



The Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice
Minister for the Prevention of Domestic and Family Violence

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The Reverend David Baker
General Secretary
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Dear Reverend Baker

Thank you for your correspondence dated 23 August 2024 regarding the Respect at Work and Other Matters Amendment Bill 2024 (the Bill).

I note that your correspondence dated 8 July 2024 outlined concerns regarding the Bill on behalf of faith leaders. I trust the information provided in my reply to that letter dated 2 August 2024 was of assistance.

The committee tabled its report on the Bill on 2 August 2024 which recommended that the Bill be passed and concluded that the Bill is compatible with the rights protected by the *Human Rights Act 2019*. The Committee's report on the Bill can be accessed on the Committee's website at <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=250&id=4429>.

In responding to this letter, I have sought advice from the Commissioner responsible for the *Building Belonging* review, and now tasked with performing functions and powers under the Anti-Discrimination Act, Scott McDougall (the Commissioner). I have done so as I believe it is important to recognise that he is uniquely placed and speaks with authority regarding the purpose, but importantly, the application and implementation of the legislative amendments here in Queensland.

The Commissioner acknowledges the vital importance of respecting religious freedoms while at the same time upholding other human rights protections. Based on his advice, I understand that the Commissioner's interpretation of the amendments is consistent with the contents of this letter.

In the Commissioner's view, the Respect at Work Amendment Bill 2024:

- continues to uphold the right of religious institutions to maintain their religious doctrines, beliefs and practices, such as through allowing mosques to have separate men's and women's spaces.
- ensures that religious bodies such as churches, mosques and synagogues can maintain different roles for women and men, such as by allowing Catholic churches to exclusively appoint men into priesthood positions.

Positive Duty

I note concerns regarding the impact of the positive duty on religious organisations and how this may prevent such organisations from acting in accordance with religious doctrine or require them to actively promote views which are contrary to religious doctrines.

Religious organisations, such as churches, religious schools, or not-for-profit organisations, will only be subject to the positive duty to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and other conduct prohibited by the Anti-Discrimination Act, to the extent that they already have a duty under the Act to not engage in that conduct.

If a religious organisation is not subject to a particular prohibition – because, for example, they are captured by an exemption – then the duty will not apply to that conduct.

There are a number of exemptions which are of particular relevance to religious organisations, including in the areas of work, goods and services, and education. These include, for example, exemptions in relation to the ordination or appointment of priests, ministers of religion or members of a religious order and the selection or appointment of people to participate in religious observance and practice (section 109), and in relation to access to sites of cultural or religious significance (section 48). This Bill makes no changes to the range of exemptions for religious organisations.

The positive duty as set out in the Bill does not require that a religious organisation, or any duty holder, take active positive measures, such as actively promoting views which may be contrary to religious beliefs. It only requires that the duty holder take *reasonable and proportionate measures to eliminate conduct* to the extent that they already have a duty under the Act to not engage in that conduct. What those measures look like will be different depending on the duty holder.

I note concerns about the application of the positive duty to the new prohibitions of harassment on the basis of sex and creating a hostile work environment on the basis of sex. In this regard, I note that religious organisations, including schools, are already 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 and creating a hostile workplace environment on the basis of sex under section 47C of the Sex Discrimination Act.

In relation to concerns about representative complaints being made against religious organisations and schools for non-compliance with the positive duty, I note that non-compliance with the positive duty cannot be the subject of an individual or representative complaint. Non-compliance with the positive duty could instead be the subject of an investigation and enforcement actions by the Queensland Human Rights Commission, consistent with the enforcement model applicable to the positive duty under the Sex Discrimination Act.

Harassment on the basis of sex and creating a hostile work environment

I note concerns regarding the new prohibitions regarding harassment on the basis of sex and creating a hostile work environment, and your recommendation that the exemption for religious bodies under section 109 of the Anti-Discrimination Act should be amended to apply to these prohibitions ‘to bring Queensland law into line with the equivalent Commonwealth law’.

The exceptions for religious bodies and religious educational institutions in sections 37 and 38 of the Sex Discrimination Act do not apply to the equivalent prohibitions under Part II, Division 3. Consistent with the Anti-Discrimination Act, the exceptions for religious bodies under sections 37 and 38 of the Sex Discrimination Act only apply in relation to discrimination prohibitions in Divisions 1 and 2, and not to the prohibitions of sexual harassment, harassment on the basis of sex or creating a hostile workplace environment set out in Division 3.

Similarly, adjusting the threshold for what would constitute harassment to refer to ‘conduct of a seriously demeaning nature’ would be inconsistent with the Sex Discrimination Act.

Vilification

The vilification provisions in the Bill implement the recommendations from the former Legal Affairs and Safety Committee reports — *Inquiry into serious vilification and hate crimes* and the report of the inquiry into the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023*. At the time, the Committee considered numerous submissions from various stakeholders, including various religious groups on the topic before it tabled its reports.

The vilification amendments build on our strengthened response to hate crimes and serious vilification, including banning the public display of hate symbols such as those related to Nazi ideology under new laws that came into effect in April this year.

The Committee considered the vilification amendments in the Respect at Work Bill in detail and noted [at page 27] 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’. The changes focus on public acts and do not affect private religious discourse. They will not affect, for example, a religious minister offering pastoral care, nor discussions in a private scripture study group.

The Bill requires a high threshold to be met for relevant conduct to be considered ‘hate speech’. For example, under the proposed new ‘harm-based’ provision in the Bill, a person must not engage in a public act that a reasonable person would consider ‘hateful towards, reviling, seriously contemptuous of, or seriously ridiculing’. The threshold has been at an appropriately high level so as to not encapsulate genuine religious speech.

The harm-based provisions are directed towards the harm that particularly serious hate speech has on a person or group of persons with an attribute, in contrast to the effect that it has on a third-party audience (per the incitement provision). Obviously, speech or conduct which is hateful, reviling, seriously contemptuous or seriously ridiculing to a person with an attribute may have absolutely no effect on an ordinary

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member of society at large. This is because such language or conduct is steeped in historical and social contexts from which an ordinary member of society may be completely divorced, or unaware of, and which would therefore not impact them in the same way that a member of the targeted group would.

Indeed, the reality of much hate speech is that it is communicated in a coded way, such that it would cause significant harm to people with a particular attribute, but which may have no meaning for the wider community. In those circumstances, even the most vile of hate speech may not meet the threshold of a reasonable person test if it was linked to the ordinary member of the community.

The approach taken in this Bill is consistent with jurisprudence on section 18C of the *Racial Discrimination Act 1975*, in particular the examination of the relevant elements of that provision by Justice Bromberg in *Eatock v Bolt* (2011) 283 ALR 505. Justice Bromberg found that the person, or group of people, whose reaction is to be assessed was a 'reasonable representative', that is an ordinary or reasonable member or members of the group that the conduct was directed towards.

Importantly, the proposed amendments to vilification will retain exceptions for public acts done reasonably, and in good faith, for purposes in the public interest, including public discussion or debate about any act or matter.

Clear public understanding of the types of expressions captured by the provision is vital for the new laws to be successfully implemented. To that end, the Anti-Discrimination Act provides that the functions of the QHRC include undertaking educational programs which further the purposes of the Bill, as well as producing public guidelines on matters relating to the Act, including how to comply with the positive duty (which includes vilification).

Any future complaints made under this new provision are subject to the existing mechanisms under the Anti-Discrimination Act, which includes a requirement for the Commissioner to reject complaints which are frivolous, trivial, or vexatious, or which are misconceived or lacking in substance.

If you have any questions in relation to the above, I invite you to contact the Human Rights Commissioner on 1300 130 670 or at scott.mcdougall@qhrc.qld.gov.au

Yours sincerely



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