

Anti-Discrimination Bill 2024 consultation

Submission to Department of Justice and Attorney-General

22 March 2024

# Contents

[**About the Commission 3**](#_Toc161917214)

[**Summary of submission 3**](#_Toc161917215)

[**Background 3**](#_Toc161917216)

[**Key improvements 5**](#_Toc161917217)

[Shifting to prevention 5](#_Toc161917218)

[Refining the key concepts – discrimination and sexual harassment 5](#_Toc161917219)

[Enhancing protections from vilification and hate speech 5](#_Toc161917220)

[Improving the complaints system 6](#_Toc161917221)

[Increasing protections 6](#_Toc161917222)

[**Priority concerns** 7](#_Toc161917223)

[Commencement 7](#_Toc161917224)

[Liability (vicarious liability) 8](#_Toc161917226)

[When a person is vicariously liable for others 9](#_Toc161917227)

[Reasonable steps defence 9](#_Toc161917228)

[Acts done in compliance with or authorised by other laws 11](#_Toc161917229)

[Expansion in scope of application 11](#_Toc161917230)

[Reasonable accommodations 14](#_Toc161917231)

[Incorporating concept into definitions of direct and indirect 15](#_Toc161917232)

[Definition of ‘reasonable accommodation’ 15](#_Toc161917233)

[Factors for unjustifiable hardship 16](#_Toc161917234)

[Positive duty 17](#_Toc161917235)

[Vilification 18](#_Toc161917237)

[Complaints functions 20](#_Toc161917239)

[Terminology – ‘accepted’ or ‘dealt with’ language 20](#_Toc161917240)

[Inflexible notification provisions 21](#_Toc161917242)

[Commission complaint powers narrowed by draft Bill](#_Toc161917243) 22

[Organisation (interested) body complaints 23](#_Toc161917244)

[Exceptions – GOR religious 24](#_Toc161917245)

[Exceptions – roles in religious bodies 26](#_Toc161917247)

**Annexures ………………………………………………………………………………....29**

# About the Commission

1. The Queensland Human Rights Commission (**QHRC**) is an independent statutory authority with functions under the *Anti-Discrimination Act 1991* (**Anti-Discrimination Act**) and the *Human Rights Act 2019* (**Human Rights Act**), which include:

* dealing with complaints of discrimination, sexual harassment, vilification, reprisal (under the *Public Interest Disclosure Act 2010*), and contraventions of the Human Rights Act
* reviewing public entities’ policies, programs, procedures, practices and services in relation to their compatibility with human rights
* promoting an understanding, acceptance, and public discussion of human rights and the Human Rights Act in Queensland
* providing education about human rights and the Human Rights Act.

# Summary of submission

1. This submission is in response to the consultation draft of the Anti-Discrimination Bill 2024 (**draft Bill**).
2. The QHRC strongly supports the introduction of a new Anti-Discrimination Bill into the Queensland Parliament.
3. The majority of provisions outlined in the draft Bill align closely with the recommendations made by the QHRC's 2022 review of the Anti-Discrimination Act, as detailed in *Building belonging: Review of Queensland’s* *Anti-Discrimination Act 1991* (***Building belonging* review**).
4. This submission outlines:

* key improvements to the law presented in the Bill.
* priority concerns necessitating amendments.
* suggested amendments across a broad range of issues (contained in Annexures A - H to this submission).

# Background

1. In 2021, the Attorney-General asked the Queensland Human Rights Commission to review the *Anti-Discrimination Act 1991* (Qld). The QHRC’s *Building belonging* review considered whether there was a need for any reform to enhance and update the Act so it best protects and promotes equality, non-discrimination and the realisation of human rights.[[1]](#footnote-2)
2. The *Building belonging* review was the first thorough consideration of Queensland’s anti-discrimination law in over 30 years. The Review aimed to ensure the Act's relevance and effectiveness in contemporary Queensland. Through extensive consultations and consideration of survey responses and submissions, the Review gathered insights from diverse stakeholders about the complex nature of discrimination and its negative impacts on affected individuals and communities.
3. The *Building belonging* review highlighted the limitations of the current Act in addressing systemic discrimination. The proposed reforms set out in the *Building belonging* review emphasised the importance of changes that not only address individual instances of discrimination but tackle its systemic roots. This led to recommendations for a more proactive approach to addressing discrimination beyond the existing, reactive, complaints-driven framework.
4. The Review called for significant reforms, including the introduction of a positive duty for organisations to eliminate discrimination, the redefinition and expansion of protected attributes, and the recognition of intersectional (combined attribute) discrimination.
5. Other changes to legal definitions and to the complaint process were directed at simplifying the legal framework for the benefit of both complainants and duty holders, making it more accessible and effective, and improving access to justice.
6. The *Building belonging* review concluded with a call for a comprehensive overhaul of the Anti-Discrimination Act, advocating for a new Act that aligns with contemporary societal values and international human rights law. The final report[[2]](#footnote-3) was delivered to the Attorney-General in July 2022.
7. In response to the QHRC recommendations in the *Building belonging* review, the Queensland Government provided their *Final Queensland Government Response* which was tabled in the Legislative Assembly on 3 April 2023. The response gave in-principle support to all of the QHRC recommendations, and indicated that it was committed to the introduction of legislation in the current term of government.
8. Vilification and hate crimes laws were not examined in the *Building belonging* review as a parliamentary committee had been established to consider the law in Queensland.[[3]](#footnote-4)
9. On 31 January 2022, the Legal Affairs and Safety Committee concluded their inquiry into serious vilification and hate crimes and provided their report to the Legislative Assembly (No. 22, 57th Parliament). The QHRC assisted that inquiry by making recommendations for improvements to both civil and criminal responses to vilification. The government responded in May 2022 with support for 9 of the recommendations and in-principle support for the remaining 8 recommendations.

# Key improvements

## Shifting to prevention

1. A major focus of the *Building belonging* review was to create a new legislative scheme that focussed on prevention of discrimination and sexual harassment. The draft Bill achieves this reframe by introducing a positive duty to eliminate discrimination and other forms of unlawful conduct, combined with new education and compliance powers for the QHRC.
2. For more information on some aspects requiring improvement, refer to Annexure G.

## Refining the key concepts

1. The *Building belonging* review sought to ensure that the legal tests for discrimination respond effectively to the problems they are seeking to address and are easy to understand and apply. Updates to the meaning of direct and indirect discrimination and the new affirmative measures provisions reflect the purpose and intention of recommendations made by the Review.
2. Consistent with the recommendations of the *Building belonging* review, the draft Bill acknowledges that individuals may encounter discrimination based on multiple grounds, and ensures that people can bring complaints based on intersectional experiences of discrimination.
3. While not addressed by the *Building belonging* review, the QHRC supports enhancing the ‘characteristics extension’[[4]](#footnote-5) so that it applies not only to discrimination but to other kinds of unlawful conduct, such as vilification.
4. For more information on some aspects requiring improvement, refer to Annexure B.

## Enhancing protections from vilification and hate speech

1. While vilification was excluded from the terms of reference for the QHRC’s review of the Anti-Discrimination Act, the Bill reflects many recommendations made by the QHRC to the Legal Affairs and Safety Committee Inquiry into vilification and hate crime laws.
2. Positive enhancements have been included in the draft Bill to improve Queensland’s civil vilification laws, including:

* introduction of a new harm-based provision (clause 84)
* extended meaning of ‘public’ to include workplaces and schools (clause 83)
* protection of people based on their age, disability, and sex, in addition to the current protections based on race, religion, gender identity, and sexuality (sexual orientation in the draft Bill) (clause 84(2) and clause 85(1)).

1. For more information on some aspects requiring improvement, refer to Annexures B.

## Improving the complaints system

1. In response to the *Building belonging* review, the draft Bill updates the QHRC’s complaints function to ensure that the QHRC can deliver a flexible, modern, and efficient dispute resolution service.
2. Several changes, such as increasing the time limit on making complaints and improvement of the representative complaints provisions, enhance access to justice for people affected by discrimination. A shift towards a shared burden of proof in the tribunal hearing process will also enhance access to justice.
3. For more information on some aspects requiring improvement, refer to Annexure F.

## Increasing protections

1. The *Building Belonging* review aimed to ensure that all people who require protection under the Anti-Discrimination Act are included, and that coverage of the law extends to all contexts and settings in which unfair discrimination occurs, subject to reasonable exceptions.
2. The draft Bill closely follows the recommendations of the *Building Belonging* review and includes new attributes, such as homelessness and subjection to domestic or family violence, and improves the definitions of several attributes where the scope was too narrow or further clarity was needed.
3. Most of the *Building Belonging* review’s recommendations for updates to, or omission of exceptions, have also been implemented in the draft Bill.
4. For more information on some aspects requiring improvement, refer to Annexures A and E.

# Priority concerns

## Commencement

1. The draft Bill indicates an intention for the Anti-Discrimination Act to commence by proclamation, rather than on a specified date.[[5]](#footnote-6)
2. The *Building belonging* review recommended that the QHRC be given additional functions to allow it to support proactive compliance with the positive duty and to effectively address non-compliance. The Review recommended that, while these functions should be introduced immediately, provisions related to ‘upper end enforcement’ should be staged to allow duty holders time to seek and receive guidance on steps they may need to take to comply with any new obligations.
3. The QHRC observes that financial penalties are not included in the suite of compliance options under the draft Bill. This means that all regulatory action that may be taken by the QHRC as an outcome of an investigation will be voluntarily entered into by a duty holder. This aligns with one of the main purposes of the draft Bill, which is to promote and facilitate voluntary compliance.
4. Accordingly, we consider that there is no longer adequate justification for staged introduction, and that all provisions in the Act should commence on a specified commencement date.
5. This approach will ensure the timely passage of the legislation and provide certainty to the community, stakeholders, and the QHRC, about the new law.
6. The QHRC will have a key role in implementation of the regulatory function, and this holds significant resourcing and staffing implications. To ensure the QHRC can provide adequate support, awareness, and education to stakeholders and the broader Queensland community on these fundamental changes, certainty of the commencement date is imperative.
7. A significant part of this work will be to consult on, develop, publish, and publicise guidelines and education programs for duty holders to ensure that they are ready to comply with the updated Act. This significant program of work would be assisted by clear commencement timeframes. Further, a single commencement date for the reforms will reduce costs and avoid the potential for unnecessary confusion that may result from staged commencement.

### Recommendation

The Anti-Discrimination Act should commence on 1 September 2025.

## Liability (vicarious liability)

1. The *Building belonging* review did not make any recommendations for changes to provisions regarding vicarious liability, currently contained in sections 132 to 133 of the Anti-Discrimination Act. In Queensland the law on vicarious liability is settled, and stakeholders did not raise any concerns with the Review about the wording of the current provisions.
2. Part 8 of the Bill[[6]](#footnote-7) replaces the current Act’s vicarious liability provisions with new provisions for ‘liability’, the effect of which is likely to drastically alter the extent to which a person will be held liable for the actions of their workers or agents.
3. Section 132 of the Anti-Discrimination Act sets out the reason for vicarious liability provision in the Act and the work it has to do:
4. One of the purposes of the Act is to promote equality of opportunity for everyone by making a person liable for certain acts of the person’s workers or agents.
5. This purpose is to be achieved by making a person civilly liable for a contravention of the Act by the person’s workers or agents.
6. Section 133(1) of the Anti-Discrimination Act states that where a person’s workers or agents contravene the Act ‘in the course of work or while acting as agent, both the person and the worker or agent, as the case may be, are jointly and severally civilly liable for the contravention’ and action can be taken against the worker or agent, the vicariously liable party, or both. However, section 133(2) provides that:
7. It is a defence to a proceeding for a contravention of the Act arising under subsection (1) if the respondent proves, on the balance of probabilities, that the respondent took reasonable steps to prevent the worker or agent contravening the Act.
8. The draft Bill has omitted the current vicarious liability sections. The liability clauses set out in Clauses 93 to 96 introduce new concepts of:

* *representative* – rather than worker or agent
* *within the scope of the representative’s actual or apparent authority* – rather than in the course of work or while acting as agent
* reasonable *diligence* (for the defence) – rather than reasonable steps
* proving a *person’s state of mind* about a particular act or omission.

1. The Consultation guide in relation to the draft Bill does not explain the reason for these changes.

### When a person is vicariously liable for others

1. Clause 96 of the draft Bill provides for liability of a *representative* of a person. ‘Representative of a person’ is defined in clause 93 by reference to *employee* and *agent*.
2. ‘Employee’ is defined for the purposes of Part 8 (liability) for an *entity* as including a person engaged by the *entity* under a contract of service. Entity is not defined in the draft Bill, however section 35 of the *Acts Interpretation Act 1954* (Qld) provides that a reference in an Act to an entity is a reference to an entity in and for Queensland.
3. The meaning of ‘agent’ is defined in the dictionary to mean a person who has *actual, implied, or ostensible authority* to act on behalf of another. However, clause 96 limits liability to acts or omissions within the scope of the representative’s *actual or apparent authority*.
4. There is clear Queensland jurisprudence on the meaning of ‘in the course of work’.[[7]](#footnote-8) The words are construed broadly, and their interpretation is not confined to analogies from the law of vicarious liability in tort. The expression ‘acting as agent’does not require connection with the performance of work, merely the existence of an agency, and whether the conduct was within some perceived scope of apparent or ostensible authority is not an element for deciding vicarious liability.[[8]](#footnote-9)
5. The changes to vicarious liability in clauses 93 to 96 would limit the current broad coverage of liability for the conduct of a person’s workers or agents. The limitation is inconsistent with the government’s stated purpose of the draft Bill to protect people more effectively from discrimination, sexual harassment, vilification and victimisation and other unlawful conduct.
6. The new phrasing is likely to limit the liability of organisations where a worker has done something that is clearly not within the scope of their work tasks, such as when an employee has sexually assaulted another employee on work premises.

### Reasonable steps defence

1. As to the defence in clause 96, there is also no basis for changing the existing defence of taking reasonable steps to *exercising reasonable diligence*. The latter expression is less likely to be understood by those who have a duty to prevent contraventions of the Act. It is also incongruent with the new positive duty in clause 19 of the Bill which requires taking ‘reasonable and proportionate measures.’
2. Further, there is helpful case law in Queensland[[9]](#footnote-10) that assists duty holders to understand their obligations to take ‘reasonable steps’, depending on the size and capacity of the employer. This case law may no longer be relied upon if the words change from ‘reasonable steps’ to ‘reasonable diligence’.
3. All Australian discrimination laws contain a defence to liability for a worker or agent’s contravention of the Act. The QHRC is concerned that the new provisions are out of step with most vicarious liability provisions in state and federal discrimination laws in Australia.
4. The QHRC was unable to identify any jurisdictions of where 'due diligence' was the wording of the defence to vicarious liability.[[10]](#footnote-11)
5. The majority of vicarious liability provisions in state or federal laws either contain the words ‘reasonable steps’ or ‘all reasonable steps’. Like section 133(2) of the current Queensland Act, taking ‘reasonable steps’ is a defence under Tasmanian[[11]](#footnote-12) and South Australian[[12]](#footnote-13) laws. Taking ‘*all* reasonable steps’ (emphasis added) is a defence under New South Wales, Western Australian, Northern Territory, ACT laws, and under the federal race and sex discrimination laws.[[13]](#footnote-14) Victorian legislation provides a similar exception to vicarious liability where the employer or principal took ‘reasonable precautions’ to prevent the contravention.[[14]](#footnote-15)
6. In addition, the current drafting includes a section regarding proof of a person’s state of mind about a particular act or omission.[[15]](#footnote-16) Proving a person’s state of mind about a particular act or omission is rarely relevant in anti-discrimination law, particularly as a person’s motivation for discrimination and whether they are aware of the discrimination do not matter.[[16]](#footnote-17) One exception may be in relation to sexual harassment.[[17]](#footnote-18) Therefore, clause 96(3) appears to be superfluous.

### Recommendation

Section 133 of the Anti-Discrimination Act should be reinstated, and a clause that is similar to section 132, which explains the purpose of the liability provisions, should be included.

## Acts done in compliance with or authorised by other laws

1. Clause 56(1) of the draft Bill provides an exception where discrimination is necessary to comply with State or Commonwealth laws, or to comply with an order of a court or tribunal.
2. The QHRC supports the exception that applies to acts necessary to comply with an order of a court or tribunal.
3. However, it has serious concerns about cl 56(1)(a) which creates an exception to discrimination in relation to compliance with other laws. Although section 106 of the Anti-Discrimination Act provides a similar exception, clause 56 of the draft Bill significantly expands[[18]](#footnote-19) the scope of the exception by:

* applying to future legislation as well as past legislation (the current exception only applies to legislation in force as at 30 June 1992)
* applying to both State and Commonwealth legislation[[19]](#footnote-20)
* applying to conduct that is ‘necessary to comply with, or is authorised by’ legislation, rather than conduct that is ‘necessary to comply with, or is *specifically* authorised’ by another law.

1. These three changes will greatly broaden the circumstances in which a person may rely on the exception and give rise to significant gaps in protection.

### Expansion in scope of application

1. Clause 56 broadens the application of the exception to anylaw, existing or future, State or Commonwealth. By doing so, it displaces ordinary principles of statutory construction that would otherwise apply to resolve any potential inconsistency between laws. Under those ordinary principles, where there is an overlap between two legislative provisions a court will try to read them in a way that allows them to operate concurrently.[[20]](#footnote-21) This approach promotes the objects of the draft Bill, whereas an exception that gives precedence to other legislation, past or future, does not.
2. The *Building belonging* review did not recommend any change to the existing exception, and no concerns from stakeholders were noted by the Review that might justify such an expansion of scope. A number of other Australian jurisdictions operate without such exceptions in their discrimination laws, and law reform bodies have recommended the removal of existing provisions to comply with other Acts in state and territory legislation.[[21]](#footnote-22)
3. The Consultation guide provides limited justification for this significant change, and mentions compliance with a Commonwealth Act that regulates superannuation and to:

… permit discrimination on the basis of immigration or migration status where necessary to comply with a law of the State or the Commonwealth regarding the regulation of immigration to Australia.[[22]](#footnote-23)

1. Such a broad exception is not the least restrictive means to achieve this end. The Anti-Discrimination Act has been working effectively in this area for more than 30 years without any exception for laws passed after 1992. Given that any legislation invoked under the ‘existing provision of another Act’ provision in s 106 of the Anti-Discrimination Act would now be 30 years old, it should not be necessary to reproduce the exception relating to those laws in the new Bill. If any inconsistency remains, it should be dealt with through ordinary principles of statutory interpretation.
2. If there are concerns that the introduction of new protected attributes, or expansion of the definition of some attributes, might cause difficulties with the application of particular laws (for example, the Blue Card and Yellow Card regimes, or legislation touching on immigration status) even after the application of ordinary Constitutional or statutory interpretation principles, those specific laws should be identified, and the exception limited to them.[[23]](#footnote-24)
3. Alternatively, any broader exceptions should be limited to the new or amended attributes and to laws passed before commencement of the Bill. When parliament passes new legislation they are taken to be aware of existing anti-discrimination protections, and if they wish to create an exception from such protections this should be done clearly in the later Act.

### Conduct ‘authorised by’ another law

1. By including the words ‘or is authorised by’ another law, the exception in clause 56(1) allows a person to act inconsistently with the draft Bill not only where another law compels such action,[[24]](#footnote-25) but also where there is a discretionunder another law that would allow the person to act in a certain way.[[25]](#footnote-26) Although this reflects the existing position to some extent under s 106 of the Anti-Discrimination Act, it appears to have been made even more permissive by removal of the word ‘specifically’ and its scope of operation significantly increased by the fact it now applies to any other law.
2. Allowing discretions to operate in this way is inconsistent with the purposes of the draft Bill. If this exception is retained at all the words ‘or is authorised by’ must be removed.

### Suggested drafting for more limited exception

1. Ideally, the exception in Clause 56 should be limited to conduct necessary to comply with an order of a court or tribunal, with no specific exception for compliance with other laws. However, if it is considered necessary to address specific issues associated with the redefined or new attributes, the following drafting illustrates potential options to improve the drafting:

Option one:

**Compliance with legislation or court or tribunal orders**

1. A person may discriminate against another person if the discrimination is necessary to comply with an order of a court or tribunal.
2. A person may discriminate against another person on the basis of [relevant new or amended attribute/s] if the discrimination is necessary to comply with any of the following as in force at the commencement of this section:
   1. *Working with Children (Risk Management and Screening Act) 2000*;
   2. *Disability Service Act 2006*;
   3. ….

Option two:

**Compliance with legislation or court or tribunal orders**

1. A person may discriminate against another person if the discrimination is necessary to comply with an order of a court or tribunal.
2. A person may discriminate against another person on the basis of [relevant new or amended attribute/s], if the discrimination is necessary to comply with an existing provision of another Act.
3. In this section—

***Existing provision*** means a provision of an Act in existence atthe commencement of this section.

### Recommendation

Clause 56(1) of the draft Bill should be amended to remove the exception for compliance with other laws. However, if such an exception is retained it should be amended to:

* limit the exception to specific statutory regimes, or to existing legislation as it relates to new or amended protected attributes; and
* remove reference to actions that are ‘authorised by’ another law.

## Reasonable accommodations

1. The *Building belonging* review recommended the inclusion of a new, stand-alone requirement to make reasonable accommodations for a person with a disability. The intention was that this requirement would be enforceable by people with a disability in the same manner as other contraventions of the Act.[[26]](#footnote-27)
2. However, the draft Bill includes the concept of reasonable accommodations through:

* creating a positive duty that is *not* actionable by an individual through making a complaint (clause 18); and
* incorporating it into to the definitions of direct and indirect discrimination (clauses 14 and 15).

1. The QHRC has several concerns about this approach.

### Incorporating concept into definitions of direct and indirect

1. The draft Bill imports reasonable accommodations into both direct and indirect discrimination creating unnecessary complexity. This drafting may also lead to an incorrect interpretation that people without the attribute of disability are not entitled to reasonable accommodations, where this may currently be argued under indirect discrimination, such as on the grounds of family responsibilities.
2. Reasonable accommodations as a kind of direct discrimination creates confusion because there is no causation element like there is for ‘traditional’ direct discrimination. Attempting to cast reasonable accommodation as a type of direct discrimination, which requires the person with disability to be treated unfavourably, also creates problems when trying to define ‘reasonable accommodation’ in clause 12.
3. Making a complaint about reasonable accommodations as a type of indirect discrimination under clause 15(2) requires the person to demonstrate: 1) The imposition of a term, 2) that has the effect of disadvantaging the person because of the disability, 3) where the person would not be disadvantaged by the condition if a reasonable accommodation was made, and 4) failure or refusal to make the reasonable accommodation. The person with disability would then have to go on to prove the elements in cl 12(1)(a), further discussed in the next section, when the case could be argued more simply as a form of indirect discrimination under clause 15(1).
4. The preferred alternative, in line with recommendations made in *Building Belonging*, is to create a third, stand-alone obligation to make reasonable accommodations, entirely separate from direct and indirect discrimination.

### Definition of ‘reasonable accommodation’

1. Clause 12 defines what is a reasonable accommodation in relation a person with a disability.
2. To prove an accommodation is reasonable, a person must show it is:

* necessary
* appropriate to be made
* effective
* to ensure the person is not treated unfavourably.

1. Rather than factors to establish what is ‘reasonable’, these are framed as elements that each need to be proved by the person with a disability. This unnecessarily restricts an assessment of what is ‘reasonable’, and may impose too high a burden on the person with disability to demonstrate.
2. As necessity, appropriateness and effectiveness are arguably aspects of reasonableness, there seems to be no benefit in confining the meaning by including these additional terms.

### Factors for unjustifiable hardship

1. In clause 12(3) the word ‘must’ should be changed to ‘may’. Not all of the factors will be relevant to each situation, and so mandating consideration of all factors in every case is unnecessarily onerous.
2. Clause 12(3)(b) refers to ensuring a person with disability is not ‘treated unfavourably’ which reinforces the problem of attempting to frame a failure to make reasonable accommodations as a form of direct discrimination. It would be preferable to refer to ‘disadvantage’, which aligns better with the formulation of indirect discrimination.

### Recommendation

Omit clauses 12, 14(2), 15(2) and 18.

Insert new contravention of ‘reasonable accommodations for people with disability’ – separate to direct and indirect discrimination. Suggested drafting:

**Reasonable accommodations for people with disability**

(1) A person (**the first person**) discriminates against a person with disability if:

(a) the person with disability requests a reasonable accommodation; and

(b) the accommodation does not impose unjustifiable hardship on the first person; and

(c) the first person fails or refuses to make the accommodation.

*Examples of what may be a reasonable accommodation –*

*1. A reasonable accommodation for a person with vision impairment may be buying a screen reading software for the person.*

*2. A reasonable accommodation for a person who uses a wheelchair may be physical modifications to the person’s workstation to accommodate the wheelchair.*

(2) The first person has the onus of proving that making the accommodation would impose an unjustifiable hardship, on the balance of probabilities.

(3) In deciding whether an accommodation in relation to a person with disability would impose an unjustifiable hardship on the first person, the following matters may be considered:

[insert cl 12(3)(a) to (h), but amend cl 12(3)(c) to read ‘…to ensure the person with disability is not disadvantaged’.]

Make corresponding amendments in cl 13, to ensure this new contravention is incorporated and applies to all areas in which unlawful discrimination is prohibited.

## Positive duty

1. Consistent with the *Building belonging* review recommendations,[[27]](#footnote-28) the QHRC supports the inclusion of a general positive duty in clause 19 of the draft Bill.
2. However, it is unclear whether the draft Bill fulfils the Review’s recommendation that:

The duty should apply to anyone who has a legal obligation under the Act, and for all attributes and areas covered by the Act.[[28]](#footnote-29)

1. Clause 19(1) specifies that the duty applies to corporations, partnerships, unincorporated bodies, and sole traders who *carry on a business or operations*. The term ‘operations’ is not defined. The positive duty in the federal Sex Discrimination Act refers to ‘a person conducting a business or undertaking’ but this is in the context of a positive duty that only applies to the area of work.[[29]](#footnote-30) It is unclear how, or whether, ‘business or operations’ applies in the context of schools, universities, and government entities.
2. Clause 19 may have been drafted in this way to ensure that natural persons are not bound by the duty. The QHRC has no issue with natural persons not being bound by the duty, unless sole traders. However, the current drafting does not make clear who the duty applies to and, in particular, whether educational authorities, educational institutions, local governments, the Queensland Police Service, and the State of Queensland are bound by the duty.
3. Unclear drafting means that duty holders in certain areas of activity, notably education and administration of State Laws and programs may not be bound by the provision. A lack of clarity about who is required to take reasonable and proportionate measures to eliminate unlawful conduct will be detrimental to the effectiveness of the positive duty and result in disputes about the QHRC’s ability to enforce the duty.
4. The words ‘and other unlawful conduct’ should be included in the heading for clause 19 and added to clause 19 (1) which currently requires that persons ‘must not engage in discrimination, sexual harassment, vilification or victimisation’. The duty applies to part 4, 6, and 7 of the Act. Part 7 includes vilification (Div 2) and victimisation (Div 3), but also includes unlawful advertising (Div 4) and unlawful requests or encouragement (Div 5).
5. Clause 19 should be redrafted to ensure that all duty holders are required to comply with the positive duty and to clarify that all forms of unlawful conduct in Parts 4, 6 and 7 are covered by the positive duty provisions.

### Recommendations

Clause 19 (Duty to eliminate discrimination, sexual harassment, vilification and victimisation) should contain a list of duty holders bound by the Act, which includes:

* + a corporation
  + a partnership
  + an unincorporated body
  + a sole trader
  + a government entity within the meaning of the *Public Sector Act 2022*, section 276
  + the Queensland Police Service
  + a local government
  + an educational institution
  + an educational authority.

Amend the clause 19 heading and clause 19(1) to include the words ‘and other unlawful conduct’.

## The legal test for vilification

1. The draft Bill mostly reflects the recommendations made by the QHRC to the Legal Affairs and Safety Committee Inquiry into vilification and hate crime laws.[[30]](#footnote-31)
2. However, the QHRC has concerns about the drafting of clause 85(1). The new provision entitled ‘Inciting hatred, serious contempt or severe ridicule’ replaces the existing vilification provision in section 124A of the Anti-Discrimination Act.
3. The intention of the change is to make the law clear that it is not necessary to show actual incitement of hatred, serious contempt, or severe ridicule.[[31]](#footnote-32) However, the QHRC does not consider that this drafting achieves the purpose.
4. Existing section 124A was modelled on the New South Wales provision, whereas clause 85 seems more akin to sections 7 and 8 of the Victorian *Racial and Religious Tolerance Act 2001* (RRT Act).
5. The word ‘incite’ has been construed in both New South Wales and Victorian case law as meaning ‘to rouse, to stimulate, to urge, to spur on, to animate’[[32]](#footnote-33) and that it is not necessary for a person to in fact be incited by the words or publications.[[33]](#footnote-34) These authorities were cited by the NSW Court of Appeal in *Sunol v Collier (No 2)*[[34]](#footnote-35)and have been followed and applied by Queensland tribunals.[[35]](#footnote-36)
6. In Queensland, the test enunciated in *Kazak* has been applied: that is, whether the ordinary reader/listener/observer would consider they were being urged on to hatred (or the other relevant sentiments) towards a person or group of persons because of their race or other relevant attribute.
7. Changing the expression of the prohibition to ‘incites, or is reasonably likely to incite,’ suggests that ‘conduct that incites’ means actual incitement. This has the potential to create a shift in the way vilification provisions have been construed and applied.
8. In the Victorian decision in *Catch the Fire Ministries,* an element of the audience was incorporated into the test. Nettle JA said that there could be no incitement without an audience. This is at odds with Queensland decisions where the element of ‘public act’ and its meaning could result in there not being an actual audience.[[36]](#footnote-37)
9. Legislation is drafted for the public at large. It is a fundamental feature of the rule of law that legislation be clear and able to be understood by those who are bound by it. Section 4(3)(k) of the *Legislative Standards Act 1992* provides that legislation should be unambiguous and drafted in a sufficiently clear and precise way.[[37]](#footnote-38)
10. With those principles in mind, and the potential for clause 85 to change the law, the better approach is to keep the wording of section 124A but changing *incite* to *urge or promote*.

### Recommendation

Clause 85 should be amended so it provides:

A person must not, by a public act, urge or promote hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of …

1. Refer to Annexure B for commentary regarding the selection of attributes for protection from vilification and hate crimes.

## Complaints functions

1. Overall, Part 9 of the draft Bill reflects the objectives of the reforms recommended in the *Building belonging* review, including that it:

* retains the compulsory dispute resolution process, while reshaping the legislative framework to facilitate a more flexible and responsive dispute resolution process at the QHRC (Recommendation 9)
* makes changes to improve access to justice, including a longer 2-year time limit to make a complaint (Recommendation 8).

1. However, aspects of the draft Bill require amendment to ensure that the QHRC can make the complaints process more effective and efficient.

### Terminology – ‘accepted’ or ‘dealt with’ language

1. The draft Bill uses inconsistent language when referring to actions taken by the Commissioner in relation to complaints. It refers to ‘dealing with’ complaints in some clauses[[38]](#footnote-39) and ‘accepting’ complaints in others.[[39]](#footnote-40)
2. While it is important to maintain the distinction between complaints that fall within the Commissioner’s jurisdiction and those that do not, referring to complaints as ‘accepted’ or ‘not accepted’ is confusing and misleading to parties who do not understand the distinction.
3. Parties often interpret the term ‘accepted complaint’ to mean that the Commissioner has decided the complaint has merit and/or that a finding has already been made that the alleged conduct did occur and did amount to unlawful discrimination. Conversely, complainants may interpret ‘not accepting’ their complaint to mean that the Commissioner does not accept that the allegations occurred, when it generally only means that the Commissioner has assessed the allegations as having insufficient detail to indicate a contravention of the Anti-Discrimination Act.
4. The language used to maintain the distinction is therefore important in building trust between Commission staff and complaint parties, which is an essential element for providing successful dispute resolution services.
5. The message the draft Bill needs to convey is that the Commissioner will deal with complaints that are within jurisdiction and will not deal with those that aren’t. The ordinary meaning of the words ‘deal with complaint’ includes taking any action in relation to it. This includes the discrete processes of assessing the complaint to determine whether it is within jurisdiction and, where it is found to be within jurisdiction, the subsequent process of complaint resolution. Emphasising the distinction between the two processes can be achieved through consistent use of the terms ‘decided to deal with’ or ‘not deal with’.

### Recommendation

All references in the draft Bill to ‘acceptance’ of the complaint be replaced with language to indicate the Commissioner has ‘decided to deal with’ the complaint or ‘is dealing with’ the complaint.

References to ‘accepted complaint’ should be replaced with ‘complaint that the commissioner has decided to deal with’ or ‘complaint that the commissioner is dealing with’, depending on the context.

### Inflexible notification provisions

1. One of the disadvantages of the current Anti-Discrimination Act, as discussed in the *Building belonging* review,[[40]](#footnote-41) is that it includes rigid procedural timeframes and processes that limit flexibility delivering dispute resolution services.
2. The current notification provisions in section 143 require the QHRC to send out long and complex letters to complaint parties. Paper-based processes not only have resource implications, but place individuals with literacy issues or English as an additional language at a disadvantage.
3. While many of the inflexible notification provisions have been removed, the new clause 123 is likely to create similar problems. Some of the information required in a notice to the respondent could be explained verbally or included on the QHRC’s website.
4. In the QHRC’s experience, respondents seldom take the opportunity to make submissions in writing in response to a complaint and, when they do, the written responses rarely help to resolve the complaint. Requiring the QHRC to advise respondents of this option is of little worth.
5. A requirement to provide the ‘substance’ of a complaint to a respondent will create a burden on QHRC’s resources when the only requirement should be to provide a copy of the complaint.
6. To achieve the goal of a more flexible and efficient process, any extraneous notification requirements should be removed from the draft Bill. The *Equal Opportunity Act 2010* (Vic) contains no similar notification requirements.
7. Whether or not a specific provision is included, the QHRC has a duty under administrative law to provide procedural fairness to all parties.

### Recommendation

Clause 123 should either be removed, or amended to read as follows:

**123 Decision by commissioner to deal with complaint**

(1) If the commissioner decides to deal with a complaint, the commissioner must:

(a) notify the complainant and respondent that the Commission is dealing with the complaint; and

(b) provide a copy of the complaint to the respondent.

### Commission complaint powers narrowed by draft Bill

1. Certain powers for the QHRC to deal with complaints dealt with elsewhere or to conciliate a matter where an unfair agreement exists between the parties are no longer included in the draft Bill.
2. Currently, the QHRC can reject or stay a complaint where the Commissioner:

* reasonably considers the act or omission that is the subject of the complaint may be effectively or conveniently dealt with by another entity[[41]](#footnote-42)
* reasonably considers the act or omission the subject of the complaint has been adequately dealt with by another entity.[[42]](#footnote-43)

1. The QHRC may also lapse a complaint where the complaint:

* has been adequately dealt with by another entity or may be effectively or conveniently dealt with by another entity.[[43]](#footnote-44)

1. These provisions are used at the discretion of the QHRC in circumstances such as where the parties have already been through another complaint process, for example, a conciliation through the Australian Human Rights Commission about the same alleged conduct.
2. Further, where a complainant has entered into an unfair agreement not to complain, the QHRC is able to nonetheless deal with a complaint in these circumstances.[[44]](#footnote-45) This power is rarely exercised, but is necessary in cases where a complainant, particularly a vulnerable complainant, has been coerced or deceived into entering an unfair agreement with the effect of removing their right to make a complaint.
3. The QHRC suggests the restoration of these existing powers that are necessary for the effective performance of its functions.

### Recommendation

Clause 117 be amended to:

* expand the wording of clause 117(1)(b) to allow the commissioner to decide not to deal with a complaint if they consider it may be appropriately dealt with by another entity, or they consider it has been adequately dealt with by another entity
* include an additional paragraph in clause 117(2) that would allow the commissioner to have regard to ‘any other relevant factor’.

A provision equivalent to section 137 of the current Act (Unfair agreements not to complain are not binding) should be included in the Act.

### Organisation (interested body) complaints

1. The *Building belonging* review recommended that organisations be able to make complaints about any unlawful conduct, not just vilification, as is currently provided for under the ‘relevant body’ complaint provision in section 134(3).[[45]](#footnote-46)
2. The recommendation was intended to reduce pressure on individual complainants and improve access to justice in circumstances of systemic discrimination. For example, where a large proportion of people with a protected attribute are negatively affected by a discriminatory policy, it should not require one person with that attribute to have the burden of bringing a complaint.
3. Relevant body complaints about vilification have been retained on largely the same terms as the current Act in clause 103 of the draft Bill. A new category of organisational complaint, called ‘interested body’ complaints, has been included as clause 104 in the draft Bill. This provision allows a complaint to be made about any alleged contravention of the Act by a body that has an interest in the complaint for reasons that are set out in the definition of ‘interested body’.
4. The provisions for interested body complaints, as presently drafted, require each person on whose behalf the complaint is made to be named in the complaint, and to have given consent. This defeats the purpose of the *Building belonging* review’s recommendation.
5. The provision in it is current form is unlikely to be used by organisations to address matters involving systemic discrimination.
6. The current drafting creates no more than another form of agency, which is already covered by clause 101(b) of the draft Bill. The provision is even more restrictive than the agency provision, as the interested body must show that they have an ‘interest in the complaint’ in terms of the criteria listed in clause 104(2).
7. A simple remedy is to extend clause 103 (relevant body complaints) to include vilification *and* discrimination and other unlawful conduct. Clause 103(2) qualifies these complaints (‘the commissioner *may* accept a relevant body’s complaint’) and imposes conditions that the commissioner must be satisfied about before accepting the complaint.
8. The QHRC accepts that not all complaints are suitable to be dealt with as an interested body complaint. To ensure transparency and procedural fairness, the QHRC could publish guidelines about how the commissioner will exercise their discretion to deal with a complaint of this kind.

### Recommendation

Clause 103 should be amended to include the contravention of discrimination and unnecessary questions (clause 92), rather than being confined to vilification.

1. For other detailed recommendations regarding complaints see Annexure F.

## Exception — Genuine occupational requirement for religious bodies

1. Clause 29 of the draft Bill reflects a more tailored exception in relation to employment by religious bodies than currently exists in the Anti-Discrimination Act, consistent with Recommendations 39.1–39.2 of the *Building belonging* review.
2. However, by the inclusion of clause 29(1)(b), the exception may operate more narrowly than anticipated in the recommendation, as it is tied directly to an inability to meet the genuine occupational requirement, rather than providing scope for reasonable and proportionate different treatment on the grounds of religion simply because a particular position involves religious aspects.[[46]](#footnote-47)
3. Since completion of the *Building belonging* review, and the release of the draft Bill, recommendations of the Australian Law Reform Commission (**ALRC**) for reform to religious exceptions in Commonwealth law have been made public.[[47]](#footnote-48)
4. The QHRC considers that a similar approach to that recommended by the ALRC provides an appropriate way to achieve the overall intention of the recommendation, in a way that is consistent with the various rights involved and potential changes to Commonwealth legislation. This would be to:

* retain the current drafting of the Genuine occupational requirements – generally exception in clause 28 (with minor amendments as shown in Annexure E); and
* include an additional, broader exception, applying at selection only, that allows greater scope for discrimination on the grounds of religious belief or religious activity where the duties of the role involve the teaching, observance or practice of religion, where this is reasonable and proportionate.[[48]](#footnote-49)

1. As is explored in the ALRC’s report, and consistent with the position adopted in the *Building belonging* review, this suggested broader exception at the point of selection recognises the legitimate interest that religious bodies have in employing people sharing the beliefs of the organisation where it is relevant to their role, and the fact that discrimination on the grounds of religious belief and activity will usually have a less severe impact on the rights of prospective, as opposed to existing, employees.[[49]](#footnote-50)
2. By the operation of clause 28, this approach still allows different treatment of existing employees on religious grounds, but only where that person’s religious belief or religious activity (or lack thereof) means that they cannot fulfil the essential requirements of their particular role concerning the teaching, observance or practice of religion, consistent with international human rights law and international labour law.

### Recommendation

Include an additional exception relating to selection of people for work by religious bodies as follows:

**Religious bodies: preferencing in selection**

(1) A person may discriminate against another person on the basis of religious belief or religious activity in relation to a matter mentioned in section 22(1)(a), (b) or (d) by giving preference to a member of the relevant religion where—

(a) the work is for a religious body;

(b) the duties of the position involve, or would involve, the participation by the worker in the teaching, observance or practice of the relevant religion; and

(c) the discrimination is reasonable and proportionate in the circumstances.

(2) For the purposes of sub-section (1) the relevant religion is the religion in accordance with which the religious body is conducted.

(3) To remove any doubt, it is declared that a person can not rely on subsection (1) to discriminate against another person on the basis of a protected attribute other than religious belief or religious activity.

For other detailed recommendations in relation to clause 29, and a related issue concerning clause 28(3), see Annexure D.

## 

## Exception — Roles in religious bodies

1. Clause 61 introduces new wording to the existing religious roles exceptions in the Anti-Discrimination Act, extending the exception to a ‘role that otherwise involves the propagation of the doctrines, tenets or beliefs of the religion concerned’ (cl 61(2)(a)).
2. The inclusion of this wording may be intended to implement Recommendation 37.1 of the *Building belonging* Review, to clarify that certain lay positions may be covered by the exception relating to special roles within religious organisations associated with religious observances and practices.[[50]](#footnote-51)
3. However, when read with the new definition of ‘religious bodies’ in the draft Bill, the words in cl 61(2)(b) have the potential to significantly expand the scope of the exception to many or all staff within faith-based organisations such as schools or hospitals, who may be considered by those organisations as being involved in the propagation of the religion. This was not the intention of Recommendation 37.1, and would undermine the changes made to religious employment exceptions in cl 29.
4. The intention of Recommendation 37.1 is, however, met by the inclusion of the words in clause 61(2)(a), so these should be retained, while cl 61(2)(b) should be omitted. This would also be consistent with a recent recommendation of the ALRC in relation to an equivalent exception in the *Sex Discrimination Act 1984* (Cth).[[51]](#footnote-52)
5. Greater clarity about the scope of the provision would also be achieved by amending its heading to ‘Participation in religious observance or practice’, reflecting the characterisation of the purpose of equivalent provisions by the Anti-Discrimination Tribunal of Queensland in *Walsh v St Vincent de Paul Society Queensland (No 2)* and by Maxwell P of the Victorian Court of Appeal in *Christian Youth Camps Ltd v Cobaw Community Health Services Ltd*.[[52]](#footnote-53)

### Recommendation

Amend clause 61 so that it reads:

**Participation in religious observance or practice**

(1) This Act does not apply in relation to—

(a) the ordination or appointment of people as priests, ministers of religion or members of a religious order or to another religious role; or

(b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order or to another religious role; or

(c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice.

(2) For subsection (1)(a) and (b), another religious role is a role within a religious body that is the same as, or similar to, the role of a priest, minister of religion or member of a religious order.

1. Thank you for the opportunity to provide this submission. The QHRC looks forward to the timely passage of the Anti-Discrimination Bill through parliament.

1. Review of the *Anti-Discrimination Act 1991* (Qld), Terms of Reference 2. [↑](#footnote-ref-2)
2. *Building belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022). [↑](#footnote-ref-3)
3. Review of the *Anti-Discrimination Act 1991* (Qld), Terms of Reference 4. [↑](#footnote-ref-4)
4. Anti-Discrimination Act 2024 Draft Bill (Qld) cl 11. [↑](#footnote-ref-5)
5. Anti-Discrimination Act 2024 Draft Bill (Qld) cl 2. [↑](#footnote-ref-6)
6. Anti-Discrimination Act 2024 Draft Bill (Qld) cls 93 - 96. [↑](#footnote-ref-7)
7. *Oaks Hotels & Resorts Limited v Knauer & Ors*[2018] QCA 359.  [↑](#footnote-ref-8)
8. *JKL Limited v STU & Ors*[2018] QCATA 29. [↑](#footnote-ref-9)
9. *Mt Isa Mines Limited v Hopper*[1999] 2 Qd R 496; *Webb v State of Queensland*[2006] QADT 8; *KW v BG Limited & Ors*[2009] QADT 7. [↑](#footnote-ref-10)
10. The *Disability Discrimination Act 1992* (Cth) s 123(2), (4) requires the body to establish that they both took ‘reasonable precautions *and* exercised due diligence’ (emphasis added) as does the *Age Discrimination Act 2004* (Cth) ss 57(2), (4). [↑](#footnote-ref-11)
11. *Anti-Discrimination Act 1998* (Tas) s 104(2) [↑](#footnote-ref-12)
12. *Equal Opportunity Act 1984* (SA) s 91(2). [↑](#footnote-ref-13)
13. *Anti-Discrimination Act 1977* (NSW) s 53(3), the *Equal Opportunity Act 1984* (WA) s 161(2), the *Anti-Discrimination Act 1992* (NT) s 105(2), the *Discrimination Act 1991* (ACT) s 121A(3), the *Racial Discrimination Act 1975* (Cth) ss 18A(2), 18E(2), and the *Sex Discrimination Act 1984* (Cth) s 106(2). [↑](#footnote-ref-14)
14. The *Equal Opportunity Act 2010* (Vic) s 110. [↑](#footnote-ref-15)
15. Anti-Discrimination Act 2024 Draft Bill (Qld) cl 96(3). [↑](#footnote-ref-16)
16. Anti-Discrimination Act 2024 Draft Bill (Qld) cls 13(2)-(3). [↑](#footnote-ref-17)
17. Anti-Discrimination Act 2024 Draft Bill (Qld) cl 79(b)(i). [↑](#footnote-ref-18)
18. Clause 56 also narrows the exception in some ways, including by removing compliance with an existing provision of an industrial agreement under the repealed *Industrial Relations Act 1999* (Qld). [↑](#footnote-ref-19)
19. Section 106 of the Anti-Discrimination Act refers to acts necessary to comply with or specifically authorised by another ‘Act’, and ‘Act’ is defined in the *Acts Interpretation Act 1954* (Qld) s 6, to mean ‘an Act of the Queensland Parliament’. [↑](#footnote-ref-20)
20. See, for example, *State of Queensland v Attrill* [2012] QCA 299, [29] and Neil Rees, Simon Rice and Dominique Allen, *Australian anti-discrimination and equal opportunity law* (Federation Press, 3rd ed, 2018), [15.10.8]. [↑](#footnote-ref-21)
21. South Australia and Western Australia do not have an exception for compliance with laws. The WA Law Reform Commission recently examined the issue and concluded that there was no reason to reinstate a previously-existing exception. It also noted that ‘Law Reform bodies in the ACT, Victoria and NSW have recommended the repeal or amendment of similar provisions that provide an exception for acts done to comply with the requirements of another law’: WA Law Reform Commission, *Review of the Equal Opportunity Act 1984* (WA) (May 2022: Final Report) 158. [↑](#footnote-ref-22)
22. Department of Justice and Attorney-General (Qld), *Consultation Guide: Anti-Discrimination Bill 2024 (Exposure Draft)* February 2024, 30. [↑](#footnote-ref-23)
23. This is the approach taken in a number of Commonwealth laws, including the *Sex Discrimination Act 1984* (Cth) s 40(2); *Disability Discrimination Act* *1992* (Cth) s 47(2); *Age Discrimination Act 2004* (Cth) ss (1)-(1A). [↑](#footnote-ref-24)
24. The words ‘in direct compliance with’ and analogous phrases such as ‘necessary to comply with’ have been interpreted narrowly in this way: *Waters v Public Transport Commission* (1991) 173 CLR 349, 369-370 (Mason CJ and Gaudron J), 413 (McHugh J); Neil Rees, Simon Rice and Dominique Allen, *Australian anti-discrimination and equal opportunity law* (Federation Press, 3rd ed, 2018) [15.10.26]–[15.10.30]. [↑](#footnote-ref-25)
25. This is how the words ‘authorised by’ have been interpreted: *Wojcik v Roads Corporation* [1997] VADT 75, discussed in Neil Rees, Simon Rice and Dominique Allen, *Australian anti-discrimination and equal opportunity law* (Federation Press, 3rd ed, 2018), [15.10.31]. [↑](#footnote-ref-26)
26. *Building belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022), Recommendation 5. [↑](#footnote-ref-27)
27. The Review, *Building belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022) 25, Recommendation 15. [↑](#footnote-ref-28)
28. The Review, *Building belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022) 25, Recommendation 15.2. [↑](#footnote-ref-29)
29. Sex Discrimination Act 1984 (Cth) s 47C. [↑](#footnote-ref-30)
30. Queensland Human Rights Commission, Submission Nos 036 and 082 to Legal Affairs and Safety Committee, Queensland Parliament *Inquiry into serious vilification and hate crimes* (12 July 2021, 11 November 2021). [↑](#footnote-ref-31)
31. Department of Justice and Attorney-General (Qld), *Consultation Guide: Anti-Discrimination Bill 2024 (Exposure Draft)* February 2024, 35. [↑](#footnote-ref-32)
32. *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc* [2006] VSCA 284, (2006) 15 VR 207; *Kazak v John Fairfax Publications Limited* [2000] NSWADT 77; *Burns v Dye* [2002] NSWADT 32; *Veloskey v Karagiannakis* [2002] NSWADTAP 18; *Burns v Laws (No 2)* [2007] NSWADT 47. [↑](#footnote-ref-33)
33. *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc* [2006] VSCA 284, (2006) 15 VR 207 [154]; *Veloskey v Karagiannakis* [2002] NSWADTAP 18 [25]*.* [↑](#footnote-ref-34)
34. *Sunol v Collier (No 2)* [2012] NSWCA 44. [↑](#footnote-ref-35)
35. See for example, *Wilson & McCollum v Lawson* [2008] QADT 27; *Peters v Constance* [2005] QADT 9; *Deen v Lamb* [2001] QADT 20. [↑](#footnote-ref-36)
36. See for example *Peters v Constance* [2005] 9 where it was sufficient that the conduct was capable of being heard by others in the apartment block. Also *Wilson & McCollum v Lawson* [2008] QADT 27, *Huenerberg v Murray* [2023] QCAT 175, and *Zhai v Kullack* [2024] QCAT 56, where comments in a residential neighbourhood were capable of being heard by passers-by and other neighbours. [↑](#footnote-ref-37)
37. Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs – Clear Meaning*, 19 June 2013. [↑](#footnote-ref-38)
38. Anti-Discrimination Act 2024 Draft Bill (Qld) cls 115-122, 190-191, 218. [↑](#footnote-ref-39)
39. Anti-Discrimination Act 2024 Draft Bill (Qld) cls 98, 103, 105, 108, 110, 116(2), 123, 125, 126, 127, 128, 129, 130, 237, 273. [↑](#footnote-ref-40)
40. The Review, *Building belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022) 165-167. [↑](#footnote-ref-41)
41. *Anti-Discrimination Act 1991* (Qld) s 140(1)(b). [↑](#footnote-ref-42)
42. *Anti-Discrimination Act 1991* (Qld) s 140(2). [↑](#footnote-ref-43)
43. *Anti-Discrimination Act 1991* (Qld) s 168A(1). [↑](#footnote-ref-44)
44. *Anti-Discrimination Act 1991* (Qld) s 137. [↑](#footnote-ref-45)
45. The Review, *Building belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022) 19, recommendation 10.1. [↑](#footnote-ref-46)
46. Reflecting to a large extent the position under ss 82A and 83A of the *Equal Opportunity Act 2010* (Vic), but narrower than the position in Tasmania and the ACT, which provide broader scope for discrimination the grounds of religious belief and religious activity for some or all staff of religious bodies: *Anti-Discrimination Act 1992* (ACT), ss 44, 46; *Anti-Discrimination Act 1998* (Tas), s 51. [↑](#footnote-ref-47)
47. Australian Law Reform Commission, *Maximising the realisation of human rights: Religious educational institutions and anti-discrimination laws* (ALRC Report 142, December 2023), tabled in the Commonwealth House of Representatives on 21 March 2024. [↑](#footnote-ref-48)
48. Similar to the exception in *Anti-Discrimination Act 1992* (ACT), s 44(b), allowing discrimination by religious bodies on the ground of religious conviction in relation to employment or work in a hospital or other place conducted by the body in which health services are provided. [↑](#footnote-ref-49)
49. Australian Law Reform Commission, *Maximising the realisation of human rights: Religious educational institutions and anti-discrimination laws* (ALRC Report 142, December 2023), 209–240, in particular 217–219. [↑](#footnote-ref-50)
50. Department of Justice and Attorney-General (Qld), *Consultation Guide: Anti-Discrimination Bill 2024 (Exposure Draft)* February 2024, 31. [↑](#footnote-ref-51)
51. Australian Law Reform Commission, *Maximising the realisation of human rights: Religious educational institutions and anti-discrimination laws* (ALRC Report 142, December 2023), rec 2, concerning *Sex Discrimination Act 1984* (Cth), s 37. [↑](#footnote-ref-52)
52. *Walsh v St Vincent de Paul Society Queensland* (No.2) [2008] QADT 32 [74]–[77] (Member Wensley QC);*Christian Youth Camps Ltd v Cobaw Community Health Services Ltd* (2014) 50 VR 256 [226]. [↑](#footnote-ref-53)