

INTERIM QUEENSLAND GOVERNMENT RESPONSE

TO THE QUEENSLAND HUMAN RIGHTS COMMISSION'S REPORT, *BUILDING BELONGING – REVIEW OF QUEENSLAND'S ANTI-DISCRIMINATION ACT 1991*

On 23 April 2021, the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence wrote to the Queensland Human Rights Commission (QHRC) requesting they undertake a review of the *Anti-Discrimination Act 1991* (AD Act) and consider whether there is a need for any reform to enhance and update the AD Act, taking into account Australian and international best practices, to best protect and promote equality, non-discrimination and the realisation of human rights.

The Terms of Reference for the QHRC's review are attached.

The QHRC were guided in their review by the expertise and leadership of its Reference Group, which included CEO-level engagement from the following organisations who assisted the QHRC to identify priority issues engage with communities:

- Chamber of Commerce and Industry Queensland;
- Community Legal Centers Queensland;
- Multicultural Australia;
- Queensland Churches Together;
- Queensland Council for LGBTI Health;
- Queensland Council of Social Services;
- Queensland Council of Unions;
- Queensland Law Society; and
- Queenslanders with Disability Network.

The QHRC also undertook a wide and thorough consultation process, including holding over 120 targeted consultations, four regional public consultations, six roundtables with particular groups, and releasing a discussion paper which received 130 submissions plus 1,109 responses to an online survey. The QHRC also undertook an extensive analysis of Australian and international discrimination and human rights law, as well as academic literature, to ensure their recommendations were informed by a sound evidence base.

The QHRC's review has culminated in the *Building Belonging* report. The report makes 122 recommendations under 46 broad categories of reform. The recommendations aim to ensure Queensland's discrimination law is effective in protecting people from discrimination and sexual harassment by:

- **eliminating discrimination**, including the introduction of a new Act to protect and promote the right to equality and eliminate discrimination and sexual harassment to the greatest extent possible;
- **refining key concepts**, to ensure the legal tests for discrimination respond effectively to the problems they are seeking to address and are easy to understand and apply;
- **shifting the focus to prevention**, to stop discrimination and sexual harassment before it happens;
- **improving the complaints system**, including reorientating the dispute resolution process to ensure it is flexible and efficient, and to enhance access to justice; and
- **increasing protection**, to ensure all people who require protection under the Act are included, and that coverage of the law extends to all contexts and settings where unfair discrimination occurs, subject to reasonable exceptions.



As Commissioner McDougall notes in his foreword, when the AD Act was introduced in 1991 as part of the Goss Government's agenda to modernise Queensland's laws, it offered the promise of equal and effective protection against discrimination to a range of historically disadvantaged groups. But a lot has changed since 1991 and it is timely that we, as a government and a community, reflect on our laws to ensure they align with our shared values, modern standards of behaviour, and expectations of equality, just as the QHRC has done.

The Queensland Government recognises that our community is rich in diversity, and that this diversity will mean that there are different views and perspectives on the reforms recommended in the *Building Belonging* report. That is why we know how important it is to carefully consider the findings and recommendations of the QHRC to ensure that, when we modernise our discrimination laws, we strike the right balance between competing rights and interests, including the need to protect all people from discrimination and sexual harassment based on a contemporary understanding of equality.

The Queensland Government thanks the QHRC for its comprehensive review and report, as well as all stakeholders and members of the public who shared their expertise and personal stories as part of the review.

We know how important the views of our community were to the QHRC in undertaking their review, and they are equally as important to the Queensland Government. Stakeholders and members of the wider public will continue to have opportunities to participate at future key junctures, such as providing their views on any proposed draft legislation.

The *Building Belonging* report gives us the opportunity to do just that – to build a Queensland where everyone belongs – where all Queenslanders are respected, and where all individuals are offered protections from discrimination and sexual harassment. The Queensland Government welcomes the opportunity offered by the *Building Belonging* report to consider ways to build a better Queensland. This will require partnership with key stakeholders and the community more broadly.

The Queensland Government is currently carefully considering the findings and recommendations of the *Building Belonging* report, and a more detailed response will be released by the end of 2022. **[END]**



Terms of Reference

Queensland Human Rights Commission review of the *Anti-Discrimination Act 1991* (Qld)

1. I, SHANNON FENTIMAN, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, ask the Queensland Human Rights Commission (Commission) to undertake a review of the *Anti-Discrimination Act 1991*, pursuant to section 61(b) of the *Human Rights Act 2019* and section 235(k) of the *Anti-Discrimination Act 1991* (AD Act).

Scope

2. The Commission is asked to review the AD Act and consider whether there is a need for any reform to enhance and update the AD Act, taking into account Australian and international best practices, to best protect and promote equality, and non-discrimination and the realisation of human rights.
3. In undertaking this review, the Commission should consider whether there is a need for any reform, and if so, the scope of reform regarding:
 - a) the compatibility of the AD Act with the *Human Rights Act 2019*;
 - b) the preamble and preliminary provisions under Chapter 1 of the AD Act, including whether a more positive approach is required to eliminate discrimination, and other objectionable conduct prohibited in the AD Act;
 - c) the attributes of discrimination, including (but not limited to):
 - i. whether the current definitions given to protected attributes under Schedule 1 of the AD Act best promote the rights to equality and non-discrimination; and
 - ii. whether additional attributes of discrimination should be introduced to section 7 of the AD Act, including (but not limited to) spent criminal conviction or irrelevant criminal record; expunged homosexual conviction; irrelevant medical record; immigration status; employment activity; and physical features;
 - d) the areas of activity which discrimination is prohibited under Part 4 of the AD Act;
 - e) the definitions in the AD Act (other than vilification), including (but not limited to), discrimination, unjustifiable hardship, genuine occupational requirements, sexual harassment, and victimisation;
 - f) whether the AD Act should contain a positive duty on organisations to eliminate discrimination and other objectionable conduct prohibited by the AD Act, similar to the duty contained in section 15 of the *Equal Opportunity Act 2010* (Vic);
 - g) whether the AD Act should reflect protections, processes and enforcement mechanisms that exist in other Australian discrimination laws;
 - h) exemptions and other legislative barriers that apply to the prohibition on discrimination;
 - i) whether the requirement for less favourable treatment, as imported by the concept of the comparator, remains an appropriate requirement to establish discrimination or whether there are other contemporary responses that would be appropriate;
 - j) whether the functions, processes, powers and outcomes of the Commission are appropriately suited to ensuring it can further the objective of eliminating discrimination and other objectionable conduct under the AD Act, to the greatest possible extent;
 - k) the functions, processes, powers and outcomes of the Queensland Civil and Administrative Tribunal (QCAT) and the Queensland Industrial Relations Commission (QIRC) under the AD Act;



- l) ways to improve the process and accessibility for bringing and defending a complaint of discrimination, including (but not limited to) how the complaints process should be enhanced to improve access to justice for victims of discrimination;
 - m) options for more tailored approaches towards, or alternatives to existing frameworks for, dispute resolution that enable systemic discrimination to be addressed as well as discrimination complaints that raise public interest issues;
 - n) any other matters the Commission considers relevant to the review.
4. In light of the Government's commitment for a Parliamentary Committee inquiry on serious vilification and hate crime, the Commission is directed not to consider as part of this review vilification or sections 124A or 131A of the AD Act.
5. The review will also consider ongoing efforts by the Palaszczuk Government and relevant work in other Australian jurisdictions in implementing the recommendations from the Australian Human Rights Commission's *Respect@Work: Sexual Harassment National Inquiry Report (2020)* 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.

Consultation

6. The Commission's review is to include consultation with:
- a) the public generally, including people with lived experience of discrimination and/or
 - b) who have initiated complaints under the AD Act;
 - c) legal stakeholders;
 - d) the QCAT and QIRC;
 - e) community advocacy groups and organisations; and
 - f) any other body the Commission considers relevant having regard to the issues relating to the review.
7. The Commission should consider all submissions made as part of the review, including any made about the impact of the AD Act on human rights and the nature and scope of those rights that are relevant to the AD Act.

Report

8. The Commission is to provide a report on its review to the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence by 30 June 2022.

