

Criminal Code Amendment (Hate Crimes) Bill 2024

Questions on Notice to NSW Council for Civil Liberties

We took one question on notice from the Chair, which was expressed in the following terms:

On the issue of free speech, I know it's obviously very important to both of your organisations around making sure that there are well recognised limits to speech, particularly where it impedes others' rights or urges violence. Did you get a chance to have a look at the submission or evidence today from the Castan Centre for Human Rights Law? Maybe you could take on notice to look at that submission. They put forward the proposition that the bill appropriately protects free speech in the circumstances. I wonder if you could take it on notice and provide us with some feedback on it.

The Castan Centre Submission says:

“The issue of vilification and hate speech cannot be used to suppress free speech that is not violent or forceful. To express this in other terms, speech and conduct that is neither hateful nor violent engages human rights in a distinct way and is the subject of human rights protection. However, the right to freedom of thought, freedom of expression, and association are protected in human rights law, these rights are not absolute. Rather, limitations on these rights, if they are to be lawful, must be adequately balanced and legitimate. That is, proportionate, made according to law and non-arbitrary. Laws addressing such conduct do not breach freedoms of the individual or group who are vilifying another person or group. Laws which appropriately define this conduct and which do not impose carte blanche restrictions on such activity (such as the Bill) are likely to be human rights-compliant, given the significant social ill sought to be addressed by these laws.”

NSWCCL submits that:

- 1) Urging violence and threatening violence is never a legitimate exercise of free speech. Nor is vilification, but this is not the subject of this bill.
- 2) The right to freedom of expression is not absolute and cannot infringe on the freedom of autonomy of others.
- 3) In principle, we do not see how the proposed laws infringe on freedom of expression.
- 4) We submitted that the bill should be clarified so that it only relates to public acts. If the bill was intended to relate to private acts, there may be some burden on freedom of expression. But we do not understand that to be parliament's intention.
- 5) NSWCCL, however, does not consider the law to be appropriately defined and targeted, as discussed in our oral evidence before the committee. Criminal laws which are unclear and uncertain are suboptimal from a human rights perspective.
- 6) As also discussed in oral evidence and in our submission, we cannot rule out that the offences created by the bill will be used disproportionately against people with protected attributes. If that were to occur, it would also be a breach of human rights.
- 7) So while, in our view, the bill does not infringe on freedom of expression, that does not mean that it may not otherwise have adverse human rights implications.