

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

**Submission No:** 21  
**Submitted by:** Caxton Legal Centre Inc  
**Publication:** Making the submission and your name public  
**See attached:**

3 May 2023

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

By email: [LASC@parliament.qld.gov.au](mailto:LASC@parliament.qld.gov.au)

Dear Committee

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

Thank you for the opportunity to provide feedback on the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023<sup>1</sup> (the Bill). At the outset we acknowledge that many of the changes proposed in this Bill have been called for by the communities who will benefit most from them, and commend this committee and the parliament for responding thoughtfully.

In relation to the Bill we make the following four observations and recommendations.

1. Improve alignment of anti-vilification provisions to the *Anti-Discrimination Act 1991* (AD Act) list of protected attributes (s7 AD Act)

Recommendation 4 of the LASC Inquiry Report recommended that:

*... the Queensland Government ensures anti-vilification provisions (in both civil and criminal laws) cover the attributes of: a) race; b) religion; c) **gender; and/or sex**; d) sexual orientation; e) gender identity and/or gender expression; f) sex characteristics and/or intersex status; g) **disability**; and h) medical status, including HIV/AIDS status. (emphasis added)*

We reiterate the position from our LASC Submission (Recommendation 12(d)), that the Queensland Government should improve the usefulness of the offence regime including expanding the provision to prohibit vilification on the basis of other specific attributes including age, disability and sex. The Bill falls short of achieving what the LASC Inquire report recommended, and what was called for by many contributors to the LASC process including Caxton.

We understand that the attribute of sex characteristics is intended to clarify an important aspect of protective coverage for intersex people, and welcome that addition, but query why other (including closely associated) attributes, remain unprotected. In particular it is likely to create confusion around coverage for women, who may now find themselves protected on the basis of certain bodily features associated with their gender, but not simply because they are women.

**We strongly recommend the expansion and improved alignment of the anti-vilification provisions to all existing and future protected attributes contained in s7 of the AD Act, or at least sex, disability and age.**

---

<sup>1</sup> Caxton Legal Centre has also previously provided a submission to this Committee in its 2021 Inquiry into Serious Vilification and Hate Crimes (**LASC Inquiry**), and appeared before it during the public hearing.

## 2. Expand application of proposed circumstances of aggravation to sexual assault offences

The Consultation Draft proposes the inclusion of circumstances of aggravation to apply to prescribed offences in the Criminal Code (ss69, 75, 207, 335, 339, 359, 359E and s469) and s6 (public nuisance) of the *Summary Offences Act 2005* (Qld) based on hatred or serious contempt for persons falling within the recognised protected attributes. None of the provisions listed relate to sexual violence.

We noted in our LASC Submission, with reference to effectiveness of existing penalties for offences of vilification in Queensland, that:

*It may be preferable to consider whether relevant categories of hatred and vilification should be considered aggravating features of a range of existing other offences (including assault, sexual assault and various public order offences).*

It remains a concern to us that in Queensland some people continue to experience sexual violence that is motivated by hatred on the basis of their gender, gender identity, sexuality, race and other protected attributes including lawful employment as a sex worker. There is no reason to exclude sexual offences from the list of offences which may include hatred as an aggravating feature.

**We recommend sexual assault and related sexual offences be included in offences which may include hatred as an aggravating feature.**

## 3. Definition of 'public act'

We note the Bill relocates the definition of 'public act,' without substantive amendment.

Recommendation 6 of the LASC Report states:

*The committee recommends 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.*

The current definition of 'public act' includes the words 'or by electronic means' but does not expressly reference social media. In our LASC Submission, we addressed the issues surrounding the use and regulation of social media and online forums to commit acts of vilification and hate. We drew specific reference to the Queensland Police Service Facebook page, which attracts a constant stream of public commentary that may incite hatred towards protected groups, most notably Aboriginal and Torres Strait Islander people. In our oral evidence before the LASC, we relayed shocking vilification content from that page. It must be made explicit in the legislation that communication on social media is caught by the definition of public act.

**We recommend including 'posting and commenting on social media' in the examples list of forms of communication in those definitions.**

## 4. Proposed public display offence

### *A special class of vilification*

This proposed offence selects one way of communicating vilification content and treats it more seriously than all other types of vilification. However, we believe that vilification should be measured by the hatred and distress it causes, not the method of communicating. For example, a swastika flying above a synagogue as occurred in Brisbane in 2021, and a pig's head left outside a mosque as occurred on the Gold Coast in 2022, send comparable messages of hatred towards people of faith, but are treated differently under Queensland law. The first will now be prohibited by this new public display offence but would also plainly have constituted public nuisance under the *Summary Offences Act 2005 (Qld)* at the time it occurred and may also have met the threshold for serious vilification given the location and the history of that flag. It was reported in the media in 2022 that a person was charged with wilful damage in respect of the pig's head, a charge that is not an obviously comfortable fit for conduct of this nature. It remains unclear (a) whether that charge was sustained, and (b) whether these reforms will add anything at all to the current options available to the Queensland Police if that conduct occurred again.

### *Too low a threshold for criminalisation, especially when the civil threshold remains high*

We have previously raised concerns in other consultations/forums around the low threshold for criminalisation that exists in the general public nuisance offence<sup>2</sup> and in particular the criminalisation of conduct that is merely 'disorderly' and 'offensive'. This new offence adopts a similar threshold, and may in fact further lower it, in respect of displayed symbols to conduct that 'might' make a person feel 'menaced, harassed or offended'.

We also note in this regard that recommendation 5 (lowering the threshold for the *civil* incitement test) from the LASC Report has not been taken up in this legislative response. In our view, that is the appropriate place for a lower threshold, and would provide significant support to people who experience all types of vilification in many areas of their lives.

**We recommend further investigating the appropriate structure of this new offence, and looking at options that would bring coherence and unity to the criminal regime. We also recommend action to implement a lower threshold for the civil matters, as also recommended by the LASC report.**

This contribution was prepared by Kate Pillai, Human Rights and Civil Lawyer, and Bridget Burton, Director, Human Rights and Civil Law Practice.

Yours faithfully  
Caxton Legal Centre



Cybele Koning, CEO