STRATEGIC REVIEW
of the QUEENSLAND HUMAN RIGHTS COMMISSION

and related reviews

DISCUSSION PAPER

30 September 2026

Acknowledgement

We acknowledge the Traditional Custodians of the lands across the State of Queensland and pay our respects to Elders past and present. We recognise and value the cultures, traditions and contributions that Aboriginal and Torres Strait Islander peoples bring to our communities and their deep connection to the lands, waters and seas of Queensland and the Torres Strait.

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This paper follows the Melbourne University Law Review Association Inc, *Australian Guide to Legal Citation* (4th ed., 2018) and reflects the law as at 28 September 2026.



The Review is committed to ensuring that Queenslanders from all culturally and linguistically diverse backgrounds can contribute to this review. To arrange an interpreter to communicate the Discussion Paper to you, please contact us on 13 Q GOV (13 7468).

Foreword

On 11 June 2026, the Queensland Government announced this Review with the intention of ensuring Queensland's human rights and anti-discrimination framework is modern, practical and responsive to the needs of the community.

The Terms of Reference for the Review incorporate three separate yet interwoven reviews: a strategic review of the Queensland Human Rights Commission; a further review of the *Human Rights Act 2019*; and a review of the uncommenced provisions of the *Respect at Work and Other Matters Amendment Act 2024* amending the *Anti-Discrimination Act 1991*.

At the time of the Review's announcement, I recognised the need for all people in Queensland, especially the most vulnerable, to be protected by a workable and effective human rights and anti-discrimination framework.

An important part of that protection is the ability to either make a human rights complaint or a complaint under the *Anti-Discrimination Act 1991* alleging a contravention of that Act.

The Discussion Paper raises issues and questions in relation to all three parts of the Review as to how the complaint processes under both Acts may be made more effective, accessible and uniform. During preliminary consultations, stakeholders have shared their views about how current complaints processes can be improved and highlighted the benefits of early and timely resolution.

The Discussion Paper also raises important issues and questions concerning the functioning of the Queensland Human Rights Commission, the operation of the *Human Rights Act 2019*, and any unintended consequences that may flow from the uncommenced provisions of the *Respect at Work and Other Matters Amendment Act 2024*.

Early in this Review, I committed to releasing this Discussion Paper on 30 September 2026, with submissions to be received over the month of October. This was to provide certainty to stakeholders and community members about their ability to contribute and to have their views considered.

In preliminary stakeholder consultations, I have gained a sense of what may be termed "consultation fatigue" given the significant reviews and inquiries that have preceded this Review. The Review would, however, be greatly assisted by a broad spectrum of submissions.

The Review Team has endeavoured to keep the issues and questions in this paper targeted for this reason.

As I am required to deliver the Final Report by 31 March 2027, some of the issues and questions in the Discussion Paper have been framed in such a way as to suggest a preliminary view. I emphasise that any such views expressed are indeed preliminary and all submissions will be fully considered.

The Hon. Peter Flanagan KC
Strategic Reviewer

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Glossary

ADA	*Anti-Discrimination Act 1991*
ACT HRA	*Human Rights Act 2004* (ACT)
ACT HRC	Australian Capital Territory Human Rights Commission
AHRC	Australian Human Rights Commission
Building Belonging Report	Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (July 2022)
Building Belonging Review	The review of Queensland's *Anti-Discrimination Act 1991* undertaken by the Queensland Human Rights Commission
Draft Anti-Discrimination Bill 2024	The exposure draft of the Anti-Discrimination Bill 2024
First Review	Professor Susan Harris Rimmer, *Placing People at the Heart of Policy: First Independent Review of the Human Rights Act 2019 (Qld)* (Final Report, September 2024)
HRA	*Human Rights Act 2019*
JRA	*Judicial Review Act 1991*
QCAT	Queensland Civil and Administrative Tribunal
QHRC	Queensland Human Rights Commission
QIRC	Queensland Industrial Relations Commission
Respect at Work Act	*Respect at Work and Other Matters Amendment Act 2024*
Respect at Work Bill	Respect at Work and Other Matters Amendment Bill 2024
Respect@Work Report	The AHRC's *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Report* (March 2020)
VEOHRC	Victorian Equal Opportunity and Human Rights Commission
Victorian Charter	*Charter of Human Rights and Responsibilities Act 2006* (Vic)
YJA	*Youth Justice Act 1992*

About the Review

[1] On 11 June 2026, the Queensland Government announced a review of Queensland's human rights and anti-discrimination framework.[1] The Review is being undertaken by the Honourable Peter Flanagan KC.

[2] There are three parts to the Review:

- **Part A** is a strategic review of the Queensland Human Rights Commission;
- **Part B** is a further review of the operation of the *Human Rights Act 2019*;
- **Part C** is a review of the uncommenced provisions of the *Respect at Work and Other Matters Amendment Act 2024* amending the *Anti-Discrimination Act 1991*.

[3] The Terms of Reference for the Review are at **Appendix 1**.

[4] Mr Flanagan has been assisted by three barristers from the private Bar and a Secretariat of three legal policy officers from the Department of Justice (**the Review Team**).

Review process



Research and initial stakeholder consultation (Stage 1)

[5] During the research and stakeholder consultation phase, the Review Team reviewed:

(a) submissions from key stakeholders, government agencies and others which were made to:

(i) Parliamentary Committees' consideration of the Human Rights Bill 2018[2] and the Respect at Work and Other Matters Amendment Bill 2024;[3]

(ii) Professor Susan Harris Rimmer's first review of the *Human Rights Act 2019* (**First Review**);[4] and

(iii) the Queensland Human Rights Commission during the development of its Report – *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*;[5]

(b) reports of Australian reviews of human rights and anti-discrimination legislation, and human rights commissions and anti-discrimination bodies operating at the Commonwealth, state and territory level; and

(c) academic articles, papers, reports, case law and literature.

[6] To help inform the Review and the development of this Discussion Paper, the Review Team also met with:

(a) the Queensland Human Rights Commission and key government departments and agencies;

(b) key stakeholders, including heads of jurisdiction, advocacy bodies, academics, professional bodies, legal service providers and unions;

(c) commissions that perform similar functions to the Queensland Human Rights Commission, such as the Australian Human Rights Commission, the ACT Human Rights Commission and the Victorian Equal Opportunity and Human Rights Commission.

[7] Individual meetings were held with peak bodies and service providers who expressed interest in being consulted during this preliminary review stage.

[8] **Appendix 2** is a list of individuals and entities that were consulted prior to the release of the Discussion Paper.

Discussion Paper release and consultation period (Stages 2 and 3)

[9] Following the release of this Discussion Paper, the Review will be inviting feedback from key stakeholders and members of the public. The key issues and options identified, and views expressed, in this Discussion Paper are presented to promote discussion. They do not represent a final view or position. Submissions and consultation feedback received will be an important source of information for the Review in developing the Final Report and recommendations.

[10] The Review acknowledges that some issues and reform proposals within the scope of the Review have already been the subject of extensive review and consultation. For this reason, the Discussion Paper focuses on issues not previously considered or fully explored, and those that may benefit from further input and consultation.

[11] If a particular issue is not addressed in the Discussion Paper, for example in relation to the operation of the *Human Rights Act 2019*, this is because the Review does not presently have any concerns. However, if you wish to make a submission about an issue not raised in the Discussion Paper, please feel free to do so.

What happens next?

[12] The Review will consider submissions received and the outcomes of further consultation and prepare a Final Report. The Final Report must be delivered to the Attorney-General and Minister for Justice and Minister for Integrity by 31 March 2027. The Commissioner of the Queensland Human Rights Commission must also be provided with a copy of the Final Report.

How to tell us your views

[13] The Review would like to hear from you. You can tell us your views by making a submission. The Review would appreciate submissions to be made in writing. If you require assistance in making a submission other than in writing, please contact us.

[14] Answering some or all of these questions will mean that we can use your views to directly inform the issues and options under consideration by the Review. **Appendix 3** is a complete list of questions.

[15] If you are a service provider or professional or industry body, the Review encourages you to consider including case studies in your submission.

[16] Please be aware that it is not the purpose of this Review to examine how the Queensland Human Rights Commission has managed or handled individual complaints or the outcomes of an anti-discrimination or human rights complaint. However, you may want to use your personal experiences to help you comment about any areas of improvement to the complaints process that may help other people in the future.

[17] You may **make a submission** in two ways:

(a) **Sending your submission by email**: qhrc.strategic.review@justice.qld.gov.au

(b) **Posting a hardcopy** to:

Secretariat Support
Strategic Review of the Queensland Human Rights Commission
c/- Office of the Deputy Director-General, Corporate Services
GPO Box 149
BRISBANE QLD 4001

[18] The closing date for submissions is **30 October 2026**.

[19] The Review will treat your submission as a **public submission** unless you tell us you would like us to treat it as **confidential**.

[20] **Public submissions** may be published on the Department of Justice's website and we may refer to them in the Final Report. If you are comfortable with us publishing and referring to your submission, but want us to remove your name and other identifying information first, please let us know. This is called an "**anonymised public submission**".

[21] Confidential submissions will not be published on the Department of Justice's website and any references to the submission in the list of submissions made will not identify the author.

[22] Submissions may be subject to disclosure under the *Right to Information Act 2009* and applications for access to submissions (including confidential submissions) will be determined in accordance with that Act.

Part A – Strategic Review

Scope

[23] The Queensland Human Rights Commission (**QHRC**) is established under the *Anti-Discrimination Act 1991* (**ADA**). Section 247 of the ADA provides for strategic reviews of the QHRC to be conducted. A strategic review includes a review of the QHRC's functions and whether those functions are being performed economically, effectively and efficiently. Those requirements align with broader requirements under whole-of-government legislation.[6]

[24] At its most basic, a strategic review looks comprehensively at the role, functions and performance of the QHRC.

[25] While the terminology of efficient, effective and economical is not defined in the authorising legislation for the Review,[7] the QHRC has a legislative obligation to 'achieve reasonable value for money by establishing and maintaining systems, practices and controls for the efficient, effective and economical financial and performance management' of the QHRC.[8] Relevant to that obligation, Queensland Treasury provides advice on these objectives to government agencies, including statutory bodies such as the QHRC, through the *Financial Accountability Handbook*. The Handbook describes these concepts as follows:

(a) **Effective** – 'The effectiveness of the operations of an agency may be defined as being able to deliver a successful service that meets agency objectives as completely as possible; that is, it is producing the desired result';[9]

(b) **Efficient** – 'Efficient management of financial resources may be defined as ensuring resources are achieving maximum performance with as little waste as possible';[10]

(c) **Economical** – 'For an agency to operate economically, the accountable officer or statutory body is required to act prudently, by minimising costs at all opportunities without compromising results. While the economy of an agency's operations is underpinned by cost, the efficiency and effectiveness of operations also contribute to achieving overall economy'.[11]

Functions

[26] Section 235 of the ADA and section 61 of the *Human Rights Act 2019* (**HRA**) prescribe the various functions of the QHRC. The QHRC has a wide range of functions, including dealing with complaints, examining Acts and other legislation, and intervening in court proceedings that relate to human rights or anti-discrimination matters.

[27] **Appendix 4** is a more detailed analysis of the statutory functions of the QHRC under the HRA and the ADA.

[28] Considering the QHRC's functions under section 61 of the HRA and section 235 of the ADA, some anomalies are apparent, for example:

(a) One of the functions under section 235(i) of the ADA is 'to promote an understanding and acceptance, and the public discussion, of human rights in Queensland'. This function, which squarely relates to human rights, is already prescribed in the QHRC's functions under the HRA.[12]

(b) Under section 61(b) of the HRA, the QHRC may review the effect of Acts, statutory instruments and the common law on human rights if asked to do so by the Attorney-General. Under section 235(c) of the ADA, however, the QHRC has a function to examine Acts and, when requested by the Minister (that is, the Attorney-General), proposed Acts to determine whether they are, or would be, inconsistent with the purposes of the ADA.

(c) Section 235(k) of the ADA provides for a function of the QHRC to be 'such other functions as the Minister determines', when ordinarily the functions of a statutory body are a matter for Parliament to determine through the making or amending of an Act.

[29] Other aspects of section 61 of the HRA and section 235 of the ADA may not reflect the QHRC's current role and activities, such as the function to research and develop new grounds of discrimination for consideration by government (ADA section 235(f)) and a power to seek an opinion from the Queensland Civil and Administrative Tribunal (**QCAT**) regarding how the ADA applies in a specific situation (ADA section 228). The Review also notes that understanding all of the QHRC's functions may be complex and challenging due to the wide spread of functions and powers across both Acts.

[30] The Review is considering whether the Commission's functions in section 61 of the QHRC and section 235 of the ADA should be redrafted to achieve better cohesion, clarity and simplicity.

Discussion Question	
A1	Should there be any changes to the drafting of the QHRC's functions or powers?

Complaints and conciliation

[31] The QHRC has functions to receive and resolve complaints under both the ADA and the HRA.[13] A person may therefore complain to the QHRC in relation to:

(a) discrimination which is prohibited by the ADA, sexual harassment and other objectionable conduct including vilification; or

(b) public entities acting or making decisions in a way that is not compatible with human rights, or failing to give proper consideration to a human right in making a decision.[14]

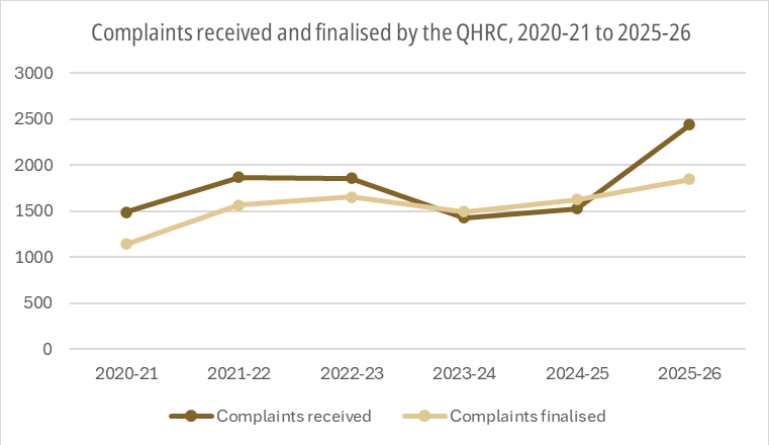
[32] Under section 44 of the *Public Interest Disclosure Act 2010*, complaints about reprisals may also be dealt with as alleged contraventions of the ADA.

[33] Based on preliminary consultations, it is apparent that the way in which the QHRC performs its complaints function is significantly influenced by legislative frameworks regarding complaints, aspects of which have already been the subject of review and recommendations. Accordingly, the prospect of legislative changes to the complaints frameworks under both the ADA and the HRA are considered together in the following section of this Discussion Paper, 'A reformed complaints framework'.

[34] This section of Part A of the Discussion Paper focuses on operational, rather than legislative, matters and the Review particularly seeks input as to the practical experience of the complaints handling functions performed by the QHRC.

Snapshot of complaints data

[35] In the years since the commencement of the HRA, the total number of complaints received by the QHRC has followed an increasing trend. High numbers of complaints were received in 2021–2022 and 2022–2023, likely reflecting the introduction of the HRA and the impacts of the COVID-19 pandemic.[15] However, in 2025–2026, the QHRC received a record number of complaints (2,439),[16] being an increase of just under 60 per cent from the previous year. Although the number of complaints finalised by the QHRC each year has generally been increasing, there is a backlog of complaints.



[36] Key features of the QHRC's complaints data for 2025–2026 include:

- The average time between a complaint being received by the QHRC and allocated to complaints handling staff was approximately 142 days (4–5 months).
- For complaints accepted by the QHRC, the average time between a complaint being received by the QHRC and finalised was approximately 353 days (11–12 months).
- Approximately 88 per cent of the complaints accepted by the QHRC were dealt with under the ADA, reflecting the general trend of previous years.
- In relation to discrimination complaints that the QHRC accepted and finalised, the most common attributes the subject of complaints were impairment, race and sex. The most common areas of discrimination were work, goods and services, and State laws and programs.
- In relation to human rights complaints that the QHRC accepted and finalised, the most commonly involved rights were the right to recognition and equality before the law, the right to privacy and reputation, and the right to protection from torture and cruel, inhuman or degrading treatment.

Complaints handling processes

[37] When complaints are lodged with the QHRC, members of the Enquiries and Dispute Resolution team assess the complaint to determine whether it meets statutory criteria under the ADA and the HRA.

[38] There are certain complaints which the QHRC must not accept, including complaints that the QHRC considers to be frivolous, trivial, vexatious, misconceived or lacking in substance.[17] There are also circumstances in which the QHRC has a discretion not to deal with a complaint, such as where it considers the subject matter of the complaint has been adequately dealt with by another entity.[18] If the complaint is accepted, it progresses through the QHRC's dispute resolution processes, which may include the QHRC seeking information from the parties.[19]

[39] Preliminary consultations suggest that the use of generative AI tools by complainants is now also increasing the number of complaints received by the QHRC and the complexity of individual complaints. This reflects the experience of other public bodies with complaints handling functions.[20]

Discussion Questions

A2 What is your experience of the QHRC's complaints handling processes?

A3 Does the QHRC appropriately determine which complaints to accept and which to reject?

A4 Are there any improvements you would make to the QHRC's complaints handling processes, including to improve the efficiency of the process?

Engagement with parties to complaints

[40] The complaints process requires the QHRC to engage with both complainants and respondents. The QHRC of course receives the complaint in the first instance from a complainant but may then need to liaise with the respondent (eg to confirm which entity is the proper respondent to a complaint or seek further information). Within that, the QHRC must balance the need to facilitate both parties' participation in the process with the need to progress complaints efficiently and retain the QHRC's independence and impartiality.

Discussion Question

A5 Does the QHRC engage appropriately with parties to a complaint, and how could they improve their engagement?

Conciliation conferences

[41] Many complaints accepted by the QHRC progress to a conciliation conference. The Review understands that this can be an effective means of resolving some, but not all, complaints. For example, a conciliation conference may not be successful if parties are not able to engage constructively, or if the complainant is seeking a resolution that the respondent cannot offer. Conciliation conferences may also involve additional time and expense for parties, for example, if legal representation is used. There is also the real issue of a person who makes a human rights complaint or a discrimination complaint being retraumatised by the conciliation process.

[42] Alternative options for dispute resolution might include:

(a) early resolution processes, which the QHRC adopts in appropriate cases and which involve resolution of complaints in a quicker and more informal way (eg by QHRC staff speaking to parties on the phone and identifying a mutually acceptable resolution);

(b) an ability for a complainant to notify the QHRC of a matter without progressing a formal dispute resolution process.

Discussion Questions	
A6	What is your experience (whether as a complainant or a respondent) of the conciliation conference process?
A7	Is the conciliation process effective and how could it be improved?
A8	Should there be more, or different, avenues to resolve complaints?

Investigations

[43] Section 235(b) of the ADA provides for the QHRC to carry out investigations relating to contraventions of that Act. Chapter 7, Part 1, Division 2 of the ADA provides for how the QHRC may proceed with the investigation of both a complaint and other potential contraventions of the ADA.

Scope of the function

[44] The ADA prescribes various circumstances in which the QHRC may, or must, exercise its investigative function.

[45] First, section 154A provides that the Commissioner may "investigate" a complaint at any time after the complaint is received by the Commissioner.

[46] Second, section 155(1) of the Act prescribes that the Commissioner *must* initiate an investigation if requested to do so by the Minister, or QCAT or the Queensland Industrial Relations Commission (**QIRC**) becomes aware of circumstances that may constitute a contravention of the Act and refers the matter to the Commissioner.

[47] Third, section 155(2) of the Act provides that the Commissioner *may* initiate an investigation if:[21]

(a) during the course of carrying out the QHRC's functions, a possible contravention of the Act against a group or class of persons is discovered, the matter is of public concern, and the Minister agrees;

(b) an allegation is made that an offence against the Act has been committed; or

(c) during the course of carrying out the QHRC's functions, a possible offence against the Act is discovered.

[48] In conducting an investigation, the Commissioner has the same powers as the Commissioner has in dealing with the complaint of a contravention of the Act.[22] If the Commissioner has reason to believe that a person is able to provide information or documents relevant to an investigation, the Commissioner may issue a written direction to the person to provide the requested information or documents within a reasonable timeframe.[23] The Commissioner may enforce the direction by filing a copy of it with a court of competent jurisdiction, upon which the direction is enforceable as if it were an order of the court.[24]

[49] Where certain matters which are investigated cannot be resolved by conciliation, the Commissioner may refer the matter to QCAT or the QIRC as if it were a complaint.[25]

Performance of the function

[50] The QHRC informed the Review that, in practice, it only exercises its power to investigate a complaint in a very limited way (for example, for the purpose of identifying the proper respondent to a complaint). Given the primary way a complaint is dealt with is through conciliation, which does not require fact-finding, the QHRC does otherwise not rely upon its investigatory power to interrogate the subject matter of a complaint.

[51] The Building Belonging Report noted that the Commissioner's discretion to initiate an investigation into the possible commission of an offence against the ADA has rarely, if ever, been used.[26] That is perhaps unsurprising given the nature of the offences identified in Chapter 7, Part 4 of the Act, such as the improper communication of official information or contempt of the Commission.

[52] Similarly, the QHRC does not exercise its function to investigate systemic issues. The Building Belonging Report observed that the ADA's silence on what action the Commissioner may take upon the completion of an investigation means that an investigation of a systemic issue under the current provisions can, at best, result in a conciliation and (if unresolved) referral to QCAT or the QIRC for determination.[27]

[53] The Respect at Work Act seeks to remedy this gap by expressly identifying the actions that the Commissioner may take upon completion of an investigation. The actions the Commissioner may take depend upon the type of investigation conducted.

[54] Part C of the Discussion Paper contains commentary and questions relating to the changes to the QHRC's investigation function introduced by the Respect at Work Act.

Interventions

[55] The QHRC has functions and powers conferred upon it by the HRA and the ADA to permit it to intervene in court proceedings in certain circumstances. These functions are different in nature and in scope. In practice, the QHRC only exercises its intervention function under the HRA.

[56] Section 51 of the HRA provides the QHRC with a right to intervene in a proceeding before a court or tribunal in which:

(a) a question of law arises that relates to the application of the HRA; or

(b) a question arises in relation to the interpretation of a statutory provision in accordance with a provision of the HRA.

[57] The Attorney-General is also given an equivalent right of intervention under section 50 of the HRA.

[58] Section 52 of the HRA requires the parties to certain proceedings in which a question arises under the HRA to give notice to the QHRC and the Attorney-General. Parties may also voluntarily notify the QHRC of relevant proceedings.

When will the QHRC intervene?

[59] The QHRC has published updated guidelines for the exercise and non-exercise of its power to intervene.[28] The QHRC advises in its guidelines that it may intervene in matters that are likely to:

- develop human rights jurisprudence;
- foster discussion of the meaning and scope of rights; and/or
- address serious human rights issues.

[60] Factors the QHRC will consider when determining whether to intervene include:

- whether the case involves new or unsettled law or would clarify a disputed interpretation;
- whether intervention aligns with the QHRC's strategic priorities;
- whether the human rights issue is significant and central to the proceedings; and
- whether the QHRC can add unique value not already provided by the parties or the Attorney-General.

[61] The QHRC has intervened in over 30 proceedings since its inception.

Where does the QHRC intervene?

[62] The QHRC's power to intervene is confined to relevant proceedings in a court or tribunal. The HRA defines "court" to mean the Supreme Court, the District Court, the Magistrates Court, the Childrens Court or the Coroners Court.[29] "Tribunal" is not defined however its meaning has been judicially considered.

[63] The principal court in which the QHRC has intervened is the Supreme Court (Trial Division), followed by the Coroners Court and Court of Appeal.

[64] The QHRC informed the Review that there is value in intervening in coronial inquests due to the inquisitorial nature of that process and the potential to shape recommendations. However, the role the QHRC may play as an intervener in coronial inquests, and the application of the HRA to such proceedings, has been the subject of divergent views within the Coroners Court.

[65] Most recently, the Coroners Court has rejected submissions made by the QHRC that:[30]

(a) the Coroners Court is a public entity acting in an administrative capacity when performing its functions of fact-finding and preventive comments powers, such that it must comply with section 58 of the HRA. This issue is considered further in Part B of this Discussion Paper at paragraphs [278] to [280].

(b) the Coroners Court is required by the interpretation provision in section 48 of the HRA, and as part of its functions, to investigate potential breaches of human rights that may have caused or contributed to the relevant death, to make findings identifying potential human rights breaches by public entities, and to make preventative comments that flow from this. The interpretation provision is considered in Part B of this Discussion Paper at paragraphs [207] to [212](c).

The QHRC's role upon intervening

[66] In addition to deciding when and where to intervene, *how* the QHRC conducts itself as a party when it does intervene in proceedings is central to whether the intervention function is being performed economically, effectively and efficiently.

[67] In its submissions to the First Review of the HRA conducted by Professor Harris Rimmer, the QHRC described its role as intervener in the following terms:[31]

> The Commission sees its role as intervener as an independent and expert advocate for the Human Rights Act and to assist courts, tribunals, and parties understand the application of human rights. Often parties refine their submissions and positions throughout the proceeding having had the benefit of submissions from the Commission and or Attorney-General. The Commission's practice is to publish its court submissions whenever possible to further promote public discussion and understanding of human rights and the Act in Queensland. The Commission is unaware of any concerns raised regarding its involvement in court proceedings as intervener.

[68] The QHRC's intervention guidelines state that '[g]iven our role, the Commission can make submissions that focus on broader public interest issues, rather than limited to the interests of the parties.'[32]

[69] The Review notes that in most of the proceedings in which the QHRC has intervened, the Attorney-General has also intervened under the HRA. From our review of those matters in which both the QHRC and the Attorney-General have intervened, it appears that:

(a) the QHRC ordinarily makes submissions on the application of the HRA which support the position of the individual party to the proceeding (usually the applicant); and

(b) the Attorney-General ordinarily makes submissions on the application of the HRA which support the position of the State entity party to the proceeding (usually the respondent).

Party or amicus curiae?

[70] Section 51(1) of the HRA provides that the QHRC 'may intervene in and be joined as a party to' the proceeding.

[71] In its submissions to the First Review, the QHRC noted its limited capacity and resources to intervene in court proceedings meant that it had focused on intervening in superior court proceedings despite human rights issues regularly arising in the lower courts and tribunals.[33] The Review understands that:

(a) responsibility for the intervention function sits within the QHRC's Legal and Policy directorate;

(b) external counsel is ordinarily retained for matters in which the QHRC intervenes, although the Commission has sought to limit its involvement in some proceedings to the making of written submissions.

[72] The QHRC submitted that, in addition to its intervention function, the Commission should be permitted to appear as *amicus curiae* ("friend of the court") to enable it to assist in more matters by limiting its role to making submissions on points of law. Professor Harris Rimmer agreed and recommended that the QHRC be permitted to appear as *amicus curiae* in court proceedings raising significant human rights issues.[34]

[73] The Review notes that the AHRC has an ability to intervene in proceedings with the leave of the court and subject to any conditions imposed, as well as an *amicus curiae* function for certain proceedings. Exercise of the *amicus curiae* function also requires leave of the court.

Measuring impact

[74] The Review is not aware of any metrics or similar by which the QHRC identifies and measures the impact of its interventions. By contrast, the AHRC measures its impact based on the number of occasions on which its applications for leave to appear are accepted, and whether arguments presented in the QHRC's submissions to courts are reflected in the final judgment in the matter.[35]

Discussion Questions	
A9	Should the QHRC have a right to appear as amicus curiae ("friend of the court") in a proceeding, whether instead of or in addition to its existing power to intervene?
A10	Should there be any conditions on when, where and how the QHRC can participate in a proceeding before a court or tribunal?

Interventions under the ADA

[75] Section 235(j) of the ADA provides that one of the QHRC's functions is, if the QHRC considers it appropriate to do so, to intervene in a proceeding that involves human rights issues with the leave of the court and subject to any conditions imposed by the court.

[76] This provision mirrors an equivalent function given to the AHRC under its governing Act.[36] "Human rights" is defined in the ADA to have the meaning given by section 3(1) of the *Australian Human Rights Commission Act 1986* (Cth). The Commonwealth Act defines "human rights" in different terms to the HRA.

[77] The QHRC does not, and never has, exercised this function. The QHRC's predecessor, the Anti-Discrimination Commission of Queensland, did on some occasions although such interventions were extremely rare.

[78] The intended purpose and utility of the function conferred by the ADA is uncertain given the QHRC has an express power under the HRA to intervene in proceedings raising human rights issues.

Discussion Question	
A11	Should the QHRC's intervention function in the ADA be repealed?

Education

[79] The functions of the QHRC conferred by the ADA include undertaking research and educational programs to promote the purposes of the ADA.[37] Under the HRA, the QHRC also has functions to make information about human rights available to the community and to provide education about human rights and the HRA.[38] The primary way the QHRC performs these functions is through the delivery of training to private, community and government sectors in relation to rights and responsibilities under both the ADA and HRA.

[80] Training is delivered in public and private sessions which may be conducted in person, at the QHRC or client premises, as well as virtually. The QHRC also offers training in an online (eLearning) format. Topics of training offered by the QHRC include the legislative frameworks under the ADA and HRA, as well as more specific topics such as sexual harassment and gender identity and discrimination. The QHRC's training services are delivered widely: in recent years, the QHRC has delivered an average of around 250 training sessions and received an average of around 17,000 new enrolments in online training annually.[39]

[81] In 2024 and 2025, the QHRC reviewed its education program and redesigned its education services to focus on capability, leadership and culture change. The redesigned education services are to be progressively implemented and are accompanied by a new learning management system with improved service delivery and data collection capability.

Discussion Question	
A12	What is your experience of the QHRC's education services and are any improvements required?

Examining Acts and making submissions to public policy processes

[82] There is no existing express function under the HRA that provides that the QHRC may examine proposed Acts. The ADA, however, confers an express power under section 235(c). The exercise of this function is subject to limitations. First, any examination of a proposed Act must be at the request of the Attorney-General. Second, such an examination is limited to determining whether the proposed Act is, or would be, inconsistent with the purposes of the ADA.

[83] The QHRC also has more general functions under the HRA such as section 61(d) 'to promote an understanding and acceptance, and the public discussion of human rights' and section 61(e) 'to make information about human rights available to the community'.

[84] Since its establishment in 2020, the QHRC has made numerous public submissions in a variety of forums, for example, to Parliamentary Committees inquiries or policy reviews being undertaken by state and federal government agencies. The primary focus of these submissions has been on Bills being considered by Queensland Parliamentary Committees after the relevant Bill has been introduced into Parliament. Since 2020, a total of 61 submissions to Queensland Parliamentary Committees have been published on the QHRC website.

[85] A preliminary analysis of these public submissions shows that they often raise issues about matters concerning government policy rather than focusing on the application of the HRA to the proposed legislation and the potential impact on human rights. Such an approach raises questions as to:

(a) the effectiveness of submissions in achieving a different outcome after a Bill has been introduced into Parliament;

(b) the effect on the relationship between the government and the QHRC, noting that the QHRC is independent but has an important role to play in furthering an understanding of the impact of proposed legislative changes on human rights.

[86] By contrast, the ACT Human Rights Commission (**ACT HRC**) has similar functions to the QHRC, with a role in analysing and supporting government in the development of bills and other policy decisions. In relation to the consideration of a commission's role in supporting government decision-making, the ACT HRC has observed that a:

> pre-enactment scrutiny culture has had a direct impact on improving the human rights compatibility of laws by ensuring there is a method for detecting disproportionate limitations on human rights that might otherwise be overlooked.[40]

[87] The ACT HRC also found that working collaboratively with government led to the following outcomes:

(a) early advice was taken seriously by government, with genuine concerns held by policy and legal officers about the need to ensure that Bills are introduced, where possible, that are compatible with human rights; and

(b) the independence of the ACT HRC was not jeopardised as 'once bills are tabled in the Legislative Assembly, and if the HR Commission retains concerns, our statutory independence means we are still in a position to make strong, robust and public comments'.[41]

[88] An issue is whether Queensland should adopt the approach taken in the ACT which involves frequent early engagement and advice to Ministers and government departments during policy development and the Cabinet process. This approach would allow the QHRC to provide greater support to government to identify and consider any potential disproportionate impacts earlier in the decision-making process and may better promote a human rights culture in Queensland. The ACT experience is that this model does not result in a loss of independence.

Discussion Questions

A13 What should be the role of the QHRC in participating in public debate on policy and legislation development in Queensland?

A14 At what stage in the process for the development of policy and legislation should the QHRC be involved? For example, should the QHRC be involved earlier in the process?

A15 Would earlier involvement of the QHRC in government decision-making processes compromise the independence of the QHRC?

Promoting understanding and public discussion

[89] The QHRC has functions and powers with respect to raising public awareness of human rights under section 235(i) of the ADA and section 61(d) of the HRA. These engagement activities are led primarily by the QHRC's Engagement & Communications directorate, which is comprised of a Communications Unit, Engagement Unit and the Yirmba First Nations Unit.

[90] The QHRC's activities which seek to raise public awareness of human rights and engage in public discussion are wide and varied. For example, in the 2023 –2024 Annual Report, the QHRC took part in or attended more than 30 events across the State, including NAIDOC week, Wear It Purple in Toowoomba, Iconic Multicultural Festival on the Gold Coast, the Luminous Festival Brisbane and Africa Day Festival.[42]

[91] The QHRC also uses other mechanisms to engage with the community, such as the development of a podcast,[43] speaking engagements at events conducted by key peak bodies, and developing partnerships with community legal centres, Queensland Law Society committees, the Queensland Human Rights Advocates Group and other critical stakeholder forums.[44]

[92] The Yirmba First Nations Unit is principally based in the Cairns (Gimuy) office, but conducts an array of engagement activities across Queensland directed at promoting and improving rural and remote First Nations communities' understanding of anti-discrimination and human rights matters. The Unit also works within the QHRC and externally to enhance cultural safety for First Nations people who make a complaint.

Discussion Questions

A16 What is your experience of the engagement activities undertaken by the QHRC?

A17 Are there any improvements you would recommend to the QHRC's engagement activities, including ways to better promote a culture of human rights in Queensland?

A reformed complaints framework

Scope

[93] Part A of this Review requires a strategic review of the QHRC, involving consideration of whether the QHRC's functions are being performed economically, effectively and efficiently. One of the functions conferred on the QHRC by the ADA and the HRA is dealing with human rights and anti-discrimination complaints.[45]

[94] Part B of the Review requires a further review of the operation of the HRA, including whether further or different provision should be made in the HRA about proceedings that may be brought or remedies that may be awarded in relation to acts or decisions of public entities made unlawful because of the HRA.

[95] Part C of the Review considers whether there are any unintended consequences from amendments made by the Respect at Work Act, including amendments to the complaints framework under the ADA.

[96] Based on preliminary consultations, it is apparent that:

(a) the way in which the QHRC performs its complaints function is significantly influenced by the legislative frameworks regarding complaints under the ADA and the HRA; and

(b) there may be benefit in aligning the complaints framework under the ADA with the more modern complaints framework under the HRA, giving consideration to the changes proposed following the QHRC's review of the ADA (**Building Belonging Review**).

[97] Accordingly, the prospect of legislative changes to the complaints frameworks under the ADA and the HRA are considered together in this section of the Discussion Paper.

[98] Operational matters, which go to how the QHRC carries out its responsibilities under those complaints frameworks in practice, are discussed above in Part A of this Discussion Paper.

[99] The question of further remedies for a person subject to a contravention of section 58(1) of the HRA, being remedies beyond the QHRC's internal dispute resolution services, are discussed below in Part B of this Discussion Paper.

Background to legislative changes

[100] A person who has been subject to an alleged contravention of the ADA,[46] or section 58(1) of the HRA,[47] may make a complaint to the QHRC. Complaints to the QHRC may therefore relate to:

(a) discrimination which is prohibited by the ADA, sexual harassment and other objectionable conduct including vilification; or

(b) public entities acting or making decisions in a way that is not compatible with human rights, or failing to give proper consideration to a human right in making a decision.

[101] In 2021–2022, the QHRC undertook the Building Belonging Review, an aspect of which was engaging in detailed consultation regarding specific changes that could be made to improve the complaints framework under the ADA. The results of this aspect of the review are described in detail in Chapter 5 of the report produced by that review, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (**Building Belonging Report**).

[102] In 2024, the former Queensland Government sought feedback on an exposure draft of a new Anti-Discrimination Bill to replace the ADA (**Draft Anti-Discrimination Bill 2024**). Part 9 of the Draft Anti-Discrimination Bill 2024 contained the new legislative framework for ADA complaints, which had some similarities with that under the HRA. Although some elements of the Draft Anti-Discrimination Bill 2024 were carried forward into the Respect at Work Act, which is the subject of Part C of the Review, the new legislative framework for ADA complaints was mostly not.[48]

[103] **Appendix 5** to this section of the Discussion Paper sets out a detailed comparison of the complaints frameworks under the current ADA, the HRA and that proposed in the Draft Anti-Discrimination Bill 2024.

[104] The analysis undertaken by the QHRC in respect of the ADA complaints framework in preparing the Building Belonging Report largely aligns with feedback provided to the Review in preliminary consultations. Accordingly, the Review has adopted the Draft Anti-Discrimination Bill 2024 as a starting point for possible changes to the complaints frameworks under both the ADA and the HRA, noting that there are also specific issues in relation to the HRA complaints framework that were outside the scope of the Building Belonging Review.

[105] The following is a brief summary of the complaints frameworks under the ADA and HRA, and the main legislative changes that the Review proposes to consider.

Changes to the ADA complaints framework

[106] The complaints framework under the ADA is set out in Chapter 7, Part 1 of the ADA. With some exceptions, the framework broadly reflects that included in the ADA upon its enactment in 1991.

The current framework

[107] A person who has been subject to an alleged contravention of the ADA may complain to the QHRC[49] within 1 year of the alleged contravention of the ADA.[50] If a complaint is made more than 1 year after the alleged contravention, the QHRC must accept the complaint if satisfied the complainant has shown good cause, but must otherwise not accept the complaint.[51] However, if the complaint relates to multiple alleged contraventions, at least one of which is within time, the QHRC may accept the complaint and defer its decision on the out of time allegations until after it has attempted to resolve the complaint by conciliation.[52]

[108] The QHRC must decide whether to accept or reject a complaint within 28 days of receiving the complaint and notify the complainant of the decision.[53] The QHRC must reject a complaint if it is of the reasonable opinion that the complaint is frivolous, trivial or vexatious, or misconceived or lacking in substance.[54] It may reject (or, in some circumstances, stay) complaints in other circumstances, including where it reasonably considers the subject matter of the complaint may be effectively or conveniently dealt with by another entity.[55]

[109] The QHRC has power to investigate complaints, including directing persons to provide particular information and documents to the QHRC.[56] If the QHRC accepts a complaint, it must notify the respondent and inform the respondent that it may give a written response within 28 days of the notice.[57]

[110] If the QHRC believes that a complaint may be resolved by conciliation, it must try to resolve it in that way.[58] If the complaint resolves by conciliation, the QHRC must record the agreement and file it with the QIRC or QCAT.[59] A party may request that the QHRC refer a complaint to the relevant tribunal in particular circumstances, including where the complaint has not resolved at a conciliation.[60]

Proposed changes

[111] ***Reasonable help to reduce complaint to writing*:** Consistent with the HRA,[61] the Draft Anti-Discrimination Bill proposes that if the Commissioner is satisfied the complainant needs help to put a complaint in writing, the Commissioner must give reasonable help to the complainant to do so.[62]

[112] ***Power to make preliminary enquiries:*** Consistent with the HRA,[63] the Draft Anti-Discrimination Bill sought to replace the Commissioner's power to investigate a complaint with a power to make preliminary inquiries to decide how to deal with the complaint.[64] By contrast, the Respect at Work Act seeks to fold the Commissioner's power to investigate complaints into a new investigations framework, which is discussed below in Part C of the Discussion Paper.

[113] ***Requirements upon a complaint being accepted*:** The ADA requires the QHRC to notify the respondent to a complaint of certain matters upon accepting a complaint, most notably that:

(a) the respondent may give a written response to the complaint and that any response must be provided within 28 days of the notice; and

(b) that if the respondent does not provide a written response or ask for an early conciliation conference, a conciliation conference will be held on a date stated in the notice.[65]

[114] Consistent with the HRA,[66] the Draft Anti-Discrimination Bill 2024 does not require the QHRC to provide the respondent with a 28-day timeframe to respond to a complaint or with a date for a conciliation conference.[67]

[115] ***Timeframe for complaints*:** The Draft Anti-Discrimination Bill 2024 proposes a 2-year timeframe for complaints and replaces the "show cause" process with a discretion to deal with an out-of-time complaint if the Commissioner considers there are exceptional circumstances and it is in the interests of justice.[68]

[116] ***Complaints which the QHRC may decide not to deal with*:** The Draft Anti-Discrimination Bill 2024 consolidates provisions as to complaints which the QHRC has a discretion not to deal with (eg complaints that are the subject of court or tribunal proceedings),[69] and expands that discretion to apply where:[70]

(a) the Commissioner considers there are insufficient details to indicate the alleged contravention the subject of the complaint; or

(b) having regard to all the circumstances, the Commissioner considers it is not appropriate to deal with the complaint (which could apply where, for example, a complainant dies).

[117] ***Complaints that are withdrawn:*** Under the ADA, if the complainant notifies the QHRC that they do not want to continue with a complaint, the QHRC must notify the complainant that the complaint will lapse at the end of 28 days unless the complainant notifies the QHRC that they intend to continue with the complaint.[71] The Draft Anti-Discrimination Bill 2024 retains a similar provision, but provides the QHRC with a discretion whether to give the complainant an opportunity to decide to continue with the complaint before accepting the withdrawal.[72]

[118] ***Dispute resolution*****:** The ADA provides that, if the Commissioner believes that a complaint may be resolved by conciliation, the Commissioner must try to resolve it in that way.[73] The Draft Anti-Discrimination Bill 2024 proposes a more flexible approach in line with the HRA, which includes:

(a) a series of principles regarding complaints handling, including that the type of dispute resolution provided for the complaint should be appropriate to the nature of the complaint;[74]

(b) providing for the Commissioner to 'take action the commissioner considers appropriate to provide dispute resolution for the complaint' (including conciliation);[75] and

(c) providing discretion for the Commissioner to take such action in the way the Commissioner considers appropriate (eg using telephone or other electronic means).[76]

[119] ***Representation at conciliation conferences*****:** The Draft Anti-Discrimination Bill 2024 retains the discretion for the commissioner to consent to a person being represented at a conciliation conference but, like the HRA,[77] provides that consent may be given if the Commissioner is satisfied that it is appropriate for the person to be represented, that it would help the conciliation and the representative has sufficient knowledge of the matters to effectively represent the person.[78]

[120] ***Timeframe for dealing with complaints*****:** The Draft Anti-Discrimination Bill 2024 provides that the commissioner must use the Commissioner's best endeavours to finish dealing with a complaint within 12 months after the complaint is made.[79]

[121] ***When the QHRC is finished dealing with a complaint*****:** The Draft Anti-Discrimination Bill 2024 clarifies the circumstances in which the Commissioner will have finished dealing with a complaint, including where the parties give the Commissioner written notice of their agreement to resolve the complaint.[80]

Discussion Questions

A18 Do you support aligning the complaints framework in the ADA with the Draft Anti-Discrimination Bill 2024?

A19 Should there be any further or different changes to that complaints framework?

Changes to the HRA complaints framework

[122] The complaints framework under the HRA is set out in Part 4, Division 2 of the HRA.

The current framework

[123] A "human rights complaint" for the purposes of the HRA, means a 'complaint about an alleged contravention of section 58(1) by a public entity in relation to an act or decision of the public entity'.[81] That is, a complaint about either or both of the "substantive" limb in section 58(1)(a) – that an act or decision is incompatible with human rights – and the "procedural" limb in section 58(1)(b) – that a public entity failed to give proper consideration to a human right relevant to the decision.

[124] A person can only make a human rights complaint if the QHRC is satisfied that the person has first made a complaint to the relevant public entity and, unless exceptional circumstances exist, 45 business days have elapsed without the person receiving a response they consider adequate.[82]

[125] The QHRC may make preliminary inquiries to decide how to deal with a human rights complaint and must refuse to deal with a complaint that it considers to be frivolous, trivial, vexatious, misconceived or lacking in substance. It may also refuse to deal with a complaint in particular circumstances, including where it considers there to be a more appropriate course under another law to deal with the complaint,[83] or the complaint was not made within 1 year of the alleged contravention.[84]

[126] If the QHRC decides to accept a human rights complaint for resolution, the QHRC may take action to try to resolve the complaint[85] and may conduct a conference for the purpose of conciliating the complaint.[86] If a complaint does not resolve, the QHRC prepares a report which may detail the action the QHRC considers the respondent should take to ensure its acts and decisions are compatible with human rights.[87] The QHRC may publish information about a human rights complaint that the Commission has finished dealing with.[88]

The meaning of "human rights complaint"

[127] As a matter of practice, the facts giving rise to a "human rights complaint" may involve a breach of section 58(1) of the HRA as well as other matters – such as a breach of the ADA or a privacy or workplace complaint – which may or may not be expressly identified.

[128] Although the definition of "human rights complaint" could be limited to complaints raising *only* a breach of section 58(1) of the HRA, the practical reality is that certain conduct may give rise to legal or other rights for which there are various forms of redress, and as to which a complainant ought not be limited in the process or processes they wish to engage. However, this gives rise to difficulties including that:

(a) different forms of redress often specify procedural requirements (on both complainants and respondents) which differ from those in the HRA, and may offer different remedies; and

(b) a complaint may relate to and identify more than one public entity, causing uncertainty as to the respective responsibilities of the public entities involved.

Discussion Questions

A20 Are there any changes that could be made to the process for making human rights complaints to public entities to better align it with other government complaints processes?

A21 Should there be a prescribed process for when a human rights complaint made to a public entity involves more than one public entity?

Naming individuals as respondents to human rights complaints

[129] The definition of "public entity" under the HRA includes a public service employee, and staff members and executive officers of public entities.[89] By Schedule 1 of the HRA, "respondent" means "the public entity" who is alleged to have contravened section 58(1) and, if that public entity is an individual (eg a public service employee), the public entity which employs or engages them.

[130] There is therefore scope for an individual public sector employee to be both named and joined as a respondent to a human rights complaint along with their public entity employer. The Review heard in preliminary consultations that this practice is occurring and that it can be a significant source of distress for the individual involved. It is also unusual. For example, in the judicial review context, courts have identified that unless a decision-maker acts as an individual, the responsible body should be named and not the individual.[90]

Discussion Question

A22 Should the HRA specify that a "human rights complaint" may only be made against a public entity, and not an individual in the employ of, or contracted to, that public entity?

Agents and representative complaints

[131] At present, the individual the subject of an alleged contravention of section 58(1), their agent, or a person authorised by the QHRC in writing, are able to make human rights complaints to the QHRC.

[132] An "agent", in the context of the HRA as a whole, may be seen to be sufficiently broad to encompass a person authorised and directed by the aggrieved person to make a complaint on their behalf. If the aggrieved person has not authorised or directed another person, another person may nevertheless seek authorisation from the QHRC to make such a complaint.

[133] Commenced provisions of the Respect at Work Act introduced into the ADA representative complaint provisions, whereby a third party can make a complaint on behalf of a class or group of persons who may have been discriminated against.[91] Although section 64(3) of the HRA provides that 'two or more persons may jointly make a human rights complaint', that does not deal with a third party bringing a complaint on behalf of two or more people.

[134] Recognising the benefit of uniformity, where appropriate, between the complaints processes under the HRA and ADA, consideration should be given to introducing a simpler and more pared back representative regime for human rights complaints. This would require detailed consideration of the differences between a human rights complaint and a complaint under the ADA, and the practical likelihood of a group of persons being subject to an act or decision which may be incompatible with their human rights.

Discussion Question

A23 Would a representative action for human rights complaints be necessary or desirable?

Requirements to engage with public entity

[135] Although the QHRC has a discretion under section 65(2) to accept a complaint prior to the 45-business day timeframe elapsing, there is no discretion presently to accept a complaint that has not been made to the relevant public entity in the first instance.

[136] There is an argument that this procedural prerequisite ought to be amended or removed. For example, some complainants may be unwilling to make a complaint to the public entity directly due to fear (whether reasonable or not) of recrimination or reprisal.

[137] The Review's present view, however, is that the requirement to attempt resolution directly with the relevant public entity prior making a complaint to the QHRC is an important step other than perhaps in exceptional circumstances. If it was removed entirely, there is a risk that the QHRC would receive many more complaints, and potentially complaints that it is not best placed to deal with in the first instance as it will not have access to the resources relied upon by the public entity which made the decision.

Discussion Questions

A24 Should a complainant be required to engage with the relevant public entity prior to complaining to the QHRC?

A25 Is the timeframe of 45 business days appropriate, including where a complaint engages multiple complaints frameworks?

Form of complaint

[138] Section 67 requires that a complaint be in writing, with the complainant's name and address, and have sufficient details to "indicate" the alleged contravention. The QHRC provides a complaints form in online and printable formats, however, there is no requirement to use a particular form when making a human rights complaint to a public entity or to the QHRC. The use of a prescribed form might streamline the management of human rights complaints between public entities and the QHRC, but may create an additional obstacle for some complainants.

[139] The HRA does not expressly allow an oral complaint to be made. However, if the QHRC considers the complainant needs help to put the complaint in writing, it must give reasonable help to the complainant to put the complaint in writing.[92]

Discussion Questions

A26 Should there be a prescribed form for human rights complaints for the purposes of the initial complaint to the relevant public entity and any subsequent complaint to the QHRC?

A27 Should a person be able to make an oral complaint to the QHRC in exceptional circumstances?

Powers of the QHRC

[140] The QHRC may make preliminary enquiries about a human rights complaint,[93] and has the power to ask or direct a relevant entity – being the complainant or respondent, or another entity the commissioner considers has information relevant to the complaint – to give the Commissioner information about the complaint.[94]

Discussion Question

A28 Are the QHRC's powers to enquire into human rights complaints sufficient for the purposes of its functions in dealing with and conciliating complaints?

Refusal to deal with complaints

[141] The QHRC must refuse to deal with a human rights complaint if the QHRC considers the complaint is frivolous, trivial, vexatious, misconceived or lacking in substance (section 69). The wording of this provision reflects section 139 of the ADA, and comparable provisions in Australian anti-discrimination legislation. The terms 'frivolous, trivial, vexatious, misconceived or lacking in substance' are well-understood in the common law and under relevant statutes, such as the *Vexatious Proceedings Act 2005*, and within the *Uniform Civil Procedure Rules 1999*.

[142] By contrast, section 70 of the HRA provides the QHRC with a discretion to refuse to deal with, or continue to deal with, a human rights complaint in certain circumstances, which may be summarised as follows:

(a) the QHRC considers there is a more appropriate course of action available under another law to deal with the subject of the complaint;

(b) the QHRC considers the subject of the complaint has been appropriately dealt with by another entity;

(c) the QHRC considers the requirements under section 65 for the making of the complaint have not been met;

(d) the complaint was not made or referred to the QHRC within 1 year after the alleged contravention to which the complaint relates happened; and

(e) broadly, the complainant does not comply with a reasonable request made by the QHRC or is uncooperative or uncontactable.

[143] The QHRC may also:

(a) defer dealing with a complaint to allow for engagement with the relevant public entity as required by section 65, or to ensure the complaint is dealt with appropriately under another law;[95]

(b) in some circumstances, refer the human rights complaint to other entities (being the Ombudsman, the Health Ombudsman, the Crime and Corruption Commission, Information Commissioner, and the Federal National Disability Insurance Scheme Commissioner) if the complainant consents and the QHRC forms the view that the complaint would be more appropriately dealt with by that other entity;[96] and

(c) if the QHRC considers a human rights complaint would be more appropriately dealt with as a complaint about an alleged contravention of the ADA, deal with the complaint under the ADA if the complainant consents.[97]

[144] The Review's preliminary view is that:

(a) the requirement for the complainant to consent to a complaint being referred to another entity or dealt with under the ADA may be overly burdensome given that the QHRC (not the complainant), with its expertise, is in the best position to determine the appropriate legislative structure under which the complaint should be progressed and resolved;

(b) in line with the Draft Anti-Discrimination Bill 2024,[98] consideration could be given to imposing a time limit for the making of a human rights complaint, being 2 years after the alleged contravention or, if the complainant was a child at the time, the child turns 18 – with provision for the QHRC to deal with out-of-time complaints in exceptional circumstances.[99]

Discussion Questions

A29 Should the complainant's consent be a prerequisite to any referral by the QHRC to another entity?

A30 Should a time limit for the making of a human rights complaint be imposed and, if so, what is the appropriate timeframe and in what circumstances (if any) would it be appropriate to accept an out of time complaint? Should this be consistent with the provisions of the Draft Anti-Discrimination Bill 2024?

Progression of human rights complaints

[145] Sections 76 to 87 govern the process of accepting a human rights complaint and its conciliation by the QHRC. Paragraphs [111]–[121] of this Discussion Paper outline the proposal to adopt the Draft Anti-Discrimination Bill 2024 as a starting point for possible changes to the complaints frameworks under the ADA.

[146] Despite similarities between the complaints framework in the Draft Anti-Discrimination Bill 2024 and that under the HRA there are some differences, many of which no doubt reflect the distinct interests protected by each regime. Nevertheless, the Review's preliminary view is that there may be benefit in aligning those processes, where appropriate, to simplify the QHRC's dispute resolution functions and provide greater flexibility and clarity in relation to the early resolution of complaints.

[147] Key changes to align the provisions of the HRA with the Draft Anti-Discrimination Bill 2024 may include:

(a) implementing a timeframe for making of complaints (discussed above at paragraph [115]);

(b) providing complainants with an opportunity to "show cause" in circumstances where the QHRC is considering not to continue to deal with the complaint;[100]

(c) expanding the QHRC's discretion not to deal with particular complaints to apply where:[101]

(i) the Commissioner considers there are insufficient details to indicate the alleged contravention the subject of the complaint; or

(ii) having regard to all the circumstances, the Commissioner considers it is not appropriate to deal with the complaint (which could apply where, for example, a complainant dies);

(d) before a complaint is referred to the tribunal, allowing the complainant or the Commissioner to apply for an order prohibiting a person from doing an act that might prejudice the resolution of the complaint, or an order that the tribunal might make after a hearing;[102]

(e) implementing dispute resolution principles, namely that:[103]

(i) dispute resolution should be provided for the complaint as early as possible;

(ii) the type of dispute resolution provided for the complaint should be appropriate to the nature of the complaint;

(iii) the dispute resolution process provided for the complaint should be fair to all parties;

(iv) dispute resolution for the complaint should be consistent with the purposes of the Act;

(f) expanding the (non-exclusive) list of actions the QHRC may take to try to resolve a complaint to include:[104]

(i) facilitating discussions between the parties; and

(ii) giving information or guidance to the respondent about how to comply with the Act; and

(g) providing discretion for the QHRC to take dispute resolution action in the way the QHRC considers appropriate (eg using telephone or other electronic means).[105]

[148] In relation to the conduct of conciliation conferences, key changes to align the provisions with the HRA with the Draft Anti-Discrimination Bill would include:

(a) providing for the QHRC to "invite" persons to take part in a conciliation conference including the parties, a class member for a representative complaint, or a person the QHRC considers has information relevant to the complaint or whose presence is likely to be conducive to the conciliation of the complaint[106] (noting that the QHRC otherwise has power to "direct" a person to take part in a conciliation conference[107]);

(b) allowing the payment of costs to be directed against a party who fails to attend a conciliation conference or, where the complainant fails to attend, allowing the dismissal of the complaint;[108]

(c) providing that, in conducting a conciliation conference, the QHRC must take all reasonable steps to ensure the conduct of the conference does not disadvantage a party or a class member for a representative complaint;[109]

(d) providing for a conciliation conference to be conducted in the way the QHRC considers appropriate, including by hearing from the parties separately in separate rooms and by teleconferencing, videoconferencing or another form of communication that allows persons taking part in the conference to hear and take part in discussions as they happen;[110] and

(e) specifying that the QHRC must use best endeavours to finish dealing with a complaint within 12 months after the complaint is made.[111]

Discussion Question

A31 Do you support alignment, where appropriate, of the complaints processes under the HRA with the changes proposed to the ADA, while the complaint is being dealt with by the QHRC?

Action on dealing with human rights complaint

[149] The QHRC must notify the parties when a human rights complaint is considered to be resolved.[112] When a complaint does not resolve, the QHRC must prepare a report about the complaint which may include details of action the QHRC considers the respondent should take to ensure its acts and decisions are compatible with human rights. The QHRC must give a copy of the report to the parties.[113] Separately, the QHRC may publish information about a human rights complaint that the QHRC has finished dealing with.[114]

[150] Thus, if a complaint is not resolved, the QHRC must issue a report which may (but is not required to) include details of action the QHRC considers the respondent should take to ensure its acts and decisions are compatible with human rights. Whilst that suggests that the QHRC has taken a particular view about the respondent's conduct:

(a) there is otherwise no express provision or role for the QHRC to make any finding of unlawful conduct within the meaning of section 58(1) of the HRA;

(b) there is no requirement on the respondent to reply to that report, nor to take any action.

[151] A proposal which may provide practical and genuine consequences for a public entity the subject of a human rights complaint which has not resolved could involve the following:

(a) first, the respondent should be required to reply within a specified time period to any recommended action in the report of the QHRC;

(b) second, the respondent must subsequently inform the QHRC in writing about any action which is being taken by the respondent in response to the QHRC's recommendations; and

(c) third, the QHRC must publish on its website:

(i) the substance of the complaint;

(ii) the recommended action and the respondent's reply; and

(iii) any action taken by the respondent in response to the recommendations.

[152] The Review's preliminary view is that there is a likelihood that such a process would achieve the following outcomes:

(a) public entities would continue to be publicly accountable for considering recommendations made by the QHRC and taking actions in response;

(b) the culture of human rights in the Queensland Government would continue to improve through transparent reporting on complaints that were not resolved by conciliation;

(c) changes to policies, procedures and practices may be influenced or caused by the making of human rights complaints; and

(d) the central dialogue between public entities and the public whom they serve would continue to evolve.

Discussion Question

A32 Should there be any changes to the reporting process where a human rights complaint is unable to be resolved at conciliation?

Part B – Further Review of the *Human Rights Act 2019*

Scope

[153] Section 95 of the HRA required that the operation of the Act prior to 30 June 2023 be independently reviewed as soon as practicable after that date. The First Review of the HRA was conducted by Professor Harris Rimmer, whose final report was delivered on 30 September 2024.

[154] Section 96 of the HRA requires that the operation of the Act after 30 June 2023 be the subject of a further independent review. Part B of the Review comprises this second review of the HRA. In conducting the second review of the HRA, the Review must consider the following:[115]

(a) whether additional human rights should be included as human rights under the HRA, including, but not limited to, rights under the:

(i) International Covenant on Economic, Social and Cultural Rights; or

(ii) Convention on the Rights of the Child; or

(iii) Convention of the Rights of Persons with Disabilities; or

(iv) Convention on the Elimination of All Forms of Discrimination against Women;

(b) whether further or different provision should be made in the HRA about proceedings that may be brought, or remedies that may be awarded, in relation to acts or decisions of public entities made unlawful because of the HRA;

(c) whether the amendments made by the HRA to the *Corrective Services Act 2006* and the *Youth Justice Act 1992* are operating effectively, or further or different provision should be made for the interrelationship between the HRA and those Acts; and

(d) whether a further review of the HRA is necessary.

[155] The Review is also required by its Terms of Reference to consider how best to protect the rights of victims of crime.

[156] In exploring these issues, we refer to the recommendations made by Professor Harris Rimmer in the First Review.[116] The current Review provides an opportunity to reconsider some aspects of the HRA's scope and operation, noting the Queensland Government has decided not to implement the recommendations of Professor Harris Rimmer's earlier review.[117]

[157] Because the current Review encompasses several aspects of the ADA's operation that did not form part of the First Review, it also allows for a broader consideration of how Queensland's human rights and anti-discrimination legal frameworks can be better aligned to operate in a clear, cohesive and complementary way.

Human rights in Queensland

[158] Part 2 of the HRA:

- identifies who has human rights;
- confirms that human rights are in addition to other rights and freedoms;
- provides that human rights may be limited; and
- sets out the human rights afforded protection under the Act.

Limitations on human rights

[159] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 8 relevantly provides that an act, decision or statutory provision is compatible with human rights if it limits a human right only to the extent that is reasonably and demonstrably justifiable in accordance with section 13.

[160] In the First Review of the HRA, Professor Harris Rimmer agreed with the submission that certain rights in the International Covenant on Civil and Political Rights are absolute rights and that, where those same rights appear in the HRA, the Act should clarify that no limitations upon those rights can be justified.[118] Examples of such rights are:

- the right to life (Article 6);
- freedom from slavery and servitude (Article 8(1), (2));
- freedom from imprisonment for inability to fulfil a contractual obligation (Article 11).

Discussion Question	
B1	Should any human rights be expressed as absolute and not subject to any limitation?

Should there be additional human rights?

[161] The HRA recognises 23 human rights. As shown in **Appendix 6**, that is the same number as the *Human Rights Act 2004* (ACT) (**ACT HRA**) and three more than the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Victorian Charter**) (although the nature of the rights recognised across those jurisdictions differ). The Commonwealth Parliamentary Inquiry, which recommended the enactment of a Commonwealth Human Rights Act, proposed recognising 28 human rights.[119]

[162] In the First Review, Professor Harris Rimmer recommended the addition of three human rights:

- the right to adequate housing;
- the right to a clean, healthy and sustainable environment; and
- the right to live free from gender-based violence.

[163] Professor Harris Rimmer also recommended the Queensland Law Reform Commission be tasked to explore the value of a further four human rights, namely:

- the right to self-determination for Aboriginal and Torres Strait Islander peoples, and a self-determination reform framework;
- the right to access government information and services in accessible formats and right to access the Internet for essential government services;
- the right to compensation for wrongful conviction;
- rights-based approaches to disasters.

[164] The Queensland Government did not accept these recommendations.

[165] The Review notes that Professor Harris Rimmer's discussion paper sought submissions on 13 proposed additional human rights. Both Professor Harris Rimmer's discussion paper in relation to human rights and the relevant submissions have been considered by this Review.

[166] One of the issues raised in those submissions was whether enacting additional human rights would detract from the force of the existing 23 human rights already recognised under the HRA. This is in circumstances where the existing 23 human rights are expressed in general language and contain overlapping concepts.

[167] Further, it does not necessarily follow that because a subject matter is considered worthy of legislative protections it should also attract a broad and positively stated human right. For example, concerns about the adequacy of housing in Queensland may be better served by specific amendments to the *Residential Tenancies and Rooming Accommodation Act 2008* rather than the introduction of a universal human right of all people in Queensland to adequate housing.

Discussion Question	
B2	Should any additional human rights be recognised in the HRA?

Victims of crime

[168] The Review is also required by its Terms of Reference to consider how best to protect the rights of victims of crime.

Existing protections

[169] Presently, the rights of victims of crime in Queensland are expressly recognised in the Charter of Victims' Rights (**Charter**).[120] The Charter sets out the rights of certain victims of crime[121] and the requirements for government entities and non-government entities to act in accordance with those rights 'as far as practicable and appropriate'.[122]

[170] Other legislation also affords specific rights to victims, including the *Penalties and Sentences Act 1992*, *Youth Justice Act 1992* and *Corrective Services Act 2006*. For example, under Part 10B of the *Penalties and Sentences Act 1992* a victim has a right to give a written victim impact statement to the prosecutor detailing the harm caused to them by the offence in order to inform the sentencing court.[123]

[171] The Victims' Commissioner is undertaking a review of the Charter to ensure that it effectively promotes and protects the rights of diverse victims of crime. As part of its review, the Victims' Commissioner is exploring how the Charter and HRA interact, noting that both the Victims' Commissioner and QHRC may receive complaints where there is an overlap between victims' rights under the Charter and rights protected under the HRA.[124]

[172] The Victims' Commissioner's final report is due to be submitted to the Minister for Youth Justice and Victim Support and Minister for Corrective Services in December 2026.[125]

Submissions made to the First Review

[173] Professor Harris Rimmer recommended a new right be included in the HRA which:

(a) recognises that victims of crime should be treated in a respectful and trauma-informed way that reduces the stress and trauma on victims;

(b) includes a right to be treated with courtesy, compassion, respect and dignity by investigatory and prosecuting agencies, and to be provided relevant information (unless a victim has elected not to receive information) in a timely manner;

(c) refers to the rights, protections and support detailed in the Charter.

[174] In making this recommendation, Professor Harris Rimmer noted that four stakeholders had made submissions that many of the rights detailed in the HRA sufficiently recognise, protect and support the rights of victims of crime.

[175] All individuals in Queensland have human rights – it follows that victims of crime have the benefit of all human rights recognised by the HRA. Rights that may be particularly relevant to the experience of victims of crime include: the right to equality; the right to life; the prohibition on torture, cruel, inhuman and degrading treatment; the right to freedom of expression; the right to privacy and reputation; the protection of families and children; and cultural rights generally and for Aboriginal and Torres Strait Islander peoples.[126]

[176] During consultations for the First Review several legal stakeholders referred to the general rights of victims already protected by the Charter and existing human rights under the HRA as a reason why there was not a strong justification for the separate recognition of victims' rights in the HRA.[127] They raised specific concerns about the potential for unintended consequences should a separate stand-alone right be established, including for the right to a fair trial, and suggested the focus instead should be on legislative reforms that better enhance protections of pre-existing rights.[128]

[177] The existence of separate complaints mechanisms under the Charter that enable victims to make a complaint about their treatment was viewed as another reason recognition of victims' rights in the HRA was not needed. There was a concern that recognition might risk duplicating existing complaints processes and the role of the new Victims' Commissioner, making the process of making a complaint more confusing for victims. A suggestion was made that consideration instead could be given to providing the Victims' Commissioner with additional powers aligning with those of the Human Rights Commissioner, such as the power to conduct and compel attendance at conciliation conferences.

[178] However, Professor Harris Rimmer noted that most stakeholders and submissions argued that the current human rights (particularly those that relate to criminal proceedings)[129] do not impose a positive duty on public entities to take steps to protect the rights of victims of crime. Similarly, some commentators highlight the recognition of victims' rights as human rights as being important for several reasons, including that this creates a clear obligation on the State and its agencies to respect victims' rights.[130]

Discussion

[179] An issue is whether the rights of victims of crime should be expressly recognised in the HRA as human rights or whether those rights are better protected under specific legislation. There may be real difficulties in incorporating the rights of victims of crime as human rights into the HRA when the HRA presently contains specific rights in relation to criminal proceedings, rights for children in the criminal process, the right not to be tried or punished more than once, and a right in relation to retrospective criminal laws.[131]

[180] Similarly, if the rights of victims of crime are made "human rights," the application of the proportionality test under sections 8 and 13 of the HRA may be a complex exercise, requiring the balancing and weighing of competing rights.

Discussion Questions

B3 Should new human rights be included in the HRA to protect victims of crime?

B4 If any new human rights are included, are there any unintended consequences in how those rights would operate alongside existing rights?

Application of human rights in Queensland

[181] Part 3 of the HRA comprises four divisions.

(a) Division 1 creates systems and processes for determining whether proposed legislation is compatible with human rights;

(b) Division 2 provides for Parliament to override the operation of the HRA in specific circumstances;

(c) Division 3:

(i) requires courts and tribunals to, so far as is possible, interpret legislation in a way that is compatible with human rights; and

(ii) provides that the Supreme Court may make a declaration of incompatibility where it is of the opinion that a statutory provision cannot be interpreted in a way compatible with human rights;

(d) Division 4 makes it unlawful for a public entity to act in a way that is incompatible with human rights, and to fail to give proper consideration to human rights in making a decision.

Scrutiny of new legislation

[182] Part 3, Division 1 of the HRA essentially comprises a process that Parliament has decided to implement to govern itself.

[183] The Review seeks submissions on how Part 3, Division 1 has operated since the First Review of the HRA, including as to:

(a) the quality and effectiveness of statements of compatibility, the scrutiny of bills and statements of compatibility by portfolio committees (including of non-Queensland laws), and human rights certificates for subordinate legislation;

(b) a possible gap in the legislation, namely that there is no requirement for a Minister or Member proposing a bill to respond in any way to concerns raised by the portfolio committee;

(c) whether there should be a uniform approach to the form of statements of compatibility, which presently vary from department to department in both content and length. In this respect the Review notes that section 38(2) specifically provides for what a statement of compatibility must state. There are only two opinions of the moving Minister or Member which must be stated, namely: first, whether the Bill is compatible with human rights and, if so, how it is compatible; second, if it is not compatible with human rights, the nature and extent of the incompatibility.

Discussion Question

B5 How has the process of scrutinising new legislation under the HRA operated, and are any improvements required?

Override declarations

43 Override by Parliament

(1) Parliament may expressly declare in an Act that the Act or another Act, or a provision of the Act or another Act, has effect despite being incompatible with 1 or more human rights or despite anything else in this Act.

[184] Part 3, Division 2 deals with Parliament's ability to make "override declarations" under section 43(1) of the HRA. The intention of Parliament is that an override declaration will only be made in exceptional circumstances. A member who introduces a Bill containing an override declaration must make a statement to the Legislative Assembly explaining the exceptional circumstances that justify including the override declaration. The effect of an override declaration is that the HRA does not apply to the relevant Act or provision to the extent of the override declaration while the declaration is in force.

[185] Our preliminary view is that the whole of Part 3, Division 2 of the HRA should be repealed.

Submissions to the First Review

[186] The First Review recommended that the override declaration provisions be repealed. Both reviews of the Victorian Charter, which contains a similar mechanism, came to the same conclusion.

[187] At the time of the First Review, Professor Harris Rimmer noted that the override provision had been used twice, both times in relation to youth justice issues.

[188] The first use of the override power involved the *Strengthening Community Safety Act 2023*, which amended the *Bail Act 1980* and the *Youth Justice Act 1992* to create a breach of bail offence for children, enable children to be declared as serious repeat offenders, and require courts to revoke conditional release orders when breached by a child, thus returning the child to detention.

[189] The second use of the override power involved the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023*. The Act primarily amended other legislation but also the *Youth Justice Act 1992* and the *Police Powers and Responsibilities Act 2000*. Professor Harris Rimmer noted that four of the amendments required an override declaration.

[190] Many of the submissions received by Professor Harris Rimmer addressed the override provisions, with all of them critical of either how the override had been used or of the need for an override power at all. Criticisms were also made as to whether the necessary threshold of "exceptional circumstances" was being met. One submission noted that an override declaration permitted the government to escape

human rights scrutiny entirely by removing the need for a statement of compatibility thereby excluding the parliamentary scrutiny process for the relevant Act or provision.

[191] The Review notes that the override provisions continue to be used.[132]

Discussion

[192] The underlying (unstated) premise of section 43(1) is that a statutory provision which is incompatible with one or more human rights does otherwise not have effect, thus requiring an "override declaration" by Parliament to render it effective.

[193] The difficulty is that there is no provision in the HRA which has this result. To the contrary, central to the "dialogue model" is the protection of the paramountcy of Parliament. It is for Parliament alone to determine whether to pass laws which are or may be incompatible with one or more human rights. The HRA expressly recognises this, as it is replete with provisions that protect the validity of every Act passed by Parliament and subordinate legislation promulgated by the Executive.[133]

[194] The Commonwealth Parliamentary Joint Committee on Human Rights did not recommend an override provision primarily because there was simply no need for such a provision. The Committee referred to a submission of the Castan Centre for Human Rights Law which stated:[134]

> Whereas human rights instruments are 'designed not only to preserve parliamentary sovereignty, but also to enhance the transparency of an accountability for public decision-making that impacts on rights, and to require justifications for the rights-costs of such decisions', override provisions 'in design and practice ... undermine such scrutiny and accountability' and allow for 'the substitution of inter-institutional dialogue with a representative monologue'.

[195] The short point is that, where the sovereignty and paramountcy of Parliament is maintained under the HRA, there is simply no requirement for Parliament to make an override declaration.

Discussion Question	
B6	Should the override declaration provisions of the HRA be repealed?

Interpretation of laws

[196] Part 3, Division 3 is an integral part of the "dialogue model" established by the HRA. Division 3 is intended to facilitate the creation of "dialogue" between the courts and Parliament, particularly through the interpretation provision (section 48) and the Supreme Court's ability to make declarations of incompatibility (section 53).

[197] It is convenient to consider first the Supreme Court's power to make a declaration of incompatibility before turning to the interpretation provision and the balance of the sections in Part 3, Division 3, each of which is inextricably linked.

Declarations of incompatibility

53 Declaration of incompatibility

(1) This section applies if—
- (a) in a proceeding in the Supreme Court a question of law arises that relates to the application of this Act or a question arises in relation to the interpretation of a statutory provision in accordance with this Act; or
- (b) a question is referred to the Supreme Court under section 49; or
- (c) an appeal before the Court of Appeal relates to a question mentioned in paragraph (a).

(2) The Supreme Court may, in a proceeding, make a declaration (a declaration of incompatibility) to the effect that the court is of the opinion that a statutory provision can not be interpreted in a way compatible with human rights.

[198] By section 53 of the HRA, the Supreme Court is empowered to make what is termed a "declaration of incompatibility" if the Court is of the opinion that a statutory provision cannot be interpreted in a way compatible with human rights. A declaration of incompatibility is taken to be an order of the Supreme Court in its Trial Division.

[199] What flows from the making of a declaration of incompatibility is prescribed in sections 54 to 57, namely:

(a) a declaration of incompatibility does not affect in any way the validity of the statutory provision for which the declaration was made;

(b) a declaration does not create in any person any legal right or give rise to any civil cause of action;

(c) the Supreme Court must give a copy of a declaration of incompatibility to the Attorney-General who must, in turn, give a copy to the Minister administering the statutory provision for which the declaration was made;

(d) the Minister must then table a copy of the declaration of incompatibility in the Legislative Assembly and prepare a written response to it, which must also be tabled in the Legislative Assembly; and

(e) the Legislative Assembly must refer the declaration of incompatibility to the relevant portfolio committee which must consider the declaration and report on it to the Legislative Assembly.

[200] In this way, a "dialogue" is supposedly created between the Supreme Court and Parliament upon the Court making a declaration of incompatibility.

[201] Accordingly, for the "dialogue model" to operate as intended, the Supreme Court needs to first exercise its discretion to make a declaration of incompatibility.

[202] At the time of the First Review, no such declaration had been made by the Supreme Court of Queensland. That remains the case.

[203] The Supreme Courts of Victoria and the ACT also have the discretion to make declarations of incompatibility. Only one such declaration has been made in Victoria (over 20 years),[135] and two declarations in the Australian Capital Territory (over 22 years).[136] The only declaration under the Victorian Charter, which was made by the Victorian Court of Appeal in *R v Momcilovic,* was set aside by the High Court.[137] The remaining two declarations in the ACT have not resulted in any legislative change.

[204] It is readily apparent from any analysis of the decided cases that the "dialogue model" between the legislature and the courts does not operate as initially contemplated in any of Queensland, the ACT or Victoria.

[205] From this, the Review considers that an issue arises whether it is appropriate for this element of the "dialogue model" to remain in force.

[206] Considerations relevant to the issue include:

(a) **the separation of powers:** There is a need for there to be, and be seen to be, complete independence between Parliament and the judiciary. It is questionable whether it is an appropriate and indeed a constitutional function of a Chapter III Court to issue what is an advisory opinion which has no effect on the validity of the statutory provision in question.[138]

(b) **the unwillingness of Supreme Courts to make declarations of incompatibility:** As noted above, the Supreme Court of Queensland has not made any declaration of incompatibility and only three such declarations have been made by other courts. Even on the very limited occasions on which a court has made a declaration of incompatibility, there has not been any successful preservation or protection of those human rights which were declared to be infringed by the statutory provision in question.

(c) **the apparent lack of utility of any declaration of incompatibility:** A declaration of incompatibility does not affect the validity of the statutory provision or create any cause of action. Further, Parliament is not obliged to change or amend any infringing statutory provision – nor should it be, given Parliament is paramount. It follows that a declaration of incompatibility is unlikely to be sought by a party. That is because any such declaration will not affect the validity of the provision and therefore will have no practical consequence for the party who is successful in obtaining it.

(d) **the potential for unintended consequences:** For example, if a declaration of incompatibility is made in criminal proceedings, the declaration may undermine any conviction of a person even if the validity of the statutory provision was not affected.

Discussion Questions

B7 Is it an appropriate function of the Supreme Court of Queensland to make declarations of incompatibility which have no effect on the validity of a statutory provision?

B8 Is it appropriate for the "dialogue model" between the courts and Parliament to remain?

B9 Should sections 53 to 57 of the HRA be repealed?

Interpretation provision

48 Interpretation

(1) All statutory provisions must, to the extent possible that is consistent with their purpose, be interpreted in a way that is compatible with human rights.

(2) If a statutory provision can not be interpreted in a way that is compatible with human rights, the provision must, to the extent possible that is consistent with its purpose, be interpreted in a way that is most compatible with human rights.

(3) International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.

...

[207] The interpretive provision has created considerable uncertainty as to its operation, despite attracting much judicial and academic analysis.[139]

[208] The principal issue is whether section 48 requires a departure from the long-standing and well-understood statutory interpretation process engaged in by courts and tribunals on a daily basis.

[209] For example, under what is called the "principle of legality", there is a presumption that Parliament does not intend to limit fundamental human rights, freedoms and immunities without expressing clear words to that effect. The Victorian Charter equivalent to section 48 has been judicially determined by Victorian courts, and the High Court, to not require a remedial interpretation (that is, it does not require courts to read in words which change the meaning of the enacted legislation, so as to make it compatible with human rights). Queensland courts, in very large part, have adopted that interpretation of section 48.

[210] Further, the requirement to interpret statutory provisions in a way that is compatible with human rights remains subject to the "human rights compatible" interpretation being consistent with the purpose of the statute in which the provision is contained. However, section 14A of the *Acts Interpretation Act 1954* already provides that in interpreting a provision of an Act, the interpretation that will achieve the purpose of the Act is to be preferred to any other interpretation. Accordingly, each and every statutory provision must (irrespective of section 48 of the HRA) be interpreted to best achieve the governing Act's purpose, consistent with the traditional approach to statutory construction.

[211] It follows that if section 48 does no more than require the application of established principles of statutory interpretation, the question is what purpose does that provision serve?

[212] If it does have work to do beyond established principles of statutory interpretation, the following issues arise:

(a) Where there are two or more competing interpretations which are available and all are consistent with the statutory purpose, does section 48 require a court to adopt the interpretation which is most compatible with human rights?

(b) Or, does section 48 require courts and tribunals to:

(i) first, consider whether any of the 23 human rights in the HRA are relevant; and

(ii) second, apply the proportionality test in sections 8 and 13 to those identified rights each time a statutory provision is interpreted?

(c) If section 48 has this effect, does it also require notice to be given to the Attorney-General and the QHRC?

[213] The Review notes that the operation of section 48 of the HRA and the equivalent provision of the Victorian Charter are presently being considered by the High Court[140] such that further clarity may be provided as to how these sections are to be applied.

Discussion Question

B10 Should the interpretation provision in the HRA be retained and, if so, should it be amended to clarify its operation?

Referring questions of law

[214] Section 49 provides that a party, court or tribunal can refer to the Supreme Court:

(a) a question of law that arises that relates to the application of the HRA; or

(b) a question in relation to the interpretation of the statutory provision in accordance with the HRA.

[215] Referral remains subject to the court or tribunal in which the question arises considering the question is appropriate to be decided by the Supreme Court.

[216] The Review is aware of only two reported instances in which referrals have been made to the Supreme Court:

- In *Wood v The King* [2022] QSC 216, Davis J concluded that an application brought to the District Court was not justiciable and refused to answer the other questions referred to his Honour.
- In *Palmer v Australian Securities and Investments Commission* [2026] QSC 51, Hindman J refused to answer any of the questions referred to her Honour.

[217] It therefore appears that the referral process is not one actively and routinely engaged in by inferior courts and tribunals and that, even in those limited referrals which have been made, the questions as framed were inappropriate for resolution by the Supreme Court.

[218] This is perhaps unsurprising given that section 48 has been interpreted as reflecting the orthodox statutory construction process, such that it is difficult to see on what basis any referral would appropriately be made for a question in relation to the interpretation of statutory provisions in accordance with the HRA.

[219] Further, as to questions of law that arise relating to the application of the HRA, there does not appear to be any reason why such questions could not be determined by the relevant court or tribunal seized of it, and thereafter appealed. The obvious advantage of this approach is that a party would not experience the proceeding being essentially stayed pending the Supreme Court's consideration of the question referred.[141]

[220] The issue therefore arises whether there needs to be any referral process under the HRA, particularly if the Supreme Court's ability to make a declaration of incompatibility is repealed.

Discussion Question

B11 Should the referral process be repealed?

Interventions

[221] The QHRC's exercise of its power to intervene in proceedings under the HRA has been considered in Part A of this Discussion Paper at paragraphs [55] to [74].

[222] In addition to the matters raised in those paragraphs, the Review notes that the ability of the Attorney-General and QHRC to intervene is closely linked to the power of the Supreme Court to make a declaration of incompatibility under section 53 as a condition on the exercise of that power in that:

(a) notice must be given to the Attorney-General and the QHRC; and

(b) each of them must be afforded a reasonable opportunity to intervene or make submissions prior to the making of such a declaration.

Obligations on public entities

Unlawful conduct

58 Conduct of public entities

(1) It is unlawful for a public entity—
  (a) to act or make a decision in a way that is not compatible with human rights; or
  (b) in making a decision, to fail to give proper consideration to a human right relevant to the decision.

(2) Subsection (1) does not apply to a public entity if the entity could not reasonably have acted differently or made a different decision because of a statutory provision, a law of the Commonwealth or another State or otherwise under law.
Example—
A public entity is acting to give effect to a statutory provision that is not compatible with human rights.

(3) Also, subsection (1) does not apply to a body established for a religious purpose if the act or decision is done or made in accordance with the doctrine of the religion concerned and is necessary to avoid offending the religious sensitivities of the people of the religion.

(4) This section does not apply to an act or decision of a private nature.

(5) For subsection (1)(b), giving proper consideration to a human right in making a decision includes, but is not limited to—
  (a) identifying the human rights that may be affected by the decision; and
  (b) considering whether the decision would be compatible with human rights.

(6) To remove any doubt, it is declared that—
  (a) an act or decision of a public entity is not invalid merely because, by doing the act or making the decision, the entity contravenes subsection (1); and
  (b) a person does not commit an offence against this Act or another Act merely because the person acts or makes a decision in contravention of subsection (1).

[223] Section 58 is an important provision in the HRA. It places obligations on public entities to act and make decisions in a way that is compatible with human rights.

[224] There are two components to the obligations placed on public entities under section 58:

- first, section 58(1)(a) provides that it is unlawful for a public entity to act or make a decision in a way that is not compatible with human rights (the "**substantive**" limb).
- second, section 58(1)(b) provides that it is unlawful for a public entity to fail to give proper consideration to a human right relevant to the decision (the "**procedural**" limb).

[225] Importantly, these provisions do not apply if the public entity could not reasonably have acted or decided differently at law. In other words, there are statutory provisions which of their very nature will be incompatible with human rights and decisions made under those provisions are not unlawful, nor are human rights required to be given proper consideration prior to such decisions being made.

Procedural limb

[226] The primary issue that arises from section 58 is the application of the procedural limb.

[227] For example, when a public entity is required to make a decision under enactment, it is ordinarily required to prepare a statement of reasons in support of its decision. As part of those reasons, the procedural limb would require the public entity to address how the entity gave proper consideration to any human right relevant to that decision and why the decision is compatible with human rights.

However, the procedural limb extends to all acts and decisions of public entities, whether under enactment or not, such that entities must engage in this process in circumstances where they otherwise would not be required to prepare a formal statement of reasons.

[228] The Review considers there may be good reasons for the procedural limb to be repealed. Even if the procedural limb is repealed, acts and decisions of public entities would still need to be compatible with human rights in order to be lawful. That would not change.

[229] ***First***, it is the result of a public entity's actions or decisions that is important. The substantive limb makes it unlawful for a public entity to make a decision which is incompatible with human rights. The procedural limb does not change that. The decision is either incompatible or it is not. One can fail to comply with the procedural limb, yet at the same time make a decision that is *not* incompatible with human rights.

[230] ***Second***, while the Queensland and Victorian cases have interpreted the procedural limb as being satisfied in circumstances where there has not been *any* documented genuine consideration of whether the act or decision is in fact incompatible with human rights,[142] our present understanding is that public entities nevertheless feel obliged to document in thorough and exacting terms the process of considering human rights.

[231] This approach appears to require the investment of extensive public resources and significant expense. Our preliminary consultations have identified that compliance by public entities with the procedural limb is expensive, time-consuming and onerous. Many public entities are required to make hundreds of decisions each week, all of which may affect one or more human rights. Sometimes those decisions are required to be made urgently. In most instances, it will be apparent that while human rights issues arise, there is simply no question of the act or decision being incompatible with human rights. Yet a failure to comply with the procedural limb results in the public entity acting unlawfully and gives rise to the act or decision potentially being challenged.

[232] This burden is exacerbated by section 58(5), which requires a public entity to identify and give proper consideration to a human right which *may* be affected by a decision. Understandably, public entities appear to take a conservative approach by identifying any potential rights which may be engaged, even if the risk of that right being infringed upon is remote.

[233] While the procedural limb no doubt creates an additional burden on public entities given the multiplicity of day-to-day acts and decisions made, initial consultations suggest that compliance with the procedural limb has assisted in creating a culture of human rights in public entities.

[234] ***Third***, the procedural limb seems to be an attempt to ensure that a public entity complies with the substantive limb. The logic appears to be that if a public entity complies with the procedural limb, it will result in the entity making a decision or acting in a way that is compatible with human rights.

[235] ***Fourth***, although the substantive and procedural limbs do not apply if the public entity could not reasonably have acted differently or made a different decision at law, a decision-maker might nonetheless feel obliged to comply with the procedural step because they are unsure whether the exception applies. Removal of the procedural limb would simplify decision-making by removing this uncertainty.

[236] ***Fifth***, in terms of review rights under the *Judicial Review Act 1991* (**JRA**) and the application of the "piggy-back" provision in section 59 (discussed below), the procedural limb has the very real potential to result in a decision being found to be "unlawful" irrespective of whether the judicial review application is otherwise unmeritorious, and the decision is not incompatible with human rights.

Discussion Question

B12 Should the "procedural" limb in section 58(1)(b) be retained? If it is retained, should the consequence of non-compliance with the "procedural" limb mean the act or decision is unlawful?

Consequences of an unlawful decision

[237] Section 58(6)(a) provides that the act or decision of a public entity is not invalid merely because the act or decision is unlawful because it fails to meet the requirements of the substantive limb or the procedural limb.

[238] Concerns have been raised as to the consequence of the act or decision remaining valid despite being unlawful. Submissions in relation to the Human Rights Bill 2018 recommended that if a decision is unlawful, it should also be considered invalid.[143]

[239] The Review considers that the work of section 58(6)(a) is quite limited. It does no more than state that an act or decision is not invalid *merely* because it is unlawful by operation of section 58(1). That is, a breach of section 58(1) does not amount to jurisdictional error. Instead, the act or decision is treated in the same way as every other act or decision by a public entity which does not amount to jurisdictional error – it may be challenged and ultimately found to have been unlawfully made for any other reason.

Legal proceedings: the "piggy-back" provision

[240] A central issue in this review of the HRA is what remedies should be available to a person in Queensland who is affected by an unlawful act or decision of a public entity within the meaning of section 58(1).

[241] Section 59 is a provision of significant importance in this regard. Outside of making a complaint to the QHRC, it offers the only remedy to a person affected by the unlawful conduct of a public entity under section 58 of the HRA.

59 Legal proceedings

(1) Subsection (2) applies if a person may seek any relief or remedy in relation to an act or decision of a public entity on the ground that the act or decision was, other than because of section 58, unlawful.

(2) The person may seek the relief or remedy mentioned in subsection (1) on the ground of unlawfulness arising under section 58, even if the person may not be successful in obtaining the relief or remedy on the ground mentioned in subsection (1).

(3) However, the person is not entitled to be awarded damages on the ground of unlawfulness arising under section 58.

(4) This section does not affect a right a person has, other than under this Act, to seek any relief or remedy in relation to an act or decision of a public entity, including—

(a) a right to seek judicial review under the Judicial Review Act 1991 or the Uniform Civil Procedure Rules 1999; and

(b) a right to seek a declaration of unlawfulness and associated relief including an injunction, a stay of proceedings or an exclusion of evidence.

(5) A person may seek relief or remedy on a ground of unlawfulness arising under section 58 only under this section.

[242] Section 59 has been described as a "piggy-back" provision. This is because a person who is affected by the unlawful conduct of a public entity under section 58 does not have a direct right of action to challenge that conduct. Instead, such a challenge may only be brought by piggy-backing it onto another *separate* ground at law on which the same conduct may be challenged.

[243] Even when the piggy-back provision is used, damages cannot be awarded for a public entity's unlawful conduct under the HRA.

Introduction of the piggy-back provision

[244] During its consideration of the Human Rights Bill 2018, the Parliamentary Committee did not accept that there should be a separate cause of action for contravention of section 58(1) of the Act, nor that a breach of section 58(1) should constitute a separate ground of review under the JRA.[144]

[245] At the time, the Human Rights Bill 2018 provided for a detailed "human rights complaints" process where a public entity breached section 58(1), including dispute resolution through conciliation.

[246] This is to be contrasted to the Victorian Charter, which did not and still does not contain any similar complaints process. By contrast, the ACT HRA has provided for a direct cause of action since 2009 while a complaints process was not introduced until 2024.

[247] The Queensland Parliament considered it appropriate to also incorporate the Victorian piggy-back provision. This decision introduced a concurrent and complex means of reviewing a public entity's conduct. The introduction of the piggy-back provision may have been a compromise between adopting a complaints-only model or introducing a direct cause of action because of the uncertainty as to whether an act or decision that is incompatible with human rights should be justiciable at all.

Operation of the piggy-back provision

[248] There are a number of issues with the operation of section 59.

[249] ***First***, it does not provide any express guidance as to whether the *other* cause of action or right relied upon by an applicant to which an alleged human rights contravention may be piggy-backed must be meritorious.[145] Instead, it has been left to case law to provide some guidance in relation to this issue. The issue is that an alleged human rights contravention could be piggy-backed onto a spurious claim in order to avoid the limitation imposed by section 59.[146]

[250] ***Second***, it is unclear whether section 59 operates as intended, or if it in fact permits an applicant to bring a human rights challenge provided they *also* have a different cause of action or right available to them in respect of the relevant act or decision, even if they choose not to litigate that other action or right.[147] For example, take a right based on an argument that a direction of a public entity is not a proper exercise of power (and therefore justiciable) and that the direction is also incompatible with human rights. Is the latter able to be reviewed under the piggy-back provision despite the applicant (whether intentionally or otherwise) deciding not to have the direction also reviewed under the JRA on the ground that it was an improper exercise of power?

[251] ***Third***, it is uncertain what remedies a court or tribunal can award an applicant who *only* establishes a breach of section 58(1) of the HRA, but not the *other* cause of action or right on which the human rights challenge is piggy-backed. Because section 58(6) of the HRA provides that an unlawful act or decision under that section is not invalid, it is somewhat unclear whether a court or tribunal is limited to declaring the decision to be unlawful, or whether a remedy (other than damages) would be available (for example, an injunction or the quashing of the act or decision). Or indeed, could a court or tribunal make any order *other than* damages. That arises due to the fact that "remedy" and "relief" are not defined, nor is any remedy or relief linked to "unlawfulness" under section 58(1).

[252] ***Fourth***, by its very nature, section 59 of the HRA seems to encourage *more* litigation rather than less. By requiring any human rights challenge to be piggy-backed in order to be validly instituted, the parties and the relevant court or tribunal must consider all *other* matters (irrespective of the merits of those other matters) in addition to resolving the question of unlawfulness under section 58. That is likely to increase the complexity, cost and time for dealing with that proceeding. It is also somewhat at odds with the purpose of the HRA being to address human rights issues through mechanisms that promote dialogue and education.[148]

Remedies

[253] The Review's preliminary view is that section 59 has created considerable uncertainty and, if it is retained, it should be amended.

[254] If section 59 is amended, the Review considers that the amendments should clarify the following:

(a) that the human rights enacted in the HRA do not give rise to any freestanding right of action;

(b) the underlying cause of action or administrative review must not be frivolous, vexatious or constitute an abuse of process, nor be amenable to strike out or summary dismissal because it has no reasonable prospects of success;

(c) whether subsections 59(3)–(6) of the HRA should be retained.

[255] A number of additional considerations arise in relation to remedies generally under the HRA:

(a) should a human rights complaint made to the QHRC be able to be referred to QCAT or the QIRC, similar to a complaint under the ADA;

(b) what remedies should be available where a human rights complaint is established, for example declaratory or injunctive relief;

(c) whether a separate cause of action similar to that in the ACT HRA should be created. In this regard, the Review notes that the ACT introduced a complaints process in 2024 because few people were invoking the statutory cause of action, primarily because of cost and delay;

(d) whether a separate ground of review in the JRA should be introduced, or section 59 be amended, such that an act or decision by a public entity contrary to section 58(1) of the HRA may be reviewable under Part 3 or Part 5 of the JRA.[149]

Discussion Question

B13 What remedies should be available for a contravention of section 58(1) of the HRA?

Application of the HRA to courts and tribunals

> **5 Act binds all persons**
>
> ...
>
> (2) This Act applies to—
>
> (a) a court or tribunal, to the extent the court or tribunal has functions under part 2 and part 3, division 3...

[256] Section 5(2)(a) has been described as a "riddle". It is a section that has led to extensive judicial consideration, both in Victoria and Queensland. Until recently, this judicial consideration has not satisfactorily resolved the inherent uncertainties concerning the application of section 5(2)(a).

[257] Following the Queensland Court of Appeal's recent decision in *Huang v Body Corporate for Dorchester CTS 10749* (***Huang***),[150] the Review's preliminary view is that section 5(2)(a) has no work to do and should be repealed.

Functions under Part 2

[258] The first uncertainty is identifying what functions a court or tribunal has under Part 2 of the HRA.

[259] None of the provisions in Part 2 expressly confer a function[151] upon a court or tribunal.

[260] The Victorian courts have identified three possible constructions of the equivalent to section 5(2)(a) in the Victorian Charter:[152]

- the **broad construction**, which holds that the function of courts is to enforce directly any and all of the rights enumerated in Part 2;
- the **intermediate construction**, which holds that the function of courts is to enforce directly only those rights enumerated in Part 2 that relate to court proceedings;
- the **narrow construction**, which holds that the function of courts is to enforce directly only those rights that are explicably and exclusively addressed to the courts.

[261] Courts in both Victoria and Queensland have generally applied the intermediate construction. Yet even in applying the intermediate construction, two distinct methods have been adopted. As observed by Ryan J in *Innes v Electoral Commission of Queensland & Anor (No 2)*:[153]

> [C]ourts in Victoria have applied two different methods of identifying the rights which a court, in any given case, is to apply.
>
> The first method, known as the "list of rights" approach, which was applied in early decisions, focused on the nature of each *right* to determine whether it conferred a function on the Court (such as the right to fair hearing under s 31 HR Act).
>
> The second method, applied more recently, focuses on the nature of the *function* that the *court* is performing and identifies rights which relate to that function (the "functional approach")...

[262] The difficulty is that, depending on which construction of section 5(2)(a) is adopted, further uncertainty arises as to *which* human rights the courts are required to consider given section 5(2)(a) does not expressly identify those human rights which apply to a function.

[263] The second uncertainty is whether section 5(2)(a), by reference to a court or tribunal's function under Part 2, obliges a court to merely refer to the relevant right or to actually enforce it.[154]

Recent clarification: *Huang*

[264] The proper construction of section 5(2)(a) has recently been clarified by the Queensland Court of Appeal in *Huang*.

[265] In that decision, the Court of Appeal accepted the Attorney-General's contention that by enacting section 5(2)(a), the Queensland Parliament did not intend to create freestanding obligations, but rather to refer to the specific obligations contained elsewhere in the HRA. Part 2 did not, therefore, identify any functions that a court or tribunal is to exercise. Nor does the HRA provide that courts and tribunals are to consider human rights when making any judicial decision.

[266] The Court of Appeal also accepted that if section 5(2)(a) were to be construed as imposing freestanding obligations on courts and tribunals to directly apply human rights, it would create a right to appeal from any judicial decision on the basis of an error of law in failing to consider a particular human right. This would be inconsistent with the intention not to create standalone remedies for contraventions of the HRA, expressed in the explanatory notes for that Act.[155]

[267] As observed by Bradley JA at [91]:

> The construction advanced by the Commissioner, and adopted by Mr Huang, would require a court or tribunal to undertake its own enquiries to identify any human right that could be affected by a decision it was to make. Such an investigative role might be appropriate for courts in civilian legal systems or tribunals with inquisitorial powers. It is inapt for courts and tribunals acting judicially within the common law tradition, which decide disputes brought to them by the parties based on evidence adduced and submissions made by the parties. Nothing in the HRA indicates an intention to alter the adversarial nature of the judicial system in Queensland and give it the inquisitorial nature of civilian courts.

[268] The effect of the Court of Appeal's decision in *Huang* is that the identification of a court or tribunal having "functions" under Part 2 of the HRA simply has no work to do. The Review's opinion is therefore that there is no utility in section 5(2)(a) continuing to refer to Part 2.

Functions under Part 3, Division 3

[269] Part 3, Division 3 of the HRA relevantly:

- requires that all statutory provisions must, to the extent possible, be interpreted in a way that is compatible with human rights;
- permits the Supreme Court to make a declaration of incompatibility to the effect that the Court is of the opinion that a statutory provision cannot be interpreted in a way compatible with human rights.

[270] The language of "function" sits uneasily with the requirement of courts to apply laws, including the requirement to interpret all statutory provisions to the extent possible consistent with their purpose in a way that is compatible with human rights. This is better viewed as a requirement imposed by the legislature rather than as a "function".

[271] As is explained above at paragraphs [198]–[206], the Review's preliminary view is that the Supreme Court's power to make a declaration of incompatibility should be repealed. That raises the question whether courts and tribunals would have any relevant "function" under Part 3, Division 3, of the HRA if the Review's recommendation is adopted.

Discussion Question

B14 Should section 5(2)(a) of the HRA be repealed?

Definitions

[272] Various issues arise from the application of terms defined in the HRA.

Court

[273] The term "court" is defined in Schedule 1 to mean the Supreme Court, the District Court, the Magistrates Court, the Childrens Court, or the Coroners Court. The word "tribunal" is not defined. Its meaning has, however, been judicially considered.

[274] The definition of "court" does not include the Land Court, the Land Appeal Court, the Planning and Environment Court, the Mental Health Court, nor the Industrial Court of Queensland.

[275] The Review cannot identify a compelling rationale for the inclusion of some courts but not others. In particular, the exclusion of the Land Court and Land Appeal Court is at odds with the requirement in section 52 for notice to be given to the Attorney-General and the QHRC if, in a proceeding before one of those courts, a question of law arises that relates to the application of the HRA or a question arises in relation to the interpretation of a statutory provision in accordance with the HRA.

Discussion Question

B15 Should the definition of "court" be amended to include the Land Court, the Land Appeal Court, the Planning and Environment Court, the Mental Health Court, and the Industrial Court of Queensland?

Discrimination

[276] Discrimination is defined in Schedule 1 to include direct discrimination or indirect discrimination within the meaning of the ADA on the basis of an attribute stated in section 7 of that Act.

[277] The use of an inclusive, rather than an exhaustive, definition has led to uncertainty as to whether other forms of discrimination, not contained within the ADA, are intended to be captured by the HRA. A simple way of resolving this uncertainty would be to omit the word "includes" and substitute it with the word "means" to put it beyond doubt that "discrimination" means "discrimination" within the meaning of the ADA.

Discussion Question

B16 Should the definition of "discrimination" be amended to make it clear it is exhaustive?

Public entity

When are courts and tribunals "public entities"?

[278] The current definition of "public entity" in section 9 does not include a court or tribunal, except when acting in an "administrative capacity".

[279] The difficulty is that the distinction between a court or tribunal acting in a "judicial" capacity rather than "administrative" capacity may not always be clear. For example, the definition of "court" in the HRA includes the Coroners Court. The Coroners Court would ordinarily not be considered to be a "public entity". It is not settled as a matter of law whether coroners, in exercising their functions, are acting administratively or judicially or a combination of both. The better view is probably that their functions are both judicial and administrative, a possibility that the HRA does not address.

[280] As it currently stands, the definition of "public entity" may result in a court or tribunal becoming the subject of a "human rights complaint" and possible collateral challenge when making directions in a proceeding or otherwise acting in a capacity which is not clearly judicial.

Discussion Question

B17 Should section 9(4)(b) of the HRA be amended so that a court or tribunal is not a public entity for the purposes of the application of the Act, irrespective of whether it is acting judicially or administratively?

"Functional" public entities

[281] A "public entity" is defined broadly to include:[156]

(a) an entity whose functions include functions of a public nature when that entity is performing the functions for the State or a public entity; and

(b) a registered provider when the provider is performing functions of a public nature in the State.

[282] Concerns have previously been raised that there is some ambiguity as to whether non-government service providers are public entities as defined in the HRA.

Discussion Question

B18 Do sections 9(1)(h), 9(2)(a) and 10 of the HRA require amendment to clarify what constitutes a functional public entity, for example non-government service providers?

Amendments to the *Corrective Services Act 2006* and the *Youth Justice Act 1992*

Youth Justice Act 1992

263 Management of detention centres

...

(7) Subsection (8) applies in relation to the chief executive's consideration of—

(a) the *Human Rights Act 2019*, section 30(2) in relation to a child detained in a detention centre on remand; and

(b) the segregation of the child mentioned in paragraph (a) from a child detained on sentence.

(8) To remove any doubt, it is declared that the chief executive does not contravene the *Human Rights Act 2019*, section 58(1) only because the chief executive's consideration takes into account—

(a) the safety and wellbeing of the child on remand and other detainees; and

(b) the chief executive's responsibilities and obligations under this section.

Corrective Services Act 2006

5A Relationship with Human Rights Act 2019

(1) This section applies to the chief executive's or a corrective services officer's consideration of—

(a) the *Human Rights Act 2019*, section 30(2) in relation to a prisoner admitted to a corrective services facility for detention on remand or a prisoner detained without charge; or

(b) the *Human Rights Act 2019*, section 30 in relation to managing a prisoner in a corrective services facility where it is not practicable for the prisoner to be provided with the prisoner's own room under section 18.

(2) To remove any doubt, it is declared that the chief executive or officer does not contravene the *Human Rights Act 2019*, section 58(1) only because the chief executive's or officer's consideration takes into account—

(a) the security and good management of corrective services facilities; or

(b) the safe custody and welfare of all prisoners.

[283] The Review must consider whether the amendments made by the HRA to the *Corrective Services Act 2006* (**CSA**) and the *Youth Justice Act 1992* (**YJA**) are operating effectively, or whether further or different provisions should be made for the interrelationship between the HRA and those Acts.[157]

[284] The HRA, as introduced, inserted section 5A into the CSA and sections 263(7) and (8) into the YJA.[158] Both of these new sections refer to section 30(2) of the HRA, which provides that an accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences, unless reasonably necessary.

[285] The rationale for these amendments was explained as follows:[159]

> The Bill will amend the [YJA] and the [CSA] to clarify that other factors, relevant to determining how to act or make a decision under the YJA or the CSA, may be taken into account in addition to human rights considerations under the Bill. The effect of the amendments to both the YJA and the CSA will mean that an act or decision made under these Acts, taking into consideration the additional factors, will not be unlawful under the HR Bill, only because these additional factors were considered.

[286] Professor Harris Rimmer in the First Review of the HRA recommended that both amendments should be repealed:[160]

> Overall, it appears that the amendments made to the *CSA* and *YJA* have had no effect and serve no purpose. Submissions suggested they create confusion, and in the absence of any evidence or submissions to the contrary, they should be repealed.

[287] In support of this conclusion, Professor Harris Rimmer referred to a submission from the Queensland Council for Civil Liberties which noted:[161]

> At the time the provisions were introduced, they were described as necessary to deal with the exigent situation. The fact that they continue to be necessary six years later is an indictment of the government in terms of its management of detention centres, prisons and of the whole issue of youth justice in particular. At the time, when the Bill was introduced, it was our submission that these provisions should be subject to a sunset clause, which clearly did not happen. It is our position that these provisions should be repealed. All of the factors which these provisions allow the relevant decision-makers to take into account, are fully accommodated in section 13 of the Act.

[288] Since the First Review, the Queensland Court of Appeal has considered these amendments in *Mizner v State of Queensland (Corrective Services)*.[162] The Court of Appeal identified the limited operation of section 5A of the CSA:[163]

> The effect of s 5A is to declare that there will be no contravention of s 58(1) of the HRA only because the Chief Executive of QCS or a corrective services officer takes into account the security and good management of corrective services facilities, or the safe custody and welfare of all prisoners, when considering a prisoner's human rights under s 30. In the present case, the effect of s 5A of the CSA was that it was permissible for those matters to be considered and the respondents did not act contrary to s 58(1) of the HRA by taking them into account when making the relevant decisions of which the appellant complained. Where engaged, s 5A does not determine the issue of whether a person's human rights under s 30 of the HRA have been limited. It remains necessary to consider other relevant matters, together with the matters taken into account under s 5A of the CSA, to ensure compliance with s 58(1) of the HRA.

[289] Following the reasoning in *Mizner*, the question is whether these amendments should be retained. The considerations identified in the amendments are ones that may arguably be taken into account in applying the proportionality test required by sections 8 and 13 of the HRA.

Discussion Question

B19 Should section 5A of the *Corrective Services Act 2006* and sections 263(7)–(8) of the *Youth Justice Act 1992* be retained?

Further review of the HRA

[290] Section 96(6) requires this Review to recommend whether a further review of the HRA is necessary.

[291] The HRA is an important piece of legislation for the people of Queensland.

[292] Any amendments which may be made to the HRA will affect all public entities and the people of Queensland more generally. It is important that the operation and effectiveness of any recommended amendments that are enacted are reviewed.

[293] Sufficient time should pass to enable an informed assessment of the practical implementation of any recommended amendments. Our preliminary view is that a period of 5 years is appropriate.

[294] Given the QHRC will be subject to a strategic review every 5 years following the Final Report,[164] and that review must consider the QHRC's functions,[165] there may be value in undertaking any future strategic review of the QHRC concurrently with the further operational review of the HRA, as occurred during this Review. Aligning these processes on an ongoing basis would allow for a more integrated assessment of the QHRC's performance, recognising the effectiveness, efficiency and economy of the performance of its functions are closely linked to its operational HRA arrangements at the time of such a review.

Discussion Question	
B20	Is a further review of the HRA necessary and, if so, in what timeframe?

Other issues

[295] The issues discussed in this part of the Discussion Paper relate to those aspects of the operation of the HRA that the Review considers may be in need of reform and would benefit from further consultation, as well as those matters expressly referred to in the Terms of Reference.

[296] If issues have not been discussed, this is because the Review does not presently have any concerns about their operation. However, we invite views about any other issues you may wish to raise.

Discussion Question	
B21	Are there any other issues that you would like to raise about the operation of the HRA?

Part C – Review of the Respect at Work Act

Scope

[298] On 10 September 2024, the Respect at Work Act was passed by the Legislative Assembly. The Act made various amendments to the ADA.

[299] On 14 March 2025, the Queensland Government announced its decision to pause the commencement of the majority of those amendments pending further consideration of the changes proposed.[166]

[300] The Terms of Reference require this Review to consider the uncommenced provisions of the Respect at Work Act which amend the ADA. Specifically, the Review is required to:

- consider the potential operation of those provisions;
- make any recommendations concerning the operation of and reform to the ADA; and
- consider the implications, if any, for victims of crime.

Context

[301] Part C of the Review arises primarily from concerns that some of the proposed amendments to the ADA may have unintended consequences which have not been properly considered.[167]

[302] The Discussion Questions for Part C of the Review are therefore focused on identifying any unintended consequences of the uncommenced provisions.

[303] This approach recognises the extensive work and consultation conducted over a lengthy period by the QHRC which resulted in the Building Belonging Report. The previous Queensland Government supported in principle all recommendations made in the Building Belonging Report, including a holistic redrafting of the ADA.[168]

[304] The Draft Anti-Discrimination Bill 2024 was subsequently prepared to address recommendations made in the Building Belonging Report and community feedback was sought.[169] However, that Bill was ultimately not progressed and the Respect at Work Act was instead passed by the Legislative Assembly on 10 September 2024.

Equitable outcomes

[305] One of the purposes of the ADA is the promotion of "equality of opportunity" for everyone by protecting them from unfair discrimination in certain areas.

[306] Sections 4 to 6 of the Respect at Work Act seek to amend each of the long title, the preamble, and the purpose of the ADA by substituting the phrase "equality of opportunity" with the phrase "equal opportunity and equitable outcomes".

Long Title
An Act to promote **equality of opportunity** for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct

Preamble
7 It is, therefore, the intention of the Parliament to make provision, by the special measures enacted by the Act, for the promotion of **equality of opportunity** for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct.

6 Act's anti-discrimination purpose and how it is to be achieved
(1) One of the purposes of the Act is to promote **equality of opportunity** for everyone by protecting them from unfair discrimination in certain areas of activity, including work, education and accommodation.

"Formal equality" and "substantive equality"

[307] The Building Belonging Report observed that the concept of systemic discrimination is connected to the concepts of "formal equality" and "substantive equality".

[308] "Formal equality" was said to refer to 'the concept that all people should be treated the same. This encourages neutrality and asserts that people should be judged on the basis of merit and not their characteristics'.[170]

[309] "Substantive equality" on the other hand was described as focusing on:[171]

> outcomes instead of only ensuring that people have an equality of opportunity. Rather than considering whether or not two people are treated in the same way, substantive equality requires correcting or equalising a person's position to move towards equal outcomes.

[310] This concept recognises that discrimination can cause social and economic disadvantage and that access to opportunities are not equitably distributed throughout society. This means that the equal application of a rule to different groups can have unequal (ie inequitable) results or outcomes. The achievement of substantive equality may therefore require reasonable accommodations to be made or affirmative measures to be taken.

[311] The Building Belonging Report recommended that the objects of the ADA should include 'to promote and facilitate the progressive realisation of substantive equality as far as reasonably practicable'.[172]

The introduction of "equitable outcomes"

[312] The Draft Anti-Discrimination Bill 2024 took up the Building Belonging Report's recommendation to introduce the term "substantive equality". It also went further by referring in the proposed new preamble to '[t]he achievement of equitable outcomes and equal opportunities'. It is not readily apparent why the phrase "equitable outcomes" was introduced.

[313] The Respect at Work Bill took a different approach, and replaced "equality of opportunity" with the phrase "equal opportunity and equitable outcomes" throughout the ADA, without reference to "substantive equality". The change in language was said to be consistent with the concept of "substantive equality".[173]

[314] The Parliamentary Committee's report into the Respect at Work Bill noted that:[174]

(a) the AHRC's Respect@Work Report recommended that the objectives of the *Sex Discrimination Act 1984* (Cth) be amended to include 'to achieve substantive equality between women and men';[175] and

(b) the Respect at Work Bill proposed equivalent amendments to the ADA by replacing references to "equality of opportunity" with "equal opportunity and equitable outcomes".

[315] The introduction of the phrase "equitable outcomes" was not without criticism:

(a) The Statement of Reservation to the Parliamentary Committee's Report was signed by two then members of the Opposition who noted that uncertainty would be introduced through what they termed 'the subjective notion of "equitable outcomes"'.[176] They remarked that it was noteworthy that departmental representatives could not precisely and consistently explain to the Committee what the term meant, and noted that it even went beyond the objects in the *Sex Discrimination Act 1984* (Cth) following the Respect@Work Report. They concluded that the uncertainty of the term created a level of uncertainty about the extent of the legislation.

(b) When the Respect at Work Bill was introduced into the Queensland Parliament and read for a second time, the Honourable Tim Nicholls noted again the 'subjective nature' of the phrase "equitable outcomes" and the uncertainty and legal ambiguity it creates.[177] He considered it would make it difficult for individuals, businesses and courts to interpret and apply the law consistently.

Potential unintended consequences

[316] The issue is whether adopting the language of "equitable outcomes" or "substantive equality" would introduce uncertainty and subjectivity into the ADA.

[317] One problem with "equitable outcomes" is that it is, by its very nature, uncertain, and has real potential to introduce subjectivity into the operation of the ADA. In particular, the introduction of that phrase into the "purpose" provision of the ADA would mean that the promotion of "equitable outcomes" would need to be taken into account when interpreting the remainder of the Act, including applying the tests of direct and indirect discrimination.

[318] The uncertain meaning of the phrase may create legal ambiguity and make it difficult for individuals, businesses, and courts and tribunals to interpret and apply the law consistently. As already observed, "equitable outcomes" is not a phrase that was recommended in the Building Belonging Report. Further, because the phrase is not used in relevant Commonwealth legislation, its introduction into the ADA could lead to a potential divergence in how courts and tribunals at the Commonwealth and State level interpret and apply similar concepts.

[319] While similar criticisms could be made about the uncertain and subjective meaning of "substantive equality", the phrase is used at the Commonwealth level. This means that using the phrase in the ADA would promote consistency and uniformity in terms of case law which addresses how the phrase is meant to be understood and applied.

Discussion Question	
C1	Does the phrase "equality of opportunity" require any amendment?

Prohibited conduct on the basis of sex

[320] The AHRC's Respect@Work Report recommended introducing two new prohibitions in the *Sex Discrimination Act 1984* (Cth):

- harassment on the basis of sex; and
- work environment hostile on the basis of sex.

[321] The Building Belonging Report found that there were not compelling reasons to introduce the new prohibitions into the ADA, in part because of existing prohibitions on the relevant conduct. Nonetheless, the Respect at Work Act introduced both prohibitions, each of which would only apply in relation to work or work-related areas.

[322] The Parliamentary Committee noted in its report on the Respect at Work Bill that some stakeholders had concerns about the new prohibitions, including whether they were necessary and the potential for unintended consequences. The Department of Justice and Attorney-General's response to those concerns was that:[178]

> the clear evidence from the Respect@Work Report shows that sex-based contraventions remain rampant in workplaces, indicating a lack of public understanding about what is lawful. The new prohibitions are designed to set clear boundaries for conduct, and simply supplement the existing protections rather than replace them.

"Harassment on the basis of sex"

[323] A purpose of the ADA is to promote equality of opportunity for everyone by protecting them from sexual harassment. One of the ways it seeks to do so is by prohibiting sexual harassment. "Sexual harassment" is defined in section 119 of the ADA and means, in broad terms, when a person subjects another person to unwelcome conduct that is sexual in nature, and the conduct is done either:

(a) with the intention of offending, humiliating or intimidating the person; or

(b) in circumstances where a reasonable person would be offended, humiliated or intimidated by the conduct.

[324] The Respect at Work Act seeks to amend the ADA by supplementing the existing prohibition on sexual harassment with a new prohibition of "harassment on the basis of sex" (proposed new Chapter 3, Part 3, Divisions 1 and 2), and making consequential changes to the long title and preamble of the Act.

[325] Unlike "sexual harassment", the concept of "harassment on the basis of sex" refers to unwelcome conduct that demeans a person by virtue of their sex, rather than because the conduct is sexual. "Harassment on the basis of sex" also extends to unwelcome conduct that demeans a person by virtue of:

- a characteristic that a person of that sex generally has;
- a characteristic that is often imputed to a person of that sex;
- a sex the other person is presumed to be, or to have been at any time, by the person engaging in the conduct;
- a sex the other person has been, even if the person is not that sex at the time of conduct.

Commonwealth position

[326] The Respect@Work Report noted that sex-based harassment and sex discrimination often occur together, and that conduct falling short of sexual harassment may 'nevertheless constitute sex discrimination if it amounts to less favourable treatment on the basis of sex.'[179]

[327] The AHRC noted that, as a matter of practice, a complaint of harassment on the basis of sex that does not involve conduct of a sexual nature may be assessed and accepted as one alleging sex discrimination (an approach which was said to be supported by case law). However, the AHRC acknowledged that this case law may not be generally understood by the public, and suggested that one way to achieve clarity and certainty to the law and support access to justice would be to incorporate an express prohibition on sex-based harassment into the *Sex Discrimination Act 1984* (Cth).[180]

[328] The AHRC's recommendation was accepted and a prohibition on harassment on the ground of sex was introduced into the *Sex Discrimination Act 1984* (Cth).

Queensland position

[329] The Building Belonging Report did not recommend prohibiting harassment on the basis of sex. To the contrary, it observed that:[181]

(a) to do so solely on the attribute of sex and/or gender may serve to embed inequality in the ADA, and cause incompatibility with the HRA;

(b) there was no evidence that sex-based harassment is more serious or prevalent than other kinds of harassment such that it warrants a more favourable approach than harassment because of other attributes;

(c) new specific legislative provisions may override general discrimination and sexual harassment protections that had been working well. That is, complaints that would likely be captured by a new prohibition on sex-based harassment would already be accepted by the Commission under the ADA in its present form. Having an additional provision that addresses the same kind of conduct may lead to a misunderstanding or misinterpretation of existing provisions which are working well;

(d) simplifying the test for direct and indirect discrimination is a better way to improve the educative function of the law.

[330] The Review's preliminary view is that the concerns expressed in the Building Belonging Report are well-founded.

Discussion Question

C2 Are there any unintended consequences of introducing a new prohibition on "harassment on the basis of sex"?

Work environment "hostile on the basis of sex"

[331] The Respect at Work Act also seeks to introduce a new prohibition on subjecting another person to a work environment that is hostile on the basis of sex (proposed new Chapter 4 Part 5).

[332] A person would contravene the new prohibition if a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the conduct would create a work environment that would be offensive, humiliating or intimidating to a person based on that person's sex (or a characteristic that a person of that sex generally has, or which is often imputed to a person of that sex).

Commonwealth position

[333] The AHRC's rationale for recommending the introduction of a prohibition on sexually hostile work environments was similar to its position on the need to prohibit sex-based harassment. The AHRC acknowledged that 'it has been traditionally accepted that a sexually hostile work environment could constitute unlawful sex discrimination under the Sex Discrimination Act' but considered that there was merit in clarifying the law to expressly prohibit such conduct and set clear boundaries for acceptable conduct in the workplace.[182]

Queensland position

[334] The Building Belonging Report raised similar concerns about prohibiting sexually hostile work environments to those it raised in respect of a prohibition on sex-based discrimination. The Report also noted that determining responsibility for the creation of an environment is not straightforward and may result in bystanders with limited control over a workplace becoming liable.[183]

[335] The Review's preliminary view is that the concerns expressed in the Building Belonging Report are well-founded.

Discussion Question

C3 Are there any unintended consequences of introducing a new prohibition on subjecting a person to a work environment that is hostile on the basis of sex?

New attributes

[336] The ADA prohibits discrimination on the basis of listed attributes. The Respect at Work Act seeks to amend section 7 of the ADA to introduce 10 additional or amended attributes:

Existing attributes	Proposed additional or amended attributes
sex	sexual orientation
relationship status	subject to domestic or family violence
pregnancy	potential pregnancy
parental status	homelessness
family responsibilities	family, carer or kinship responsibilities
breastfeeding	physical appearance
age	expunged convictions
race	irrelevant criminal record
impairment	irrelevant medical record
religious belief or religious activity	a combination of two or more of any of the above attributes
political belief or activity	
trade union activity	
sex work activity	
gender identity	
sexuality	
sex characteristics	
association with, or relation to, a person identified on the basis of any of the above attributes	

[337] The last new attribute, in referring to 'the above attributes', is a reference to all existing attributes under the ADA and the new attributes.

Criminal record attributes

[338] The Respect at Work Act seeks to amend the ADA to introduce two new attributes concerning a person's criminal record:

- irrelevant criminal record
- expunged conviction.

[339] From the Parliamentary debates, the new attribute of most concern in terms of potential unintended consequences is the prohibition of discrimination on the basis of "irrelevant criminal record".

Building Belonging

[340] The Building Belonging Report recommended the inclusion of one new attribute of "irrelevant criminal record" which would cover:[184]

- expunged convictions under the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*;
- spent convictions; and
- 'the imputation of a record relating to arrest, interrogation or criminal proceedings of any sort'.

[341] The Report observed that the inclusion of the proposed new attribute was appropriate because there is a gap in protection for people with criminal records, such people experience marginalisation, and "irrelevant criminal record" is a protected ground for discrimination at the Commonwealth level.[185]

Irrelevant criminal record

[342] The definition of "irrelevant criminal record" in the Respect at Work Act is as follows:

> ***irrelevant criminal record***, in relation to a person, means a record, or an imputation of a record, relating to an offence or alleged offence, if—
>
> (a) the person has been charged with the offence but—
> (i) a proceeding for the offence is not finalised; or
> (ii) the charge has lapsed, been withdrawn or discharged, or struck out; or
> (b) the person has been acquitted of the offence; or
> (c) the person has had a conviction for the offence quashed or set aside; or
> (d) the person is proceeded against for the offence only by way of an infringement notice under the *State Penalties Enforcement Act 1999*; or
> (e) the person has a conviction for the offence, but the circumstances of the offence are not directly relevant to the situation in which the record is being considered; or
> (f) the person has a spent conviction for the offence; or
> (g) the offence was dealt with by way of—
> (i) a caution administered to the person under the *Youth Justice Act 1992*, part 2, division 2; or
> (ii) a restorative justice process under the *Youth Justice Act 1992*, part 2, division 3.

[343] Each of the circumstances identified in the definition is considered below.

Unfinalised proceedings and charges

[344] Whilst the presumption of innocence is a central tenet of criminal law, a complete prohibition on discriminating against a person who has been charged with an offence if the offence has not been finalised may be considered to be too broad. Charges that have not been finalised could relate to conduct extending from multiple murders to a simple offence.

[345] There may be circumstances where it would be inappropriate to discriminate based on a charge which has lapsed, been withdrawn, discharged or struck out. The most obvious example is where the wrong person is charged and then released (and the charge withdrawn).

[346] However, identifying this as an attribute constitutes a complete prohibition on *any inquiry* being made into the circumstances of the charge and the circumstances in which it came to lapse, be withdrawn or discharged or be struck out.

Acquittals and quashed offences

[347] A verdict of acquittal means that a person has been found not guilty of the relevant offence after proceeding through the criminal justice system. That does not mean, in law, that the person has been found to be innocent. What it means is that the prosecution has failed to prove the relevant charge beyond reasonable doubt. A verdict of acquittal may also arise from a directed verdict because of a technicality.

[348] Similar considerations may apply where a conviction for an offence has been quashed or set aside.

Infringement notices under State Penalties Enforcement Act 1999

[349] A prohibition on discriminating on the basis that a person has been dealt with for an infringement notice under the *State Penalties Enforcement Act 1999* may be too broad.

[350] In some instances of decision-making, the existence of an offence which proceeded by way of an infringement notice under that Act may be relevant despite the more minor nature of such offences compared to a crime. For example, minor offences which are committed on numerous occasions and over a lengthy period may be relevant to an assessment of a person's suitability and appropriateness, not only for employment, but for licencing, housing, appointments and admission to various bodies or professions.

Irrelevant circumstances

[351] The Building Belonging Report considered that introducing "relevance" of the criminal record as a key component of the attribute was necessary to ensure that there is a reasonable balance between the rights of the individual with a criminal record, and the need for reasonable decisions to be made in an employment context, in the administration of State laws and programs, and other areas.[186]

[352] An "irrelevant criminal record" would include a record relating to an offence or alleged offence where 'the person has a conviction for the offence, but the circumstances of the offence are not directly relevant to the situation in which the record is being considered'.

[353] We consider that an attribute in such terms may give rise to at least the following issues.

[354] ***First***, determining whether a conviction is "directly relevant" could be difficult depending on the context. It is also matter on which reasonable minds may differ. A test of "direct relevance" would necessarily introduce a subjective opinion and an element of uncertainty into the ADA.

[355] ***Second***, the introduction of a subjective and uncertain test may result in increased numbers of complaints being made, and the inconsistent application of that test in resolving complaints. For example, inconsistent outcomes could be achieved at conciliation because people are uncertain about how the test should be applied. Similarly, inconsistent decisions could be made at a tribunal level.

[356] ***Third***, there is no carve-out for serious offences. It applies to the most trivial offences through to the most serious, including murder and rape.

[357] ***Fourth***, there may be unforeseen difficulties in applying the proposed new tests for direct and indirect discrimination (as contained in proposed new sections 10 and 11) to such a widely drafted attribute.

[358] ***Fifth***, there does not appear to be any ability to consider whether or not a person has been rehabilitated. Conversely, by recognising spent convictions as an "irrelevant criminal record", an appropriate balance is arguably struck between the rights of the offender and the aims of the criminal justice system.

Spent convictions

[359] A spent conviction is defined in Schedule 1 to the *Acts Interpretation Act 1954* to mean a conviction:

(a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* (**Rehabilitation Act**) has expired under that Act;

(b) that is not revived as prescribed by section 11 of that Act.

[360] Once the rehabilitation period for a conviction has expired:

(a) the person who committed the offence can lawfully deny any criminal conviction; they cannot be required to disclose it; and

(b) it must be disregarded when assessing the person's fitness to be admitted to a profession, occupation or calling or for any other purpose.

[361] Including spent convictions within the definition of "irrelevant criminal record" is appropriate in order to support the effect of the Rehabilitation Act by protecting those who have, for example, committed an offence in their youth or young adulthood and have subsequently rehabilitated themselves.

[362] However, as presently drafted the reference to “spent convictions” in the definition of “irrelevant criminal record” may be too broad. “Spent convictions” is not defined in the ADA and the Respect at Work Act does not seek to introduce a definition of that term. In those circumstances, the term would take its meaning under the *Act Interpretation Act 1954*, which defines the term to mean a conviction for which the rehabilitation period has expired under the Rehabilitation Act and that is not revived under section 11 of that Act.

[363] This definition fails to capture that there are exceptions in the Rehabilitation Act. Relevantly, regard may be had to the fact of conviction of the offence if:

(a) the person is expressly required by law to disclose their criminal history;

(b) the person or authority assessing the person's fitness is expressly required by law to consider the criminal history of that person;

(c) disclosure of a person’s criminal history is required or authorised under any provision of law or rule of legal practice, or for the purposes of subsequent criminal proceedings.

[364] The Review’s preliminary view is that it would be appropriate for any protection from discrimination on the basis of a spent conviction to remain subject to the exceptions in the Rehabilitation Act to ensure that the ADA does not undermine the operation of the Rehabilitation Act.

Offences dealt with under the Youth Justice Act 1992

[365] The Review’s preliminary view is that this part of the definition of "irrelevant criminal record" is appropriate.

[366] Cautions and restorative justice processes under the YJA seek to divert a child who commits an offence (other than a serious offence) from the court's criminal justice system. One of the primary purposes of a caution or restorative justice process is to ensure that the youth does not carry the stigma of a criminal charge or subsequent conviction into their adulthood, which could prevent their rehabilitation. This purpose could be undermined if a person were permitted to discriminate against a youth because the youth received a caution or participated in a restorative justice process.

[367] However, it may be appropriate for there to be a specific carve-out where a child reoffends to permit an earlier caution or restorative justice process to be taken into account in determining whether to provide a further caution or restorative justice process.

Expunged conviction

[368] The new attribute "expunged conviction" is defined narrowly as follows:

> ***expunged conviction***, in relation to a person, means a conviction of the person that has been expunged or extinguished, or whose effect has otherwise ended, under—
>
> (a) the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*; or
>
> (b) a law of another State that provides for the same, or substantially the same, matter as the Act mentioned in paragraph (a).

[369] The Building Belonging Report observed that while there may be some protection from discrimination on this basis under the existing protected attribute of "sexuality", the ADA would benefit from expressly referring to an expunged past homosexual conviction as this may 'address stigma and fear experienced by people who were unjustly treated in the past'.[187]

The Review's preliminary view

[370] The Review's preliminary view is that:

(a) it is appropriate to prohibit discrimination on the grounds of "expunged conviction" and the uncontroversial elements of the definition of "irrelevant criminal record" (as identified above);

(b) prohibiting discrimination on the basis of the balance of the elements in the definition of "irrelevant criminal record" may have unintended consequences.

[371] The potential for unintended consequences to arise from the proposed new attribute of "irrelevant criminal record" must be considered having regard to exceptions to discrimination in the ADA, including:

(a) section 25, which provides that a person may create genuine occupational requirements for a position (eg holding a Blue Card);

(b) section 108, which provides that a person may do an act that is reasonably necessary to protect the health and safety of people at a place of work.

Discussion Questions

C4 What are the unintended consequences of retaining the present definition of "irrelevant criminal record"?

C5 Are there any unintended consequences of retaining the proposed new attribute of "expunged conviction"?

Irrelevant medical record

[372] The Respect at Work Act defines "irrelevant medical record" as follows:

> ***irrelevant medical record***, in relation to a person, means the person's medical record, or a part of the person's medical record, that is not directly relevant to the situation in which the record or part of the record is being considered.

[373] "Medical record" is further defined in the Respect at Work Act to include a record of applications or claims the person has made for compensation or other money to be paid under workers' compensation schemes.

[374] The Building Belonging Report did not recommend that "irrelevant medical record" be included as an additional attribute because the QHRC considered that:[188]

(a) existing attributes in the ADA provide sufficient protection, except for people with variations of sex characteristics;

(b) any gap in protection would be remedied by introducing a new attribute of "sex characteristics" and updating the definitions of "gender identity" and "impairment".

[375] Amendments to the ADA commenced on 29 April 2024 which introduced "sex characteristics" as a protected attribute and updated the definition of "gender identity".[189] However, the Respect at Work Act did not adopt the Building Belonging Report's recommendation to change the language of "impairment" to "disability".

[376] The Review notes that a primary rationale given in the Building Belonging Report for updating "impairment" to "disability" was to modernise the language and ensure consistency with Commonwealth legislation. Although the Respect at Work Act does not seek to amend the ADA to introduce the language of "disability", the Review's preliminary view is that:

(a) the gaps in protection identified in the Building Belonging Report have been filled or, to the extent any remain, are not significant; and

(b) for the reasons outlined in the Building Belonging Report, the ADA should not be amended to create a new attribute of "irrelevant medical record".

Discussion Question

C6 Are there any unintended consequences of retaining the present definition of "irrelevant medical record"?

Combined grounds: two or more attributes

[377] Section 7(4) of the Respect at Work Act seeks to amend the ADA to introduce a new attribute to prevent discrimination against a person based on a combination of two or more of any other attributes protected under the ADA (including the other new or amended attributes sought to be introduced by the Respect at Work Act).

[378] Relatedly, the proposed new section 8(2) seeks to amend the ADA to provide that discrimination on the basis of an attribute of a person who has two or more attributes includes discrimination in relation to:

- any of the attributes;
- two or more of the attributes; or
- the combined effect of two or more of the attributes.

[379] These proposed amendments are intended to address a gap in protection under the ADA for what the Building Belonging Report describes as 'intersectional discrimination', meaning:[190]

> when two or multiple grounds operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination.

[380] The Building Belonging Report noted that:[191]

(a) people who experienced discrimination because of combined grounds are not adequately recognised or protected by the ADA;

(b) combined grounds discrimination has been recognised as one of the cultural and systemic drivers of discrimination and sexual harassment;

(c) proving discrimination can be difficult when conduct that allegedly contravenes the ADA cannot easily be ascribed to one single attribute of a person.

[381] While the proposed new section 8(2) would capture concerns about whether or not a person could be discriminated against based on a combination of other protected attributes, section 7(4) of the Respect at Work Act goes further by introducing an uncertain protected attribute which would arise from a person's unique circumstances and combination of attributes. In that way, it appears to the Review that the proposed new attribute is intended to operate as a "catch all" protection for instances where a person's experience of discrimination does not neatly fit within two or more protected attributes.

[382] The Review's preliminary view is that the introduction of an undefined and uncertain new attribute, the scope of which would be defined by the particular facts of each individual matter, may be problematic. It is not clear to us why proposed new section 8(2) would not offer sufficient protection to people who experience discrimination on the basis of two or more attributes, particularly if the amendments to the tests of direct and indirect discrimination proposed by the Respect at Work Act are implemented.

Discussion Question

C7 Are there any unintended consequences of retaining the new attribute "a combination of two or more of any of the above attributes"?

The balance of the new attributes

[383] As to the balance of the new or amended attributes, the Review does not wish to identify any specific concerns other than with the definition of "homelessness". The Review seeks submissions as to whether there are any unintended consequences from retaining the new or amended attributes, namely homelessness, subjection to domestic or family violence, potential pregnancy, sexual orientation, family care or kinship responsibilities, and physical appearance.

[384] These attributes are considered briefly below.

Homelessness

[385] The Building Belonging Report recommended not defining "homelessness". However, the Respect at Work Act in section 52 defines "homelessness" in relation to a person to include 'the person not having adequate, safe and secure housing'.

[386] The reference to 'adequate' housing may unduly expand the scope of people caught by the attribute by inviting consideration of adequacy of housing which may otherwise be safe and secure.

[387] Other Acts which refer to "homelessness" do not define the term.

[388] Section 4 of the *Supported Accommodation Assistance Act 1994* (Cth) defines a person as "homeless" for the purposes of the Act if, and only if, he or she has inadequate access to safe and secure housing. By tying the requirement of inadequacy to the access a person has to safe and secure housing, this definition avoids the issue which arises from the Respect at Work Act definition.

[389] The Australian Bureau of Statistics' information paper on the statistical meaning of homelessness observes:[192]

> Definitions of homelessness are culturally and historically contingent. They range from limited objective measures which conflate homelessness with rooflessness to more equivocal subjective definitions founded on culturally and historically determined ideas of 'home'.

[390] The Australian Bureau of Statistics' definition of homelessness is:[193]

> informed by an understanding of homelessness as 'home'lessness, not rooflessness. It emphasises the core elements of 'home' in Anglo-American and European interpretations of the meaning of home as identified in research evidence... These elements include: a sense of security, stability, privacy, safety, and the ability to control living space. Homelessness is therefore a lack of one or more of the elements that represent 'home'.

[391] The Review's preliminary view is that if the new attribute of "homelessness" is retained, it should not be defined.

Discussion Question

C8 Should the definition of "homelessness" in section 52 of the Respect at Work Act be repealed?

Subjection to domestic or family violence

[392] The Respect at Work Act implements the Building Belonging Report's recommendation for the inclusion of a new attribute of "subjection to domestic or family violence", within the meaning of that phrase as defined in the *Domestic and Family Violence Protection Act 2012*. The definition includes behaviour that is physically or sexually abusive, emotionally or psychologically abuse, economically abusive, threatening, coercive, or that in any other way controls or dominates the relevant person and causes them to fear for their safety or wellbeing (or that of someone else).[194]

[393] The Review has heard that victim-survivors of domestic or family violence experience discrimination in the areas of accommodation and employment. An attribute of this kind is presently protected by anti-discrimination laws in South Australia, the ACT and the Northern Territory. Specific protections for victim-survivors of domestic or family violence also exist in other legislative contexts, most notably in industrial laws.

Potential pregnancy

[394] The ADA presently protects against discrimination on the basis of the attribute of "pregnancy". That term is not defined in the Act. Section 7(1) of the Respect at Work Act seeks to amend the existing attribute of "pregnancy" to include, in the alternative, "potential pregnancy". The Respect at Work Act defines "potential pregnancy" to include in relation to a person:

(a) the person's capability to become pregnant;

(b) the person's expressed desire to become pregnant;

(c) the person's likelihood, or perceived likelihood, to become pregnant; and

(d) the person's undergoing of a medical treatment or other procedure that procures, or attempts to procure, pregnancy in the person other than by sexual intercourse.

[395] The inclusion of this new attribute was not considered in the Building Belonging Report. The explanatory notes for the Respect at Work Bill identify that the existing attribute of pregnancy was amended to ensure consistency with the *Sex Discrimination Act 1984* (Cth) and to capture a person's engagement in assisted reproductive technology services in order to become pregnant.

Sexual orientation

[396] The Respect at Work Act seeks to amend the ADA to implement the Building Belonging Report's recommendation to replace the existing protected attribute of "sexuality" with the more contemporary terminology of "sexual orientation". While "sexuality" is presently defined in the ADA to mean 'heterosexuality, homosexuality or bisexuality', the Respect at Work Act defines "sexual orientation" more expansively to mean:

> the person's capacity, or lack of capacity, for emotional, affectional and sexual attraction to, or intimate or sexual relations with, persons of a different gender or the same gender or more than one gender.

[397] Although the *Sex Discrimination Act 1984* (Cth) uses the language of "sexual orientation", the term is defined such that it has the same coverage as the existing definition of "sexuality" in the ADA. The definition of sexual orientation contained in the Respect at Work Act would therefore ensure that there is increased protection in Queensland from discrimination on the basis of sexual identities.

Family, carer or kinship responsibilities

[398] The Respect at Work Act seeks to replace the existing protected attribute of "family responsibilities" (and its associated definitions of "family responsibilities" and "immediate family") with the more expansive term "family, carer or kinship responsibilities".

[399] Presently, "immediate family" is narrowly defined such that a person would not be protected from discrimination on the basis of their caring responsibilities if the person to whom the care was being given was, for example, an aunt or a cousin. Stakeholders expressed concerns to the Building Belonging Review that existing definitions of "family" and "immediate family" did not adequately reflect contemporary familial arrangements and cultural practices. Accordingly, as recommended in the Building Belonging Report, the new attribute is not defined in the Respect at Work Act.

Physical appearance

[400] The Respect at Work Act seeks to amend the ADA to implement the Building Belonging Report's recommendation to introduce a new protected attribute of "physical appearance", which is defined to mean:

> (a) the person's weight, size or height; or
> (b) the presence of a birth mark or scar on the person's face or body; or
> (c) any other characteristic of the person's face or body—
> (i) that the person has because of another attribute of the person; or
> (ii) that is not freely chosen.

[401] Importantly, the definition captures only those physical features which are based on characteristics that are present from birth or acquired (for example, a birth mark), but not those which reflect something voluntarily acquired or assumed by a person (for example, a tattoo) unless protected by another protected attribute (for example, a tattoo adopted for cultural reasons). By confining the definition in this way, the Respect at Work Act addressed stakeholder concerns raised to the Building Belonging review about the unreasonably broad scope of a generalised protected attribute of physical appearance.

Discussion Question	
C9	Are there any unintended consequences of retaining any or all of the other additional new or amended attributes?

When does a person discriminate?

[402] The Respect at Work Act seeks to amend the ADA to:

- identify that a person discriminates against another person if they directly or indirectly discriminate against them on the basis of an attribute (proposed new section 11A); and
- replace the existing definitions of "direct discrimination" and "indirect discrimination".

[403] The Review's preliminary view is that the QHRC's reasoning in the Building Belonging Report for changes to the definitions of direct and indirect discrimination appears to be both sound and well founded.

Direct discrimination

[404] The changes to the definition of "direct discrimination" proposed by the Respect at Work Act are set out below:

Existing definition	Proposed new definition
Direct discrimination on the basis of an attribute happens if a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different.	***Direct discrimination*** on the basis of an attribute happens if a person treats, or proposes to treat, another person unfavourably because the other person has an attribute.

[405] The proposed new definition also provides that:

(a) the attribute is only required to be one of the reasons, rather than the substantial reason, for the unfavourable treatment; and

(b) it is irrelevant whether the person who discriminates considers that the treatment is unfavourable.

[406] This new definition would remove the requirement for a complainant to satisfy the "less favourable" test, which requires identification what is called a "hypothetical comparator" in the same or similar circumstances to the complainant.

[407] The Building Belonging Report observed that concerns about the hypothetical comparator test include that:[195]

(a) the test is technical, uncertain and hard to understand and apply, particularly in complex cases and cases involving discrimination on the basis of combined attributes;

(b) 'constructing a hypothetical comparator is artificial, contrived, and creates barriers to accessing justice';

(c) the test has cost and time consequences for legal proceedings.

[408] The proposed new test would focus on the nature of the conduct itself, and the reasons for it.

Indirect discrimination

[409] The changes to the definition of "indirect discrimination" proposed by the Respect at Work Act are set out below:

Existing definition	Proposed new definition
Indirect discrimination on the basis of an attribute happens if a person imposes, or proposes to impose, a term— (a) with which a person with an attribute does not or is not able to comply; and (b) with which a higher proportion of people without the attribute comply or are able to comply; and (c) that is not reasonable.	***Indirect discrimination*** on the basis of an attribute happens if a person imposes, or proposes to impose, a condition, requirement or practice that— (a) has, or is likely to have, the effect of disadvantaging another person because the other person has an attribute; and (b) is not reasonable.

[410] The proposed new definition also provides that creating an environment in which a person with an attribute is disadvantaged is taken to be imposing a condition, requirement or practice.

[411] The Building Belonging Report recorded similar concerns about the existing definition to those set out above in relation to the definition of "direct discrimination". The Report noted that establishing the "comparator pool", meaning the higher proportion of people without the attribute who can comply with a term, was 'prohibitively difficult'.[196]

[412] The proposed new definition would focus the relevant inquiry on the effect of the condition, requirement or practice on a person with a particular attribute, and whether the condition, requirement or practice is reasonable in all of the relevant circumstances.

Discussion Question

C10 Are there any unintended consequences of retaining the new definitions of "direct discrimination" and "indirect discrimination"?

Burden of proof

[413] The Respect at Work Act seeks to amend the ADA to replace the existing provisions which govern the burden of proof in relation to a complaint of discrimination.[197]

Existing provisions	Proposed new provisions
204 Burden of proof—general principle It is for the complainant to prove, on the balance of probabilities, that the respondent contravened the Act, subject to the requirements of sections 205 and 206	**204 Burden of proof—general** (1) In a complaint proceeding, if there are facts from which it could be decided, in the absence of any other explanation, that the respondent contravened the provision of the Act the subject of the alleged contravention, the respondent is taken to have contravened the provision. (2) Subsection (1) does not apply if the respondent proves, on the balance of probabilities, that the respondent did not contravene the provision. (3) Subsection (1) and (2) apply in addition to any other provision of the Act that provides for who has the onus of proving a particular matter. *Note—* See, for example, section 11(3) and 205
205 Burden of proof—indirect discrimination In a case involving an allegation of indirect discrimination, the respondent must prove, on the balance of probabilities, that a term complained of is reasonable.	
206 Burden of proof—exemptions If the respondent wishes to rely on an exemption, the respondent must raise the issue and prove, on the balance of probabilities, that it applies	**205 Burden of proof—exemption** (1) An exemption is a defence to discrimination, and the person seeking to rely on the exemption has the onus of proving, on the balance of probabilities, that the exemption applies. (2) In this section— ***exemption*** means an exemption under chapter 2, Part 4 or 5 that applies to discrimination.

[414] Under the existing provisions, different parties bear the onus of proof depending upon whether a complaint of direct discrimination or indirect discrimination is made.

[415] The complainant bears the onus of proof for a complaint of direct discrimination.

[416] Both the complainant and the respondent share the onus of proof for a complaint of indirect discrimination, such that:

(a) the complainant must prove that a particular term imposed (or proposed to be imposed) is one with which:

(i) a person with an attribute does not or not able to comply; and

(ii) a higher proportion of people without the attribute comply or are able to comply;

(b) if the complainant discharges that onus, the respondent then bears the onus of proving that the term complained of is reasonable.

[417] The proposed new section 204 provides for a shifting and shared onus in relation to all complaints of discrimination – whether direct or indirect discrimination. Under the new section:

(a) the complainant would bear the initial burden of proving facts from which it could be decided that the conduct complained of is discriminatory;

(b) if the complainant discharges that onus, the burden would then shift to the respondent to prove on the balance of probabilities that the conduct was not discriminatory.

[418] The Building Belonging Report considered whether the burden of proof should shift at any point during the determination of a complaint of direct discrimination and, if so, what would be the appropriate approach. This was against a background of a shifting or 'shared' burden of proof having been adopted in overseas jurisdictions, including Canada, the United Kingdom and the European Union. Models of shifting burdens of proof in the *Fair Work Act 2009* (Cth) and the *Equality Act 2010* (UK) were specifically considered by the Building Belonging Review:

- The *Fair Work Act 2009* (Cth) reverses the onus of proof in relation to general protections for certain rights. For example, an employee is only required to establish that adverse action was taken and that they had one of the relevant attributes. It is then presumed that the adverse action was taken because of the attribute unless the employer proves otherwise.
- The *Equality Act 2010* (UK) model is one where a claimant must be able to make out a *prima facie* case that the treatment could amount to direct or indirect discrimination. If the complainant does so, the burden of proof shifts to the respondent to prove otherwise.

[419] The Building Belonging Report considered that there were sound reasons to depart from the current burden of proof provisions for direct discrimination and to adopt a 'shared burden of proof'. One of the primary reasons was that the respondent would usually be the person, and perhaps the only person, who knows why action was taken. The *Equality Act 2010* (UK) model was preferred over the *Fair Work Act 2009* (Cth) model, as it was considered to be fairer and more balanced.

[420] The Building Belonging Report did not recommend any changes to sections 205 (the respondent being required to prove reasonableness for indirect discrimination) or section 206 (the burden of proof for an exemption). Despite that, the Respect at Work Act seeks to repeal section 205.

[421] The Review notes that there is presently no shifting burden of proof for complaints of direct discrimination in any anti-discrimination legislation in Australia save for in the ACT. For the ACT, the shifting burden arises only where a complaint of direct discrimination is referred to the ACT Civil and Administrative Tribunal. It operates where a complainant can prove that the treatment or proposed treatment is unfavourable and presents evidence that would enable the Tribunal to decide, in the absence of any other explanation, that the treatment or proposed treatment is because of an attribute.

Discussion Question

C11 Should the current burden of proof be changed to a 'shifting' burden of proof and, if so:

(a) should a 'shifting' burden of proof apply only to complaints of direct discrimination?

(b) what should a complainant be required to prove prior to the burden shifting to the respondent?

Positive duty

[422] A positive duty is 'an obligation on a person or organisation to take active steps to prevent discrimination and sexual harassment before it happens'.[198] The intention is to reduce reliance on the complaints process. The burden is shifted from complainants to make a complaint, to employers and organisations to stop unlawful conduct from occurring.

Proposed operation of the positive duty

Respect at Work Act proposed new section 131I

131I Duty to eliminate discrimination, sexual harassment, harassment on the basis of sex and other objectionable conduct

(1) This section applies to a person who, under chapter 2, 3, 4 or 5, must not engage in discrimination, sexual harassment, harassment on the basis of sex or other objectionable conduct.

(2) However, this section applies to an individual only if the individual is a person conducting a business or undertaking.

(3) The person must take reasonable and proportionate measures to eliminate the discrimination, sexual harassment, harassment on the basis of sex or other objectionable conduct as far as possible.

(4) To remove any doubt, it is declared that the duty under subsection (3) does not limit, and applies to the person in addition to, the prohibitions applying to the person under chapter 2, 3, 4 or 5.

Who would be subject to the duty?

[423] Under the Respect at Work Act amendments to the ADA, a positive duty would be established in Queensland to 'eliminate, as far as possible' discrimination, sexual harassment and other behaviour prohibited under the ADA.[199] It would apply to all persons with obligations under the Act, including individuals, corporations, bodies politic and the State, but would apply to an individual only if conducting a business or undertaking.[200]

What would the duty require?

[424] The duty would require a person to take 'reasonable and proportionate measures to eliminate discrimination, sexual harassment, harassment on the basis of sex or other objectionable conduct as far as possible'. Specific criteria would be listed in the ADA to assist in determining whether a measure is reasonable and proportionate, including the nature, size and circumstances of the person's business, undertaking or operations, the practicability and cost of the measure, and the person's business and operational priorities.

What role would the QHRC play?

[425] There are two ways the QHRC would be involved in facilitating compliance with the positive duty:

(a) **education and prevention:** the QHRC would be required to issue guidelines about how to comply with the positive duty,[201] to aid in the effective implementation of the duty.[202]

(b) **enforcement:** The QHRC would also be given stronger investigation and enforcement powers.[203] The Commissioner could commence an investigation if they suspect a person is not complying with the duty, and direct that person to provide information and attend before the Commission.

[426] While the amendments would permit the Commissioner to accept a written undertaking or issue a compliance notice where appropriate, compliance with those measures could only be enforced by an order of the tribunal.

Adoption of a positive duty in Australia

[427] Victoria was the first Australian jurisdiction to introduce a positive duty in its anti-discrimination legislation in 2011.[204] A positive duty has since been introduced in the Australian Capital Territory (**ACT**) and the Northern Territory (**NT**), as well as at a federal level under the *Sex Discrimination Act 1984* (Cth),[205] and recommended for introduction in Western Australia.[206] Its introduction is also under active consideration in New South Wales.[207]

[428] In the form legislated in the Respect at Work Act, the Queensland positive duty would be similar to that which exists in the ACT, the NT and Victoria in that it would apply across all protected attributes.[208] It would be broader in scope than the positive duty introduced under the *Sex Discrimination Act* which is limited to the area of work and only covers sexual harassment and certain types of unlawful conduct on the basis of sex.

[429] The investigation and enforcement powers proposed are similar to those that exist under the Commonwealth and NT models, but stronger than those that exist in Victoria. The ACT has more limited powers than other jurisdictions to consider compliance with the positive duty.

Support for a positive duty and concerns

[430] The Building Belonging Report identified several benefits of a positive duty, including its potential to:

- prevent discrimination and sexual harassment before it happens;
- introduce shared responsibility with duty holders rather than this resting largely with people the Act is designed to protect;
- promote a better understanding of the causes and impacts of discrimination and about the Act; and
- achieve systemic change.[209]

[431] Most stakeholders expressed their support for the introduction of a positive duty in Queensland during the Building Belonging Review and Respect at Work Act Parliamentary Committee process. This was often in the context of the additional benefits it could bring in preventing discrimination, noting the high rates of under-reporting and identified gaps in existing protections.

[432] The potential for inconsistency and duplication with existing duties under other laws and regulations, however, was raised as an issue.

[433] Concerns more generally related to the increased regulatory burden for duty holders and associated costs, particularly for small to medium sized businesses, independent schools and religious, charitable and welfare organisations.[210] During the Parliamentary Committee process, some stakeholders also recommended that amendments be made to clarify that the positive duty does not prevent religious bodies and schools from teaching their beliefs or require them to promote values within their organisations inconsistent with those beliefs.[211]

[434] Another commonly raised concern is the need to ensure a positive duty results in genuine measures being put in place to address discrimination, harassment and vilification rather than being treated as a "box ticking" compliance exercise.[212]

[435] A specific objection of those opposed to the introduction of a positive duty in Queensland during consideration of the Respect at Work Bill was to the QHRC taking on a regulatory function with what was described as being 'quasi-judicial' investigation and enforcement powers.[213]

[436] There are examples of other Queensland public sector entities that perform multiple functions, including receiving and conciliating complaints and acting as a regulator. Examples include the Office of Fair Trading, Workplace Health and Safety Queensland, and the Queensland Building and Construction Commission. Where entities perform dual roles, there has been recognition of the need to delineate and separate the performance of roles which may give rise to a conflict.[214]

The experience of other jurisdictions

[437] The Review Team met with representative of the Australian Human Rights Commission (**AHRC**), ACT Human Rights Commission (**ACT HRC**) and the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) to better understand their experience with the positive duty.

[438] The Commissions' general position was that the positive duty had been misconstrued as imposing a heavy regulatory burden. Duty holders already have a responsibility not to unlawfully discriminate, harass or engage in other unlawful conduct and a positive duty is just about 'being clearer' or 'more explicit' about what already is expected of them.

[439] The AHRC advised of several measures put in place to support duty holders and its new role as a regulator:

- The AHRC has worked closely with jurisdictions, such as Victoria, to align guidance developed for duty holders. This means that by complying with the Commonwealth duty, duty holders can feel assured they also are likely to satisfy their workplace health and safety obligations and state-based positive duty requirements.
- The AHRC has issued a Statement of Intent that outlines how the Commission intends to undertake its new function to monitor and ensure compliance with the positive duty.[215] Consistent with principles set out in this statement, the Commission told us their focus is on working cooperatively with organisations by examining systems, policies and practices to assist them to build their organisational maturity, rather than responding to individual incidents of suspected non-compliance.

[440] The commencement of the AHRC's functions was staged, with some guidance and educative functions commencing first followed by compliance-related functions and powers commencing a year later.

[441] The AHRC told us the shift to become a regulator was significant, and time was required to sufficiently prepare the Commission to take on this new role. The positive duty and the AHRC's capacity to carry out its related compliance function will be subject to an independent review to be completed by September 2027.[216]

[442] VEOHRC advised its powers are more limited. Its investigatory function relating to the positive duty has been exercised just once. This was in 2022 involving an investigation into Bakers Delight Holdings. The outcomes were reported by the Commissioner as extremely positive with the joint Chief Executive Officers cooperating fully with the investigation, and assuming a leadership role in educating others in the industry about the investigation outcomes and steps needed to comply.

[443] The ACT HRC does not have any independent investigatory powers with respect to the positive duty. Instead, the Commission may consider if the duty has been met when considering a discrimination complaint.[217] The positive duty currently applies only to government entities, and individuals with organisational management responsibilities for those entities, but will apply to other duty holders

from April 2027.[218] The ACT HRC told the Review team that one of the reasons that it had not gone down the enforcement pathway was a concern about the Commission continuing to operate as an impartial complaints-handling body, while making determinations regarding compliance with the positive duty.

How much will introduction of the positive duty cost?

[444] No estimate of direct compliance costs for the positive duty or a detailed cost-benefit analysis was prepared for the Respect at Work Bill.[219]

[445] A positive duty gives rise to both implementation costs and potential cost savings.

- Direct costs include those involved in developing policies, training and compliance systems, as well as funding regulatory functions. These costs may be offset by reductions in legal expenses, workers' compensation claims and complaint-handling costs although there are complexities in this type of assessment. For example, discrimination complaints may increase in the short term due to increased trust and confidence in complaints systems.
- Indirect benefits are more difficult to attach a monetary value to. In a work-related context they may include higher productivity, lower staff turnover and reduced reputational risk.

[446] At the time the positive duty was introduced in the *Sex Discrimination Act*, it was estimated the average annual regulatory costs would be in vicinity of $226.4 million, of which the majority ($200 million) would be borne by businesses.[220] However, it was anticipated these costs would 'be offset in the longer term by the financial benefits accruing to business associated with the prevention of the sexual harassment', including anticipated productivity gains.[221] The accuracy of those estimates is yet to be determined.

[447] The AHRC has established a team of 10 people in support of the Federal sex discrimination positive duty across a range of functions including compliance and enforcement, education, public awareness and research. The Commission has raised concerns publicly that this current level of resourcing is insufficient.[222] The NT Anti-Discrimination Commission also has raised concerns about its current funding, noting that its ability to carry out investigations with respect to the positive duty is dependent on its resourcing.[223]

[448] In the Building Belonging Report, the QHRC suggested '[a] clear delineation between the funding provided for the Commission's dispute resolution function and its functions to proactively support compliance with the Act' would be required were a positive duty to be introduced 'to achieve structural separation as well as to ensure the new functions of the Commission would have certainty of resourcing'.[224]

[449] The former Government allocated $24.57m to the QHRC over 5 years from 1 July 2024. This was intended to support implementation of all of the Building Belonging reforms, not just the positive duty. The QHRC was in the process of preparing draft guidelines to assist entities to comply with the proposed positive duty in anticipation of the positive duty's commencement at the time the decision was made to pause commencement of the Respect at Work Act provisions.

The Review's preliminary view

[450] The Review's preliminary view is that, while the introduction of a state-based positive duty in Queensland may have merit, there are sound reasons why the implementation should be further delayed.

Commonwealth position

[451] A positive duty under the *Sex Discrimination Act* has only recently been introduced. It is contemplated a positive duty will also be introduced by the Commonwealth under the *Disability Discrimination Act 1992* in the near future. There is merit in seeing how these duties operate in practice before implementation in Queensland, particularly given Queensland's duty would cover all protected attributes, extend to vilification, and apply in all areas. This means that more duty holders will be impacted and required to put in place measures to prevent a broader range of unlawful behaviour than under the Commonwealth duty.

[452] Delaying commencement would mean that Queensland would have the benefit of the Commonwealth's review of its positive duty which is due to commence later this year. The findings could inform any decision by the Queensland Government to implement the positive duty and the minimum funding and resourcing requirements to support the effective operation of such a duty.

QHRC's impartiality

[453] Important questions were raised during consideration of the Respect at Work Bill about the QHRC's ability to operate as an impartial complaints-handling body if invested with additional investigation and enforcement functions. We invite views about the appropriateness of the QHRC having a regulatory and enforcement function given the potential for conflict with its existing role as a conciliator of human rights and anti-discrimination complaints, and whether the Commission's proposed 'structural separation' would adequately respond to these issues.

[454] If the Commission is to take on an investigation and compliance role, the QHRC will need time to prepare and plan to take on the role of a regulator. This includes time to build trust and confidence in its abilities to assume this new role and how its new powers and functions will be exercised.

Interim measures

[455] There are steps that could be taken in the short term towards the introduction of a positive duty in Queensland without committing to its immediate full implementation. For example, the QHRC could be supported to publish guidelines to promote voluntary compliance. To encourage take up of these guidelines in the absence of investigation and enforcement powers, the Act could be amended to provide that acting in compliance with guidelines issued by the Commission can be relied upon as a relevant circumstance in responding to an allegation of discrimination.[225] The introduction of an express power for the QHRC to issue guidelines and their potential use is discussed at paragraphs [485] to [489] below.

[456] A staged approach to implementation could also be considered. For example, the QHRC's educative, public awareness and guidance functions could commence first, with a view to the Commission's investigative and enforcement powers coming into force later.[226] Alternatively, adopting the ACT model, the positive duty obligations could apply to government entities for a period of time before consideration is given to extending this to other duty holders.

[457] Reliance could also be placed on existing duties under the *Sex Discrimination Act* and other Acts, including the *Work Health and Safety Act 2011*, together with the introduction of a new power for the QHRC to undertake systemic reviews (discussed at paragraphs [478]–[484] below). This may achieve some of the objectives of the positive duty to promote, as far as possible, the objective of substantive equality, while avoiding concerns about the broader impacts of the introduction of a state-based positive duty across all individual duty holders.

Discussion Questions

C12 Are there any unintended consequences that may arise if the positive duty were implemented in Queensland?

C13 Would it be appropriate for the QHRC to have a regulatory and enforcement function as contemplated by the positive duty provisions?

Investigations

[458] The Respect at Work Act seeks to make significant amendments to the QHRC's investigatory function and powers.

[459] Presently, the QHRC has a function to carry out investigations relating to contraventions of the ADA. Chapter 7, Part 1, Division 2 of the ADA identifies six circumstances in which the Commissioner can conduct an investigation. These may be broadly grouped as:

- investigations into complaints;
- investigations upon request; and
- investigations into potential contraventions of the ADA.

[460] The Commissioner has the same powers in conducting an investigation as they have in dealing with a complaint of a contravention of the ADA, including (in respect of certain matters investigated) to attempt to resolve the matter by conciliation and refer the matter to the tribunal if it is not resolved. The Commissioner may also direct a person to provide information and documents relevant to an investigation. Otherwise, the Commissioner does not have any express enforcement powers to accompany the QHRC's investigations function.

[461] The QHRC's performance of this function has been considered in Part A of this Discussion Paper.

[462] The Respect at Work Act seeks to empower the Commissioner to also conduct investigations into:

- compliance with the proposed new positive duty; and
- a systemic contravention of the ADA.

[463] The Act also introduces a new framework for the conduct and enforcement of an investigation.

[464] An overview of how the new framework would operate is shown below:

SUBECT MATTER	CONDUCT OF INVESTIGATION	OUTCOME & ACTIONS
Complaint	• May commence at any time after complaint received • Conducted in any way Commissioner considers appropriate • Commissioner has same powers as if dealing with a complaint • Power to require information or document	• Decide to take **no further action** • **Take any other action** the Commissioner may take under the ADA in relation to the subject matter of the investigation
Request of Minister, QCAT or Industrial Relations Commission	• Must notify person of investigation • Conducted in any way Commissioner considers appropriate • Commissioner has same powers as if dealing with a complaint • Power to require information or document	• Decide to take **no further action** • **Take any other action** the Commissioner may take under the ADA in relation to the subject matter of the investigation • **Refer to tribunal** as if complaint if believes matter cannot be resolved by conciliation
Matter of public concern affecting a class of people	As above	As above
Allegation of an offence against the ADA	As above	• Decide to take **no further action** • **Take any other action** the Commissioner may take under the ADA in relation to the subject matter of the investigation
Possible offence against the ADA	As above	As above
Compliance with positive duty	As above	• Decide to take **no further action** • **Take any other action** the Commissioner may take under the ADA in relation to the subject matter of the investigation • Accept an **undertaking** • Give a **compliance notice** • Prepare a **report**, and publish it or give it to the Minister
Systemic contravention	As above	• Decide to take **no further action** • **Take any other action** the Commissioner may take under the ADA in relation to the subject matter of the investigation • Prepare a **report**, and publish it or give it to the Minister

Investigating complaints

[465] Presently the QHRC *may* investigate a complaint at any time after the complaint is received by the Commissioner (section 154A).

[466] The Respect at Work Act does not propose amending this provision save for identifying that proposed new provisions concerning the conduct of an investigation would apply to an investigation into a complaint. The new provisions are considered below.

[467] Under the Draft Anti-Discrimination Bill 2024, the QHRC would have been empowered to make "preliminary inquiries" about a complaint, rather than conduct an investigation into a complaint. The QHRC would also be able to direct a person to give information about the complaint.

[468] The Review's preliminary view is that there is merit in separating any power to inquire into a complaint from the power to investigate and the rights which attach to that power. This was the approach taken in the Draft Anti-Discrimination Bill 2024, which better reflects how the QHRC presently uses its investigations function in respect of dealing with complaints. As discussed in Part A of this Discussion Paper, the QHRC principally uses its investigations power to make preliminary inquiries in dealing with a complaint (for example, to assist it to identify who is the proper respondent to a complaint).

[469] It is difficult to identify why the QHRC would need to investigate a complaint beyond making preliminary inquiries into that complaint for the purpose of attempting to facilitate a resolution between the parties. Given the QHRC is responsible for conciliating complaints under the ADA, there may also be a tension between it having an investigatory role alongside its role as an impartial conciliator.

Discussion Question

C14 Should the power to inquire into a complaint be separate from the QHRC's investigative function?

Investigations upon request and into potential contraventions of the ADA

[470] Under section 155(1) of the ADA, the QHRC *must* initiate an investigation if:

- requested to do so by the Minister; or
- QCAT or the QIRC becomes aware of circumstances that may constitute a contravention of the ADA and refers the matter to the QHRC.

[471] Under section 155(2) of the ADA, the QHRC *may* initiate an investigation if:

- during the course of carrying out the QHRC's functions, a possible case of a contravention of the ADA against a group or class of people is discovered, the matter is of public concern and the Minister agrees; or
- an allegation is made that an offence against the ADA has been committed; or
- during the course of carrying out the QHRC's functions, a possible offence against the ADA is discovered.

[472] The Respect at Work Act retains these provisions as proposed new sections 173A and 173B(1), which would attract the new provisions about how an investigation is to be conducted and what action may be taken in response to an investigation.

Compliance with the positive duty

[473] In support of the proposed new positive duty, the Respect at Work Act seeks to amend the ADA to permit the Commissioner to conduct an investigation into a person's compliance with that duty if the Commissioner suspects the person is not complying with the duty (proposed new section 173(B)(2)).

[474] Upon completion of an investigation into compliance with the positive duty, the Commissioner could take various steps including:

- accepting an undertaking from the person the subject of the investigation (and helping them to prepare that undertaking), which could then be published;
- giving the person a compliance notice; and
- preparing a report, which could be published or given to the Minister.

[475] The report:

- may include the Commissioner's recommendations for dealing with the matter;
- must not include personal information about an individual (unless that information has been published previously, or with the person's consent); and
- must not include an adverse comment about an entity unless the entity has been given an opportunity to make submissions in relation to the adverse comment and the submissions are fairly stated in the report.

[476] If the report is provided to the Minister, it must be tabled in the Legislative Assembly.

[477] The Review's preliminary views about the proposed introduction of a positive duty are set out in paragraphs [450]–[457] above.

Systemic contraventions

[478] The Respect at Work Act seeks to introduce an additional basis upon which the Commissioner has a discretion to conduct an investigation (proposed new section 173B(3)).

[479] Under this provision, the Commissioner may conduct an investigation:

- into any matter relating to a contravention of the Act that is or is suspected to be systemic; and
- if the Commissioner believes the investigation would 'help achieve the purposes of this Act'.

[480] A contravention of the Act is defined to be "systemic" if it affects a class or group of persons, and is continuous, repetitive or forms a pattern.

[481] If the Commissioner conducts an investigation into a systemic issue, they may prepare a report about the investigation and publish that report or give it to the Minister (proposed new section 173O). The contents of the report are the same as those identified above for an investigation into compliance with the positive duty. The report must be tabled in Parliament if it is given to the Minister.

[482] The proposed new power to investigate a systemic contravention sits uneasily alongside the Commissioner's existing power to conduct an investigation into a possible contravention of the Act against a class or group of persons if it is of public concern and the Minister agrees (retained as proposed new section 173B(1)(a) in the Respect at Work Act).

[483] While an investigation into a systemic contravention may be commenced if the Commissioner believes the investigation would help achieve the purposes of the ADA, an investigation into a *non-systemic*

potential contravention against a class of people could only be commenced if the matter was of public concern *and* the Minister agrees.

[484] It is unclear why there would be a higher threshold for commencing an investigation into a non-systemic contravention than a systemic contravention, particularly given:

(a) an investigation into a systemic contravention would permit the Commissioner to give a report to the Minister which would then be tabled in Parliament;

(b) upon completion of an investigation into a non-systemic contravention, the Commissioner could only decide to take no further action, take any other action the Commissioner may take under the ADA in relation to the subject matter of the investigation, or refer the matter to the tribunal.

Discussion Questions

C15 Should the QHRC have a power to investigate potential systemic contraventions of the ADA?

C16 Should this power be subject to any conditions, for example the Minister's consent and the matter being of public interest?

C17 What powers should the QHRC have following completion of an investigation into potential systemic contraventions of the ADA?

Guidelines

[485] The Respect at Work Act seeks to amend the ADA to empower the QHRC to issue guidelines to support the introduction of the positive duty.

[486] Proposed new section 173Q would:

- require the QHRC to issue guidelines about how persons may comply with the positive duty;
- permit the QHRC to issue guidelines about any other matter relating to the Act.

[487] The QHRC would be required to be publish any guidelines issued on its website. It could also publish them in any other way it considers appropriate.

[488] Even if the positive duty is not ultimately implemented, the Review's preliminary view is that the QHRC should have an express power to issue and publish guidelines.

[489] Such a power could be used to promote and achieve compliance with the ADA in two ways:

(a) An entity may be able to request the QHRC to provide it with specific guidelines to assist it in achieving compliance with the ADA, at the entity's own cost.

(b) A method to encourage an entity to implement and comply with a guideline could be to deem compliance with a guideline as a relevant circumstance when considering whether an entity has engaged in discrimination. For example, if a respondent proves, on the balance of probabilities, that it took all reasonable steps to implement and comply with an applicable guideline issued by the QHRC that could be a relevant circumstance to be taken into account in a proceeding for a contravention of the ADA.

Discussion Questions

C18 Should the QHRC have an express power to issue guidelines, including at the request and cost of a person or entity with duties under the ADA?

C19 Should compliance with a guideline issued by the QHRC be a relevant circumstance that may be taken into account in a proceeding for contravention of the ADA?

Vilification

[490] Vilification is sometimes termed "hate speech".[227] Similarly, anti-vilification laws have been called "hate speech laws",[228] but they also capture hate crimes and hate conduct.[229] Throughout Australia, anti-vilification laws make it unlawful to vilify people on the basis of various attributes, most commonly race.[230]

[491] Section 124A of the ADA presently provides protection from vilification by prohibiting a person from, by a public act, inciting hatred towards, serious contempt for, or severe ridicule of, persons on the ground of race, religion, sexuality, sex characteristics or gender identity, unless exempted.

[492] The Respect at Work Act seeks to amend the ADA by replacing section 124A with a new framework for anti-vilification laws. The amendments proposed by the Respect at Work Act would:

- expand the list of attributes protected from vilification;
- introduce a new definition of 'public act'; and
- lower the threshold for making a complaint about vilification.

[493] The Respect at Work Act does not amend the existing exemptions to the prohibition on vilification, including public acts done reasonably and in good faith for academic, artistic, scientific or research purposes or for other purposes in the public interest.

[494] The ADA is not the only way that people are protected at law from vilification. The Queensland Criminal Code also makes it an indictable offence for a person to engage in serious racial, religious, sexuality, sex characteristics or gender identify vilification.[231] It is outside the scope of this Review to consider the anti-vilification offence in the Criminal Code.

Context

[495] The Building Belonging Review was directed in its Terms of Reference not to review vilification or serious vilification.[232] This carve-out was due to a concurrent inquiry by the Queensland Parliament's Legal Affairs and Safety Committee (**LASC**) into serious vilification and hate crimes.

[496] Following delivery of the LASC inquiry's final report (**LASC Inquiry**),[233] a Bill was introduced to, amongst other changes, relocate the criminal offence of vilification from the ADA to the Criminal Code.[234] The LASC also prepared a report on that Bill (**LASC Report**).[235] The Bill was passed and from 29 April 2024, the criminal offence of serious vilification was relocated from the ADA to the Criminal Code.

[497] The LASC Inquiry and the LASC Report recommended various amendments to the civil vilification provision in the ADA. The amendments proposed by the Respect at Work Act are intended to implement those recommendations.

Expanding the list of protected attributes

[498] The Respect at Work Act amendments propose expanding the list of protected attributes to include "sex", "age" and "impairment". Only "impairment" is defined in the ADA, and the Respect at Work Act amendments do not propose introducing definitions for "sex" and "age".

[499] The ADA presently prohibits vilification on the ground of "sexuality". As discussed above at paragraphs [396] to [397], the Respect at Work Act seeks to replace the term "sexuality" with the more expansive "sexual orientation". The practical consequence of this change would be that vilification on the ground of "sexual orientation" would capture conduct that is not presently prohibited under the ADA.

[500] Section 124A proposed by the Respect at Work Act would also expand the operation of the vilification protections beyond the expressly identified protected attributes by providing that a reference to one of the protected attributes includes a reference to:

- a characteristic that a person with the relevant attribute generally has; or
- a characteristic that is often imputed to a person with the relevant attribute; or
- a relevant attribute that a person is presumed to have, or to have had at any time, by the person engaging in the conduct; or
- a relevant attribute that a person had, even if the person did not have it at the time the conduct was engaged in.

[501] If implemented, the practical effect of this change would be to expand the coverage of the protected attributes in the same manner as section 8 of the ADA. Section 8 provides that discrimination on the basis of an attribute includes direct and indirect discrimination on the basis of one of the matters listed above.

[502] Stakeholder feedback to the LASC Inquiry supported the expansion of anti-vilification protections to people with the attributes of sex, age and impairment. The Parliamentary Committee for the Respect at Work Bill noted that many stakeholders expressed support for the proposed strengthening of protections against vilification, but that some stakeholders had concerns about the impact of the expanded protections on rights of freedom of expression and religion.[236]

[503] The Review notes that other jurisdictions have included similar attributes to "sex", "age" and "impairment" in their anti-vilification laws.[237]

Discussion Question

C20 Are there any unintended consequences of prohibiting vilification on the additional grounds of sex, age, impairment and the updated definition of sexual orientation?

A new definition of 'public act'

[504] For a person's conduct to amount to vilification, it must be a 'public act'.

[505] Section 124B proposed by the Respect at Work Act seeks to expand and clarify the existing definition of 'public act' to capture communicating through social media and other electronic methods, and conduct that occurs on private land.

Respect at Work Act proposed new section 124B

(1) In this part, public act—

(a) includes the following conduct—

(i) any form of communication, including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods, to the public;

(ii) any conduct, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, observable by the public;

(iii) the distribution or dissemination of any matter to the public; but

(b) does not include the distribution or dissemination of any matter by a person to the public if the person does not know, and could not reasonably be expected to know, the content of the matter.

(2) Conduct mentioned in subsection (1) may be a public act even if it happens on private land or in a place that is not ordinarily accessed by the general public.

Examples of places for subsection (2)—

a place of work, an educational facility

[506] The amendments give effect to recommendations from the LASC Inquiry and LASC Report that:

(a) Queensland adopt the definition of 'public act' in section 93Z(5) of the *Crimes Act 1900* (NSW), or otherwise amends the definition of 'public act' to set out examples of communication by electronic means as including, but not limited to, online communication and social media posts;[238]

(b) the definition should extend to conduct in closed environments, such as hospitals and education institutions.[239]

[507] These recommendations were made in response to submissions and evidence presented to the LASC Inquiry on the issue of "online" vilification.[240] The Committee noted the:[241]

> proliferation of vilifying commentary on various social media platforms and consider[ed] that the public nature of social media usage needs to be recognised in the definition of 'public acts' for the purpose of anti-vilification legislation.

[508] The LASC Report also noted the QHRC's submission that Queensland and New South Wales cases had taken a narrow view of what was a 'public act' by excluding communications made in workplaces and schools. The Committee noted that the QHRC considered this interpretation to be inconsistent with 'the intention of the prohibition of vilification and that work and education should be regarded as "areas of public life"'.[242]

Discussion Question

C21 Are there any unintended consequences of retaining the updated definition of "public act"?

Lowering the threshold for vilification complaints

[509] The ADA presently contains one prohibition against vilification. Under the Respect at Work Act amendments:

- the threshold for breaching the existing prohibition would be lowered; and
- a further new prohibition would be introduced.

[510] The differences between these three approaches are shown below:

Existing prohibition (Existing s 124A)	**Amended prohibition** (Proposed s 124D)	**Additional new prohibition** (Proposed s 124C)
A person must not, by a public act, ***incite hatred towards, serious contempt for, or severe ridicule of,*** a person or group of persons on the ground of the race, religion, sexuality, sex characteristics or gender identity of the person or members of the group.	A person must not, in a public act, ***engage in conduct that is likely to incite hatred towards, serious contempt for, or severe ridicule of***, a person or group of persons on the basis of the age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation of the person or members of the group.	A person must not, because of the age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation of another person or a group of persons, ***engage in a public act that a reasonable person would consider hateful towards, reviling, seriously contemptuous of, or seriously ridiculing*** the other person or members of the group.

The amended prohibition: clarifying the "objective incitement" test

[511] New section 124D proposed by the Respect at Work Act would amend the existing prohibition to clarify that a complainant is only required to show that a public act was *likely to* incite hatred, serious contempt or severe ridicule of a person or group, not that it actually did so. This provision is referred to as the '**incitement provision**'.

[512] The LASC Inquiry recommended that the Queensland Government investigate lowering the threshold for the prohibition on vilification in the ADA.[243]

[513] The Draft Anti-Discrimination Bill 2024 included a slightly different test to what was ultimately passed in the Respect at Work Act. It referred instead to conduct that 'incites, or is reasonably likely to incite'. Its effect would have been to capture actual incitement, in addition to conduct that is likely to incite.[244]

[514] This approach was not adopted in the Respect at Work Bill. The Explanatory Notes for the Bill explain that:[245]

> [b]eyond the additional attributes and updated definition of public act introduced by this Bill, the incitement provision will operate similarly to the previous section 124A of the AD Act, with the added clarification that it is only necessary to show conduct that is likely to incite. (emphasis added)

[515] In responding to stakeholders that did not support this amendment (including the QHRC), the then Department of Justice and Attorney-General informed the Parliamentary Committee that:[246]

> the amendments to the incitement provision are a clarification of existing case law that actual incitement is not a necessary element of the test. This is the original intent behind the incitement provision, as noted in the explanatory notes for the *Anti-Discrimination Amendment Act 2001*:
>
> 'Consistent with the interpretation that has been accorded "incite" in other jurisdictions, the section will not require proof that anyone was actually incited to be satisfied. The test of whether incitement has occurred is an objective one based on a hypothetical listener or viewer.'

Discussion Question

C22 Are there any unintended consequences of retaining the objective incitement test in the new proposed section 124D of the ADA?

The new "harm-based" prohibition

[516] Proposed new section 124C would introduce a further prohibition on vilification, the test for which would be focused on harm to the individual.

[517] The LASC Inquiry recommended that the Queensland Government investigate lowering the threshold for the existing incitement provision in the ADA.[247] This recommendation was made in response to a submission from the Australian Lawyers Alliance that there is a need for a separate harm-based provision against hate-based conduct:[248]

> Under such a provision a person or persons wishing to rely on the harm-based test would no longer need to demonstrate that a third party has been incited to hatred, but would be required to show that it was likely that a reasonable person of the targeted group would have been offended, insulted, humiliated or intimidated by the conduct. This is important because it is people from targeted groups who suffer the impacts of hate, not the Australian community as a whole.

[518] Central to the new prohibition is the "reasonable person" test. A "reasonable person" is defined in proposed new section 124C(2) as follows:

> ***reasonable person*** means a reasonable person who has the same age, gender, identity, impairment, race, religion, sex, sex characteristics or sexual orientation as the other person or members of the group.

[519] The Explanatory Notes for the Respect at Work Bill note that the test for the incitement provision 'has a very high threshold' and that '[t]he test for the harm-based provision, although focused on the harm to the individual, also has a high threshold'.[249]

[520] The Parliamentary Committee noted that some stakeholders had concerns about the operation of the "reasonable person" test, and the proposed stronger vilification provisions more generally:

(a) The Statement of Reservation to the Parliamentary Committee's Report (which was signed by two then members of the Opposition) criticised the "reasonable person" test stating that the '[t]he question should be considered by asking how a "reasonable person" in the community at large considers such conduct' rather than a reasonable person with the same protected attribute.[250]

(b) Concerns were raised about the potential impact of the new vilification provisions on human rights, principally freedom of expression and religion. In response to those concerns, the Department of Justice and Attorney-General noted that the new harm-based prohibition 'does not prevent the expression or manifestation of religious beliefs in public in a manner which is

not hateful, reviling, seriously contemptuous or seriously ridiculing', and that the Respect at Work Bill 'ultimately serves to enhance freedom of expression and other human rights, such as the freedom to manifest religion in community with others'.[251]

[521] The Committee was ultimately satisfied that the proposal to strengthen the vilification protections would limit the right to freedom of expression in a manner that is reasonable and demonstrably justifiable in a free and democratic society.[252]

Discussion Question

C23 Are there any unintended consequences of retaining the "harm-based" prohibition on vilification in the new proposed section 124C of the ADA?

Appendices

Appendix 1 – Terms of Reference

Review of the Queensland Human Rights Commission and Queensland's Anti-Discrimination and Human Rights statutory framework

Strategic review of the Queensland Human Rights Commission

Further review of the Human Rights Act 2019

Review of the uncommenced provisions of the Respect at Work Act and Other Matters Amendment Act 2024 amending the Anti-Discrimination Act 1991

Terms of Reference

BACKGROUND

The Queensland Human Rights Commission (Commission) is a statutory body established under the *Anti-Discrimination Act 1991* (Anti-Discrimination Act), with functions under that Act and the *Human Rights Act 2019* (Human Rights Act).

Part A - Strategic review of the Queensland Human Rights Commission

Section 247 of the Anti-Discrimination Act establishes the process for a strategic review of the Commission.

Under section 247(9) of the Anti-Discrimination Act, a strategic review includes a review of the Commission's:

(a) functions;[1] and

(b) performance of the functions to assess whether they are being performed economically, effectively and efficiently.

Each strategic review must be undertaken by an appropriately qualified person that is appointed by the Governor in Council.

Part B - Further review of the Human Rights Act 2019

Section 95 of the Human Rights Act provides that the Attorney-General must ensure the operation of the Human Rights Act before 1 July 2023 is reviewed as soon as possible after that date. On 26 March 2025, the Attorney-General and Minister for Justice and Minister for Integrity (Attorney-General) tabled the *Placing People at the Heart of Policy: First Independent Review of the Human Rights Act 2019 (Qld) – Final Report* (the first review report), indicating that the Queensland Government had agreed not to implement the report's recommendations.

Additionally, section 96 of the Human Rights Act provides that the Attorney-General must ensure a further review of that Act, by an independent and appropriately qualified person, is to be conducted as

[1] Refer to section 235 of the Anti-Discrimination Act, and section 61 of Human Rights Act.

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soon as practicable after 1 July 2027 or, if the Attorney-General considers it appropriate, at any time after tabling of the first review report but before 1 July 2027.

A review under section 96 of the Human Rights Act must consider:

(a) whether additional human rights should be included as human rights under the Human Rights Acts, including rights under the:

(i) International Covenant on Economic, Social and Cultural Rights; or

(ii) Convention on the Rights of the Child; or

(iii) Convention on the Rights of Persons with Disabilities; or

(iv) Convention on the Elimination of All Forms of Discrimination against Women;

(b) whether further or different provision should be made about proceedings that may be brought or remedies that may be awarded in relation to acts or decisions of public entities made unlawful because of the Human Rights Act;

(c) whether the amendments made by the Human Rights Act to the *Corrective Services Act 2006* and the *Youth Justice Act 1992* are operating effectively or whether further or different provision should be made for the interrelationship between the Human Rights Act and those Acts.

Part C - Review of the uncommenced provisions of the Respect at Work Act amending the Anti-Discrimination Act

On 10 September 2024, the *Respect at Work and Other Matters Amendment Act 2024* (Respect at Work Act) was passed by the Legislative Assembly. The Respect at Work Act made various amendments to the Anti-Discrimination Act. With the exception of provisions which made amendments to representative complaints under the Anti-Discrimination Act (which commenced on 1 December 2024), the majority of the provisions of the Respect at Work Act (including those giving effect to the amendments summarised above) were due to commence on 1 July 2025.

On 14 March 2025, the Government announced its decision to pause the commencement of the Respect at Work Act. A ministerial statement by the Attorney-General highlighted the following matters:

(a) the Department of Justice had raised serious concerns about the attribute of 'irrelevant criminal record' impacting high risk discretionary decisions such as weapons licensing, police protection notices and security provider licensing;

(b) the Respect at Work Act had been rushed through Parliament in the final days of the former government, and, as a result, there was the prospect of serious unintended and unwanted consequences;

(c) due to the impending commencement date of 1 July 2025, which did not allow sufficient time for consultation or policy work, amendments were necessary to delay the commencement of the reforms until a date set by proclamation.

On 30 April 2025, the *Crime and Corruption (Restoring Reporting Powers) and Other Legislation Amendment Act 2025* was passed by the Legislative Assembly. This included amendments to delay the commencement of the Respect at Work Act from 1 July 2025 to a date to be set by proclamation.

It is a government election commitment to consult with stakeholders about the next step for anti-discrimination law in Queensland. A review will assist to deliver on that commitment.

QUALIFICATIONS OF REVIEWER

Under section 247 of the Anti-Discrimination Act, the strategic review is to be conducted by an independent and appropriately qualified person appointed by the Governor in Council. The same qualifications are required for a person appointed to undertake a further review under section 96 of the Human Rights Act.

The Reviewer, appointed to undertake the strategic review of the Commission, will also be responsible for undertaking a further review of the Human Rights Act and a review of the uncommenced provisions of the Anti-Discrimination Act.

The Reviewer will need to demonstrate they have no pecuniary interest in the outcome of the review and have no established relationship with the Commission. The Reviewer will also be required to demonstrate independence from the Commission.

POWERS OF REVIEWER

As to those aspects of the review related to section 247 of the Anti-Discrimination Act and as provided for by section 248 of the Anti-Discrimination Act, the Reviewer will have the powers of an authorised auditor under the *Auditor-General Act 2009* for an audit of an entity, and that Act and other Acts apply to the reviewer as if the reviewer were an authorised auditor conducting an audit of an entity.

SCOPE OF THE REVIEW

The scope of the review is:

(a) a strategic review of the Commission as required under section 247 of the Anti-Discrimination Act;

(b) a further review of the Human Rights Act as required pursuant to section 96 of the Human Rights Act;

(c) a review of the uncommenced provisions of the Respect at Work Act amending the Anti-Discrimination Act.

Part A - Strategic review of the Queensland Human Rights Commission

In accordance with section 247 of the Anti-Discrimination Act, the Reviewer is required to review the:

(a) functions of the Commission;

(b) performance of the Commission's functions to assess whether they are being performed economically, effectively and efficiently.

The Reviewer is also required to examine all structural and operational aspects of the Commission, as well as its relationship with public sector entities, victims of crime and duty holders under the Anti-Discrimination Act.

Part B - Further review of the Human Rights Act 2019

In accordance with section 96, the Reviewer is required to undertake a review of the Human Rights Act. Complying with section 95(4) and 96(4), the Reviewer must consider the following:

(a) whether additional human rights should be included as human rights under the Human Rights Act, including, but not limited to, rights under–

(i) the International Covenant on Economic, Social and Cultural Rights; or
(ii) the Convention on the Rights of the Child; or
(iii) the Convention of the Rights of Persons with Disabilities; or
(iv) the Convention on the Elimination of All Forms of Discrimination against Women;

(b) whether further or different provision should be made in the Human Rights Act about proceedings that may be brought or remedies that may be awarded in relation to acts or decisions of public entities made unlawful because of the Human Rights Act;

(c) whether the amendments made by the Human Rights Act to the *Corrective Services Act 2006* and the *Youth Justice Act 1992* are operating effectively, or further or different provision should be made for the interrelationship between the Human Rights Act and those Acts.

The Reviewer is to also consider how to best protect the rights of victims of crime.

In accordance with section 96(6), the Reviewer must include a recommendation about whether a further review of the Human Rights Act is necessary.

The Reviewer should also address whether any recommendations should be made concerning the operation of and reform to the Human Rights Act.

Part C - Review of the uncommenced provisions of the Respect at Work Act amending the Anti-Discrimination Act

The Reviewer is required to review the uncommenced provisions of the Respect at Work Act amending the Anti-Discrimination Act, and to:

(a) consider the potential operation of those provisions;

(b) to make any recommendations concerning the operation of and reform to the Anti-Discrimination Act.

In undertaking the work referred to at (a) and (b) above, the Reviewer should consider the implications, if any, for victims of crime.

In conducting each of the reviews, the Reviewer is to conduct targeted consultation with stakeholders in relation to the matters above.

COMPLETION OF REVIEW REPORT

The **review report** is to be provided to the Attorney-General and Human Rights Commissioner (the Commissioner) by 31 March 2027.

The Reviewer is required to include draft legislative provisions in the report, where appropriate, which give effect to the report recommendations. If the Reviewer considers it appropriate, the Reviewer may provide an interim report as to one or more of the three reviews.

The strategic review of the Commission part of the report will be provided to the Attorney-General and the Commissioner to comply with section 249 of the Anti-Discrimination Act:

(a) Section 249(1) of the Anti-Discrimination Act requires the Reviewer to give a copy of the **proposed report** to the Attorney-General and the Commissioner.

(b) Under section 249(2) of the Anti-Discrimination Act, the Commissioner may provide written comments to the Reviewer on anything in the proposed report within 21 days of the proposed report having been given.

(c) Section 249(3) of the Anti-Discrimination Act provides that if comments are provided to the Reviewer and there is agreement between the Reviewer and the Commissioner on how to resolve a comment, the report is to be amended as agreed to dispose of the comment. That section further provides that if the Reviewer and the Commissioner cannot agree about how to dispose of a comment, the comment must be included in full in the report.

(d) Section 249(4) of the Anti-Discrimination Act requires the Reviewer, after complying with sections 249(1) and (3) of the Anti-Discrimination Act, to give the review report to the Attorney-General and the Commissioner.

(e) Section 249(5) of the Anti-Discrimination Act requires that the review report provided under section 249(4) of the Anti-Discrimination Act be the same as the proposed report subject to any changes made in response to comments provided by the Commissioner.

To ensure compliance with section 249(6) of the Anti-Discrimination Act, the review report must be tabled in the Legislative Assembly within 3 sitting days after it is given to the Attorney-General. This also satisfies the obligations that a further review report must be tabled within 14 sitting days, after it is given to the Attorney-General.

Appendix 2 – Stakeholder consultations

23 June 2026	Professor Susan Harris Rimmer, Griffith University Law School Independent Reviewer, inaugural review of the *Human Rights Act 2019* (Qld)
26 June 2026	Kate Connors, Victims' Commissioner for Queensland
1 July 2026	Queensland Human Rights Commission[#]
20 July 2026	Department of Education
23 July 2026	Chief Magistrate Brassington and Deputy Chief Magistrate Courtney
24 July 2026	Department of Health
28 July 2026	Chief Justice of Queensland, the Honourable Justice Bowskill
29 July 2026	Professor Tamara Walsh, The University of Queensland & Professor Dominique Allen, Monash University
31 July 2026	Scott McDougall, former and inaugural Queensland Human Rights Commissioner
3 August 2026	Legal Aid Queensland
3 August 2026	Queensland Law Society
5 August 2026	Chief Judge of the District Court of Queensland, His Honour Judge Devereaux SC
7 August 2026	Queensland Corrective Services
13 August 2026	Australian Human Rights Commission
14 August 2026	Queensland Council of Social Services
14 August 2026	Victorian Equal Opportunity and Human Rights Commission
19 August 2026	Queensland Nurses and Midwives' Union
20 August 2026	Crown Solicitor
21 August 2026	QShelter
21 August 2026	ACT Human Rights Commission
24 August 2026	Department of Justice
24 August 2026	Department of Youth Justice and Victim Support
25 August 2026	Aboriginal and Torres Strait Islander Legal Service
25 August 2026	State Coroner Ryan and Deputy State Coroner MacKenzie
26 August 2026	Queensland Police Service
27 August 2026	Australian Human Rights Commission
27 August 2026	Queensland Sexual Assault Network
31 August 2026	President Stilgoe OAM, Land Court of Queensland
1 September 2026	Australian Christian Lobby
3 September 2026	Professor Nicholas Aroney, The University of Queensland
3 September 2026	Basic Rights Queensland

4 September 2026	Queensland Advocacy for Inclusion / Queensland Independent Disability Advocacy Network
8 September 2026	Equality Australia
8 September 2026	Queensland Council of Unions
9 September 2026	Ethnic Communities Council of Queensland

#This was an all staff meeting. Individual meetings with the Commissioner, Deputy Commissioner and Commission staff have occurred throughout the Review. They are excluded from this table.

Appendix 3 – List of questions

Part A – Strategic Review

Functions	
A1	Should there be any changes to the drafting of the QHRC's functions or powers?
Complaints and conciliation	
A2	What is your experience of the QHRC's complaints handling processes?
A3	Does the QHRC appropriately determine which complaints to accept and which to reject?
A4	Are there any improvements you would make to the QHRC's complaints handling processes, including to improve the efficiency of the process?
A5	Does the QHRC engage appropriately with parties to a complaint, and how could they improve their engagement?
A6	What is your experience (whether as a complainant or a respondent) of the conciliation conference process?
A7	Is the conciliation process effective and how could it be improved?
A8	Should there be more, or different, avenues to resolve complaints?
Interventions	
A9	Should the QHRC have a right to appear as amicus curiae ("friend of the court") in a proceeding, whether instead of or in addition to its existing power to intervene?
A10	Should there be any conditions on when, where and how the QHRC can participate in a proceeding before a court or tribunal?
A11	Should the QHRC's intervention function in the ADA be repealed?
Education	
A12	What is your experience of the QHRC's education services and are any improvements required?
Examining Acts and making submissions to public policy processes	
A13	What should be the role of the QHRC in participating in public debate on policy and legislation development in Queensland?
A14	At what stage in the process for the development of policy and legislation should the QHRC be involved? For example, should the QHRC be involved earlier in the process?
A15	Would earlier involvement of the QHRC in government decision-making processes compromise the independence of the QHRC?
Promoting understanding and public discussion	
A16	What is your experience of the engagement activities undertaken by the QHRC?
A17	Are there any improvements you would recommend to the QHRC's engagement activities, including ways to better promote a culture of human rights in Queensland?

A reformed complaints framework

The current framework – potential reforms	
A18	Do you support aligning the complaints framework in the ADA with the Draft Anti- Discrimination Bill 2024?
A19	Should there be any further or different changes to that complaints framework?
Human rights complaints process	
A20	Are there any changes that could be made to the process for making human rights complaints to public entities to better align it with other government complaints processes?
A21	Should there be a prescribed process for when a human rights complaint made to a public entity involves more than one public entity?
A22	Should the HRA specify that a "human rights complaint" may only be made against a public entity, and not an individual in the employ of, or contracted to, that public entity?
Agents and representative complaints	
A23	Would a representative action for human rights complaints be necessary or desirable?
Requirement to engage with public entity	
A24	Should a complainant be required to engage with the relevant public entity prior to complaining to the QHRC?
A25	Is the timeframe of 45 business days appropriate, including where a complaint engages multiple complaints frameworks?
Form of complaint	
A26	Should there be a prescribed form for human rights complaints for the purposes of the initial complaint to the relevant public entity and any subsequent complaint to the QHRC?
A27	Should a person be able to make an oral complaint to the QHRC in exceptional circumstances?
Powers of the QHRC	
A28	Are the QHRC's powers to enquire into human rights complaints sufficient for the purposes of its functions in dealing with and conciliating complaints?
A29	Should the complainant's consent be a prerequisite to any referral by the QHRC to another entity?
A30	Should a time limit for the making of a human rights complaint be imposed and, if so, what is the appropriate timeframe and in what circumstances (if any) would it be appropriate to accept an out of time complaint? Should this be consistent with the provisions of the Draft Anti-Discrimination Bill 2024?
Progression of human rights complaints	
A31	Do you support alignment, where appropriate, of the complaints processes under the HRA with the changes proposed to the ADA, while the complaint is being dealt with by the QHRC?
Action on dealing with human rights complaint	
A32	Should there be any changes to the reporting process where a human rights complaint is unable to be resolved at conciliation?

Part B – Further review of the *Human Rights Act 2019*

Limitation on human rights	
B1	Should any human rights be expressed as absolute and not subject to any limitation?
Should there be additional human rights?	
B2	Should any additional human rights be recognised in the HRA?
B3	Should new human rights be included in the HRA to protect victims of crime?
B4	If any new human rights are included, are there any unintended consequences in how those rights would operate alongside existing rights?
Scrutiny of new legislation	
B5	How has the process of scrutinising new legislation under the HRA operated, and are any improvements required?
Override declarations	
B6	Should the override declaration provisions of the HRA be repealed?
Interpretation of laws	
B7	Is it an appropriate function of the Supreme Court of Queensland to make declarations of incompatibility which have no effect on the validity of a statutory provision?
B8	Is it appropriate for the "dialogue model" between the courts and Parliament to remain?
B9	Should sections 53 to 57 of the HRA be repealed?
B10	Should the interpretation provision in the HRA be retained and, if so, should it be amended to clarify its operation?
B11	Should the referral process be repealed?
Obligations on public entities	
B12	Should the "procedural" limb in section 58(1)(b) be retained? If it is retained, should the consequence of non-compliance with the "procedural" limb mean the act or decision is unlawful?
Remedies	
B13	What remedies should be available for a contravention of section 58(1) of the HRA?
Application of the HRA to courts and tribunals	
B14	Should section 5(2)(a) of the HRA be repealed?
Definitions	
B15	Should the definition of "court" be amended to include the Land Court, the Land Appeal Court, the Planning & Environment Court, the Mental Health Court, and the Industrial Court of Queensland?
B16	Should the definition of "discrimination" be amended to make it clear it is exhaustive?
B17	Should section 9(4)(b) of the HRA be amended so that a court or tribunal is not a public entity for the purposes of the application of the Act irrespective of whether it is acting judicially or administratively?
B18	Do sections 9(1)(h), 9(2)(a) and 10 of the HRA require amendment to clarify what constitutes a functional public entity, for example non-government service providers?

Amendments to the *Corrective Services Act 2006* and the *Youth Justice Act 1992*

B19 Should section 5A of the *Corrective Services Act 2006* and sections 263(7)–(8) of the *Youth Justice Act 1992* be retained?

Further review of the HRA

B20 Is a further review of the HRA necessary and, if so, in what timeframe?

Other issues

B21 Are there any other issues that you would like to raise about the operation of the HRA?

Part C – Review of the Respect at Work Act

Equitable outcomes

C1 Does the phrase "equality of opportunity" require any amendment?

Prohibited conduct on the basis of sex

C2 Are there any unintended consequences of introducing a new prohibition on “harassment on the basis of sex”?

C3 Are there any unintended consequences of introducing a new prohibition on subjecting a person to a work environment that is hostile on the basis of sex?

New attributes

C4 What are the unintended consequences of retaining the present definition of "irrelevant criminal record"?

C5 Are there any unintended consequences from retaining the proposed new attribute of "expunged conviction?

C6 Are there any unintended consequences of retaining the present definition of "irrelevant medical record"?

C7 What are the unintended consequences of retaining the new attribute "a combination of two or more of any of the above attributes"?

C8 Should the definition of “homelessness” in section 52 of the Respect at Work Act be repealed?

Other new and amended attributes

C9 Are there any unintended consequences of retaining any or all of the other additional new or amended attributes?

When does a person discriminate?

C10 Are there any unintended consequences of retaining the new definitions of “direct discrimination” and “indirect discrimination”?

Burden of proof

C11 Should the current burden of proof be changed to a ‘shifting’ burden of proof and, if so:

(a) should a ‘shifting’ burden of proof apply only to complaints of direct discrimination?

(b) what should a complainant be required to prove prior to the burden shifting to the respondent?

Positive duty

C12 Are there any unintended consequences that may arise if the positive duty were implemented in Queensland?

C13 Would it be appropriate that the QHRC to have a regulatory and enforcement function as contemplated by the positive duty provisions?

Investigations

C14 Should the power to inquire into a complaint be separate from the QHRC's investigative function?

C15 Should the QHRC have a power to investigate potential systemic contraventions of the ADA?

C16 Should this power be subject to any conditions, for example the Minister's consent and the matter being of public interest?

C17 What powers should the QHRC have following completion of an investigation into potential systemic contraventions of the ADA?

Guidelines

C18 Should the QHRC have an express power to issue guidelines, including at the request and cost of a person or entity with duties under the ADA?

C19 Should compliance with a guideline issued by the QHRC be a relevant circumstance that may be taken into account in a proceeding for contravention of the ADA?

Vilification

C20 Are there any unintended consequences of prohibiting vilification on the additional grounds of sex, age, impairment and the updated definition of sexual orientation?

C21 Are there any unintended consequences of retaining the updated definition of "public act"?

C22 Are there any unintended consequences of retaining the objective incitement test in the new proposed section 124D of the ADA?

C23 Are there any unintended consequences of retaining the "harm-based" prohibition on vilification in the new proposed section 124C of the ADA?

Appendix 4 – Statutory functions of the QHRC

ADA	HRA	Supporting Powers / Examples
Complaints		
To inquire into complaints and, where possible, to effect conciliation (ADA s 235(a))	To deal with human rights complaints (HRA s 61(a))	Receiving complaints about alleged contraventions of the ADA and HRA (ADA ss 134, 146; HRA ss 65–67) Taking action in relation to complaints including making preliminary enquiries (HRA s 68), determining whether to accept or reject complaints (ADA ss 138–141; HRA ss 69, 76), investigating complaints (ADA s 154A) and seeking information (ADA ss 156, 157; HRA s 78) Conducting conciliation conferences (ADA ss 158–160; HRA s 79) In particular circumstances, referring ADA complaints to the industrial relations commission or QCAT (ADA ss 164A, 166, 167) Preparing reports about unresolved HRA complaints (HRA ss 88, 90)
Investigations		
To carry out investigations relating to contraventions of the Act (ADA s 235(b))		Initiating investigations if requested by the Minister or referred by QCAT or the industrial relations commission (ADA s 155(1)), and where the QHRC discovers possible contraventions of the ADA (ADA s 155(2))
Examining law for consistency with the ADA and HRA		
To examine Acts and, when requested by the Minister, proposed Acts, to determine whether they are, or would be, inconsistent with the purposes of the Act, and to report to the Minister the results of the examination (ADA s 235(c))	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 review (HRA s 61(1)(b))	In May 2021, the Attorney-General asked the QHRC to undertake a review of the ADA, with the Building Belonging report being handed to the Attorney-General on 29 July 2022
Research and education		
To undertake research and educational programs to promote the purposes of the Act, and to coordinate programs	To make information about human rights available to the community (HRA s 61(1)(e))	Delivering training to private, community and government sectors in relation to rights and responsibilities under both the ADA and HRA Providing training in an online (eLearning) format

ADA	HRA	Supporting Powers / Examples
undertaken by other people or authorities on behalf of the State (ADA s 235(d))	To provide education about human rights and this Act (HRA s 61(1)(f))	Providing an information service (via telephone, email and post) to help people understand their rights and responsibilities under Queensland's anti-discrimination and human rights legislation Providing dedicated points of contact for prisoners, LGBTIQ+ people, and Aboriginal and Torres Strait Islander peoples
Engagement with other public entities		
To consult with various organisations to ascertain means of improving services and conditions affecting groups that are subjected to contraventions of the Act (ADA s 235(e))	To review public entities' policies, programs, procedures, practices and services in relation to their compatibility with human rights (HRA s 61(1)(c))	In December 2024, the QHRC completed Phase 1 of the review into the QPS to improve diversity and inclusion and published the report titled 'Strengthening the Service'
Promoting understanding and public discussion		
To promote an understanding and acceptance, and the public discussion, of human rights in Queensland (ADA s 235(i))	To promote an understanding and acceptance, and the public discussion, of human rights and this Act in Queensland (HRA s 61(1)(d))	Contributing to parliamentary inquiries, other consultation processes and reviews, including preparing submissions to parliamentary committees and other bodies on the development of government policies and legislation In 2024–25, the Yirmba First Nations Unit was established and led events across the state, including public forums, cultural consultations, and community gatherings Participating events across the State including NAIDOC Day, Wear it Purple, Iconic Multicultural Festival, Pride Fair Day, BCC Community Issues in Focus, Gold Coast Health LGBTIQ+ Pride Festival, Luminous Festival Brisbane, Africa Day Festival and Annual Human Rights Week activities Speaking engagements in conjunction with community organisations and educational institutions Involvement in advisory groups and networks, consultation groups and cross-agency collaboration networks including the Queensland Human Rights Advocates Group, Queensland Academics Human Rights Group and the Australian Council of Human Rights Agencies

ADA	HRA	Supporting Powers / Examples
Interventions		
If the QHRC considers it appropriate to do so – to intervene in a proceeding that involves human rights issues with the leave of the court hearing the proceeding and subject to any conditions imposed by the court (ADA s 235(j))		Intervening in and being joined as a party to a proceeding before a court or tribunal in which questions involving the application of the HRA or questions of the interpretation of statutory provisions in accordance with the HRA (HRA s 51)
Other functions		
Such other functions as the Minister determines (ADA s 235(k)) To take any action incidental or conducive to the discharge of the above functions (ADA s 235(l)) When requested by the Minister, to research and develop additional grounds of discrimination and to make recommendations for the inclusion of such grounds in the Act (ADA s 235(f)) Such functions as are conferred on the commission under an arrangement with the Commonwealth (ADA s 235(h)) To assist the Attorney-General in reviews of this Act under sections 95 and 96 (HRA s 61(1)(g)) To advise the Attorney-General about matters relevant to the operation of this Act (HRA s 61(1)(h)) Such functions as are conferred on the commission under another Act (ADA s 235(g))	Another function conferred on the commission under this Act or another Act (HRA s 61(1)(i))	Making arrangements with the Commonwealth in relation to joint or shared performance of functions (ADA s 258) Making submissions in proceedings for exemptions under the ADA (ADA s 113) Seeking opinions from the tribunal (being the industrial relations commission or QCAT) about how the ADA applies in a specific situation (ADA Chapter 8) Providing comments on proposed strategic review reports (ADA s 249) Preparing annual reports about the operation of the HRA (HRA s 91) and the performance of the QHRC's functions under the HRA (HRA s 92)

Appendix 5 – Comparison of complaint frameworks

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)[1]
Making a complaint			
Who may complain	A complaint may be made by a person subjected to a contravention of the Act, their agent or a person authorised in writing on behalf of a person who is unable to make a complaint (s 134(1)). Two or more people may make a complaint jointly (s 134(2)). In particular circumstances, an entity may make a complaint (ss 134(4), (5)).	A human rights complaint – being a complaint about an alleged contravention of s 58(1) by a public entity – may be made by an individual the subject of the alleged contravention, their agent or a person authorised in writing to make a complaint for an individual who can not make a complaint (ss 64(1), (2)). Two or more persons may jointly make a human rights complaint (s 64(3)).	A complaint may be made by a person the subject of an alleged contravention (or, if the person is a child, their parent), their agent, a person authorised in writing to make the complaint for a person who can not make a complaint or, in particular circumstances, bodies with representative functions (cls 101(1), (2)).[2] Two or more persons may jointly make a complaint (cl 102).
Multiple allegation	A person may make a complaint alleging more than 1 contravention of the Act (s 135).		A complaint may be made in relation to more than 1 alleged contravention of the Act (cl 106).

1 Note that the complaints provisions in Part 9 of the Exposure Draft were expressed not to apply to a contravention of the general duty in s 19 (cl 97).
Cl 98 of the Exposure Draft provided that the commissioner's functions under Part 9 included:
a) to consider and, if appropriate, inquire into complaints about alleged contraventions of this Act; and
b) to provide services to facilitate resolution of complaints about alleged contraventions of this Act accepted by the commissioner.

2 See also cls 103, 104.

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)[1]
Initial complaint to public entity		A person may only make a human rights complaint to the commissioner if (s 65(1)) – (a) the commissioner is satisfied the person has made a complaint to the public entity about the alleged contravention; (b) at least 45 business days have elapsed since the complaint mentioned was made; and (c) the person has not received a response to the complaint or has received a response the person considers to be an inadequate response. However, the commissioner may accept a complaint made before that period has elapsed if the commissioner considers it appropriate because of exceptional circumstances (s 65(2)).	
Referral of complaints between entities		If a referral entity[3] receives a complaint under a referral Act[4] which may also be a human rights complaint, the referral entity may deal with the complaint under that Act or refer the complaint to the commissioner (s 66). If the subject of a human rights complaint could be the subject of a complaint under a referral Act or an NDIS complaint,[5] the commissioner may refer the human rights complaint to a referral entity or the NDIS commissioner if the complainant consents, and the commissioner considers the complaint would be more appropriately dealt with by that entity (s 73). The commissioner may enter into arrangements with referral entities and the NDIS commission about the referral of complaints (s 74).	

3 Namely the Crime and Corruption Commission, the Health Ombudsman, the Information Commissioner or the Ombudsman.

4 Namely the *Ombudsman Act 2001*, the *Health Ombudsman Act 2013*, the *Crime and Corruption Act 2001* and the *Information Privacy Act 2009*.

5 'NDIS complaint' means a complaint mentioned in the *National Disability Insurance Scheme Act 2013* (Cth) s 181G.

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)[1]
Formal requirements	A complaint must be in writing, set out reasonably sufficient details to indicate an alleged contravention of the Act, state the complainant's address for service and be lodged with, or sent by post to, the commissioner (s 136).	A human rights complaint must be written, state the complainant's name and address for service and include enough details to indicate the alleged contravention to which the complaint relates (s 67(1)). If the commissioner is satisfied the complainant needs help to put the complaint in writing, the commissioner must give reasonable help to the complainant to put the complaint in writing (s 67(2)).	A complaint must be in writing, state the complainant's name and address for service and include enough details to indicate the alleged contravention to which the complaint relates (cl 107(1)). If the commissioner is satisfied the complainant needs help to put the complaint in writing, the commissioner must give reasonable help to the complainant to put the complaint in writing (cl 107(2)).
Representative complaints	A person may make a complaint about an alleged contravention of the Act as a representative complaint on behalf of a class of persons (s 146), subject to additional formal and procedural rules (ss 147–152A).		**NB:** Provision for representative complaints is included in Div 3 of Part 9 of the Exposure Draft. The provisions of the ADA relating to representative complaints (as well as consequential amendments) were introduced by those provisions of the RAW Act which commenced on 1 December 2024.
Complaints by dismissed workers	Where a worker is dismissed in circumstances entitling them to lodge a complaint with the commissioner and apply for industrial relief – (a) if the worker does not apply for industrial relief before a complaint is accepted, they may only proceed with the complaint and cannot later apply for industrial relief (s 153); if the worker applies for industrial relief before lodging a complaint, the worker may proceed with both but the tribunal cannot make an order in respect of the complaint for re-instatement or re-employment of the worker (s 154).		Where a worker is dismissed in circumstances entitling them to make a complaint and apply for industrial relief – (a) if the worker makes a complaint which is accepted before they apply for industrial relief, they may only proceed with the complaint and cannot later apply for industrial relief (cl 105(2))); if the worker applies for industrial relief before any complaint is accepted, the worker may proceed with both but the tribunal cannot make an order in respect of the complaint for re-instatement or re-employment of the worker (cl 105(3)).
Acceptance of complaints			
Preliminary enquiries		The commissioner may make preliminary inquiries about a human rights complaint to decide how to deal with the complaint (s 68).	The commissioner may make preliminary inquiries about a complaint to decide how to deal with the complaint (cl 115).

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)[1]
Prior agreemen	The commissioner may accept a complaint from a person who had previously agreed not to complain if the commissioner is of the reasonable opinion that it is fair to accept the complaint (s 137).		
Acceptance timeframe	The commissioner must decide whether to accept or reject a complaint within 28 days of receiving the complaint (s 141). The complainant may seek a statement of written reasons for the rejection of a complaint (s 142(3)).		
Notification of acceptance	If a complaint is accepted, the commissioner must promptly notify the respondent in writing of the substance of the complaint and provide information, including that (s 143): (a) the respondent may give a written response to the complaint and that any response must be provided within 28 days of the notice; (b) the respondent may ask for an early conciliation conference; and (c) that if the respondent does not provide a written response or ask for an early conciliation conference, a conciliation conference will be held on a date stated in the notice.	If the commissioner decides to accept a human rights complaint for resolution by the commission, the commissioner must notify the parties (s 76(1)). The notice given to the respondent must state (s 76(2)) – (a) the substance of the complaint; (b) that the respondent will be given an opportunity to make submissions in writing in response to the complaint; (c) that the respondent must advise the commissioner of the respondent's address for service; and (d) that the commissioner may seek information or documents from the respondent.	If the commissioner decides to accept a complaint for resolution by the commission, the commissioner must notify the parties (cl 123(1)). The notice given to the respondent must state (cl 123(3)) – (a) the substance of the complaint; (b) that the respondent will be given an opportunity to make submissions in writing in response to the complaint; (c) that the respondent must advise the commissioner of the respondent's address for service; and (d) that the commissioner may seek information or documents from the respondent.
When the commissioner must not or may not deal with particular complaints			
Timeframe for complaint	A person is only entitled to make a complaint within 1 year of the alleged contravention of the Act, unless the commissioner is satisfied the complainant has shown good cause (s 138). Where a complaint involves a within-time contravention and an out-of-time contravention, the commissioner may defer deciding whether or not to accept the complaint to the extent it relates to the out-of-time contravention until after any conciliation (s 141A).	*See below s 70(1)(a): The commissioner may refuse to deal or to continue to deal with a human rights complaint if the complaint was not made or referred to the commissioner within 1 year after the alleged contravention to which the complaint relates happened.*	The period for making a complaint is within 2 years after the alleged contravention of the Act or, if the complainant was a child at the time, the child turns 18 (cl 100).

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)[1]
Frivolous and vexatious complaints	The commissioner must reject a complaint if it is of the reasonable opinion that the complaint is (s 139): (a) frivolous, trivial or vexatious; or (b) misconceived or lacking in substance. If, at any time after a complaint is accepted and before it is referred to the tribunal, the commissioner is of the reasonable opinion that the complaint is – (a) frivolous, trivial or vexatious; or (b) misconceived or lacking in substance. the complainant must be given an opportunity to show cause, otherwise the commissioner must notify the parties that the complaint has lapsed (s 168).	The commissioner must refuse to deal with a human rights complaint if the commissioner considers the complaint is frivolous, trivial, vexatious, misconceived or lacking in substance (s 69).	The commissioner must not deal with, or continue to deal with, a complaint that the commissioner considers is frivolous, trivial or vexatious or misconceived or lacking in substance (cl 116(1)). If after a complaint is accepted and before the complaint is referred to the tribunal, the commissioner is considering not to continue to deal with the complaint, the deal with complainant must be given an opportunity to show cause (cl 116(2)).
Discretion not to deal with particular complaints	The commissioner may reject or stay a complaint if (s 140(1)): (a) there are concurrent proceedings in a court or tribunal; or (b) the commissioner reasonably considers the subject of the complaint may be effectively or conveniently dealt with by another entity. The commissioner may also reject a complaint if it reasonably considers the subject of the complaint has been adequately dealt with by another entity (s 140(2)).	The commissioner may refuse to deal or to continue to deal with a human rights complaint if (s 70(1)) – (a) the commissioner considers there is a more appropriate course of action available under another law to deal with the subject of the complaint; or (b) the commissioner considers the subject of the complaint has been appropriately dealt with by another entity; or (c) the commissioner considers the requirements for engagement with the public entity have not been met; or (d) the complaint was not made or referred to the commissioner within 1 year after the alleged	The commissioner may decide not to deal with, or continue to deal with, a complaint if (cl 117(1)) – (a) the complaint was not made to the commissioner within the complaint period; (b) the commissioner considers the subject of the complaint has been appropriately dealt with by a court or tribunal; (c) the commissioner considers the subject of the complaint would be more appropriately dealt with by a court or tribunal; (d) there are concurrent proceedings in a court or tribunal in relation to the subject of the complaint (noting that the court may in these circumstances instead stay the complaint (cl 117(3));

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)[1]
	If, at any time after a complaint is accepted and before it is referred to the tribunal, the commissioner is of the reasonable opinion that the complaint – (a) has been adequately dealt with by another entity; or (b) may be effectively or conveniently dealt with by another entity. the complainant must be given an opportunity to show cause, otherwise the commissioner must notify the complainant that the complaint has lapsed (s 168A).	contravention to which the complaint relates happened. The commissioner may refuse to continue to deal with a human rights complaint if (s 70(2)) – (a) the complainant does not comply with a reasonable request made by the commissioner in dealing with the complaint; (b) the commissioner is satisfied on reasonable grounds the complainant, without a reasonable excuse, has not cooperated in the commissioner's dealing with the complaint; or (c) the commissioner can not make contact with the complainant. The commissioner may defer dealing with a complaint if (s 70(3)) – (a) the complainant has complained to the public entity as required but the commissioner considers the public entity has not yet had an adequate opportunity to deal with the complaint; or (b) the commissioner considers it is necessary to do so to ensure the complaint is dealt with appropriately under another law. If the commissioner refuses to deal or defers dealing with a complaint, the commissioner must notify the parties unless it considers it is not appropriate to do so (s 71).	(e) the commissioner considers there are insufficient details to indicate the alleged contravention the subject of the complaint; or (f) having regard to all the circumstances, the commissioner considers it is not appropriate to deal with, or continue to deal with, the complaint. The commissioner may decide to deal with a complaint that was not made to the commissioner within the complaint period if the commissioner considers there are exceptional circumstances and it is in the interests of justice to do so (having regard to the reason for the complaint being made after the complaint period ended and the impacts on the parties) (cl 117(2)).
Where complainant loses interest	If the commissioner is of the reasonable opinion that a complainant has lost interest in continuing with a complaint, the commissioner must notify the complaint and, if no response is received, the commissioner must write to the parties to tell them that the complaint has lapsed (s 169).		If the commissioner considers the complainant may have lost interest in continuing with the complaint, the commissioner may, by written notice, ask the complainant to confirm whether or not the complainant wishes to continue with the complaint (cls 120(1), (2)). If the complainant no longer wishes to continue with the complaint (cl 120(3)) or does not respond (cl 120(4)), the commissioner must not continue to deal with the complaint.

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)[1]
Where complaint is withdrawn	If a complainant gives the commissioner written notice that the complainant does not want to continue with the complaint, the commissioner must notify the complainant that the complaint will lapse unless the complainant notifies the commission that it intends to continue with the complaint (ss 170(1), (2)). If the complainant does not give the commissioner such notice, the complaint lapses and the commissioner must notify the respondent (ss 170(4), (5)).		The complainant may give the commissioner written notice that the complainant wishes to withdraw the complaint cl 119(1)). The commissioner may give the complainant an opportunity to decide to continue with the complaint (cl 119(2)). If the commissioner accepts the withdrawal, the commissioner must not continue to deal with the complaint and must notify the parties (cl 119(3)).
Reasons			If the commissioner decides not to deal with, or continue to deal with, a complaint (except where the complainant has advised that it does not wish to continue with, or wishes to withdraw, the complaint), the commissioner must notify the parties and provide reasons (cl 121(2)).
Lapsing		If the commissioner refuses to deal, or to continue to deal, with a human rights complaint the complaint lapses (s 72).	If the commissioner does not deal with, or stops dealing with, a complaint, the complaint lapses (cl 122).
Initial actions			
Complaints under	If the commissioner considers a complaint would be more appropriately dealt with as a complaint about an alleged contravention of the HRA, the commissioner may, with the consent of the complainant, deal with the complaint under the HRA (s 140A).	If the commissioner considers a human rights complaint would be more appropriately dealt with as a complaint about an alleged contravention of the ADA, the commissioner may, with the consent of the complainant, deal with the complaint under the ADA (s 75).	If the commissioner considers a complaint would be more appropriately dealt with as a complaint about an alleged contravention of the HRA, the commissioner may, with the consent of the complainant, deal with the complaint under the HRA (cl 118).
Preliminary orders/direction	At any time before a complaint is referred to the tribunal, the complainant or the commissioner may apply for an order prohibiting a person from doing an act that might prejudice the investigation or conciliation of the complaint or an order that the tribunal might make after a hearing (s 144).		At any time before a complaint is referred to the tribunal, the complainant or the commissioner may apply for an order prohibiting a person from doing an act that might prejudice the dispute resolution of the complaint or an order that the tribunal might make after a hearing (cl 142).

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)[1]
	Any time before a complaint is referred to the tribunal, the commissioner is of the reasonable opinion that the preservation of anonymity of a person involved in a proceeding under the Act is necessary to protect the work security, privacy or any human right of the person, the commissioner may give a direction prohibiting the disclosure of the person's identity (s 145).		
Investigations and information requests			
Investigations	The commissioner may investigate a complaint at any time after the complaint is received (s 154A). The commissioner must initiate an investigation if requested to do so by the Minister, or if a matter is referred to the commissioner by the tribunal (s 155(1)). The commissioner may initiate and investigation if (s 155(2)). (a) during the course of the commission's functions, a possible case of a contravention of the Act is discovered, the matter is of public concern and the Minister agrees; (b) an allegation is made that an offence against the Act has been committed; or (c) during the course of carrying out the commission's functions, a possible offence against the Act is discovered. In certain circumstances, the matter can be referred to the tribunal and the commissioner will be the applicant (s 155(5)).		

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)[1]
Information requests	If the commissioner has reason to believe that a person– (a) published or displayed an advertisement that contravenes the Act; or (b) is able to provide information or produce documents relevant to an investigation; the commissioner may direct the person in writing to give to the commissioner the specified information or documents (s 156(1)). Such directions may be enforced by filing a copy of the direction in court (ss 156(3), (4)).	The commissioner may ask or direct a relevant entity – being the complainant or respondent, or another entity the commissioner considers has information relevant to the complaint – to give the commissioner information about the complaint (s 78). Such directions may be enforced by filing a copy of the direction in court (ss 78(7), (8)).	The commissioner may ask or direct a relevant person – meaning the complainant, respondent, a class member for a representative complaint or another person the commissioner considers has information relevant to the complaint – to give the commissioner information about the complaint (cl 124). Such directions may be enforced by filing a copy of the direction in court (cls 124(7), (8)).
	If a person has done an act of discrimination that would be unlawful but for provisions of the Act which turn on the existence of otherwise of actuarial or statistical data, the commissioner may direct the person to provide any source of the actuarial, statistical or other data on which the act of discrimination was based (s 157(1)). Such directions may be enforced by filing a copy of the direction in court (ss 157(2), (3)).		

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)
Dispute resolution			
Avenues for dispute resolution	If the commissioner believes that a complaint may be resolved by conciliation, the commissioner must try to resolve it in that way (s 158(1)).	If the commissioner decides to accept a human rights complaint for resolution by the commission, the commissioner may take the reasonable action the commissioner considers appropriate to try to resolve the complaint, including (s 77) – (a) asking the respondent to make submissions to the commission in writing in response to the complaint; (b) giving the complainant a copy of the respondent's written submissions; (c) asking or directing the complainant or respondent to give the commissioner information relevant to the complaint; (d) making enquiries of, and discussing the complaint with, the complainant and the respondent; or (e) causing the complaint to be conciliated (see also ss 79, 80).	The following principles apply in relation to a complaint accepted by the commissioner (s 128) – (a) dispute resolution should be provided for the complaint as early as possible; (b) the type of dispute resolution provided for the complaint should be appropriate to the nature of the complaint; (c) the dispute resolution process provided for the complaint should be fair to all parties; (d) dispute resolution for the complaint should be consistent with the purposes of the Act. If the commissioner accepts a complaint, the commissioner must take action the commissioner considers appropriate to provide dispute resolution for the complaint, including (s 129) – (a) asking the respondent to make submissions in writing in response to the complaint; (b) giving the complainant a copy of the respondent's submissions; (c) asking or directing the complainant or respondent to give the commissioner information relevant to the complaint; (d) making enquiries of, and discussing the complaint with, the parties; (e) facilitating discussions between the parties; (f) giving information or advice to the respondent about how to comply with the Act; or (g) causing the complaint to be conciliated (see also ss 130, 131). The commissioner may take such action in the way the commissioner considers appropriate, including by communicating with the parties in person or by telephone, email or another electronic means, and by engaging with the parties separately or together or by using an intermediary (s 129(3)).

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)
Conciliation conferences			
Participants in conciliation conferences	The commissioner may direct a person to take part in a conciliation conference (s 159(1)). If a complainant, without reasonable excuse, does not comply with a direction to attend a conciliation conference, the commissioner may dismiss the complaint and direct the complainant to pay costs to the respondent (s 160(1)). If a respondent, without reasonable excuse, does not comply with a direction to attend a conciliation conference, the commissioner may direct the respondent to pay costs to the complainant (s 160(2)). All such directions may be enforced by filing a copy of the direction in court (ss 159(2), (3) and ss 156(3), (4)).	The commissioner may direct a person to take part in a conciliation conference (s 81). Such directions may be enforced by filing a copy of the direction in court (ss 81(2), (3)).	The commissioner may invite persons to take part in a conciliation conference including the parties, a class member for a representative complaint or a person the commissioner considers has information relevant to the complaint or whose presence is likely to be conducive to the conciliation of the complaint (cl 132(1)). The commissioner may direct such a person to take part in a conciliation conference (cl 132(2)). If a complainant, without reasonable excuse, does not comply with a direction to attend a conciliation conference, the commissioner may dismiss the complaint and direct the complainant to pay costs to the respondent (cl 133(1)). If a respondent, without reasonable excuse, does not comply with a direction to attend a conciliation conference, the commissioner may direct the respondent to pay costs to the complainant (cl 133(2)). All such directions may be enforced by filing a copy of the direction in court (cls 132(3), (4) and ss 133(3), (4)).
Complainant must attend in person		The complainant for a human rights complaint must attend the conciliation conference in person unless they are a child or a person with impaired capacity, or the commissioner consents to another person attending the conciliation conference for the complainant (s 82(1)). The complainant may, with the commissioner's consent, be accompanied at the conciliation conference by a support person (s 82(2)).	

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)
Form of conciliation conference	A conciliation conference must be held in private (s 161).	In conducting a conciliation conference, the commissioner is not bound by the rules of evidence (s 85(1)). A conciliation conference must be held in private (s 85(2)).	In conducting a conciliation conference, the commissioner (s 136(1)) – (a) must take all reasonable steps to ensure the conduct of the conference does not disadvantage a party or a class member for a representative complaint; (b) is not bound by the rules of evidence. A conciliation conference must be held in private (cl 136(2)). A conciliation conference is to be conducted in the way the commissioner considers appropriate, including by hearing from the parties separately in separate rooms and by teleconferencing, videoconferencing or another form of communication that allows persons taking part in the conference to hear and take part in discussions as they happen (cl 136(3)).
Assistance to complainant	A person has a right to use a professional or voluntary interpreter at a conciliation conference (s 162).	A person may be helped at a conciliation conference by an interpreter or another person necessary or desirable to make the conciliation conference intelligible to the person including, for example, a person with appropriate cultural or social knowledge and experience (s 84).	A person may be helped at a conciliation conference by an interpreter or another person necessary or desirable to make the conciliation conference intelligible to the person including, for example, a person with appropriate cultural or social knowledge and experience (cl 135).
Representation	A person may be represented by another person at a conciliation conference, with the commissioner's permission (s 163).	A person may be represented by another person at a conciliation conference only with the commissioner's consent (s 81(1)), which may be given on conditions or withdrawn (s 81(3)). The commissioner may give consent if satisfied that it is appropriate for the person to be represented, that it would help the conciliation and the representative has sufficient knowledge of the matters to effectively represent the person (s 81(2)).	A person may be represented by another person at a conciliation conference only with the commissioner's consent (cl 134(1)), which may be given on conditions or withdrawn (cl 134(3)). The commissioner may give consent if satisfied that it is appropriate for the person to be represented, that it would help the conciliation and the representative has sufficient knowledge of the matters to effectively represent the person (cl 134(2)).

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)
Resolution of complaints			
Resolution timeframe			The commissioner must use the commissioner's best endeavours to finish dealing with a complaint within 12 months after the complaint is made (cl 125)
Filing agreement with tribunal	If the complaint is resolved by conciliation, the commissioner must record the terms of the agreement and have the document signed by the complainant and the respondent (s 164(1)). The commissioner must provide a copy of the document to each party and file the document with the tribunal (s 164(2)). The agreement is then enforceable as if it were an order of the tribunal (s 164(3)).		If a complaint is resolved by dispute resolution, either party may ask the commissioner to make a record of the agreement (cl 138(1)). If a party makes the request, the commissioner must have the record signed by the parties, provide a copy to each party and file the record with the tribunal (cls 138(2), (3)). The agreement is then enforceable as if it were an order of the tribunal (cl 138(4)).
Effect on other		A person's participation in a conciliation conference does not affect a right the person may have to seek any relief or remedy the person may have in relation to a contravention of s 58(1) (s 87).	
Admissibility	Nothing said or done in the course of conciliation of a complaint may be included in any document prepared by the commission when referring the complaint to the tribunal (s 164AA).	Nothing said or done in the course of a conciliation conference for a human rights complaint is admissible in any criminal, civil or administrative proceeding, unless the complainant and respondent for the complaint agree (s 86).	Nothing said or done in the course of a conciliation conference for a complaint is admissible in any criminal, civil or administrative proceeding, unless the complainant and respondent agree (cl 137).

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)
Reports on unresolved complaints		If a human rights complaint has not been resolved by conciliation or otherwise, the commissioner must prepare a report about the complaint which may include details of action the commissioner considers the respondent should take to ensure its acts and decisions are compatible with human rights. The commissioner must give a copy of the report to the complainant and respondent (s 88). If the commissioner considers a human rights complaint has been resolved, the commissioner must notify the parties (s 89). The commissioner may publish information about a human rights complaint that the commission has finished dealing with (s 90).	
Referral to tribunal	Complaints may be referred to the relevant tribunal – being the industrial relations commission in work related matters, or otherwise QCAT – in the following circumstances: (a) where there has been a conciliation and the complaint has not resolved, and the complainant seeks to have the complaint referred to the tribunal (s 164A); (b) where the commissioner notifies the parties that it believes that a complaint cannot be resolved by conciliation (s 165), the complainant may seek the referral of the complaint to the tribunal (s 166); and (c) where the commissioner has not finished dealing with a complaint 6 months after accepting the complaint, either party may seek the referral of the complaint to the tribunal (s 167).		Complaints may be referred to the relevant tribunal – being the industrial relations commission in work related matters, or otherwise QCAT – in the following circumstances: (a) where the commissioner notifies the parties that it believes that a complaint can not be resolved by dispute resolution (whether or not dispute resolution has been attempted), and the complainant seeks to have the matter referred to the tribunal (cl 126); and (b) where the commissioner has not finished dealing with a complaint 6 months after accepting the complaint, either party may seek the referral of the complaint to the tribunal (cl 127).

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)
When the commissioner is finished dealing with a complaint			The commissioner finishes dealing with a complaint if and when (cl 139) – (a) the commissioner stops dealing with the complaint; (b) the parties give the commissioner written notice of their agreement to resolve the complaint; (c) the complaint is resolved through a conciliation conference; (d) the complaint is resolved by dispute resolution and the commissioner files a record of the agreement with the tribunal; (e) the period within which the complainant may require referral to the tribunal passes; (f) the respondent asks for the complaint to be referred to the tribunal and the complainant does not agree; or (g) the commissioner refers the complaint to the tribunal.
Miscellaneous			
No person authorised	The commissioner may withdraw an authorisation for a person to act on behalf of another person and, if no further authorisation is requested, the complaint lapses (s 171).		The commissioner may withdraw an authorisation for a person to act on behalf of another person and, if no further authorisation is requested, the complaint lapses (cl 140).
Extending time	The commissioner may extend a time limits relating to the complaints process if the commissioner is of the reasonable opinion that (s 172): (a) the extension will not cause undue hardship to any party; and (b) there are reasonable grounds for granting the extension.		The commissioner may extend a time limits relating to the complaints process if the commissioner is of the reasonable opinion that (cl 141): (a) the extension will not cause undue hardship to any party; and (b) there are reasonable grounds for granting the extension.

Topic	*Anti-Discrimination Act 1991*	*Human Rights Act 2019*	Anti-Discrimination Bill 2024 (ED)
Document authentication	A document requiring authentication by the commission or commissioner is sufficiently authenticated if signed by the commissioner (s 173).		
	Judicial notice must be taken of the signature of the commissioner if it appears on a document issued by the commission or commissioner (s 174).		

Appendix 6 – Comparison of human rights recognised in Australia

Rights recognised under Australian human rights legislation and proposed for introduction by the First Review: Professor Susan Harris-Rimmer, *Placing People at the Heart of Policy: First Independent Review of the Human Rights Act 2019 (Qld)* (2024).*

Human Right	Qld	ACT	Victoria
Civil and political rights			
Recognition and equality before the law	✓	✓	✓
Right to life	✓	✓	✓
Protection from torture and cruel, inhuman or degrading treatment	✓	✓	✓
Freedom from forced work	✓	✓	✓
Freedom of movement	✓	✓	✓
Freedom of thought, conscience, religion and belief	✓	✓	✓
Freedom of expression	✓	✓	✓
Peaceful assembly and freedom of association	✓	✓	✓
Taking part in public life	✓	✓	✓
Right to property	✓	–	✓
Privacy and reputation	✓	✓	✓
Protection of families and children	✓	✓	✓
Cultural rights–general[1]	✓	✓	✓
Cultural rights– Aboriginal and Torres Strait Islander peoples	✓	✓	✓
Liberty and security of person	✓	✓	✓
Humane treatment when deprived of liberty	✓	✓	✓
Fair hearing / fair trial	✓	✓	✓
Rights in criminal proceedings	✓	✓	✓
Rights of children in criminal process	✓	✓	✓
Not to be tried or punished more than once	✓	✓	✓
Protection from retrospective criminal laws	✓	✓	✓
Compensation for wrongful conviction	–	✓	–
Economic, social and cultural rights			
Right to education	✓	✓	–
Right to health services	✓	–	–
Right to work	–	✓	–
Right to a healthy environment	–	✓	–
Right to adequate housing	–	–[#]	–
Gender-based discrimination			
Right to live free from gender-based violence	–	–	–
Principles of Justice for Victims of Crime			
Right to be treated with courtesy, compassion, respect and dignity[2]	–	–	–
Right to be provided with relevant information[2]			

* Shaded rows are new rights proposed for introduction or consideration by the First Review that are not currently recognised in the HRA.

A right to housing will be introduced into the *Human Rights Act 2004* (ACT) from 1 January 2027: see *Human Rights (Housing) Amendment Act 2025* (ACT). This is limited to the following aspects until 1 January 2029: (a) that everyone is entitled to enjoy this right without discrimination; (b) that no-one may be unlawfully or arbitrarily evicted from their home; and (c) that no-one may have an essential utility service to their home unlawfully or arbitrarily withdrawn.

Notes:

1. Queensland is the only jurisdiction to have separate sections in the Act relating to recognition of general cultural rights and the right of Aboriginal and Torres Strait Islander peoples. In the ACT and Victoria, these are included in the same section.

2. While not expressly recognised under human rights legislation, Queensland, the ACT and Victoria all have legislation establishing charters or statements of victims' rights setting out victims' rights: see *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld), chapter 3, schedule 1; *Victims of Crime Act 1994* (ACT) part 3A; and *Victims' Charter Act 2006* (Vic).

Endnotes

1 Attorney-General and Minister for Justice and Minister for Integrity, The Honourable Deb Frecklington, 'Crisafulli Government to Review Human Rights and Anti-Discrimination Frameworks' (Media Statement, 11 June 2026).

2 Legal Affairs and Community Safety Committee, Queensland Parliament, Human Rights Bill 2018 (Report No 26, 56th Parliament, February 2019).

3 Community Safety and Legal Affairs Committee, *Respect at Work and Other Matters Amendment Bill 2024* (Report No 13, 57th Parliament, July 2024).

4 Susan Harris Rimmer, *Placing People at the Heart of Policy: First Independent Review of the Human Rights Act 2019 (Qld)* (Final Report, September 2024) ('*First Review*').

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

6 *Financial Accountability Act 2009* (Qld) s 61 ('FAA').

7 Nor are they defined in the *Acts Interpretation Act 1954* (Qld) s 36, sch 1.

8 See section 4(1) of the *Financial and Performance Management Standard 2019* which is binding on the QHRC as a statutory body for the purposes of the FAA: *Anti-Discrimination Act 1991* (ADA) s 237; FAA ss 8, 57(4)–(5).

9 Queensland Treasury, *Financial Accountability Handbook: Volume 1 – Introduction* (Handbook, April 2025) 13.

10 Ibid.

11 Ibid 14.

12 HRA s 61(d).

13 ADA s 235(a); HRA s 61(a).

14 ADA s 134; HRA ss 63–64.

15 See Queensland Human Rights Commission, *Annual Report 2021-22* (2022) 15 ('*QHRC Annual Report 2021-22*') (n=1, 870); Queensland Human Rights Commission, *Annual Report 2022-23* (2023) 9 ('*QHRC Annual Report 2022-23*') (n=1, 860).

16 Queensland Human Rights Commission, unpublished data.

17 ADA ss 139; HRA s 69. Also, if at any time after a complaint is accepted, the commissioner is of the reasonable opinion that the complaint is frivolous, trivial or vexatious, misconceived or lacking in substance, the complaint will lapse unless the complainant is able to show it is not: ADA s 168.

18 ADA s 140; HRA s 70(1)(b).

19 Ibid ss 154A–157.

20 See eg Justice Adam Hatcher, 'A Disrupted Future: Artificial Intelligence and the Fair Work Commission' (Presentation to the Victorian Bar Association, 18 February 2026); Prof John McMillan AO, Strategic Review of the Office of the Queensland Ombudsman (14 May 2026) pp 73–76.

21 ADA s 155(2).

22 Ibid s 155(3).

23 Ibid s 156(1).

24 Ibid ss 156(3), (4);

25 Ibid s 155(4).

26 *Building Belonging Report* (n 5) 251.

27 Ibid.

28 Queensland Human Rights Commission, "Guideline: Intervention in court proceedings" ('Intervention Guideline') (updated 18 May 2026).
29 HRA s 6, sch 1.
30 *Inquest into the death of Selesa Tafaifa* (Coroners Court of Queensland, Deputy State Coroner S Gallagher, 29 October 2025) [8]–[33]; *Inquest into the death of Wayne Thomas Kerle* (Coroners Court of Queensland, Deputy State Coroner S Gallagher, 26 June 2026) [206]–[226].
31 Queensland Human Rights Commission, Submission to Independent Reviewer, *Review of Queensland's Human Rights Act 2019* (8 July 2024) [192] ('QHRC Submission to First Review').
32 Intervention Guideline (n 2828) at 2.
33 QHRC Submission to First Review (n 3131) [198]–[199].
34 *First Review* (n 4) 68.
35 Australian Human Rights Commission, *Annual Report 2024–2025* (2025) 93.
36 *Australian Human Rights Commission Act 1986* (Cth) s 11(1)(o).
37 ADA s 235(d).
38 HRA ss 61(e), (f).
39 In period 1 July 2021 to 30 June 2025: See *QHRC Annual Report 2021-22* (n 15) 33–5; *QHRC Annual Report 2022-23* (n 15) 29–32; Queensland Human Rights Commission, *Annual Report 2023-24* (2024) 26–8 ('*QHRC Annual Report 2023-24*'); Queensland Human Rights Commission, *Annual Report 2024-25* (2025) 44–6 ('*QHRC Annual Report 2024-25*').
40 ACT Human Rights Commission, Submission No 176 to Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework* (1 July 2023) 4 <https://www.hrc.act.gov.au/__data/assets/pdf_file/0005/2300288/Submission-to-Parliamentary-Joint-Committee-on-Human-Rights-2023.pdf> .
41 Ibid.
42 *QHRC Annual Report 2023-24* (n 39) 43.
43 *QHRC Annual Report 2024-25* (n 39) 60.
44 *QHRC Annual Report 2023-24* (n 39) 44–5.
45 See HRA s 61(a); ADA s 235(a).
46 ADA s 134.
47 HRA s 64.
48 Note that the Draft Anti-Discrimination Bill 2024 contained amended provisions for representative complaints which were enacted in similar form by s 31 of the Respect at Work Act. Other changes to the complaints framework, including extending the time limit for complaints (see Respect at Work Act s 29), were included in the Respect at Work Act but have not commenced.
49 ADA s 134.
50 Ibid s 138.
51 Ibid s 138(2).
52 Ibid s 141A.
53 Ibid s 141.
54 Ibid s 139.
55 Ibid s 140(1)(b).
56 Ibid ss 154A, 156, 157.
57 Ibid ss 143(1), (2).
58 Ibid s 158(1).
59 Ibid s 164.
60 Ibid s 164A.
61 HRA s 67(2).
62 Draft Anti-Discrimination Bill 2024 cl 107(2).
63 HRA s 68.

64 Draft Anti-Discrimination Bill 2024 cl 115.
65 ADA s 143.
66 HRA s 76.
67 Draft Anti-Discrimination Bill 2024 cl 123.
68 Ibid cls 100, 117(1)(a), 117(2) (cf ADA ss 138, 141A).
69 Ibid cl 117 (cf ADA ss 140, 168A).
70 Ibid cls 117(1)(e), (f).
71 ADA s 170.
72 Draft Anti-Discrimination Bill 2024 cl 119.
73 ADA s 158(1).
74 Draft Anti-Discrimination Bill 2024 cl 128.
75 Ibid cl 129.
76 Ibid cl 129(3).
77 HRA s 83.
78 Draft Anti-Discrimination Bill 2024 cl 134(2).
79 Ibid cl 125.
80 Ibid cl 139.
81 HRA s 63.
82 Ibid s 65.
83 Ibid s 70(1)(a).
84 Ibid s 70(1)(d).
85 Ibid ss 77, 78.
86 Ibid s 79.
87 Ibid s 88.
88 Ibid s 90.
89 Ibid s 9.
90 See eg *Brown v Rezitis* (1970) 127 CLR 157, 169; *Sinkovich v Attorney General of New South Wales* (2013) 85 NSWLR 783, 787–8 [13]; *SYO v CMQ* [2024] QSC 324, [9].
91 Respect at Work Act s 31.
92 Ibid s 67(2).
93 Ibid s 68.
94 Ibid s 78.
95 Ibid s 70(3).
96 Ibid s 73.
97 Ibid s 75.
98 Draft Anti-Discrimination Bill 2024 cls 100, 117.
99 That is, the commissioner may decide to deal with a complaint made out of time if the commissioner considers there are exceptional circumstances and it is in the interests of justice to do so, having regard to: (a) the reason for the complaint being made after the complaint period ended; (b) the impact that not dealing with the complaint may have on the complainant or another person on whose behalf the complaint is made; and (c) the impact that dealing with the complaint may have on the respondent.
100 Draft Anti-Discrimination Bill 2024 cls 116(2)–(3).
101 Ibid cls 117(1)(e), (f).
102 Ibid cl 142. In order to obtain such interim relief, the human rights complaint would need to be one which could be "piggy-backed" either on an ADA complaint or otherwise.
103 Ibid cl 128.
104 Ibid cls 129(2)(e), (f).
105 Ibid cl 129(3).
106 Ibid cl 132(1).

107 HRA s 81.
108 Draft Anti-Discrimination Bill 2024 cl 133.
109 Ibid cl 136(1)(a).
110 Ibid cl 136(3).
111 Ibid cl 125.
112 HRA s 89.
113 Ibid s 88.
114 Ibid s 90.
115 The matters the Review must consider are set out in sections 95(4), 96(4) and 96(6) of the HRA.
116 *First Review* (n 4).
117 Letter dated 26 March 2025, from the Attorney-General and Minister for Justice and Minister for Integrity, the Hon Deb Frecklington, to the Clerk of the Parliament, Mr Neil Laurie, enclosing a report by Professor Susan Harris Rimmer, dated 30 September 2024, titled 'Placing People at the Heart of Policy: First Independent Review of the Human Rights Act 2019 (Qld)—Final Report' < https://www.parliament.qld.gov.au/docs/find.aspx?id=5825T0231>.
118 *First Review* (n 4) 55.
119 Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024).
120 Schedule 1 of the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld).
121 The Charter affords rights to "affected victims". This term is defined in section 38 of the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 38 and includes 'a person who suffers personal harm' because a 'relevant offence' is committed against the person. A 'relevant offence' is defined in s 39 and includes conduct that is 'an offence against the person of someone' as well as domestic violence offences and contraventions of domestic violence orders. It does not include offences that cause purely financial or economic harm.
122 Ibid s 41.
123 This is qualified by section 179K(2) which provides that the prosecutor may continue with the sentencing proceedings without having permitted the victim to give details of the harm, including in the form of a victim impact statement, if it is reasonable to do so in the circumstances.
124 Office of the Victims' Commissioner (Queensland), *Review of the Queensland Charter of Victims' Rights: Detailed Paper* (Discussion Paper, August 2025) section 5.3.6.
125 For more information on the Charter review, visit the Victims' Commissioner's website: https://www.victimscommissioner.qld.gov.au/our-work/review-of-the-charter-of-victims-rights. The Reviewer and Victims' Commissioner have committed to continue to share information as both reviews progress.
126 See Queensland Human Rights Commission, Submission to Legal Affairs and Safety Committee Inquiry into Support Provided to Victims of Crime, 12 April 2023. This submission also mentions the right to liberty and security, including ensuring the physical safety of people who are in danger of physical harm.
127 Legal Aid Queensland, Submission No 39 to Independent Reviewer, First Independent Review of the Human Rights Act 2019 (5 July 2024) 16–18; Queensland Law Society, Submission No 81 to Independent Reviewer, First Independent Review of the Human Rights Act 2019 (12 July 2024) 10–11. See also Caxton Community Legal Centre, Submission No 63 to Independent Reviewer, First Independent Review of the Human Rights Act 2019 (5 July 2024) 11.
128 Queensland Law Society, Submission No 81 to Independent Reviewer, First Independent Review of the Human Rights Act 2019 (12 July 2024) 11; Legal Aid Queensland, Submission No 39 to Independent Reviewer, First Independent Review of the Human Rights Act 2019 (5 July 2024) 16–18.
129 See HRA ss 31–35.
130 Robyn Holder, Tyrone Kirchengast and Paul Cassell, 'Transforming Crime Victims' Rights: From Myth to Reality' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 1.

131 HRA ss 32–35.

132 Since the First Review of the HRA, a further two Acts of Parliament have included three override declaration provisions (two in the *Making Queensland Safer Act 2024* and one in the *Community Protection and Public Child Sex Offender Register (Daniel's Law) Act 2025*). A further two Bills which include override declaration provisions (the Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 and Protecting Queenslanders from Dangerous Prisoners and Strengthening Victims' Rights Amendment Bill 2026) have also been introduced to Parliament in August and September 2026.

133 These include section 43 itself and sections 42, 47 and 54.

134 Parliamentary Joint Committee on Human Rights, Parliament of Australia (n 119) 195. The report quotes the Castan Centre for Human Rights Law, Submission No 160, citing Julie Debeljak, 'Of Parole and Public Emergencies: Why the Victorian Charter Override Provision Should Be Repealed' (2022) 45(2) *University of NSW Law Journal* 570, 616.

135 *R v Momcilovic* [2010] VSCA 50; 25 VR 436.

136 *In the Matter of an Application for Bail by Isa Islam* [2010] ACTSC 147; 4 ACTLR 235 (Penfold J); *Davidson v Director-General, Justice and Community Safety Directorate* [2022] ACTSC 83; 18 ACTLR 1 (Loukas-Karlsson J).

137 *Momcilovic v The Queen* [2011] HCA 34 ('*Momcilovic*').

138 This is in circumstances where the High Court in *Momcilovic* held only by a bare majority (4:3) that the Victorian Charter equivalent provision was not unconstitutional.

139 The equivalent provision to section 48 in the Victorian Charter (section 32(1)) most recently has been considered by the High Court in *Director of Public Prosecutions (Vic) v Smith* [2024] HCA 32; 283 CLR 561.

140 *Smith v Chief Executive, Corrective Services* [2026] QCA 99 was the subject of a grant of special leave for an expedited appeal and is presently reserved before the High Court: *Smith v Chief Executive, Queensland Corrective Services & Ors* [2026] HCATrans 51. A matter concerning s 32(1) of the Victorian Charter is presently reserved before the High Court: *Charisiou v The King* [2026] HCADisp 91 (9 April 2026); [2026] HCATrans 43 (12 August 2026).

141 See HRA s 49(3).

142 See *HJ v IBAC* [2021] VSC 200; 64 VR 270; *Thompson v Minogue* (2021) 67 VR 301 at [85]–[89], [156]; *Johnston v Carroll* [2024] QSC 2; 19 QR 1 at [75].

143 Australian Lawyers Alliance, Submission No 24 to Queensland Parliament Legal Affairs and Community Safety Committee, *Human Rights Bill 2018* (22 November 2018) 14; Human Rights Law Centre, Submission No 101 to Queensland Parliament Legal Affairs and Community Safety Committee, *Human Rights Bill 2018* (26 November 2018) 16.

144 Legal Affairs and Community Safety Committee, Queensland Parliament, *Human Rights Bill 2018* (Report No 26, 56th Parliament, February 2019) 84.

145 The difficulty arises from the use of the phrase "*may not be successful in obtaining the relief or remedy*" in section 59(2) of the HRA which, on its face, does not speak of the quality of the other cause of action or right relied upon, but rather whether the relief or remedy sought is ultimately successful.

146 See for example, *Chief Executive, Department of Environment Science & Innovation v Nagana Yarrbayn Wangan & Jagalingou Cultural Custodians* [2026] QCA 7 at [171] (Doyle JA, Mullins P and Boddice JA agreeing).

147 That arises from the use of the words a person "*may seek any relief or remedy*" in section 59(1) of the Act. It does not require the person to in fact seek such relief or remedy.

148 See, for example, *Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children* [2016] VSC 796; 51 VR 473.

149 If implemented, this would require the time periods for the bringing of a judicial review application in the Supreme Court of Queensland to be amended for the purposes of these rights.

150 [2026] QCA 147.

151 The word "function" is defined in Schedule 1 to the HRA to include "a power". The HRA, therefore, applies to a court or tribunal to the extent the court or tribunal has a function or power under Part 2 and Part 3, Division 3.

152 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 6(2)(b) ('Victorian Charter'); *Matsoukatidou v Yarra Ranges Council* [2017] VSC 61; 51 VR 624 at [32]. The *Human Rights Act 2004* (ACT) does not contain a similar provision.

153 [2020] QSC 293; 5 QR 623 at [225]–[227].

154 See Applegarth J in *Attorney General for State of Queensland v Grant* [2022] QSC 180.

155 *Huang* at [61]–[66].

156 HRA ss 9(1)(h) and 9(2)(a). Matters that may be considered in deciding whether a function is of a public nature are set out in section 10.

157 Ibid ss 95(4) and 96(4).

158 Ibid ss 126 and 183.

159 Explanatory Notes, Human Rights Bill 2018 (Qld) 9.

160 *First Review* (n 4) 90.

161 Ibid.

162 *Mizner v State of Queensland (Corrective Services)* [2025] QCA 169.

163 Ibid at [241] (Crowley J, Bond JA and Gotterson AJA agreeing).

164 ADA s 247(2).

165 Ibid s 247(9)(a).

166 With the exception of provisions which amended representative complaints under the ADA and some transitional provisions (which commenced on 1 December 2024), the majority of the provisions of the Respect at Work Act amending the ADA were due to commence on 1 July 2025. The commencement of these provisions has been delayed from 1 July 2025 to a date to be set by proclamation: *Crime and Corruption (Restoring Reporting Powers) and Other Legislation Amendment Act 2025* s 53 amending: *Respect at Work and Other Matters Amendment Act 2024* (Qld) s 2 ('Respect at Work Act').

167 Queensland, Legislative Assembly, *Parliamentary Debates*, 14 March 2025, 'Ministerial Statement – Anti-Discrimination Laws', 488 (Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity).

168 The final Queensland Government response to the Building Belonging Report was tabled in the Legislative Assembly on 3 April 2023.

169 Draft Anti-Discrimination Bill 2024.

170 *Building Belonging Report* (n 5) 53 (citations omitted).

171 Ibid.

172 Ibid Recommendation 2.3.

173 Explanatory Notes, Respect at Work and Other Matters Amendment Bill 2024 (Qld), 26.

174 See Community Safety and Legal Affairs Committee (n 3).

175 Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in the Australian Workplaces* (Report, 2020) ('*Respect@Work Report*').

176 This statement was issued by Jon Krause MP, Deputy Chair and Member for Scenic Rim and Mark Boothman MP, Member for Theodore: Community Safety and Legal Affairs Committee (n 3).

177 Queensland, *Parliamentary Debates*, Legislative Assembly, 10 September 2024, 2875 (Tim Nicholls, Member for Clayfield).

178 Community Safety and Legal Affairs Committee (n 3) 23.

179 *Respect@Work Report* (n 177) 457.

180 Ibid 458.

181 *Building Belonging Report* (n 5) 136–8.

182 *Respect@Work Report* (n 177) 460.

183 *Building Belonging Report* (n 5) 141.

184 Ibid 323, Recommendation 29.
185 Ibid 322–3.
186 Ibid 322.
187 Ibid 323.
188 Ibid 341.
189 *Births, Deaths and Marriages Registration Act 2023* (Qld) ss 152, 157.
190 *Building Belonging Report* (n 5) 105.
191 Ibid 50.
192 Australian Bureau of Statistics, *A Statistical Definition of Homelessness* (Catalogue Number 4922.0, 4 September 2012) 9.
193 Ibid 7.
194 See *Domestic and Family Violence Protection Act 2012* (Qld) s 8.
195 *Building Belonging Report* (n 5) 89–90.
196 Ibid 101.
197 Pursuant to s 285AA of the *Anti-Discrimination Act 1991* (Qld), the new burden of proof provisions will commence on the date that the new definitions of direct and indirect discrimination commence. That is presently on a date to be fixed by proclamation. For that reason, the new burden of proof provisions are 'uncommenced' provisions for the purposes of this Review's Terms of Reference.
198 *Building Belonging Report* (n 5) 214.
199 Respect at Work Act (n 168) s 25 inserting: ADA Chapter 5C.
200 On the definition of a business or undertaking, see *Work Health and Safety Act 2011* (Qld) s 5.
201 Respect at Work Act (n 168) s 39 inserting: ADA s 173Q.
202 Community Safety and Legal Affairs Committee (n 3) 13; Queensland (n 179) 2869, 2928 (Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Family Violence).
203 Respect at Work Act (n 168) s 39 inserting: ADA Chapter 7, Part 1A.
204 *Equal Opportunity Act 2010* (Vic) s 15.
205 *Discrimination Act 1991* (ACT) s 75; *Anti-Discrimination Act 1992* (NT) ss 18A–18D; *Sex Discrimination Act 1984* (Cth) s 47C.
206 Law Reform Commission of Western Australia, *Review of the Equal Opportunity Act 1984 (WA)* (Project 111 Final Report, May 2022) Recommendation 121.
207 See 'Anti-Discrimination Act Review', *NSW Law Reform Commission* (31 August 2026) <https://lawreform.nsw.gov.au/projects/anti-discrimination-act-review.html>. The Terms of Reference expressly ask the Commission to consider: 'whether the Act should include positive obligations to prevent harassment, discrimination and vilification, and to make reasonable adjustments to promote full and equal participation in public life'.
208 However, unlike the Queensland proposal, the Victorian duty does not apply to vilification.
209 *Building Belonging Report* (n 5) 16–17.
210 Ibid 221–2.
211 Queensland Churches Together, Submission No 16 to Community Safety and Legal Affairs Committee, *Respect at Work and Other Matters Amendment Bill 2024* (26 June 2024) 3, 10. See also Australian Christian Lobby, Submission No 7 to Community Safety and Legal Affairs Committee, *Respect at Work and Other Matters Amendment Bill 2024* (28 June 2024) 7.
212 See for example, *Building Belonging Report* (n 5) 222–23 referring to submissions made by Queensland Catholic Education and Legal Aid Queensland.
213 Ibid 233. The submissions referred to in this context were made by: Independent Schools Queensland; Human Rights Law Alliance; Australian Christian Lobby; Christian Schools Australia; Australian Association of Christian Schools; James Cook University; and the Australian Industry Group.
214 See, for example, Queensland Building and Construction Commission, *QBCC Governance Review 2022* (Report, May 2022) that recommended that 'an independent, quarantined Mediation, Resolution and

Review Unit' be established within the Queensland Building and Construction Commission and that the functions of this unit be separated and quarantined from the Commission's licensing and compliance functions: Recommendation 2.

215 Australian Human Rights Commission, 'Statement of Intent–October 2024', <https://humanrights.gov.au/__data/assets/file/0013/57010/AHRC-Ministerial-Statement-Intent-Letter-AG-171024.pdf>.

216 *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth) s 4.

217 *Human Rights Commission Act 2005* (ACT) s 52(3). The ACT Civil and Administrative Tribunal has a similar power to consider this under section 53DB.

218 *Discrimination Act 1991* (ACT) s 75(4).

219 See Queensland Treasury, 'Impact Analysis Statement: Summary IAS', Respect at Work and Other Matters Amendment Bill (June 2024) 4 <https://www.publications.qld.gov.au/dataset/djag-impact-analysis-statements-2024/resource/161508ca-ed18-4a2f-80d7-cb31b80aa6fc>.

220 Letter from A/g Deputy Secretary, Integrity and International Group to Executive Director, Office of Best Practice Regulation, Department of the Prime Minister and Cabinet, 9 August 2022, 3 <https://oia.pmc.gov.au/sites/default/files/posts/2022/09/Respect%40Work%20certification%20letter.pdf>.

221 Ibid 2–3. On the costs of sexual harassment to the Australian economy, see Deloitte Access Economics, *The Economic Costs of Sexual Harassment in the Workplace: Final Report* (March 2019) prepared for the Respect@Work Inquiry.

222 Commonwealth, *Inquiry into gender equality as a national security and economic security imperative,* Joint Standing Committee on Foreign Affairs, Defence and Trade, 6 May 2026, 4 (Dr Anna Cody, Sex Discrimination Commissioner).

223 Jeswynn Yogaratnam, NT Anti-Discrimination Commissioner, 'Making Racism Invisible', Submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, Inquiry into Racism Hate and Violence against First Nations People, 7 July 2026, 9.

224 *Building Belonging Report* (n 5) 238.

225 See, for example, section 133(2) of the ADA which provides that it is a defence to a proceeding for contravention of the Act arising under the vicarious liability provisions if the respondent proves, on the balance of probabilities, that they took 'reasonable steps' to prevent the person from contravening the Act.

226 This approach was initially recommended by the QHRC which recommended a two year delay between commencement of the duty and the provisions relating to enforceable undertakings and compliance notices: see *Building Belonging Report* (n 5) Recommendation 20.

227 Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Serious Vilification and Hate Crimes* (Report No 22, 57th Parliament, 31 January 2022) 5 [2.2] ('*LASC Inquiry*') quoting a submission by Katherine Gelber. See also *Ridd v James Cook University* [2021] HCA 32 [20] (Kiefel CJ, Gageler, Keane, Gordon And Edelman JJ), citing the then ADA s 131A as a reference to "hate speech".

228 Neil Rees, Simon Rice and Dominique Allen, Australian Anti-Discrimination and Equal Opportunity Law (The Federation Press, 3rd ed, 2018) 686 [13.2.5], quoting Luke McNamara and Kath Gelber.

229 See, for example, section 52B of the *Criminal Code* (Qld).

230 Rees, Rice and Allen (n 231) 676 [13.1.1].

231 *Criminal Code* (Qld) ss 52A –52B.

232 *Building Belonging Report* (n 5) 35 fn 5.

233 *LASC Inquiry* (n 230).

234 *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023*.

235 Legal Affairs and Community Safety Committee, Queensland Parliament, *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (Report No 49, 57th Parliament, June 2023) ('*LASC Report*').

236 Community Safety and Legal Affairs Committee (n 3) 29–30.

237 "Sex" is a protected attribute in Victoria, the ACT and NT. "Age" is a protected attribute in the NT. "Impairment" (or "disability") is a protected attribute in Victoria, the ACT and Tasmania. See: *Equal Opportunity Act 2010* (Vic) s 102B, *Discrimination Act 1991* (ACT) s 67A, *Anti-Discrimination Act 1992* (NT) ss 19, 20A; *Anti-Discrimination Act 1998* (Tas) s 19.

238 *LASC Inquiry* (n 230) Recommendation 6. *LASC Report* (n 238) Recommendation 4.

239 *LASC Report* (n 238) Recommendations 3.

240 *LASC Inquiry* (n 230) 10–13.

241 Ibid 47.

242 *LASC Report* (n 238) 10.

243 *LASC Inquiry* (n 230) Recommendation 5.

244 Draft Anti-Discrimination Bill 2024, cl 85.

245 Explanatory Notes, Respect at Work and Other Matters Amendment Bill 2024 (Qld) 31.

246 Queensland Department of Justice and Attorney-General, *Response to Submissions: Respect at Work and Other Matters Amendment Bill 2024* (Correspondence to the Community Safety and Legal Affairs Committee, updated 12 July 2024) 18.

247 *LASC Inquiry* (n 230) Recommendation 5.

248 Ibid 45.

249 Explanatory Notes, Respect at Work and Other Matters Amendment Bill 2024 (Qld) 19.

250 Community Safety and Legal Affairs Committee (n 3) 49 (emphasis in original).

251 Ibid 30.

252 Ibid 29, 31.