

## **Criminal Code (Serious Vilification and Hate Crimes) Amendment Bill 2023**

**Submission No:** 25  
**Submitted by:** Australian Lawyers for Human Rights  
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**See attached:**



[www.alhr.org.au](http://www.alhr.org.au)

11 May 2023

Legal Affairs and Safety Committee  
Committee Secretary  
Legal Affairs and Safety Committee  
Parliament House  
Alice Street  
BRISBANE. QLD 4000  
By email: [lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)

**To the Committee,**

**SUBMISSION IN RESPONSE TO THE *CRIMINAL CODE (SERIOUS VILIFICATION AND HATE CRIMES) BILL 2023 (QLD)***

Australian Lawyers for Human Rights (**ALHR**) is grateful for the opportunity to make the following submission in response to the *Criminal Code (Serious Vilification and Hate Crimes) Bill 2023 (Qld)* (**the Bill**). The Bill will amend the *Anti-Discrimination Act 1991 (Qld)* (**AD Act**), the *Criminal Code, Police Powers and Responsibilities Act 2000 (Qld)* (**PPRA**) and the *Summary Offences Act 2005 (Qld)* (**SO Act**). ALHR welcomes the Bill and its intention to better address and increase protection against serious vilification and hate crimes, particularly for the LGBTQI+ community.

**Acknowledgements**

Australian Lawyers for Human Rights (**ALHR**) acknowledges the traditional owners and custodians of the lands on which we work across Queensland as the first people of this country. We recognise that the land belonging to these peoples was never ceded, given up, bought, or

sold. We pay our deep respect to Elders past, present and emerging and express our strong support for the Uluru Statement from the Heart.

## About Australian Lawyers for Human Rights

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees.

ALHR seeks to utilise its extensive experience and expertise in the principles and practice of international law and human rights law in Australia to:

- Promote Federal and State laws across Australia that comply with the principles of international human rights law;
- Engage with the United Nations in relation to Australian human rights violations;
- Promote and support lawyers' practice of human rights law in Australia;
- Engage internationally to promote human rights and the rule of law.

Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

## Vilification and hate crimes experienced by LGBTQI+ people

ALHR has previously had the opportunity to make a submission to the Legal Affairs and Safety Committee (**LASC**) in July 2021.<sup>1</sup> The focus of that submission was the vilification and hate crimes experienced by LGBTQI+ people.

The subject of vilification and hate crimes is of particular relevance to LGBTQI+ people, as one of the groups most at risk of experiencing these problems in Australia.

ALHR notes that the main purpose of the Bill is to implement legislative reforms as recommended by the LASC Report Inquiry into serious vilification and hate crimes<sup>2</sup> (**the LASC Report**). Specifically, the Bill implements recommendations 7, 8, 9 and 16 of the LASC Report.

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<sup>1</sup> See: <https://alhr.org.au/qld-anti-discrim-inq/>

<sup>2</sup> No.22 57th Parliament

In addition to addressing these recommendations, the Bill will amend the AD Act to increase the existing penalty for the offence at section 131A (Vilification of serious racial, religious, sexuality or gender identity vilification)

ALHR commends the Queensland Government for the seriousness with which the Bill treats vilification, an approach whichs better reflects the community's condemnation of such conduct.

We welcome the inclusion of all three attributes of sexuality, gender identity and sex characteristics into both the AD Act and *Criminal Code Act 1899* (Qld). The definition of these three attributes contained in the *Births, Deaths and Marriages Registration Amendment Bill 2022*, which amends the *ADAct*, modernises the terms to better reflect the wide scope of people who fall within the LGBTQI+ community and removes the ambiguity of the previous terms.

We support the inclusion of sex characteristics under the circumstances of aggravation provisions in the new section 52B of the *Criminal Code*.

ALHR submits that while the Bill has substantially improved protections and recognition afforded to members of the LGBTQI+ community through the introduction of the abovementioned progressive definitions, it has failed to incorporate the newly defined attribute of 'sex characteristics' into the current discrimination and vilification provisions in the *ADAct* or the new section 52A of the *Criminal Code*. ALHR is therefore concerned that it remains unclear whether the Bills' vilification prohibitions will apply to intersex people.

**Recommendation 1: 'Sex characteristics' should be explicitly included as a protected attribute under the discrimination and vilification provisions in the *Anti-Discrimination Act 1991* and section 52A of the *Criminal Code*, to ensure intersex people are protected against discrimination.**

ALHR notes that the title for Chapter 4, Part 4 of the *ADAct* has not been redrafted. In its current form it refers to 'racial and religious vilification,' despite the fact that the provision contained within that chapter (s 124A) refers to race, religious, sexuality and gender identity. ALHR submits that it is therefore possible that a casual reader of the legislation may see only the heading for Chapter 4, Part 4 and not understand that vilification based on sexuality and gender identity (and hopefully in future sex characteristics) is also prohibited. It is also possible that a victim of such vilification may be left unaware they gain protection under this provision of the

Act. To remove confusion about which attributes are protected against vilification, ALHR submits that that this title should be amended.

**Recommendation 2: The title for Chapter 4, Part 4 should be re-drafted to remove confusion about which attributes are protected against vilification.**

## **Amendments to Prohibited Symbols**

ALHR supports the introduction of the new ‘Prohibited symbols’ offence which will assist in protecting the community from the harmful of the display of hate symbols. The wide range of circumstances captured by this offence indicates the seriousness with which the Queensland Government intends to treat such actions.

ALHR acknowledges the human rights-informed efforts of the Government in distinguishing between the legitimate use of symbols as opposed to illegitimate use through the introduction of exceptions. For the purposes of the provision, a person will not commit the offence if they engaged in conduct for a genuine artistic, religious, educational, historical, legal, law enforcement or public interest purpose, or to oppose the ideology represented by the prohibited symbol and the display of the symbol was ‘reasonable’ for that purpose.

ALHR considers this to be a proportionate legislative response that appropriately balances rights in order to protect the equal dignity, safety and security of all individuals. **Exclusion**

## **of Disability from Proposed Reforms**

Although the Bill has substantially improved protections and recognition afforded to members of the LGBTIQ+ community, it has failed to account for individuals with disability. The vilification provisions in both the *AD Act* and *Criminal Code* do not explicitly extend to protect the attribute of disability. ALHR submits that this is a major oversight by the Government.

People living with disability persistently face ongoing vilification and harassment on the basis of their disability. A report issued by the Australian Institute of Health and Welfare in 2020 found that 44% of complaints received by the Australian Human Rights Commission (AHRC) relate to disability discrimination, forming the largest category of complaints received by the AHRC<sup>3</sup> The report found that 1 in 6 Australians with disability aged 15–64 experience disability

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<sup>3</sup> Australian Institute of Health and Welfare, *people with disability in Australia 2022* (Report, 2022) <<https://www.aihw.gov.au/getmedia/3bf8f692-dbe7-4c98-94e0-03c6ada72749/aihw-dis-72-people-with-disability-in-australia-2022.pdf.aspx?inline=true>> 162.

discrimination<sup>4</sup>, and of this group, 82% who had experienced disability discrimination in the previous year also avoided social situations because of their disability.<sup>5]</sup>

Whilst Queensland's *ADAct* does list impairment as a protected attribute with respect to discrimination, the Act's vilification provisions only protect four attributes: race, religion, sexuality, and gender identity. Evidence clearly illustrates how individuals living with disabilities are highly susceptible to unfavourable treatment by others and frequently suffer prejudice in society - prejudice that extends to vilification. In order to better protect this vulnerable group of individuals, ALHR strongly recommends that vilification on the ground of disability be similarly prohibited under the Queensland's *ADAct*.

**Recommendation 3: Disability should be included as a protected attribute under Chapter 4 Part 4 the *Anti-Discrimination Act 1991* (Qld) to better protect disabled people from vilification.**

ALHR submits that disability should be included as an attribute which forms part of the 'relevant group' in the newly introduced section 52 of the *Criminal Code*. Disability was not included in the prohibition of symbols reforms which were made to the *Criminal Code*. This means that people with disabilities do not form part of the 'relevant group' for the purposes of determining whether a prohibited symbol should be included in the regulations.

Failure to include people with disability within the relevant section is a breach of the United Nations Convention on the Rights of Persons with Disabilities, and in particular article 13.

ALHR submits that this is especially alarming given the disability community have previously been a relevant group or part of the relevant group of people against whom symbols or images promoted extreme prejudice. For example, people with disabilities and chronic health conditions were targeted by Nazi policies of genocide, mass murder and other form of persecution. As such, symbols such as the swastika promoted extreme prejudice against them.

**Recommendation 4: Disability should be included as a characteristic forming part of the definition of 'relevant group' in section 52C(5) of the *Criminal Code*.**

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<sup>4</sup> Ibid 163.

<sup>5</sup> Ibid 168.

## **Amendments to the *Police Powers and Responsibilities Act 2000***

The Bill amends sections 30 (Prescribed circumstances for searching persons without warrant) and 32 (Prescribed circumstances for searching vehicle without warrant) of the PPRA to allow a police officer to search a person or vehicle without a warrant or vehicle without a warrant where the police officer reasonably suspects the person has committed, or is committing, the offence.

While these provisions are intended to support the effective and practical enforcement of offences and to prevent or minimise any harm caused by the public display of prohibited symbols, ALHR has reservations that expanding police powers to permit searches without a warrant risks unintended discriminatory impacts on vulnerable or marginalised groups who may already be subject to “over-policing.”

On balance ALHR does not support the expansion of police stop and search powers without appropriate judicial oversight. \_\_\_\_\_

If you would like to discuss any aspect of the submission with us, please do not hesitate to contact us.



**Kerry Weste**  
**President**



*Any information provided in this submission is not intended to constitute legal advice, to be a comprehensive review of all developments in the law and practice, or to cover all aspects of the matters referred to. Readers should take their own legal advice before applying any information provided in this document to specific issues or situations.*

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