

## Respect at Work and Other Matters Amendment Bill 2024

**Submission No:** 36  
**Submitted by:** Queensland Human Rights Commission  
**Publication:** Making the submission and your name public  
**Attachments:** See attachment  
**Submitter Comments:**



Queensland  
**Human Rights**  
Commission

# Respect at Work and Other Matters Amendment Bill 2024

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Submission to Community Safety and Legal Affairs  
Committee

8 July 2024

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# About the Commission

1. The Queensland Human Rights Commission (**the Commission**) is an independent statutory body with functions under the *Anti-Discrimination Act 1991* (Qld) (**Anti-Discrimination Act**) and the *Human Rights Act 2019* (Qld) (**Human Rights Act**) including dealing with complaints of discrimination and contraventions of the Human Rights Act, and promoting an understanding, acceptance, and public discussion of human rights in Queensland.

## Introduction

2. This is a submission to the Community Safety and Legal Affairs Committee to inform their consideration of the Respect at Work and Other Matters Amendment Bill 2024 (**the Bill**).
3. The submission includes:
  - high priority issues that necessitate amendments to the Bill
  - priority reforms from *Building Belonging* that require immediate action to strengthen and improve Queensland discrimination laws
  - commentary on further key aspects of the Bill.

## The Committee should recommend the Bill be passed

4. The Commission supports the passage of the Bill but recommends amendments that will improve the effectiveness of proposed changes to the Anti-Discrimination Act.
5. The Bill implements some recommendations of the Commission's report on its 2021-22 review of discrimination laws in Queensland (*Building Belonging*).<sup>1</sup>
6. While these proposed amendments are welcome, the Bill does not address foundational issues that *Building Belonging* addressed.

## Remaining *Building Belonging* recommendations should be implemented without delay

7. In May 2021, the Attorney-General asked the Commission to undertake a review of the Anti-Discrimination Act – the first holistic consideration of the Act since its introduction more than 30 years ago. Following a comprehensive 14-month consultation and review, the Commission published its final report, *Building Belonging*, which was tabled in parliament in September 2022.<sup>2</sup>

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<sup>1</sup> Queensland Human Rights Commission, *Building belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022).

<sup>2</sup> Queensland Human Rights Commission, *Building belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022).

8. The review conducted extensive consultation and research including more than 120 stakeholder consultations, 4 public consultations, 6 roundtables, 159 written submissions, and an online survey which received 1,109 responses.
9. *Building Belonging* called for significant reforms including the introduction of a positive duty on organisations to eliminate discrimination, the redefinition and expansion of protected attributes, and the recognition of intersectional discrimination. Changes to legal definitions and the complaint process were also recommended to simplify the legal framework for the benefit of both complainants and duty holders, making it more accessible and effective, and improving access to justice.
10. *Building Belonging* recommended a comprehensive overhaul of the Anti-Discrimination Act, and that the Act be repealed and replaced with a new Act that aligns with contemporary needs and expectations and with the Human Rights Act.
11. The final report was delivered to the Attorney-General in July 2022. When tabling the report in the Queensland Parliament, the then Attorney-General described the review as ‘comprehensive, consultative, inclusive and evidence-based.’
12. In response, the Queensland Government supported in-principle all recommendations and committed to a Bill to repeal and replace the *Anti-Discrimination Act 1991* in the current term of government.<sup>3</sup>
13. If the current Bill passes into law, 14 of the 46 *Building Belonging* recommendations will have been fully or partially implemented.<sup>4</sup> The Queensland Government has indicated that it intends to implement recommendations of the *Building Belonging* report in two phases.
14. The Bill also updates civil and criminal vilification laws. While an examination of vilification and hate crime laws was expressly excluded from the scope of the Commission’s review of the Anti-Discrimination Act, the Legal Affairs and Safety Committee separately considered these issues and the Commission actively participated in this inquiry.<sup>5</sup>
15. The Commission supports the changes that further implement the recommendations of the Legal Affairs and Safety Committee to strengthen vilification and hate crime laws in Queensland,<sup>6</sup> subject to some concerns regarding the wording of the vilification provision.
16. The Commission looks forward to the next phase of reforms and to the full implementation of the *Building Belonging* recommendations.

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<sup>3</sup> Final Queensland Government Response in the Legislative Assembly tabled 3 April 2023.

<sup>4</sup> Aside from the amendments contained in this Bill, other amendments to attributes and exceptions have been made through the *Births, Deaths and Marriages Registration Act 2024*, the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* and the Assisted Reproductive Technology Bill 2024 (currently being considered by this committee).

<sup>5</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into serious vilification and hate crimes* (Report no. 22, January 2022).

<sup>6</sup> Noting that amendments have also previously been made by the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023*.

# Recommendations

17. The Committee should recommend the Bill be passed, subject to the following proposed changes:

## **Recommendation 1**

Amend the Bill to incorporate sections 151-154 of the Consultation Draft Bill within Part 1A of the current Bill – ‘What the commission may do – investigations and compliance’.

## **Recommendation 2**

Amend the Bill to include an express provision for publishing reports on the investigations conducted into compliance with the positive duty.

## **Recommendation 3**

Expand the capacity to undertake systemic investigations to cover all unlawful conduct covered by the Act, and in relation to all attribute(s) and areas of activity.

## **Recommendation 4**

Create a single time limit of 2 years across all attributes and areas by amending clause 29 of the Bill so that it changes the wording of current section 138 as follows:

- (1) Subject to subsection (2), a person is only entitled to make a complaint within ~~4-year~~**2 years** of the alleged contravention of the Act.

## **Recommendation 5**

Add a clarifying note to section 124E which explains that, to remove any doubt, it remains open for a complainant to argue direct discrimination in relation to attributes other than sex.

## **Recommendation 6**

Amend new section 124D so that it reads:

- A person must not, by a public act, urge or promote hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of ...

## **Recommendation 7**

Remove clause 12 of the Bill.

## **Recommendation 8**

Amend clauses 21 and 57-59, so that sections 124A, 124C, 124D of the Anti-Discrimination Act and sections 52A, 52B and 52C of the Criminal Code include ‘sex work activity’ as a grounds for civil and criminal vilification.

# Five priority issues

18. This section presents five priority issues for the Committee’s consideration and recommends changes that address these concerns and substantially improve the Bill.

## Ensure adequate tools to prevent all forms of discrimination

### Shifting to prevention

19. During the Commission's review of discrimination laws, a consistent theme that emerged throughout our consultations and submissions was that the current system lacks a preventative focus. Currently, the primary way the Anti-Discrimination Act is enforced is through resolving individual complaints about conduct that has already occurred. Given the significant barriers many people face to making a complaint, this approach limits the effectiveness of the law to protect people from discrimination.
20. Overall, there was strong stakeholder support for shifting the focus to prevention, including through the introduction of a positive duty within the Anti-Discrimination Act, and providing the Commission with tools to support compliance. The Commission heard these tools should focus on education and awareness and include enforcing compliance.
21. The Commission supports and endorses the positive duty as framed in the Bill. This legal obligation requires duty holders to take reasonable and proportionate steps to eliminate discrimination as far as possible, while having regard to relevant factors such as the size, nature, and resources of the business or operation.
22. *Building Belonging* highlighted the benefits of a positive duty and effective tools to support compliance, including prevention, education and awareness, shared responsibility, and shifting the focus to address systemic forms of discrimination, rather than addressing isolated, individual instances.
23. While strongly supporting the framing of the positive duty, the Commission has reservations about the lack of appropriate functions and powers provided to the Commission to encourage and require compliance.

### Encouraging voluntary compliance

24. *Building Belonging* recommended a suite of tools to support compliance with the positive duty. These functions and powers are based on a 'responsive regulation enforcement'<sup>7</sup> framework, and include three tiers:
  - **Level one:** building an understanding of obligations through education and awareness, and the publication of guidelines
  - **Level two:** cooperating to address systemic issues through the express power to conduct voluntary reviews, and providing advice to duty holders on action plans
  - **Level three:** addressing non-compliance through systemic investigations, and the option to take various actions including accepting written undertakings, issuing a compliance notice, and applying to the tribunal for enforcement.

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<sup>7</sup> See Professors Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate*, (Oxford University Press, 1992). This work poses the concept of the regulatory pyramid, which focuses a regulator's efforts on prevention and persuasion. John Braithwaite is an Emeritus Professor at the Australian National University.

25. The Bill would provide the Commission the functions and powers for levels one and 3 but does not include level 2 compliance powers. This means the Commission would not have the function to conduct voluntary reviews and provide input to an organisation's action plans.
26. While previously regarded as 'soft' regulation, voluntary reviews have increasingly been considered an effective tool for motivating duty holders to take measurable steps towards eliminating systemic discrimination. In consultations during the *Building Belonging* review, these approaches were also preferred by duty holders.
27. Level 2 functions and powers also align with the fundamental purposes of the positive duty. This is because the positive duty is, at its core, about changing culture within institutions. While serious wrongdoing is best addressed through an inquiry or investigation approach using coercive powers, cultural change is often best achieved through willing and voluntary involvement of the duty holder.
28. The Commission notes that these functions were incorporated into the consultation draft Bill published by the Queensland Government.<sup>8</sup> These provided fit-for-purpose provisions that implemented the recommendations of chapter 6 of the *Building Belonging* report, and were supported by the Commission.

### **Recommendation 1**

Amend the Bill to incorporate sections 151-154 of the Consultation Draft Bill within Part 1A of the Bill – 'What the commission may do – investigations and compliance'.

#### **Ensure that a positive duty compliance investigation has an express reporting power**

29. Under the Bill, after the Commission has decided to investigate compliance with the positive duty,<sup>9</sup> the Commission may take various actions. These include accepting and publishing written undertakings, issuing a compliance notice, and applying to the tribunal for enforcement.<sup>10</sup>
30. However, there is no express provision that allows the commissioner to prepare and publish a report about the investigation.
31. This differs from the actions the commissioner may take following an investigation into systemic work-related contraventions on the basis of sex, where there is express provision providing for the publication and/or tabling of reports.<sup>11</sup>
32. Public reporting is a vital function for the Commission for the following reasons:
  - creating broader educative and normative value for duty holders, and promoting the broader objectives of the Act

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<sup>8</sup> Anti-Discrimination Bill 2024 (Qld) Consultation Draft, February 2024.

<sup>9</sup> Respect at Work and Other Matters Amendment Bill 2024 (Qld) cl 39 relating to proposed s 173B(3).

<sup>10</sup> Clause 39, sections 173I-N.

<sup>11</sup> Respect at Work and Other Matters Amendment Bill 2024 (Qld) cl 39 relating to proposed s173O and s173P.



- encouraging duty holders to engage voluntarily and collaboratively with the Commission, which can be more effective for driving cultural change
- providing further context where written undertakings are being published, including an opportunity for duty holders to have their responses to any adverse comments published contemporaneously with any written undertakings.

33. Reports on positive duty investigations would also align with options available for investigations following a systemic investigation into work-related contraventions on the basis of sex.

## **Recommendation 2**

Amend the Bill to include an express provision for publishing reports on the investigations conducted into compliance with the positive duty.

### **Scope of systemic investigation powers are too narrow**

34. As drafted, the Bill only provides the Commission with an ‘own motion’ power to investigate contraventions of the Act if they are suspected of happening at work, are systemic in nature, and on the basis of sex. No similar own motion powers of investigation would be available to the Commission for other contraventions such as systemic race or disability discrimination.
35. The Explanatory Notes state that the power to conduct an investigation is central to the Commission’s new functions to ‘proactively support compliance with the Act, rather than simply relying on individuals subject to alleged contraventions making complaints’.<sup>12</sup> However, there is insufficient justification as to why own motion investigations can only be started in relation to systemic sex discrimination at work.
36. When undertaking the *Building Belonging* review, the Commission heard about situations outside of workplaces that were clearly unlawful, but where no individuals were prepared to make a complaint because of negative consequences. For instance, in a regional area we heard that rental application forms were starting to include a question about whether the applicant is Aboriginal or Torres Strait Islander. The community considered they were being screened out as potential renters but feared repercussions if they raised their concerns.
37. While the Commission anticipates investigative powers will only be used in limited circumstances to address the most serious and systemic conduct, when used strategically, systemic investigations can have a trickle-down effect on duty holders and create positive cultural change.

## **Recommendation 3**

Expand the capacity to undertake systemic investigations to cover all unlawful conduct covered by the Act, and in relation to all attribute(s) and areas of activity.

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<sup>12</sup> Explanatory Notes, Respect at Work and Other Matters Amendment Bill 2024 (Qld) 23.

## Changes to complaints complicate rather than improve outdated complaint procedures

38. A major focus of *Building Belonging* was improving the complaints provisions, which are outdated and overly prescriptive. But the Bill as drafted will worsen – rather than improve – the experience of complaint parties. It will create delays and reduce the efficiency of the Commission’s complaint handling process.
39. The Bill creates different time limits for complaints that allege sex-related contraventions at work from those that do not.<sup>13</sup> This will result in some allegations having a 2-year time limit while others having a 1-year time limit, depending on the area of activity (work or another area) and the relevant attributes or contraventions (on the basis of sex or a different attribute).
40. The Explanatory Notes refer to the Australian Human Rights Commission’s *Respect@Work* report which recommended amending the time limit under the federal Sex Discrimination Act. However, all federal discrimination laws have since been standardised to provide a 2-year time limit for making a complaint.<sup>14</sup>
41. The Commission anticipates that different time limits will pose serious difficulties that may not have been anticipated when introducing variable time limits. Commission staff will be called on to explain this inconsistency and its rationale, which is likely to cause serious frustration for complaint parties and the tribunal.
42. Frequently complaints allege a contravention on the basis of sex as well as and another attribute/s, and may occur across multiple areas of activity.
43. Varying time limits create practical problems in situations where a person complains about:
  - a course of conduct which has included a combination of sexual harassment with other unlawful treatment, e.g. impairment discrimination
  - a single allegation which amounts to both sex discrimination and another form of discrimination, e.g. being subjected to abuse that is both racist and sexist
  - a series of incidents where work colleagues have engaged in unlawful conduct, some of which occurred at work and some that did not.
44. Variable time limits in the current Bill would:
  - be inconsistent with the right of equality before the law and the right to equal and effective protection against discrimination under section 15 of the *Human Rights Act 2019* (Qld)
  - introduce further inconsistency with the federal law, without any apparent justification

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<sup>13</sup> Respect at Work and Other Matters Amendment Bill 2024 (Qld) cl 29, relating to amendment of s 138. The following contraventions have a 2-year timeframe: sex discrimination, sexual harassment, sex-based harassment, subjecting a person to a work environment that is hostile based on sex or victimisation resulting from a sex-based allegation – see cl 50 of the Bill for meaning of *contravention on the basis of sex*.

<sup>14</sup> *Australian Human Rights Commission Act 1986* (Cth) s 46PH amended by the *Anti-Discrimination and Human Rights Legislation (Respect at Work) Act 2022* (Cth).

- worsen the experience of complainants seeking redress for intersectional disadvantage, which is of particular concern given that people with experiences of marginalisation because of their age, race, and/or LGBTIQ+ status experience sexual harassment and other demeaning conduct at a higher rate<sup>15</sup>
- be impracticable for the Commission to implement and create more red tape, slowing down complaint assessment processes and increasing delays for any complainant who is alleging sex-based discrimination or harassment, or sexual harassment, in addition to discrimination on the ground of another attribute or in more than one area of activity.

#### Recommendation 4

Create a single time limit of 2 years for all attributes and areas by amending clause 29 of the Bill so that it changes the wording of current section 138 as follows:

(1) Subject to subsection (2), a person is only entitled to make a complaint within 4 ~~year~~ **2 years** of the alleged contravention of the Act.

45. See also the section on *Improving the complaint system* on page 19 for a discussion on the further amendments required to improve the system.

### New sex-based contraventions may have unintended consequences

46. The Bill amends chapter 3 of the Anti-Discrimination Act to create new prohibitions on sex-based harassment when it occurs at work, and work environments that are hostile on the basis of sex. These were amendments recommended by the Australian Human Rights Commission in its *Respect@Work* report,<sup>16</sup> since implemented in the federal context in the Sex Discrimination Act.
47. Sexual harassment thrives in environments where there is a culture of acceptance of inappropriate behaviour, particularly where an employer has failed to take reasonable steps to address the behaviour. Prohibitions against harassment based on sex and hostile work environments are aimed at addressing underlying sexist cultures that permeate some workplaces.
48. A common view expressed in submissions and consultations to the Commission's review of the Anti-Discrimination Act was that Queensland's sexual harassment provisions are working well and are the best in Australia, and that relatively low complaint numbers are more to do with stigma and negative consequences of complaining rather than the law itself.<sup>17</sup>

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<sup>15</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) 19. *Respect@Work* noted that sexual harassment is experienced at greater rates by young people, LGBTIQ workers, Aboriginal and Torres Strait Islander workers, workers with a disability, workers from culturally and linguistically diverse backgrounds, migrant workers, and people in insecure work.

<sup>16</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020).

<sup>17</sup> Queensland Human Rights Commission, *Building belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 131.

49. After in-depth consultations, consideration of submissions and legal research, the Commission concluded that the current sexual harassment laws in Queensland are working well, and substantially cover the situations that *Respect@Work* sought to address in the federal jurisdiction.
50. The Commission cautions against implementing these changes in the Queensland context without due consideration of potential unintended consequences from the way the law is interpreted in relation to other attributes.
51. Interpretation of the federal *Sex Discrimination Act 1984* does not affect the application of the 3 other federal discrimination laws that deal with contraventions based on the attributes of age, race, and disability. In contrast, the Queensland Anti-Discrimination Act addresses discrimination against all attributes in one piece of legislation.
52. Sex-based harassment is a form of *direct* discrimination.<sup>18</sup> Work environments that are hostile on the basis of sex are a form of *indirect* discrimination.<sup>19</sup>
53. Under the rules of statutory interpretation, specific laws when enacted more recently may be found to override general laws.<sup>20</sup> As sex-based harassment is already a form of direct discrimination, specific provision in the Act about sex-based harassment may lead to an interpretation that other kinds of harassing treatment, such as racist comments, are not unlawful.
54. New section 124E (hostile work environments) contains a sub-section that confirms that the section does not limit other provisions of the Act that prohibit conduct that may offend, humiliate or intimidate another person, but there is no similar provision in section 120 (sex-based harassment).
55. While an Explanatory Note states that a complainant may still argue a term being imposed that constitutes indirect discrimination by facilitating a work environment that is hostile on the basis of another attribute,<sup>21</sup> there is no similar note in relation to harassment based on sex.

### **Recommendation 5**

Add a clarifying note to section 124E which explains that, to remove any doubt, it remains open for a complainant to argue direct discrimination in relation to attributes other than sex.

56. See also *Redefining key concepts* on page 18 for recommendations of how the law should be amended to address gaps in the legislation that the Bill aims to fill by creating new sex-based contraventions.

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<sup>18</sup> Explanatory Notes, Respect at Work and Other Matters Amendment Bill 2024 (Qld) 9.

<sup>19</sup> Explanatory Notes, Respect at Work and Other Matters Amendment Bill 2024 (Qld) 10.

<sup>20</sup> *Goodwin v Phillips* (1908) 7 CLR 1 at 14.

*Multicultural and Indigenous Affairs v Nystrom* (2006) 228 CLR 566, [48]

<sup>21</sup> Explanatory Notes, Respect at Work and Other Matters Amendment Bill 2024 (Qld)10.

## New vilification wording puts established case law at risk

57. The vilification provision in section 124D changes the existing provision by changing the word 'incite' to 'engage in conduct that is likely to incite'. There is well established jurisprudence that 'incite' as currently used means to stimulate, urge on, and the like, and that it is not necessary that a person is actually incited.
58. In reviewing the effectiveness of vilification laws, the Legal Affairs and Safety Committee recommended lowering the threshold for incitement.<sup>22</sup> By changing the meaning from the way it has been interpreted (promote, urge on, and the like), the way the provision is framed in the Bill will *increase* rather than *lower* the threshold. That is, the complainant will have to prove that the conduct is likely to incite.
59. Adopting the words 'likely to incite' creates the impression that the requirement is that someone might be actually incited. It would be much clearer to use words that reflect the way that incite has been interpreted by the Queensland courts. Under Queensland law, vilification may occur even where there is no actual audience to observe the conduct.<sup>23</sup>
60. The Explanatory Notes state that 'it is not necessary to show actual incitement, but instead only requires the conduct to be capable of inciting hatred, serious contempt, or severe ridicule.'<sup>24</sup>
61. This is different from the current legal test in Queensland, based on NSW case law, which is: whether the ordinary reader/listener/observer would consider that they were being urged on to hatred towards or the other relevant emotions.<sup>25</sup>
62. Changing the provision from 'engage in conduct that is likely to incite' to 'promote or urge on' would better achieve the objective of simplifying the understanding and application of the threshold.

### Recommendation 6

Amend new section 124D so it reads that:

A person must not, by a public act, urge or promote hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of ...

## Conflict between two Bills regarding ART exception

63. *Building Belonging* recommended the repeal of section 45A of the Act, which permits discrimination against single people and LGBTQ+ people seeking

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<sup>22</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into serious vilification and hate crimes* (Report no. 22, January 2022), recommendation 5.

<sup>23</sup> See for example *Peters v Constance* [2005] 9 where it was sufficient that the conduct was capable of being heard by others in the apartment block. Also, in *Wilson & McCollum v Lawson* [2008] QADT 27, *Huenerberg v Murray* [2023] QCAT 175, and *Zhai v Kullack* [2024] QCAT 56, comments in a residential neighbourhood were capable of being heard by passers-by and other neighbours

<sup>24</sup> Explanatory Notes, Respect at Work and Other Matters Amendment Bill 2024 (Qld) 31.

<sup>25</sup> *Kazak v John Fairfax Publications Limited* [2000] NSWADT 77.

assisted reproductive technology services.<sup>26</sup> The section is not relied on by service providers and is likely to be inoperative because it is inconsistent with the federal *Constitution*.<sup>27</sup>

64. The Assisted Reproductive Technology Bill 2024 (Qld) (the **ART Bill**), also being considered by this Committee at the time of writing, omits section 45A.<sup>28</sup> The omission of this exception is necessary for other provisions in the ART Bill regarding eligibility for services to function congruently.<sup>29</sup>
65. The Commission is unsure why the Bill makes minor wording changes to the exemption in section 45A when the intention appears to be to ultimately repeal the provision, consistent with *Building Belonging* recommendations.

### Recommendation 7

Remove clause 12 of the Bill.

## Other key aspects

66. This section provides commentary on other key aspects of the Bill relating to discrimination and vilification – updates to vilification laws, the update and expansion of protected attributes, improvements to representative complaints, and changes that substantially replicate existing investigation provisions.

### Modernising and strengthening vilification laws

67. This section discusses the updates to vilification and hate crime laws in the Bill. See also *New vilification wording puts established case law at risk* on page 11.

### Protections from vilification

68. Following its inquiry into serious vilification and hate crimes (the **Vilification inquiry**), the Legal Affairs and Safety Committee recommended lowering the threshold of the civil incitement test,<sup>30</sup> adopting the definition of a ‘public act’ from a NSW provision that incorporates social media and other electronic methods,<sup>31</sup> and expanding the attributes covered by civil and criminal anti-vilification provisions.<sup>32</sup>

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<sup>26</sup> Queensland Human Rights Commission, *Building belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Report, July 2022) Recommendation 44.

<sup>27</sup> In *McBain v Victoria*, the Federal Court found that an exception in the now repealed *Infertility Treatment Act 1995* (Vic), which permitted refusal of infertility treatment because of marital status, was inconsistent with the *Sex Discrimination Act 1984*, and therefore inoperative under section 109 of the Constitution.

<sup>28</sup> Assisted Reproductive Technology Bill 2024 (Qld) cl 155.

<sup>29</sup> Explanatory Notes, Assisted Reproductive Technology Bill 2024 (Qld) 118.

<sup>30</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into serious vilification and hate crimes* (Report no. 22, January 2022), recommendation 5.

<sup>31</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into serious vilification and hate crimes* (Report no. 22, January 2022) recommendation 6.

<sup>32</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into serious vilification and hate crimes* (Report no. 22, January 2022) recommendation 4.

69. The Commission supports the creation of a new harm-based prohibition, the addition of further attributes, and the extension of coverage to include characteristics of attributes, and to clarify that a ‘public act’ for the purposes of vilification may occur on private land, such as a school or workplace.

#### *New prohibition on harmful conduct*

70. The Commission supports the introduction of a new prohibition of hateful, reviling, seriously contemptuous, or seriously ridiculing conduct (new section 124C). The Commission considers that the provision would complement the current prohibition against inciting conduct in current section 124A and strengthen the law by prohibiting conduct that causes significant harm to others.
71. A criticism of civil prohibitions on discrimination is that they do not place enough emphasis on the harm experienced by victims, and the harm caused to the broader society in terms of social cohesion.
72. A Victorian inquiry into anti-vilification protections recommended a ‘harm-based’ prohibition on vilification with the aim of reflecting the ordinary understanding of vilification as an expression of hatred or abuse and reducing the evidentiary burden on complainants to prove the element of ‘incitement’.<sup>33</sup> This ‘harm-based’ approach, also considered in detail by the Legal Affairs and Safety Committee, has been adopted in the Bill.

#### *New protected attributes*

73. As previously expressed to the Vilification inquiry, the Commission supports the expansion of further attributes in the civil and criminal vilification provisions and, in particular, the inclusion of impairment. In conducting its inquiry, the Legal Affairs and Safety Committee heard evidence to indicate that people with disabilities are subjected to vilification openly in public and in other areas of public life.<sup>34</sup>
74. During the Vilification inquiry, and more recently in a parliamentary inquiry into a recent Bill strengthening criminal responses,<sup>35</sup> some stakeholders made submissions recommending that sex workers be protected from vilification.
75. The Commission has previously recommended a framework for consideration of which attributes should be selected for protection from civil and criminal vilification.<sup>36</sup> The 5 factors for consideration in this framework are demonstrable need, relative prevalence, severity, additional harm, and suitability.<sup>37</sup>

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<sup>33</sup> Legislative Assembly Legal and Social Issues Committee, Victorian Parliament, *Inquiry into anti-vilification protections* (2021) 119.

<sup>34</sup> Queensland Human Rights Commission, Supplementary submission to Legal Affairs and Safety Committee – Inquiry into serious vilification and hate crimes (11 November 2021).

<sup>35</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (Report no. 49, June 2023).

<sup>36</sup> Queensland Human Rights Commission, Submission to Legal Affairs and Safety Committee – Inquiry into serious vilification and hate crimes, 26 (12 July 2021).

<sup>37</sup> This framework has been drawn from the Law Commission (United Kingdom), *Hate crime laws* (Final report, Law Com No 402, 2021).

76. Considering this framework and evidence provided to the recent inquiries in these issues, there are arguable grounds for the inclusion of ‘sex work activity’ in the list of attributes to be protected from vilification and hate crimes.

### Recommendation 8

Amend clauses 21 and 57-59, so that sections 124A, 124C, 124D of the Anti-Discrimination Act and sections 52A, 52B and 52C of the Criminal Code include ‘sex work activity’ as a grounds for civil and criminal vilification.

#### *Extending coverage to characteristics of attributes*

77. The Bill will ensure that people are adequately protected from vilification that occurs because of a characteristic of a protected attribute. Section 8 of the Anti-Discrimination Act currently states that discrimination on the basis of an attribute includes a characteristic that a person with an attribute generally has, or a characteristic that is often imputed to a person with an attribute. The new sex-based prohibitions included in the Bill will contain a similar characteristics extension.
78. Applying this approach to vilification is a logical and necessary amendment to promote consistency across the Act’s contraventions and to close potential gaps in protection. In particular, the current law may fail to protect people from vilification where the vilifying conduct has occurred because of a characteristic often imputed to a person with the relevant attribute.
79. In the recent case of *Valkyrie and Hill v Shelton* [2023] QCAT 302, in the absence of a provision extending vilification on the ground of an attribute to include a characteristic of the attribute (as with discrimination) there was no means to find that references to drag queens were sufficiently linked to either the attributes of gender identity or sexuality.<sup>38</sup>
80. Adding a characteristics extension for vilification would also clarify other situations where people are vilified because of characteristics associated with a protected attribute. For instance, wearing a head scarf is generally associated with Muslim women. In the absence of a characteristics extension for vilification, a respondent may be able to argue that the vilifying conduct was linked to the wearing of a head covering, rather than to the person’s religion.

#### *Extending coverage to private land, including schools and workplaces*

81. The Commission supports clarification of the meaning of a ‘public act’ to remove any doubt that vilification that occurs in a public area of life is unlawful, even if it occurs on private land. The Commission has previously submitted that, in light of recent case law, it is necessary to clarify whether the prohibition is intended to apply to environments such as workplaces and schools that are not open to the public generally.<sup>39</sup>
82. Vilification and hate crime laws are not targeted at addressing private behaviour as this would unjustifiably limit freedom of expression. Clarifying that vilification

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<sup>38</sup> *Valkyrie and Hill v Shelton* [2023] QCAT 302 [131].

<sup>39</sup> Queensland Human Rights Commission, Submission No 36 to Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into serious vilification and hate crimes* (12 July 2021) 40 [156].



may occur in workplaces and places of education is consistent with the approach that only private communications are excluded from the prohibitions.

## New protected attributes and updated attributes

### Updating protected attributes

83. The Bill implements several recommendations of *Building Belonging*<sup>40</sup> by updating certain protected attributes in the current Anti-Discrimination Act, while other amendments have been made independently to improve the definition of gender identity and update protection for sex workers.<sup>41</sup>
84. The Commission strongly supports changes to the following attributes in accordance with the recommendations of *Building Belonging*:
  - sexual orientation (currently sexuality)
  - family, carer or kinship responsibilities (currently family responsibilities)
  - race (to explicitly include immigration / migration status in the non-exhaustive definition).
85. While not addressed by *Building Belonging*, the Commission does not have concerns with expanding coverage for pregnancy with a new 'potential pregnancy' attribute, nor with specifically defining the meaning of trade union activity.
86. The Commission expresses disappointment at the failure to implement the *Building Belonging*<sup>42</sup> recommendation to update the current name of the attribute 'impairment' to 'disability'. Associated changes would have included updating the definition of disability and replacing outdated language to align better with federal law. Clarification of how the Act applies to assistance animals and people who experience addiction is also needed.
87. All groups in need of protection under the Act will have the benefit of reforms recommended by the *Building Belonging* report except for people with a disability. Disability (impairment) discrimination represented 65% of complaints dealt with in 2022-23 by the Commission.
88. While acknowledging that this is the first tranche of legislative reform, the Commission recommends that reforms relating to people with a disability are prioritised in the subsequent amendments.

### Protecting additional attributes

89. Protection for additional attributes as recommended by the *Building Belonging* report<sup>43</sup> has been included in the Bill. The Commission notes that amendment of

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<sup>40</sup> Queensland Human Rights Commission, *Building belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) recommendations 23, 25, 26.

<sup>41</sup> *Births, Deaths and Marriages Registration Act 2024; Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024*.

<sup>42</sup> Recommendation 21.

<sup>43</sup> Queensland Human Rights Commission, *Building belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) recommendations 29, 30, 31, 32.

the Act to include the new attribute of sex characteristics has already commenced, concurrently with birth certificate reforms.<sup>44</sup>

90. The Commission supports the introduction of the following new attributes as recommended by the *Building Belonging*:
- physical appearance
  - homelessness
  - subjection to family and domestic violence
  - irrelevant criminal record
  - expunged conviction.
91. While the conduct sought to be addressed<sup>45</sup> is already covered by other attributes (i.e. impairment, gender identity and sex characteristics), the Commission does not object to the inclusion of the additional 'irrelevant medical record' attribute.

## Representative complaints

92. The Commission supports the amendments to representative complaints which align with the recommendations of *Building Belonging*. The Commission is pleased to observe that the Commission's drafting suggestions made to improve the representative complaints provisions have been implemented in the Bill.

## Retention of restrictive and impractical investigation powers

93. Some investigative powers included in the Bill<sup>46</sup> replicate impractical and outdated provisions that have been part of the Act since commencement in 1992.<sup>47</sup> *Building Belonging* concluded that the existing section 155 had deficiencies which resulted in them being rarely, if ever, used.
94. Currently section 155 requires the Commissioner to initiate an investigation if requested to do so by the Minister, or if the tribunal becomes aware of circumstances that may constitute a contravention of the Act and refers the matter to the commissioner.<sup>48</sup>
95. In addition, the Commissioner may initiate an investigation if:
- during the course of carrying out the commission's functions, a possible case of a contravention of the Act against a group or class of people is discovered, the matter is of public concern and the Minister agrees
  - an allegation is made that an offence against the Act has been committed

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<sup>44</sup> Amended by the *Births, Deaths and Marriages Registration Act 2024*, which commenced on 29 April 2024.

<sup>45</sup> As discussed in Explanatory Notes, *Respect at Work and Other Matters Amendment Bill 2024* (Qld) 44.

<sup>46</sup> *Respect at Work and Other Matters Amendment Bill 2024* (Qld) cl 39, inserting ss 173A, 173B(1), 173G and 173H.

<sup>47</sup> To be clear, the Commission supports the inclusion of section 173B(2)-(4), subject to earlier recommendations in this submission that section 173(3) should not be confined to one area (work) and one attribute (sex).

<sup>48</sup> *Anti-Discrimination Act 1991* (Qld) s 155(1).

- during the course of carrying out the commission’s functions, a possible offence against the Act is discovered.<sup>49</sup>
96. The second and third options (s 155(2)(b)–(c)) apply in limited circumstances when an offence against the Act is alleged to have been committed or is discovered. For example, improper communication of official information, providing false or misleading information, obstruction, or contempt of the Commission.<sup>50</sup> These provisions have rarely, if ever, been used.
  97. The Commissioner may conduct an investigation if in the course of carrying out the commission’s functions if the first option applies. However, the outcomes of the investigation are limited to those available through the usual complaint process. This means that the outcome of an investigation conducted under these provisions can, at best, result in a conciliation conference and, if it cannot be resolved, referral to the tribunal for determination. It does not allow for recommendations or a public report, or another outcome.
  98. The Commission considers that these provisions should not remain in the Anti-Discrimination Act for the following reasons:
    - The role of the Minister in directing (section 173A) or agreeing with the commencement of an investigation (section 173B) potentially compromises the independence of the Commission or may lead to a perception of ministerial overreach.
    - The provisions in section 173G and 173H are inconsistent with the role of the Commission to provide an impartial dispute resolution process, by requiring the Commissioner to become the ‘applicant’ in a tribunal matter.
  99. If retained in the Bill, the Commission expects these powers to remain unused, as they have been for the past 30 years.

## Priority reforms for immediate action

100. The Commission brings to the attention of the Committee the further changes necessary to modernise and strengthen Queensland’s discrimination law.
101. The Commission appreciates the Government’s commitment to introducing the remaining 32 recommendations made by *Building Belonging* in stage 2 reforms.

## Redefining key concepts

102. While the Respect at Work and Other Matters Amendment Bill creates some changes to attributes and exceptions, it fails to resolve foundational issues with the Anti-Discrimination Act.
103. One key intention of the Bill appears to be to strengthening the law to better protect people, and particularly women, from harassing and demeaning conduct in the workplace.

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<sup>49</sup> *Anti-Discrimination Act 1991* (Qld) s 155(2).

<sup>50</sup> *Anti-Discrimination Act 1991* (Qld) ss 220–223.

104. The *Respect@Work* report focussed on the intersectional nature of workplace sexual harassment (multiple forms of intersecting discrimination and harassment) but this approach is not reflected in the Bill.<sup>51</sup>
105. The Commission considers that the best way to address intersectional discrimination and harassment is to update the meaning of discrimination and introduce the concept of combined grounds of discrimination. This can be achieved by:
- redefining the test for direct discrimination as ‘unfavourable treatment’, with the requirement to prove that discrimination was ‘one of the reasons’ for the treatment
  - adopting a simplified disadvantage test for indirect discrimination to remove complex, impractical, and technical aspects of the current test, and provide further guidance through an expanded, non-exhaustive list of factors to determine whether or not the conduct was reasonable
  - confirming that engaging in conduct in relation to a person who has 2 or more protected attributes, includes engaging in conduct in relation to the combined effect of 2 or more protected attributes.
106. Other key recommendations that should be actioned as a priority include:
- adopting a shared burden of proof to address the challenges faced to prove discrimination, especially considering the power imbalances for disadvantaged and marginalised groups who experience discrimination the most
  - modernising and clarifying the role of affirmative measures as a significant way to promote and realise substantive equality
  - creating an express, positive obligation on duty holders to provide reasonable accommodations (adjustments) for people with disability to clarify the law and create more certainty for everyone.
107. The Commission notes that all these changes to implement *Building Belonging* have been drafted, and incorporated in the public consultation draft released in February 2024. Further improvements on the public consultation draft have been recommended by the Commission and other stakeholders.<sup>52</sup>

### Improving the complaints system

108. *Building Belonging* recommended reorienting the dispute resolution process to ensure a flexible and efficient approach while enhancing access to justice for people who are most likely to experience discriminatory treatment. It is disappointing that necessary and uncontroversial changes have not been made. See also *Changes to complaints complicate rather than improve outdated complaint procedures* on page 8.
109. A public consultation draft was released in February 2024 which implements all the recommended changes. The Commission has recommended further minor

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<sup>51</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020), 19.

<sup>52</sup> Queensland Human Rights Commission, Submission to Department of Justice and Attorney-General on the Anti-Discrimination Bill 2024 (Exposure Draft) 22 March 2024.

improvements on the consultation draft, a number of which are set out in Appendix A to this submission.

### Changes to exemptions and exceptions

110. The Commission understands that exemptions and exceptions will be dealt with in stage 2 of the reforms following further consultation.
111. Some exceptions and exemptions for particular areas of activity require adjustment to meet current community needs and expectations, and to ensure that the Act is compatible with human rights obligations under the *Human Rights Act 2019* (Qld).
112. The delay in implementation will mean that provisions that may be incompatible with the Human Rights Act will remain in the Act. The Commission looks forward to the swift implementation of changes to exceptions involving non-profit organisations that deliver goods or services, and exemptions for clubs, sport, religious bodies, superannuation, and insurance.
113. The Commission understands that the Queensland Government intends to conduct further consultation regarding religious exemptions in light of the release of the Australian Law Reform Commission report that recommends legislative reforms to ensure the Australian Government's policy regarding anti-discrimination laws and religious educational institutions is given legal effect in accordance with Australia's international legal obligations.<sup>53</sup> However, changes to other exemptions are generally uncontroversial and should be implemented without delay.

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<sup>53</sup> Australian Law Reform Commission, 'ALRC Religious Educational Institutions and Anti-Discrimination Laws Report tabled in Parliament', *Media Release* (Web Page, 21 March 2024) <<https://www.alrc.gov.au/news/adl-final-report-tabled/>>.

# Appendix A

*Below is an extract from the Anti-Discrimination Bill 2024 Consultation Draft, with further amendments recommended by the Commission. The sections about representative complaints are excluded from the extract below as they are incorporated into the Respect at Work and Other Matters Amendment Bill 2024.*

## Part 9 Complaints about contraventions of Act

### Division 1 Preliminary

#### 93 Application of part

This part does not apply in relation to a contravention or an alleged contravention of the general duty.

#### 94 Commissioner's functions

The commissioner's functions under this part include—

- (a) to consider and, if appropriate, inquire into complaints about alleged contraventions of this Act; and
- (b) to provide services to facilitate resolution of complaints about alleged contraventions of this Act being dealt with by the commissioner.

#### 95 Who is the *complainant* for a complaint

The ***complainant*** for a complaint is—

- (a) for a complaint made by a relevant body as provided under section 99 - the relevant body; or
- (b) for a complaint made by an interested body as provided under section 100 – a person named in the complaint as a person on whose behalf the complaint is being made; or
- (c) for a representative complaint—the person who made the complaint; or
  - (i) the person who made the complaint; or
  - (ii) if the complainant has been substituted under section 110- the substituted complainant; or
- (d) otherwise—the person who made the complaint or on whose behalf the complaint is made.

### Division 2 Making a complaint generally

#### 96 Period within which complaint may be made

The period for making a complaint (the ***complaint period***) is within 2 years after—

- (a) the alleged contravention of this Act to which the complaint relates happened; or

- (b) if the person the subject of the alleged contravention of this Act to which the complaint relates was a child when the alleged contravention happened—the child turns 18.

## 97 Who may make a complaint

- (1) Any of the following may make a complaint for an alleged contravention of this Act—
  - (a) a person the subject of the alleged contravention or, if the person is a child—
    - (i) the child; or
    - (ii) the child's parent;
  - (b) an agent of the person;
  - (c) a person authorised in writing by the commissioner to make the complaint for the person;
  - (d) a relevant body as provided under section 99;
  - (e) an interested body as provided under section 100.
- (2) For subsection (1)(c), the commissioner may authorise a person to make a complaint for a person if satisfied the person can not make the complaint.  
Note—  
See also section 139.

## 98 Joint complaints

Two or more persons may jointly make a complaint.

## 99 Complaint by relevant body about vilification

- (1) A relevant body may make a complaint for an alleged contravention of section 79 or 80.
- (2) However, the commissioner may decide to deal with a relevant body's complaint about an alleged contravention of section 79 or 80 only if the commissioner is satisfied—
  - (a) the complaint is made in good faith; and
  - (b) the alleged contravention is about conduct that has affected or is likely to affect represented persons for the relevant body; and
  - (c) it is in the interests of justice to accept the complaint.
- (3) In this section—  
**relevant body** means a body corporate or an unincorporated body whose primary purpose is, or whose primary purposes include, the promotion of the interests or welfare of persons of a particular age, gender identity, race, religion, sex or sexual orientation or with a particular disability or particular sex characteristics.

**represented persons**, for a relevant body, means persons the promotion of whose interests or welfare is a primary purpose of the relevant body.

## 100 Complaint by interested body on behalf of 1 or more persons

- (1) An interested body may make a complaint about an alleged contravention of this Act on behalf of 1 or more named persons if—
  - (a) each named person—
    - (i) is entitled to make a complaint under section 97(1)(a) about the alleged contravention; and
    - (ii) has consented to the complaint being made by the body on the person's behalf; and
  - (b) if the complaint is made on behalf of more than 1 person, the alleged contravention relates to, or arises out of, the same conduct.

- (2) In this section—

### ***interested body-***

1 An *interested body* in relation to a complaint is-

- (a) A registered employee organisation, if the complaint made on behalf of its members; or
- (b) a body corporate or unincorporated body that has an interest in the complaint because-
  - (i) the body represents the interests or welfare of a group of persons with a protected attribute; and
  - (ii) the conduct constituting the alleged contravention to which the complaint relates is a matter of genuine concern to the body because of the way conduct of that nature adversely affects or has the potential to adversely affect the interests of the body or the interests or welfare of the persons it represents.

2 However, an entity that purports to represent the industrial interests of employees or employers is not an *interested body* in relation to a complaint unless the entity is a registered employee organisation and the complaint is made on behalf of its members.

## 101 Complaints by dismissed workers

- (1) This section applies to a worker who is dismissed in circumstances entitling the worker to—
  - (a) make a complaint; and
  - (b) apply for industrial relief.
- (2) If, in relation to the circumstances, the worker makes a complaint and a notice under section 121 is given for the complaint before the worker applies for industrial relief, the worker may only proceed with the complaint and may not later apply for industrial relief in relation to the circumstances.
- (3) If, in relation to the circumstances, the worker applies for industrial relief before making a complaint or before a notice under section 121, the worker may proceed with both the complaint and the application for industrial relief, but the tribunal may not make an order in relation to the complaint requiring the reinstatement or re-employment of the worker.



- (4) In this section—  
**industrial relief** means relief under the *Industrial Relations Act 2016*, chapter 8, part 2.

## 102 Complaint may allege more than 1 contravention

A complaint may be made in relation to more than 1 alleged contravention of this Act.

*Example—*

C applies to real estate agent R to rent a house and is asked to fill out a form which includes a question about C's country of birth. C is not offered a house, and believes this is on the basis of C's national origin. C may make a complaint about being required to answer a question about C's national origin contrary to section 92 (Unnecessary information), or a complaint about unlawful discrimination under section 46 (Providing accommodation), or both.

## 103 Form of complaint

- (1) A complaint made to the commissioner must—
- (a) be in writing; and
  - (b) state the complainant's name and address for service; and
  - (c) include enough details to indicate the alleged contravention to which the complaint relates.
- (2) If the commissioner is satisfied the complainant needs help to put the complaint in writing, the commissioner-
- (a) must give reasonable help to the complainant to put the complaint in writing.
  - (b) without limiting paragraph (a), may take the substance of the complaint orally and arrange for it to be transcribed into a written complaint.

## Division 3 Representative complaints

*Note – this section has already been implemented through the Respect at Work and Other Matters Amendment Bill.*

## Division 4 Dealing with complaint

### 112 Preliminary inquiries

The commissioner may make preliminary inquiries about a complaint to decide whether or how to deal with the complaint under this division.

### 113 Commissioner must not deal with particular complaints

- (1) The commissioner must not deal with, or continue to deal with, a complaint that the commissioner considers is—
- (a) frivolous, trivial or vexatious; or

(b) misconceived or lacking in substance.

*Notes—*

1 See section 119 for the requirement that the commissioner give written notice of not dealing with, or continuing to deal with, the complaint.

2 Under section 120, a complaint to which this section applies lapses and the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint.

- (2) Subsection (3) applies if, after a notice is given under section 121 about the complaint and before the complainant is referred to the tribunal, the commissioner is considering not to continue to deal with the complaint under subsection (1).
- (3) Before the commissioner decides not to continue to deal with the complaint, the commissioner must give the complainant an opportunity to show, within a period of at least 14 days, to the commissioner's satisfaction that the complaint is not frivolous, trivial, vexatious, misconceived or lacking in substance.

## 114 Commissioner may decide not to deal with complaint

- (1) The commissioner may decide not to deal with, or continue to deal with, a complaint if—
- (a) the complaint was not made to the commissioner within the complaint period; or
  - (b) the person the subject of the alleged contravention of this Act to which the complaint relates was a child when the alleged contravention happened and, having regard to the time that elapsed between when the alleged contravention happened and when the complaint is made, the commissioner considers dealing with the complaint would be unfairly prejudicial to the respondent; or
  - (c) the commissioner considers the alleged contravention the subject of the complaint has been appropriately dealt with by another entity; or
  - (d) the commissioner considers the alleged contravention the subject of the complaint would be more appropriately dealt with by another entity; or
  - (e) there are concurrent proceedings in a court, tribunal or another entity in relation to the alleged contravention the subject of the complaint; or
  - (f) the commissioner considers there are insufficient details to indicate the alleged contravention the subject of the complaint; or
  - (g) having regard to all the circumstances, the commissioner considers it is not appropriate to deal with, or continue to deal with, the complaint.

*Notes—*

1 See section 119 for the requirement that the commissioner give written notice of not dealing with, or continuing to deal with, the complaint.

2 Under section 120, a complaint to which this section applies lapses and the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint.

- (2) If subsection (1)(a) applies, the commissioner may decide to deal with the complaint if the commissioner considers it is in the interests of justice to do so, having regard to the following matters—
  - (a) the reason for the complaint being made after the complaint period ended;
  - (b) the impact that not dealing with the complaint may have on the complainant or another person on whose behalf the complaint is made;
  - (c) the impact that dealing with the complaint may have on the respondent.
  - (d) any other relevant matter.
- (3) If subsection (1)(e) applies, the commissioner may decide to stay the complaint instead of deciding not to deal with, or continue to deal with, the complaint.
- (4) A time limit for doing anything under this Act in relation to a complaint does not run while a complaint is stayed.

#### 115 Commissioner may deal with complaint despite agreement not to complain

- (1) The commissioner may decide to deal with a complaint made by or on behalf of a person who has agreed with another person not to make the complaint if the commissioner considers it is in the interests of justice to deal with the complaint.
- (2) In deciding whether it is in the interests of justice to deal with the complaint, the commissioner must have regard to the following matters-
  - (a) the knowledge of the parties to the agreement;
  - (b) what the person by or on behalf of whom the complaint is made received in return for entering into the agreement;
  - (c) any other relevant matter.

#### 116 Dealing with complaint under Human Rights Act 2019

- (1) This section applies if the commissioner considers a complaint made to the commissioner under this Act would be more appropriately dealt with by the commission as a complaint about an alleged contravention of the *Human Rights Act 2019*.
- (2) The commissioner may, with the consent of the complainant, deal with the complaint under the *Human Rights Act 2019* as an alleged contravention of that Act.
- (3) For dealing with the complaint as mentioned in subsection (2), the complaint—
  - (a) is taken to be a complaint about an alleged contravention of the *Human Rights Act 2019* that is accepted by the commissioner under section 76 of that Act; and
  - (b) is taken to be made on the day the complaint was made under this Act.

## 117 Complainant may withdraw complaint

- (1) The complainant may give the commissioner written notice stating that the complainant wishes to withdraw the complaint.
- (2) The commissioner may give the complainant an opportunity to decide to continue with the complaint before deciding to accept the withdrawal.
- (3) If the commissioner accepts the withdrawal, the commissioner—
  - (a) must not continue to deal with the complaint; and
  - (b) must give the complainant and respondent written notice that the complaint has been withdrawn.

*Note—*

Under section 120, a complaint to which this subsection applies lapses and the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint.

- (4) However, the commissioner need not give notice of the withdrawal to the respondent if the commissioner considers it is not appropriate in the circumstances to do so.

*Example of circumstances for subsection (4)—*

The respondent is not aware of the complaint or has not been contacted by the commissioner in relation to the complaint.

- (5) If the withdrawal relates to a representative complaint and the commissioner substitutes another class member as the complainant for the complaint under section 106, the commissioner must give the person seeking withdrawal of the complaint written notice stating—
  - (a) the complaint has not been withdrawn; and
  - (b) that another class member has been substituted as the complainant for the complaint; and
  - (c) the person may opt-out of the complaint under section 106.

## 118 Commissioner may withdraw complaint on behalf of complainant

- (1) This section applies if the commissioner considers the complainant for a complaint may have lost interest in continuing with the complaint.
- (2) The commissioner may, by written notice, ask the complainant to confirm within a stated reasonable period whether or not the complainant wishes to continue with the complaint.
- (3) If, within the time stated in the notice, the complainant confirms that the complainant no longer wishes to continue with the complaint, the commissioner—
  - (a) must not continue to deal with the complaint; and
  - (b) must give the complainant and respondent written notice that the complaint has been withdrawn.
- (4) If the complainant does not respond to the commissioner's notice within the time stated in the notice, the commissioner must not continue to deal with the complaint.

*Notes—*

1 See section 119 for the requirement that the commissioner give written notice of not continuing to deal with the complaint under subsection (4).

2 Under section 120, a complaint to which subsection (3) or (4) applies lapses and the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint.

## 119 Notice about not dealing with a complaint

- (1) This section applies if the commissioner decides not to deal with, or continue to deal with, a complaint—
  - (a) under section 114; or
  - (b) because section 113 or 118(4) applies in relation to the complaint.
- (2) The commissioner must give the complainant and respondent a written notice stating—
  - (a) the decision; and
  - (b) the reasons for the decision; and
  - (c) the effect of section 120.
- (3) However, the commissioner need not give notice of the decision to the respondent if the commissioner considers it is not appropriate in the circumstances to do so.

*Example of circumstances for subsection (3)—*

The respondent is not aware of the complaint or has not been contacted by the commissioner in relation to the complaint.

## 120 Complaint not dealt with lapses

If the commissioner does not deal with, or stops dealing with, a complaint under this division—

- (a) the complaint lapses; and
- (b) the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint.

## 121 Decision by commissioner to deal with complaint

- (1) If the commissioner decides to deal with a complaint, the commissioner must give the complainant and respondent notice of the decision.
- (2) The notice must state—
  - (a) the role of the commissioner in trying to resolve the complaint; and
  - (b) the powers the commissioner may exercise in trying to resolve the complaint.
- (3) The notice given to the respondent must also—
  - (a) include a copy of the complaint or a statement of the substance of the complaint; and
  - (b) state-

- (i) that the respondent must advise the commissioner of the respondent's address for service; and
- (ii) that the commissioner may seek information or documents from the respondent in relation to the complaint.

## 122 Commissioner may ask or direct relevant person to give information

- (1) This section applies in relation to the commissioner for making preliminary inquiries under section 112 or dealing with a complaint under this part.
- (2) The commissioner may, by written notice given to a relevant person, ask or direct the person to give the commissioner information about the complaint within the reasonable period stated in the notice.
- (3) The notice must state the purpose for making the request or giving the direction.
- (4) For information in an electronic document, compliance with the request or direction requires the giving of a clear written reproduction of the information.
- (5) The relevant person must comply with a direction unless the person has a reasonable excuse.
- (6) It is a reasonable excuse for a relevant person to fail to comply with a direction because, for example, complying with the direction—
  - (a) would require the person to disclose information that is the subject of legal professional privilege; or
  - (b) for an individual—might tend to incriminate the individual or make the individual liable to a penalty.
- (7) The commissioner may enforce a direction by filing a copy of the direction with a court of competent jurisdiction.
- (8) The direction is then enforceable as if it were an order of the court.
- (9) In this section—
  - information** includes a document.
  - relevant person**, for a complaint, means—
    - (a) the complainant or respondent; or
    - (b) for a representative complaint, a class member for the complaint; or
    - (c) another person the commissioner considers has information relevant to the complaint in the person's possession or control.

## 123 Timeframe for dealing with complaint

The commissioner must use the commissioner's best endeavours to finish dealing with a complaint within 12 months after the complaint is made.

*Note—*

See, however, section 125 in relation to requesting the complaint to be referred to the tribunal if the commissioner has not finished dealing with it within 6 months after the commissioner gives notice under section 121.

## 124 Complaint not able to be resolved

- (1) If the commissioner believes that a complaint accepted by the commissioner can not be resolved by dispute resolution under division 5, the commissioner must promptly tell the complainant and the respondent by written notice.
- (2) The obligation in subsection (1) arises whether or not dispute resolution has been attempted.
- (3) Within 28 days after the written notice is given or a longer period agreed by the commissioner under subsection (6), the complainant may, by written notice, require the commissioner to refer the complaint to—
  - (a) if the complaint is or includes a work-related matter—the IRC; or
  - (b) otherwise—QCAT.

*Note—*

If the complaint includes a work-related matter and a matter other than a work-related matter, the complaint must be referred to the IRC. However, the IRC may transfer the complaint to QCAT under section 201.

- (4) If the commissioner is given a written notice under subsection (3) for the complaint, the commissioner must promptly—
  - (a) refer the complaint to the IRC or QCAT; and
  - (b) give the respondent a copy of the complaint.

- (5) The complainant is the applicant for the purposes of the relevant tribunal Act.

*Note—*

If the complainant does not give written notice under subsection (3), the commissioner finishes dealing with the complaint—see section 139(e).

- (6) The commissioner may agree to a longer period for subsection (3) if—
  - (a) the complainant asks the commissioner, in writing, for an extension within the 28-day period mentioned in the subsection; and
  - (b) the commissioner considers—
    - (i) there are reasonable grounds for the request; and
    - (ii) the extension will not cause undue hardship to the respondent.

(7) If the complainant asks for the extension, the day the complainant asks for the extension, the day the complainant is given written notice of the commissioner's decision about the extension and any period between those days, is not included in the period mentioned in subsection (1) within which the complaint may be referred to the tribunal.

(8) However, if the complainant asks for the extension on the last day of the period mentioned in subsection (1) and the extension is subsequently refused, the complainant may require the commissioner to refer the complaint to the tribunal by making a written request on the day the complainant receives written notice of the refusal or on the next day that is a business day.

(9) If the commissioner gives notice under subsection (1) for a complaint, section 125 does not apply, or stops applying, in relation to the complaint.

## 125 Complainant or respondent may seek referral after 6 months

- (1) If the commissioner has not finished dealing with a complaint 6 months after giving notice under section 121 for the complaint, either the complainant or the respondent may, by written notice, request the commissioner to refer the complaint to—
  - (a) if the complaint is or includes a work-related matter—the IRC; or
  - (b) otherwise—QCAT.

*Note—*

If the complaint includes a work-related matter and a matter other than a work-related matter, the complaint must be referred to the IRC. However, the IRC may transfer the complaint to QCAT under section 201.

- (2) The commissioner may defer acting on a request for up to 28 days, if there is a significant prospect that the matter can be resolved by dispute resolution under division 5 within that period.
- (3) If the matter is not resolved at the end of 28 days, the procedures in subsection (4) or (5) apply.
- (4) If the respondent requests the commissioner to refer the complaint—
  - (a) the commissioner must ask the complainant whether the complainant agrees to the complaint being referred; and
  - (b) if the complainant agrees in writing—the commissioner must refer the complaint to the IRC or QCAT; and
  - (c) if the complainant does not agree in writing within 28 days—the complaint lapses, and the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint; and
  - (d) the commissioner may extend the 28-day period, but only if the complainant asks, in writing, for an extension before the 28 days have passed.
- (5) If the complainant requests the commissioner, in writing, to refer the complaint, the commissioner must comply.
- (6) If the commissioner refers the complaint to the IRC or QCAT, the commissioner must promptly give the respondent a copy of the complaint.
- (7) The complainant is the applicant for the purposes of the relevant tribunal Act.

## Division 5 Dispute resolution

### Subdivision 1 General provisions

#### 126 Principles for dispute resolution

The following principles apply in relation to a complaint accepted by the commissioner—



- (a) dispute resolution should be provided for the complaint as early as possible;
- (b) the type of dispute resolution provided for the complaint should be appropriate to the nature of the complaint;
- (c) the dispute resolution process provided for the complaint should be fair to all parties;
- (d) dispute resolution for the complaint should be consistent with the purposes of this Act.

## 127 Action to be taken for dispute resolution

- (1) If the commissioner accepts a complaint, the commissioner must take action the commissioner considers appropriate to provide dispute resolution for the complaint.
- (2) Without limiting subsection (1), the commissioner may—
  - (a) ask the respondent to make submissions to the commissioner in writing in response to the complaint; or
  - (b) give the complainant a copy of the respondent's submissions; or
  - (c) ask or direct the complainant or respondent to give the commissioner information relevant to the complaint, including under section 122; or
  - (d) make enquiries of, and discuss the complaint with, the complainant and the respondent; or
  - (e) facilitate discussions between the complainant and the respondent; or
  - (f) give information to the respondent about how to comply with this Act; or
  - (g) cause the complaint to be conciliated under subdivision 2.
- (3) The commissioner may take action to provide dispute resolution in the way the commissioner considers appropriate, including, for example—
  - (a) by communicating with the complainant or respondent in person or by telephone, email or another electronic means; and
  - (b) by engaging with the complainant and respondent separately or together or by using an intermediary to engage with the complainant and respondent.

## Subdivision 2 Conciliation

### 128 Commissioner may conduct conciliation conference

If the commissioner accepts a complaint, the commissioner may conduct a conference (a **conciliation conference**) under this subdivision for the purpose of conciliating the complaint.

### 129 Purpose of conciliation

The purpose of conciliation of a complaint is to promote the resolution of the complaint in a way that is informal, quick and efficient.

### 130 Attendance at conciliation conference

- (1) The commissioner may invite any of the following persons to take part in a conciliation conference—
  - (a) the complainant or respondent;
  - (b) for a representative complaint, a class member for the complaint;
  - (c) a person who the commissioner considers may be able to give information relevant to the conciliation of the complaint;
  - (d) a person whose presence at the conference the commissioner considers is likely to be conducive to the conciliation of the complaint.
- (2) The commissioner may, by written notice, direct a person mentioned in subsection (1) to take part in a conciliation conference, whether or not the person was invited to take part in the conciliation conference under the subsection.
- (3) The commissioner may enforce the direction by filing a copy of it with a court of competent jurisdiction.
- (4) The direction is then enforceable as if it were an order of the court.

### 131 Party fails to attend conciliation conference

- (1) If a complainant, without reasonable excuse, does not comply with a direction to attend a conciliation conference, the commissioner may, by written notice, dismiss the complaint and direct the complainant to pay costs to the respondent.
- (2) If a respondent, without reasonable excuse, does not comply with a direction to attend a conciliation conference, the commissioner may, by written notice, direct the respondent to pay costs to the complainant.
- (3) A party may enforce a direction as to costs by filing a copy of it with a court of competent jurisdiction.
- (4) The direction is then enforceable as if it were an order of the court.

### 132 Representation

- (1) A person may be represented by a person (a **representative**) at a conciliation conference only with the commissioner's consent.
- (2) The commissioner must consent to the representation unless it would not be in the interests of justice to do so.

### 133 Support person

- (1) A person may be accompanied by a support person at conciliation conference with the commissioner's consent.
- (2) The commissioner may—
  - (a) give the consent on conditions the commissioner considers reasonable; and
  - (b) withdraw the consent if the person or the representative does not comply with the conditions.

### 134 Use of interpreters and other persons

A person may be helped at a conciliation conference by—

- (a) an interpreter; or
- (b) another person necessary or desirable to make the conciliation conference intelligible to the person, including, for example, a person with appropriate cultural or social knowledge and experience.

### 135 Conduct of conciliation conference

(1) In conducting a conciliation conference, the commissioner—

- (a) must take all reasonable steps to ensure the conduct of the conference does not disadvantage the complainant or respondent or, for a representative complaint, a class member for the complaint; and
- (b) is not bound by the rules of evidence.

(2) A conciliation conference must be held in private.

(3) Subject to subsections (1) and (2), a conciliation conference is to be conducted in the way the commissioner considers appropriate, including, for example—

- (a) by the commissioner hearing from the complainant and respondent separately in separate rooms; and
- (b) by teleconferencing, videoconferencing or another form of communication that allows persons taking part in the conference to hear and take part in discussions as they happen.

### 136 Confidentiality of conciliation conference

Nothing said or done in the course of a conciliation conference for a complaint may be included in any document prepared by the commissioner in the course of referring the complaint to the tribunal.

## Division 6 Action on dealing with complaint

### 137 Resolution of complaint

(1) If a complaint is resolved by dispute resolution under this part, either the complainant or respondent may ask the commissioner to make a record of the agreement.

(2) If the complainant or respondent makes the request, the commissioner must make a record of the agreement and give the record to the complainant and the respondent for signing and returning to the commissioner.

(3) If the record of agreement is signed by both the complainant and the respondent and the signed record is given to the commissioner, the commissioner must provide a copy of the signed record to each party and file the signed record with the tribunal.

(4) The agreement is then enforceable as if it were an order of the tribunal.

## 138 End of dealing with complaint

- (1) The commissioner finishes dealing with a complaint if and when—
  - (a) the commissioner stops dealing with the complaint under division 3 or section 139(3); or
  - (b) the complainant and respondent give the commissioner written notice of their agreement to resolve the complaint; or
  - (c) the complaint is resolved by dispute resolution under this part and the commissioner files a record of the agreement between the complainant and respondent with the tribunal under section 137; or
  - (d) the period within which the complainant may require the complaint to be referred to the tribunal under section 124(3) passes without the complainant requiring the complaint to be referred; or
  - (e) the respondent asks for the complaint to be referred to the tribunal under section 125 and the complainant does not agree to the referral within the time allowed under section 125(4); or
  - (f) the commissioner refers the complaint to the tribunal under section 124 or 125.
- (2) If the commissioner finishes dealing with a complaint, the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint.

## Division 7 Other provisions about complaints

### 139 Commissioner may withdraw authorisation

- (1) The commissioner may, by written notice, withdraw an authorisation under section 97(1)(c) if the commissioner believes there is good reason to do so.
- (2) The commissioner may, by written notice, authorise another person to act on behalf of the complainant.
- (3) If the commissioner does not act under subsection (2) and no further authorisation is requested by the complainant within 28 days after the withdrawal under subsection (1) or a longer period allowed by the commissioner under section 140—
  - (a) the complaint lapses, and the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint; and
  - (b) the commissioner must—
    - (i) stop dealing with the complaint; and
    - (ii) tell the complainant and the respondent in writing that the complaint has lapsed.
- (4) Subsection (3) does not apply if the complainant notifies the commissioner that the complainant will continue with the complaint personally.

## 140 Commissioner may extend time limits

- (1) The commissioner may extend a time limit specified in this part for the doing of anything, whether by a party or the commissioner, if the commissioner believes that—
  - (a) the extension will not cause undue hardship to any party; and
  - (b) there are reasonable grounds for granting the extension.
- (2) In this section, a reference to a party in relation to a representative complaint includes a reference to a class member for the complaint.

## 141 Applications for orders protecting complainant's interests (before reference to tribunal)

- (1) At any time before a complaint is referred to the tribunal, the complainant or the commissioner may apply, as provided under the relevant tribunal Act, to the tribunal for an order prohibiting a person from doing an act that might prejudice—
  - (a) dispute resolution of the complaint under this part; or
  - (b) an order that the tribunal might make after a hearing.
- (2) A party or the commissioner may apply, as provided under the relevant tribunal Act, to the tribunal for an order varying or revoking an order made under subsection (1).
- (3) If the tribunal is satisfied it is in the interests of justice, an application for an order under subsection (1) may be heard in the absence of the respondent to the application.