LIKE LOVE PROJECT: VILIFICATION PROTECTIONS FOR LGBTIQ PEOPLE

Emma Fell, Ellyse Anderson and Emily Hazzard

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**Contents**

Introduction .......................................................................................................................... 3

1 PREVALENCE OF ONLINE VILIFICATION .................................................................... 3
   A Facebook as a ‘Disinhibiting Environment’ ................................................................. 3
   B Detachment from Social Cues ..................................................................................... 4
   C The Nature of the Comments Section and ‘Social Identity Formulation’ .................... 4
   D Why Aren’t More People Utilising Section 124A? ...................................................... 5

2 FACEBOOK’S REPORTING MECHANISMS ............................................................... 6
   A Facebook’s Five Personal Mechanisms for Overcoming Online Abuse ...................... 6

3 LEGISLATIVE PROTECTIONS ......................................................................................... 7
   A Queensland Legislation ............................................................................................... 7
   B Consideration of the Queensland Definition ............................................................. 8
   C How is Vilification Differentiated from Discrimination and Cyberbullying? .............. 10

4 WHAT LEGISLATIVE PROTECTIONS EXIST IN OTHER JURISDICTIONS? ................. 10
   A New South Wales ....................................................................................................... 10
   B The Australian Capital Territory .................................................................................. 11
   C Tasmania .................................................................................................................... 12
   D Other Australian Jurisdictions .................................................................................... 12

5 COMPARATIVE JURISDICTIONS ............................................................................... 13
   A Protected Characteristics of LGBTIQ Status ............................................................. 15
   B Discrimination, Harassment and Vilification Protection on the Grounds of LGBTIQ Status .................................................................................................................. 15

6 APPLICATION OF THE LEGISLATION ....................................................................... 16
   A Type of Conduct Found to Violate the Provisions ....................................................... 16
   B Exemptions .................................................................................................................. 17
   C Legal Mechanisms for Reporting .............................................................................. 17

7 CONCLUSION ................................................................................................................ 18
Introduction

In light of concerns that the debate regarding the Australian marriage equality postal survey will result in an increase of online hate speech, particularly on Facebook, this report seeks to raise awareness of the protections offered to individuals who suffer unlawful public vilification.

This report provides some introductory remarks on the prevalence of online vilification. We focus particularly on the use of ‘comments’ made on social media public pages. The report then reflects upon the nature of online social media platforms and how such platforms enable vilifying behaviour. Following this, the avenues available to victims to report such behaviour and their ability to seek remedies are discussed.

The report contends that Facebook’s mechanisms for reporting vilifying behaviour are limited because it places the burden for reporting such issues with the victim and there appear to be minimal consequences for the perpetrator.

Alternatively, a victim can bring a claim under s 124A of the Anti-Discrimination Act 1991 (Qld), which has a greater capacity to hold perpetrators to account. The provision establishes the offence of vilification as a public act, which incites hatred, serious contempt or severe ridicule on the grounds of race, religion, sexuality or gender identity. This report will explain the operation of s 124A, and compare it to similar offences existing in other Australian, and international, jurisdictions. Finally, it will provide a practical explanation of who can bring an action under s 124A and the process of bringing the complaint.

1 PREVALENCE OF ONLINE VILIFICATION

Any frequent Facebook user may bear witness to the increasing prevalence of hateful comments on their Facebook ‘newsfeeds’. Most recently, the ‘comments section’ under ‘posts’ discussing the marriage equality postal vote have become a hotbed for such behaviour. So, the question becomes, what is it about the nature of social networking forums that enables such behaviour and why are we not seeing more claims being brought under s 124A?

A Facebook as a ‘Disinhibiting Environment’

Facebook is a forum that enables anonymity which creates a ‘disinhibiting environment’.¹ As a result, users feel more emboldened to engage in socially

unacceptable behaviour which would otherwise be ‘inhibited by conventions seen in everyday life’. In a virtual environment, where users can hide behind a fake name, offenders feel that their anonymity prevents them from being held to account for their actions. Contributing to this environment is the sheer amount of physical distance between users, which adds to the offender’s belief that they will not be held liable for their actions.

B Detachment from Social Cues

In an online environment, users are not able to witness indicators of the other person’s feelings, such as their facial expressions and body language. Consequently, there is no ‘automatic activation of empathy as an inhibitor of aggression’. Without this activation of empathy through social cues, users are limited in their ability to understand the reactions and emotions of others. Hence, to an extent, the anti-social, and at times unlawful, behaviour of some users can be explained by a lack of awareness of the actual harm and distress that their actions are causing, due to a lack of direct contact with other users.

C The Nature of the Comments Section and ‘Social Identity Formulation’

The comments section provides a continuous thread, directly connected to a particular post, in which people can express their opinions and also see, and respond to, other users’ opinions. This feature often leads to hateful and unlawful comments appearing under posts debating LGBTIQ issues on public pages hosted by conservative groups, for example, the Australian Conservatives Party and the Australian Christian Lobby.

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3 Ibid.
4 Ibid.
5 Suler, above n 1.
8 Barlińska, Szuster and Winiewski, above n 6.
In this environment, such posts provoke controversy, as those who identify as conservative or devoutly Christian may view these debates as ‘questioning their social identity’. Hence, these comments sections tend to spiral into increasingly hateful debates. The group dynamic enhances the willingness of some people to speak up, as they are encouraged by other users’ comments that align with their own attitudes. Lee and Chun refer to this dynamic as a ‘spiral of empowerment’.

D Why Aren’t More People Utilising Section 124A?

There is something unique about online activity that seems to suggest to the public that actions that they would consider unlawful if conducted face-to-face do not warrant the same response online. Hence, whilst some of the comments posted may amount to unlawful vilification for the purposes of s 124A, the ‘virtual status’ of these offences renders people less likely to take action.

When discussing vilification provisions in Australia, Gelber and McNamara noted that the explanation for the lack of complaints being brought under these provisions is twofold.

Firstly, there is a lack of public knowledge of the existence of these provisions. This is partly the result of a lack of awareness within the community and shows that the legal profession needs to engage in more community education programs. There have been some positive advances on this matter following the recent High Court decision allowing the postal survey to proceed despite concerns about the effect it would have on the LGBTIQ community. Legal firms such as Maurice Blackburn, Shine Lawyers and the LGBTI Legal Service, have begun advertising the availability of vilification protections.

Another reason for the lack of potential awareness of the vilification provisions is that the preferred mechanism for dispute resolution is confidential conciliation. Hence, data regarding the number of actions being bought and their success rate is

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13 Ibid.
14 Williams, above n 2, 103.
16 Ibid.
17 Ibid.
not publicly accessible. Increased awareness of the cause of action available under s 124A is not only important to ensure people are aware of their right to bring a claim, but should also have a deterrent effect on other Facebook users.

Secondly, Gelber and McNamara noted that the underutilisation of the provision is also the result of ‘the profound negative effects of the incidents’ and lack of confidence that a sympathetic response will be achieved. When interviewing people who had experienced racial vilification, one interviewee claimed, ‘I usually can never … respond, I get totally paralysed’. Others cited concerns that they thought their complaints would not be taken seriously and that it would ultimately cause them more distress to bring an action than to move on from the matter. Thus, the underutilisation of s 124A is deeper than a mere lack of knowledge of the existence of protections. Rather, those involved in addressing the complaint need to show greater compassion and understanding to ensure victims feel empowered to engage with the process.

2 FACEBOOK’S REPORTING MECHANISMS

Facebook, among other social media platforms, places the responsibility for denunciation of hate speech on users. It has only limited proactive monitoring mechanisms, and thus the onus rests primarily on victims to report potential vilification. Further, Facebook encourages counter-speech, in which a person – likely the victim – responds to the poster of harmful comments by offering ‘accurate information and alternative viewpoints’. Facebook argues this works to ‘create a safer and more respectful environment’. Arguably, this is not how counter-speech plays out in non-virtual circumstances, and places the onus for action on victims or bystanders. Conversely, it is common for attempts to counter harmful posts on social media to quickly descend into public arguments and increasingly abusive comments.

A Facebook’s Five Personal Mechanisms for Overcoming Online Abuse

Facebook recommends a five-step process to addressing online abuse:

1. Send a private message to the person responsible for the offensive conduct;
2. ‘Unfriend’ the perpetrator;
3. ‘Block’ the perpetrator;
4. ‘Report’ the perpetrator’s comment as abusive; and

18 Ibid 507.
19 Ibid.
20 Facebook, Encouraging Respectful Behaviour: Hate Speech <https://m.facebook.com/communitystandards/encouraging-respectful-behavior/>.
21 Ibid.
5. ‘Unfollow’ the public page or ‘block’ it from your view

These mechanisms are largely ineffective at preventing, or remedying, unlawful vilification. Firstly, recommending that a victim sends a private message to their attacker shows a lack of understanding of the impact that vilification has on an individual, and is likely to only further an abusive relationship. Further, unfriending or blocking the individual responsible for the offending content fails to understand the public nature of the platform, as ‘friendship status’ is not required to view another person’s comments. In addition, the suggestion that the victim unfollow or block the public page has the consequence of inappropriately punishing the victim for the perpetrator’s offensive conduct.

Lastly, despite its suggestion that victims report abusive content, it has been reported that Facebook is failing to remove vilification on the grounds of LGBTIQ status.\(^{22}\) When content is reported, it is reviewed by Facebook employees who determine whether the content is in breach of Facebook’s Community Standards. There is a lack of publicly accessible criteria to explain these community standards. This creates uncertainty in the reporting process, due to a lack of awareness as to the sort of content that will constitute a breach.\(^{23}\) For example, content considered disturbing or distressing to an individual user may not meet the criteria for being removed or blocked. Further, if Facebook elects to take down particular content, it has been argued that it is often very slow at doing so.\(^{24}\) Facebook recognises these limits in their reporting mechanisms, as evident in their suggestion that users who feel threatened by content they see on Facebook contact law enforcement agencies.\(^{25}\)

3 LEGISLATIVE PROTECTIONS

A Queensland Legislation

Queensland law includes strong protections for LGBTIQ individuals, including specific provisions in the *Anti-Discrimination Act 1991* (Qld) outlawing vilification on the grounds of sexuality. These provisions make it unlawful to ‘incite hatred towards, serious contempt for, or severe ridicule of’ a person on the basis of their sexuality through a public act.\(^{26}\)

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\(^{22}\) Benjamin Abraham, ‘Challenging Hate Speech with Facebook Flarf: The Role of User Practices in Regulating Hate Speech on Facebook’ (2014) 23 *Fibre Culture Journal* 47, 66.

\(^{23}\) Ibid.

\(^{24}\) Ibid.


\(^{26}\) *Anti-Discrimination Act 1991* (Qld) s 124A.
**Anti-Discrimination Act 1991 (Qld)**

**124A Vilification on grounds of race, religion, sexuality or gender identity unlawful**

(1) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, religion, sexuality or gender identity of the person or members of the group.

(2) Subsection (1) does not make unlawful—

(a) the publication of a fair report of a public act mentioned in subsection (1); or

(b) the publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or

(c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.

**4A Meaning of public act**

(1) A public act includes—

(a) 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

(b) any conduct that is observable by the public, including actions, gestures and the wearing or display of clothing, signs, flags, emblems or insignia.

(2) Despite anything in subsection (1), a public act 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.

**Schedule: Dictionary**

*Sexuality* means heterosexuality, homosexuality or bisexuality

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**B Consideration of the Queensland Definition**

In determining whether s 124A has been contravened, a number of principles must be considered. The relevant test is an objective inquiry into whether the conduct is capable of inciting ‘reasonable members of the audience of the public act to hate, or have serious contempt for, or severely ridicule the targeted group’.\(^{27}\) Significantly, the person’s intention to incite is irrelevant, and it is not necessary to demonstrate that any particular person was actually incited.\(^{28}\) However, sexuality must be a ‘substantially contributing factor’, and there must be incitement to another to hate, ‘rather than a mere conveyance of hatred already held by the speaker’.\(^{29}\) Accordingly, the conduct must not simply be an expression of the speaker’s hatred of or contempt towards the group, but must be capable of inciting these feelings in others.\(^{30}\) Additionally, incite is to be measured against an ‘ordinary member of the

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\(^{27}\) Burns *v* Laws (EOD) [2008] NSWADTAP 32, [32].


\(^{29}\) GLBTI *v* Wilks & Anor [2007] QADT 27, [15].

\(^{30}\) *Sunol v Collier (No 2)* (2012) 289 ALR 128, 137-8 [41].
class to which the public act is directed, taking account of the circumstances in which the conduct occurs.’

Regarding the exceptions under s 124A(2), whether an act is done ‘reasonably’ is to be assessed against the standards held by a contemporary, educated community, which is ‘appreciative and respectful of the dignity and worth of everyone.’ The conduct must rationally relate to the protected activity, and be proportionate to what is necessary for that purpose. Conduct may fall under the ‘good faith’ exception where the person held an honest belief that the conduct was necessary or desirable in order to facilitate public discussion of a matter in the public interest, which is held to mean something that affects the public at large. Where speech is directed towards one individual, but it is reasonably foreseeable that another member of the public could have heard it, that speech may constitute a public act.

The ordinary, natural meaning should be used when interpreting words such as incite, hatred, contempt, and ridicule. Incite means ‘to rouse, to stimulate, to urge, to spur on, to stir up or to animate and covers conduct involving commands, requests, proposals, actions or encouragement’. Hatred, serious contempt, or severe ridicule are interpreted in a similar way. Hatred is an extreme emotion, such as intense dislike. Contempt involves holding the attitude that something or someone is worthless, or deserving of being treated as inferior. To ridicule is to deride, or laugh at.

The inclusion of the words serious and severe demonstrate the level of importance and harshness necessary to balance prohibition of vilification and freedom of expression.

The prohibition under s 124A is not inconsistent with the implied freedom of communication, due to the limitation contained in s 124(2)(c), which ensures that the scope of the provision is reasonably ‘appropriate and adapted to serve a legitimate end in a manner compatible with the maintenance of the constitutionally prescribed system of government’.

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31 Menzies v Owen [2014] QCAT 661, [18].
32 Ibid [24].
33 Sunol v Collier (No 2) (2012) 289 ALR 128, 137-8 [41].
35 Khalil v Sturges [2005] VCAT 2446, [51].
36 GLBTI v Wilks & Anor [2007] QADT 27, [15].
37 Sunol v Collier (No 2) (2012) 289 ALR 128, 137-8 [41]
39 Ibid.
40 Owen v Menzies & Ors; Bruce v Owen; Menzies v Owen [2012] QCA 170, [70].
C How is Vilification Differentiated from Discrimination and Cyberbullying?

In considering these laws, it is important to differentiate online vilification from cyberbullying and discrimination. Cyberbullying includes ‘making threats against, stalking, menacing, harassing or seriously offending someone’ through the use of technology. Cyberbullying is also sometimes distinguished from trolling, which involves deception and meaningless disruption, usually absent from cyberbullying. Conversely, cyberbullies generally know their victims in real life, and carry out very direct and targeted conduct. Due to the various methods employed in cyberbullying, and the inescapability of technology, victims of cyberbullying may experience heightened feelings of powerlessness.

Sexuality-based discrimination occurs when someone is treated less favourably than someone else because they are heterosexual, gay, lesbian, or bisexual. Discrimination on the basis of sexuality is prohibited under ss 7-8 Anti-Discrimination Act 1991 (Qld). Vilification is different again. While discrimination refers to unfair treatment, vilification involves a public act which incites hatred, serious contempt or severe ridicule for an individual or group due to their sexuality. Vilification may present itself in many forms, including ‘speech, graffiti, websites, and public abuse or media remarks’.

4 WHAT LEGISLATIVE PROTECTIONS EXIST IN OTHER JURISDICTIONS?

A New South Wales

The law in New South Wales regarding vilification is very similar to the position in Queensland. While the Queensland provision prohibiting vilification on the basis of

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43 Ibid.
46 Ibid.
47 Ibid.
sexuality includes other attributes, such as race and religion,\textsuperscript{48} New South Wales has a specific provision prohibiting homosexual vilification.\textsuperscript{49} The definition of ‘public act’ is very similar to the Queensland section.\textsuperscript{50} However, under the New South Wales legislation, only a member of the targeted group at which the allegedly unlawful conduct is directed has standing to lodge a complaint and pursue civil litigation.\textsuperscript{51} This is a key difference from Queensland, where the provision is broader to allow entities that meet specific criteria to bring an action on behalf of the targeted group (see section 6).\textsuperscript{52}

\begin{center}
\textbf{Anti-Discrimination Act 1977 (NSW)}

\textbf{49ZT Homosexual vilification unlawful}

(1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the homosexuality of the person or members of the group.

(2) Nothing in this section renders unlawful:

\begin{itemize}
  \item[(a)] a fair report of a public act referred to in subsection (1), or
  \item[(b)] a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the \textit{Defamation Act 2005} or otherwise) in proceedings for defamation, or
  \item[(c)] a public act, done reasonably and in good faith, for academic, artistic, religious instruction, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.
\end{itemize}
\end{center}

\textbf{B The Australian Capital Territory}

Specific anti-vilification provisions also exist in the Australian Capital Territory, making vilification on the basis of sexuality unlawful.\textsuperscript{53} Again, the ACT provisions are worded in a fairly similar manner to s 124A in Qld.

\begin{itemize}
  \item[\textsuperscript{48}] \textit{Anti-Discrimination Act 1991 (Qld)} s 124A.
  \item[\textsuperscript{49}] \textit{Anti-Discrimination Act 1977 (NSW)} s 49ZT.
  \item[\textsuperscript{50}] \textit{Anti-Discrimination Act 1991 (Qld)} s 4A; \textit{Anti-Discrimination Act 1977 (NSW)} s 20B.
  \item[\textsuperscript{51}] \textit{Anti-Discrimination Act 1977 (NSW)} s 88.
  \item[\textsuperscript{52}] \textit{Anti-Discrimination Act 1991 (Qld)} s 134(3), (4).
  \item[\textsuperscript{53}] \textit{Discrimination Act 1991 (ACT)} s 67A(1)(g).
\end{itemize}
C Tasmania

Provisions making it unlawful to incite hatred towards a person or group of people on the basis of sexual orientation also exist in Tasmania. 54

D Other Australian Jurisdictions

The remaining Australian jurisdictions – Victoria, South Australia, Western Australia, and the Northern Territory – do not have specific provisions prohibiting vilification on the grounds of sexuality. Instead, they rely on anti-discrimination provisions, which are also mirrored in Queensland, 55 which prohibit discrimination on the basis of sexual orientation. Sexuality based discrimination involves treating someone less favourably due to their sexuality.

54 Anti-Discrimination Act 1998 (Tas) s 19.
55 Anti-Discrimination Act 1991 (Qld) ss 7, 8.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Anti-Discrimination Laws</th>
<th>Anti-Vilification Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Capital Territory</td>
<td>Discrimination Act 1998 (ACT): s 7(w) and Part 3</td>
<td>Discrimination Act 1998 (ACT): s 67A(1)(g)</td>
</tr>
<tr>
<td>Victoria</td>
<td>Equal Opportunity Act 2010 (Vic): s 6</td>
<td>×</td>
</tr>
<tr>
<td>South Australia</td>
<td>Equal Opportunity Act 1984 (SA): Part 3</td>
<td>×</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Equal Opportunity Act 1984 (WA): Part 11B</td>
<td>×</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>Anti-Discrimination Act 1996 (NT): s 19</td>
<td>×</td>
</tr>
<tr>
<td>Commonwealth</td>
<td>Sex Discrimination Act 1984 (Cth): s5A</td>
<td>×</td>
</tr>
</tbody>
</table>

### 5 COMPARATIVE JURISDICTIONS

The International Covenant on Civil and Political Rights (ICCPR) prohibits hate speech, thereby imposing a limitation on the right to freedom of speech.\(^{56}\) Despite this, former United Nations Secretary General Ban Ki-Moon noted that the treatment of LGBTIQ peoples worldwide, and the prevalence of hate speech, has been recognised as ‘one of the great neglected human rights challenges of our time’.\(^{57}\)

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As in Australia, other international jurisdictions have grappled with the issue of how to protect the LGBTIQ community from vilification, whilst not unduly restricting the right to freedom of speech.\(^5^8\) This debate has been particularly prominent in the US, as conservative parties vocally champion their First Amendment right. Despite this, the First Amendment clearly does not protect the incitement of violence.\(^5^9\) In the United States in particular, there is more of a focus on hate crimes as opposed to vilification, as the debate has become increasingly associated with violence, as was seen in the Pulse Nightclub attack.\(^6^0\)

At present, there is a lack of consistency in protections for LGBTIQ people across Europe, and this has been cause for debate.\(^6^1\) At present, EU law does not require member states to recognise sexual orientation or gender identity as a motivating factor for violence under criminal law. However, some member-states do provide such protections within their domestic legislation.\(^6^2\) Some non-EU members not only ignore sexual orientation and gender identity in the realm of human rights protections, but states such as Russia and Moldova have gone as far as banning propaganda of ‘non-traditional’ sexual relationships.\(^6^3\)


\(^{59}\) Ibid.

\(^{60}\) Lisa Gutierrez, LGBT Americans Face a Steady Threat of Hate and Violence (13 June 2016) The Kansas City Star

\(^{61}\) European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex, Hate Crime & Hate Speech (31 August 2017) European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex

\(^{62}\) Ibid.

\(^{63}\) Ibid.
### A Protected Characteristics of LGBTIQ Status

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Sexual Orientation</th>
<th>Gender Identity</th>
<th>Intersex Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia (Cth)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Australia (QLD)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
</tr>
<tr>
<td>Netherlands</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
</tr>
<tr>
<td>Canada</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
</tr>
<tr>
<td>New Zealand</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
</tr>
<tr>
<td>Taiwan</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
</tr>
</tbody>
</table>

- Form of sex discrimination
- Could be interpreted as a form of sex discrimination

### B Discrimination, Harassment and Vilification Protection on the Grounds of LGBTIQ Status

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Direct and Indirect Discrimination</th>
<th>Harassment</th>
<th>Vilification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia (Cth)</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
</tr>
<tr>
<td>Australia (QLD)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>United Kingdom</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Netherlands</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
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<tr>
<td>Canada</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>New Zealand</td>
<td>✓</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>Taiwan</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
</tr>
</tbody>
</table>

- Limited to provision of goods and services, accommodation and employment

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65 Ibid.
6 APPLICATION OF THE LEGISLATION

A Type of Conduct Found to Violate the Provisions

A wide range of conduct has been found to be in violation of s 124A\(^{66}\) and the comparable provisions in other states.

In *Menzies v Owen*,\(^ {67}\) three of the six acts complained of were found to be in violation of the section. This included a publicly available report made to the local Council which included various statements suggesting that homosexuals prey on children, should be put to death, and should not be allowed in public spaces.\(^ {68}\) Further, a newsletter distributed to local residents making a large number of homophobic statements, including descriptions of homosexuals as ‘sodomites’, claims that homosexuals should not have human rights, that homosexuals abuse children, and that homosexuals place a burden on the health system, also contravened the section.\(^ {69}\) Finally, a website publication advocating the death sentence for homosexuals, claiming homosexuals steal children, and linking homosexuality to bestiality (among other things) was also in contravention.\(^ {70}\)

The case of *GLBTI v Wilks & Anor*\(^ {71}\) regarded a letter to the editor using disparaging descriptions of homosexuals, recounting a fictional attack on gay people, and making threats of future attacks.\(^ {72}\) It was held that both the writer and the publisher of the newspaper had violated the provision, and were ordered to make public apologies and retractions.\(^ {73}\) In another case, a blog post containing accusations that gay people are perverted, sick criminals, and linking homosexuality to pedophilia was found to be in violation of the equivalent NSW law.\(^ {74}\) Similarly, comments printed in a newspaper placing gay people in the same category as pedophiles were also in violation of the section.\(^ {75}\)

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\(^{66}\) *Anti-Discrimination Act 1991* (Qld).

\(^{67}\) [2014] QCAT 661.

\(^{68}\) *Menzies v Owen* [2014] QCAT 661, [54], [68].

\(^{69}\) Ibid [79], [95].

\(^{70}\) Ibid [97], [126].

\(^{71}\) [2007] QADT 27.

\(^{72}\) *GLBTI v Wilks & Anor* [2007] QADT 27, [4].

\(^{73}\) Ibid [23].

\(^{74}\) *Burns v Sunol* [2016] NSWCATAD 74, [14], [43].

\(^{75}\) *Burns v Corbett* [2013] NSWADT 227, [19], [46].
B Exemptions

However, there are also a number of exceptions to the provision.\textsuperscript{76} For example, acts done in good faith for the public interest will not be in violation of the section, as was held in a case in which a politician circulated a pamphlet discussing teachings in the Koran.\textsuperscript{77} Further, offensive content disparaging homosexual men broadcast widely as part of a television program was found to be intended as comedy, and not likely to incite vilification.\textsuperscript{78}

C Legal Mechanisms for Reporting

There are a range of criteria and restrictions that apply when making a report under s 124A.\textsuperscript{79} First, a range of people may make a complaint, including: a person who was subjected to the alleged conduct,\textsuperscript{80} an agent acting on behalf of that person;\textsuperscript{81} a person authorised to act on behalf of the person who was subjected to the conduct but is unable to complain;\textsuperscript{82} and a relevant entity.\textsuperscript{83} In order for an entity to make a valid complaint, it must be a body which is primarily intended to promote the interests or welfare of a particular group – in this case persons of a particular sexuality.\textsuperscript{84} Further, the complaint by the relevant entity must be made in good faith, the alleged contravention must have affected or be likely to affect relevant persons for the entity, and it must be in the interests of justice for the complaint to be accepted.\textsuperscript{85} It is possible for a complaint to be made by two or more people jointly,\textsuperscript{86} and where it is alleged that a number of people were subjected to the conduct, it may be possible to establish a representative complaint.\textsuperscript{87}

Where a complaint has been made, the commissioner must consider whether the issue may be resolved through a conciliation process; if so, this must be attempted as the first step.\textsuperscript{88} If a conciliation conference is held, and does not result in the resolution of the complaint, the complainant may seek a referral to the tribunal for a

\textsuperscript{76} Anti-Discrimination Act 1991 (Qld) s 124A.
\textsuperscript{77} Deen v Lamb [2001] QADT 20.
\textsuperscript{78} Burns v Nine Network Australia Pty Ltd [2011] NSWADTAP 25, [38], [46].
\textsuperscript{79} Anti-Discrimination Act 1991 (Qld).
\textsuperscript{80} Ibid s 134(1)(a).
\textsuperscript{81} Ibid s 134(1)(b).
\textsuperscript{82} Ibid s 134(1)(c).
\textsuperscript{83} Ibid s 134(3).
\textsuperscript{84} Ibid s 134(5).
\textsuperscript{85} Ibid s 134(4).
\textsuperscript{86} Ibid s 134(2).
\textsuperscript{87} Ibid s 146.
\textsuperscript{88} Ibid s 158.
Here, the burden is on the complainant to prove on the ‘balance of probabilities’ that the respondent engaged in contravening conduct under s 124A.\(^9\)

### 7 CONCLUSION

In light of the current Australian discourse regarding marriage equality, and the ensuing online debate of this topic, it is necessary to consider the protections available to LGBTIQ people who may be subject to vilification in this context. Social media sites, such as Facebook, provide a particularly potent forum for hate speech. A range of factors contribute to this, including: social media’s tendency to embolden people to conduct themselves in ways that would be unacceptable in everyday life; the detachment from social cues provided by online forums; and the nature of comments sections which provoke controversy and escalate confrontations. Despite this, the number of complaints made under s 124A is limited, as there is a lack of public knowledge of the provisions, and a lack of confidence in the supportive capacity of the process. Further, Facebook’s internal mechanisms for combating hate speech are largely inadequate, placing substantial burden on victims, and recommending unrealistic processes.

Nonetheless, Queensland law contains strong protections for LGBTIQ people, including the prohibition of vilification of the grounds of sexuality, among other anti-discrimination provisions. Other Australian jurisdictions, including New South Wales, the Australian Capital Territory, and Tasmania, have similar provisions. Further, there are comparable protections in other international jurisdictions. Vilification claims have been substantiated in a range of circumstances, and provide a strong and effective means of protection for LGBTIQ Queenslanders. It is crucial, therefore, that there is sufficient public knowledge of, and confidence in, s 124A, to ensure this protection is fully utilised.

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\(^{90}\) Burns v Nine Network Australia Pty Ltd [2011] NSWADTAP 25, [15]-[19].

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\(^{9}\) Ibid s 164A.