



Consultation Paper

Anti-Discrimination Bill 2024 (Exposure Draft) - Exceptions for religious bodies

February 2024

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Abbreviations

Abbreviation	Definition
ACT	Australian Capital Territory
AD Act	<i>Anti-Discrimination Act 1991</i> (Qld)
ALRC	Australian Law Reform Commission
ALRC Consultation Paper	Australian Law Reform Commission, <i>Consultation Paper: Religious Educational Institutions and Anti-Discrimination Laws</i> (January 2023)
Building Belonging Report	Queensland Human Rights Commission, <i>Building belonging: Review of Queensland's Anti-Discrimination Act 1991</i> (July 2022)
DJAG	Department of Justice and Attorney-General
Draft Bill	Anti-Discrimination Bill 2024 (Exposure Draft)
HR Act	<i>Human Rights Act 2019</i> (Qld)
LRCWA	Law Reform Commission of Western Australia
NT	Northern Territory
QHRC	Queensland Human Rights Commission
WA	Western Australia

Introduction

Purpose

The Department of Justice and Attorney-General (DJAG) invites your comment on proposals to modernise Queensland's anti-discrimination laws. The purpose of the draft Anti-Discrimination Bill 2024 (the draft Bill) is to:

- promote and protect the rights to equality and non-discrimination;
- eliminate discrimination, sexual harassment, vilification and other unlawful conduct to the greatest extent possible;
- promote and facilitate the identification and elimination of systemic causes of discrimination, sexual harassment, vilification and victimisation;
- promote and facilitate voluntary compliance with the legislation; and
- establish a flexible and efficient process for resolving complaints about alleged contraventions of the legislation.

The purpose of this Consultation Paper is to seek feedback on the proposed approach to key **exceptions for religious bodies** in the draft Bill.

Further consultation papers, including a consultation paper seeking feedback on the entire draft Bill, and information about how to provide feedback are also available at: the DJAG [community consultation webpage](#), which can be accessed via the DJAG website at www.justice.qld.gov.au/community-engagement/community-consultation/current or at Get Involved at <https://www.getinvolved.qld.gov.au/>.

Why is this consultation occurring?

On 1 September 2022, the QHRC Report: *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Building Belonging Report) was tabled in the Queensland Legislative Assembly. On 3 April 2023, the Queensland Government tabled its Final Response to the report, supporting in-principle all 122 recommendations of the QHRC.

The Queensland Government recognises that there is a need for new anti-discrimination legislation to be introduced that reflects contemporary best practice and is in keeping with modern community expectations and standards of behaviour. The Queensland Government has committed to introducing a Bill to repeal and replace the *Anti-Discrimination Act 1991* (AD Act) within the current term of government.

This represents significant law reform for the State, and it is important to carefully consider all elements of the new legislative framework to ensure it strikes the right balance between competing rights and interests, including the need to protect all people from discrimination, sexual harassment and vilification based on a contemporary understanding of equality. Importantly, the Queensland Government has committed to continuing to consult with stakeholders and the community as we work to implement these recommendations.

Relevant recommendations

This consultation paper focuses on the proposed approach to implementing the following recommendations from the Building Belonging Report:

Number	Recommendation	Clause in draft Bill
37.1	The Act should retain an exception from discrimination for the ordination, training and selection of religious leaders and this be broadened to include lay people who have a role which is the same as, or is similar to, the role of a priest, minister of religion or member of a religious order or where the person otherwise has a role that involves the propagation of that faith.	Clause 61 – Roles in religious bodies
38.1	<p>A general religious bodies exception and religious accommodation exception should be retained, but should only apply to the attribute of religious belief or activity where the conduct by an organisation or related entity established for religious purposes ('religious organisation') is:</p> <ul style="list-style-type: none"> • to conform to the religious doctrines, tenets or beliefs of the body; and • reasonable and proportionate in all the circumstances. 	Clause 62 – Acts by religious bodies
38.2	<p>The Act should include a non-exhaustive list of factors to guide whether it is reasonable and proportionate, such as:</p> <ul style="list-style-type: none"> • the importance of the relevant conduct in protecting the ethos of the religious organisation and the religious susceptibilities of adherents of that religion • whether the religious organisation is a public entity under the Human Rights Act when engaging in the conduct • if the religious organisation operates in a commercial manner when engaging in the conduct • the reasonable availability of alternative services • whether the services are essential services • the rights and interests of the person receiving, or proposed to receive, good or services or accommodation. 	N/A
39.1	The current genuine occupational requirements exceptions relating to work in educational institutions or other bodies established for religious purposes (s 25 (2)-(8)) should be repealed, along with a legislative note in s 25(1) which indicates that discrimination on the basis of religion will always be a 'genuine occupational requirement' at a religious school.	Clause 28 – Genuine occupational requirements generally
39.2	A new exception should be created to allow discrimination on the ground of religious belief or religious activity in relation to work for an organisation or related entity established for religious purposes ('religious organisation') if reasonable and proportionate in the circumstances and the participation of the person in the teaching, observance or practice of a particular religion is a genuine occupational requirement. This should not provide an exception	Clause 29 – Genuine occupational requirements for religious bodies

Number	Recommendation	Clause in draft Bill
	from unnecessary questions that may be asked for a discriminatory purpose.	
39.3	<p>The Act should include a non-exhaustive list of factors to guide whether it is reasonable and proportionate, such as:</p> <ul style="list-style-type: none"> • the importance of the relevant conduct in protecting the ethos of the religious organisation and the religious susceptibilities of adherents to that religion • the proximity between the person’s actions and the religious organisation’s proclamatory mission • whether the religious organisation is a public entity under the Human Rights Act when engaging in the conduct • whether the religious organisation operates in a commercial manner when engaging in the conduct • the reasonable availability of alternative employment • the rights and interests of the employee. 	N/A
39.4	The Act should include examples to demonstrate that the exception does not permit discrimination against employees who are not involved in the teaching, observance or practice of a religion, such as a science teacher in a religious educational institution.	N/A
40.1	The exception allowing discrimination on enrolment on the basis of sex or religion should be retained with the addition of a legislative note to clarify that this section applies to students enrolling for the first time and is on the basis of ‘religion’ not ‘religious belief or activity’.	<p>Clause 35 – Educational institution for students of particular sex or students with disability</p> <p>Clause 36 – Educational institution for particular religion</p>

How to get involved

You may wish to comment on all the issues set out in this consultation paper, or only the issues that are of particular interest to you. You can provide comments or make a submission via email or post.

Email:

adactreview@justice.qld.gov.au

Post:

Strategic Policy and Legislation
Department of Justice and Attorney-General
GPO Box 149
Brisbane, Qld 4001

Submissions close at 5pm on 22 March 2024

Privacy Statement: Personal information in your comments or submission will be collected by the Department of Justice and Attorney-General (DJAG) for the purpose of informing reforms to anti-discrimination legislation in Queensland. DJAG may contact you for further information on the issues your comments or submission raise. Your comments or submission may also be provided to others with an interest in the reforms, for example, Parliament's Legal Affairs and Safety Committee. Comments and submissions in relation to this consultation paper will be treated as public documents and may be published on DJAG's website. If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly. **Please note however that all submissions may be subject to disclosure under the *Right to Information Act 2009*.**

Summary of proposals / Consultation questions

Below is a list of all the consultation questions in the Consultation Paper. However, any comments on the proposed reforms are welcome.

Genuine occupational requirements for religious bodies (clause 29)

It is proposed to include an exception in the Bill in relation to work for a religious body.

The proposed exception will allow a religious body to discriminate on the grounds of religious belief or religious activity in relation to the selection and dismissal of workers if:

- participation in the teaching, observance or practice of the religion concerned is a genuine occupational requirement of the work; and
- the other person cannot satisfy the genuine occupational requirement because of the other person's religious belief or religious activity; and
- the discrimination is reasonable and proportionate in the circumstances.

Discrimination on the basis of a protected attribute other than religious belief or religious activity will not be permitted under this exception.

Questions for consultation:

1. Do you agree with the proposed exception in relation to work for religious bodies as set out in clause 29 of the draft Bill?
2. Should the exception include examples to demonstrate that the exception does not permit discrimination against employees who are not involved in the teaching, observance or practice of a religion? If yes, what examples should be included?

Educational institutions for students of a particular sex or religion (clauses 35 and 36)

It is proposed to provide exceptions for religious and single-sex educational institutions in relation to the admission of students.

An educational institution operated wholly or mainly for students of a particular religion will be permitted to discriminate on the basis of religious belief or religious activity by refusing to admit a student who is not of a particular religion.

Similarly, an educational institution operated wholly or mainly for students of a particular sex will be permitted to discriminate by refusing to admit a student who is not of the particular sex.

The proposed exceptions will only apply at the time of enrolment and will not permit discrimination on the basis of other protected attributes.

Question for consultation:

3. Do you agree with the proposed exceptions for religious and single-sex educational institutions as set out in clauses 35 and 36 of the draft Bill?

Roles in religious bodies (clause 61)

It is proposed to provide a general exception in relation to the ordination, appointment, training, education and selection of people who hold special roles within religious bodies.

The proposed exception will apply in relation to:

- priests, ministers of religion, and members of a religious order;
- people who hold 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;
- people who perform functions in relation to, or otherwise participate in, any religious observance or practice; and
- people who have a role within a religious body that otherwise involves the propagation of the doctrines, tenets or beliefs of the religion concerned.

Question for consultation:

4. Do you agree with the proposed exception in relation to roles in religious bodies as set out in clause 61 of the draft Bill?

Acts by religious bodies (clause 62)

It is proposed to provide a general exception for religious bodies which applies to all areas of activity except for work and education.

The proposed exception will permit discrimination on the basis of religious belief or religious activity if:

- the conduct by the religious body conforms to the doctrines, tenets or beliefs of the religious body; and
- the discrimination is reasonable and proportionate in the circumstances.

Question for consultation:

5. Do you agree with the proposed general exception for religious bodies, which applies in areas of activity other than work and education, as set out in clause 62 of the draft Bill?

Background

Exceptions for religious bodies

Modern anti-discrimination laws define discrimination as either 'direct' or 'indirect' discrimination, based on one or more protected attributes, which occurs in an area of activity or public life where discrimination is prohibited.

Modern anti-discrimination laws also provide for exceptions to the prohibitions on discrimination outlined in each area of activity. This ensures that these laws strike an appropriate balance between protecting people from discrimination and protecting other rights and interests.

The current AD Act contains exceptions that allow religious bodies to discriminate in the following circumstances:

- **Employment:** discrimination is allowed on any grounds (except for age, race and impairment) in the employment relationship with employees of an educational institution or other body established for religious purposes, if the discrimination is reasonable and it is a genuine occupational requirement (section 25(2)-(8) of the AD Act);
- **Education:** discrimination is allowed on the grounds of sex or religion in relation to applicants for enrolment at an educational institution set up wholly or mainly for students of a particular sex or religion (section 41 of the AD Act);
- **Goods and services or accommodation:** discrimination is allowed on the basis of any attribute when a religious body provides goods and services or accommodation if the discrimination is in accordance with the doctrine of the religion and is necessary to avoid offending the religious sensitivities of people of the religion (sections 90 and 109(d) of the AD Act);
- **Sites of cultural or religious significance:** discrimination is allowed on the grounds of sex, race, age or religion when restricting access to, or selling, sites of cultural or religious significance if the discrimination is in accordance with the doctrine of the religion or culture concerned and is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion (sections 48 and 80 of the AD Act); and
- **Ordination, appointment and training of certain persons:** discrimination is allowed on the basis of any protected attribute in relation to the ordination, appointment and training of priests, ministers of religion or members of a religious order, and the selection or appointment of people to perform functions in relation to, or otherwise participate in, religious observances or practices (section 109(a)-(c) of the AD Act).

The Building Belonging Report concluded that many of these exceptions are complicated and difficult to apply. The Report makes a number of recommendations that require careful consideration to ensure that the right balance is struck between different rights and interests. The purpose of this consultation paper is to invite feedback from relevant stakeholders about whether the proposed approach to exceptions for religious bodies, as reflected in relevant clauses of the draft Bill, strikes an appropriate balance between the right to non-discrimination and the right to manifest religious belief.

Religious exceptions and human rights

The right to equality

The AD Act is primarily concerned with the protection and advancement of the right to equality and non-discrimination, which is also protected in section 15 of the *Human Rights Act 2019* (HR Act). The right to recognition and equality before the law provides that every person has the right to enjoy their human rights without discrimination. It also provides that every person is equal before the law, is entitled to the equal protection of the law without discrimination and has the right to

equal and effective protection against discrimination. The principle of non-discrimination protects the 'equal dignity of every person', because treating somebody differently because of a protected attribute 'undermines their sense of personal autonomy and their capacity for self-realisation'.¹ The right to equality has been described as 'the keystone in the protective arch of [human rights legislation]'.²

The right to religion

The right to freedom of thought, conscience, religion and belief is protected under section 20 of the HR Act in the following terms:

- (1) Every person has the right to freedom of thought, conscience, religion and belief, including—
 - (a) the freedom to have or to adopt a religion or belief of the person's choice; and
 - (b) the freedom to demonstrate the person's religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.
- (2) A person must not be coerced or restrained in a way that limits the person's freedom to have or adopt a religion or belief.

This right, which was drawn from Article 18 of the *International Covenant on Civil and Political Rights*,³ distinguishes the right to 'have or adopt' a religion or religious belief (section 20(1)(a) and (2)) from the freedom to demonstrate or manifest that belief individually or as part of a community (section 20(1)(b)).

At international law, it is not permissible to impose 'any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice'.⁴ However, where necessary to protect the fundamental rights and freedoms of others, the freedom to manifest religion or belief (which includes through religious instruction, worship, observance and practice) may be subject to restriction.⁵

In the context of a discrimination claim in Victoria involving religious exceptions under the *Equal Opportunity Act 2010* (Vic), the court explained the nature of the equivalent right in the Victorian *Charter of Rights and Responsibilities* as follows:

In the area of religious freedom, when interpreting and applying such instruments, international courts have adopted a framework which draws a conceptual distinction between the possession of a religious belief and the manifestation of that belief. The former is regarded as 'inviolable' while the latter may be liable to circumscription. The task of circumscription in those jurisdictions requires those applying the law to balance competing human rights against one another.

...Under human rights law and international instruments, the right to freedom of religion includes the right to believe, the right to declare the belief openly and the right to manifest that belief by worship, practice and teaching without coercion or constraint. The right is not unlimited. It is subjected to limitations necessary to protect public safety, order, health, morals and the fundamental rights and freedoms of others.⁶

(footnotes omitted)

¹ *Lifestyle Communities Ltd (No 3)* [2009] VCAT 1869 [109].

² *Ibid* [277].

³ United Nations, *International Covenant on Civil and Political Rights* (ICCPR), opened for signature 19 December 1966, UN Doc 999 UNTS 171 (entered into force 23 March 1976).

⁴ UN Human Rights Committee, *General Comment No 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 48th sess, UN Doc CCPR/C/21/Rev.1/Add.4 (27 September 1993) 2 [3].

⁵ *Ibid* [8].

⁶ *Christian Youth Camps Ltd v Cobaw Community Health Services* [2014] VSCA 75; (2014) 50 VR 256, 395 [537]-[538] (Redlich JA).

There is nothing in the current or proposed exceptions to Queensland's anti-discrimination laws that would prevent a person from having or holding a religious belief.

Balancing the right to equality and the right to religion

The modernisation of Queensland's anti-discrimination framework ensures that the State continues to fulfil its obligations under rights to equality and non-discrimination in Queensland's human rights legislation, as well as international law.

The primary purpose of anti-discrimination laws is to protect the right to equality and non-discrimination. However, certain exceptions may be necessary in order to ensure that the right to manifest religious belief is not unreasonably limited. That is to say, where the rights to non-discrimination and equal protection of the law and the right to manifest religious belief need to be balanced against each other, anti-discrimination laws must strike an appropriate balance between the competing rights to ensure any limitations are justified. One element of this balancing exercise involves ensuring that limitations on one right only go as far as necessary to protect other rights.

Protected attributes under anti-discrimination legislation have traditionally included such attributes as a person's race, age, sex and religion. In 1991, when the AD Act was enacted, the attribute of religion was included to ensure people were protected from being discriminated against because of their religion. However, while a person's sexuality was protected under the attribute of 'lawful sexual activity', no such protections were afforded to transgender people, with the attribute of 'gender identity' only being incorporated into the AD Act in 2002.⁷

Broadly, the Building Belonging Report reflects a finding that the AD Act is not consistent with modern standards. The AD Act, like its counterpart the HR Act, is an organic instrument which must evolve over time to reflect the community's understanding of equality and discrimination.

The proposed amendments identified below represent a re-balancing of the right to equality with the right to religion in step with contemporary understanding of the importance of protecting people from discrimination based on attributes such as sexual orientation and gender identity. The draft Bill aims to strike a fairer balance between rights protected by the HR Act and international law by maintaining broad exceptions in relation to activities such as the selection, ordination and appointment of religious leaders, but restricting the ability of religious bodies to discriminate on grounds other than religious belief or religious activity in areas such as employment, accommodation and the provision of goods and services.

Other jurisdictions

See **Annexure 1** for a comparative table of exceptions for religious bodies across Australian anti-discrimination laws.

Exceptions for religious bodies are currently under review or have recently been amended in a number of other state and territory anti-discrimination laws. Key developments in other jurisdictions include:

- In 2021, Victoria passed legislation which amended the scope of exceptions in its anti-discrimination legislation for religious bodies and schools in relation to employment decisions, decisions about school students, and the provision of government funded goods or services.⁸
- In August 2022, the government of Western Australia (WA) announced its commitment to overhaul its anti-discrimination laws in response to a comprehensive review completed by the

⁷ *Discrimination Law Amendment Act 2002* (Qld). Commencement date for the relevant parts of the amending Act was 31 March 2003.

⁸ *Equal Opportunity (Religious Exceptions) Amendment Act 2021* (Vic).

Law Reform Commission of WA (LRCWA).⁹ The LRCWA made a number of recommendations in relation to the scope of exceptions for religious bodies.¹⁰

- In November 2022, the Australian Government announced its commitment to reform federal anti-discrimination laws as they apply to religious educational institutions and referred a law reform inquiry on this topic to the Australian Law Reform Commission (ALRC).¹¹ The ALRC published a Consultation Paper — *Religious Educational Institutions and Anti-Discrimination Laws* (ALRC Consultation Paper) — setting out proposals for reform in January 2023.¹² The ALRC's Final Report was submitted to the Attorney-General of Australia in December 2023.
- In November 2022, the Northern Territory (NT) passed legislation which amended its anti-discrimination legislation by removing exceptions for religious educational institutions in relation to enrolment of students and work, as well as narrowing exceptions for religious bodies in relation to accommodation.¹³
- In 2023, the Australian Capital Territory (ACT) passed amendments to modernise and strengthen its anti-discrimination protections.¹⁴ The amending act will make changes to the scope of religious exceptions in the *Discrimination Act 1991* (ACT) from 11 April 2024.

⁹ Government of Western Australia, 'AG announces overhaul to Equal Opportunity Act' (News story, 17 August 2022), <<https://www.wa.gov.au/government/announcements/ag-announces-overhaul-equal-opportunity-act>>.

¹⁰ Law Reform Commission of Western Australia, *Review of the Equal Opportunity Act 1984 (WA)* (Project 111 Final Report, May 2022).

¹¹ The Hon Mark Dreyfus KC MP, Attorney-General of Australia, 'Terms of Reference – Religious Educational Institutions and Anti-Discrimination Laws' (4 November 2022) <<https://www.alrc.gov.au/inquiry/anti-discrimination-laws/terms-of-reference/>>.

¹² Australian Law Reform Commission, *Consultation Paper: Religious Educational Institutions and Anti-Discrimination Laws* (January 2023).

¹³ *Anti-Discrimination Amendment Act 2022* (NT).

¹⁴ *Discrimination Amendment Act 2023* (ACT).

Exception in relation to work for religious bodies

Currently, the AD Act provides a broad exception in relation to work for religious bodies under section 25 of the AD Act. The Building Belonging Report recommended that the new Act incorporate a more tailored exception in relation to work for religious bodies (**Recommendations 39.1-39.2**).

The proposed exception in the work area of activity will permit religious bodies to discriminate on the basis of religious belief or religious activity in relation to the selection and dismissal of workers in certain circumstances.

This exception is reflected in **clause 29** of the draft Bill, which will allow discrimination by a religious body on the grounds of religious belief or religious activity if:

- participation in the teaching, observance or practice of the religion concerned is a genuine occupational requirement of the work; and
- the other person cannot satisfy the genuine occupational requirement because of the other person's religious belief or religious activity; and
- the discrimination is reasonable and proportionate in the circumstances.

Discrimination on the grounds of religious belief or religious activity

Discrimination on the basis of protected attributes other than religious belief or religious activity will not be permitted under this exception.

Faith-based schools, for example, will be able to discriminate on the basis of religious belief or religious activity when appointing staff if the teaching, observance or practice of a religion is a genuine occupational requirement of the role. However, discrimination based on other protected attributes such as sexual orientation or relationship status will not be permitted in any employment decisions.

The QHRC concluded that it is necessary to limit religious freedom in this way to uphold the privacy and non-discrimination rights of staff in religious bodies.¹⁵

Narrowing the grounds on which a religious body can discriminate in the area of employment to religious belief and religious activity will bring Queensland broadly in line with anti-discrimination laws in several other Australian jurisdictions, including ACT,¹⁶ Tasmania,¹⁷ and Victoria.¹⁸ The proposed approach is also broadly consistent with the proposals for amendments to the *Sex Discrimination Act 1984* (Cth) and the *Fair Work Act 2009* (Cth) outlined in the ALRC Consultation Paper.¹⁹ A more restrictive approach has been adopted in NT, with recent amendments resulting in the removal of an exception for employment in religious educational institutions.²⁰ For a more comprehensive overview of exceptions in relation to employment by religious bodies in Australian anti-discrimination laws, see **Table 1 in Annexure 1**.

¹⁵ Queensland Human Rights Commission, *Building belonging: Review of Queensland's Anti-Discrimination Act 1991 (Qld)* (July 2022) 383.

¹⁶ *Discrimination Act 1991* (ACT) ss 32(1)(e) (as amended by *Discrimination Amendment Act 2023* (ACT), 44, 46. Sections 44 and 46 provide separate exceptions in relation to work or employment in educational institutions, hospitals, or other places in which health services are provided.

¹⁷ *Anti-Discrimination Act 1998* (Tas) ss 51, 52(d).

¹⁸ *Equal Opportunity Act 2010* (Vic) ss 82A, 83A.

¹⁹ Australian Law Reform Commission, *Consultation Paper: Religious Educational Institutions and Anti-Discrimination Laws* (January 2023) Technical Consultation Proposals 8 and 9.

²⁰ *Anti-Discrimination Amendment Act 2022* (NT) s 17. The *Anti-Discrimination Act 1992* (NT) now only provides for a general genuine occupational qualification test (s 35), which permits discrimination based on a genuine occupational qualification which the other person is required to fill.

‘Reasonable and proportionate’ requirement

The purpose of imposing a requirement that discrimination is ‘reasonable and proportionate in the circumstances’ is to ensure that an appropriate balance is struck between the legitimate objective of the discrimination and the rights and interests of individuals who would be affected by the discrimination. The inclusion of this requirement was recommended by the QHRC (**Recommendation 39.2** of the Building Belonging Report).

Employment exceptions for religious bodies in Victorian anti-discrimination law are also subject to a requirement that discrimination be ‘reasonable and proportionate in the circumstances’.²¹ The LRCWA recommended the incorporation of the same requirement in exceptions for religious bodies under Western Australian anti-discrimination laws.²² Similarly, the ALRC Consultation Paper proposed a new exception for employment in religious educational institutions which would be subject to a requirement that the treatment is ‘proportionate’.²³

It is not proposed to incorporate a list of matters that must be considered when assessing whether discrimination is reasonable and proportionate in the circumstances. This will allow the concept of ‘reasonable and proportionate’ to be applied flexibly, having regard to the relevant circumstances. It will also allow the concept to develop in conjunction with jurisprudence from other jurisdictions with equivalent exceptions.

Assessing whether discrimination is reasonable and proportionate may involve consideration of:

- *The purpose of the proposed conduct* – why is it necessary or desirable to discriminate in these circumstances? Why is this purpose important?
- *The impact of the discrimination on the other person(s)* – how will the discrimination affect the rights and interests of a person or persons with protected attributes? Are there other employment opportunities available to the person(s) in their geographical area if they are denied access to this opportunity?
- *Alternative options* – is there another option available which would not involve discrimination or would have less of an impact on affected persons? Would this be as effective in achieving the objective?
- *Whether or not the importance of achieving the purpose outweighs the harm caused by the discrimination* – is there a fair balance between the rights and interests of the affected persons, and the legitimate objective of discrimination?

Genuine occupational requirements for religious bodies (clause 29)

It is proposed to include an exception in the Bill in relation to work for a religious body.

The proposed exception will allow a religious body to discriminate on the grounds of religious belief or religious activity in relation to the selection and dismissal of workers if:

- participation in the teaching, observance or practice of the religion concerned is a genuine occupational requirement of the work; and
- the other person cannot satisfy the genuine occupational requirement because of the other person’s religious belief or religious activity; and

²¹ *Equal Opportunity Act 2010* (Vic) ss 82A, 83A.

²² Law Reform Commission of Western Australia, *Review of the Equal Opportunity Act 1984 (WA)* (Project 111 Final Report, May 2022) Recommendation 77 (exception for religious bodies applicable to all areas, including employment) and Recommendation 79 (employment exception for religious educational institutions).

²³ Australian Law Reform Commission, *Consultation Paper: Religious Educational Institutions and Anti-Discrimination Laws* (January 2023) Technical Consultation Proposals 8 and 9.

- the discrimination is reasonable and proportionate in the circumstances.

Discrimination on the basis of a protected attribute other than religious belief or religious activity will not be permitted under this exception.

Questions for consultation:

1. Do you agree with the proposed exception in relation to work for religious bodies as set out in clause 29 of the draft Bill?
2. Should the exception include examples to demonstrate that the exception does not permit discrimination against employees who are not involved in the teaching, observance or practice of a religion? If yes, what examples should be included?

Exceptions for religious and single-sex educational institutions

Currently, the AD Act provides an exception which permits educational institutions operated wholly or mainly for students of a particular sex or a particular religion to exclude an applicant who is not of that particular sex or religion.²⁴

It is proposed to provide exceptions in the new Act which permit discrimination in relation to admission of students at religious and single-sex educational institutions (**clauses 35 and 36** of the draft Bill). This is consistent with **Recommendation 40.1** of the Building Belonging Report.

Educational institutions for students of a particular sex

Educational authorities which operate an educational institution wholly or mainly for students of a particular sex, such as same-sex schools, will be able to discriminate on the basis of a person's sex when a student seeks to enrol at that school.

The proposed exception only applies at the time of admission of students. This means, for example, that an educational authority will not be able to discriminate against a student who alters their record of sex in the relevant child register after enrolment. 'Sex' is not defined for the purposes of the draft Bill. However, when the *Births, Deaths and Marriages Registration Act 2023* commences, a person's sex will include a person's sex as altered on the register.²⁵

Providing an exception for single-sex schools which applies in relation to the admission of students is consistent with anti-discrimination laws in most other Australian jurisdictions. For a more detailed overview of equivalent exceptions, see **Table 2A in Annexure 1**.

Educational institutions for students of a particular religion

Providing an exception in relation to enrolment at religious educational institutions promotes the right to manifest religion in community by allowing religious schools to only admit students who are of a particular religion. It also protects and promotes the right to the protection of families and children.

Most Australian anti-discrimination laws which prohibit discrimination on religious grounds provide an exception in relation to admission of students at religious educational institutions. For a more detailed overview of equivalent exceptions, see **Table 2B in Annexure 1**.

²⁴ *Anti-Discrimination Act 1991* (Qld) s 41. This exception also applies in relation to educational institutions operated for students 'who have a general or specific impairment'.

²⁵ *Births, Deaths and Marriages Registration Act 2023* (Qld) s 47.

Educational institutions that operate wholly or mainly for students of a particular religion will be permitted to discriminate on the basis of religious belief or religious activity by refusing to admit as a student an applicant who is not of a particular religion.

For example, a school for Catholic students may choose to reject an applicant for admission on the basis that they are not Catholic, having regard to the applicant's religious beliefs or religious activity. However, the school would not be permitted to discriminate on the basis of other protected attributes, such as an applicant's gender identity or sexual orientation.

Further, discrimination would only be permitted at the time of enrolment. A school could not, for example, expel or discipline a student on the basis that the student's religious beliefs or religious activities have changed after enrolment.

It is proposed to clarify that this exception permits discrimination on the basis of the religious belief or religious activity (and not on any other grounds) because 'religion' is not a protected attribute under Queensland anti-discrimination law. It is not clear how this exception could operate unless it permits discrimination on the basis of 'religious belief or religious activity', to the extent that this is determinative of 'religion'.

It is similarly proposed to update other exceptions in the AD Act which currently permit discrimination on the basis of 'religion' to refer to 'religious belief or religious activity'. These include exceptions in relation to sites of cultural or religious significance (**clauses 40 and 45**), and the exception for accommodation provided to students (**clause 50**).

Educational institutions for students of a particular sex or religion (clauses 35 and 36)

It is proposed to provide exceptions for religious and single-sex educational institutions in relation to the admission of students.

An educational institution operated wholly or mainly for students of a particular religion will be permitted to discriminate on the basis of religious belief or religious activity by refusing to admit a student who is not of a particular religion.

Similarly, an educational institution operated wholly or mainly for students of a particular sex will be permitted to discriminate by refusing to admit a student who is not of the particular sex.

The proposed exceptions will only apply at the time of enrolment and will not permit discrimination on the basis of other protected attributes.

Question for consultation:

3. Do you agree with the proposed exceptions for religious and single-sex educational institutions as set out in clauses 35 and 36 of the draft Bill?

Exception for special roles in religious bodies

It is proposed to provide a general exception in relation to the ordination, appointment, training, education and selection of people who hold special roles or perform special functions within religious bodies (**clause 61** of the draft Bill).

The proposed exception provides that the Act will not apply to:

- the ordination or appointment of people as priests, ministers of religion or members of a religious order or to another religious role; or
- 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
- the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice.

The proposed approach will retain the effect of section 109(a)-(c) of the current AD Act, but will extend the coverage of the exception to capture 'another religious role' within a religious body which:

- is the same as, or similar to, the role of a priest, minister of religion or member of a religious order; or
- otherwise involves the propagation of the doctrines, tenets or beliefs of the religion concerned.

The extension of this exception to 'lay people' who play an important spiritual role within a religious body was recommended by the QHRC in the Building Belonging Report (**Recommendation 37**).

Where the proposed exception applies, discrimination will be permitted on the basis of any attribute. This exception is accordingly broader than other exceptions for religious bodies in the draft Bill. This is because the activities covered by this exception are intimately related to the propagation and practice of religion.

Other Australian jurisdictions also provide broad exceptions in relation to the selection, ordination and training of people who hold particular religious roles.²⁶

Roles in religious bodies (clause 61)

It is proposed to provide a general exception in relation to the ordination, appointment, training, education and selection of people who hold special roles within religious bodies.

The proposed exception will apply in relation to:

- priests, ministers of religion, and members of a religious order;
- people who hold 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;
- people who perform functions in relation to, or otherwise participate in, any religious observance or practice; and
- people who have a role within a religious body that otherwise involves the propagation of the doctrines, tenets or beliefs of the religion concerned.

²⁶ See *Discrimination Act 1991* (ACT) s 32(1)(a)-(c), as amended by *Discrimination Amendment Act 2023* (ACT); *Anti-Discrimination Act 1977* (NSW) s 56(a)-(c); *Anti-Discrimination Act 1992* (NT) s 51(a)-(c); *Equal Opportunity Act 1984* (SA) ss 50(1)(a)-(b), 85ZM; *Anti-Discrimination Act 1998* (Tas) s 52(a)-(c); *Equal Opportunity Act 2010* (Vic) s 82(1)(a)-(c); *Equal Opportunity Act 1984* (WA) s 72(a)-(c); *Sex Discrimination Act 1982* (Cth) s 37(1)(a)-(c).

Question for consultation:

4. Do you agree with the proposed exception in relation to roles in religious bodies as set out in clause 61 of the draft Bill?

General exception for religious bodies

It is proposed to provide a general exception for religious bodies, which applies to all areas of activity other than work and education (**clause 62**).

The proposed exception will allow a religious body to discriminate on the basis of religious belief or religious activity if:

- the act constituting the discrimination conforms to the doctrines, tenets or beliefs of the religious body; and
- the discrimination is reasonable and proportionate in the circumstances.

This exception would be relevant, for example, to a religious body that provides goods and services, or accommodation.

It is not intended that discrimination on the basis of any other protected attributes would be permitted under this exception. This means, for example, that a religious body that provides accommodation, such as a campsite, could not refuse to provide such services to people based on their sex or sexual orientation.

Existing exceptions for religious bodies under sections 90 and 109(1)(d) of the AD Act are not confined to discrimination on the basis of religious belief or religious activity. The QHRC found that these exceptions allow people with protected attributes to be discriminated against in a way that may leave them deprived of essential services, particularly in areas where resources and services are scarce (such as remote and regional areas).²⁷ The QHRC accordingly recommended restricting the scope of equivalent exceptions in the new Bill to apply only on the basis of religious belief or religious activity (**Recommendation 38.1** of the Building Belonging Report).

There are varying approaches across Australian anti-discrimination laws to exceptions for religious bodies in relation to the provision of accommodation and goods and services. However, several jurisdictions have recently made amendments, or are considering amendments, to narrow exceptions for religious bodies in this area – including the ACT, NT, Victoria and WA. For a more detailed overview of equivalent exceptions, see **Table 3 in Annexure 1**.

It is not proposed to prescribe matters that must be considered when assessing whether discrimination is reasonable and proportionate for the purposes of the general exception for religious bodies. This will allow this concept to be applied flexibly and to develop in conjunction with jurisprudence from other jurisdictions with equivalent exceptions. This is consistent with the approach to the exception in relation to religious bodies in the work area, as outlined above.

Acts by religious bodies (clause 62)

It is proposed to provide a general exception for religious bodies which applies to all areas of activity except for work and education.

The proposed exception will permit discrimination on the basis of religious belief or religious activity if:

- the conduct by the religious body conforms to the doctrines, tenets or beliefs of the religious body; and

²⁷ Queensland Human Rights Commission, *Building belonging: Review of Queensland's Anti-Discrimination Act 1991 (Qld)* (July 2022) 378.

- the discrimination is reasonable and proportionate in the circumstances.

Question for consultation:

5. Do you agree with the proposed general exception for religious bodies, which applies in areas of activity other than work and education, as set out in clause 62 of the draft Bill?

Annexure 1: Comparison of exceptions for religious bodies

The tables below compare the scope of proposed exceptions for religious bodies in the draft Bill with equivalent exceptions in other states and territories, as well as Commonwealth anti-discrimination laws. The exceptions summarised below relate to: (1) employment by religious organisations, including religious educational institutions; (2) the enrolment of students in religious and single-sex educational institutions; and (3) discrimination in areas other than education and employment (covering, for example, the provision of goods and services, and accommodation).

In some jurisdictions, anti-discrimination laws have been recently amended or are the subject of law reform recommendations under consideration by the relevant government. Where relevant, the table below reflects recent or proposed amendments to exceptions to highlight how the proposed exceptions in Queensland compare to evolving discrimination laws in other jurisdictions. However, the table does not reflect the preliminary consultation proposals from the Australian Law Reform Commission's *Consultation Paper: Religious Educational Institutions and Anti-Discrimination Laws* (January 2023).

Provisions cited in the table below refer to the following sources:

- Australian Capital Territory (ACT): *Discrimination Act 1991* (ACT), as amended by *Discrimination Amendment Act 2023* (ACT) where relevant. Amendments come into force on 11 April 2024.
- New South Wales (NSW): *Anti-Discrimination Act 1977* (NSW).
- Northern Territory (NT): *Anti-Discrimination Act 1992* (NT).
- South Australia (SA): *Equal Opportunity Act 1984* (SA).
- Tasmania (Tas): *Anti-Discrimination Act 1998* (Tas).
- Victoria (Vic): *Equal Opportunity Act 2010* (Vic).
- Western Australia (WA): Law Reform Commission of Western Australia, *Review of the Equal Opportunity Act 1984* (WA) (Project 111 Final Report, May 2022). Where no change has been recommended, the table summarises the existing law as reflected in *Equal Opportunity Act 1984* (WA).
- Commonwealth (Cth): *Sex Discrimination Act 1984* (Cth).

1. Exceptions for employment by religious bodies				
Jurisdiction	Discrimination permitted in relation to...	On grounds of...	Additional requirements	Provision
New approach	Work for a religious body	Religious belief or religious activity	<ul style="list-style-type: none"> • Participation in teaching, observance or practice of religion is a genuine occupational requirement; • The other person cannot satisfy the genuine occupational requirement because of their religious belief or religious activity; and • Reasonable and proportionate in the circumstances. 	Clause 29, Draft Bill
ACT	Employment by a religious body	Religious conviction	<ul style="list-style-type: none"> • Conforms to the doctrines, tenets or beliefs of the body's religion; • Necessary to avoid injury to religious susceptibilities of adherents of the religion; and • Publication of policy. 	s 32(1)(e) (as amended)
	Employment or work in an educational institution, hospital or other place in which health services are provided	Religious conviction	<ul style="list-style-type: none"> • Duties of the employment or work involve participation in the teaching or practice of religion. 	s 44 (as amended)
	Employment by a religious educational institution	Religious conviction	<ul style="list-style-type: none"> • Discrimination is intended to enable, or better enable, the institution to be conducted in accordance with doctrines, tenets, beliefs or teachings in accordance with which the institution is conducted; and • Publication of policy. 	ss 46(2), (4)
NSW	Any act of a body established to propagate religion	Any	<ul style="list-style-type: none"> • Conforms to the doctrines of religion; or • Necessary to avoid injury to the religious susceptibilities of adherents of that religion. 	s 56(d)

Jurisdiction	Discrimination permitted in relation to...	On grounds of...	Additional requirements	Provision
	Employment by a private educational authority	Sex, transgender grounds, marital or domestic status, homosexuality	N/A	ss 25(3)(c), 38C(3)(c), 40(3)(c), 49ZH(3)(c)
NT	N/A	N/A	N/A	N/A
SA	Any act of a body established for religious purposes	Sex, sexual orientation, gender identity or intersex status	<ul style="list-style-type: none"> Conforms with the precepts of religion; or Necessary to avoid injury to the religious susceptibilities of adherents of that religion. 	s 50(1)(c)
	Employment by religious educational institution	Sexual orientation, gender identity, intersex status, or marital or domestic partnership status	<ul style="list-style-type: none"> Institution is administered in accordance with precepts of religion; Discrimination is founded on precepts of that religion; and Provision of written policy. 	ss 34(3), 85Z(2)
Tas	Employment based on religion	Religious belief or affiliation or religious activity	<ul style="list-style-type: none"> Participation of the person in the teaching, observance or practice of a particular religion is a genuine occupational qualification or requirement. 	s 51(1)
	Employment by a religious educational institution	Religious belief or affiliation or religious activity	<ul style="list-style-type: none"> Discrimination is in order to enable, or better enable, the institution to be conducted in accordance with tenets, beliefs, teachings, principles or practices of religion. 	s 51(2)
Vic	Employment by a religious body or religious educational institution	Religious belief or activity	<ul style="list-style-type: none"> Conformity with the doctrines, beliefs or principles of religion is an inherent requirement of the position; Person cannot meet inherent requirement because of their religious belief or activity; and Discrimination is reasonable and proportionate. 	ss 82A, 83A
	General exception, including work	Any	<ul style="list-style-type: none"> Conforms to doctrines, tenets or beliefs of religion of body; 	<i>Review of the Equal</i>

Jurisdiction	Discrimination permitted in relation to...	On grounds of...	Additional requirements	Provision
WA (proposed approach)			<ul style="list-style-type: none"> Reasonably necessary to avoid injury to religious susceptibilities of adherents of religion; and Reasonable and proportionate in the circumstances. 	<i>Opportunity Act 1984 (WA)</i> , Recommendation 77
	Employment by a religious educational institution	Religious conviction	<ul style="list-style-type: none"> Conformity with the doctrines, beliefs or principles of religion is an inherent requirement of the position; Person cannot meet inherent requirement because of their religious conviction; and Discrimination is reasonable and proportionate. 	<i>Review of the Equal Opportunity Act 1984 (WA)</i> , Recommendation 79
Cth	General exception, including employment	Sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy, breastfeeding, family responsibilities	<ul style="list-style-type: none"> Conforms to the doctrines, tenets or beliefs of that religion; or Necessary to avoid injury to the religious susceptibilities of adherents of that religion 	s 37(1)(d)
	Employment by religious educational institutions	Sex, sexual orientation, gender identity, marital or relationship status or pregnancy	<ul style="list-style-type: none"> Institution is conducted in accordance with doctrines, tenets, beliefs or teachings of a particular religion or creed; and Discrimination is in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed. 	ss 38(1)-(2)

2A. Exceptions for single sex educational institutions (students)

Jurisdiction	Discrimination permitted in relation to...	On grounds of...	Additional requirements	Provision
New approach	Admission	Sex	N/A	Clause 35(a), draft Bill
ACT	Admission	Sex	N/A	s 36
NSW	Admission	Sex	N/A	s 31A(3)(b)
	Any act by a private educational authority	Sex	N/A	s 31A(3)(a)
NT	Admission	Sex	N/A	s 30(1)
SA	Admission	Sex	N/A	s 37(3)
Tas	Enrolment	Gender	N/A	s 27(1)(b)
Vic	Exclusion from educational institution or program	Sex	N/A	s 39(a)
WA	Admission	Sex	N/A	s 18(3)
Cth	Admission	Sex	N/A	s 21(3)

2B. Exceptions for religious educational institutions (students)

Jurisdiction	Discrimination permitted in relation to...	On grounds of...	Additional requirements	Provision
New approach	Admission	Religious belief or religious activity	N/A	Clause 36, draft Bill
ACT	Admission	Religious conviction	Publication of policy	ss 46(1), (3)
NSW	Any act by a private educational authority	Sex, transgender grounds, marital or domestic status, homosexuality	N/A	ss 31A(3)(a), 38K(3), 46A(3), 49ZO(3)

Jurisdiction	Discrimination permitted in relation to...	On grounds of...	Additional requirements	Provision
NT	N/A	N/A	N/A	N/A
SA	Any act by a religious educational institution	Religious appearance or dress	N/A	s 85ZE(5)
Tas	Admission	Religious belief or affiliation or religious activity (of student, their parents or their grandparents)	Publication of policy (with respect to discrimination on basis of religious belief or affiliation, or religious activity, of a person's parents or grandparents)	s 51A
Vic	Exclusion from educational institution or program	Religious belief	N/A	s 39(a)
	In the course of establishing, directing, controlling or administering the educational institution	Religious belief or activity	<ul style="list-style-type: none"> • Conforms with doctrines, beliefs or principles of the religion; or • Reasonably necessary to avoid injury to religious sensitivities of adherents of the religion; and • Reasonable and proportionate. 	s 83
WA (proposed approach)	Admission	Religious conviction	<ul style="list-style-type: none"> • Conforms with doctrines, beliefs or principles of the religion; • Reasonably necessary to avoid injury to religious susceptibilities of adherents of the religion; and • Reasonable and proportionate. 	<i>Review of the Equal Opportunity Act 1984 (WA)</i> , Recommendation 81
Cth	Provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed	Sexual orientation, gender identity, marital or relationship status or pregnancy	<ul style="list-style-type: none"> • In good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed. 	s 38(3)

3. Exceptions for religious bodies in areas other than education and employment				
Jurisdiction	Discrimination permitted in relation to...	On grounds of...	Additional requirements	Provision
New approach	Areas other than employment and education	Religious belief or religious activity	<ul style="list-style-type: none"> • Conforms to doctrines, tenets or beliefs of the religious body; and • Reasonable and proportionate in the circumstances. 	Clause 62, draft Bill
ACT	Provision of goods, services or facilities to the public	Religious conviction	<ul style="list-style-type: none"> • Conforms to the doctrines, tenets or beliefs of body's religion; • Necessary to avoid injury to religious susceptibilities of adherents of religion; • Publication of policy; and • Not a religious body whose sole or main purpose is commercial. 	s 32(1)(d) (as amended)
	Areas other than employment, education and goods and services	Any	<ul style="list-style-type: none"> • Conforms to the doctrines, tenets or beliefs of the body's religion; • Necessary to avoid injury to religious susceptibilities of adherents of religion; and • Not a religious body whose sole or main purpose is commercial. 	s 32(1)(f) (as amended)
	Provision of accommodation for members of a relevant class of people by a religious body	Any	N/A	s 32(4) (as amended)
NSW	Any act of a body established to propagate religion	Any	<ul style="list-style-type: none"> • Conforms to the doctrines of religion; or • Necessary to avoid injury to the religious susceptibilities of adherents of that religion. 	s 56(d)
NT	Any act of a body established for religious purposes	Any	<ul style="list-style-type: none"> • Done as part of any religious observance or practice. 	s 51(d)

Jurisdiction	Discrimination permitted in relation to...	On grounds of...	Additional requirements	Provision
SA	Any act of a body established for religious purposes	Sex, sexual orientation, gender identity or intersex status	<ul style="list-style-type: none"> • Conforms with the precepts of that religion; or • Necessary to avoid injury to the religious susceptibilities of the adherents of that religion. 	s 50(1)(c)
Tas	Any act	Religious belief or affiliation or religious activity	<ul style="list-style-type: none"> • Carried out in accordance with the doctrine of a particular religion; and • Necessary to avoid offending the religious sensitivities of any person of that religion. 	s 52(d)
Vic	Acts by religious body in areas other than employment or provision of government funded goods or services	Religious belief or activity; sex; sexual orientation; lawful sexual activity; marital status; parental status; gender identity	<ul style="list-style-type: none"> • Conforms with doctrines, beliefs or principles of body's religion; or • Reasonably necessary to avoid injury to religious sensitivities of adherents of religion; and • Reasonable and proportionate in the circumstances 	s 82(2)
	Provision of government funded services by religious body	Religious belief or activity	<ul style="list-style-type: none"> • Conforms with doctrines, beliefs or principles of body's religion; or • Reasonably necessary to avoid injury to religious sensitivities of adherents of religion; and • Reasonable and proportionate in the circumstances 	s 82B
WA (proposed approach)	Areas other than provision of government funded or commercial (for profit) goods or services by religious body	Any	<ul style="list-style-type: none"> • Conforms to the doctrines, tenets or beliefs of the religion of the body; • Reasonably necessary to avoid injury to religious susceptibilities of adherents of religion; and • Reasonable and proportionate in the circumstances. 	<i>Review of the Equal Opportunity Act 1984 (WA), Recommendation 77</i>
	Provision of government funded or commercial (for	Religious conviction	<ul style="list-style-type: none"> • Conforms to the doctrines, tenets or beliefs of the religion of the body; or 	<i>Review of the Equal Opportunity Act</i>

Jurisdiction	Discrimination permitted in relation to...	On grounds of...	Additional requirements	Provision
	profit) goods or services by religious body		<ul style="list-style-type: none"> Reasonably necessary to avoid injury to religious susceptibilities of adherents of religion; and Reasonable and proportionate in the circumstances. 	1984 (WA), Recommendation 76
Cth	Acts by religious bodies which are not connected with the provision of Commonwealth-funded aged care (other than employment)	Sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy, breastfeeding, family responsibilities	<ul style="list-style-type: none"> Conforms to the doctrines, tenets or beliefs of body's religion; or Necessary to avoid injury to religious susceptibilities of adherents of religion. 	s 37(1)(d)