



Respect at Work and Other Matters Amendment Bill 2024

Report No. 13, 57th Parliament
Community Safety and Legal Affairs Committee
July 2024

Community Safety and Legal Affairs Committee

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All web address references are current at the time of publishing.

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Chair's foreword

This report presents a summary of the Community Safety and Legal Affairs Committee's examination of the Respect at Work and Other Matters Amendment Bill 2024 (Bill).

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

Discrimination and vilification have no place in a free, democratic society. Unfortunately, in some instances, it is still the case that vulnerable groups within our community are confronted with barriers which prevent them fully taking part in society purely because they are identifiable as members of a particular group.

A robust, workable anti-discrimination framework protects such groups and provides a process for recourse in the event of any contraventions. This Bill delivers reforms to Queensland's statutory anti-discrimination scheme (contained in the *Anti-Discrimination Act 1992*) to reflect recommendations from various reports and to modernise the operation of the scheme.

The Bill proposes to implement recommendations from the Queensland Human Rights Commission's *Building Belonging – Review of Queensland's Anti-Discrimination Act 1991* report, particularly in respect of expanding and updating the attributes protected from discrimination under the *Anti-Discrimination Act 1992*, and by introducing a positive duty to eliminate all forms of unlawful discrimination, sexual harassment, vilification and other associated objectionable conduct as far as possible.

In response to the findings of the *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Report* prepared by the Australian Human Rights Commission, the Bill includes new prohibitions of harassment on the basis of sex and subjecting a person to a work environment that is hostile on the basis of sex. These reforms are supported by an extension to the time limit for making of a complaint of unlawful sex-based harassment and expansion to the powers and functions of the Queensland Human Rights Commission to investigate those complaints and systemic issues of work-related sex-based harassment.

The Bill also amends the current vilification provisions in the *Anti-Discrimination Act 1992* as recommended in this committee's predecessor's reports on its *Inquiry into serious vilification and hate crimes* and its inquiry into the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023, including changes to the test for civil vilification and the introduction of the harm-based provision to specifically address the impact of vilification on protected groups.

Amongst other matters, the Bill amends the *Penalties and Sentences Act 1992* to introduce a new aggravating sentencing factor. If an offender is convicted of an offence involving violence against, or that resulted in physical harm to, a person in their workplace, the court must treat as an aggravating factor the fact that the offence occurred in the performance of the functions of the victim's office or employment. This reflects the community's view that any violence, or threats of violence, directed towards workers in the performance of their duties is unacceptable.

I am proud to be part of a government which seeks to strengthen protections for all workers, particularly those from diverse backgrounds.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Justice and Attorney-General.

I commend this report to the House.

A handwritten signature in black ink, appearing to read 'Peter Russo', with a long horizontal stroke extending to the right.

Peter Russo MP

Chair

Recommendations

Recommendation 1

5

The committee recommends that the Respect at Work and Other Matters Amendment Bill 2024 be passed.

Executive Summary

This report presents the Community Safety and Legal Affairs Committee's examination of the Respect at Work and Other Matters Amendment Bill 2024 (Bill). The primary objectives of the Bill are to promote respect at work and strengthen protections against vilification.

The most significant changes proposed in the Bill include amendments to the *Anti-Discrimination Act 1991* that would:

- prohibit sex-based harassment in workplaces and subjecting a person to a work environment that is hostile on the basis of sex
- impose a positive duty to eliminate discrimination, sexual harassment and victimisation.

The Bill also proposes substantive amendments to the *Criminal Code Act 1899*, *District Court of Queensland Act 1967*, *Magistrates Act 1991*, *Penalties and Sentences Act 1992*, *Queensland Civil and Administrative Tribunal Act 2009*, and *Youth Justice Act 1992*.

This Bill implements a range of recommendations made by the Australian Human Rights Commission, the Queensland Human Rights Commission, the Queensland Sentencing Advisory Council and this committee's precursor, the Legal Affairs and Safety Committee, following inquiries and reviews they conducted in the last few years.

During its inquiry into the Bill, the committee received and considered a variety of evidence. This included:

- 37 written submissions from stakeholders
- a written briefing and oral briefing provided by the Department of Justice and Attorney-General
- evidence provided by witnesses at a public hearing in Brisbane.

The evidence received by the committee indicates that many stakeholders are supportive of the Bill's objectives and how it seeks to achieve them. However, a number of stakeholders expressed disappointment that the Bill does not include additional reforms canvassed during community consultations that informed its development. A small number of stakeholders raised concerns about how the changes proposed in the Bill will affect certain groups, especially religious schools and institutions.

Having considered the policy objectives of the Bill, its compliance with the *Legislative Standards Act 1992* and the *Human Rights Act 2019*, and the views of stakeholders, the committee recommends that the Bill be passed.

In recommending that the Bill be passed, the committee has considered several issues of fundamental legislative principles raised by the Bill, as well as the potential of the Bill to both promote and limit human rights. In particular, the committee considered the impact of the strengthened vilification protections on the right to freedom of expression and the right to liberty and security of person.

The committee is satisfied that the Bill has sufficient regard to fundamental legislative principles, and that any limitation of human rights is reasonable and justified in the circumstances. The committee is also satisfied that the explanatory notes and statement of compatibility tabled with the Bill clearly explain its purpose, the issues it raises in relation to fundamental legislative principles, and its potential impact on human rights.

1 Introduction

This report presents the Community Safety and Legal Affairs Committee's (committee) examination of the Respect at Work and Other Matters Amendment Bill 2024 (Bill).

1.1 Inquiries and reviews that informed the Bill

Several inquiries and reviews have informed the development of the Bill. The most significant of these include:

- the Australian Human Rights Commission (AHRC) report, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Report* (Respect@Work Report) published in 2020¹
- 2 inquiries conducted by this committee's precursor, the Legal Affairs and Safety Committee (LASC), on vilification and hate crimes:
 - the *Inquiry into serious vilification and hate crimes*, which LASC reported on in 2022²
 - the *Inquiry into the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023*, which LASC reported on in 2023³
- the Queensland Human Rights Commission's (QHRC) review of the *Anti-Discrimination Act 1991* (AD Act), which it reported on in its *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* report (Building Belonging Report), in 2022.⁴

The Bill implements selected recommendations made by these inquiries and reviews (see Appendix D, and sections 2 and 3). It also implements a recommendation made by the Queensland Sentencing Advisory Council (QSAC) following its 2020 report, *Penalties for assaults on public officers* (see Appendix D and section 4.1).⁵

1.1.1 Respect@Work Report

Between 2018 and 2020, the AHRC conducted an inquiry into workplace sexual harassment in Australia. Its Respect@Work Report, published in March 2020, 'found that workplace sexual harassment remained prevalent, and that the current system for addressing sexual harassment was complex and confusing for victims and employers to understand'.⁶ To address these concerns, it recommended several changes to the *Sex Discrimination Act 1984* (Cth) (SD Act).

Although the recommendations made in the Respect@Work Report were addressed to the Australian Government and focussed on changes to Commonwealth legislation, they are relevant to the states and territories which have legislation that overlaps with the SD Act. In Queensland, this takes the form of the AD Act, which is the focus of the Bill.

The significant degree of overlap between Commonwealth and state-based legislation in this area led the AHRC to expressly recommend that the Australian Government work with state and territory

¹ AHRC, Respect@Work Report, March 2020.

² LASC, *Report No. 22, 57th Parliament - Serious vilification and hate crimes*, January 2022.

³ LASC, *Report No. 49, 57th Parliament - Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023*, June 2023.

⁴ QHRC, *Building Belonging Report*, July 2022.

⁵ QSAC, *Penalties for assaults on public officers*, Final report, August 2020.

⁶ Explanatory notes, p 2.

governments to amend state and territory human rights and anti-discrimination legislation to achieve consistency, where possible, with the SD Act.⁷

In 2021 and 2022, the Federal Parliament passed two Acts amending the SD Act and implementing recommendations made in the Respect@Work Report.⁸

As shown in the first table in Appendix D and discussed in section 2, the Bill includes several provisions that will align the AD Act with the amended SD Act, implementing recommendations from the Respect@Work Report in a manner adapted to Queensland's legislative context.

1.1.2 LASC reports on vilification and hate crimes

This committee's precursor, LASC, conducted two related inquiries that have informed the development of the Bill.

In 2021 and early 2022, LASC conducted the *Inquiry into serious vilification and hate crimes*, which it reported on in January 2022 (LASC Vilification Report).⁹ That report made 17 recommendations, 7 of which concerned potential legislative change (Recommendations 4-9 and 16). The government indicated support, or support-in-principle, for all the recommendations made by the LASC Vilification Report in its response tabled on 26 May 2022.

Many of LASC's recommendations relating to legislative change were addressed by the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023.¹⁰ LASC conducted an inquiry into that Bill in 2023. Its report on that inquiry (the LASC Vilification and Hate Crimes Bill Report) made 9 recommendations.¹¹ Three of those recommendations (Recommendations 2-4) concerned potential changes to the AD Act and/or the *Criminal Code Act 1899* (Criminal Code). These recommendations overlapped with or reiterated outstanding recommendations from LASC's earlier report (see Appendix D).

As shown in the second table in Appendix D and discussed in section 3, the Bill includes several provisions designed to implement these overlapping and outstanding recommendations. Broadly speaking, these amendments are designed to strengthen protections against vilification and hate crimes in Queensland.

In some cases, discussed in more detail in section 3, the amendments proposed in the Bill differ from what LASC recommended. However, these variations are relatively minor.

1.1.3 Building Belonging Report

In 2021 and 2022, the QHRC undertook a review of the AD Act. In its report, tabled in September 2022, it made 122 recommendations designed to improve protections against discrimination in Queensland.¹² Many of these involved changes to the AD Act, including recommendations to update existing attributes protected under the Act, incorporate new attributes, and establish a positive duty to eliminate discrimination and sexual harassment.

⁷ AHRC, Respect@Work Report, March 2020, Recommendation 26.

⁸ *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (Cth); *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth).

⁹ LASC, *Report No. 22, 57th Parliament - Serious vilification and hate crimes*, January 2022.

¹⁰ Explanatory notes, pp 3-4.

¹¹ LASC, *Report No. 49, 57th Parliament - Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023*, June 2023.

¹² QHRC, *Building Belonging Report*, July 2022.

In April 2023, the government provided in-principle support for all 122 recommendations made in the Building Belonging Report.¹³

As shown in the third table in Appendix D and discussed in section 2, the Bill includes several provisions designed to implement certain recommendations made in the Building Belonging Report. Other recommendations made by that report are being implemented through different channels,¹⁴ including the *Assisted Reproductive Technology Bill 2024* (ART Bill), which is currently being considered by this committee.

Committee comment

During its inquiry into this Bill, the committee also examined the ART Bill. The committee notes that clause 155 of the ART Bill proposes removing section 45A of the AD Act, implementing Recommendation 44.1 from the Building Belonging Report.

The committee also notes that clause 12 of this Bill proposes a minor amendment to the same section (being section 45A of the AD Act).

To avoid any inconsistency between the two Bills, the committee suggests that the government consider removing clause 12 of this Bill *if* clause 44 of the ART Bill is adopted by the Legislative Assembly prior to its consideration of this Bill.

1.2 Policy objectives of the Bill

The main objectives of the Bill are to:

- promote respect at work, including by:
 - prohibiting sex-based harassment and subjecting a person to a work environment that is hostile on the basis of sex
 - imposing a positive duty to eliminate discrimination, sexual harassment and victimisation.
- strengthen protections against vilification.

The Bill's objectives also include clarifying the scope of judicial immunity in inferior courts, providing magistrates with an entitlement to unpaid parental leave, protecting workers from violent offences, and aligning legislative requirements with modern court practices.

To achieve its objectives, the Bill proposes substantive amendments to the AD Act, Criminal Code, *District Court of Queensland Act 1967*, *Magistrates Act 1991*, *Penalties and Sentences Act 1992*, *Queensland Civil and Administrative Tribunal Act 2009*, and *Youth Justice Act 1992*. It also proposes consequential amendments to the *Corrective Services Act 2006* and the *Human Rights Act 2019* (HRA).

1.3 Legislative compliance

The committee considered whether the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the HRA.

¹³ Explanatory notes, p 4.

¹⁴ This includes certain recommendations regarding protected attributes. See Department of Justice and Attorney-General (DJAG), written briefing, 25 June 2024, pp 6-7.

1.3.1 *Legislative Standards Act 1992*



Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.¹⁵

In its examination of the Bill, the committee identified a variety of issues relating to fundamental legislative principles. In particular, the committee has considered:

- whether the QHRC's new investigation powers are sufficiently defined, subject to appropriate review, and consistent with principles of natural justice (see section 2.4.1.4), and
- whether the proposed penalty for failing to comply with directions of the commissioner in the course of an investigation is proportionate and consistent with other penalties (see section 2.4.1.2).

These issues are discussed in more detail in the relevant sections below.

Committee comment

Having considered these issues, as well as other fundamental legislative principles issues raised by the Bill and detailed in the explanatory notes,¹⁶ the committee is satisfied that the Bill has sufficient regard to fundamental legislative principles.

1.3.2 *Human Rights Act 2019*



A law is compatible with human rights if it does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable.¹⁷

In its examination of the Bill's compatibility with the HRA, the committee identified several human rights affected by the Bill. The most notable of these include the impact of the strengthened vilification protections on the right to freedom of expression (see section 3.2.1) and the right to security and liberty of person (see section 3.2.2).

The committee also considered other human rights issues raised by the Bill and detailed in the statement of compatibility. This includes the positive effect that the Bill will have on the right to recognition and equality before the law, which is protected by the HRA.¹⁸ As detailed in the statement of compatibility, the Bill is expected to promote that right in several ways, including by improving the effectiveness of Queensland's anti-discrimination laws and strengthening protections against vilification.¹⁹

¹⁵ LSA, s 4(2).

¹⁶ Explanatory notes, pp 17-24.

¹⁷ HRA, s 8.

¹⁸ HRA, s 15.

¹⁹ Statement of compatibility, pp 4-5.

Committee comment

The committee considers that the limitations on human rights are reasonable and demonstrably justified and the Bill is compatible with the rights protected by the HRA.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.4 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends that the Respect at Work and Other Matters Amendment Bill 2024 be passed.

Sections 2, 3 and 4 set out the committee's examination of the Bill in more detail. Those sections do not discuss all consequential, minor or technical amendments.

2 Promoting respect at work

One of the primary objectives of the Bill is to promote respect in workplaces across Queensland. To achieve this objective, the Bill proposes amending the AD Act to:

- update its objectives²⁰
- expand and update the attributes it protects²¹
- clarify the kinds of behaviour that it prohibits²²
- create a new positive duty to prevent discrimination, sexual harassment and other behaviour prohibited by the AD Act²³
- provide the QHRC with strengthened powers to investigate and enforce compliance, including with the new positive duty²⁴
- make certain improvements to the complaints process, including in relation to representative complaints.²⁵

The Bill also proposes amendments to the AD Act relating to vilification (see section 3). While all these amendments are relevant to workplaces, some will also have applications to other contexts.

2.1 Objectives of the *Anti-Discrimination Act 1991*

The Respect@Work Report recommended that the objectives of the federal SD Act be amended to include ‘to achieve substantive equality between women and men’.²⁶ The Bill proposes an equivalent amendment to the AD Act, providing that references to ‘equality of opportunity’ in the preamble and purposes of the Act be replaced with references to ‘equal opportunity and equitable outcomes’.²⁷

2.2 Protected attributes and prohibited behaviour

The Building Belonging Report and the Respect@Work Report made a number of recommendations relating to the attributes protected by the AD Act and the behaviour it prohibits. As detailed below, the Bill includes several provisions that implement these recommendations.

2.2.1 Expanding and updating protected attributes

The AD Act prohibits discrimination on the basis of ‘protected attributes’.²⁸ In the Building Belonging Report, the QHRC recommended that several of the existing attributes be updated, and some new attributes added to those protected under the AD Act (see Table D.3 in Appendix D).

²⁰ Bill, cls 5, 6.

²¹ Bill, cls 7, 52.

²² Bill, cls 18, 22.

²³ Bill, cl 25.

²⁴ Bill, cl 39.

²⁵ Bill, cls 28-31, 47.

²⁶ AHRC, Respect@Work Report, Recommendation 16(a).

²⁷ Bill, cls 5, 6.

²⁸ AD Act, s 7.

To implement these recommendations, the Bill proposes amending section 7 of the AD Act (which specifies which attributes are protected)²⁹ and the Dictionary (which defines each attribute).³⁰ Table 1 below, provides a summary of these changes.³¹

Table 1 *Proposed changes to protected attributes*

Attribute	Nature of change	Explanation
expunged conviction	new attribute	Added as a standalone attribute, rather than as part of 'irrelevant criminal record' as recommended by the QHRC. Recognises that 'historical homosexual convictions which have been expunged should never have existed and are different from other records or convictions'. ³²
family, carer or kinship responsibilities	updated attribute	Term replaces 'family responsibilities' and is left undefined, as recommended by the QHRC.
homelessness	new attribute	Added and left undefined, as recommended by the QHRC.
irrelevant criminal record	new attribute	Added as recommended by the QHRC. Definition is largely consistent with recommendation but varies slightly.
irrelevant medical record	new attribute	Additional change, beyond QHRC recommendations. Included in response to stakeholder feedback (see section 2.2.1.1).
parental status	updated attribute	Definition of 'parent' updated to include: <ul style="list-style-type: none"> for an Aboriginal person – a person who, under Aboriginal tradition, is regarded as a parent of the person for a Torres Strait Islander person – a person who, under Island custom, is regarded as a parent of the person. Additional change, beyond QHRC recommendation, to modernise the definition. ³³
physical appearance	new attribute	Added as recommended by the QHRC. Varies from the term used by QHRC (physical features) but defined consistently with the QHRC's recommendation.
pregnancy or potential pregnancy	updated attribute	Expanded to include 'potential pregnancy' which will be defined in the Dictionary. Additional change, beyond QHRC recommendations. Will align the AD Act with the SD Act. ³⁴

²⁹ Bill, cl 7.

³⁰ Bill, cl 52.

³¹ See also explanatory notes, pp 6-8.

³² DJAG, written briefing, 25 June 2024, p 8.

³³ Explanatory notes, p 44.

³⁴ DJAG, written briefing, 25 June 2024, p 8. Section 7 of the SD Act prohibits discrimination on the ground of pregnancy or potential pregnancy.

Attribute	Nature of change	Explanation
race	updated attribute	Definition updated to include immigration or migration status, as recommended by the QHRC. Also adds express inclusion of caste to avoid doubt and align with definitions used by the United Nations Committee on the Elimination of Racial Discrimination General Recommendation 29. ³⁵
sexual orientation	updated attribute	Terminology changed (replaces 'sexuality') and definition updated in a manner consistent with QHRC recommendation.
subjection to domestic or family violence	new attribute	Added and defined as recommended by QHRC.
trade union activity	updated attribute	Additional change, beyond QHRC recommendations. Intended to align the AD Act with the <i>Industrial Relations Act 2016</i> . ³⁶

Note: See Appendix D for details of QHRC recommendations and explanatory notes (pp 6-8) for definitions.

Several of the amendments proposed by the Bill differ slightly to those proposed in the Building Belonging Report. In most cases, these differences are relatively minor. For example, the Bill inserts the new attribute, 'physical appearance' rather than 'physical features' as the QHRC recommended.³⁷

In some other cases, the proposed changes go beyond what the QHRC recommended. For example, the Bill proposes updating the definitions of 'trade union activity' and 'parental status' to modernise these definitions and align them with other Acts.³⁸

2.2.1.1 *Addition of 'irrelevant medical record' a response to stakeholder feedback*

In the Building Belonging Report, the QHRC considered whether 'irrelevant medical record' should be added as a protected attribute under the AD Act. It received 18 submissions on this issue, with 17 supporting the addition. However, the QHRC ultimately concluded that 'irrelevant medical record' should not be added as a protected attribute because it had been unable to identify any gaps in protection, making its addition unnecessary.³⁹

While the QHRC maintains that adding 'irrelevant medical record' is unnecessary, it advised the committee that it 'does not object' to its inclusion in the Bill.⁴⁰ The Department of Justice and Attorney-General (DJAG) explained the decision to add 'irrelevant medical record' as a protected attribute as follows:

The new protected attribute of 'irrelevant medical record' has been included in response to feedback from stakeholders to provide greater protection from situations when a person's medical record is used as a basis for treating them unfairly, unless the medical record is relevant to the situation. The inclusion of 'irrelevant medical record' as a protected attribute is consistent with the *Anti-Discrimination Act 1992* (NT) and the *Anti-Discrimination Act 1998* (Tas).⁴¹

³⁵ Explanatory notes, p 44.

³⁶ Explanatory notes, p 45.

³⁷ QHRC, Building Belonging Report, July 2022, Recommendation 30.

³⁸ Explanatory notes, pp 44-5.

³⁹ QHRC, Building Belonging Report, July 2022, pp 339-341.

⁴⁰ QHRC, submission 36, p 16.

⁴¹ DJAG, written briefing, 25 June 2024, p 8.

Several stakeholders who provided evidence to the committee expressly supported the inclusion of ‘irrelevant medical record’ as a protected attribute.⁴² For example, the Queensland Network of Alcohol and Other Drug Agencies (QNADA) expressed the view that this amendment would help to address the stigma and discrimination experienced by people who use drugs.⁴³ Similarly, the Queensland Nurses and Midwives’ Union (QNMU) stated that it supports this change, explaining that ‘QNMU’s members frequently report being asked intrusive questions about their medical history in job interviews’.⁴⁴

2.2.1.2 Some stakeholders proposed changes to definitions of protected attributes

Some stakeholders proposed changes to the definitions of certain protected attributes. For example:

- Equality Australia suggested that the definition of ‘expunged conviction’ be amended to include convictions expunged under state or territory Acts equivalent to the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*. They suggested this would ensure Queenslanders who previously lived in other jurisdictions received equal protection under the AD Act.⁴⁵
- Queensland Council of Unions (QCU) proposed clarifying the definition of ‘potential pregnancy’ to prevent discrimination against people undergoing fertility treatment.⁴⁶ It also proposed clarifying several other definitions.
- Legal Aid Queensland took the view that ‘homelessness’ should be defined, expressing concern that ‘leaving the term undefined may leave it susceptible to too narrow interpretation’.⁴⁷

‘Homelessness’ is not defined in the Bill because the QHRC recommended that it not be defined. It made this recommendation because no stakeholders proposed definitions of the term in its consultations with them, and because it considered ‘that the dictionary meaning [of ‘homelessness’] is broad enough to include people who are living in temporary situations such as hostels or refuges, or couch surfing’. The QHRC therefore concluded it was appropriate that ‘homelessness’ be given its ordinary meaning.⁴⁸

A small number of stakeholders objected to how certain protected attributes, such as ‘sexual orientation’ and ‘gender identity’, have been defined.⁴⁹

2.2.1.3 Inclusion of ‘sex work’ as an additional protected attribute

Basic Rights Queensland noted that following the decriminalisation of sex work in Queensland, ‘sex work’ ought to be included as a protected attribute for the purposes of the AD Act in response to feedback received from sex workers that ‘[t]hey are frequently exposed to prevalent underprotected forms of hate speech and online targeting of them in communities’.⁵⁰

⁴² QNADA, submission 12; Queensland Nurses and Midwives’ Union (QNMU), submission 17; QCU, submission 27; Aboriginal and Torres Strait Islander Legal Service, submission 32.

⁴³ Submission 12, p 3.

⁴⁴ Submission 17, p 2.

⁴⁵ Submission 5, p 1.

⁴⁶ Submission 27, pp 12-13.

⁴⁷ Submission 10, p 5.

⁴⁸ QHRC, Building Belonging Report, July 2022, pp 336-338.

⁴⁹ Australian Christian Lobby, submission 7; Pastor Marshall Gray and others, submission 8; Queensland Churches Together, submission 16; Women Apostolic Alliance, submission 35.

⁵⁰ Public hearing transcript, Brisbane, 12 July 2024, p 19.

Basic Rights Queensland's submission was informed by the issues raised by Respect Inc, being a statewide sex worker organisation, which noted that the Northern Territory made amendments to its discrimination and vilification legislation in recognition of the decriminalisation of sex work.⁵¹

2.2.2 New prohibitions relating to sex-based discrimination and harassment

The AD Act already prohibits discrimination on the basis of sex⁵² as well as sexual harassment.⁵³ Despite the existence of such prohibitions, the AHRC found that sexual harassment remained widespread in workplaces across Australia. It suggested this was partly due to a disconnect between the existing prohibitions and the general public's understanding of them.⁵⁴

To respond to this problem, the AHRC recommended the express prohibition of:

- sex-based harassment, and
- creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex.⁵⁵

In line with these recommendations, the Bill proposes amending the AD Act to insert new prohibitions on such behaviour.⁵⁶

2.2.2.1 *Harassment on the basis of sex*

The Bill proposes amending Chapter 3 of the AD Act to include a new prohibition of harassment on the basis of sex.⁵⁷ This new prohibition would only apply in relation to work or work-related areas.⁵⁸

As the explanatory notes state, the Bill provides that:

... harassment on the basis of sex happens if a person:

- engages in unwelcome conduct of a demeaning nature in relation to another person;
- engages in the conduct on the basis of the sex of the person harassed; and
- engages in the conduct with the intention of offending, humiliating or intimidating the other person, or in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.⁵⁹

This will capture:

... conduct which is done on the basis of:

- the other person's sex; or
- a characteristic that a person of the other person's sex generally has; or
- a characteristic that is often imputed to a person of the other person's sex; or
- the sex the other person is presumed to have, or to have had at any time, by the person engaging in the conduct; or

⁵¹ Respect Inc, submission 28, p 1.

⁵² AD Act, s 7(a).

⁵³ AD Act, s 118.

⁵⁴ Explanatory notes, pp 9-10.

⁵⁵ AHRC, Respect@Work Report, March 2020, Recommendations 16(b), (c).

⁵⁶ Bill, cls 18, 22.

⁵⁷ Bill, cl 18.

⁵⁸ Bill, cl 18, proposed ss 120A-120E of the AD Act.

⁵⁹ Explanatory notes, p 9; Bill, cl 18, proposed s 120 of the AD Act.

- the sex the other person had, even if the person did not have it at the time of the conduct.⁶⁰

Proposed sections 120A to 120E of the AD Act detail the circumstances in which the new prohibition will apply, limiting it (as noted above) to work and work-related areas.⁶¹

2.2.2.2 Subjecting a person to a work environment that is hostile on the basis of sex

The Bill proposes inserting a new Part 5 into Chapter 4 of the AD Act to introduce a prohibition on subjecting another person to a work environment that is hostile on the basis of sex.⁶²

Whether this prohibition is breached will depend on whether:

... a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the conduct would create a work environment that would be offensive, humiliating or intimidating to a person of the second person's sex on the basis of:

- (i) the sex of the second person; or
- (ii) a characteristic that a person of the second person's sex generally has; or
- (iii) a characteristic that is often imputed to a person of the second person's sex.⁶³

2.2.2.3 Some stakeholders have reservations about the new prohibitions

Some stakeholders, including the QHRC and Queensland Law Society (QLS), expressed reservations about the new prohibitions relating to sex-based discrimination and harassment.⁶⁴ Their concerns, discussed in more detail in section 2.5.3, focus on whether these new prohibitions are necessary and their potential for unintended side-effects.

2.3 Creation of a positive duty

At present, the AD Act 'places the burden of enforcing the right to equality on the person who has been the subject of unlawful conduct through making a complaint'.⁶⁵

As the explanatory notes detail, the Respect@Work Report 'recommended amending the SD Act to introduce a positive duty on all employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible'.⁶⁶ This recommendation has now been implemented at the federal level.⁶⁷

The Building Belonging Report made a similar recommendation. However, it suggested the introduction of a positive duty with broader scope, requiring action to prevent all forms of discrimination prohibited by the AD Act, not just discrimination on the basis of sex.⁶⁸

To address this issue, the Bill proposes inserting a new Chapter 5C into the AD Act, which will establish a positive duty 'to eliminate, as far as possible, discrimination, sexual harassment, harassment on the basis of sex and certain other objectionable conduct'.⁶⁹

⁶⁰ Explanatory notes, p 9; Bill, cl 18, proposed s 120 of the AD Act.

⁶¹ Bill, cl 18.

⁶² Bill, cl 22.

⁶³ Bill, cl 22, proposed s 124E(2)(c) of the AD Act.

⁶⁴ QHRC, submission 36 and QLS, submission 37.

⁶⁵ Explanatory notes, p 11.

⁶⁶ Explanatory notes, p 11.

⁶⁷ SD Act, s 47C.

⁶⁸ QHRC, Building Belonging Report, July 2022, Recommendations 15.1, 15.2.

⁶⁹ Bill, cl 25, proposed s 131H(2)(a) of the AD Act.

As discussed in section 2.5 below, many stakeholders indicated support for the new positive duty to prevent discrimination.

2.3.1 Scope of the positive duty and who it will apply to



The positive duty proposed in the Bill is broader than that recommended by the Respect@Work Report⁷⁰ and implemented in the SD Act.⁷¹ This is because, as recommended by the Building Belonging Report, it is not limited to sex discrimination, but rather will require action to prevent all forms of discrimination and other objectionable behaviour prohibited by the AD Act.⁷²

The new positive duty:

- would apply ‘to all persons (including individuals, corporations, and bodies politic, including the state) who under chapters 2, 3, 4, and 5 of the AD Act, must not engage in discrimination, sexual harassment, harassment on the basis of sex and other objectionable conduct’⁷³
- would only apply to individuals who are ‘conducting a business or undertaking’.⁷⁴

2.3.2 What the positive duty will require

The positive duty will require people to ‘take reasonable and proportionate measures’ to eliminate the behaviour prohibited by the AD Act.

What constitutes ‘reasonable and proportionate measures’ will depend on a variety of factors, including:

- the size, nature and circumstances of a business or undertaking
- a person’s resources, including their financial resources
- the practicability and costs of different measures
- a person’s business and operational priorities.⁷⁵

This is consistent with Recommendation 15.3 from the Building Belonging Report, which identified a range of factors that should be considered when determining whether a person has complied with the positive duty.⁷⁶

In practice, the positive duty will mean that people subject to it will be required to act proactively to prevent prohibited conduct, ‘rather than merely waiting for complaints to be made’.⁷⁷ The explanatory notes state that the kinds of action that will be required will include:

- ensuring there are organisational policies in place that address the importance of respectful behaviour in the workplace;
- ensuring easily accessible information is available;

⁷⁰ Explanatory notes, p 11.

⁷¹ SD Act, s 47C.

⁷² QHRC, Building Belonging Report, Recommendations 15.1, 15.2.

⁷³ Explanatory notes, p 12; Bill, cl 25, proposed s 131(1).

⁷⁴ Explanatory notes, p 12; Bill, cl 25, proposed s 131(2).

⁷⁵ Bill, cl 25, proposed s 131J of the AD Act.

⁷⁶ QHRC, Building Belonging Report, Recommendation 15.3. See Appendix D for detail.

⁷⁷ Explanatory notes, p 12.

- conducting workplace surveys to measure knowledge and awareness of unlawful conduct like discrimination or sexual harassment and the extent to which such conduct may have been experienced by members of the workforce;
- engaging in informal or formal disciplinary discussions with members of the organisation who are displaying conduct that may be disrespectful and unlawful under the AD Act; and
- managers and people in positions of leadership clearly and regularly articulating expectations of respectful behaviour.⁷⁸

The Bill proposes that the QHRC would be able to issue guidelines on any matter relating to the AD Act, expressly including how to comply with the positive duty.⁷⁹

2.3.2.1 Importance of guidelines to be developed by QHRC

Several stakeholders emphasised the importance of the guidelines that QHRC would be empowered to develop and publish as part of its compliance function.⁸⁰

For example, the QLS noted that the ability of organisations and individuals to comply with new requirements introduced in the Bill would depend, in part, on the ability of the QHRC to fulfil its new functions, including by developing and publishing guidelines on what the positive duty requires. It stressed that these guidelines ‘should be developed and published well in advance of the commencement of the positive duty provisions to allow duty-holders time [to] adapt their systems, policies and structures’.⁸¹

Similarly, QCU stressed that the QHRCS’s guidelines would be ‘important educational resources’, explaining:

Education for employers will be key to facilitating effective implementation of the Bill and contributing to a cultural shift where employers proactively take steps to create safe workplaces and prevent harassment and discrimination.⁸²

In light of this, QCU proposed that the QHRC should be required, rather than simply empowered, to issue guidelines on key topics such as compliance with the positive duty.⁸³

The need for further guidance regarding the application of the positive duty was highlighted at the public hearing in that several submitters presumed that the positive duty obligations contained in the Bill only applied to the protected attribute of ‘sex’.⁸⁴

In this regard, DJAG advised at the public hearing that the QHRC would have an ‘educative function’ on how businesses are expected to comply with the new duty obligations proposed in the Bill and noted that the positive duty obligations relate to all forms of discrimination, vilification and other unlawful conduct contained in the Bill (not only that related to sex).⁸⁵

2.4 Strengthened powers and improved complaints process

The Bill proposes several amendments to the AD Act that are designed to improve compliance with its requirements. These include changes to:

⁷⁸ Explanatory notes, p 12.

⁷⁹ Bill, cl 39, proposed s 173Q of the AD Act.

⁸⁰ Queensland Council of Unions, submission 27; Queensland Law Society, submission 37.

⁸¹ Queensland Law Society, submission 37, p 5.

⁸² Submission 21, p 46.

⁸³ Submission 27, pp 45-46.

⁸⁴ Public hearing transcript, Brisbane, 12 July 2024, pp 18, 21, 24-26.

⁸⁵ Public briefing transcript, Brisbane, 15 July 2024, p 4.

- provide the commissioner with new investigation and enforcement powers⁸⁶
- extend the time frame in which people can make certain complaints⁸⁷
- improve the scheme for representative complaints.⁸⁸

2.4.1 New investigation and enforcement powers



At present, the AD Act provides the QHRC with a limited investigation function and no enforcement powers.⁸⁹ The Bill will change this significantly. It proposes that the commissioner be given new functions and powers relating to investigation and enforcement, including in relation to the proposed positive duty and systemic work-related contraventions relating to the basis of sex.⁹⁰

These changes reflect the Respect@Work Report, which recommended that the AHRC be given the power to investigate and enforce compliance with the new positive duty, and the power to undertake broader inquiries into systemic work-related contraventions of the SD Act.⁹¹

2.4.1.1 When the commissioner can investigate

The commissioner already has the power to investigate:

- a complaint
- possible contraventions against classes or groups of people uncovered in the performance of their functions, if the matter is of public concern and the Minister agrees
- allegations of an offence against the AD Act made to them
- possible offences against the AD Act discovered in the performance of their functions
- when requested to do so by the Minister
- if the Queensland Civil and Administrative Tribunal (QCAT) or the Queensland Industrial Relations Commission (QIRC) refers a matter to them.⁹²

In line with the recommendations made by the Respect@Work Report, the Bill proposes amending the AD Act to also give the commissioner the power to investigate:

- a person's compliance with the positive duty, if the commissioner suspects that they are not complying
- any matter relating to a contravention on the basis of sex that is, or is suspected to be, systematic and is a work-related matter.⁹³

The Bill provides that a contravention is 'systemic' if it affects a class or group of persons, or if it is continuous, repetitive or forms a pattern.⁹⁴

⁸⁶ Bill, cl 39.

⁸⁷ Bill, cl 29.

⁸⁸ Bill, cls 31, 47.

⁸⁹ AD Act, ch 7, pt 1, div 2.

⁹⁰ Bill, cl 39.

⁹¹ Explanatory notes, p 13.

⁹² AD Act, ss 154A, 155.

⁹³ Bill, cl 39, proposed ss 173B(2) and (3) of the AD Act.

⁹⁴ Bill, cl 39, proposed s 173B(4) of the AD Act.

2.4.1.2 *Powers relating to investigations*

The Bill proposes granting the commissioner a range of powers when undertaking an investigation in relation to the positive duty or systemic workplace contraventions. These include powers to obtain information and examine witnesses.

Failure to produce documents, or provide information, required by the commissioner would be an offence (subject to a maximum penalty of 100 penalty units, currently \$16,130)⁹⁵ unless the person has a reasonable excuse.⁹⁶ The explanatory notes state that this penalty has been set by reference to what will be sufficient to deter non-compliance and the penalties are proportionate to comparable offences in other legislation.⁹⁷

Fundamental legislative principles provide that the penalties imposed by legislation should be proportionate to the offence and consistent with other penalties imposed by the relevant legislation.⁹⁸ It is therefore notable that this penalty is significantly higher than the penalties imposed for most other offences under the AD Act, which typically range from 35 to 45 penalty units.⁹⁹ The only existing instance where the penalty for an individual is 100 penalty units in the AD Act is where a person breaches an order by the commission with respect to anonymity of persons involved in a proceeding.¹⁰⁰

However, the penalties for non-compliance offences are being increased to 100 penalty units in several other Bills.¹⁰¹ As such, the penalty proposed by the AD Act will be consistent with that imposed for similar offences in other legislation.

Committee comment

The committee notes the need to deter non-compliance and the comparability of the proposed penalty to that provided for similar offences in other legislation. The committee is satisfied that the proposed penalty for failure to comply with a direction given by the commissioner during an investigation is consistent and proportionate.

2.4.1.3 *What the commissioner can do after an investigation*

The Bill proposes that the commissioner have the power to take a range of actions after conducting an investigation. This includes:

- taking no further action, or taking any other action they are empowered to take under the AD Act¹⁰²
- if the investigation is related to the positive duty – helping a person to prepare an enforceable undertaking, accepting an enforceable undertaking or issuing a compliance notice¹⁰³

⁹⁵ Bill, cl 39, proposed s 173F(4) of the AD Act. From 1 July 2024, a penalty unit is \$161.30. Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

⁹⁶ Bill, cl 39, proposed s 173F of the AD Act.

⁹⁷ Explanatory notes, p 20.

⁹⁸ LSA, s 4(2)(a).

⁹⁹ See, for example, AD Act, s 127 (discriminatory advertisements).

¹⁰⁰ AD Act, s 191(2).

¹⁰¹ See, for example, Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024, cl 28 (amends s 215 of the *Tobacco and Other Smoking Products Act 1998*).

¹⁰² Bill, cl 39, proposed s 173G.

¹⁰³ Bill, cl 39, proposed s 173I.

- if the investigation is related to a systemic workplace contravention – preparing a report and either publishing it or giving it to the Minister (who will be required to table it within 6 sitting days).¹⁰⁴

The Bill proposes that reports relating to systemic workplace contraventions:

- may include recommendations for dealing with the subject matter of the report, and
- must comply with certain requirements if they include personal information or adverse comments about an entity.¹⁰⁵

2.4.1.4 Whether new powers are sufficiently defined, subject to appropriate review and consistent with natural justice

As discussed above, the Bill proposes granting the commissioner new powers to investigate and enforce compliance with the AD Act.¹⁰⁶ This raises issues of fundamental legislative principles, which require that such powers be sufficiently defined, subject to appropriate review and consistent with the principles of natural justice, including the right to be heard by an unbiased decision maker and afforded procedural fairness.¹⁰⁷

The administrative powers that the Bill proposes to grant to the commissioner are significant. For example, an individual can be required to produce information or be examined as part of an investigation in the absence of a specific complaint (e.g. if the commissioner suspects non-compliance with the positive duty).¹⁰⁸

However, these powers are subject to a number of safeguards. For example:

- an enforceable undertaking may only be entered into with consent of the person subject to the undertaking
- the commissioner and the person subject to the undertaking may agree to amend the undertaking at any time
- before withdrawing acceptance of an undertaking, the commissioner must provide the person with an opportunity to show, within at least 14 days, that the person is complying with the undertaking
- decisions to issue compliance notices are subject to review by the tribunal.¹⁰⁹

In addition, a report produced by the commissioner on an investigation into systemic contraventions must not include personal information about an individual or adverse comments about an entity, unless the entity has been given the opportunity to make submissions and those submissions are fairly stated in the report.¹¹⁰

Committee comment

In light of the limits and safeguards included in the Bill, the committee is satisfied that the commissioner's new powers with regards to investigation and compliance are sufficiently defined, subject to appropriate review and consistent with the principles of natural justice.

¹⁰⁴ Bill, cl 39, proposed ss 173O and 173P of the AD Act.

¹⁰⁵ Bill, cl 39, proposed s 173P of the AD Act.

¹⁰⁶ Bill, cl 39.

¹⁰⁷ LSA, ss4(3)(a) and (b).

¹⁰⁸ Bill, cl 39, proposed ss 173B(2) and (3) of the AD Act.

¹⁰⁹ Bill, cl 39, proposed ss 173J-173N of the AD Act; explanatory notes, p 23.

¹¹⁰ Bill, cl 39, proposed new s 173P of the AD Act; explanatory notes, p 22.

2.4.1.5 *QHRC has concerns about adequacy of new powers*

The QHRC advised the committee that it has some concerns about whether the new powers proposed in the Bill will be adequate to achieve the Bill's objectives. In its submission, the QHRC identified this as a priority issue, explaining that it 'has reservations about the lack of appropriate functions and powers provided to the Commission to encourage and require compliance'.¹¹¹

The QHRC suggested that its concern could be addressed by amending the Bill to:

- incorporate draft sections 151-154 from the exposure draft of the Bill, circulated to stakeholders by DJAG
- include an express power to publish reports on investigations conducted into compliance with the positive duty
- expand the power to undertake systemic investigations so it applies in relation to all unlawful conduct and areas covered by the AD Act (i.e. not just contravention on the basis of sex that are work-related).¹¹²

At the public hearing, the QHRC elaborated, explaining why it is so concerned about expanding its ability to report on investigations:

We need an express reporting power for positive duty compliance investigations. As noted, we strongly recommended an explicit reporting mechanism for compliance investigations related to the positive duty. Public reporting is very important as it maximises our resources by informing other duty holders about how they can meet their obligations under the new positive duty. Therefore, they have a very broad educative value. It is also important for the transparency and accountability of the commission, so it is essential for compliance and the express reporting power to ensure effective implementation.¹¹³

In response to such concerns, DJAG highlighted that the Bill does contain an express provision which allows for the publishing of reports concerning systemic, work-related contraventions of the AD Act on the basis of sex.¹¹⁴ DJAG also noted, at a federal level, the AHRC does not have reporting powers in respect of contraventions by employers of the positive duty obligations and the expansion of such powers in Queensland to include reporting on positive duty contraventions is a matter for government.¹¹⁵

2.4.1.6 *Impact on workload and resources of QHRC*

Some stakeholders drew attention to the expected impact of the Bill on the workload of the QHRC, suggesting that it should be provided with additional resources to undertake this work.¹¹⁶ They observed that the expansion of the QHRC's functions and powers is likely to have a significant impact on its workload and, consequently, the resources it requires to function effectively.



In response to stakeholder concerns about the adequacy of the QHRC's resources, DJAG told the committee that the government has approved 'the allocation of funding to the QHRC of \$24.570M from 1 July 2024 over five years, and \$7.67M and 25 FTE ongoing'.¹¹⁷

¹¹¹ QHRC, submission 36, p 5.

¹¹² QHRC, submission 36, pp 6-7.

¹¹³ Neroli Holmes, Deputy Commissioner, QHRC, public hearing transcript, Brisbane, 12 July 2024, p 2.

¹¹⁴ Public briefing transcript, Brisbane, 15 July 2024, pp 6-7.

¹¹⁵ DJAG, correspondence, 14 July 2024, pp 36-37.

¹¹⁶ QCU, submission 27; QLS, submission 37.

¹¹⁷ DJAG, correspondence, 8 July 2024, p 34.

2.4.2 Extending the time frame for certain complaints

The AD Act currently requires people to make complaints within one year of the relevant conduct occurring. Complaints lodged after this time has elapsed can be terminated by the commissioner, although they may choose to accept them if satisfied that the complainant 'has shown good cause'.¹¹⁸

The Respect@Work Report recommended that a longer time frame be provided for complaints relating to sexual harassment to recognise that complex reasons may lead applicants to delay making these kinds of complaints. In light of that recommendation, the time period for making such complaints under the federal SD Act has been extended from six months to 2 years.¹¹⁹

The Bill proposes aligning the AD Act with the SD Act by extending the time frame for making certain complaints from one year to 2 years.¹²⁰ This longer time period would only apply to complaints that relate to:

- discrimination on the basis of sex
- sexual harassment or harassment on the basis of sex
- subjecting a person to a work environment that is hostile on the basis of sex
- victimisation of a person in relation to the above types of conduct.¹²¹

2.4.2.1 *Many stakeholders suggested extending time frames for all complaints*

The QHRC expressed concern about the proposal to extend time frames for some complaints but not others, emphasising that this may have unintended consequences and create challenges during implementation. It told the committee that it:

... anticipates that different time limits will pose serious difficulties that may not have been anticipated when introducing variable time limits. Commission staff will be called on to explain this inconsistency and its rationale, which is likely to cause serious frustration for complaint parties and the tribunal.¹²²

The QHRC explained that complaints frequently allege a contravention on the basis of sex as well as other attributes and can occur across multiple areas of activity. As a result, having variable time limits for different types of complaints is likely to create practical problems if, for example, a complainant alleges that they were subject to a combination of sex-based harassment and discrimination on the basis of race or impairment.¹²³

At the public hearing, the QHRC elaborated on their concern, stating:

Variable complaint time limits depending on a complainant's attributes and areas are completely unworkable, will frustrate the process and will tie up the commission, complaint parties and tribunals in red tape.¹²⁴

A significant number of other stakeholders also suggested that the time frames for making other types of complaints should also be extended. For example, Queensland Advocacy for Inclusion told the committee:

¹¹⁸ AD Act, s 138.

¹¹⁹ Explanatory notes, p 13.

¹²⁰ Bill, cl 29.

¹²¹ Explanatory notes, p 13.

¹²² Submission 36, p 8.

¹²³ QHRC, submission 36, p 8.

¹²⁴ Neroli Holmes, Deputy Commissioner, QHRC, public hearing transcript, Brisbane, 12 July 2024, p 2.

... the same flexibility and accommodation is required for all discrimination claims, not just those based upon sex and in the workplace setting. There are a myriad [of] reasons why a person with a disability, for example, may be delayed in making a complaint about an alleged contravention of the Act.¹²⁵

Many other stakeholders also suggested that the extended time frame should apply to all types of complaints, not just those related to sex-based discrimination or harassment.¹²⁶

In response to these concerns, DJAG advised the committee that the current position in the Bill reflects the recommendations made in Respect@Work Report, and that any further extension of time frames for complaints would be a matter for government to consider.¹²⁷

Committee comment

The committee notes the concerns raised by submitters, including the QHRC, that the different timeframes may create confusion for the community and cause unintended consequences. Therefore, the committee suggests the government consider extending the time limitation for the making of all complaints to the QHRC, regardless of the protected attribute the complaint is based on, to 2 years.

2.4.3 Improving the scheme for representative complaints

Generally, representative complaints are complaints made by:

- an individual affected by prohibited behaviour, on behalf of other individuals who have similar complaints, or
- an organisation that claims to represent a particular group of people affected by prohibited behaviour.

The AD Act currently provides a scheme for making representative complaints.¹²⁸

The Respect@Work Report recommended that the AHRC Act be amended to allow unions and other representative groups to bring representative claims to court, rather than only to the AHRC itself. It also recommended that the AHRC Act be amended to include a cost protection provision relating to representative complaints.¹²⁹ Such provisions typically protect certain people – such as members of a representative group who did not bring a complaint – against adverse costs orders when complaints are unsuccessful.

In light of these recommendations, the Bill proposes amending the AD Act to:

- align the scheme for representative complaints with the equivalent scheme at the federal level¹³⁰
- allow a registered employee union to make a representative complaint about an alleged contravention that is a work-related matter¹³¹
- clarify that a costs order may only be made against the person or union who made a representative complaint.¹³²

¹²⁵ Submission 4, p 5.

¹²⁶ Equality Australia, submission 5; Legal Aid Queensland, submission 10; Alice Taylor, submission 13; Multicultural Australia, submission 15; Basic Rights Queensland, submission 20; Caxton Legal Centre, submission 21; LGBTI Legal Service, submission 26; Queensland Law Society, submission 37.

¹²⁷ DJAG, correspondence, 8 July 2024, p 26.

¹²⁸ AD Act, ch 7, pt 1, div 1, subdiv 2; chr 7, pt 2, div 1, subdiv 2.

¹²⁹ Explanatory notes, p 14.

¹³⁰ Bill, cls 31, 47.

¹³¹ Bill, cl 31, proposed s 146(2) of the AD Act.

¹³² Bill, cl 48(10).

The scheme that the Bill proposes for representative complaints sets out:

- who may make such a complaint and the form it must take¹³³
- how class members may opt out of such a complaint and the effect of a representative complaint¹³⁴
- how such complaints may be amended, including by substitution of complainants¹³⁵
- directions that the commissioner may give in relation to such a complaint¹³⁶
- what happens if such a complaint is referred to the tribunal (the QIRC for work-related matters, and QCAT otherwise).¹³⁷

In addition to changes that reflect recommendations from the Respect@Work Report, the Bill proposes amending the AD Act to:

- provide that a party may only be represented in a complaint before the Industrial Relations Commission as provided for in section 529 of the *Industrial Relations Act 2016*¹³⁸
- preclude unregistered unions from bringing complaints as an agent.¹³⁹

These changes would align the AD Act with the *Industrial Relations Act 2016*, which was amended in 2022¹⁴⁰ to prevent unregistered unions from representing people or acting as agents.¹⁴¹

2.5 Most stakeholders support changes to promote respect at work

The views expressed by stakeholders varied. While most supported amending the AD Act to promote respect at work, a significant number expressed the view that further reforms are also necessary (see 2.5.2). A small number of stakeholders expressed concern about specific provisions in the Bill (see 2.5.3), while some stakeholders advised the committee that they strongly oppose the proposed changes. The Bill's potential impact on religious organisations, especially schools, is a key concern for the latter group (see 2.5.3).

2.5.1 Many stakeholders express broad support for changes

Many stakeholders expressed broad support for the proposed changes to the AD Act. For example:

- the Public Advocate advised the committee they support 'the updating of anti-discrimination laws to reflect the changing needs of society, including for people with impaired decision-making ability'¹⁴²
- the Queensland African Communities Council offered broad support for the Bill, especially the proposed positive duty to prevent discrimination¹⁴³

¹³³ Bill, cls 31 and 47, proposed ss 146 and 147 of the AD Act.

¹³⁴ Bill, cls 31 and 47, proposed ss 148-149 and 195-196 of the AD Act.

¹³⁵ Bill, cls 31 and 47, proposed ss 150-152 and 201 of the AD Act.

¹³⁶ Bill, cl 31, proposed s 152A of the AD Act.

¹³⁷ Bill, cl 47.

¹³⁸ Bill, cl 45.

¹³⁹ Bill, cls 28(2), (3).

¹⁴⁰ *Industrial Relations and Other Legislation Amendment Act 2022*.

¹⁴¹ Explanatory notes, p 15.

¹⁴² Submission 1, p 1.

¹⁴³ Submission 2, p 2.

- Queensland Advocacy for Inclusion stated that the proposed changes will improve the rights of people with disability in Queensland¹⁴⁴
- Equality Australia welcomed the proposals to expand and update protected attributes, establish a positive duty to prevent discrimination, improve the complaints process, and strengthen investigation powers.¹⁴⁵

A wide variety of other stakeholders also offered broad support for the amendments proposed to the AD Act.¹⁴⁶

2.5.2 Some stakeholders propose further reforms

Some stakeholders expressed disappointment that the Bill does not include additional reforms, including some recommended by the QHRC in the Building Belonging Report.¹⁴⁷ Many of them noted that those additional reforms had already been subject to extensive consultation, and expressed hope that they will be implemented soon.¹⁴⁸

The position articulated by the Queensland Council of Social Services (QCOSS) is representative of the stakeholders who expressed disappointment that additional reforms are not included in the Bill. It stated:

The significant body of work already undertaken by the QHRC and DJAG provides an unmissable opportunity to modernise Queensland's AD Act, which would significantly contribute to a deeper realisation of equality in our society. Extensive engagement with communities and organisations across Queensland has taken place to support the development of the Building Belonging Report and in response to the Exposure Draft [of the Bill]. That feedback must be harnessed to implement changes that were thoughtfully identified to foster a more equal society. While the Bill reflects several positive changes, limitations to the ultimate effectiveness of the AD Act remain.¹⁴⁹

In this vein, several stakeholders proposed additional reforms to further strengthen protections against discrimination, some of which were canvassed in the consultations that informed the development of the Bill. For example:

- several stakeholders proposed the inclusion of a positive duty to make reasonable accommodations for people with disability¹⁵⁰

¹⁴⁴ Submission 4, p 4.

¹⁴⁵ Submission 5, p 1.

¹⁴⁶ Legal Aid Queensland, submission 10; QNADA, submission 12; Alice Taylor, submission 13; Queensland Council of Social Service (QCOSS), submission 14; Multicultural Australia, submission 15; QNMU, submission 17; Q Shelter, submission 19; Basic Rights Queensland, submission 20; ADA Australia, submission 22; Soroptimist International of Brisbane Inc, submission 23; Queensland Family & Child Commission, submission 24; LGBTI Legal Service, submission 26; QCU, submission 27; Aboriginal and Torres Strait Islander Legal Service, submission 32. See also evidence provided by Equality Australia, Basic Rights Queensland, and Multicultural Australia, public hearing transcript, Brisbane, 12 July 2024.

¹⁴⁷ Queensland Advocacy for Inclusion, submission 4; Legal Aid Queensland, submission 10; QCOSS, submission 14; Q Shelter, submission 19; Caxton Legal Centre, submission 21; ADA Australia, submission 22; QCU, submission 27; Aboriginal and Torres Strait Islander Legal Service, submission 32; Queensland Law Society, submission 37.

¹⁴⁸ QHRC, submission 36.

¹⁴⁹ Submission 14, p 3.

¹⁵⁰ Queensland Advocacy for Inclusions, submission 4; QCOSS, submission 14; QNMU, submission 17; Basic Rights Queensland, submission 20.

- several stakeholders proposed amendments to the definitions of ‘direct discrimination’ and ‘indirect discrimination’¹⁵¹
- some stakeholders expressed disappointment that the Bill does not reform section 25 of the AD Act to better protect LGBTIQ+ staff and students from discrimination at religious schools¹⁵²
- several stakeholders suggested that the Bill should recognise and address intersectionality (i.e. when several protected attributes, such as gender identity and disability, overlap and interact to magnify disadvantage and discrimination)¹⁵³
- some suggested that the QHRC’s powers to investigate and report be further expanded¹⁵⁴
- some suggested that existing exemptions for non-profit organisations that provide goods and services be removed.¹⁵⁵

More generally, some stakeholders who support the Bill indicated concern that it strengthens protections against some forms of discrimination more than others. For example, Legal Aid Queensland stated that it ‘holds concerns about the manner in which these protections have been introduced which seem to prioritise sex-based discrimination at work above all other forms of discrimination’.¹⁵⁶ Several other stakeholders expressed a similar view.¹⁵⁷

2.5.2.1 Response from department

DJAG advised the committee that further reform of the AD Act, including additional changes recommended in the Building Belonging Report, is a matter for the government. However, DJAG noted that:

- the explanatory notes describe the Bill as ‘the first stage in a staged approach to the reform of Queensland’s anti-discrimination laws’
- the Attorney-General has stated that further consultations and the ALRC’s report concerning religious educational institutions will inform the second stage of reforms.¹⁵⁸

2.5.3 Some stakeholders have reservations about specific provisions

Some stakeholders support the Bill overall but have reservations about the provisions that prohibit sex-based harassment and creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex.¹⁵⁹ Their concerns centre on whether these new prohibitions are necessary, and the risk that they may have unintended side effects.

¹⁵¹ Queensland Advocacy for Inclusion, submission 4; Equality Australia, submission 5; QCOSS, submission 14; Basic Rights Queensland, submission 20; LGBTI Legal Service, submission 26.

¹⁵² Equality Australia, submission 5; Michelle Jeffries, submission 18; Queensland Independent Education Union, submission 29.

¹⁵³ Legal Aid Queensland, submission 10; QCOSS, submission 14; Basic Rights Queensland, submission 20; Caxton Legal Centre, submission 21; Aboriginal and Torres Strait Islander Legal Service, submission 32; Queensland Law Society, submission 37.

¹⁵⁴ Legal Aid Queensland, submission 10; Caxton Legal Centre, submission 21.

¹⁵⁵ QCOSS, submission 14; LGBTI Legal Service, submission 26.

¹⁵⁶ Submission 10, p 6.

¹⁵⁷ Multicultural Australia, submission 15; Queensland Family & Child Commission, submission 24.

¹⁵⁸ DJAG, correspondence, 8 July 2024, p 3; Public briefing transcript, Brisbane, 15 July 2024, p 3.

¹⁵⁹ Queensland Law Society, submission 36; QHRC, submission 37.

For example, the QHRC expressed concern that the new prohibitions might have unintended side-effects, such as potentially limiting the ability of complainants to argue direct discrimination in relation to attributes other than sex.¹⁶⁰

The QLS told the committee that the proposed prohibition on harassment on the basis of sex should not be introduced ‘at this time’ but rather after further consideration and as part of a more comprehensive reform of the AD Act. It also took the view that there is ‘insufficient justification’ for introducing a specific prohibition on subjecting a person to a work environment that is hostile on the basis of sex.¹⁶¹

Similarly, the QHRC told the committee that it doubted whether these prohibitions were necessary. It explained that a ‘common view’ expressed in the submissions and consultations that informed its Building Belonging Report was that:

... Queensland’s sexual harassment provisions are working well and are the best in Australia, and that relatively low complaint numbers are more to do with stigma and negative consequences of complaining rather than the law itself.¹⁶²

2.5.3.1 Response from department

In response to concerns about the new prohibitions, DJAG advised the committee:

... the clear evidence from the Respect@Work Report shows that sex-based contraventions remain rampant in workplaces, indicating a lack of public understanding about what is lawful. The new prohibitions are designed to set clear boundaries for conduct, and simply supplement the existing protections rather than replace them.¹⁶³

2.5.4 Some stakeholders strongly oppose proposed changes

Some stakeholders told the committee that they strongly oppose the changes proposed in the Bill. This view was most common among groups and individuals who identified themselves as religious.¹⁶⁴ However, some faith-based groups, such as the Australian Muslim Advocacy Network (AMAN) took a different view, arguing that by improving protections against discrimination the Bill had the potential to promote freedom of religion.¹⁶⁵

In contrast, the Australian Christian Lobby stated that the reforms proposed in the Bill ‘target those of faith in an unwarranted way’ and will ‘operate to the permanent disadvantage of religious organisations’.¹⁶⁶ They told the committee that the new prohibitions on sex-based harassment and discrimination, as well as the new positive duty to prevent discrimination, would place a disproportionate and unreasonable burden on religious bodies, especially faith-based schools.¹⁶⁷

Similarly, Pastor Marshall Gray, who made a submission on behalf of several individuals, stated that the Bill ‘poses significant threats to the fundamental rights of religious institutions to operate in accordance with their beliefs’.¹⁶⁸ He took the view that the changes proposed by the Bill will ‘severely

¹⁶⁰ Submission 36, p 10.

¹⁶¹ Submission 37, p 2

¹⁶² Submission 36, p 9.

¹⁶³ DJAG, correspondence, 8 July 2024, p 12.

¹⁶⁴ Wing Fai Im, submission 3; Australian Christian Lobby, submission 7; Pastor Marshall Gray and others, submission 8; CHBE Ltd, trading as Faith Christian School of Distance Education, submission 9; Queensland Churches Together, submission 16.

¹⁶⁵ Australian Muslim Advocacy Network Ltd, submission 30.

¹⁶⁶ Submission 7, p 1.

¹⁶⁷ Submission 7, pp 13-14.

¹⁶⁸ Submission 8, p 1.

restrict' the ability of religious schools and institutions to teach, hire staff and conduct community activities in a manner that reflects their religious convictions.¹⁶⁹

A small number of other stakeholders took a similar position.¹⁷⁰ Some of them also expressed concern that the requirements of the positive duty are uncertain, creating a risk that religious schools 'will not understand what is required to be assured of compliance'.¹⁷¹

The Institute of Public Affairs expressed concern that the proposed positive duty would have an effect on free speech in all workplaces, not simply religious organisations. They took the view that the Bill:

... would have the effect of employers over-complying with the positive duty to eliminate any conduct in the workplace that the Queensland Human Rights Commissioner may deem 'objectionable'. This would result in employers erring on the side of caution to eliminate speech in the workplace that a person could consider to be 'hateful', which would fall within the scope of the vilification provisions.¹⁷²

2.5.4.1 Response from the department

DJAG advised that, in practice, the impact of the new prohibitions on workplaces, including religious schools, will be limited given the existence of equivalent prohibitions in federal legislation. For example, workplaces are already subject to an equivalent prohibition on hostile workplace environments under section 28M of the SD Act.¹⁷³

In relation to the positive duty, DJAG noted that its introduction does not change the scope of conduct prohibited under the AD Act. As a result:

... a religious school would not be required to change its teaching practices to comply with the positive duty unless those teaching practices are unlawful under chapters 2, 3, 4 or 5 of the Anti-Discrimination Act.¹⁷⁴

In addition:

... religious organisations, including schools, would already be subject to a positive duty to take reasonable and proportionate steps to eliminate, as far as possible, harassment on the basis of sex in work-related contexts under section 47C of the Sex Discrimination Act.¹⁷⁵

Committee comment

The committee acknowledges the diverse views expressed by stakeholders. While it is clear most welcome the changes proposed in the Bill, it is also clear that some remain disappointed that the Bill does not put forward a more comprehensive re-working of the state's anti-discrimination laws, and others have reservations about specific changes.

The committee acknowledges that further consultation with stakeholders is progressing and hopes this consultation will build on the substantial body of work already undertaken.

¹⁶⁹ Submission 8, p 3.

¹⁷⁰ Including Albert Young, submission 11; Queensland Churches Together, submission 16; Institute for Public Affairs, submission 31; Women Apostolic Alliance, submission 35.

¹⁷¹ CHBE Ltd, trading as Faith Christian School of Distance Education, submission 9, p 3.

¹⁷² Submission 31, p 3.

¹⁷³ DJAG, correspondence, 8 July 2024, p 12.

¹⁷⁴ DJAG, correspondence, 8 July 2024, p 23.

¹⁷⁵ DJAG, correspondence, 8 July 2024, p 24.

3 Strengthening protections against vilification

To strengthen protections against vilification, the Bill proposes amendments to both the AD Act and the Criminal Code. These amendments would limit some human rights, most notably those relating to freedom of expression, as discussed in section 3.2.

The proposed amendments to both the AD Act and the Criminal Code would implement several recommendations made in the LASC Vilification Report and the LASC Vilification and Hate Crimes Bill Report. Those recommendations are set out in full in Appendix D.

3.1 Amendments to civil and criminal vilification provisions

At present, Queensland has laws that provide both civil and criminal protections against vilification. These provide protection against behaviour based on a more limited set of attributes than those protected from discrimination more generally.

The AD Act sets out the civil vilification protections. It currently prohibits vilification on the grounds of race, religion, sexuality, sex characteristics or gender identity.¹⁷⁶

Under the Criminal Code, it is an offence to:

- knowingly or recklessly engage in a public act that incites hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, religion, sexuality or gender identity of the person or members of the group in a way that includes:
 - threatening physical harm towards, or towards any property of, the person or group of persons, or
 - inciting others to threaten physical harm towards, or towards any property of, the person or group of persons¹⁷⁷
- publicly distribute, publish or publicly display a prohibited symbol in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended, unless the person has a reasonable excuse.¹⁷⁸

In addition, for certain offences, it is a circumstance of aggravation that an offender was wholly or partly motivated to commit the offence by hatred or serious contempt for a person or group of persons based on their actual or assumed race, religion, sexuality, sex characteristics or gender identity.¹⁷⁹

The Bill proposes amendments to both the civil and criminal protections against vilification.

3.1.1 Expanding attributes protected from vilification

The Bill proposes amending both the AD Act and the Criminal Code to add sex, age, impairment and – in the case of the Criminal Code – sex characteristics, as attributes that are protected from vilification. It also proposes replacing references to the attribute of sexuality with references to sexual orientation.¹⁸⁰ Other attributes protected from vilification (race, religion, gender identity and sex characteristics) would remain unchanged.

¹⁷⁶ AD Act, s 124A.

¹⁷⁷ Criminal Code, s 52A.

¹⁷⁸ Criminal Code, s 52D.

¹⁷⁹ Criminal Code, s 52B.

¹⁸⁰ Bill, cls 21, 57-59.

DJAG advised that the Bill ‘also ensures that a reference to a relevant attribute is also extended to capture characteristics, imputed characteristics, presumed attributes or past attributes in a similar way that attributes are extended for discrimination by section 8 of the AD Act’.¹⁸¹



If adopted, the proposed amendments will mean that the vilification provisions of the AD Act and the Criminal Code protect all the attributes (or equivalents of them) that LASC recommended be protected¹⁸² with one exception: medical status, including HIV/AIDS status. However, DJAG advised the committee that the definition of ‘impairment’ includes HIV status.¹⁸³

3.1.2 Clarifying the definition of ‘public act’

The Bill proposes amending both the AD Act and the Criminal Code to clarify the definition of ‘public act’ for the purpose of the vilification provisions. In both cases, the Bill provides that a ‘public act’:

- includes social media and other online communication
- can occur on private land, or a place not ordinarily accessed by the general public, such as schools and hospitals.¹⁸⁴

These changes reflect Recommendation 6 from the LASC Vilification Report and Recommendation 3 from the LASC Vilification and Hate Crimes Bill Report (see Appendix D).

3.1.3 Clarifying the test for civil vilification

The Bill proposes amending the AD Act to clarify that the civil vilification provisions only require a complainant to show that a public act was likely to incite hatred, serious contempt or severe ridicule of a person or group, not that it actually did so.¹⁸⁵ In other words, the Bill provides for an objective, rather than subjective, incitement test.¹⁸⁶

This change reflects Recommendation 5 of the LASC Vilification Report, which recommended that the government investigate lowering the test for civil incitement (see Appendix D).

3.1.3.1 *QHRC has concerns about proposed wording*

QHRC supports strengthening protections against vilification but told the committee it has concerns about the wording proposed in the Bill for proposed new section 124D of the AD Act. QHRC explained that by changing the word ‘incite’ to ‘engage in conduct that is likely to incite’ the Bill creates a potential disconnect with existing case law, which has interpreted ‘incite’ to mean ‘to stimulate, urge on, and the like’ rather than to require that a person is actually incited.¹⁸⁷ As a result, the QHRC believes there is a risk that the new provision raises, rather than lowers, the threshold of the test for civil vilification, contrary to what is intended.

¹⁸¹ DJAG, written briefing, 25 June 2024, p 15.

¹⁸² LASC, LASC Vilification Report, Recommendation 4.

¹⁸³ DJAG, written briefing, 25 June 2024, p 14. Schedule 1 of the AD Act defines ‘impairment’ to include ‘the presence in the body of organisms capable of causing illness or disease’.

¹⁸⁴ Bill, cl 21, proposed s 124B of the AD Act; Bill cl 57(3).

¹⁸⁵ Bill, cl 21

¹⁸⁶ Explanatory notes, p 11.

¹⁸⁷ QHRC, submission 36, p 11.

The QHRC explained its concern as follows:

Adopting the words 'likely to incite' creates the impression that the requirement is that someone might be actually incited. It would be much clearer to use words that reflect the way that incite has been interpreted by the Queensland courts ...

Changing the provision from 'engage in conduct that is likely to incite' to 'promote or urge on' would better achieve the objective of simplifying the understanding and application of the threshold.¹⁸⁸

In response to this concern, DJAG noted that the provisions proposed in the Bill 'are a clarification of existing case law that actual incitement is not a necessary element of the test'.¹⁸⁹

3.1.4 Introducing a new civil protection focussed on the harm caused

The Bill also proposes amending the AD Act to introduce a new protection against vilification that is focussed on the harm caused to the person, or group of persons, who is subject to such behaviour. This will prohibit a person from engaging in a public act, based on a relevant protected attribute such as race or religion, that 'a reasonable person would consider hateful towards, reviling, seriously contemptuous of, or seriously ridiculing' of another person or members of a group.¹⁹⁰

In this context, the Bill provides that 'reasonable person' means a reasonable person who has the same age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation as the other person or members of the group'.¹⁹¹

This prohibition will be subject to certain exceptions, including for fair reports of public acts and public acts done reasonably and in good faith for academic, artistic, scientific or research purposes or other purposes in the public interest.¹⁹² This reflects existing exceptions to the vilification prohibitions, which are designed to ensure 'that these prohibitions do not unduly burden the freedom of political communication, nor unreasonably limit the right to freedom of expression'.¹⁹³

This change also reflects Recommendation 5 of the LASC Vilification Report, which recommended that the government investigate lowering the test for civil incitement (see Appendix D). That recommendation was made in response to submissions that advocated for an additional, harm-based protection, arguing such a provision 'is important because it is people from targeted groups who suffer the impacts of hate, not the Australian community as a whole'.¹⁹⁴

3.2 Strengthened vilification protections limit some human rights

The proposal to strengthen protections against vilification would limit the right to freedom of expression, as well as the right to liberty and security of person, both of which are protected under the HRA.¹⁹⁵

The Bill's impact on the freedom of expression was a key concern for some stakeholders, as discussed in section 3.3.2 below.

¹⁸⁸ Submission 36, p 11.

¹⁸⁹ DJAG, correspondence, 8 July 2024, p 16.

¹⁹⁰ Bill, cl 21, proposed s 124C(1) of the AD Act.

¹⁹¹ Bill, cl 21, proposed s 124C(2) of the AD Act.

¹⁹² Bill, cl 21, proposed s 124C(3) of the AD Act.

¹⁹³ DJAG, written briefing, 25 June 2024, p 15.

¹⁹⁴ Australian Lawyers Alliance, as quoted in the LASC Vilification Report, p 45.

¹⁹⁵ HRA, ss 21, 29.

3.2.1 Freedom of expression

The HRA protects the right to freedom of expression, including ‘the freedom to seek, receive and impart information and ideas of all kinds’ whether orally, in writing, in print, through art or via any other medium.¹⁹⁶ This right plays a particularly important role in democratic systems, where it facilitates open debate, negotiation and the consideration of diverse interests and perspectives as part of the decision-making process. It is well established that it protects not only constructive discussion, but also information and ideas that may be considered offensive, disturbing or shocking.¹⁹⁷ However, it is also well established that the freedom of expression is not absolute and may be limited in certain circumstances, such as when restrictions are required to protect the rights of others.¹⁹⁸

By proposing stronger protections against vilification, in both civil and criminal laws, the Bill would limit the right to freedom of expression by making it unlawful to express information and ideas that:

- are likely to promote or encourage hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on a protected ground (age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation)
- a reasonable person would consider hateful towards, reviling, seriously contemptuous of, or seriously ridiculing of another person or members of a group, where this is done because of that person or group’s age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation.¹⁹⁹

Several factors suggest that this limitation of the right to freedom of expression may be reasonable and justified in the circumstances. These include:

- the purpose of the strengthened protections, which ‘is to promote social cohesion, enhance public discourse, and promote the rights of those who are targeted by the conduct’²⁰⁰
- evidence, documented in the reports of this committee’s precursor,²⁰¹ that existing protections against vilification are not effective
- the fact that the provisions ‘do not prevent the holding of an opinion, nor rigorous public discussion and debate of ideas and issues, but instead target the types of communication that actually serve to stifle public debate and in turn result in an undermining of the freedom of expression of others’²⁰²
- the provision of exceptions designed to reduce the limitation of the right, including exceptions for fair reporting of public acts and acts done reasonably and in good faith for academic, artistic, scientific or research purposes, or other purposes in the public interest.²⁰³

¹⁹⁶ HRA, s 21(2).

¹⁹⁷ See *Sunday Times v United Kingdom (No 2)* [1992] 14 EHRR 123.

¹⁹⁸ Statement of compatibility, pp 6-7.

¹⁹⁹ Bill, cl 21.

²⁰⁰ Statement of compatibility, p 7.

²⁰¹ LASC, *Report No. 22, 57th Parliament - Serious vilification and hate crimes*, January 2022; LASC, *Report No. 49, 57th Parliament - Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023*, June 2023.

²⁰² Statement of compatibility, p 9.

²⁰³ Statement of compatibility, p 9.

Committee comment

The committee recognises that some stakeholders have significant concerns about the impact of the strengthened vilification protections on the right to freedom of expression (see section 3.3.2, below).

The committee acknowledges that freedom of expression plays a crucial role in democracies and should only be subject to limits where this is truly necessary. However, the committee is satisfied that the proposal to strengthen protections against vilification limits the right to freedom of expression in a manner that is reasonable and demonstrably justifiable in a free and democratic society.

3.2.2 Right to security and liberty of person

By expanding the attributes protecting against vilification (as discussed in section 3.1.1) and clarifying the definition of ‘public acts’ (as discussed in section 3.1.2) the Bill would expand the kinds of conduct captured by the relevant offences in the Criminal Code. This limits the right to security and liberty of a person, because it would result in more circumstances in which a person may be prosecuted for vilification and, consequently, deprived of their liberty.²⁰⁴

The statement of compatibility identifies this limitation of the right to liberty and security as a serious matter. However, it also states that it is reasonable and justified in the circumstances because it is targeted towards the most serious behaviour affecting the rights of others, including behaviour which potentially limits the right to life. It explains:

While the additional limitation on the right to liberty is very serious, it also relates to conduct which is more serious in nature, as it involves conduct that threatens physical harm, or incites others to physical harm, towards other persons or property, or relates to the motivations in the commission of other serious offences. Such conduct is even more destructive to social cohesion, and presents a greater threat to the rights of those who are subject to it, particularly their right to life.²⁰⁵

Committee comment

Given the targeted nature of the criminal vilification provisions, and the serious and harmful nature of the behaviour they prohibit, the committee is satisfied that the limit on the right to liberty and security of persons is reasonable and demonstrably justifiable in the circumstances.

3.3 Many stakeholders support strengthened protections but some have concerns

Many stakeholders expressed support for the proposed strengthening of protections against vilification.²⁰⁶ For example, Caxton Legal Centre states that this proposal ‘is likely to make a material impact and is a timely reform’.²⁰⁷

3.3.1 Some stakeholders propose expansion of protection

A small number of stakeholders suggested that the vilification protections be further expanded to protect against vilification based on other attributes, such as a person’s status as a sex worker.²⁰⁸ Respect Inc, a state-wide organisation representing sex workers told the committee that ‘sex workers

²⁰⁴ Statement of compatibility, p 10.

²⁰⁵ Statement of compatibility, p 10.

²⁰⁶ Equality Australia, submission 5; Legal Aid Queensland, p 7; Alice Taylor, submission 13; Multicultural Australia, submission 15; Basic Rights Queensland, submission 20; Caxton Legal Centre, submission 21; LGBTI Legal Service, submission 26; QCU, submission 27; Aboriginal and Torres Strait Islander Legal Service, submission 32.

²⁰⁷ Submission 21, p 2.

²⁰⁸ Basic Rights Queensland, submission 20; Respect Inc, submission 28; QHRC, submission 36.

are treated as an ‘easy target’ for vilification’, causing ‘extreme safety impacts’ and undermining the intention of the recent decriminalisation of sex work in Queensland.²⁰⁹

3.3.1.1 Response from the department

In response to stakeholders’ proposals to expand the attributes protected from vilification, DJAG noted that the additional attributes inserted by the Bill reflect the recommendations made by this committee’s precursor, LASC.²¹⁰

3.3.2 Some stakeholders have concerns about impact on freedom of expression and religion

Some stakeholders expressed concern about the potential impact that stronger protections against vilification will have on the freedom of expression. This concern was most pronounced among religious individuals and groups.²¹¹ For example, Wing Fai Im, a member of the Cleveland Baptist Church, expressed concern that ‘simply teaching our beliefs’ could leave members of religious groups exposed to complaints, and potentially prosecution.²¹²

Similarly, the Australian Christian Lobby stated that by lowering the threshold of the test for civil vilification to one based on the reasonable person (as discussed in section 3.1.3), the Bill will endorse a standard that ‘is increasingly hostile to Christians’.²¹³ The Australian Christian Lobby suggested that the vilification provisions would create significant uncertainty about what kind of statements would be prohibited²¹⁴ and ‘make hate targets of Christians and other followers of other faiths’.²¹⁵ A small number of other stakeholders expressed similar concerns.²¹⁶

Not all of the stakeholders who expressed concern about the impact of stronger vilification provisions were religious organisations or individuals. For example, the Institute for Public Affairs also expressed significant concerns about how these provisions will impact the right to free speech.²¹⁷

3.3.2.1 Response from the department

In response to concerns about how the Bill would affect religious organisations and individuals, including schools, DJAG noted that the vilification protections establish a high threshold regarding what constitutes unlawful conduct. In addition, the new harm-based prohibition, ‘does not prevent the expression or manifestation of religious beliefs in public in a manner which is not hateful, reviling, seriously contemptuous or seriously ridiculing’.²¹⁸ Moreover, by protecting against the considerable harm’ caused by vilification, the Bill ‘ultimately serves to enhance freedom of expression and other human rights, such as the freedom to manifest religion in community with others’.²¹⁹

²⁰⁹ Respect Inc, submission 28, p 2.

²¹⁰ DJAG, correspondence, 8 July 2024, p 15.

²¹¹ Including Wang Fai Im, submission 3; Australian Christian Lobby, submission 7; Paster Marshall Gray and others, submission 8; CHBE Lt, trading as Faith Christian School of Distance Education, submission 9; Albert Young, submission 11.

²¹² Submission 3, p 1.

²¹³ Submission 7, p 8.

²¹⁴ Submission 7, pp 9-10.

²¹⁵ Submission 7, p 11.

²¹⁶ Pastor Marshall Gray and others, submission 8; CHBE Ltd, trading as Faith Christian School of Distance Education, submission 9; Albert Young, submission 11; Queensland Churches Together, submission 16; Women Apostolic Alliance, submission 35. See also Queensland Churches Together, public hearing transcript, Brisbane, 12 July 2024, pp 15-16.

²¹⁷ Submission 31, pp 1-2.

²¹⁸ DJAG, correspondence, 8 July 2024, p 18.

²¹⁹ DJAG, correspondence, 8 July 2024, p 19.

Committee comment

The committee acknowledges the concerns expressed by stakeholders regarding the Bill's impact on the freedom of expression, particularly those who have emphasised the way in which the Bill may affect religious organisations, including schools. However, for the reasons discussed in section 3.2.1, above, the committee is satisfied that the Bill limits the freedom of expression in a manner that is reasonable and demonstrably justifiable in the circumstances.

4 Other amendments proposed by the Bill

The Bill proposes amendments to several other Acts. These amendments are intended to protect workers from violent offences, clarify the scope of judicial immunity in inferior courts, provide magistrates with an entitlement to unpaid parental leave, and align legislative requirements with modern court practices.

4.1 Protecting workers from violent offences

To better protect workers from violent offences, the Bill proposes amendments to the *Penalties and Sentences Act 1992* (PS Act).²²⁰ These amendments reflect a recommendation made by the Queensland Sentencing Advisory Council (QSAC) in 2020.²²¹ However, as discussed in section 4.1.2, the changes proposed in the Bill vary from QSAC's recommendation in some respects.

4.1.1 Bill proposes new aggravating factor

The Bill proposes amending the sentencing guidelines set out in the PS Act to require a court sentencing an offender to treat the fact that an offender committed an offence against (or harming) a person who was performing, or had performed, the functions of their office or employment as an aggravating factor.²²²

This new aggravating factor will:

- only apply to certain kinds of offences: those that involved violence and those that resulted in physical harm to another person²²³
- apply to workers regardless of whether they are employees, contractors, appointees, volunteers or unpaid.²²⁴

Courts would not be required to consider this new aggravating factor if they consider it would be unreasonable to do so in the circumstances of the case.²²⁵ This will provide sentencing courts with discretion similar to that which exists in relation to some other aggravating factors, such as domestic violence.²²⁶

4.1.2 Proposal in Bill differs from QSAC's recommendation

The explanatory notes state that the proposed changes to the PS Act are a response to one of the recommendations made by QSAC in its report on *Penalties for assaults on public officers*.²²⁷ The relevant recommendation is extracted in full in Appendix D.



Although the new aggravating factor proposed in the Bill broadly reflects the recommendation made by QSAC in 2020, it differs from it in several important respects. Most notably, some of the constraints and clarifications recommended by QSAC are not included in the Bill. This may result in the new aggravating factor applying to a broader range of cases than QSAC envisaged.

²²⁰ Bill, cl 70.

²²¹ QSAC, *Penalties for assaults on public officers*, Final report, August 2020, Recommendation 10-1.

²²² Bill, cl 70.

²²³ Bill, cl 70, proposed s 9(10E) of the PS Act).

²²⁴ Bill, cl 70, proposed s 9(10G) of the PS Act).

²²⁵ Bill, cl 70, proposed s 9(10F) of the PS Act).

²²⁶ PS Act, s 9(10A).

²²⁷ Explanatory notes, p 5; QSAC, *Penalties for assaults on public officers*, Final report, August 2020.

The differences between QSAC’s recommendation and the changes proposed in the Bill are summarised in Table 2, below.

Table 2 Key differences between the Bill and QSAC’s recommendation

QSAC Recommendation	Position in Bill
Aggravating factor to be limited to two classes of victims: frontline and emergency workers, and other victims who are vulnerable due to the nature of their occupation (such as bus drivers and health workers)	Aggravating factor applies to all workers
New provision should provide an example of when it may not be reasonable to apply the aggravating factor — as was done with some other references to ‘exceptional circumstances’	Courts have discretion not to apply aggravating factor in ‘exceptional circumstances’ however the Bill does not include an example of such circumstances.
It should be made clear in drafting this new section that the court is not to have additional regard to the victim’s occupation in sentencing if that factor is an element of the offence, as is done in relation to some other aggravating factors.	Bill does not expressly provide that courts should not have additional regard to the new factor if it is an element of the offence.

4.1.3 Stakeholders have divergent views

The explanatory notes state that QSAC conducted extensive consultation in developing its report and that consultation on QSAC’s recommendations was also undertaken.²²⁸

QSAC’s report indicated that stakeholders held divergent views about the proposed new aggravating circumstance. It stated:

Legal stakeholder and advocacy bodies generally supported retaining (or curtailing) the current form of section 340, without the need for separate additional offences or circumstances of aggravation to be introduced. However, several stated that an aggravating factor would be the preferred approach if further recognition of occupation was to be legislated, even though this was described as redundant because courts already take this into account.²²⁹

Very few stakeholders expressly commented on the new circumstances of aggravation. Some indicated support for it,²³⁰ for example, the Australian Workers’ Union stated that it ‘will help deter instances of violence across every industry and workplace, in both the public and private sectors’.²³¹ However, the Australian Workers’ Union also noted that it was not entirely clear to its members whether occupational employees of Queensland Health who are assaulted in the course of their employment fall within the requirements for a ‘serious assault’ under section 340 of the Criminal Code in any event.²³²

Committee comment

The committee suggests that the government consider an update to section 340 of the Criminal Code to clarify the application of the ‘serious assault’ offence to health operational workers.

The Shop Distributive and Allied Employees Association (Queensland Branch) also indicated strong support for the proposal, highlighting several incidents in which its members had been physically

²²⁸ Explanatory notes, p 25.

²²⁹ QSAC, *Penalties for assaults on public officers*, Final report, August 2020, p 235.

²³⁰ Australian Workers’ Union, submission 25; Shop Distributive and Allied Employees Association (Queensland Branch), submission 33.

²³¹ Submission 25, p 2.

²³² Public hearing transcript, Brisbane, 12 July 2024, pp 27, 29.

attacked or threatened while at work.²³³ Its representative emphasised the value that the new aggravating factor will have as a deterrent:

All workers—and I think this builds on the comments from the previous speaker—deserve the right to go to work, serve the public and feel safe while they do it and go home in one piece.

We and our members do not seek to have significant numbers of customers incarcerated—in fact, we hope that none are—but we seek to have them behave and to think twice before they abuse a worker.²³⁴

In contrast, the QLS stated that it does not support the new circumstance of aggravation because it is unnecessary and better left to judicial discretion. It explained its position as follows:

... the fact that the victim of a convicted offence was offended against in the course of their employment, and any consequences of that, are circumstances that are routinely taken into account in the determination of penalty by the courts. The circumstances of such offences are already considered as aggravating features of an offender's conduct.

Accordingly, variations to sentencing based on the occupational attributes of the victim are better left to judicial discretion than provided for beyond that already enshrined in the penalties and sentences legislative framework.²³⁵

Committee comment

The committee notes the range of views that stakeholders expressed regarding the new circumstance of aggravation. This amendment is designed to achieve an important goal: protecting Queensland's workers from violence and physical harm.

The committee notes the concerns that the Bill implements QSAC's recommendation in a manner that differs from what was proposed in the relevant report and that this may result in the new aggravating circumstance applying to a broader range of cases than QSAC envisaged. As such, the committee encourages the government to review the Bill and provide guidance material for judicial officers, particularly around what may constitute 'exceptional circumstances' (if required) to ensure the Bill operates as intended without any unintended consequences.

4.2 Clarifying the scope of judicial immunity in inferior courts

To clarify the scope of judicial immunity in Queensland's inferior courts (i.e. those other than the Supreme Court and the Industrial Relations Court) the Bill proposes amendments to:

- the *District Court of Queensland Act 1967*²³⁶
- the *Magistrates Act 1991*²³⁷
- the *Queensland Civil and Administrative Tribunal Act 2009*.²³⁸

The overall effect of these amendments would be to give Queensland's magistrates, District Court judges, and certain officers of QCAT protections and immunities equivalent to that of a Supreme Court Judge.²³⁹

²³³ Public hearing transcript, Brisbane, 12 July 2024, p 30.

²³⁴ Justin Power, Secretary, Shop, Distributive and Allied Employees Association (Queensland Branch), public hearing transcript, Brisbane, 12 July 2024, p 31.

²³⁵ Submission 37, p 6.

²³⁶ Bill, cl 61.

²³⁷ Bill, cl 67.

²³⁸ Bill, cl 74.

²³⁹ Explanatory notes, p 5.

4.2.1 Why clarification is required

In Australia, there is a long-standing common law principle that judges have some degree of immunity in relation to acts done in the course of their judicial work.²⁴⁰ This principle is designed to protect the independence of the judiciary by ensuring that judges can undertake their work without fear of being held personally liable for the consequences of that work.

In *Stradford (a pseudonym) v Judge Vasta* [2023] FCA 1020, Justice Wigney described the existing common law on the judicial immunity of inferior court judges as ‘unsettled’²⁴¹ and identified (in a non-exhaustive manner) several exceptional circumstances in which a judge of an inferior court would not be protected by judicial immunity. This resulted in Judge Vasta, a judge of the Federal Circuit Court of Australia, being held personally responsible for the false imprisonment of Mr Stradford, purportedly for contempt of court, and ordered to pay compensation to him.²⁴²

According to the explanatory notes, this decision cast doubt on the scope of judicial immunity in inferior courts, such as the District Court and Magistrates Court.²⁴³ It also caused concern in the legal community that judges working in inferior courts would not be adequately protected from being held personally liable for actions undertaken in the course of their work.²⁴⁴

4.3 Providing magistrates with entitlement to unpaid parental leave

At present, magistrates in Queensland have no entitlement to unpaid parental leave. This is a side-effect of legislative provisions that create ‘a statutory entitlement for a person who holds the office of a magistrate to be paid a salary and specified allowances which is not conditional upon the magistrate performing the duties of the office’.²⁴⁵

To provide magistrates with an entitlement to unpaid parental leave, the Bill proposes amending the *Magistrates Act 1991* to expressly provide that the terms and conditions of a magistrate’s employment may include an entitlement to paid or unpaid parental leave.²⁴⁶

4.4 Aligning legislative requirements with modern court practices

The Bill proposes amendments to the PS Act and *Youth Justice Act 1992* (YJ Act) to align certain legislative requirements with modern court practices.²⁴⁷

At present, the YJ Act and PS Act require courts record in writing their reasons for imposing an order of detention or imprisonment and ensure they are kept with the court file.²⁴⁸ However, current practice in Queensland’s criminal courts ‘does not accord with these requirements,’ partly because they ‘pre-date the digitalisation of court recordings and requirements relating to the provision of written reasons’.²⁴⁹

²⁴⁰ *Sirros v Moore* [1975] 1 QB 118 at 135D (Lord Denning MR).

²⁴¹ *Stradford (a pseudonym) v Judge Vasta* [2023] FCA 1020 at [12].

²⁴² For a summary of that case, see Leah Ferris, ‘Federal Courts Legislation Amendment (Judicial Immunity) Bill 2023’, *Bills Digest No. 28*, Bills Digests Alphabetical Index 2023-24, 8 November 2023, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2324a/24bd28#_ftnref4.

²⁴³ Explanatory notes, p 5.

²⁴⁴ Leah Ferris, ‘Federal Courts Legislation Amendment (Judicial Immunity) Bill 2023’, *Bills Digest No. 28*, Bills Digests Alphabetical Index 2023-24, 8 November 2023, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2324a/24bd28#_ftnref4.

²⁴⁵ Explanatory notes, p 5; *Judicial Remuneration Act 2007*, s 24(1); *Magistrates Act 1991*, s 47(1).

²⁴⁶ Bill, cl 66.

²⁴⁷ Bill, cls 71, 77.

²⁴⁸ PS Act, s 10; YJ Act, s 209.

²⁴⁹ Explanatory notes, p 6.

To address this issue, the Bill proposes that the relevant sections of the PS Act and YJ Act be amended to provide that the requirement to keep a written record of the court's reasons for imposing detention orders or imprisonment with the court file does not apply if those reasons are recorded under the *Recording of Evidence Act 1962*.²⁵⁰

²⁵⁰ Bill, cls 71 and 77.

Appendix A – Submitters

Sub #	Submitter
1	The Public Advocate
2	Queensland African Communities Council
3	Wing Fai Im
4	Queensland Advocacy for Inclusion
5	Equality Australia
6	Australia’s National Research Organisation for Women’s Safety
7	Australian Christian Lobby
8	Pastor Marshall Gray and Others
9	CHBE Ltd, T/A Faith Christian School of Distance Education
10	Legal Aid Queensland
11	Albert Young
12	Queensland Network of Alcohol and Other Drug Agencies (QNADA)
13	Dr Alice Taylor
14	Queensland Council of Social Service (QCOSS)
15	Multicultural Australia
16	Queensland Churches Together
17	Queensland Nurses and Midwives’ Union
18	Michelle Jeffries
19	Q Shelter
20	Basic Rights Queensland
21	Caxton Legal Centre
22	ADA Australia
23	Soroptimist International of Brisbane Inc
24	Queensland Family & Child Commission
25	Australian Workers’ Union

- 26 LGBTI Legal Service Inc
- 27 Queensland Council of Unions
- 28 Respect Inc
- 29 Queensland Independent Education Union
- 30 The Australian Muslim Advocacy Network Ltd (AMAN)
- 31 Institute of Public Affairs
- 32 Aboriginal and Torres Strait Islander Legal Service (ATSILS)
- 33 The Shop Distributive and Allied Employees Association (Queensland Branch)
- 34 Confidential
- 35 Women's Apostolic Alliance
- 36 Queensland Human Rights Commission
- 37 Queensland Law Society

Appendix B – Officials at public departmental briefing

BRISBANE, 15 JULY 2024

Department of Justice and the Attorney-General

- Leanne Robertson, Assistant Director-General, Strategic Policy and Legislation
- Kim Chandler, Director, Strategic Policy and Legislation
- Joanna Eisemann, Principal Legal Officer, Strategic Policy and Legislation
- Joseph Morrow, Acting Principal Legal Officer, Strategic Policy and Legislation
- Phoebe Tapley, Senior Legal Officer, Strategic Policy and Legislation

Appendix C – Witnesses at public hearing

BRISBANE, 12 JULY 2024

Queensland Human Rights Commission

- Neroli Holmes, Deputy Commissioner
- Heather Corkhill, Principal Policy Officer

Queensland Law Society

- Bridget Cook, Senior Policy Solicitor
- Kate Brodnik, Principal Policy Solicitor

Equality Australia

- Emily Gray, Legal Director

Queensland Churches Together

- Reverend David Baker, General Secretary
- Professor Nicholas Aroney

Basic Rights Queensland

- Penny Spalding, Special Project Officer
- Eloise Dalton, Director, Working Women Queensland

Queensland African Communities Council

- Beny Bol OAM, President
- Belleange Tshibangu, Vice President
- Samoko Jayo Okoth, Cultural Lore Elder
- Denis Jato, African Youth Support Council Acting Program Coordinator
- Girmay Gebremedhin, Community Relations Officer
- Amandhi Caldera, Youth Mentor and Administration Officer

Multicultural Australia

- Christine Castley, Chief Executive Officer
- Kalpalata Iyer, Research and Advocacy Manager

Australian Workers' Union of Employees, Queensland

- Stacey Schinnerl, Secretary
- Joey Kaiser, Coordinator (Campaigns and Strategy)
- Emily Searle, Campaigns Officer

Shop, Distributive & Allied Employees Association (QLD Branch)

- Justin Power, Secretary

Queensland Council of Unions

- Jacqueline King, General Secretary
- Nate Tosh, Legislation and Policy Officer

Australian Christian Lobby

- Rob Norman, Queensland State Director

Appendix D – Recommendations implemented by the Bill

Table D.1 *Bill implements several recommendations from the Respect@Work Report²⁵¹*

Recommendation	Relevant provisions in Bill
<p>Recommendation 16: Amend the <i>Sex Discrimination Act</i>²⁵² to ensure</p> <ul style="list-style-type: none"> (a) the objects include ‘to achieve substantive equality between women and men’ (b) sex-based harassment is expressly prohibited (c) creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex is expressly prohibited. 	<ul style="list-style-type: none"> • Clause 25, proposed s 131H • Consequential changes in cls 4-6, 16, 19, 23 and 26 • Clause 18 • Clause 22
<p>Recommendation 17: Amend the <i>Sex Discrimination Act</i> to introduce a positive duty on all employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible. In determining whether a measure is reasonable and proportionate, the Act should prescribe the factors that must be considered including, but not limited to:</p> <ul style="list-style-type: none"> (a) the size of the person’s business or operations (b) the nature and circumstances of the person’s business or operations (c) the person’s resources (d) the person’s business and operational priorities (e) the practicability and the cost of the measures (f) all other relevant facts and circumstances. 	<ul style="list-style-type: none"> • Clause 25
<p>Recommendation 18: The Commission be given the function of assessing compliance with the positive duty, and for enforcement. This may include providing the Commission with the power to:</p> <ul style="list-style-type: none"> (a) undertake assessments of the extent to which an organisation has complied with the duty, and issue compliance notices if it considers that an organisation has failed to comply (b) enter into agreements/ enforceable undertakings with the organisation (c) apply to the Court for an order requiring compliance with the duty. 	<ul style="list-style-type: none"> • Clause 39, including proposed ss 173I-173N

²⁵¹ AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Report*, March 2020.

²⁵² The Respect@Work Report was addressed to the Australian Government, so recommendations refer to Commonwealth legislation. As shown later in the table, the report recommended the amendment of state-based anti-discrimination legislation, such as the AD Act, to achieve consistency with the *Sex Discrimination Act 1984* (Cth).

Recommendation	Relevant provisions in Bill
<p>Recommendation 19: Amend the <i>Australian Human Rights Commission Act</i>²⁵³ to provide the Commission with a broad inquiry function to inquire into systemic unlawful discrimination, including systemic sexual harassment. Unlawful discrimination includes any conduct that is unlawful under the federal discrimination laws. The Commission should be given powers to require:</p> <ul style="list-style-type: none"> (a) the giving of information (b) the production of documents (c) the examination of witnesses (d) with penalties applying for non-compliance, when conducting such an inquiry 	<ul style="list-style-type: none"> • Clause 39, including proposed ss 173O and 173P
<p>Recommendation 22: Amend the <i>Australian Human Rights Commission Act</i> so that the President's discretion to terminate a complaint under the <i>Sex Discrimination Act</i> on the grounds of time does not arise until it has been 24 months since the alleged unlawful discrimination took place.</p>	<ul style="list-style-type: none"> • Clause 29
<p>Recommendation 23: Amend the <i>Australian Human Rights Commission Act</i> to allow unions and other representative groups to bring representative claims to court, consistent with the existing provisions in the <i>Australian Human Rights Commission Act</i> that allow unions and other representative groups to bring a representative complaint to the Commission.</p>	<ul style="list-style-type: none"> • Clauses 31 and 47
<p>Recommendation 25: Amend the <i>Australian Human Rights Commission Act</i> to insert a cost protection provision consistent with section 570 of the <i>Fair Work Act 2009</i> (Cth).</p>	<ul style="list-style-type: none"> • Clause 48
<p>Recommendation 26: The Australian Government work with state and territory governments, through the Council of Australian Governments or another appropriate forum, to amend state and territory human rights and anti-discrimination legislation with the objective of achieving consistency, where possible, with the <i>Sex Discrimination Act</i>, without limiting or reducing protections.</p>	<ul style="list-style-type: none"> • All clauses listed above

Source: DJAG, written briefing, 25 June 2024, Appendix 1; Explanatory notes, pp 2-3; Bill.

²⁵³ In this table, references to Acts are references to Commonwealth legislation unless otherwise stated.

Table D.2 Bill implements several recommendations made by LASC

Recommendation	Relevant provisions in Bill
LASC Vilification Report ²⁵⁴	
Recommendation 4: That the Queensland Government ensures anti-vilification provisions (in both civil and criminal laws) cover the attributes of: a. race b. religion c. gender and/or sex d. sexual orientation e. gender identity and/or gender expression f. sex characteristics and/or intersex status g. disability h. medical status, including HIV/AIDS status.	<ul style="list-style-type: none"> • Clause 21, proposed ss 124A, 124C and 124D • Clauses 56-59
Recommendation 5: That the Queensland Government investigate lowering the threshold of the civil incitement test.	<ul style="list-style-type: none"> • Clause 21, proposed ss 124C and 124D
Recommendation 6: that the definition of ‘public act’ in section 93Z(5) of the <i>Crimes Act 1900 (NSW)</i> be adopted, which incorporates social media and other electronic methods, and ensure it applies to civil and criminal incitement-based and harm-based provisions in Queensland’s anti-vilification laws.	<ul style="list-style-type: none"> • Clause 21, proposed s 124B • Clause 57(3)
LASC Vilification and Hate Crimes Bill Report ²⁵⁵	
Recommendation 2: That the Queensland Government considers, as part of its review of the <i>Anti-Discrimination Act 1991</i> , the possible inclusion of additional protected attributes, particularly age and impairment, in relation to ss 124A and 131A of the <i>Anti-Discrimination Act 1991</i> (vilification and serious vilification), s 52B of the <i>Criminal Code Act 1899</i> (circumstances of aggravation) and s 52C of the <i>Criminal Code Act 1899</i> (prohibited symbols).	<ul style="list-style-type: none"> • Clause 21, proposed ss 124A, 124C and 124D • Clauses 56-59
Recommendation 3: That the Queensland Government considers amending the Bill to include closed environments, such as hospitals and educational institutions, in the proposed amended s 131A of the <i>Anti-Discrimination Act 1991</i> and proposed new s 52D(4) of the <i>Criminal Code Act 1899</i> in relation to the display, distribution or publication of prohibited symbols.	<ul style="list-style-type: none"> • Clause 21, proposed s 124B
Recommendation 4: That the Queensland Government amends the definition of ‘public act’ in ss 124A and 131A of the <i>Anti-Discrimination Act 1991</i> to set out examples of communication by electronic means as, not limited to but including, online communication and social media posts and comments.	<ul style="list-style-type: none"> • Clause 21, proposed s 124B • Clause 57(3)

Source: DJAG, written briefing, 25 June 2024, Appendix 1; Bill.

²⁵⁴ LASC, *Report No. 22, 57th Parliament - Serious vilification and hate crimes*, January 2022.

²⁵⁵ LASC, *Report No. 49, 57th Parliament - Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023*, June 2023.

Table D.3 *Bill implements some recommendations from Building Belonging Report²⁵⁶*

Recommendation	Relevant provisions in Bill
A positive duty to eliminate discrimination and sexual harassment	
<p>Recommendation 15</p> <p>15.1: The Act²⁵⁷ should include a positive duty to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, and other prohibited conduct as far possible.</p>	<ul style="list-style-type: none"> • Clause 25, proposed s 131H
<p>15.2: The duty should apply to anyone who has a legal obligation under the Act, and for all attributes and areas covered by the Act.</p>	<ul style="list-style-type: none"> • Clause 25, proposed s 131I
<p>15.3: Drawing on the Victorian approach and the additional criteria recommended by the Respect@Work report, in determining whether a measure is reasonable and proportionate, the Act should prescribe that the factors that must be considered are:</p> <ul style="list-style-type: none"> • the size of the person’s business or operations • the nature and circumstances of the person’s business or operations • the person’s resources • the person’s business and operational exigencies • the practicability and the costs of the measures • all other relevant facts and circumstances. 	<ul style="list-style-type: none"> • Clause 25, proposed s 131J
Updating protected attributes	
<p>Recommendation 23</p> <p>23.1: The Act should rename the sexuality attribute to sexual orientation, and define it to mean a person’s emotional, affectional, or sexual attraction to, or intimate or sexual relations with:</p> <ul style="list-style-type: none"> • persons of a different gender • persons of the same gender, or • persons of more than one gender. 	<ul style="list-style-type: none"> • Clause 7(2) • Clause 52
<p>23.2: The section should include a legislative note that explains that sexual orientation includes not having attraction to or intimate or sexual relations with a person.</p>	<ul style="list-style-type: none"> • Clause 52
<p>Recommendation 25</p> <p>25.1: The Act should add the further terms ‘immigration or migration status’ to the non-exhaustive definition of race.</p>	<ul style="list-style-type: none"> • Clause 52
<p>Recommendation 26</p> <p>26.1: The current attribute of family responsibilities should be renamed ‘family, carer, or kinship responsibilities’ and should not be defined.</p>	<ul style="list-style-type: none"> • Clause 7(3)

²⁵⁶ QHRC, *Building Belonging: Review of Queensland’s Anti-Discrimination Act 1991*, July 2022.

²⁵⁷ In this table, references to ‘the Act’ are references to the AD Act.

Recommendation	Relevant provisions in Bill
Protecting additional attributes	
<p>Recommendation 29</p> <p>29.1: The Act should include a new attribute of irrelevant criminal record and it should be defined as in the <i>Discrimination Act 1991</i> (ACT) Dictionary definition. The definition should expressly include:</p> <ul style="list-style-type: none"> • convictions under the <i>Criminal Law (Historical Homosexual Convictions Expungement) Act 2017</i> • spent convictions under the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i>, and • the imputation of a record relating to arrest, interrogation or criminal proceedings of any sort. 	<ul style="list-style-type: none"> • Clause 7(3) • Clause 52
<p>Recommendation 30</p> <p>30.1: The Act should include a new attribute of physical features. Physical features should be defined to mean weight, size, height, birth marks, scars, and bodily characteristics other than chosen alterations to a person's physical appearance such as cosmetic procedures, tattoos, piercings, hair styles, and other modifications, unless they are characteristics of other attributes.</p>	<ul style="list-style-type: none"> • Clause 7(3) • Clause 52
<p>Recommendation 31</p> <p>31.1: The Act should include a new attribute of 'subjection to domestic or family violence', and it should be defined as in section 8 of the <i>Domestic and Family Violence Protection Act 2012</i>.</p>	<ul style="list-style-type: none"> • Clause 7(3) • Clause 52
<p>Recommendation 32</p> <p>32.1: The Act should include a new attribute of 'homelessness', and it should not be defined.</p>	<ul style="list-style-type: none"> • Clause 7(3)

Table D.4 Bill implements recommendation of Queensland Sentencing Advisory Council²⁵⁸

Recommendation	Relevant provisions in Bill
10-1 New aggravating factor for assaults on public officers and other workers	
<p>(a) A new subsection, modelled on, and placed as part of, existing sections 9(9B) (regarding manslaughter of a child under 12 years), 9(10) (offender who has one or more previous convictions) and 9(10A) (domestic violence offences), should be added to section 9 of the <i>Penalties and Sentences Act 1992</i> requiring that when determining the appropriate sentence for an offender convicted of an offence to which subsections (2A) and (3) apply, a court must treat as an aggravating factor the fact that the offence occurred in the performance of the functions of the victim's office or employment, or because of the performance of those functions or employment.</p>	<ul style="list-style-type: none"> • Clause 70
<p>(b) The aggravating factor should apply to two classes of victim within the provision, reflecting the NSW model in the <i>Crimes (Sentencing Procedure) Act 1999</i> section 21A(2):</p> <ol style="list-style-type: none"> i. frontline and emergency workers victims adopting the same definition as under the revised section 340 as set out in Recommendation 3-1; and ii. other victims who are vulnerable because of their occupation. It could contain a non-exhaustive list of examples, such as bus drivers or other public transport workers, taxi drivers, rideshare drivers, health workers, or security officers, but should not be limited to public sector employees and should include volunteers. 	<ul style="list-style-type: none"> • Clause 70
<p>(c) The new section should also have words to the effect that its subject matter must be treated as an aggravating factor if the court considers that it can be reasonably treated as such, having regard to particular circumstances of the individual case. This is consistent with the effect of sections 9(10) and (10A).</p> <p>It should also have an example of when it may not be reasonable to apply the aggravating factor — as was done with 'exceptional circumstances' in section 9(10A) — namely, when the offender's behaviour giving rise to the charge was affected by his or her mental illness.</p> <p>It should be made clear in drafting this new section that the court is not to have additional regard to the victim's occupation in sentencing if that factor is an element of the offence. For example, such an offence would not apply to assaults charged under section 340 of the Criminal Code.</p>	<ul style="list-style-type: none"> • Clause 70

²⁵⁸ QSAC, *Penalties for assaults on public officers*, Final report, August 2020.

Statement of Reservation

Statement of Reservation

This Bill, if enacted, will go some way towards aligning Queensland law with that of the Commonwealth. Further, the Bill enacts some recommendations of the former Legal Affairs and Safety Committee (“LASC”) with which the LNP agrees.

There are, however, significant concerns with Part 2 of the Bill. This section contains departures from Commonwealth legislation and recommendations made by the AHRC and reports of the LASC. If enacted, these provisions could give rise to substantial uncertainty about what actions, conduct and words are lawful and give rise to litigation against individuals, businesses and community organisations through no fault of their own.

This uncertainty begins with Clause 6, which would amend the object of the Anti-Discrimination Act 1991 (“AD Act”) by including, alongside the objective and longstanding concept of “equality of opportunity for everyone”, the subjective notion of “equitable outcomes”. The notion of “equitable outcomes” is added by the Bill to the purpose of each distinct provision aiming to prevent discrimination. It is noteworthy that departmental representatives could not precisely and concisely explain to the committee what this term means, and further that this goes beyond the objects contained in the Commonwealth Sex Discrimination Act 1984 (“SDA”) (even after the adoption of amendments by the Commonwealth following the *Respect@Work Report*). The uncertainty of this term creates a level of uncertainty (or “unknowability”) about the extent of this legislation.

In relation to the Bill’s amendments to the vilification provisions, they exceed in significant respects the recommendations of the LASC. Proposed Section 124C alters the usual broad application of the “objective test”. It does so by confining the question of whether something is hateful, reviling, seriously contemptuous, or seriously ridiculing to a person or group with a protected attribute to whether a “reasonable person” with that protected attribute would find it so. The question should be considered by asking how a “reasonable person” in the community at large considers such conduct under Section 124C.

Section 124D introduces an offence for conduct “likely” to incite. This term may well be considered uncertain and prone to different interpretations by different people. The potential to create uncertainty is undesirable in legislation.

The “positive duty” provision contained in the Bill is inordinately broader in scope than the positive duty under the SDA. Understandably the SDA confined this duty, in section 47C(4), largely to discrimination on the grounds of sex. This Bill extends the positive duty to all discrimination proscribed by the AD Act, sexual harassment, harassment on the basis of sex or “other objectionable conduct.” The Bill empowers the QHRC to issue “guidelines” about how to comply with the law, which underlines just how uncertain the

provisions of this Bill are (including the object of “equitable outcomes”). The QHRC is also provided with greater investigation and enforcement powers, including to investigate compliance with the positive duty to prevent discrimination. Combined, this is an expansion of power for the QHRC.

The impact of uncertainty is that parties may face legal action for allegedly failing to comply with a law that it is impossible to know the bounds of. An undesirable, and yet likely intended, consequence of uncertain law is that the freedom of religion, freedom of association and freedom of speech in Queensland will be curtailed – either by self-censorship, enforcement of “guidelines” from the QHRC, or by litigation.

Uncertain laws are not effective and often lead to unintended consequences. While the LNP wants to ensure all people are respected and protected from any form of harassment or discrimination, this will only be achieved through the right legislation.



Jon Krause MP
Member for Scenic Rim
Deputy Chair



Mark Boothman MP
Member for Theodore

