

Part A:  
About the Review

# What we have been asked to do

## The scope of the Review

The Queensland Human Rights Commission (the Commission) has been asked to review the *Anti-Discrimination Act 1991* and consider whether there is a need for any reform to enhance and update the legislation to best protect and promote equality and non-discrimination and the realisation of human rights.

The Review was requested by the by the Attorney-General and is enabled by the Commission's statutory functions.<sup>1</sup>

The Terms of Reference for this Review ask us to consider whether there is a need for any reform, and if so, the scope of the reform regarding:

- a) the compatibility of the Anti-Discrimination Act with the *Human Rights Act 2019* (Qld)
- b) the preamble and preliminary provisions, including whether a more positive approach is required to eliminate discrimination and other objectionable conduct prohibited in the Anti-Discrimination Act.
- c) the attributes of discrimination, including:
  - i. whether the current definitions given to protected attributes best promote the rights to equality and non-discrimination; and
  - ii. whether additional attributes of discrimination should be introduced
- d) the areas of activity in which discrimination is prohibited
- e) the definitions in the Anti-Discrimination Act (other than vilification), including discrimination, unjustifiable hardship, genuine occupational requirements, sexual harassment, and victimisation
- f) whether the Anti-Discrimination Act should contain a positive duty on organisations to eliminate discrimination and other objectionable conduct prohibited by the Anti-Discrimination Act, similar to the duty contained in section 15 of the *Equal Opportunity Act 2010* (Vic)
- g) whether the Anti-Discrimination 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
- 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

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<sup>1</sup> *Human Rights Act 2019* (Qld) s 61(b); *Anti-Discrimination Act 1991* (Qld) s 235(k).

- 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 Anti-Discrimination 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 Anti-Discrimination Act
- l) ways to improve the process and accessibility for bringing and defending a complaint of discrimination, including 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.

We are also asked to 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. This follows recommendations made by the Australian Human Rights Commission's *Respect@Work: Sexual Harassment National Inquiry Report* (2020).

Given that the Queensland Parliament Legal Affairs and Safety Committee<sup>2</sup> is currently conducting an Inquiry into Serious Vilification and Hate Crimes, the Terms of Reference directed us not to review vilification or relevant provisions.<sup>3</sup>

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<sup>2</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Serious Vilification and Hate Crimes*. The committee is to report to the Legislative Assembly by 31 January 2022.

<sup>3</sup> Queensland Human Rights Commission Review of the *Anti-Discrimination Act 1991* (Qld), Terms of Reference 4.

## Our approach

The Commission is an independent statutory authority established under the Anti-Discrimination Act with functions under the Anti-Discrimination Act and the Human Rights Act.

The current role of the Commission includes resolving complaints, promoting human rights and non-discrimination, and providing education.

To conduct the Review we have:

- established an external Reference Group
- established a Review Team within the Commission
- developed principles to guide and inform decision-making
- outlined a clear methodology for undertaking the task, which includes consulting as broadly as possible.

## Reference Group

The role of the Reference Group includes providing advice and feedback on our approach and methodology, identifying relevant issues, and encouraging and supporting participation in the Review by a wide range of stakeholders and community members and stakeholders.

The Reference Group is Chaired by Commissioner Scott McDougall, and the members are:

- Chamber of Commerce and Industry Queensland: Stephen Tait, Chief Executive Officer
- Community Legal Centres Queensland: Rosslyn Monro, Director
- Multicultural Australia: Christine Castley, Chief Executive Officer
- Queensland Churches Together: David Baker, General Secretary
- Queensland Council for LGBTI Health: Rebecca Reynolds, Chief Executive
- Queensland Council of Social Service: Aimee McVeigh, Chief Executive Officer
- Queensland Law Society: Elizabeth Shearer, President
- Queensland Unions: Jacqueline King, Assistant General Secretary
- Queenslanders with Disability Network: Michelle Moss, Director of Policy and Strategic Engagement

## Guiding principles

The methodology of the Review is based on the following principles:

**Comprehensive and consultative** – the Commission aims to consult as widely as possible on issues within the Terms of Reference. We will take measures to ensure that a broad range of people and organisations, including stakeholder groups identified by the Terms of Reference, are actively invited to contribute to the Review. The Commission is committed to listening to all views, experiences, and suggestions for change.

**Transparent and inclusive** – the Commission is committed to providing a transparent process throughout the Review and encourages public scrutiny and input. We encourage diverse views and will consider all perspectives. We will adopt a community-wide perspective to promoting equality, and non-discrimination and the realisation of human rights.

**Evidence based** – the Commission’s findings and recommendations will be based on rigorous analysis of information gathered by the Review, including through submissions, responses to the Discussion Paper, public consultations and community engagement, and relevant legal and policy analysis.

**Independent** – as an independent statutory authority, the Commission is committed to independence, and will conduct the Review consistent with its statutory obligations and vision, purpose, and values.<sup>4</sup>

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<sup>4</sup> As reflected in the Queensland Human Rights Commission *Strategic Plan 2020–2024*.

## Methodology

The Review is gathering information through submissions, consultations, and research. A schedule of our key activities is published on the Commission's website.

### Submissions

We have established an open submission process and invited people to share their experiences, views, and ideas on what needs to change to improve Queensland's discrimination law. Our submission process opened in August 2021 and will close on 1 March 2022.

We have published a guided online submission form that aims to provide an accessible way for people to share their views and ideas. People can make a submission by sharing their contribution online, as a written submission, audio or video content, image or artwork, or verbally. Submissions can be made anonymously, which means that people can choose not to provide their name or any details.

So far, we have received over 100 submissions, including from people with disability, LGBTIQ+ people, people of cultural and linguistically diverse backgrounds, and from First Nations people. In the days before releasing this Discussion Paper, we also received over 300 submissions raising concerns about vaccination requirements and other public health measures in relation to COVID-19.

This Discussion Paper is an important part in our process as it provides an opportunity to raise key questions the Review must answer. We hope to receive as many responses to this paper as possible.

### Consultations

The Review conducted a series of over 70 stakeholder consultations in the initial phase, which ran between August and November 2021. A list of stakeholders who participated is available at Appendix A.

We will conduct further consultations between December 2021 and March 2022, including a series of 'Community Conversations' across Queensland and 'Review Roundtables' that will focus on particular issues and topics.

As part of the consultation process, we invited organisations that would like to participate in a consultation with us to register their interest. This has provided an opportunity for direct involvement for a broad range of organisations.