

## Master Builders submission to the *Anti-Discrimination Bill 2024*

### Introduction

Master Builders is Queensland's peak industry association for building and construction and represents the interests of over 9,800 members.

Whilst this submission is brief, we do hold serious concerns with the Bill containing a new provision for "reasonable and proportionate" measures at clause 28, which deals with exceptions for discrimination where there is a genuine operational requirement. This new obligation will increase compliance costs for business, and due to the fact that it was not contained in the QHRC's recommendations for reform, we see no demonstrable benefit for this change.

We welcome further engagement on our submission at any time.

### Building and Construction industry

ABS data indicates that as at 30 June 2021, there were a total of 79,230 construction businesses in operation across Queensland. This is more than every other sector of the economy.

The most striking feature of our industry's construction businesses is their size: of the total, the overwhelming majority (98.4 per cent) are small in size with less than 20 employees.

Any legislative changes should not adversely affect the industry if no demonstrable benefit can be identified, especially where the impacts are felt by small business, resulting in increased costs affecting the viability of the business.

### Exceptions – Work and work-related areas

Master Builders does not support the Bill containing a new provision for "reasonable and proportionate" measures at clause 28.

We have reviewed both the draft Bill<sup>1</sup> and the Consultation Guide<sup>2</sup>, as well as the final report from the *Building belonging: Review of Queensland's Anti-Discrimination Act 1991*<sup>3</sup> and submit that in relation to *Exceptions – Work and work-related areas* (page 23 of the Consultation Guide):

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<sup>1</sup> <https://www.publications.qld.gov.au/dataset/anti-discrimination-bill-2024-consultation/resource/f6e7fb8e-ec58-4b7f-aab2-5788ad9f3fb2>

<sup>2</sup> <https://www.publications.qld.gov.au/dataset/anti-discrimination-bill-2024-consultation/resource/1e94a0ee-e203-47db-8431-5262a2727486>

<sup>3</sup> [https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf)

- The new requirement at clause 28 of the Bill that genuine occupational requirements be “reasonable and proportionate” was not, as far as we can tell, recommended to apply to all work settings in the *Building belonging* final report.
  - Page 24 of the Consultation Guide makes no reference to the *Building belonging* report and instead simply states:
    - *Under current jurisprudence, genuine occupational requirements are considered synonymous with ‘inherent requirements’ which is the test found in Commonwealth discrimination law (e.g. section 21A of the Disability Discrimination Act). However, clause 28 in the draft Bill now also requires that the imposition of a genuine occupational requirement is reasonable and proportionate.*
  - Nor is this proposed new requirement raised in the *Final Queensland Government Response to the Queensland Human Rights Commission’s report, Building belonging: Review of Queensland’s Anti-Discrimination Act 1991*<sup>4</sup>

If it is decided to retain the current proposed clause 28, Master Builders submits that the new provision at clause 28 does not contain the requisite detail for employers to decide reasonable and proportionate measures.

- The new positive duty at clause 20 of the proposed Bill to take “reasonable and proportionate” measures to eliminate discrimination, sexual harassment, vilification or victimisation as far as possible is accompanied with factors that must be taken into consideration when deciding if such measures meet the new test, however clause 28 of the new Bill does not contain such factors. It instead contains only two examples of “genuine occupational requirements”, not the factors to be considered in deciding their reasonableness.
- Clause 20 of the Bill provides the following detail:
  - *In deciding whether a measure is reasonable and proportionate ... the following matters must be considered ...*
    - (a) *the size of the business or operations;*
    - (b) *the nature and circumstances of the business or operations;*
    - (c) *the resources of the business or operations;*
    - (d) *the business and operational priorities of the business or operations;*
    - (e) *the practicality and the cost of the measure;*
    - (f) *any other relevant matter.*

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<sup>4</sup> <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/c0fd9b56-1086-4a1e-87e1-81b4a9aae7aa/final-queensland-government-response-building-belonging-report.pdf?ETag=3849a5d660181d59a9986b931ae69af8>