



Speech By
Tim Nicholls


MEMBER FOR CLAYFIELD

Record of Proceedings, 11 October 2023

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

Resumed from 10 October (see p. 2877), on motion of Ms Linard—

That the bill be now read a second time.

 **Mr NICHOLLS** (Clayfield—LNP) (11.53 am), continuing: And not Clayfield, Madam Deputy Speaker. Yesterday I had only just started my contribution for a few minutes before the adjournment debate of the House and I was commenting on the very many good and serious organisations and individuals that had made submissions to the committee inquiry into this bill and also the previous inquiry into serious vilification and hate crimes. Obviously many of the submissions made to those two inquiries were similar and the first inquiry and then the committee report on the bill were similar or carried on with similar themes. I have read many of those submissions made to the bill and to the previous inquiry. I would not claim to have read every detail of all of them but have certainly read many of them and I have had the opportunity, along with many of my colleagues on this side of the House and, I am sure, many members of this House, to meet members of our multicultural community to discuss the need for this bill and their concerns in relation to the bill.

I have also had the opportunity to consider the submissions made by the Queensland Law Society and other organisations, together with those of distinguished academics like Professor Nicholas Aroney and Dr Paul Taylor. I also want to commend Mr Jason Steinberg, President of the Queensland Jewish Board of Deputies, whom I have known, as I am sure others have, for many years. In fact, Jason participates in Anzac Day ceremonies in my electorate. Many in this place know Jason and his efforts to ensure that the history of the Nazi persecution of Jews is not forgotten. He has fought tenaciously and persuasively to establish a Holocaust Museum here in Brisbane. His actions were supported originally by the LNP opposition under the leadership of the member for Nanango and subsequently by the Labor government. This has resulted in the opening in June this year of Australia's newest Holocaust Museum located in Brisbane's CBD in the grounds of St Stephen's Cathedral in a space kindly and generously made available by the Catholic Archdiocese in Penola Place and under the guidance of His Grace Archbishop Mark Coleridge.

I recently attended a Righteous Among the Nations ceremony held by the Israeli Embassy and Yad Vashem, the World Holocaust Remembrance Center, at the Hanly centre and took the opportunity to visit the new museum. It is, as all such museums are, an incredibly moving place to experience. The displays, while often simple and of simple things, are carefully presented and paint the picture of the way in which hate and vilification and symbols can be used to lure an entire population into actions of such horror that to contemplate them in a civilised society seems impossible. The deaths of six million Jews and many millions of other so-called undesirables like Roma, Soviet POWs and those with disabilities shows just how persuasive such actions and symbols can be.

How ironic then that the opening hours for the museum currently say, 'We will be closed for the Jewish holiday of Simchat Torah on Sunday, 8 October.' Simchat Torah is a celebration, often accompanied by dancing and singing, to mark the completion of the annual reading of a section of the Bible. Surely that holiday will now always bring to mind last weekend's Hamas terrorist attacks—attacks that civilised nations around the world have rightly condemned as I do now in the strongest possible way. Now in the 21st century there surely can be no argument that the democratic and vibrant state of Israel not only does exist but is entitled to protect its citizens and its territory from terrorism and attacks, especially when as seems evident those terrorist attacks are sponsored by states that deny democracy and even fundamental human rights to their own people. I am sure all right-thinking people accept this proposition and reject any false proposition that says otherwise.

It is important to note that there are no specific symbols banned under this bill, even the Nazi Hakenkreuz, sometimes and incorrectly referred to as a swastika. As my friends in the multicultural community kindly and gently inform me, the swastika is a sacred symbol in Hinduism, Buddhism, Jainism and Odinism and in many other cultures and religions, as has been noted by other speakers in this place. It is also important to note that the situation today in Germany and many other European states is that the public display of Nazi symbols, including on the internet, is prohibited by law and individuals violating such terms are subject to criminal proceedings. It is of course not only the Nazi hate symbols that must be dealt with. In this era we also have other symbols that emerge, sometimes with bewildering rapidity. We also have symbols not only of the far right or the far left but of extreme religious movements, and the ISIS movement is one of those.

To address these new and emerging symbols, this bill provides that the minister can make a decision on symbols through regulation. Proposed new section 52C in the Criminal Code establishes a framework to proscribe symbols or images that represent an ideology of extreme prejudice against a relevant group based on the protected attributes in former section 131A of the Anti-Discrimination Act. Those are the sections that are to be transferred to the Criminal Code as new section 52A. That framework allows the minister to recommend to the Governor in Council that a regulation proscribing a prohibited symbol be made. The minister must consult with the chairperson of the CCC, the Human Rights Commissioner and the commissioner of the Queensland Police Service, however, before making that recommendation. A number of submitters took issue with the minister having this level of power, and indeed it is an unusual power that is delegated from this Assembly to the minister to make. A number of those submissions stated that there should be consultation with the relevant groups or others. Another stated that there is no need for an emergent response as the intent is to prohibit the use of symbols that have a long history associated with hate, and the Hakenkreuz would be an example of that.

Professor Graeme Orr points out that the power to prohibit something as socially constructed or embedded as a symbol is an unusual power to vest in a member of the executive, and I think he is right. He says even if proposed new section 52C requires behind the scenes consultation with certain integrity and policing agencies such as the chair of the CCC, the Human Rights Commissioner and the Commissioner of Police—two of those are policing agencies, the other is a rights oriented agency, but even it has a mission focused on anti-discrimination as much as resolving competing liberty considerations. His concern is that the ordinary justification for such a delegation of a substantive power to a minister is exigency or technicality—that is, a need to deal quickly with some unexpected problem or to adapt quickly to some technical variant of an existing problem. The pandemic was a good example of this, yet this bill is about repressing the misuse of symbols which, to be meaningful and hateful, must have a history. I think this is a valid concern and there will need to be vigilance that such a provision is not misused.

Under section 52D a new offence is introduced to capture a broad range of circumstances, including the public display of tattoos and the public distribution or publication of symbols online. There are allowances to display these symbols, including genuine artistic, religious, educational, historical, legal, law enforcement purposes, a public interest purpose or to oppose the ideology represented by that symbol. The subjectivity of section 52D was raised by several submitters with concerns that it leads to a low level of criminality and is a subjective rather than an objective test. The department has addressed these matters in its response to the submissions to the committee.

Several submitters also raised the issue of the reversal of the onus of proof when it comes to section 52D(1), and I acknowledge that this is a significant concern—that is, that a person has a defence to an alleged offence if the person has a reasonable excuse. Proposed new section 52D(3) says the evidential burden is placed on the defendant in relation to showing a reasonable excuse for the purposes of a charge under that subsection. This is not an unusual provision. In fact, the Minister for Health referred to this matter in her introductory speech for the previous bill with regard to changes being made to the criminal law in relation to coercive control. It is not unusual because it is the case that the person best placed to show that they had a reasonable excuse is the person actually relying

on that defence. Indeed, that is the way the Criminal Code is structured and a reasonable excuse has been a defence since its inception. The evidentiary burden to show reasonable excuse does not relieve the Crown of its obligation to disprove beyond a reasonable doubt that the excuse is valid. The so-called legal burden remains, as it should, with the prosecution. This proposition is not unusual or unknown, nor particularly controversial in a legal sense.

Importantly, the bill's intent was broadly supported by submitters, including the Queensland Law Society, who did raise some other concerns; the Queensland Family and Child Commission; Townsville Community Law; Full Stop Australia; PeakCare; the Aboriginal and Torres Strait Islander Legal Service; Equality Australia; Caxton Legal Centre; Multicultural Queensland Advisory Council; and Multicultural Australia; as well as many other individual submitters. I note the Queensland Council for Civil Liberties is supportive of some amendments of the bill, however is opposed to 52C and 52D, which are two I have already dealt with in regards to the prohibited symbols. They oppose these as a matter of principle. The Council for Civil Liberties say the test of whether you support freedom of speech is not whether you support it for those with whom you agree, but whether you support it for those with whom you most disagree. While this is somewhat along the famous lines of the phrase 'I disapprove of what you say but I will defend to the death your right to say it'—a quotation sometimes misattributed to Voltaire—there are, unfortunately, variations to the shades of black and white these days. Similarly, Professor Aroney and Dr Taylor take issue with the restrictions on freedom of expression, noting the protections afforded such matters under the International Covenant on Civil and Political Rights; however, as I said, in this day and age there are very few absolutes, much as we might all like things to be different.

So we end up with balancing rights and obligations and in this particular case, and with the safeguards, including the reasonable excuse safeguard, find the balance tilting slightly in favour of limiting the right to freedom of expression or freedom of speech in order to ensure the broader protection of those members or groups who would be menaced, harassed or offended by the display of prohibited symbols. I acknowledge that this is a fine balancing act and that in a competition of various rights there will be some who will feel that the balance has not been adequately achieved. However, it is the obligation of this place to come to a decision, not to forever prevaricate.

While the opposition will support this bill, we make it clear that the answer is not solely in passing more and more restrictive legislation on the freedom of speech. The danger with that is that the tighter the squeeze the more slips between the grasp. We must ultimately change the way people are prepared to think and behave from an early stage. While it is naive to think all bad behaviour will be eliminated, tolerance, education, civility and respect are an essential part of the longer-term solution to dealing with the mindlessness of hatred and vilification based on race. With those comments, I conclude my contribution to the debate on this bill.