




Speech By
Hon. Leanne Linard

MEMBER FOR NUDGE

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

 **Hon. LM LINARD** (Nudgee—ALP) (Minister for the Environment and the Great Barrier Reef, Minister for Science and Minister for Multicultural Affairs) (5.25 pm), in reply: I thank honourable members for their thoughtful contributions to the debate on the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023. Before addressing matters that were raised in members' contributions during debate on the bill, I was heartened to hear the warm tributes made by members in the memory of the late member for Stretton, Duncan Pegg. His strong and tireless advocacy for a caring and inclusive Queensland will long be remembered, and deservedly so. There was no greater advocate for our multicultural communities and the value of diversity in this place than Duncan. His memory and legacy are rightly acknowledged in this debate, as are the contributions shared by many members across the House: members who have shared personal experiences, some painful, of vilification in their own lives or the lives of those they love; members who have generously given their support for this bill, who have spoken passionately of their communities, of our Queensland community and of the need to ensure that everyone feels safe.

The Legal Affairs and Safety Committee identified in its report on the inquiry into vilification and hate crimes that, sadly, some Queenslanders are vilified only because of their differences. As the member for Caloundra so aptly pointed out in his contribution to the debate—

We are hugely and splendidly different and our differences are worthy of celebration ...

Regrettably, the member was also right to note that 'these differences also need protection'. During her contribution during the debate of the bill, the member for Macalister noted that—

Queenslanders deserve to have a life free from discrimination, a life of safety and security in their homes and in public life and a life free from violence and intimidation.

This bill is a significant step in the right direction in achieving these goals. As I indicated in the second reading speech on the bill, there is absolutely no place for vilification and hate crimes in Queensland. The Palaszczuk government is committed to strengthening our laws to ensure our diverse communities have that protection. This legislation supports that commitment.

The Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill will give effect to recommendations 7, 8, 9 and 16 that the Legal Affairs and Safety Committee made after considering the issue of serious vilification and hate crimes during its inquiries. The four recommendations that are to be implemented by the bill are important ones because they will ensure that our laws operate to offer the protection that so many members of this House, as I just mentioned, have spoken about. Recommendation 7 is to be implemented through the removal of the requirement for the written consent of a Crown Law officer before commencing a prosecution for serious racial, religious, sexuality or gender identity vilification under section 131A of the Anti-Discrimination Act 1991.

The effect of this amendment is to ensure that, where a prosecution is being considered for an offence of serious vilification, actions to commence that prosecution can be taken swiftly and without the need to obtain the consent of a Crown Law officer.

The bill will make further changes to the offence of serious vilification that is currently in section 131A of the Anti-Discrimination Act. The first additional change is that, where a custodial penalty is considered appropriate, the maximum penalty of imprisonment provided for is to be increased from six months to three years imprisonment. This increase is intended to send a signal that the community will not tolerate and rightly denounces this type of conduct and the insidious harms that it produces. The second additional change is that the offence in section 131A of the Anti-Discrimination Act is to be relocated to the Criminal Code. I note that, as observed by some members in their contributions, the offence of serious vilification in the Anti-Discrimination Act is not a new offence but its relocation is a significant matter.

Queensland's Criminal Code houses the general criminal law. It includes criminal offences that are considered to be of general application. In other words, it applies to make offences of the types of conduct that people might ordinarily consider to be criminal offences. In relocating the section 131A of the Anti-Discrimination Act to the Criminal Code it sends an additional message that the type of conduct captured by the offence—that is, the vilification of another based upon that person's race, religion, sexuality, sex characteristics or gender identity—is something that the community will not and does not tolerate.

During debate some members raised whether the attributes that are covered by the offence are sufficiently covered and whether further attributes should be protected by the offence. As indicated in the government response tabled on 3 October 2023 to the Legal Affairs and Safety Committee report No. 49, the Palaszczuk government supports consideration of the possible inclusion of additional attributes as part of the review of the Anti-Discrimination Act. The government has previously committed to introducing legislation in response to the Queensland Human Rights Commission report *Building belonging: review of Queensland's Anti-Discrimination Act 1991* within the current term of government. The Queensland government's final response to the QHRC report supported in principle all recommendations in the report. Relevant recommendations, which also includes recommendations about considering what constitutes a 'closed environment' and a 'public act' made by the Legal Affairs and Safety Committee's report, will be carefully considered in conjunction with the implementation of the QHRC report recommendations and any consequential changes to the circumstance of aggravation that may be required as a result will be considered as part of these broader anti-discrimination reforms. This approach will ensure a cohesive approach across the entirety of vilification and hate crime legislation, the proposed new Anti-Discrimination Act, as well as Queensland's wider legislative context.

The bill will implement recommendation 8 by introducing a circumstance of aggravation for particular offences where the offender, in committing the offence, is wholly or partly motivated by hatred or serious contempt for a person or group of persons based on a particular identified protected attribute. Where one of the prescribed offences is charged and the accused person convicted, the maximum penalty available for the offence is increased. The circumstance of aggravation will be available to the certain offences in the Criminal Code as set out in clause 12 of the bill. An example of an offence under the Criminal Code is where the offence of assault occasioning bodily harm is charged with a circumstance of aggravation. The maximum available penalty in that situation will be 10 years. Currently a charge of assault occasioning bodily harm without a circumstance of aggravation carries a maximum penalty of seven years. Another example is the offence of unlawful stalking, intimidation, harassment or abuse; where it is charged with a circumstance of aggravation the maximum available penalty will be seven years. That offence without a circumstance of aggravation currently carries a maximum penalty of five years imprisonment. The circumstance of aggravation will also be available for charges of public nuisance and trespass under the Summary Offences Act as provided at clauses 29 and 30 of the bill.

The bill will also implement recommendation 16 to establish a criminal offence that prohibits the display of hate symbols. Clause 12 of the bill introduces section 52D of the Criminal Code. The offence applies to a person who publicly distributes, publishes or publicly displays a prohibited symbol in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended, unless the person has a reasonable excuse. Proposed section 52D(2) of the Criminal Code sets out what is a reasonable excuse for the purposes of the offence. A person will have a reasonable excuse where the person engaged in conduct that constitutes the offence for genuine artistic, religious, educational, historical, legal or law enforcement purpose or where a person engaged in the conduct for a purpose in the public interest or where the person engaged in conduct in opposition to the ideology represented by the prohibited symbol. In all cases where an accused person seeks to rely upon a reasonable excuse, it must be demonstrated that the person's conduct was, in the circumstances, reasonable for that purpose.

The creation of the offence also sees the creation of a power for the minister responsible for the Criminal Code to proscribe a hate symbol by regulation. During members' contributions to the debate of the bill three matters were raised in relation to the operation of the offence. The first matter was in relation to the power of the minister responsible for the Criminal Code to proscribe a symbol as a prohibited symbol and giving that power to a member of the executive. Members should note that a number of safeguards exist which are relevant to the making of a regulation to proscribe a prohibited symbol. As provided at section 52C(3), before recommending the prescription of a prohibited symbol the minister may only recommend to the Governor in Council that a regulation proscribing a prohibited symbol be made if the minister is satisfied that the symbol is widely known by the public as a symbol solely or substantially representative of an ideology of extreme prejudice or is widely known by members of a relevant group as being solely or substantially representative of an ideology of extreme prejudice against that group. The provision provides a definition of relevant group. It means a group of persons who identify with each other on the basis of an attribute or characteristic that is or is based on the race, religion, sexuality, sex characteristics or gender identity of the person. Proposed section 52C(3) makes it clear that the power is one to be exercised for the benefit of the public and not to further the nefarious aims of a politician. The exercise of the power to proscribe is based upon the community's understanding of the symbol as a symbol of an ideology of extreme prejudice. At proposed section 52C(4) the minister must consult with the chairperson of the Crime and Corruption Commission, the Queensland Human Rights Commissioner and the Commissioner of the Queensland Police Service. Compliance with section 52C(4) is mandatory prior to making a recommendation to the Governor in Council. Each of these agencies are uniquely placed to potentially inform the minister of matters related to a symbol which may be under consideration for prescription as a prohibited symbol. This will allow the government to respond to the emergence of new hate symbols in a more timely manner compared to other jurisdictions.

While on the topic of consultation, it was raised during debate why religious or multicultural organisations are not required under the proposed provisions to also be consulted. This is the second matter raised during debate in relation to the prohibited symbols offence. It is implicit within the power to proscribe a prohibited symbol for the minister to consult with those organisations. If no consultation was undertaken it could hardly be said that the minister has complied with the requirement in proposed section 52C to be satisfied that a symbol is widely known by the public as being effectively a symbol of hate.

Additional safeguards also lie outside the bill. For instance, a regulation made may be subject to disallowance motion of this Assembly. Other options may also be open where a regulation is made beyond the power provided for by the bill. A concern was also raised about the meaning of the phrase 'might reasonably be expected' in the context of the offence to display prohibited symbols. This is the third matter raised in relation to the prohibited symbols offence. The provision has been drafted referencing 'a member of the public'. That ensures that a court can consider the effects of the symbol on any individual or class of persons as a whole. It does not require the person to witness the display, distribution or publication. Whether or not a court is satisfied that a member of the public could reasonably be expected to feel menaced, harassed or offended would be defined according to the general means of statutory interpretation taking into account the text, context and purpose of the provision.

As I move from the substantive nature of the bill to some concluding remarks, I again reiterate, as foreshadowed during my second reading speech, I intend to move 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 to 28 September 2023.

During the debate many members observed that throughout the committee's consideration of serious vilification across its two reports that there has been significant input from individuals in our communities and from organisations. The committee's initial inquiry attracted over 80 written submissions and all submitters should be commended for taking the time to inform the committee during its deliberations and for contributing to the development of milestone legislation such as this in our state.

It takes courage to share one's personal story; it is vulnerable, raw and honest. To do so when that story includes experiences of pain, grief, fear, anger and, as some have said, shame it takes even greater courage. I thank those who did so as part of the consideration of the bill and the earlier inquiry and I thank the many who have shared personal stories with me. I honour those voices, as our government does by bringing forward this legislation. I thank the members across this House who will support this important reform for doing likewise.

In particular, I want to acknowledge the Cohesive Communities Coalition and particularly Christine Castley and Rita Jabri Markwell, who are in the gallery today, as co-chairs of the coalition for their fearless and impassioned advocacy to see these reforms delivered. As the former attorney-general said at introduction, these reforms are the direct result of the hard work and advocacy of multicultural community members and stakeholders from across Queensland. These reforms are yours and, while I wish they were not needed, I am honoured to have played a small part in bringing them about so that all in our community may feel safe, seen and valued. Of course, these laws will protect not only our multicultural community but also our LGBTIQ+ community. I acknowledge the many stakeholders and advocates who have equally called for these reforms from that community.

While the list is long, I want to read into *Hansard* the names of a number of dedicated stakeholders in acknowledgement of their contribution and input into this reform. Once passed, it will mean we have among the strongest frameworks in the country. They are: Multicultural Australia, Multicultural Queensland Advisory Council, Queensland Law Society, Caxton Legal Centre, Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Service, LGBTI Legal Service, Settlement Services International Limited, Queensland Human Rights Commission, Access Community Services, Queensland Chinese Forum, Queensland Chinese United Council, Australian Muslim Advocacy Network, Queensland Council for LGBTI Health, Equality Australia, Queensland African Communities Council, Scarlet Alliance Australian Sex Workers Association, Respect Inc., Hindu Council of Australia, Islamic Council of Queensland, Islamic College of Brisbane, Islamic Society of Gold Coast, Islamic Women's Association of Australia, White Ribbon Australia, Gold Coast Sikh Association, Federation of Indian Communities of Queensland, Sikh Nishkam Society of Australia, Ethnic Communities Council of Queensland, Rainbow Families Queensland, Queensland University of Technology, Queensland Jewish Community Services Inc., Queensland Jewish Board of Deputies, Pacific Islands Council of Queensland and Queensland Council for Civil Liberties.

I make particular mention of my Multicultural Queensland Advisory Council, made up of eleven amazing humans with a myriad of life experiences as culturally and linguistically diverse Queenslanders. When we had our first meeting in 2021, I asked them what they would like to achieve during their time on the council. Having a much greater input into government process was at the top of their list. Shortly after submissions opened for the Legal Affairs and Safety Committee's initial inquiry into serious vilification and hate crime, they jumped at the opportunity to make a submission. It was a pleasure to write the forward to that submission. I was then so proud to see some MQAC members given the opportunity to appear before the committee. I have taken a quote from their submission that sums up perfectly the importance of this bill and what it means to those in our community who are subject to serious vilification and hate crime. It states—

While the Council is aware that racism cannot be tackled through legislative reform alone, it believes that strengthening the protections against serious vilification and hate speech represents a necessary and important step in making justice for its victims accessible and worthwhile.

I would also like to thank those officers who worked on the development of the bill, including Ernest Lin, Adam Savage, Jemma Golding-Wallace, Michael Shears, Adele Bogard and Justin O'May. I once again thank all honourable members for their thoughtful and respectful considerations during the debate.

I conclude with a quote that featured in the foreword of the inquiry report, written by my friend and colleague the member for Toohey, and also in his speech on this bill. He quoted Dr Martin Luther King who said—

It may be true that morality cannot be legislated but behaviour can be regulated. It may be true that the law cannot change the heart but it can restrain the heartless.

I thank the member for Toohey for his leadership. I thank the member for Toohey for his passion in regard to this bill. I thank all members of his committee for the report that they produced on both occurrences. The law is a powerful instrument for social change and in that vein I commend the bill to the House.