

# Strengthening Protections for Queensland Workers Amendment Bill 2026

## Explanatory Notes

### Short title

The short title of the Bill is the *Strengthening Protections for Queensland Workers Amendment Bill 2026*.

### Policy objectives and the reasons for them

The key objectives of the Bill are to amend the *Anti-Discrimination Act 1991* (AD Act) and associated legislation, such as the *Corrective Services Act 2006*, the *Criminal Code* and the *Human Rights Act 2019* to implement reforms regarding Respect at Work legislation that were delayed by the Crisafulli LNP Government.

As such, the majority of this Explanatory Notes document will replicate the work undertaken by the former Queensland Labor Government. Every care and attention has been taken to ensure that the Explanatory notes are updated and current within the resources provided in the Opposition. It is noted that the Opposition should not have to bring this Private Members Bill if the Crisafulli LNP Government did not pause the laws which would protect Queenslanders.

In June 2018, the Australian Human Rights Commission (AHRC) was tasked with reviewing and reporting on workplace sexual harassment and making recommendations on its prevalence and nature, and the adequacy of the legal frameworks in place to deal with it.

The Respect@Work Report, published in March 2020, set out the AHRC's findings and recommendations following its inquiry into workplace sexual harassment.

Broadly, the report found that workplace sexual harassment remained prevalent, and that the current system for addressing sexual harassment was complex and confusing for victims and employers to understand. The AHRC recommended a number of improvements to the *Sex Discrimination Act 1984* (Cwlth) (SD Act). Key reforms which were proposed by the Respect@Work Report include:

- amending the **objects** of the SD Act to include 'to achieve substantive equality between women and men' (recommendation 16(a) of the Respect@Work Report);
- prohibiting '**sex-based harassment**' (recommendation 16(b) of the Respect@Work Report);
- prohibiting '**creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex**' (recommendation 16(c) of the Respect@Work Report);
- introducing a **positive duty** which requires employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible (recommendation 17 of the Respect@Work Report);

- introducing powers for the AHRC to **assess and enforce compliance with the positive duty**, including powers to: undertake assessments of the extent to which an organisation has complied with the duty; issue compliance notices if it considers an organisation has failed to comply with the duty; enter into agreements/enforceable undertakings with the organisation; and apply to the Court for an order requiring compliance with the duty (recommendation 18 of the Respect@Work Report);
- providing the AHRC with a broad inquiry **function to inquire into systemic unlawful discrimination**, including systemic sexual harassment, with powers including requiring the giving of information or the production of documents, and the examination of witnesses, with penalties for non-compliance when conducting the inquiry (recommendation 19 of the Respect@Work Report);
- increasing the **time period** after which the President of the AHRC has the discretion to terminate a complaint on the grounds that it was made 6 months after the alleged contravention occurred to 24 months (recommendation 22 of the Respect@Work Report);
- allowing **unions and other representative groups to bring representative claims** to court, consistent with the existing provisions in the *Australian Human Rights Commission Act 1986* (Cwlth) (AHRC Act) that allow unions and other representative groups to bring a representative complaint (recommendation 23 of the Respect@Work Report); and
- introducing a **cost protection provision** in the AHRC Act consistent with section 570 of the *Fair Work Act 2009* (Cwlth) (recommendation 25 of the Respect@Work Report).

In response to the recommendations of the Respect@Work Report, the Federal Parliament passed two Acts which made a number of amendments to the SD Act and the AHRC Act: the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (Cwlth); and the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cwlth).

The Respect@Work Report noted that there is merit in having consistency in sexual harassment (and sex discrimination) provisions across federal, state and territory anti-discrimination legislation. The AHRC accordingly recommended that the Australian Government work with state and territory governments to amend state and territory human rights and anti-discrimination legislation with the objective of achieving consistency, where possible, with the SD Act, without limiting or reducing protections (recommendation 26).

### **LASC Vilification Report and LASC Vilification and Hate Crimes Bill Report**

The Bill also amends the AD Act to implement certain recommendations made by the LASC Vilification Report and LASC Vilification and Hate Crimes Bill Report.

On 21 April 2021, the inquiry into serious vilification and hate crimes was referred to the LASC. On 31 January 2022, the LASC Vilification Report was tabled in the Legislative Assembly. The Government Response to the LASC Vilification Report was tabled on 26 May 2022.

On 29 March 2023, the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023 was introduced. The Bill responded to various recommendations in the LASC Vilification Report, including moving the offence of serious

vilification to the Criminal Code, introducing circumstances of aggravation relating to vilification motivating certain criminal conduct, and prohibiting the display of hate symbols.

On 30 June 2023, the LASC Vilification and Hate Crimes Bill Report was tabled in the Legislative Assembly.

The Government Response to the LASC Vilification and Hate Crimes Bill Report was tabled on 3 October 2023.

The *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* commenced on 29 April 2024.

### **Queensland Human Rights Commission Review of the AD Act**

On 23 April 2021, the then Attorney-General asked the QHRC to undertake a review of the AD Act.

On 1 September 2022, the QHRC's Building Belonging Report was tabled in the Queensland Legislative Assembly alongside the Queensland Government's interim response to the report.

On 3 April 2023, the Government's Final Response to the Building Belonging Report was tabled in the Legislative Assembly, providing in-principle support for all 122 recommendations.

The Building Belonging Report made a number of recommendations in relation to the attributes which are protected under the AD Act, including recommendations to update existing attributes and to incorporate new attributes (recommendations 21 to 32).

The Building Belonging Report also recommended introducing a positive duty to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, and other prohibited conduct as far as possible (recommendation 15.1). The QHRC recommended that the positive duty 'apply to anyone who has a legal obligation under the Act, and for all attributes and areas covered by the Act' (recommendation 15.2) and that the Act should prescribe certain factors that must be considered in determining whether a measure taken to comply with the duty is 'reasonable and proportionate' (recommendation 15.3).

### **Alignment with *Industrial Relations Act 2016***

Amendments to the AD Act will also ensure that there is greater consistency with the *Industrial Relations Act 2016* (Industrial Relations Act) in relation to who may be an agent and who may represent a party for work-related complaints, which limit agency and representation by employee and employer organisations to such organisations that are registered. The amendments also introduce a definition of 'trade union activity', which has been adapted from the definition of 'industrial activity' in the Industrial Relations Act.

### **Passing of *Respect at Work and Other Matters Amendment Act 2024***

Consistent with the AHRC's recommendation, in September 2024, the former Labor Government passed the *Respect at Work and Other Matters Amendment Act 2024*, with specific provisions set to commence on 1 July 2025.

## *Crime and Corruption (Restoring Reporting Powers) and Other Legislation Amendment Act 2025*

In April 2025, the Crisafulli LNP Government passed legislation to indefinitely delay the changes under the *Respect at Work and Other Matters Amendment Act 2024* that were due to commence on 1 July 2025. As a result of the Crisafulli LNP Government’s decision, changes that have been postponed indefinitely include:

- new protections against discrimination to Queenslanders experiencing domestic or family violence or homelessness
- new protections against vilification for Queenslanders with a disability and older people
- a new legal requirement for businesses, organisations and government agencies to prevent discrimination, rather than respond to problems after they occur (‘positive duty’).
- Reforms to make sex-based harassment unlawful
- Improving recognition on intersectional discrimination and allowing people to make complaints on combined grounds.
- Making definitions and legal tests easier to understand and apply, and giving people longer timeframes to make complaints to the Commission

This in many Queenslanders eyes is a shameful act by the Crisafulli LNP Government.

## **Achievement of policy objectives**

### **Expanding and updating protected attributes**

The Bill includes amendments to introduce new attributes on the basis of which discrimination is prohibited and updates some of the existing attributes. The table below summarises the amendments made to attributes on the basis of which discrimination is prohibited under the AD Act.

<b>Attribute</b>	<b>New or updated?</b>	<b>Definition</b>
Expunged conviction	New attribute	Means the person has an expunged conviction under the <i>Criminal Law (Historical Homosexual Convictions Expungement) Act 2017</i> .
Family, carer or kinship responsibilities	Updated to include ‘carer or kinship responsibilities’, and to omit the existing definition of ‘family responsibilities’	Not defined
Homelessness	New attribute	Not defined
Irrelevant medical record	New attribute	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.
Parental status	Definition of ‘parent’ updated	<i>medical record</i> , of a person, includes a record of applications or claims the person has made for compensation or other money to be paid under—

		<p>(a) the workers' compensation scheme under the <i>Workers' Compensation and Rehabilitation Act 2003</i>; or</p> <p>(b) a similar scheme under another Act or a law of another State or the Commonwealth.</p>
Physical appearance	New attribute	<p>Means whether or not a person is a parent.</p> <p><b>parent</b> includes—</p> <p>(a) step-parent; and</p> <p>(b) adoptive parent; and</p> <p>(c) foster parent; and</p> <p>(d) guardian; and</p> <p>(e) for an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a parent of the person; and</p> <p>(f) for a Torres Strait Islander person—a person who, under Island custom, is regarded as a parent of the person.</p>
Pregnancy or potential pregnancy	Updated to include potential pregnancy, consistent with the SD Act	<p>means—</p> <p>(a) the person's weight, size or height; or</p> <p>(b) the presence of a birth mark or scar on the person's face or body; or</p> <p>(c) any other characteristic of the person's face or body—</p> <p>(i) that the person has because of another attribute of the person; or</p> <p>(ii) that is not freely chosen.</p>
Race	Definition updated to include immigration or migration status, and caste	<p><b>potential pregnancy</b>, in relation to a person, includes—</p> <p>(a) the person's capability to become pregnant; and</p> <p>(b) the person's expressed desire to become pregnant; and</p> <p>(c) the person's likelihood, or perceived likelihood, to become pregnant.</p>
Sexual orientation	New term 'sexual orientation' instead of 'sexuality' Update definition	Means 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.
Subjection to domestic or family violence	New attribute	Means the person is or has been subject to domestic violence within the meaning given by the <i>Domestic and Family Violence Protection Act 2012</i> , section 8.
Trade union activity	New definition	Means any of the following activities—
		<p>(a) being, or not being, a member of a registered employee organisation;</p> <p>(b) joining, not joining, or refusing to join a registered employee organisation;</p>

		<ul style="list-style-type: none"> <li>(c) establishing, or being involved in establishing, a registered employee organisation;</li> <li>(d) organising or promoting, or proposing to organise or promote, a lawful activity on behalf of a registered employee organisation;</li> <li>(e) encouraging, assisting or participating in, or proposing to encourage, assist or participate in, a lawful activity organised or promoted by a registered employee organisation;</li> <li>(f) not participating in, or refusing to participate in, a lawful activity organised or promoted by a registered employee organisation;</li> <li>(g) representing or advancing the views, claims or interests of members of a registered employee organisation.</li> </ul>
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Many of the amendments outlined above are consistent with recommendations made by the Building Belonging Report.

The new protected attribute of ‘irrelevant medical record’ has been included in response to feedback from stakeholders to provide greater protection from situations when a person’s medical record is used as a basis for treating them unfairly, unless the medical record is relevant to the situation.

The Bill also includes expunged convictions under the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017* as a standalone protected attribute. This acknowledges that historical homosexual convictions which have been expunged should never have existed and are different from other records or convictions.

### **New prohibitions of harassment on the basis of sex and subjecting a person to a work environment that is hostile on the basis of sex**

#### Harassment on the basis of sex

The Respect@Work Report found that there was a disconnect between the protections which are afforded under the SD Act and public understanding of those protections.

In particular, there was a perceived gap in coverage for conduct which may not meet the threshold of ‘sexual harassment’ but would otherwise be captured by the prohibition on direct discrimination on the basis of sex. The AHRC considered that the prevalence of this behaviour in workplaces indicates that the law is not well understood, and that clarification of the scope of the law is required in order to combat it.

The Bill amends chapter 3 of the AD Act to include new prohibitions of harassment on the basis of sex. However, in contrast to the SD Act, this new prohibition only applies in relation to work or work-related areas.

The Bill incorporates a definition of ‘harassment on the basis of sex’, which has been adapted from section 28AA of the SD Act to align with the existing provision on sexual harassment in the AD Act. This definition provides that harassment on the basis of sex happens if a person:

- engages in unwelcome conduct of a demeaning nature in relation to another person;
- engages in the conduct on the basis of the sex of the person harassed; and
- engages in the conduct with the intention of offending, humiliating or intimidating the other person, or in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

As with discrimination under section 8 of the AD Act, protection is afforded for conduct which is done on the basis of:

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

<b>Harassment By</b>	<b>Of</b>
A person conducting a business or undertaking	A worker in the business or undertaking
	A person seeking work in the business or undertaking
	Any other person in connection with conducting the business or undertaking
A worker in a business or undertaking	Another worker in the business or undertaking
	A person seeking work in the business or undertaking
	Any other person in connection with the person’s work in the business or undertaking
Any person	A person conducting a business or undertaking
	A worker in a business or undertaking
A member of an organisation of workers, employers, or people who carry on an industry, profession, trade or business	Another member of the organisation
	A person seeking membership of the organisation
A person who has power to grant, renew or extend a professional, trade or business qualification or authorisation	A person seeking the grant, renewal or extension of the qualification or authorisation.

A person who is subject to harassment on the basis of sex contrary to the prohibitions introduced by the Bill would be entitled to make a complaint to the QHRC in accordance with chapter 7 of the Act.

### Work environment that is hostile on the basis of sex

In accordance with recommendation 16(c) of the Respect@Work Report, section 28M of the SD Act sets out a prohibition on subjecting another person to a work environment that is hostile on the ground of sex.

The AHRC found that conduct of this nature was likely already covered by existing prohibitions on sexual harassment or under indirect discrimination. However, as the conduct remains prevalent, there is a disconnect between the existing protections and the understanding of these protections in the general public. Furthermore, given the relative paucity in judicial consideration on this point, amendments were considered necessary in order to provide clarity and certainty to the law.

The Bill amends chapter 4 of the AD Act to introduce a new prohibition on subjecting another person to a work environment that is hostile on the ground of sex. A person who is subject to such conduct would be entitled to make a complaint to the QHRC in accordance with chapter 7 of the Act.

This new prohibition only relates to the attribute of sex. However, it would still be open for a complainant to argue that a person has imposed a term that constitutes indirect discrimination by creating or facilitating a work environment that is hostile on the basis of an attribute other than sex.

### **Amendments to vilification provisions**

The Bill implements recommendations from the LASC Vilification Report and the LASC Vilification and Hate Crimes Bill Report as follows:

- updating and expanding the list of protected attributes for both criminal and civil vilification to include sex, age, and impairment in addition to the existing attributes of race, religion, sexuality (renamed sexual orientation), gender identity and sex characteristics (recommendation 4 of the LASC Vilification Report and recommendation 2 of the LASC Vilification and Hate Crimes Bill Report);
- clarifying that the test for civil vilification does not require a complainant to show that another person was actually incited, but instead that the public act was ‘likely’ to incite (that is, an objective incitement test) (recommendation 5 of the LASC Vilification Report);
- introducing a new ‘harm-based provision’ for civil vilification, which focuses on the harm caused to people who are members of a group with a protected attribute (recommendation 5 of the LASC Vilification Report); and
- introducing a new definition of ‘public act’ for both criminal and civil vilification which encompasses social media and other online communication as well as making it clear that a public act can occur on private land or a place not ordinarily accessed by the general public such as schools and hospitals (recommendation 6 of the LASC Vilification Report and recommendation 3 of the LASC Vilification and Hate Crimes Bill Report).

### **Positive duty**

The Respect@Work Report recommended amending the SD Act to introduce a positive duty on all employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible (recommendation 17). This recommendation has been implemented in section 47C of the SD Act, which provides that ‘an employer or a person conducting a business or undertaking ... must take reasonable

and proportionate measures to eliminate' certain types of unlawful conduct by or against certain persons.

The AD Act does not currently impose an equivalent duty requiring persons to take active steps to eliminate, or prevent, conduct which is unlawful under the Act. There is an incentive under the Act for a person to take reasonable steps to prevent their workers or agents contravening the Act in order to benefit from the defence to vicarious liability proceedings under section 133 of the Act. However, the Act places the burden of enforcing the right to equality on the person who has been the subject of unlawful conduct through making a complaint.

The Respect@Work Report identified the key benefit of a positive duty as shifting the burden from individuals making complaints to employers taking proactive and preventative actions. The Building Belonging Report similarly recommended the introduction of a positive duty in order to shift the focus of Queensland's anti-discrimination law towards the prevention of discrimination, sexual harassment and other unlawful conduct (recommendation 15.1).

The Bill amends the AD Act to introduce a new positive duty that requires duty holders to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, harassment on the basis of sex and other objectionable conduct as far as possible.

The new positive duty applies to all persons (including individuals, corporations and bodies politic, including the state) who under chapters 2, 3, 4 and 5 of the AD Act, must not engage in discrimination, sexual harassment, harassment on the basis of sex and other objectionable conduct. However, the duty will only apply to individuals to the extent that they are conducting a business or undertaking, as defined in section 5 of the *Work Health and Safety Act 2011*.

In accordance with recommendation 15.2 of the Building Belonging Report, the positive duty introduced by the Bill is broader in scope than the positive duty under section 47C of the SD 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. The new positive duty under the AD Act will complement the application of the more limited duty under the SD Act by extending the duty to take positive action to a wider range of contexts and conduct in Queensland.

In practical terms, the positive duty will mean that, rather than merely waiting for complaints to be made, duty holders will be required to take proactive steps to prevent conduct that would be discrimination, sexual harassment, harassment on the basis of sex or other objectionable conduct in the first place by, for example:

- ensuring there are organisational policies in place that address the importance of respectful behaviour in the workplace;
- ensuring easily accessible information is available;
- conducting workplace surveys to measure knowledge and awareness of unlawful conduct like discrimination or sexual harassment and the extent to which such conduct may have been experienced by members of the workforce;
- engaging in informal or formal disciplinary discussions with members of the organisation who are displaying conduct that may be disrespectful and unlawful under the AD Act; and

- managers and people in positions of leadership clearly and regularly articulating expectations of respectful behaviour.

The Bill provides guidance to duty holders by prescribing certain factors that must be considered in determining whether a measure is reasonable and proportionate, in line with recommendation 17 of the Respect@Work Report, section 47C(6) of the SD Act and recommendation 15.3 of the Building Belonging Report.

The Bill also includes amendments to the functions and powers of the QHRC to provide that the commission's educational programs may support compliance with the Act, in addition to promoting the purposes of the Act, and to explicitly include a power for the commission to make guidelines. Educational programs and guidelines produced by the QHRC may provide valuable further guidance to duty holders in relation to compliance with the new positive duty.

### **Timeframe for complaints**

Recommendation 22 of the Respect@Work Report was to amend the AHRC Act so that the President's discretion to terminate a complaint under the SD Act on the grounds of time does not arise until it has been 24 months since the alleged unlawful discrimination took place.

The AHRC noted that the 6-month timeframe (which previously applied under the AHRC Act) failed to recognise the complex reasons which may account for an applicant's delay in making a sexual harassment complaint.

Section 138 of the AD Act currently provides that a person is only entitled to make a complaint within one year of the alleged contravention of the Act, subject to the commissioner's discretion to accept a complaint beyond this period if the commissioner is satisfied that the complainant has shown good cause. The Bill amends the AD Act to entitle a person to make a complaint within two years of all types of alleged contraventions of the Act about which a person may make a complaint.

This existing timeframe in the AD Act is to continue to apply to other complaints.

### **Investigation and enforcement powers**

Recommendation 18 of the Respect@Work Report was for the AHRC to be given the function of assessing compliance with, and enforcing, the positive duty, which may include providing the Commission with the power to undertake an assessment of the extent to which an organisation has complied with the duty.

Part II, division 4A of the AHRC Act provides the Commission with functions relating to the positive duty in relation to sex discrimination. Section 35B of the AHRC Act allows the Commission to inquire into a person's compliance with the positive duty in relation to sex discrimination if the Commission reasonably suspects that the person is not complying. The outcomes may include the giving of a compliance notice (section 35F) or acceptance of enforceable undertakings (section 35K).

Recommendation 19 of the Respect@Work was to amend the AHRC Act to provide the AHRC with a broad inquiry function to inquire into systemic unlawful discrimination, including systemic sexual harassment. Unlawful discrimination includes any conduct that is unlawful under the federal discrimination laws.

Part II, division 4B of the AHRC Act provides the Commission with functions relating to systemic discrimination. Section 35L of the AHRC Act provides that the Commission may inquire into any matter that may relate to systemic unlawful discrimination or suspected systemic unlawful discrimination. Systemic unlawful discrimination means unlawful discrimination that affects a class or group of persons and is continuous, repetitive or forms a pattern. An inquiry may result in a report to the Minister and the publishing of a report by the Commission (section 35Q).

The AD Act currently provides for a limited investigations power for the commission in chapter 7, part 1, division 2.

The Bill amends the AD Act to allow the commissioner to conduct investigations into:

- a person's compliance with the positive duty if the commissioner suspects that the person is not complying; and
- any matter relating to a contravention of the AD Act that is or is suspected to be systemic, if the commissioner believes the investigation would help achieve the purposes of the Act.

A contravention of the Act is systemic if it affects a class or group of persons, and is continuous, repetitive or forms a pattern.

After conducting an investigation, the commissioner may do one or more of the following:

- decide to take no further action;
- if the investigation relates to failure to comply with the positive duty —
  - help a person prepare an undertaking;
  - accept an undertaking; and
  - give a compliance notice;
- if the investigation relates to a systemic relevant contravention — prepare a report; or
- publish a prepared report about an investigation relating to a person's compliance with the positive duty, or give the prepared report to the Minister
- otherwise take any other action the commissioner is empowered to take under the Act.

The powers and protections available to the AHRC for each type of inquiry, applied by section 35D and 35N of the AHRC are:

- obtaining information and documents (section 21 of the AHRC Act);
- examination of witness (section 22 of the AHRC Act);
- offences for failure to comply with a notice to give information (section 23 of the AHRC Act);
- protection of certain information from the exercise of powers (section 24 of the AHRC Act); and
- offences for obstruction (section 26 of the AHRC Act).

The Bill introduces broadly analogous powers for both types of investigations for the commissioner.

## Alternative ways of achieving policy objectives

To implement the remaining identified Respect@Work Report recommendations and other measures in the Bill, a legislative response is required.

There is one other way that it can be achieved which is for the Crisafulli LNP Government via the LNP Attorney-General and Minister for Justice to stop delaying these laws, and proclaim the laws that the Crisafulli LNP Government paused as law. This could occur with a stroke of a pen, by the LNP Attorney-General and Minister for Justice.

## Estimated cost for government implementation

Implementation costs are expected to be met from within existing budget allocations.

## Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992 (LS Act)*. Potential impacts on fundamental legislative principles are addressed below.

### **Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the LS Act)**

#### Prohibitions of certain types of conduct

The Bill imposes limits on the rights and liberties of individuals by expanding the list of attributes on the basis of which discrimination is prohibited and imposing new prohibitions of certain conduct — namely, harassment on the basis of sex (clause 18), hateful, reviling, seriously contemptuous, or seriously ridiculing conduct (clause 21), and subjecting another person to a work environment that is hostile on the basis of sex (clause 22).

These amendments could be considered to impact on the fundamental legislative principle that legislation should have regard to the rights and liberties of individuals (section 4(2)(a) of the LS Act) including that legislation should not, without reasonable justification, prohibit ordinary conduct. The introduction of new prohibitions in relation to harassment on the basis of sex, vilification and hostile work environments is in recognition of the significant harm, including personal, social and economic harm, caused by such conduct.

The expansion of the list of protected attributes recognises the historic and continuing unfavourable treatment on the basis of these attributes, and the resulting harm. The purpose of the amendments is accordingly to ensure the right to equality for people who have been subject to systemic discrimination and historical disadvantage.

The new prohibitions do not extend to all areas of life, but only to certain contexts related to work (for harassment on the basis of sex and hostile workplace environments) or to public acts (for the new vilification prohibition).

The expanded list of protected attributes will have effect in relation to the existing prohibitions of discrimination, which only apply in relation to certain areas of activity. This ensures that the prohibitions, and the new protected attributes, will not impact conduct in private settings.

Therefore, to the extent that these prohibitions impact on the rights and liberties of individuals (to engage in certain conduct) it is considered justified, having regard to the harm caused to other persons as a result of this conduct and that the prohibitions are limited to public areas of life.

#### Updated exemptions for compliance with laws

The Bill includes amendments to update the exemption under section 106 of the AD Act in relation to compliance with laws and orders of courts and tribunals (clause 13), and the equivalent exemption in relation to requests for unnecessary information under section 124 (clause 20).

Allowing discrimination and requests for unnecessary information by updating sections 106 and 124 of the AD Act could be considered to impact on the fundamental legislative principle that legislation should have regard to the rights and liberties of individuals (section 4(2)(a) of the LS Act) – including the right to equality under the law and non-discrimination.

Exemptions under the AD Act are intended to balance the importance of providing protection from discrimination with legitimate reasons that justify differential treatment. The updated exemptions in relation to compliance with laws ensures that a person cannot be held liable for complying with a duty or obligation which the law imposes on them. Enabling compliance with legislative duties is necessary to upholding the rule of law.

On balance, the updated exemptions in relation to compliance with laws under sections 106 and 124 are considered justified given that they are appropriately tailored to ensure that discrimination is only permitted for a proper purpose and the exemptions provide certainty for people about the scope and limits of the prohibitions on discrimination and requests for unnecessary information.

#### New vilification prohibition - hateful, reviling, seriously contemptuous, or seriously ridiculing conduct

The expansion of the attributes on the basis of which vilification is prohibited, and the new prohibition of hateful, reviling, seriously contemptuous, or seriously ridiculing conduct, impact on an individual's right to free speech and so may be considered to impact on the fundamental legislative principle that legislation should have regard to the rights and liberties of individuals (section 4(2)(a) of the LS Act).

The prohibition of vilification is in recognition of the significant harm caused not only to individuals who have been subject to systemic discrimination and social exclusion on the basis of certain protected attributes, but also the harm caused to the community, including the breakdown of social cohesion.

The two prohibitions are tailored towards addressing these harms. The 'harm-based' provision (new section 124C) focuses on the harm caused to the individual by the conduct, and the 'incitement' provision (new section 124D) focuses on conduct that is capable of inciting hatred (in others) towards, serious contempt for, or severe ridicule of, a person or group of persons.

While free speech is a very important right, it is not absolute and must be balanced against the right of individuals to live free from fear, denigration, discrimination and intimidation and

the objective of promoting social cohesion and public order. Vilification is aimed at damaging the dignity and public standing of those subject to the speech and inciting serious contempt and hatred towards them by other members of the community. Living free from fear, denigration, discrimination and intimidation based on a particular attribute is central to living with dignity and enjoying equal social standing with others in society who do not have these attributes.

The test for the incitement prohibition has a very high threshold: it must be likely to *incite hatred towards, serious contempt for, or severe ridicule of*, a person or group of persons. The test for the harm-based provision, although focused on the harm to the individual, also has a high threshold. The public act must involve conduct that a reasonable person would consider *hateful, reviling, seriously contemptuous, or seriously ridiculing*.

The Bill also includes exceptions for these prohibitions. For both the ‘harm-based’ provision and the ‘incitement’ provision, the following is not unlawful: publication of a fair report of a public act referred to in the provision; the publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; and a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.

The prohibition on vilification only applies to ‘public acts’ and does not extend into private life.

Finally, these prohibitions do not apply to all protected attributes, but only to certain attributes — namely, age, impairment, gender identity, race, religion, sex, sex characteristics and sexual orientation. Because of the significance of the right to free speech, the prohibited grounds for vilification are traditionally more confined than discrimination and tend to be limited to the types of attributes that are generally considered immutable.

To the extent that the prohibitions on vilification limit the right to free speech, or freedom of expression, it is considered that the limitation is justified given the harm caused to individuals and social cohesion caused by vilification. The prohibitions are also sufficiently narrowly confined, only apply to public acts and are subject to numerous exceptions so as not to unnecessarily stifle reasonable public debate and discussion engaged in good faith for academic, artistic, scientific or research purposes.

#### Commissioner’s powers in conducting an investigation

The Bill also expands the circumstances in which the commissioner may conduct an investigation (clause 38). This may impact the fundamental legislative principle that legislation should have regard to the rights and liberties of individuals (section 4(2)(a) LS Act).

In conducting an investigation, the commissioner will be able to direct parties to provide information or documents and to attend before the commission while undertaking an investigation. A person is liable to a maximum penalty of 100 penalty units for failure to comply with the direction.

The penalty level for an offence, including whether it is proportionate to the level of seriousness of the offence and consistent with other similar offences, is relevant to whether

the offence has sufficient regard to the rights and liberties of persons who may be subject to it.

The penalty for the new offence is considered proportionate and relevant to the actions to which they apply, taking into account comparable offences in other Queensland legislation. The penalty is sufficiently high to deter non-compliance and thereby support the purposes of the Act effectively and allow the functions and powers of the commissioner to be performed and exercised with appropriate cooperation from relevant persons.

The inclusion of ‘without reasonable excuse’ in the offence acknowledges that there are likely to be a range of matters that are peculiarly within the knowledge of the defendant and that the defendant would be better positioned than the prosecution to meet the evidential burden. It ensures liability would not be unjustly imposed, given the unpredictability of situations likely to arise.

Particular circumstances, such as requiring a person to disclose information that is the subject of legal professional privilege or might tend to incriminate an individual or make them liable to a penalty, may apply as a reasonable excuse for a person not to comply with a direction. A person required to attend before the commissioner is entitled to an amount equivalent to the amount the person would receive under the Supreme Court of Queensland Act 1991 if the person were required to attend a Magistrates Court as a witness. These safeguards are also consistent with the principles of natural justice and provide appropriate protection against self-incrimination.

The commissioner’s powers are considered justified to support the compliance and enforcement powers in the Bill, including the ability to undertake an investigation into compliance with the new positive duty or a contravention that is or is suspected to be systemic, and is a work-related matter.

#### Restriction on appointment of agent for work related complaints

Clause 28 amends section 134 of the AD Act to provide that a person’s agent for a work-related complaint cannot be an employee or officer of, or acting for, an entity that purports to represent the industrial interests of employees or employers, other than an entity that is an organisation of employees or employers registered under the Industrial Relations Act or the *Fair Work (Registered Organisations) Act 2009* (Cwlth).

This provision could be considered to be inconsistent with the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals (section 4(2) of the LS Act) because it interferes with a person’s freedom of contract to appoint another person or entity as an agent under the general law of agency.

These provisions support amendments to the Industrial Relations Act (by the *Industrial Relations and Other Legislation Amendment Act 2022*) that were made to ensure that employees’ and employers’ industrial interests are effectively represented by entities subject to regulation under the Industrial Relations Act rather than unregulated entities who are not required to fulfil the high level of governance duties under that legislation. The amendments to the Industrial Relations Act were designed to protect members’ interests by promoting integrity, accountability and transparency of employee and employer organisations. The Bill supports the changes to the industrial relations framework by ensuring that a person’s agent for a work-related complaint is an entity that can appear in the IRC under the Industrial

Relations Act. Accordingly, any impact on fundamental legislative principles is considered justified.

#### Updated tests for discrimination

The proposed Bill would impact the scope of prohibited conduct under the AD Act by amending the definitions of direct and indirect discrimination, and providing for protection against intersectional and cumulative discrimination. Consequential amendments are also made to the *Corrective Services Act 2006* to reflect the updated definitions of direct and indirect discrimination.

These amendments could be considered to impact on the fundamental legislative principle that legislation should have regard to the rights and liberties of individuals (section 4(2)(a) of the LS Act) including that legislation should not, without reasonable justification, prohibit ordinary conduct.

The amendments to the definitions of direct and indirect discrimination are intended to ensure that the AD Act continues to provide effective protection against discrimination by modernising and simplifying the tests for discrimination. The amendment to introduce a new protected attribute of a combination of two or more protected attributes captures intersectional and cumulative discrimination, recognising that people may experience discrimination on the basis of two or more attributes, or may experience discrimination differently as a result of the combined effect of two or more attributes.

These amendments will have effect in relation to the existing prohibitions of discrimination, which only apply in relation to certain areas of activity. This ensures that the prohibitions will not impact conduct in private settings.

Therefore, to the extent that these amendments impact on the rights and liberties of individuals (to engage in certain conduct), the impact is considered justified, noting that the amendments will only have effect with respect to existing discrimination prohibitions, which apply to public areas of life, and having regard to the importance of the amendments to ensuring the AD Act provides effective protection against discrimination.

**Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a) of the LS Act) and consistent with principles of natural justice (section 4(3)(b) of the LS Act)**

#### Investigations and compliance tools

Clause 38 of the Bill gives the commissioner power to conduct an investigation into: a person's compliance with the positive duty; and, any matter that may relate to a contravention that is or is suspected to be systemic, and is a work-related matter.

At the conclusion of an investigation relating to compliance with the positive duty, the commissioner has a range of options, including to: enter into enforceable undertakings with a duty holder; issue a compliance notice; and apply to the tribunal for an order requiring a person to comply with the notice. For investigations into systemic work-related contraventions on the basis of sex, the commissioner may prepare a report and report to the Minister, who must table the report in Parliament within six sitting days of receiving it, or publish the report, or both.

These investigation and compliance tools could potentially be viewed as departing from the fundamental legislative principle that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is consistent with principles of natural justice (section 4(3)(b) of the LS Act).

The Bill clearly sets out that the commissioner may only conduct an investigation in relation to a person's compliance with the positive duty if the commissioner suspects that the person is not complying with the positive duty. The commissioner may investigate systemic work the commissioner believes that doing so would help achieve the purposes of the Act. Further, the commissioner must initiate an investigation if requested to do so by the Minister or if the tribunal refers a matter to the commissioner for investigation.

If, at the conclusion of an investigation, the commissioner prepares a report, the report must not include personal information about an individual unless that information has previously been published and must not include an adverse comment about an entity unless that entity has been given an opportunity to make submissions in relation to the comment and the entity's submissions are fairly stated in the report.

The power to conduct an investigation is central to the new function of the QHRC to proactively support compliance with the Act, rather than simply relying on individuals subject to alleged contraventions making complaints. These high-level compliance powers are aimed at identifying and addressing systemic work-related contraventions on the basis of sex, and promoting compliance with the newly introduced positive duty.

At the conclusion of an investigation into compliance with the positive duty, the commissioner may accept an enforceable undertaking from a person or issue a compliance notice, both of which are enforceable. If a person fails to comply with the undertaking or the compliance notice, enforcement is by way of application to a tribunal. If the tribunal is satisfied that the person has failed to comply with the undertaking or notice, the tribunal may make an order requiring the person to comply.

These powers may be considered to depart from the fundamental legislative principles that rights and liberties, or obligations, should only be dependent on administrative power if the power is sufficiently defined and subject to appropriate review (section 4(3)(a) of the LS Act) and that legislation should be consistent with principles of natural justice (section 4(3)(b) of the LS Act).

An enforceable undertaking may only be entered into if the commissioner considers a person has contravened, is contravening or is likely to contravene the positive duty, and may only be entered into with the consent of the person subject to the undertaking. The commissioner and the person may also agree to amend the undertaking at any time. The commissioner may also unilaterally withdraw the commissioner's acceptance of an undertaking, but only if the commissioner considers the person has failed to comply with an order made by the tribunal to comply with the undertaking, and the commissioner has given the person the opportunity to show, within a stated period of at least 14 days, to the commissioner's satisfaction that the person is complying with the undertaking.

The commissioner may only make a compliance notice if the commissioner considers that a person has contravened, is contravening, or is likely to contravene the positive duty, and

either the person has not offered an enforceable undertaking acceptable to the commissioner in relation to the contravention or the commissioner has accepted an enforceable undertaking and the person has failed to comply with the undertaking and the commissioner has withdrawn the undertaking.

A decision of the commissioner to issue a compliance notice is also subject to review by the tribunal. The person subject to the compliance notice may make an application to the tribunal for a review of the decision to issue the notice or the terms of the notice.

The powers of the commissioner to enter into enforceable undertakings and issue compliance notices are central to the new function of the QHRC to proactively support compliance with the positive duty.

These powers of the commissioner in relation to investigations and compliance tools (including enforceable undertakings and compliance notices) are sufficiently defined, are subject to appropriate review, and are considered consistent with natural justice.

### **Legislation should be consistent with the principles of natural justice (section 4(3)(b) of the LS Act)**

#### Representation in IRC

Clause 42 inserts a new section of the AD Act that provides that, in a complaint proceeding before the IRC, a party to a complaint or a person ordered or permitted to appear or to be represented in the complaint proceeding, may be represented in the proceeding only as provided under the *Industrial Relations Act*, section 529.

This restriction on the persons by whom a party can be represented in a complaint proceeding may be inconsistent with the fundamental legislative principle that legislation should be consistent with the principles of natural justice (section 4(3)(b) of the LS Act).

These provisions support amendments to the Industrial Relations Act (by the *Industrial Relations and Other Legislation Amendment Act 2022*) that were made to ensure that employees' and employers' industrial interests are effectively represented by entities subject to regulation under the Industrial Relations Act rather than unregulated entities who are not required to fulfil the high level of governance duties under that legislation. The Bill supports the changes to the industrial relations framework by ensuring that restrictions on representation of parties before the IRC under the Industrial Relations Act apply in relation to proceedings commenced under the AD Act. Accordingly, any impact on fundamental legislative principles is considered justified.

#### Publication of reports for investigation into compliance with positive duty

The proposed amendments will expand the scope of the commissioner's reporting powers to enable reporting on investigations into all types of systemic contraventions and investigations into compliance with the positive duty.

At the conclusion of an investigation in relation to systemic contraventions or compliance with the positive duty, the commissioner will have the power to prepare a report and give it to the Minister (who must table the report in Parliament within six sitting days of receiving it), or publish the report, or do both of these things.

The expansion of the commissioner's reporting powers will provide the QHRC with a greater suite of tools to perform its new function in relation to proactively supporting compliance with the positive duty. The publication of reports about compliance with the positive duty by duty holders may, for example, have an important educative function for other duty holders.

The expanded reporting powers could potentially be viewed as departing from the fundamental legislative principle that legislation should be consistent with principles of natural justice (section 4(3)(b) of the LS Act).

However, the Bill includes important safeguards in relation to the content of reports. If, at the conclusion of an investigation, the commissioner prepares a report, the report must not include personal information about an individual unless that information has previously been published and must not include an adverse comment about an entity unless that entity has been given an opportunity to make submissions in relation to the comment and the entity's submissions are fairly stated in the report.

The reporting powers of the commissioner in relation to investigations are accordingly considered consistent with the principles of natural justice

### **Legislation should not allow for the reversal of the onus of proof – abrogation of common law rights and principles**

#### Burden of proof

The amendments include the introduction of a 'shared burden of proof' that will apply primarily to complaints of direct discrimination.

The effect of the amendments will be that 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 that is the subject of the alleged contravention, the respondent is taken to have contravened the provision. This does not apply if the respondent proves, on the balance of probabilities, that the respondent did not contravene the provision. This means that the complainant need only establish a prima facie case of discrimination, then the burden shifts to the respondent to show, on the balance of probabilities, that the reason for their impugned conduct was not because the complainant had an attribute, or that there was some other non-discriminatory reason, or that they otherwise did not contravene the Act.

While the principle in relation to the reversal of the onus of proof in the LS Act (section 4(3)(d)) is expressly directed towards criminal proceedings, the shared burden of proof for direct discrimination may be seen to abrogate the common law principle that the burden of proof in a civil claim will generally lie on the plaintiff or complainant for all essential elements.

In this case, the shared burden can be justified on the basis that the facts which are relevant to the reason for the treatment of the complainant by the respondent are normally in the possession of the respondent. Bearing the whole burden of proof is too onerous for complainants, especially if unrepresented. Furthermore, time and costs may be saved by a legislative approach that focuses attention on the key issues at stake in complaints of direct discrimination.

## Consultation

Consultation was originally undertaken by the former Labor Government with the Queensland Council of Unions in relation to the amendments to the AD Act to implement recommendations from the Respect@Work Report.

The amendments to introduce a broad positive duty (consistent with the Building Belonging Report recommendations), the amendments to protected attributes (other than ‘irrelevant medical record’) and the amendments to the vilification provisions (to implement various recommendations of the LASC Vilification Report and the LASC Vilification and Hate Crimes Bill Report) were included in a draft exposure version of the Anti-Discrimination Bill 2024 that was subject to broad public consultation between 1 March 2024 and 22 March 2024 and were broadly supported by stakeholders.

Further consultation was undertaken during the former Community Safety and Legal Affairs Committee’s inquiry into the *Respect at Work and Other Matters Amendment Bill 2024*.

Following the Crisafulli LNP Government’s decision to indefinitely postpone the Anti-Discrimination Act reforms that were due to commence on 1 July, the Queensland Labor Opposition has consulted with Queenslanders and the Queensland Council of Unions on the development and introduction of the *Strengthening Protections for Queensland Workers Amendment Bill 2026*.

Consultation with the Queensland Parliamentary Service has occurred in relation to technical and procedural aspects of the Bill.

## Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland. Although uniformity with other jurisdictions is not required, due regard has been had to the approach taken in other Australian jurisdictions in the development of the Bill.

The amendments to the AD Act are broadly consistent with key changes to the SD Act and the AHRC Act made in response to the AHRC’s Respect@Work Report. The introduction of a positive duty to take reasonable and proportionate measures to eliminate certain unlawful conduct is also consistent with the *Discrimination Act 1991 (ACT)*, *Anti-Discrimination Act 1992 (NT)* and *Equal Opportunity Act 2010 (Vic)*. Equivalent attributes to those introduced by the Bill are protected by discrimination laws in one or more other Australian jurisdictions (namely, the *Discrimination Act 1991 (ACT)*, the *Anti-Discrimination Act 1992 (NT)*, the *Anti-Discrimination Act 1998 (Tas)* and the *Equal Opportunity Act 2010 (Vic)*).

## Notes on provisions

### Part 1 Preliminary

*Clause 1* provides the Short Title of the Act.

### Part 2 Amendment of Anti-Discrimination Act 1991

**Clause 2** provides that this part and schedule 1 amend the *Anti-Discrimination Act 1991* (AD Act).

**Clause 3** amends the long title to replace the existing reference to ‘equality of opportunity’ with ‘equal opportunity and equitable outcomes’. The concept of ‘equality of opportunity’ currently underpins the preamble and purpose provisions throughout the AD Act. The Bill updates references to ‘equality of opportunity’ to refer instead to ‘equal opportunity and equitable outcomes’. This is consistent with the concept of substantive equality, which recognises that equality of opportunity (or formal equality) may not be sufficient to secure equitable outcomes. To achieve equality of outcomes it may be necessary to accommodate differences and treat various groups differently, recognising that some people have been subject to systemic discrimination and historical disadvantage.

**Clause 4** amends paragraph 7 of the preamble to replace the existing reference to ‘equality of opportunity’ with ‘equal opportunity and equitable outcomes’, and to insert a reference to ‘harassment on the basis of sex’.

**Clause 5** amends section 6 (Act’s anti-discrimination purpose and how it is to be achieved) to replace the existing reference to ‘equality of opportunity’ with ‘equal opportunity and equitable outcomes’.

**Clause 6** amends section 7 (Discrimination on the basis of certain attributes prohibited) to insert ‘expunged conviction’, ‘homelessness’, ‘irrelevant medical record’, ‘physical appearance’ and ‘subjection to domestic or family violence’ as new attributes on the basis of which discrimination is prohibited, and to make consequential numbering changes, and include a combination of two or more attributes otherwise listed in section 7 as an attribute on the basis of which discrimination is prohibited by the AD Act. The clause also modernises certain existing attributes by replacing ‘family responsibilities’ with ‘family, carer or kinship responsibilities’, replacing ‘pregnancy’ with ‘pregnancy or potential pregnancy’, and replacing ‘sexuality’ with ‘sexual orientation’. Definitions of the terms ‘expunged conviction’, ‘irrelevant medical record’, ‘medical record’, ‘physical appearance’, ‘potential pregnancy’, ‘sexual orientation’ and ‘subjection to domestic or family violence’ are added to schedule 1 of the AD Act by clause 46 of the Bill.

This amendment makes it clear that the AD Act protects against what is sometimes referred to as ‘multiple discrimination’, which can manifest as either ‘cumulative discrimination’ or ‘intersectional discrimination.’

Cumulative discrimination refers to discrimination experienced on two or more distinct grounds. For example, a person who has a mental illness and is homeless may experience discrimination because they have both protected attributes.

Intersectional discrimination, on the other hand, is where a person experiences discrimination based on a combination of attributes which interact with each other in a way that results in a distinct and specific form of discrimination.

**Clause 7** amends section 8 (Meaning of discrimination on the basis of an attribute) 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. This further ensures that cumulative and intersectional discrimination are captured with respect to the prohibitions of discrimination under the AD Act.

**Clause 8** omits sections 10 and 11 of the AD Act and inserts new sections 10 (Meaning of direct discrimination), 11 (Meaning of indirect discrimination) and 11A (When does a person discriminate against another person).

New subsection 10(1) defines direct discrimination as where a person treats, or proposes to treat, another person unfavourably because the other person has an attribute. New subsection 10(2) provides that the attribute is only required to be one of the reasons, rather than the substantial reason, for the unfavourable treatment, and that it is irrelevant whether the person who discriminates considers that the treatment is unfavourable.

The new definition of direct discrimination removes the requirement for a comparator inherent in the ‘less favourable’ test, and instead focuses on the nature of the conduct itself, and the reasons for it. In this way, the amendment simplifies the definition by removing unnecessary technicalities.

New subsection 11(1) defines indirect discrimination as where a person imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging another person because the other person has an attribute, and the condition, requirement or practice is not reasonable. This definition focuses 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 the relevant circumstances.

New subsection 11(2) provides that creating an environment in which a person with an attribute is disadvantaged is taken to be imposing a condition, requirement or practice. This subclause makes clear that conduct of this nature falls within the scope of the definition of indirect discrimination in subsection (1)(a).

New subsection 11(3) provides that the onus of proving whether the condition, requirement or practice is reasonable is on the person who imposed, or proposed to impose, the condition, requirement or practice. Placing the burden of proof on the person who imposes the condition, requirement or practice recognises that the information which is relevant to determining reasonableness is most likely to lie with the person who imposes the condition, requirement or practice. The standard of proof required is on the balance of probabilities.

New subsection 11(4) sets out a number of factors which may be relevant to the determination of whether a condition, requirement or practice is reasonable. The factors which are listed are directed towards a fulsome consideration of the relevant impact on both the person who is disadvantaged and the person who is imposing or proposing to impose the condition, requirement or practice. The list is not exhaustive and contemplates, at (4)(g), that there may be other relevant matters that may need to be considered based on the particular circumstances in which it arises.

New subsection 11A(1) provides that a person discriminates against another person if the person directly or indirectly discriminates against the other person on the basis of an attribute.

New subsection 11A(2) provides that it does not matter: whether the discrimination is only direct discrimination, only indirect discrimination or both direct discrimination and indirect discrimination; whether the person who discriminates is aware of the discrimination; or whether the discrimination happens because the person does an act or omission.

New subsection 11A(3) provides that a person's motive for discriminating against another person is irrelevant.

**Clause 9** amends section 19 (Discrimination by industrial, professional, trade or business organisation in pre-membership area) to omit the reference to 'if the *Industrial Relations Act 2016*, chapter 12, part 9, division 2 or part 10 applies' and insert 'under the *Industrial Relations Act 2016*, chapter 12, part 9, division 2 or part 10'.

**Clause 10** amends section 20 (Discrimination by industrial, professional, trade or business organisation in membership area) to omit the reference to 'if the *Industrial Relations Act 2016*, chapter 12, part 9, division 2 or part 10 applies' and insert 'under the *Industrial Relations Act 2016*, chapter 12, part 9, division 2 or part 10'.

**Clause 11** amends section 21 (Discrimination by qualifying body in pre-qualification area) to make amendments which are consequential to the inclusion of a definition of 'professional, trade or business qualification or authorisation' in schedule 1. The amendments simplify the drafting of the provision without impacting its operation.

**Clause 12** amends section 22 (Discrimination by qualifying body in qualification area) to make amendments which are consequential to the inclusion of a definition of 'professional, trade or business qualification or authorisation' in schedule 1. The amendments simplify the drafting of the provision without impacting its operation.

**Clause 13** replaces the exemption under section 106 (Acts done in compliance with legislation etc.). The new exemption permits discrimination which is necessary to comply with another Act or an Act of the Commonwealth, or an order of a court or tribunal. In accordance with section 7 of the *Acts Interpretation 1954*, the exemption also permits discrimination which is necessary to comply with a statutory instrument made or in force under an Act.

**Clause 14** amends the heading of chapter 3 (Sexual harassment prohibited by this Act (complaint)) to read 'Sexual harassment and harassment on the basis of sex prohibited by this Act (complaint)'.

**Clause 15** amends the heading of chapter 3, part 1 (Act's freedom from sexual harassment purpose) to read 'Preliminary'.

**Clause 16** amends section 117 (Act's freedom from sexual harassment purpose and how it is to be achieved) to incorporate references to the new prohibition of harassment on the basis of sex. Further, subclause (2) amends section 117(1) to provide that one of the purposes of the Act is to promote equal opportunity and equitable outcomes for everyone by protecting them from sexual harassment and harassment on the basis of sex.

**Clause 17** relocates section 120 (Meaning of relevant circumstances) to part 1 of chapter 3 as new section 117A and inserts a new subsection (1).

Subsection (1) provides that the section applies in relation to determining whether conduct of a person constitutes sexual harassment or harassment on the basis of sex of another person. The effect of this is to ensure the existing test for determining whether conduct constitutes sexual harassment will also apply to the new prohibitions of harassment on the basis of sex.

*Clause 18* inserts a new part 3 in chapter 3 of the AD Act.

Section 120 (Meaning of harassment on the basis of sex) of the new part provides for the definition of ‘harassment on the basis of sex’ which is defined to happen if a person:

- engages in unwelcome conduct of a demeaning nature in relation to another person; and
- engages in the conduct on the basis of the other person’s sex or a characteristic that a person of the other person’s sex generally has, or a characteristic that is often imputed to a person of the other person’s sex, or a sex the other person is presumed to be, or to have been at any time, by the person engaging in the conduct, or a sex the other person has been, even if the person is not that sex at the time of the conduct; and
- engages in the conduct with the intention of offending, humiliating or intimidating the other person, or in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

The objective test for determining where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct is the same as the test which applies for sexual harassment. It is set out in section 117A of the AD Act.

The definition also provides that where there are two or more reasons for the conduct, the other person’s sex needs to only be one of the reasons. This is in contrast to the definition of discrimination in the AD Act, where the attribute must be the substantial reason for the conduct. This reduces the burden on complainants with respect to proving the reasons for the conduct, which can often be multifaceted and difficult to untangle.

An inclusive definition of ‘conduct’, inserted by this Bill, applies to this section to include making a statement whether the statement is made orally or in writing.

The definition of harassment on the basis of sex is modelled on section 28AA of the *Sex Discrimination Act 1984* (Cwlth) (SD Act), with appropriate modifications to align with the existing concepts and tests for sexual harassment in the AD Act and other Queensland legislation, such as the *Industrial Relations Act 2016*. The conduct which may be captured under this definition may also amount to sex discrimination, or sexual harassment, and it is intended to support those existing prohibitions in providing clear boundaries for acceptable conduct in places of work.

New section 120A (Relationship with other conduct) declares that, to remove any doubt, chapter 3, part 3 (Prohibition of harassment on the basis of sex) does not limit any other provision of the AD Act that prohibits conduct of a person that is the same as or similar to conduct prohibited under chapter 3, part 3, division 2, whether the conduct is engaged in on the basis of, or in relation to, sex or any other attribute.

Division 2 provides for the application of the prohibitions of harassment on the basis of sex. The new prohibition will generally apply in circumstances relating to work or the work-related area.

Section 120B (Person conducting business or undertaking) applies the prohibition to a person conducting a business or undertaking, which is defined in schedule 1 to have the same meaning as section 5 of the *Work Health and Safety Act 2011*. Under this section, a person

conducting a business or undertaking must not harass on the basis of sex a worker in the business or undertaking, a person seeking work in the business or undertaking, or any other person in connection with conducting the business or undertaking.

Section 120C (Worker in a business or undertaking) applies the prohibition to a worker in a business or undertaking, who must not harass on the basis of sex another worker in the business or undertaking, a person seeking work in the business or undertaking, or any other person in connection with the person's work in the business or undertaking.

Section 120D (Other person dealing with business or undertaking) applies the prohibition to a person generally, who must not harass on the basis of sex a person conducting a business or undertaking, or a worker in a business or undertaking.

Section 120E (Industrial, professional, trade or business organisation) applies the prohibition to a member of an organisation of workers, employers, or people who carry on an industry, profession, trade or business, who must not harass on the basis of sex another member of the organisation, or a person seeking membership of the organisation.

Section 120F (Qualifying body) applies the prohibition to a person who has power to grant, renew or extend a professional, trade or business qualification or authorisation, who must not harass on the basis of sex a person who is seeking the grant, renewal or extension of the qualification or authorisation. 'Professional, trade or business qualification or authorisation' is defined in schedule 1.

**Clause 19** amends section 121 (Act's freedom from associated objectionable conduct purpose and how it is to be achieved) to replace the existing reference to 'equality of opportunity' with 'equal opportunity and equitable outcomes'.

**Clause 20** amends section 124 (Unnecessary information) to omit sections 124(2) to (4), and the example, and insert new sections 124(2) and (3). Subsection (2) provides that subsection (1) does not apply to a request that is necessary to comply with another Act or an Act of the Commonwealth, or an order of a court or tribunal. This is consistent with section 106, as amended by the Bill. Subsection (3) reflects existing section 124(3), with minor amendments to clarify the operation of the provision.

**Clause 21** replaces chapter 4, part 4 (Racial and religious vilification) and inserts a new title 'Vilification on grounds of age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation'.

Section 124A (References to attribute of a person) provides that, for the purposes of chapter 4, part 4, references to relevant attributes also include 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.

This section extends the coverage of the attributes covered by the vilification provisions in part 4 in the same manner that section 8 of the AD Act extends the meaning of discrimination on the basis of an attribute.

Section 124B (Meaning of *public act*) provides for the meaning of public act, which is relevant to both the ‘harm-based’ vilification provision in section 124C, and the ‘incitement’ based vilification provision in section 124D. A public act is defined under this clause as including the following conduct:

- 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;
- any conduct, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, observable by the public; and
- the distribution or dissemination of any matter to the public.

However, the distribution or dissemination of any matter by a person to the public where the person does not know, and could not reasonably be expected to know, the content of the matter does not fall within the definition of a public act.

Subsection (2) makes it clear that conduct which falls within the definition in subsection (1) is a public act even if it happens on private land or in a place that is not ordinarily accessed by the general public, such as a place of work or an educational facility.

Section 124C (Hateful, reviling, seriously contemptuous, or seriously ridiculing conduct) prohibits a person, because of the age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation of another person or a group of persons, engaging 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.

Subsection (2) provides that the relevant determination of what a reasonable person would consider hateful, reviling, seriously contemptuous or seriously ridiculing is based on the objective standard of a reasonable person who has the same attribute, attributes or combination of attributes as the person or group of persons. It is not intended to measure the impact of the conduct against a reasonable person of the public at large, as the particular harm that is suffered is best determined by reference to the person or group who have that particular attribute.

Subsection (3) provides for various exceptions to the prohibition, including the publication of a fair report of a public act, publication of material which would be subject to a defence of absolute privilege in proceedings for defamation, and a public act done reasonably and in good faith for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.

The inclusion of these exceptions is critical to ensuring that the limitations imposed on the right to freedom of expression only go as far as necessary in order to achieve the purpose of promoting the right to equality and the broader purposes of the AD Act, without unjustifiably limiting the rights of others.

Section 124D (Inciting hatred, serious contempt or severe ridicule) prohibits a person, in a public act, from engaging 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. It is not necessary to show actual incitement, but instead only requires the conduct to be capable of inciting hatred, serious contempt, or severe ridicule.

Subsection (2) provides for various exceptions to the prohibition including the publication of a fair report of a public act, publication of material which would be subject to a defence of absolute privilege in proceedings for defamation, and public acts done reasonably and in good faith for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and exposition of, any act or matter.

Beyond 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.

**Clause 22** inserts a new part 5 in chapter 4 of the AD Act to prohibit hostile work environments.

Section 124E(1) prohibits hostile work environments by making it unlawful for a person to subject another person to a work environment that is hostile on the basis of sex.

Section 124E(2) provides that a person (the first person) subjects another person (the second person) to a hostile work environment on the basis of sex if the first person engages in conduct in a place where either or both the first person or second person works, and the second person is at the place at the time or after the conduct is engaged in, and a reasonable person, having regard to all circumstances, would have anticipated the possibility that the conduct would create a work environment that would be offensive, humiliating or intimidating to a person of the second person's sex because of the second person's sex, or a characteristic that a person of the second person's sex generally has, or a characteristic that is often imputed to a person of the second person's sex.

An inclusive definition of 'conduct', inserted by this Bill, applies to this section to include making a statement whether the statement is made orally or in writing.

Section 124E(3) provides that it does not matter whether the conduct would create an environment that would be offensive, humiliating or intimidating to a person for multiple reasons, as long as one of the reasons is the person's sex or a characteristic or imputed characteristic of the person's sex. As with the new prohibition of harassment on the basis of sex, this reduces the burden on complainants in proving that the work environment is hostile on the basis of sex.

Section 124E(4) makes it clear that this section does not limit the protection provided in relation to conduct that may offend, humiliate or intimidate another person by other provisions of the AD Act, such as the prohibitions on indirect discrimination or harassment. This ensures, for example, that subjecting a person to a hostile work environment on the basis of attributes other than sex is still unlawful discrimination where it would meet the definition of indirect discrimination.

Section 124F (Relevant circumstances) provides for the relevant circumstances in determining whether a reasonable person would have anticipated that the conduct would create a work environment that would be offensive, humiliating or intimidating to a person.

The new part 5 is modelled on section 28M of the SD Act with appropriate modifications to incorporate existing concepts within the AD Act. An example of such a modification is the reference to a place of work, rather than a workplace, which accords with the approach taken

in section 108 of the AD Act and aligns with the definition of ‘work’ in schedule 1 of the AD Act.

**Clause 23** amends section 125 (Act’s freedom from associated highly objectionable conduct purpose and how it is to be achieved) to replace the existing reference to ‘equality of opportunity’ with ‘equal opportunity and equitable outcomes’.

**Clause 24** amends section 130 (Meaning of victimisation) to replace the reference to ‘an act that would amount to a contravention of the Act’ with ‘an act, or made an omission, that would amount to a contravention of the Act or the positive duty’. This amendment ensures that the prohibition of victimisation extends to acts of victimisation which occur because a person, or a person associated with, or related to, the person, in good faith, alleged, or intends to allege, that a person failed to comply with the positive duty under new section 131I. Allegations about non-compliance with the positive duty cannot form the basis of a stand-alone complaint under chapter 7 of the AD Act, but may arise in other circumstances such as a complaint about another contravention of the AD Act or in the process of an investigation conducted by the commissioner.

**Clause 25** inserts new chapter 5C (Positive duty).

Section 131H (Act’s positive duty purpose and how it is to be achieved) sets out the purpose of chapter 5C, which is to promote equal opportunity and equitable outcomes for everyone by providing for the taking of positive action to prevent, as far as possible, contraventions of the Act, and to help promote, as far as possible, the achievement of substantive equality. This purpose is to be achieved by: imposing a positive duty on certain persons to eliminate, so far as possible, discrimination, sexual harassment, harassment on the basis of sex and certain other objectionable conduct; and providing for investigation into, and enforcement of, a person’s compliance with the positive duty under chapter 7, part 1A.

Section 131I (Duty to eliminate discrimination, sexual harassment, harassment on the basis of sex and other objectionable conduct) sets out the new positive duty, which requires a person to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, harassment on the basis of sex and other objectionable conduct as far as possible.

The positive duty applies to a person who must not engage in discrimination, sexual harassment, harassment on the basis of sex and other objectionable conduct under chapter 2, 3, 4 or 5. Per the *Acts Interpretation Act 1954*, a ‘person’ includes an individual and a corporation. However, subclause (2) makes clear that it only applies to an individual to the extent that an individual conducts a business or undertaking within the meaning of section 5 of the *Work Health and Safety Act 2011*. This recognises that the prohibitions under the AD Act are wide ranging, and that not every individual who is required not to engage in prohibited conduct under the Act is in a position to take reasonable and proportionate steps to ensure its elimination as far as possible.

To remove any doubt, subclause (4) clarifies that the positive duty does not limit, and applies to a person in addition to, the prohibitions applying to the person under chapter 2, 3, 4 and 5. The note to the provision highlights that duty holders which are public entities under the Human Rights Act 2019 have additional obligations to act and make decisions compatibly with human rights and to give proper consideration to human rights when making a decision under section 58 of that Act.

Section 131J (Deciding whether measure is reasonable and proportionate) sets out matters that must be considered in deciding whether a measure taken by a person to comply with the duty under section 131I(3) is reasonable and proportionate. The matters that must be considered are:

- the size, nature and circumstances of the person’s business or undertaking or operations;
- the resources of the person, whether financial or otherwise;
- the practicability and the cost of the measure;
- the person’s business and operational priorities;
- any other relevant matter.

**Clause 26** amends section 132 (Act’s vicarious liability purpose and how it is to be achieved) to replace the existing reference to ‘equality of opportunity’ with ‘equal opportunity and equitable outcomes’.

**Clause 27** amends the heading to chapter 7, part 1 (What the Queensland Human Rights Commission may do) to read ‘What the commission may do—complaints’ to better reflect the part’s content.

**Clause 28** amends section 134 (Who may complain) to provide that an agent who may make a complaint that wholly or partly relates to a work-related matter for a person subjected to an alleged contravention of the Act cannot be an employee or officer of, or acting for, an entity that purports to represent the industrial interests of employees or employers, other than an organisation of employees or employers registered under the *Industrial Relations Act 2016* or the *Fair Work (Registered Organisations) Act 2009* (Cwlth).

The clause also makes amendments to the definition of ‘relevant alleged contravention’ in section 134(5) which are consequential to the replacement of chapter 4, part 4 (Racial and religious vilification). A relevant entity will be permitted to complain to the commissioner about an alleged contravention of new section 124C (Hateful, reviling, seriously contemptuous, or seriously ridiculing conduct) or section 124D (Inciting hatred, serious contempt or severe ridicule).

**Clause 29** amends section 138 (Time limit on making complaints) to provide that the complaint period within which a person is entitled to make a complaint is within two years after the alleged contravention of the AD Act. This complaint period applies to all types of alleged contraventions of the Act about which a person may make a complaint.

**Clause 30** amends section 141A (Deferral of acceptance of complaint for out-of-time contravention) to refer to ‘complaint period’ to reflect that this will depend on whether the complaint relates to an alleged contravention that is a work-related matter or to another type of alleged contravention.

**Clause 31** amends the heading to chapter 7, part 1, division 2 (The investigation process) to read ‘Investigation of complaint’ to better reflect the division's content.

**Clause 32** amends section 154A (Investigation of complaint) to provide that chapter 7, part 1A, division 1, subdivision 2 (Conduct of investigation) applies in relation to the investigation of a complaint by the commissioner.

**Clause 33** omits section 155 and section 156. The matters covered by these sections are addressed in new chapter 7, part 1A (What the commission may do—investigations and compliance).

**Clause 34** relocates and renumbers section 157 (Commissioner may obtain actuarial, statistical or other data) as new section 173S in new chapter 7, part 1A, division 3 (Other provisions).

**Clause 35** amends the heading to chapter 7, part 1, division 3 (The conciliation process) to read ‘Conciliation of complaint’ to better reflect the division’s content.

**Clause 36** relocates and renumbers section 173 (Authentication of documents) to new section 266A in chapter 10 (Miscellaneous).

**Clause 37** relocates and renumbers section 174 (Judicial notice of commissioner’s signature) to new section 266B in chapter 10 (Miscellaneous).

**Clause 38** inserts new chapter 7, part 1A (What the commission may do—investigations and compliance), which includes new sections 173 to 173R.

The new chapter 7, part 1A integrates existing grounds for investigations with new grounds for investigations, as well as the new powers for the commissioner in relation to investigations and new possible outcomes as a result of investigations on the new grounds.

Section 173 (Application of subdivision) provides that chapter 7, part 1A, division 1, subdivision 1 (Starting investigation) does not apply in relation to a matter that is the subject of a complaint the commissioner has accepted under section 141.

Section 173A (When commissioner must conduct investigation) provides that the commissioner must conduct an investigation if requested to do so by the Minister, or if QCAT or the IRC becomes aware of circumstances that may constitute a contravention of the Act and refers the matter to the commissioner.

Section 173B (When commissioner may conduct investigation) provides that the commissioner may conduct an investigation:

- into a possible contravention of the Act against a class or group of persons discovered in the performance of the commission’s functions, if the matter is of public concern and the Minister agrees (which is an existing ground for investigation);
- relating to an allegation of an offence against the Act made to the commission (which is an existing ground for investigation);
- into a possible offence against the Act discovered in the performance of the commission’s functions (which is an existing ground for investigation);
- into a person’s compliance with the positive duty if the commissioner suspects the person is not complying (which is a new ground for investigation); and
- into any matter relating to a contravention of the AD Act that is or is suspected to be systemic, if the commissioner believes the investigation would help achieve the purposes of the Act. A contravention of the Act is systemic if the contravention affects a class or group of persons, and is continuous, repetitive or forms a pattern.

Section 173C (Commissioner must notify person about investigation) provides that, if an investigation under chapter 7, part 1A, division 1, subdivision 1 (Starting investigation)

relates to a particular person, the commissioner must give the person written notice of the investigation. The notice must invite them to make submissions in relation to the investigation within a stated reasonable time.

Section 173D (Application of subdivision) provides that chapter 7, part 1A, division 1, subdivision 2 (Conduct of investigation) applies in relation to an investigation of a complaint under section 154A or under chapter 7, part 1A, division 1, subdivision 1 (Starting investigation).

Section 173E (Conduct of investigation generally) provides that the commissioner may conduct an investigation in the way the commissioner considers appropriate, and that in conducting an investigation under section 173A or section 173B(1) the commissioner has the same powers the commissioner has in dealing with a complaint about a contravention or alleged contravention of the Act.

Section 173F (Power to require information or document) provides that, if the commissioner believes that a person may have information relevant to an investigation, the commissioner may, by written notice, direct the person to give the commissioner the information within a stated reasonable time, or attend before the commissioner at a stated reasonable time and place to give the information to the commissioner. The person must comply with the direction unless the person has a reasonable excuse, such as those reasonable excuses stated as examples. Failure to comply is an offence with a maximum penalty of 100 penalty units. A person who attends before the commissioner is entitled to be paid by the commission an amount equivalent to the amount the person would receive under the *Supreme Court of Queensland Act 1991* if the person's attendance before the commissioner were attendance in a Magistrates Court as a witness.

Section 173G (Outcome of investigation) provides that, after conducting an investigation under chapter 7, part 1A, division 1, subdivision 2 (Conduct of investigation), the commissioner may decide to take no further action or take any other action the commissioner may take under the Act in relation to the matter the subject of the investigation. An example is provided which states that for an investigation relating to an offence against the Act the commissioner may decide to start a proceeding under section 226.

Section 173H (Referral to tribunal) provides that if an investigation under section 173A or section 173B(1)(a) is about a matter involving a contravention or alleged contravention of the Act and the commissioner believes the matter cannot be resolved by conciliation, the commissioner may refer the matter to the tribunal as if it were a complaint. If this occurs, the commissioner is, for the purposes of the relevant tribunal Act, the applicant.

Section 173I (Action commissioner may take) provides that, in relation to an investigation under section 173B(2) relating to a person's compliance with the positive duty, the commissioner may help a person to whom the investigation relates to prepare an undertaking, accept such an undertaking, or give a compliance notice to a person to whom the investigation relates. It also allows the commissioner to prepare a report about an investigation under section 173B(2) relating to a person's compliance with the positive duty, and publish the report or give the report to the Minister under section 173O.

Section 173J (Undertakings) allows the commissioner to accept a written undertaking under which a person undertakes to take, to stop taking or not to take stated action to comply with the positive duty, if the commissioner considers that the person has contravened, is

contravening or is likely to contravene the positive duty. The commissioner and the person may agree to amend an undertaking at any time. If the commissioner refuses to accept a written undertaking from the person, the commissioner must give a written notice of the decision and the reasons for it. The commissioner may publish an undertaking on the commission's website, and in any other way the commissioner considers appropriate.

Section 173K (Compliance with undertaking) provides that if a person fails to comply with an undertaking accepted by the commissioner from the person, the commissioner may apply to the tribunal for an order requiring the person to comply with it. If the tribunal is satisfied that the person has failed to comply with the undertaking, the tribunal may make an order requiring the person to comply with it and any other order the tribunal considers appropriate. If the person fails, or continues to fail, to comply with the undertaking after an order is made, the commissioner may withdraw acceptance of it, after giving the person the opportunity to show, within a period of at least 14 days, that the person is complying with it to the commissioner's satisfaction.

Section 173L (Compliance notices) provides that the commissioner may issue a compliance notice requiring a person to take, to stop taking or not to take stated action to comply with the positive duty if the commissioner considers the person has contravened, is contravening or is likely to contravene the positive duty after conducting an investigation. To be issued with a compliance notice, the person must either not offer an undertaking acceptable to the commissioner, or fail to comply with an undertaking resulting in the commissioner withdrawing acceptance of it. The compliance notice must include stated information.

Section 173M (Compliance with compliance notice) provides that if the commissioner has issued a compliance notice to a person which the person fails to comply with, the commissioner may apply to the tribunal for an order requiring the person to comply with it. If the tribunal is satisfied that the person has failed to comply with the compliance notice, the tribunal may make an order requiring the person to comply and any other order the tribunal considers appropriate.

Section 173N (Review of compliance notice) provides that if the commissioner issues a compliance notice to a person, they may apply to the tribunal for a review of the issuing of the compliance notice or any term of the compliance notice within 28 days after receiving the notice and as provided under the relevant tribunal Act. The tribunal may confirm the compliance notice with or without amendment, or withdraw the compliance notice. If the tribunal confirms the compliance notice, the tribunal must also consider whether the time for complying with the compliance notice should be amended.

Subsection 173O(1) (Report on investigation) provides that a report about an investigation under section 173B(2) relating to a person's compliance with the positive duty may include the commissioner's recommendations for dealing with the matter the subject of the report.

A report must not include personal information about an individual unless the information has previously been published, or given for the purpose of publication, by the individual. A report also 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.

Subsection 173O(2) provides that an adverse comment does not include a statement that a respondent did not participate in resolving a complaint. Although the Bill does not provide

for complaints to be made about a contravention of the positive duty, complaints made about other contraventions may be relevant to an investigation.

Subsection 173O(3) provides that the commissioner may do either or both of: publishing a copy of the report on the commission's website and in any other way the commissioner considers appropriate; and giving the report to the Minister.

Subsection 173O(4) provides that if the Minister is given a report, the Minister must table it in the Legislative Assembly within six sitting days after receiving it.

Section 173P (Action commissioner may take) provides that in relation to an investigation under section 173B(3) relating to a systemic work-related contravention, the commissioner may prepare a report about the investigation, and publish the report or give it to the Minister under section 173Q.

Section 173Q (Report on investigation) provides that a report about the investigation relating to a systemic work-related contravention may include the commissioner's recommendations for dealing with the matter the subject of the report, and must only include personal information in stated circumstances. The report 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. An adverse comment does not include a statement that a respondent did not participate in resolving a complaint. The commissioner may publish a copy of the report on the commission's website and in any other way the commissioner considers appropriate, and may give the report to the Minister. If the commission gives the report to the Minister, the Minister must table it within six sitting days after the Minister receives it.

Section 173R (Commission guidelines) provides that the commission may issue guidelines about how persons may comply with the positive duty, and may issue guidelines on any matter relating to the Act.

Section 173S (Publication of guidelines) provides that the commission must publish any guidelines issued under this division on the commission's website and may publish the guidelines in any other way the commission considers appropriate.

The clause also inserts a heading for chapter 7, part 1A, division 3 (Other provisions).

**Clause 39** amends section 174A (Functions of QCAT) to refer to new functions of QCAT related to undertakings accepted under section 173J and compliance notices issued under section 173L, and makes consequential updates to paragraph references.

**Clause 40** amends section 174B (Functions of industrial relations commission) to refer to new functions of the IRC related to undertakings accepted under section 173J and compliance notices issued under section 173L, and makes consequential updates to paragraph references.

**Clause 41** amends section 175 (Time limit on referred complaints) to reflect the complaint periods as provided for in amended section 138.

**Clause 42** inserts new section 176A (Representation — industrial relations commission) which provides that a party to a proceeding for a complaint before the IRC, or a person

ordered or permitted to appear or to be represented in such a proceeding, may be represented only as provided under section 529 of the *Industrial Relations Act 2016*.

**Clause 43** makes a consequential amendment to section 223 (Contempt of commission) to reflect the insertion of new chapter 7, part 1A (What the commission may do— investigations and compliance).

**Clause 44** amends section 235 (Commission’s functions) to expand the commission’s functions in relation to investigations to conducting investigations under section 154A and chapter 7, part 1A and, if appropriate, taking action in relation to the investigation.

**Clause 45** inserts new chapter 11, part 11 (Transitional provisions for Strengthening Protections for Queensland Workers Amendment Act 2026) which contains new sections 286 to 291

Section 286 (Definitions for part) provides definitions of ‘amendment Act’, and ‘former’ and ‘new’ for a provision of the Act.

Section 287 (Time limit for making complaint) provides that new section 138 does not apply in relation to an alleged contravention of the Act that happened more than one year before commencement, and that relevant former provisions of the Act as in force before commencement continue to apply. However, the section does not affect the commissioner accepting a complaint under former sections 138(2) or 141A that was made more than one year after the alleged contravention or relates to at least one alleged contravention that happened more than one year before the complaint was made, or the tribunal accepting a referred complaint under former section 175(2) that was made to the commissioner more than one year after the alleged contravention.

Section 288 (Existing complaints by unregistered industrial organisations) provides that new section 134(2) does not apply in relation to a complaint made before the commencement.

Section 289 (Burden of proof for complaints about pre-commencement conduct) provides that new sections 204 and 205 do not apply in relation to a complaint made before the commencement, immediately before the commencement, or had not been finally dealt with; or a complaint made after the commencement in relation to an alleged contravention of the Act that happened before the commencement, and that former sections 204 and 206 of the Act as in force before commencement continue to apply, in relation to the complaint. The purpose of new section 289 is to clarify that the provisions regarding burden of proof will not affect complaints that are already on foot when the new provisions commence and will not apply to complaints about alleged contraventions that occurred prior to the commencement of the new provisions.

Section 290 (Existing investigation) provides that an investigation under section 154A or former section 155 started but not finished before the commencement may be continued and finished. New chapter 7, part 1A, division 1, subdivision 2 applies in relation to the investigation, and the investigation started under former section 155 is taken to have been started under chapter 7, part 1A, division 1, subdivision 1.

Section 291 (Existing directions for information or documents) provides that former section 156 continues to apply in relation to a direction given under that section before the commencement, as if the amendment Act had not been enacted.

**Clause 46** amends schedule 1 to insert new definitions of terms used in provisions amended by the Bill and to update or incorporate new definitions of attributes prescribed by section 7 of the Act. The clause also amends the definition of ‘complainant’ to reflect amendments made to provisions relating to representative complaints, and amends the definition of ‘contravention’ to include a reference to ‘harassment on the basis of sex’. See previous Explanatory Notes of the Respect at Work legislation for more details.

### **Part 3                   Amendment of Corrective Services Act 2006**

**Clause 47** provides that part 3 amends the *Corrective Services Act 2006*.

**Clause 48** amends section 319A (Definitions) to replace the definition of ‘relevant person’. This amendment is consequential to the amendments made to section 134 of the AD Act.

**Clause 49** makes a consequential amendment to section 319G (When treatment of offender by protected defendant is not direct discrimination) to reflect the updated meaning of direct discrimination under new section 10 of the AD Act. This amendment does not change the effect of the modifications in section 319G of the *Corrective Services Act 2006* to the operation of section 10 of the AD Act.

**Clause 50** makes a consequential amendment to section 319H (When term imposed on offender by protected defendant is not indirect discrimination) to reflect the updated meaning of indirect discrimination under new section 11 of the AD Act. This amendment does not change the effect of the modifications in section 319H of the *Corrective Services Act 2006* to the operation of section 11 of the AD Act.

### **Part 4                   Amendment of Criminal Code**

**Clause 51** provides that part 4 amends the Criminal Code.

**Clause 52** amends section 1 (definitions) to omit the definition of sexuality and insert definitions of ‘impairment’ and ‘sexual orientation’ which refer to the definition of ‘impairment’ and the definition of ‘sexual orientation’ in schedule 1 of the AD Act.

**Clause 53** amends section 52A (Offence of serious racial, religious, sexuality or gender identity vilification) to update the definition of ‘public act’ and the grounds on which serious vilification is prohibited.

**Clause 54** amends section 52B(1) to refer to ‘age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation’ instead of ‘race, religion, sexuality, sex characteristics or gender identity’.

**Clause 55** amends section 52C(5) to update the definition of ‘relevant group’ to refer to ‘age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation’ instead of ‘race, religion, sexuality, sex characteristics or gender identity’.

### **Part 5                   Amendment of Human Rights Act 2019**

**Clause 56** provides that part 5 amends the *Human Rights Act 2019*.

*Clause 57* amends the note to the definition of ‘discrimination’ in schedule 1 to omit the reference to ‘sexuality’ and insert ‘sexual orientation’. This amendment is consequential.

## **Schedule 1    Other amendments of Anti-Discrimination Act 1991**

Inserts new schedule 1 (Other amendments of Anti-Discrimination Act 1991) to make required reference updates.