

6 December 2024

Senate Legal and Constitutional Affairs Committee  
Via email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

To the Committee

### **Responses to Questions Taken on Notice Monday 2 December 2024**

Thank you again for the opportunity to provide evidence at the Committee's hearing on Monday 2 December 2024 into the Criminal Code Amendment (Hate Crimes) Bill 2024.

At that hearing, I took three questions on notice. The following are our responses to those questions.

1. Extension of offences to cover property

*Senator Scarr: I'm interested in your view, and I'll go around the panel of witnesses for your thoughts on expanding the scope of this provision to include property – or, if not, on whether it should be something which should be considered in a separate provision – or if there's any reason why both shouldn't be considered in the same way or through the same lens.*

The Justice and Equity Centre does not support the extension of the existing offence in s80.2A, or the new offence in proposed s80.2BA, to include urging or threatening violence against property. Given the primary purpose of these provisions – to protect groups, or members of groups – and the severity of the punishments involved (up to 7 years' imprisonment), we generally support the targeted focus of these criminal offences as drafted.

We acknowledge some of the issues identified by other organisations in their submissions to the inquiry, and would be open to further consideration of a separate and specific offence where hate crimes involve damage to or destruction of property. However, as outlined in our submission, we believe a higher priority in terms of amendment to the current Bill is expansion to establish civil vilification provisions in Commonwealth law explicitly covering religious belief, sex, disability, sexual orientation, gender identity and expression and sex characteristics.

2. Extension of offences to cover associates

*Senator Scarr: To what extent do you think that consideration should be given to expanding the scope of the offence to include those who are targeted, are subject to the violence, threat of violence or use of force as a result of their association with people who have the relevant attribute?*

As expressed at the Committee hearing, the Justice and Equity Centre supports in principle the expansion of the existing and proposed offences in the Hate Crimes Bill to ensure that urging or threatening violence against associates of the groups or members of groups that are protected by these provisions is captured. This is necessary given the circumstances of some of the examples of hate crimes which have precipitated this legislation (including drag storytimes). However, we also submit that, if associates are included in these offences, this term be clearly defined so as to avoid unwarranted expansion of these offences.

### 3. Approach to vilification

*Chair: Some participants have recommended the introduction of a serious vilification offence. We have gone through this with a number of other witnesses in previous panels. I am keen to hear from other panel members ... about what other particular models for a vilification provision the committee could look to or consider as examples. That is for anyone who wants to jump in on anti-vilification.*

As indicated in my oral evidence to the Committee, our submission called for the introduction of civil vilification protections across attributes, modelled on section 18C of the *Racial Discrimination Act 1975* (Cth) or similar provisions under state and territory law.

The Justice and Equity Centre submits that the introduction of civil vilification provisions is a higher priority than adding criminal vilification prohibitions, particularly given that if this legislation passes, both urging and threatening violence against groups or members of groups will be criminally prohibited under Commonwealth law.

In terms of our preferred approach to civil vilification, we note the schemes adopted in most states and territories have strengths, with the breadth of provisions like s17(1) of Tasmania's *Anti-Discrimination Act 1998* and the recently-added s20A of the Northern Territory *Anti-Discrimination Act 1992* ensuring the widest coverage of affected communities.

Nevertheless, given the operation of s18C of the *Racial Discrimination Act* for almost three decades, the most straight-forward approach may be to introduce equivalent provisions explicitly covering religious belief, sex, disability, sexual orientation, gender identity and expression and sex characteristics. This would ensure consistency across protected attributes under Commonwealth law and/or avoid relitigating arguments about the wording of s18C that have been settled.

Thank you for your consideration of these responses. Please do not hesitate to contact me at the details provided should you require additional information.

Yours sincerely

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