

Dissenting Report of the Australian Greens

1.1 The committee's inquiry into the Criminal Code Amendment (Impersonating a Commonwealth Body) Bill 2017 (the bill) received 8 submissions with the majority raising concerns about this bill.

1.2 Despite the concerns raised by submitters, the report recommends that this bill be passed. However, the Australian Greens believe that this bill is an unacceptable limitation on freedom of expression and could potentially have a chilling effect on political communication and satire.

1.3 This bill introduces new offences and a new injunction power to prohibit and prevent conduct amounting to false representation of a Commonwealth body. While there are valid reasons to prohibit and prevent false representation of a Commonwealth body this bill does not appear to provide protections for satirical, artistic and educational purposes.

1.4 Australian Lawyers for Human Rights submitted that:

'under the proposed legislative regime would each episode of Clarke and Dawe, The Chaser, The Juice Media's "Honest Government Ads" or Shaun Micallef's "Mad as Hell" need to be prefaced by explanations that the characters are not representing the federal government to avoid any risk of all concerned being jailed for up to 5 years? That the question even needs to be asked demonstrates that the proposed legislation is an unreasonable overreach by the Executive arm of government and utterly inimical to the values of a free and democratic society.'¹

1.5 The bill does not provide guidance as to what might be 'genuine' satire. Mr Giordano Nanni, of Juice Media submitted that there is a 'dearth' of case law on what satire means in Australia. This is concerning given that this bill proposes a penalty of up to five years imprisonment.²

1.6 Mr Jeremy Gans submitted that a fundamental flaw of the Bill is that it 'criminalises reasonable misunderstandings, rather than deception, in a context where reasonable misunderstandings (about the role and reach of Australia's federal government) are absolutely commonplace (and are widely recognised as such by all informed people.)'³

1.7 Proposed section 150.1 is deeply concerning in that it could lead to the imprisonment of a person who does not necessarily mislead anyone, but where it could be argued they were reckless that someone could form the impression that they were acting on behalf of a Commonwealth body.

1 Australian Lawyers for Human Rights, Submission 6, pg. 3, 2.5.

2 Dr Giordano Nanni, Submission 3

3 Mr Jeremy Gans, Submission 1, pg 3

Conclusion

1.8 The Australian Greens are concerned that the Chair has not appropriately responded to and addressed the concerns raised by the submitters regarding this bill.

1.9 The amendments proposed are unnecessary, have not been sufficiently justified, will unreasonably fetter freedom of political expression and silence many satirists.

Recommendation 1

1.10 The Australian Greens recommend that this bill be opposed by the Senate.

Senator Nick McKim

Australian Greens