

Delicate balance between free speech and other rights

Should the Prevention and Combating of Hate Crimes and Hate Speech Bill be passed into law, SA will join Germany, the Netherlands and the UK in criminalising certain forms of speech. While government may enact the Bill as it stands, the 'ultimate test' will be whether the Bill succeeds in deterring the 'growing incidents of hate crime and hate speech'. In an examination of the Bill on the [Centre for Constitutional Rights](#) site, the centre's Phephelaphi Dube argues while free speech absolutists may disagree with the criminalisation of hate speech and punt the Bill as an example of thought control, this view 'possibly' loses sight of the balancing nature of the Constitution in which most rights are subject to limitation. She suggests this is the paradox which the Bill seeks to address: robust freedom of expression while ensuring that the social fabric of SA remains intact. Dube adds that the Bill is an improved version of its 2016 predecessor. **'In an open and democratic society, the freedom to express ideas is important, but that freedom has to be underpinned by considerations of other values including dignity, equality and freedom.'** It is this delicate balance which the Bill by and large successfully achieves,' she says. Dube notes the Bill creates the offence of hate crime motivated by prejudice. 'The hate crime means that where an individual is found guilty of a criminal offence motivated by prejudice or intolerance, towards the victim, then the additional charge of a hate crime arises.' She says the intention of the Bill is a welcome development in SA law, as it plugs a legislative gap and further serves as a deterrent to would-be offenders. 'There is a need for legal regulation to guide behaviour change,' she adds. Dube points out that the Bill does not stop at criminalising hate crimes and hate speech. It takes the 'important step' of tasking the state and the SA Human Rights Commission with 'promoting awareness of, and combating, both hate crimes and hate speech'.