



AUSTRALIAN MUSLIM ADVOCACY NETWORK

THE NSW LAW REFORM COMMISSION

**REVIEW OF STATE'S LAWS ON THREATS AND INCITEMENT TO
VIOLENCE**

SUBMISSIONS FROM THE AUSTRALIAN MUSLIM ADVOCACY NETWORK LTD

19 April 2024

1. INTRODUCTION

The Australian Muslim Advocacy Network Ltd (AMAN) works to prevent the harms of systemic racism, online hatred and Islamophobia through policy engagement and law reform.

AMAN has used the Queensland Anti-Discrimination Act to make several complaints, including:

- A vilification complaint that was successful in Court against the former Fraser Senator Anning.
- A vilification complaint still on foot against X (formerly known as Twitter) in QCAT.
- Other undisclosed matters before the Queensland Human Rights Commission, which works to secure Australian Muslims' psychological and physical safety.

AMAN also played a leading role in developing and introducing hate crime law reforms in Queensland.

In relation to NSW, AMAN has previously assisted individuals with test complaints under the NSW Anti-Discrimination legislation and spearheaded research into the effectiveness of NSW hate crime laws, focused on the *R v Lozina* case study. We have also contributed to the Australian Hate Crime Network submissions to previous NSW Parliamentary inquiries.

2. RECOMMENDATIONS

2.1 NSW Crimes Act reform:

- (a) Improve their existing criminal laws by introducing ***statutory circumstances of aggravation*** for certain crimes ***wholly or partially motivated*** by hatred based on a protected characteristic rather than only considering it at sentencing.
- (b) Otherwise, avoid expanding criminal legislation, particularly in the context of 'violent extremism'.
- (c) Introduce hate crime scrutiny panels (as recommended by the Queensland Parliamentary Inquiry into Serious Vilification). The panels would be established at local/district command levels, including operational and prosecution police with community-based experts from different communities affected by hate crimes. This would provide an avenue for continuous improvement in investigating and prosecuting hate crimes. Take learnings from the UK model.

- (d) Introduce proper screening and internal complaint processes within the police to shield police from the influence of white supremacist bias and infiltration.

2.2 NSW Anti-Discrimination Act reform

- (a) Urgently introduce discrimination protection for persons based on their religion, religious belief or activity. This should include:
 - (a) protection against unlawful discrimination, direct and indirect, on the grounds of religious belief or activity
 - (b) shields contract workers from discrimination on the grounds of their religious beliefs or activities.
 - (c) Applicability to the same range of educational authorities, providers of goods or services, providers of accommodation and registered clubs as is offered in other discrimination clauses.
- (b) Alternatively, to Recommendation 2.2 (a), urgently clarify that the race discrimination provisions cover Muslims (and other ethno-religious communities) until a broader review of the Act can be completed.
- (c) Shift the burden of contending with racism from affected individuals and communities to the whole of society by making it part of the core business of employers to take all reasonable and proportionate measures to eliminate racist harassment.
- (d) Ensure that a complainant can bring a discrimination complaint against an agency or authority (such as NSW Police, Youth Justice and Justice Health & Forensic Mental Health Network) for failing to take reasonable measures to screen staff for dehumanising and discriminatory, racist attitudes (including anti-Muslim attitudes), given the prevalence of these attitudes in Australian society, the power dynamic/extreme vulnerability present in these contexts. Currently, the NSW Anti-Discrimination Board believes that the staff recruitment process does not provide a service as defined in ss19 and 49M (ss19 and 49M).
- (e) Ensure that a victim of racist violence by police officers (amounting to unreasonable force) can pursue redress through discrimination and vilification

laws. Our police should not be above the law; they should be role models regarding community standards. Currently, the Anti-Discrimination Board regards the use of force by NSW police against a person as likely not being carried during a 'service' that would come within the ambit of the ADA. Other forums to complain about NSW police conduct are woefully non-transparent and unfit for purpose.

- (f) Clarify that prison custody of inmates comes within the provision of services within the ambit of the ADA, despite case authorities.¹ Persons within their custody and care should benefit from discrimination protection.
- (g) Clarify that where a complainant is detained under provisions of the Mental Health (Forensic Provisions) Act 1990, the respondent provides the Complainant with a service defined in section 49M of the ADA. Persons within their care should benefit from discrimination protection.
- (h) Ensure that representative bodies can bring vilification and discrimination complaints (see, for example, 134(3-5) ADA 1991 Qld; QHRC has proposed that this be extended to discrimination complaints, Building Belonging Report 2022).
- (i) Ensure that the Act (including vilification and discrimination clauses) applies to foreign social media companies whose platforms are accessed by end-users based in New South Wales, recognising that the spread of dehumanising material online is a public harm, not a private one.
- (j) Add discrimination based on caste as a protected attribute.

¹ State of New South Wales v Whiteoak [2014] NSWCATAP 99

2.3 The NSW Government should not adopt the IHRA definition by government bodies to maintain clear lines between vilification and freedom of speech.

2.4 The NSW Government should introduce a Human Rights Act.

2.5 The NSW Government should take further measures to counter dehumanisation as a public harm.

- (a) Ensure that any NSW Parliamentary Code of Conduct also references anti-dehumanisation standards, given the heightened effect of political discourse on stoking racial prejudice and anti-religious and anti-Muslim sentiment.
- (b) Build resilience within NSW Schools to dehumanising material by introducing the concept and examples into an age-appropriate curriculum.

2.6 Communications law reform (Commonwealth level):

- (a) define clearly apparent vilifying and dehumanising material about groups based on race or religion (not speech about nation-states, militaries or political movements) should be agreed upon by public regulators overseeing social media companies, traditional media and parliamentary code of behaviour.² Civil penalties, including a transparent notice and takedown model or fines for platforms, should be on the table, focusing on those actors making a financial profit from unlawful vilification³. Australian case law⁴, Canadian case law⁵, and genocide prevention studies⁶ provide a rich tapestry from which to define

² <https://www.aman.net.au/wp-content/uploads/2023/08/Submission-Human-Rights-Inquiry-Australian-Muslim-Advocacy-Network.pdf>

³ <https://www.aman.net.au/wp-content/uploads/2023/04/AMAN-Submission-to-SERC-for-Inquiry-into-the-Influence-of-International-Digital-Platforms.pdf>

⁴ *Eatock v Bolt* [2011] FCA 1103; 197 FCR 261; 283 ALR 505.

⁵ *Saskatchewan (Human Rights Commission) v. Whatcott* 2013 SCC 11, [2013] 1 S.C.R. 467

⁶ Jonathan Leader Maynard and Susan Benesch, "Dangerous Speech and Dangerous Ideology: An integrated Model for Monitoring and Prevention" (2016) 9(3) *Genocide Studies and Prevention: An International Journal*, 77.

dehumanising material⁷. AMAN urges full transparency by government and social media companies.

3. TERMS OF REFERENCE

3.1 Pursuant to section 10 of the Law Reform Commission Act 1967 (NSW), the NSW Law Reform Commission is asked to expeditiously review and report on the effectiveness of section 93Z of the Crimes Act 1900 (NSW) in addressing serious racial and religious vilification in NSW.

- (a) In undertaking this review, the Commission should have regard to:
 - (a) the impact of racial and religious vilification on all parts of the NSW community;
 - (b) criminal vilification offences in other Australian and international jurisdictions, and the desirability of harmonisation and consistency between New South Wales, the Commonwealth and other Australian States or Territories;
 - (c) the availability of civil vilification provisions in the Anti-Discrimination Act 1977 (NSW);
 - (d) the impacts on freedoms, including freedom of speech, association and religion;
 - (e) the need to promote community cohesion and inclusion;
 - (f) the views of relevant stakeholders as determined by the Commission; and
 - (g) any other matter that the Commission considers relevant.

⁷ For AMAN's current working definition of dehumanising material: https://www.aman.net.au/?page_id=1425

4. DISCUSSION

4.1 The impact of racial and religious vilification on all parts of the NSW community

(a) Over time, the confluence of legal, cultural and political power to conflate Islam and terrorism has profoundly dehumanised Australian Muslims. This affects Australian Muslims, as reported hate incidents show.⁸

(b) Research suggests that Islamophobia and anti-Muslim sentiment are highly prevalent and cannot be remedied due to terrorism concerns.⁹ At the same time, terrorism concern levels are high due to the conflation of terrorism and Islam in the media and our law. This has supported the mainstreaming of hostile political rhetoric,¹⁰ fuelling anti-Islam movements. Anti-Muslim sentiment continues to be prevalent¹¹. Bringing about institutional changes in media, government, law enforcement, and various workplace settings requires discrimination protections.

4.2 Criminal vilification offences in other Australian and international jurisdictions and the desirability of harmonisation and consistency between New South Wales, the Commonwealth and other Australian States or Territories;

(a) In New South Wales, section 21A(2)(h) of the Crimes (Sentencing Procedure) Act 1999 recognises the common law rule that a motive of prejudice against and/or hatred for a group of people is an aggravating factor. Given that this provision is the only statutory protection

⁸ Derya Iner, *Islamophobia in Australia Report, 2023* (Charles Sturt University and ISRA); Based on a review of the Ministerial responses to successive Scanlon Foundation Reports which have shown exceptionally high levels of distrust and negative sentiment towards Muslims among Australians.

⁹ Matteo Vergani, Fethi Mansouri, Liliana Orellana (2022) *Terrorism concern and persistence of negative attitudes towards Islam and Muslims. Community and Applied Social Psychology*. Volume 32, Issue 6

¹⁰ Derya Iner and Sean McManus. "Islamophobia in Australia." In *The Rise of Global Islamophobia in the War on Terror*, edited by Naved Bakali and Farid Hafiz. UK: Manchester University Press. See for eg: Conifer, D. (2015, December 5). Tony Abbot calls for 'religious revolution' inside Islam, defends controversial 2014 budget measures as 'justifiable and right'. ABC news; Davey, M. (2018, November 12). Bourke Street attack: Morrison accused of 'scapegoating' Muslim Community. *The Guardian*; Henderson, A. and Conifer, D. (2015, December 9). Malcolm Turnbull warns against blanket statements after Tony Abbott calls for Islam to change. ABC; Humphries, D. (2006, February 25.) Live here and be Australian, Howard declares. *Sydney Morning Herald*; Karp, P. (2018, November 12). Morrison urges Muslim community to be more 'proactive in tackling terrorism. *The Guardian*; Karp, P. (2020, April 20). Tony Abbott's anti-Muslim rhetoric while PM 'profoundly dangerous', Malcolm Turnbull says. *The Guardian*; Medhora, S. (2015, February 24). Tony Abbott urges Muslim groups to 'get with the program' and condemn extremism. *The Guardian*.

¹¹ Kevin Dunn, above n (1).

provided to minority groups who may face a physical and verbal threat, its application carries significant stakes.

Case Study

AMAN's research associates have also assessed the effectiveness of NSW's current hate crime legal framework, using the *R v Lozina* as a case study.¹²

On the 20th of November 2019, about 10.30 on the evening of the offence, the victim, Ms Rana Elasmr, was seated with two female friends at a table at the Bay Vista Café in the Eat Street area of Church Street, Parramatta. The offender, Lozina, approached the young woman, which can be seen in the circuit television footage from two cameras taken at the site of the offending. He leaned over with his right hand extended, seeking spare change from the people at the table. The perpetrator claimed in his oral evidence that his request for money was denied. This was followed by an almost immediate explosion of violence by the offender. He reached across the front of the young woman closest to him to strike past that woman, initially at the head of the victim, Ms Elasmr.

He continued to strike at her with his clenched fist, drawing it back for concerted and repeated blows approximately 14 times. Ms Elasmr attempted to protect her abdomen as she was heavily pregnant by lying in a fetal position. The offender continued to press forward, getting closer to her and then kicking and stomping on her head. One of Ms Elasmr's friends bravely tried to fend off the offender using a chair. Several bystanders also intervened as they came for the victim's help. Ms Elasmr was taken to Westmead Hospital. She was found to have an injury in a cut and a swelling to her head.

The victim was in a state of shock and frightened by the offender's violent actions, especially as the offender mentioned, 'You Muslims raped my mum' during the assault. As seen in the CCTV footage, the offender is a large man who, without any provocation, assaulted the victim. Craigie J acknowledged the potential harm this could have caused the victim and her unborn baby, which he mentions were not caused because of good fortune and not because of any restraint on the part of the offender.

The offender was prosecuted under the provisions of s 59 of the Crimes Act 1900. Additionally, the Crown submitted that an aggravating factor was present in that it was "motivated by hatred for or prejudice against a group of people" as per s 21A(2)(h) of the Crimes (Sentencing Procedure) Act. That section states that in determining the appropriate sentence, a court is to take into account that the offence was motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, sexual orientation, or age, or having a specific disability).

However, the sentencing judge, Craigie J, did not label the offender's crime as a hate crime and focused on negating the offender's culpability, diminishing justice for the victim and the victim's community.

*Craigie J has minimised the application of this section of the law by asserting that 'initiating motive of irritation in being refused money was also present', hence mitigating the offence committed by the offender. In *R v Holten* (2005), the court stated that it is essential that sentencing courts give careful consideration to the aggravating factors in s21A(2)(h) of the Crimes (Sentencing Procedure) Act 1999 (NSW) to determine not only whether they are available as a matter of law but also whether they arise in the facts of the case. This section should have been given greater weight in *Lozina's* as his hate against Muslims was quite evident. For example, amongst his answers related to cross-examination to that incident, when he was asked whether he hated Muslims, he responded: 'They're killing the Australian*

¹² Maryam Hashimi and Rita Jabri Markwell, Forthcoming article. *R v Stipe Lozina: Addressing the gaps in NSW's Hate Crime Laws*

economy.' Further, as is also discussed in the sentence assessment report, what is evident is that the offender indeed has, as expressed, 'an issue with Muslims.'

Craigie J highlighted this in his remarks in Lozina as he reinstates, 'the offender has also done harm to the community, unknowingly and uncaringly, in providing by his actions, a profoundly unsettling instance of violence on its face, propelled solely by religious prejudice.' He further argues, 'If that were the only stark and simple explanation for what the offender did, the harm to the community would be even greater than it deserves to be assessed.' It can be inferred from this remark that because it was accepted that Lozina's hate motivation was one aspect of his offending, as a consequence, the harm felt by the Muslim community would be less. This is surprising as Lozina's offending had an overall and ongoing terrorising effect on the Muslim community. To this day, this incident continues to create fear, especially among hijab-wearing women, for their safety when they interact with the community in public spaces. The fact that Lozina asked for money before launching the attack did not reduce the community's perception that this was a violent hate crime, as evidenced by the hate elements reported across the media (such as Lozina's words at the time, his disgust and disregard for her vulnerability as a pregnant woman, and his previous record) seemed to indicate.

The NSW's current approach, which relies heavily on sentencing to deliver justice to victims, is part of the problem. By enabling hate crimes to be charged as hate crimes (through introducing statutory circumstances of aggravation), a victim still benefits from a crime being appropriately labelled even if the sentence is reduced due to mental illness or other mitigating factors.

Other jurisdictions

(b) The UK definition of racist incidents is primarily centred on the effects of the incident on the victim and the victim's community rather than exploring the perpetrator's state of mind, reducing the prosecution's burden, and enabling state acknowledgement in more instances of harm. (Metropolitan Police 2000, 22). The UK Minimum Standards guide police on "The Investigation of Racist, Domestic Violence and Homophobic Incidents" in public order offences. There, the Association of Chief Police Officers (ACPO) identifies hate crime as a crime where the perpetrator's prejudice against any identifiable group of people is a factor in determining who is victimised. The Stephen Lawrence inquiry report recognises hate crime as any incident perceived to be racist by the victim or any other person (Metropolitan Police 2000, 22).

(c) in the United Kingdom, there is a similar approach to NSW as it attaches a statutory aggravation to racially motivated offences under *the Crime and Disorder Act 1998* (UK). Sections 29-32 outline several crimes that become aggravated if a racial or religious motivation can be proven. Section 28 prescribes that: (1) An offence is racially or religiously aggravated for the purposes of sections 29 to 32 below if— (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial or religious group, or (b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group. Section 28(3) adds that it is immaterial if the offender was also motivated by another factor.

(d) Therefore, racially aggravated assault can occur where the motivation for the attack is not solely based on race. For instance, if the United Kingdom's legislative approach were applied to Lozina, it would be irrelevant if there was a motive of irritation present in the offender's case because he was refused money as the offender also clearly attacked the victim due to her association with the Islamic faith.

(e) Scotland's *Hate Crime and Public Order* (Scotland Bill) 2019 retains the existing core method of prosecuting hate crimes in Scotland, which is via the attachment of a statutory aggravation when a person has committed an offence and has evinced or

has been motivated by, malice and ill-will towards a person or group of persons based on a listed characteristic. A baseline offence (e.g., murder, assault, breach of the peace) must be committed for an aggravation to be attached. The Bill retains the existing threshold for proving an aggravation (i.e., the aggravation can be established by evidence from a single source). The Scottish Bill also covers breaches of the peace, similar to offensive conduct in New South Wales. Where a crime is proven, the court must state and record the conviction to show the type of prejudice in question (for instance, race or sexual orientation) as the aggravation. This provides the acknowledgement for the victim and community as it is then recorded as a hate crime. The court must also consider the aggravation in sentencing, stating the extent, if any, that a sentence has been increased due to the operation of a statutory aggravation. Where the sentence is not different, the court must state why there is no such difference.

(f) The criminal liability regime in Chapter XI of Western Australia's Criminal Code 1913 (WA)(racist harassment and incitement to racial hatred) differs significantly from that contained in the legislation of other jurisdictions in New South Wales. One of the main elements of distinction is how it addresses harm to individuals by enabling the crime to be labelled a hate crime. Chapter XI currently creates categories of offences that depend on an accused's state of mind. Sections 77, 79, 80A, and 80C require proof of an intention by the accused either to incite racial animosity or racist harassment or to racially harass a person or group. Sections 78, 80, 80B and 80D refer only to conduct having that likely effect. The downside of these laws is that the evidentiary threshold for prosecution remains high with the motive requirements. This under-utilisation of the law means that acknowledgement to victims of the harm they've endured is rarely provided.

(g) The laws of the United States also recognise the harms an individual suffers. Title I of the Civil Rights Act of 1968 allows for the federal prosecution of anyone who "wilfully injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with ... any person because of his race, colour, religion or national origin. Further, The Violent Crime Control and Law Enforcement Act 1994 requires the United

States Sentencing Commission to increase the penalties for hate crimes committed based on any person's actual or perceived race, colour, religion, national origin, ethnicity, or gender. The laws in the United States are effective at identifying individual harm, as they not only address bodily and physical harm but look at other forms of harmful conduct, such as intimidation and interference.

AMAN's Role in Queensland Hate Crime Law Reform

(h) When a place of worship is vandalised with hateful threats or a woman in hijab is harassed in a public place for being Muslim, those matters must be called hate crimes by police, media and the law. In most places in Australia, those matters won't be treated as hate crimes but are called property damage, public nuisance, or an unfortunate incident that warrants no further action.

(i) Hate crime laws are not a proven deterrent to spreading hatred online or in the physical world. However, they are still necessary to maintain community confidence in the legal system, social belonging, and safety.

(j) AMAN supports introducing effective hate crime laws in Australian states and territories. We have studied existing hate crime provisions in Australia, the UK, the US, and Scotland to understand what has worked and what hasn't.

(k) We made a detailed submission to a Queensland Parliamentary inquiry and have argued for thresholds that work for the community.¹³ To achieve community confidence, we recommend the Commission use the following indicators to measure the success and effectiveness of hate crime law proposals, specifically that there is:

- (a) Formal acknowledgment of the discriminatory hate element of the crime for the victim and victim's group.
- (b) Immediate and sustained safety for the victim from further hate crime.
- (c) Deterrence of hateful language and acts based on protected characteristics.

¹³ [Hate Crime Law Reform in Queensland – AMAN](#);

- (d) A clear signal of society's value of diversity, equal worth and dignity for all.
- (e) A process that is worthwhile for victims, who achieve better redress and justice.
- (f) Consistent application of the law by police in response to more instances of harm.

(l) As part of a community coalition of faith and cultural organisations in Queensland, we supported the development of hate crime laws introduced into the Queensland Parliament in March 2023. These laws are promising because:

- (a) The Bill introduces a statutory circumstance of aggravation (also known as penalty enhancement laws¹⁴) to a broad range of existing crimes. This means that police can charge a crime as a Hate Crime from the beginning, and the penalty will be higher. This will encourage police to investigate and support better data and evidence collection during investigations. It will also mean that media can report incidents as Hate Crimes rather than threatening vandalism on a mosque being called 'property damage'.
- (b) The aggravation applies where the offender was wholly or partly motivated to commit the offence by hatred or serious contempt for a person or group based on race, religion, sexuality, sex characteristics or gender identity, either real or presumed about a person or group.¹⁵
- (c) The aggravation applies to the following prescribed offences:
 - Going armed so as to cause fear
 - Threatening violence
 - Disturbing religious worship
 - common assault
 - assaults occasioning bodily harm
 - threats
 - punishment of unlawful stalking, intimidation, harassment or abuse
 - wilful damage
 - public nuisance

¹⁴ [The need to criminalise hate crimes | BarNews \(nswbar.asn.au\)](https://www.nswbar.asn.au/news/the-need-to-criminalise-hate-crimes)

¹⁵ [Criminal Code \(Serious Vilification and Hate Crimes\) and Other Legislation Amendment Bill 2023](#)

- trespass¹⁶

- (d) Racist street harassment is covered via public nuisance inclusion, including public incitements of hatred by white nationalists that disrupt people's peaceful enjoyment of public places. Pro-Palestinian movements and other legitimate forms of public assembly and political expression would continue to be protected. However, any individuals engaging in hate speech against Jews in particular (a practice that is widely denounced in the pro-Palestinian movement) could enliven this provision. This is important to ensure that legitimate protest movements are not derailed by the criminal actions of just a few individuals. In NSW, there is no equivalent public nuisance law. However, offensive language could be clarified in relation to racist abuse.
- (e) The motive element requires a Hate Crime to be wholly or partly motivated by hatred or serious contempt. This means that if there is another personal motive, it won't exclude the crime from being called a Hate Crime.
- (f) Factors like the perpetrator's mental illness, age and other factors can still be considered at sentencing, but it won't detract from the crime still being called a Hate Crime.
- (g) Improvements to the existing criminal offence of serious vilification (inciting violence and harm against protected groups) will encourage greater use.

(m) AMAN supports the strengthening of civil laws and improvements to criminal law. We do not support the expansion of criminal offences, particularly in realms that expose young people from marginalised communities, including teenagers and persons with disabilities, to criminalisation. For example, AMAN and other Muslim civil society and religious organisations have strongly opposed the proposed ban of the 'IS Flag' and Schedule 2 offences in the Counterterrorism legislation amendment (Prohibited Hate Symbols) Bill 2023 introduced into the Australian Parliament.

(n) Hate Crime Scrutiny panels remain an important component of law reform in driving continuing improvement, accountability and awareness within the police. The model has been trialled in the UK for many years and was the subject of recommendation by the Queensland Parliamentary Inquiry into Hate Crimes and Serious Vilification, which the Queensland

¹⁶ Ibid.

Government accepted on principle.¹⁷ The Scrutiny Panels are important because a failure to investigate hate crimes properly not only impacts the confidence of the immediate victim but also compromises broader community confidence in the police. The panels provide a protected space for de-identified information from investigations to be shared, discussed and improved upon. The current NSW model, which relies heavily on the effectiveness of a small hate crime unit and education campaigns, is limited by the ongoing disconnection with operational police from hate crime understanding and practice. The scrutiny panel brings together operational police with expertise from prosecution, hate crimes and community at a district level to build capacity, knowledge about context and mutual awareness.

(o) White supremacy within police remains a significant problem for which there continues to be inadequate risk mitigation in place.¹⁸ The danger this poses is that hate crime and terrorism-related laws can end up being disproportionately used against people of colour and First Nations peoples.

(p) AMAN also believes it is important to include guardrails against police officers weaponising hate crime policing against members of groups that are frequently overpoliced.

4.3 the availability of civil vilification provisions in the Anti-Discrimination Act 1977 (NSW);

(a) To rebuild trust, discriminatory conduct by law enforcement, prison officers, and government staff should not be off-limits under the Act.

- (a) The Act's Existing limitations mean that enormous spheres of discriminatory conduct are off limits because they are carried out by statutory agencies or deemed not to provide a service within the Act's ambit (ss19 and 49M).
- (b) In particular, NSW Police, Youth Justice and Justice Health & Forensic Mental Health Network must be treated as providing a service to persons

¹⁷ See page 50-51 of the Parliamentary Committee's report. They recommended Queensland legislate for hate crime scrutiny panels.
<https://documents.parliament.qld.gov.au/tableoffice/tables/papers/2022/5722T26.pdf>

¹⁸ <https://www.lexology.com/library/detail.aspx?g=845947e9-6e09-4750-b7a1-5ffdf782611c>;
<https://www.abc.net.au/news/2020-06-13/nsw-police-officer-ok-symbol-black-lives-matter-march/12352134>;
<https://www.lowyinstitute.org/the-interpreter/it-s-not-ok-white-supremacy-australia-s-security-services>;
https://www.nswccl.org.au/police_white_supremacy_symbols;
<https://www.theage.com.au/national/victoria/police-investigate-inappropriate-memes-on-officer-s-social-media-20191102-p536uh.html>;
<https://www.youtube.com/watch?v=HTUNWOPemx0>

in their custody or care, or another category must be formulated to ensure that redress under the Act is available.

(b) Positive obligations imposed on employers to prevent sexual harassment should apply equally to racist harassment and all forms of dehumanising speech

- (a) Racist harassment must include racism based on notions of cultural, biological and skin colour superiority.
- (b) Education about dehumanising material (see **Schedule A**) and how to avoid engaging in dehumanising speech should be included in employers' positive obligation to create a safe work environment for their staff.

(c) Clarify that social media companies must respect NSW vilification laws

- (a) The Act should be amended to ensure that both vilification and discrimination clauses apply to foreign social media companies whose platforms are accessed by end-users based in New South Wales.¹⁹
- (b) The NSW Government can help by adopting definitions of dehumanising material to guide various institutions.

(d) Vilification protections must continue to apply to community/civil society organisations as well as natural persons

- (a) Community organisations representing the interests of groups identified based on protected attributes like race or religion can become targets of vilification and hatred online and offline. They must be able to bring a complaint. Within the Act's existing vilification provisions, a person includes both a corporate and natural person. This should be maintained for all protected groups, including religious community organisations.

(e) Representative bodies must be able to bring discrimination and vilification complaints on behalf of groups or communities

¹⁹ [X should answer to Queensland authorities over Islamophobic tweets by an American, tribunal hears | Queensland | The Guardian](#)

(a) AMAN has brought legal actions under the Queensland Anti-Discrimination Act as a representative entity (section 134(3-5)). The Queensland Human Rights Commission has recently proposed extending this to discrimination complaints, *Building Belonging Report 2022*. AMAN believes this is necessary as discrimination elements of our complaints have been knocked out because of this limitation. In Victoria, both discrimination and vilification complaints can be brought by a representative entity.

(f) Assistance must be provided to complainants from non-English speaking and low-literacy backgrounds.

(a) Legal Aid is not funded to support most discrimination or vilification complaints. When a complainant reaches a lawyer, they are almost always discouraged from seeking redress under the law, given that the law is weighted in favour of major institutions.

(b) Still, there is a benefit to engaging in conciliation processes to force practical problem-solving, for example, where a service or employer is not taking a complaint seriously. In AMAN's experience of referring people to the NSW Anti-Discrimination Board in 2020-22, the Board's staff struggled to assist complainants from non-English speaking and low-literacy backgrounds.

4.4 the impacts on freedoms, including freedom of speech, association and religion;

(a) The IHRA definition has demonised legitimate discourse in universities,²⁰ in the medical profession²¹ and in public protest movements, where the "River to the Sea, Palestine will be

²⁰ <https://www.aljazeera.com/opinions/2023/12/6/the-ihra-definition-of-anti-semitism-has-no-place-on-australian-campuses>; <https://www.trtworld.com/discrimination/scholar-fired-for-criticising-israel-slams-german-academic-censorship-16919713>

²¹ <https://www.smh.com.au/national/i-m-a-doctor-who-wants-peace-in-gaza-for-that-i-was-reported-to-the-medical-watchdog-20240214-p5f51h.html>; <https://www.smh.com.au/national/dozens-of-doctors-reported-to-watchdog-over-israel-gaza-social-media-posts-20240119-p5eyof.html> viewed 30 March 2024.

free” chant referring to liberation from Israel’s unlawful occupation is characterised as anti-Semitic, hateful and violent.²² Politicians²³, media²⁴ and some leaders of the Jewish community (as later shown) have engaged in these claims.

Courts have not validated these claims of anti-Semitism. UK Equality Act protects anti-Zionist beliefs.²⁵ Academic freedom includes displaying a swastika on an Israeli flag.²⁶

(b) By the definition of Anti-Palestinian racism²⁷, the IHRA definition of Antisemitism is racist because it has the effect of denying the Nakba (“catastrophe” to the Palestinians), it fails to acknowledge Palestinians as Indigenous peoples with rights in relation to occupied and historic

²² See, for example: “The battle cry “Palestine will be free, from the river to the sea” heard at demonstrations in Australia and elsewhere, is not a call for peace. It is not a call for a two-state solution. It is a call for an end to Jewish self-determination, and for the Jewish population of Israel to be ethnically cleansed and replaced by Palestinian Arabs returning en masse.”
http://www.davidknoll.com.au/files/JCOM/21st_century_pogrom_aj_n_10_06_21.pdf

²³ Premier Minns suggests that protesting Israel is a double standard to approach taken to other countries and protestors were preaching hate: <https://www.2gb.com/exclusive-unions-vow-to-block-israeli-ship-docking-in-sydney/> viewed 30 March 2024 ; Peter Dutton says that the Greens opposition to Israel is ‘whipping up that hatred’ against Jewish Australians: <https://www.peterdutton.com.au/leader-of-the-opposition-transcript-interview-with-sarah-abo-and-the-hon-richard-marles-mp-today-show-9/> viewed 30 March 2024. Dutton refers to Greens motion condemning Israel as anti-Semitic: <https://www.theaustralian.com.au/nation/politics/peter-dutton-lashes-anthony-albanese-for-not-speaking-against-a-greens-motion-condemning-israel/news-story/dea0afbe674b0a19ee261e4ecdca9e34>

²⁴ For example, see: Greg Sheridan, ‘Muslim migrants and Western Left create new anti-Semitism crisis’ (The Australian, 9 December 2023); Clarissa Bye, ‘Lakemba Ramadan Night Market complaints over ‘anti-Israel’ chants’ (The Daily Telegraph, 21 March 2024); Andrew Bolt, “‘Appalling failure’: Andrew Bolt calls for Penny Wong to apologise to Australian Jews”, *Sky News Australia* (15 November 2023); Andrew Bolt, “Why is Our Government Giving the Soft Touch to Jewish Hatred” *Herald Sun* (15 November 2023); Sharri Markson, “Sadistic and barbaric: Hated of Israel manifest as anti-Zionism” *Sky News Australia* Youtube (13 November 2023); Sharri Markson, “Anti-western alliance: New ‘axis of evil’ is emerging” *Sky News Australia* (31 October 2023); Sharri Markson, “‘Failure of Leadership’: Jacinta Allan defends pro-Palestine school protest” *Sky News Australia* (15 November 2023); Ramesh Thakur, “From vows of never against to a here we go again shrug” *The Australian* (17 November 2023).

²⁵ <https://www.theguardian.com/education/2024/feb/05/uk-professor-suffered-discrimination-due-to-anti-zionist-beliefs-tribunal-rules>

²⁶ <https://www.theguardian.com/australia-news/2022/oct/28/sydney-academic-tim-anderson-swastika-israel-flag-judge-finds>

²⁷ https://assets.nationbuilder.com/cjpme/pages/6244/attachments/original/1657735516/227_-_Factsheet_on_Anti-Palestinian_Racism_-_EN.pdf?1657735516

Palestine; it erases freedom of expression about atrocities against Palestinians; it excludes or pressures others to exclude Palestinian perspectives, Palestinians and their allies; and it defames Palestinians and their allies as being inherently antisemitic.

(c) Under the IHRA definition, labelling Israel as an apartheid state or remembering the ongoing Nakba may be construed as 'claiming that the existence of the State of Israel is a racist endeavour.' Advocating for a single democratic state may be construed as 'denying the Jewish people their right to self-determination.' Calling for an end to illegal settlements could be seen as applying double standards because Israel and its supporters often reject the notion that it occupies Palestinian land.

(d) Furthermore, in wrongly conflating criticism of Israel with anti-Semitism, the IHRA definition disregards diverse Jewish views²⁸, hinders the fight against genuine anti-Semitism²⁹ and worsens anti-Semitism.³⁰

The Impact of 'weaponised' Antisemitism on freedom of speech

(e) In the study of the public Facebook group, no explicit 'anti-Zionist' ideology was observed during the review period; hostility towards individuals who advocated for a ceasefire, or the inclusion of pro-Palestinian perspectives was consistent and forceful. One Jewish Australian comments, "I am also sad that I don't feel comfort and safety in mainstream Jewish community spaces because of lateral violence from Zionists."

(f) Anti-Palestinian racism includes defaming Palestinians and their allies as being inherently antisemitic, a terrorist threat or sympathiser, and opposed to democratic values. Numerous artefacts document offline and online activism to 'correct', 'cover-up' or pressure to remove 'hate', which includes billboard signs, stickers, posters and graffiti to 'Free Palestine', 'Boycott Israel', 'Ceasefire now'. The Palestinian flag, which is banned from display in Israel in public places, is described as making Jewish Australians 'unsafe' ('Is this acceptable in Australia? Can it be reported or condemned?'). An older Australian who put a Palestinian flag in the front garden of the Castlemaine RSL with a sign that says "Bendigo Against Genocide" was photographed and asked to remove the flag by a contributor to the group (he refused). The

²⁸ <https://www.smh.com.au/national/as-jews-we-don-t-accept-that-criticism-of-israel-s-government-is-antisemitic-20240201-p5f1o6.html>

²⁹ <https://www.abc.net.au/news/2024-02-15/jewish-australians-anti-semitism-anti-zionism-israel-ihra/103446882>

³⁰ <https://www.middleeasteye.net/opinion/war-gaza-fight-against-antisemitism-shield-israel-genocide>

contributor refers to the person's group as about to start a 'hate rally.' Successful attempts to have the Palestinian flag removed by local councils are shared and celebrated in the group. Posters saying, 'You're not an activist, you're not a liberal. You're just a [expletive] antisemite' and 'always remember antisemitism doesn't help Palestinians' are produced and shared via the group to 'cover up the hate'. Examples are shown of these posters covering posters of a watermelon saying, 'Free Palestine' and 'Boycott Israel'. In another incident, graffiti saying 'Israel is guilty of war crimes' is described as hate speech. Another contributor writes about a visit to the Immigration Museum with his two young daughters when he complained about a child's poster and successfully asked to remove it from the kid's activity section. The picture is of a t-shirt and bag inscribed with the words '#Free Palestine', 'From the river to the sea' and 'Stop the Genocide' and responds to a Museum prompt, 'What is important to you? Design your T-shirt and tote bag that proudly shows your values to the world.' This contributor is widely congratulated for having it taken down, with responses about 'learned hate' and 'unfortunately they don't know any better. They are raised on hatred.') Another contributor shares that when at the public pool she saw a university student wearing a 'keffiah' (Palestinian scarf) ('I went in with how much I care about the death and destruction. I asked why she wore the scarf. She wanted Palestinian people to understand that she was a safe person to approach. She was horrified to learn that currently, the keffiah has a similar threatening effect as the swastika for Jews. That by wearing it, Jewish people will be fearful and distrusting of her. I asked her not to wear it at the pool, where I bring my kids, and she agreed.') This post received overwhelming support.

(g) Jewish Council of Australia Executive Director Sarah Schwartz states,

There is nothing antisemitic about calling for an end to Israel slaughtering children in Gaza. And there is nothing antisemitic about supporting freedom, equality and human rights for Palestinians. The claims that these things are antisemitic are really damaging. They undermine the Palestinian freedom movement, and they dehumanise Palestinians in their struggle.... We have seen in the US the House of Representatives also passed a motion declaring anti-Zionism to be a form of antisemitism. We say that actions like this are not only extremely damaging to the Jewish community. But they give Israel broad cover to continue its campaign of killing and annexation in Gaza and the West Bank.³¹

³¹ <https://www.sydneycriminallawyers.com.au/blog/setting-the-record-straight-the-jewish-councils-sarah-schwartz-on-antisemitism/>

(h) However, as the past six months have strongly illustrated, many leading members of the pro-occupation Zionist movement in Australia are not reliable narrators when it comes to discerning Antisemitism or producing evidence of Antisemitism. Like the contributors to the public Facebook group, they regard anti-zionism as Antisemitic.

(i) David Knoll, Brian Samuel and Helen Shardy argue that the United Nations and anti-Zionists are anti-Semitic and engaging in an online 'pogrom': "anti-Zionism is the proposition that every people on this planet, except Jews, are entitled to the right of self-determination. It is anti-Zionism that is plainly racist... Experience has taught that...those who equate Zionism with apartheid, Nazism, colonialism or racism, are anti-Zionist and antisemitic." Further, they criticised the ABC QandA program for including Randa Abdel-Fattah, Author and academic, for giving "disproportionate extremist anti-Zionist views".³²

(j) NSW government entities must reject the adoption of the IHRA Definition of Antisemitism to protect freedom of expression.

(k) In addition, NSW needs a Human Rights Act³³ to drive accountability and improvement in public institutions, strengthen democracy, and maximise freedom of expression and religious freedoms (along with all human rights).

(l) Vilification complaint mechanisms are insufficient; dehumanisation must be treated as public harm through definitions of dehumanising material that have strong public consensus.

- (a) Vilification and the advocacy of hatred continue to be treated as private harm. While we have laws in most states and territories to target religious vilification, these avenues are ineffective in targeting the scale of online hatred, racism and Islamophobia. Public regulators must be engaged with definitions of clearly vilifying material and impose financial penalties on serial actors and the platforms that enable them. The business model of inciting hatred based on a group's race and religion must be disrupted through proportionate penalties.

³² http://www.davidknoll.com.au/files/JCOM/21st_century_pogrom_aj_n_10_06_21.pdf

³³ See AMAN's submission to the NSW Law Reform Commission inquiry into the Anti Discrimination Act 1977, dated 29 September 2023.

- (b) AMAN has submitted to the Australian Government that states cannot meet their obligations to prevent incitement to genocide under the Rome Statute and to prevent the advocacy of hatred under the International Covenant on Civil and Political Rights through vilification laws alone. Anti-dehumanisation standards that connect to parliamentary codes of conduct, media and online safety regulation must be introduced to treat racism as a public harm and provide a social atmosphere for citizens that supports their right to health and non-discrimination.
- (c) To fully implement Australia's commitment to prevent genocide and ban the advocacy of hatred, the Australian Government should consider introducing anti-dehumanisation standards that are integrated across social and traditional media regulation and parliamentary codes of conduct and provide additional guidance to judicial officers in applying vilification and discrimination laws. AMAN has published working definitions of dehumanising speech and discourse (including through disinformation) (**Schedule A**).
- (d) Much vilification occurs through media or social media. Yet, the vilification framework continues to hold the burden and risk on the victim, allowing gigantic platforms to externalise the social cost while internalising the profits. The Online Safety Act only addresses hatred directed at individuals, not communities. To support a more preventative approach (known as 'safety by design'), Australia needs to clarify harmful forms of hatred encapsulated by dehumanising material.³⁴

4.5 The need to promote community cohesion and inclusion;

(a) AMAN wishes to document the following evidence relevant to community cohesion and inclusion. AMAN has also analysed over 100 instances of anti-Palestinian and anti-Muslim racism in a Facebook group of the Australian Jewish community with 8,900 members between November 2023 and March 2024.³⁵ We observed:

³⁴ [Policy Brief – Dehumanisation – AMAN](#)

³⁵ Australian Muslim Advocacy Network, Observations on manifestations of anti-Muslim and anti-Palestinian racism – November 2023 to March 2024 (Forthcoming report).

- (a) A failure to acknowledge Palestinians as an Indigenous people with a collective identity, belonging and rights in relation to occupied and historic Palestine;
- (b) Israel's violence against Palestinians was justified or denied, erasing the human rights and equal dignity and worth of Palestinians; and
- (c) Anti-Muslim conspiracy theory was shared unchallenged in the group

(b) Unfortunately, these patterns are reflected at a higher level.

(c) The Australian Jewish Association published a video portraying the crowd as chanting "Gas the Jews", which sparked national and international media coverage to characterise the Palestinian protests at the Opera House as Anti-Semitic. The video was later found to be false.³⁶ As JCA Executive Director Schwartz states, "It is concerning the government swiftly reacted to an alleged chant without proper evidence. It shows the government isn't making rational decisions about these issues."³⁷

(d) Peter Wertheim, CEO of the Executive Council of Australian Jewry (ECAJ), described the pro-Palestinian movement as a combination of 'Islamist extremists' and 'Western progressives' who have a 'shared hatred Western liberal democracy.'³⁸

(e) Alex Ryvchin, other CEO of ECAJ, speaking of Gazan refugees coming to Australia, also reframes grievance with Israel through the lens of anti-Semitism: "I think there's a greater concern about the worldview, the values that these people hold, and are they compatible with Australian values and living alongside a Jewish community that they've been raised to hate?".³⁹

(f) Lawyer and National Chairman of the Australia/Israel Jewish Affairs Council, Mark Liebler AC, said on the QandA program, "When it comes to terrorists, do you see Jews walking around with banners saying, "Destroy Hamas, destroy Hamas"? They don't do it.... This is not something which is in line with Jewish tradition. And what do the Palestinians do? Whether it's 9/11 or 7 October, they hand out lollies, and they celebrate when people are hacked to

³⁶ <https://www.abc.net.au/news/2024-02-02/nsw-police-opera-house-protest-video-analysis/103418582>;

³⁷ <https://www.sydneycriminallawyers.com.au/blog/setting-the-record-straight-the-jewish-councils-sarah-schwartz-on-antisemitism/>

³⁸ <https://www.theaustralian.com.au/commentary/politicians-have-failed-to-grasp-new-reality-of-antisemitism/news-story/878a399a9e36177ccc87573a1b2ca4dc>;

³⁹ <https://www.skynews.com.au/australia-news/twitter-personalities-and-journalists-go-into-meltdown-over-australian-values-amid-granting-of-860-visas-to-palestinian-refugees/news-story/390b9ad614b8d92ac9e376583a6f2eac>

death.”⁴⁰ Mr Nasser Mashni, the President of APAN who was on the panel, said, “he’s besmirched our entire people.”

(g) These comments from persons in positions of responsibility essentialise and dehumanise all Palestinians via imputation of a terrorist connection. This deliberate strategy sadly works to activate Australian prejudice and disarm rational thinking.⁴¹

(h) Henry Ergas, an economist, uses the term "Islamist theological Antisemitism," which echoed Mr Wertheim's message. However, this term may confuse and lead to greater difficulties by associating the issue with Islamist theology. It is like the conflation of Israel and its actions with Antisemitism. These politically motivated attempts to tie Palestinian resistance to undefined and demonising concepts work hand in hand with suggesting that all Jewish people are Zionists and support Israel. Both exacerbate racism and need to be comprehensively rejected.

(i) There has been a broader editorial push in Newscorp papers⁴² to suggest that Islam and Muslims are the problem. In one piece dated 25 October 2023⁴³, Alex Ryvchin (ECAJ), Robert Gregory (Australian Jewish Association) and Jeremy Leibler (Zionist Federation of Australia) took turns making comments about the Australian Muslim leadership and community:

- (i) “I am unaware of a single Muslim cleric in this country who has unreservedly condemned the atrocities which included beheading babies, raping young girls and murdering Holocaust survivors,” said Mr Gregory, repeating discredited atrocity propaganda by the Israeli Defence Force.
- (ii) Mr Gregory continues, “the majority have remained silent. Their silence speaks for itself and is an indictment on Australia’s approach to immigration and multiculturalism”.

⁴⁰ <https://www.abc.net.au/qanda/the-israel-gaza-war/103061842>

⁴¹ Vergani, M., Mansouri, F., & Orellana, L. (2022). Terrorism concern and persistence of negative attitudes towards Islam and Muslims. *Journal of Community & Applied Social Psychology*, 32(6), 1029–1046. <https://doi.org/10.1002/casp.2633>

⁴² The following articles are subject to formal press complaint processes by AMAN: Ramesh Thakur, ‘Social justice crowd insists words are violence, but valorises terrorists’, *The Australian* (17 November 2023); Chris Kenny, ‘Complacency exposes the fragility of democracy’, *The Australian* (18 November 2023); Greg Sheridan, ‘Muslim migrants and Western Left create new anti-Semitism crisis’, *The Australian* (9 December 2023);

⁴³ Clarissa Bye, ‘Jewish leaders claim Australian Muslim clerics yet to condemn savage Hamas terrorists’ *The Daily Telegraph*, (25 October 2023).

- (iii) Mr Gregory engages in dehumanisation by attempting to depict Muslims as inherently dangerous and violent and proposes to apply to Muslims some form of exclusion or exile: “There is nothing to talk about with those who cannot separate their religion from terrorism.”
- (iv) Mr Ryvchin states, “This is a battle of humanity against barbarism.” It is noted at this stage that already thousands of civilians had been murdered by Israel’s indiscriminate bombing, and the whole of Gaza had been subject to a siege of food, water, fuel and medical supplies.
- (v) Lawyer and Zionist Federation of Australia spokesperson Jeremy Leibler excuses any legal responsibility for Israel of indiscriminate bombing and the crime of the total siege, saying, ‘Muslim leaders ought to condemn Hamas for bringing this upon their own people.’

(j) Regrettably, most of Australia’s leading Jewish organisations have failed to condemn explicit and implicit racism about Palestinians and Muslims and instead run a false campaign that Australian Muslim organisations tolerate hatred towards Jews and approve of atrocities through media. This “accusation in the mirror” is a technique⁴⁴ to allow harmful behaviours towards the Palestinian and Muslim communities to continue to fly under the radar and flourish.

(k) This also exposes the media’s inability to analyse double standards critically. The media routinely ask Muslims and Palestinians to prove their humanity by criticising atrocities by Hamas. In contrast, Jewish and Israeli persons are never asked to prove their humanity by criticising atrocities by Israel. AMAN has recently submitted complaints to The Australian and The Daily Telegraph.

(l) AJA has engaged in prolific vilification of Palestinians and Muslims online, and never once has the media asked other leading Jewish organisations whether they support AJA’s conduct, condemn it, or should be imputed as being the same as AJA. In contrast, Muslims and Palestinians are routinely homogenised into a monolith, where the collective must be guilty and responsible for the crimes of specific members. That is a form of dehumanisation that has continued for decades.

⁴⁴ Jonathan Leader Maynard and Susan Benesch, “Dangerous Speech and Dangerous Ideology: An integrated Model for Monitoring and Prevention” (2016) 9(3) *Genocide Studies and Prevention: An International Journal*, 77.

SCHEDULE A

DEHUMANISING MATERIAL

(1) Dehumanising material is the material serially or systematically produced or published, which an ordinary person would conclude portrays the class of persons identified based on a protected characteristic (“class of persons”) as not deserving to be treated equally to other humans because they lack qualities intrinsic to humans. Dehumanising material includes portraying the class of persons:

(a) to be or have the appearance, qualities, or behaviour of

(i) an animal, insect, filth, form of disease or bacteria;

(ii) inanimate or mechanical objects; or

(iii) a supernatural alien or demon.

(b) are polluting, despoiling, or debilitating an ingroup or society as a whole;

(c) have a diminished capacity for human warmth and feeling or to make up their own mind, reason, or form their own individual thoughts;

(d) homogeneously pose a powerful threat or menace to an in-group or society, posing overtly or deceptively;

(e) are to be held responsible for and deserving of collective punishment for the specific crimes or alleged crimes of some of their “members”;

(f) are inherently criminal, dangerous, violent or evil by nature;

(g) do not love or care for their children;

(h) prey upon children, the aged, and the vulnerable;

(i) was subject as a group to past tragedy or persecution that should now be trivialised, ridiculed, glorified or celebrated;

(j) are inherently primitive, coarse, savage, intellectually inferior or incapable of achievement on a par with other humans;

(k) must be categorised and denigrated according to skin colour or concepts of racial purity or blood quantum or

(l) must be excised or exiled from public space, neighbourhood or nation.

(2) Without limiting how the material in section (1) is presented, forms of presentation may include,

(a) speech or words;

(b) the curation or packaging of information;

(c) images; and

(d) insignia.

Intention component

If the above definition was used as a standalone civil penalty, it should be complemented by an intention component:

In circumstances in which a reasonable person would conclude that the material was intended to portray the class of persons as not deserving to be treated equally to other humans or to incite hatred, serious contempt or severe ridicule toward the class of persons.

Adding an intention element may make enforcement more difficult and may not be necessary, especially if the definition is used as part of a legal framework where there are already intention components or exceptions available.

See the website for how we developed this working definition.