

Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023

Explanatory notes for SL 2023 No. 193

Made under the

Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023

General Outline

Short Title

Proclamation to commence all remaining provisions of the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023

Authorising law

Section 2 of the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023*

Policy objectives and the reasons for them

The *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* received assent on 19 October 2023.

The objective of the Proclamation is to fix 29 April 2024 as the commencement of the remaining provisions of the Act that are not in force. These provisions implement Recommendations 7, 8, 9 and 16 of the Legal Affairs and Safety Committee Report *Inquiry into serious vilification and hate crimes* (No. 22, 57th Parliament).

Recommendation 7 related to the removal of the requirement that the written consent be given by a Crown Law Officer before commencing a prosecution under section 131A (Offence of serious racial, religious, sexuality or gender identity vilification) of the *Anti-Discrimination Act 1991* (AD Act). Recommendation 8 was that a statutory aggravation regarding serious vilification/hate be introduced into the Criminal Code and *Summary Offences Act 2005* (SO Act). Recommendation 9 was that section 131A of the AD Act be relocated to the Criminal Code. Recommendation 16 recommended the criminalisation of the display of hate symbols.

To implement these recommendations, the Act amends the AD Act, Criminal Code, *Ombudsman Act 2001*, *Police Powers and Responsibilities Act 2000* (PPR Act), and SO Act.

The provisions that are to commence are Parts 2, 3, 4 and 5.

The primary purposes of the sections in Part 2 are to amend the AD Act to:

1. create a new definition of *public act*; and
2. amend, relocate and renumber section 131A of the AD Act. The amendments to section 131A of the AD Act increase the maximum penalty for the offence from 70 penalty units or 6 months imprisonment to three years imprisonment and removes the requirement for a Crown Law Officer's written consent to be obtained prior to a proceeding being commenced for the offence. The provision relocates section 131A of the AD Act to the Criminal Code and renumbers the provision.

The primary purpose of the sections in Part 3 are to amend the Criminal Code to:

1. provide definitions *gender identity*, *prohibited symbol*, *race*, *sex characteristics* and *sexuality* in section 1 of the Criminal Code;
2. insert Part 2 Chapter 7A (Serious vilification and prohibited symbols); and
3. amend sections 552A and 552BA of the Criminal Code.

The primary purpose of the sections in Part 4 are to amend the PPR Act to apply, extend the application of existing powers in section 30 (Prescribed circumstances for searching persons without warrant) and section 32 (Prescribed circumstances for searching vehicle without warrant) of the PPR Act.

The primary purpose of the sections in Part 5 are to amend the SO Act to provide for circumstances of aggravation in relation to section 6 (Public nuisance) and section 11 (Trespass).

The amendments to the *Ombudsman Act 2001* contained in Part 3A of the Act were commenced on 27 October 2023 by Proclamation Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023 (commencing certain provisions).

Achievement of policy objectives

The policy objective is achieved by fixing a commencement date of 29 April 2024 for the uncommenced provisions of the Act.

Consistency with policy objectives of authorising law

The Proclamation is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Proclamation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

As outlined in the explanatory notes for the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023, the benefits and costs of implementing the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* will be met from existing agency resources. While the amendments are not expected to have any significant resourcing impacts, any funding required beyond existing agency resources will be subject to normal budget processes.

Consistency with fundamental legislative principles

The Proclamation is consistent with fundamental legislative principles.

Consultation

Consultation was undertaken with relevant stakeholders during the development of the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023 (the Bill). A consultation draft of the Bill was provided to key legal and multicultural stakeholders who were invited to provide feedback.

19 stakeholders provided feedback on the Bill. Stakeholder feedback was taken into account in finalising the Bill.