

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

Submission No: 27
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Publication: Making the submission and your name public
See attached:

Submission to Queensland Parliament
Legal Affairs and Community Safety Committee
Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation
Amendment Bill 2023

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I am supportive of the intent of this Bill. But I make this submission to raise one concern about the Bill's method.

That is the delegation, to a Minister, of the power to regulate to prohibit symbols.

My submission does not riff off any constitutional, freedom of expression concern. Rather it is driven by concern for the procedural rule of law. And the precedent the Bill's method may set.

The power to prohibit something as socially constructed or embedded as a symbol is an unusual power to vest in a member of the executive. Even if section 52C requires behind the scene consultation with certain integrity and policing agencies. (The Chair of the CCC, the Human Rights Commissioner and the Commissioner of Police. Two of those are policing agencies. The other is a 'rights' oriented agency, but even it has a mission focused on anti-discrimination as much as competing liberty considerations.)

The ordinary justification for delegating substantive power to a Minister is exigency or technicality. That is, need to deal fleet-footedly with some unexpected problem or to adapt quickly to some technical variant of an existing problem. The pandemic was a good example of this.

Yet this Bill is about repressing the misuse of symbols which, to be meaningful and hateful, must have a history.

To mention history is also to recall that Queensland has had periods when governments repressed civil and political liberties. Eg, between the wars, and in the 1970s-80s. Whilst we now have a statutory charter of rights and a stronger system of judicial review of administrative action, we also have a very flat constitution. No bill of rights, no upper house, four year terms.

In short, it is not clear why the ordinary principle that criminalisation of conduct is a matter for Parliament is not followed in this Bill. Legislating to ban particular symbols would involve more representative and public debate about public, misuse of such symbols. It would provide a pre-emptive veto of any misuse of executive proposals to prohibit such symbols. Such debate might in itself be educative in condemning extreme symbols, as well as limiting the potential for executive misuse of the power in the Bill. Finally, there is an obvious risk of 'repression breeding subversion': ie that prohibitions of symbols may make them perversely more attractive to some in the community who simply wish to be transgressive or trolls. Whilst they may not be moved much by parliamentary deliberation, they are more not less likely to see themselves as martyrs if the executive, rather than the Parliament, prohibits their precious symbols. (*Lord of the Rings* meme intended).