

THIS PUBLIC BILL has this day been read a Third time and passed

The Clerk of the Parliament.

*Legislative Assembly Chamber,
Brisbane, October 2023*



Queensland

**No.
A BILL for**

An Act to amend the Anti-Discrimination Act 1991, the Criminal Code, the Ombudsman Act 2001, the Police Powers and Responsibilities Act 2000 and the Summary Offences Act 2005 for particular purposes



Queensland

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

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2023

A Bill

for

An Act to amend the *Anti-Discrimination Act 1991*, the *Criminal Code*, the *Ombudsman Act 2001*, the *Police Powers and Responsibilities Act 2000* and the *Summary Offences Act 2005* for particular purposes

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

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

2 Commencement

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

Part 2 Amendment of Anti-Discrimination Act 1991

3 Act amended

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

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

Section 4A—

omit.

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

Section 124A—

insert—

(3) In this section—

public act—

(a) includes—

(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

(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

(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.

6 Omission of ch 5A, hdg (Serious racial and religious vilification)

Chapter 5A, heading—

omit.

7 Amendment, relocation and renumbering of s 131A (Offence of serious racial, religious, sexuality or gender identity vilification)

(1) Section 131A(1), penalty—

omit, insert—

Maximum penalty—3 years imprisonment.

(2) Section 131A(2) to (4)—

omit, insert—

(2) In this section—

public act—

- (a) includes—
 - (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
 - (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
- (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.

(3) Section 131A—

relocate to the Criminal Code, part 2, chapter 7A, as inserted by this Act, and *renumber* as section 52A.

8 Insertion of new ch 11, pt 9

Chapter 11—

insert—

Part 9

Transitional provision for Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023

281 Continued application of former s 131A

- (1) Former section 131A continues to apply to a

person charged with an offence under that section as if the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* had not commenced.

- (2) Subsections (3) and (4) apply if—
 - (a) immediately before the commencement, a proceeding could have been started for an offence against former section 131A; and
 - (b) on the commencement, the proceeding has not been started.
- (3) The proceeding may be started and continued under former section 131A, as if the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* had not commenced.
- (4) However, despite former section 131A(2), the proceeding may be heard and decided without a Crown Law Officer's written consent.
- (5) In this section—

former section 131A means section 131A as in force before the commencement.

9 Amendment of sch 1 (Dictionary)

Schedule 1, definition *public act*—
omit.

Part 3 Amendment of Criminal Code

10 Code amended

This part amends the Criminal Code.

11 Amendment of s 1 (Definitions)

Section 1—

insert—

gender identity see the *Anti-Discrimination Act 1991*, schedule 1.

prohibited symbol see section 52C(1).

race see the *Anti-Discrimination Act 1991*, schedule 1.

sex characteristics see the *Anti-Discrimination Act 1991*, schedule 1.

sexuality see the *Anti-Discrimination Act 1991*, schedule 1.

12 Insertion of new pt 2, ch 7A

Part 2—

insert—

Chapter 7A Serious vilification and prohibited symbols

52B Circumstances of aggravation for particular offences

- (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—
 - (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

- (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.
- (2) In this section—
- prescribed offence*** means an offence against any of the following sections—
- (a) section 69;
 - (b) section 75;
 - (c) section 207;
 - (d) section 335;
 - (e) section 339;
 - (f) section 359;
 - (g) section 359E;
 - (h) section 469.

52C Prohibited symbols

- (1) A ***prohibited symbol*** is a symbol or image—
 - (a) prescribed by regulation for this section; or
 - (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.
- (2) A regulation under subsection (1)(a)—
 - (a) must prescribe the symbol or image as a graphic representation of the symbol or image; and
 - (b) may not prescribe the symbol or image by describing a class of symbols or images.
- (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

the symbol or image—

- (a) is widely known by the public as being solely or substantially representative of an ideology of extreme prejudice against a relevant group; or
 - (b) is widely known by members of a relevant group as being solely or substantially representative of an ideology of extreme prejudice against that group.
- (4) Also, the Minister must, before making the recommendation, consult with each of the following persons about the proposed recommendation—
- (a) the chairperson of the Crime and Corruption Commission;
 - (b) the Human Rights Commissioner under the *Anti-Discrimination Act 1991*;
 - (c) the commissioner of the police service under the *Police Service Administration Act 1990*.

- (5) In this section—

relevant group means a group of persons who identify with each other on the basis of an attribute or characteristic that is, or is based on, the race, religion, sexuality, sex characteristics or gender identity of the persons.

52D Display, distribution or publication of prohibited symbols

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

Maximum penalty—70 penalty units or 6 months imprisonment.

(2) Without limiting what may be a reasonable excuse for subsection (1), a person has a reasonable excuse if—

(a) any of the following apply—

(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;

(ii) the person engaged in the conduct that is alleged to constitute the offence for a purpose that is in the public interest;

Examples for subparagraph (ii)—

- publication of a fair and accurate report of an event or matter of public interest
- a genuine political or other genuine public dispute or issue carried on in the public interest

(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

(b) the person's conduct was, in the circumstances, reasonable for that purpose.

(3) An evidential burden is placed on the defendant in relation to showing a reasonable excuse for subsection (1).

(4) For subsection (1), a person **publicly displays** a prohibited symbol if the person—

(a) displays the symbol—

(i) in a place that the public is entitled to use, is open to members of the public

- or is used by the public, whether or not on payment of money; or
- (ii) in a place the occupier of which allows, whether or not on payment of money, members of the public to enter; or
- (b) displays the symbol in a way that is visible from a place mentioned in paragraph (a).
- (5) To remove any doubt, it is declared that, for subsection (1)—
 - (a) the offence is committed at the time when the person distributes, publishes or displays the prohibited symbol; and
 - (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 Amendment of s 69 (Going armed so as to cause fear)

- (1) Section 69—

insert—

- (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.

- (2) Section 69(1A) and (2)—

renumber as section 69(2) and (3).

14 Amendment of s 75 (Threatening violence)

- (1) Section 75—

insert—

- (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.

- (2) Section 75(1A) and (2)—
renumber as section 75(2) and (3).

15 Amendment of s 207 (Disturbing religious worship)

- (1) Section 207, ‘on summary conviction’—
omit.
- (2) Section 207—
insert—
- (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.

16 Amendment of s 335 (Common assault)

- Section 335(2)—
omit, insert—
- (2) The following provisions state a circumstance of aggravation for an offence against this section—
- (a) section 52B;
- (b) the *Penalties and Sentences Act 1992*, section 108B.
- (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.

17 Amendment of s 339 (Assaults occasioning bodily harm)

- (1) Section 339(4)—
omit, insert—

(4) 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*, sections 108B and 161Q.

(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.

(2) Section 339(3) to (4A)—

renumber as section 339(2) to (4).

18 Amendment of s 359 (Threats)

(1) Section 359(3)—

omit, insert—

(3) 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.

(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.

(2) Section 359(3A) and (4)—

renumber as section 359(4) and (5).

19 Amendment of s 359E (Punishment of unlawful stalking, intimidation, harassment or abuse)

(1) Section 359E(6)—

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).

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).

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
- (ii) the maximum term of imprisonment for which the defendant is liable is more than 3 years but not more than 5 years; and
- (iii) the assault is without the circumstance of aggravation stated in section 335(2)(a);

22 Amendment of s 552BA (Charges of indictable offences that must be heard and decided summarily)

(1) Section 552BA(4), definition *relevant offence*—

insert—

- (aa) an offence against section 335 alleged to have been committed with the circumstance of aggravation stated in section 335(2)(a); or

(2) Section 552BA(aa) and (b)—

renumber as section 552BA(b) and (c).

Part 3A Amendment of Ombudsman Act 2001

22A Act amended

This part amends the *Ombudsman Act 2001*.

22B Amendment of pt 12, hdg

Part 12, heading, after ‘Transitional’—

insert—

and validation

22C Insertion of new pt 12, div 8

Part 12—

insert—

**Division 8 Validation provision for
inspector of detention
services**

**120 Performance of duties of inspector of
detention services before taking oath**

- (1) This section applies in relation to a person who held office as the inspector of detention services during the period from 9 December 2022 to 28 September 2023 (the *relevant period*).
- (2) Anything done by the person under this Act, the *Inspector of Detention Services Act 2022* or another law during the relevant period in the performance of the duties of the office has the same effect, and is taken to have always had the same effect, as it would have had if the person had made the oath required under section 63(1) before performing the duties.

**Part 4 Amendment of Police Powers
and Responsibilities Act 2000**

23 Act amended

This part amends the *Police Powers and Responsibilities Act 2000*.

24 Amendment of s 29 (Searching persons without warrant)

Section 29(2)(c), ‘section 30(b)’—

omit, insert—

section 30(1)(b)

25 Amendment of s 30 (Prescribed circumstances for searching persons without warrant)

Section 30(1)—

insert—

(ha) the person has committed, or is committing, an offence against the Criminal Code, section 52D;

26 Amendment of s 32 (Prescribed circumstances for searching vehicle without warrant)

Section 32(2)(a), from ‘against the’—

omit, insert—

against—

(i) the *Summary Offences Act 2005*, section 10C; or

(ii) the Criminal Code, section 52D;

27 Amendment of ch 2, pt 6A (Prevention of criminal consorting)

Chapter 2, part 6A, note, first dot point, ‘section 30(i)’—

omit, insert—

section 30(1)(i)

Part 5 Amendment of Summary Offences Act 2005

28 Act amended

This part amends the *Summary Offences Act 2005*.

29 Amendment of s 6 (Public nuisance)

(1) Section 6(1), penalty, paragraph (a)—

omit, insert—

- (a) if the offence involves circumstances of aggravation—25 penalty units or 6 months imprisonment; or

(2) Section 6—

insert—

- (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—
 - (a) within licensed premises, or in the vicinity of licensed premises;
 - (b) the circumstance of aggravation stated in the Criminal Code, section 52B, as if this section were a prescribed offence mentioned in that section.

30 Amendment of s 11 (Trespass)

(1) Section 11(1), penalty—

omit, insert—

Maximum penalty—

- (a) if the offence involves circumstances of aggravation—40 penalty units or 1 year's imprisonment; or
- (b) otherwise—20 penalty units or 1 year's imprisonment.

(2) Section 11(2), penalty—

omit, insert—

Maximum penalty—

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

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