

Respect at Work and Other Matters Amendment Bill 2024

Statement of Compatibility

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

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Yvette D’Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, make this statement of compatibility with respect to the amendments to be moved during consideration in detail (ACiDs) of the Respect at Work and Other Matters Amendment Bill 2024 (the Bill).

In my opinion, the ACiDs are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the amendments

The objectives of the ACiDs 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 to reflect 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 (QCS); 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 legislation

The ACiDs will address matters raised during the Committee's inquiry by modifying and supplementing the amendments to the AD Act and related legislation 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 for attributes other than sex with respect to hostile work environments and harassment on the basis of sex;
- create a single time limit for bringing a complaint within two years of an alleged contravention of the AD Act;
- provide the Queensland Human Rights Commissioner (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 Queensland Human Rights Commission (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.

Amendments to reflect the establishment of the Commonwealth ART

The ACiDs will also make consequential amendments to Queensland legislation that are required to reflect the establishment of the ART.

On 16 December 2022, the Australian Government announced reform to the federal system of administrative review. This reform will abolish the Administrative Appeals Tribunal (AAT) and establish a new federal administrative review body, the ART.

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 and District Courts of Queensland

The ACiDs will also 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 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.

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 an as needed basis for up to six months at a time.

Amendment to the Penalties and Sentences Act

An ACiD will amend section 10(1)(c) of the Penalties and Sentences Act to clarify that the court's obligation when imposing a sentence of imprisonment to provide sentence transcripts to QCS is triggered when a transcript is requested by QCS.

Amendment to the Criminal Code

An ACiD will 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*.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

I have considered each of the rights protected by part 2 of the HR Act. In my opinion, the human rights relevant to the Bill are:

- right to recognition and equality before the law (section 15);
- right to freedom of movement (section 19)
- right to freedom of expression (section 21);
- right to take part in public life (section 23);
- right to property (section 24);
- right to privacy (section 25);

- right to liberty and security of person (section 29);
- right to humane treatment when deprived of liberty (section 30); and
- right to fair hearing (section 31).

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Amendments to the AD Act and related legislation

Investigations – application to systemic contraventions and expansion of reporting powers

The Bill includes a power to conduct an investigation into any matter related to a contravention on the basis of sex that 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 systemic contravention must affect a class or group of persons and be continuous, repetitive or form a pattern. Following such an investigation, the commissioner may 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 Bill also includes a power to conduct an investigation into a person’s compliance with the positive duty.

The ACiDs include amendments to:

- expand the scope of the investigation power to any matter related to a contravention of the AD Act generally that is suspected to be systemic (which may result in the preparation and publishing of a report or giving of a report to the Minister); and
- allow for the preparation of a report by the commissioner following an investigation into the positive duty which may be published or given to the Minister who must table it in the Legislative Assembly.

The investigation powers in the Bill, as amended by the ACiDs, engage the right to a fair hearing under section 31 of the HR Act, and the right to privacy under section 25 of the HR Act. Fair hearing rights extend beyond proceedings of a judicial character and may apply to ‘civil proceedings which are of an administrative character’, such as ‘proceedings of many boards, tribunals and administrative decision-makers’.¹ Nevertheless, while fair hearing rights are engaged, the provisions do not limit the right to a fair hearing as they provide for adequate procedural fairness for the subjects of the investigation. Furthermore, when performing these functions, the commissioner will be subject to obligations to act compatibly with, and give due consideration to, human rights as a public entity under the HR Act. With respect to privacy, the provisions contain safeguards so that 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, and in this way engage the right but do not limit it.

¹ *Kracke v Mental Health Review Board* [2009] VCAT 646, [415], [418].

Investigations – power to require information or document

Clause 39 of the Bill inserts section 173F into the AD Act, which 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 SCQ Act if the person's attendance before the commissioner were attendance in a Magistrates Court as a witness.

The ACiDs expand the scope of the investigation power to any matter related to a contravention of the AD Act generally that is suspected to be systemic. This will mean that the commissioner's power to direct a person to give information to the commissioner, or attend before the commissioner to give information, may apply to persons who the commissioner believes has information relevant to these types of investigations.

The Bill, as amended by the ACiDs, imposes limits on:

- freedom of movement (section 19);
- freedom of expression (section 21(2));
- right to property (section 24); and
- right to privacy (section 25).

Ø) nature of the right(s) limited

Freedom of movement (section 19)

The right to freedom of movement is concerned with any restrictions on a person's ability to move freely within the State of Queensland. It protects the fundamental value of freedom.²

The requirement to attend before the commissioner limits this right by requiring attendance at a certain place, where a failure to do so is an offence punishable by a fine.

Freedom of expression (section 21(2))

The scope of the freedom of expression 'necessarily includes freedom not to express one's opinion.'³ Requiring a person to give information limits this right.

² *Antunovic v Dawson* (2020) 30 VR 355; [2010] VSC 377 [72], citing *Kracke v Mental Health Review Board* [2009] VCAT 646, [588].

³ Human Rights Committee, *General Comment No 34: Freedoms of opinion and expression (Article 19 of the International Covenant on Civil and Political Rights)*, 102nd sess, UN Doc CCPR/C/GC/34 (12 September 2011), [10].

Right to property (section 24)

The protection of property rights underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. Property covers real and personal property, which includes money.

The particular element of property rights which is engaged is the right not to be arbitrarily deprived of property. The right is limited to deprivations which are arbitrary, in the sense that they are disproportionate, and therefore it is convenient to assume there is a limit and determine whether it is proportionate in the next stage of the analysis.

A failure to comply with a direction to give information is an offence which has a maximum penalty of 100 penalty units. As a result, a person may be liable to pay a penalty where they fail to comply without a reasonable excuse.

Right to privacy (section 25)

The right to privacy and reputation under section 25 of the HR Act protects the individual from all interferences and attacks upon their privacy, family, home, correspondence and reputation. The right to privacy reflects the underlying value of human beings as autonomous individuals.⁴

The relevant powers for the commissioner engage a person's right not to have their privacy unlawfully or arbitrarily interfered with because the information or documents required to be given to the commissioner may include personal information.

As with the right to property, the right only protects against interferences which are either unlawful or arbitrary. As such, a limit has been assumed and the arbitrariness will be determined under section 13 of the HR Act.

h)) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The power to direct a person to provide information relevant to an investigation, including the expanded scope of an investigation related to systemic contraventions of the AD Act, is directed towards ensuring the commissioner can discharge their investigation functions under the AD Act, as amended by the Bill. This purpose is consistent with a free and democratic society because it concerns the effective operation of the AD Act, which promotes the right to equal and effective protection against discrimination under section 15(4) of the HR Act. The AD Act is not able to protect against discrimination and promote the achievement of equality of opportunity and equitable outcomes if the commissioner lacks the powers necessary to investigate contraventions. The purpose of making it an offence not to comply is to ensure a person complies with the order.

⁴ William A Schabas, *U.N. International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (3rd rev ed, 2019) 459.

g) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Allowing for all relevant information to be obtained by the commissioner will help the commissioner investigate whether there have been serious contraventions of the Act, including systemic contraventions.

h) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

An alternative is to rely on voluntary provision of information only, which would be less restrictive on rights as a person could simply refuse to comply. This would not be effective in achieving the purpose. Another alternative is to provide for the commissioner to apply to the tribunal to compel the production of information, which may be less restrictive on the basis that there would be additional safeguards against any unjustified intrusions on privacy rights, and a person would not be subject to an offence if they did not comply. However, this is not a reasonably available alternative as it would carry with it significant resource impacts on the QHRC as well as the tribunal, without any clear evidence it would provide greater protection for those subject to investigation.

In any case, the limitations are appropriately tailored to ensure they only go as far as necessary by allowing a person to withhold relevant information where they have a reasonable excuse. Further, it is unlikely a person would be asked to attend before the commissioner where they were otherwise able to provide the information in another manner, and therefore it is unlikely that the limitations on movement would be significant.

i) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

While the amendments do impose limitations on a number of rights as identified above, they are outweighed by the importance of ensuring the commissioner is able to discharge their functions effectively. Given the powers of the commissioner are appropriately defined, with suitable thresholds and the allowance for a reasonable excuse for non-compliance, it is considered that the amendments achieve an appropriate balance between the importance of the purpose and the human rights of those who may be subject to directions.

j) any other relevant factors

Nil.

Hearings – shared burden of proof

The ACiDs include amendments to introduce a ‘shared burden of proof’ that will apply primarily in relation to 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 a protected attribute, or that there was some other non-discriminatory reason, or that they otherwise did not contravene the Act.

Section 32(1) of the HR Act protects the presumption of innocence for persons who are charged with a criminal offence. The Bill, as amended by the ACiDs, does not limit this right by imposing a shared burden as discrimination complaints are civil in nature. Insofar as the right to a fair hearing in section 31 of the HR Act incorporates the presumption of innocence in the context of civil proceedings, this right is not limited as the burden of proof is not reversed, but instead shifts after requiring the complainant to prove a prima facie case of discrimination. The respondent still enjoys the presumption of innocence as mere accusations of discrimination will not be enough to establish a complaint.

Amendments to the Corrective Services Act 2006 (Corrective Services Act)

The ACiDs also include amendments to modify sections 319G and 319H of the Corrective Services Act to reflect the new definitions of direct and indirect discrimination to be introduced in the AD Act by the Bill as amended.

Chapter 6, part 12A of the Corrective Services Act modifies the application of the AD Act in relation to complaints by ‘offenders’ about alleged contraventions committed by ‘protected defendants’.

Offenders include prisoners as well as offenders who are subject to community-based orders, and protected defendants include the State, in relation to matters arising out of the administration of the Corrective Services Act, as well as certain other entities involved in the administration of the Act.

Sections 319G and 319H modify the meaning of direct and indirect discrimination with respect to the treatment of offenders by protected defendants.

In relation to the test for direct discrimination, section 319G provides that a protected defendant does not directly discriminate against an offender if the treatment, or proposed treatment, is reasonable having regard to a range of identified matters. The ACiDs include amendments to section 319G to refer to ‘unfavourable treatment’ to reflect amendments to the general test for direct discrimination under the AD Act. The modified test for direct discrimination is otherwise maintained.

In relation to the test for indirect discrimination, section 319H prescribes a range of matters relevant to assessing whether a term is reasonable, such as the security and good order of any corrective services facility in which the offender was detained when the protected defendant imposed, or proposed to impose, the term. The ACiDs include amendments to amend section 319H to reflect amendments to the general test for indirect discrimination under the AD Act. The modified test for indirect discrimination is otherwise maintained.

④ the nature of the right

The *right to recognition and equality before the law* under section 15 of the HR Act provides that everyone has the right to enjoy their human rights without discrimination and is entitled to the equal protection of the law without discrimination. This right places both a negative obligation on states not to discriminate when enacting legislation, and a positive obligation to enact legislation to protect against discrimination.

Preserving a distinct test for discrimination for offenders under section 319G of the Corrective Services Act imposes a limit on the right to equal protection of the law without discrimination and effective protection against discrimination in sections 15(3) and (4) of the HR Act. This is because the law will necessarily impact offenders who experience discrimination (and therefore have an attribute) by imposing a different legal definition for discrimination for those complainants. The reasonableness of treatment is not relevant to the general meaning of direct discrimination under the AD Act as modified by the ACiDs for the Bill.

The modified test for indirect discrimination under section 319H of the Corrective Services Act limits the right to a far lesser extent, because the amendments do not materially change the test compared to the general population, other than by prescribing factors relevant to corrective services that must be considered.

The *right to humane treatment when deprived of liberty* under section 30(1) of the HR Act provides that a person has a right to be treated with humanity if they are accused of breaking the law and are detained. This right recognises the particular vulnerability of persons in detention and intends to ensure that they are treated humanely. The underlying value of the right to humane treatment is respect of the inherent dignity that people should be afforded as human beings. Creating a different legal test for discrimination for offenders may be seen as an imposition beyond the normal incidents of incarceration (that is, it should not be more difficult to show discrimination just because a person is a prisoner or offender).

④ the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of maintaining a reasonableness test for direct discrimination and maintaining additional reasonableness factors for indirect discrimination is to ensure QCS is able to meet the increasing and varied individual needs of prisoners and offenders fairly without compromising the safety and security of the correctional environment or community safety.

④ the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Decisions in the correctional environment are unique, requiring a delicate balance of each prisoner or offender's individual needs and the safety and security of the correctional environment. In the community, community safety must be at the forefront of every decision about the supervision of prisoners on parole, offenders subject to community-based orders and offenders subject to *Dangerous Prisoners (Sexual Offenders) Act 2003* orders. Actions that in another context may be reasonable can cause unique and serious security and safety risks in

the correctional environment. For example, the installation of a hand rail in a cell may, depending on the circumstances, also present a serious risk of suicide as this introduces a hanging point and contradicts safe cell design principles. This is one such example where many competing and ongoing interests and risks must be considered and balanced.

With this context in mind, the amendments ensure that the reasons for any particular treatment, which are often necessitated by the correctional environment and are reflected in the proposed reasonableness factors, are able to be considered when determining the reasons for the conduct. This facilitates the security and good order of the prison by allowing certain decisions to be made which may result in unfavourable treatment for a particular prisoner with an attribute, but that are necessary in the circumstances.

⑥ whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

An alternative which is less restrictive on human rights would be to repeal sections 319G and 319H in their entirety. Whether this is a reasonably available alternative would depend on whether the general tests for discrimination and the available exemptions are sufficiently flexible to enable the effective operation of the correctional environment. It is considered that the following alternatives would not be as effective at achieving the purpose:

- The unmodified framework for both direct and indirect discrimination under the AD Act as amended would likely appropriately facilitate much of the conduct required for the security and good order of prisons. For example, if the reason for unfavourable treatment of an offender was for the protection of other prisoners, or the general security and good order of the prison, it could be argued that the treatment does not constitute direct discrimination because the conduct was not taken because of an attribute. However, the amended test for direct discrimination also provides that the attribute need only be one of the reasons for the treatment, not the substantial reason. This does not provide adequate protection for QCS' decisions to take into account all necessary risk factors, including in balance against the needs of other prisoners, without the additional legislative modifications in the Corrective Services Act.
- Any conduct that is necessary to comply with provisions of the Corrective Services Act would be captured by the general exemption in the AD Act, as amended by the Bill, for acts necessary to comply with other legislation. While this may provide some protection for QCS' actions, much of QCS' administration of corrective services is based on discretion, and is guided by an assessment of risk in the circumstances. This provision does not provide the same level of protection for QCS' decision making as the modified provisions in sections 319G and 319H of the Corrective Services Act.
- In relation to indirect discrimination, whether a term is reasonable is to be assessed in all the relevant circumstances. A non-exhaustive list of factors which may be considered is provided. Accordingly, it would remain open to the tribunal to consider the types of factors currently prescribed by the Corrective Services Act. However, that approach does not ensure that these factors are taken into account and given the necessary weight. Prescribing these factors in the Corrective Services Act therefore ensures proper consideration of the unique circumstances of the correctional environment.
- It would also be open for the legislature to take a similar approach to the HR Act and provide for a general statement in the Corrective Services Act which provides that conduct would not amount to direct discrimination only because the protected defendant took into

account the security and good order of corrective services facilities, and the safe custody and welfare of all prisoners. This would signal the importance of these considerations when determining the reasons for direct discrimination without imposing a separate legal test for prisoners. However, courts are yet to consider the scope of the general statement in the Corrective Services Act in relation to human rights. Accordingly, a similar provision for discrimination would not provide the same level of assurance that the necessary factors can be taken into account for correctional decision making.

There are also a number of safeguards that mitigate the extent of the limitations on human rights presented by sections 319G and 319H of the Corrective Services Act as modified by the ACiDs for the Bill, such as the requirement for QCS to make decisions in a way that is compatible with human rights when taking the actions that would be the subject of the complaints.

⊖ the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The final question is whether the modified tests for direct and indirect discrimination strike a fair balance between the rights of offenders and the importance of promoting the security and good order of the correctional system. Equal and effective protection from discrimination and the humane treatment of persons deprived of liberty are important expressions of respect for the inherent dignity that all people should be afforded by virtue of their humanity. However, the extent of harm to this underlying value which results from section 319G is relatively minor. This is because, as outlined above, the application of the reasonableness test in section 319G could lead to the same result as applying the general test for direct discrimination in most cases.

On the other side, the modified tests ensure that correctional decision making is able to balance the interests of individual offenders with overall safety and security. Without these tests, it is uncertain that QCS will be supported to take all necessary actions to generally ensure the safety and security of the correctional system. Given the importance of ensuring that QCS have sufficient flexibility to take actions necessary to ensure the safety of all offenders and staff, the limitations outlined above are seen as appropriately justified in the circumstances.

Amendments to reflect the establishment of the Commonwealth ART

Broadly, the ACiDs that reflect the establishment of the ART do not impact on the rights of individuals in Queensland. However, the ACiDs do retain review rights for administrative decision making in the new ART (as opposed to the AAT), and this may engage the right to a fair hearing in section 31 of the HR Act.

Section 31(1) of the HR Act provides that a party to a civil proceeding (which includes administrative review processes) has the right to have their proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Section 31 may also include an element of access to the courts.

The ACiDs do not make any material change to the rights for review. Where those review rights are to be vested in the ART, there is nothing to suggest that the ART would not be able

to provide a competent, independent and impartial proceeding to resolve any dispute. In reaching this conclusion, regard has been given to the Statement of Compatibility that was tabled with the Administrative Review Tribunal Bill 2023 (Cwlth) which concluded that the legislation was compatible with comparable rights under international law. Accordingly, while the right to a fair hearing may be engaged, it is not limited by the relevant ACiDs.

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

The ACiDs provide for the appointment of retired Queensland Supreme and District Court judges as reserve judges up to the age of 78 years, consistent with the current age requirements for acting judges under section 6 of the SCQ Act and section 17 of the DCQ Act. A reserve judge who is not a retired Queensland Supreme or District Court judge (that is, a judge of a Supreme or District Court in another state or territory or a judge of the Federal Court) will only be eligible for appointment up to the age of 70 years, 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.

⓪ the nature of the right

Right to recognition and equality before the law (section 15)

The right to recognition and equality before the law provides that every person has the right to enjoy their human rights without discrimination and is entitled to the equal protection of the law without discrimination. This right places both a negative obligation on the State not to discriminate when enacting legislation, and a positive obligation to enact legislation to protect against discrimination. The term ‘discrimination’ includes direct and indirect discrimination as defined in the AD Act. Age is a characteristic protected from discrimination under the AD Act.

Right to take part in public life (section 23)

The right to take part in public life protects the right of all people to participate in the conduct of public affairs and contribute to the public life of the State. The right includes a right to have access, on general terms of equality, to the public service and to public office. At international law, the term is said to include all positions within the executive, legislature and judiciary. Criteria and processes for appointment, promotion, suspension and dismissal within the public service must be objective, reasonable and non-discriminatory.

By imposing an age limit of 78 years for reserve judges who are retired Queensland Supreme or District Court judges, and an age limit of 70 years for other eligible persons, the age eligibility requirements of the reserve judges scheme can be said to limit both the right to recognition and equality before the law, and the right to take part in public life.

- ⊖ the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of imposing different age limits for reserve judges who are retired Queensland Supreme or District Court judges, and for those who are judges of a Supreme or District Court in another state or territory or judges of the Federal Court, is primarily to ensure consistency with the existing age requirements for acting judges, and the general age eligibility requirements for judges, under the SCQ Act and DCQ Act.

- ⊖ the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Imposing different age limits for retired Queensland Supreme or District Court judges, and for judges of other relevant jurisdictions, aims to achieve consistency with the existing age requirements for both judges and acting judges in the Supreme and District Courts.

The different age limits also ensure that the previous experience and expertise of retired Queensland Supreme or District Court judges can continue to be used when needed to assist with temporary vacancies and periodic increases in the workloads of the Supreme and District Courts.

- ⊖ whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the reserve judges scheme and achieve consistency with the current approach for the appointment of acting judges.

- ⊖ the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the purpose of imposing different age limits on retired Queensland Supreme or District Court judges, and on judges of a Supreme or District Court in another state or territory or judges of the Federal Court, for the purposes of appointment as a reserve judge, outweighs any limitation on the right to recognition and equality before the law and the right to take part in public life.

Amendments to the Penalties and Sentences Act

The ACiD to clarify when a court must provide sentence transcripts to QCS does not impact on the rights of individuals in Queensland.

Amendment to the Criminal Code

The ACiD to section 340 of the Criminal Code to clarify that the current definition of public officer includes operational workers under the *Hospital and Health Boards Act 2011* does not impact on the rights of individuals in Queensland.

Conclusion

In my opinion, the ACiDs for the Bill are compatible with human rights under the *Human Rights Act 2019* because the Bill as amended limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13.

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