



Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
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Dear Madam/Sir

### **CRIMINAL CODE AMENDMENT (HATE CRIMES) BILL 2024**

The writer appeared before the committee on 2 December 2024.

The chair asked a question on notice relating to the submission of the Castan Centre for Human Rights Law. As stated by the Chair that submission "put forward the proposition that the Bill appropriately protects free speech in the circumstances".

I assume this is a reference to the statements of Prof Castan on page 17 of the transcript.

My first comment is that those statements seem to be somewhat different from the content of the original submission particularly at paragraph 2.3.

But in any event, this Council takes the view that freedom of speech is a fundamental right without which you don't have any of the others. Therefore, when it comes to considerations of political speech in particular, it is not a simple matter of balancing.

As we have noted in our original submission, if you have any doubt that these provisions deal with political speech it is confirmed by the fact that one of the protected categories is political opinion.

Our position is that the protection of political speech, which is in fact fundamental to any possibility of social advancement, requires that any restraints in it be extremely narrow. In this context, our submission is that the best way to protect free speech is to require that there is no offence committed unless the person intended certain consequences, and they desired that their acts cause those consequences or know that those consequences are substantially certain to result from their acts. The proposed standard of recklessness clearly does not meet that test. The submission makes no reference to the general criminal law position which is that to be criminally liable requires a guilty mind. There is no argument as to why that position should not apply in the circumstances dealt with by this legislation. The likely consequence of a recklessness standard is to chill free speech. I refer again to the example that I gave of the United States Supreme Court case involving the "threat" to kill Lyndon Johnson.

This Council adheres to the view which used to be the position on the progressive side of politics until sometime in the 1990s. Which is that freedom of speech is fundamental to social progress. The clear evidence is that these laws are usually used against those who they are supposed to protect. In any event, there is no evidence that they work. It is often said that these types of laws are necessary to prevent things like the development of Adolf Hitler. In fact, Weimar Germany had anti-hate laws. Those laws were in fact enforced with some vigour. During the 15 years before Hitler came to power there were more than 200 prosecutions based on anti-Semitic speech. Furthermore, there is evidence that what happened is that Nazis made use of the trials to promote their cause.<sup>1</sup>

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<sup>1</sup> A. Alan Borovoy *When Freedoms Collide – The Case for our Civil Liberties* – Lester & Orpen Dennys 1988 at page 50. Mr Borovoy was the General Counsel of the Canadian Civil Liberties Association for 30 years and a Jew.



We trust this is of assistance to you in your deliberations.

Please direct correspondence concerning this submission to [president@qccl.org.au](mailto:president@qccl.org.au)

Yours Faithfully

Michael Cope  
President  
For and on behalf of the  
Queensland Council for Civil Liberties  
6 December 2024