




Speech By
Hon. Leanne Linard

MEMBER FOR NUDGE

Record of Proceedings, 10 October 2023

**CRIMINAL CODE (SERIOUS VILIFICATION AND HATE CRIMES) AND OTHER
LEGISLATION AMENDMENT BILL**

Second Reading

 **Hon. LM LINARD** (Nudgee—ALP) (Minister for the Environment and the Great Barrier Reef, Minister for Science and Minister for Multicultural Affairs) (6.39 pm): I move—

That the bill be now read a second time.

On 29 March this year, the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill was introduced into the Legislative Assembly. The bill was subsequently referred to the Legal Affairs and Safety Committee. I thank the Legal Affairs and Safety Committee for their consideration of this bill. I would also like to thank those stakeholders, organisations and individuals who made submissions to the committee and who participated in the public hearing.

The bill was introduced in response to that committee's inquiry into serious vilification and hate crimes, which is report No. 22 of the 57th Parliament. Over the course of the committee's inquiry into serious vilification and hate crimes and its subsequent examination of the bill, the committee heard some very distressing examples of despicable conduct fuelled by hate. The committee's report on the inquiry into serious vilification and hate crimes identified that Queenslanders from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander people and members of the LGBTIQ+ community experienced serious vilification and hate crimes too often. The committee heard of the profound effect upon victims. Feelings of humiliation, hopelessness, depression and anxiety are pervasive. The effects of vilification upon the victims is deeply real, and is the cause of long-lasting harm.

The committee heard that people will change their behaviour to lessen the chances that they are subject to such vile abuse or assault. They feel that they must remain hypervigilant while in the community. These experiences are not one-off occurrences; they are regrettably not unique. Some stakeholders reported to the committee that such conduct is on the rise. That people feel it necessary to take steps in their day-to-day lives to avoid being exposed to this kind of hate is deeply saddening. No-one anywhere should feel that this is acceptable, particularly not in a modern society like the one we have in Queensland. In short, this is not who we are as Queenslanders. Discrimination, vilification and hate has no place in our community.

Before I speak further on the bill, I would like to foreshadow that I will be moving amendments during consideration in detail to make an administrative correction to validate the appointment of the Inspector of Detention Services under the Ombudsman Act 2001 from 9 December 2022 until 28 September 2023. At the time of appointment on 9 December 2022, an oath or affirmation was not taken in relation to the inspector's function, as required under the Ombudsman Act. Upon becoming aware of this, the government has acted quickly to remedy this situation with the inspector taking an affirmation

under the Ombudsman Act on 28 September 2023. The inspector commenced operations from 1 July 2023. The amendments, to be moved during consideration in detail, will declare that anything done by the inspector from 9 December 2022 until 28 September 2023 has the same effect and is taken to have always had the same effect as it would have had if the inspector had made the affirmation.

On 30 June this year, the committee's report on the bill, report No. 49, was tabled. A total of nine recommendations were made. The government's response to the committee's recommendations was tabled on 3 October this year. Recommendation 1 is that the bill be passed. As I have already said, and again reiterate, there is absolutely no place for vilification and hate crimes in Queensland. The government is committed to strengthening our laws to ensure our diverse communities are protected. One of the primary objectives of this legislation is to ensure that, as a society, we make it clear that the community will not tolerate vilification, or the deliberate use of hate symbols to promote hatred towards our diverse communities and to cause those communities harm.

The bill before the House proposes to give effect to recommendations 7, 8, 9 and 16 of the committee's report. Recommendation 7 proposed that the Queensland government investigate the viability of removing the requirement for the written consent of a Crown Law officer before commencing a prosecution for the offence of serious vilification which is already contained in the Anti-Discrimination Act. Section 131A of the Anti-Discrimination Act is the offence of serious racial, religious, sexuality or gender identity vilification. The offence criminalises public acts which—

... knowingly or recklessly incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, religion, sexuality or gender identity of the person or members of the group in a way that includes—

- (a) threatening physical harm towards, or towards any property of, the person or group of persons; or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Under section 131A, a prosecution cannot be commenced without the written consent of a Crown Law officer. In this context, the Crown Law officer is either the Attorney-General or the Director of Public Prosecutions. The bill, through clause 7, proposes that this requirement be removed. The change proposed by the bill is to enable prosecutions for the offence to proceed expeditiously. The gravity of the offence is recognised by the proposed changes to the maximum penalty available for the offence. Currently, the maximum penalty for an individual is 70 penalty units or six months imprisonment. For an organisation, the maximum penalty is 350 penalty units. The bill also proposes through clause 7 that the penalty be changed by increasing the maximum penalty that can be imposed on an individual to three years imprisonment from six months. The proposed increase in the penalty better reflects the seriousness of the offence and the community's expectations. The change in penalty will bring them more into line with penalties available in other Australian jurisdictions for similar offences.

Implementing recommendation 9 of the inquiry, the bill further proposes that the offence in section 131A of the Anti-Discrimination Act be relocated to the Criminal Code. Moving the offence into the Criminal Code further recognises the gravity of the offence. Recommendation 8 of the committee's report on the inquiry was that the Queensland government introduce a statutory aggravation regarding hate and serious vilification into the Criminal Code and the Summary Offences Act 2005 to apply to criminal conduct. The bill proposes the introduction of a circumstance of aggravation to be available for charging where the offender commits a prescribed offence that was wholly or partly motivated by hatred or serious contempt for a person or group of persons based upon race, religion, sexuality, sex characteristics or gender identity or the presumed race, religion, sexuality, sex characteristics or gender identity.

Clause 12 of the bill provides that the circumstance of aggression will be available to be charged with the offence in the Criminal Code of going armed so as to cause fear, threatening violence, disturbing religious worship, common assault, assaults occasioning bodily harm, threats, unlawful stalking, intimidation, harassment or abuse and wilful damage. Part 5 of the bill proposes that the circumstance of aggravation would be available where the offences of public nuisance and trespass are charged under the Summary Offences Act. Where an offender is convicted of a prescribed offence, along with the circumstance of aggravation, an increased maximum penalty will apply. For going armed so as to cause fear and threatening violence, the maximum penalty, where the circumstance of aggravation has been charged, increases from two years to three years. For disturbing religious worship, the maximum penalty increases from two months to six months. For common assault, the penalty increases from three years to four years. For assaults occasioning bodily harm, the increase is from seven years to 10 years. For threats and unlawful stalking, intimidation, harassment or abuse and wilful damage, the maximum penalty increases from five years to seven years. For public nuisance and trespass under the Summary Offences Act, the maximum financial penalties available are proposed to be increased. A court's ability to imprison an offender will remain as currently provided.

I note that the protected attribute of sex characteristics has been included within the bill to align with the Births, Deaths and Marriages Registration Act 2023, which was passed on 14 June 2023. This ensures a common definition of sex characteristics between the bill and the Births, Deaths and Marriages Registration Act. The definition used in the bill will provide protections for members of the intersex community under the offence of serious racial, religious, sexual identity or gender identity vilification. The issue of determining an offender's motivation and whether that motivation was wholly or partly driven by hatred or serious contempt is a subjective matter. A person's motivation for committing an offence is a subjective matter of which proof will be required. Such proof may arise explicitly from the offender's conduct, or from other circumstances which give rise to the charge.

This threshold test, with reference to the words 'wholly or partly', recognises that, even if the conduct in question is motivated significantly by a non-prejudiced factor, if the offender is also partly motivated by one or more of the protected attributes of race, religion, sexuality, sex characteristics or gender identity in the circumstance of aggravation, the person is liable to be charged for the offence with the circumstance of aggravation attached. The bill provides that the new circumstance of aggravation captures motivations towards both individuals and groups. The inclusion of the term 'presumed' will ensure offenders who commit offences based on an erroneous assumption of the race, religion, sexuality, sex characteristics or gender identity of the person or group of persons will remain liable to be charged with an offence with the circumstance of aggravation.

To implement recommendation 16 of the committee's report on its inquiry, clause 12 of the bill proposes that the Criminal Code be amended to provide an offence to publicly display, distribute or publish a prohibited symbol in a way that could menace, harass or offend a member of the public. The offence will carry a maximum penalty of 70 penalty units or six months imprisonment. The bill provides that a prohibited symbol can be proscribed under regulation which ensures that the government can quickly respond to emerging symbols associated with extremist ideologies. However, before a symbol can be proscribed, the minister is required to consult with the chairperson of the Crime and Corruption Commission, the Human Rights Commissioner and the Commissioner of the Queensland Police Service.

For a person to have committed the offence, the bill provides that the offence is committed at the time when the person publicly displays, distributes or publishes the prohibited symbol. The offence is intended to capture a broad range of circumstances, including the public display of tattoos and the public distribution or publication of prohibited symbols online. There is also a non-exhaustive list of excuses to the offence, including if the display or distribution is for a genuine artistic, religious, educational, historical, legal or law enforcement purpose; a public interest purpose; or to oppose the ideology represented by the prohibited symbol.

The proposed amendments provide that a defendant seeking to rely on an excuse must also prove their conduct was reasonable in the circumstances. It is intended that an excuse might be available where the public display is made in genuine trade for sale of historical memorabilia, books, satire, documentaries, museums and during historical re-enactments. While there is no room for the proliferation of racism and hatred in our society, the government has implemented safeguards through these excuses to achieve a balance between the right to freedom of expression against the need to protect our diverse communities from hateful ideologies. The religious purpose excuse is particularly relevant to those of the Hindu, Buddhist and Jain faiths. I note that the Nazi Hakenkreuz, which is the hooked cross, significantly resembles the swastika and is a symbol that is displayed with a peaceful and profound meaning. The religious excuse is intended to ensure that the display of symbols such as the swastika in these contexts is not the target of the offence.

The introduction of the bill will also align Queensland with other jurisdictions in the country that have implemented or are in the process of implementing legislation to ban symbols associated with Nazi ideology, including in Victoria, New South Wales, the ACT, WA and Tasmania. Consistent with these jurisdictions, I also note that the Commonwealth has recently introduced its Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill to criminalise public displays of symbols of the Nazi regime. The bill also amends the Police Powers and Responsibilities Act 2000 to assist in the enforcement of amendments introducing an offence for the public display, distribution or publication of a prohibited symbol. We are enabling police officers to search a person or vehicle without a warrant where the officer reasonably suspects the person has committed or is committing the offence under new section 52D of the Criminal Code. A police officer will therefore have the power to stop, detain and search the person or vehicle and seize all or part of a thing that may provide evidence of the commission of the offence.

I will return briefly to the recommendations that were made by the Legal Affairs and Safety Committee in its report on the bill. As I noted earlier, the government's response was tabled on 3 October this year. The government has previously committed to introducing legislation within this term

in response to the Queensland Human Rights Commission report titled *Building belonging: review of Queensland's Anti-Discrimination Act 1991*. The issue of the inclusion of additional protected attributes, which is recommendation 2, will be considered by the government as part of its consideration of *Building belonging*. Recommendation 3 is effectively that certain closed environments such as hospitals and schools be considered public spaces. Recommendation 4 is that the definition of 'public act' in the Anti-Discrimination Act be updated to provide examples of communications by electronic means. The government's responses to these specific recommendations are that they will be considered within the context of the *Building belonging* report. Consideration of these recommendations in that context means that the matters raised can be considered in light of the amendments in this bill and further consideration of the *Building belonging* report.

In response to the committee's recommendations 5, 6 and 7 about monitoring the operation of the bill, I would also like to note the government's commitment in the recently tabled response to implement measures to monitor the effectiveness of the proposed amendments. The government is committed to ensuring our laws and practices meet community expectations and that the provisions in the bill appropriately address serious vilification and hate crime in Queensland. This bill represents the Palaszczuk government's—our government's—deep commitment to call out and eliminate hate and prejudice and represents a vital step for Queensland in supporting our diverse communities. Our diversity as communities and as a state is a strength. It is something that we should celebrate and never fear. I commend the bill to the House.