LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Mrs LJ Gerber MP
Ms SL Bolton MP (virtual)
Ms JM Bush MP (virtual)
Mr JM Krause MP

Staff present:
Mrs K O'Sullivan—Committee Secretary
Dr S Pruim—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE CRIMINAL CODE (SERIOUS VILIFICATION AND HATE CRIMES) AND OTHER LEGISLATION AMENDMENT BILL 2023

TRANSCRIPT OF PROCEEDINGS

Thursday, 1 June 2023

Brisbane

THURSDAY, 1 JUNE 2023

The committee met at 11.01 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023. My name is Peter Russo, member for Toohey and chair of the committee.

I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders, past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all now share.

With me here today are: Laura Gerber, member for Currumbin and deputy chair; Sandy Bolton, member for Noosa, via videoconference; Jonty Bush, member for Cooper, via videoconference; Jason Hunt, member for Caloundra, via videoconference; and Jon Krause, member for Scenic Rim.

The purpose of today's briefing is to assist the committee with its inquiry into its examination of the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023, which was introduced into the Queensland parliament on 29 March 2023 and was referred to the Legal Affairs and Safety Committee for consideration.

Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that, under the standing orders, the public may be admitted to, or excluded from, the briefing at the discretion of the committee.

I also remind committee members that departmental officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the Attorney-General or left to debate on the floor of the House.

These proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask everyone present to turn your mobiles phones off or switch to silent mode.

BOGARD, Ms Adele, Acting Director, Strategic Policy and Legal Services, Department of Justice and Attorney-General

ROBERTSON, Ms Leanne, Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General

SHEARS, Mr Michael, Principal Legal Officer, Strategic Policy and Legal Services, Department of Justice and Attorney-General

CHAIR: I now welcome the following witnesses who will brief the committee from the Department of Justice and Attorney-General: Ms Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services; Ms Adele Bogard, Acting Director, Strategic Policy and Legal Services; and Mr Michael Shears, Principal Legal Officer, Strategic Policy and Legal Services. I invite you to make a five-minute opening statement, after which committee members will have some questions for you.

Ms Robertson: Thank you for the opportunity to brief the committee today about the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023. I note that the department has already provided detailed written briefing material to the committee on the amendments in the bill. We also provided a written response to the submission on 17 May 2023. That written response addressed submissions 1 to 23. I note that the department was not privy to submissions 7 and 10 and 24 to 26 at the time that we provided the response to submissions.

In order to give effect to recommendations 7, 8, 9 and 16 in the committee's 2022 report *Inquiry into serious vilification and hate crimes*, the bill amends the Anti-Discrimination Act 1991, the Criminal Code and the Summary Offences Act 2005. The bill also amends the Police Powers and Responsibilities Act 2000 to assist in the enforcement of amendments that give effect to recommendation 16.

In addition to implementing those recommendations in the committee's report, the bill increases the maximum penalty for the offence at section 131A of the Anti-Discrimination Act from 70 penalty units or six months imprisonment to three years imprisonment. Speaking briefly to the amendments to the Anti-Discrimination Act 1991, the bill relocates the offence of serious racial, religious, sexuality or gender identity vilification from section 131 of the Anti-Discrimination Act to the Criminal Code where it is being renumbered as section 52A. That is consistent with recommendation 9 of the committee's 2022 report.

Consistent with recommendation 7 of the committee's 2022 report, the bill also removes the requirement for a proceeding to be commenced only with a crown law officer's written consent. Acknowledging the relocation amendment and renumbering of section 131A, the bill inserts a new provision into the Anti-Discrimination Act which provides that, after commencement, former section 131A continues to apply where a person is already charged with the offence at the time of commencement. For conduct that occurred prior to the commencement of the bill but for which proceedings have not yet commenced, the proceeding may be started under former section 131A as if the bill had not commenced. However, the proceeding may be heard and decided without a crown law officer's written consent.

I turn now to the amendments to the Criminal Code. In addition to amending the Anti-Discrimination Act, part 3 of the bill amends the Criminal Code. Firstly, reflecting implementation of the government's response to recommendation 8 of the committee's 2022 report, the bill creates a new circumstance of aggravation to be applied to these offences: going armed so as to cause fear; threatening violence; disturbing religious worship; common assault; assault occasioning bodily harm; threats; unlawful stalking, intimidation, harassment or abuse; and wilful damage.

The new circumstance of aggravation is also applied to the offences of public nuisance and trespass in the Summary Offences Act. The effect of this circumstance of aggravation is to increase the existing maximum penalty for these offences where the offender is motivated wholly or partly to commit the offence by hatred or serious contempt for a person or a group of persons based on the person's actual or presumed race, religion, sexuality, sex characteristics or gender identity.

Consistent with recommendation 16 of the committee's 2022 report, the bill also creates a new offence, section 52D, into the code which prohibits the public display, public distribution or publication of a prohibited symbol in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended, unless the person has a reasonable excuse. The bill contains a number of exceptions and excuses to the offence. For example, the bill makes clear that a person will not commit the offence if they engage in conduct for a genuine artistic, religious, educational, historical, legal or law enforcement purpose; or for a public interest purpose; or to oppose the ideology represented by the prohibited symbol.

The bill does not prescribe any prohibited symbol and instead sets out a process for prohibited symbols to be prescribed by way of regulation if the relevant minister is satisfied the symbol or image is widely known by the public or members of a relevant group as being solely or substantially representative of an ideology of extreme prejudice against a relevant group. The term 'relevant group' is itself defined in the bill to mean a group of persons who identify with each other on the basis of an attribute or characteristic that is, or is based on, the race, religion, sexuality, sex characteristics or gender identity of the persons. Before recommending to the Governor in Council the making of a regulation to prescribe a prohibited symbol, the minister will also be required to consult with the chairperson of the Crime and Corruption Commission, the Human Rights Commissioner and the Police Commissioner.

As noted earlier, the bill also amends the Police Powers and Responsibilities Act to indirectly give effect to implementation of recommendation 16 of the committee's 2022 report. The amendments to the Police Powers and Responsibilities Act will enable police officers to search a person or a vehicle without a warrant where the officer reasonably suspects the person has committed or is committing the new offence under section 52D of the code of the public display, public distribution or publication of a prohibited symbol. A police officer will therefore have the power to stop, detain and search the person or vehicle and search all or part of a thing that may provide evidence of the commission of the offence.

The minor amendments to the Police Powers and Responsibilities Act in clauses 24 and 27 of the bill are machinery in nature and update sectional references to ensure the accurate operation of existing provisions. Thank you for the opportunity to provide information on the bill. We are happy to take questions.

Mrs GERBER: I wanted to talk about Multicultural Australia's submission and, in particular, their submission to the committee that a cultural group or a community should be given the opportunity to provide a victim impact statement. The reason I want to ask you questions around that is that they said in their oral statement that they did not get an opportunity to present that submission during the victims of crime inquiry. I can see that the department's response refers to the victims of crime inquiry. However, the committee did not have the opportunity to consider their submission in that inquiry because they did not get to present that submission to our inquiry.

Do you foresee any issues with Multicultural Australia's submission that a community should be given the opportunity to present a victim impact statement? I am not sure if you heard their oral evidence. The way they envisioned that might happen is that the victim would be given the opportunity first to provide a victim impact statement and then, if that victim wanted to go back to their community leader and if the community as a whole wanted to provide the court or court process with the impact of that hate crime on the community as a whole, they should be given an opportunity to provide a victim impact statement as well.

Ms Robertson: Chair, I think we might have to take that on notice. I think we would have to think about the provisions in the VoCA legislation itself and I think have a conversation with the prosecutors.

Mrs GERBER: That would be great. I had a whole line of questioning. If you could take on notice as to whether you foresee any issues with that happening, how that could potentially play out and anything else you wanted to inform the committee about that process.

Ms Robertson: Yes.

Ms BOLTON: Because this has been brought up in the hearings we have had this week, my first question goes to why recommendations 4, 5 and 6 do not appear to have been accommodated in this particular piece of legislation. Can I ask why?

Ms Bogard: As you would be aware, the Queensland government's response to recommendation 4 supported recommendation 4 in principle and noted that the recommendation to expand antivilification provisions to capture additional attributes will be considered in the context of the Queensland Human Rights Commission's report titled *Building belonging*. The Queensland government's final response to the *Building belonging* supported in principle the recommendations of that report. Careful consideration is being given to ensuring the recommendations are implemented in a way that is cohesive across the entirety of the proposed new Anti-Discrimination Act and with regard to Queensland's wider legislative context in relation to anti-discrimination provisions. The department notes that the government has committed to introducing legislation in response to *Building belonging* in the current term of government. The implementation of recommendation 4 and any consequential changes to the circumstance of aggravation that may be required as a result—and obviously the new 131A that has been transferred to the Criminal Code—will be considered as part of those broader anti-discrimination reforms. That is where that current recommendation is so that it is holistically considered as part of the review of the Anti-Discrimination Act.

Ms BOLTON: Do we have a projected time line on that?

Ms Bogard: The time frame that has been committed to is that the legislation will be introduced within the current term of government.

Ms BOLTON: With regard to recommendation 5, the Caxton Legal Centre specifically raised lowering the threshold of the civil incitement test in their submission.

Ms Bogard: The response to that is similar. That is being considered as part of those broader Anti-Discrimination Act reforms.

Ms BOLTON: Does that also apply to recommendation 6?

Ms Bogard: Yes.

Ms BUSH: I have a couple of questions. I will start off with the QHRC's recommendation in their submission around expanding the definition of what would be defined as a public place. I believe they wanted to expand it to include workplaces, schools and hospitals. I think you have given a response on that, but I am limited on my laptop. Can you refresh me as to the reasons they could not be included in that definition?

Mr Shears: Looking at the definition at the moment of 'public act', it is moved over to the Criminal Code from the Anti-Discrimination Act and just replicated, essentially. That captures any form of communication to the public, including by speaking, writing, printing, displaying notices, broadcasting, telecasting, screening or the playing of tapes or other recorded material or by electric means and any conduct that is observable by the public, including actions, gestures and the wearing or display of clothing, signs, flags, emblems or insignia. The recommendation raised by the QHRC was whether or not the definition of 'public act' as it applies to 131A—now 52A—should be captured to include workplaces, schools and hospitals.

The short answer is that this bill does not do that, obviously, but it is noted that recommendation 6 did reference an amendment to the definition of 'public act' to achieve a different purpose, obviously. But on the basis of that being considered as part of the report *Building belonging*, as my colleague mentioned earlier, that recommendation would be taken on board during that process.

Ms Bogard: Just to build on what Michael said, if we are talking about public display in relation to the symbol offence in relation to workplaces and schools, as a school is generally not a place the public is entitled to use or access, the display of a prohibited symbol offence would not apply in a school. But due to the operation of subsection 52D(4) (a), it may apply if a symbol were displayed at the school but visible outside the school. In relation to a workplace, it would ultimately depend on the nature of the workplace. Some workplaces could fall within the meaning of public place, but it would be dependent on the nature. For example, a cafe or shopping centre may be considered open to the public for the purposes of public display of the symbol and therefore may be captured by the offence, but other workplaces may not fall within the definition and therefore not be captured. Ultimately, it would depend on the individual circumstances.

Ms BUSH: In the original inquiry we did hear that a lot of these acts, verbal or otherwise, are occurring in workplaces and schools. Maybe it is captured under IR legislation. Are there broader protections for people to stop that kind of behaviour? I think that ultimately we want to drive down that type of behaviour in workplaces, schools and hospitals.

Mr Shears: If the question is whether or not workplace health and safety legislation captures offending behaviour that would be otherwise captured by 131A but is not by virtue of it not being a public act, that is something I would have it take on notice, if you do not mind.

Ms BUSH: I am just trying to work out where those protections are. Do they already exist? If not and they are coming in this act, where are they and will they be addressed, particularly in workplaces.

CHAIR: Can I just ask a question following on from the member for Cooper's question. If an act of vilification occurs in the workplace that, on my reading, would be covered by the new legislation. If someone is vilified in their workplace the new legislation would deal with that. Am I misreading the bill?

Ms Bogard: The current bill does not alter the elements of section 131A that require a public act. That is where decisions about whether or not a workplace is a public place come into play.

CHAIR: A workplace is not a public place but, for example, if I am working in a warehouse and someone does something offensive to me based on my race or characteristics or whatever, would that not be covered by this new legislation?

Ms Bogard: If you were assaulted in the workplace, the new circumstance of aggravation would apply because it would require a public act or that the incident occur in a public place. One of the prescribed offences, the circumstance of aggregation, applies. If that occurred in a workplace, absolutely the new legislation would apply. The symbol offence may apply, depending on the location and circumstances of the workplace and the display. Section 131A would not apply in that circumstance. Again, it depends on the circumstances of the workplace. There are tribunal decisions about the definition of 'public act' in the context of workplaces, both in Queensland and elsewhere, which do relate to workplaces and whether or not they are a public place for the purpose of 131A.

Ms BUSH: What you are saying is if a prescribed offence occurs in a workplace and has the aggravating factor, it will apply. If it is not one of those prescribed offences, if it is verbal threats or something that is not a prescribed offence, then it is carved out of workplaces because it is not a public place.

Mr Shears: No. The concern about the definition of 'public act' raised by the QHRC is really limited to the 131A offence and how it operates now. They recommended the expansion of it so it would put beyond doubt that workplaces are always captured. All other offences that do not reference any kind of public place or anything like that—such as assaults as Adele mentioned earlier—can be committed in a private place, which would include a workplace as well.

Ms BUSH: It is 131A which is shifting from the Anti-Discrimination Act into the Criminal Code.

Mr Shears: That is right.

Mrs GERBER: I just raise the Caxton Legal Centre's submission in relation to social media and their recommendation around the definition of 'public act'. I note that the department's submission identifies that social media in the content of electronic means is captured by the definition. Caxton Legal Centre's recommendation was that social media or a like term be included in the bill itself to make it clearer for people who are trying to explain the offence to victims but also for a prosecution. What is the department's view on that?

Mr Shears: That recommendation by Caxton is largely reflected in recommendation 6, which spoke of amending the definition of 'public act' to reflect the New South Wales provision, which incorporates social media and other electronic methods and just making sure that it relates to the civil and criminal incitement-based and harm-based provisions in Queensland's antivilification laws. Adele did touch on this previously. That does form part of the government's response to the report *Building belonging* and is wrapped up in that.

Mrs GERBER: I think their oral submission went down a slightly different track to that as well. When they presented to us yesterday their oral submission was that, the way the bill is currently drafted, where you have the including provisions it could potentially be clearer and that the way it is currently drafted can include electronic means, and electronic means of communication encompasses social media. That was their oral submission. They were quite clear yesterday in that recommendation, separate to what is in their written submission which the department has responded to.

Ms Bogard: Is that in relation to section 131A? Again, that is the definition of 'public act' that has been relocated from the Anti-Discrimination Act across. No amendments have been made to that definition, and that is what Michael was talking about relates to recommendation 6 and the ongoing consideration of that. Or was that in relation to one of the other provisions; for example, the symbol provision?

Mrs GERBER: I think it was one of the other provisions, but I will have to pull up the transcript to be clear.

CHAIR: We do not have the transcript.

Mrs GERBER: Can you come back to me and I will let you know exactly?

Ms Bogard: Yes.

CHAIR: Again broadly speaking it is wrapped up in the amendments to the Anti-Discrimination Act. You will have to wait for that to unfold to see where we land on vilification.

Ms Bogard: The definition of 'public act', even though it has been relocated from the Anti-Discrimination Act, is also replicated in relation to section 124A of the Anti-Discrimination Act, so those definitions are identical and that is how they have applied in the Anti-Discrimination Act for quite some time. If the definition of 'public act' is altered in either sense, then it has to be addressed holistically with the Anti-Discrimination Act amendments because we would not amend it just for Criminal Code purposes without considering the implications and application to 124A.

Ms BOLTON: Adele, I just want to clarify the chair's question around the application of these laws within workplaces and schools. You mentioned that if an assault occurs then aggravation can be attributed so then it can be accommodated. If there is no assault, what happens then?

Ms Bogard: Just to clarify, have you got an example of the sort of conduct you are thinking of? The circumstance of aggravation is obviously to a specific list of offences, and they include common assault, threatening violence, wilful damage, public nuisance, trespass—there is a range of offences there—so not specifically an assault. What I was getting at before is that if any of the prescribed offences occurred within a school or a workplace that was not a public place, then the circumstance of aggravation could apply. It is just that the displaying a symbol offence has to be a public display, and obviously section 131A of the Anti-Discrimination Act, which has been transferred to the Criminal Code, also requires a public act. Those two provisions are intrinsically linked to the location of the offence.

Ms BOLTON: Wonderful. Throughout the hearings and the submissions, what has been raised—and I think it was raised in 2022 when we did the individual inquiry—is education. I know the minister in her original speech said it is important to ensure that appropriate community education and cultural reform occurs so that the aims of this legislation can be achieved. I think I asked last year what this would look like—in terms of the education of not only the police but the community in general—to support these new offences and whether there has been a budget allocated for that.

Ms Bogard: I note that recommendation 17 of the committee's 2022 report specifically related to community education campaigns in conjunction with organisations such as the QHRC and Multicultural Australia. Similar to the other non-legislative recommendations, recommendation 17 has

been supported in principle and is being considered as part of that broader work with *Building belonging* and the holistic work with the review and reforms of the Anti-Discrimination Act. That is where that is all tied up in at the moment—that holistic review and reform of the ADA and all of the recommendations of the QHRC *Building belonging* report.

Ms BOLTON: Thank you.

CHAIR: I was just looking at the sections that are being transferred over. Broadly speaking, if in my workplace I believe that the words spoken to me are of a threatening nature, depending on the evidence of course, those provisions could be used in the workplace.

Mr Shears: Is the question in relation to 131A?

CHAIR: Yes, sorry. I should have been clearer.

Mr Shears: This is what Adele was touching on earlier. I think it really does depend on the nature of the workplace and the extent to which the public have access to it.

CHAIR: What I was trying to get at is this: I work in a workplace, the public do not have access to it, but one of my co-workers or my boss says something to me which I regard as being threatening. I then would be covered by the new legislation. I know it is evidentiary but I would be able to make a complaint under the new legislation. Or do those threats have to be made in public? That is where I am confused.

Mr Shears: It does have to be a public act. The operation of 131A, with the exception of the removal of the requirement for crown law officer consent, is consistent as it is now. Afterwards it will still be the same, apart from the maximum penalty as well. Whether or not whatever occurs in this hypothetical scenario is considered a public act would be the question. I think there is a question mark about to what extent your workplace is a public place.

CHAIR: Thank you.

Ms Bogard: If it is of assistance, I note the QHRC written submission does reference some case law in relation to workplaces and decisions about 131A and whether or not a workplace is a public place. It ultimately will turn on the circumstances.

CHAIR: Thank you. Sorry to harp on about it.

Mr KRAUSE: We were talking about 131A then so I will ask a question about that. The new section 52B is in relation to a circumstance of aggravation and the attributes around that. It has got two subsections—(a) is in relation to a person and (b) is in relation to a group of persons. Are those two categories of aggravation in a substantial sense the same as those provisions set out in 131A? It is a different type of provision, I understand, but in substance do they cover the same ground, or is new section 52B broader in terms of the coverage of it than 131A?

Mr Shears: To answer that question, there would be overlap with conduct that is covered by both offences. I think that would be accepted. The offence in 131A talks about—

> ... knowingly or recklessly incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race ... in a way that includes ... threatening physical harm towards, or towards any property of ... or inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

So 52B is different because it is not a standalone offence; it is a circumstance of aggravation that is applying to existing offences.

Mr KRAUSE: I understand, thank you. You mention 131A relates to a person or group of persons. In relation to where it talks about presumed race, religion, sexuality and so on of the person or group of persons, is the part that refers to a presumed characteristic already covered in the Anti-Discrimination Act or is that a new addition to the law in Queensland? I know it is about a different matter—about aggravation—but is that an addition to section 131A that we are introducing in this bill?

Mr Shears: You could frame it as an addition. The 131A offence does not capture a presumption based on an attribute, but the circumstance of aggravation does.

Mr KRAUSE: Yes, and we have not had a circumstance of aggravation on these grounds previously, have we? This is the introduction of it.

Mr Shears: Yes.

Mr KRAUSE: But it goes further than the previous Anti-Discrimination Act provision in relation to vilification in introducing the presumption. I have some other questions but I think the deputy chair is ready to recommence her line of questioning from before.

Mrs GERBER: The Caxton written submission talks about the bill relocating the definition of 'public act' without substantive amendment. I think we were getting a bit hung up on the actual definition of 'public act'. Ms Burton from Caxton appeared before the committee this week and she said in her oral submission—

It is broad enough to cover it currently.

By 'it' they meant social media.

We are not asking for it to be included as an extra thing. Within the definition is a list. It says 'including' and then it lists some examples of public acts. The example used that covers social media is the phrase 'or by electronic means'.

They would like to see that it is clearer so they can explain both to victims and to successful prosecutions that 'by electronic means' does include social media. That was their submission. I am interested in the department's response to that.

Mr Shears: I think the furthest I could really put it is that that recommendation is broadly consistent with what is in recommendation 6 of the LASC report, and that is forming a part of the government's response to *Building belonging*.

Mrs GERBER: Okay.

Mr KRAUSE: Going back to where we were before about the introduction of the presumed matter in relation to aggravation, if we have a prescribed offence and someone is alleged to have been motivated by a particular characteristic and the prosecution, in going for a sentence, is saying that there was a presumed characteristic, who is that presumption directed at? Is it saying that the offender is presumed to have held a particular view about a group of persons or a person?

Mr Shears: Yes, that is correct.

Mr KRAUSE: Who has to prove that there was this presumption?

Mr Shears: The prosecution will be required to prove that.

Mr KRAUSE: To which standard?

Mr Shears: The criminal standard, beyond reasonable doubt.

Ms Bogard: It might assist if we give a very simple example. If a person is assaulted because the offender presumes that person is Hindu, for example, but that person is actually a Buddhist, they presumed that they were a person who held a particular attribute and they did not. Or if they assaulted someone because they presumed that they were a Christian but that person actually was an atheist, that is where the presumption comes in. The person is motivated by their hatred or prejudice for Christians, for example, but the person actually did not hold that attribute. Does that make sense? Whereas under 131A they are required to have that attribute.

Mr KRAUSE: How would you prove that though?

Ms Bogard: It would ultimately come down to the circumstance of the offending conduct. If someone is assaulted on the street and there is nothing said or no surrounding circumstances, it would be very difficult to prove, but if someone is assaulted on the street and the person assaulting them is making racial slurs at the time they are assaulting them, then the whole circumstance would be considered and you would presume the fact that they were making racial slurs at the time they were assaulting them does tend to indicate they were motivated by prejudice towards a particular race, for example.

Mr KRAUSE: It sounds like it could be a difficult one to prosecute. Just moving away from the technicalities of it, there was a submission from Equality Australia, which I am sure you would have looked at, that recommended—

... offenders who commit crimes motivated by characteristics or stereotypes they wrongly impute to people with particular attributes—

or groups of people—

... are also treated as having done so 'based on' hatred or serious contempt.

How do you respond to Equality Australia's submission? Is it your position that the provisions as drafted actually cover what they are looking for? It was my view that they went further than the bill in terms of what they are asking for. How do you respond to that?

Mr Shears: The way the provision is drafted at the moment is that the offence—whichever one of the prescribed offences they have committed—has to be proved that it was 'wholly or partly motivated to commit the offence by hatred or serious contempt for a person or group of persons based on' the list of attributes. To the extent whether or not an attribute which is falsely attributed to a group

is captured, I suppose practically speaking that would come down to the facts and circumstances of the case. The department's position is that it is broad enough or open enough as is to potentially capture such circumstances, but it would really be dependent on the facts and circumstances of an individual case.

Ms BUSH: I have a question in relation to sex workers. Before I ask that, I want to acknowledge that these hearings are critical in nature. I think this is a great bill and I am really excited about where it is going and I want to commend you for everything you have done on the bill.

In relation to sex workers, we heard from Respect Inc and Scarlet Alliance in relation to expanding the protected attributes to include sex work. I unfortunately was not at the hearing, but I do accept their evidence that sex workers are vilified like no other profession. I have seen the departmental response. Obviously, there is a lot of work going on in this space around decriminalisation and anti-discrimination. What is the sequencing of how all of this is going to roll out? What is preventing us from also locating those protections in this bill?

Ms Bogard: I would bring you back to recommendation 4 of the committee's previous report, which was to ensure that antivilification provisions include certain additional attributes. Obviously the work of *Building belonging* and the holistic reform and review of the Anti-Discrimination Act will look at all of those attributes. The government is considering those as part of the broader reforms.

Ultimately whether an attribute of sex worker or sex work is included as a protected attribute will be a matter for government. In relation to sequencing, obviously the government has broadly committed to decriminalising sex work in Queensland. Work considering the QLRC's report in relation to decriminalisation and the framework for that is ongoing.

Ms BUSH: Are you able to give any sense of a time frame or, again, is that with the government?

CHAIR: In this term of government.

Ms Bogard: In relation to *Building Belonging* and the introduction of a new Anti-Discrimination Act framework, government has committed to doing that during this term of government. As far as I am aware, no commitment has been made in relation to time frames for the decriminalisation of the sex work industry.

Ms BUSH: Thank you. Chair, you are right.

Mrs GERBER: I want to ask a question following on from the member for Scenic Rim's line of questioning around the presumption, broadening the definition essentially to include 'presumed attribute'. Is there another jurisdiction that has done that in Australia?

Mr Shears: To answer that question, we did take into account the approaches of other jurisdictions. The extent to which the other jurisdictions included the presumption elements is actually not information I have in front of me right now. If you do not mind, I will take that on notice.

Mrs GERBER: That is great, thank you. The follow-up question I had is around how long those jurisdictions have had that presumption in place and whether you can detail any outcomes—successful prosecutions or however that data might be produced by the relevant jurisdiction—in relation to the prosecution around that piece of legislation.

Ms Bogard: We have taken it on notice, but I want to flag that Western Australia is the only other jurisdiction that provides for a circumstance of aggravation to existing offences. The majority of other jurisdictions provides for an aggravating sentencing factor. The Western Australian provision, as I read it, does not include a presumption. It provides that—

(a) immediately before or during or immediately after the commission of the offence, the offender demonstrates hostility towards the victim based, in whole or part, on the victim being a member of a racial group; or

(b) the offence is motivated, in whole or part, by hostility towards persons as members of a racial group.

That is section 80I of the Western Australian Criminal Code for reference.

Mrs GERBER: Based on that, is it fair to say then that Queensland is the only jurisdiction that has—or you will take that on notice and get back to me on that?

Ms Bogard: We will take it on notice for completeness. At this time my understanding is Western Australia is the only other jurisdiction with a circumstance of aggravation.

Mrs GERBER: It does not go as far as Queensland in terms of the presumption of an attribute?

Ms Bogard: Yes.

CHAIR: It may be too early to be asking this question. A component of the submissions that the committee received in relation to the inquiry and the nature of this legislation once it is passed refers to education. Would the department be involved in preparing that material into the future, or is it too early to be thinking about that?

Ms Robertson: That goes back to that recommendation 17 in the committee's report. That will be considered in the context of the new anti-discrimination legislation and what that looks like having regard to the recommendations of *Building Belonging*. That work will be part of that work in that sense. To answer your question simply, it is probably a bit too early to see about the who and the how, so to speak.

CHAIR: Thank you.

Mr KRAUSE: As I understand it, section 52B, circumstances of aggravation, applies to public nuisance and trespass offences. Broadly speaking, public nuisance can include protesting, swearing—things like that. I see Ms Robertson nodding.

Ms Robertson: A wide range of behaviour.

Mr KRAUSE: A wide range of behaviour; yes, that is right. Section 52B includes aggravation for a prescribed offence which includes public nuisance, which may include protest in relation to a person on the basis of their race or a group of persons based on their race, religion and various other attributes. There are many people in our nation who are sometimes concerned about the actions of foreign countries including China. Is it possible that a protester who is protesting against the actions of the Chinese government could be caught up if they are charged with a public offence order under section 52B in circumstances of aggravation on the basis of race?

Mr Shears: The circumstance of aggravation in 52B and also the Summary Offences Act—if I could clarify—does not affect the operation of the base offence, or the simpliciter offence.

Mr KRAUSE: I understand.

Mr Shears: In this scenario, if that person was committing something at a protest event that was already a public nuisance—

Mr KRAUSE: A public disorder offence.

Mr Shears:—the offence has already been committed. To answer the question as to whether or not that person could potentially be captured by the circumstance of aggravation, it really would come down to the facts and circumstances of the case and the conduct that the person engaged in.

Mr KRAUSE: It is possible, though, under the provision as drafted?

Mr Shears: I cannot say it is impossible. So, yes, it is possible.

Ms Bogard: Obviously they would need to meet the elements of public nuisance under section 6 of the Summary Offences Act—

Mr KRAUSE: I understand.

Ms Bogard:—in addition to the elements of the circumstance of aggravation. Ultimately, that comes down to the circumstances.

Mr KRAUSE: I understand. The Queensland Council for Civil Liberties indicated some reservations about the circumstance of aggravation applying to public disorder offences. I think one of the reasons was on the basis that it may impinge people's freedom of speech, and I tried to ask about the example in terms of protesting and freedom of speech. Can I ask a question about the prohibited symbols provision please? We have asked questions of other witnesses about it being in regulation, not in legislation. Why were the CCC, the QPS and the QHRC listed as the people that a minister must consult with prior to prescribing something to be a prohibited symbol?

Ms Bogard: Chair, respectfully, as the member's question appears to raise matters of government policy—

CHAIR: It does.

Ms Bogard:—I suggest—

CHAIR: It is a matter that should be left for debate on the floor of the House or the question should be addressed to the minister.

Mr KRAUSE: Really?

CHAIR: Yes.

Mr KRAUSE: Can I ask another question?

Mrs GERBER: Rephrase.

CHAIR: I do not know if rephrasing it is going to get you out of it.

Mr KRAUSE: In what respect does the QPS and the CCC in particular—I sort of understand the QHRC—relate to or contribute to a discussion about what is a prohibited symbol or what should be a prohibited symbol?

CHAIR: I do not know if that has improved the question.

Mr KRAUSE: That is not a question of policy.

CHAIR: All right.

Mr KRAUSE: Can the department answer that at all?

Ms Bogard: I could give you a little bit of information. I am not straying into policy, but obviously if we are talking about right-wing extremists, for example, the CCC and QPS may hold intelligence information about symbols that may be used in that arena.

Mr KRAUSE: Or any type of political extremist.

Ms Bogard: That might inform the minister's decision-making.

Mr KRAUSE: Okay. I have a couple more questions, but I am conscious of the time. I am happy to keep going.

CHAIR: How much time do you think we have?

Mr KRAUSE: Seven minutes.

CHAIR: About that. All right.

Mr KRAUSE: In relation to the QHRC's evidence here the other day—on Monday I think it was—the commissioner mentioned—and it was partly in response to one of my questions—that perhaps people should consider seeking legal advice before getting a particular tattoo if it was a prohibited symbol. That arose out of a discussion about the elements of the offence which is in relation to prohibited symbols, the display of which might reasonably be expected to cause a member of the public to feel menaced. There has been concern raised about the uncertainty of that provision in that it is not a pure objective provision because the word 'might' introduces a huge element of subjectivity. How do you respond to those criticisms and concerns raised by other submitters including the QLS, the Queensland Law Society, who were at sevens and eights and nines about what their position was, but they did express concerns about it? How do you respond to criticism and concern that it is introducing a very uncertain offence when it comes to the display of prohibited symbols because of the word 'might'?

Ms Bogard: Obviously the test 'might reasonably be expected' will ultimately be subject to judicial interpretation in terms of how that applies. I think a couple of submitters on Monday mentioned that reasonableness is well established at common law. The decision in relation to the threshold for that offence is the government policy decision that was made. Obviously that 'might' could be a different term which would increase or lower the threshold either side. It could be 'would reasonably be expected', so a slightly higher threshold.

Mr KRAUSE: It could be that, but it is not that.

Ms Bogard: In drafting the provision the intention on our end was to ensure that a court consider the effects of a symbol on any individual or class of persons. That is as far as I can take it. I agree that it is not an ordinary person test because it is based on a member of the public, but the actual interpretation of that is ultimately a matter for judicial decision and the setting of the threshold is a matter for government policy.

Mr KRAUSE: I take your point about it being a matter of judicial judgement and discretion. That is a long way down the track though. Someone will have been charged and taken to trial before it gets anywhere near that, and that is problematic for a range of reasons. I know we are talking about symbols that have already been prohibited. However, we do not know what will be prohibited in the future; it is subject to regulation only.

CHAIR: All right. The question has been answered unless Ms Robertson—

Mr KRAUSE: I was coming up to a new question, Chair.

Ms Robertson: I think the heart of the question is actually about the threshold and that is a government policy, in a sense. I do not think we can take it any further this morning.

Mr KRAUSE: Chair, I asked how you deal with those concerns—

CHAIR: The question has been answered by the panel. We have two minutes and 25 seconds left. Sandy, do you have a question? It will probably be our last question.

Ms BOLTON: No, someone else can have it.

CHAIR: Jonty?

Ms BUSH: I am not sure where Victoria is at in relation to the implementation of its legislation around prohibiting the display of symbols. Did you have any engagement with Victoria around what they were doing and any learning from that in relation to that display offence?

Ms Bogard: Victoria does have legislation prohibiting the display of—I am just trying to find the section in front of me.

Mr KRAUSE: Objective test?

Ms BUSH: I am more interested in whether there were any learnings that had come. I know it is very early days and so it may not be able to be answered.

Ms Robertson: Basically they have an offence of public display of symbols in their Summary Offences Act. They have a specific offence in there and it is operational, as we understand it. We cannot really take it any further in relation to the experience of the operation of the section.

Ms Bogard: Section 41K of the Summary Offences Act in Victoria provides a person who intentionally displays a Hakenkreuz in a public place or in public view in circumstances where the person knows, or ought to know, that the symbol is a symbol associated with Nazi ideology commits an offence. That is their current offence provision.

Mr KRAUSE: That is more of an objective test, isn't it?

CHAIR: There were some questions taken on notice. I am going to read them as best I can. Multicultural Australia suggests that communities be given the opportunity to provide victim impact statements for vilification or hate crimes.

Ms Robertson: In relation to that question, can I clarify? I thought that you also wanted to know how that might actually play out when it is operationalised.

CHAIR: Yes, foresee what might arise out of this process. I think this is also a part: how might it work in practice, noting you might need to consult with the DPP? Are there any protections in the Work Health and Safety Act to prevent vilification? The last one I believe is: in relation to the presumption of attributes in section 52B, is there any other Australian jurisdiction that has done this? If so, what are the—I do not know if they can answer that one—prosecution outcomes?

Mrs GERBER: There is not much.

CHAIR: If you have issues answering those questions by 6 June, I ask you to communicate with the secretariat who, I have been assured, will be more than accommodating of all reasonable requests. Thank you. That brings this briefing to a conclusion. Thank you for your participation. A transcript of these proceedings will be available on the committee's webpage in due course. I declare the public briefing closed.

The committee adjourned at 12.01 pm.