



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

Protecting Queenslanders' individual rights and liberties since 1967

Watching Them While They're Watching You

Chair
Legal Affairs and Community Safety Committee

By Email: LACSC@parliament.qld.gov.au

Dear Sir,

Criminal Code and Other Legislation Amendment Bill 2019

Please accept this submission in relation to the change to the definition of murder proposed by this Bill.

The QCCL is an organisation of volunteers, established in 1967. It campaigns for the civil liberties and civil rights of Queenslanders

in *Zaburoni v The Queen* (2016) 256 CLR 482 the High Court held that under the *Criminal Code* in order to establish that a person is guilty of murder the prosecution must show that the accused meant to kill the person by his or her conduct. It is not sufficient to show that the accused was aware that death will occur in the ordinary course of events (at 490). The Court went on to express the view at paragraph 15 that “where the accused is aware that, save for some intervening event, his or her conduct will certainly produce a particular result, the inference that the accused intended, by engaging in that conduct, to produce that particular result is compelling. Nonetheless, foresight that conduct will produce a particular result as a “virtual certainty” is of evidential significance and under the Code it remains the trier of fact must be satisfied that the accused meant to produce the particular result.”

It is our submission that there is no need to change the law.

The Council supports a subjectivist approach to the criminal law.

Subjectivism relies on the notion that individuals can be considered culpable for harm only where they were at the material time aware of the risk of causing that harm, and thus were able to avoid it. This means that it is important that the defendant voluntarily causes the outcome, either by consciously running the risk of that outcome or by actually intending it.

We support this approach because it enhances the rule of law by assuring citizens that they will not be liable to conviction or the exercise of state coercion against them unless they knowingly cause a prohibited harm. The application of this principle ensures that each person is guaranteed the greatest liberty.¹

In this case, the question is what degree of moral culpability is required for the highest level of punishment available to be imposed. It is our view, that the highest level of punishment

¹ Ashworth *Principles of Criminal Law* second edition Clarendon Press 1995 Page 152

qccl.org.au



@LibertyQld

GPO Box 2281, Brisbane QLD 4001 Email: forum.qccl@gmail.com

Enquiries: [REDACTED]

Media Enquiries: Michael Cope, President: [REDACTED]

available must be reserved for the state of mind with the greatest moral culpability namely that the person intended the result.


In that context, we note the views of respected legal scholars such as Professor Andrew Ashworth, that a person can be said to have intended a result if he or she realises that the result was virtually certain to follow from the behaviour in question.² That view is reflected in the ruling of the High Court set out above.

In the circumstances our submission is that the Criminal Code correctly delineates the range of conduct that should fall within the definition of murder.

Having said that we are concerned that even if you disagree with our analysis of the morality the Bill is defective because no serious attempt is made in the Bill to define the relevant terms. This is particularly perplexing when there have been many attempts to do this including, a number of comprehensive reviews by the Law Commission of the United Kingdom and the Law Reform Commission of Ireland. This lack of a definition of the term “reckless indifference” will no doubt result in unnecessary and harmful uncertainty in the law. If the government is not willing to attempt a definition then we would submit that the Committee should consider that an indication that the law should not change from the current position where the line between murder and manslaughter is a bright one.

We trust this is of assistance to you in your deliberations.

Yours faithfully


Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
8 March 2019

² ibid Pages 171-172 and 175