# Annexure A: Preliminary

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| **Clause** | **Issues** | **Recommended changes** |
| Long title | Inconsistent with *Building belonging* reviewrecommendation 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 *Priority concerns: Commencement* 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 *work* 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 *work* 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 *Acts Interpretation Act 1954* (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 *the Acts Interpretation Act 1954* (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 *Building belonging* 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

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| **Clause** | **Issues** | **Recommended changes** |
| Cls 12, 14, 15, 18  Reasonable accommodations | Refer to *Priority concerns*: *Reasonable accommodations* in this submission. | 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: 2. The person with disability requires reasonable accommodation; and 3. The accommodation does not impose unjustifiable hardship on the first person; and 4. 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. |
| Cl 13  When does a person discriminate against another person | 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.  The words ‘on the basis of’ in clause 13(1) do not align with the framing of clause 15 (Indirect discrimination).  Section 6 of the current Act may be used as a basis for the drafting. | Amend clause 13(1) to read:   1. 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 2. in an area set out in part 4. |
| Cl 15  Indirect discrimination | In clause 16(5) – the word ‘must’ should be replaced with ‘may’.  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 *Equal Opportunity Act 2010* (Vic)*,* on which this provision is largely based.  It would be impractical and resource intensive for the Tribunal to have to consider each one of these factors in every case. | Amend clause 15(5) as follows:  In deciding whether a condition, requirement, or practice is reasonable, the following matters ~~must~~ may be considered. |
| Cl 16  Affirmative measures | Clause 16(3) and (7) should be confined to government plans, policies or programs in relation to minority racial groups, for consistency with *Building belonging* 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.  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. | 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.  Amend to include examples of affirmative measures. |
| Cl 85  Inciting hatred, serious contempt or severe ridicule | Refer to *Priority concerns*: *Vilification* in this submission. | 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 – |
| Cl 84 and 85  (Civil vilification attributes)  Cl 278 – 280  (Criminal vilification attributes) | During recent parliamentary inquiries into vilification and hate crimes,[[1]](#footnote-2) and into a recent Bill strengthening criminal responses,[[2]](#footnote-3) some stakeholders made submissions recommending that sex workers be protected from vilification.  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]](#footnote-4)  The QHRC has previously recommended a framework[[4]](#footnote-5) 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.  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. | Amend clauses 84, 85, 278 and 280 to include ‘sex work activity’. |
| Cl 212  Burden of proof | While consistent with *Building belonging* 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.  There is no justification for use of the word ‘may’ instead of must in the 2nd limb, and this may create confusing outcomes. | Redraft clause 212 as follows:   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…. 4. Subsections (1), (2) and (3) apply in addition…   Provide an example in the provision which illustrates how the shift in burden of proof may apply in practice. |

# Annexure C: Positive duties and vicarious liability

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| **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 *Priority concerns*: *Positive duty* in this submission. | 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’. |
| Cl 93 – 96  Provisions about liability | Refer to *Priority concerns*: *Liability (vicarious liability)* in this submission. | Omit clauses 93 – 96 of the draft Bill.  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. |

# Annexure D: Unlawful discrimination – areas

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| **Clause** | **Issues** | **Recommended changes** |
| Various subdivision titles | The title *Exceptions for discrimination* repeats throughout the draft Bill. This can make it hard to navigate. | Update to reflect the particular area e.g. *Exceptions for work discrimination*. |
| Cl 21(3)(b)  When is discrimination lawful discrimination | 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.  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.  The consequences of allowing respondents to argue specific exceptions intended for one context in an entirely different context are unknown.  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.  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.  No justification has been provided for this departure from the status quo. | Omit cl 21(3)(b). |
| Cl 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 provisions in subdivision one where headings reflect the entities to which the provisions apply.  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.  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.  It is preferable to stick with the concept of work and worker. | Change this heading to *Work – general*, or something similar. |
| Cl 46  Providing accommodation | 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).  The accommodation area does not necessarily only apply to accommodation ‘providers’.  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.  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. | Change this heading to *Accommodation – general*, or something similar. |

# Annexure E: Lawful discrimination – exceptions and exemptions

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| **Clause** | **Issues** | **Recommended changes** |
| Cl 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. |
| Cl 28  Genuine occupational requirements – generally | Examples appear to be broader than current Queensland case law e.g. *Chivers v State of Queensland [2014] QCA 141* 101; *Toganivalu v Brown & Department of Corrective Services [2006] QADT 13* (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:  *Using age as a criterion for a peer support position in a service for children and young people*  Reinstate a current example from the Anti-Discrimination Act (slightly updated):  *Selecting an actor for a dramatic performance on the basis of age, race or sex for reasons of authenticity, aesthetics, or tradition.* |
| Cl 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. |
| Cl 29  Genuine occupational requirements for religious bodies | Refer to *Priority concerns*: *Genuine occupational requirements for religious bodies* 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  (c) the discrimination is reasonable and proportionate in the circumstances.  (2) For the purposes of subsection (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. |
| Cl 31  Domestic or personal services | 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.  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. | Clause 31 should be amended to provide that a person may discriminate *on the basis of age or sex* against another person in relation to work involving the provision of domestic or personal services… |
| Cl 32  Work involving vulnerable people | 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.  The inclusion of a new exception relating to irrelevant criminal record is not consistent with the findings of the *Building belonging* 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]](#footnote-6)  There is no justification whatsoever for including any expunged homosexual convictions in the scope of this exception (even if cl 32(b) should operate to achieve this end), so they should be specifically excluded. | Remove Cl 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):  (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]:  (a) Working with Children (Risk Management and Screening Act) 2000;  (b) Disability Service Act 2006;  (c) ….  If the exception is retained, exclude expunged homosexual convictions by including an additional sub-section (2):   1. Sub-section (1) does not apply to an irrelevant criminal record relating to an expunged conviction for an offence under the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*. |
| Cls 35 and 36  Educational institution – sex, disability, religion. | Inconsistent with *Building belonging* 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 *Building belonging* 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  Club established for particular class of persons | 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 only’ club. The exception should be narrowed to avoid this outcome, modelled on the current section 97.  It should also be clearer that the exception only extends to club membership, and not other areas such as goods and services and work. | 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. |
| Cl 56(1)  Compliance with legislation or court or tribunal orders | Refer to *Priority concerns*: *Acts done in compliance or authorised by other laws* in this submission. | 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:   * 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. |
| Cl 56(2)  Compliance with Commonwealth legislation in relation to insurance or superannuation | Inconsistent with *Building belonging* 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.  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 *Sex Discrimination Act 1984.*  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.  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).  Therefore the effect of clause 56(2) is to broaden the circumstances in which a person may be lawfully discriminated against.  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-exhaustive factors to assist determination of when it is reasonable to rely on a data source.  The consultation paper does not justify the departure from the recommendations of the *Building belonging* 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. | Omit ‘family, carer or kinship relationships’ from cl 56(2)(a).  Clause 56 should be amended to include an additional sub-section that provides:  In deciding whether it is reasonable to rely on actuarial or statistical data, the following matters may be considered:  • 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  whether the data indicates that the person poses an ‘unacceptable risk’. |
| Cl 57  Citizenship or visa requirements imposed under State government policies etc. | Inconsistent with *Building belonging* review recommendation 25.3, that recommended that decisions and actions made under the provision should be compatible with the Human Rights Act.  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]](#footnote-7)  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.  An alternative to achieve the purposes of the recommendation is to include the words ‘reasonable and proportionate’ in the drafting of this provision. | Amend cl 57(1) as follows:   1. This Act does not apply in relation to reasonable and proportionate decisions or actions about – |
| Cl 61  Roles in religious bodies | Refer to *Priority concerns*: *Religious exceptions* in this submission. | Omit clause 61(2)(b). |
| Cl 62  Acts by religious bodies | 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 *Sex Discrimination Act 1984* (Cth), section 37(1)(d) and in the existing provision in the Anti-Discrimination Act, section 109, the conduct must comply with the doctrines (and/or tenets or beliefs) of the religion concerned. This should not be broadened beyond the existing position.  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.  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. | Amend cl 62 as follows:  **Acts by religious bodies**  (1) A religious body may discriminate against a person on the basis of the person’s religious belief or religious activity if—  (a) the act constituting the discrimination conforms to the doctrines, tenets or beliefs of the religious ~~body~~ body’s religion; and  (b) the discrimination is reasonable and proportionate in the circumstances.  (2) Subsection (1) does not apply to—  (a) an activity to which division 2 or 3 applies; or  (b) an activity by an educational authority to which division 6 applies.  Note—  See, however—  (a) section 29 in relation to activities to which division 2 applies;  (b) section 36 in relation to activities to which division 3 applies; and  (c) section 50 in relation to activities to which division 6 applies.  (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. |
| Cl 64  Sport | 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.’  The QHRC considers there is benefit in adding the words ‘reasonable and proportionate’ to this exception. | Amend cl 64 as follows:   1. 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 – |
| Heading to Div 11 - Exemptions | The heading should be changed to *Tribunal exemptions* for better clarity both here and in clause 21. | Change heading of Division 11 to *Tribunal exemptions.* |
| Cl 66  Application for exemption | The existing section 113 has been broken up into sections rather than sub-sections.  This clause is similar to existing s113(1). However, it refers to an application for exemption under *this part* whereas s113 provides for applications for exemption from specific provisions of the Act.  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).  The prohibitions of unlawful advertising (clause 89) and unnecessary information (clause 92) are in part 7 of the Bill. | Change ‘from a provision of this part’ to ‘from the application of specified provisions of the Act.’ |
| Cl 67  Commissioner’s role in application for exemption | 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. | Amend clause 67(1)(a) to require copies of all material filed in relation to the application to be given to the Commissioner. |

# Annexure F: Complaints about contraventions

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| **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 *Priority concerns*: *Complaints functions* 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. |
| Cl 104  Complaints by interested body on behalf of 1 or more complainants | Refer to *Priority concerns: Complaint functions* 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. |
| Cl 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. |
| Cl 117  Commissioner may decide not to deal with complaint | 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 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.  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.  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. | 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 time of the allegations and did not make the complaint until many years later, if the respondent can show substantial prejudice.  Expand clause 117(1)(b) to allow the commissioner to decide not to deal with a complaint if it may be appropriately deal with by another entity or it has been adequately dealt with by another entity.  Amend clause 117(2) to include an additional paragraph as follows:  117(2)(d) any other relevant factor |
| Cl 122  Compliant not dealt with lapses | 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. | Amend clause 122 to include the words ‘or finishes dealing with the complaint under section 139’ after the words ‘under this division’ |
| Cl 123  Acceptance of complaint by commissioner | Refer to *Priority concerns*: *Complaint functions* in this submission. | 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: 2. notify the complainant and respondent that the Commission is dealing with the complaint; and 3. provide a copy of the complaint to the respondent. |
| Cl 126  Complaint not able to be resolved | 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, 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. | 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 requests an extension of time, until a decision about whether to grant the extension is made. |
| Cl 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). |
| Cl 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. |
| Cl 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. |
| Cl 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). |
| Cl 140  Commissioner may withdraw authorisation | 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 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. | Change the words ‘within 28 days after the withdrawal’ in clause 140(3) to ‘within a reasonable period after the withdrawal’. |
| N/A  (Section 137 of the *Anti-Discrimination Act 1991*) | There is no equivalent to section 137 of the Anti-Discrimination Act in the draft Bill.  For more information refer to *Priority concerns: Complaint functions* in this submission. | Include a provision equivalent to section 137 in the current Act. |
| Cl 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—  (a) means a record of information, however recorded; and  (b) includes—  (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—  (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.’ |
| Cl 108(2)  Who may make a representative complaint | Consistent with *Building belonging* 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 *Australian Human Rights Commission Act 1986* (Cth).  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.’  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 *Australian Human Rights Commission Act 1986* (Cth)’ a representative complaint may be lodged without the consent of class members.’ | Amend clause 108(2) to provide:  ‘A complaint may be made under subsection (1) on behalf of a class of persons without the consent of ~~all~~ members of the class.’ |
| Cls 108(3) and 202(3)  Who may make a representative complaint | 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 -   1. The complaint was made as a representative complaint in good faith; and 2. It is in the interests of justice that the matter be dealt with as a representative complaint.   This is adapted from existing sections 147(2) and 195(2) of the AD Act.  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. | Omit cl 108(3) and 202(3). |
| Cl 109  Additional requirements for form of representative complaint | 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.  It is appropriate that these matters also be required for a representative complaint referred to the Tribunal. | 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. |
| Cl 110(a)  Effect of representative complaint on persons who are members of the class represented | Under clause 110(a), a person may only opt out of a complaint before the complaint is accepted.  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) *Australian Human Rights Commission Act 1986* (Cth) that allows a class member to withdraw any time before the President ‘terminates the complaint’.  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) *Australian Human Rights Commission Act 1986* (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.’ | Clause 110(a) should read:  ‘A person who is a member of a class of persons for which a representative complaint is made—  (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;'  Insert a new sub-clause that provides:  The commissioner may at any stage direct that notice of any matter be given to a class member or class members. |
| Cl 204  Effect of representative complaint on persons who are not members of the class represented | 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’.  This provision appears in s 46POB the *Australian Human Rights Commission Act 1986* (Cth), and prevents a class member from making an application to the Federal Curt 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.  Cl 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.  Cl 208 provides that if a tribunal orders that the complaint no longer continue as a representative complaint, then the complainant can continue on their own behalf, and class members can be joined as a joint complainant.  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). | 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. |
| Cl 207  Tribunal may discontinue representative complaint in particular circumstances | The Act should provide the tribunal additional power to discontinue a representative complaint where ‘it is otherwise inappropriate’ that the compliant continue as a representative complaint.  The Court has a similar discretion under s 103K(1)(e) *Civil Proceedings Act 2011*. | Cl 207(1) should read  **207 Tribunal may discontinue representative complaint in particular circumstances**  (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—  (a) the complaint will not provide an efficient and effective way of dealing with the complaints of the class members for the complaint; or  (b) the complainant is not able to adequately represent the interests of the class members for the complaint; or  (c) it is otherwise inappropriate that the complaint continue as a representative complaint. |
| Cl 216  Orders in representative complaint | For clarity, cl 216 should be amended in line with s 103X *Civil Proceedings Act 2011*. | Cl 216 should read:  **216 Orders in representative complaint**  (1) An order of the tribunal made for a representative complaint—  (a) must describe or otherwise identify the class members for the complaint affected by the order; and  (b) binds the class members described, other than a person who has opted out of the proceeding under sections 110 or 203. |
| N/A | Under sections 103P and 103S *Civil Proceedings Act 2011*, the court can substitute another class member as the representative party.  Under section 46PC(2) of the *Australian Human Rights Commission Act 1986*, the president may replace any complainant with another person as complainant.  The Commission and tribunal should have similar powers to replace complainants representing a member class in appropriate circumstances. | Insert a provision that will allow the Commissioner or president to replace the complainant for a representative complaint with another class member. |
| Cl 271  Amendment of s319A *Corrective Services Act 2006* | Spelling error in clause 271(4). | Amend clause 271(3) to ‘an entity’ rather than ‘and entity’. |
| Cl 274  Amendment of s 319G *Corrective Services Act 2006* | Inconsistent with *Building belonging* review recommendation 42.1, that sections 319G, 319H and 319I be entirely omitted, to ensure compatibility with the *Human Rights Act 2019*. | Rather than amend, entirely omit 319G of the *Corrective Services Act 2006*. |
| Cl 275  Amendment of s 319H *Corrective Services Act 2006* | As above | Rather than amend, entirely omit 319H of the *Corrective Services Act 2006*. |
| N/A | As above. | Omit 319H of the *Corrective Services Act 2006.* |

# Annexure G: Commission and Tribunal functions

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| **Clause** | **Issues** | **Recommended changes** |
| Part 10 Div 3  Compliance reviews and action plans | The term ‘compliance’ is contrary to the purpose of cooperating with duty holders to address systemic issues.  Given the nature of the proposed positive duty, which focuses on prevention, ‘compliance’ is too constrictive a term.  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. | Part 10 Division 2 – change heading, and all subsequent references to, by removing the word ‘compliance’ e.g. ‘~~Compliance~~ Reviews and action plans’. |
| Cl 150  Reports about compliance | 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.  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.  The legislation should impose procedural fairness obligations on the QHRC and in doing so, contemplate that adverse comment may be contained in these reports.  There should be an option of providing a report to the Minister for tabling, rather than only publishing it on the Commission’s website.  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 Act’. A report is not likely to be about steps already taken but steps that *should* be taken to comply. | Clause 150(1) should be amended as follows:   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.   Consider including further clauses in relation to reports about compliance to legislate for an ‘adverse comment’ process, drafted similarly to cl 145(2)(b). |
| Part 11  Opinions | Opinions are rarely utilised, and the QHRC would support their removal from the Act. | Omit Part 11. |
| Cl 171  Commission’s functions | Inconsistent with *Building belonging* 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   1. ~~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. |
| Cl 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 *Legal Profession Act 2007* in relation to the appointment of the Legal Services Commissioner, or the *Crime and Corruption Act 2001* 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. |
| Cl 237  Commission report about operation of Act | An issue arises currently with the QHRC’s reporting under section 91(e) of the *Human Rights Act 2019* 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 *received* into the Commission in a financial year. A complaint must be assessed to determine this.  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.  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.  A simple option to resolve this is to require reporting only on the matters *finalised* in the reporting period.  The word ‘type’ of complaint lacks clarity, but the QHRC presumes this means which contraventions were complained about. | Amend clause 237(2) as follows:   1. the number of complaints ~~made or referred to the commissioner~~ finalised in the financial year 2. ~~The types of complaints made or referred to the commissioner~~ for the finalised complaints, the contraventions that were complained about. 3. 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. 4. 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. 5. the number of finalised complaints ~~made or referred to the commissioner~~ that were – 6. for complaints finalised ~~made or referred to the~~  by the commissioner about discrimination…. 7. for complaints finalised ~~made or referred to the~~  by the commissioner about vilification…. |

# Annexure H: Other issues

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

1. Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Serious Vilification and Hate Crimes* (Report No. 22, January 2022). [↑](#footnote-ref-2)
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). [↑](#footnote-ref-3)
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. [↑](#footnote-ref-4)
4. This framework has been drawn from the Law Commission (United Kingdom), *Hate crime laws* (Final report, Law Com No 402, 2021). [↑](#footnote-ref-5)
5. *Building belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Queensland Human Rights Commission, July 2022), 22. [↑](#footnote-ref-6)
6. Consultation guide – p 23. [↑](#footnote-ref-7)