

12 October 2017

Senate Legal and Constitutional Affairs Committee

Submission - Inquiry into the Criminal Code Amendment (Impersonating a Commonwealth Body) Bill 2017

Thank you for your invitation to make a submission on this bill.

I produce a video series called '[Honest Government Adverts](#)' in which we satirically impersonate Governments to inform the public about current issues (eg. the marriage-equality survey; the Adani coal mine; Centrelink 'robo-debt' letters, the Dakota Access Pipeline). Our videos have received millions of online views from a dedicated audience, both in Australia and abroad.

Whilst I agree impersonating the Commonwealth Government for nefarious purposes should be considered an offence, I am concerned the current wording of this law could also be used to suppress work of a satirical nature.

To substantiate my concerns, I would like to inform this Committee that 5 days before this bill was introduced, the Department of the Prime Minister & Cabinet emailed me, suggesting that my "Honest Government Ads" could mislead people into thinking they are actual Government communications. (More info on the email in [this article from The Mandarin](#))

For this reason, I am making this submission to seek your support in ensuring this bill contains an explicit and un-ambiguous exemption for satire.

I note that the Bill currently appears to exempt satire with this clause: "conduct does not include conduct engaged in solely for genuine satirical, academic or artistic purposes." But the wording here is sloppy and ambiguous for a number of reasons, including:

1. Who decides what counts as "genuine" satire? There is a dearth of case law on what "satire" even means in Australia and it's hard enough to advise on the satire fair dealing exception for copyright law, let alone when there is 2-5 years' imprisonment at stake.
2. The qualification "solely" is problematic: what if the work is satire but the creator also has other, or additional, motivations - albeit perfectly legal/legitimate ones?
3. Lastly, as Professor Jeremy Grans pointed out in his own submission to this Committee, "this is clearly an important exception and should not be buried away in a weird definition".

Given these concerns, I respectfully request this Committee to ensure this bill is amended to include a strong and legally meaningful exemption for satire, so that this law cannot cause a chilling effect on my work and that of other satirists in Australia.

If the Government genuinely wants to ensure this bill does not unduly limit freedom of expression, as the Minister states, then the satire exemption should not be qualified by adjectives, but simply read: "*This section does not apply to conduct engaged in for satirical, academic or artistic purposes.*"

It is worth noting also that Australia is the only western liberal democracy/common law legal system bereft of a Bill of Rights and no express right to freedom of speech/expression, which makes laws such as the one currently being proposed all the more concerning.

Yours sincerely,

Giordano Nanni

