

Criminal Code (Serious Vilification and Hate Crimes) Amendment Bill 2023

Submission No: 3
Submitted by: Multicultural Australia
Publication: Making the submission and your name public
See attached:



**MULTICULTURAL
AUSTRALIA**

it's who we are

**Criminal Code (Serious Vilification
and Hate Crimes) and Other
Legislation Amendment Bill 2023**

14 April 2023

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: LASC@parliament.qld.gov.au

Dear Committee Secretary,

Re: Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023

Thank you for the opportunity to make a submission addressing the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023.

Multicultural Australia strongly supports this Bill, which will implement select legislative reforms recommended by this Committee in its Report: *Inquiry into serious vilification and hate crimes* (No. 22, 57th Parliament).¹ We also welcome the Government's continuing commitment to extensive consultation with key community stakeholders in developing this legislative response.

As a member of the Cohesive Communities Coalition, Multicultural Australia has a strong commitment to strengthening the legal protections that will support Queensland communities to live safely and peacefully and protect and foster diversity. Through our work as a major settlement provider for migrants and refugees in metropolitan and regional Queensland, we are deeply committed to advancing multiculturalism and building inclusive communities where everyone belongs. As we have previously noted, we consider that this community engagement is vital to the creation of workable, enforceable laws that will achieve their desired purpose.

For any queries in relation to this submission, please contact Rose Dash, Chief Client Officer, Multicultural Australia at [REDACTED] or [REDACTED].

Yours sincerely,

[REDACTED]

Christine Castley
CEO, Multicultural Australia

¹ Recommendations 7, 8, 9 and 16 of the Report.

Introduction

Multicultural Australia strongly supports the reforms proposed by the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023 (the Bill) and supports its passage in its current form. In this submission, we express our support for the Bill and offer minor suggestions for inclusion for the Committee's consideration.

We recognise that the legislative reforms proposed by the Bill follow extensive consideration and consultation, including through the Parliamentary Inquiry into Serious Vilification and Hate Crimes,² the Government response to the Committee's Report,³ the Issues Paper released and discussed at the Queensland Government Roundtable with key stakeholders,⁴ and the oral and written submissions provided in response.

We acknowledge that the focus of this Bill is to implement recommendations 7, 8, 9 and 16 of this Committee's Report, as well as to amend s 131A of the *Anti-Discrimination Act 1991* (Qld). While supporting this approach, we submit that implementation of the remaining recommendations should be a priority for the Government. In particular, and as noted below, we emphasise the importance of education – to support public awareness and culturally capable service delivery – and note the value in implementing the non-legislative reforms proposed by this Committee in conjunction with the legislative reforms proposed by the Bill.

Below, we respond to the substantive reforms proposed by the draft Bill.

Key reforms:

Removing the requirement for written consent of the Attorney-General or Director of Public Prosecutions before commencing a prosecution for serious vilification:

Multicultural Australia supports this recommendation. We consider that this reform will remove a

² The Report for which was tabled on 31 January 2022: Legal Affairs and Safety Committee. Report No. 22, 57th Parliament. *Inquiry into Serious Vilification and Hate Crimes*. 31 January 2022.

³ Which supported, or supported in principle, all of the recommendations made by the Legal Affairs and Safety Committee.

⁴ Convened on 31 October 2022 and attended by the Attorney-General for Queensland, the Minister for Police and Corrective Services, the Department of Children, Youth Justice and Multicultural Affairs, the Queensland Human Rights Commission, members of the Cohesive Communities Coalition (including Multicultural Australia staff and members of Multicultural Australia's Future Leaders Advocacy Group, Queensland African Communities Council, Islamic Council of Queensland, Access Community Services, Queensland Jewish Community, Queensland Chinese Forum, Aboriginal and Torres Strait Islander Service, Gold Coast Sikh Association, Islamic Women's Association of Australia, Queensland Multicultural Council) and other community organisations.

practical obstacle to enforcement and increase the utility of this provision.

Introduction of a statutory circumstance of aggravation regarding hate/serious vilification into the Criminal Code and *Summary Offences Act 2005* (Qld) to apply to criminal conduct:

Multicultural Australia strongly supports this proposal and welcomes the strength of this legislative response. We particularly support the introduction of the test for the application of the circumstance of aggravation in clause 52B as one based on the whole or partial motive of the offender. We consider that this test provides clarity and guidance for police and the community about hate crime (and will therefore support appropriate charge and prosecution decisions), aligns with international precedent,⁵ and is consistent with the recommendation made by the Queensland Human Rights Commission in *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*⁶ to require proof that discrimination was “one of the reasons” for the treatment in redefining the test for direct discrimination as a test of unfavourable treatment (and with the test applicable under federal anti-discrimination law).

Notwithstanding our strong support for this provision, we offer the following minor suggestions:

- The addition of a further sub-clause to s 52B, that: “*It is immaterial if the offender was also motivated by another factor*”.⁷
- Establishing the right for the relevant community impacted by the hate crime, or from which the victim of crime was a member, to make a Victim Impact Statement.
- Enlivening judicial discretion in sentencing (to cover circumstances where police have not identified the aggravation but a judge considers it appropriate).

Relocating s 131A from the *Anti-Discrimination Act 1991* (Qld) into the Criminal Code:

Multicultural Australia supports this important reform, which we consider reflects the gravity of the conduct that it seeks to address. We also support the framing and scope of the proposed transitional provision.

⁵ For example, under the *Crime and Disorder Act 1998* (UK), there is a statutory aggravation for racially motivated offences that are triggered where the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

⁶ Queensland Human Rights Commission. July 2022.

⁷ This would also align with s 28(3) of the *Crime and Disorder Act 1998* (UK).

Creating a criminal offence that bans the public display of hate symbols:

Multicultural Australia supports the introduction of a complementary criminal offence⁸ banning the public display, distribution or publication of hate symbols. We support the proposed definition of “prohibited symbols” and appreciate that it has been informed by feedback from community stakeholders in relation to the complexity associated with particular symbols.⁹

We welcome that this new offence will capture both offline and online conduct, and consider this broad scope to be consistent with the spirit and intent of the recommendations made by this Committee in its Report.¹⁰

Given the recognised complexities, we welcome the requirement for consultation preceding listing a prohibited symbol under s 52C(4). However, we consider that the consultation requirement should extend to encompass the views of relevant communities. We propose that this could be achieved by amending s 52C(4) through the addition of a further subsection listing a nominated representative that reflects the views of relevant communities as a person with whom consultation about the proposed recommendation is required.¹¹

Increasing the maximum penalty for the offence of serious racial, religious, sexuality or gender identity vilification from six months to three (3) years imprisonment:

Multicultural Australia supports this proposed reform, which we consider appropriately reflects the seriousness of these offences, aligns with incitement of violence laws, and enlivens the ability to issue a warrant to assist with the investigation of offences.

Additional considerations

As noted in previous consultations, we consider the community response to the proposed legislative reforms critical. Understanding of the legislative changes, and public faith and confidence in the laws, is vital. Introduction of the legislative changes should be accompanied by

⁸ Part 2, Chapter 7A of the Criminal Code.

⁹ Including the swastika, which has profound meaning for religions including Hinduism, Buddhism and Jainism and has been misappropriated by Nazi ideology as a symbol of hate.

¹⁰ The Committee recommended that “the Queensland Government adopt the definition of ‘public act’ in section 93Z(5) of the *Crimes Act 1900* (NSW), which incorporates social media and other electronic methods, and ensure it applies to civil and criminal incitement-based and harm-based provisions in Queensland’s anti-vilification laws” in the context of their acknowledgement of “the proliferation of vilifying commentary on various social media platforms” and their broad recommendation that “the public nature of social media usage needs to be recognised in the definition of ‘public acts’ for the purpose of anti-vilification legislation. See p 47 of the Report.

¹¹ The discussion in relation to the Nazi symbol, referenced in the Committee’s Report, highlights the importance of consulting with not only Jewish, but also Hindu, Sikh and Jain communities.

a wide-ranging implementation process that includes communication, education, resourcing, and carefully planned and staged lead-in time. Multicultural Australia, along with other members of the Cohesive Communities Coalition, is committed to contributing to this important community development work.

We note this Committee's recommendation that the Queensland Government develop community education campaigns in conjunction with relevant organisations to educate the community about vilification and hate conduct.¹² We consider that implementation of this non-legislative reform should accompany this tranche of legislative reforms, to ensure that the laws operate as intended and to minimise unintended consequences. Multicultural Australia remains committed to ongoing engagement in this important work.

We also acknowledge the strong consensus, on the part of community stakeholders and government, in relation to the importance of developing policing and judicial capacity to enforce the laws in a culturally safe and competent way. We emphasise the importance of properly resourced training in this regard.

¹² Recommendation 17 of the Report.