

Respect at Work and Other Matters Amendment Bill 2024

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**Submission to the
Community Safety and Legal Affairs Committee**

**Respect at Work and Other Matters
Amendment Bill 2024**

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Introduction

1. The Queensland Council of Unions (**QCU**) is the peak council of registered unions in Queensland representing 28 affiliated unions and 400,000 workers. We have a proud history of representing the voices of Queensland workers since 1885, and have been advocating for their industrial, social, and political interests since that time.
2. Advocating for reform to sexual harassment laws and effective responses to matters such as discrimination in work and work related areas and gender based violence in workplaces, and protections for injured workers are core union business, and we welcome the opportunity to make a submission to the Community Safety and Legal Affairs Committee's (**Committee**) Inquiry into the Respect at Work and Other Matters Amendment Bill 2024 (**Bill**).
3. While the QCU is strongly supportive of the broader social and community reforms in the Bill, our submission is intended to address the amendments as they relate to work and work related complaints, as well as other work related issues arising from the Queensland Human Rights Commission's (**QHRC**) report *Building Belonging: Review of Queensland's Anti Discrimination Act 1991* (**Building Belonging**).¹
4. Our submission has been developed in consultation with our affiliates who represent complainants in work and work related areas of discrimination law.

Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991 – Final report* (Review, 2022)
<https://www.qhrc.qld.gov.au/data/assets/pdf_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf>.

5. Where our affiliates have made supplementary submissions and they raise matters in addition to those discussed in our submission, those matters are raised with our support.

General Comments

6. In June 2018, the Australian Human Rights Commission (**AHRC**) was tasked with undertaking a National Inquiry into Sexual Harassment in Australian Workplaces.
7. In the Terms of Reference for that inquiry, the AHRC's task was to review and report on workplace sexual harassment and make recommendations in relation to, *inter alia*, the current legal framework.
8. In January 2020, the AHRC published its *Respect@Work: Sexual Harassment National Inquiry Report* (**Respect@Work**).² *Respect@Work* recommended, *inter alia*, the following amendments to the legal framework:
 - a. Expressly prohibiting sex based harassment;
 - b. Expressly prohibiting creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex;
 - c. Introducing a positive duty on all employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible;
 - d. Allowing unions to bring representative claims; and
 - e. Achieving consistency in states and territories, where possible, with the *Sex Discrimination Act 1984* (Cth) (**SD Act**), without limiting or reducing protections.

² Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (Review, 19 January 2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>>.

9. In May 2021, the QHRC was tasked to undertake a comprehensive review of the AD Act (**AD Act Review**).
10. The terms of reference for the AD Act Review asked the QHRC, *inter alia*, to consider the ongoing efforts by the Queensland Government and relevant work in other Australian jurisdictions in implementing the recommendations from Respect@Work and include options for legislating for a positive duty on all employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment, and victimisation as far as possible.³
11. The AD Act Review established a Reference Group of which the QCU were a party to, and held stakeholder consultations including engagement with the QCU and our affiliates at a roundtable meeting. The QCU and our affiliates also made written submissions to the AD Act Review.
12. While the QCU is strongly supportive of the call for broader social and community reforms, the content of the QCU's submissions to the AD Act Review related to the operation of the *Anti Discrimination Act* 1991 (Qld) (**AD Act**) with respect to work and work related discrimination and the relevant reforms required to ensure prospective employees and employees are protected from discrimination.
13. At every opportunity we called for urgent reforms relating to the implementation of the Respect@Work recommendations, as well as other matters addressed in the Bill such as the inclusion of additional protected attributes (e.g., irrelevant

³ Terms of Reference – Queensland Human Rights Commission review of the *Anti-Discrimination Act 1991* (Qld), clause 5.

medical record, irrelevant criminal record, and subjection to domestic or family violence) and clarifying the protected attribute of 'trade union activity'.

14. We also called for broader reforms. For example, amending the complaints procedure for work and work related complaints, definitions and tests for discrimination, the burden of proof and the occupational requirements exemption, as well as including a positive duty to make reasonable adjustments for a person with an impairment.
15. The QCU continues to advocate for these reforms.
16. The final report from the AD Act Review, *Building Belonging*, was tabled in Parliament on 1 September 2022.⁴
17. The Government's response to the AD Act Review was tabled in Parliament on 3 April 2023 confirming in principle support for all recommendations, including a holistic redrafting of the AD Act.
18. Consultation on this matter occurred throughout the first quarter of 2024 with the Department of Justice and Attorney General (**DJAG**) seeking feedback on a draft new Anti Discrimination Bill 2024 (**draft AD Bill**) to replace the current AD Act.⁵

⁴ Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991 – Final report* (Review, 2022) <https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf>.

⁵ See, Department of Justice and Attorney-General, *Anti-Discrimination Bill 2024 consultation* (2024) <<https://www.justice.qld.gov.au/community-engagement/community-consultation/past/anti-discrimination-bill-2024>>.

19. The QCU and our affiliates made both written submissions and engaged in a roundtable with representatives of DJAG during this period.
20. We again called for the urgent implementation of the Respect@Work recommendations, noting that the draft AD Bill failed to prescribe relevant provisions relating to sex based harassment or subjecting another person to a workplace environment that is hostile on the ground of sex, and related Respect@Work recommendations.
21. The Bill seeks to implement these reforms, and we commend the Miles Government for heeding the call.
22. These are important matters that should not be delayed by the ongoing consultation regarding the contentious reforms that were proposed in the draft AD Bill such as the amendments to the religious occupational exemption (discussed further at page 48), and other non work related areas such as sport.
23. The QCU therefore commends the Bill to the Committee. However, we have suggested a number of amendments to ensure the Bill better meets its objectives which are outlined below.

Summary of recommendations

Recommendation 1

The QCU recommends amending the definition of ‘potential pregnancy’ contained in the Bill to ensure that discrimination cannot occur in relation to a person seeking treatment or participating in fertility treatment.

[page 13]

Recommendation 2

The QCU recommends amending the definition of ‘irrelevant medical record’ to clarify what must be considered in determining whether a medical record is an irrelevant medical record in the context of a work or work related matter.

[page 27]

Recommendation 3

The QCU recommends amending the definition of ‘trade union activity’ to ensure the AD Act clearly and unambiguously prescribes that a worker who is discriminated against for being represented by, or seeking to be represented by, a member, delegate or officer of a registered employee organisation is protected by the attribute.

[page 30]

Recommendation 4

The QCU recommends that the Bill include a positive duty to make reasonable adjustments.

[page 38]

Recommendation 5

The QCU recommends that section 209(1)(a) and (f) of the AD Act be amended to ensure that more appropriate remedies may be included in the orders a tribunal may make if a representative complaint is proven.

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Recommendation 6

The QCU recommends that clause 39 of the Bill be amended to include a prescribed right, in relevant circumstances, for a person who reasonably considers that another person is not complying with the positive duty to make a written request to the QHR Commissioner to conduct an investigation. This right could be modelled on section 231 of the *Work Health and Safety Act 2011*.

[page 45]

Recommendation 7

The QCU recommends that clause 39 of the Bill be amended to make it mandatory for the QHRC to issue guidelines on compliance with the general positive duty, the prohibitions on sex based harassment and sexually hostile workplaces, and the positive duty to make reasonable adjustments (as recommended by the QCU see recommendation 4)

[page 47]

Recommendation 8

The QCU strongly recommends that further consultation occurs regarding religious occupational exemptions in Queensland with the key stakeholders (i.e., government, faith based school employers and unions) as an urgent priority.

[page 58]

Recommendation 9

The QCU recommends that further consultation occurs on the reforms required to provide complainants with a direct right of access to the relevant tribunal.

[page 64]

Recommendation 10

The QCU recommends that the Bill be amended to include 'immigration and/or migration status' as a standalone protected attribute based on the definition contained in the *Discrimination Act 1991* (ACT).

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New and amended attributes

24. The QCU is supportive of the range of new and amended protected attributes

in clause 7 of the Bill, including:

- a. Potential pregnancy;
- b. Sexual orientation;
- c. Family, carer or kinship responsibilities;
- d. Subjection to domestic or family violence;
- e. Homelessness;
- f. Physical appearance;
- g. Expunged conviction;
- h. Irrelevant criminal record; and
- i. Irrelevant medical record.

25. The QCU is also supportive of the amendments relevant to the protected attribute of 'trade union activity' in clause 52 of the Bill, including the associated definition of 'registered employee organisation', as well as the amendment to section 134 in clause 28.

Potential pregnancy

26. The QCU supports the amendments in the Bill which update the protected attribute of pregnancy to include potential pregnancy, consistent with the SD Act. However, the Bill does not explicitly protect people engaging in treatment to become pregnant (i.e., reproductive assistance).

27. This is an active area of discrimination which is occurring in religious schools (see further submissions regarding this matter at page 48).

28. Potential pregnancy is defined in clause 52 of the Bill to include:

- a. the person's capability to become pregnant;
- b. the person's expressed desire to become pregnant; and
- c. the person's likelihood or perceived likelihood to become pregnant.

29. A reasonable interpretation of the potential pregnancy definition in the Bill supports the view that discrimination against employees on the basis that they are undertaking fertility treatment would be potential pregnancy discrimination. However, there appears to be no existing case law on this point, and it should not be necessary to test it to establish the principle.⁶

30. Therefore, there is a need for the Bill to provide clarity to working parents and their employers that discrimination on the grounds of undergoing fertility treatment to become pregnant is prohibited under the AD Act.

Recommendation 1

The QCU recommends to the Committee including a new subsection (d) within the definition of 'potential pregnancy' in clause 52 of the Bill as follows:

(d) the person's engagement in treatment, including fertility treatments such as in vitro fertilisation (IVF), intrauterine insemination (IUI), or other forms of reproductive assistance, to become pregnant.

Sexual orientation

31. The current definition of 'sexuality' in Schedule 1 of the AD Act is limited to mean heterosexuality, homosexuality or bisexuality. This definition perpetuates exclusion of people who do not identify with these sexual orientations.

⁶ Australian Human Rights Commission, *Pregnancy Guidelines* (Guidelines, 2001) <https://humanrights.gov.au/sites/default/files/content/sex_discrimination/publication/pregnancy_guidelines/Pregnancy_guidelines.pdf> 29.

32. Clause 7 of the Bill addresses this issue by replacing the protected attribute of 'sexuality' with 'sexual orientation' which is defined in clause 52 of the Bill to mean: 'the person's capacity, or lack of capacity, for emotional, affectional and sexual attraction to, or intimate or sexual relations with, persons of a different gender or the same gender or more than one gender'.
33. The new definition is inclusive of a greater spectrum of sexual orientations including, for example, the experience of people who experience a lack of sexual or romantic attraction. It is not restricted to certain categories or existing language, which is important because terminology is constantly evolving.
34. The definition of sexual orientation in the Bill aligns with the international *Yogyakarta Principles* which were contributed to by international human rights experts to provide best practice guidance on terminology,⁷ and is consistent with the *Public Health Act 2005* (Qld).⁸
35. Therefore, the QCU supports the use of the term sexual orientation as a protected attribute in the Bill, and the new definition which addresses current gaps in protection.

Family, carer or kinship responsibilities

36. The AD Act currently includes family responsibilities as a protected attribute. However, 'family' is narrowly defined in Schedule 1 of the AD Act to mean a dependent child or immediate family member.

⁷ International Panel of Experts in International Human Rights Law and on Sexual Orientation and Gender Identity, *Yogyakarta Principles: principles on the application of international human rights law in relation to sexual orientation and gender identity* (Principles, 2007) <https://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf> 6.

⁸ Section 213E.

37. 'Immediate family' is further defined in Schedule 1 of the AD Act by an exhaustive list including:

- a. the person's spouse or former spouse;
- b. a child of the person or the person's spouse or former spouse, including an ex nuptial child, stepchild, adopted child, or past or present foster child of the person or the person's spouse or former spouse; or
- c. a parent, grandparent, grandchild or sibling of the person or the person's spouse or former spouse.

38. While the protected attribute as it is currently defined provides important protections for workers who are parents and workers who have caring responsibilities toward their immediate family members, it fails to protect people with other caring responsibilities. For example, workers who care for an elderly person or a person with a disability, who are not their immediate family as defined under the AD Act, would currently be excluded from protection.

39. Building Belonging also noted that Aboriginal and Torres Strait Islander communities have the right and cultural responsibility to maintain their kinship ties,⁹ and the current definition of family in the AD Act fails to recognise this. A person may have kinship obligations placed on them because of their family and cultural connections, and responsibilities may also arise during Sorry Business, which involves cultural practices associated with death.¹⁰

40. The Bill amends the current attribute to include 'family, carer or kinship responsibilities' and it does not include a definition of these terms.¹¹ The amendment allows for a broader interpretation of the protected attribute

⁹ Including under the *Human Rights Act 2019* (Qld), ss 28, 29.

¹⁰ Queensland Human Rights Commission, *Building Belonging Report* (Review, 2022) 307. Clause 7.

because it is undefined. This better reflects the diversity of modern family arrangements, carer responsibilities and cultural understandings of family, including protecting Aboriginal and Torres Strait Islander kinship ties.

41. The amendment implements Recommendation 26 of Building Belonging,¹² and is compatible with the *Human Rights Act 2019* (Qld) (**HR Act**) which construes family broadly.¹³ It is also consistent with the *Fair Work Act 2009* (Cth) (**FW Act**) which contains 'family or carer responsibilities' as a protected ground.¹⁴

42. The QCU supports this more open understanding of family in the Bill.

Subjection to domestic or family violence

43. People who are subjected to domestic or family violence (**DFV**) are not currently protected under the AD Act. The Bill includes subjection to DFV as an additional protected attribute.¹⁵ It refers to section 8 of the *Domestic and Family Violence Protection Act 2012* (Qld) to define domestic violence.¹⁶

44. Victim survivors of DFV should be recognised as a social group requiring protection under the AD Act. Employees experiencing DFV actively face discrimination in the workplace. For example, the QCU is aware of an example

² Queensland Human Rights Commission, *Building Belonging Report* (Review, 2022) 305.

³ Explanatory Notes, *Human Rights Bill 2018* (Qld) 22.

⁴ Section 351.

⁵ Clause 7.

⁶ Section 8 of the *Domestic and Family Violence Protection Act 2012* (Qld) defines domestic violence to mean 'behaviour, or a pattern of behaviour, by a person towards another person with whom the first person is in a relevant relationship that is physically or sexually abusive; emotionally or psychologically abusive; economically abusive; threatening; coercive; or in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else'.

of a woman who was terminated from her employment due to her employer's concern about a work health and safety risk.

Worker experiencing DFV dismissed for risk of WHS

An employee of a community service organisation was subjected to DFV in her private life by her partner. After intervention by police, police took out a protection notice against the partner. The employee disclosed this matter privately to a work colleague who without the employee's permission informed a senior manager. The organisation subsequently terminated the employee on the basis that she was a risk to the health and safety of other staff and clients.

45. Additionally, the QCU through its affiliates is aware of several employees who continue to experience unfavourable treatment in their employment because they have been subjected to DFV. Similar experiences are reported across a range of industries, including from the community sector and large public sector employers.

Unfavourable treatment in employment because of experiencing DFV

A regional classroom teacher was advised by management that she would be taken off class and need to undertake a regional relief role as her DFV related absences "were too many and the parents are complaining".

46. Under current industrial laws, workers are protected from adverse action on the ground of DFV. Section 296 of the *Industrial Relations Act 2016* (Qld) (**IR Act**) and section 351 of the FW Act provides that an employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because the person has been or is being subjected to DFV (albeit

stated in different terms).¹⁷ Adverse action includes dismissal or injury in employment, altering their position to the person's prejudice, or discriminating between the person and other employees.¹⁸

47. The QCU therefore supports the inclusion of DFV as a new protected attribute in the AD Act.

Homelessness

48. There is currently no protection in the AD Act from discrimination for people experiencing homelessness. The Bill includes homelessness as an additional protected attribute, and it does not define the term.¹⁹

49. In their 2008 publication, *Homelessness is a Human Rights Issue*, the AHRC noted that people who experience homelessness face persistent discrimination in work related contexts.²⁰ For example, there are many barriers to gaining work for people experiencing homelessness, as they may lack education and skills training, community and family connections, knowledge about their employment rights, and bargaining power.²¹

50. People experiencing homelessness also face discrimination in the process of finding and applying for work on the basis of their inability to provide an address,

⁷ Section 296 of the *Industrial Relations Act 2016* (Qld) states that 'an employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because someone has committed, or is committing, domestic violence against the person'. Section 351 of the *Fair Work Act 2019* (Cth) states that 'an employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because of the persons... subsection to family and domestic violence'.

⁸ *Industrial Relations Act 2016* (Qld), s 282(1); *Fair Work Act 2019* (Cth), s 342(1).

⁹ Clause 7.

²⁰ Australian Human Rights Commission, *Homelessness is a Human Rights Issue* (Publication, 2008) <<https://humanrights.gov.au/our-work/publications/homelessness-human-rights-issue-2008>>.

²¹ *Ibid*, 9.

satisfy identity requirements or because they have a criminal record from offences associated with homelessness.²² In Queensland, police have ‘move on’ powers which disproportionately affect people experiencing homelessness, with research suggesting that young people, First Nations people and people who are homeless are more likely to be moved on than other community members.²³ These interrelated experiences of discrimination significantly increase vulnerability to discrimination in work related contexts.

51. Further, people experiencing homelessness are often unable to maintain their employment due to the difficulty of managing immediate needs including caring for children, mental health challenges, DFV, and finding safe and affordable housing.

52. Research shows that having a job is critical to being able to break free from homelessness.²⁴ Protecting people experiencing homelessness from discrimination by employers can facilitate better employment outcomes and thus help to break this cycle. Employers can and should play a significant role in assisting people experiencing homelessness by taking account of their life situation and providing flexibility and support in work arrangements.

53. The QCU therefore supports inclusion of homelessness as a protected attribute in the Bill.

²² Ibid, 10.

²³ Tamara Walsh and Monica Taylor, ‘You’re not welcome here: Police Move-On Powers and Discrimination Law’ (2007) 30(1) *UNSW Law Journal* 151.

²⁴ Neha Swami, The grim cycle of homelessness and unemployment (Article, 2018) <<https://pursuit.unimelb.edu.au/articles/the-grim-cycle-of-homelessness-and-unemployment>>.

Physical appearance

54. The Bill includes 'physical appearance' as an additional protected attribute.

Physical appearance is defined to mean the person's weight, size, height, birth mark, scar, or any other characteristic of the person's face or body. The definition is intended to cover physical characteristics which are 'either impossible or very difficult to change'.²⁵ It expressly excludes 'freely chosen characteristics', such as piercings and tattoos, unless they are characteristics of another protected attribute, such as a hairstyle adopted for cultural reasons.²⁶

55. Building Belonging noted that people experience discrimination because of their physical features in employment and gave the example of a person seeking work as a person with higher weight:

'Obviously, there are standards in most industries which are there for health and safety reasons. I'm not disputing those, I'm disputing where it has no basis on your ability, where it has nothing to affect your capability at the job, it's just that somebody else has a prejudice or doesn't want doesn't like it so, you know, they kind of go oh well, we don't want to hire someone who looks like that'.²⁷

56. The QCU supports inclusion of physical appearance as a protected attribute in the Bill. In work related contexts, discrimination on the basis of physical features is unjustifiable and should be prohibited when the person is able to perform the inherent requirements of the job.

²⁵ Explanatory Notes, *Respect at Work and Other Matters Amendment Bill 2024* (Qld) 44.

²⁶ *Ibid*, 44.

²⁷ Queensland Human Rights Commission, *Building Belonging Report* (Review, 2022) 325.

Expunged conviction

57. The Bill includes 'expunged conviction' as an additional protected attribute. It is defined in clause 52 of the Bill to mean the person has an expunged conviction under the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017* (Qld).
58. Homosexuality was criminalised in Queensland until 1991. People with historical homosexual convictions have been able to apply to have their convictions expunged in Queensland since 2017 with the passage of that law.
59. The Bill proposes a standalone protected attribute in the AD Act for expunged convictions to acknowledge that expunged historical homosexual convictions should never have existed and are different from other records covered by the 'irrelevant criminal record' protected attribute.²⁸
60. Building Belonging noted that these convictions were instituted due to historical prejudice, and it is unjust to permit discrimination against a person on this basis. Further, these convictions continue to burden individuals with fear and shame, particularly older community members, and their families.²⁹
61. The QCU supports inclusion of expunged conviction as a protected attribute in the Bill. In a work related context, the amendment would strengthen protections against discrimination in the expungement scheme, under which workers are not required to disclose information about the expunged conviction to anyone, and cannot be excluded, dismissed or otherwise prejudiced in any office, profession or employment because of the expunged conviction.³⁰

²⁸ Explanatory Notes, *Respect at Work and Other Matters Amendment Bill 2024* (Qld) 8.

²⁹ Queensland Human Rights Commission, *Building Belonging Report* (Review, 2022) 319-20.

³⁰ *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017* (Qld), s 24(f).

Irrelevant criminal record

62. The Bill includes 'irrelevant criminal record' as an additional protected attribute, which would make it unlawful for an employer to discriminate against a job applicant or employee based on their criminal record if they have an irrelevant criminal record.

63. Clause 52 of the Bill defines the attribute as two kinds of irrelevant criminal records:

- a. records which do not relate to a finding of guilt and conviction before a court or tribunal, which are therefore irrelevant, and
- b. where a determination of guilt and a conviction have been recorded, but the circumstances of the offending are not directly relevant to the situation in which the record is being considered.³¹

64. As noted in the explanatory notes for the Bill,³² the proposed amendments would require employers to assess the relevance of a person's criminal record, on the basis of the considerations in *Complainant 201908 v Commissioner for Fair Trading (Discrimination)* [2020] ACAT 24, which include:

- a. the seriousness of the conviction or offence and its relevance to the job in question whether in relation to the offence there was a finding of guilt but without conviction, which indicates a less serious view of the offence by the courts;
- b. the age of the applicant when the offences occurred;
- c. the length of time since the offence occurred;
- d. whether the applicant has a pattern of offences;

³ Explanatory Notes, *Respect at Work and Other Matters Amendment Bill 2024* (Qld) 43.

³² *Ibid.*

- e. the circumstances in which the offence took place, for example if it was an offence that took place in a work, domestic or personal context;
- f. whether the applicant's circumstances have changed since the offence was committed (for example, past drug use);
- g. whether the offence has been decriminalised by Parliament or it was an offence overseas but not in Australia;
- h. the attitude of the job applicant to their previous offending behaviour; and
- i. references from people who know about the offending history.³³

65. This means that the protection does not override any circumstance where, for example, a person's criminal record may preclude them from working with children or people with disabilities under the current Blue Card or Disability Worker Screening arrangements in Queensland.

66. However, the QCU is aware that many employers require a background criminal check in the employment screening process and are subsequently discriminating against employees on the grounds of criminal records which do not necessarily relate to the inherent requirements of a particular job. This is also commonplace for professional registration bodies that discriminate on the grounds of criminal records that do not relate to dealing with children, people with disabilities, or another risk factor relevant to the particular profession.

67. In doing so, many potential employees are directly excluded from working in a range of professions even if their past records are not relevant to the job. Direct discrimination against many people with a criminal record actively continues

³³ [72]-[87].

the systemic disadvantages many face without providing an opportunity to demonstrate rehabilitation.

68. For these reasons, the QCU supports the amendment.

Irrelevant medical record

69. The AD Act does not currently have a protected attribute of 'irrelevant medical record'.

70. This is in contrast to the Commonwealth jurisdiction,³⁴ Tasmania and the Northern Territory which all explicitly prohibit discrimination based on this attribute.³⁵

71. Currently, it is unlawful under section 124(1) of the AD Act for a person to ask another person to supply information orally or in writing, on which unlawful discrimination on the grounds of a protected attribute might be based.

72. There is potential to make a complaint about a request for the supply of an irrelevant medical record under this provision. However, it fails to provide adequate protections for employees and prospective employees who often fear the consequences of dealing with these matters via a complaint.

73. At the front of every prospective employee's and employee's mind is their financial security. The prospect of impacting their ability to obtain employment, the security of their employment, or facing some other reprisal from their

³⁴ *Australian Human Rights Commission Act 1986* (Cth), s 3(1); *Australian Human Rights Commission Regulations 2019* (Cth), s 6(a)(ii).

³⁵ *Anti-Discrimination Act 1998* (Tas), s16(r); *Anti-Discrimination Act 1992* (NT), s19(1)(p).

employer by making a complaint often outweighs the benefits of making a complaint.

74. As a result, common industry wide practices prevail which contravene section 124(1) of the AD Act because there is no positive duty on employers to not request the supply of irrelevant medical records.

75. These practices include, among others, the request of irrelevant medical records as part of pre employment screening, medical examination and other processes, and independent medical examination (**IME**) and functional capacity evaluation (**FCE**) requests for return to work for non work related injuries.

76. Commonly, requests seek to access a person's full medical records rather than being restricted to the injuries or medical conditions that might relate to the inherent requirements of the job. These requests often extend to unrelated matters such as previous mental health conditions which have no relevance to the duties the subject of the employment, and are beyond the obligation for a prospective employee to disclose a pre existing injury or medical condition under section 571B of the *Workers' Compensation and Rehabilitation Act 2003* (Qld)(**WCR Act**).³⁶

77. In most cases, the employer does not disclose the purpose for which the medical information is sought and under the *Privacy Act 1988* (Cth), once a prospective employee hands over their medical records to an employer, the

³⁶ Section 571A of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) defines 'pre-existing injury or medical condition' for an employment process as an injury or medical condition existing during the period of the employment process that a person suspects or, ought reasonably to suspect, would be aggravated by performing the duties the subject of the employment.

records become part of the employee's records which can be accessed and stored at any time without being subject to the privacy principles. This puts them at risk of discrimination throughout the entirety of their employment.

Maritime Industry - Medical Testing

A maritime employer in Queensland is currently using hair follicle testing for pre employment. Hair follicle testing can be used to determine evidence of historical and habitual drug and alcohol use. This does not relate to whether a person is currently substance using or abusing and in effect can screen out someone with a previous addiction or disorder that currently no longer applies.

78. Clause 7 of the Bill addresses this matter by introducing the protected attribute of 'irrelevant medical record', and the QCU supports the amendment.

79. The inclusion of 'irrelevant medical record' as a protected attribute along with the general positive duty imposed on employers by the new section 131I (in clause 25 of the Bill) to take reasonable and proportionate measures to eliminate discrimination as far as possible will more effectively protect prospective employees and employees from unfair discrimination. The associated investigation and compliance measures in the Bill will also ensure that there are additional mechanisms in place to address ongoing employer contraventions.

80. The Bill could, however, benefit from amending the definition of 'irrelevant medical record' in clause 52 of the Bill to include additional wording that prescribes what must be considered in determining whether a medical record is an irrelevant medical record in the context of a work or work related matter. This would provide clarification for employees and employers.

Recommendation 2

The QCU recommends to the Committee including the following wording in the definition of 'irrelevant medical record' in clause 52 of the Bill to clarify what must be considered in determining whether a medical record is an irrelevant medical record in the context of a work or work related matter:

In determining whether a medical record is an irrelevant medical record for a work or work related matter, the following must be considered:

- (a) whether the medical record is relevant to the injuries or medical conditions being considered; and
- (b) whether the injuries or medical conditions are relevant to the inherent requirements of the job.

Trade union activity

81. Trade union activity is a protected attribute under section 7(k) of the AD Act. However, there is currently no definition of the attribute in the Act.

82. There is also no legislative definition of a 'trade union'.

83. Two issues arise from this:

- a. It is currently unclear what constitutes a 'trade union activity'; and
- b. The AD Act is inconsistent with other Queensland laws (namely the IR Act and the *Work Health and Safety Act 2011* (Qld) (**WHS Act**)) in relation to the definition of a 'trade union' and in appropriately recognising the rights and privileges of registered unions (registered employee organisations) with respect to work and work related matters.

84. The Bill principally addresses these matters by:

- a. providing registered unions with exclusive standing to act as an agent of a person with respect to work and work related matters in clause 28,
- b. providing registered unions with explicit standing to make a representative complaint in clause 31, and
- c. defining 'registered employee organisation' and 'trade union activity' in clause 52.

85. The QCU supports these amendments. They ensure consistency with the IR Act and WHS Act and reinforce the legal understanding of who is and who is not a trade union in Queensland.

86. Consistent with Queensland's industrial relations and work health and safety legislative framework, the amendments clarify that only organisations registered under the IR Act or the *Fair Work (Registered Organisations) Act 2009* (Cth) are recognised as being able to represent the industrial interests of employees within the Queensland jurisdiction.

87. The amendments acknowledge the legal recognition of trade unions under Queensland's industrial relations system which grants them rights and privileges such as making and varying awards, bargaining for certified agreements, organising protected industrial action, entering workplaces to hold discussions with workers, and to initiate proceedings to enforce the rights and conditions of workers. In return for these rights and privileges, registered unions are subject to proscriptive regulation, accountability and governance requirements relating to, *inter alia*, elections, disclosure obligations of officers, membership rules, financial management arrangements, auditing, reporting and record keeping requirements, which are all subject to civil penalties.

88. Importantly, they also provide consumer law protections for Queensland workers ensuring they are adequately protected from being misrepresented and misled about an unregistered organisation's right to represent their industrial interests. They prevent organisations who are not registered, nor seeking registration, from misrepresenting themselves as 'trade unions' with rights and privileges under Queensland's industrial relations system without the consequent accountabilities required of a registered organisation. The amendments will ensure that those organisations cannot use the AD Act to gain de facto recognition as a trade union. They will also provide protection for employees in the federal jurisdiction under the FW Act in a similar vein.

89. Defining what constitutes a 'trade union activity' will ensure there is certainty about what activities are protected by the attribute. This is supported by the QCU.

90. However, the Bill could be amended to ensure the definition of 'trade union activity' is more consistent with the definition of 'industrial activity' in section 290 of the IR Act as intended.³⁷ The definition currently omits 'being represented by, or seeking to be represented by, a registered employee organisation'. The inclusion of these words in a new subsection (h) of the definition will ensure the AD Act clearly and unambiguously prescribes that a worker who is discriminated against for being represented by, or seeking to be represented by, a member, delegate or officer of a registered employee organisation is protected by the attribute.

³⁷ Explanatory Notes, *Respect at Work and Other Matters Amendment Bill 2024* (Qld) 4.

Recommendation 3

The QCU recommends to the Committee including a new subsection (h) within the definition of 'trade union activity' in clause 52 of the Bill as follows:

(h) being represented by, or seeking to be represented by, a registered employee organisation.

Sex based harassment and sexually hostile workplaces

Respect@Work

91. The QCU supports the introduction of the two new offences relating to sex based harassment and sexually hostile workplaces into the AD Act at clauses 18 and 22 of the Bill.

92. Both offences are consistent with new offences included in amendments to the SD Act in late 2022 that arose from recommendations in *Respect@Work*.

93. In considering the scope of the existing sexual harassment offence in the SD Act, the AHRC recommended no change to the existing offence but recommended the introduction of two new offences – sex based harassment and sexually hostile workplaces – because existing case law is not readily understood by the community and there was therefore a need to clarify and provide certainty in the law to support ordinary people's access to justice.³⁸

94. *Respect@Work* found that while Australian discrimination laws had been aimed at preventing and responding to sexual harassment since their initial inception in the 1980s, they had subsequently lagged significantly behind other

³⁸ Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (Review, 19 January 2020) 458, 460.

countries.³⁹ Sexual harassment in Australian workplaces had also become so pervasive, with one in three people identifying as having experienced sexual harassment in the previous five years.⁴⁰

95. Respect@Work was well informed by a 2018 survey of 10,000 Australians which identified that women (39%) were more likely than men (26%) to have experienced workplace sexual harassment.⁴¹ The survey results also identified that those most at risk of harassment were young people, workers with a disability, workers from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander people, LGBTIQ workers, migrant workers (particularly temporary visa holders), and workers in precarious or other forms of insecure work.⁴²

96. A follow up survey in 2022 conducted by the AHRC,⁴³ showed similar results and that disturbingly two thirds of Australian workers do not think their organisation is doing enough to address sexual harassment.⁴⁴

97. In this context, any reforms to improve protection for Queensland workers against sexual harassment within the Queensland discrimination jurisdiction should take account of the continuing pervasive nature of sexual harassment and to be informed by the legislative changes that have occurred in federal jurisdiction.

³⁹ Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (Review, 19 January 2020) 9.

⁴⁰ *Ibid*, 10.

⁴¹ *Ibid*, 17.

⁴² *Ibid*, 19.

⁴³ Australian Human Rights Commission, *Time for respect: Fifth national survey on sexual harassment in Australian workplaces* (National Survey, 2022) < <https://humanrights.gov.au/time-for-respect-2022>>.

⁴⁴ *Ibid*.

Legislative History

98. The specific recommendations arising from Respect@Work for the two new offences are outlined as follows

Recommendation 16(b), (c)

Amend the SD Act to ensure:

- *sex based harassment is expressly prohibited,*
- *creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex is expressly prohibited.*

99. After the release of Respect@Work, the then LNP Federal Government amended the SD Act to include a new sex based harassment offence only.⁴⁵ However, the new offence was drafted inconsistently with the Respect@Work recommendation and pre existing case law to deem sex based harassment as 'where a person engaged in unwelcome conduct of a **seriously** demeaning nature in relation to the person harassed' (emphasis added).

100. In 2022, the new Albanese Labor Government acted on seven key recommendations in Respect@Work by introducing the Anti Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022, which came into effect from 12 December 2022. That Bill included the introduction of the recommended sexually hostile workplace offence and also contained an amendment to the sex based harassment offence to remove the term 'seriously' from 'seriously demeaning' to ensure the law was consistent with Respect@Work and pre existing case law.

⁴⁵ See, *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021 (Qld)*.

101. Paralleling these federal reforms, the Queensland Government initiated the AD Act Review. While canvassing submissions in support of introducing similar reforms to the Respect@Work recommendations into state law, Building Belonging, however, did not recommend the adoption of either the sex based harassment offence or a sexually hostile workplace environment offence.

102. Among other things, the QHRC did not identify any significant gap in protection that would be addressed by creating the two new offences, preferring to address the issues by education,⁴⁶ while also acknowledging the federal Attorney General was at that time consulting on incorporating the hostile work environment provision into the federal SD Act.⁴⁷

103. This may have also been partly due to the fact that sexual harassment is contained within a standalone piece of law being the SD Act, whereas state discrimination laws apply to a range of protected attributes, including sexual harassment.

104. Notwithstanding, continued survey results and feedback from across industry sectors continue to show that sexual harassment remains all pervasive, there has been limited information or public guidance material issued by the QHRC to clarify that harassment does occur on the grounds of sex or the creation of sexually hostile workplaces, and it is widely acknowledged by governments, industry and unions that there is much work to be done to redress these issues.

⁴⁶ Queensland Human Rights Commission, *Building Belonging Report* (Review, 2022) 141.

⁴⁷ Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (Review, 19 January 2020) 139.

105. At the same time, it is also widely acknowledged by governments, industry and unions that part of addressing Australia's, and indeed Queensland's, significant skills shortage gap is increasing female participation in industries that are traditionally male dominated. This can only be achieved by encouraging cultural change in those industries to eliminate sex based harassment and sexually hostile workplaces.

106. The QCU therefore supports the introduction of the two new offences as a step forward. Combined with the new positive duty for duty holders to prevent discrimination of all forms of sexual harassment and sex based harassment, and other forms of objectionable conduct, these amendments will help lead the changes required by industry stakeholders to put in place measures to prevent these broader types of sexual harassment, conduct and behaviours, so far as possible.

Vilification

107. The QCU supports the amendments to the vilification provisions in clause 29 of the Bill, which implement key outstanding reforms recommended by the Legal Affairs and Safety Committee.⁴⁸

108. Clause 29 of the Bill makes four main amendments to the existing vilification provisions in the AD Act:

- a. it expands the list of protected attributes for vilification to include three new attributes: sex, age and impairment (proposed section 124A);

⁴⁸ Legal Affairs and Community Safety Committee, Parliament of Queensland, *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill* (Report 49, 2023) <<https://documents.parliament.qld.gov.au/tp/2023/5723T913-C272.pdf>>; Legal Affairs and Community Safety Committee, Parliament of Queensland, *Inquiry into serious vilification and hate crimes* (Report 22, 2022) <<https://documents.parliament.qld.gov.au/tp/2022/5722T26.pdf>>.

- b. it clarifies the meaning of public act to include broadcasting and communicating through social media (proposed section 124B);
- c. it clarifies that the test for civil vilification is an objective one: that the act is 'likely to incite', rather than requiring a complainant to show another person was actually incited (proposed section 124C); and
- d. it introduces a prohibition of hateful, reviling, seriously contemptuous, or seriously ridiculing conduct (proposed section 124D).

109. The QCU supports these amendments as they address important gaps in protections for workers.

110. Vilification can be psychologically and physically harmful. Employees should have the right to be free from vilification in the workplace and employers should take proactive steps to protect employees from vilification. The amendments, along with the new positive duty, will ensure that employers are obliged to.

111. There are also limited legal remedies that currently apply to vilification in the workplace. The WHS Act imposes a positive duty on employers to take preventative steps in relation to psychiatric injuries, which includes taking steps to prevent vilification in the workplace that may lead to psychiatric illness.⁴⁹ A worker can also apply to the Fair Work Commission (**FWC**) for a 'stop bullying order', however this requires repeated conduct and would not apply to single incidents of vilification.⁵⁰

112. The amendments will therefore provide additional protections for workers.

⁴⁹ *Work Health and Safety Act 2011* (Qld), s 19.

⁵⁰ *Fair Work Act 2009* (Cth), s 789FC.

Positive duty

113. The legislative framework prescribed by the AD Act is largely predicated upon a complaints based system that operates once discrimination has occurred and focuses to a lesser extent on indirect discrimination aimed at proactively changing systemic disadvantages for people with a protected attribute. This type of framework is reflective of the many anti discrimination laws that existed internationally and within Australia at the time of the AD Act's introduction in 1991.

114. However, within the last decade or so, more contemporary anti discrimination laws have been framed with an objective to focus on the elimination or prevention of discrimination, harassment, and victimisation.⁵¹

115. In contrast to the equality of opportunity focus under the AD Act, this type of approach is aimed at prevention before a contravention occurs and changing workplace and other practices by placing positive obligations and requirements on duty holders to take proactive measures to eliminate direct and systemic discrimination, harassment and victimisation as far as possible.

116. This approach recognises equality cannot be achieved until it is recognised that discrimination causes social and economic disadvantages and that access to opportunities are not equally distributed across the community.

117. Further, it recognises that equal application of a rule to everyone will have unequal results or outcomes to different groups, and essentially that the

⁵ See, e.g., the *Equal Opportunity Act 2010* (Vic), s 3; *Discrimination Act 1991* (ACT), s 4.

achievement of substantive equality may require the making of reasonable adjustments and accommodations including the taking of special measures.⁵²

118. The QCU supports the introduction of a positive duty into the AD Act, as proposed in clause 25 of the Bill. The requirement for a duty holder to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, harassment on the basis of sex or other objectionable conduct as far as possible is consistent with a proactive approach to removing discriminatory practices. It also ensures duty holders are focussed on implementing preventative and positive actions and measures consistent with the positive obligation contained in:

- a. section 15 of the *Equal Opportunity Act 2010* (Vic) (**EO Act**) to eliminate discrimination, sexual harassment and victimisation as far as possible; and
- b. section 47C of the SD Act to eliminate, as far as possible, unlawful sex discrimination, sexual harassment, harassment on the ground of sex, sexually hostile workplace environments and acts of victimisation.

119. Further, it will ensure that employers place a higher priority on compliance with the AD Act. As was noted in *Respect@Work*,⁵³ the lack of a positive duty to prevent sexual harassment means that employers currently place a higher priority on compliance with employment and work health and safety laws, which in turn places a heavy onus on individuals to complain.

120. In addition to the general positive duty, more contemporary anti discrimination laws also include a specific duty to make reasonable

⁵² *Discrimination Act 1991* (ACT), s 4(d).

⁵³ Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (Review, 19 January 2020) 445.

adjustments to accommodate another person's particular needs arising from a protected attribute, including an employee with an impairment.⁵⁴ However, the Bill fails to include a similar duty.

121. The QCU therefore submits to the Committee that the Bill could be improved by including a positive duty to make reasonable adjustments. If the aim of the amendments is to reframe the Act to focus on more positive obligations and requirements of duty holders, including employers, and to ensure that vulnerable Queenslanders, such as workers with an impairment or people with disability, are not treated unfavourably, then the inclusion of this duty is paramount.

Recommendation 4

The QCU recommends to the Committee that the Bill include a positive duty to make reasonable adjustments.

Time limit on making complaints about a contravention on the basis of sex

122. The current time limit in the AD Act to make a complaint about a contravention on the basis of sex is one year from the alleged discrimination taking place.

123. This does not provide adequate time for people who have experienced sexual harassment to bring a claim. There are many legitimate and complex reasons for a person to delay making a sexual harassment or related complaint within the current statutory time limit. Experiencing sexual harassment can be

⁵⁴ *Equal Opportunity Act 2010 (Vic)*, s 20; *Discrimination Act 1991 (ACT)*, s 74.

traumatic and people need time to recover before they can take legal action. Workers may also be hesitant to lodge a complaint if they still work in the workplace where they experienced sexual harassment for fear of victimisation.

124. Further, Respect@Work similarly recommended that the timeframe for the AHRC President's discretion to not accept a complaint under the SD Act be extended from 6 months to 24 months since the alleged unlawful discrimination.⁵⁵

125. Clause 29 of the Bill ensures that the AD Act is amended consistent with this recommendation by extending the time limit for a person making a complaint about a contravention on the basis of sex that is a work related matter from one year to two years.

126. Therefore, the QCU supports the amendment.

Representative complaints

127. Unions play a recognised role under relevant industrial laws in representing the individual and collective interests of their members. Applications for a proceeding about an industrial matter under these laws can be made by a union for both collective disputes and as a representative of an individual.

128. With respect to collective disputes, these proceedings are commenced on behalf of members of the relevant union, but the subject matter often relates to the industrial entitlements of a whole classification of employee, whether they

⁵⁵ Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (Review, 19 January 2020) 2, 29.

are a member or not. In short, unions have standing to file proceedings that relate to employees who are, or are eligible to be, members.

129. The clearest example of this is when a union makes an application about the interpretation or enforcement of an industrial instrument. Decisions by relevant tribunals in relation to these matters are binding on the employer and all relevant employees, whether they are members of the union or not.

130. Similarly to industrial law, unions play a central role in relation to discrimination and harassment matters in the work and work related area.

131. This central role was recognised in *Respect@Work* which recommended (at Recommendation 23) to amend the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**) to allow unions to bring representative claims to court, consistent with the existing provisions in the AHRC Act that allow unions and other representative groups to bring a representative complaint to the AHRC.

132. Clause 31 of the Bill proposes amendments to the representative complaints provisions in the AD Act that are consistent with section 46P(2)(c) of the AHRC Act which permits a trade union to lodge a complaint about a contravention of the relevant Commonwealth discrimination laws on behalf of one or more other persons.

133. The QCU supports the amendments.

134. Section 209 of the AD Act, proposed to be amended at clause 48 of the Bill, could, however, benefit from further amendment to ensure that more

appropriate remedies may be included in the orders a tribunal may make if a representative complaint is proven.

135. While there are a range of matters a representative complaint could be made about, in the work and work related area, representative complaints would commonly relate to a discriminatory practice of an employer. In these circumstances, where a contravention has been proven, orders should be able to be made by a tribunal that declare the practice as discriminatory and place positive obligations on the employer to take proactive measures to eliminate the discriminatory practice (in keeping with the new positive duty).

136. This could be achieved by amending the wording in section 209(1)(a) of the AD Act.

Recommendation 5

The QCU recommends to the Committee that:

a. the current wording of section 209(1)(a) of the AD Act is omitted and replaced with

‘an order declaring that the respondent has committed unlawful discrimination and directing the respondent not to repeat or continue such unlawful discrimination’; and

b. the current wording of section 209(1)(f) of the AD Act is amended as follows

‘an order requiring the respondent to discontinue a practice or program that has been proven to be unlawfully discriminatory or implement practices or programs to eliminate unlawful discrimination’.

137. The amendment proposed for section 209(1)(a) of the AD Act in Recommendation 6 above is consistent with section 46PO(4)(a) of the AHRC Act.

Investigations and compliance

138. Clause 39 of the Bill proposes several amendments with respect to the regulatory functions of the QHRC. This includes powers to commence investigations and enforce compliance of the new positive duty via undertakings and compliance notices.

139. As previously discussed, the QCU supports the introduction of a positive duty into the AD Act. One of the reasons for this is that it will ensure that employers place a higher priority on compliance with the AD Act. However, this will not be achieved by the positive duty alone.

140. Strong and proactive regulation, with a clear focus on promoting prevention, is required to ensure duty holders are complying with their positive duty. The amendments in clause 39 of the Bill provide the QHRC with the tools to do this and are supported by the QCU. However, they could benefit from improvement.

141. As currently proposed:

- a. a contravention of the positive duty is not a contravention of the Act for which a complaint may be made;⁵⁶ and
- b. the Queensland Human Rights Commissioner (**QHR Commissioner**) may conduct an investigation into a person's compliance with the positive duty if they suspect the person is not complying with duty.⁵⁷

⁵⁶ Clause 25 of the Bill, legislative note in new section 131H.

⁵⁷ Clause 39 of the Bill, new section 173B(2).

142. This allows the QHR Commissioner to refrain from conducting an investigation despite a suspected compliance issue becoming known to them without any requirement to explain their reasons for not doing so to a person who reasonably considers that an investigation ought to occur.

143. While it may be hypothetical, the potential for these circumstances to arise may impact trust and confidence in the QHRC to protect Queenslanders from unfair discrimination, sexual harassment, harassment on the basis of sex or other objectionable conduct. Maintaining trust and confidence in the QHRC is integral to ensuring they can be an effective regulator and this matter should therefore be addressed.

144. This could be achieved by prescribing a right for a person who reasonably considers that another person is not complying with the positive duty to make a written request to the QHR Commissioner to conduct an investigation.

145. The amendment could be modelled on section 231 of the WHS Act which allows a person who reasonably considers that an act or omission constitutes a category 1 or category 2 offence under that Act to make a written request to the Work Health and Safety Prosecutor (**WHS Prosecutor**) that a prosecution be brought in relation to the act or omission in circumstances where no prosecution has been brought by the WHS prosecutor within a prescribed period of time.

146. For the purposes of the AD Act, a similar provision could operate in the following way:

a. The provision applies if:

- i. a person (the applicant) reasonably considers that another person is not complying with the positive duty (suspected compliance issue); and
 - ii. the applicant has a reasonable belief that it has been at least 3 months since the suspected compliance issue has been, or ought to have been, known to the QHR Commissioner; and
 - iii. no investigation has been commenced by the QHR Commissioner.
- b. The applicant may make a written request to the QHR Commissioner that an investigation be conducted in relation to the suspected compliance issue.
- c. Within 1 month after the QHR Commissioner receives a request, they must advise the applicant, in writing, whether an investigation will be conducted and their reasons for the decision.
- d. If the QHR Commissioner advises the applicant that an investigation will not be conducted, they must:
 - i. advise the applicant that the applicant may ask the QHR Commissioner, within 1 month, to refer the matter to the relevant tribunal for consideration (i.e., the Queensland Industrial Relations Commission (**QIRC**) for work and work related matters); and
 - ii. if the applicant makes a written request to the QHR Commissioner to do so, refer the matter to the relevant tribunal immediately.
- e. The relevant tribunal must then hear the matter (with the QHR Commissioner having the right to intervene in the proceeding) and determine whether a contravention of the positive duty is proven.
- f. If a contravention of the positive duty is proven, the QHR Commissioner must:
 - i. consider whether compliance action should be taken; and

- ii. advise the applicant, in writing, whether action will be taken or give reasons why they decided to take no action.

Recommendation 6

The QCU recommends to the Committee that the Bill be amended to include a prescribed right, in relevant circumstances, for a person who reasonably considers that another person is not complying with the positive duty to make a written request to the QHR Commissioner to conduct an investigation.

Guidelines

147. To effectively implement the Bill and achieve its purpose, it is important for the QHRC to issue guidelines on work related matters and the amendments outlined in the Bill. The Bill provides a legislative function for the QHRC to be able to issue formal guidelines on any matter relating to the AD Act and requires the QHRC to publish these guidelines on their website.⁵⁸
148. The QHRC currently develops resources and guides to help duty holders understand their obligations under the AD Act, including for example the Employer Toolkit and Small Business Handbook.⁵⁹
149. The draft AD Bill made guidelines mandatory for two matters:
 - a. the duty to make reasonable accommodation for people with disabilities (i.e., reasonable adjustments); and
 - b. the general positive duty.⁶⁰

⁵⁸ Clause 39.

⁵⁹ Queensland Human Rights Commission, *Guides and Toolkits* <<https://www.qhrc.qld.gov.au/resources/guides-and-toolkits>>.

⁶⁰ Clause 146.

150. This was supported in an extensive consultation process, which went into the detail of how the guidelines should be developed through stakeholder engagement to ensure they are fit for purpose in different contexts.⁶¹ The current Bill has removed the requirement for the Commission to issue guidelines.

151. From the QCU's perspective, it is important for the Bill to include the mandatory guidelines. Accessible guidelines are important educational resources for duty holders to understand and comply with their responsibilities under the AD Act and will assist in preventing unlawful discrimination by employers in their workplace. Education for employers will be key to facilitating effective implementation of the Bill and contributing to a cultural shift where employers proactively take steps to create safe workplaces and prevent harassment and discrimination.

152. Given that the Bill introduces two new offences relating to sex based harassment and sexually hostile workplaces into the AD Act, it is a matter of priority that the QHRC develops guidance material in relation to these matters. Both Respect@Work and Building Belonging noted the educational value of guidelines where the law is new, complex, difficult to apply in practice and when case law is limited.⁶²

153. Therefore, the QCU suggests that it should be mandatory for the Commission to issue guidelines on the following:

- a. complying with the general positive duty;
- b. harassment on the basis of sex;
- c. subjection to a sexually hostile workplace; and

⁶ Queensland Human Rights Commission, *Building Belonging Report* (Review, 2022) 241.

⁶² Ibid; Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (Review, 19 January 2020).

- d. complying with the positive duty to make reasonable adjustments (as recommended by the QCU see recommendation 4 on page 38).

154. This could be achieved by amending clause 39 in the Bill as follows:

173Q Commission ~~may issue~~ guidelines

(a) The commission may issue guidelines on any matter relating to this Act, ~~including how persons may comply with the positive duty.~~

(b) The commission must issue guidelines about each of the following

- (i) how persons may comply with the general positive duty; and
- (ii) how persons may comply with the prohibition of harassment on the basis of sex; and
- (iii) how persons may comply with the duty not to subject another person to a work environment that is hostile on the basis of sex; and
- (iv) how persons may comply with the positive duty to make reasonable adjustments.

Recommendation 7

The QCU recommends to the Committee that it be mandatory for the QHRC to issue guidelines on compliance with the general positive duty, the prohibitions on sex based harassment and sexually hostile workplaces, and the positive duty to make reasonable adjustments (as recommended by the QCU see recommendation 4).

Representational rights in the QIRC

155. The QCU is supportive of amendments in the Bill which ensure that restrictions on representation of parties in the QIRC under the IR Act also apply to proceedings commenced under the AD Act.

156. Clause 45 of the Bill provides that a party may only be represented in the QIRC as provided under section 529 of the IR Act. Section 529 of the IR Act provides standing for registered trade unions and expressly excludes unregistered organisations.⁶³

157. As noted in the Explanatory Notes to this Bill, this restriction on representation ensures that the industrial interests of employees and employers are represented by entities subject to strict regulation and governance duties under the IR Act, rather than unregulated entities.⁶⁴

158. The importance of this matter was previously discussed at pages 28–29.

Matters not addressed in the Bill

Religious occupational exemption

159. While the Bill does not seek to amend the AD Act with respect to matters relating to religious occupational exemptions, the QCU seeks to use this submission as an opportunity to address the issue more broadly and outline our view on the next stage of discrimination law reform required in Queensland.

⁶³ *Industrial Relations Act 2016* (Qld), s 529(1)–(2); *Industrial Relations and Other Legislation Amendment Act 2022* (Qld).

⁶⁴ Explanatory Notes, *Respect at Work and Other Matters Amendment Bill 2024* (Qld) 24.

160. Specifically, we seek to use this opportunity to highlight our concerns regarding the legislative exemptions covered within Queensland's legislation that allows faith based educational institutions to discriminate against students, teachers, and staff.

The AD Act

161. Section 25 of the AD Act contains several key elements which exempt and permit discrimination by faith based schools against school staff, including that:

- a. discrimination may occur on the basis of **a genuine occupational requirement** for 'a position';
- b. **discrimination can occur on the basis of any protected attribute** if it is not unreasonable (except for age, impairment or race);
- c. whether an act is unreasonable depends on the circumstances of the case, including if action is **harsh or unjust or disproportionate** to the person's actions as well as taking into consideration the **consequences for both the employer and person**;
- d. discrimination may occur if a person **openly acts** in a way that the person knows or ought reasonably know **is contrary to the employer's religious beliefs**; and
- e. discrimination may occur **during a selection process, in the course of the person's work**, or in **doing something connected with the person's work** (emphasis added).

162. Significantly, the meaning of what is a 'genuine occupational requirement' was considered by the Queensland Supreme Court in the matter of *Chivers v State of Queensland (Queensland Health)* [2014] QCA 141 (**Chivers**). In *Chivers*, the Court relied on the High Court's interpretation of what is an 'inherent

requirement' for employment in *Qantas Airways Limited v Christie* (1998) 193 CLR 280 and *X v The Commonwealth* (1999) 200 CLR 177.⁶⁵

163. While the application of *Chivers* related to an impairment discrimination matter, including 'faith based schools' as part of the overall 'genuine occupational requirement' exemption in the Queensland legislation means that consideration is not only given to the individual job to be performed (e.g., is it a science or a mathematics teacher role?), but also the job within the employer's undertaking and the employer's working environment (e.g., will the same science or mathematics teacher be required to lead home room including prayer as a smaller component of their role within a faith based school?).

164. The practical application of Queensland law has therefore meant that Queensland faith based schools are able to discriminate against job applicants and employees on a broad range of protected attributes. Actual practices indicate that this can and does occur across the board to include a range of positions within a school, and also extends beyond the public acts of a staff member into their private lives (this is discussed further on pages 53 54).

Other Jurisdictions

165. In comparison to many other more contemporary discrimination law jurisdictions (ACT, Northern Territory, Tasmania and Western Australia), Queensland's legislative framework permits a much broader range of permitted discriminatory practices against potential staff and staff employed in faith based schools.

⁶⁵ *Chivers v State of Queensland (Queensland Health)* [2014] QCA 141, 17 [57].

166. Discrimination law in these other jurisdictions provide either no exceptions, limited or specific exemptions, or exemptions that permit faith based schools to discriminate on very broad grounds.

167. In summary:

- a. In the Northern Territory, there are no exemptions to permit discrimination on the basis of religious beliefs or activities;
- b. In the ACT, it is not lawful to discriminate on the grounds of religious conviction as 'a genuine occupational qualification of a position';
- c. In Tasmania, discrimination must be 'a genuine occupational requirement' and in accordance with the tenets, beliefs, teachings, principles or practices of the particular religion. No other exemptions are provided;
- d. In Victoria, an exception to discrimination is only permitted where the discrimination conforms with the doctrines, beliefs or principles of the religion and 'is reasonably necessary';
- e. In Western Australia, an exception is permitted if the discrimination 'occurs in good faith' in order to avoid injury to the religious susceptibilities of adherents of that religion or creed;
- f. South Australia prohibits discrimination on the grounds of sex and pregnancy with narrow exceptions permitted on the grounds of sexual orientation, gender identity, and domestic partnership status (in relation to same sex domestic partners); and
- g. In New South Wales, specific exemptions are permitted for private educational authorities to discriminate on the grounds of sex, homosexuality, transgender, or marital or domestic status.

AD Act Review

168. In considering the current exemption for faith based schools in relation to the employment of staff, in *Building Belonging*, the QHRC essentially acknowledged:

- a. the importance of recognising and respecting the rights of parents to educate their children in accordance with their religious beliefs;
- b. that religious organisations make a significant contribution to the community; and
- c. that it is necessary to limit religious freedom as recommended to uphold the rights to privacy and non discrimination of staff in religious bodies.⁶⁶

169. This culminated in Recommendation 39 which recommended:

- a. at Recommendation 39.1, the repeal of the current genuine occupational requirement exception relating to work in educational institutions or other bodies established for religious purposes (s 25(2) (8) AD Act);
- b. at Recommendation 39.2, the creation of a new exception to allow discrimination on the grounds of religious belief or religious activity for an organisation or related entity established for religious purposes, if **reasonable and proportionate** in the circumstances and the participation of the person in the teaching, observance or practice of a particular religion **is a genuine occupational requirement**; and
- c. at Recommendation 39.3, the inclusion of a list of factors for what is considered to be reasonable and proportionate, including:
 - i. the importance of the relevant conduct in protecting the ethos of the religious organisation and the religious susceptibilities of adherents of that religion;

⁶⁶ Queensland Human Rights Commission, *Building Belonging Report* (Review, 2022) 273.

- ii. the proximity between the person's actions and the religious organisation's proclamatory mission;
- iii. whether the religious organisation is a public entity under the HR Act when engaging in the conduct;
- iv. if the religious organisation operates in a commercial manner when engaging in the conduct;
- v. the reasonable availability of alternative employment; and
- vi. the rights and interests of the employee.

170. In addition, Recommendation 39.4 was that the AD Act should include examples to demonstrate that the exception does not permit discrimination against employees who are not involved in the teaching, observance or practice of a religion, such as a science teacher.

171. The Queensland Independent Education Union (**QIEU**), who is the principal union representing school staff in independent and faith based schools, has provided a series of case studies previously to the QHRC and to this Committee in its own submissions outlining the extent and breadth of discrimination against school staff that occurs based on existing protected attributes including sex, relationship status, pregnancy, parental status, gender identity, sexuality and family responsibilities.

172. The QIEU have identified that the most common forms of discrimination currently occurring affect:

- a. staff in de facto relationships getting married (relationship status);
- b. staff being pregnant outside of marriage (pregnancy, relationship status);
- c. staff becoming separated (relationship status);
- d. staff living in a same sex relationship (relationship status, sexual orientation);

- e. staff participating in IVF/IUI treatment;
- f. staff divorcing (relationship status); and
- g. staff remarrying without an annulment (relationship status).

173. The QIEU advise that many of these instances where discrimination occurs end in termination and are subject to confidentiality deeds. They occur predominantly after employment, sometimes years after employment, and may come to light from unintended disclosure to another staff member, the announcement of a wedding, or when accessing sick leave for reproductive health reasons.

174. Clearly, the ability for a faith based school to actively discriminate against school staff on the grounds of these protected attributes is not acceptable in a modern community that also seeks to protect individual human rights.

175. The QIEU also advise that there are over 30,000 teachers and education workers in non government schools which would still be covered by the QHRC recommended exception allowing an employer to continue to discriminate against employees including:

- a. all primary teachers in faith based schools who deliver a form of Christian Studies or Religious Education;
- b. Religious Education teachers in secondary schools;
- c. promotional positions relating to Religious Education;
- d. secondary pastoral care positions (e.g., Head of Year that incorporates significant ethos and religious beliefs); and
- e. secondary home room teachers that oversee daily prayer and pastoral activities.

176. In addition, many teachers regularly teach out of subject given student movements and staff absences and these teachers would also be excluded from protection by the proposed QHRC recommendation (e.g., the common practice of a science teacher required to be a home room teacher or supervise a school camp/activity).

177. It is also worth noting that neither the current protected attributes in the AD Act nor the proposed new attributes or amendments in the Bill will address discrimination on the basis of a person seeking or participating in a form of fertility treatment such as IUI or IVF treatment (as previously discussed at page 12).

178. This is particularly pertinent when one in six Australian couples are experiencing fertility issues and around one in every eighteen Australian babies are now being born as a result of IVF or IUI treatment.⁶⁷

179. The fact that an employee within a faith based school is seeking fertility treatment in their private life should have no impact on their employment or public conduct within a religious school.

[Federal Report on Religious Discrimination](#)

180. The QCU notes that the Australian Law Reform Commission (**ALRC**) has continued to work on the issues explored in Building Belonging. This work culminated in the release of a report titled 'Maximising the Realisation of Human Rights: Religious Education Institutions and Anti Discrimination Laws' in December 2023 (**ALRC Report**).⁶⁸

⁶⁷ University of New South Wales, National Perinatal Epidemiology and Statistics Unit (2023).

⁶⁸ Australian Law Reform Commission Report 142 (December 2023) Final Report 'Maximising the Realisation of Human Rights: Religious Educational Institutions and Anti-Discrimination Laws.

181. The ALRC was tasked with recommending legislative reforms that were necessary to ensure, to the extent practicable, that federal anti discrimination laws reflect the Federal Government's commitment to ensuring that a religious educational institution, *inter alia*:

- a. must not discriminate against a member of staff on the basis of sex, sexual orientation, gender identity, marital or relationship status, or pregnancy; and
- b. can continue to build a community of faith by giving preference, in good faith, to persons of the same religion as the educational institution in the selection of staff.

182. The ALRC Report contains two relevant recommendations (Recommendations 1 and 7) in relation to discrimination or permitted discrimination against school staff by faith based schools and put into effect the Government's commitment.

183. In effect, Recommendation 1 narrows the grounds in which it would be lawful to discriminate against staff at religious educational institutions pursuant to the SD Act.

184. Recommendation 7 similarly narrows the circumstances in which it would be lawful to treat staff, especially existing employees, at religious educational institutions differently on the ground of religion, to ensure that differential treatment on the basis of religion does not allow for discrimination on SD Act grounds, and to allow religious educational institutions to give preference to persons of the same religion in selecting employees, in order to build and maintain a community of faith.

185. If the relevant recommendations were implemented, faith based schools would be able to preference the employment of school staff to persons of the same religion but not discriminate against a person on the basis of sex, sexual orientation, gender identity, marital or relationship status or pregnancy in their employment (adding to the existing protections of age, race and impairment).
186. In practice, any law based upon these two recommendations would mean that a faith based school could preference, in good faith, the employment of a person for a teaching position who is of the same religion over another applicant who is not, but the school could not discriminate against a person on the basis of any other protected attribute in relation to their employment.
187. The principles underpinning these recommendations is a significant step forward to protect staff seeking employment in and working within faith based schools and would still enable all other matters relating to the public conduct of school staff while at work, or in connection with work, to continue to be regulated through other areas.
188. For example, under these principles, public conduct in relation to a staff member's work or which is connected with their work could be regulated via internal policies and procedures, such as a Code of Conduct. However, those documents would not regulate a person's private conduct such as their relationship status, pregnancy, or participation in fertility treatment.
189. These principles would also provide stronger and clearer protection for the human rights of school staff within faith based schools in preference to the recommendation from Building Belonging which would continue to perpetuate

existing case law issues around 'occupational requirements', and not provide clarity around the circumstances in which preference may not be given.

190. For example, while there are prohibitions on religious discrimination in the FW Act that apply to employment and prospective employment, these prohibitions are subject to considerably broad exceptions for religious institutions. The FW Act contains exceptions for religious institutions in relation to conduct taken in good faith 'to avoid injury to the religious susceptibilities' of adherents of the relevant religion or creed.⁶⁹

191. Without any dedicated state or federal anti discrimination legislation prohibiting religious discrimination or limiting the circumstances in which such discrimination is permitted to occur, staff at faith based schools lack security in their employment.

Recommendation 8

The QCU strongly recommends to the Committee that further consultation occurs regarding religious occupational exemptions in Queensland with the key stakeholders (i.e., government, faith based school employers and unions) as an urgent priority.

192. The QCU would welcome the opportunity to consult further on our views that:

- a. a faith based school should be able to preference the employment of a person on the basis the applicant or employee is of the same religion;
- b. a faith based school should not be able to request information from a person that would identify a protected attribute, either directly or indirectly;

and

⁶⁹ *Fair Work Act 2019* (Cth), s 153(2)(b).

- c. a faith based school should not be able to discriminate against a person on the basis of any protected attribute (except for religious belief and/or activity as discussed above).

193. We similarly consider it necessary to open a dialogue on the following central policy issues:

- a. the practical impact of a positive duty on faith based schools as employers; and
- b. the scope to which a faith based school should be able to have policies that apply to all staff that outline expectations of conduct in relation to the employment of a person in their work or for work related activities versus private conduct.

194. The QCU also strongly recommends that the amendment to the proposed definition of 'potential pregnancy' contained in the Bill ensures that discrimination cannot occur in relation to a person seeking treatment or participating in fertility treatment such as IUI or IVF (as previously discussed at page 13).

Procedure for making work and work related complaints

195. The QCU notes that the Bill does not contain amendments relating to the structures of the QHRC and complaints handling processes arising from the recommendations from Building Belonging. However, similar to religious occupational exemptions, the QCU takes the opportunity to express our position on what these should encompass in a stage two Bill of reforms.

196. The AD Act Review sought to canvas parties' views about the existing complaints process which requires all parties to initially lodge a complaint with

the QHRC for investigation within 28 days (to determine whether it should be accepted or rejected), prior to being referred to initial conciliation by the QHRC.

197. It is only then, after a matter remains unresolved through conciliation at the QHRC, that a party may seek to have their matter referred to the relevant tribunal (the QIRC for work related matters, or the Queensland Civil and Administrative Tribunal (**QCAT**) for non work related matters)

198. For a work related matter, it is relevant to note the QIRC will automatically refer the matter to conciliation, and again if not resolved, then may proceed to arbitration which is normally preceded by a pre conference hearing.

199. It is significant to note that this process has only arisen because of changes made to the original two staged enforcement process when the AD Act was introduced, with conciliation provided by the former Anti Discrimination Commission and then determination by the former Anti Discrimination Tribunal.

200. However, because of the abolition of the Anti Discrimination Tribunal and referrals of matters for determination to QCAT, and more recently the QIRC for work related complaints, the process for proceeding with a matter under the AD Act has now in effect become a four staged complaint process.

201. As was pointed out by the QCU in our submissions to the AD Act Review, the four staged process is not only an inefficient use of time and wasted resources, but combined with general delays in hearing matters before the QHRC, it can be highly traumatising for complainants. Having to retell their story over and over and provide the same evidence through multiple processes to different

people, actively dissuades complainants from pursuing a complaint and accessing justice.

202. A further complication in a work related matter is that any orders sought, for example to protect the status quo for an employee while a matter is being heard, are required to be made on application to the QIRC before the matter can continue in conciliation before the QHRC,⁷⁰ as the QHRC is not a tribunal and has no powers to issue orders.

203. On this basis, the QCU submissions to the AD Act Review were to recommend a restructuring of the functions of the QHRC to effectively make it a regulator focused on providing education about discrimination matters, and to ensure compliance and enforcement with the AD Act, particularly based around the new proposed positive duty. Our submissions also recommended that this new regulator be given additional powers to undertake investigations into systemic issues of discrimination, including the power to issue compliance notices and enter into enforceable undertakings similar to other regulators.

204. The QCU recommended in our submissions to the AD Act Review that the QHR Commissioner be given a statutory right of intervention in all QIRC and QCAT proceedings under the AD Act, be able to pursue actions for non compliance with the Act in a relevant tribunal or court or bring on a matter of significant public interest before the relevant tribunal or court, such as could have occurred in the public case of Citipointe College.

205. Further, the QCU recommended that all work related matters should automatically be referred to the QIRC as the relevant tribunal for hearing work

⁷⁰ Anti-Discrimination Act 1991 (Qld), s 144.

related matters and to QCAT for non work related matters. As a matter of process, the QIRC would hear and determine complaints using its conciliation, and determinative powers as a tribunal.

206. The QCU continues to support this model. The QIRC, similarly to the FWC, already has jurisdiction and experience in dealing with discrimination matters, general protections, and sexual harassment and sex based harassment complaints under the IR Act and the WHS Act, as well as the current jurisdiction under the AD Act.

207. On that basis, the QCU does not support the recommendations made by the QHRC to address these matters, as they are not considered practical to deal with work related complaints.

208. For instance, Recommendations 9.11 to 9.14 of Building Belonging state:

- a. The Act should not require the Commission to take certain steps within specified timeframes during the dispute resolution process. Instead, the Commission must use its best endeavours to finish dealing with a complaint within 12 months of its lodgement;
- b. For matters that have met the threshold to proceed to dispute resolution, the Commission should give a notice to all parties to allow a complainant to elect to proceed to the tribunal once dispute resolution processes have finalised without an agreement, or if the Commission declines to provide, or continue to provide, dispute resolution; and
- c. Once the notice has been given to parties, the person bringing the complaint should retain the right to request referral to the tribunal for determination and this request must be made within the existing timeframe of 28 days.

209. If these recommendations are implemented, there would not be a direct right of access to the tribunal or court.

210. Adoption of these recommendations would simply delay the hearing of a matter even further by mandating a 12 month period before a party could apply for a matter to be heard by a tribunal (only to have to start at conciliation once again before a different Commissioner in a different jurisdiction).

211. The QCU therefore supports further reform and discussions in this space to consider the changes required to permit direct access to the relevant tribunal, in the first instance by conciliation and then by determination, if required, where there is no agreement reached.

212. This will reduce the time and resources of those involved with hearing the matters and ensure that complaints are prioritised and handled in a way where the person making the complaint is not continuously re-traumatised by overburdening and bureaucratic processes.

213. It will also ensure that:

- a. there is a clearer purpose for the QHRC in ensuring compliance and enforcement with the AD Act, separated from disputes handling, more akin to normal powers and functions of a regulator; and
- b. work and work related disputes are handled by experienced and skilled Commissioners of the QIRC who are already familiar with dealing with the very same matters in other areas within their jurisdiction.

Recommendation 9

The QCU recommends to the Committee that further consultation occurs on the reforms required to provide complainants with a direct right of access to the relevant tribunal.

Immigration or migration status

214. Clause 52 of the Bill adds the terms 'immigration or migration status' to the definition of the protected attribute of 'race'. However, this suggests that people may only face discrimination on the basis of their immigration or migration status because of their race. This is clearly not the case because migration status may be independent of a person's race.

215. Anti discrimination legislation in the Northern Territory and Tasmania includes, in the definition of race, 'being or having been an immigrant',⁷¹ and the *Racial Discrimination Act 1975* (Cth) extends the grounds of prohibited discrimination to the 'status of being an immigrant'.⁷² The *Discrimination Act 1991* (ACT) however, protects the attribute of 'immigration status' in its own right and not as an aspect of race.⁷³

216. In providing this protection, the ACT legislation defines immigration status to include 'being an immigrant, a refugee or an asylum seeker, or holding any kind of visa under the *Migration Act 1958* (Cth)', and notes that this includes the immigration status that the person 'has or has had in the past, or is thought to have or have had in the past'.⁷⁴

⁷¹ *Anti-Discrimination Act 1992* (NT), s 4; *Anti-Discrimination Act 1998* (Tas), s 3.

⁷² *Racial Discrimination Act 1975* (Cth), s 5.

⁷³ *Discrimination Act 1991* (ACT), s 7(i).

⁷⁴ *Ibid.*

217. The QCU supports this model.

218. Therefore, the Bill could be improved by including 'immigration and/or migration status' as a standalone protected attribute based on the definition contained in the *Discrimination Act 1991* (ACT).

Recommendation 10

The QCU recommends to the Committee that the Bill be amended to include 'immigration and/or migration status' as a standalone protected attribute based on the definition contained in the *Discrimination Act 1991* (ACT).

Conclusion

219. The QCU thanks the Committee for the opportunity to make this submission.

220. We welcome the reforms contained in the Bill, but we encourage the Committee to carefully consider the improvements recommended by the QCU above.