

# TERMS OF REFERENCE

## Queensland Human Rights Commission review of the *Anti-Discrimination Act 1991 (Qld)*

1. I, SHANNON FENTIMAN, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, ask the Queensland Human Rights Commission (Commission) to undertake a review of the *Anti-Discrimination Act 1991*, pursuant to section 61(b) of the *Human Rights Act 2019* and section 235(k) of the *Anti-Discrimination Act 1991* (AD Act).

### Scope

2. The Commission is asked to review the AD Act and consider whether there is a need for any reform to enhance and update the AD Act, taking into account Australian and international best practices, to best protect and promote equality, and non-discrimination and the realisation of human rights.
3. In undertaking this review, the Commission should consider whether there is a need for any reform, and if so, the scope of reform regarding:
  - (a) the compatibility of the AD Act with the *Human Rights Act 2019*;
  - (b) the preamble and preliminary provisions under Chapter 1 of the AD Act, including whether a more positive approach is required to eliminate discrimination, and other objectionable conduct prohibited in the AD Act;
  - (c) the attributes of discrimination, including (but not limited to):
    - i. whether the current definitions given to protected attributes under Schedule 1 of the AD Act best promote the rights to equality and non-discrimination; and
    - ii. whether additional attributes of discrimination should be introduced to section 7 of the AD Act,<sup>1</sup> including (but not limited to) spent criminal conviction or irrelevant criminal record; expunged homosexual conviction; irrelevant medical record; immigration status; employment activity; and physical features;
  - (d) the areas of activity which discrimination is prohibited under Part 4 of the AD Act;
  - (e) the definitions in the AD Act (other than vilification), including (but not limited to), discrimination, unjustifiable hardship, genuine occupational requirements, sexual harassment, and victimisation;
  - (f) whether the AD Act should contain a positive duty on organisations to eliminate discrimination and other objectionable conduct prohibited by the AD Act, similar to the duty contained in section 15 of the *Equal Opportunity Act 2010* (Vic);
  - (g) whether the AD Act should reflect protections, processes and enforcement mechanisms that exist in other Australian discrimination laws;
  - (h) exemptions and other legislative barriers that apply to the prohibition on discrimination;

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<sup>1</sup> Section 235(f) of the AD Act provides that it is a function of the Commission, when requested by the Minister “to research and develop additional grounds of discrimination and to make recommendations for the inclusion of such grounds in the Act”.

- (i) whether the requirement for less favourable treatment, as imported by the concept of the comparator, remains an appropriate requirement to establish discrimination or whether there are other contemporary responses that would be appropriate;
  - (j) whether the functions, processes, powers and outcomes of the Commission are appropriately suited to ensuring it can further the objective of eliminating discrimination and other objectionable conduct under the AD Act, to the greatest possible extent;
  - (k) the functions, processes, powers and outcomes of the Queensland Civil and Administrative Tribunal (QCAT) and the Queensland Industrial Relations Commission (QIRC) under the AD Act;
  - (l) ways to improve the process and accessibility for bringing and defending a complaint of discrimination, including (but not limited to) how the complaints process should be enhanced to improve access to justice for victims of discrimination;
  - (m) options for more tailored approaches towards, or alternatives to existing frameworks for, dispute resolution that enable systemic discrimination to be addressed as well as discrimination complaints that raise public interest issues;
  - (n) any other matters the Commission considers relevant to the review.
4. In light of the Government's commitment for a Parliamentary Committee inquiry on serious vilification and hate crime, the Commission is directed not to consider as part of this review vilification or sections 124A or 131A of the AD Act.
5. The review will also consider ongoing efforts by the Palaszczuk Government and relevant work in other Australian jurisdictions in implementing the recommendations from the Australian Human Rights Commission's *Respect@Work: Sexual Harassment National Inquiry Report (2020)* and include options for legislating for a positive duty on all employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation as far as possible.

### **Consultation**

6. The Commission's review is to include consultation with:
- (a) the public generally, including people with lived experience of discrimination and/or
  - (b) who have initiated complaints under the AD Act;
  - (c) legal stakeholders;
  - (d) the QCAT and QIRC;
  - (e) community advocacy groups and organisations; and
  - (f) any other body the Commission considers relevant having regard to the issues relating to the review.
7. The Commission should consider all submissions made as part of the review, including any made about the impact of the AD Act on human rights and the nature and scope of those rights that are relevant to the AD Act.

### **Report**

8. The Commission is to provide a report on its review to the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence by 30 June 2022.