

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence

Respect at Work and Other Matters Amendment Bill 2024

Objectives of the Amendments

The objectives of the amendments to be moved during consideration in detail of the Respect at Work and Other Matters Amendment Bill 2024 (the Bill) are to:

- address matters raised during the inquiry of the Community Safety and Legal Affairs Committee (the Committee) into the Bill, including comments from the Committee and other issues raised by stakeholders in submissions and at the public hearing for the inquiry;
- make consequential amendments to Queensland legislation that are required as a result of the establishment of the Commonwealth Administrative Review Tribunal (ART);
- amend the *Supreme Court of Queensland Act 1991* (SCQ Act), the *District Court of Queensland Act 1967* (DCQ Act) and the *Judicial Remuneration Act 2007* (JR Act) to introduce a legislative scheme for the appointment of reserve judges in the Supreme Court of Queensland and the District Court of Queensland;
- amend the *Penalties and Sentences Act 1992* (Penalties and Sentences Act) to clarify the obligation on a court imposing a sentence of imprisonment to provide sentencing transcripts to Queensland Corrective Services; and
- amend the Criminal Code offence of serious assault in section 340 to clarify that the current definition of public officer includes operational workers under the *Hospital and Health Boards Act 2011*.

Amendments to the *Anti-Discrimination Act 1991* (AD Act) and related amendments

On 14 June 2024, the Bill was introduced into the Queensland Parliament and referred to the Committee for detailed consideration.

On 2 August 2024, the Committee tabled the report of its inquiry into the Bill, *Respect at Work and Other Matters Amendment Bill 2024* (Report No. 13, 57th Parliament).

The Committee made one recommendation — that the Bill be passed.

The Committee's comments in its report included suggestions to consider further amendments to the Bill to address certain issues raised by stakeholders, including extending the time limitation for the making of all complaints to the Queensland Human Rights Commission (QHRC) to two years, regardless of the type of alleged contravention on which the complaint is based.

Some stakeholders recommended amending the Bill to implement, as a priority, additional reforms recommended by the QHRC in its report, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Building Belonging Report). Reforms highlighted by stakeholders included:

- updating the definitions of discrimination (in accordance with recommendations 3.1 and 3.3 to 3.6 of the Building Belonging Report);
- providing protection from discrimination on the basis of one or more attributes or because of the effect of a combination of attributes (in accordance with recommendation 3.2 of the Building Belonging Report); and
- introducing a shared burden of proof (in accordance with recommendation 13.1 of the Building Belonging Report).

Stakeholders also recommended amendments to clarify and improve the operation of the amendments made by the Bill, including:

- clarifying that the introduction of prohibitions with respect to hostile work environments and harassment on the basis of sex is not intended to limit the scope of existing protections under the AD Act;
- enabling the Queensland Human Rights Commissioner (commissioner) to conduct investigations into all types of systemic contraventions of the AD Act;
- expanding the possible outcomes of an investigation by the commissioner into suspected non-compliance with the positive duty to include the publication of reports;
- requiring the QHRC to publish guidelines on how persons may comply with the positive duty to ensure that duty holders receive appropriate guidance;
- amending the definitions of 'expunged conviction', 'potential pregnancy' and 'trade union activity' to clarify the intended scope of these attributes; and
- introducing a definition of 'homelessness' to minimise the risk of an unduly narrow interpretation of this attribute.

Amendments to reflect the establishment of the Commonwealth ART

The objective of the amendments to be moved during consideration in detail of the Bill is to make minor and technical consequential amendments to Queensland legislation to reflect the establishment of the Commonwealth ART and abolishment of the Administrative Appeals Tribunal (AAT).

On 16 December 2022, the Australian Government announced reform to the Federal system of administrative review.

The *Administrative Review Tribunal Act 2024* (Cwlth), *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (Cwlth) and *Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Act 2024* (Cwlth) are now in force. The Commonwealth Government has announced that

the *Administrative Review Tribunal Act 2024* (Cwlth), which establishes the ART, will commence on 14 October 2024.

Amendments for the appointment of reserve judges in the Supreme Court and District Court of Queensland

An objective of the amendments to be moved during consideration in detail of the Bill is to introduce a legislative scheme for the appointment of reserve judges in the Supreme Court and District Court of Queensland. The new reserve judges scheme is intended to supplement the existing provisions of the SCQ Act and the DCQ Act that provide for the appointment of acting judges.

Section 6 of the SCQ Act and section 17 of the DCQ Act currently provide for the appointment of acting judges in the Supreme Court and District Court of Queensland respectively. Each time an acting judge is required, the appointment must be made by the Governor in Council, in consultation with the Minister and the relevant head of jurisdiction.

The amendments to introduce a scheme for reserve judges will provide greater flexibility to call in additional judges on a short-term basis, allowing the Courts to respond to short-term resourcing demands, temporary vacancies and periodic increases in workloads, in a more timely way than the current process for appointing acting judges.

Amendment to the Penalties and Sentences Act

The objective of the amendment to the Penalties and Sentences Act to be moved during consideration in detail of the Bill is to clarify that a court imposing a sentence of imprisonment must provide a sentencing transcript to Queensland Corrective Services when requested. This reflects the current practice in which Queensland Corrective Services makes a request for specific transcripts.

Amendment to the Criminal Code

The objective of the amendment to be moved during consideration in detail of the Bill to the Criminal Code offence of serious assault in section 340 is to clarify that the current definition of public officer includes operational workers under the *Hospital and Health Boards Act 2011*.

Achievement of the Objectives

Amendments to the AD Act and related amendments

The amendments to be moved during consideration in detail of the Bill will address matters raised during the Committee's inquiry by modifying and supplementing the amendments to the AD Act in the Bill to:

- state commencement dates for the amendments to the AD Act and related amendments to provide greater certainty to stakeholders;
- update the definitions of direct and indirect discrimination;
- include a new protected attribute of a combination of two or more protected attributes (to recognise intersectional and cumulative discrimination);
- provide for a shared burden of proof that will apply primarily with respect to complaints of direct discrimination;
- clarify the availability of existing protections in the AD Act for attributes other than sex with respect to subjecting a person to a hostile work environment and harassment;

- create a single time limit for bringing a complaint within two years of an alleged contravention of the AD Act;
- provide the commissioner with the power to conduct investigations into all types of systemic contraventions of the AD Act;
- allow the commissioner to publish a report as an outcome of an investigation into non-compliance with the positive duty;
- make it mandatory for the QHRC to publish guidelines on the positive duty;
- ensure that the definition of ‘expunged conviction’ captures expunged convictions under corresponding laws in other states or territories;
- introduce an inclusive definition of ‘homelessness’;
- ensure that the definition of ‘potential pregnancy’ captures a person’s engagement in assisted reproductive technology services in order to become pregnant; and
- ensure that the definition of ‘trade union activity’ includes being represented by, or seeking to be represented by, a registered employee organisation.

In addition to addressing matters raised in the course of the Committee’s inquiry into the Bill, a number of these amendments are broadly consistent with recommendations made by the Building Belonging Report, including amendments to:

- update the definitions for direct and indirect discrimination (recommendations 3.1 and 3.3 to 3.6 of the Building Belonging Report);
- provide protection from discrimination on the basis of one or more attributes or because of the effect of a combination of attributes (recommendation 3.2 of the Building Belonging Report);
- extend the time limit for complaints (recommendation 8.1 of the Building Belonging Report); and
- provide for a shared burden of proof (recommendation 13.1 of the Building Belonging Report).

The amendment to introduce a two-year time limit for all types of complaints is also consistent with implementation at the Commonwealth level of recommendations made by the Australian Human Rights Commission (AHRC) in its report, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*. Section 46PH of the *Australian Human Rights Commission Act 1986* (Cwlth) provides that the President of the AHRC may terminate any type of complaint regarding unlawful discrimination if it was lodged more than 24 months after the alleged acts, omissions or practices took place.

Amendments to reflect the establishment of the Commonwealth ART

The amendments to be moved during consideration in detail of the Bill will also include consequential amendments to ten Queensland Acts as a result of the establishment of the ART (that will replace the AAT), namely the: *Agricultural and Veterinary Chemicals (Queensland) Act 1994*, *Competition Policy Reform (Queensland) Act 1996*, *Corporations (Queensland) Act 1990*, *Education and Care Services National Law (Queensland) Act 2011*, *Gene Technology (Queensland) Act 2016*, *Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003*, *Telecommunications Interception Act 2009*, *Therapeutic Goods Act 2019*, *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016* and *Water Efficiency Labelling and Standards (Queensland) Act 2005*.

These amendments will commence on the commencement of the ART on 14 October 2024.

Amendments for the appointment of reserve judges in the Supreme and District Courts of Queensland

The amendments to be moved during consideration in detail of the Bill will amend the SCQ Act, the DCQ Act and the JR Act to introduce a legislative scheme for the appointment of reserve judges in the Supreme and District Courts of Queensland.

The SCQ Act and the DCQ Act will be amended to allow for the Governor in Council to appoint as many reserve judges as are necessary for transacting the business of the Supreme and District Courts.

The amendments will provide for the appointment of an eligible person as a reserve judge for up to five years, with the option for reappointment. The engagement of a reserve judge during their period of appointment will be at the discretion of the Chief Justice or Chief Judge, who will have the ability to engage reserve judges on a full-time or sessional basis for up to six months at a time.

Eligibility for appointment as a reserve judge will be limited to individuals who are, or have been, a judge of the Supreme or District Court of Queensland or another state or territory, or a judge of the Federal Court of Australia.

While retired Queensland Supreme and District Court judges will be eligible for appointment as a reserve judge up to the age of 78 years, Supreme or District Court judges of another state or territory, or judges of the Federal Court of Australia, will only be eligible for appointment up to the age of 70 years. This is consistent with the position for acting judges and the general age eligibility requirements for judges under section 21 of the SCQ Act and section 14 of the DCQ Act.

Amendments to the JR Act will provide for remuneration arrangements for reserve judges in the Supreme and District Courts which are broadly consistent with those currently in place for acting judges in those courts.

Amendment to the Penalties and Sentences Act

An amendment to be moved during consideration in detail of the Bill will amend the Penalties and Sentences Act to clarify that the obligation of courts when imposing a sentence of imprisonment to provide sentence transcripts to Queensland Corrective Services is triggered when a transcript is requested by Queensland Corrective Services.

Amendment to the Criminal Code

An amendment to be moved during consideration in detail of the Bill will amend paragraph (b) of the definition of ‘public officer’ in section 340(3) of the Criminal Code to include specific examples of particular operational officers under the *Hospital and Health Boards Act 2011*.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives other than by legislative amendment.

Estimated Cost for Government Implementation

Amendments to the AD Act and related amendments

There are expected to be costs associated with the amendments to be moved during consideration in detail in relation to the AD Act. The proposed amendments will have implications for the QHRC, the Queensland Civil and Administrative Tribunal (QCAT)

and the Industrial Relations Commission (IRC). In particular, the scope of the QHRC's functions will be broader as a result of expanded investigation and reporting powers, and the requirement to produce guidelines in relation to compliance with the positive duty. The extension of the time limit for all types of complaints under the AD Act may increase the number of complaints to the QHRC, QCAT and the IRC. Further, the changes to the tests for discrimination, and amendments to recognise intersectional and cumulative discrimination, will have a temporary impact on the length and complexity of proceedings as jurisprudence develops, which will impact the resourcing of QCAT and IRC. However, ultimately the changes should result in less complex hearings.

In recognition of the importance of the QHRC's role in the delivery of the reforms in the Bill, the Queensland Government has approved the allocation of funding to the QHRC of \$24.570M from 1 July 2024 over five years, and \$7.67M and 25 full-time equivalents ongoing.

To the extent that there are additional costs arising from the amendments to be moved during consideration in detail, they will be managed within existing resources, including the funding allocated to the QHRC for the delivery of the reforms in the Bill.

Amendments to reflect the establishment of the Commonwealth ART

There are no expected costs associated with the consequential amendments required to reflect the establishment of the ART.

Amendments for the appointment of reserve judges in the Supreme and District Courts of Queensland

Funding is available to enable the appointment of reserve judges in the Supreme and District Courts.

Amendment to the Penalties and Sentences Act

There are no expected costs associated with this amendment.

Amendment to the Criminal Code

There are no expected costs associated with this amendment as it clarifies the current definition.

Consistency with Fundamental Legislative Principles

The amendments to be moved during consideration in detail of the Bill are 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.

Amendments to the AD Act and related amendments

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

Updated tests for discrimination

The proposed amendments would impact the scope of prohibited conduct under the AD Act by amending the definitions of direct and indirect discrimination, and providing for protection against intersectional and cumulative discrimination. Consequential amendments are also made to the *Corrective Services Act 2006* to reflect the updated definitions of direct and indirect discrimination.

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 amendments to the definitions of direct and indirect discrimination are intended to ensure that the AD Act continues to provide effective protection against discrimination by modernising and simplifying the tests for discrimination. The amendment to introduce a new protected attribute of a combination of two or more protected attributes captures intersectional and cumulative discrimination, recognising that people may experience discrimination on the basis of two or more attributes, or may experience discrimination differently as a result of the combined effect of two or more attributes.

These amendments 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 will not impact conduct in private settings.

Therefore, to the extent that these amendments impact on the rights and liberties of individuals (to engage in certain conduct), the impact is considered justified, noting that the amendments will only have effect with respect to existing discrimination prohibitions, which apply to public areas of life, and having regard to the importance of the amendments to ensuring the AD Act provides effective protection against discrimination.

Investigations into systemic contraventions

The proposed amendments would expand the circumstances in which the commissioner may conduct an investigation in relation to suspected systemic contraventions of the AD Act.

The expansion of the scope of the commissioner's investigations powers to include all types of systemic contraventions of the AD Act means that there will also be broader application of the commissioner's powers to direct parties to provide information or documents, and to attend before the commission. A person is liable to a maximum penalty of 100 penalty units for failure to comply with the direction.

The expanded application of the commissioner's powers when conducting an investigation 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).

Importantly, as outlined in the Explanatory Notes for the Bill, the offence for a failure to comply with a direction of the commissioner only applies where a person fails to comply 'without reasonable excuse'.

Particular circumstances, such as requiring a person to disclose information that is the subject of legal professional privilege or that 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 regulations made under the SCQ Act if the person were required to attend a Magistrates Court as a witness. The safeguards in place are also consistent with the principles of natural justice and provide appropriate protection against self-incrimination.

The expansion of the commissioner's investigation powers is considered justified to support the identification and elimination of all types of systemic contraventions of the AD Act.

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

Publication of reports for investigation into compliance with positive duty

The proposed amendments will expand the scope of the commissioner's reporting powers to enable reporting on investigations into all types of systemic contraventions and investigations into compliance with the positive duty.

At the conclusion of an investigation in relation to systemic contraventions or compliance with the positive duty, the commissioner will have the power to prepare a report and give it to the Minister (who must table the report in Parliament within six sitting days of receiving it), or publish the report, or do both of these things.

The expansion of the commissioner's reporting powers will provide the QHRC with a greater suite of tools to perform its new function in relation to proactively supporting compliance with the positive duty. The publication of reports about compliance with the positive duty by duty holders may, for example, have an important educative function for other duty holders.

The expanded reporting powers could potentially be viewed as departing from the fundamental legislative principle that legislation should be consistent with principles of natural justice (section 4(3)(b) of the LS Act).

However, the Bill includes important safeguards in relation to the content of reports. 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 reporting powers of the commissioner in relation to investigations are accordingly considered consistent with the principles of natural justice.

Legislation should not allow for the reversal of the onus of proof – abrogation of common law rights and principles

Burden of proof

The amendments include the introduction of a 'shared burden of proof' that will apply primarily to complaints of direct discrimination.

The effect of the amendments will be that if there are facts from which it could be decided, in the absence of any other explanation, that the respondent contravened the provision of the Act that is the subject of the alleged contravention, the respondent is taken to have contravened the provision. This does not apply if the respondent proves, on the balance of probabilities, that the respondent did not contravene the provision. This means that the complainant need only establish a prima facie case of discrimination, then the burden shifts to the respondent to show, on the balance of probabilities, that the reason for their impugned conduct was not because the complainant had an attribute, or that there was some other non-discriminatory reason, or that they otherwise did not contravene the Act.

While the principle in relation to the reversal of the onus of proof in the LS Act (section 4(3)(d)) is expressly directed towards criminal proceedings, the shared burden of proof for direct discrimination may be seen to abrogate the common law principle that the burden of proof in a civil claim will generally lie on the plaintiff or complainant for all essential elements.

In this case, the shared burden can be justified on the basis that the facts which are relevant to the reason for the treatment of the complainant by the respondent are normally in the possession of the respondent. Bearing the whole burden of proof is too onerous for complainants, especially if unrepresented. Furthermore, time and costs may be saved by a legislative approach that focuses attention on the key issues at stake in complaints of direct discrimination.

Consultation

The Chief Justice and the Chief Judge were consulted on the amendments to provide a scheme to appoint reserve judges in the Supreme Court and District Court.

NOTES ON PROVISIONS

Amendment 1 amends clause 2 (Commencement) to provide for the commencement of:

- the following provisions on 1 December 2024:
 - part 2, heading;
 - sections 3, 28(1), 31, 37, 38 and 46 to 48;
 - section 51, to the extent it inserts—
 - chapter 11, part 10, heading; and
 - sections 282 and 285;
 - section 52(2), to the extent it inserts definitions *class member* and *registered employee organisation*;
 - section 52(3);
- the following provisions on 1 July 2025:
 - the provisions of part 2 that are not in force on 30 June 2025;
 - part 3;
 - sections 56 to 59;
 - part 6;
 - schedule 1.

Amendment 2 amends clause 2 (Commencement) to provide for the commencement of part 11 and schedule 2, as inserted by amendments 32 and 34, immediately after the commencement of the *Administrative Review Tribunal Act 2024* (Cwlth), section 8.

Amendment 3 amends clause 3 (Act amended) to provide that schedule 1 amends the AD Act, in addition to part 2. This amendment is consequential to amendment 33, which inserts schedule 1.

Amendment 4 amends clause 7 (Amendment of s 7 (Discrimination on the basis of certain attributes prohibited)) to include a combination of two or more attributes otherwise listed in section 7 as an attribute on the basis of which discrimination is prohibited by the AD Act, and to make consequential numbering changes.

This amendment makes it clear that the AD Act protects against what is sometimes referred to as ‘multiple discrimination’, which can manifest as either ‘cumulative discrimination’ or ‘intersectional discrimination.’

Cumulative discrimination refers to discrimination experienced on two or more distinct grounds. For example, a person who has a mental illness and is homeless may experience discrimination because they have both protected attributes.

Intersectional discrimination, on the other hand, is where a person experiences discrimination based on a combination of attributes which interact with each other in a way that results in a distinct and specific form of discrimination.

Amendment 5 inserts new clause 7A (Amendment of s 8 (Meaning of *discrimination on the basis of an attribute*)) which provides that ‘discrimination on the basis of an attribute’ of a person who has two or more attributes includes discrimination in relation to any of the attributes, two or more of the attributes, or the combined effect of two or more of the attributes. This further ensures that cumulative and intersectional

discrimination are captured with respect to the prohibitions of discrimination under the AD Act.

Amendment 6 inserts new clause 7B (Replacement of ss 10 and 11) which omits sections 10 and 11 of the AD Act and inserts new sections 10 (Meaning of *direct discrimination*), 11 (Meaning of *indirect discrimination*) and 11A (When does a person discriminate against another person).

New subsection 10(1) defines direct discrimination as where a person treats, or proposes to treat, another person unfavourably because the other person has an attribute. New subsection 10(2) provides that the attribute is only required to be one of the reasons, rather than the substantial reason, for the unfavourable treatment, and that it is irrelevant whether the person who discriminates considers that the treatment is unfavourable.

The new definition of direct discrimination removes the requirement for a comparator inherent in the ‘less favourable’ test, and instead focuses on the nature of the conduct itself, and the reasons for it. In this way, the amendment simplifies the definition by removing unnecessary technicalities.

New subsection 11(1) defines indirect discrimination as where a person imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging another person because the other person has an attribute, and the condition, requirement or practice is not reasonable. This definition focuses the relevant inquiry on the effect of the condition, requirement or practice on a person with a particular attribute, and whether the condition, requirement or practice is reasonable in all the relevant circumstances.

New subsection 11(2) provides that creating an environment in which a person with an attribute is disadvantaged is taken to be imposing a condition, requirement or practice. This subclause makes clear that conduct of this nature falls within the scope of the definition of indirect discrimination in subsection (1)(a).

New subsection 11(3) provides that the onus of proving whether the condition, requirement or practice is reasonable is on the person who imposed, or proposed to impose, the condition, requirement or practice. Placing the burden of proof on the person who imposes the condition, requirement or practice recognises that the information which is relevant to determining reasonableness is most likely to lie with the person who imposes the condition, requirement or practice. The standard of proof required is on the balance of probabilities.

New subsection 11(4) sets out a number of factors which may be relevant to the determination of whether a condition, requirement or practice is reasonable. The factors which are listed are directed towards a fulsome consideration of the relevant impact on both the person who is disadvantaged and the person who is imposing or proposing to impose the condition, requirement or practice. The list is not exhaustive and contemplates, at (4)(g), that there may be other relevant matters that may need to be considered based on the particular circumstances in which it arises.

New subsection 11A(1) provides that a person discriminates against another person if the person directly or indirectly discriminates against the other person on the basis of an attribute.

New subsection 11A(2) provides that it does not matter: whether the discrimination is only direct discrimination, only indirect discrimination or both direct discrimination and indirect discrimination; whether the person who discriminates is aware of the discrimination; or whether the discrimination happens because the person does an act or omission.

New subsection 11A(3) provides that a person's motive for discriminating against another person is irrelevant.

Amendment 7 amends clause 18 (Insertion of new ch 3, pt 3) to insert new section 120AA (Relationship with other conduct). New section 120AA declares that, to remove any doubt, chapter 3, part 3 (Prohibition of harassment on the basis of sex) does not limit any other provision of the AD Act that prohibits conduct of a person that is the same as or similar to conduct prohibited under chapter 3, part 3, division 2, whether the conduct is engaged in on the basis of, or in relation to, sex or any other attribute.

Amendment 8 amends clause 22 (Insertion of new ch 4, pt 5) to declare that, to remove any doubt, section 124E (Work environment that is hostile on the basis of sex) does not limit any other provision of the AD Act that is the same as or similar to conduct prohibited under section 124E, whether the conduct is engaged in on the basis of, or in relation to, sex or any other attribute. This clarifies that subjecting a person to a hostile work environment on the basis of an attribute other than sex, may also be prohibited under another provision of the Act (e.g. the prohibition on indirect discrimination). This also clarifies that the same conduct may amount to both subjecting a person to a hostile work environment on the basis of sex, and indirect discrimination on the basis of sex, for example.

Amendment 9 amends clause 29 (Amendment of s 138 (Time limit on making complaints)) to provide that the complaint period within which a person is entitled to make a complaint is within two years after the alleged contravention of the AD Act. This complaint period applies to all types of alleged contraventions of the Act about which a person may make a complaint.

Amendment 10 amends section 173B (When commissioner may conduct investigation), as inserted by clause 39 (Insertion of new ch 7, pt 1A), to provide that the commissioner may conduct an investigation into any matter relating to a contravention of the AD Act that is or is suspected to be systemic, if the commissioner believes the investigation would help achieve the purposes of the Act. A contravention of the Act is systemic if the contravention affects a class or group of persons, and is continuous, repetitive or forms a pattern.

Amendment 11 amends section 173I (Action commissioner may take), as inserted by clause 39 (Insertion of new ch 7, pt 1A), to allow the commissioner to prepare a report about an investigation under section 173B(2) relating to a person's compliance with the positive duty, and publish the report or give the report to the Minister under section 173NA, as inserted by amendment 12.

Amendment 12 amends clause 39 (Insertion of new ch 7, pt 1A) to insert new section 173NA (Report on investigation).

New subsection 173NA(1) provides that a report about an investigation under section 173B(2) relating to a person's compliance with the positive duty may include the commissioner's recommendations for dealing with the matter the subject of the report.

A report must not include personal information about an individual unless the information has previously been published, or given for the purpose of publication, by the individual. A report also 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.

New subsection 173NA(2) provides that an adverse comment does not include a statement that a respondent did not participate in resolving a complaint. Although the Bill does not provide for complaints to be made about a contravention of the positive duty, complaints made about other contraventions may be relevant to an investigation.

New subsection 173NA(3) provides that the commissioner may do either or both of: publishing a copy of the report on the commission's website and in any other way the commissioner considers appropriate; and giving the report to the Minister.

New subsection 173NA(4) provides that if the Minister is given a report, the Minister must table it in the Legislative Assembly within six sitting days after receiving it.

Amendment 13 amends clause 39 (Insertion of new ch 7, pt 1A) to modify the heading for chapter 7, part 1A, division 1, subdivision 5, to refer to 'Action relating to systemic contravention' rather than 'Action relating to systemic work-related contravention on the basis of sex'. This is consequential to amendment 10.

Amendment 14 amends section 173Q (Commission may issue guidelines) as inserted by clause 39 (Insertion of new ch 7, pt 1A) to provide that the commission must issue guidelines about how persons may comply with the positive duty, and to make consequential changes to that section and its heading.

Amendment 15 inserts new clause 47A (Replacement of ss 204-206) which omits sections 204 to 206 of the AD Act and inserts new sections 204 and 205.

New section 204 (Burden of proof – general) provides that, in a complaint proceeding, the respondent is taken to have contravened the provision of the Act the subject of the alleged contravention if there are facts from which it could be decided in the absence of any other explanation. If the respondent proves on the balance of probabilities that they did not contravene the provision, the respondent is not taken to have done so. In addition to these general provisions, other provisions in the Act may provide for who has the onus of proving a particular matter.

The shared burden of proof in new section 204 is modelled on section 136 of the *Equality Act 2010* (UK) and is intended to operate in the same manner. The operation of the shared burden has been expounded on in considerable detail in the United Kingdom, and, in particular, in the matter of *Wong v Igen Ltd & Ors* [2005] EWCA Civ 142 ('*Wong v Igen*'). In that matter, the Court provided, in an annex to the judgment, a comprehensive guide to the shared burden established by section 63A of the *Sex*

Discrimination Act 1975 (UK), which predated the *Equality Act 2010* (UK). The Court's judgement in *Wong v Igen* presents a 'two-stage' process for applying the shared burden of proof. The relevance of this two-stage process to section 136 of the *Equality Act 2010* (UK) has been affirmed in later cases (see, for example, *Royal Mail Group Ltd v Efobi* [2021] UKSC 33).

The first stage requires the complainant to prove, on the balance of probabilities, facts from which the tribunal could conclude that the respondent had committed an unlawful act of discrimination. At the first stage of the analysis, the complainant is not required to prove the reason for the conduct, and the tribunal does not consider the reasons in determining whether the complainant has established a prima facie case for discrimination. In the case of direct discrimination under the AD Act, then, new section 204 may require a complainant at the first stage to prove facts which show the complainant has an attribute listed in section 7 of the AD Act, and that they suffered unfavourable treatment. If the complainant does not discharge the burden to present a prima facie case, the complaint will fail.

Where a prima facie case is established, the second stage of the process then shifts the burden of proof to the respondent. To discharge the burden, the respondent must prove, on the balance of probabilities, that the reason for their impugned conduct was not because the complainant had a protected attribute, or that there was some other non-discriminatory reason, or that they otherwise did not contravene the AD Act. Since facts which are relevant to this determination are normally in the possession of the respondent, 'a tribunal would normally expect cogent evidence to discharge that burden of proof' (see (13) of annex 1 of *Wong v Igen*). If the respondent fails to discharge the burden of proof on the balance of probabilities, the complainant will succeed.

New section 205 (Burden of proof – exemption) provides that an exemption under chapter 2, part 4 or 5 is a defence to discrimination and the person seeking to rely on the exemption has the onus of proving, on the balance of probabilities, that the exemption applies.

Amendment 16 amends clause 51 (Insertion of new ch 11, pt 10) to change the definitions of 'former' and 'new' to refer to the commencement 'of the provision in which the term is used'. This amendment is consequential to amendment 1, which amends clause 2 (Commencement) to provide for the commencement on 1 December 2024 of clause 51 to the extent it inserts the heading of chapter 11, part 10 and sections 282 and 285. Clause 51 to the extent it inserts other sections will commence on 1 July 2025. The amendment amends the definition of 'former' and 'new' to accommodate the different commencement dates of provisions inserted by clause 51.

Amendment 17 amends clause 51 (Insertion of new ch 11, pt 10) to insert new section 285A (Burden of proof for complaints about pre-commencement conduct). New section 285A applies in relation to a complaint made before the commencement that had not been finally dealt with immediately before the commencement, or a complaint made after the commencement in relation to an alleged contravention of the Act that happened before commencement. New sections 204 and 205 do not apply, and former sections 204 to 206 continue to apply, in relation to the complaint. The purpose of new section 285A is to clarify that the new provisions regarding burden of proof to be inserted by clause 47A will not affect complaints that are already on foot when the new provisions commence and will not apply to complaints about alleged contraventions that occurred

prior to the commencement of the new provisions.

Amendment 18 amends clause 52 (Amendment of sch 1 (Dictionary)) to omit the definition of ‘contravention on the basis of sex’. This term has been omitted from the Bill by amendments 9, 10 and 13.

Amendment 19 amends clause 52 (Amendment of sch 1 (Dictionary)) to expand the definition of ‘expunged conviction’ to include a conviction that has been expunged or extinguished, or whose effect has otherwise ended, under a law of another State that provides for the same, or substantially the same, matter as the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*.

Amendment 20 amends clause 52 (Amendment of sch 1 (Dictionary)) to include a definition of ‘homelessness’. Homelessness, in relation to a person, includes the person not having adequate, safe and secure housing. This inclusive definition provides guidance that homelessness is not simply whether a person has a roof over their head, but captures where a person is living in:

- improvised dwellings or sleeping rough;
- short-term or emergency accommodation;
- temporary arrangements without security of tenure, such as ‘couch surfing’ with friends or relatives; or
- severely overcrowded accommodation.

Amendment 21 amends clause 52 (Amendment of sch 1 (Dictionary)) to expand the definition of ‘potential pregnancy’ to include the person’s undergoing of a medical treatment or other procedure that procures, or attempts to procure, pregnancy in the person other than by sexual intercourse.

Amendment 22 amends clause 52 (Amendment of sch 1 (Dictionary)) to expand the definition of ‘trade union activity’ to include being represented by, or seeking to be represented by, a registered employee organisation.

Amendment 23 amends clause 52 (Amendment of sch 1 (Dictionary)) to omit the definition of ‘victimisation’. This is consequential to the omission of the definition of ‘contravention on the basis of sex’ which referred to victimisation of a person in relation to particular conduct. The existing definition of victimisation in section 130 will continue to apply.

Amendment 24 amends clause 52 (Amendment of sch 1 (Dictionary)) to insert a note under the definition of ‘discriminate’ referring readers to section 11A, inserted by amendment 6.

Amendment 25 inserts new clauses 54A (Amendment of s 319G (When treatment of offender by protected defendant is not direct discrimination)) and 54B (Amendment of s 319H (When term imposed on offender by protected defendant is not indirect discrimination)).

Clauses 54A and 54B make consequential amendments to sections 319G and 319H of the *Corrective Services Act 2006*, which modify the meaning of direct and indirect discrimination with respect to the treatment of ‘offenders’ by ‘protected defendants’.

Clause 54A amends section 319G(1) of the *Corrective Services Act 2006* to reflect the updated meaning of direct discrimination under new section 10 of the AD Act, as inserted by amendment 6. This amendment does not change the effect of the modifications in section 319G of the *Corrective Services Act 2006* to the operation of section 10 of the AD Act.

Clause 54B amends section 319H of the *Corrective Services Act 2006* to reflect the updated meaning of indirect discrimination under new section 11 of the AD Act, as inserted by amendment 6. This amendment does not change the effect of the modifications in section 319H of the *Corrective Services Act 2006* to the operation of section 11 of the AD Act.

Amendment 26 inserts new clause 59A which amends section 340(3) (Serious assaults) of the Criminal Code to provide an example of a public officer who is a health service employee under the *Hospital and Health Boards Act 2011* pursuant to paragraph (b). The example provides that a public officer pursuant to paragraph (b) includes a person appointed as a health service employee to perform functions as a security officer, wardsperson, cleaner or food service worker.

Amendment 27 inserts new clauses 60A (Amendment of s 3 (Definitions)), 60B (Amendment of s 17 (Acting judge)) and 60C (Insertion of new ss 18 and 18A).

New clause 60A amends section 3 of the DCQ Act to insert definitions of *reserve judge* and *retired District Court judge*.

New clause 60B makes a consequential amendment to section 17(8) of the DCQ Act as a result of new clause 60A.

New clause 60C inserts new sections 18 and 18A of the DCQ Act to provide for the appointment and engagement of reserve judges of the District Court.

Amendment 28 inserts new part 6A (Amendment of *Judicial Remuneration Act 2007*) which comprises new clauses 64A (Act amended), 64B (Amendment of s 5A (Retired acting Supreme Court judge)), 64C (Amendment of s 9 (District Court judge other than the Chief Judge or retired acting District Court judge)), 64D (Amendment of s 9A (Retired acting District Court judge)) and 64E (Amendment of sch 2 (Dictionary)).

New clause 64A provides that part 6A amends the JR Act.

New clause 64B amends section 5A of the JR Act to provide for the remuneration of a reserve Supreme Court judge engaged on a full-time or sessional basis and inserts sectional definitions of *pension* and *reserve Supreme Court judge*.

New clause 64C makes a consequential amendment to section 9 of the JR Act to provide a consistent approach with section 5 of the JR Act.

New clause 64D amends section 9A of the JR Act to provide for the remuneration of a reserve District Court judge engaged on a full-time or sessional basis and inserts sectional definitions of *pension*, *reserve District Court judge*, and *retired acting District Court judge*.

New clause 64E made a consequential amendment to Schedule 2 of the JR Act as a result of new clause 64D.

Amendment 29 amends clause 71 (Amendment of s 10 (Court's reasons to be stated and recorded)) to provide that, under section 10(1)(c) of the *Penalties and Sentences Act 1992*, a court imposing a sentence of imprisonment, including a suspended sentence of imprisonment, must, if the chief executive (corrective services) requests a copy of the reasons, cause a copy of the reasons to be forwarded to the chief executive (corrective services).

Amendment 30 amends clause 71 (Amendment of s 10 (Court's reasons to be stated and recorded)) to make a consequential amendment to clause numbering a result of amendment 29.

Amendment 31 inserts new part 9A (Amendment of Supreme Court of Queensland Act 1991) which comprises new clauses 75A (Act amended), 75B (Amendment of s 6 (Acting judges)), 75C (Insertion of new ss 6A and 6B) and 75D (Amendment of sch 5 (Dictionary)).

New clause 75A provides that new part 9A amends the SCQ Act.

New clause 75B makes a consequential amendment to section 6 of the SCQ Act as a result of new clause 75D.

New clause 75C inserts new sections 6A and 6B of the SCQ Act to provide for the appointment and engagement of reserve judges of the Supreme Court.

New clause 75D amends schedule 5 of the SCQ Act to insert definitions of *reserve judge* and *retired Supreme Court judge*.

Amendment 32 inserts new part 11 (Amendments relating to Administrative Review Tribunal Act 2024 (Cwlth)) and new clause 78 (Legislation amended). Clause 78 provides that schedule 2 amends the legislation it mentions. Amendment 34 inserts new schedule 2 (Amendments relating to Administrative Review Tribunal Act 2024 (Cwlth)).

Amendment 33 inserts new schedule 1 (Other amendments of Anti-Discrimination Act 1991) to make amendments to sections 15(1)(f), 15A(2)(d), 18(d), 20(1)(d), 22(c), 23(d), 39(d), 46(1)(d), 55(c), 57(c), 69(c), 71(c), 83(d) and 95(e) of the AD Act, which prohibit discrimination by 'treating [specified persons] unfavourably in any way'. The amendments replace references to 'treating [specified persons] unfavourably in any way' with references to 'subjecting [relevant persons] to any other detriment'. This updated language is more consistent with equivalent prohibitions in other Australian anti-discrimination laws and avoids any redundancy with new section 10, as inserted by amendment 6, which defines direct discrimination with reference to unfavourable treatment.

Item 2 amends section 131D (Provisions of this Act that do not apply for this chapter) to omit a reference to section 205. This is consequential to amendment 15.

Amendment 34 inserts new schedule 2 (Amendments relating to Administrative Review Tribunal Act 2024 (Cwlth)).

Schedule 2 (Amendments relating to Administrative Review Tribunal Act 2024 (Cwlth)) makes the following consequential amendments:

- *Agricultural and Veterinary Chemicals (Queensland) Act 1994*:
 - item 1 amends section 16(2) by replacing ‘*Administrative Appeals Tribunal Act 1975* (Cwlth), section 28, as that section’ with ‘*Administrative Review Tribunal Act 2024* (Cwlth), part 10, division 3, as that division’;
 - item 2 replaces section 19 (Construction of references to Part IVA of Commonwealth AAT Act) with new section 19 (Construction of references to part 7 of Commonwealth Administrative Review Tribunal Act) that refers to the *Administrative Review Tribunal Act 2024* (Cwlth) and the whole or part of part 7 of that Act, and reflects current drafting practice;
 - item 3 amends the schedule (Dictionary), definition *Commonwealth administrative laws* by replacing paragraph (a)(i) ‘the *Administrative Appeals Tribunal Act 1975*, excluding part IVA;’ with new paragraph (a)(i) ‘the *Administrative Review Tribunal Act 2024* (Cwlth), excluding part 7;’;
- *Competition Policy Reform (Queensland) Act 1996*:
 - item 1 amends section 29, definition *Commonwealth administrative laws* by replacing paragraph (a)(i) ‘the *Administrative Appeals Tribunal Act 1975*, excluding part IVA;’ with new paragraph (a)(i) ‘the *Administrative Review Tribunal Act 2024* (Cwlth), excluding part 7;’;
 - item 2 replaces section 33A (Construction of references to part IVA of AAT Act (Cwlth)) with new section 33A (Construction of references to part 7 of Commonwealth Administrative Review Tribunal Act) that refers to the *Administrative Review Tribunal Act 2024* (Cwlth) and the whole or part of part 7 that Act, and reflects current drafting practice;
- *Corporations (Queensland) Act 1990*:
 - item 1 amends section 3(1), definition *Commonwealth administrative laws* by replacing paragraph (a) ‘the *Administrative Appeals Tribunal Act 1975* (Cwlth), excluding part IVA;’ with new paragraph (a) ‘the *Administrative Review Tribunal Act 2024* (Cwlth), excluding part 7;’;
 - item 2 replaces section 36A (Construction of references to part IVA of Commonwealth AAT Act) with new section 36A (Construction of references to part 7 of Commonwealth Administrative Review Tribunal Act) that refers to the *Administrative Review Tribunal Act 2024* (Cwlth) and the whole or part of part 7 of that Act, and reflects current drafting practice;
- *Education and Care Services National Law (Queensland) Act 2011*:
 - item 1 replaces ‘Administrative Appeals Tribunal’ in sections 39(1), 40(1) and 41(1) with ‘Administrative Review Tribunal’;

- *Gene Technology (Queensland) Act 2016*:
 - item 1 amends section 5(1), definition *Commonwealth administrative laws*, by replacing paragraph (a) ‘the *Administrative Appeals Tribunal Act 1975* (Cwlth) (excluding part IVA of that Act);’ with new paragraph (a) ‘the *Administrative Review Tribunal Act 2024* (Cwlth), excluding part 7.’;
 - item 2 replaces section 15(3) with new subsection (3) that refers to the *Administrative Review Tribunal Act 2024* (Cwlth) and the whole or part of part 7 of that Act, and reflects current drafting practice;

- *Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003*:
 - items 1 to 3 amend section 39 (Definitions for div 6) by omitting the definition *Administrative Appeals Tribunal*, inserting a new definition for *Administrative Review Tribunal* and amending the definition *decision* by replacing ‘*Administrative Appeals Tribunal Act 1975* (Cwlth)’ with ‘*Administrative Review Tribunal Act 2024* (Cwlth)’;
 - items 4 to 7 amend section 40 (Review of decisions) by replacing ‘Administrative Appeals Tribunal’ with ‘Administrative Review Tribunal’ in section 40(1), replacing ‘*Administrative Appeals Tribunal Act 1975* (Cwlth)’ with ‘*Administrative Review Tribunal Act 2024* (Cwlth)’ in section 40(2), replacing ‘*Administrative Appeals Tribunal Act 1975* (Cwlth), other than part IVA’ with ‘*Administrative Review Tribunal Act 2024* (Cwlth), other than part 7’ in section 40(3) and replacing section 40(4) with new subsection (4) that refers to the *Administrative Review Tribunal Act 2024* (Cwlth) and the whole or part of part 7 of that Act, and reflects current drafting practice;
 - items 8 and 9 amend the schedule (Dictionary) by omitting the definition *Administrative Appeals Tribunal* and inserting ‘*Administrative Review Tribunal*, for part 3, division 6, see section 39.’;

- *Telecommunications Interception Act 2009*:
 - item 1 replaces ‘AAT’ in sections 9, 10(1) and 15(1)(a)(i) and (ii) with ‘ART’;

- *Therapeutic Goods Act 2019*:
 - item 1 amends section 9(1) by replacing paragraph (a) ‘the *Administrative Appeals Tribunal Act 1975* (Cwlth)’ with new paragraph (a) ‘the *Administrative Review Tribunal Act 2024* (Cwlth)’;

- *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*:
 - item 1 amends section 4(1), definition *Commonwealth administrative laws* by replacing paragraph (a) ‘the *Administrative Appeals Tribunal Act 1975*, other than part IVA.’ with new paragraph (a) ‘the *Administrative Review Tribunal Act 2024*, other than part 7.’;
 - item 2 replaces section 13(5) with new subsection (5) that refers to the *Administrative Review Tribunal Act 2024* (Cwlth) and the whole or part of part 7 of that Act, and reflects current drafting practice;

- *Water Efficiency Labelling and Standards (Queensland) Act 2005*:
 - item 1 amends section 5(1), definition *Commonwealth administrative laws* by replacing paragraph (a) ‘the *Administrative Appeals Tribunal Act 1975*, other than Part IVA;’ with new paragraph (a) ‘the *Administrative Review Tribunal Act 2024* (Cwlth), other than part 7;’;
 - item 2 replaces section 15(5) with new subsection (5) that refers to the *Administrative Review Tribunal Act 2024* (Cwlth) and the whole or part of part 7 of that Act, and reflects current drafting practice.

Amendment 35 amends the long title to insert a reference to the *Judicial Remuneration Act 2007*.

Amendment 36 amends the long title to insert a reference to the *Supreme Court of Queensland Act 1991*.

Amendment 37 amends the long title to insert a reference to ‘the legislation mentioned in schedule 2’.