



Chapter 1:

About the Review

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About the Review

In May 2021, Queensland's Attorney-General, the Honourable Shannon Fentiman, asked the Queensland Human Rights Commission (the Commission) to undertake a comprehensive review of Queensland's discrimination law, the *Anti-Discrimination Act 1991* (Qld) (the Anti-Discrimination Act). That year marked the thirtieth anniversary of the Act.

In announcing the Review, the Attorney-General said that making sure our laws protect and promote equality for our diverse communities is a key priority for the Queensland government, and commented:

The anniversary provides a timely opportunity to conduct this holistic review of our anti-discrimination laws to ensure they continue to provide those protections in a contemporary setting.¹

Following the announcement, Terms of Reference were provided to the Commission and made public.

Terms of Reference

The Commission's Review of the Anti-Discrimination Act is conducted pursuant to section 61(b) of the *Human Rights Act 2019* (the Human Rights Act) and section 235(k) of the Anti-Discrimination Act.

Those provisions give the Commission the following functions:

- if asked by the Attorney-General, to review the effect of Acts, statutory instruments and the common law on human rights and give the Attorney-General a written report about the outcome of the review²
- such other functions as the Minister determines.³

The Terms of Reference ask the Commission to review the Anti-Discrimination Act and consider whether there is a need for any reform to enhance and update the Act to best protect and promote equality, non-discrimination and the realisation of human rights.

In undertaking the Review, the Commission is to consider the scope of 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 , but not limited to:
 - 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 to section 7 of the Act including (but not limited to) spent criminal conviction or irrelevant criminal record;

1 The Honourable Shannon Fentiman, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family violence, 'Review to ensure Queenslanders protected against discrimination' (Media Statement, 4 May 2021).

2 *Human Rights Act 2019* (Qld) s 61(b). Pursuant to s 94, the Attorney-General must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving the report.

3 *Anti-Discrimination Act 1991* (Qld) s 235(k).

expunged homosexual conviction; irrelevant medical record; immigration status; employment activity; and physical features

- 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
- 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 and the Queensland Industrial Relations Commission 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.

The Commission is also asked to consider the ongoing efforts by the Queensland 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. At the time of announcing the Review, the Queensland Parliament's Legal Affairs and Safety Committee⁴ was conducting the Inquiry into Serious Vilification and Hate Crimes, and the Terms of Reference direct us not to review vilification or serious vilification.⁵

4 Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Serious Vilification and Hate Crimes* (Report No. 22, 31 January 2022).

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

In conducting the Review, the Commission was asked to consult with:

- the public generally, including people with experience of discrimination, and/or people who have initiated complaints under the Act
- legal stakeholders
- community advocacy groups and organisations
- the tribunals, which include the Queensland Civil and Administrative Tribunal and the Queensland Industrial Relations Commission
- any other body the Commission considers relevant, having regard to the issues relating to the review.

The Commission is also to consider all submissions made during the Review, including any made about the impact of the Anti-Discrimination Act on human rights, and the nature and scope of those rights that are relevant to the Anti-Discrimination Act.

The Commission was required to provide a report to the Attorney-General by 30 June 2022. On 16 March 2022, we formally requested a four-week extension of time because of delays in receiving submissions due to COVID-19 and flooding events in South-East Queensland. This extension was granted by the Attorney-General on 31 March 2022.

The date the Commission was required to provide the report was therefore extended to 30 July 2022.

Our approach

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

When asked to undertake this Review, the Commissioner established a team within the Commission to conduct the Review. The Review team commenced its work on 21 June 2021.

Guiding principles

We developed a set of principles to guide and inform the Review's methodology and decision-making, and these were published on the Commission's website in July 2021.⁶

Those principles have guided us in making decisions about our consultation and submissions process and how to form the conclusions set out in this report.

Comprehensive and consultative – We aim 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. We are committed to listening to all views, experiences, and suggestions for change.

Transparent and inclusive – We are committed to providing a transparent process throughout the Review, and to encouraging public scrutiny and input. We aim to hear a diverse range of views and will consider all perspectives. We will adopt a community-wide perspective to promoting equality, non-discrimination, and the realisation of human rights.

⁶ Since publication on our website, we have made minor updates to the wording of these principles to align with the language of this report.

Evidence based – The Review findings and recommendations will be based on rigorous analysis of information gathered by the Review through submissions, consultations, legal and policy analysis, and research.

Independent – As the Commission is an independent statutory body and is committed to this independence, we will conduct the Review consistent with the Commission’s statutory obligations and vision, purpose, and values.⁷

Reference Group

The Review established a Reference Group with nine key stakeholder streams, including employer groups, unions, religious organisations, community groups, and legal practitioners, and convened three times in the course of the Review.

The role of the Reference Group was to identify priority issues for the stakeholder groups represented, and to support engagement with their communities and members.⁸

The Reference Group was chaired by Commissioner Scott McDougall, and included CEO-level engagement from the following organisations:

- Chamber of Commerce and Industry Queensland
- Community Legal Centres Queensland
- Multicultural Australia
- Queensland Churches Together
- Queensland Council for LGBTI Health
- Queensland Council of Social Service
- Queensland Council of Unions
- Queensland Law Society
- Queenslanders with Disability Network.

While the Reference Group provided input on issues under consideration, it did not have any decision-making function, or formulate, deliberate, or decide on recommendations.

Methodology

To inform the findings and recommendations of this report, the Review gathered information through three key activities: consultations, submissions, and research.

We aimed to consult as widely as possible about issues within the Terms of Reference to ensure that as many people as possible could have input into the future of Queensland’s discrimination law. We also sought direct input from people who have experienced discrimination and sexual harassment.

To ensure an accessible process, we took active steps to promote awareness of the Review and created alternative ways for people to engage with us, including:

- providing a webpage with information about the Review that included our schedule of events, an open call for organisations to request consultations, and ways to participate

⁷ As reflected in the Queensland Human Rights Commission *Strategic Plan 2020–2024*.

⁸ Queensland Human Rights Commission, ‘Review Reference Group: Terms of Reference’, *Our Reference Group (Web Page, 15 July 2021)* < <https://www.qhrc.qld.gov.au/law-reform/about-the-review/our-reference-group> >.

- issuing regular updates and alerts through a subscription-based e-newsletter, social media posts, and press releases
- distributing information for the Reference Group to share through their networks
- designing our consultation and submission processes to be as accessible and transparent as possible.

People and organisations could share their contributions by requesting a consultation, making a submission about issues they identified or responding to questions in the Discussion Paper, sharing their experience through our Have Your Say guided submission form, or by participating in public conversations, roundtables, or smaller specialised face-to-face and virtual roundtables.

We published information about our schedule of events to give as much notice as possible about the time available to engage with the Review.

Consultations

During the course of the Review, we conducted over 120 consultations, either face-to-face or online. A list of our consultations undertaken by the Review is available at Appendix A.

Consultations were held with:

- people with experience of discrimination and sexual harassment
- non-government organisations that provide direct support to people who experience, or are at risk of experiencing, discrimination or sexual harassment
- employers and business representatives, including industry and professional bodies, and peak bodies
- legal representatives for people who make or respond to complaints about discrimination and sexual harassment
- academics, legal and policy experts, including specialists in anti-discrimination law and policy
- staff of the Commission,
- government departments and agencies, including interstate human rights agencies, statutory bodies, and tribunals.

Consultations

Between August and November 2021, we conducted a series of initial stakeholder consultations. The purpose of this phase was to identify whether the Anti-Discrimination Act is effective in eliminating discrimination in Queensland, and to establish priority issues the Review should address.

To inform decisions about who should participate in the consultations, we conducted stakeholder analysis based on the attributes and areas currently covered by the Act, plus additional stakeholders mentioned in the Terms of Reference. This stakeholder analysis included people with protected attributes, as well as organisations and entities who have obligations under the Act.

We also focused on groups who are underrepresented in the Commission's complaints data. This ensured that people who do not currently access the available protections were given a voice, and the Review heard about issues that may be limiting the effectiveness of the Act.

We invited key stakeholders to participate in the consultation process and share their views, experiences, and suggestions for change. To enhance transparency and inclusivity of this process, we allowed organisations to request a meeting with the Review team at any stage of the Review.

Our process resulted in rich and diverse conversations that allowed us to undertake a holistic re-consideration of how discrimination and sexual harassment are experienced. From this, our approach turned to considering how to reorientate the system towards a more proactive, flexible approach. Our analysis of themes and issues that emerged from consultations was distilled into the key topics and questions set out in the Discussion Paper which was released in November 2021.

Between January and May 2022, we conducted a second round of consultations. This phase focused on hearing from legal and policy experts, government departments and agencies, interstate human rights agencies, statutory bodies, and tribunals about options for reform. This phase also tested reactions to potential recommendations, identified possible unintended consequences of reform, and what constitutes best practice.

Public engagement

The Review held four public consultations in regional Queensland during November and December 2021 – in Rockhampton, Townsville, Yarrabah, and Cairns. Over 170 people attended the events which were open to registration by members of the public and organisations. Additional scheduled consultations in South-East Queensland were cancelled due to the impacts of the COVID-19 pandemic.

The purpose of these public consultations was to hear from people living in regional areas about the local issues that affect them, to identify community perceptions about barriers to equality, and to explore what changes are needed to improve Queensland’s discrimination law. Attendees were asked to reflect on what needs to change to achieve equality for everyone in their community.

During these discussions, we identified that the law must be practical and easy to understand if it is to be effective in protecting people from discrimination. We also sensed an awareness of discrimination and its impact on the community.

Roundtables

The Review conducted a series of six roundtables in February and March 2022, with over 100 people participating.

In deciding on roundtable topics, we considered the extent to which the discussion could elicit expertise that would assist the Review to rigorously test possible recommendations, including to identify any unintended consequences, or provide an opportunity to hear from a group of stakeholders who face barriers to participating in the Review by the other means provided.

We held roundtables with the following groups:

- people with disability
- children and young people – aged under 18, and aged 18 to 25
- small business and industry
- legal practitioners who provide advice and representation to both complainants and respondents
- Queensland Government departments.

We drew on the knowledge and expertise of our Reference Group members and other organisations to design the format and presentation of roundtables, as well as to co-design community surveys focused on a selection of questions from the Discussion Paper for target audiences.

Submissions

There were three ways to make submissions to the Review – completing a guided online survey, responding to the Discussion Paper, or making a submission about issues within the Terms of Reference.

The submissions process was open from early August 2021 and the Discussion Paper was published on 30 November 2021. All submissions closed on 1 March 2022. This allowed seven months to make a submission, and three months to respond to the specific questions raised in the Discussion Paper.

Submissions could be completed using the online form, sending an electronic or written submission, or by sharing audio or video content, images, or artworks.

Discussion paper

On 30 November 2021, we published a Discussion Paper outlining priority topics and including 56 questions about options for reform.

In response, the Review received 130 submissions. Of those, 117 submissions were published on the Commission website. Thirteen were classified as confidential submissions and not made public.

The Review also received an additional 29 general submissions, which did not respond to the Discussion Paper but raised issues relevant to the Terms of Reference.

A list of submissions received by the Review is at Appendix B.

Online survey

The Review wanted to hear from people who have experienced discrimination and sexual harassment, especially from people who don't usually report their experiences, to understand the impact on them and their communities. We wanted to get a sense of how much discrimination occurs in Queensland that may not be captured by the current law.

We also wanted to hear from people who had direct experience of the complaint process, including people who were respondents to complaints, to consider whether the approach to making a complaint should change.

To receive input on these issues, we developed a guided submissions 'Have Your Say' form to survey people about their personal experiences. The form was available as an online survey or could be downloaded and completed at the user's convenience.

We allowed submissions to be made confidentially, and also allowed an option of anonymity. This meant that it was not compulsory to provide identifying information.

We asked people about:

- their experiences of discrimination and sexual harassment
- what impact the experience had
- whether they told anyone about what happened, and if so who they told
- whether they had ever made a formal report or complaint, and if so to whom
- what makes it difficult to bring a complaint
- how the complaint process could be improved
- their suggestions and ideas for change.

A different set of questions was supplied to people who told us they had been respondents to complaints of discrimination.

The Review received 1,109 responses to the Have Your Say survey. Of these, 1,084 were from individuals and 25 were from organisations.

Demographic questions were not mandatory and survey participants could choose to answer all, some, or none of the questions. Of the survey participants who responded to these questions, people from diverse backgrounds were well-represented. Responses to the online survey included:

- 40 people who identified as Aboriginal
- 10 people who identified as Torres Strait Islander
- 86 people who identified as being from a culturally or linguistically diverse background
- 62 people who identified as having a disability
- 78 people who identified as LGBTIQ+
- 21 people who identified as sex workers.

We discuss the key topics identified through submissions in Chapter 2.

Research and analysis

Research

The Review undertook extensive research of academic literature and analysis of Australian and international laws on discrimination and, where relevant, considered international human rights instruments and case law.

We conducted a comparative analysis of federal, state, and territory discrimination and equality laws, and considered other reviews of state and federal discrimination laws. The protections, processes, and enforcement mechanisms available in other discrimination laws were examined, and this allowed us to identify and consider Australian and international best practice.

Key sources that could tell us about the nature and prevalence of discrimination and sexual harassment and its social, psychological, and economic impacts were investigated. We describe the findings of this research in chapter 2.

Our analysis

Drawing on information gathered through consultations, submissions, and research, we have developed a rigorous and evidence-based process for arriving at our recommendations.

During the process of formulating recommendations, we have also considered key themes emphasised in the Terms of Reference and the guiding principles adopted by the Review.

The reforms recommended in this report have been shaped by the many contributions received by the Review, including from people who have experienced discrimination and sexual harassment.

Arriving at the final recommendations has been a process in which many different information sources have been balanced to achieve the best policy outcomes.

