



Queensland
Human Rights
Commission

Anti-Discrimination Bill 2024 consultation

Submission to Department of Justice and Attorney-
General

22 March 2024

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About the Commission

1. The Queensland Human Rights Commission (**QHRC**) is an independent statutory authority with functions under the *Anti-Discrimination Act 1991* (**Anti-Discrimination Act**) and the *Human Rights Act 2019* (**Human Rights Act**), which include:
 - dealing with complaints of discrimination, sexual harassment, vilification, reprisal (under the *Public Interest Disclosure Act 2010*), and contraventions of the Human Rights Act
 - reviewing public entities' policies, programs, procedures, practices and services in relation to their compatibility with human rights
 - promoting an understanding, acceptance, and public discussion of human rights and the Human Rights Act in Queensland
 - providing education about human rights and the Human Rights Act.

Summary of submission

2. This submission is in response to the consultation draft of the Anti-Discrimination Bill 2024 (**draft Bill**).
3. The QHRC strongly supports the introduction of a new Anti-Discrimination Bill into the Queensland Parliament.
4. The majority of provisions outlined in the draft Bill align closely with the recommendations made by the QHRC's 2022 review of the Anti-Discrimination Act, as detailed in *Building belonging: Review of Queensland's Anti-Discrimination Act 1991* (**Building belonging review**).
5. This submission outlines:
 - key improvements to the law presented in the Bill.
 - priority concerns necessitating amendments.
 - suggested amendments across a broad range of issues (contained in Annexures A - H to this submission).

Background

6. In 2021, the Attorney-General asked the Queensland Human Rights Commission to review the *Anti-Discrimination Act 1991* (Qld). The QHRC's *Building belonging* review considered whether there was a need for any reform to enhance and update the Act so it best protects and promotes equality, non-discrimination and the realisation of human rights.¹

¹ Review of the *Anti-Discrimination Act 1991* (Qld), Terms of Reference 2.

7. The *Building belonging* review was the first thorough consideration of Queensland's anti-discrimination law in over 30 years. The Review aimed to ensure the Act's relevance and effectiveness in contemporary Queensland. Through extensive consultations and consideration of survey responses and submissions, the Review gathered insights from diverse stakeholders about the complex nature of discrimination and its negative impacts on affected individuals and communities.
8. The *Building belonging* review highlighted the limitations of the current Act in addressing systemic discrimination. The proposed reforms set out in the *Building belonging* review emphasised the importance of changes that not only address individual instances of discrimination but tackle its systemic roots. This led to recommendations for a more proactive approach to addressing discrimination beyond the existing, reactive, complaints-driven framework.
9. The Review called for significant reforms, including the introduction of a positive duty for organisations to eliminate discrimination, the redefinition and expansion of protected attributes, and the recognition of intersectional (combined attribute) discrimination.
10. Other changes to legal definitions and to the complaint process were directed at simplifying the legal framework for the benefit of both complainants and duty holders, making it more accessible and effective, and improving access to justice.
11. The *Building belonging* review concluded with a call for a comprehensive overhaul of the Anti-Discrimination Act, advocating for a new Act that aligns with contemporary societal values and international human rights law. The final report² was delivered to the Attorney-General in July 2022.
12. In response to the QHRC recommendations in the *Building belonging* review, the Queensland Government provided their *Final Queensland Government Response* which was tabled in the Legislative Assembly on 3 April 2023. The response gave in-principle support to all of the QHRC recommendations, and indicated that it was committed to the introduction of legislation in the current term of government.
13. Vilification and hate crimes laws were not examined in the *Building belonging* review as a parliamentary committee had been established to consider the law in Queensland.³
14. On 31 January 2022, the Legal Affairs and Safety Committee concluded their inquiry into serious vilification and hate crimes and provided their report to the Legislative Assembly (No. 22, 57th Parliament). The QHRC assisted that inquiry

² *Building belonging: Review of Queensland's Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022).

³ Review of the *Anti-Discrimination Act 1991* (Qld), Terms of Reference 4.

by making recommendations for improvements to both civil and criminal responses to vilification. The government responded in May 2022 with support for 9 of the recommendations and in-principle support for the remaining 8 recommendations.

Key improvements

Shifting to prevention

15. A major focus of the *Building belonging* review was to create a new legislative scheme that focussed on prevention of discrimination and sexual harassment. The draft Bill achieves this reframe by introducing a positive duty to eliminate discrimination and other forms of unlawful conduct, combined with new education and compliance powers for the QHRC.
16. For more information on some aspects requiring improvement, refer to Annexure G.

Refining the key concepts

17. The *Building belonging* review sought to ensure that the legal tests for discrimination respond effectively to the problems they are seeking to address and are easy to understand and apply. Updates to the meaning of direct and indirect discrimination and the new affirmative measures provisions reflect the purpose and intention of recommendations made by the Review.
18. Consistent with the recommendations of the *Building belonging* review, the draft Bill acknowledges that individuals may encounter discrimination based on multiple grounds, and ensures that people can bring complaints based on intersectional experiences of discrimination.
19. While not addressed by the *Building belonging* review, the QHRC supports enhancing the 'characteristics extension'⁴ so that it applies not only to discrimination but to other kinds of unlawful conduct, such as vilification.
20. For more information on some aspects requiring improvement, refer to Annexure B.

Enhancing protections from vilification and hate speech

21. While vilification was excluded from the terms of reference for the QHRC's review of the Anti-Discrimination Act, the Bill reflects many recommendations made by the QHRC to the Legal Affairs and Safety Committee Inquiry into vilification and hate crime laws.

⁴ Anti-Discrimination Act 2024 Draft Bill (Qld) cl 11.

22. Positive enhancements have been included in the draft Bill to improve Queensland's civil vilification laws, including:
 - introduction of a new harm-based provision (clause 84)
 - extended meaning of 'public' to include workplaces and schools (clause 83)
 - protection of people based on their age, disability, and sex, in addition to the current protections based on race, religion, gender identity, and sexuality (sexual orientation in the draft Bill) (clause 84(2) and clause 85(1)).
23. For more information on some aspects requiring improvement, refer to Annexures B.

Improving the complaints system

24. In response to the *Building belonging* review, the draft Bill updates the QHRC's complaints function to ensure that the QHRC can deliver a flexible, modern, and efficient dispute resolution service.
25. Several changes, such as increasing the time limit on making complaints and improvement of the representative complaints provisions, enhance access to justice for people affected by discrimination. A shift towards a shared burden of proof in the tribunal hearing process will also enhance access to justice.
26. For more information on some aspects requiring improvement, refer to Annexure F.

Increasing protections

27. The *Building Belonging* review aimed to ensure that all people who require protection under the Anti-Discrimination Act are included, and that coverage of the law extends to all contexts and settings in which unfair discrimination occurs, subject to reasonable exceptions.
28. The draft Bill closely follows the recommendations of the *Building Belonging* review and includes new attributes, such as homelessness and subjection to domestic or family violence, and improves the definitions of several attributes where the scope was too narrow or further clarity was needed.
29. Most of the *Building Belonging* review's recommendations for updates to, or omission of exceptions, have also been implemented in the draft Bill.
30. For more information on some aspects requiring improvement, refer to Annexures A and E.

Priority concerns

Commencement

31. The draft Bill indicates an intention for the Anti-Discrimination Act to commence by proclamation, rather than on a specified date.⁵
32. The *Building belonging* review recommended that the QHRC be given additional functions to allow it to support proactive compliance with the positive duty and to effectively address non-compliance. The Review recommended that, while these functions should be introduced immediately, provisions related to ‘upper end enforcement’ should be staged to allow duty holders time to seek and receive guidance on steps they may need to take to comply with any new obligations.
33. The QHRC observes that financial penalties are not included in the suite of compliance options under the draft Bill. This means that all regulatory action that may be taken by the QHRC as an outcome of an investigation will be voluntarily entered into by a duty holder. This aligns with one of the main purposes of the draft Bill, which is to promote and facilitate voluntary compliance.
34. Accordingly, we consider that there is no longer adequate justification for staged introduction, and that all provisions in the Act should commence on a specified commencement date.
35. This approach will ensure the timely passage of the legislation and provide certainty to the community, stakeholders, and the QHRC, about the new law.
36. The QHRC will have a key role in implementation of the regulatory function, and this holds significant resourcing and staffing implications. To ensure the QHRC can provide adequate support, awareness, and education to stakeholders and the broader Queensland community on these fundamental changes, certainty of the commencement date is imperative.
37. A significant part of this work will be to consult on, develop, publish, and publicise guidelines and education programs for duty holders to ensure that they are ready to comply with the updated Act. This significant program of work would be assisted by clear commencement timeframes. Further, a single commencement date for the reforms will reduce costs and avoid the potential for unnecessary confusion that may result from staged commencement.

Recommendation

The Anti-Discrimination Act should commence on 1 September 2025.

⁵ Anti-Discrimination Act 2024 Draft Bill (Qld) cl 2.

Liability (vicarious liability)

38. The *Building belonging* review did not make any recommendations for changes to provisions regarding vicarious liability, currently contained in sections 132 to 133 of the Anti-Discrimination Act. In Queensland the law on vicarious liability is settled, and stakeholders did not raise any concerns with the Review about the wording of the current provisions.
39. Part 8 of the Bill⁶ replaces the current Act's vicarious liability provisions with new provisions for 'liability', the effect of which is likely to drastically alter the extent to which a person will be held liable for the actions of their workers or agents.
40. Section 132 of the Anti-Discrimination Act sets out the reason for vicarious liability provision in the Act and the work it has to do:
- (1) One of the purposes of the Act is to promote equality of opportunity for everyone by making a person liable for certain acts of the person's workers or agents.
 - (2) This purpose is to be achieved by making a person civilly liable for a contravention of the Act by the person's workers or agents.
41. Section 133(1) of the Anti-Discrimination Act states that where a person's workers or agents contravene the Act 'in the course of work or while acting as agent, both the person and the worker or agent, as the case may be, are jointly and severally civilly liable for the contravention' and action can be taken against the worker or agent, the vicariously liable party, or both. However, section 133(2) provides that:
- (2) It is a defence to a proceeding for a contravention of the Act arising under subsection (1) if the respondent proves, on the balance of probabilities, that the respondent took reasonable steps to prevent the worker or agent contravening the Act.
42. The draft Bill has omitted the current vicarious liability sections. The liability clauses set out in Clauses 93 to 96 introduce new concepts of:
- *representative* – rather than worker or agent
 - *within the scope of the representative's actual or apparent authority* – rather than in the course of work or while acting as agent
 - reasonable *diligence* (for the defence) – rather than reasonable steps
 - proving a *person's state of mind* about a particular act or omission.

⁶ Anti-Discrimination Act 2024 Draft Bill (Qld) cls 93 - 96.

43. The Consultation guide in relation to the draft Bill does not explain the reason for these changes.

When a person is vicariously liable for others

44. Clause 96 of the draft Bill provides for liability of a *representative* of a person. 'Representative of a person' is defined in clause 93 by reference to *employee* and *agent*.
45. 'Employee' is defined for the purposes of Part 8 (liability) for an *entity* as including a person engaged by the *entity* under a contract of service. Entity is not defined in the draft Bill, however section 35 of the *Acts Interpretation Act 1954* (Qld) provides that a reference in an Act to an entity is a reference to an entity in and for Queensland.
46. The meaning of 'agent' is defined in the dictionary to mean a person who has *actual, implied, or ostensible authority* to act on behalf of another. However, clause 96 limits liability to acts or omissions within the scope of the representative's *actual or apparent authority*.
47. There is clear Queensland jurisprudence on the meaning of 'in the course of work'.⁷ The words are construed broadly, and their interpretation is not confined to analogies from the law of vicarious liability in tort. The expression 'acting as agent' does not require connection with the performance of work, merely the existence of an agency, and whether the conduct was within some perceived scope of apparent or ostensible authority is not an element for deciding vicarious liability.⁸
48. The changes to vicarious liability in clauses 93 to 96 would limit the current broad coverage of liability for the conduct of a person's workers or agents. The limitation is inconsistent with the government's stated purpose of the draft Bill to protect people more effectively from discrimination, sexual harassment, vilification and victimisation and other unlawful conduct.
49. The new phrasing is likely to limit the liability of organisations where a worker has done something that is clearly not within the scope of their work tasks, such as when an employee has sexually assaulted another employee on work premises.

Reasonable steps defence

50. As to the defence in clause 96, there is also no basis for changing the existing defence of taking reasonable steps to *exercising reasonable diligence*. The latter expression is less likely to be understood by those who have a duty to prevent contraventions of the Act. It is also incongruent with the new positive duty in

⁷ *Oaks Hotels & Resorts Limited v Knauer & Ors* [2018] QCA 359.

⁸ *JKL Limited v STU & Ors* [2018] QCATA 29.

clause 19 of the Bill which requires taking ‘reasonable and proportionate measures.’

51. Further, there is helpful case law in Queensland⁹ that assists duty holders to understand their obligations to take ‘reasonable steps’, depending on the size and capacity of the employer. This case law may no longer be relied upon if the words change from ‘reasonable steps’ to ‘reasonable diligence’.
52. All Australian discrimination laws contain a defence to liability for a worker or agent’s contravention of the Act. The QHRC is concerned that the new provisions are out of step with most vicarious liability provisions in state and federal discrimination laws in Australia.
53. The QHRC was unable to identify any jurisdictions of where ‘due diligence’ was the wording of the defence to vicarious liability.¹⁰
54. The majority of vicarious liability provisions in state or federal laws either contain the words ‘reasonable steps’ or ‘all reasonable steps’. Like section 133(2) of the current Queensland Act, taking ‘reasonable steps’ is a defence under Tasmanian¹¹ and South Australian¹² laws. Taking ‘*all* reasonable steps’ (emphasis added) is a defence under New South Wales, Western Australian, Northern Territory, ACT laws, and under the federal race and sex discrimination laws.¹³ Victorian legislation provides a similar exception to vicarious liability where the employer or principal took ‘reasonable precautions’ to prevent the contravention.¹⁴
55. In addition, the current drafting includes a section regarding proof of a person’s state of mind about a particular act or omission.¹⁵ Proving a person’s state of mind about a particular act or omission is rarely relevant in anti-discrimination law, particularly as a person’s motivation for discrimination and whether they are

⁹ *Mt Isa Mines Limited v Hopper* [1999] 2 Qd R 496; *Webb v State of Queensland* [2006] QADT 8; *KW v BG Limited & Ors* [2009] QADT 7.

¹⁰ The *Disability Discrimination Act 1992* (Cth) s 123(2), (4) requires the body to establish that they both took ‘reasonable precautions *and* exercised due diligence’ (emphasis added) as does the *Age Discrimination Act 2004* (Cth) ss 57(2), (4).

¹¹ *Anti-Discrimination Act 1998* (Tas) s 104(2)

¹² *Equal Opportunity Act 1984* (SA) s 91(2).

¹³ *Anti-Discrimination Act 1977* (NSW) s 53(3), the *Equal Opportunity Act 1984* (WA) s 161(2), the *Anti-Discrimination Act 1992* (NT) s 105(2), the *Discrimination Act 1991* (ACT) s 121A(3), the *Racial Discrimination Act 1975* (Cth) ss 18A(2), 18E(2), and the *Sex Discrimination Act 1984* (Cth) s 106(2).

¹⁴ The *Equal Opportunity Act 2010* (Vic) s 110.

¹⁵ *Anti-Discrimination Act 2024 Draft Bill* (Qld) cl 96(3).

aware of the discrimination do not matter.¹⁶ One exception may be in relation to sexual harassment.¹⁷ Therefore, clause 96(3) appears to be superfluous.

Recommendation

Section 133 of the Anti-Discrimination Act should be reinstated, and a clause that is similar to section 132, which explains the purpose of the liability provisions, should be included.

Acts done in compliance with or authorised by other laws

56. Clause 56(1) of the draft Bill provides an exception where discrimination is necessary to comply with State or Commonwealth laws, or to comply with an order of a court or tribunal.
57. The QHRC supports the exception that applies to acts necessary to comply with an order of a court or tribunal.
58. However, it has serious concerns about cl 56(1)(a) which creates an exception to discrimination in relation to compliance with other laws. Although section 106 of the Anti-Discrimination Act provides a similar exception, clause 56 of the draft Bill significantly expands¹⁸ the scope of the exception by:
 - applying to future legislation as well as past legislation (the current exception only applies to legislation in force as at 30 June 1992)
 - applying to both State and Commonwealth legislation¹⁹
 - applying to conduct that is 'necessary to comply with, or is authorised by' legislation, rather than conduct that is 'necessary to comply with, or is *specifically* authorised' by another law.
59. These three changes will greatly broaden the circumstances in which a person may rely on the exception and give rise to significant gaps in protection.

Expansion in scope of application

60. Clause 56 broadens the application of the exception to any law, existing or future, State or Commonwealth. By doing so, it displaces ordinary principles of statutory construction that would otherwise apply to resolve any potential inconsistency between laws. Under those ordinary principles, where there is an overlap between two legislative provisions a court will try to read them in a way that

¹⁶ Anti-Discrimination Act 2024 Draft Bill (Qld) cls 13(2)-(3).

¹⁷ Anti-Discrimination Act 2024 Draft Bill (Qld) cl 79(b)(i).

¹⁸ Clause 56 also narrows the exception in some ways, including by removing compliance with an existing provision of an industrial agreement under the repealed *Industrial Relations Act 1999* (Qld).

¹⁹ Section 106 of the Anti-Discrimination Act refers to acts necessary to comply with or specifically authorised by another 'Act', and 'Act' is defined in the *Acts Interpretation Act 1954* (Qld) s 6, to mean 'an Act of the Queensland Parliament'.

allows them to operate concurrently.²⁰ This approach promotes the objects of the draft Bill, whereas an exception that gives precedence to other legislation, past or future, does not.

61. The *Building belonging* review did not recommend any change to the existing exception, and no concerns from stakeholders were noted by the Review that might justify such an expansion of scope. A number of other Australian jurisdictions operate without such exceptions in their discrimination laws, and law reform bodies have recommended the removal of existing provisions to comply with other Acts in state and territory legislation.²¹
62. The Consultation guide provides limited justification for this significant change, and mentions compliance with a Commonwealth Act that regulates superannuation and to:

... permit discrimination on the basis of immigration or migration status where necessary to comply with a law of the State or the Commonwealth regarding the regulation of immigration to Australia.²²
63. Such a broad exception is not the least restrictive means to achieve this end. The Anti-Discrimination Act has been working effectively in this area for more than 30 years without any exception for laws passed after 1992. Given that any legislation invoked under the ‘existing provision of another Act’ provision in s 106 of the Anti-Discrimination Act would now be 30 years old, it should not be necessary to reproduce the exception relating to those laws in the new Bill. If any inconsistency remains, it should be dealt with through ordinary principles of statutory interpretation.
64. If there are concerns that the introduction of new protected attributes, or expansion of the definition of some attributes, might cause difficulties with the application of particular laws (for example, the Blue Card and Yellow Card regimes, or legislation touching on immigration status) even after the application

²⁰ See, for example, *State of Queensland v Attrill* [2012] QCA 299, [29] and Neil Rees, Simon Rice and Dominique Allen, *Australian anti-discrimination and equal opportunity law* (Federation Press, 3rd ed, 2018), [15.10.8].

²¹ South Australia and Western Australia do not have an exception for compliance with laws. The WA Law Reform Commission recently examined the issue and concluded that there was no reason to reinstate a previously-existing exception. It also noted that ‘Law Reform bodies in the ACT, Victoria and NSW have recommended the repeal or amendment of similar provisions that provide an exception for acts done to comply with the requirements of another law’: WA Law Reform Commission, *Review of the Equal Opportunity Act 1984 (WA)* (May 2022: Final Report) 158.

²² Department of Justice and Attorney-General (Qld), *Consultation Guide: Anti-Discrimination Bill 2024 (Exposure Draft)* February 2024, 30.

of ordinary Constitutional or statutory interpretation principles, those specific laws should be identified, and the exception limited to them.²³

65. Alternatively, any broader exceptions should be limited to the new or amended attributes and to laws passed before commencement of the Bill. When parliament passes new legislation they are taken to be aware of existing anti-discrimination protections, and if they wish to create an exception from such protections this should be done clearly in the later Act.

Conduct 'authorised by' another law

66. By including the words 'or is authorised by' another law, the exception in clause 56(1) allows a person to act inconsistently with the draft Bill not only where another law compels such action,²⁴ but also where there is a discretion under another law that would allow the person to act in a certain way.²⁵ Although this reflects the existing position to some extent under s 106 of the Anti-Discrimination Act, it appears to have been made even more permissive by removal of the word 'specifically' and its scope of operation significantly increased by the fact it now applies to any other law.
67. Allowing discretions to operate in this way is inconsistent with the purposes of the draft Bill. If this exception is retained at all the words 'or is authorised by' must be removed.

Suggested drafting for more limited exception

68. Ideally, the exception in Clause 56 should be limited to conduct necessary to comply with an order of a court or tribunal, with no specific exception for compliance with other laws. However, if it is considered necessary to address specific issues associated with the redefined or new attributes, the following drafting illustrates potential options to improve the drafting:

Option one:

Compliance with legislation or court or tribunal orders

- (1) A person may discriminate against another person if the discrimination is necessary to comply with an order of a court or tribunal.

²³ This is the approach taken in a number of Commonwealth laws, including the *Sex Discrimination Act 1984* (Cth) s 40(2); *Disability Discrimination Act 1992* (Cth) s 47(2); *Age Discrimination Act 2004* (Cth) ss (1)-(1A).

²⁴ The words 'in direct compliance with' and analogous phrases such as 'necessary to comply with' have been interpreted narrowly in this way: *Waters v Public Transport Commission* (1991) 173 CLR 349, 369-370 (Mason CJ and Gaudron J), 413 (McHugh J); Neil Rees, Simon Rice and Dominique Allen, *Australian anti-discrimination and equal opportunity law* (Federation Press, 3rd ed, 2018) [15.10.26]–[15.10.30].

²⁵ This is how the words 'authorised by' have been interpreted: *Wojcik v Roads Corporation* [1997] VADT 75, discussed in Neil Rees, Simon Rice and Dominique Allen, *Australian anti-discrimination and equal opportunity law* (Federation Press, 3rd ed, 2018), [15.10.31].

- (2) A person may discriminate against another person on the basis of [relevant new or amended attribute/s] if the discrimination is necessary to comply with any of the following as in force at the commencement of this section:
- a. *Working with Children (Risk Management and Screening Act) 2000*;
 - b. *Disability Service Act 2006*;
 - c.

Option two:

Compliance with legislation or court or tribunal orders

- (1) A person may discriminate against another person if the discrimination is necessary to comply with an order of a court or tribunal.
- (2) A person may discriminate against another person on the basis of [relevant new or amended attribute/s], if the discrimination is necessary to comply with an existing provision of another Act.
- (3) In this section—
Existing provision means a provision of an Act in existence at the commencement of this section.

Recommendation

Clause 56(1) of the draft Bill should be amended to remove the exception for compliance with other laws. However, if such an exception is retained it should be amended to:

- limit the exception to specific statutory regimes, or to existing legislation as it relates to new or amended protected attributes; and
- remove reference to actions that are ‘authorised by’ another law.

Reasonable accommodations

69. The *Building belonging* review recommended the inclusion of a new, stand-alone requirement to make reasonable accommodations for a person with a disability. The intention was that this requirement would be enforceable by people with a disability in the same manner as other contraventions of the Act.²⁶

70. However, the draft Bill includes the concept of reasonable accommodations through:

- creating a positive duty that is *not* actionable by an individual through making a complaint (clause 18); and
- incorporating it into the definitions of direct and indirect discrimination (clauses 14 and 15).

71. The QHRC has several concerns about this approach.

²⁶ *Building belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022), Recommendation 5.

Incorporating concept into definitions of direct and indirect

72. The draft Bill imports reasonable accommodations into both direct and indirect discrimination creating unnecessary complexity. This drafting may also lead to an incorrect interpretation that people without the attribute of disability are not entitled to reasonable accommodations, where this may currently be argued under indirect discrimination, such as on the grounds of family responsibilities.
73. Reasonable accommodations as a kind of direct discrimination creates confusion because there is no causation element like there is for 'traditional' direct discrimination. Attempting to cast reasonable accommodation as a type of direct discrimination, which requires the person with disability to be treated unfavourably, also creates problems when trying to define 'reasonable accommodation' in clause 12.
74. Making a complaint about reasonable accommodations as a type of indirect discrimination under clause 15(2) requires the person to demonstrate: 1) The imposition of a term, 2) that has the effect of disadvantaging the person because of the disability, 3) where the person would not be disadvantaged by the condition if a reasonable accommodation was made, and 4) failure or refusal to make the reasonable accommodation. The person with disability would then have to go on to prove the elements in cl 12(1)(a), further discussed in the next section, when the case could be argued more simply as a form of indirect discrimination under clause 15(1).
75. The preferred alternative, in line with recommendations made in *Building Belonging*, is to create a third, stand-alone obligation to make reasonable accommodations, entirely separate from direct and indirect discrimination.

Definition of 'reasonable accommodation'

76. Clause 12 defines what is a reasonable accommodation in relation a person with a disability.
77. To prove an accommodation is reasonable, a person must show it is:
- necessary
 - appropriate to be made
 - effective
 - to ensure the person is not treated unfavourably.
78. Rather than factors to establish what is 'reasonable', these are framed as elements that each need to be proved by the person with a disability. This unnecessarily restricts an assessment of what is 'reasonable', and may impose too high a burden on the person with disability to demonstrate.
79. As necessity, appropriateness and effectiveness are arguably aspects of reasonableness, there seems to be no benefit in confining the meaning by including these additional terms.

Factors for unjustifiable hardship

80. In clause 12(3) the word 'must' should be changed to 'may'. Not all of the factors will be relevant to each situation, and so mandating consideration of all factors in every case is unnecessarily onerous.
81. Clause 12(3)(b) refers to ensuring a person with disability is not 'treated unfavourably' which reinforces the problem of attempting to frame a failure to make reasonable accommodations as a form of direct discrimination. It would be preferable to refer to 'disadvantage', which aligns better with the formulation of indirect discrimination.

Recommendation

Omit clauses 12, 14(2), 15(2) and 18.

Insert new contravention of 'reasonable accommodations for people with disability' – separate to direct and indirect discrimination. Suggested drafting:

Reasonable accommodations for people with disability

(1) A person (**the first person**) discriminates against a person with disability if:

- (a) the person with disability requests a reasonable accommodation; and
- (b) the accommodation does not impose unjustifiable hardship on the first person; and
- (c) the first person fails or refuses to make the accommodation.

Examples of what may be a reasonable accommodation –

1. A reasonable accommodation for a person with vision impairment may be buying a screen reading software for the person.

2. A reasonable accommodation for a person who uses a wheelchair may be physical modifications to the person's workstation to accommodate the wheelchair.

(2) The first person has the onus of proving that making the accommodation would impose an unjustifiable hardship, on the balance of probabilities.

(3) In deciding whether an accommodation in relation to a person with disability would impose an unjustifiable hardship on the first person, the following matters may be considered:

[insert cl 12(3)(a) to (h), but amend cl 12(3)(c) to read '...to ensure the person with disability is not disadvantaged'.]

Make corresponding amendments in cl 13, to ensure this new contravention is incorporated and applies to all areas in which unlawful discrimination is prohibited.

Positive duty

82. Consistent with the *Building belonging* review recommendations,²⁷ the QHRC supports the inclusion of a general positive duty in clause 19 of the draft Bill.
83. However, it is unclear whether the draft Bill fulfils the Review's recommendation that:
- The duty should apply to anyone who has a legal obligation under the Act, and for all attributes and areas covered by the Act.²⁸
84. Clause 19(1) specifies that the duty applies to corporations, partnerships, unincorporated bodies, and sole traders who *carry on a business or operations*. The term 'operations' is not defined. The positive duty in the federal Sex Discrimination Act refers to 'a person conducting a business or undertaking' but this is in the context of a positive duty that only applies to the area of work.²⁹ It is unclear how, or whether, 'business or operations' applies in the context of schools, universities, and government entities.
85. Clause 19 may have been drafted in this way to ensure that natural persons are not bound by the duty. The QHRC has no issue with natural persons not being bound by the duty, unless sole traders. However, the current drafting does not make clear who the duty applies to and, in particular, whether educational authorities, educational institutions, local governments, the Queensland Police Service, and the State of Queensland are bound by the duty.
86. Unclear drafting means that duty holders in certain areas of activity, notably education and administration of State Laws and programs may not be bound by the provision. A lack of clarity about who is required to take reasonable and proportionate measures to eliminate unlawful conduct will be detrimental to the effectiveness of the positive duty and result in disputes about the QHRC's ability to enforce the duty.
87. The words 'and other unlawful conduct' should be included in the heading for clause 19 and added to clause 19 (1) which currently requires that persons 'must not engage in discrimination, sexual harassment, vilification or victimisation'. The duty applies to part 4, 6, and 7 of the Act. Part 7 includes vilification (Div 2) and victimisation (Div 3), but also includes unlawful advertising (Div 4) and unlawful requests or encouragement (Div 5).

²⁷ The Review, *Building belonging: Review of Queensland's Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022) 25, Recommendation 15.

²⁸ The Review, *Building belonging: Review of Queensland's Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022) 25, Recommendation 15.2.

²⁹ Sex Discrimination Act 1984 (Cth) s 47C.

88. Clause 19 should be redrafted to ensure that all duty holders are required to comply with the positive duty and to clarify that all forms of unlawful conduct in Parts 4, 6 and 7 are covered by the positive duty provisions.

Recommendations

Clause 19 (Duty to eliminate discrimination, sexual harassment, vilification and victimisation) should contain a list of duty holders bound by the Act, which includes:

- a corporation
- a partnership
- an unincorporated body
- a sole trader
- a government entity within the meaning of the *Public Sector Act 2022*, section 276
- the Queensland Police Service
- a local government
- an educational institution
- an educational authority.

Amend the clause 19 heading and clause 19(1) to include the words 'and other unlawful conduct'.

The legal test for vilification

89. The draft Bill mostly reflects the recommendations made by the QHRC to the Legal Affairs and Safety Committee Inquiry into vilification and hate crime laws.³⁰
90. However, the QHRC has concerns about the drafting of clause 85(1). The new provision entitled 'Inciting hatred, serious contempt or severe ridicule' replaces the existing vilification provision in section 124A of the Anti-Discrimination Act.
91. The intention of the change is to make the law clear that it is not necessary to show actual incitement of hatred, serious contempt, or severe ridicule.³¹ However, the QHRC does not consider that this drafting achieves the purpose.
92. Existing section 124A was modelled on the New South Wales provision, whereas clause 85 seems more akin to sections 7 and 8 of the Victorian *Racial and Religious Tolerance Act 2001* (RRT Act).

³⁰ Queensland Human Rights Commission, Submission Nos 036 and 082 to Legal Affairs and Safety Committee, Queensland Parliament *Inquiry into serious vilification and hate crimes* (12 July 2021, 11 November 2021).

³¹ Department of Justice and Attorney-General (Qld), *Consultation Guide: Anti-Discrimination Bill 2024 (Exposure Draft)* February 2024, 35.

93. The word ‘incite’ has been construed in both New South Wales and Victorian case law as meaning ‘to rouse, to stimulate, to urge, to spur on, to animate’³² and that it is not necessary for a person to in fact be incited by the words or publications.³³ These authorities were cited by the NSW Court of Appeal in *Sunol v Collier (No 2)*³⁴ and have been followed and applied by Queensland tribunals.³⁵
94. In Queensland, the test enunciated in *Kazak* has been applied: that is, whether the ordinary reader/listener/observer would consider they were being urged on to hatred (or the other relevant sentiments) towards a person or group of persons because of their race or other relevant attribute.
95. Changing the expression of the prohibition to ‘incites, or is reasonably likely to incite,’ suggests that ‘conduct that incites’ means actual incitement. This has the potential to create a shift in the way vilification provisions have been construed and applied.
96. In the Victorian decision in *Catch the Fire Ministries*, an element of the audience was incorporated into the test. Nettle JA said that there could be no incitement without an audience. This is at odds with Queensland decisions where the element of ‘public act’ and its meaning could result in there not being an actual audience.³⁶
97. Legislation is drafted for the public at large. It is a fundamental feature of the rule of law that legislation be clear and able to be understood by those who are bound by it. Section 4(3)(k) of the *Legislative Standards Act 1992* provides that legislation should be unambiguous and drafted in a sufficiently clear and precise way.³⁷

³² *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc* [2006] VSCA 284, (2006) 15 VR 207; *Kazak v John Fairfax Publications Limited* [2000] NSWADT 77; *Burns v Dye* [2002] NSWADT 32; *Veloskey v Karagiannakis* [2002] NSWADTAP 18; *Burns v Laws (No 2)* [2007] NSWADT 47.

³³ *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc* [2006] VSCA 284, (2006) 15 VR 207 [154]; *Veloskey v Karagiannakis* [2002] NSWADTAP 18 [25].

³⁴ *Sunol v Collier (No 2)* [2012] NSWCA 44.

³⁵ See for example, *Wilson & McCollum v Lawson* [2008] QADT 27; *Peters v Constance* [2005] QADT 9; *Deen v Lamb* [2001] QADT 20.

³⁶ See for example *Peters v Constance* [2005] 9 where it was sufficient that the conduct was capable of being heard by others in the apartment block. Also *Wilson & McCollum v Lawson* [2008] QADT 27, *Huenerberg v Murray* [2023] QCAT 175, and *Zhai v Kullack* [2024] QCAT 56, where comments in a residential neighbourhood were capable of being heard by passers-by and other neighbours.

³⁷ Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs – Clear Meaning*, 19 June 2013.

98. With those principles in mind, and the potential for clause 85 to change the law, the better approach is to keep the wording of section 124A but changing *incite* to *urge or promote*.

Recommendation

Clause 85 should be amended so it provides:

A person must not, by a public act, urge or promote hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of ...

99. Refer to Annexure B for commentary regarding the selection of attributes for protection from vilification and hate crimes.

Complaints functions

100. Overall, Part 9 of the draft Bill reflects the objectives of the reforms recommended in the *Building belonging* review, including that it:
- retains the compulsory dispute resolution process, while reshaping the legislative framework to facilitate a more flexible and responsive dispute resolution process at the QHRC (Recommendation 9)
 - makes changes to improve access to justice, including a longer 2-year time limit to make a complaint (Recommendation 8).
101. However, aspects of the draft Bill require amendment to ensure that the QHRC can make the complaints process more effective and efficient.

Terminology – ‘accepted’ or ‘dealt with’ language

102. The draft Bill uses inconsistent language when referring to actions taken by the Commissioner in relation to complaints. It refers to ‘dealing with’ complaints in some clauses³⁸ and ‘accepting’ complaints in others.³⁹
103. While it is important to maintain the distinction between complaints that fall within the Commissioner’s jurisdiction and those that do not, referring to complaints as ‘accepted’ or ‘not accepted’ is confusing and misleading to parties who do not understand the distinction.
104. Parties often interpret the term ‘accepted complaint’ to mean that the Commissioner has decided the complaint has merit and/or that a finding has already been made that the alleged conduct did occur and did amount to unlawful discrimination. Conversely, complainants may interpret ‘not accepting’ their complaint to mean that the Commissioner does not accept that the allegations

³⁸ Anti-Discrimination Act 2024 Draft Bill (Qld) cls 115-122, 190-191, 218.

³⁹ Anti-Discrimination Act 2024 Draft Bill (Qld) cls 98, 103, 105, 108, 110, 116(2), 123, 125, 126, 127, 128, 129, 130, 237, 273.

occurred, when it generally only means that the Commissioner has assessed the allegations as having insufficient detail to indicate a contravention of the Anti-Discrimination Act.

105. The language used to maintain the distinction is therefore important in building trust between Commission staff and complaint parties, which is an essential element for providing successful dispute resolution services.
106. The message the draft Bill needs to convey is that the Commissioner will deal with complaints that are within jurisdiction and will not deal with those that aren't. The ordinary meaning of the words 'deal with complaint' includes taking any action in relation to it. This includes the discrete processes of assessing the complaint to determine whether it is within jurisdiction and, where it is found to be within jurisdiction, the subsequent process of complaint resolution. Emphasising the distinction between the two processes can be achieved through consistent use of the terms 'decided to deal with' or 'not deal with'.

Recommendation

All references in the draft Bill to 'acceptance' of the complaint be replaced with language to indicate the Commissioner has 'decided to deal with' the complaint or 'is dealing with' the complaint.

References to 'accepted complaint' should be replaced with 'complaint that the commissioner has decided to deal with' or 'complaint that the commissioner is dealing with', depending on the context.

Inflexible notification provisions

107. One of the disadvantages of the current Anti-Discrimination Act, as discussed in the *Building belonging* review,⁴⁰ is that it includes rigid procedural timeframes and processes that limit flexibility delivering dispute resolution services.
108. The current notification provisions in section 143 require the QHRC to send out long and complex letters to complaint parties. Paper-based processes not only have resource implications, but place individuals with literacy issues or English as an additional language at a disadvantage.
109. While many of the inflexible notification provisions have been removed, the new clause 123 is likely to create similar problems. Some of the information required in a notice to the respondent could be explained verbally or included on the QHRC's website.
110. In the QHRC's experience, respondents seldom take the opportunity to make submissions in writing in response to a complaint and, when they do, the written

⁴⁰ The Review, *Building belonging: Review of Queensland's Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022) 165-167.

responses rarely help to resolve the complaint. Requiring the QHRC to advise respondents of this option is of little worth.

111. A requirement to provide the 'substance' of a complaint to a respondent will create a burden on QHRC's resources when the only requirement should be to provide a copy of the complaint.
112. To achieve the goal of a more flexible and efficient process, any extraneous notification requirements should be removed from the draft Bill. The *Equal Opportunity Act 2010* (Vic) contains no similar notification requirements.
113. Whether or not a specific provision is included, the QHRC has a duty under administrative law to provide procedural fairness to all parties.

Recommendation

Clause 123 should either be removed, or amended to read as follows:

123 Decision by commissioner to deal with complaint

(1) If the commissioner decides to deal with a complaint, the commissioner must:

- (a) notify the complainant and respondent that the Commission is dealing with the complaint; and
- (b) provide a copy of the complaint to the respondent.

Commission complaint powers narrowed by draft Bill

114. Certain powers for the QHRC to deal with complaints dealt with elsewhere or to conciliate a matter where an unfair agreement exists between the parties are no longer included in the draft Bill.
115. Currently, the QHRC can reject or stay a complaint where the Commissioner:
 - reasonably considers the act or omission that is the subject of the complaint may be effectively or conveniently dealt with by another entity⁴¹
 - reasonably considers the act or omission the subject of the complaint has been adequately dealt with by another entity.⁴²
116. The QHRC may also lapse a complaint where the complaint:
 - has been adequately dealt with by another entity or may be effectively or conveniently dealt with by another entity.⁴³

⁴¹ *Anti-Discrimination Act 1991* (Qld) s 140(1)(b).

⁴² *Anti-Discrimination Act 1991* (Qld) s 140(2).

⁴³ *Anti-Discrimination Act 1991* (Qld) s 168A(1).

117. These provisions are used at the discretion of the QHRC in circumstances such as where the parties have already been through another complaint process, for example, a conciliation through the Australian Human Rights Commission about the same alleged conduct.
118. Further, where a complainant has entered into an unfair agreement not to complain, the QHRC is able to nonetheless deal with a complaint in these circumstances.⁴⁴ This power is rarely exercised, but is necessary in cases where a complainant, particularly a vulnerable complainant, has been coerced or deceived into entering an unfair agreement with the effect of removing their right to make a complaint.
119. The QHRC suggests the restoration of these existing powers that are necessary for the effective performance of its functions.

Recommendation

Clause 117 be amended to:

- expand the wording of clause 117(1)(b) to allow the commissioner to decide not to deal with a complaint if they consider it may be appropriately dealt with by another entity, or they consider it has been adequately dealt with by another entity
- include an additional paragraph in clause 117(2) that would allow the commissioner to have regard to ‘any other relevant factor’.

A provision equivalent to section 137 of the current Act (Unfair agreements not to complain are not binding) should be included in the Act.

Organisation (interested body) complaints

120. The *Building belonging* review recommended that organisations be able to make complaints about any unlawful conduct, not just vilification, as is currently provided for under the ‘relevant body’ complaint provision in section 134(3).⁴⁵
121. The recommendation was intended to reduce pressure on individual complainants and improve access to justice in circumstances of systemic discrimination. For example, where a large proportion of people with a protected attribute are negatively affected by a discriminatory policy, it should not require one person with that attribute to have the burden of bringing a complaint.
122. Relevant body complaints about vilification have been retained on largely the same terms as the current Act in clause 103 of the draft Bill. A new category of organisational complaint, called ‘interested body’ complaints, has been included as clause 104 in the draft Bill. This provision allows a complaint to be made about

⁴⁴ *Anti-Discrimination Act 1991* (Qld) s 137.

⁴⁵ The Review, *Building belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022) 19, recommendation 10.1.

any alleged contravention of the Act by a body that has an interest in the complaint for reasons that are set out in the definition of 'interested body'.

123. The provisions for interested body complaints, as presently drafted, require each person on whose behalf the complaint is made to be named in the complaint, and to have given consent. This defeats the purpose of the *Building belonging* review's recommendation.
124. The provision in its current form is unlikely to be used by organisations to address matters involving systemic discrimination.
125. The current drafting creates no more than another form of agency, which is already covered by clause 101(b) of the draft Bill. The provision is even more restrictive than the agency provision, as the interested body must show that they have an 'interest in the complaint' in terms of the criteria listed in clause 104(2).
126. A simple remedy is to extend clause 103 (relevant body complaints) to include vilification *and* discrimination and other unlawful conduct. Clause 103(2) qualifies these complaints ('the commissioner *may* accept a relevant body's complaint') and imposes conditions that the commissioner must be satisfied about before accepting the complaint.
127. The QHRC accepts that not all complaints are suitable to be dealt with as an interested body complaint. To ensure transparency and procedural fairness, the QHRC could publish guidelines about how the commissioner will exercise their discretion to deal with a complaint of this kind.

Recommendation

Clause 103 should be amended to include the contravention of discrimination and unnecessary questions (clause 92), rather than being confined to vilification.

128. For other detailed recommendations regarding complaints see Annexure F.

Exception — Genuine occupational requirement for religious bodies

129. Clause 29 of the draft Bill reflects a more tailored exception in relation to employment by religious bodies than currently exists in the Anti-Discrimination Act, consistent with Recommendations 39.1–39.2 of the *Building belonging* review.
130. However, by the inclusion of clause 29(1)(b), the exception may operate more narrowly than anticipated in the recommendation, as it is tied directly to an inability to meet the genuine occupational requirement, rather than providing

scope for reasonable and proportionate different treatment on the grounds of religion simply because a particular position involves religious aspects.⁴⁶

131. Since completion of the *Building belonging* review, and the release of the draft Bill, recommendations of the Australian Law Reform Commission (**ALRC**) for reform to religious exceptions in Commonwealth law have been made public.⁴⁷
132. The QHRC considers that a similar approach to that recommended by the ALRC provides an appropriate way to achieve the overall intention of the recommendation, in a way that is consistent with the various rights involved and potential changes to Commonwealth legislation. This would be to:
- retain the current drafting of the Genuine occupational requirements – generally exception in clause 28 (with minor amendments as shown in Annexure E); and
 - include an additional, broader exception, applying at selection only, that allows greater scope for discrimination on the grounds of religious belief or religious activity where the duties of the role involve the teaching, observance or practice of religion, where this is reasonable and proportionate.⁴⁸
133. As is explored in the ALRC’s report, and consistent with the position adopted in the *Building belonging* review, this suggested broader exception at the point of selection recognises the legitimate interest that religious bodies have in employing people sharing the beliefs of the organisation where it is relevant to their role, and the fact that discrimination on the grounds of religious belief and activity will usually have a less severe impact on the rights of prospective, as opposed to existing, employees.⁴⁹
134. By the operation of clause 28, this approach still allows different treatment of existing employees on religious grounds, but only where that person’s religious belief or religious activity (or lack thereof) means that they cannot fulfil the essential requirements of their particular role concerning the teaching,

⁴⁶ Reflecting to a large extent the position under ss 82A and 83A of the *Equal Opportunity Act 2010* (Vic), but narrower than the position in Tasmania and the ACT, which provide broader scope for discrimination the grounds of religious belief and religious activity for some or all staff of religious bodies: *Anti-Discrimination Act 1992* (ACT), ss 44, 46; *Anti-Discrimination Act 1998* (Tas), s 51.

⁴⁷ Australian Law Reform Commission, *Maximising the realisation of human rights: Religious educational institutions and anti-discrimination laws* (ALRC Report 142, December 2023), tabled in the Commonwealth House of Representatives on 21 March 2024.

⁴⁸ Similar to the exception in *Anti-Discrimination Act 1992* (ACT), s 44(b), allowing discrimination by religious bodies on the ground of religious conviction in relation to employment or work in a hospital or other place conducted by the body in which health services are provided.

⁴⁹ Australian Law Reform Commission, *Maximising the realisation of human rights: Religious educational institutions and anti-discrimination laws* (ALRC Report 142, December 2023), 209–240, in particular 217–219.

observance or practice of religion, consistent with international human rights law and international labour law.

Recommendation

Include an additional exception relating to selection of people for work by religious bodies as follows:

Religious bodies: preferencing in selection

(1) A person may discriminate against another person on the basis of religious belief or religious activity in relation to a matter mentioned in section 22(1)(a), (b) or (d) by giving preference to a member of the relevant religion where—

(a) the work is for a religious body;

(b) the duties of the position involve, or would involve, the participation by the worker in the teaching, observance or practice of the relevant religion; and

(c) the discrimination is reasonable and proportionate in the circumstances.

(2) For the purposes of sub-section (1) the relevant religion is the religion in accordance with which the religious body is conducted.

(3) To remove any doubt, it is declared that a person can not rely on subsection (1) to discriminate against another person on the basis of a protected attribute other than religious belief or religious activity.

For other detailed recommendations in relation to clause 29, and a related issue concerning clause 28(3), see Annexure D.

Exception — Roles in religious bodies

135. Clause 61 introduces new wording to the existing religious roles exceptions in the Anti-Discrimination Act, extending the exception to a 'role that otherwise involves the propagation of the doctrines, tenets or beliefs of the religion concerned' (cl 61(2)(a)).

136. The inclusion of this wording may be intended to implement Recommendation 37.1 of the *Building belonging* Review, to clarify that certain lay positions may be

covered by the exception relating to special roles within religious organisations associated with religious observances and practices.⁵⁰

137. However, when read with the new definition of 'religious bodies' in the draft Bill, the words in cl 61(2)(b) have the potential to significantly expand the scope of the exception to many or all staff within faith-based organisations such as schools or hospitals, who may be considered by those organisations as being involved in the propagation of the religion. This was not the intention of Recommendation 37.1, and would undermine the changes made to religious employment exceptions in cl 29.
138. The intention of Recommendation 37.1 is, however, met by the inclusion of the words in clause 61(2)(a), so these should be retained, while cl 61(2)(b) should be omitted. This would also be consistent with a recent recommendation of the ALRC in relation to an equivalent exception in the *Sex Discrimination Act 1984* (Cth).⁵¹
139. Greater clarity about the scope of the provision would also be achieved by amending its heading to 'Participation in religious observance or practice', reflecting the characterisation of the purpose of equivalent provisions by the Anti-Discrimination Tribunal of Queensland in *Walsh v St Vincent de Paul Society Queensland (No 2)* and by Maxwell P of the Victorian Court of Appeal in *Christian Youth Camps Ltd v Cobaw Community Health Services Ltd*.⁵²

⁵⁰ Department of Justice and Attorney-General (Qld), *Consultation Guide: Anti-Discrimination Bill 2024 (Exposure Draft)* February 2024, 31.

⁵¹ Australian Law Reform Commission, *Maximising the realisation of human rights: Religious educational institutions and anti-discrimination laws* (ALRC Report 142, December 2023), rec 2, concerning *Sex Discrimination Act 1984* (Cth), s 37.

⁵² *Walsh v St Vincent de Paul Society Queensland (No.2)* [2008] QADT 32 [74]–[77] (Member Wensley QC); *Christian Youth Camps Ltd v Cobaw Community Health Services Ltd* (2014) 50 VR 256 [226].

Recommendation

Amend clause 61 so that it reads:

Participation in religious observance or practice

(1) This Act does not apply in relation to—

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

(2) For subsection (1)(a) and (b), another religious role is 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.

140. Thank you for the opportunity to provide this submission. The QHRC looks forward to the timely passage of the Anti-Discrimination Bill through parliament.

Annexure A: Preliminary

Clause	Issues	Recommended changes
Long title	Inconsistent with <i>Building belonging</i> review recommendation 2.1, the draft Bill continues to refer to 'An Act to promote equality of opportunity to everyone'. The term 'unfair' discrimination does not appear anywhere in the Act and may be misleading. An alternative is to include 'unlawful', or to simply say 'discrimination'.	Amend the long title as follows: An Act to promote equality of opportunity and achieve equitable outcomes for everyone by protecting them from unfair discrimination....
Cl 2 Commencement	Refer to <i>Priority concerns: Commencement</i> in this submission.	The Anti-Discrimination Act should commence on 1 September 2025.
Cl 5 Application of an Act to employment connected with Queensland	Rather than adopting the language and concepts of employment, employer, and employer, the better approach would be to extend the application of the Act to <i>work</i> connected with Queensland. Clause 5(2)(b)(i) is too broad. Although it would capture many of the entities excluded from the definition of public entity, it would mean the prohibitions and duties would apply to conduct that occurs outside of Queensland simply because the employer has a place of business in Queensland. The Act would apply to conduct in every place that a world-wide business operates, even if it has only a small business or undertaking in Queensland and no Queensland workers.	Re-draft clause 5 so that it extends application of the Act to <i>work</i> connected with Queensland, without using the language of employer and employment. Remove clause 5(2)(b)(i).
Cl 10(g) and Sch 1 Irrelevant criminal record	'Spent conviction' is not defined in the draft Bill but is defined in the <i>Acts Interpretation Act 1954</i> (Qld) – for ease of navigation suggest a legislative note is included to refer to this.	Include a legislative note to direct readers of the legislation to the definition of 'spent conviction' in <i>the Acts Interpretation Act 1954</i> (Qld) in the definitions section.
Cl 10(q) and Sch 1 Sex work activity	Refer to the QHRC's submission to the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 which amends the Anti-Discrimination Act and inserts a new attribute of 'sex work activity'.	Remove the word 'adult' from the definition in (a) and add the word 'or' between (i) and (ii).
Cl10(o) Sex attribute	Inconsistent with <i>Building belonging</i> review recommendation 22.3, which recommends that the Act and Explanatory Notes clarify that 'sex' or a 'particular sex' refers to both those people of a sex that was assigned to them at birth, and people whose gender identity aligns with that sex.	Either clarify through Dictionary (preferable) or include in Explanatory Notes.

Annexure B: Key concepts

Clause	Issues	Recommended changes
<p>Cls 12, 14, 15, 18</p> <p>Reasonable accommodations</p>	<p>Refer to <i>Priority concerns: Reasonable accommodations</i> in this submission.</p>	<p>Omit clauses 12, 14(2), 15(2) and 18.</p> <p>Insert new contravention of 'reasonable accommodations for people with disability' – separate to direct and indirect discrimination. Suggested drafting:</p> <p>Reasonable accommodations for people with disability</p> <p>(1) A person (the first person) discriminates against a person with disability if:</p> <ul style="list-style-type: none"> (a) The person with disability requires reasonable accommodation; and (b) The accommodation does not impose unjustifiable hardship on the first person; and (c) The first person fails or refuses to make the accommodation. <p><i>Examples of what may be a reasonable accommodation –</i></p> <ol style="list-style-type: none"> 1. <i>A reasonable accommodation for a person with vision impairment may be buying a screen reading software for the person.</i> 2. <i>A reasonable accommodation for a person who uses a wheelchair may be physical modifications to the person's workstation to accommodate the wheelchair.</i> <p>(2) The first person has the onus of proving that making the accommodation would impose an unjustifiable hardship, on the balance of probabilities.</p> <p>(3) In deciding whether an accommodation in relation to a person with disability would impose an unjustifiable hardship on the first person, the following matters <u>may</u> be considered:</p> <p>[insert Cl 12(3)(a) to (h), but amend cl 12(3)(c) to read '...to ensure the person with disability is not disadvantaged'.]</p>

		Make corresponding amendments in cl 13, to ensure this new contravention is incorporated and applies to all areas in which unlawful discrimination is prohibited.
CI 13 When does a person discriminate against another person	<p>Wording of clause 13(1) makes it clear that a person must have a protected attribute, but not that the discrimination must also occur in an area of activity.</p> <p>The words 'on the basis of' in clause 13(1) do not align with the framing of clause 15 (Indirect discrimination).</p> <p>Section 6 of the current Act may be used as a basis for the drafting.</p>	<p>Amend clause 13(1) to read:</p> <p>(a) A person discriminates against another person if the person directly or indirectly discriminates against the other person on the basis of on a ground set out in section 10; and</p> <p>(b) in an area set out in part 4.</p>
CI 15 Indirect discrimination	<p>In clause 16(5) – the word 'must' should be replaced with 'may'.</p> <p>The wording of the current indirect discrimination is 'whether a term is reasonable depends on all the relevant circumstances of the case, including for example – '. This is also similar to the wording of the <i>Equal Opportunity Act 2010</i> (Vic), on which this provision is largely based.</p> <p>It would be impractical and resource intensive for the Tribunal to have to consider each one of these factors in every case.</p>	<p>Amend clause 15(5) as follows:</p> <p>In deciding whether a condition, requirement, or practice is reasonable, the following matters must may be considered.</p>
CI 16 Affirmative measures	<p>Clause 16(3) and (7) should be confined to government plans, policies or programs in relation to minority racial groups, for consistency with <i>Building belonging</i> review recommendation 4.2. We are concerned that the higher standard for measures in relation to race, when applied across the board, may have a chilling effect on measures such as the use of identified positions.</p> <p>Section 104 of the Anti-Discrimination Act currently contains examples to assist readers to understand what 'welfare measures' means. No examples have been included in clause 16.</p>	<p>Amend cl 16 to make it clear that the higher standard reflected in clauses 16(3) and (7) is only applicable to government plans, policies or programs in relation to minority racial groups.</p> <p>Amend to include examples of affirmative measures.</p>
CI 85 Inciting hatred, serious contempt or severe ridicule	Refer to <i>Priority concerns: Vilification</i> in this submission.	<p>Clause 85 should be amended so it provides:</p> <p>A person must not, by a public act, urge or promote hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of –</p>

<p>CI 84 and 85 (Civil vilification attributes) CI 278 – 280 (Criminal vilification attributes)</p>	<p>During recent parliamentary inquiries into vilification and hate crimes,¹ and into a recent Bill strengthening criminal responses,² some stakeholders made submissions recommending that sex workers be protected from vilification.</p> <p>At the latter of these inquiries, the Department of Justice and Attorney-General advised parliament that it was giving careful consideration to the issue of which attributes would have protection under vilification as part of the broader anti-discrimination reforms.³</p> <p>The QHRC has previously recommended a framework⁴ for consideration of which attributes should be selected for protection from civil and criminal vilification. The 5 factors for consideration in this framework are demonstrable need, relative prevalence, severity, additional harm and suitability.</p> <p>The QHRC considers that there are arguable grounds for the inclusion of ‘sex work activity’ in the list of attributes in need of protection from vilification and hate crimes.</p>	<p>Amend clauses 84, 85, 278 and 280 to include ‘sex work activity’.</p>
<p>CI 212 Burden of proof</p>	<p>While consistent with <i>Building belonging</i> recommendation 13.1, further clarity could be achieved, including to ensure that it is clear that tribunal or courts should disregard the explanations of the respondent in the 1st limb of the test.</p> <p>There is no justification for use of the word ‘may’ instead of must in the 2nd limb, and this may create confusing outcomes.</p>	<p>Redraft clause 212 as follows:</p> <ol style="list-style-type: none"> (1) In a complaint proceeding, the complainant must prove, on the balance of probabilities, that in the absence of any other explanation, that the respondent contravened the provision of this Act that is the subject of the alleged contravention. (2) In determining under sub-section (1) whether there are facts from which it could be decided that the respondent contravened the provision of this Act that is the subject of the alleged contravention it must be assumed that there is no other explanation for those facts. (3) If the complainant proves the matter under subsections (1) and (2), the tribunal may must decide....

¹ Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Serious Vilification and Hate Crimes* (Report No. 22, January 2022).

² Legal Affairs and Safety Committee, Queensland Parliament, *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (Report No. 49, June 2023).

³ Legal Affairs and Safety Committee, Queensland Parliament, *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (Report No. 49 June 2023) 8.

⁴ This framework has been drawn from the Law Commission (United Kingdom), *Hate crime laws* (Final report, Law Com No 402, 2021).

		<p>(4) Subsections (1), (2) and (3) apply in addition...</p> <p>Provide an example in the provision which illustrates how the shift in burden of proof may apply in practice.</p>
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Annexure C: Positive duties and vicarious liability

Clause	Issues	Recommended changes
Part 3 Positive duties	Location in the draft Bill is confusing. Would be preferable to have the positive duties appear before Part 10 which deals with the Commission's compliance functions.	Move the content in Part 3 to between current Part 9 and Part 10.
Cl 19 Duty to eliminate discrimination, sexual harassment, vilification and victimisation	Refer to <i>Priority concerns: Positive duty</i> in this submission.	<p>Clause 19 (Duty to eliminate discrimination, sexual harassment, vilification and victimisation) should contain a list of duty holders bound by the Act, which includes:</p> <ul style="list-style-type: none"> • a corporation • a partnership • an unincorporated body • a sole trader • a government entity within the meaning of the <i>Public Sector Act 2022</i>, section 276 • the Queensland Police Service • a local government • an educational institution • an educational authority. <p>Amend the clause 19 heading and clause 19(1) to include the words 'and other unlawful conduct'.</p>
Cl 93 – 96 Provisions about liability	Refer to <i>Priority concerns: Liability (vicarious liability)</i> in this submission.	<p>Omit clauses 93 – 96 of the draft Bill.</p> <p>Section 133 of the Anti-Discrimination Act should be reinstated, and a clause that is similar to section 132, which explains the purpose of the liability provisions, should be included.</p>

Annexure D: Unlawful discrimination – areas

Clause	Issues	Recommended changes
Various subdivision titles	The title <i>Exceptions for discrimination</i> repeats throughout the draft Bill. This can make it hard to navigate.	Update to reflect the particular area e.g. <i>Exceptions for work discrimination</i> .
CI 21(3)(b) When is discrimination lawful discrimination	<p>The drafting of this provision is not clear, but the QHRC has interpreted it to mean that a respondent could argue an exception ordinarily confined to an area of activity when responding to a complaint arising in another area of activity. For example, a respondent may rely on an exception in the Work and work-related area even though the complaint involves the Administration of state laws and programs area.</p> <p>This provision seems unnecessary and may create complexity and confusion. This is counterproductive to the overall aims of improving the clarity and effectiveness of the law.</p> <p>The consequences of allowing respondents to argue specific exceptions intended for one context in an entirely different context are unknown.</p> <p>The QHRC notes that there are no current exceptions in the Administration of State Laws and programs area, but the inclusion of clause 21(3)(b) would mean that a wide range of exceptions may now become available to the State and its contractors.</p> <p>As the draft Bill, consistent with the current Act, includes a section for General exceptions in Part 4, Division 10, if there are any specific exemptions that should be applicable across various areas, then these exceptions should instead be moved to this division.</p> <p>No justification has been provided for this departure from the status quo.</p>	Omit cl 21(3)(b).
CI 22 Employers	There is a risk that this heading may lead to an interpretation that the prohibitions only apply to Employers, particularly having regard to the other	Change this heading to <i>Work – general</i> , or something similar.

	<p>provisions in subdivision one where headings reflect the entities to which the provisions apply.</p> <p>The draft Bill introduces the concepts of employee and employer, which is a specific relationship and doesn't include all workers within the definition of work.</p> <p>Work and worker still appear throughout the Bill, but there would be a combination of references to worker and employee that may be inconsistent and confusing.</p> <p>It is preferable to stick with the concept of work and worker.</p>	
<p>CI 46 Providing accommodation</p>	<p>There is a risk that this heading may lead to an unintentional narrowing of the area of accommodation. The clause merges two previous provisions entitled 'Discrimination in the pre-accommodation area' and 'Discrimination in the accommodation area' (sections 82-83).</p> <p>The accommodation area does not necessarily only apply to accommodation 'providers'.</p> <p>In clause 46(2) a person may be liable for 'subjecting the person to any other detriment in connection with the accommodation'. For instance, it may include a body corporate responsible for ensuring that a property is accessible for a person with a disability. E.g. C v A [2005] QADT 14.</p> <p>Including the word 'providing' in the title of clause 46 is likely to cause confusion and may lead to an incorrect interpretation, limiting the effectiveness of the Act.</p>	<p>Change this heading to <i>Accommodation – general</i>, or something similar.</p>

Annexure E: Lawful discrimination – exceptions and exemptions

Clause	Issues	Recommended changes
CI 21(2) and (5) When is discrimination lawful discrimination	Renaming 'exemption' to 'tribunal exemption' may create better clarity and assist understanding for those reading the legislation.	Amend clause 21(2)(b) to read: a tribunal exemption applies in relation to the discrimination. Amend clause 21(5) to refer to tribunal exemption rather than exemption, accordingly.
CI 28 Genuine occupational requirements – generally	Examples appear to be broader than current Queensland case law e.g. <i>Chivers v State of Queensland [2014] QCA 141 101</i> ; <i>Toganivalu v Brown & Department of Corrective Services [2006] QADT 13</i> (Member Mullins) [101]	Consider amending examples as follows: Remove the example regarding membership of a particular political party. Amend the example the peer support position to read as follows: <i>Using age as a criterion for a peer support position in a service for children and young people</i> Reinstate a current example from the Anti-Discrimination Act (slightly updated): <i>Selecting an actor for a dramatic performance on the basis of age, race or sex for reasons of authenticity, aesthetics, or tradition.</i>
CI 28(3) As above	Interaction between cl 28 and cl 29 through the operation of cl 28(3) is unclear and may lead to broader reading of cl 28 than intended. Clause 29 is broad enough to cover all situations where religious belief or religious activity is a genuine occupational requirement.	Amend cl 28(3) to read: (3) This section does not apply in relation to discrimination on the basis of religious belief or religious activity.
CI 29 Genuine occupational requirements for religious bodies	Refer to <i>Priority concerns: Genuine occupational requirements for religious bodies</i> in this submission.	Include an additional exception relating to selection of people for work by religious bodies as follows: Religious bodies: preferencing in selection (1) A person may discriminate on the basis of religious belief or religious activity in relation to a matter mentioned in section 22(1)(a), (b) or (d) by giving preference to a person of the relevant religion where— (a) the work is for a religious body; (b) the duties of the position involve, or would involve, the participation by the worker in the teaching or practice of the relevant religion; and

		<p>(c) the discrimination is reasonable and proportionate in the circumstances.</p> <p>(2) For the purposes of subsection (1) the relevant religion is the religion in accordance with which the religious body is conducted.</p> <p>(3) To remove any doubt, it is declared that a person can not rely on subsection (1) to discriminate against another person on the basis of a protected attribute other than religious belief or religious activity.</p>
<p>CI 31 Domestic or personal services</p>	<p>The exception has likely been included in the draft Bill to protect the privacy and dignity of people who are hiring others to work in their private home, including where a domestic or personal service employee is hired through a service provider, such as through the National Disability Insurance Scheme.</p> <p>It is reasonable to include an exception in relation to domestic or personal services. However, the exception should be limited further to allow discrimination only when necessary and proportionate – such as to ensure that a person with a disability can be cared for by a person of their age or sex.</p>	<p>Clause 31 should be amended to provide that a person may discriminate <i>on the basis of age or sex</i> against another person in relation to work involving the provision of domestic or personal services...</p>
<p>CI 32 Work involving vulnerable people</p>	<p>The consultation guide indicates that the provision is included so as not to undermine statutory schemes that operate to protect children and people with disability. However, the current drafting does not achieve this aim, as it applies in the area of work, rather than the administration of state laws and programs.</p> <p>The inclusion of a new exception relating to irrelevant criminal record is not consistent with the findings of the <i>Building belonging</i> review. The review found that the combination of including a ‘relevance’ factor and the existing genuine occupational requirements and workplace health and safety requirements meant that an additional exception is redundant.⁵</p> <p>There is no justification whatsoever for including any expunged homosexual convictions in the scope of this</p>	<p>Remove CI 32 (Work involving vulnerable people) and instead amend the exception in cl 56 (compliance with laws etc) to add specific reference to relevant legislation. E.g. include new sub-section 56(2):</p> <p>(2) Nothing in Division [2] or Division [8] affects anything done by a person on the basis of irrelevant criminal record in direct compliance with, [or specifically authorised by] any of the following as in force on [date of entry into force]:</p> <ul style="list-style-type: none"> (a) Working with Children (Risk Management and Screening Act) 2000; (b) Disability Service Act 2006; (c) <p>If the exception is retained, exclude expunged homosexual convictions by including an additional sub-section (2):</p>

⁵ *Building belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022), 22.

	exception (even if cl 32(b) should operate to achieve this end), so they should be specifically excluded.	(2) Sub-section (1) does not apply to an irrelevant criminal record relating to an expunged conviction for an offence under the <i>Criminal Law (Historical Homosexual Convictions Expungement) Act 2017</i> .
Cls 35 and 36 Educational institution – sex, disability, religion.	Inconsistent with <i>Building belonging</i> review recommendation 40.1 - that a legislative note be included to ensure it is clear that the exception applies to students enrolling for the first time, and that it applies on the basis of 'religion' not 'religious belief or activity'. While the <i>Building belonging</i> review suggested a legislative note, given the current drafting of these clauses it may be clearer to include the text in the wording of the relevant sections.	Amend clauses 35 and 36 to read as follows: 35 Educational institution for students of particular sex or students with disability or particular disability (1) An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex, or students with disability or disability of a particular kind, may refuse to admit as students persons who— (a) are not of the particular sex; or (b) do not have disability or disability of the particular kind. (2) Subsection (1)(a) applies only to refusal to admit as a student a person who has not previously been admitted as a student of the educational institution. 36 Educational institution for students of particular religion (1) An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular religion may discriminate on the basis of religious belief or religious activity by refusing to admit as students persons who are not of the particular religion. (2) Subsection (1) applies only to refusal to admit as a student a person who has not previously been a student of the educational institution. (3) To remove any doubt, it is declared that a person can not rely on subsection (1) to discriminate against another person on the basis of a protected attribute other than religious belief or religious activity. Example for subsection (3)— A person can not rely on subsection (1) to discriminate against another person on the basis of the other person's gender identity.
Cl 52	The framing of this exception is overly broad and may create unfair outcomes where majority groups can exclude minorities from clubs. This is the case because of a number of 'universal' attributes in the Act. For instance, it may allow a 'cisgender only' club, or a 'heterosexual	Omit clause 52 and replace with an exception based on section 97 of the current Act, which permits discrimination in relation to membership of a club where the club has been established to preserve a minority culture or to prevent or reduce disadvantage.

Club established for particular class of persons	<p>only' club. The exception should be narrowed to avoid this outcome, modelled on the current section 97.</p> <p>It should also be clearer that the exception only extends to club membership, and not other areas such as goods and services and work.</p>	
CI 56(1) Compliance with legislation or court or tribunal orders	Refer to <i>Priority concerns: Acts done in compliance or authorised by other laws</i> in this submission.	<p>Clause 56(1) in the draft Bill should be amended to remove the exception for compliance with other laws. However, if such an exception is retained it should be amended to:</p> <ul style="list-style-type: none"> • limit the exception to specific statutory regimes, or to existing legislation as it relates to new or amended protected attributes; and • remove reference to actions that are 'authorised by' another law.
CI 56(2) Compliance with Commonwealth legislation in relation to insurance or superannuation	<p>Inconsistent with <i>Building belonging</i> review recommendation 41.1 – 41.2. The Review found that insurance and superannuation exceptions are having a disproportionate and adverse impact on older people, people with disability, people with mental health conditions, and people predisposed to genetic conditions.</p> <p>Clause 56(1) allows discrimination on the basis of sex, relationship status, or family, carer or kinship responsibilities where it is already permitted under the <i>Sex Discrimination Act 1984</i>.</p> <p>In the current Queensland Act, the only exceptions to discrimination in the area of insurance are on the grounds of age, impairment or sex. The only exceptions to discrimination in the area of superannuation are on the grounds of age, impairment, sex or relationship status.</p> <p>No discrimination is permitted currently in the Queensland Act in relation to the family responsibilities attribute (which is amended in the draft Bill to include carer and kinship responsibilities).</p> <p>Therefore the effect of clause 56(2) is to broaden the circumstances in which a person may be lawfully discriminated against.</p> <p>The Review did not anticipate any expansion of the attributes on which discrimination may be permitted, and rather recommended the inclusion of a list of non-</p>	<p>Omit 'family, carer or kinship relationships' from cl 56(2)(a).</p> <p>Clause 56 should be amended to include an additional sub-section that provides:</p> <p style="color: #0070C0;">In deciding whether it is reasonable to rely on actuarial or statistical data, the following matters may be considered:</p> <ul style="list-style-type: none"> • whether the data is up to date • whether the data is relevant to the type and terms or conditions of the policy • whether the data is from a reasonable source • whether the data is from an Australian data source, or if from overseas, how it is applicable in the local context <p style="color: #0070C0;">whether the data indicates that the person poses an 'unacceptable risk'.</p>

	<p>exhaustive factors to assist determination of when it is reasonable to rely on a data source.</p> <p>The consultation paper does not justify the departure from the recommendations of the <i>Building belonging</i> review other than to explain that it creates harmony with Commonwealth laws. While federal/state consistency is desirable, many exceptions in state discrimination laws are currently inconsistent with federal law, and harmonisation should not be a determinative factor.</p>	
<p>CI 57</p> <p>Citizenship or visa requirements imposed under State government policies etc.</p>	<p>Inconsistent with <i>Building belonging</i> review recommendation 25.3, that recommended that decisions and actions made under the provision should be compatible with the Human Rights Act.</p> <p>Several exceptions have had the words ‘reasonable and proportionate’ added, to ‘ensure that an appropriate balance is struck between the legitimate objective of the discrimination within the scope of the exception and the rights and interest of individuals who would be affected by the discrimination.’⁶</p> <p>Of all the exceptions in the draft Bill, the QHRC considers that a proportionality aspect is most pertinent in the case of this exception, that only applies to public entities making decisions about eligibility of persons for programs.</p> <p>An alternative to achieve the purposes of the recommendation is to include the words ‘reasonable and proportionate’ in the drafting of this provision.</p>	<p>Amend cl 57(1) as follows:</p> <p>(1) This Act does not apply in relation to reasonable and proportionate decisions or actions about –</p>
<p>CI 61</p> <p>Roles in religious bodies</p>	<p>Refer to <i>Priority concerns: Religious exceptions</i> in this submission.</p>	<p>Omit clause 61(2)(b).</p>
<p>CI 62</p> <p>Acts by religious bodies</p>	<p>This clause provides that the relevant conduct must comply with the ‘doctrines, tenets or beliefs of the body’. In other legislation with equivalent exceptions, such as the <i>Sex Discrimination Act 1984</i> (Cth), section 37(1)(d) and in the existing provision in the Anti-Discrimination Act, section 109, the conduct must comply with the doctrines</p>	<p>Amend cl 62 as follows:</p> <p>Acts by religious bodies</p> <p>(1) A religious body may discriminate against a person on the basis of the person’s religious belief or religious activity if—</p>

⁶ Consultation guide – p 23.

	<p>(and/or tenets or beliefs) of the religion concerned. This should not be broadened beyond the existing position.</p> <p>In addition, the clause has the potential to undermine the operation of clauses 49 and 50, concerning provision of accommodation by educational authorities. The provision of accommodation by educational authorities should be specifically excluded from the operation of this exception.</p> <p>For consistency with other exceptions on the grounds of religious belief or religious activity, this should include a 'for the avoidance of doubt' provision confirming that this cannot justify discrimination on the grounds of other attributes.</p>	<p>(a) the act constituting the discrimination conforms to the doctrines, tenets or beliefs of the religious body body's religion; and</p> <p>(b) the discrimination is reasonable and proportionate in the circumstances.</p> <p>(2) Subsection (1) does not apply to—</p> <p>(a) an activity to which division 2 or 3 applies; or</p> <p>(b) an activity by an educational authority to which division 6 applies.</p> <p>Note—</p> <p>See, however—</p> <p>(a) section 29 in relation to activities to which division 2 applies;</p> <p>(b) section 36 in relation to activities to which division 3 applies; and</p> <p>(c) section 50 in relation to activities to which division 6 applies.</p> <p>(3) To remove any doubt, it is declared that a person can not rely on subsection (1) to discriminate against another person on the basis of a protected attribute other than religious belief or religious activity.</p>
Cl 64 Sport	<p>Several exceptions have had the words 'reasonable and proportionate' added to 'ensure that an appropriate balance is struck between the legitimate objective of the discrimination within the scope of the exception and the rights and interest of individuals who would be affected by the discrimination.'</p> <p>The QHRC considers there is benefit in adding the words 'reasonable and proportionate' to this exception.</p>	<p>Amend cl 64 as follows:</p> <p>(2) A person may restrict participation in a competitive sporting activity on the basis of sex or gender identity if the restriction is reasonable and proportionate having regard to –</p>
Heading to Div 11 - Exemptions	<p>The heading should be changed to <i>Tribunal exemptions</i> for better clarity both here and in clause 21.</p>	<p>Change heading of Division 11 to <i>Tribunal exemptions</i>.</p>
Cl 66 Application for exemption	<p>The existing section 113 has been broken up into sections rather than sub-sections.</p> <p>This clause is similar to existing s113(1). However, it refers to an application for exemption under <i>this part</i></p>	<p>Change 'from a provision of this part' to 'from the application of specified provisions of the Act.'</p>

	<p>whereas s113 provides for applications for exemption from specific provisions of the Act.</p> <p>Clause 66 is located in part 4 Unlawful discrimination. Tribunal exemptions invariably include exemption from the operation of s124 (asking for information on which unlawful discrimination might be based) and s127 (discriminatory advertising).</p> <p>The prohibitions of unlawful advertising (clause 89) and unnecessary information (clause 92) are in part 7 of the Bill.</p>	
<p>CI 67</p> <p>Commissioner's role in application for exemption</p>	<p>Consulted persons sometimes make submissions to the tribunal and the submissions are not provided to the QHRC. Material from third parties may be relevant to the QHRC's submissions.</p>	<p>Amend clause 67(1)(a) to require copies of all material filed in relation to the application to be given to the Commissioner.</p>

Annexure F: Complaints about contraventions

Clause	Issues	Recommended changes
Part 9 (clauses 98, 103, 105, 108, 110, 116(2), 123, 125-130, 2 and other miscellaneous clauses (237, 254 and 273))	Refer to <i>Priority concerns: Complaints functions</i> in this submission.	The language of 'deal with' or 'decide to deal with' a complaint should be adopted consistently throughout the AD Bill, wherever there is need to refer to the commissioner's actions in relation to a complaint within jurisdiction.
CI 104 Complaints by interested body on behalf of 1 or more complainants	Refer to <i>Priority concerns: Complaint functions</i> in this submission	Clause 103 should be amended to include the contravention of discrimination and unnecessary information (clause 92), rather than being confined to vilification.
Clauses which refer to acceptance of complaint in various contexts	Some clauses (e.g. Clauses 105, 110, 116) identify the time of acceptance of a complaint as the relevant time for a specific purpose. However, the fact that a complaint is accepted, and therefore the specific time at which it is accepted, is often not known to the parties, who remain unaware of the decision to accept the complaint until the decision is notified to them.	Replace 'acceptance' of a complaint in each of these clauses with a reference to notification of the complaint.
CI 107 Form of complaint	Complaints need to be in writing so they can be notified to the respondent without the risk of the meaning being changed in oral miscommunication. Some complainants lack the skill and access to services that can help reduce a complaint to writing. In these cases, the Commission assists the complainant to transcribe a complaint with appropriate safeguards to ensure it is accurately recorded.	Amend clause 107 to include a provision that specifically allows Commission staff, in exceptional circumstances that justify it, to receive and deal with a complaint made orally, and to transcribe such a complaint into written form.
CI 117	The clause provides for when the commissioner must refuse to deal with a complaint. In cases where the complainant was a young child at the time of the alleged contravention and does not make the complaint until two	Amend clause 117 to allow the commissioner not to deal with a complaint made within the complaint period where the complainant was a child at the

<p>Commissioner may decide not to deal with complaint</p>	<p>years after turning 18, the current draft would require the commissioner to deal with the complaint even if doing so caused substantial prejudice to the respondent.</p> <p>Clause 117(1)(b) replaces the existing section 140 of the AD Act, but it is much narrower. The proposed clause is limited to allowing the commissioner to decide not to deal with a complaint if it would be more appropriately dealt with by a court or tribunal.</p> <p>Clause 117(2) lists the factors the commissioner must consider in deciding whether exceptional circumstances and the interests of justice are sufficient to justify dealing with a complaint made after the 2-year complaint period has expired.</p>	<p>time of the allegations and did not make the complaint until many years later, if the respondent can show substantial prejudice.</p> <p>Expand clause 117(1)(b) to allow the commissioner to decide not to deal with a complaint if it may be appropriately dealt with by another entity or it has been adequately dealt with by another entity.</p> <p>Amend clause 117(2) to include an additional paragraph as follows:</p> <p style="padding-left: 40px;">117(2)(d) any other relevant factor</p>
<p>CI 122 Complainant not dealt with lapses</p>	<p>As currently drafted, clause 122 has the effect of lapsing complaints the commissioner 'does not deal with, or stops dealing with' under Pt 9 Div 4, and prevents the complainant from making a further complaint about the same allegations. It is unclear whether the clause applies in cases where the commissioner 'finishes' dealing with a complaint. If it does not apply to those complaints, there is potential for a complainant to withdraw a complaint after referral, and re-lodge the same complaint again, which would be unfair to the respondent.</p>	<p>Amend clause 122 to include the words 'or finishes dealing with the complaint under section 139' after the words 'under this division'</p>
<p>CI 123 Acceptance of complaint by commissioner</p>	<p>Refer to <i>Priority concerns: Complaint functions</i> in this submission.</p>	<p>Clause 123 should either be removed, or amended to read as follows:</p> <p style="padding-left: 40px;">123 Decision by commissioner to deal with complaint</p> <p style="padding-left: 40px;">(1) If the commissioner decides to deal with a complaint, the commissioner must:</p> <p style="padding-left: 80px;">(a) notify the complainant and respondent that the Commission is dealing with the complaint; and</p> <p style="padding-left: 80px;">(b) provide a copy of the complaint to the respondent.</p>
<p>CI 126</p>	<p>Clause 126 replaces sections 165 and 166 of the AD Act, which collectively provide for the process to refer a complaint for hearing, if requested by the complainant,</p>	<p>Amend clause 126 to include a provision that corresponds to section 166(3) and (4) of the current Anti-Discrimination Act, which have the effect of pausing the 28-day time limit for referral from the time the complainant</p>

Complaint not able to be resolved	after the commissioner has told the parties of the commissioner's belief that it can not be resolved by dispute resolution. The proposed clause omits the mechanism provided for in the existing AD Act which pauses the time limit for requesting referral while the commissioner considers a request for an extension of time.	requests an extension of time, until a decision about whether to grant the extension is made.
CI 129 Action to be taken for dispute resolution	The proposed clause allows the commissioner to give information and advice to a respondent about how to comply with the Act. This may risk the parties' perception of the commission as neutral. Maintaining neutrality is fundamental to the provision of successful dispute resolution services.	Amend clause 129 to omit the word 'advice' from paragraph 129(2)(f).
CI 137 Confidentiality of conciliation conference	The current wording of clause 137 represents a significant broadening of the range of proceedings in which comments made in the course of conciliation are rendered inadmissible, well beyond the hearing of the complaint itself. This poses a potential unreasonable limitation on the right to a fair hearing (section 31 HR Act).	Amend clause 137 to provide that: Nothing said or done in the course of conciliation can be admitted as evidence in a hearing before the tribunal, unless the complainant and respondent agree.
CI 138 Resolution of complaint	The current drafting imposes an obligation on the commissioner to have the parties sign, which realistically, the commissioner has no control over. Parties may reach agreement 'in principle' during a conference, but never agree on the final wording of a written agreement. Even if parties orally agree to detailed terms during a conference, one party may change their mind before signing an agreement.	Amend clause 138(2) to require the commissioner to make a record of the agreement and provide it to the complainant and respondent for their signature. Amend clause 138(3) to require the commissioner to provide a copy of the record of the agreement to each party and file the record with the tribunal if all the parties return the signed agreement.
CI 139 End of dealing with complaint	Clause 139(c) appears to contemplate an informal resolution of a complaint during or at the end of a conciliation conference. Informal resolution with no written record creates too much uncertainty. Conciliation conferences are held in private (clause 136) and there may be no written record of the resolution, and no way of proving that agreement was ever reached. Parties frequently agree to a resolution reluctantly during a conference, and subsequently renege when circumstances change, or emotions run high.	Omit clause 139(c).
CI 140	The current wording of 140(3) may have the unintended consequence of lapsing the complaint in probably rare situations where for some reason the commissioner	Change the words 'within 28 days after the withdrawal' in clause 140(3) to 'within a reasonable period after the withdrawal'.

Commissioner may withdraw authorisation	withdraws authorisation (e.g. of a parent) but it takes more than 28 days to determine if/who should be authorised as a new representative for the complainant.	
N/A (Section 137 of the <i>Anti-Discrimination Act 1991</i>)	There is no equivalent to section 137 of the Anti-Discrimination Act in the draft Bill. For more information refer to <i>Priority concerns: Complaint functions</i> in this submission.	Include a provision equivalent to section 137 in the current Act.
CI 235 Service of documents	The current draft of the service provisions allows a party to have an email address as their address for service. However, s.235 which provides for how service is to occur, includes only personal service or service by post. Service by email is not mentioned.	Amend clause 235 to include an additional paragraph 235(2)(e) allowing for service of documents by email when 'the party's address for service is, or includes, an email address and the document is emailed to that address.'
Schedule 1 Dictionary	The dictionary does not include a definition of document, despite references to documents in the service provisions.	Amend Schedule 1 (Dictionary) to include a definition of document as follows: 'document— <ul style="list-style-type: none"> (a) means a record of information, however recorded; and (b) includes— <ul style="list-style-type: none"> (i) a thing on which there is writing; and (ii) a thing on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and (iii) an electronic document. electronic document means— <ul style="list-style-type: none"> (a) a thing from which sounds, images or writings can be reproduced with or without the aid of anything else; or (b) a record of information reproduced from a thing mentioned in paragraph (a); or (c) a record of information that exists in digital form and is capable of being reproduced, transmitted, stored or duplicated by electronic means.'

<p>CI 108(2)</p> <p>Who may make a representative complaint</p>	<p>Consistent with <i>Building belonging</i> review recommendation of 11.1 clause 108(1) incorporates criteria for bringing a representative complaint to the Commission or tribunal similar to section 46PB of the <i>Australian Human Rights Commission Act 1986</i> (Cth).</p> <p>Clause 108(2) states that ‘A complaint may be made under subsection (1) on behalf of a class of persons without the consent of all members of the class.’</p> <p>The inclusion of the word ‘all’ might imply that consent is required from at least one or more members of the class. Under s 46PB(4) the <i>Australian Human Rights Commission Act 1986</i> (Cth) ‘a representative complaint may be lodged without the consent of class members.’</p>	<p>Amend clause 108(2) to provide:</p> <p>‘A complaint may be made under subsection (1) on behalf of a class of persons without the consent of all members of the class.’</p>
<p>Cls 108(3) and 202(3)</p> <p>Who may make a representative complaint</p>	<p>Clauses 108(3) and 202(3) retains the discretion of the Commissioner and tribunal to accept a complaint as a representative complaint if the commissioner is satisfied -</p> <ul style="list-style-type: none"> (a) The complaint was made as a representative complaint in good faith; and (b) It is in the interests of justice that the matter be dealt with as a representative complaint. <p>This is adapted from existing sections 147(2) and 195(2) of the AD Act.</p> <p>It does not appear helpful to retain this discretion. A scenario which does not fit the criteria of cl 108(1) but would be in the interests of justice to accept as a representative complaint could not be identified. Further, accepting a representative complaint on this basis will limit the rights of class members who have not opted out to make their own complaints.</p>	<p>Omit cl 108(3) and 202(3).</p>
<p>CI 109</p> <p>Additional requirements for form of representative complaint</p>	<p>Clause 109 sets out additional requirements for the form of representative complaint to the Commission, such as describing the members of the class, specifying the nature of the complaints made, and the nature of the relief sought.</p> <p>It is appropriate that these matters also be required for a representative complaint referred to the Tribunal.</p>	<p>Insert additional requirements for form of representative complaint to the tribunal, in the same form as what is required for a representative complaint to the Commission under cl 109.</p>

<p>CI 110(a)</p> <p>Effect of representative complaint on persons who are members of the class represented</p>	<p>Under clause 110(a), a person may only opt out of a complaint before the complaint is accepted.</p> <p>Opting out should be allowed up until the complaint has been dealt with by the Commission, particularly if clause 110(b) remains. There may be reason for a class member to opt out after the complaint has been accepted, for example, because of the conduct of the complainant. This aligns with the approach under section 46PC(1) <i>Australian Human Rights Commission Act 1986</i> (Cth) that allows a class member to withdraw any time before the President 'terminates the complaint'.</p> <p>If cl 110(b) is retained, then there should be provision for class members to be notified of the complaint so they have the opportunity to opt out. For example, section 45PC(3) <i>Australian Human Rights Commission Act 1986</i> (Cth) provides: 'The President may at any stage direct that notice of any matter be given to a class member or class members.' However, this may be sufficiently addressed by clause 114 which states: 'The commissioner may give directions about the conduct of a representative complaint while it is being dealt with by the commissioner.'</p>	<p>Clause 110(a) should read:</p> <p>'A person who is a member of a class of persons for which a representative complaint is made—</p> <p>(a) may, by written notice given to the commissioner at any time before the commission has finished dealing with the complaint under section 139 is accepted, opt out of the representative complaint;'</p> <p>Insert a new sub-clause that provides:</p> <p>The commissioner may at any stage direct that notice of any matter be given to a class member or class members.</p>
<p>CI 204</p> <p>Effect of representative complaint on persons who are not members of the class represented</p>	<p>Under clause 203(1)(b), a person who does not opt out by a fixed date 'is not entitled to make a separate complaint in relation to the conduct constituting the alleged contravention'.</p> <p>This provision appears in s 46POB the <i>Australian Human Rights Commission Act 1986</i> (Cth), and prevents a class member from making an application to the Federal Court under section 46PO unless they have opted out by a certain date. It appears that they could be part of a class action at the conciliation stage, but then choose to litigate it on their own behalf at the Federal Court.</p> <p>CI 204 provides a person who is not a member of the class (such as persons who have opted out) is not prevented from making a complaint in relation to the conduct constituting the alleged contravention.</p> <p>CI 208 provides that if a tribunal orders that the complaint no longer continue as a representative complaint, then the</p>	<p>Amend clause 204 that will enable a class member who has opted out of a representative complaint under cl 203(1)(a) to apply to have their complaint dealt with by the tribunal separately.</p>

	<p>complainant can continue on their own behalf, and class members can be joined as a joint complainant.</p> <p>However, despite these provisions, it is unclear what a class member can do to pursue their rights if they opt out at the tribunal stage, as they are already prevented from making a complaint to the Commission on the same subject matter because of cl 110(b).</p>	
<p>CI 207</p> <p>Tribunal may discontinue representative complaint in particular circumstances</p>	<p>The Act should provide the tribunal additional power to discontinue a representative complaint where 'it is otherwise inappropriate' that the complainant continue as a representative complaint.</p> <p>The Court has a similar discretion under s 103K(1)(e) <i>Civil Proceedings Act 2011</i>.</p>	<p>CI 207(1) should read</p> <p>207 Tribunal may discontinue representative complaint in particular circumstances</p> <p>(1) The tribunal may, on application by the respondent or on its own initiative, order that a complaint no longer continue as a representative complaint if the tribunal considers it is in the interests of justice to do so because—</p> <p>(a) the complaint will not provide an efficient and effective way of dealing with the complaints of the class members for the complaint; or</p> <p>(b) the complainant is not able to adequately represent the interests of the class members for the complaint; <u>or</u></p> <p>(c) it is otherwise inappropriate that the complaint continue as a representative complaint.</p>
<p>CI 216</p> <p>Orders in representative complaint</p>	<p>For clarity, cl 216 should be amended in line with s 103X <i>Civil Proceedings Act 2011</i>.</p>	<p>CI 216 should read:</p> <p>216 Orders in representative complaint</p> <p>(1) An order of the tribunal made for a representative complaint—</p> <p>(a) must describe or otherwise identify the class members for the complaint affected by the order; and</p> <p>(b) binds the class members described, <u>other than a person who has opted out of the proceeding under sections 110 or 203.</u></p>

N/A	<p>Under sections 103P and 103S <i>Civil Proceedings Act 2011</i>, the court can substitute another class member as the representative party.</p> <p>Under section 46PC(2) of the <i>Australian Human Rights Commission Act 1986</i>, the president may replace any complainant with another person as complainant.</p> <p>The Commission and tribunal should have similar powers to replace complainants representing a member class in appropriate circumstances.</p>	Insert a provision that will allow the Commissioner or president to replace the complainant for a representative complaint with another class member.
CI 271 Amendment of s319A <i>Corrective Services Act 2006</i>	Spelling error in clause 271(4).	Amend clause 271(3) to 'an entity' rather than 'and entity'.
CI 274 Amendment of s 319G <i>Corrective Services Act 2006</i>	Inconsistent with <i>Building belonging</i> review recommendation 42.1, that sections 319G, 319H and 319I be entirely omitted, to ensure compatibility with the <i>Human Rights Act 2019</i> .	Rather than amend, entirely omit 319G of the <i>Corrective Services Act 2006</i> .
CI 275 Amendment of s 319H <i>Corrective Services Act 2006</i>	As above	Rather than amend, entirely omit 319H of the <i>Corrective Services Act 2006</i> .
N/A	As above.	Omit 319H of the <i>Corrective Services Act 2006</i> .

Annexure G: Commission and Tribunal functions

Clause	Issues	Recommended changes
<p>Part 10 Div 3</p> <p>Compliance reviews and action plans</p>	<p>The term 'compliance' is contrary to the purpose of cooperating with duty holders to address systemic issues.</p> <p>Given the nature of the proposed positive duty, which focuses on prevention, 'compliance' is too constrictive a term.</p> <p>The QHRC would not be able to confirm whether compliance is achieved, it would only be able to make recommendations as to steps to take that could to help prevent discrimination. This is further challenged given that the QHRC will not be making any findings of non-compliance.</p>	<p>Part 10 Division 2 – change heading, and all subsequent references to, by removing the word 'compliance' e.g. 'Compliance Reviews and action plans'.</p>
<p>CI 150</p> <p>Reports about compliance</p>	<p>Requiring the consent of the person fetters the independence of the QHRC and weakens the voluntary nature of this regulatory tool. Often, duty holders will be more likely to voluntarily comply if they are aware a report will be published.</p> <p>Not having sufficient reporting powers under the Reviews function means the QHRC may be more likely to commence investigations rather than attempt to achieve voluntary compliance because without sufficient reporting powers the capacity to drive change is limited.</p> <p>The legislation should impose procedural fairness obligations on the QHRC and in doing so, contemplate that adverse comment may be contained in these reports.</p> <p>There should be an option of providing a report to the Minister for tabling, rather than only publishing it on the Commission's website.</p> <p>Additionally, the scope of report should be changed. Current drafting in s150(1) is too restrictive – '... a report about the steps taken by the person to comply with the</p>	<p>Clause 150(1) should be amended as follows:</p> <p>(1) With the consent of a person The commission may publish a report, about a matter arising from the performance of the Commission's function under section 149.</p> <p>Consider including further clauses in relation to reports about compliance to legislate for an 'adverse comment' process, drafted similarly to cl 145(2)(b).</p>

	Act'. A report is not likely to be about steps already taken but steps that <i>should</i> be taken to comply.	
Part 11 Opinions	Opinions are rarely utilised, and the QHRC would support their removal from the Act.	Omit Part 11.
CI 171 Commission's functions	Inconsistent with <i>Building belonging</i> review recommendation 27 that the Commission's functions should include the ability to recommend to the Attorney-General that additional grounds of discrimination be included in the Act. The requirement to wait for a request from the Minister is unnecessarily restrictive.	Amend clause 171(1)(c) as follows (c) When requested by the Minister To research and examine additional attributes and to make recommendations to the Minister for the inclusion of the attributes as protected attributes under this Act.
CI 173 Appointment of commissioner	The drafting currently makes it unclear whether a reappointment can occur, and how long a person can hold office in total. An alternative approach would be to follow the approach of the <i>Legal Profession Act 2007</i> in relation to the appointment of the Legal Services Commissioner, or the <i>Crime and Corruption Act 2001</i> in relation to the appointment of the Chairperson.	Add a sub-clause that states: The commissioner may be reappointed but must not hold that office for more than 10 years in total.
CI 237 Commission report about operation of Act	An issue arises currently with the QHRC's reporting under section 91(e) of the <i>Human Rights Act 2019</i> in which the QHRC is required to report on the number of human rights complaints 'made or referred' to the commissioner. The problem has arisen because the QHRC has a single complaint form where a person may make a complaint about either the Human Rights Act, the Anti-Discrimination Act, or both. Having only one complaint form improves access to justice, since many unrepresented complainants do not know which Act or Acts their matter falls under when lodging. Because of this, the QHRC cannot say how many complaints of various types (human rights, discrimination, sexual harassment etc) have been <i>received</i> into the Commission in a financial year. A complaint must be assessed to determine this.	Amend clause 237(2) as follows: (a) the number of complaints made or referred to the commissioner finalised in the financial year (b) The types of complaints made or referred to the commissioner for the finalised complaints, the contraventions that were complained about. (c) the number of finalised complaints made or referred to the commissioner that were not dealt with, and the reasons the commissioner decided not to deal with the complaints. (d) the outcome of the finalised complaints made or referred to the commissioner , including whether or not the complaints were resolved by dispute resolution or otherwise. (e) the number of finalised complaints made or referred to the commissioner that were – (f) for complaints finalised made or referred to the by the commissioner about discrimination.... (g) for complaints finalised made or referred to the by the commissioner about vilification....

	<p>When the QHRC doesn't have sufficient resources or a backlog of complaints arises, reporting becomes even more difficult because of the delay between receipt and assessment of the matter.</p> <p>Another issue is that until a complaint is finalised, the QHRC Cannot report on what happened with it – what process was used, how many resolved, and how they were resolved.</p> <p>A simple option to resolve this is to require reporting only on the matters <i>finalised</i> in the reporting period.</p> <p>The word 'type' of complaint lacks clarity, but the QHRC presumes this means which contraventions were complained about.</p>	
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Annexure H: Other issues

Clause	Issues	Recommended changes
Sch 1	<p>The current definition of <i>work-related matter</i> was inserted by the <i>Industrial Relations Act 2016</i> to discern the jurisdictions of the QCAT and the QIRC. It is:</p> <p><i>work-related matter</i> means a complaint or other matter relating to, or including, work or the work-related area.</p> <p>At the time, we submitted that the definition conflates <i>matter</i> in the sense of subject matter, <i>matter</i> in the legal sense of an action or proceeding, and the area of <i>work-related</i> in the sense of unlawful discrimination. We also submitted that the definition was not necessary.</p> <p>The Bill would define <i>work-related matter</i> as:</p> <p><i>work-related matter</i> means a complaint or other matter relating to, or including, work or another activity to which par4, division 2 applies.</p> <p>Part 4 division 2 contains provisions relating to discrimination in work and work-related matters.</p> <p>In every provision or heading where work-related matter is used in the Bill, it is in the sense of subject matter. Our concerns in 2016 remain.</p> <p>A better definition to reflect the subject matter is:</p> <p><i>work-related matter</i> means any subject matter involving or related to work.</p>	<p>Replace the Dictionary of work-related matter with the following:</p> <p><i>work-related matter</i> means any subject matter involving or related to work.</p>
Cl 82(2) How contravention may be dealt with	<p>Where a prohibition is also an offence (victimisation, unlawful advertising, inducing unlawful advertising), it can be dealt with as complaint or a proceeding for an offence under the current Act.</p> <p>Currently there is no bar to the complainant pursuing a complaint and the Commissioner taking proceedings for an offence.</p>	<p>Omit clause 82(2).</p>

	The QHRC is not aware of any reasons for this change, and is not aware of any issues arising under the current law that would justify a departure from the status quo.	
Cls 89 and 90 Unlawful advertisements	In practice, unlawful advertisements are very difficult to enforce through the complaint function, as standing issues often arise. These matters would be better dealt with through the QHRC's new compliance powers.	Amend so that these are only offences and not actionable by making a complaint.
Part 13, Div 3. Cls 186 – 189 Commonwealth/State arrangements.	These provisions were in place at the commencement of the Anti-Discrimination Act when the Commonwealth Human Rights and Equal Opportunity Commission administered the Anti-Discrimination Commission. They are redundant and can be removed from the Act.	Omit Part 13, Div 3.