

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

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Australian Feminists for Women's Rights

AF4WR submission to inquiry of the Legal Affairs and Safety Committee into CRIMINAL CODE (SERIOUS VILIFICATION AND HATE CRIMES) AND OTHER LEGISLATION AMENDMENT BILL 2023

Australian Feminists for Women's Rights (AF4WR) formed in mid-2022 to produce and provide advocacy on women's and girls' sex-based rights, informed by contemporary, credible evidence regarding these matters. We raise three core issues in relation to the proposed legislation:

1. Protections for Queensland women and girls against misogyny, hate and vilification is insufficient;
2. The potential for the proposed law change to restrict freedom of association and speech and/or be misused by the Government and/or vexatious individuals; and
3. Maintaining community confidence in the application of hate crime and vilification laws.

Each section contains recommendations for amendments to the proposed legislation, which are listed in summary at the end of this submission.

Issue 1: Protections for Queensland women and girls against misogyny, hate and vilification is insufficient

Women in Queensland have argued for a number of years for sex to be included in the Anti-Discrimination Act 1991 (the Act) as a protected category for vilification. This issue has been pursued as part of the grassroots campaign against the sexist slogans on the Wicked Camper vans.¹

At the time the Queensland Government refused to include sex as a protected characteristic under vilification despite its inclusion under the discrimination provisions. Instead a band-aid solution to restrict the registration of vehicles that did not comply with advertising standards was put in place. This was easily avoided by Wicked Campers who proceeded to register their vans in other states. The lack of action resulted in a Coalition Federal Government urging State and Territory Governments to do something to get these misogynist slogans inciting direct violence, including sexual violence against girls, off the streets².

If the Queensland Government continues to deny Queensland women and girls these protections when it once again has the opportunity to rectify this disappointing decision, and continues to ignore the real threat to women and girls of misogyny, it will be demonstrating a disregard for their safety

¹ <https://www.brisbanetimes.com.au/national/queensland/wicked-camper-van-slogans-labelled-violent-sexist-20150411-1mj4k2.html>

² <https://www.theguardian.com/australia-news/2019/mar/08/sexist-misogynistic-coalition-moves-to-restrict-wicked-campers-slogans>

that contradicts its claimed commitment to support and protect them. Women and girls in Queensland believe what you do, not what you say.

This is another opportunity lost. Another opportunity to define who we are as a state – as a community we can clearly indicate that we do not accept public contributions that incite violence against women.

The Queensland Government's Plan to Prevent Violence Against Women (the Plan) finished last year³. What is the Plan now? Has the Government given up on this goal? The Plan states that violence against women is not new: "What is new is the growing recognition that acts of violence against women are not isolated events but rather form a pattern of behaviour that violates the rights of women and girls, limits their participation in society and damages their health and wellbeing."

The Plan indicated that 4 out of 5 victims of sexual assault are female. It also confirmed: "There is a relationship between the consumption of sexually violent pornography, sexually violent movies, news headlines that endorse rape myths, sex-stereotyping in video games, or exposure to degrading images of women and attitudes that support violence against women." The least we can do as a community is include sex as a specific protected characteristics for vilification and hate crimes.

Recommendation 1.1: AF4WR recommend that the Queensland Government recognise the real and constant threat that misogyny presents for women and girls in Queensland. Sex should be included as a clearly protected characteristic and the existing and proposed legislation (and any related legislation) should be updated accordingly.

Example:

"124A Vilification on grounds of sex, race, religion, sexuality or gender identity unlawful"(Anti Discrimination Act 1991)

and

52B Circumstances of aggravation for particular offences

(1) It is a circumstance of aggravation for a prescribed offence that the offender was wholly or partly motivated to commit the offence by hatred or serious contempt for a person or group of persons based on—

(a) in relation to a person—the race, religion, sexuality, sex characteristics or gender identity of the person, or presumed race, religion, sexuality, sex characteristics or gender identity of the person; or..." (Criminal Code)

³ Queensland Violence against Women Prevention Plan 2016-2021, The State of Queensland (Department of Communities, Child Safety and Disability Services) 2016

Recommendation 1.2: Provisions should be clearly made to ensure that discrimination and vilification against a person because of their sex can relate to their biological or legal sex.

If the Queensland Government continues to ignore women as a sex-based class and continues to ignore the reality of sexism, sexist behaviour and misogyny it will continue to find itself on the wrong side of the present, not just the wrong side of history.

The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression in 2021 calls for an international approach to address sexist hate speech.⁴ This is five years after the Council of Europe published its report on sexist hate speech, calling for explicit laws to prevent such speech⁵. Here is an opportunity to be the first step in that international journey, for Queensland to lead the way.

“Every ~~man~~ person is guilty of the all the good ~~he~~ they did not do.” – Voltaire. Quote amended as we are asking Queensland leading women with the power to help make the Queensland a safer, better place for all women in Queensland.

Issue 2: The potential for the proposed law change to restrict freedom of association and speech and/or be misused by the Government and/or vexatious individuals

The proposal provides the responsible Minister the power to designate a hate symbol. Determining the status of symbols is defined as a regulatory change to enable designation of prohibited symbols without passage through parliament. This may provide flexibility, however it also creates in the future, should a Government or regulator choose to pursue an ideological agenda, an avenue to target a particular group or community. For example, could a Government consider the inclusion of symbols used by groups that disagree with Government policy as hate symbols? Would this lead to that group being vulnerable to negative impacts of these laws?

The oversight offered for this potential misuse of power only requires the Minister to consult with certain officials as defined in the Act, it does not require agreement from these officials. It is noted a group or individual targeted unfairly by these laws would need to have access to the financial means to challenge the laws in court.

Recommendation 2.1: Consider an amendment to require consent from two of the three officials identified in 52C Prohibited symbols (4) to the prescription of a prohibited symbol to ensure a Government does not misuse the provision.

It is unclear if the proposed changes will maintain the balance between freedom of expression and association in all circumstances. AF4WR acknowledge that there are elements to the existing and

⁴ <https://link.springer.com/article/10.1007/s11196-022-09884-8>

⁵ Council of Europe (2016) Report of Seminar on Sexist Hate Speech

proposed laws that reflect community expectation and play a role in setting the tone in our communities that vilification and hate speech are not acceptable public behaviour. However, the Bill proposes the removal of a check and balance where consent is required from the Attorney-General or the Director of Public Prosecutions before a proceeding can be commenced under section 131A of the Anti-Discrimination Act while also relocating the provision to the Criminal Code.

Given this removal, which may be considered an appropriate step to better align this offence with other offences, the stakes are higher on the possibility of vexatious complaints. This is particularly the case given the burden of proof placed on a defendant.

Across public mediums the tone of debates about contentious issues and the policing of views has grown from social rejection of the views to social rejection and sanction of the person.⁶⁷ This leaves laws like those proposed open to abuse by the current and future Governments as well as by vexatious individuals seeking to do harm to an organisation or individual. Vexatious complainants will benefit from the changes due to the shift of burden on defendants to engage the legal system at a cost to them to show their actions are reasonable to avoid penalty. This assumes the individual and/or organisation has the means to do this.

Community organisations and service providers and public servants are currently extremely cautious to participate in any public debate or discussion that includes the considerations of sex, gender and gender identity. The comprehensive consideration and consultation on issues impacting women and girls could be adversely impacted by some elements of these proposals without a clear commitment to freedom of association and expression. AF4WR are deeply concerned, for example, that a vexatious complaint could be directed at a women's organisation advocating for single sex services and spaces for the most vulnerable women and girls in the community.

We refer the committee to the submission made by Professor Nicholas Aroney and Dr Paul Taylor (submission no 21 to Inquiry into Serious Vilification and Hate Crimes), which recommended a holistic approach to addressing vilification and hate crimes and their precursors by the states. This submission also drew attention to the international obligations for maintaining the balance of these laws between freedom of expression and association and the freedom from vilification and hate speech.

Recommendation 2.2: Adopt a holistic non-ideological approach to this issue, including education across communities and public service provision that supports healthy public discussion and debate whilst promoting an understanding of discrimination, legal protections and pathways to equality.

In the recent discussion and inquiry into the proposal to introduce gender self-identification, service providers and community organisations that are run by people who have spent their lives dedicated to the wellbeing of Queensland women and girls were concerned about voicing their concerns (including by anonymous submission). The Bill proposes a pathway that may further contribute to this impact on the public discussion and debate.

⁶ <https://www.abc.net.au/news/2022-05-31/yassmin-abdel-magied-says-drama-finds-me-/101112186>

⁷ <https://www.theguardian.com/books/2023/mar/15/jk-rowling-views-transgender-issues-many-folks-deeply-unhappy>

It is of particular concern that the Attorney-General has indicated that she expects the laws to be used in similar situations to the Let Women Speak rally in Melbourne not only against the neo-Nazi contingent but against feminists that attended the Let Women Speak rally. The Attorney-General has also indicated the laws could be used against health professionals who misgender transwomen in hospitals⁸. That is, the Attorney-General appears to expect that public servants engaging with patients in situations where biological sex matters in a high-pressured environment will be subject to these laws if they refer to the patient as their biological sex.

Recommendation 2.3: Consider a clearer indication of the public interest to include the freedom to express views that may not be held by the Government of the day and provide for particular protections for public servants and organisations and service providers that may be eligible for or receiving public funding.

Issue 3: Maintaining community confidence in the application of hate crime and vilification laws.

In 2015 Gelber and McNamara⁹ reported a high level of support and confidence in the application of hate crime and vilification laws. To continue to ensure the protection of vulnerable communities and support public debate and discussion on issues that impact these groups in different ways, the committee is encouraged to consider the recommendations above and engage with women's groups with respect in this conversation that acknowledges the importance of sex based class analysis.

SUMMARY – RECOMMENDATIONS

- Recommendation 1.1: AF4WR recommend that the Queensland Government recognise the real and constant threat that misogyny presents for women and girls in Queensland. Sex should be included as a clearly protected characteristic and the existing and proposed legislation (and any related legislation) should be updated accordingly.
- Recommendation 1.2: Provisions should be clearly made to ensure that discrimination and vilification against a person because of their sex can relate to their biological or legal sex.
- Recommendation 2.1: Consider an amendment to require consent from two of the three officials identified in 52C Prohibited symbols (4) to the prescription of a prohibited symbol to ensure a Government does not misuse the provision.
- Recommendation 2.2: Adopt a holistic non-ideological approach to this issue, including education across communities and public service provision that supports healthy public discussion and debate whilst promoting an understanding of discrimination, legal protections and pathways to equality.

⁸ S Fentiman, 29 March 2023, Queensland Parliament record of proceedings, p.730

⁹ K Gelber and L McNamara (2015) The effects of civil hate speech laws: lessons from Australia

- Recommendation 2.3: Consider a clearer indication of the 'public interest' to include the freedom to express views that may not be held by the Government of the day and provide for particular protections for public servants and organisations and service providers that may be eligible for or receiving public funding.