Review of SA's anti-vilification and anti-discrimination frameworks: summary

South Australia's (SA's) anti-vilification and anti-discrimination laws are being reviewed to ensure the laws effectively prevent and address discrimination and vilification broadly across SA.

The discussion paper *AGD SA Review of SA's anti-vilification and anti-discrimination frameworks* explores ways to strengthen these laws and address gaps in the law.

This fact sheet provides a high-level overview of the main options in the discussion paper. You should read the discussion paper for more detail.

Criminal vilification laws (hate speech and hate crime/conduct laws)

What are they?

Anti-vilification laws, sometimes called hate speech or hate crime laws, provide civil and criminal protections against threats to harm vulnerable people or groups, or actions that encourage other people to harm vulnerable people or groups. They can help prevent and punish this behaviour, and give people affected by it a way to seek justice or compensation.

Criminal vilification or hate speech and hate crime/conduct laws are generally reserved for the most serious incidents of vilification. The *Racial Vilification Act 1996* is SA's main law against vilification.

Why change them?

To protect against conduct motivated by hate and vilification of vulnerable people or groups including on the basis of personal attributes.

The South Australian Royal Commission into Domestic, Family and Sexual Violence (RCDFSV) recommended that a review of SA's anti-discrimination and anti-vilification laws be conducted. Among the RCDFSV's findings was that SA's laws do not do enough to prevent and address the discrimination and vilification that can lead to domestic, family and sexual violence.

How could changes be made?

By potentially:

- making it easier to prosecute certain vilification offences
- introducing new offences, such as a standalone offence of inciting hatred
- expanding vilification laws to protect more groups of people, and including these offences in the *Criminal Law Consolidation Act 1935* (SA)
- introducing 'aggravated forms' of existing criminal offences where they are motivated by hate towards specified vulnerable groups
- increasing maximum penalties.

Civil vilification laws

What are they?

Civil vilification laws allow people who have been harmed by hateful behaviour to take legal action themselves and seek compensation for the harm caused. They don't need police or prosecutors deciding to bring criminal charges.

SA's civil racial vilification protections are in the *Civil Liability Act 1936*.

Why change them?

To increase protection against vilification. Current vilification laws in SA only protect against racial vilification. If people need to take their own court action it can also leave some without protection, because legal costs are high.

How could changes be made?

By potentially:

- expanding the civil vilification laws beyond race to include other characteristics (or vulnerable groups), while keeping important freedom of speech protections
- expanding complaint pathways
- introducing a 'harm-based test', to make it easier to identify when vilification has happened.

Anti-discrimination laws

What are they?

In SA, the *Equal Opportunity Act 1984* provides important protections against discrimination. Discrimination is treating someone unfairly ('unfavourably') because of who they are, or a personal characteristic, such as their race or sex or having a disability.

Why change them?

Changes could make it easier to prove discrimination and provide greater protection against discrimination and harassment**.**

The RCDFSV found SA's laws do not do enough to prevent and address the discrimination and vilification that can lead to domestic, family and sexual violence.

Anti-discrimination laws (cont.)

How could changes be made?

By potentially:

- changing how unfavourable treatment is assessed
- reviewing how indirect discrimination is assessed through the proportionality test, which looks at whether a rule or requirement disadvantages some people more than others
- expanding the Equal Opportunity Act to cover more types of discrimination
- extending the areas of public life where anti-discrimination protections apply
- making changes to exemptions
- including a positive duty for specified bodies to take steps to eliminate discrimination, sexual harassment, vilification and victimisation
- updating the Equal Opportunity Act to increase protection against sexual and other types of harassment
- strengthening accountability for causing, directing or contributing to discrimination or harassment (vicarious liability)
- updating how complaints of discrimination and harassment are managed, such as timeframes for making a complaint, who can make a complaint and how they are made and responded to
- changing how matters are referred to and handled by the South Australian Civil and Administrative Tribunal
- adding extra functions and powers for the Commissioner for Equal Opportunity
- changing how sexual harassment complaints against Members of Parliament and judicial officers are managed
- extending unlawful victimisation (treating someone unfavourably because they have made a complaint) and/or making victimisation a criminal offence
- broadening the protections for people with therapeutic animals beyond accommodation.