



Queensland

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





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**2023**

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## **A Bill**

for

***An Act to amend the *Anti-Discrimination Act 1991*, the *Criminal Code*, the *Police Powers and Responsibilities Act 2000* and the *Summary Offences Act 2005* for particular purposes***

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**The Parliament of Queensland enacts—** 1

**Part 1 Preliminary** 2

**Clause 1 Short title** 3

This Act may be cited as the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023*. 4  
5  
6

**Clause 2 Commencement** 7

This Act commences on a day to be fixed by proclamation. 8

**Part 2 Amendment of Anti-Discrimination Act 1991** 9  
10

**Clause 3 Act amended** 11

This part amends the *Anti-Discrimination Act 1991*. 12

**Clause 4 Omission of s 4A (Meaning of *public act*)** 13

Section 4A— 14  
*omit.* 15

**Clause 5 Amendment of s 124A (Vilification on grounds of race, religion, sexuality or gender identity unlawful)** 16  
17

Section 124A— 18  
*insert—* 19  
(3) In this section— 20

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	<i>public act</i> —	1
	(a) includes—	2
	(i) any form of communication to the public, including by speaking, writing, printing, displaying notices, broadcasting, telecasting, screening or playing of tapes or other recorded material, or by electronic means; and	3 4 5 6 7 8
	(ii) any conduct that is observable by the public, including actions, gestures and the wearing or display of clothing, signs, flags, emblems or insignia; but	9 10 11 12
	(b) does not include the distribution or dissemination of any matter by a person to the public if the person does not know, and could not reasonably be expected to know, the content of the matter.	13 14 15 16 17
<b>Clause 6</b>	<b>Omission of ch 5A, hdg (Serious racial and religious vilification)</b>	18 19
	Chapter 5A, heading—	20
	<i>omit.</i>	21
<b>Clause 7</b>	<b>Amendment, relocation and renumbering of s 131A (Offence of serious racial, religious, sexuality or gender identity vilification)</b>	22 23 24
	(1) Section 131A(1), penalty—	25
	<i>omit, insert</i> —	26
	Maximum penalty—3 years imprisonment.	27
	(2) Section 131A(2) to (4)—	28
	<i>omit, insert</i> —	29
	(2) In this section—	30
	<i>public act</i> —	31

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	(a) includes—	1
	(i) any form of communication to the public, including by speaking, writing, printing, displaying notices, broadcasting, telecasting, screening or playing of tapes or other recorded material, or by electronic means; and	2 3 4 5 6 7
	(ii) any conduct that is observable by the public, including actions, gestures and the wearing or display of clothing, signs, flags, emblems or insignia; but	8 9 10 11
	(b) does not include the distribution or dissemination of any matter by a person to the public if the person does not know, and could not reasonably be expected to know, the content of the matter.	12 13 14 15 16
(3)	Section 131A—	17
	<i>relocate</i> to the Criminal Code, part 2, chapter 7A, as inserted by this Act, and <i>renumber</i> as section 52A.	18 19
<b>Clause 8</b>	<b>Insertion of new ch 11, pt 9</b>	20
	Chapter 11—	21
	<i>insert</i> —	22
	<b>Part 9</b>	<b>Transitional provision</b>
		<b>for Criminal Code</b>
		<b>(Serious Vilification</b>
		<b>and Hate Crimes) and</b>
		<b>Other Legislation</b>
		<b>Amendment Act 2023</b>
		23 24 25 26 27 28
	<b>281 Continued application of former s 131A</b>	29
	(1) Former section 131A continues to apply to a	30



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	person charged with an offence under that section	1
	as if the <i>Criminal Code (Serious Vilification and</i>	2
	<i>Hate Crimes) and Other Legislation Amendment</i>	3
	<i>Act 2023</i> had not commenced.	4
(2)	Subsections (3) and (4) apply if—	5
(a)	immediately before the commencement, a	6
	proceeding could have been started for an	7
	offence against former section 131A; and	8
(b)	on the commencement, the proceeding has	9
	not been started.	10
(3)	The proceeding may be started and continued	11
	under former section 131A, as if the <i>Criminal</i>	12
	<i>Code (Serious Vilification and Hate Crimes) and</i>	13
	<i>Other Legislation Amendment Act 2023</i> had not	14
	commenced.	15
(4)	However, despite former section 131A(2), the	16
	proceeding may be heard and decided without a	17
	Crown Law Officer’s written consent.	18
(5)	In this section—	19
	<i>former section 131A</i> means section 131A as in	20
	force before the commencement.	21
<b>Clause 9</b>	<b>Amendment of sch 1 (Dictionary)</b>	22
	Schedule 1, definition <i>public act</i> —	23
	<i>omit.</i>	24
<b>Part 3</b>	<b>Amendment of Criminal Code</b>	25
<b>Clause 10</b>	<b>Code amended</b>	26
	This part amends the Criminal Code.	27

<b>Clause 11</b>	<b>Amendment of s 1 (Definitions)</b>	1
	Section 1—	2
	<i>insert—</i>	3
	<i>gender identity</i> see the <i>Anti-Discrimination Act 1991</i> , schedule 1.	4
	<i>prohibited symbol</i> see section 52C(1).	5
	<i>race</i> see the <i>Anti-Discrimination Act 1991</i> , schedule 1.	6
	<i>sex characteristics</i> see the <i>Anti-Discrimination Act 1991</i> , schedule 1.	7
	<i>sexuality</i> see the <i>Anti-Discrimination Act 1991</i> , schedule 1.	8
		9
		10
		11
		12
<b>Clause 12</b>	<b>Insertion of new pt 2, ch 7A</b>	13
	Part 2—	14
	<i>insert—</i>	15
	<b>Chapter 7A Serious vilification and prohibited symbols</b>	16
		17
	<b>52B Circumstances of aggravation for particular offences</b>	18
		19
	(1) It is a circumstance of aggravation for a prescribed offence that the offender was wholly or partly motivated to commit the offence by hatred or serious contempt for a person or group of persons based on—	20
		21
		22
		23
		24
	(a) in relation to a person—the race, religion, sexuality, sex characteristics or gender identity of the person, or presumed race, religion, sexuality, sex characteristics or gender identity of the person; or	25
		26
		27
		28
		29

(b) in relation to a group of persons—the race, religion, sexuality, sex characteristics or gender identity shared, or presumed to be shared, by the members of the group. 1  
2  
3  
4

(2) In this section— 5

*prescribed offence* means an offence against any of the following sections— 6  
7

(a) section 69; 8

(b) section 75; 9

(c) section 207; 10

(d) section 335; 11

(e) section 339; 12

(f) section 359; 13

(g) section 359E; 14

(h) section 469. 15

## **52C Prohibited symbols** 16

(1) A *prohibited symbol* is a symbol or image— 17

(a) prescribed by regulation for this section; or 18

(b) that so nearly resembles a symbol referred to in paragraph (a) that it is likely to be confused with or mistaken for that symbol. 19  
20  
21

(2) A regulation under subsection (1)(a)— 22

(a) must prescribe the symbol or image as a graphic representation of the symbol or image; and 23  
24  
25

(b) may not prescribe the symbol or image by describing a class of symbols or images. 26  
27

(3) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1)(a) only if the Minister is satisfied 28  
29  
30

- the symbol or image— 1
- (a) is widely known by the public as being 2  
solely or substantially representative of an 3  
ideology of extreme prejudice against a 4  
relevant group; or 5
- (b) is widely known by members of a relevant 6  
group as being solely or substantially 7  
representative of an ideology of extreme 8  
prejudice against that group. 9
- (4) Also, the Minister must, before making the 10  
recommendation, consult with each of the 11  
following persons about the proposed 12  
recommendation— 13
- (a) the chairperson of the Crime and Corruption 14  
Commission; 15
- (b) the Human Rights Commissioner under the 16  
*Anti-Discrimination Act 1991*; 17
- (c) the commissioner of the police service 18  
under the *Police Service Administration Act* 19  
*1990*. 20
- (5) In this section— 21
- relevant group*** means a group of persons who 22  
identify with each other on the basis of an 23  
attribute or characteristic that is, or is based on, 24  
the race, religion, sexuality, sex characteristics or 25  
gender identity of the persons. 26

## **52D Display, distribution or publication of prohibited symbols** 27 28

- (1) A person who publicly distributes, publishes or 29  
publicly displays a prohibited symbol in a way 30  
that might reasonably be expected to cause a 31  
member of the public to feel menaced, harassed or 32  
offended, commits an offence, unless the person 33  
has a reasonable excuse. 34

Maximum penalty—70 penalty units or 6 months imprisonment.	1 2
(2) Without limiting what may be a reasonable excuse for subsection (1), a person has a reasonable excuse if—	3 4 5
(a) any of the following apply—	6
(i) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, religious, educational, historical, legal or law enforcement purpose;	7 8 9 10 11
(ii) the person engaged in the conduct that is alleged to constitute the offence for a purpose that is in the public interest;	12 13 14
<i>Examples for subparagraph (ii)—</i>	15
• publication of a fair and accurate report of an event or matter of public interest	16 17
• a genuine political or other genuine public dispute or issue carried on in the public interest	18 19 20
(iii) the person engaged in the conduct that is alleged to constitute the offence in opposition to the ideology represented by the prohibited symbol; and	21 22 23 24
(b) the person’s conduct was, in the circumstances, reasonable for that purpose.	25 26
(3) An evidential burden is placed on the defendant in relation to showing a reasonable excuse for subsection (1).	27 28 29
(4) For subsection (1), a person <b>publicly displays</b> a prohibited symbol if the person—	30 31
(a) displays the symbol—	32
(i) in a place that the public is entitled to use, is open to members of the public	33 34

	or is used by the public, whether or not on payment of money; or	1 2
	(ii) in a place the occupier of which allows, whether or not on payment of money, members of the public to enter; or	3 4 5
	(b) displays the symbol in a way that is visible from a place mentioned in paragraph (a).	6 7
(5)	To remove any doubt, it is declared that, for subsection (1)—	8 9
	(a) the offence is committed at the time when the person distributes, publishes or displays the prohibited symbol; and	10 11 12
	(b) it is irrelevant whether or not a member of the public has seen the prohibited symbol because of the distribution, publication or display.	13 14 15 16
<b>Clause 13</b>	<b>Amendment of s 69 (Going armed so as to cause fear)</b>	17
	(1) Section 69—	18
	<i>insert—</i>	19
	(1A) If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable to imprisonment for 3 years.	20 21 22 23
	(2) Section 69(1A) and (2)—	24
	<i>renumber</i> as section 69(2) and (3).	25
<b>Clause 14</b>	<b>Amendment of s 75 (Threatening violence)</b>	26
	(1) Section 75—	27
	<i>insert—</i>	28
	(1A) If the offender commits the offence with the circumstance of aggravation stated in section	29 30

	52B, the offender is liable to imprisonment for 3 years.	1 2
(2)	Section 75(1A) and (2)— <i>renumber</i> as section 75(2) and (3).	3 4
<b>Clause 15</b>	<b>Amendment of s 207 (Disturbing religious worship)</b>	5
(1)	Section 207, ‘on summary conviction’— <i>omit.</i>	6 7
(2)	Section 207— <i>insert—</i>	8 9
(2)	If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable to imprisonment for 6 months.	10 11 12 13
<b>Clause 16</b>	<b>Amendment of s 335 (Common assault)</b>	14
	Section 335(2)— <i>omit, insert—</i>	15 16
(2)	The following provisions state a circumstance of aggravation for an offence against this section—	17 18
(a)	section 52B;	19
(b)	the <i>Penalties and Sentences Act 1992</i> , section 108B.	20 21
(3)	If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable to imprisonment for 4 years.	22 23 24 25
<b>Clause 17</b>	<b>Amendment of s 339 (Assaults occasioning bodily harm)</b>	26
(1)	Section 339(4)— <i>omit, insert—</i>	27 28

	(4) The following provisions also state a circumstance of aggravation for an offence against this section—	1 2 3
	(a) section 52B;	4
	(b) the <i>Penalties and Sentences Act 1992</i> , sections 108B and 161Q.	5 6
	(4A) If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable to imprisonment for 10 years.	7 8 9 10
	(2) Section 339(3) to (4A)— <i>renumber</i> as section 339(2) to (4).	11 12
<b>Clause 18</b>	<b>Amendment of s 359 (Threats)</b>	13
	(1) Section 359(3)— <i>omit, insert</i> —	14 15
	(3) The following provisions also state a circumstance of aggravation for an offence against this section—	16 17 18
	(a) section 52B;	19
	(b) the <i>Penalties and Sentences Act 1992</i> , section 161Q.	20 21
	(3A) If the offender commits the offence with the circumstance of aggravation stated in section 52B, the offender is liable to imprisonment for 7 years.	22 23 24 25
	(2) Section 359(3A) and (4)— <i>renumber</i> as section 359(4) and (5).	26 27
<b>Clause 19</b>	<b>Amendment of s 359E (Punishment of unlawful stalking, intimidation, harassment or abuse)</b>	28 29
	(1) Section 359E(6)—	30



*omit, insert—*

- (6) The following provisions also state a  
circumstance of aggravation for an offence  
against this section—
- (a) section 52B;
  - (b) the *Penalties and Sentences Act 1992*,  
section 161Q.
- (6A) If the offender commits the offence with the  
circumstance of aggravation stated in section  
52B, the offender is liable to imprisonment for 7  
years.
- (2) Section 359E(6A) and (7)—  
*renumber* as section 359E(7) and (8).

**Clause 20      Amendment of s 469 (Wilful damage)**

- (1) Section 469—  
*insert—*
- (1A) If the offender commits the offence with the  
circumstance of aggravation stated in section  
52B, the offender is liable, if no other punishment  
is provided, to imprisonment for 7 years.
- (2) Section 469(1A) to (3)—  
*renumber* as section 469(2) to (4).

**Clause 21      Amendment of s 552A (Charges of indictable offences  
that must be heard and decided summarily on  
prosecution election)**

- Section 552A(1)(b)—  
*omit, insert—*
- (b) any offence involving an assault, if—

	(i) the assault is not of a sexual nature or accompanied by an attempt to commit a crime; and	1 2 3
	(ii) the maximum term of imprisonment for which the defendant is liable is more than 3 years but not more than 5 years; and	4 5 6 7
	(iii) the assault is without the circumstance of aggravation stated in section 335(2)(a);	8 9 10
<b>Clause 22</b>	<b>Amendment of s 552BA (Charges of indictable offences that must be heard and decided summarily)</b>	11 12
	(1) Section 552BA(4), definition <i>relevant offence</i> — <i>insert</i> —	13 14
	(aa) an offence against section 335 alleged to have been committed with the circumstance of aggravation stated in section 335(2)(a); or	15 16 17
	(2) Section 552BA(aa) and (b)— <i>renumber</i> as section 552BA(b) and (c).	18 19

<b>Part 4</b>	<b>Amendment of Police Powers and Responsibilities Act 2000</b>	20 21
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<b>Clause 23</b>	<b>Act amended</b>	22
	This part amends the <i>Police Powers and Responsibilities Act 2000</i> .	23 24

<b>Clause 24</b>	<b>Amendment of s 29 (Searching persons without warrant)</b>	25
	Section 29(2)(c), ‘section 30(b)’— <i>omit, insert</i> —	26 27

---

	section 30(1)(b)	1
<b>Clause 25</b>	<b>Amendment of s 30 (Prescribed circumstances for searching persons without warrant)</b>	2
	Section 30(1)—	3
	<i>insert—</i>	4
	(ha) the person has committed, or is committing, an offence against the Criminal Code, section 52D;	5 6 7 8
<b>Clause 26</b>	<b>Amendment of s 32 (Prescribed circumstances for searching vehicle without warrant)</b>	9
	Section 32(2)(a), from ‘against the’—	10
	<i>omit, insert—</i>	11
	against—	12
	(i) the <i>Summary Offences Act 2005</i> , section 10C; or	13 14 15
	(ii) the Criminal Code, section 52D;	16
<b>Clause 27</b>	<b>Amendment of ch 2, pt 6A (Prevention of criminal consorting)</b>	17
	Chapter 2, part 6A, note, first dot point, ‘section 30(i)’—	18
	<i>omit, insert—</i>	19
	section 30(1)(i)	20 21
<b>Part 5</b>	<b>Amendment of Summary Offences Act 2005</b>	22 23
<b>Clause 28</b>	<b>Act amended</b>	24
	This part amends the <i>Summary Offences Act 2005</i> .	25

<b>Clause 29</b>	<b>Amendment of s 6 (Public nuisance)</b>	1
(1)	Section 6(1), penalty, paragraph (a)—	2
	<i>omit, insert—</i>	3
	(a) if the offence involves circumstances of aggravation—25 penalty units or 6 months imprisonment; or	4 5 6
(2)	Section 6—	7
	<i>insert—</i>	8
	(6) It is a circumstance of aggravation for this section for a person to commit a public nuisance offence in either or both of the following circumstances—	9 10 11
	(a) within licensed premises, or in the vicinity of licensed premises;	12 13
	(b) the circumstance of aggravation stated in the Criminal Code, section 52B, as if this section were a prescribed offence mentioned in that section.	14 15 16 17
<b>Clause 30</b>	<b>Amendment of s 11 (Trespass)</b>	18
(1)	Section 11(1), penalty—	19
	<i>omit, insert—</i>	20
	Maximum penalty—	21
	(a) if the offence involves circumstances of aggravation—40 penalty units or 1 year’s imprisonment; or	22 23 24
	(b) otherwise—20 penalty units or 1 year’s imprisonment.	25 26
(2)	Section 11(2), penalty—	27
	<i>omit, insert—</i>	28
	Maximum penalty—	29

- (a) if the offence involves circumstances of  
aggravation—40 penalty units or 1 year’s  
imprisonment; or 1  
2  
3
- (b) otherwise—20 penalty units or 1 year’s  
imprisonment. 4  
5
- (3) Section 11— 6  
*insert—* 7
- (4) It is a circumstance of aggravation for this section 8  
for a person to commit the offence in the 9  
circumstance of aggravation stated in the 10  
Criminal Code, section 52B, as if this section 11  
were a prescribed offence mentioned in that 12  
section. 13

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