



COMMUNITY SAFETY AND LEGAL AFFAIRS COMMITTEE

Members present:

Mr PS Russo MP—Chair

Mr MA Boothman MP

Ms SL Bolton MP (via teleconference)

Ms JM Bush MP (via teleconference)

Mr JE Hunt MP (via teleconference)

Mr JM Krause MP

Staff present:

Ms K O'Sullivan—Committee Secretary

Ms E Lewis—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE RESPECT AT WORK AND OTHER MATTERS AMENDMENT BILL 2024

TRANSCRIPT OF PROCEEDINGS

Monday, 15 July 2024

Brisbane

MONDAY, 15 JULY 2024

The committee met at 9.00 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Respect at Work and Other Matters Amendment Bill 2024. My name is Peter Russo. I am the member for Toohey and the chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share. With me here today are Jon Krause, the member for Scenic Rim and deputy chair; Sandy Bolton, the member for Noosa, who is appearing via teleconference; Mark Boothman, the member for Theodore; Jonty Bush, the member for Cooper, who is appearing via teleconference; and Jason Hunt, the member for Caloundra, who is also appearing via teleconference.

The purpose of today's briefing is to assist the committee with its inquiry. This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. I remind committee members that departmental officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

These proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my directions at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask everyone to kindly turn their mobile phones either off or to silent mode.

CHANDLER, Ms Kim, Director, Strategic Policy and Legislation, Department of Justice and Attorney-General

EISEMANN, Ms Joanna, Principal Legal Officer, Strategic Policy and Legislation, Department of Justice and Attorney-General

MORROW, Mr Joseph, Acting Principal Legal Officer, Strategic Policy and Legislation, Department of Justice and Attorney-General

ROBERTSON, Mrs Leanne, Assistant Director-General, Strategic Policy and Legislation, Department of Justice and Attorney-General

TAPLEY, Ms Phoebe, Senior Legal Officer, Strategic Policy and Legislation, Department of Justice and Attorney-General

CHAIR: I invite you to make an opening statement of up to five minutes, after which the committee members will have some questions for you.

Mrs Robertson: Thank you for the opportunity to provide a briefing to the committee regarding the Respect at Work and Other Matters Amendment Bill 2024. I, too, would like to acknowledge the traditional custodians of the land on which we meet today and pay my respects to elders past, present and emerging.

I note that the department has provided detailed written briefing material to the committee on the amendments in the bill and we also provided a written response to the submissions received by the committee by 2 July 2024. We provided that response on 8 July 2024. That written response addressed submissions Nos 1 through to 30. I note that we were not privy to submissions Nos 31 to 37, I believe, at the time we provided the response on 8 July. We have subsequently provided an updated response incorporating those later submissions, and I trust the committee has received that later response.

The bill amends the Anti-Discrimination Act 1991 to implement key recommendations of the following reports: the Australian Human Rights Commission report titled *Respect@Work: national inquiry into sexual harassment in Australian workplaces*; the Queensland Human Rights Commission report titled *Building belonging: review of Queensland's Anti-Discrimination Act 1991*; and the former Legal Affairs and Safety Committee reports titled *Inquiry into serious vilification and hate crimes and Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023*.

In addition to the amendments made to the Anti-Discrimination Act, the bill also amends the following acts: the Magistrates Act 1991 to provide magistrates with an entitlement to access unpaid parental leave; and the Magistrates Act, the District Court of Queensland Act 1967 and the Queensland Civil and Administrative Tribunal Act 2009 to clarify protections and immunities that apply to magistrates, District Court judges and certain officers of QCAT. It amends the Penalties and Sentences Act 1992 to implement an aggravating sentencing factor as recommended by the Queensland Sentencing Advisory Council's final report on penalties for assaults on public officers. It also amends the Penalties and Sentences Act and the Youth Justice Act 1992 to update requirements for the recording of reasons for imprisonment on detention orders.

Turning firstly to the amendments to the Anti-Discrimination Act, the *Respect@Work* report, produced by the Australian Human Rights Commission, 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 Commonwealth Sex Discrimination Act 1984 which have since been implemented. Recommendation 26 of the *Respect@Work* report was for state and territory governments to amend their anti-discrimination legislation with the objective of achieving consistency with the Sex Discrimination Act, without limiting or reducing protections.

In accordance with this recommendation, and noting the benefit of cohesive anti-discrimination schemes at the state and Commonwealth levels, the bill implements similar changes to the Anti-Discrimination Act as follows: updated object provisions that reflect a renewed focus on substantive equality; two new prohibitions on sex-based harassment and subjecting a person to a hostile work environment on the basis of sex; the introduction of a positive duty to eliminate certain conduct, including unlawful discrimination and sexual harassment, as far as possible; new investigation and enforcement powers for the Queensland Human Rights Commission with respect to the positive duty and systemic work related contraventions on the basis of sex; an increased time period for work related complaints about sex-based contraventions of the act to two years; and clarification that a costs order may only be made against a person or union who makes a representative complaint. While these amendments are broadly consistent with the changes made to the Sex Discrimination Act, they have been appropriately adapted for the Queensland context in order to ensure internal consistency within the Anti-Discrimination Act while still achieving the policy intent as set out in the *Respect@Work* report.

The bill also implements certain recommendations of the *Building belonging* report that the government has identified as priority reforms suitable for the first stage of a staged approach to a broader implementation of the *Building belonging* report. The amendments that implement a limited number of recommendations of the *Building belonging* report, either wholly or in part, include: updating the language and definitions for certain existing protected attributes to reflect modern usage and understandings, such as changing 'sexuality' to 'sexual orientation' and 'family responsibilities' to 'family, carer or kinship responsibilities'; the introduction of the protected attributes that are expunged conviction, homelessness, irrelevant criminal record, irrelevant medical record, physical appearance and subjection to domestic or family violence; and the introduction of a broad positive duty to eliminate discrimination, sexual harassment, harassment on the basis of sex and other objectionable conduct as far as possible. It also introduces certain reforms to the investigations and enforcement powers of the Queensland Human Rights Commission and updates the criteria for bringing a representative complaint.

Finally, the bill also implements the recommendations made by the former Legal Affairs and Safety Committee in its reports on the inquiry into serious vilification and hate crimes, report No. 22, and the inquiry into the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023, report No. 49, by expanding the list of protected attributes for criminal and civil vilification, clarifying the objective test for incitement, introducing a new harm-based provision for civil vilification and introducing a new definition of 'public act'.

We note that many of the submissions refer to recommendations made by the *Building belonging* report that have not been implemented in this bill and express concerns about non-implementation of the draft Anti-Discrimination Bill 2024 that was released for public consultation in March this year. The draft Anti-Discrimination Bill 2024 was a holistic rewrite of the Anti-Discrimination Act and involved

many complex and interrelated changes to discrimination law in Queensland. The scope and purpose of the Respect at Work and Other Matters Amendment Bill, the bill before the committee this morning, is different to the draft Anti-Discrimination Bill that was consulted on earlier this year. The bill before the committee this morning is focused on amending the Anti-Discrimination Act to implement key reforms recommended by the Australian Human Rights Commission in the *Respect@Work* report.

As noted above, this bill also implements a limited number of recommendations of the *Building belonging* report, either in whole or in part. The scope of this bill, including which recommendations of the *Building belonging* report it implements, is ultimately a matter for government. However, it is noted that the Attorney-General indicated in the explanatory speech that the respect at work bill represents the first stage in a staged approach to the reform of Queensland's anti-discrimination laws. The Attorney-General further stated that the Queensland government will advance a second stage of reforms after further consultation with specific stakeholders on certain exceptions. The Attorney-General said that it is important that the second stage of reforms considers the approach that the Commonwealth takes following the release of the Australian Law Reform Commission's report concerning religious educational institutions and the anti-discrimination laws.

I also note that a number of submissions on this bill raised concerns about the changes in the bill to civil vilification, including the introduction of the new harm-based provision. The changes in the bill are direct responses to the recommendations of the former Legal Affairs and Safety Committee inquiries into vilification and the previously passed Criminal Code (Serious Vilification Hate Crimes) and Other Legislation Amendment Act 2023 and implement all outstanding recommendations of those inquiries that were directed to legislative responses.

Of particular concern in some submissions to the committee was the impact that the changes to the vilification provisions would have on freedom of expression, particularly as it relates to the freedom of religious bodies to manifest their religion in community. As noted in the statement of compatibility to the bill, the changes in the bill will limit the freedom of expression and in some circumstances the right to take part in public life and freedom of association and peaceful assembly. However, the statement of compatibility states that these limits are considered justified as they are directed towards only the most serious forms of conduct that severely impact the rights of others, undermine social cohesion and in turn stifle the full participation of all people in public life regardless of their personal attributes.

Finally, I would like to address another issue raised by submitters with respect to the two new prohibitions against sex-based harassment in the workplace and hostile workplaces on the basis of sex. Submitters have queried why these prohibitions are limited in scope in that they apply only to the attribute of sex and only in the workplace. While the scope of these prohibitions is ultimately a matter for government, these new prohibitions are a direct response to the findings of the *Respect@Work* report and are targeted at combating particular unlawful conduct that was found in the report to be pervasive. As noted in both the *Respect@Work* report and the *Building belonging* report, this kind of conduct is already unlawful under the prohibitions for direct and indirect discrimination. However, its prevalence speaks to a clear gap in public understanding about the protections that are already afforded. As such, the changes serve to supplement the existing protections by making it clear that this sex-based conduct in the workplace is unlawful and provides a tool for greater education and protection where there is evidence of its need. For similar conduct that is done on the basis of other attributes or that may occur in other areas of public life, the existing protections against discrimination continue to provide appropriate coverage.

Thank you again for the opportunity to address the committee this morning. We are happy to take questions.

Mr KRAUSE: Thank you, Mrs Robertson, for your briefing here this morning. I wanted to ask you a couple of questions about the bill. Firstly, there is a fair bit in this bill in relation to new requirements, particularly when it comes to the positive duty that is being imposed by section 25, and various other things. Has the department planned any implementation measures in terms of putting information into the community, especially for businesses that will be impacted by this where they may not have been previously by the Anti-Discrimination Act? What is the plan to operationalise it?

Ms Chandler: The Queensland Human Rights Commission have an educative function in relation to the Anti-Discrimination Act and they already provide guidelines and community education on the Anti-Discrimination Act, so they will also be providing that education.

Mr KRAUSE: We had the Queensland Human Rights Commission before us on Friday. They gave me the impression that they were quite sure there would be a stage 2 to these proposals. Has the department drafted up a stage 2 proposal for consideration by government in order to implement the *Building belonging* report in full?

Mrs Robertson: Ultimately, that is a matter for the Attorney and government.

Mr KRAUSE: The bill amends the preamble to the act to include not only equality of opportunity but also the goal of equitable outcomes in the bill. Is the term 'equitable outcomes' defined in the bill? If not, can you tell us what that means?

Ms Chandler: No, it is not defined as such in the bill, but the idea is to implement a number of recommendations of the *Respect@Work* report and the *Building belonging* report. Both reports really focused on moving away from that idea of formal equality, where the idea is to get equitable outcomes that you treat everybody the same, but the new generation of discrimination laws, including the recommendations of the *Respect@Work* report, really focus on, like you said, more of a positive duty on duty holders to prevent discrimination and more positive and proactive actions to get equitable outcomes.

Mr KRAUSE: What are equitable outcomes, though?

Ms Chandler: Equitable outcomes is where everyone is equal under the law.

Mr KRAUSE: Equal opportunity?

Ms Chandler: It is more than equal opportunity.

Mr KRAUSE: So it is more than equal opportunity?

Ms Chandler: It is more than equal opportunity, yes. Everyone has the same opportunity, but it does not recognise that some people have attributes where they might have been subject to systemic disadvantage and discrimination, so they do not start from the same place, and sometimes they need other measures, including education, for example, from the Queensland Human Rights Commission, to address and raise community understanding about that disadvantage so that you can have equitable outcomes.

Mr KRAUSE: What will businesses that will be subject to this new provision need to do to ensure equitable outcomes are achieved if it is not defined in the bill? You said it is more than equal opportunity. What will they need to do?

Ms Chandler: They are the principle type statements, but the positive duty is fairly well defined in the bill. That relates to requiring duty holders to take reasonable and proportionate measures to eliminate discrimination, sex harassment—the new sex-based contraventions—vilification and other unlawful conduct under the bill. The types of actions that businesses will have to take on will really depend on the size and nature of the business. The bill provides a number of factors about identifying what matters must be considered in determining what is reasonable for businesses to execute or implement the positive duty, and that includes things like the size and nature of the person's business and their undertaking, the resources of the person, whether financial or otherwise, the practicality and cost of the measure, the person's business and operational priorities and any other relevant matters. It could be as simple as updating organisational policies, providing education in the workplace, engaging in informal or formal discussions when employees may be engaging in conduct that is not unlawful under the anti-discrimination bill. It is important to note that there is already a positive duty for employees in Queensland. The Sex Discrimination Act applies that positive duty to persons undertaking a business or undertaking in Queensland at the moment.

Mr KRAUSE: If that is the case, one might ask why we have any new provision. I want to clarify: there is no threshold for the size of business or enterprise that would be subject to these provisions, is there?

Ms Chandler: No, there is not.

Mr KRAUSE: A sole trader or a partnership will be subject to it?

Ms Chandler: They will be, yes.

Mr KRAUSE: It is a matter for the Queensland Human Rights Commission to determine what is reasonable and proportionate; is that the case?

Ms Chandler: Yes. They will have a role to enforce compliance of positive duty, but the regulation approach really should be one of community education and guidelines in the first instance.

Mr KRAUSE: Just to be clear, you are saying it is a case-by-case basis, based on the business, so there is not a great deal of certainty offered in the bill on exactly what people need to do to comply with the positive obligation?

Ms Chandler: The bill does provide that the Queensland Human Rights Commission should produce guidelines. I note the Australian Human Rights Commission have produced quite extensive guidelines on how to comply, what the positive duty is and how businesses can comply with the positive duty.

Mr BOOTHMAN: When it comes to clause 52 of the bill regarding irrelevant criminal record, how does that work? As an example, a person may have an extensive traffic history and all of those traffic infringements were dealt under SPER. What does it mean for a heavy vehicle company, like a transport company or a bus company, hiring an individual? Would they be able to say no to hiring an individual whom they deem inappropriate to drive one of their vehicles?

Mr Morrow: Yes. If there are convictions on their record, that is where the idea of relevance will then come into it. It is particularly apt in that employment example. It links up to the idea of genuine occupational requirements. Obviously if the record was relevant to an occupational requirement—in that example, being a good driver would probably be part of the occupational requirements of that role—then criminal records of convictions for traffic offences would probably be relevant in that. It depends on all the circumstances, but in that case, even if you were not looking at it in terms of that attribute itself, the genuine occupational requirement exception would probably come into play in any case, but I think they would complement each other in that way.

Mr BOOTHMAN: Say there was a mistrial involving a sexual assault crime, having regard to the blue card system at the moment—even if the conviction is quashed. Does that deny the person getting a blue card?

Mr Morrow: It is slightly different in the context of blue card. It should be noted as well that there have been slight changes to the compliance with other law exception, and because the blue card system is legislated, including how decisions are made, that act in particular sets out relevant considerations which go beyond just convictions. They set out what can be considered by the decision-makers. Decision-makers making decisions under there will be subject to that compliance with other laws exception.

Mr BOOTHMAN: But would that mean they would be discriminated against under the legislation where it says that charges may be lapsed or discharged or struck out? Would that mean that that individual would be discriminated against, even though they cannot get a blue card at the moment, so to speak, to work in an environment where potentially there would be children?

Mr Morrow: The decision-makers under the blue card system would not need to worry about whether they are contravening it if they are acting under their statutory authority, under the blue card act.

Mr BOOTHMAN: With regard to part 4, section 124C(3)(a), (b) and (c) in the legislation you have ‘a public act done reasonably and in good faith for academic, artistic, scientific or research purposes’. Why was religion not included in there as one of those?

Mr Morrow: That is our current exception for incitement. It does not include religion specifically. There are some jurisdictions which do—Victoria, I believe, and I cannot think of the other off the top of my head.

Mr BOOTHMAN: Is it New South Wales?

Mr Morrow: Western Australia is the other one, but New South Wales does not, no. The formulation accords with roughly what is in section 18D of the Racial Discrimination Act, and is also consistent with our current one with Tasmania, with Northern Territory. I mention those in particular because they are the other jurisdictions with a harm-based provision—the Commonwealth and that state and territory. They have that formulation where they do not specifically refer to religion. In order to stay consistent with our current jurisprudence on it and noting that the other harm-based jurisdictions have that same formulation, the bill retains that test.

Mr BOOTHMAN: You could say that an individual may take offence or feel that it is hateful that even a person who, as an example, has a religious belief—they may feel that they are not projecting hateful speech as this is what their religious beliefs are, yet a person who does not believe in that religion may take offence to that. The religious person feels they have done it in a reasonable manner. My point is: why has the department not included religion in the bill itself? If you are looking at it for academic purposes—we heard from the Australian Christian Lobby—there is academia also in these religious groups; therefore, I am asking why that was not considered.

Ms Chandler: As a follow-on from what Joe was saying, the exception currently allows for public acts done reasonably and in good faith. It is not just artistic or scientific purposes but other public acts that are done reasonably and in good faith. The other thing to remember is that the threshold is quite high for the two vilification provisions, so to be caught by either the incitement provision or the new harm-based provision the person expressing their opinion would either have to be inciting hatred towards, serious contempt for or serious ridicule of a person for the incitement provisions and, for the harm-based provision, meet the threshold of being hateful, reviling, seriously contemptuous or

seriously ridiculing. That is quite a high threshold to have to meet. International human rights jurisprudence does recognise that the right to freedom of expression as well as the right to practise your religion can be limited for certain purposes, which includes preventing hateful speech against certain persons in the community that affects their reputation, their dignity and their social standing.

Ms BUSH: Some of the submitters raised some concerns around the definition of discrimination and the comparative requirements. I can see the JAG response and my read of it is that definitional matters are outside the scope of this particular bill but may be looked at in a subsequent bill or discussion. Am I correct in that assumption? Is that something that might come in time, that consideration of a change of definition?

Ms Chandler: The original anti-discrimination bill that we consulted on earlier this year, which did implement the *Building belonging* recommendations, did update the definitions of discrimination, both direct and indirect discrimination, to remove the old comparator test and to introduce the new modern test of discrimination. However, that is not part of this bill, as the member has correctly identified. The second stage of reforms, as Mrs Robertson said before, really is a matter for government to consider and nothing has been drafted yet.

Ms BUSH: Thank you. The next question I have is in relation to the time limits for making a complaint. There were two periods of time, a 12-month and a 24-month period. Some submitters queried whether it would be simpler to just make it a two-year period across all attributes.

Ms Chandler: Yes, the amendment to the complaints period currently is one year in which a person has to make a complaint about a contravention under the act. The commissioner can accept complaints outside that time period if the person shows good cause as to why that complaint should be accepted. We are implementing the respect at work recommendation in this bill. Its recommendation was to allow 24 months for a complaint about the sex-based contraventions. Because the implementation of that recommendation was confined to the sex-based contraventions—so sex discrimination, sex harassment, harassment on the basis of sex and creating a hostile work environment on the basis of sex—the two-year timeframe for complaints was confined to those sex-based contraventions in the workplace. You are right: that does set up two different timeframes. For all other contraventions of the Anti-Discrimination Act there will be the current timeframe that is under the bill.

Ms BUSH: I think the feedback from other jurisdictions is that they then had to go back and amend that to simplify that in order for the commission to manage those complaints operationally. Would it be possible or simpler at this stage to make that adjustment and just make it two years across all attributes? Are there legal or operational impediments to doing that at this stage?

Ms Chandler: I do not understand that there would any operational impediments, but the question as to whether to amend the bill to standardise the timeframe for all contraventions would be a matter for government to consider.

Ms BUSH: Government? Great. They were the two areas I had at the moment.

Mr HUNT: I did have a question but the member for Theodore covered off on it. I want to touch briefly on another matter. Last week the Australian Christian Lobby—and I cannot think of their exact words—said something to the effect that churches would be forced underground as a consequence of this legislation. I think what the department has said around the thresholds being so very high lays that to rest—unless the department has anything else they would like to add?

Ms Chandler: No, thanks.

Ms BOLTON: My question is to Mrs Robertson—and my apologies if you have already covered this in your opening statement because I was cut off a few times due to trouble with telecommunication. Several submitters at the public hearing raised concerns regarding the Queensland Human Rights Commission being able to publish reports regarding the results of investigations. Can you clarify whether or not they can publish those reports?

Ms Chandler: The bill amends the Anti-Discrimination Act to give the Queensland Human Rights Commission new compliance and enforcement powers which align with the new compliance and enforcement powers provided to the Australian Human Rights Commission by the changes made for the *Respect@Work* report. There are two types of new investigations. One is into compliance with a positive duty. The outcome of those investigations could be entering into an undertaking with the duty holder and then that undertaking would be enforceable, or issuing a compliance notice in the event of the failure of compliance with the undertaking or failure to enter into an undertaking. Then there is another type of investigation into systemic discrimination. In the bill, that type of systemic discrimination is limited to the sex-based contraventions in the workplace. The outcome of that type of investigation

is the publication of a report. I believe that some submitters have asked for the bill to be amended so that a report can be published out of any investigation undertaken by the Queensland Human Rights Commission, not just a report into systemic discrimination about the sex-based contraventions in the workplace. Again, whether the bill was amended to allow that would be a matter for government.

Ms BOLTON: I am just trying to get my head around the relevant anti-discrimination reform and why the entire Queensland Anti-Discrimination Act was not repealed and replaced with a new act, which was recommended by the Queensland Human Rights Commission.

Ms Chandler: I refer the member to the Attorney-General's statement in the explanatory speech. When the respect at work bill was introduced, the Attorney-General acknowledged that there was the anti-discrimination bill that was consulted on earlier this year but undertook, after consultation on that bill, to instead implement a staged approach to anti-discrimination reform with this bill, the respect at work bill, being the first stage and then committed to undertake further consultation with stakeholders around some of the more contentious issues in the anti-discrimination bill before a second stage would commence.

Ms BOLTON: We do not have any draft or a confirmation of that second stage? I think I heard that earlier.

Ms Chandler: That is correct.

CHAIR: I have two questions. When the Queensland African Communities Council gave evidence on Friday they spoke about adding race into the definition. I know, Leanne, you covered some of that in your opening. I will repeat what I believe it is. There are provisions in other pieces of legislation that would deal with that concern. Did I summarise that correctly?

Ms Chandler: I did not hear the African Communities Council submission. The definition of 'race' in the Anti-Discrimination Act will be updated by the bill to include immigration and migration status as well as caste. I am not sure but they may have asked for language?

CHAIR: Yes, I think they did suggest that race be included. I was conscious that in your opening you did address some of that, if I heard correctly.

Ms Chandler: Phoebe has just alerted me that one of the submitters did ask for investigations into systemic discrimination that I was talking about before, which is at the moment limited to the sex-based contraventions in the workplace, to also include investigations into race discrimination. At the moment the bill limits those systemic investigations to sex-based contraventions in the workplace.

CHAIR: Are there other pieces of legislation that cover it so it is not absolutely necessary that it be in this new legislation?

Ms Chandler: The way you would remedy race discrimination at the moment would be by way of a complaint. Also, if a lot of complaints were made to the Queensland Human Rights Commission about race discrimination by a certain duty holder, they may also undertake an investigation into the failure of that duty holder to comply with the positive duty to eliminate discrimination in the workplace. If there were some type of culture in the workplace that was promoting race discrimination, that may also be an indication that that duty holder was not implementing the positive duty to eliminate discrimination. That may be another way that that is addressed.

CHAIR: Would it be problematic to have the word 'race' in the act?

Ms Chandler: The investigation into systemic discrimination theoretically could be broadened out to all types of discrimination, including race and other types of discrimination. Again, that would be a matter for government to consider.

CHAIR: Would you be kind enough to expand on the change to the test for the civil offence of vilification, please?

Ms Chandler: We currently have two types of vilification in Queensland. We have the serious vilification that is in the Criminal Code—and the Criminal Code (Vilification and Hate Crimes) and Other Legislation Amendment Act relocated serious vilification from the Anti-Discrimination Act to the Criminal Code. It involves vilification where you threaten physical harm to the person or their property. Then in the Anti-Discrimination Act we have what is called an incitement provision for vilification. That prohibits a person engaging in conduct that will incite hatred towards, serious contempt for or severe ridicule of a person or a group of persons with a particular attribute. The Legal Affairs and Safety Committee parliamentary inquiry into vilification and hate crime recommended that the civil incitement test threshold be lowered. That was recommendation 5 of their first report. In response to that recommendation, the incitement test is amended to state that the conduct is likely to incite. That clarifies both the intention of the provision and case law that you do not have to actually find a third person that was incited.

That inquiry also highlighted that the current incitement provision in the Anti-Discrimination Act is very much focused on inciting a reaction in a third person and does not really focus on the harm to the actual person, the complainant who is affected by the hate speech. So a new harm-based provision is included by this bill into the anti-discrimination bill which will prohibit behaviour that a reasonable person would consider hateful, reviling, seriously contemptuous or seriously ridiculing of another person or other members of the group with that attribute. It is similar but with a higher threshold to the harm-based provision, which is in section 18C of the Racial Discrimination Act.

CHAIR: This will be the last question.

Mr KRAUSE: Wasn't a regulatory impact statement done about the impact on business of this bill?

Ms Eisemann: Yes, it was. It is published on the department's website.

Mr KRAUSE: Can you provide the committee with information about the number of complaints made to the Human Rights Commission about the new protected attributes over the last three years?

Ms Chandler: Do you mean complaints that have been made about new protected attributes but have not been able to be actioned under the act?

Mr KRAUSE: Correct. You can take it on notice.

Ms Chandler: We will take it on notice if we can find that information. It may not be discoverable.

CHAIR: That is the caveat.

Mr KRAUSE: I do have another question, Chair, and that relates to clause 18 relating to harassment on the basis of sex. The new provision goes beyond the Commonwealth law to include actions connected with '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'. I just want to know how people will know about another person's sex if they did not know about it or if it is in the past. Will businesses be required to inquire about these things or keep records of employees? How will people actually be able to prove that and defend themselves against any claims under clause 18, because it is couched in such uncertain terms?

Mr Morrow: In reference to the extension to past sex?

Mr KRAUSE: Yes.

Mr Morrow: That is included already on the basis of discrimination for all attributes. Under section 8 we extend the meaning of discrimination on the basis of an attribute to capture those characteristics or imputed characteristics, including previous characteristics. Obviously if we just take discrimination, for example, if you are unaware that a person previously had an attribute—one of the elements is that you are doing it on the basis of the attribute—it would be very hard to make out that you did it on the basis of an attribute in terms of direct discrimination if you were not aware of it.

Mr KRAUSE: A claim could still be brought, though.

Mr Morrow: A complaint could always be brought and then it would be subject to the complaint procedure through the QHRC. It is in that process where questions like that come to the fore and hopefully are resolved before continuing further.

CHAIR: That brings to a conclusion this briefing. There was a question taken on notice—and I am paraphrasing—about the number of complaints that were not able to be proceeded with because they related to the new protected attributes. If it is at all possible, could we have that response to the secretariat by close of business Wednesday, 17 July, if the information is available? If there is some issue in getting it to the secretariat by that date, just communicate with them. I understand they are very tolerant. Thank you for allowing us to change the time from Friday to today; it was very much appreciated by the committee.

The committee adjourned at 9.48 am.