

FINAL QUEENSLAND GOVERNMENT RESPONSE

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

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

On 1 September 2022, the QHRC's report, *Building Belonging – Review of Queensland's Anti-Discrimination Act 1991* was tabled in the Queensland Legislative Assembly alongside the Queensland Government's interim response to the report. The Queensland Government is proud to support in-principle all 122 recommendations of the QHRC.

The Queensland Government recognises that there is a need for new anti-discrimination legislation to be introduced that reflects contemporary best practice and is in keeping with modern community expectations and standards of behaviour. The Queensland Government will introduce a Bill to repeal and replace the *Anti-Discrimination Act 1991* within the current term of government.

This represents significant law reform for the State, and it is important to carefully consider all elements of the new legislative framework to ensure it strikes the right balance between competing rights and interests, including the need to protect all people from discrimination and sexual harassment based on a contemporary understanding of equality. This careful consideration will include looking at matters such as:

- ensuring the recommendations are implemented in a way that is cohesive across the entirety of the proposed new anti-discrimination Act and that has regard to Queensland's wider legislative context;
- considering approaches in other Australian jurisdictions (both at the Commonwealth and State and Territory level), as well as comparative international jurisdictions where relevant;
- considering impacts on individuals and organisations who will be impacted by the proposed reforms; and
- other specific matters relevant to discrete recommendations as set out in the detailed response.

Importantly, we will continue to consult with stakeholders and the community as we work to implement these recommendations.

The Queensland Government once again thanks the QHRC for its comprehensive review and report, as well as all stakeholders and members of the public who shared their expertise and personal stories as part of the review. We know how important the views of our community were to the QHRC in undertaking their review, and they are equally as important to the Queensland Government. Stakeholders and members of the wider public will continue to have opportunities to participate at future key junctures, such as providing their views on any proposed draft legislation.

The values underpinning the *Building Belonging* report – of equality, dignity, and respect – are values that are shared by the Queensland Government. We look forward to working together with the community to commence our journey of reform towards a modern anti-discrimination framework that reflects these shared values and aligns with contemporary standards of behaviour and expectations of equality.



RESPONSE TO SPECIFIC RECOMMENDATIONS

This table provides a line-by-line response to the specific recommendations made by the QHRC in their *Building Belonging* report.

No.	Recommendation	Position	Response
A new anti-discrimination Act for Queensland			
1.1	The <i>Anti-Discrimination Act 1991</i> (Qld) should be replaced with a new Act to come into force by 1 July 2023.	Support in-principle	<p>The Queensland Government recognises and supports the need for new anti-discrimination legislation to be introduced that reflects contemporary best practice and is in keeping with modern community expectations and standards of behaviour.</p> <p>This represents significant law reform for the State, and it is important to carefully consider all elements of the new legislative framework to ensure it strikes the right balance between competing rights and interests, including the need to protect all people from discrimination and sexual harassment based on a contemporary understanding of equality.</p> <p>The Queensland Government will introduce a Bill to repeal and replace the <i>Anti-Discrimination Act 1991</i> within the current term of government (referred to below as the proposed new anti-discrimination Act).</p>
1.2	The Commission should be involved in providing instructions to the Office of the Parliamentary Counsel to prepare a draft Bill.	Support in-principle	<p>The Queensland Government is committed to a consultative law reform process to implement the recommendations of the <i>Building Belonging</i> report. The Queensland Human Rights Commission (QHRC), as well as other key stakeholders and members of the wider public, will have the opportunity to participate in this process at key junctures in line with</p>



			standard processes and procedures for consultation with impacted agencies and stakeholders (such as, for example, providing their views on any proposed draft legislation).
Objects, purpose and beneficial interpretation of a new anti-discrimination Act for Queensland			
2.1	The new Act should be called the Anti-Discrimination Act and contain a long title that reflects the updated purpose of the legislation.	Support in-principle	The Queensland Government supports the intent of these recommendations, and will give further consideration to how best to ensure that the introductory provisions of the proposed new anti-discrimination Act are contemporary, appropriately articulate and reflect the purposes of the legislation, and work together cohesively to assist with interpretation of the legislation.
2.2	The Preamble should be retained but should only include the considerations by Parliament currently set out in section 6.	Support in-principle	
2.3	<p>The objects of the Act should include:</p> <ul style="list-style-type: none"> • to prevent and eliminate discrimination, sexual harassment, and other objectionable conduct to the greatest extent possible • to further promote and protect the right to equality as set out in section 15 of the <i>Human Rights Act 2019</i> (Qld) • to encourage identification and elimination of systemic causes of discrimination • to recognise that discrimination and other objectionable conduct can cause serious personal, social, and economic harm, and that discrimination based on a combination of attributes can have a cumulative harmful effect • to promote and facilitate the progressive realisation of substantive equality as far as reasonably practicable by recognising that: <ul style="list-style-type: none"> ○ discrimination can cause social and economic disadvantage and that access to opportunities are not equitably distributed throughout society; and 	Support in-principle	



	<ul style="list-style-type: none"> ○ equal application of a rule to different groups can have unequal results or outcomes; and ○ the achievement of substantive equality may require making reasonable accommodations and implementing affirmative measures. 		
2.4	The Act should contain a provision to require the Act be interpreted in a way that is beneficial to a person who has a protected attribute, to the extent it is possible to do so, consistently with the objects of the Act and the <i>Human Rights Act 2019</i> (Qld).	Support in-principle	The Queensland Government supports the intent of this recommendation, recognising the well-established principle of statutory interpretation that, as anti-discrimination legislation is beneficial in nature, any ambiguity in interpretation should be resolved in a way that is most favourable to the people the legislation is intended to benefit. Further consideration will be given to the nature of an express interpretative provision in the proposed new anti-discrimination Act to ensure it aligns with other recommendations that go to interpretation of the legislation, as well as other relevant legislative instruments that govern statutory interpretation (including the <i>Acts Interpretation Act 1954</i> and the <i>Human Rights Act 2019</i>).
Defining discrimination			
3.1	The Act should adopt the approach of the <i>Discrimination Act 1991</i> (ACT) by creating a legislative provision entitled 'meaning of discrimination' which: <ul style="list-style-type: none"> • explains that discrimination occurs when a person discriminates either directly or indirectly, or both directly and indirectly, against another person • defines direct discrimination 	Support in-principle	The Queensland Government supports the intent of these recommendations, recognising the importance of ensuring the definitions of discrimination in the proposed new anti-discrimination Act are easy to understand and avoid unnecessary technicalities.



	<ul style="list-style-type: none"> defines indirect discrimination 		<p>Further consideration will be given to how to most effectively and appropriately achieve the reframed approach to defining discrimination, including considering:</p> <ul style="list-style-type: none"> the approaches in other Australian jurisdictions, in particular Victoria and the Australian Capital Territory; relevant jurisprudence; implications for duty holders; implications for complaints and complaint processes; and ensuring the definitions align with the holistic reform to Queensland's discrimination legislation.
3.2	The definition of direct and indirect discrimination should expressly provide that discrimination can occur on the basis of one or more attributes, or because of the effect of a combination of attributes, and the Act should not use the singular language of 'an attribute'.	Support in-principle	
3.3	Direct discrimination should be defined to mean where a person treats, or proposes to treat, another person unfavourably because of one or more attributes, or because of the effect of a combination of attributes.	Support in-principle	
3.4	The Act should clarify that the protected attribute or combination of attributes need only be one of the reasons, rather than a substantial reason, for the treatment.	Support in-principle	
3.5	The definition of indirect discrimination should include the following aspects: <ul style="list-style-type: none"> a person imposes a condition, requirement, or practice which has or is likely to have the effect of disadvantaging the other person because the person has one or more protected attributes, or because of the effect of a combination of attributes, and the condition, requirement, or practice is not reasonable. 	Support in-principle	
3.6	The Act should incorporate a non-exhaustive list of factors to determine reasonableness based on the <i>Equal Opportunity Act 2010</i> (Vic).	Support in-principle	
Affirmative measures			
4.1	The Act should include a new provision called affirmative measures, contained within the	Support in-principle	The Queensland Government supports the intent of these



	part of the Act that explains the meaning of discrimination rather than in general exceptions, defined as per section 12 of the <i>Equal Opportunity Act 2010</i> (Vic). The Act should include contemporary examples to demonstrate how affirmative measures may apply in practice.		<p>recommendations, noting that the intent of affirmative measures is to avoid discrimination and achieve substantive equality</p> <p>The <i>Building Belonging</i> report highlights the need to ensure Aboriginal and Torres Strait Islander peoples are genuinely consulted about the introduction of affirmative measures provisions in the proposed new anti-discrimination Act. The Queensland Government is committed to a careful and considered approach to the introduction of any new affirmative measures provisions avoids a paternalistic approach which undermines the agency of marginalised groups, in particular First Nations peoples.</p>
4.2	The Act should impose a different and higher standard for measures that apply to government plans, policies, or programs in relation to minority racial groups, requiring that they are reasonable and proportionate to the scope and impact of the measures on the affected group. The Act should confirm that such measures be designed and implemented after prior consultation with affected communities, and with the active participation of the communities.	Support in-principle	
4.3	Prior to the enactment of legislation, the Queensland Government should ensure that Aboriginal and Torres Strait Islander peoples are genuinely consulted about this proposed approach.	Support in-principle	<p>The Queensland Government recognises the importance of genuine consultation with affected groups prior to the enactment of the proposed new anti-discrimination Act to ensure it does not entrench disadvantage.</p> <p>Consultation will also be undertaken across government agencies in relation to the heightened responsibilities proposed for government plans, policies and programs.</p>
A positive duty to make reasonable accommodations			
5.1	The Act should replace unjustifiable hardship exceptions with a positive, standalone duty to make reasonable accommodations for a person with disability which	Support in-principle	The Queensland Government supports the intent of these recommendations, recognising that reasonable accommodations are critical to



	applies to all areas of activity in which the Act operates.		avoiding discrimination and achieving substantive equality for people with a disability and their carers.
5.2	<p>A non-exhaustive list of criteria for assessing whether an accommodation is reasonable should be included in the Act, including:</p> <ul style="list-style-type: none"> • the person's circumstances, including the nature of the disability • the nature of the accommodation • the consequences for the person with a disability if the accommodation is not made • the financial circumstances of the person required to provide the accommodation • the consequences for the person required to provide the accommodation, including any financial impact • the consequences for other people affected by the accommodation, including numbers of people advantaged or disadvantaged • balancing the consequences of providing the accommodation against the disadvantage that would be imposed upon the person with disability and others if the accommodation is not made. 	Support in-principle	<p>Further consideration will be given to how these recommendations sit in the context of other recommendations for reform and approaches in other Australian jurisdictions (particularly Victoria), as well as considering implications for duty holders and the areas of activity covered by the proposed new anti-discrimination Act.</p>
Sexual harassment, sex-based harassment and hostile environments			
6.1	The current test for sexual harassment should be retained.	Support in-principle	The Queensland Government supports the intent of these recommendations, noting the findings of the <i>Building Belonging</i> report that the current definition of sexual harassment in Queensland is effective and operating well.
6.2	The Act should not introduce new prohibitions against sex-based harassment or creating an intimidating, hostile, humiliating or offensive environment on the basis of sex. An example of indirect discrimination should be included to demonstrate that creating or facilitating an environment where people with particular attributes are disadvantaged is a form of indirect discrimination.	Support in-principle	<p>Further consideration will be given to the work being undertaken at a national level in response to the <i>Respect@Work: Sexual Harassment National Inquiry Report</i> (2020), in particular the</p>



			<i>Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022</i> (Cth), as well as the operation of sexual harassment laws in other Australian jurisdictions, to ensure that the proposed new anti-discrimination Act protects against sexual harassment in the most effective way possible.
6.3	The Commission should undertake engagement with stakeholders to promote a greater understanding about the protections in the Act that prohibit sexual harassment and develop targeted resources for particular industries and groups, including for sex workers.	Support in-principle	The Queensland Government recognises the need for further community education about existing sexual harassment protections to ensure they are effective and well understood. The Queensland Government notes that the QHRC has an existing function and is resourced to undertake research and create educational programs to promote the purposes of the AD Act, and as such supports the proposal for the QHRC to place a greater focus on providing this education to make it clear to the community that sexual harassment is not acceptable.
The complaints process			
7.1	The Act should provide that if the Commission is satisfied that the complainant needs help to put their complaint in writing, the Commission must give reasonable help to them to do so.	Support in-principle	The Queensland Government supports the intent of these recommendations and recognises the importance of ensuring the process for making complaints to the QHRC is effective, efficient and accessible.
7.2	If the Commission is satisfied on reasonable grounds that exceptional circumstances justify the complaint being made orally, the Act should allow the Commission to receive the complaint orally and transcribe into written form.	Support in-principle	The Queensland Government notes the findings of the <i>Building Belonging</i> report that current complaints process requirement may be creating barriers for individuals seeking access to justice and that more should be done to
7.3	The Commission should ensure that if help is given to a person	Support in-principle	



	to put their complaint in writing, it should be given by a staff member who will not be responsible for providing dispute resolution services to that party.		<p>ensure complainants are supported to access the QHRC services.</p> <p>The Queensland Government also notes the obligations on the QHRC as a public entity under the <i>Human Rights Act 2019</i> (HR Act), which support the QHRC's responsibility to provide reasonable assistance to complainants to ensure they are not discriminated against if they are unable to satisfy the written complaint requirement. These recommendations would align with that existing obligation.</p>
Time limit to make a complaint			
8.1	The Commission should have discretion to decline to provide or continue to provide dispute resolution if the alleged contravention occurred more than 2 years before the complaint was lodged. The Act should frame the time limit by way of giving the Commissioner discretion to provide dispute resolution.	Support in-principle	<p>The Queensland Government supports the intent of this recommendation, noting that the majority of submissions made to the <i>Building Belonging</i> report on this issue raised concerns with the operation of the current 1-year limit and the ability of the QHRC to only accept 'out of time' complaints where the complainant can show 'good cause'.</p> <p>Further consideration will be given to the most appropriate time limit for making a complaint under the proposed new anti-discrimination Act to ensure that the concerns raised in the <i>Building Belonging</i> report about the current 1 year time limit are addressed and that there is sufficient discretion and flexibility for the QHRC to accept 'out of time' complaints in appropriate circumstances. Regard will also be had to comparative complaints processes under other</p>



			Queensland legislation (including the <i>Human Rights Act 2019</i> and <i>Ombudsman Act 2001</i>) as well as comparable complaints processes in other Australian jurisdictions.
8.2	The Act should explicitly provide that a child can bring a complaint. If a complaint is brought in relation to allegations that occurred when the person was a child, the Act should allow that the 2 years referred to in the discretion only starts once the child turns 18, unless the respondent can show substantial prejudice.	Support in-principle	The Queensland Government supports the intent of this recommendation, and acknowledges the experiences of discrimination shared by young people with the QHRC in the course of the review. Further consideration will be given to how best to ensure that young people are supported to access the QHRC's complaints process under the proposed new anti-discrimination Act.
8.3	The Act should give the Tribunal the jurisdiction to make a merits review of decisions by the Commission in relation to the discretion to provide dispute resolution, and discretion to be able to award costs if an application is frivolous or vexatious.	Support in-principle	The Queensland Government notes the findings of the <i>Building Belonging</i> report that a more accessible review process for decisions by the QHRC in relation to complaints is necessary. Further consideration will be given to the issue of statutory review rights, including considering approaches in other Australian jurisdictions, in consultation with the Queensland Civil and Administrative Tribunal (QCAT) and the Queensland Industrial Relations Commission (QIRC). Further consideration will also be given to the potential impacts of the expansion of QCAT and the QIRC's jurisdiction, including to ensure continued efficient management of caseloads.
8.4	The Act should require that an application for review must not be made unless the tribunal has granted leave to make the application.	Support in-principle	
A new approach to dispute resolution			
9.1	The Commission's complaints process should remain compulsory but be reshaped	Support in-principle	The Queensland Government supports the intent of these



	into a more flexible and responsive dispute resolution process.		<p>recommendations, recognising the benefits of an accessible, flexible, responsive and efficient dispute resolution process for the QHRC to handle complaints under the proposed new anti-discrimination Act.</p> <p>Further consideration will be given to comparative approaches in other Australian jurisdictions, in particular in Victoria and at the Commonwealth level, in order to ensure the provisions in the proposed new anti-discrimination Act reflect contemporary best practice and provide appropriate processes and avenues to complainants and respondents to resolve complaints with the assistance of the QHRC.</p>
9.2	The Commission's function to inquire into complaints and, where possible, to effect conciliation should be replaced with a function to offer services designed to facilitate resolution of disputes.	Support in-principle	
9.3	Principles of dispute resolution should be enshrined in the Act. Those principles should include: <ul style="list-style-type: none"> • Dispute resolution should be provided as early as possible. • The type of dispute resolution offered should be appropriate to the nature of the complaint. • The dispute resolution process should be fair to all parties. • Dispute resolution should be consistent with the objectives of the Act. 	Support in-principle	
9.4	The Commission should have power to make preliminary enquiries about a complaint to decide whether or not to provide dispute resolution, or if necessary for dispute resolution processes.	Support in-principle	
9.5	The Commission must decline to provide dispute resolution if the Commissioner considers the complaint is frivolous, trivial, vexatious, misconceived or lacking in substance.	Support in-principle	
9.6	The Commission should have discretion to decline to provide or continue to provide dispute resolution for the following reasons: <ul style="list-style-type: none"> • the alleged contravention occurred more than 2 years before the complaint was lodged • there are insufficient details to indicate an alleged contravention of the Anti-Discrimination Act 	Support in-principle	



	<ul style="list-style-type: none"> having regard to all the circumstances, the Commission considers it is not appropriate to provide or to continue to provide dispute resolution 		
9.7	<p>The Act should give the tribunal:</p> <ul style="list-style-type: none"> the jurisdiction to make a merits review of decisions by the Commissioner to decline to provide or continue to provide dispute resolution discretion to be able to award costs if an application is frivolous or vexatious. 	Support in-principle	The Queensland Government supports the intent of these recommendations, noting the findings of the <i>Building Belonging</i> report that a more accessible review process for decisions by the QHRC in relation to complaints is necessary.
9.8	The Act should require that an application for review must not be made unless the tribunal has granted leave to make the application.	Support in-principle	Further consideration will be given to the issue of statutory review rights, including considering approaches in other Australian jurisdictions, in consultation with QCAT and the QIRC. Further consideration will also be given to the potential impacts of the expansion of QCAT and the QIRC's jurisdiction, including to ensure continued efficient management of caseloads.
9.9	<p>Once the Commission has decided to offer dispute resolution to parties for a complaint, the Commission should be able to take reasonable and appropriate action to resolve the dispute, including:</p> <ul style="list-style-type: none"> Asking any respondent to make written submissions to be shared with the person bringing the complaint Asking any party to give the Commission information relevant to the complaint Making enquiries or discussing the complaint with either or both parties Facilitating a conciliation conference 	Support in-principle	<p>The Queensland Government supports the intent of this recommendation and recognises the importance of ensuring the QHRC has appropriate powers to enable an effective dispute resolution process for complaints under the proposed new anti-discrimination Act.</p> <p>Further consideration will be given to the precise nature and scope of the powers required, including by reference to comparable dispute resolution and conciliation processes under other Queensland legislation, as well as those processes in other Australian jurisdictions and the powers provided to</p>
9.10	If a conciliation conference is convened, all parties must be given the opportunity to attend,	Support in-principle	



	but the Commission should have discretion to decide which parties are directed to attend.		equivalent Commissions to undertake those functions.
9.11	The Act should not require the Commission to take certain steps within specified timeframes during the dispute resolution process. Instead, the Commission must use its best endeavours to finish dealing with a complaint within 12 months of its lodgement.	Support in-principle	The Queensland Government supports the intent of these recommendations, noting the findings in the <i>Building Belonging</i> report that the current prescriptive timeframes for interim steps in the dispute resolution process do not support a flexible and responsive process. Further consideration will be given to how best to ensure complaints are dealt with by the QHRC in a timely way under the proposed new anti-discrimination Act.
9.12	For matters that have met the threshold to proceed to dispute resolution, the Commission should give a notice to all parties to allow a complainant to elect to proceed to the tribunal once dispute resolution processes have finalised without an agreement, or if the Commission declines to provide, or continue to provide, dispute resolution.	Support in-principle	The Queensland Government supports the intent of these recommendations, recognising the need to provide appropriate 'next steps' if a complaint is unable to be resolved through the QHRC's dispute resolution process. Further consideration will be given to how best to achieve this 'next steps' process under the proposed new anti-discrimination Act, including consultation with QCAT and the QIRC.
9.13	Once the notice has been given to parties, the person bringing the complaint should retain the right to request referral to the tribunal for determination and this request must be made within the existing timeframe of 28 days.	Support in-principle	
9.14	If these recommendations are implemented, there should not be a direct right of access to the tribunal or court.	Support in-principle	The Queensland Government notes a number of stakeholders made submissions to the review in support of some form of a direct right of access to the tribunal or court being provided for under the proposed new anti-discrimination Act.



			Further consideration will be given to this recommendation (and in the context of other relevant recommendations), including having regard to comparative approaches in other Australian jurisdictions, to determine whether a direct right of access to a tribunal or court may be appropriate in some instances (such as systemic or public interest cases) while also balancing the impacts of a direct right of access on courts, tribunals and parties.
9.15	Once the new Act is in effect, the Commission should: <ul style="list-style-type: none"> • develop a guideline to inform decision making about which dispute resolution actions to take in a particular complaint • publish information at least annually about timeframes within which it has finalised complaints. 	Support in-principle	The Queensland Government supports the intent of the development of guidance material by the QHRC to support the operation of an accessible, flexible, responsive and efficient dispute resolution process, as well as public annual reporting on the timeframes for finalising complaints, within existing resources.
Organisation and representative complaints			
10.1	The Act should allow organisations to make complaints in relation to any unlawful conduct under the Act, rather than only in relation to vilification. Organisation complaints should have the same options and outcomes as individual complaints.	Support in-principle	The Queensland Government supports the intent of these recommendations, recognising the findings in the <i>Building Belonging</i> report that organisational and representative complaints processes can reduce the burden on the individuals who have experienced not just vilification but discrimination and sexual harassment as well, and to enhance access to justice and create opportunities to address and respond to systemic issues.
11.1	The Act should replace the criteria for bringing a representative complaint to the Commission or tribunal with criteria similar to section 46PB of the <i>Australian Human Rights Commission Act 1986 (Cth)</i> .	Support in-principle	
11.2	The existence of a prior representative complaint should not prevent another person from commencing a non-representative complaint.	Support in-principle	



11.3	Organisations should be able to have their complaint dealt with as a representative complaint, provided they are able to bring the complaint on their own behalf.	Support in-principle	can be realised under the proposed new anti-discrimination Act, including by simplifying the legislative criteria and requirements for bringing these complaints and ensuring there are appropriate processes for their resolution to achieve meaningful outcomes.
11.4	Where the complaint cannot be resolved through the Commission's dispute resolution processes, the complainant in a representative complaint may elect to lodge their complaint either in: <ul style="list-style-type: none"> the tribunal, a no costs jurisdiction, or the Supreme Court, a costs jurisdiction. 	Support in-principle	
Complaints by prisoners			
12.1	Section 319E of the <i>Corrective Services Act 2006</i> (Qld), that requires a person detained in a corrective services facility who is making a complaint against a 'protected defendant' to first make a complaint to the chief executive before lodging a complaint with the Commission, should be repealed.	Support in-principle	The Queensland Government supports the intent of these recommendations, noting that the current internal complaints process requirement under section 319E of the <i>Corrective Services Act 2006</i> (CSA) enables Queensland Corrective Services (QCS) to consider and, where possible, resolve complaints and other issues internally in the first instance.
12.2	In the alternative, if an internal complaint mechanism is retained for complaints about protected defendants, the process should be made consistent with the Human Rights Act by: <ul style="list-style-type: none"> requiring an internal complaint be made prior to complaining to the Commission allowing the complainant to lodge a complaint with the Commission after 45 days have elapsed providing the Commission with a discretion to defer dealing with a complaint if the protected defendant did not have an adequate opportunity to deal with the complaint providing the Commission with a discretion to waive the internal complaint 	Support in-principle	<p>The Queensland Government notes that the QHRC's proposed internal complaints process under recommendation 12.2 would align with the complaints process under the <i>Human Rights Act 2019</i> and would enable complaints and other issues to be considered and where possible, resolved internally by QCS in the first instance.</p> <p>Further consideration will be given to the implementation of these recommendations under the proposed new anti-discrimination Act.</p>



	requirement if there are exceptional circumstances.		
Proving discrimination			
13.1	The Act should introduce a shared burden of proof in which the burden shifts to the respondent once the complainant has established a prima facie case. The provision should be based on section 136 of the <i>Equality Act 2010</i> (UK), and informed by the guide in the Annex to the UK case of <i>Igen Ltd & Ors v Wong</i> [2005] EWCA Civ 142.	Support in-principle	The Queensland Government notes the concerns raised by the <i>Building Belonging</i> report in relation to the current operation of the burden of proof in providing discrimination matters (including that it is too onerous for already vulnerable and marginalised complainants) and the benefits that could be achieved through a shifted or shared burden between complainants and respondents. Further consideration will be given to how best to address these concerns in a way that is fair and balanced, having regard to discrimination legislation in other Australian jurisdictions and overseas models, and aligns with the holistic reform to Queensland's discrimination legislation.
The tribunals			
14.1	The Act should enable the Commissioner to intervene as of right in a proceeding before a court or tribunal in which a question of law arises that relates to the application of the Act, and the Commission should publicly report annually on the number and type of interventions it has conducted. The definition of human rights should reflect the Human Rights Act.	Support in-principle	The Queensland Government supports the intent of this recommendation, noting the valuable assistance the QHRC may offer to the QCAT and the QIRC in their discrimination jurisdictions. Further consideration will be given to how to best facilitate the proposed intervention function, including in relation to notice requirements and proposed public reporting obligations, having regard to the intervention model set out under the <i>Human Rights Act 2019</i> .
14.2	The tribunals should ensure that, wherever possible, members who deal with matters under the Act have demonstrated knowledge and	Support in-principle	The Queensland Government supports the intent of this recommendation but observes that, as QCAT and the QIRC are independent tribunals, the



	experience in discrimination law.		constitution of those Tribunals for the hearing of any given case is a matter for the respective Presidents or their delegates.
14.3	When considering appointments to the tribunals, the Queensland Government should have regard to the benefits associated with tribunal membership reflecting the diversity of the community that comes before them.	Support in-principle	<p>The Queensland Government supports the intent of this recommendation, and is committed to a diverse Tribunal membership that reflects the Queensland community.</p> <p>QCAT appointments are independent statutory processes determined through a merits-based process, and applicants from culturally and linguistically diverse backgrounds are encouraged to apply.</p> <p>Appointments to the QIRC are subject to Cabinet and Governor-in-Council approval. The <i>Industrial Relations Act 2016</i> prescribes prerequisites for individuals to be nominated for appointment, including that the nominee must have a high level of experience in business or industry or a relevant entity, or be someone who has suitable experience, qualifications and standing in the community.</p>
14.4	The Tribunals should ensure that members undertake regular training on cultural competency.	Support in-principle	<p>The Queensland Government is committed to cultural competency.</p> <p>The training of QCAT members is the responsibility of the QCAT training committee. As an independent body, QCAT will consider the recommendation and act on that recommendation as it deems necessary.</p> <p>The training and education activities undertaken by QIRC</p>



			members is a matter for each member. QIRC members receive an education and conference allowance which is subject to annual reporting obligations.
14.5	Tribunals should provide written reasons for all final decisions and significant interlocutory decisions, and should publish those decisions and reasons.	Support in-principle	The Queensland Government supports the intent of this recommendation and is committed to the principle of open justice. Further consideration will be given to strategies to increase the publication of decisions and reasons in consultation with QCAT and the QIRC.
14.6	The Commission and tribunals should publicly report annually on the number, type, and outcomes of matters they have dealt with under the Act. The type of matter should include the attribute and area, if an allegation of discrimination was made.	Support in-principle	The Queensland Government supports the intent of this recommendation, noting that public annual reporting is an important transparency and accountability measure as well as providing valuable data and insights in terms of the types of matters being brought to the QHRC, QCAT and QIRC.
A positive duty to eliminate discrimination and sexual harassment			
15.1	The Act should include a positive duty to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, and other prohibited conduct as far possible.	Support in-principle	The Queensland Government supports the intent of these recommendations, and recognises that creating a positive duty to eliminate discrimination, sexual harassment and other objectionable conduct is an important element of a proactive and preventative anti-discrimination framework. The Queensland Government notes that the introduction of a positive duty would focus on creating cultural change, as well as addressing systemic discrimination issues, rather than relying on individuals to pursue complaints after the fact. Further consideration will be given to these recommendations and how to
15.2	The duty should apply to anyone who has a legal obligation under the Act, and for all attributes and areas covered by the Act.	Support in-principle	
15.3	Drawing on the Victorian approach and the additional criteria recommended by the <i>Respect@Work</i> report, in determining whether a measure is reasonable and proportionate, the Act should prescribe that the factors that must be considered are: <ul style="list-style-type: none"> • the size of the person's business or operations • the nature and circumstances of the 	Support in-principle	



	<p>person's business or operations</p> <ul style="list-style-type: none"> • the person's resources • the person's business and operational exigencies • the practicability and the costs of the measures • all other relevant facts and circumstances. 		<p>most effectively and appropriately achieve the desired preventative outcomes, including having regard to:</p> <ul style="list-style-type: none"> • the impacts for duty-holders and the support required to ensure individuals and organisations are able to meet and comply with a positive obligation; • the development of an appropriate monitoring, compliance and enforcement model; • approaches in other Australian jurisdictions, including Victoria (where a positive duty has been legislated) and similar independent review recommendations in other jurisdictions, in particular Western Australia and the Australian Capital Territory; and • work being undertaken at a national level in response to the <i>Respect@Work: Sexual Harassment National Inquiry Report (2020)</i>, in particular in response to recommendation 17 and the introduction of a positive duty to eliminate sex discrimination, sexual harassment and victimisation in the <i>Sex Discrimination Act 1984 (Cth)</i> under the <i>Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022 (Cth)</i>.
Supporting compliance			
16.1	The Act should create a function for the Commission to promote and advance the objectives of the Act, and to be	Support in-principle	The Queensland Government supports the intent of this recommendation and acknowledges the critical role



	an advocate for the Act. This should include taking a proactive role in eliminating discrimination, including systemic discrimination.		the QHRC plays in ensuring Queensland's anti-discrimination laws fulfil their objectives through education, advocacy and enforcement. Further consideration will be given to how best to ensure the functions designated to the QHRC under the proposed new anti-discrimination Act align with the holistic reform to Queensland's discrimination legislation.
16.2	The Commission ensure structural separation between its dispute resolution function and its role in proactively eliminating discrimination, and this should include reviewing information management and governance structures.	Support in-principle	The Queensland Government acknowledges the importance of the QHRC structuring its organisational responsibilities in a way that enables them to best fulfil their functions and objectives. Consideration of this recommendation will be a matter for the QHRC.
16.3	If a complaint is made to the Commission that gives rise to an actual or perceived conflict of interest that arises from the Commission's exercise of its functions, the views of the parties about the appropriateness of the Commission to resolve the dispute should inform the decision about whether dispute resolution can be offered.	Support in-principle	The Queensland Government supports the appropriate managements of actual or perceived conflicts of interest by the QHRC in the exercise of its functions under the proposed new anti-discrimination Act. Consideration of this recommendation will be a matter for the QHRC.
16.4	The Commission's funding to undertake proactive work to eliminate discrimination, including systemic discrimination, should be separate from its funding for dispute resolution functions, and both should be subject to annual public reporting.	Support in-principle	The Queensland Government will give further consideration to the QHRC's funding arrangements in the context of the development of the proposed new anti-discrimination Act.
Tools to promote and enforce compliance			
17.1	The Commission's educative and research functions should be retained, and their scope should be expanded to ensure they can meet the new objectives of the Act.	Support in-principle	The Queensland Government supports the intent of this recommendation, and will give further consideration to how best to ensure the functions designated to the QHRC under the proposed new anti-



			discrimination Act align with the holistic reform to Queensland's discrimination legislation.
17.2	<p>The Commission should have a legislative basis for:</p> <ul style="list-style-type: none"> • Developing and publishing guidelines in consultation with relevant duty holders and people affected by discrimination and sexual harassment to whom the practice guidelines will affect or relate. • Conducting independent reviews that allow the Commission to, on request by a duty holder, enter an agreement to review an organisation's programs and practices to promote compliance with the Act. An agreement may provide for the payment of the Commission's reasonable costs of undertaking the review. • Providing advice about action plans. An action plan should not be legally binding but may be considered by a tribunal or court if relevant to a matter before the court or tribunal under this Act. • Conducting investigations on its own initiative if certain criteria apply. The criteria should be based on section 127 of the <i>Equal Opportunity Act 2010 (Vic)</i>, and include whether the matter raises a serious issue, relates to a class or group of people, cannot reasonably be expected to be resolved through dispute resolution, there are reasonable grounds to suspect one or more contraventions of the Act have occurred and the investigation would advance the objectives of the Act. 	Support in-principle	The Queensland Government recognises the importance of ensuring the QHRC have an appropriate legislative basis for fulfilling their functions under the proposed new anti-discrimination Act. Further consideration will be given to the exact scope, nature and extent of the powers required by the QHRC to fulfill those functions, including by considering the functions and powers of equivalent bodies in comparable jurisdictions.
Outcome of investigations			



18.1	At the conclusion of an investigation, the Commission should have the legislative basis to make findings and recommendations.	Support in-principle	The Queensland Government recognises the importance of ensuring the QHRC have an appropriate legislative basis for fulfilling their functions under the proposed new anti-discrimination Act. Further consideration will be given to the exact scope, nature and extent of the powers and enforcement mechanisms required by the QHRC to fulfill those functions, including by considering the functions, powers and enforcement mechanisms of equivalent bodies in comparable jurisdictions.
18.2	The Act should ensure that the outcome of an investigation conducted under these provisions can include: <ul style="list-style-type: none"> • taking no further action by the Commission • providing a public report that contains recommendations to the Attorney-General or Parliament • entering into an enforceable undertaking with the duty holder • issuing a compliance notice and, if breached, applying to a tribunal or court to seek civil penalties. 	Support in-principle	
Powers to compel			
19.1	The Commission should retain its investigation powers to compel the production of information and documents, including data. These powers should be for the following purposes: <ul style="list-style-type: none"> • undertaking research • conducting inquiries into complaints received by the Commission • conducting own-initiative investigations. 	Support in-principle	The Queensland Government recognises the importance of ensuring the QHRC have an appropriate legislative basis for fulfilling their functions under the proposed new anti-discrimination Act. Further consideration will be given to the exact scope, nature and extent of the powers and enforcement mechanisms required by the QHRC to fulfill those functions, including by considering the functions, powers and enforcement mechanisms of equivalent bodies in comparable jurisdictions.
19.2	The Act should allow the Commission to require a person to attend before the Commission at a reasonable place and time for the purposes of giving information or answering questions relevant to an investigation.	Support in-principle	
19.3	The Act should update the penalty provisions that apply to a person for failure to comply with a requirement to produce, provide or attend.	Support in-principle	
Staged implementation of enforcement provisions			
20.1	All of the above provisions should be introduced into the new Act. However, to allow time	Support in-principle	The Queensland Government will consider the approach to staged implementation of the



	for duty holders to take reasonable and proportionate steps to comply with any new obligations, provisions relating to enforceable undertakings, compliance notices, and civil penalties should come into effect after a period of two years.		enforcement functions and powers of the QHRC in the context of the development of the proposed new anti-discrimination Act, including the proposed introduction of a positive duty under recommendation 15.
Updating protected attributes			
21.1	The term 'impairment' should be replaced with 'disability'.	Support in-principle	The Queensland Government supports the intent of these recommendations to update the current protected attribute of 'impairment' with 'disability' to more accurately align with contemporary understandings of the attribute, while noting that the 'impairment' attribute can have broader application, including in workplace health and safety contexts. Further consideration will be given to the scope of the 'disability' attribute, having regard to the benefits of alignment with the federal <i>Disability Discrimination Act 1992</i> and many other Australian jurisdictions, as well as the relationship between these recommendations and others made by the <i>Building Belonging</i> report, such as those relating to reasonable accommodations.
21.2	The definition of disability should be aligned with the federal <i>Disability Discrimination Act 1992</i> (Cth) but should remove references to outdated or inappropriate language such as 'disfigurement, 'malformation' or 'malfunction'.	Support in-principle	
21.3	The Act should provide express protection for assistance animals, not limited to dogs, using a model that is consistent with the <i>Disability Discrimination Act 1992</i> (Cth).	Support in-principle	The Queensland Government recognises the important and special role that assistance animals play for persons with disability, and the need to ensure there are appropriate protections against discrimination for persons who rely on the support of, in particular, assistance dogs. The Queensland Government will give further consideration to the more expansive protection proposed under the



			<p>federal <i>Disability Discrimination Act 1991</i>, as well as approaches in other Australian jurisdictions and the current operational framework in Queensland, under the proposed new anti-discrimination Act.</p>
21.4	<p>To remove any doubt, the Act should confirm that people with addiction are covered by the attribute of disability.</p>	Support in-principle	<p>The Queensland Government recognises the submissions made to the review by a number of stakeholders, including people living with mental illness, HIV/AIDS, addiction and other health conditions, who expressed concerns that neither an ‘impairment’ or ‘disability’ descriptor accurately or appropriately reflected their experience. The Queensland Government acknowledges these views and will give further consideration to alternatives in the development of the proposed new anti-discrimination Act.</p>
21.5	<p>The Commission should continue to undertake engagement with stakeholders to promote a greater understanding about the scope of the disability attribute and who it protects.</p>	Support in-principle	<p>The Queensland Government appreciates the QHRC’s continued efforts to undertake community education about discrimination in Queensland. The Queensland Government notes that the Commission has an existing function and is resourced to undertake research and create educational programs to promote the purposes of the AD Act, and as such supports the proposal for the QHRC to place a greater focus on providing education related to disability to ensure the community understands the scope of the attribute and who it protects.</p>
22.1	<p>The definition of gender identity should be based on the definition in the Yogyakarta Principles.</p>	Support in-principle	<p>On 2 December 2022 the Queensland Government introduced the Births, Deaths and Marriages Registration</p>



			<p>Bill 2022 (BDMR Bill) which repeals and replaces the existing <i>Births, Deaths and Marriages Registration Act 2003</i> to ensure that registration services remain relevant, responsive and contemporary, including reforms that strengthen the legal recognition of trans and gender diverse people.</p> <p>The BDMR Bill amends the definition of 'gender identity' in the current AD Act ensuring the definition is consistent with the Yogyakarta Principles and the <i>Public Health Act 2005</i>.</p>
22.2	The Act should make reference to sex and/or gender in a way that is complementary with Queensland's birth registration laws.	Support in-principle	<p>On 2 December 2022 the Queensland Government introduced the Births, Deaths and Marriages Registration Bill 2022 (BDMR Bill) which repeals and replaces the existing <i>Births, Deaths and Marriages Registration Act 2003</i> to ensure that registration services remain relevant, responsive and contemporary, including reforms that strengthen the legal recognition of trans and gender diverse people.</p> <p>In creating a new anti-discrimination Act, regard will be had to how sex and/or gender is defined under the BDMR Bill.</p>
22.3	The Act and its Explanatory Notes should clarify that all references to 'sex', or a 'particular sex' include both people of a sex that was assigned to them at birth, and people whose gender identity aligns with that sex.	Support in-principle	<p>On 2 December 2022 the Queensland Government introduced the Births, Deaths and Marriages Registration Bill 2022 which Bill repeals and replaces the existing <i>Births, Deaths and Marriages Registration Act 2003</i> to ensure that registration services remain relevant, responsive and contemporary, including reforms that</p>



			<p>strengthen the legal recognition of trans and gender diverse people.</p> <p>The Queensland Government recognises the need to ensure a flexible and beneficial understanding of 'sex' and will give further consideration to the effect of this recommendation in the context of other recommendations of the <i>Building Belonging</i> report and on the drafting of the proposed new anti-discrimination Act more broadly.</p>
23.1	<p>The Act should rename the sexuality attribute to sexual orientation, and define it to mean a person's emotional, affectional, or sexual attraction to, or intimate or sexual relations with:</p> <ul style="list-style-type: none"> • persons of a different gender; or • persons of the same gender; or • persons of more than one gender. 	Support in-principle	<p>The Queensland Government supports the intent of these recommendations to update and replace the current protected attribute of 'sexuality' with 'sexual orientation' to more accurately align with contemporary understandings of the attribute.</p> <p>Further consideration will be given to the scope of the 'sexual orientation' attribute under the proposed new anti-discrimination Act, including by reference to approaches in other Australian legislation and under the <i>Yogyakarta Principles</i>, to ensure it is inclusive and allows sufficient flexibility for the legislation to evolve as terminology changes and develops.</p>
23.2	<p>The section should include a legislative note that explains that sexual orientation includes not having attraction to or intimate or sexual relations with a person.</p>	Support in-principle	<p>The Queensland Government supports the intent of this recommendation and will give further consideration to it subject to the findings and recommendations of the Queensland Law Reform Commission's (QLRC) review into the issue of regulating a</p>
24.1	<p>The Act should include 'sex worker' as an attribute and the attribute should be defined to mean 'being a sex worker or engaging in sex work.'</p>	Support in-principle	<p>The Queensland Government supports the intent of this recommendation and will give further consideration to it subject to the findings and recommendations of the Queensland Law Reform Commission's (QLRC) review into the issue of regulating a</p>



			decriminalised sex work industry in Queensland.
24.2	The Queensland Government should consider introducing an exception to permit discrimination on the basis of this attribute when an act is in compliance with a law that regulates the sex work industry.	Support in-principle	The Queensland Government will give further consideration to this recommendation subject to the findings and recommendations of the QLRC review into the issue of regulating a decriminalised sex work industry in Queensland.
24.3	Following the outcome of the Queensland Law Reform Commission's review of the regulatory framework for the sex work industry, the Queensland Government should: <ul style="list-style-type: none"> include a definition of sex work in the Act to align with any reforms to the sex work industry repeal the sex worker accommodation exception in section 106C of the Act. 	Support in-principle	The Queensland Government supports the intent of this recommendation and will give further consideration to it subject to the findings and recommendations of the QLRC review into the issue of regulating a decriminalised sex work industry in Queensland.
25.1	The Act should add the further terms 'immigration or migration status' to the non-exhaustive definition of race.	Support in-principle	The Queensland Government supports the intent of this recommendation to make clear that people who are, or have been, immigrants, migrants, refugees or asylum seekers are protected by the current attribute of 'race'. Further consideration will be given to how best achieve this clarity under the proposed new anti-discrimination Act.
25.2	A general exception should be included in the Act to permit discrimination on the basis of immigration or migration status when an act is done in direct compliance with a law of the state or Commonwealth regarding the regulation of immigration to Australia, and related matters.	Support in-principle	The Queensland Government supports exceptions to permit discrimination on the basis of immigration or migration status in appropriate circumstances, and recognises the need to ensure that, for example, acts done in direct compliance with a law of the state or Commonwealth regarding immigration or citizenship or acts done in compliance with state revenue laws (such as laws relating to



			taxation, royalties, grants and debt enforcement) should not amount to discrimination under the proposed new anti-discrimination Act.
25.3	The existing citizenship or visa requirements exception should be retained in the same terms with an additional sub-section that requires that decisions and actions made under it are to be compatible with the Human Rights Act.	Support in-principle	The Queensland Government supports the ongoing operation of the exception under section 106B of the AD Act in relation to eligibility provisions that require a particular citizenship or visa status in State Government policies. The Queensland Government also notes that the <i>Human Rights Act 2019</i> outlines the obligations to act and make decisions in a way that is compatible with human rights, and to give proper consideration to human rights when making decisions, and those obligations already apply consistently across the Queensland statute book.
26.1	The current attribute of family responsibilities should be renamed 'family, carer, or kinship responsibilities' and should not be defined.	Support in-principle	The Queensland Government supports the intent of this recommendation to update and replace the current protected attribute of 'family responsibilities' with 'family, carer, or kinship responsibilities' to more accurately reflect diverse family structures.
Protecting additional attributes			
27.1	The Commission's functions should allow it to recommend to the Attorney-General that additional grounds of discrimination be included in the Act.	Support in-principle	The Queensland Government supports the intent of these recommendations, recognising that the QHRC is in a unique position to identify if and when additional attributes should be considered for protection, and to provide advice on those matters to government. Further consideration will be given to the operation of this function under the proposed new anti-discrimination Act.
27.2	The Commission should establish an internal process to monitor and evaluate information it obtains, including through its education, engagement, and dispute resolution functions, to identify when the threshold for adding a new attribute is met.	Support in-principle	



28.1	<p>The Act should include a new attribute of sex characteristics, and the definition should be consistent with the Yogyakarta Principles plus 10.</p>	Support in-principle	<p>On 2 December 2022, the Queensland Government introduced the Births, Deaths and Marriages Registration Bill 2022 (BDMR Bill) which repeals and replaces the existing <i>Births, Deaths and Marriages Registration Act 2003</i> to ensure that registration services remain relevant, responsive and contemporary, including reforms that strengthen the legal recognition of intersex people in the current AD Act.</p> <p>The Bill introduces a new attribute for discrimination in the current AD Act based on 'sex characteristics'. The inclusion of a separate attribute amends a gap in the definition of 'gender identity' in the current AD Act which incorrectly conflates trans and gender diverse people and people born with variations of sex characteristics.</p> <p>The Queensland Government consulted with key stakeholders about the definition as part of the BDMR reform work and gave consideration to other jurisdictions, including Victoria and the Australian Capital Territory.</p>
29.1	<p>The Act should include a new attribute of irrelevant criminal record and it should be defined as in the <i>Discrimination Act 1991 (ACT) Dictionary</i> definition. The definition should expressly include:</p> <ul style="list-style-type: none"> • convictions under the <i>Criminal Law (Historical Homosexual Convictions Expungement) Act 2017</i> • spent convictions under the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i>; and 	Support in-principle	<p>The Queensland Government supports the intent of this recommendation, noting that discrimination based on criminal record can have significant adverse impacts on the foundational aspects of an individual's life across a wide range of areas and can hinder rehabilitation and the ability of individuals to fully participate and make positive contributions to society.</p>



	<ul style="list-style-type: none"> the imputation of a record relating to arrest, interrogation or criminal proceedings of any sort. 		<p>The <i>Building Belonging</i> report makes clear that it is the <i>irrelevance</i> of the criminal record that is the key component of the proposed protected attribute, reflecting the need to strike a reasonable balance between the rights of individuals with a criminal record and the need for reasonable and legitimate decisions to be made in a range of areas, such as work. The recommendation does not propose to displace existing protections from harm for children and people with a disability, including those provided through the Working with Children Check (Blue Card) and National Disability Insurance Scheme worker screening clearances, and the Queensland Government is committed to maintaining those important protections.</p> <p>Further consideration will be given to the scope and operation of the proposed attribute, including by reference to approaches in other Australian jurisdictions, under the proposed new anti-discrimination Act.</p>
30.1	<p>The Act should include a new attribute of physical features. Physical features should be defined to mean weight, size, height, birth marks, scars, and bodily characteristics other than chosen alterations to a person's physical appearance such as cosmetic procedures, tattoos, piercings, hair styles, and other modifications, unless they are characteristics of other attributes.</p>	Support in-principle	<p>The Queensland Government supports the intent of this recommendation, noting the experiences of a number of submitters to the review of discrimination based on physical features.</p> <p>Further consideration will be given to the scope and operation of the proposed attribute, including by reference to approaches in other Australian jurisdictions, as well as the interaction with other relevant Queensland</p>



			laws, under the proposed new anti-discrimination Act.
31.1	The Act should include a new attribute of 'subjection to domestic or family violence', and it should be defined as in section 8 of the <i>Domestic and Family Violence Protection Act 2012</i> (Qld).	Support in-principle	<p>The Queensland Government supports the intent of this recommendation, noting that people who are experiencing, or have experienced, domestic or family violence are subject to unfair treatment in areas such as work and accommodation. The addition of a specific attribute to explicitly prohibit such discrimination will ensure victims and survivors are protected.</p> <p>Further consideration will be given to the scope and operation of the proposed attribute, including by reference to approaches in other Australian jurisdictions and the need for alignment with the <i>Domestic and Family Violence Protection Act 2012</i> (DFVPA), under the proposed new anti-discrimination Act. This work will also have regard to recommendation 53 of the Queensland Women's Safety and Justice Taskforce <i>Hear Her Voice – Report 1</i> in respect of the proposed changes to the definition of domestic violence under the DFVPA.</p>
32.1	The Act should include a new attribute of 'homelessness', and it should not be defined.	Support in-principle	<p>The Queensland Government supports the intent of this recommendation and recognises the relationship between homelessness, disadvantage and discrimination.</p> <p>Further consideration will be given to the scope and operation of the proposed attribute, including whether there is a need for any exceptions, under the</p>



			proposed new anti-discrimination Act.
Changes to terminology			
33.1	The Act should use the term 'exceptions' for provisions that allow discrimination in certain circumstances and use the term 'exemptions' for applications to the tribunal for an exemption from the operation of specific provisions for a fixed period.	Support in-principle	The Queensland Government supports the intent of this recommendation, recognising the need to use accurate descriptor terms under the proposed new anti-discrimination Act rather than conflating two distinct concepts under one umbrella term.
Non-profit goods and services			
34.1	The Act should not include the provision that excludes from the operation of the Act those associations established for social, literary, cultural, political, sporting, athletic, recreational, community service or other similar lawful purposes which do not carry out their purposes for the purpose of making a profit.	Support in-principle	The Queensland Government notes the findings of the <i>Building Belonging</i> report that the operation of the current exemption may be having a disproportionate impact on people who rely on non-profit services, including older people, people with a disability, people experiencing socio-economic disadvantage, and people in remote or regional areas, and creating an unfair barrier for these persons to access the protections offered by anti-discrimination laws.
34.2	The Act should include a voluntary body exception based on the exception in the <i>Sex Discrimination Act 1984</i> (Cth) s 39, which is defined in s 4 of that Act.	Support in-principle	<p>The Queensland Government also recognises the importance of ensuring the continuing work of non-profit organisations, the significant value they provide to the community, and the need not to place an unfair burden on small organisations, in particular those who rely on volunteers.</p> <p>Further consideration will be given to these matters, as well as approaches in other Australian jurisdictions, under the proposed new anti-discrimination Act.</p>
Clubs			



35.1	The Act should define a 'club' as per the definition in the <i>Disability Discrimination Act 1992</i> (Cth) s 4.	Support in-principle	<p>The Queensland Government notes the findings of the <i>Building Belonging</i> report that the current definition of 'club' is narrow and inconsistent with the approach taken in other Australian jurisdictions. The Queensland Government also recognises the value in creating consistency with other discrimination law obligations to simplify obligations for duty holders as well as provide better protections from discrimination in club settings.</p> <p>Further consideration will be given to these matters, including the implications for adopting a wider definition of 'club', under the proposed new anti-discrimination Act.</p>
35.2	The Queensland Government should consider if any additional exceptions in the area of Club membership and affairs are required, for example on the basis of age or political affiliation.	Support in-principle	
Sport			
36.1	The Act should retain a sport exception in the same form as the current version.	Support in-principle	<p>The Queensland Government supports the intent of these recommendations, and recognises the importance of striking an appropriate balance between inclusion in sport and the need to ensure fairness of sporting activities and the safety of players.</p>
36.2	The exception should change the wording that refers to restricting participation 'to either males or females' to neutral language such as 'on the basis of sex'.	Support in-principle	
36.3	<p>The exception should additionally explain that in determining what is a 'reasonable' restriction, a person must have regard to:</p> <ul style="list-style-type: none"> • the nature and purpose of the activity; and • the consequences of the restriction for people of the restricted sex or gender identity; and • whether there are other opportunities for people of the restricted sex or gender identity to participate in the activity. 	Support in-principle	<p>Further consideration will be given to the scope and operation of this exception, including by reference to approaches in other Australian jurisdictions and in relation to its interplay with other recommendations made in the <i>Building Belonging</i> Report, as well as considering the views of relevant stakeholders (including the sporting industry), under the proposed new anti-discrimination Act. The Queensland Government is also committed to ongoing monitoring of the exception to</p>



			ensure it remains relevant, evidence-based and necessary.
Religious bodies			
37.1	The Act should retain an exception from discrimination for the ordination, training and selection of religious leaders and this be broadened to include lay people who have a role which is the same as, or is similar to, the role of a priest, minister of religion or member of a religious order or where the person otherwise has a role that involves the propagation of that faith.	Support in-principle	<p>The Queensland Government supports the intent of this recommendation, recognising that the ordination, training and selection of individuals for religious observances and practices reflects the right to freedom of religion for all people who play an important spiritual role within a religious body.</p> <p>Further consideration will be given to the scope and operation of this exception under the proposed new anti-discrimination Act.</p>
38.1	<p>A general religious bodies exception and religious accommodation exception should be retained, but should only apply to the attribute of religious belief or activity where the conduct by an organisation or related entity established for religious purposes ('religious organisation') is:</p> <ul style="list-style-type: none"> to conform to the religious doctrines, tenets or beliefs of the body; and reasonable and proportionate in all the circumstances. 	Support in-principle	<p>The Queensland Government recognises that religious bodies provide essential services throughout Queensland, and in doing so many promote inclusion and equality. These bodies are an important and valued part of the Queensland community.</p> <p>The right to freedom of thought, conscience, religion and belief is protected under international human rights instruments, as well as under the <i>Human Rights Act 2019</i>.</p> <p>The Queensland Government also recognises the importance of protecting and promoting the rights of diverse communities, including their rights (protected under international human rights instruments and the <i>Human Rights Act 2019</i>) to equality, privacy and access to health services, and ensuring that those rights are not being</p>
38.2	<p>The Act should include a non-exhaustive list of factors to guide whether it is reasonable and proportionate, such as:</p> <ul style="list-style-type: none"> the importance of the relevant conduct in protecting the ethos of the religious organisation and the religious susceptibilities of adherents of that religion whether the religious organisation is a public entity under the Human Rights Act when engaging in the conduct 	Support in-principle	



	<ul style="list-style-type: none"> • if the religious organisation operates in a commercial manner when engaging in the conduct • the reasonable availability of alternative services • whether the services are essential services • the rights and interests of the person receiving, or proposed to receive, goods and services or accommodation. 		<p>unreasonably or disproportionately limited.</p> <p>The Queensland Government notes the findings of the <i>Building Belonging</i> report that many of the current exceptions that relate to religious bodies under the AD Act are complicated and difficult to apply. Consequently, the <i>Building Belonging</i> report recommends that while the current exceptions should be retained, some changes are proposed to ensure that religious freedoms are upheld while rights to equality and privacy are also protected.</p> <p>Further consideration will be given, and consultation undertaken, in relation to these recommendations to ensure the proposed new anti-discrimination Act strikes the right balance between the need to protect people from discrimination and other objectionable conduct based on a contemporary idea of equality and the need to not unreasonably limit other rights, such as religious or cultural rights.</p> <p>It is also noted that the Australian Government is currently reviewing Federal anti-discrimination legislation, in particular relating to religious educational institutions. The Queensland Government will aim to align reforms with those progressed by the Australian Government to achieve legislative alignment across jurisdictions, noting the QHRC's comments</p>
39.1	The current genuine occupational requirements exceptions relating to work in educational institutions or other bodies established for religious purposes (s 25 (2)-(8)) should be repealed, along with a legislative note in s 25(1) which indicates that discrimination on the basis of religion will always be a 'genuine occupational requirement' at a religious school.	Support in-principle	
39.2	A new exception should be created to allow discrimination on the ground of religious belief or religious activity in relation to work for an organisation or related entity established for religious purposes ('religious organisation') if reasonable and proportionate in the circumstances and the participation of the person in the teaching, observance or practice of a particular religion is a genuine occupational requirement. This should not provide an exception from unnecessary questions that may be asked for a discriminatory purpose.	Support in-principle	
39.3	The Act should include a non-exhaustive list of factors to guide whether it is reasonable and proportionate, such as: <ul style="list-style-type: none"> • the importance of the relevant conduct in protecting the ethos of the religious organisation and 	Support in-principle	



	<p>the religious susceptibilities of adherents to that religion</p> <ul style="list-style-type: none"> • the proximity between the person's actions and the religious organisation's proclamatory mission • whether the religious organisation is a public entity under the Human Rights Act when engaging in the conduct • whether the religious organisation operates in a commercial manner when engaging in the conduct • the reasonable availability of alternative employment • the rights and interests of the employee. 		about the benefits of consistency.
39.4	The Act should include examples to demonstrate that the exception does not permit discrimination against employees who are not involved in the teaching, observance or practice of a religion, such as a science teacher in a religious educational institution.	Support in-principle	
40.1	The exception allowing discrimination on enrolment on the basis of sex or religion should be retained with the addition of a legislative note to clarify that this section applies to students enrolling for the first time and is on the basis of 'religion' not 'religious belief or activity'.	Support in-principle	
Superannuation and insurance			
41.1	The insurance and superannuation provisions should be included in the Act in relation to age and disability and be updated to include a non-exhaustive list of factors which provide guidance on whether it is reasonable to rely on actuarial or statistical data or other relevant factors.	Support in-principle	The Queensland Government supports the intent of these recommendations, noting the findings in the <i>Building Belonging</i> report that the current exceptions are having a disproportionate and adverse impact on older persons, people with a disability, people with mental health conditions, and people
41.2	These factors may include whether the data source: <ul style="list-style-type: none"> • is up to date 	Support in-principle	



	<ul style="list-style-type: none"> • is relevant to the type and terms or conditions of the policy • indicates that the person poses an ‘unacceptable risk’ • is a reasonable source • is from an Australian data source, or if from overseas, how it is applicable in the local context. 		<p>predisposed to genetic conditions.</p> <p>Further consideration will be given to the scope and operation of the provisions, including by reference to approaches in other Australian jurisdictions and recognising the benefit of aligning with federal age and disability discrimination legislation, under the proposed new anti-discrimination Act.</p>
41.3	The provisions should also require that, on request, the data on which the service provider is relying is provided to a consumer within a reasonable timeframe.	Support in-principle	
41.4	The Act should provide the Commission the power to compel an insurance or superannuation provider to disclose the source of actuarial or statistical data on which discrimination was based.	Support in-principle	
Prisoners			
42.1	Sections 319G, 319H and 319I of the <i>Corrective Services Act 2006</i> (Qld), which alter the tests for direct and indirect discrimination, and create restrictions on compensation orders should be repealed.	Support in-principle	<p>The Queensland Government notes that the modifications made to the CSA recognise the unique environment of Queensland’s corrective services facilities.</p> <p>Further consideration will be given to this recommendation under the proposed new anti-discrimination Act.</p>
Work with children			
43.1	That the Act should repeal the ‘work with children’ exception which allows discrimination on the basis of lawful sexuality activity or gender identity in the area of work.	Support in-principle	<p>On 2 December 2022 the Queensland Government introduced the Births, Deaths and Marriages Registration Bill 2022 (BDMR Bill) which repeals and replaces the existing <i>Births, Deaths and Marriages Registration Act 2003</i> to ensure that registration services remain relevant, responsive and contemporary, including reforms that strengthen the legal recognition of trans and gender diverse people.</p>



			The BDMR Bill repeals the exception in section 28 of the current AD Act so that it will no longer be lawful to discriminate on the basis of 'lawful sexuality activity' or 'gender identity' in the area of work.
Assisted reproductive technology			
44.1	The Act should repeal the assisted reproductive technology provision which allows discrimination on the basis of sexuality or relationship status in the area of goods and services.	Support in-principle	The Queensland Government supports the removal of this exemption, recognising that assisted reproductive services should be available to anyone who needs them, regardless of relationship status or sexual orientation.
Resourcing reforms			
45.1	The Queensland Government should ensure adequate resourcing is provided to: <ul style="list-style-type: none"> • legal and advocacy services, including Legal Aid Queensland, community legal centres, and Aboriginal and Torres Strait Islander legal services • community groups that undertake individual and systemic advocacy about the Anti-Discrimination Act • tribunals to ensure that any expansion of their jurisdiction is properly resourced • the Commission to ensure that it can give effect to its expanded role and functions. 	Support in-principle	The Queensland Government will give further consideration to the appropriate funding and resourcing arrangements for relevant bodies in the context of the development of the proposed new anti-discrimination Act.
Monitoring the changes			
46.1	The Queensland Government should issue a formal response to this Report within three months of being tabled indicating whether the recommendations are accepted, accepted in principle, rejected, or subject to further consideration.	Support in-principle	The Queensland Government fulfils this recommendation through the release of this final Queensland Government response to the <i>Building Belonging</i> report.
46.2	A Parliamentary Committee should oversee implementation of the new Act.	Support in-principle	The Queensland Government notes the views expressed in the <i>Building Belonging</i> report that there is a need for an



			oversight mechanism to ensure effective and successful implementation of the proposed new anti-discrimination Act. Further consideration will be given to the need, function, nature and scope for an implementation oversight mechanism in the development of the proposed new anti-discrimination Act.
46.3	The Attorney-General should establish an interdepartmental 'Building Belonging' working group to oversee the reforms contemplated by this report. The working group should include representation from the Queensland Government, the Queensland Human Rights Commission, and may include representatives from key stakeholder streams.	Support in-principle	The Department of Justice and Attorney-General will establish an interdepartmental working group to support implementation of the proposed new anti-discrimination Act. Further consideration will be given to the membership of the proposed working group at the point of establishment.

End

