




Speech By  
**Peter Russo**  
MEMBER FOR TOOHEY

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Record of Proceedings, 11 October 2023

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

 **Mr RUSSO** (Toohey—ALP) (12.06 pm): I rise to speak to the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023. The Legal Affairs and Safety Committee, in its report No. 49 of the 57th Parliament, tabled in this Assembly on 30 June 2023, has recommended to the Assembly that this bill be passed. The objective of the bill is to implement recommendations 7, 8, 9 and 16 of the committee's report No. 22 of the 57th Parliament, *Inquiry into serious vilification and hate crimes*.

Recommendation 7 of the committee was 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 serious vilification; recommendation 8 was that the Queensland government introduce a statutory aggravation regarding hate/serious vilification into the Criminal Code and the Summary Offences Act to apply to criminal conduct; recommendation 9 was that the Queensland government relocate section 131A from the Anti-Discrimination Act 1991 into the Criminal Code; and recommendation 16 was that the Queensland government establish a criminal offence that prohibits the display of hate symbols, including those relating to Nazi and ISIS ideology, with considered exceptions to the prohibition.

In addition to addressing these recommendations, the bill will amend the Anti-Discrimination Act to increase the existing penalty for the offence under section 131A, the offence of serious racial, religious, sexuality or gender identity vilification. The bill will amend the following legislation: the Anti-Discrimination Act 1991; the Criminal Code Act 1899; the Police Powers and Responsibilities Act 2000; and the Summary Offences Act 2005. In addition to recommending the bill be passed, the committee made an additional eight recommendations following our inquiries into the proposed legislation.

As a committee our examination of the bill looked into a number of key issues of the bill, including the attributes to be protected, the circumstance of aggravation, including the test to be applied and the prescribed offences, and matters relating to prohibited symbols. The current section 131A of the Anti-Discrimination Act sets out the attributes protected from serious vilification to include race, religion, sexuality and gender identity. The Births, Deaths and Marriages Registration Act will amend section 131A to include sex characteristics as a protected attribute. It is worth noting that it became apparent to the committee that there is a need for training and education and improved data collection and reporting in relation to serious vilification and hate crimes.

When the Legal Affairs and Safety Committee reported on the inquiry into serious vilification and hate crimes, report No. 22 of the 57th Parliament, in January 2022, I referred to the fact that Queensland did not have a piece of legislation dedicated to serious vilification and hate crimes. The Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill goes some way to changing that issue. As we heard in evidence during the hearing, there will be further significant changes when a revised anti-discrimination act is introduced into the parliament. Submitters suggested

that additional attributes should be protected by the serious vilification and hate crime offences including age, disability, impairment, homelessness, sex and all the attributes set out in section 7 of the Anti-Discrimination Act. The Queensland Law Society recommended that age should be included as a protected attribute and told the committee—

Our members report that age-based discrimination has become particularly prevalent as a result of the COVID-19 pandemic. Ageist hate speech further entrenches intergenerational tensions, promotes social isolation and facilitates elder abuse by devaluing older persons' social identity.

Equality Australia stated that serious vilification and hate crime protections 'should be extended to all people who commonly experience hate crimes based on who they are or their protected attributes'. Further, Equality Australia raised the issue of serious vilification and hate crimes committed on mistaken beliefs or stereotypes relating to protected attributes. They stated—

Take for example an offender who attacks a drag artist by wrongly associating them with paedophilia or grooming. This has been a common basis of attack recently experienced by members of our communities. For example, in January 2020, a group of university students charged into the Brisbane Square Library where a Drag Queen story time event was being held, chanting "drag queens are not for kids". The event caused extreme distress for children and parents in attendance.

Currently, the bill requires the prosecution to establish that the offender was motivated wholly or partly by the victim's sexual orientation or gender identity, or presumed sexual orientation or gender identity. The difficulty with this may be the disconnect in the available evidence between the offender's mistaken belief and the attribute of the victim. The evidence may only show that the offender believes that they are proceeding against someone because they are a risk to children and it is the offender's motivation that frames how the provision will apply.

In response to the matters raised by stakeholders, the department stated the inclusion of 'presumed race, religion, sexuality, sex characteristics or gender identity', in new section 52B, 'will ensure offenders who commit offences based on a presumption (despite being erroneous) of the race, religion, sexuality, sex characteristics or gender identity of the person or group are captured by the new circumstance of aggravation'. In relation to crimes committed on the basis of mistaken or false beliefs or stereotypes related to protected attributes, DJAG stated that the way the provision in new section 52B is drafted at the moment is that the offence, whichever one of the prescribed offences they have committed, has to be proved in that it was 'wholly or partly motivated to commit the offence by hatred or serious contempt for a person or group of persons based on' the list of attributes.

It is difficult to gauge whether things have improved or that people are trying to be kinder to each other. However, during our recent inquiry into the Births, Deaths and Marriages Registration Bill it was distressing to hear of the vitriol and hatred directed towards the LGBTIQ+ community and the impact on the transgender community. I also do not believe that enough has been done to monitor big tech and social media. The government can distribute information through its own online presence for the benefit of the public, but often the commentary that follows those posts on social media is unsavoury and unhelpful. I believe the Australian eSafety Commissioner has a role in assisting the public to act. Particular departments also need to monitor their online presence and respond actively by taking down inflammatory and derisive comments. It is vital to dealing with this issue.

Although our legislation does not prohibit a specific symbol, it is anticipated that symbols relating to Nazi ideology will ultimately be proscribed as we seek to make the display of the Nazi hooked cross and Islamic State symbols a criminal offence. The offence will include the capture of a broad range of circumstances, including the public display of tattoos and the public distribution or publication of prohibited symbols online. This is a very positive step, although I understand there is scope for further improvements to be made in this area in the future. The bill intends to make change by implementing several recommendations made by the committee focusing on a combination of education, community and cooperation.

My foreword to the committee's report into our inquiry into serious vilification is still relevant today. Each of us has a moral responsibility to ensure our conduct is appropriate and to teach our children to behave properly towards others. The unfortunate reality is that in our society there will always be those who traverse the bounds of proper behaviour. For those persons, deterrents and sanctions are needed. Dr Martin Luther King 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 secretariat and the committee for their work on this vital piece of legislation and all the witnesses who came and gave evidence at both of our inquiries. I commend the bill to the House.