

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

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**MULTICULTURAL QUEENSLAND ADVISORY COUNCIL:
Submission to the Legal Affairs and Safety Committee's *Criminal Code (Serious
Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023.***

2 May 2023

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

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

To whom it may concern.

The Multicultural Queensland Advisory Council (**MQAC**) is grateful for the opportunity to provide input for the Committee's consideration of the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (the **Bill**).

1. WHO THE COUNCIL ARE AND WHAT WE DO

The Multicultural Queensland Advisory Council advises the Minister for Children, Youth Justice and Multicultural Affairs on issues facing people from culturally and linguistically diverse backgrounds. Its culturally diverse members include community leaders and professionals from a variety of fields, each with unique connections to the communities in which they live and work. The Council works to genuinely listen to the needs of multicultural Queenslanders, and convey those to the Minister to ensure that they are heard, seen and acted upon.

2. SUBMISSION

MQAC was pleased to provide a submission to this Committee's inquiry into serious vilification and hate crimes in 2021.¹ In that submission, we identified a number of ways in which Queenslanders from a multicultural background are profoundly impacted by the inadequacy of current serious vilification and hate laws, both at the State and Federal levels. We also provided a number of examples of how this disadvantage manifests in the lives of Queenslanders.

We note that the Bill which is before the Committee aims to implement four of the recommendations from that review:

- Recommendation 7: removing the requirement for the written consent of the Attorney-General or Director of Public Prosecutions before commencing a prosecution for serious vilification;
- Recommendation 8: introducing a statutory circumstance of aggravation regarding hate/serious vilification into the *Criminal Code and Summary Offences Act 2005* to apply to criminal conduct;

¹ <https://documents.parliament.qld.gov.au/com/LASC-C96E/I-20CA/submissions/00000064.pdf>

- Recommendation 9: relocating section 131A from the AD Act into the Criminal Code; and
- Recommendation 16: creating a criminal offence that prohibits the display of hate symbols.

While MQAC welcomes the strengthening of protections against serious vilification and hate crimes that will come with the implementation of each of these four recommendations, we offer the Committee specific feedback on three of the recommendations.

3. CROWN LAW OFFICER CONSENT REQUIREMENT

Recommendation 7 is a direct reflection of a concern we raised in our 2021 submission, in which we wrote:²

*Where the complaint is of serious vilification, a complainant faces a further, more explicit legal challenge. As it is an offence, a complaint may be made to the QHRC or to the police. However, only the police can commence proceedings, and subsection 131A(2) states that **the consent of either the Attorney-General or Director of Public Prosecutions must be obtained beforehand. This is a very high bar to meet.** As noted in the Options Paper, this additional requirement may provide a disincentive for the police to lay charges, and may slow down the complaint process significantly. As the QHRC cannot investigate or commence proceedings, **a decision by the police to not pursue charges – even for serious instances of vilification – may mean the end of the road for a complainant.***

MQAC welcomes the removal of the requirement that the written consent of the Attorney-General or Director of Public Prosecutions must be obtained before a prosecution can be commenced. We believe this represents an important improvement on current arrangements.

We urge the Committee to satisfy itself that our second point – the poor outcomes for complainants if police decide not to pursue charges – is sufficiently addressed by the Bill. For the Bill to achieve its desired outcomes, it is important that circumstances where police are able to decide not to pursue charges are minimised. This is particularly important for young people who have experienced serious instances of vilification.

4. RELOCATING SECTION 131A FROM THE AD ACT INTO THE CRIMINAL CODE

The Explanatory Notes tell us that:

The Bill gives effect to Recommendation 9 by relocating section 131A from the AD Act and to the Criminal Code. The relocated offence will be new section 52A of the Criminal Code. The maximum penalty for the offence will be increased from 70 penalty units or 6 months imprisonment to three years imprisonment.³

While we understand that this change describes the maximum penalty, we urge the Committee to ensure that the maximum penalty is reserved to serious forms of vilification. MQAC is keen to ensure that the Bill still allows for the greater utilisation of restorative pathways, focusing on rehabilitation.

² Ibid: p.4 (emphasis added)

³ Ref: <https://documents.parliament.qld.gov.au/tp/2023/5723T391-72DE.pdf>; p.2

We urge the Committee to satisfy itself that the legislation allows Judges to exercise discretion in such matters.

5. PROHIBITION ON THE DISPLAY OF HATE MATERIALS

The inclusion in the Bill of a new 'prohibited symbols' offence is particularly welcome.

We note the Attorney-General's words from her Explanatory Speech, which tell us:⁴

The bill also makes it an offence to publicly display, distribute or publish a prohibited symbol in a way that could menace, harass or offend someone. The offence will carry a maximum penalty of 70 penalty units or six months imprisonment. Unlike other jurisdictions that have specified prohibited symbols in legislation, our framework will prescribe symbols by regulation. This will mean our laws will cover a broader range of hate symbols and we will be able to respond to new symbols or hate movements that may unfortunately emerge.

MQAC supports the prescribing of prohibited symbols in regulation.

The Explanatory Speech goes on to say:

While the bill does not prescribe a prohibited symbol, we have announced our intention to ban symbols related to Nazi and ISIS ideology.

Once again, MQAC supports this position.

We are keen to ensure that the regulations include the Nazi salute which is used to intimidate and spread fear, and also as a recruitment tool to attract (mostly) young men to extreme-right ideologies.

MQAC is pleased to see that clause 5 of the Bill specifies that a public act includes:

any form of communication to the public, including by speaking, writing, printing, displaying notices, broadcasting, telecasting, screening or playing of tapes or other recorded material, or by electronic means.

As social media is now commonly used by perpetrators of vilification and hate crimes, it is positive that the Bill includes the electronic display of prohibited hate symbols.

MQAC also acknowledges and supports the exemptions built into the legislation that will allow the use of some symbols for religious purposes. As noted by the Attorney-General in her Explanatory Speech, there has been concern among some religious communities that have a swastika as a sacred symbol (including in Hinduism, Buddhism and Jainism). We are satisfied that this exemption addresses those concerns.

In relation to police powers, the Explanatory Notes tell us that:⁵

Clauses 25 and 26 apply existing powers in the PPRA to stop, detain and search a person or vehicle without a warrant and seize evidence of the commission of the offence created by this Bill. This is a potential breach of the requirement to not confer warrantless search and seizure powers (section 4(3)(e) of the LSA) but is considered

⁴ Ref: https://documents.parliament.qld.gov.au/events/han/2023/2023_03_29_WEEKLY.pdf#page=27; p.731

⁵ Ibid: p.6

justified for the proper enforcement of the offence. The existing limitations and safeguards under the PPRA on this power apply and will appropriately limit the potential breach.

MQAC would like to see these powers used only under appropriate circumstances, and strictly in line with the intent and spirit of the Bill.

6. GENERAL

In her Explanatory Speech, the Attorney General said:⁶

... these reforms are the direct result of the hard work and advocacy of multicultural community members and stakeholders from across Queensland. In implementing these reforms their input will again be vital. We want to ensure that there is appropriate community education and cultural reform and that these laws achieve the goals they seek to. In that regard, we will again engage with stakeholders and community members as well as relevant government agencies prior to commencement. We are also committed to continuing to work with stakeholders in relation to the remaining recommendations from the Legal Affairs and Safety Committee's report.

MQAC encourages the Committee to consider the benefits of establishing, as part of this legislative change, an independent committee charged with the responsibility to ensure the work on prevention and compulsory training is implemented appropriately. We believe this committee could also play a vital role in ensuring continued consultation with impacted communities.

⁶ Ibid: p.731