




Speech By
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MEMBER FOR MIRANI

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

 **Mr ANDREW** (Mirani—PHON) (4.31 pm): I rise to speak on the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill. According to the Premier, the changes made by this bill will give us the strongest set of hate speech and hate crime laws in the country. One of the bill's stated goals is to make it easier to prosecute people for serious vilification or hate speech in Queensland. In order to achieve this, the bill amends the state's Anti-Discrimination Act, removing the necessity for the Attorney-General's consent prior to the commencement of a prosecution, and relocates section 131A of the act to part 2 of the Criminal Code.

The inclusion of hate speech offences in the Criminal Code opens the door for politically motivated and vexatious complaints to be made against certain individuals and groups, particularly those who do not go along with the political establishment's woke agenda. The bill increases the maximum prison sentence for public acts of hate speech from six months to three years. Public acts are defined as 'any form of communication to the public, including by speaking, writing, printing, displaying notices ... or by electronic means', which means people's social media posts will also be policed. As stated in the explanatory notes, part 4 of the bill empowers police officers—

An honourable member interjected.

Mr ANDREW: I am not taking interjections—'to stop, detain and search a person or vehicle without a warrant and seize evidence of the commission of an offence created by this Bill'. There are also provisions reversing the onus of proof, which means that defendants will be presumed to be guilty until proven innocent in a court of law. The bill gives no clear definition of hate speech or hate crime nor does it provide any test for how such offences are to be identified or measured.

In her introductory speech to parliament the Attorney-General said that the new laws will 'protect members of our LGBTIQ+ community from hate crimes and hate speech'. Elsewhere in her speech she cited the example of someone being misgendered in hospital as an example of a possible hate crime captured under the bill. If misgendering someone is to be regarded as an offence under this bill, then clearly the parameters for hate speech are to be drawn very widely indeed. Something as simple as stating a belief that men cannot breastfeed could put you on the wrong side of this bill.

In other key changes, the bill will allow the Attorney-General to ban a symbol or image without having to go through parliament. That is the beauty of these so-called framework or umbrella bills for governments. Loosely drafted, they give no more than a broad policy outline that can then be filled in at a later date via regulation. It makes umbrella legislation the perfect vehicle for mission creep, leaving governments with plenty of scope for a more expanded criminalisation of speech over time.

The bill therefore creates a new head of power for banning symbols and images but provides no details as to which symbols and images will be prohibited under the new laws. In fact, the only symbols mentioned in connection with this proposed bill have been the Nazi swastika and the ISIS flag. This is a common trick by governments when seeking to introduce oppressive powers. The formula is to create

an association in the public mind between the proposed legislation and an already reviled out-group for whom most people already feel extreme distaste. This ensures that no-one will feel compelled to speak out against the new powers in case they are accused of defending the reviled group and their abhorrent ideology. Of course, once the bill passes those new powers can be expanded much more widely until every group the government sets out to target has been captured.

Giving an attorney-general the power to designate a hate symbol is therefore extraordinarily dangerous. It violates what is regarded as a fundamental democratic principle; that is, key concepts creating criminal liability should not be made by regulation. It also creates a situation where the government may choose to pursue an ideological agenda and a means with which to target a particular group that disagrees with the government's policy agenda as a hate group and to ban its logo or flag as hate symbols—all without any recourse to normal parliamentary processes.

Proposed section 52D also creates a new offence relating to the public display, public distribution or publication of a prohibited symbol in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended. By criminalising behaviour that might be expected to cause someone to feel menaced, harassed or offended, the bill embeds a highly subjective element at the core of Queensland's hate crimes legislation. In doing so, it sets a very low bar for criminality, especially given the highly subjective nature of words like expected, harassed, offended and menaced.

According to the bill's explanatory notes, this new 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. The bill purports to provide a number of free speech safeguards by allowing exemptions for those who can prove their conduct consists of a reasonable and genuine contribution to literary, artistic, political, scientific, religious or academic discourse. Those seeking to exercise their rights under this clause, however, should be warned that the burden of proof will be on them to prove that their offence is not an offence under the act and that their defence is reasonable and genuine. If they fail to do so they face six months in prison. How many artists, journalists, collectors or academics do you think will be prepared to take such a risk? I think not many.

Finally, the bill adds a circumstance of aggravation to offences under the Criminal Code, including offences such as trespass, public nuisance, wilful damage, harassment, abuse, intimidation, unlawful stalking, threats and common assault. Under the proposed new subsection 52B, the circumstance of aggravation is applicable where a person was wholly or partly motivated to commit the offence by hatred or serious contempt for a person or group of persons. In the past, criminal provisions that applied to an offence of serious vilification included the element of actual incitement of hatred for a person or group. Under this bill, however, an offence can be branded a hate crime and a prison sentence substantially increased on the basis of subjective interpretation alone.

In fact, the whole notion of criminal offences being aggravated by hateful feelings or motives will take Queensland further into the territory of thought crimes. People will be punished more severely not for what they have done, but for what they were allegedly thinking or feeling at the time. How can any justice system consistently or fairly identify signs of contempt or hatred for a prescribed group as the motivating catalyst behind a criminal act? Who or what defines hate, and who can say what another person was thinking or feeling when they committed a crime or offence? It also makes the reversal of the onus of proof doubly reprehensible, given such accusations will be almost impossible to defend in court. It will end in hate crime status being judged purely on the basis of the prescribed group status of the offender and victim, leading to a two-tier justice system and the obliteration of equality before the law.

I believe that this is a dangerous bill. It will have an incredibly chilling effect on not only people's speech but their thoughts as well. The bill supposedly allows for reasonable and genuine contributions in the context of literary, artistic, religious, educational, historical, legal or law enforcement purposes or for a public interest purpose, but who decides this? How will terms like 'reasonable' and 'genuine' be defined or measured? All are inherently subjective. As the Queensland Council for Civil Liberties said in its submission on the bill—

... the fact that someone might be offended is not an appropriate ground for restricting speech as too many things offend people.

The bill's religious protections are also very uncertain. Ostensibly, religion is included as a protected characteristic, but it is extremely unlikely that anything in this bill will protect a Christian where their beliefs may come into conflict with the new gender ideology. Anyone who thinks otherwise should consider the case in Finland where a politician is being prosecuted for tweeting out a Bible verse in response to her church's sponsorship of a pride event. Free speech is far too important for us to stand by and watch it being cancelled in this way. That is why I will be asking the opposition to review this bill if they get back into power at the next election.

A free citizenry should be able to criticise their government's policies without fear of persecution and imprisonment. It seems to me that the real goal of bills such as this one is to strongarm people into conformity with a state authorised narrative and ideology that cannot, in any real sense, be challenged. It is not only possible but also extremely likely that such laws will be radically abused in the future.

As for being vilified, as a South Sea islander I know exactly what that is like but we still need to have free speech. Some people say that 'Kanaka' is a bad word. We actually wear that as a badge of honour. We understand it, but it is very difficult to capture what is here in this bill when it is arranged and how it is going to pan out.