

# Submission to the Inquiry into the *Criminal Code Amendment (Hate Crimes) Bill 2024* (Cth)

Senate Legal and Constitutional Affairs Committee

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# Human Rights Law Centre.

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## Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

We acknowledge the lands on which we work and live, including the lands of the Wurundjeri, Bunurong, Gadigal, Ngunnawal, Darug and Wadawurrung people. We pay our respect to Elders of those lands, both past and present.

We recognise that Aboriginal and Torres Strait Islander people and communities were the first technologists and innovators on this continent, with deep knowledge systems that continue to shape our understanding of innovation, sustainability, land stewardship, and community care.

We recognise that this land always was and always will be Aboriginal and Torres Strait Islander land because sovereignty has never been ceded.

We acknowledge the role of the colonial legal system in establishing, entrenching, and continuing the oppression and injustice experienced by First Nations peoples and that we have a responsibility to work in solidarity with Aboriginal and Torres Strait Islander people to undo this.

We support the self-determination of Aboriginal and Torres Strait Islander peoples.

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# 1. Executive summary

The Human Rights Law Centre welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee (the **Committee**) inquiry on the *Criminal Code Amendment (Hate Crimes) Bill 2024* (the **Bill**).

The Human Rights Law Centre supports the Bill, however, we submit that the changes proposed in the Bill are too narrow, and therefore will not adequately address the rising discrimination, hate speech, and vilification experienced by communities across Australia.

In the second reading speech, the Attorney-General Mark Dreyfus, in outlining the objectives of the Bill, stated that “No one in Australia should be targeted because of who they are or what they believe”, and goes on to say that the Bill is in response to “increasing prevalence of hate speech and hateful conduct in our society.”

Although the Attorney-General is correct in identifying the problem, the changes proposed in this Bill are too narrow and ultimately fall significantly short of providing the solution that is required.

In order to properly address the prevalence of discrimination, hate speech and vilification in our society, the Human Rights Law Centre recommends that as a starting point, section 18C of the *Racial Discrimination Act 1975* (Cth) should be amended to prohibit offending, insulting or humiliating on the basis of race, religious belief, sexual orientation, gender identity, and disability.

More broadly, we recommend that our patchwork, inconsistent anti-discrimination law framework is consolidated so that it is simple, consistent, cohesive and deals with the intersecting nature of discrimination, hate speech and vilification. The balance between the fundamental human rights to freedom of expression, the right to equality before the law, and other relevant rights including to be free from racial and other forms of discrimination and harm, would be best guided by a comprehensive Human Rights Act.

## 2. The need for urgent reform

Everyone in Australia should be able to go about their lives free from discrimination, hate speech and vilification.

Australia has voluntarily accepted international obligations to protect individuals from discrimination, hate speech and vilification. These obligations are derived from Australia having ratified international treaties including but not limited to the *International Covenant on Civil and Political Rights*<sup>1</sup> (**ICCPR**), the *International Covenant on Economic, Social and Cultural Rights*<sup>2</sup> (**ICESCR**), the *International Convention on the Elimination of All Forms of Racial Discrimination*<sup>3</sup> (**ICERD**), the *Convention on the Elimination of All Forms of Discrimination Against Women*<sup>4</sup> (**CEDAW**), and the *Convention on the Rights of Persons with Disability*<sup>5</sup> (**CRPD**).

These treaties require the Australian government to ensure equality before the law, and to protect individuals from discrimination, hate speech, and vilification based on race, religion, gender, sexual orientation, disability, and other protected attributes while balancing these protections with everyone's right to freedom of expression.

Right now, too often and for too many people across Australia, there are inadequate legal protections against discrimination, hate speech, and vilification.

Australia's anti-discrimination laws do not sufficiently protect people and communities from discrimination, hate speech and vilification. The federal anti-discrimination framework is comprised of a patchwork of inconsistent, issue-specific laws, covering distinct grounds of discrimination such as race,<sup>6</sup> sex,<sup>7</sup> age,<sup>8</sup> and disability<sup>9</sup>. The complexity is compounded by overlapping and inconsistent state and territory regimes.

The lack of overarching and cohesive protection under our existing anti-discrimination framework coupled with a reported rise in discrimination, hate speech and vilification have left many in our community exposed. As an example, since Hamas' attacks on Israel on 7 October 2023, the subsequent siege and bombardment of Gaza by the Israeli government, and now the growing conflict in Lebanon, there has been a rise in anti-Palestinian and anti-Arab racism, Islamophobia and antisemitism in Australia. This has manifested itself in many ways: there have been calls for pro-Palestinian protesters to be deported;<sup>10</sup> Jewish schools have been graffitied with violent threats;<sup>11</sup> women wearing the hijab have been assaulted by men in the street, and men wearing the kippah have been met with the white power salute.<sup>12</sup>

In recent years, we have also witnessed a worrying and dramatic rise in anti-LGBTIQ+ prejudice, hate speech and vilification. We have seen rallies held against trans rights featuring Nazi salutes, and banners

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<sup>1</sup> International Covenant on Civil and Political Rights (ICCPR), art 2 and 26.

<sup>2</sup> International Covenant on Economic, Social and Cultural Rights, art 15.

<sup>3</sup> International Convention on the Elimination of All Forms of Racial Discrimination, art 4.

<sup>4</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, art 2 and 13(c).

<sup>5</sup> Convention on the Rights of Persons with Disability, art 4.

<sup>6</sup> *Racial Discrimination Act 1975* (Cth).

<sup>7</sup> *Sex Discrimination Act 1984* (Cth).

<sup>8</sup> *Age Discrimination Act 2004* (Cth).

<sup>9</sup> *Disability Discrimination Act 1992* (Cth).

<sup>10</sup> The Australian, 'Coalition Vows to Cancel Student Protesters' Visas' (Web Page, 2024) <<https://www.theaustralian.com.au/nation/politics/coalition-vows-to-cancel-student-protesters-visas/news-story/4a7882f290f5a331aa6ef1f36fdbb68a>>.

<sup>11</sup> ABC, 'Victorian MPs condemn anti-Semitic graffiti attack on Melbourne school, ABC (online), 27 May 2024 <<https://www.abc.net.au/news/2024-05-27/mount-scopus-memorial-college-anti-semitic-graffiti/103896566>>

<sup>12</sup> Zena Chamas, Mazoe Ford, 'Islamophobic and anti-Semitic incidents in Australia at unprecedented levels as the Israel-Gaza war rages' ABC (online), 2 December 2023 <<https://www.abc.net.au/news/2023-12-02/rise-in-islamophobia-antisemitism-amid-israel-gaza-war/103088666>>.

expressing anti-trans views.<sup>13</sup> We have also seen threats of intimidation and violence used by anti-LGBTIQ+ groups to shut down events, including drag story times, and youth programs.<sup>14</sup> There has been a well-documented rise of abuse, harassment threats damage to property and physical attacks and assaults experienced by the LGBTIQ+ community.<sup>15</sup>

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability also highlighted the urgent need to address the deep-rooted ableism that affects the lives of people with disabilities, ultimately resulting in discrimination, abuse, and neglect.

The patchwork and inconsistency inherent in our current anti-discrimination legislative framework also ignores the intersecting nature of discrimination, hate speech and vilification as experienced by marginalised groups in our community. People who belong to multiple marginalised groups often experience compounded and intersecting forms of discrimination and hate speech. For example, a person who is both a racial minority, a member of the LGBTQ+ community, and living with a disability might face discrimination, hate speech, and vilification not just for their race, sexual orientation, or disability alone, but for a combination of all three.

Experiences of discrimination, hate speech, and vilification have a profound impact on individuals and communities, and can lead to anxiety, isolation, and serious mental and physical harm. The negative impacts also reduce the likelihood of reporting this harm.<sup>16</sup> More broadly, such experiences can lead to diminished trust in institutions, reduced participation in civil society, and sense of belonging, ultimately fraying the social fabric of our communities.

It is clear that Australia's current anti-discrimination laws, once world-leading, are no longer fit for purpose, and are leaving many in our community at risk of the profound harms of discrimination, hate speech, and vilification. Although we welcome elements of the Bill, the reforms proposed are ultimately limited, and will not adequately address the forms of discrimination, hate speech and vilification experienced by communities across Australia.

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<sup>13</sup> Liam Elphick, 'Victoria could protect LGBTQI people from hate. Why won't the government act now?', *ABC* (online), 9 May 2023 <<https://www.theage.com.au/national/victoria/victoria-could-protect-drag-queens-from-nazi-hate-why-won-t-the-government-act-now-20230507-p5d6dn.html>>

<sup>14</sup> *Ibid.*

<sup>15</sup> Leonard et al (2012) *Private Lives 2*, Melbourne: ARCSHS, La Trobe University, at 45-7; Australian Human Rights Commission (2015) *Resilient Individuals*, Sydney: Australian Human Rights Commission, at 18.

<sup>16</sup> Ethnic Communities' Council of Victoria, 'New research reveals vast majority of racist incidents go unreported' (Media Release, 16 July 2024) <<https://eccv.org.au/new-antiracism-research-report/>>

### 3. Criminal Code Amendment (Hate Crimes) Bill 2024

The stated aims of the Bill are to:

- Change the fault element from intent to recklessness for the existing offences of urging force or violence.
- Expand the groups against whom it would be an offence to threaten force of violence to include sex, sexual orientation, gender identity, intersex status and disability.
- Expand the list of characteristics in relation to the application of prohibited hate symbol offences to include conduct that is likely to offend, insult, humiliate or intimidate a reasonable person who is a member of a group distinguished by ‘sexual orientation, gender identity, intersex status’.
- Remove an existing good faith defence from the existing urging force or violence offences and for the proposed threatening force or violence offences.
- Add two new offences relating to threatening force or violence against targeted groups or members of targeted groups, distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality, national or ethnic origin or political opinion.

Although the second reading speech to Parliament by the Attorney-General, Mark Dreyfus KC, and the Explanatory Memorandum identify tolerance, harmonious communities, equality and inclusiveness as the values underpinning the proposed changes, it is clear that the above proposals are relatively narrow and these changes alone will not achieve a tolerant, harmonious, equal and inclusive society.

We support these changes as a first step, and strongly **recommend** that the Committee considers evidence from affected individuals, as well as organisations representing marginalised groups most impacted by these changes (including groups distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality, national or ethnic origin or political opinion).

Such evidence would assist the Committee in ensuring that these changes proposed are in line with the how these communities experience the harm that this Bill seeks to address. As an example, consideration should be given to people with disability, and organisations representing people with disability in relation to the inclusion of disability as a relevant characteristic under prohibited hate symbol offences. Other examples that could benefit from further consultation include modernisation of terminology, such as replacing the reference to ‘intersex status’ in the Bill to ‘sex characteristics’, and ensuring that the new offences of threatening force or violence properly incorporates the impact of such conduct not just the marginalised community but their allies.

More broadly, for us to build and maintain respectful, harmonious communities underpinned by values of equality and inclusiveness, we **recommend** broader reforms to harmonise and consolidate Australia’s anti-discrimination law, including via our recommendations in Section 4 below.

## 4. The way forward: a consolidated, coherent and consistent framework

In order for everyone in Australia to live their lives free from discrimination, hate speech and vilification, we need ensure that our anti-discrimination laws are coherent and consistent. The current Bill falls significantly short of the systemic reforms needed to build and maintain an equal, tolerant and inclusive society, as referenced by the Attorney General in his second reading speech.

With a view to achieving these goals, we make the following recommendations:

1. As a starting point, and as a minimum, we **recommend** that section 18C should be amended to prohibit offending, insulting or humiliating on the basis of race, religious belief, sexual orientation, gender identity, and disability.
2. More broadly, we **recommend** that the Albanese government should consolidate federal anti-discrimination laws into a single, uniform and modern Anti-Discrimination Act so that it is simple, consistent and deals with the intersecting nature of discrimination.
3. Finally, we recommend that the Australian government enact a federal Human Rights Act that brings into our domestic laws the full array of human rights protections which we have agreed to implement under international law. This should capture the key, enforceable elements of all the human rights treaties that Australia has ratified including not only the permissible scope of the right to freedom of expression under the *International Covenant on Civil and Political Rights (ICCPR)*, but also placing this in the context of other fundamental rights including those contained in the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*, the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, and the *Convention on the Rights of Persons with Disability (CRPD)*. This will ensure that our laws, policies, and service delivery are grounded in minimum human rights standards, in a way that is transparent and truly comprehensive.