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CASTAN
CENTRE FOR
HUMAN RIGHTS
LAW

Criminal Code Amendment (Hate Crimes) Bill 2024 [Provisions]

*Answer to Question on Notice from Senate Legal and
Constitutional Affairs Legislation Committee*

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1. At our appearance before the Senate Legal and Constitutional Affairs Legislation Committee on 2 December 2024, Senator Scarr invited us to comment on the following point:

One other issue that's been raised during the course of the inquiry was whether or not the scope of the offence should be expanded to include those who have some sort of degree of association with people who have the relevant attributes—where a hate crime is manifested, perpetrated, it's directed at those who are in some way providing support to or connected with people who have the relevant attribute. An example might be someone who is potentially hosting an event, or offering to host an event, and they are subject to threats of violence if they go ahead and host the event or allow the event to occur. To what extent do you think that consideration should be given to expanding the scope of the offence to include those who are targeted, are subject to the violence, threat of violence or use of force as a result of their association with people who have the relevant attribute?

2. We answered that, in principle, we supported extending the offence to people or groups associated with targeted groups or members of targeted groups. Protecting those associated with targeted groups or members of targeted groups would be consistent with existing anti-discrimination law. Where such conduct meets the threshold for the criminal law to impose sanctions in the case of urging or threatening force or violence, the criminal law should also protect those who are associated with targeted groups or group members. For example, the *Equal Opportunity Act 2010* (Vic) defines the attributes protected by the law to include 'personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.'¹ Including an additional targeted group as those targeted by personal association in-line with Victoria's wording would be the most straightforward amendment. Alternatively, separate offences could be introduced by the Bill.
3. We also wish to reiterate to the Committee that we support the introduction of a criminal offence of serious vilification. In this regard we draw the Committee's attention to the submission from Equality Australia² and the Executive Council of Australian Jewry.³ We highlight for the Committee that Victoria is proposing reforms to its anti-vilification laws to move the offence of serious vilification from the *Racial and Religious Tolerance Act 2001* (Vic) to the *Crimes Act 1958* (Vic) and extend protections to a number of additional protected attributes. We therefore highlight, for the Committee's attention, the Justice Legislation Amendment (Anti-Vilification and Social Cohesion) Bill 2024 (Vic), a copy of which is appended to this answer.
4. During our evidence session before the Committee there was also a question as to whether there should be additional protections for the property of members of targeted groups. We note that Victoria's anti-vilification offences include an offence of threatening harm or *property damage*.⁴

¹ *Equal Opportunity Act 2010* (Vic) s 6(q).

² See, Equality Australia, Submission No 38 to Senate Legal and Constitutional Affairs Legislation Committee, *Inquiry into Criminal Code Amendment (Hate Crimes) Bill 2024 [Provisions]*, Parliament of Australia, 7-8.

³ See, Executive Council of Australian Jewry, Submission No 1 to Senate Legal and Constitutional Affairs Legislation Committee, *Inquiry into Criminal Code Amendment (Hate Crimes) Bill 2024 [Provisions]*, 7-8.

⁴ See, *Racial and Religious Tolerance Act 2001* (Vic) s 24(b); Justice Legislation Amendment (Anti-Vilification and Social Cohesion) Bill 2024 (Vic) cl 4 (proposed s 195O).

5. It was also brought to our attention during the course of the hearing that the proposed amendments to the prohibited symbols laws in Division 80 would only be extended to protect on the basis of 'sexual orientation, gender identity, intersex status'.⁵ Given the sorts of ideologies motivating the need for such an offence, we recommend including disability and religion among these protected attributes. This is consistent with the purpose of the amendments and the evidence given by other witnesses.
6. In summary, the Castan Centre recommends:
 - (a) Persons associated with targeted groups or members of targeted groups should also be protected from the same conduct that the Bill seeks to address (and the offences recommended in paragraphs (b) and (c) below).
 - (b) An offence of serious vilification should be introduced, such as that which exists in Victoria.
 - (c) These offences should extend to the property or targeted groups or members of targeted groups.
 - (d) Clauses 4 and 5 of the Bill should be amended to ensure hate symbol protections for 'groups or members of groups distinguished by race, religion, nationality, national or ethnic origin or political opinion, sex, sexual orientation, gender identity, intersex status and disability', which would bring these amendments in line with the other amendments proposed by the Bill.

⁵ Criminal Code Amendment (Hate Crimes) Bill 2024 (Cth) cl 4 and 5.