conciliate complaints. Conciliation is free and confidential and, for discrimination and unlawful vilification matters, can result in a binding conciliation agreement. Conciliation is more informal than attending ACAT and can achieve a range of outcomes sought by the complainant such as apologies, financial compensation, commitments to improve policies and undertakings to attend training.

Conciliation can be empowering for complainants because they decide for themselves what would resolve the complaint. However, due to the confidential nature of conciliation, there is often little public awareness about how these issues are being addressed and the outcomes that can be achieved through conciliation.

The ACT Human Rights Commission must provide ACAT with a copy of conciliation agreements made in relation to discrimination complaints (including unlawful vilification complaints). These are enforceable by ACAT under section 55A of the *ACT Civil and Administrative Tribunal Act 2008*.

The ACT Human Rights Commission can also initiate a commission-initiated consideration (CIC) which is an own-motion investigation if vilification is brought to its attention where a person could have made a complaint but has not, where a person has withdrawn their complaint or where it is a matter of public interest.[227]

Finally, a person who has witnessed vilification in the community can anonymously report it using the Canberra Community Reporting Tool on the ACT Human Rights Commission's website. If the person is someone who is able to make a complaint, they can agree to receive information from the ACT Human Rights Commission about doing so. Otherwise, information collected through the reporting tool is used to inform the ACT Human Rights Commission's

[227] Section 48, *Human Rights Commission Act 2005*.

work, including training, community education, in submissions and other advocacy work, or for statistical purposes.

To assist with this Review, the ACT Human Rights Commission provided the following data about unlawful vilification complaints:

Type of Contact	**2022-23**	**2023-24**	**2024-25**
Vilification Enquiry	5	34	19
Vilification Complaint	6	21	22

In its submission, the ACT Human Rights Commission acknowledged that despite its best efforts, barriers remain and provided detailed information about the outreach activities that it undertakes including:

- print and radio advertising (mainstream and community radio, in community languages)
- working with community groups such as disability and LGBTIQA+ groups
- participating in community events and projects
- community education and information sessions, and
- information on its website and other formats in community-based languages.

(a) What We Heard

1. Number of Complaints

The Review notes that serious vilification complaint numbers are increasing. This increase has been proportionate to the increase in discrimination complaints received by the ACT Human Rights Commission (more than doubling between 2018-19 and 2024-25).[228] While this suggests an improvement in accessibility of complaints pathways,[229] stakeholders had feedback about the generally low number of complaints received.

Australia's Special Envoy to Combat Islamophobia noted the rate of Islamophobic incidents reported is in stark contrast to the number of religious vilification complaints made to the ACT Human Rights Commission, indicating barriers to access.[230]

Similarly, Equality Australia noted that low complaint numbers in the ACT are consistent with other jurisdictions and an indication that vilification is not rare, but rarely reported.[231] Dr Abdelmawgoud stated that the low number of formal complaints "reflects systemic barriers and a deep-seated fear".[232]

[228] ACT Human Rights Commission, *Submission S16*,
[229] Legal Aid ACT, *Submission S09*, 3.
[230] *Submission S12*, 3.
[231] *Submission S14*, 8.
[232] *Submission S15*, 2.

2. Key Barriers

Stakeholders raised a wide range of barriers, actual and perceived, to making complaints to the ACT Human Rights Commission, including:

- awareness of and knowledge about the complaints process
- the burden on the complainant
- the relationship with the perpetrator
- the perception of the complaints process and the conduct itself
- lack of support, and
- limitations of the complaints process.

These barriers may also be compounded for people who are already marginalised, and for whom making a complaint may be less of a priority than other immediate needs, such as safety or housing,[233] or for whom making a complaint may "feel risky and exhausting".[234]

A. Awareness and knowledge about the complaints process

i. Low Knowledge and Awareness

The ACT Human Rights Commission undertakes many community outreach activities, such as radio and print advertising promoting a safe and inclusive complaints process, working with community groups such as disability and LGBTIQA+ organisations to promote the complaints process, participating in community events and undertaking community education and information sessions.[235]

However, a key barrier to making complaints about unlawful vilification that many stakeholders raised was low community awareness and understanding of the ACT Human Rights Commission's complaints process.[236]

ii. Language and Literacy

Multiple stakeholders raised language barriers and literacy issues as a key barrier to accessibility, especially for people with disability and from multicultural communities.[237]

Advocacy for Inclusion also raised the need for access to Easy Read materials and Auslan access and noted that the processes "assume written communication".[238]

The ACT Human Rights Commission website has information about how to access the Translating and Interpreting Service (TIS National) on its website, and is also compatible with free online translation software like Google Translate. The ACT Human Rights Commission also has an Easy English guide to making complaints which is available on request or to download for free from the website.[239]

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[233] Equality Australia, *Submission S14*, 9.
[234] Forcibly Displaced People Network, *Submission S17*, 10.
[235] ACT Human Rights Commission, *Submission S16*, 7.
[236] Australian Multicultural Action Network, *Submission S01*, 3; Advocacy for Inclusion, *Submission S06*, 5; Women's Legal Centre, *Submission S07*, 2; Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 2; Equality Australia, *Submission S14*, 8; Dr Sara Abdelmawgoud, *Submission S15*, 2; Forcibly Displaced People Network, *Submission S17*, 6; A Gender Agenda, *Submission S21*, 2.
[237] Australian Multicultural Action Network, *Submission S01*, 3; Advocacy for Inclusion, *Submission S06*, 5; Women's Legal Centre, *Submission S07*, 3; Dr Sara Abdelmawgoud, *Submission S15*, 3.
[238] *Submission S06*, 5.
[239] https://www.hrc.act.gov.au/__data/assets/pdf_file/0018/2626101/Easy-English_complaints-process-Human-Rights-Commission-web-accessible.pdf.

Additionally, the ACT Human Rights Commission has been running advertisements on multicultural community radio in community languages for several years to promote rights and responsibilities, and the accessibility of the complaint process. Information about the complaint process is also available in other formats in community-based languages.[240]

Finally, complainants can contact the ACT Human Rights Commission for assistance making a complaint. While section 44(1)(a) of the *Human Rights Commission ACT 2005* requires the complaint to be in writing, section 44(3) states that a person is entitled to reasonable assistance from the Commission to put the complaint in writing and section 44(4) states that a complaint may be made orally if the Commission is satisfied on reasonable grounds that exceptional circumstances justify action without a written complaint.

iii. Misconceptions

Another issue that arose during the consultation was that many people in the community share significant misconceptions about the ACT Human Rights Commission's complaints process, particularly about what the ACT Human Rights Commission is, and is not, able to do.

(a) Impact on Visa Status

Stakeholders highlighted that people from migrant communities have a particular concern that making a complaint to the ACT Human Rights Commission may impact their visa status or applications for residency or future citizenship.[241] Similarly, there were considerable concerns raised about other consequences specific to the public service, such as a complaint raising flags in security clearance processes or triggering data sharing or disclosure to external agencies.[242]

However, this is not the case. The ACT Human Rights Commission may only share a complainant's information in very limited circumstances, such as with the complainant's consent or pursuant to a court or tribunal order.[243]

(b) ACT Public Servants

Additionally, there was a perception that staff who work for the ACT Public Service are not able to make complaints to the ACT Human Rights Commission because it is another government agency.[244]

While the ACT Human Rights Commission is not able to consider complaints about Federal Government agencies, it is able to consider complaints about ACT Government agencies regardless of whether the complainant is an ACT Government employee.[245]

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[240] ACT Human Rights Commission, *Submission S16*, 7.
[241] Women's Legal Centre, *Submission S07*, 3; Dr Sara Abdelmawgoud, *Submission S15*, 2; Forcibly Displaced People Network, *Submission S17*, 6.
[242] Australia's Special Envoy to Combat Islamophobia, *Submission S12,* 3.
[243] https://www.hrc.act.gov.au/__data/assets/pdf_file/0007/3077890/Privacy-Policy-Summary-June-2026-FINAL.pdf.
[244] Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 3.
[245] See e.g. *Complainant DT232023 v The Australian Capital Territory (Represented by Community Services Directorate)* (Discrimination) [2024] ACAT 89.

(c) Multiple Protected Attributes

Some stakeholders called for the legislative framework to ensure that a single complaint can be made about multiple and overlapping protected attributes, acknowledging intersectionality.[246]

Section 70 of the Human Rights Commission Act allows the ACT Human Rights Commission to conduct a single consideration in relation to two or more complaints that arise out of the same or substantially the same circumstances or subject matter. Additionally, section 8(2) and 8(3) of the Discrimination Act specifically refers to "1 or more protected attributes". This is facilitated by the ACT Human Rights Commission's complaint form which allows multiple protected attributes to be selected.

(d) Attributes Not Currently Covered

Some stakeholders raised concerns about protected attributes that communities perceive are not currently covered by unlawful vilification law.

Forcibly Displaced People Network recommended that 'nationality' and 'national or ethnic origin' should be included as protected attributes in addition to race, noting that vilification directed at forcibly displaced people is often directed at those of particular ethnic origins and that these protected attributes already exist in Commonwealth legislation.[247] Australia's Special Envoy to Combat Islamophobia stated "that race should include ethnicity, colo[u]r, descent or ancestry, nationality or national origin and ethnic origin".[248]

However, the definition of 'race' under the dictionary of the Discrimination Act specifically includes 'colour, descent, ethnic and national origin and nationality'.

Similarly, the Canberra Palestinian Community called for vilification laws to "explicitly recognise and address anti-Palestinian racism and vilification as a form of racial discrimination".[249]

Being Palestinian would fall within the current definition of 'race' which, as above, includes 'colour, descent, ethnic and national origin and nationality'.

Australia's Special Envoy to Combat Islamophobia stated that the vilification framework "should ensure religious conviction includes religious practice including visible markers of faith such as a hijab".[250]

The definition of 'religious conviction' in the Discrimination Act includes 'engaging in religious activity'. As noted in General Comment No 22 on the ICCPR, "the observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular

[246] Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 2; Dr Sara Abdelmawgoud, *Submission S15*, 2.
[247] *Submission S17*, 9.
[248] *Submission S12*, 4.
[249] *Submission S18*.
[250] *Submission S12*, 4.

language customarily spoken by a group".[251] As such, the definition in the Discrimination Act is already sufficiently broad to cover the wearing of the hijab or other visible markers of faith.

Finally, the Catholic Archdiocese of Canberra and Goulburn stated that "[l]ittle attention is paid to the place of religious groups as such; this is particularly the case for Christians who are not acknowledged as a minority group, nor [are] the protections of the various Acts routinely extended to Christians".[252]

However, Christianity does fall within the protected attribute of 'religious conviction' and ACAT has considered a vilification complaint by members of the Maronite Catholic Community previously.[253]

B. Burden on complainant

i. Individual Complainant

Several stakeholders raised concerns about the burden on individual complainants who have to make a complaint to the ACT Human Rights Commission themselves and called for third-party and community-based reporting pathways.[254]

The ACT Human Rights Commission confirmed that in some matters where a community member may be reluctant to bring a concern forward, or where a matter has been brought to their attention, the ACT Human Rights Commission may initiate a CIC, where the Commissioner becomes the complainant to try to address the issues with the respondent directly.[255]

Furthermore, a complaint may be made by an agent of the aggrieved person under section 43(1)(b) of the Human Rights Commission Act.

ii. Time

Several stakeholders also referred to the time commitment required to progress a complaint as a significant barrier, including having to take time away from work or caring responsibilities.[256]

Equality Australia noted that the time limit of 2 years to make a complaint is relatively short "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".[257]

The two year time limit refers to the ACT Human Rights Commission's ability to close a complaint at any time if more than two years have elapsed since the circumstances that gave rise to the complaint happened.[258] However, the ACT Human Rights Commission retains the discretion to consider a complaint more than 2 years after the events have happened.

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[251] CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), para 4 (https://www.refworld.org/legal/general/hrc/1993/13375).
[252] *Submission S13*, 1.
[253] *Farah v Sandilands* (Discrimination) [2021] ACAT 92 (28 September 2021).
[254] Advocacy for Inclusion, *Submission S06*, 5; Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 2; Dr Sara Abdelmawgoud, *Submission S15*, 3; DecrimACT,
[255] *Submission S16*, 7.
[256] Advocacy for Inclusion, *Submission S06*, 5; Women's Legal Centre, *Submission S07*, 2; Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 2.
[257] *Submission S14*, 8.
[258] Section 78(1)(a), *Human Rights Commission Act 2005*.

iii. Cost

While there is no fee to make a complaint, two stakeholders raised costs as a barrier, including indirect costs or loss of income to take time away from work or caring responsibilities.[259]

C. Relationship with Perpetrator

Another barrier stakeholders raised related to situations where there is either an ongoing relationship with a perpetrator or the identity of the perpetrator is unknown.

i. Fear of Escalation and Fear for Safety

Several stakeholders identified fear of escalation, retaliation, reprisal and fear for the safety of individuals and members of their community as a barrier to making complaints.[260]

This can be particularly significant where there is an existing or ongoing relationship between the parties, such as neighbours,[261] people with disability in a relationship of dependency with the perpetrator[262] or Aboriginal and Torres Strait Islander communities, where there may be ongoing relationships or cultural obligations between the parties.[263] Another example is a fear of professional consequences such as "being overlooked for promotions, being labelled as 'difficult'."[264]

Under section 68 of the Discrimination Act, it is unlawful to subject, or threaten to subject, another person to any detriment because they or someone they are associated with have made a discrimination or unlawful vilification complaint. Victimisation is also an offence under section 98 of the Human Rights Commission Act. However, complainants may be reluctant to make further complaints or may not be aware of these additional protections.

ii. Unknown Perpetrator

Another issue is when the perpetrator is completely unknown, such as "a person shouting from a moving car"[265] or "online by anonymous or unknown people, in public spaces like public transport".[266]

The ACT Human Rights Commission acknowledged that this barrier to reporting or a successful outcome can be frustrating for people and can reduce confidence in legal frameworks.[267] However, as set out above, even where a person's identity is not able to be established, the ACT Human Rights Commission is able to contact social media platforms and request content be removed.[268]

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[259] Women's Legal Centre, *Submission S07*, 2; Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 6.
[260] Australian Multicultural Action Network, *Submission S01*, 3; Women's Legal Centre, *Submission S07*, 3; Equality Australia, *Submission S14*, 8; Forcibly Displaced People Network, *Submission S17*, 7.
[261] Equality Australia, *Submission S14*, 8.
[262] Advocacy for Inclusion, *Submission S06*, 5.
[263] Women's Legal Centre, *Submission S07*, 3.
[264] Australia's Special Envoy to Combat Antisemitism, *Submission S12*, 3.
[265] Dr Sara Abdelmawgoud, *Submission S15*, 2.
[266] ACT Human Rights Commission, *Submission S16*, 8.
[267] *Submission S16*, 8.
[268] ACT Human Rights Commission, *Submission S16*, 15.

D. Perception of Complaints Process and Conduct

Another type of barrier raised by stakeholders relates to people's perception of the complaints process, including how they will be treated, awareness of the outcomes that are achievable, and the conduct itself.

i. Mistrust of Authorities

Several stakeholders raised distrust of authorities and government institutions as a barrier to making a complaint to the ACT Human Rights Commission, who may not be perceived as impartial or culturally safe.[269] This is particularly the case for Aboriginal and Torres Strait Islander communities "whose interactions with government systems are shaped by historical and ongoing experiences of systemic racism and over-surveillance"[270] and migrant communities who come from countries where "reporting a grievance to authorities can have severe and dangerous consequences".[271]

ii. Lack of Visibility

AMAN raised the fact that confidentiality of conciliation is a barrier because there is the "[p]erception that outcomes lack visibility" and recommended de-identified annual thematic summaries of vilification cases to increase transparency.[272]

Conciliation is required to be confidential under section 99 of the Human Rights Commission Act, and confidentiality facilitates open and frank discussions without prejudicing any further legal proceedings.

The ACT Human Rights Commission regularly shares case studies of complaints, including discrimination complaints, in its annual report. Vilification complaints tend to only represent a small proportion of complaints handled by the ACT Human Rights Commission.

iii. Not Being Believed

Advocacy for Inclusion said that there is "a credibility problem the review should name honestly" in that people with disability, especially cognitive or psychosocial disability, are frequently not believed by complaint bodies and their accounts are "questioned, minimised, or reframed as symptoms of their disability.[273]

iv. Stigma and Shame

Two stakeholders also raised stigma and shame as a barrier to making complaints, including self-blame such as the person should have somehow avoided the situation.[274]

E. Lack of Support

i. Supported Decision-Making

Advocacy for Inclusion called for supported decision-making to be recognised and accommodated to make the complaint system more accessible.

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[269] Australian Multicultural Action Network, *Submission S01*, 3; Women's Legal Centre, *Submission S07*, 3; Dr Sara Abdelmawgoud, *Submission S15*, 2; Forcibly Displaced People Network, *Submission S17*, 6.
[270] Women's Legal Centre, *Submission S07*, 3.
[271] Dr Sara Abdelmawgoud, *Submission S15*, 2.
[272] *Submission S01*, 3.
[273] *Submission S06*, 5.
[274] Equality Australia, *Submission S14*, 8; Forcibly Displaced People Network, *Submission S17*, 7.

ii. Availability of Legal Advice

While the ACT Human Rights Commission's complaints process is intended to be informal and accessible for individuals, some stakeholders raised concerns that without legal advice or representation, many people feel unable to pursue a complaint or understand how to navigate these processes.[275]

Further discussion about legal support services is set out below.

iii. Lack of Community Support

Women's Legal Centre highlighted that people from migrant communities "may also be discouraged from making complaints where there is a lack of support from within their community".[276]

F. Limitations of Complaints Process

i. Types of Outcomes

Equality Australia noted that the outcomes most likely to be achieved (e.g. financial compensation) often do not align with what complainants most want (e.g. for the conduct to stop, not be repeated or for the respondent to be educated).[277]

The ACT Human Rights Commission shared some of the various approaches to responding to complaints that are available, including "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".[278] The ACT Human Rights Commission provided a case study of someone reporting white supremacist stickers that were being displayed on a vehicle in a unit complex, which was resolved after the ACT Human Rights Commission wrote to the person who owned the car outlining the vilification provisions in the Discrimination Act, requesting that they remove the stickers, and requesting evidence be provided that they had been removed.[279]

ii. Requirement to Use Legal Name

Two stakeholders identified the requirement for complainants to use their legal names when making complaints to the ACT Human Rights Commission as a specific barrier, particularly for sex workers who may be exposed to further discrimination.[280]

Section 44 of the Human Rights Commission Act requires that a complaint include the name and address of the complainant, however there is no requirement that this personal information be provided directly to the respondent. In some circumstances, an extract of the complaint may be provided to the respondent or ACT Human Rights Commission may consider the matter as a CIC.

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[275] Women's Legal Centre, *Submission S07*, 3; Equality Australia, *Submission S14*, 8; Forcibly Displaced People Network, *Submission S17*, 10.
[276] Women's Legal Centre, *Submission S07*, 3.
[277] *Submission 14*, 8.
[278] *Submission S16*, 8.
[279] Ibid.
[280] DecrimACT, *Submission S23*, 2; ANU Law Reform and Social Justice, *Submission S24*, 2.

3. Further Suggestions

Some further suggestions that were put forward to address barriers to making complaints , especially for people from multicultural communities, included:

- establishing a multicultural hate reporting support hub in partnership with community organisations
- funding community navigators, and
- introducing culturally-informed conciliation training.

ii. Complaints to the ACT Civil and Administrative Tribunal

If an unlawful vilification complaint is not able to be resolved through the ACT Human Rights Commission's dispute resolution process, a complainant may request that the matter be referred to ACAT for a determination (section 53A of the Human Rights Commission Act) or, in the case of a CIC, the Commission may refer it (section 53BA).

Under section 53E of the Human Rights Commission Act, ACAT may order that the respondent:

- not repeat or continue the vilification
- perform a stated reasonable act to redress any loss or damage suffered by a person because of the unlawful act, or
- pay a person a stated amount of compensation for any loss or damage suffered by the person because of the unlawful act.

(a) What We Heard

Many of the barriers raised by stakeholders in relation to making unlawful vilification complaints to the ACT Human Rights Commission were also raised in relation to progressing a complaint in ACAT, especially language barriers, mistrust of authorities, fear of escalation of the behaviour, low awareness of processes[281] and challenges identifying the perpetrator.[282]

However, there were also barriers identified that were specific to ACAT. Additionally, Equality Australia noted that these barriers are compounded once a complaint reaches the tribunal stage, meaning complainants either choose not to proceed or drop out of the process, even where they have experienced serious harm.[283]

1. Key Barriers

A. Jurisdictional and Legal Complexities

One of the key barriers raised by stakeholders in relation to unlawful vilification was jurisdictional and legal complexities, which in turn contribute to other barriers such as delays or requiring legal advice.[284]

In his submission about his lived experience in progressing a successful unlawful vilification complaint, including on appeal, Tim Kerslake outlined some of the complexities that had to be determined in his matter.[285]

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[281] Australian Multicultural Action Network, *Submission S01*, 3.
[282] Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 2.
[283] *Submission S14*, 9.
[284] Tim Kerslake, *Submission S03*, 8; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 4; Equality Australia, *Submission S14*, 9; ACT Human Rights Commission, *Submission S16*, 9; Australian Christian Lobby, *Submission S20*, 9.
[285] *Submission S03,* 7; *Sunol v Kerslake* (Appeal) [2024] ACAT 35 (24 May 2024).

Mr Kerslake's complaint related to homophobic posts that the respondent, who lived in New South Wales, had made online. The appeal tribunal considered legally complex issues, including reviewing high court decisions to determine whether the Constitution limits the jurisdiction of a Territory tribunal in the same way as State tribunals, with respect to conferring Commonwealth judicial power and matters between a resident of a Territory and a resident of a State.[286]

Mr Kerslake cautioned that anyone "wanting to progress a case in similar circumstances will need to deal with some very technical areas of law" that "requires specific legal knowledge and can quickly overwhelm someone who does not have this knowledge".

Mr Kerslake suggested that on specific issues relating to ACAT's jurisdiction, to reduce complexity in these types of cases, a specific clause could be added to the legislation to clarify in what circumstances ACAT has jurisdiction when one party is not a resident of the ACT.[287]

The Review notes that this raises both complex practical, legal and constitutional issues. The Review does not make any recommendations but notes that these issues may require further consideration in future.

B. Delays in Finalising Matters

Another issue raised by several stakeholders is the time commitment required to progress ACAT matters and delays in matters being finalised.[288]

In his submission, Tim Kerslake provided a detailed timeline of his complaint, which began when he submitted his original complaint on 15 January 2020, and ended over four years later when the appeal tribunal published its decision on 24 May 2024.[289]

Mr Kerslake attributed this delay to several factors, including "the respondent re-prosecuting the issue of jurisdiction, which was an issue that had already been determined multiple times previously" and called for a mechanism to "ensure that when a case starts drifting into issues addressed in earlier cases, it can be dealt with promptly and redirected towards the issues that genuinely require determination".[290]

Mr Kerslake raised concerns that others will see how long his case took and decide not to progress their own complaints. He reflected that "[j]ustice delayed is justice denied".[291]

C. Enforcement of Orders

Another issue raised by some stakeholders was the ability of ACAT to enforce its own orders.[292]

Tim Kerslake noted that enforcement of ACAT orders ordinarily goes through the ACT Magistrates Court, as per section 71 of the ACT Civil and Administrative Tribunal Act, however in his case he needed to apply to the New South Wales Magistrates Court.[293] Mr Kerslake stated that enforcement can quickly become expensive, especially where recalcitrant

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[286] *Sunol v Kerslake* (Appeal) [2024] ACAT 35 (24 May 2024), [144]-[147].
[287] *Submission S03*, 8.
[288] Tim Kerslake, *Submission S03*, 8-9; Women's Legal Centre, *Submission S07*, 3; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 3; Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 2; Equality Australia, *Submission S14*, 9.
[289] *Submission S03*, 5.
[290] Ibid, 9.
[291] Ibid.
[292] Tim Kerslake, *Submission S03*, 9; Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 3; Equality Australia, *Submission S14*, 9.
[293] Tim Kerslake, *Submission S03*, 9.

respondents can claim a form of victory where enforcement is not pursued by the successful party due to costs.[294] As a solution, he recommended a mechanism allowing ACAT to enforce their own orders.

D. Availability of Legal Advice and Representation

Stakeholders highlighted the limited availability of free legal advice and representation as a particular barrier for accessing ACAT, which is more complex than making a complaint to the ACT Human Rights Commission.[295]

Women's Legal Centre noted these barriers are even more significant for Aboriginal and Torres Strait Islander people and compounded by experiences of "navigating legal systems that can feel culturally unsafe and difficult to engage with".[296]

Stakeholders recognised that limited access to free legal support means that complainants either self-represent or decide not to proceed to ACAT at all.[297] This can be especially difficult against respondents with significantly more resources or a considerable public profile which is built on "broadcasting controversial, uncivil and potentially vilifying remarks against minority groups or individuals, and then using that wealth and influence to defend vilification complaints".[298]

There is a perception that there are no free legal services available for unlawful vilification whatsoever,[299] however a full overview of existing support services for discrimination, including unlawful vilification complaints, including legal services, is set out in further detail below.

E. Retraumatisation

Equality Australia raised the risk of retraumatisation, especially "the prospect of being cross-examined or having to repeatedly recount the incident", as well as the adversarial nature of tribunal proceedings as a further barrier.[300]

F. Types of Outcomes

Some stakeholders also raised the types of outcomes available as a barrier.

The Catholic Archdiocese of Canberra and Goulburn referred to the settlement of *Farrah v Sandilands* (Discrimination) [2021] ACAT 92 (28 September 2021) as a commercial decision "which suggests that vilification is primarily remedied by the application of a suitable sum rather than prevention of vilification".[301]

Similarly, Equality Australia noted the "misalignment between the outcomes sought by complainants and those that can realistically be achieved through the legal process is even more pronounced at the Tribunal stage".[302] Equality Australia reflected that "[c]reative, educative of systemic remedies are rarely pursued by tribunals in Australia, which tend to

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[294] Ibid.
[295] Women's Legal Centre, *Submission S07*, 3; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 4; Equality Australia, *Submission S14*, 9; ACT Human Rights Commission, *Submission S16*, 9.
[296] *Submission S07*, 4.
[297] Women's Legal Centre, *Submission S07*, 3-4; ACT Human Rights Commission, *Submission S16*, 9.
[298] ACT Human Rights Commission, *Submission S16*, 9.
[299] Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 4.
[300] *Submission S14*, 9.
[301] *Submission S13*, 3.
[302] *Submission S14*,

focus on more conventional individual remedies, and particularly insignificant awards of financial compensation, that are not worth the effort of pursuing a claim".[303]

B. Reports of Serious Vilification

i. Reporting Offences to Police

(a) What We Heard

Where someone experiences serious vilification, they can report it to police. However, stakeholders acknowledged that many people in the community may be hesitant or unwilling to report it to police.[304] There has also been very low uptake of the offence, with only two serious vilification charges in 2025 which were ultimately not progressed and no successful prosecutions. ACT Policing "acknowledges that vulnerable groups including the elderly, children and young people, First Nations people, culturally and linguistically diverse communities and those experiencing mental health are more likely to face barriers accessing justice services and are at greater risk of harm".[305]

Again, many of the barriers to making police reports raised by stakeholders were similar to those for reporting unlawful vilification to the ACT Human Rights Commission and progressing a complaint to ACAT:

- fear of escalation and fear for safety[306]
- fear of impact on visa status[307]
- fear of not being believed or taken seriously[308]
- language barriers[309] and
- low knowledge and awareness,[310] and
- retraumatisation.[311]

1. Key Barriers

Stakeholders identified a range of key barriers specific to reporting serious vilification to police including:

- police communication and engagement
- police recognition of serious vilification, and
- fear of mistreatment by police.

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[303] Ibid.
[304] Australian Multicultural Action Network, *Submission S01*, 6; ACT Policing, *Submission S04*, 7; A Gender Agenda, *Submission S21*, 4; ANU Law Reform and Social Justice, *Submission S24*, 10; Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 24.
[305] *Submission S04*, 7.
[306] Australian Multicultural Action Network, *Submission S01*, 6; DecrimACT, *Submission S23*, 7; Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 23.
[307] Australian Multicultural Action Network, *Submission S01*, 6; Forcibly Displaced People Network, *Submission S17*, 14; DecrimACT, *Submission S23*, 7.
[308] Australian Multicultural Action Network, *Submission S01*, 6; Equality Australia, *Submission S14*, 26;
[309] Australian Multicultural Action Network, *Submission S01*, 6; Forcibly Displaced People Network, *Submission S17*, 14.
[310] Forcibly Displaced People Network, *Submission S17*, 14; ANU Law Reform and Social Justice, *Submission S24*, 11.
[311] Australia's Special Envoy to Combat Antisemitism, *Submission S25*, 24.

A. Police Communication and Engagement

In an Australia-wide report it prepared in 2022, Forcibly Displaced People Network found that some participants reported poor communication from police.[312]

i. Community Liaison Officers

Some stakeholders raised the perception of a lack of dedicated liaison officers as a barrier for people from marginalised communities. Australia's Special Envoy to Combat Islamophobia noted that there is no Muslim Community Liaison Officer,[313] and there was a perception that the LGBTIQA+ Liaison Officer role had been abolished.[314]

Women's Legal Centre advised that "[s]pecialist policing roles, such as First Nations and LGBTIQIA+ liaison officers, can play an important role in improving trust and making reporting more accessible".[315]

In its submission, ACT Policing advised that it is: "committed to breaking down barriers to support reporting for police…particularly for vulnerable demographics and improv[ing] community confidence through building relationships that are grounded in understanding and empathy".[316]

ACT Policing provided the Review with further advice that it has liaison officers for a range of groups in the ACT including LGBTIQA+, First Nations, Disability, Multicultural, Youth and Seniors liaison officers.[317] ACT Policing advised that liaison officers have a proactive presence across the ACT to promote positive community engagement, including by attending public events and local activities to develop and strengthen community relationships.

A Gender Agenda suggested specialist reporting services be provided for people with protected characteristics to report hate crimes, to ensure reports are handled safely.[318]

ACT Policing further advised that it continues to provide support to members of the LGBTIQA+ community through the Community Engagement Team, including providing advice, assistance or referral for police matters.

ii. Lack of Formal Referral Pathways

Equality Australia raised concerns about a lack of clear referral pathways between the ACT Human Rights Commission and ACT Policing as being likely to limit the ability of victim-survivors to move safely and confidently between complaint mechanisms, risking victim-survivors choosing a civil or criminal pathway, when the other option may have been better suited to the circumstances.[319]

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[312] *Submission S17*, 8.
[313] *Submission S12*, 8.
[314] Forcibly Displaced People Network, *Submission S17*, 14.
[315] *Submission S07*, 4.
[316] *Submission S04*, 7.
[317] https://police.act.gov.au/about-us/programs-and-partners.
[318] *Submission S21*, 4.
[319] *Submission S14*, 27.

B. Police Recognition of and Response to Serious Vilification

i. Failure to Recognise Serious Vilification

Several stakeholders raised concerns about police capacity and awareness about what constitutes, and therefore the police response to, serious vilification.[320] Aboriginal Legal Service (NSW/ACT) pointed to observations by the UN Special Rapporteur on Freedom of Religion or Belief that "failure to act on 'real' incitement cases" and "overzealous reactions to innocuous cases" can create "a climate of impunity for some and a climate of intimidation for others".[321]

Specific examples stakeholders felt were not adequately recognised as serious vilification or crimes motivated by prejudice included attacks on Catholic Churches in Canberra,[322] an assault where a Muslim woman carrying flags was pushed (with video evidence),[323] and "White Australia" pamphlets.[324]

ii. Failure to Record Hate Element

Some stakeholders raised concerns about under-recording by police of incidents motivated by hate,[325] and recommended mandatory recording of hate motivation by police.[326]

ACT Policing have since advised the Review that they have introduced a new way to record relevant information in their information management system PROMIS, and from March 2026 case officers will be asked to consider whether the incident was motivated wholly, or partly, by hatred, prejudice or bias against a person based on actual or perceived characteristics or protected attributes. ACT Policing confirmed this may also capture incidents where an offender has not been identified or an offender is charged with a different offence with, for example, a higher penalty.

iii. Charging Alternative Offences

Several stakeholders noted that police may prefer other charges that are easier to prosecute than serious vilification.[327]

Equality Australia reported that LGBTIQA+ communities advise that reports of physical violence or property damage are more likely to receive a police response than non-physical forms of harm such as online hate speech, threats, stalking and intimidation, indicating more police familiarity with these types of offences.[328]

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[320] Advocacy for Inclusion, *Submission S06*, 6; Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 4; Equality Australia, *Submission S14*, 27; ACT Human Rights Commission, *Submission S16*, 8; Forcibly Displaced People Network, *Submission S17*, 14; Australian Christian Lobby, *Submission S22*, 13; ANU Law Reform and Social Justice, *Submission S24*, 10.
[321] *Submission S22*, 4; Heiner Bielefeldt, Report of the Special Rapporteur on Freedom of Religion or Belief, UN Doc A/HRC/31/18 (23 December 2015) [63].
[322] Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 4.
[323] Dr Sara Abdelmawgoud, *Submission S15*, 2-3.
[324] ACT Human Rights Commission, *Submission S16*, 8.
[325] Equality Australia, *Submission S14*, 27; A Gender Agenda, *Submission 21*, 4; ANU Law Reform and Social Justice, 10.
[326] Australian Multicultural Action Network, *Submission S01*, 5.
[327] ACT Policing, *Submission S04*, 5; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, Equality Australia, *Submission S14*, 10; ACT Human Rights Commission, *Submission S16*, 10; Forcibly Displaced People Network, *Submission S17*, 11.
[328] *Submission S14*, 27.

ACT Policing confirmed that "[w]here multiple charging options are available, Police may elect to proceed with charging an alternative offence which presents a clearer evidentiary basis and a stronger likelihood of successful prosecution" noting that "the complexity of the elements required for serious vilification may limit the practical utility of the offence in circumstances where alternative charges are available". More detail about the elements of the serious vilification offence is set out above.

C. Fear of Treatment by Police

i. Trauma and Over-policing

Several stakeholders identified past trauma and experiences of over-policing as a significant barrier to marginalised communities making reports to police.[329] This was particularly the case for Aboriginal and Torres Strait Islander people,[330] migrants with negative police experiences overseas,[331] and Canberra's Muslim community, noting the shared location and resources between ACT Policing and the Australian Federal Police's counter-terrorism intelligence and enforcement function, which Australia's Special Envoy to Combat Islamophobia stated "disproportionately targeted Muslim communities".[332]

ii. Fear of Being Misgendered or Outed

Some stakeholders raised fears of being misgendered by police or being 'outed' as a member of the LGBTIQA+ community, or as a sex worker, during the reporting process as a barrier to reporting.[333]

iii. Misidentification as Perpetrator

Another barrier raised by A Gender Agenda was misidentification of a complainant as the perpetrator.[334]

iv. Fear of Criminalisation

DecrimACT raised a specific concern for sex workers reporting to police is a fear of criminalisation or adverse attention due to the current regulatory and enforcement framework for sex work in the ACT.[335]

v. Fear Information will be Shared Externally

As with complaints to the ACT Human Rights Commission, there was considerable concern among stakeholders that reporting to police would create a formal record which would expose victims to visa risks, employment risks (such as security clearance processes) and other risks should that information be shared externally.[336] Dr Sara Abdelmawgoud sought a "legal

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[329] Women's Legal Centre, *Submission S07*, 4; Legal Aid ACT, *Submission S09*, 8; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 8; Equality Australia, *Submission S14*, 26; Forcibly Displaced People Network, *Submission S17*, 8, 14; A Gender Agenda, *Submission 21*, 4; DecrimACT, *Submission S23*, 7.
[330] Women's Legal Centre, *Submission S07*, 4; Legal Aid ACT, *Submission S09*, 8.
[331] Forcibly Displaced People Network, *Submission S17*, 14.
[332] Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 8.
[333] Equality Australia, *Submission S14*, 26; A Gender Agenda, *Submission S21*, 4; DecrimACT, *Submission S23*, 7.
[334] *Submission S21*, 4.
[335] *Submission S23*, 7.
[336] Australian Multicultural Action Network, *Submission S01*, 6; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 8; Forcibly Displaced People Network, *Submission S17*, 14; DecrimACT, *Submission S23*, 7.

firewall", i.e. a guarantee that "reporting a hate crime…will never be shared with federal authorities for visa or citizenship purposes".[337]

ACT Policing confirmed with the Review that:

> information provided by a victim when reporting a crime is treated confidentially and is not shared externally for the purpose of employment-related police checks, security clearances, or visa applications. A person does not appear on such checks purely on the basis that they reported a crime or have been recorded as a victim.
>
> Police reports only become matters of public record if police investigations result in charges being laid and the matter proceeds through the court process. Even in those circumstances, there are protections available for victims, including limits on how identifying information may be published.
>
> ACT Policing acknowledge that some that some people may prefer not to be identified. Options exist to provide information anonymously, such as through Crime Stoppers, or to make a report to the police without proceeding to a formal complaint at that time. ACT Policing emphasise that it is never too late to get support, and even if someone says no to making a statement in the first instance, and then they change their mind later, they can tell the police at any time.

2. Further Suggestions

Stakeholders had some specific suggestions to help reduce barriers to reporting serious vilification and crimes motivated by prejudice to police including:

- a dedicated ongoing police operation for Islamophobic incidents in a similar manner to Operation Balranald (established in 2024 to coordinate responses to anti-Semitic incidents in the ACT)
- a dedicated hate crime unit in police, supported by data collection and assistance for victims[338]
- a review into ACT policing practices to better understand community concerns around reporting hate crimes to police,[339] and
- more training for ACT Policing to better understand the serious vilification offence and to work with victims of crimes motivated by prejudice in a sensitive and trauma-informed way.[340]

Stakeholder feedback has demonstrated a significant level of community ignorance and misunderstanding about the current protections in law and the options available to individuals who are the subject of hate crimes to make a report or complaint. Given this, the Review considers that steps should be taken to improve the quality and availability of information that is available publicly.

RECOMMENDATION 8: The ACT Government should work with ACT Policing and the ACT Human Rights Commission to ensure that all publicly facing information is up to date and those agencies have processes to refer matters to the other where appropriate.

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[337] *Submission 15*, 4.
[338] Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 7-8.
[339] ANU Law Reform and Social Justice, *Submission S24*, 10.
[340] Legal Aid ACT, *Submission S09*, 8; Forcibly Displaced People Network, *Submission S17*, 15.

RECOMMENDATION 9: The ACT Government should consider developing accessible materials for key ACT communities impacted by hate speech and vilification to ensure greater understanding of the scope of legal protections and how to seek appropriate assistance.

5. Support Services

A. Legal Support

As set out above, stakeholders identified access to legal support as a significant barrier to reporting unlawful vilification and serious vilification.

i. Legal Assistance for Discrimination and Vilification

The key legal services in the ACT who can assist with discrimination and vilification issues are:

- Legal Aid ACT
- Women's Legal Centre, and
- Canberra Community Law.

(a) Legal Aid ACT

Legal Aid ACT assists with a range of civil matters including discrimination. Most discrimination matters requiring legal assistance are dealt with as a general enquiry through the Legal Aid Helpline, unless they fall under a specialist service.

Legal Aid ACT's specialist services include:

- **Youth Law Centre** (may assist young people under 25 years with discrimination matters), and
- **Older Persons ACT Legal Service** (OPALS; may assist older people with discrimination matters).

Additionally, Legal Aid ACT has a Royal Commission Legal Assistance Service, which can provide assistance, including with voluntary submissions, to the Royal Commission on Antisemitism and Social Cohesion.

(b) Women's Legal Centre

Women's Legal Centre has two programs which can assist with discrimination and vilification:

- **Discrimination Law Practice**: assists women, transgender and gender diverse people with discrimination matters across a range of protected attributes, and

- **Mulleun Mura Aboriginal and Torres Strait Islander Women's Access to Justice** program: can assist Aboriginal and Torres Strait Islander women with discrimination and applying for assistance as a victim of crime.

(c) Canberra Community Law

Canberra Community Law has four programs that can assist with discrimination and vilification:

- **Dhurrawang Aboriginal Human Rights Program**: assists Aboriginal and Torres Strait Islander people with race discrimination
- **Disability Discrimination Law**: assists people with disability with disability discrimination
- **Mental Health Justice Clinic**: assists people with lived experience of mental ill-health with discrimination because of mental health, and
- **Street Law**: assists people experiencing or who are at risk of homelessness with a range of legal issues, including discrimination.

ii. What We Heard

While stakeholders highlighted the value of legal assistance in reporting unlawful vilification, serious vilification and crimes motivated by prejudice, many noted that dedicated legal services:

- are fragmented[341]
- have limited resources,[342] and
- are not available for all protected groups, such as LGBTIQA+ people[343] and sex workers.[344]

Stakeholders called for more funding for specialist legal services to assist with unlawful vilification, serious vilification and crimes motivated by prejudice.[345]

The ACT Government recently announced permanent investment in the community legal sector in the 2026-27 Budget.[346]

In addition to more support for the legal assistance sector, several stakeholders called for more support for community organisations for both proactive support and support after incidents occur.[347]

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[341] Australian Multicultural Action Network, *Submission S01*, 6.
[342] ACT Human Rights Commission, *Submission S16*, 20.
[343] Forcibly Displaced People Network, *Submission S17*, 15.
[344] DecrimACT, *Submission S23*, 7.
[345] ACT Policing, *Submission S04*, 7; Women's Legal Centre, *Submission S07*, 4; Equality Australia, *Submission S14*, 9; Forcibly Displaced People Network, *Submission S17*, 16; A Gender Agenda, *Submission S21*, 4; DecrimACT, *Submission S23*, 7.
[346] https://www.act.gov.au/our-canberra/latest-news/2026/may/202627-act-budget-investing-in-community-services.
[347] Advocacy for Inclusion, *Submission S06*, 7; Legal Aid ACT, *Submission S09*, 9; ACT Human Rights Commission, *Submission S16*, 12; Forcibly Displaced People Network, *Submission S17*, 17; Online Hate Prevention Institute, *Submission S19*, 12.

6. Prevention

A. Law Alone Not Enough

There was very strong feedback from stakeholders that while it remains an important part of responding to hate, legal protections alone are not enough to preventing unlawful vilification, serious vilification and crimes motivated by prejudice in the first place.[348]

B. Education

Stakeholders highlighted education as a key prevention strategy for vilification and crimes motivated by prejudice, including:

- education in schools[349]
- community education,[350] and
- police training.[351]

Some stakeholders also recommended specific education programs aimed at deradicalisation.[352]

Finally, some stakeholders suggested investing in programs to help promote values of social responsibility and social cohesion such as compassion, fairness, inclusion, unity, dialogue, diversity, accountability and mutual respect.[353]

C. Government Campaigns

Finally, stakeholders shared the value of dedicated government campaigns as a means of preventing vilification and crimes motivated by prejudice, including:

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[348] Australian Multicultural Action Network, *Submission S01*, 7; Legal Aid ACT, *Submission S09*, 9; Australian Human Rights Commission, *Submission S08*, 8; Luke McNamara, *Submission S10*, 3; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 9; Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 4; Dr Sara Abdelmawgoud, *Submission S15*, 4; ACT Human Rights Commission, *Submission S16*, 12; Forcibly Displaced People Network, *Submission S17*, 16; Australian Christian Lobby, *Submission S20*, 14; A Gender Agenda, *Submission S21*, 2; Aboriginal Legal Service (NSW/ACT), *Submission S22*, 4.
[349] Australian Multicultural Action Network, *Submission S01*, 7; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 9; ACT Human Rights Commission, *Submission S16*, 12.
[350] Luke McNamara, *Submission S10*, 3; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 9; Forcibly Displaced People Network, *Submission S17*, 16; ANU Law Reform and Social Justice, *Submission S24*, 10.
[351] Legal Aid ACT, *Submission S09*, 8; ACT Human Rights Commission, *Submission S16*, 19.
[352] Australian Multicultural Action Network, *Submission S01*, 7; ACT Policing, *Submission S04*, 8; Equality Australia, *Submission S14*, 28.
[353] Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 9; Catholic Archdiocese of Canberra and Goulburn, *Submission S13*, 4-5; ACT Human Rights Commission, *Submission S16*, 21; Australian Christian Lobby, *Submission S20;* 14.

- public anti-hate campaigns[354]
- specific counter-responses condemning vilification and crimes motivated by hatred,[355] and
- formally recognise significant days within the ACT calendar, such as the UN International Day to Combat Islamophobia on 15 March.[356]

As noted above, the Review makes two recommendations intended on improving public understanding and access to the protections of the law. The Government will continue to consider opportunities for improved education and public information to address hate speech and vilification in the ACT community.

[354] Australian Multicultural Action Network, *Submission S01*, 7; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 9; Forcibly Displaced People Network, *Submission S17*, 16; DecrimACT, *Submission S23*, 8.
[355] Advocacy for Inclusion, *Submission S06*, 7; Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 9; Dr Sara Abdelmawgoud, *Submission S15*, 4; Forcibly Displaced People Network, *Submission S17*, 16; Australian Christian Lobby, *Submission S20*, 14; Aboriginal Legal Service (NSW/ACT), *Submission S22*, 4; DecrimACT, *Submission S23*, 8.
[356] Australia's Special Envoy to Combat Islamophobia, *Submission S12*, 9-10.

Appendix A – Submissions Received During Consultation

S01 Australian Multicultural Action Network (AMAN)
S02 Levy, Ercan and Dryzek, Australian National University (ANU)
S03 Mr Tim Kerslake
S04 ACT Policing
S05 ACT Mental Health Consumer Network
S06 Advocacy for Inclusion
S07 Women's Legal Centre ACT
S08 Australian Human Rights Commission
S09 Legal Aid ACT
S10 Professor Luke McNamara
S11 Victims of Terrorism Australia
S12 Australia's Special Envoy to Combat Islamophobia
S13 Catholic Archdiocese of Canberra and Goulburn
S14 Equality Australia
S15 Dr Sara Abdelmawgoud
S16 ACT Human Rights Commission
S17 Forcibly Displaced People Network
S18 Canberra Palestinian Community
S19 Online Hate Prevention Institute
S20 Australian Christian Lobby
S21 A Gender Agenda
S22 Aboriginal Legal Service (NSW/ACT)
S23 DecrimACT
S24 Australian National University Law Reform and Social Justice Program
S25 Australia's Special Envoy to Combat Antisemitism
S26 Executive Council of Australian Jewry (to endorse the submission of the Special Envoy to Combat Antisemitism).

Appendix B – Comparison of Australian civil vilification protections

Protected Attribute	**ACT** 'vilification'	**Cth** 'offensive behaviour'	**NSW** 'vilification'	**NT** 'inciting hatred, serious contempt or serious ridicule'	Qld 'vilification'	SA tort of 'racial victimisation'	**Tas** 'inciting hatred'	**Vic** 'vilification' and 'incitement'	**WA** N/A
	Discrimination Act 1991 (ACT), s 67A	*Racial Discrimination Act 1975* (Cth), s 18C	*Anti-Discrimination Act 1977* (NSW), ss 20C, 38S, 49ZE, 49ZT and 49XB	*Anti-Discrimination Act 1992* (NT), s 20A	*Anti-Discrimination Act 1991* (Qld), s 124A	*Civil Liability Act 1936* (SA), s 73	*Anti-Discrimination Act 1998* (TAS), s 19	*Equal Opportunity Act 2010* (Vic), ss 102B, 102D, 102E	N/A
Disability	Yes	No	No	Yes	No	No	Yes	Yes	No
Gender Identity	Yes	No	Limited to being transgender.	Yes	Yes	No	Yes	Yes	No
HIV/AIDS Status	Yes	No	Yes	Yes, and includes hepatitis status	No	No	No	No	No
Race	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Religious Conviction	Yes	No	Yes	Yes	Yes	No	Yes	Yes (religious belief or activity)	No
Sex	Yes	No	No	Yes	No	No	No	Yes	No
Sex Characteristics	Yes	No	No	Yes	Yes	No	Yes	Yes	No
Sexuality	Yes	No	Limited to homosexuality.	Yes	Yes	No	Yes, and includes lawful sexual activity	Yes	No
Association	Yes	No	No	Yes	No	No	No	Yes	No
Other				Applies to all protected attributes listed in section 19					

Appendix C – Comparison of Australian serious vilification offences and penalties (individual)

Jurisdiction	Act	Incitement of hatred	Incitement of violence	Threatening force, harm, violence or damage	Combined
ACT	*Criminal Code 2002* (ACT)				s 750: Intentional threatening act, reckless incitement, reckless about whether act done in private **Maximum penalty: 50 penalty units**
Cth	*Criminal Code Act 1995* (Cth)		s 80.2A(1) and (2): Advocating force or violence against groups **Maximum penalty: 10 years (threaten peace, order and good government) or 7 years imprisonment** s 80.2B(1) and (2): Advocating force or violence against members of groups or close associates **Maximum penalty: 10 years (threaten peace, order and good government) or 7 years imprisonment** s 80.2BC(1 and (2)): Advocating damage to or destruction of real property or motor vehicle **Maximum penalty: 10 years (threaten peace, order and good government) or 7 years imprisonment**	s 80.2BA(1) and (2): Threatening force or violence against groups **Maximum penalty: 10 years (threaten peace, order and good government) or 7 years imprisonment** s 80.2BB(1) and (2): Threatening force or violence against members of groups or close associates **Maximum penalty: 10 years (threaten peace, order and good government) or 7 years imprisonment** s 80.2BD: Threatening damage to or destruction of real property or motor vehicle **Maximum penalty: 10 years (threaten peace, order and good government) or 7 years imprisonment**	s 80.2BE: Advocating force or violence through causing damage to property **Maximum penalty: 10 years (threaten peace, order and good government) or 7 years imprisonment**
NSW	*Crimes Act 1900* (NSW)	s 93ZAA: Publicly inciting of hatred on ground of race **Maximum penalty: 100 penalty units or 2 years imprisonment, or both**	s 93ZAA: Publicly threatening or inciting violence **Maximum penalty: 100 penalty units or 3 years imprisonment, or both**		
NT	N/A	N/A	N/A	N/A	N/A

Jurisdiction	Act	Incitement of hatred	Incitement of violence	Threatening force, harm, violence or damage	Combined
Qld	*Criminal Code Act 1899* (Qld)				s 52A: Inciting hatred in a way that includes threatening physical harm or inciting others to threaten physical harm **Maximum penalty: 3 years imprisonment**
SA	*Racial Vilification Act 1996* (SA)				s 4: Inciting hatred etc. on the ground of race by threatening physical harm or inciting others to threaten harm **Maximum penalty: $5,000, or 3 years imprisonment, or both**
TAS	N/A	N/A	N/A	N/A	N/A
VIC	*Crimes Act 1958* (VIC)	s 195N: Incitement on ground of protected attribute **Maximum penalty: 3 years imprisonment**		s 195O: Threaten physical harm or property damage on ground of protected attribute **Maximum penalty: 5 years imprisonment**	
WA	*Criminal Code Act Compilation Act 1913* (WA)	s 77: Conduct intended to incite racial animosity or racist harassment **Maximum penalty: 14 years imprisonment** s 78: Conduct likely to incite racial animosity or racist harassment **Maximum penalty: 5 years imprisonment** s 79: Possession of material for dissemination with intent to incite racial animosity or racist harassment **Maximum penalty: 14 years imprisonment** s 80: Possession of material for dissemination that is likely to incite racial animosity or racist harassment **Maximum penalty: 5 years imprisonment**			

Jurisdiction	Act	Incitement of hatred	Incitement of violence	Threatening force, harm, violence or damage	Combined
		s 80A: Conduct intended to racially harass **Maximum penalty: 5 years imprisonment** s 80B: Conduct likely to racially harass **Maximum penalty: 3 years imprisonment** s 80C: Possession of material for display with intent to racially harass **Maximum penalty: 5 years imprisonment** s 80D: Possession of material for display that is likely to racially harass **Maximum penalty: 3 years imprisonment**			

Appendix D – Comparison of Australian Nazi symbol offences

Type of Nazi Symbol	**ACT** *Criminal Code 2002* (ACT)	**Cth** *Criminal Code Act 1995* (Cth)	**NSW** *Crimes Act 1900* (NSW)	**NT** N/A	**Qld** *Criminal Code Act 1899* (Qld); *Criminal Code (Prohibited Symbols) Regulation 2024* (Qld)	**SA** *Summary Offences Act 1953* (SA); *Summary Offences (Prescribed Nazi Symbols) Regulations 2026* (SA)	**Tas** *Police Offences Act 1935*	**Vic** *Summary Offences Act 1966*	**WA** *Criminal Code Act Compilation Act 1913*
Hakenkreuz (Swastika)	Yes (s 752)	Yes (s 80.2H(1)(b), defined at s 80.2E(2)(a))	No	N/A	Yes (s 52C, Criminal Code Act; Schedule 1, Criminal Code (Prohibited Symbols) Regulation)	Yes (s 32A(1) and 32B, Summary Offences Act)	No	Yes (ss 41J, 41K)	Yes (ss 80L, 80M(2), 80O)
Double-sig rune (SS bolts)	No	Yes (s 80.2H(1)(b), defined at s 80.2E(2)(b))	No	N/A	Yes (s 52C, Criminal Code Act; Schedule 1, Criminal Code (Prohibited Symbols) Regulation)	No	No	No	Yes (ss 80M(2), 80O)
Nazi Salute (Seig Heil)	No	Yes (s 80.2H(1)(b))	No	N/A	No	Yes (s 32A(1) and 32B, Summary Offences Act)	Yes (s 6D)	Yes (ss 41J, 41K)	Yes (s 80P)
Nazi Symbols Generally	No	No	Yes (s 93ZA)	N/A	No	Yes (s 32A(1) and 32B, Summary Offences Act)	Yes (s 6C)	Yes (ss 41J, 41K)	No
Other Specific Nazi Symbols	No	No	No	N/A	Yes ((s 52C, Criminal Code Act; Schedule 1, Criminal Code (Prohibited Symbols) Regulation)	Yes (s 4, Summary Offences (Prescribed Nazi Symbols) Regulations 2026)	No	No	Yes (ss 80M, 80O)