

Senate Legal and Constitutional Affairs Legislation Committee
Criminal Code Amendment (Hate Crimes) Bill 2024 [Provisions]
Attorney-General's Department

Hearing date: 02 December 2024

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Nita Green asked the following question:

CHAIR: One of the other issues that came up throughout today was whether there's a benefit in having a serious vilification offence. The Victorian government recently announced that it'll legislate this type of offence. I assume that you're aware of the Victorian proposal. What would the Victorian proposal cover? We've asked consistently throughout the day whether people would want that to be part of the legislation, but might we understand what it would cover that isn't already covered by this bill?

Ms Hartigan: We might need to take that one on notice, given it's a relatively new offence. I don't have it to hand, sorry.

CHAIR: Okay. If you could take that on notice, that would be helpful.

The response to the question is as follows:

On Tuesday 26 November, the Victorian Government introduced the Justice Legislation Amendment (Anti-vilification and Social Cohesion) Bill 2024 into Parliament. The Bill proposes:

- New criminal offences for inciting hatred against, serious contempt for, revulsion towards or severe ridicule of a person, or groups of persons, based on their disability, gender identity, race, religious belief or activity, sex, sex characteristics, sexual orientation or a personal association with a person who is identified by reference to those protected attributes, with a proposed penalty of a maximum of three years imprisonment.
- New criminal offences for threatening physical harm or property damage on the ground of the same protected attributes listed above, with a proposed penalty of a maximum of five years imprisonment.
- Strengthens civil laws to address public vilification and incitement to vilification based on the same protected attributes listed above, with the opportunity for complaints about contraventions to the provisions to be brought to the Victorian Equal Opportunity and Human Rights Commission or the Victorian Civil and Administrative Tribunal.

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Paul Scarr asked the following question:

Senator SCARR: I understand that answer. The question was then asked perhaps of us as policymakers by the witnesses: if that's the case, is there any reason why you can't insert the word 'physical' before 'force or violence' in order to remove any doubt and provide additional confidence? I won't necessarily seek an answer from you on that now. But is that something you could potentially take on notice as a way to try and close that issue out entirely?

Mr Savery: I think that we could. The only thing that I would say on that is it is the intention. For this particular offence, I think, conceivably, there wouldn't be an impact of adding 'physical'. It's worth noting that the terms 'force' and 'violence' are used quite a bit throughout the Criminal Code, so there are a range of other offences in this division which use those terms. On the spot, I think we'd probably say that adding 'physical' is unlikely to have a significant effect to those. There are other references to violence throughout the Criminal Code. It would just be whether adding 'physical' in this context would have any effect on the interpretation of those offences if they didn't use physical or if you would then need to make broader expansions to the Criminal Code. But I suppose we could take on notice our assessment of that.

Senator SCARR: If you could take that on notice, that would be useful. I understand the complicated issues you need to consider in terms of unintended drafting consequences and how they might flow through to other provisions, so I'm very happy for you to take that on notice.

The response to the question is as follows:

The department considers it is not necessary to revise the Bill to insert the term 'physical' before the terms 'force or violence'. The ordinary meaning of these terms, and the statutory context in which they are used, make clear that they refer only to physical force or violence.

The terms 'force' and 'violence' are used in varying contexts throughout the Criminal Code. There is some risk that using the term 'physical force or violence' in this context could impact the interpretation of the terms 'force' and 'violence' in other parts of the Criminal Code.