

Respect at Work and Other Matters Amendment Bill 2024

Explanatory Notes

Short title

The short title of the Bill is the Respect at Work and Other Matters Amendment Bill 2024 (the Bill).

Policy objectives and the reasons for them

The **key objectives** of the Bill are to:

- amend the *Anti-Discrimination Act 1991* (AD Act) to:
 - implement key reforms recommended by the Australian Human Rights Commission (AHRC) in the *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Report* (Respect@Work Report) (adjusted for Queensland);
 - implement key reforms recommended by the Legal Affairs and Safety Committee (LASC) reports — *Inquiry into serious vilification and hate crimes* (LASC Vilification Report) and *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (LASC Vilification and Hate Crimes Bill Report);
 - introduce a positive duty to eliminate all forms of unlawful discrimination, sexual harassment, vilification and other associated objectionable conduct as far as possible (as recommended by the Queensland Human Rights Commission (QHRC) in its report, *Building Belonging – Review of Queensland’s Anti-Discrimination Act 1991* (Building Belonging Report)); and
 - update and expand the attributes protected by the AD Act in line with certain recommendations made by the Building Belonging Report;
- amend the *Magistrates Act 1991* to provide magistrates with an entitlement to access unpaid parental leave under the Magistrate Entitlement Booklet;
- clarify the legislative immunity and protections provided to magistrates, District Court judges, and certain officers of the Queensland Civil and Administrative Tribunal (QCAT) so that they have the same immunity as a Supreme Court judge;
- amend the *Penalties and Sentences Act 1992* (Penalties and Sentences Act) to implement an aggravating sentencing factor as recommended by the Queensland Sentencing Advisory Council (QSAC) in its *Final Report on Penalties for assaults on public officers* (QSAC Report); and
- amend the Penalties and Sentences Act and the *Youth Justice Act 1992* (Youth Justice Act) to reflect current court practices with respect to the recording of reasons for imprisonment or detention orders.

Respect@Work Report

The Bill amends the AD Act to implement key reforms from the Respect@Work Report, modified appropriately for Queensland.

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

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

Broadly, the report found that workplace sexual harassment remained prevalent, and that the current system for addressing sexual harassment was complex and confusing for victims and employers to understand. The AHRC recommended a number of improvements to the *Sex Discrimination Act 1984* (Cwlth) (SD Act).

Key reforms which were proposed by the Respect@Work Report include:

- amending the **objects** of the SD Act to include 'to achieve substantive equality between women and men' (recommendation 16(a) of the Respect@Work Report);
- prohibiting '**sex-based harassment**' (recommendation 16(b) of the Respect@Work Report);
- prohibiting '**creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex**' (recommendation 16(c) of the Respect@Work Report);
- introducing a **positive duty** which requires employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible (recommendation 17 of the Respect@Work Report);
- introducing powers for the AHRC to **assess and enforce compliance with the positive duty**, including powers to: undertake assessments of the extent to which an organisation has complied with the duty; issue compliance notices if it considers an organisation has failed to comply with the duty; enter into agreements/enforceable undertakings with the organisation; and apply to the Court for an order requiring compliance with the duty (recommendation 18 of the Respect@Work Report);
- providing the AHRC with a broad inquiry **function to inquire into systemic unlawful discrimination**, including systemic sexual harassment, with powers including requiring the giving of information or the production of documents, and the examination of witnesses, with penalties for non-compliance when conducting the inquiry (recommendation 19 of the Respect@Work Report);
- increasing the **time period** after which the President of the AHRC has the discretion to terminate a complaint on the grounds that it was made 6 months after the alleged contravention occurred to 24 months (recommendation 22 of the Respect@Work Report);
- allowing **unions and other representative groups to bring representative claims** to court, consistent with the existing provisions in the *Australian Human Rights Commission Act 1986* (Cwlth) (AHRC Act) that allow unions and other

- representative groups to bring a representative complaint (recommendation 23 of the Respect@Work Report); and
- introducing a **cost protection provision** in the AHRC Act consistent with section 570 of the *Fair Work Act 2009* (Cwlth) (recommendation 25 of the Respect@Work Report).

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

These acts implemented the recommendations listed above by:

- prohibiting ‘harassment on the ground of sex’ (section 28AA of the SD Act) in areas of public life where discrimination is prohibited (sections 28B–28L of the SD Act);
- prohibiting subjecting another person to a workplace environment that is hostile on the ground of sex (section 28M of the SD Act);
- introducing a positive duty on employers or persons conducting a business or undertaking to take reasonable and proportionate measures in the area of work to eliminate, as far as possible, discrimination on the ground of sex, sexual harassment, harassment on the ground of sex, subjecting a person to a hostile workplace environment on the ground of sex, and victimisation (section 47C of the SD Act); and
- introducing new regulatory powers for the AHRC in the AHRC Act (Part II, Division 4A of the AHRC Act).

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

LASC Vilification Report and LASC Vilification and Hate Crimes Bill Report

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

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

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

relating to vilification motivating certain criminal conduct, and prohibiting the display of hate symbols.

On 30 June 2023, the LASC Vilification and Hate Crimes Bill Report was tabled in the Legislative Assembly. The Government Response to the LASC Vilification and Hate Crimes Bill Report was tabled on 3 October 2023.

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

Queensland Human Rights Commission Review of the AD Act

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

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

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

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

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

Alignment with *Industrial Relations Act 2016*

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

Magistrates' entitlement to unpaid parental leave

The Bill includes amendments to provide magistrates with an entitlement to access unpaid parental leave.

Currently, magistrates are unable to take a period of unpaid parental leave due to the operation of section 24(1) of the *Judicial Remuneration Act 2007* (JR Act) and section 47(1) of the *Magistrates Act 1991* (Magistrates Act). Pursuant to those provisions, there is a statutory entitlement for a person who holds the office of a magistrate to be paid a salary and specified allowances which is not conditional upon the magistrate performing the duties of the office.

Under section 47(3) of the Magistrates Act, a magistrate holds office on such terms and conditions (not provided for by the Magistrates Act) as are decided by the Governor in Council. However, whilst a period of unpaid leave may be contemplated in the terms and conditions, they do not override the statutory entitlement that a magistrate must be paid.

Judicial immunity

The Bill includes amendments to clarify the protections and immunity which apply to magistrates, District Court judges and certain officers of QCAT.

A recent decision of the Federal Court of Australia (*Stradford (a pseudonym) v Judge Vasta* [2023] FCA 1020) has cast into doubt the scope of the common law judicial immunity granted to inferior court judicial officers.

Ensuring that the protection and immunity granted to Queensland magistrates, District Court judges and certain officers of QCAT is clear, and equivalent to that of a Supreme Court judge, promotes an independent and impartial judiciary and justice system, and ensures that the right to a fair trial is protected.

Insertion of an aggravating sentencing factor in the *Penalties and Sentences Act 1992*

The Bill also includes amendments to the Penalties and Sentences Act.

On 2 December 2019, the then Attorney-General and Minister for Justice and Leader of the House provided QSAC with Terms of Reference to review sentencing options and penalties for assaults on police officers and other frontline emergency service workers, corrective service officers and other public officers in the execution of their duty.

The QSAC Report recommended, among other things, that an aggravating sentencing factor be created for adults convicted of offences involving violence against, or that resulted in physical harm to, a person in their workplace (recommendations 10-1 and 10-2). This requires amendment to the Penalties and Sentences Act.

Amendment to section 10 of the *Penalties and Sentences Act 1992* and section 209 of the *Youth Justice Act 1992*

The Bill also contains amendments to ensure that court practices align with the requirements under section 10 of the Penalties and Sentences Act and section 209 of

the Youth Justice Act. Under the existing provisions there is a requirement to cause the reasons for the imposition of an order of detention or imprisonment to be reduced or recorded in writing and kept with the court file. Current practice across each of the criminal courts in Queensland does not accord with these requirements. These provisions pre-date the digitalisation of court recordings and requirements relating to the provision of written reasons.

Achievement of policy objectives

Expanding and updating protected attributes

The Bill includes amendments to introduce new attributes on the basis of which discrimination is prohibited and updates some of the existing attributes.

The table below summarises the amendments made to attributes on the basis of which discrimination is prohibited under the AD Act.

Attribute	New or updated?	Definition
expunged conviction	new attribute	Means the person has an expunged conviction under the <i>Criminal Law (Historical Homosexual Convictions Expungement) Act 2017</i> .
family, carer or kinship responsibilities	updated to include 'carer or kinship responsibilities', and to omit the existing definition of 'family responsibilities'	Not defined
homelessness	new attribute	Not defined
irrelevant criminal record	new attribute	Means a record, or an imputation of a record, relating to an offence or alleged offence, if— (a) the person has been charged with the offence but— (i) a proceeding for the offence is not finalised; or (ii) the charge has lapsed, been withdrawn or discharged, or struck out; or (b) the person has been acquitted of the offence; or (c) the person has had a conviction for the offence quashed or set aside; or (d) the person is proceeded against for the offence only by way of an infringement notice under the <i>State Penalties Enforcement Act 1999</i> ; or (e) the person has a conviction for the offence, but the circumstances of the offence are not directly relevant to the situation in which the record is being considered; or (f) the person has a spent conviction for the offence; or (g) the offence was dealt with by way of—

Attribute	New or updated?	Definition
		<p>(i) a caution administered to the person under the <i>Youth Justice Act 1992</i>, part 2, division 2; or</p> <p>(ii) a restorative justice process under the <i>Youth Justice Act 1992</i>, part 2, division 3.</p>
irrelevant medical record	new attribute	<p>Means the person’s medical record, or a part of the person’s medical record, that is not directly relevant to the situation in which the record or part of the record is being considered.</p> <p>medical record, of a person, includes a record of applications or claims the person has made for compensation or other money to be paid under—</p> <p>(a) the workers’ compensation scheme under the <i>Workers’ Compensation and Rehabilitation Act 2003</i>; or</p> <p>(b) a similar scheme under another Act or a law of another State or the Commonwealth.</p>
parental status	definition of ‘parent’ updated	<p>Means whether or not a person is a parent.</p> <p>parent includes—</p> <p>(a) step-parent; and</p> <p>(b) adoptive parent; and</p> <p>(c) foster parent; and</p> <p>(d) guardian; and</p> <p>(e) for an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a parent of the person; and</p> <p>(f) for a Torres Strait Islander person—a person who, under Island custom, is regarded as a parent of the person.</p>
physical appearance	new attribute	<p>means—</p> <p>(a) the person’s weight, size or height; or</p> <p>(b) the presence of a birth mark or scar on the person’s face or body; or</p> <p>(c) any other characteristic of the person’s face or body—</p> <p>(i) that the person has because of another attribute of the person; or</p> <p>(ii) that is not freely chosen.</p>
pregnancy or potential pregnancy	updated to include potential pregnancy, consistent with the SD Act	<p>potential pregnancy, in relation to a person, includes—</p> <p>(a) the person’s capability to become pregnant; and</p> <p>(b) the person’s expressed desire to become pregnant; and</p> <p>(c) the person’s likelihood, or perceived likelihood, to become pregnant.</p>
race	definition updated to include immigration or migration status, and caste	<p>includes—</p> <p>(a) colour; and</p> <p>(b) descent, ancestry or caste; and</p> <p>(c) ethnicity or ethnic origin; and</p>

Attribute	New or updated?	Definition
		(d) nationality or national origin; and (e) immigration or migration status.
sexual orientation	new term ‘sexual orientation’ instead of ‘sexuality’ updated definition	Means the person’s capacity, or lack of capacity, for emotional, affectional and sexual attraction to, or intimate or sexual relations with, persons of a different gender or the same gender or more than one gender.
subjection to domestic or family violence	new attribute	Means the person is or has been subject to domestic violence within the meaning given by the <i>Domestic and Family Violence Protection Act 2012</i> , section 8.
trade union activity	new definition	Means any of the following activities— (a) being, or not being, a member of a registered employee organisation; (b) joining, not joining, or refusing to join a registered employee organisation; (c) establishing, or being involved in establishing, a registered employee organisation; (d) organising or promoting, or proposing to organise or promote, a lawful activity on behalf of a registered employee organisation; (e) encouraging, assisting or participating in, or proposing to encourage, assist or participate in, a lawful activity organised or promoted by a registered employee organisation; (f) not participating in, or refusing to participate in, a lawful activity organised or promoted by a registered employee organisation; (g) representing or advancing the views, claims or interests of members of a registered employee organisation.

Many of the amendments outlined above are consistent with recommendations made by the Building Belonging Report.

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

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

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

Harassment on the basis of sex

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

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

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

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

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

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

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

The prohibitions of harassment on the basis of sex apply in circumstances equivalent to those which are covered by sections 28B–28E of the SD Act. The Bill accordingly introduces prohibitions which apply as follows:

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

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

Work environment that is hostile on the basis of sex

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

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

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

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

Amendments to vilification provisions

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

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

Positive duty

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

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

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

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

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

In accordance with recommendation 15.2 of the Building Belonging Report, the positive duty introduced by the Bill is broader in scope than the positive duty under section 47C of the SD Act, which is limited to the area of work and only covers sexual harassment and certain types of unlawful conduct on the basis of sex. The new positive duty under the AD Act will complement the application of the more limited duty under the SD Act by extending the duty to take positive action to a wider range of contexts and conduct in Queensland.

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

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

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

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

Timeframe for complaints

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

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

Section 138 of the AD Act currently provides that a person is only entitled to make a complaint within one year of the alleged contravention of the Act, subject to the commissioner's discretion to accept a complaint beyond this period if the commissioner is satisfied that the complainant has shown good cause. The Bill amends the AD Act to entitle a person to make a complaint within two years of a certain type of alleged contravention (referred to as a 'contravention on the basis of sex') that is also a work-related matter. A contravention on the basis of sex means a contravention of the Act that constitutes:

- discrimination against a person on the basis of the person's sex;
- sexual harassment or harassment on the basis of sex;
- subjecting a person to a work environment that is hostile on the basis of sex; or
- victimisation of a person in relation to the above types of conduct.

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

Investigation and enforcement powers

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

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

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

Part II, division 4B of the AHRC Act provides the Commission with functions relating to systemic discrimination. Section 35L of the AHRC Act provides that the Commission may inquire into any matter that may relate to systemic unlawful discrimination or suspected systemic unlawful discrimination. Systemic unlawful discrimination means unlawful discrimination that affects a class or group of persons

and is continuous, repetitive or forms a pattern. An inquiry may result in a report to the Minister and the publishing of a report by the Commission (section 35Q).

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

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

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

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

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

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

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

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

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

Representative complaints

Recommendation 23 of the Respect@Work Report was to amend the AHRC Act to allow unions and other representative groups to bring representative claims to court, consistent with existing provisions in the AHRC Act that allow unions and other representative groups to bring a representative complaint to the Commission.

Section 46P(2)(c) of the AHRC Act provides that complaints may be lodged with the Commission by a person or a trade union on behalf of one or more other persons aggrieved by alleged acts, omissions or practices. A ‘representative complaint’ means a complaint lodged on behalf of at least one person who is not a complainant (the person who lodged the complaint).

Recommendation 25 of the Respect@Work Report was to introduce a cost protection provision in the AHRC Act consistent with section 570 of the *Fair Work Act 2009* (Cwlth).

The Bill amends the AD Act to:

- provide a new scheme for representative complaints which is more consistent with the AHRC Act and the *Civil Proceedings Act 2011* (Civil Proceedings Act);
- allow a registered employee union to make a representative complaint about an alleged contravention that is a work-related matter;
- insert a provision clarifying that a costs order may only be made against the person or union who made a representative complaint;
- provide that a party may only be represented in a proceeding in the tribunal as provided for under section 529 of the Industrial Relations Act; and
- preclude an unregistered employee or employer union from bringing a complaint as an agent.

The amendments in relation to representation at the tribunal and precluding unregistered employee or employer unions from bringing a complaint as an agent are complementary to amendments made to the Industrial Relations Act by the *Industrial Relations and Other Legislation Amendment Act 2022*. The amendments to the Industrial Relations Act were made to ensure that employees’ and employers’ industrial interests are effectively represented by entities subject to regulation under the Industrial Relations Act rather than unregulated entities who are not required to fulfil the high level of governance duties under that legislation.

Magistrates’ entitlement to unpaid parental leave

The Bill achieves the policy objectives by amending section 47 of the Magistrates Act to provide that, despite section 47(1) and (2) of the Magistrates Act and the JR Act, the terms and conditions approved by the Government in Council under section 47(3) may include an entitlement to paid and unpaid parental leave.

Judicial immunity

The Bill achieves the policy objectives by clarifying that the legislative immunity and protection which apply to magistrates, District Court judges and certain officers of QCAT is equivalent to that granted to Supreme Court judges. These amendments apply retrospectively, except in relation to proceedings already on foot against a magistrate, District Court judge or an officer of QCAT prior to introduction of the Bill.

Insertion of an aggravating sentencing factor in the *Penalties and Sentences Act 1992*

The Bill amends section 9 (Sentencing guidelines) of the Penalties and Sentences Act to require that when determining the appropriate sentence for an offender convicted of an offence involving violence against, or that resulted in physical harm to, a person in their workplace, a court must treat as an aggravating factor the fact that the offence occurred in the performance of the functions of the victim's office or employment, or because of the performance of those functions or employment. The aggravating factor is not limited to public sector employees and is available irrespective of the victim's employment arrangements, including volunteers. The aggravated sentencing factor is to apply to contractors, agency workers and all other forms of working arrangements, including whether that work is performed for reward. The aggravated sentencing factor is to also apply to sexual assaults. It will not apply where the court considers it is not reasonable because of the exceptional circumstances of the case.

Amendment to section 10 of the *Penalties and Sentences Act 1992* and section 209 of the *Youth Justice Act 1992*

The Bill amends section 10 of the Penalties and Sentences Act and section 209 of the Youth Justice Act to provide that if the reasons for the imposition of an imprisonment or detention order are recorded under the *Recording of Evidence Act 1962* then the court does not need to cause the reasons to be reduced in writing or comply with the physical storage requirements. This will facilitate the digitalisation of court processes. The requirement for the reasons for the making of an order for imprisonment or detention to be stated in court remain.

Alternative ways of achieving policy objectives

To implement the identified Respect@Work Report recommendations and other measures in the Bill a legislative response is required. There are no alternative ways of achieving the policy objectives other than by legislation.

Estimated cost for government implementation

The amendments to the AD Act will have impacts for the QHRC, Industrial Relations Commission (IRC) and QCAT.

Implementation of the Bill will provide the QHRC with expanded investigation functions and complementary enforcement powers such as the ability to enter into enforceable undertakings and issue compliance notices relevant to the new positive duty, and to report on certain systemic contraventions of the AD Act.

The new powers for the QHRC to enforce the positive duty will also impact QCAT and the IRC. Both enforceable undertakings and compliance notices can be enforced by way of an application to the relevant tribunal (IRC for work-related matters and QCAT for all other matters). The making of a compliance notice is also subject to a merits review by the relevant tribunal.

The expansion of the protected attributes for discrimination and vilification, and the introduction of the new ‘harm-based’ provision for vilification may also impact both QCAT and the IRC, as well as the QHRC. Updating the provisions for representative complaints to align more closely with provisions in the AHRC Act and the Civil Proceedings Act may result in more representative complaints coming to both QCAT and the IRC, as well as the QHRC.

The impact of the new prohibitions of harassment on the basis of sex and subjecting a person to a hostile work environment on the basis of sex will primarily be on the IRC at the tribunal stage because the new prohibitions are restricted to the work area. The ability for registered trade unions to bring representative complaints on behalf of complainants is also likely to predominately impact the IRC. These amendments will also have impacts for the QHRC.

The amendments concerning magistrates’ entitlement to unpaid parental leave, the judicial immunity amendments, the Penalties and Sentences Act amendments and the Youth Justice Act amendments are not expected to have any costs implications.

Consistency with fundamental legislative principles

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

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

Prohibitions of certain types of conduct

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

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

The introduction of new prohibitions in relation to harassment on the basis of sex, vilification and hostile work environments is in recognition of the significant harm, including personal, social and economic harm, caused by such conduct. The expansion of the list of protected attributes recognises the historic and continuing unfavourable treatment on the basis of these attributes, and the resulting harm. The purpose of the amendments is accordingly to ensure the right to equality for people who have been subject to systemic discrimination and historical disadvantage.

The new prohibitions do not extend to all areas of life, but only to certain contexts related to work (for harassment on the basis of sex and hostile workplace environments) or to public acts (for the new vilification prohibition). The expanded list of protected attributes will have effect in relation to the existing prohibitions of discrimination, which only apply in relation to certain areas of activity. This ensures that the prohibitions, and the new protected attributes, will not impact conduct in private settings.

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

Updated exemptions for compliance with laws

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

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

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

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

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

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

The prohibition of vilification is in recognition of the significant harm caused not only to individuals who have been subject to systemic discrimination and social exclusion

on the basis of certain protected attributes, but also the harm caused to the community, including the breakdown of social cohesion.

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

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

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

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

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

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

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

Commissioner's powers in conducting an investigation

The Bill also expands the circumstances in which the commissioner may conduct an investigation (clause 39). This may impact the fundamental legislative principle that legislation should have regard to the rights and liberties of individuals (section 4(2)(a) LS Act).

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

The penalty level for an offence, including whether it is proportionate to the level of seriousness of the offence and consistent with other similar offences, is relevant to whether the offence has sufficient regard to the rights and liberties of persons who may be subject to it.

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

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

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

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

Restriction on appointment of agent for work related complaints

Clause 28 amends section 134 of the AD Act to provide that a person's agent for a work-related complaint cannot be an employee or officer of, or acting for, an entity that purports to represent the industrial interests of employees or employers, other than an

entity that is an organisation of employees or employers registered under the Industrial Relations Act or the *Fair Work (Registered Organisations) Act 2009* (Cwlth).

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

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

Magistrates' entitlement to unpaid parental leave

The amendments to section 47 of the Magistrates Act will abrogate established statutory law rights and liberties of individuals (section 4(2)(a) of the LS Act), namely a continuous statutory entitlement for magistrates to be paid. However, this abrogation is considered justified, as the amendment will only go as far as necessary given the narrow application to circumstances where a magistrate is taking a period of unpaid parental leave, and provides for magistrates to be remunerated appropriately when not performing the functions of their office.

Insertion of aggravating sentencing factor in the *Penalties and Sentences Act 1992*

The amendment to section 9 of the Penalties and Sentences Act will require a sentencing court to treat as an aggravating factor the fact that an offence involving violence against, or that resulted in physical harm to, a person was committed against that person while that person was performing functions of the victim's office or employment, or because of the performance of those functions or employment. The amendments will apply to sentences upon commencement of the provisions on assent, regardless of whether the offence was committed prior to commencement. This may impact on the rights and liberties of individuals as it may increase the likelihood of a court imposing a more severe sentence.

As noted in the QSAC Report, the insertion of the aggravating sentencing factor is considered justified as "it will make clear to the community that offences involving violence, or threatened violence, against these workers will be treated by courts in sentencing as more serious, thereby serving an important communicative function".¹

¹ QSAC Report, page xxviii.

The impact of the aggravating sentencing factors on the rights and liberties of individuals is mitigated by the fact that the court can currently consider offending against persons in their workplace in its consideration of the nature and seriousness of an offence and the harm caused by the offender during sentence. The amendment enshrines this consideration in legislation, while preserving the courts' ability to consider other matters listed in section 9 of the Penalties and Sentences Act and determine the weight to place on the aggravating sentencing factor in the particular circumstances of the offence. The amendment also enables the court to not treat the factor as an aggravating factor in exceptional circumstances. The Bill will support the courts' treatment of offending against workers as more serious, while ensuring judicial discretion in sentencing decisions is retained.

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

Investigations and compliance tools

Clause 39 of the Bill gives the commissioner power to conduct an investigation into: a person's compliance with the positive duty; and, any matter that may relate to a contravention on the basis of sex that is or is suspected to be systemic, and is a work-related matter.

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

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

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

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

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

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

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

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

The commissioner may only make a compliance notice if the commissioner considers that a person has contravened, is contravening, or is likely to contravene the positive duty, and either the person has not offered an enforceable undertaking acceptable to the commissioner in relation to the contravention or the commissioner has accepted an enforceable undertaking and the person has failed to comply with the undertaking and the commissioner has withdrawn the undertaking.

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

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

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

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

Representation in IRC

Clause 45 inserts a new section of the AD Act that provides that, in a complaint proceeding before the IRC, a party to a complaint or a person ordered or permitted to appear or to be represented in the complaint proceeding, may be represented in the proceeding only as provided under the Industrial Relations Act, section 529.

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

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

Judicial immunity

There are three principles of natural justice developed by the common law. These principles are that:

- something should not be done to a person that will deprive the person of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to present the person's case to the decision-maker;
- the decision-maker must be unbiased; and
- there must be procedural fairness, involving a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case.

Clarifying the immunity and protections given to magistrates, District Court judges and certain officers of QCAT ensures that the decision-maker is unbiased as their decision will not be influenced by any risk of personal liability attaching to their decision. This promotes the principles of natural justice.

Consultation

AD Act amendments

Consultation was undertaken with the Queensland Council of Unions in relation to the amendments to the AD Act to implement recommendations from the Respect@Work

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

Judicial amendments

The Chief Magistrate was consulted in relation to the amendments to magistrates’ unpaid parental leave entitlements.

Consultation was undertaken with the heads of jurisdiction including the Chief Justice, Chief Judge, Chief Magistrate and the President of QCAT in relation to the judicial immunity amendments.

Insertion of an aggravating sentencing factor in the Penalties and Sentences Act

QSAC undertook extensive consultation during its development of the QSAC Report and consultation on the recommendations of the QSAC Report was also undertaken.

Consistency with legislation of other jurisdictions

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

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

In relation to the magistrate’s entitlement to unpaid parental leave and the judicial immunity amendment, while the amendments are specific to the State of Queensland and are not uniform with or complementary to legislation of the Commonwealth or another state, comparable judicial immunity legislation in other states was reviewed and considered and are reflected in the positions adopted in the Bill.

The aggravating sentencing factor recommended by the QSAC Report was based on a similar provision in New South Wales, namely section 21A(2) of the *Crimes (Sentencing Procedure) Act 1999* (NSW).

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Respect at Work and Other Matters Amendment Act 2024*.

Clause 2 provides that parts 2 to 4 and 6 of the Bill will commence on a day to be fixed by proclamation.

Part 2 Amendment of Anti-Discrimination Act 1991

Clause 3 provides that this part amends the *Anti-Discrimination Act 1991* (AD Act).

Clause 4 amends the long title to replace the existing reference to ‘equality of opportunity’ with ‘equal opportunity and equitable outcomes’. The concept of ‘equality of opportunity’ currently underpins the preamble and purpose provisions throughout the AD Act. The Bill updates references to ‘equality of opportunity’ to refer instead to ‘equal opportunity and equitable outcomes’. This is consistent with the concept of substantive equality, which recognises that equality of opportunity (or formal equality) may not be sufficient to secure equitable outcomes. To achieve equality of outcomes it may be necessary to accommodate differences and treat various groups differently, recognising that some people have been subject to systemic discrimination and historical disadvantage.

Subclause (2) adds a reference to ‘harassment on the basis of sex’ to reflect the new prohibitions in relation to harassment on the basis of sex introduced by the Bill.

Clause 5 amends paragraph 7 of the preamble to replace the existing reference to ‘equality of opportunity’ with ‘equal opportunity and equitable outcomes’, and to insert a reference to ‘harassment on the basis of sex’.

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

Clause 7 amends section 7 (Discrimination on the basis of certain attributes prohibited) to insert ‘expunged conviction’, ‘homelessness’, ‘irrelevant criminal record’, ‘irrelevant medical record’, ‘physical appearance’ and ‘subjection to domestic or family violence’ as new attributes on the basis of which discrimination is prohibited. The clause also modernises certain existing attributes by replacing ‘family responsibilities’ with ‘family, carer or kinship responsibilities’, replacing ‘pregnancy’ with ‘pregnancy or potential pregnancy’, and replacing ‘sexuality’ with ‘sexual orientation’. Definitions of the terms ‘expunged conviction’, ‘irrelevant criminal record’, ‘irrelevant medical record’, ‘medical record’, ‘physical appearance’, ‘potential pregnancy’, ‘sexual orientation’ and ‘subjection to domestic or family violence’ are added to schedule 1 of the AD Act by clause 52 of the Bill.

Clause 8 amends section 19 (Discrimination by industrial, professional, trade or business organisation in pre-membership area) to omit the reference to ‘if the *Industrial Relations Act 2016*, chapter 12, part 9, division 2 or part 10 applies’ and insert ‘under the *Industrial Relations Act 2016*, chapter 12, part 9, division 2 or part 10’.

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

Clause 10 amends section 21 (Discrimination by qualifying body in pre-qualification area) to make amendments which are consequential to the inclusion of a definition of ‘professional, trade or business qualification or authorisation’ in schedule 1. The amendments simplify the drafting of the provision without impacting its operation.

Clause 11 amends section 22 (Discrimination by qualifying body in qualification area) to make amendments which are consequential to the inclusion of a definition of ‘professional, trade or business qualification or authorisation’ in schedule 1. The amendments simplify the drafting of the provision without impacting its operation.

Clause 12 amends section 45A (Non-application of s 46 to provision of assisted reproductive technology services) to make a consequential amendment to replace the term ‘sexuality’ with ‘sexual orientation’.

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

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

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

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

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

Subsection (1) provides that the section applies in relation to determining whether conduct of a person constitutes sexual harassment or harassment on the basis of sex of

another person. The effect of this is to ensure the existing test for determining whether conduct constitutes sexual harassment will also apply to the new prohibitions of harassment on the basis of sex.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 124A (References to attribute of a person) provides that, for the purposes of chapter 4, part 4, references to relevant attributes also include a reference to: a characteristic that a person with the relevant attribute generally has; or a characteristic that is often imputed to a person with the relevant attribute; or a relevant attribute that a person is presumed to have, or to have had at any time, by the person engaging in the conduct; or a relevant attribute that a person had, even if the person did not have it at the time the conduct was engaged in.

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

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

- any form of communication, including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods, to the public;
- any conduct, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, observable by the public; and
- the distribution or dissemination of any matter to the public.

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

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

Section 124C (Hateful, reviling, seriously contemptuous, or seriously ridiculing conduct) prohibits a person, because of the age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation of another person or a group of persons, engaging in a public act that a reasonable person would consider hateful towards, reviling, seriously contemptuous of, or seriously ridiculing the other person or members of the group.

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

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

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

Section 124D (Inciting hatred, serious contempt or severe ridicule) prohibits a person, in a public act, from engaging in conduct that is likely to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the basis of the age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation of the person or members of the group. It is not necessary to show actual incitement, but instead only requires the conduct to be capable of inciting hatred, serious contempt, or severe ridicule.

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

Beyond the additional attributes and updated definition of public act introduced by this Bill, the incitement provision will operate similarly to the previous section 124A of the AD Act, with the added clarification that it is only necessary to show conduct that is likely to incite.

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

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

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

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

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

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

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

The new part 5 is modelled on section 28M of the SD Act with appropriate modifications to incorporate existing concepts within the AD Act. An example of such a modification is the reference to a place of work, rather than a workplace, which accords with the approach taken in section 108 of the AD Act and aligns with the definition of ‘work’ in schedule 1 of the AD Act.

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

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

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

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

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

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

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

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

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

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

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

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

The clause also makes amendments to the definition of ‘relevant alleged contravention’ in section 134(5) which are consequential to the replacement of chapter 4, part 4 (Racial and religious vilification). A relevant entity will be permitted to complain to the commissioner about an alleged contravention of new section 124C (Hateful, reviling,

seriously contemptuous, or seriously ridiculing conduct) or section 124D (Inciting hatred, serious contempt or severe ridicule).

Clause 29 amends section 138 (Time limit on making complaints) to provide that a person is entitled to make a complaint about an alleged contravention on the basis of sex, as defined in schedule 1, that is a work-related matter within the complaint period of two years after an alleged contravention. The existing complaint period of one year after an alleged contravention is retained for other types of contraventions. If a complaint is made after the applicable complaint period, the commissioner must decide to accept the complaint, but only if the commissioner is satisfied that the complainant has shown good cause, or otherwise must decide not to accept the complaint.

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

Clause 31 replaces chapter 7, part 1, division 1, subdivision 2 (Representative complaints), which includes new sections 146 to 152A.

Section 146 (Who may make representative complaint) provides for who may make a representative complaint, for an alleged contravention of the Act, on behalf of a class of persons.

A person may make a representative complaint on behalf of a class of persons of which the person is a member. This is permitted if all members of the class may make a complaint about the alleged contravention, and all of the complaints the members of the class may make relate to, or arise out of, the conduct of the same person, and the same, similar or related circumstances, and give rise to a substantial common issue of law or fact.

Also, a registered employee organisation, as defined in schedule 1, may make a representative complaint. This is permitted if all members of the class are members of the registered employee organisation, the alleged contravention is a work-related matter, all members of the class may make a complaint about the alleged contravention, and all of the complaints the members of the class may make relate to, or arise out of, the conduct of the same person, and the same, similar or related circumstances, and give rise to a substantial common issue of law or fact.

The consent of the members of the class is not required for either type of representative complaint.

Section 147 (Additional requirements for form of representative complaint) provides that a representative complaint must describe or otherwise identify the members of the class of persons for which the complaint is made. It is not necessary to name them or specify how many there are. The representative complaint must also specify both the nature of the complaints made on behalf of the members of the class and the nature of the relief sought.

Section 148 (Effect of representative complaint on persons who are members of class represented) provides that a person who is a member of a class of persons to which a representative complaint relates may, at any time before the commissioner finishes dealing with the complaint, opt out of the representative complaint by written notice to the commissioner.

If a class member does not opt out, they are not entitled to make a separate complaint in relation to the conduct constituting the alleged contravention to which the representative complaint relates. However, the class member (other than the complainant) is not prevented from making a separate complaint if: the commissioner amends the complaint to be a non-representative complaint, or the representative complaint lapses under section 142, section 167(4)(c) or division 5. The class member (other than the complainant) is also not prevented from making a separate complaint if the representative complaint is referred to the tribunal and: the representative complaint lapses under section 193; the tribunal decides not to deal with the complaint as a representative complaint under section 194; the class member opts out; or the tribunal orders that the representative complaint no longer continue as a representative complaint.

Section 149 (Effect of representative complaint on persons who are not members of class represented) provides that the making of a representative complaint about an alleged contravention does not prevent a person who is not a member of the class of persons for which the representative complaint is made from making a complaint in relation to the conduct constituting the alleged contravention. This also applies to a person who has opted out of the representative complaint.

Section 150 (Complaint may be amended to be representative complaint) provides that the commissioner may amend a complaint so that it can be dealt with as a representative complaint. To do so, the commissioner must be satisfied that a complaint made by or on behalf of a number of persons could be dealt with as a representative complaint if the persons on whose behalf the complaint is made are increased, reduced or otherwise altered, and the person who made the complaint must consent to the amendment and to the complaint being dealt with as a representative complaint.

Section 151 (Representative complaint may be amended to be non-representative complaint) allows the commissioner to amend a complaint made as a representative complaint so that it can be dealt with other than as a representative complaint. To do so, the commissioner must be satisfied either: that the complaint was wrongly made as a representative complaint; or that it is in the interests of justice that the matter the subject of the complaint made as a representative complaint be dealt with other than as a representative complaint. Doing so will be in the interests of justice if the complaint will not provide an efficient and effective way of the dealing with the complaints of the class members or if the complainant is not able to adequately represent the interests of the class members.

Section 152 (Substitution of complainant) provides that if the complainant for a representative complaint (other than a complaint made by a registered employee organisation) gives the commissioner written notice that the complainant wishes to withdraw the complaint, the commissioner may substitute another class member as the complainant with that class member's consent. The clause also provides that if the

commissioner considers the complainant is not able to adequately represent the interests of the class members, the commissioner may substitute another class member as the complainant with that class member's consent.

Section 152A (Commissioner may give directions) provides that the commissioner may give directions about the conduct of a representative complaint while it is being dealt with by the commissioner.

Clause 32 amends the heading to chapter 7, part 1, division 2 (The investigation process) to read 'Investigation of complaint' to better reflect the division's content.

Clause 33 amends section 154A (Investigation of complaint) to provide that chapter 7, part 1A, division 1, subdivision 2 (Conduct of investigation) applies in relation to the investigation of a complaint by the commissioner.

Clause 34 omits section 155 and section 156. The matters covered by these sections are addressed in new chapter 7, part 1A (What the commission may do—investigations and compliance).

Clause 35 relocates and renumbers section 157 (Commissioner may obtain actuarial, statistical or other data) as new section 173S in new chapter 7, part 1A, division 3 (Other provisions).

Clause 36 amends the heading to chapter 7, part 1, division 3 (The conciliation process) to read 'Conciliation of complaint' to better reflect the division's content.

Clause 37 amends section 170 (Complainant may withdraw complaint) to provide that if a withdrawal relates to a representative complaint where another class member has been substituted as the complainant, sections 170(2) to (5) do not apply and the person seeking withdrawal must be advised by the commissioner that the complaint has not been withdrawn, of the substitution and that the person may opt out of the complaint.

Clause 38 amends section 172 (Commissioner may extend time limits) to make it clear that a reference to a party includes a reference to a class member for a representative complaint.

Clause 39 inserts new chapter 7, part 1A (What the commission may do—investigations and compliance), which includes new sections 173 to 173R.

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

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

Section 173A (When commissioner must conduct investigation) provides that the commissioner must conduct an investigation if requested to do so by the Minister, or if

QCAT or the IRC becomes aware of circumstances that may constitute a contravention of the Act and refers the matter to the commissioner.

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

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

Section 173C (Commissioner must notify person about investigation) provides that, if an investigation under chapter 7, part 1A, division 1, subdivision 1 (Starting investigation) relates to a particular person, the commissioner must give the person written notice of the investigation. The notice must invite them to make submissions in relation to the investigation within a stated reasonable time.

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

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

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

attendance before the commissioner were attendance in a Magistrates Court as a witness.

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

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

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

Section 173J (Undertakings) allows the commissioner to accept a written undertaking under which a person undertakes to take, to stop taking or not to take stated action to comply with the positive duty, if the commissioner considers that the person has contravened, is contravening or is likely to contravene the positive duty. The commissioner and the person may agree to amend an undertaking at any time. If the commissioner refuses to accept a written undertaking from the person, the commissioner must give a written notice of the decision and the reasons for it. The commissioner may publish an undertaking on the commission's website, and in any other way the commissioner considers appropriate.

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

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

an undertaking resulting in the commissioner withdrawing acceptance of it. The compliance notice must include stated information.

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

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

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

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

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

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

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

Clause 40 relocates and renumbers section 173 (Authentication of documents) to new section 266A in chapter 10 (Miscellaneous).

Clause 41 relocates and renumbers section 174 (Judicial notice of commissioner's signature) to new section 266B in chapter 10 (Miscellaneous).

Clause 42 amends section 174A (Functions of QCAT) to refer to new functions of QCAT related to undertakings accepted under section 173J and compliance notices issued under section 173L, and makes consequential updates to paragraph references.

Clause 43 amends section 174B (Functions of industrial relations commission) to refer to new functions of the IRC related to undertakings accepted under section 173J and compliance notices issued under section 173L, and makes consequential updates to paragraph references.

Clause 44 amends section 175 (Time limit on referred complaints) to reflect the complaint periods as provided for in amended section 138.

Clause 45 inserts new section 176A (Representation — industrial relations commission) which provides that a party to a proceeding for a complaint before the IRC, or a person ordered or permitted to appear or to be represented in such a proceeding, may be represented only as provided under section 529 of the *Industrial Relations Act 2016*.

Clause 46 amends section 193 (Complainant may withdraw complaint) to clarify that a representative complaint can only be withdrawn if the tribunal agrees, and provide that if the withdrawal sought relates to a representative complaint for which the tribunal substitutes another class member as the complainant, the complaint does not lapse and the person seeking withdrawal must be notified by the tribunal of the substitution and that the person may opt out of the complaint.

Clause 47 replaces chapter 7, part 2, division 1, subdivision 2 (Representative complaints), which includes new sections 194 to 203A.

Section 194 (Tribunal may deal with complaint as representative complaint) provides that the tribunal may deal with a complaint as a representative complaint if the complaint was being dealt with by the commissioner as a representative complaint before being referred to it, or the tribunal otherwise decides to deal with the complaint as a representative complaint. The tribunal may decide to deal with a complaint made by or on behalf of a class of persons as a representative complaint if the tribunal is satisfied that all members of the class may make a complaint under section 134(1)(a) and all of the complaints the members of the class may make under section 134(1)(a) relate to, or arise out of, conduct of the same person and the same, similar or related circumstances, and give rise to a substantial common issue of law or fact. The complainant must also be a member of the class, or be a registered employee organisation of which all class members are members for a complaint relating to an alleged contravention for a work-related matter.

Section 195 (Effect of representative complaint on persons who are members of class represented) allows for a person who is a member of the class of persons to which a representative complaint before the tribunal relates to opt out of a representative complaint, by notice before a date fixed by the tribunal (the opt-out date), which may be extended on application of the complainant, respondent or a class member. The

person is not entitled to make a separate complaint in relation to the conduct constituting the alleged contravention of the Act to which the representative complaint relates, unless they opt out. The hearing of a representative complaint must not start before the opt-out date, except by leave of the tribunal.

Section 196 (Effect of representative complaint on persons who are not members of class represented) provides that the tribunal dealing with a complaint as a representative complaint in relation to an alleged contravention does not prevent a person who is not a class member, or a person who has opted out of the complaint, from making a complaint.

Section 197 (Tribunal may order complaint to be dealt with as representative complaint) provides that if the tribunal is satisfied that a complaint made by or on behalf of a number of persons could be dealt with as a representative complaint if the persons on whose behalf the complaint is made are increased, reduced or otherwise altered, the tribunal may, by order, direct that the complaint be dealt with as a representative complaint and direct the complainant to amend the complaint to allow it to be dealt with as a representative complaint.

Section 198 (Excessive distribution costs) allows the tribunal to, by order, direct that the complaint no longer continue as a representative complaint, if the relief sought includes payment of money to class members (other than for costs), and the tribunal considers, on application by the respondent, that the costs to the respondent of identifying and distributing the amounts to be paid to the class members would be excessive. The complaint may alternatively be stayed so far as it relates to payment of money to class members.

Section 199 (Tribunal may discontinue representative complaint in particular circumstances) allows the tribunal to order that a complaint no longer continue as a representative complaint if the tribunal considers it is in the interests of justice to do so because the complaint will not provide an efficient and effective way of dealing with the complaints of the class members for the complaint, the complainant is not able to adequately represent the interests of class members, or it is otherwise inappropriate that the complaint continue as a representative complaint. The order may be made on the tribunal's own initiative or on application of the respondent. If the tribunal dismisses an application by the respondent, the tribunal may order that no further application may be made by the respondent except with the tribunal's leave, which may be granted subject to conditions about costs the tribunal considers just.

Section 200 (Effect of representative complaint being discontinued) provides that if the tribunal makes an order that the complaint no longer continue as a representative complaint (other than for a representative complaint made by a registered employee organisation), the complaint may be continued as a complaint by the person who made the complaint on the person's own behalf, and a class member may be joined as a joint complainant on their application.

Section 201 (Substitution of complainant) provides that the tribunal may substitute another class member, with their consent, as the complainant if the complainant gives notice that they wish to withdraw a representative complaint. If the tribunal considers that the complainant is not able to adequately represent the interests of the class

members for the representative complaint, the tribunal may substitute another class member as the complainant with the consent of the other class member.

Section 202 (Tribunal approval needed for settlement or withdrawal of representative complaint) provides that a representative complaint may only be settled or withdrawn with the approval of the tribunal and, if approval is given, that the tribunal may make any orders it considers just for the distribution of money paid under a settlement or paid to the tribunal.

Section 203 (Notices for representative complaint) provides that notice of stated matters, in the way and within the time directed, must be given to each class member for a representative complaint. The tribunal must not direct that notice be given personally to each class member for the representative complaint unless the tribunal considers it is reasonably practicable and not unduly expensive to do so, and may direct that notice be given by publishing a notice on a website or in another place likely to be accessible to class members. The failure of a class member for the representative complaint to receive or respond to a notice does not affect a step taken, or an order made, in the representative complaint.

Section 203A (Directions about conduct of representative complaint) provides that the tribunal may give directions about the conduct of a representative complaint before the tribunal.

Clause 48 amends section 209 (Orders the tribunal may make if complaint is proven) to provide that certain orders that the tribunal may make also apply to a class member for a representative complaint. Amendments are also made to provide that the tribunal may order costs for a representative complaint against the complainant or the respondent, but not against a class member other than the complainant, and otherwise as provided under the relevant tribunal Act.

Clause 49 makes a consequential amendment to section 223 (Contempt of commission) to reflect the insertion of new chapter 7, part 1A (What the commission may do—investigations and compliance).

Clause 50 amends section 235 (Commission's functions) to expand the commission's functions in relation to investigations to conducting investigations under section 154A and chapter 7, part 1A and, if appropriate, taking action in relation to the investigation. Amendments are also made to refer to research and educational programs that the commission undertakes supporting compliance with the Act, in addition to promoting its purposes.

Clause 51 inserts new chapter 11, part 10 (Transitional provisions for Respect at Work and Other Matters Amendment Act 2024) which contains new sections 282 to 287.

Section 282 (Definitions for part) provides definitions of 'amendment Act', and 'former' and 'new' for a provision of the Act.

Section 283 (Time limit for making complaint) provides that new section 138 does not apply in relation to an alleged contravention of the Act that happened more than one year before commencement, and that relevant former provisions of the Act as in force

before commencement continue to apply. However, the section does not affect the commissioner accepting a complaint under former sections 138(2) or 141A that was made more than one year after the alleged contravention or relates to at least one alleged contravention that happened more than one year before the complaint was made, or the tribunal accepting a referred complaint under former section 175(2) that was made to the commissioner more than one year after the alleged contravention.

Section 284 (Existing complaints by unregistered industrial organisations) provides that new section 134(2) does not apply in relation to a complaint made before the commencement.

Section 285 (Existing representative complaints) provides that for a complaint accepted by the commissioner before the commencement that, immediately before the commencement, was a representative complaint, and was either still being dealt with by the commissioner or had been referred to the tribunal and was still being dealt with by the tribunal, former chapter 7, parts 1 and 2 continue to apply and the complaint must continue to be dealt with under those parts as if the amendment Act had not been enacted. However, the commissioner or tribunal may give directions under former sections 150 or 198 that allow for the complaint to be dealt with in a way that is consistent with the Act as in force from the commencement.

Section 286 (Existing investigation) provides that an investigation under section 154A or former section 155 started but not finished before the commencement may be continued and finished. New chapter 7, part 1A, division 1, subdivision 2 applies in relation to the investigation, and the investigation started under former section 155 is taken to have been started under chapter 7, part 1A, division 1, subdivision 1.

Section 287 (Existing directions for information or documents) provides that former section 156 continues to apply in relation to a direction given under that section before the commencement, as if the amendment Act had not been enacted.

Clause 52 amends schedule 1 to insert new definitions of terms used in provisions amended by the Bill and to update or incorporate new definitions of attributes prescribed by section 7 of the Act. The clause also amends the definition of ‘complainant’ to reflect amendments made to provisions relating to representative complaints, and amends the definition of ‘contravention’ to include a reference to ‘harassment on the basis of sex’.

The definition of ‘irrelevant criminal record’ generally provides for two kinds of irrelevant criminal records. The first are records which do not relate to a finding of guilt and conviction before a court or tribunal, and are therefore by definition ‘irrelevant’. The second, set out in (e), is where there has been a determination of guilt and a conviction recorded for an offence, but the circumstances of the offending are not directly relevant to the situation in which the record is being considered. While the relevance of particular records will depend on the particular situation, the approach taken in the Australian Capital Territory Civil and Administrative Tribunal to determining relevance demonstrates its application (see *Complainant 201908 v Commissioner for Fair Trading (Discrimination)* [2020] ACAT 24, [72]-[87]).

The definition of ‘irrelevant medical record’ is defined as a person’s medical record, or part of the person’s medical record, that is not directly relevant to the situation in which the record or part of the record is being considered. In contrast to the attribute of irrelevant criminal record, which defines certain records as irrelevant, in order to not be ‘irrelevant’, the consideration of all medical records will need to be directly relevant to the circumstances, such as where the record may relate to a genuine occupational requirement. The introduction of ‘irrelevant medical record’ as a protected attribute is intended to provide further protection from situations when a person’s medical record is used as a basis for treating them unfairly, unless the medical record is relevant to the situation (e.g. use of medical history obtained in a pre-employment check that is not directly relevant to whether a person is capable of performing the particular job).

The definition of ‘medical records’ is inclusive, and covers records of applications or claims the person has made for compensation or other money to be paid under the *Workers’ Compensation and Rehabilitation Act 2003* or a similar scheme under another Act or a law of another State or the Commonwealth.

The definition of ‘physical appearance’ captures those aspects of a person’s body which are either impossible or very difficult to change. It also captures physical features which are acquired, such as burns or scars. The definition excludes freely chosen characteristics of a person’s face or body, such as piercing or tattoos, except for when those characteristics are characteristics of another protected attribute. An example would include a hairstyle that is adopted for cultural reasons (e.g. a boy who has long hair because of a cultural custom to not cut the firstborn son’s hair until a hair-cutting ceremony is held). This ensures that, where it is characteristic of another attribute (e.g. race), it is also protected by that other attribute under section 8 and that the restricted definition of the protected attribute of physical appearance does not inadvertently imply that discrimination on the basis of a hairstyle or tattoo adopted for cultural reasons, for example, is not unlawful.

The definitions of ‘parent’ and ‘relation, of a person’ are updated to include references to persons who, under Aboriginal tradition or Torres Strait Island custom, are regarded as a parent or relative of the person. Further amendments to the definition of ‘relation, of a person’ are also made in order to modernise the definition of this term.

The inclusive definition of ‘race’ is updated to include reference to ‘immigration or migration status’, as well as ‘caste’. Immigration or migration status covers persons who are immigrants, refugees or asylum seekers, or visa holders. Caste is included in addition to descent for the avoidance of doubt, consistent with the recognition of the United Nations Committee on the Elimination of Racial Discrimination in General Recommendation 29, which condemns ‘descent-based discrimination, such as discrimination on the basis of caste and analogous systems of inherited status, as a violation of the Convention’. The definition is not exhaustive, and other elements of race (such as language) may fall within the definition, or be protected as a characteristic under section 8.

A definition of ‘sexual orientation’ has been incorporated and updated compared to the existing definition of ‘sexuality’. The definition additionally captures a lack of capacity for the relevant attraction or intimate or sexual relations with another person, which covers people who may be asexual or aromantic within the definition of the attribute.

The definition of ‘trade union activity’ has been adapted from section 290 of the *Industrial Relations Act 2016*. Section 290 of the *Industrial Relations Act 2016* was amended by the *Industrial Relations and Other Legislation Amendment Act 2022* as part of a suite of amendments that were made to ensure that employees’ and employers’ industrial interests are effectively represented by entities subject to regulation under the *Industrial Relations Act 2016* rather than unregulated entities who are not required to fulfil the high level of governance duties under that legislation. In line with this policy intent, section 290 of the *Industrial Relations Act 2016* and the definition of ‘trade union activity’ introduced by the Bill capture activities in relation to registered industrial organisations.

Part 3 Amendment of Corrective Services Act 2006

Clause 53 provides that part 3 amends the *Corrective Services Act 2006*.

Clause 54 amends section 319A (Definitions) to replace the definition of ‘relevant person’. This amendment is consequential to the amendments made to section 134 of the AD Act.

Part 4 Amendment of Criminal Code

Clause 55 provides that part 4 amends the Criminal Code.

Clause 56 amends section 1 (definitions) to omit the definition of sexuality and insert definitions of ‘impairment’ and ‘sexual orientation’ which refer to the definition of ‘impairment’ and the definition of ‘sexual orientation’ in schedule 1 of the AD Act.

Clause 57 amends section 52A (Offence of serious racial, religious, sexuality or gender identity vilification) to update the definition of ‘public act’ and the grounds on which serious vilification is prohibited.

Subclauses (1) and (2) update the title and subsection (1) of section 52A to refer to ‘age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation’ instead of ‘race, religion, sexuality or gender identity’. This amendment aligns the grounds on which serious vilification is prohibited under the Criminal Code with the grounds on which vilification is prohibited under sections 124C and 124D of the AD Act, as amended by the Bill.

Clause 58 amends section 52B(1) to refer to ‘age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation’ instead of ‘race, religion, sexuality, sex characteristics or gender identity’. This aligns the grounds on which circumstances of aggravation may arise under section 52B with the grounds on which vilification is prohibited under sections 124C and 124D of the AD Act, as amended by the Bill.

Clause 59 amends section 52C(5) to update the definition of ‘relevant group’ to refer to ‘age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation’ instead of ‘race, religion, sexuality, sex characteristics or gender identity’.

This aligns the attributes listed in the definition of ‘relevant group’ with the grounds on which vilification is prohibited under sections 124C and 124D of the AD Act, as amended by the Bill.

Part 5 Amendment of District Court of Queensland Act 1967

Clause 60 provides that part 5 amends the *District Court of Queensland Act 1967*.

Clause 61 omits and inserts a new section 28AA (Protection for administrative acts) which provides when a judge has the same protection and immunity as a Supreme Court judge.

Clause 62 inserts a new section 152 (Transitional provision for Respect at Work and Other Matters Amendment Act 2024) which provides for transitional arrangements for the new section 28AA.

Part 6 Amendment of Human Rights Act 2019

Clause 63 provides that part 6 amends the *Human Rights Act 2019*.

Clause 64 amends the note to the definition of ‘discrimination’ in schedule 1 to omit the reference to ‘sexuality’ and insert ‘sexual orientation’. This amendment is consequential to renaming the attribute of ‘sexuality’ in section 7 of the AD Act.

Part 7 Amendment of Magistrates Act 1991

Clause 65 provides that part 7 amends the *Magistrates Act 1991*.

Clause 66 amends section 47 (Terms and conditions of employment—full-time and part-time magistrates) of the *Magistrates Act 1991* to insert new subsections (3A) and (3B) which provides for a magistrate’s employment terms and conditions to include an entitlement to paid or unpaid parental leave despite subsections (1) and (2) of the *Magistrates Act 1991* and the *Judicial Remuneration Act 2007*, and renumber subsections (3A) to (4) as subsections (4) to (6).

Clause 67 omits and inserts a new section 51 (Protection and immunity of magistrates) which provides when a magistrate has the same protection and immunity as a Supreme Court judge.

Clause 68 inserts a new division 12 (Transitional provision for Respect at Work and Other Matters Amendment Act 2024) which provides for transitional arrangements for the new section 51.

Part 8 Amendment of Penalties and Sentences Act 1992

Clause 69 provides that part 8 amends the *Penalties and Sentences Act 1992*.

Clause 70 amends section 9 (Sentencing guidelines) by inserting new subsections which provide an aggravating sentencing factor that a court must have regard to in certain circumstances.

New subsection (10E) provides that the aggravating sentencing factor in new subsection (10F) applies if the court is sentencing an offender to whom subsection (2A) applies and the offender commits the offence while the other person mentioned in subsection (2A) was performing, or because the person had performed, the functions of the person's office or employment.

New subsection (10F) provides that in determining the appropriate sentence for an offender, the court must treat the fact that the offender committed the offence while the other person was performing, or because the person had performed, the functions of the person's office or employment as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.

New subsection (10G) provides that a reference in subsection (10E) or (10F) to a person performing the functions of the person's office or employment includes persons performing work in a relationship of employment, under a contract for services, under an appointment or on a voluntary or unpaid basis.

Clause 71 amends section 10 (Court's reasons to be stated and recorded) and provides that the court need not comply with the requirements under section 10(1)(b) if the reasons for the making of an imprisonment order are recorded under the *Recording of Evidence Act 1962*.

Clause 72 inserts new Part 14, Division 25 (Transitional provision for Respect at Work and Other Matters Amendment Act 2024).

New section 262 provides that section 9 as amended by the *Respect at Work and Other Matters Amendment Act 2024* applies to the sentencing of an offender after the commencement whether the offence or conviction happened before or after the commencement.

Part 9 Amendment of Queensland Civil and Administrative Tribunal Act 2009

Clause 73 provides that part 9 amends the *Queensland Civil and Administrative Tribunal Act 2009*.

Clause 74 amends section 237 (Immunity of participants etc.) to clarify that a function includes an administrative function for an officer or other person on whom protection and immunity is conferred under subsection (1) to (6).

Clause 75 inserts a new chapter 10, part 5 which provides for transitional arrangements for the amendment to section 237.

Part 10 **Amendment of Youth Justice Act 1992**

Clause 76 provides that part 10 amends the *Youth Justice Act 1992*.

Clause 77 amends section 209 (Court's reasons for detention order to be stated and recorded). Subclause (1) inserts a new subsection (1A) which provides that the court need not comply with the requirements under section 209(1)(b) if the reasons are recorded under the *Recording of Evidence Act 1962*. Subclauses (2) and (3) renumber the provision and update a reference to a renumbered subsection.