



Queensland

This is a working draft provided for consultation purposes. It is subject to review and drafting changes will be made in the course of finalising the draft.

Anti-Discrimination Bill 2024

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A Bill

for

An Act to promote equality of opportunity for everyone by protecting them from unfair discrimination in particular areas of activity and from sexual harassment, vilification, victimisation and other unlawful conduct, and to repeal the *Anti-Discrimination Act 1991* and to amend this Act, the *Corrective Services Act 2006*, the Criminal Code and the legislation mentioned in schedule 2 for particular purposes

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Preamble

In enacting this Act, the Parliament of Queensland recognises that—

- 1 Every person is entitled to equal opportunities and protection against discrimination, sexual harassment, vilification and victimisation.
- 2 Discrimination, sexual harassment, vilification and victimisation can cause personal, social and economic harm.
- 3 The personal, social and economic harm caused by discrimination, sexual harassment, vilification and victimisation—
 - (a) can happen on the basis of a combination of attributes; and
 - (b) can be cumulative for a person with 2 or more attributes.
- 4 The achievement of equitable outcomes and equal opportunities throughout society may require—
 - (a) different application of a rule to different groups; and
 - (b) the making of reasonable accommodations and the taking of affirmative measures.

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Anti-Discrimination Act 2024*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act binds all persons

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

4 Application of Act to ships connected with Queensland

- (1) Without limiting the extent to which this Act may otherwise apply, it is declared that this Act applies to acts done on ships connected with Queensland.
- (2) Subsection (1) does not limit the laws of Queensland providing for the application of the criminal law to offences committed at sea.
- (3) For this section, a ship is a ship connected with Queensland if—
 - (a) it is registered under the *Shipping Registration Act 1981* (Cwlth) with a home port in Queensland; or

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- (b) it is, or is required to be, registered or licensed under the *Transport Operations (Marine Safety) Act 1994* or another Act; or
- (c) it is owned or chartered by—
 - (i) an individual whose place of residence, or principal place of residence, is in Queensland; or
 - (ii) a person whose place of business, or principal place of business, is in Queensland; or
 - (iii) a person whose principal place of business for managing the ship's operations is in Queensland.

5 Application of Act to employment connected with Queensland

- (1) Without limiting the extent to which this Act may otherwise apply, it is declared that this Act applies to acts done in relation to employment connected with Queensland, regardless of where the act is done.
- (2) For this section, employment is connected with Queensland if—
 - (a) the employer is a public sector entity; or
 - (b) the employer—
 - (i) has a place of work in, or carries on a business or undertaking in, Queensland; or
 - (ii) engages employees whose employment is performed wholly or partly in Queensland.
- (3) In this section—
public sector entity see the *Public Sector Act 2022*, section 8.

6 Application of Act to people with disability who have support persons, assistance animals or disability aids

- (1) This Act applies in relation to having a support person, assistance animal or disability aid in the same way as it applies in relation to having a disability.
- (2) For subsection (1), and without limiting that subsection, this Act has effect in relation to a person with disability who has a support person, assistance animal or disability aid as if—
 - (a) each reference to something being done or needed because of a disability were a reference to the thing being done or needed because of the fact that the person has the support person, assistance animal or disability aid; and
 - (b) each other reference to disability were a reference to the support person, assistance animal or disability aid.
- (3) For this Act—
 - (a) a person with disability has a support person if the person—
 - (i) is presently accompanied by the support person; or
 - (ii) was previously accompanied by the support person; or
 - (iii) may be accompanied by the support person in the future; or
 - (iv) is imputed to be accompanied by the support person; and
 - (b) a person with disability has an assistance animal or disability aid if the person—
 - (i) is presently accompanied by, or possesses, the assistance animal or disability aid; or
 - (ii) was previously accompanied by, or possessed, the assistance animal or disability aid; or
 - (iii) may be accompanied by, or possess, the assistance animal or disability aid in the future; or

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- (iv) is imputed to be accompanied by, or possess, the assistance animal or disability aid.
- (4) Nothing in this Act affects the liability of a person for damage to property caused by an assistance animal.
- (5) In this section—
 - disability aid**, in relation to a person with disability, means equipment, including a palliative or therapeutic device, that—
 - (a) is used by the person; and
 - (b) provides assistance to alleviate the effect of the disability.
 - support person**, in relation to a person with disability, means a person who provides paid or unpaid assistance or services to the person because of the disability, including, for example, as an assistant, carer, interpreter or reader.

7 Interpretation beneficial to people with protected attributes

This Act must 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—

- (a) the purposes of this Act; and
- (b) human rights under the *Human Rights Act 2019*.

Note—

See also the *Acts Interpretation Act 1954*, section 14A (which is about interpreting legislation to best achieve its purpose) and the *Human Rights Act 2019*, section 48 (which is about interpreting legislation in relation to compatibility with human rights).

8 Main purposes of Act

The main purposes of this Act are—

- (a) to promote and protect the rights to equality and non-discrimination set out in the *Human Rights Act 2019*, section 15; and

-
- (b) to eliminate discrimination, sexual harassment, vilification, victimisation and other unlawful conduct to the greatest extent possible; and
 - (c) to promote and facilitate the identification and elimination of systemic causes of discrimination, sexual harassment, vilification and victimisation; and
 - (d) to promote and facilitate voluntary compliance with this Act; and
 - (e) to establish a flexible and efficient process for resolving complaints about alleged contraventions of this Act.

9 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

10 Protected attributes

Each of the following is a *protected attribute* for this Act—

- (a) age;
- (b) breastfeeding;
- (c) disability;
- (d) family, carer or kinship responsibilities;
- (e) gender identity;
- (f) homelessness;
- (g) irrelevant criminal record;
- (h) parental status;
- (i) physical appearance;
- (j) political belief or activity;
- (k) pregnancy;
- (l) race;
- (m) relationship status;

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- (n) religious belief or religious activity;
- (o) sex;
- (p) sex characteristics;
- (q) sex work activity;
- (r) sexual orientation;
- (s) subjection to domestic or family violence;
- (t) trade union activity;
- (u) association with, or relation to, a person identified on the basis of any of the above attributes;
- (v) a combination of 2 or more of any of the above attributes.

11 Conduct in relation to a protected attribute

- (1) For this Act, engaging in conduct in relation to a protected attribute includes engaging in the conduct in relation to—
 - (a) a characteristic that a person with the protected attribute generally has; or
 - (b) a characteristic that is often imputed to a person with the protected attribute; or
 - (c) a protected attribute that a person is presumed to have, or to have had at any time, by the person engaging in the conduct; or
 - (d) a protected attribute that a person had, even if the person did not have it at the time the conduct was engaged in.
- (2) Also, for this Act, engaging in conduct in relation to a protected attribute in relation to a person who has 2 or more protected attributes includes engaging in the conduct in relation to—
 - (a) any of the protected attributes; or
 - (b) 2 or more of the protected attributes; or

-
- (c) the combined effect of 2 or more of the protected attributes.

12 What is a *reasonable accommodation* in relation to person with disability

- (1) A *reasonable accommodation* in relation to a person with disability is an accommodation that—
 - (a) is necessary and appropriate to be made, and effective, to ensure the person is not treated unfavourably; and
 - (b) does not impose unjustifiable hardship on the person making the accommodation.

Examples of what may be a reasonable accommodation—

- 1 A reasonable accommodation for a person with vision impairment may be buying a screen reading software for the person.
 - 2 A reasonable accommodation for a person who uses a wheelchair may be physical modifications to the person's workstation to accommodate the wheelchair.
- (2) A person who fails or refuses to make an accommodation on the grounds that making the accommodation would impose an unjustifiable hardship on the person has the onus of proving the matter, on the balance of probabilities.
 - (3) In deciding whether an accommodation in relation to a person with disability would impose an unjustifiable hardship on a person, the following matters must be considered—
 - (a) the nature of the person's disability;
 - (b) the nature of the accommodation that would be needed to ensure the person with disability is not treated unfavourably;
 - (c) the feasibility and effectiveness of the accommodation;
 - (d) the effect on the person with disability if the accommodation were made;
 - (e) the effect on the person with disability if the accommodation were not made;
 - (f) the cost of the accommodation;

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- (g) the nature of any detriment, including financial detriment, to the person making the accommodation;
- (h) any other relevant matter.

Part 2 What is discrimination

13 When does a person discriminate against another person

- (1) A person discriminates against another person if the person directly or indirectly discriminates against the other person on the basis of a protected attribute.
- (2) For subsection (1), it does not matter—
 - (a) whether the discrimination is direct or indirect or both direct and indirect; or
 - (b) whether the person who discriminates is aware of the discrimination; or
 - (c) whether the discrimination happens because the person does an act or omits to do an act.
- (3) Also, a person’s motive for discriminating against another person is irrelevant.
- (4) However, a person does not discriminate against another person by taking an affirmative measure to promote or realise substantive equality for members of a group with a particular protected attribute.
- (5) A person who takes a measure as an affirmative measure as mentioned in subsection (4) has the onus of proving, on the balance of probabilities, that the measure is an affirmative measure.

14 Direct discrimination

- (1) A person directly discriminates against another person if the person treats, or proposes to treat, the other person

unfavourably because the other person has a protected attribute.

- (2) Also, a person directly discriminates against a person with disability if—
 - (a) the person fails or refuses to make a reasonable accommodation to address the needs of the person with disability to ensure the person with disability is not treated unfavourably; and
 - (b) the failure or refusal has the effect that the person with disability is treated unfavourably.
- (3) For subsections (1) and (2), it does not matter—
 - (a) whether the other person's protected attribute is only one of the reasons for the unfavourable treatment; or
 - (b) whether the person who discriminates considers the treatment is unfavourable.

15 Indirect discrimination

- (1) A person indirectly discriminates against another person if the person imposes, or proposes to impose, a condition, requirement or practice that—
 - (a) has, or is likely to have, the effect of disadvantaging the other person because the other person has a protected attribute; and
 - (b) is not reasonable.
- (2) Also, a person indirectly discriminates against a person with disability if—
 - (a) the person imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging the person with disability because of the disability; and
 - (b) the condition, requirement or practice would not disadvantage the person with disability if a reasonable accommodation was made; and

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- (c) the person fails or refuses to make a reasonable accommodation.
- (3) Facilitating an environment in which a person with a protected attribute is disadvantaged is taken to be imposing a condition, requirement or practice to which subsection (1)(a) or (2)(a) applies.
- (4) For subsection (1), the person imposing or proposing to impose the condition, requirement or practice has the onus of proving, on the balance of probabilities, the condition, requirement or practice is reasonable.
- (5) In deciding whether a condition, requirement or practice is reasonable, the following matters must be considered—
 - (a) the nature and extent of the disadvantage resulting from the imposition, or proposed imposition, of the condition, requirement or practice;
 - (b) whether the disadvantage is proportionate to the result sought by the person who imposes, or proposes to impose, the condition, requirement or practice;
 - (c) whether any accommodation could be made to the condition, requirement or practice to reduce the disadvantage caused;
 - (d) whether there is an alternative condition, requirement or practice that would achieve the result sought by the person imposing, or proposing to impose, the condition, requirement or practice but would result in less disadvantage;
 - (e) the cost of any accommodation or any alternative condition, requirement or practice;
 - (f) the financial circumstances of the person imposing, or proposing to impose, the condition, requirement or practice;
 - (g) any other relevant matter.

16 Affirmative measures

- (1) This section provides for when a measure taken by a person is an affirmative measure to promote or realise substantive equality for members of a group with a particular protected attribute.
- (2) A measure is an affirmative measure for members of a group with a particular protected attribute if the measure—
 - (a) confers a benefit on the members of the group; and
 - (b) is taken in good faith for achieving the purpose mentioned in subsection (1) for the members of the group; and
 - (c) is reasonably likely to achieve the purpose mentioned in subsection (1) for the members of the group; and
 - (d) is proportionate to achieving the purpose mentioned in subsection (1) for the members of the group; and
 - (e) is justified because the members of the group have a particular need for advancement or assistance.
- (3) However, a measure is an affirmative measure for members of a group of persons of a particular race only if the measure—
 - (a) is taken for the sole purpose of promoting or realising substantive equality for the members of the group; and
 - (b) is necessary to promote or realise substantive equality for the members of the group.
- (4) A measure taken for achieving the purpose mentioned in subsection (1) for members of a group with a particular protected attribute other than race is an affirmative measure if it is taken—
 - (a) solely for achieving the purpose; or
 - (b) for achieving the purpose as well as for other reasons.
- (5) A measure is an affirmative measure even if the person taking the measure has imposed reasonable restrictions on eligibility for the measure.

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- (6) A measure taken as an affirmative measure stops being an affirmative measure if the promotion or realisation of substantive equality for which the measure was taken is achieved.
- (7) For subsection (2)(a), whether a measure confers a benefit on a group of persons of a particular race must be—
 - (a) decided on the basis of adequate consultation with the members of the group, or a representative body for the members of the group, in the design and implementation of the measure; and
 - (b) regularly reviewed in consultation with the members of the group or a representative body for the members of the group.

Part 3 Positive duties

17 Purpose of part

The purpose of this part is to provide for the taking of positive action to help achieve the purposes of this Act.

Note—

The commission must issue guidelines under part 10, division 2 about how persons may comply with their duties under this part—see section 146.

18 Duty to make reasonable accommodation for person with disability

- (1) A person who, under part 4, must not discriminate against a person with disability must make reasonable accommodations to ensure the person with disability is not treated unfavourably because of the disability.
- (2) The duty under subsection (1) applies to the person in addition to the prohibitions applying to the person under part 4.

19 Duty to eliminate discrimination, sexual harassment, vilification and victimisation

- (1) This section applies to the following persons who, under part 4, 6 or 7, must not engage in discrimination, sexual harassment, vilification or victimisation—
 - (a) a corporation, partnership or unincorporated body that carries on a business or operations;
 - (b) an individual who—
 - (i) carries on a business or operations; or
 - (ii) has responsibility for directing or controlling the business or operations of a person mentioned in paragraph (a).
- (2) The person must take reasonable and proportionate measures to eliminate the discrimination, sexual harassment, vilification or victimisation as far as possible.
- (3) The duty under subsection (2) applies to the person in addition to the prohibitions applying to the person under part 4, 6 or 7.

Note—

The complaint process under part 9 does not apply to contraventions or alleged contraventions of the duty under this section—see section 97.

20 Deciding whether measure is reasonable and proportionate

In deciding whether a measure is reasonable and proportionate for a person to comply with the duty under section 19(2), the following matters must be considered—

- (a) the size of the business or operations;
- (b) the nature and circumstances of the business or operations;
- (c) the resources of the business or operations;
- (d) the business and operational priorities of the business or operations;
- (e) the practicability and the cost of the measure;

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- (f) any other relevant matter.

Part 4 Unlawful discrimination

Division 1 Preliminary

21 When is discrimination lawful discrimination

- (1) Conduct of a person that constitutes discrimination against another person is unlawful unless it is lawful discrimination.
- (2) Conduct of a person that constitutes discrimination is lawful discrimination if—
 - (a) an exception applies in relation to the discrimination; or
 - (b) an exemption applies in relation to the discrimination.
- (3) For subsection (2)(a), an exception applies in relation to discrimination mentioned in division 2 to 9 if—
 - (a) an exception to discrimination mentioned in the division applies; or
 - (b) the conduct constituting the discrimination is also discrimination mentioned in another division and an exception to discrimination mentioned in the other division applies; or
 - (c) an exception to discrimination mentioned in division 10 applies.
- (4) An exception or exemption mentioned in subsection (2) is a defence to discrimination, and the person seeking to rely on the exception or exemption has the onus of proving, on the balance of probabilities, that the exception or exemption applies.
- (5) In this section—

exception, in relation to discrimination, means a provision of division 2 to 10 that permits the discrimination.

exemption, in relation to discrimination, means an exemption for the discrimination granted by the tribunal under division 11.

Division 2 Work and work-related areas

Subdivision 1 Prohibitions on discrimination

22 Employers

- (1) A person must not discriminate—
 - (a) in the arrangements made for deciding who should be offered work; or
 - (b) in deciding who should be offered work; or
 - (c) in the terms of work that is offered, including, for example, a term about when the work will end because of a person's age; or
 - (d) in failing to offer work; or
 - (e) by denying a person seeking work access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or
 - (f) in developing the scope or range of a guidance program, an apprenticeship training program or other occupational training or retraining program.
- (2) A person must not discriminate—
 - (a) in any variation of the terms of work; or
 - (b) in denying or limiting access to opportunities for promotion, transfer, training or other benefit to a worker; or
 - (c) in dismissing a worker; or

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- (d) by denying access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or
 - (e) in developing the scope or range of a guidance program, an apprenticeship training program or other occupational training or retraining program; or
 - (f) by subjecting a worker to any other detriment in connection with work.
- (3) In this section—
- dismissing* includes ending the particular work of a person by forced retirement, failure to provide work or otherwise.
- forced retirement* includes engaging in conduct with a view to causing a person to retire from particular work because of the person's age.

23 Principals

- (1) This section applies if a person (the *worker*) does work, or is to do work, for another person (the *principal*) under or because of—
- (a) a contract between the principal and a third person; or
 - (b) another arrangement, or a series of arrangements, involving the principal and a third person, whether or not the arrangement or series of arrangements also involves other persons.
- (2) The principal must not discriminate against the worker—
- (a) in the terms in which the principal allows the worker to work; or
 - (b) by not allowing the worker to work or continue to work; or
 - (c) by denying or limiting access by the worker to any benefits connected with the work; or
 - (d) by subjecting the worker to any other detriment in connection with the work.

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- (3) This section does not limit section 22.

24 Partnerships

- (1) Six or more people who propose to form themselves into a partnership must not discriminate—
- (a) in deciding who should be invited to become a partner; or
 - (b) in the terms on which a person is invited to become a partner.
- (2) A partner in a partnership that consists of 6 or more people must not discriminate—
- (a) in deciding who should be invited to become a partner; or
 - (b) in the terms on which a person is invited to become a partner.
- (3) A partner in a partnership that consists of 6 or more people must not discriminate—
- (a) in any variation of the terms of the partnership; or
 - (b) in denying or limiting access by another partner to any benefit arising from the partnership; or
 - (c) in expelling another partner from the partnership; or
 - (d) by subjecting another partner to any other detriment in connection with the partnership.

25 Industrial, professional, trade or business organisations

- (1) An organisation of workers, employers, or people who carry on an industry, profession, trade or business must not discriminate—
- (a) in failing to accept a person's application for membership of the organisation; or
 - (b) in the arrangements made for deciding who may join; or

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- (c) in deciding who may join; or
 - (d) in the terms on which a person may join.
- (2) An organisation of workers, employers, or people who carry on an industry, profession, trade or business must not discriminate—
- (a) in any variation of the terms of membership of the organisation; or
 - (b) in denying or limiting access to any benefit arising from the membership; or
 - (c) in depriving a person of membership; or
 - (d) by subjecting a person to any other detriment in connection with the membership.
- (3) This section does not apply to discrimination on the basis of trade union activity if the *Industrial Relations Act 2016*, chapter 12, part 9, division 2 or part 10 applies.

26 Qualifying bodies

- (1) A person who has power to grant, renew or extend a qualification or authorisation that, whether by itself or together with other qualifications or authorisations, is needed for, or facilitates, the practice of a profession, or the carrying on of a trade or business must not discriminate—
- (a) in granting, renewing or extending a qualification or authorisation or failing to do so; or
 - (b) in the terms on which a qualification or authorisation is granted, renewed or extended.
- (2) A person who has power to grant, renew or extend a qualification or authorisation that, whether by itself or together with other qualifications or authorisations, is needed for, or facilitates, the practice of a profession, or the carrying on of a trade or business must not discriminate against another person—

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- (a) in any variation of the terms on which a qualification or authorisation was granted, renewed or extended; or
 - (b) in revoking or withdrawing a qualification or authorisation or failing to do so; or
 - (c) by subjecting the other person to any other detriment in connection with the grant, renewal or extension of a qualification or authorisation.

27 Employment agencies

A person who carries on a business (whether or not for reward or profit) of introducing people seeking work to employers must not discriminate—

- (a) by failing to supply a service of the business, whether to a person seeking work or an employer seeking a worker; or
- (b) in the terms on which a service is offered or supplied; or
- (c) in the way in which a service is supplied; or
- (d) by subjecting a person seeking work, or an employer seeking a worker, to any other detriment in connection with a service.

Subdivision 2 Exceptions for discrimination

28 Genuine occupational requirements generally

- (1) A person may discriminate against a person in relation to a position if the discrimination—
 - (a) is based on a genuine occupational requirement for the position; and
 - (b) is reasonable and proportionate in the circumstances.

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Examples of genuine occupational requirements for a position—

- using membership of a particular political party as a criterion for a position as an adviser to a political party or a worker in the office of a member of Parliament
 - preferencing people on the basis of age for a peer support position in a service for children and young people
- (2) Subsection (1) applies to discrimination in relation to any matter mentioned in subdivision 1.
- (3) This section does not apply in relation to a genuine occupational requirement mentioned in section 29(1)(a).
- (4) In this section—
- position** includes a position as—
- (a) a worker; or
 - (b) a partner.

29 Genuine occupational requirements for religious bodies

- (1) A person may discriminate against another person on the basis of the other person’s religious belief or religious activity in relation to work for a religious body if—
- (a) participation in the teaching, observance or practice of the religion concerned is a genuine occupational requirement of the work; and
 - (b) the other person cannot satisfy the genuine occupational requirement because of the other person’s religious belief or religious activity; and
 - (c) the discrimination is reasonable and proportionate in the circumstances.
- (2) Subsection (1) applies to discrimination in relation to a matter mentioned in section 22(1)(a), (b) or (d) or (2)(c).
- (3) To remove any doubt, it is declared that a person can not rely on subsection (1) to discriminate against another person on the basis of a protected attribute other than religious belief or religious activity.

Example for subsection (3)—

A person can not rely on subsection (1) to discriminate against another person on the basis of the other person's relationship status.

30 Compulsory retirement age under another Act

This Act has no effect on the imposition, under another Act, of a compulsory retirement age on—

- (a) a Supreme Court judge; or
- (b) a District Court judge; or
- (c) a magistrate; or
- (d) a member of the Land Court; or
- (e) the president, the vice-president or a deputy president (court) of the Industrial Court; or
- (f) a deputy president appointed under the *Industrial Relations Act 2016*, section 441 or an industrial commissioner; or
- (g) a fire officer within the meaning of the *Fire and Emergency Services Act 1990*; or
- (h) a police officer.

31 Domestic or personal services

- (1) A person (an *employer*) may discriminate against another person in relation to work involving the provision of domestic or personal services, including the care, instruction or supervision of children—
 - (a) in the employer's home; or
 - (b) if the employer is in the business of providing domestic or personal services to others—in the home of the person to whom the services are provided, if the discrimination is requested by or on behalf of that person.

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- (2) Subsection (1) applies to discrimination in relation to a matter mentioned in section 22(1)(a), (b) or (d) or (2)(c).
- (3) Subsection (1) does not apply to discrimination on the basis of race.

32 Work involving vulnerable people

- (1) A person may discriminate against another person on the basis of irrelevant criminal record in relation to work if—
 - (a) the work principally involves—
 - (i) the care, instruction or supervision of a child; or
 - (ii) providing care, support or assistance to a person with disability or an aged person; and
 - (b) the discrimination is reasonably necessary to protect the physical, psychological or emotional well-being of the child, person with disability or aged person.
- (2) Subsection (1) applies to discrimination in relation to any matter mentioned in subdivision 1.
- (3) In this section—
aged person means a person 65 years or older.

33 Youth wages

A person may remunerate a worker who is under 21 years of age according to the worker’s age.

Division 3 Education area

Subdivision 1 Prohibitions on discrimination

34 Educational authorities

- (1) An educational authority must not discriminate—

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- (a) in failing to accept a person's application for admission as a student; or
 - (b) in the way in which a person's application is processed; or
 - (c) in the arrangements made for, or the criteria used in, deciding who should be offered admission as a student; or
 - (d) in the terms on which a person is admitted as a student.
- (2) An educational authority must not discriminate—
- (a) in any variation of the terms of a student's enrolment; or
 - (b) by denying or limiting access to any benefit arising from the enrolment that is supplied by the authority; or
 - (c) by expelling a student; or
 - (d) by subjecting a student to any other detriment in connection with the student's training or instruction.

Subdivision 2 Exceptions for discrimination

35 Educational institution for students of particular sex or students with disability or particular disability

An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex, or students with disability or disability of a particular kind, may refuse to admit as students persons who—

- (a) are not of the particular sex; or
- (b) do not have disability or disability of the particular kind.

36 Educational institution for students of particular religion

- (1) An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular religion may discriminate on the basis of religious

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belief or religious activity by refusing to admit as students persons who are not of the particular religion.

- (2) To remove any doubt, it is declared that a person can not rely on subsection (1) to discriminate against another person on the basis of a protected attribute other than religious belief or religious activity.

Example for subsection (2)—

A person can not rely on subsection (1) to discriminate against another person on the basis of the other person’s gender identity.

37 Age-based admission scheme

An educational authority may select students for an education program on the basis of an admission scheme that has a minimum qualifying age.

Division 4 Goods and services area

Subdivision 1 Prohibition on discrimination

38 Suppliers of goods and services

A person who supplies goods or services, whether or not for reward or profit, must not discriminate against another person—

- (a) by failing to supply the goods or services; or
- (b) in the terms on which goods or services are supplied; or
- (c) in the way in which goods or services are supplied; or
- (d) by subjecting the other person to any other detriment in connection with the supply of goods and services.

Subdivision 2 Exceptions for discrimination

39 Voluntary body

(1) A voluntary body may discriminate against a person in relation to—

- (a) the admission of persons as members of the body; or
- (b) the provision of benefits or services to members of the body.

(2) In this section—

voluntary body means an association or other body (whether incorporated or unincorporated) the activities of which are not engaged in for the purpose of making a profit, but does not include—

- (a) a club; or
- (b) an organisation of workers, employers, or people who carry on an industry, profession, trade or business; or
- (c) a body established by a law of the Commonwealth or a State; or
- (d) an association that provides grants, loans, credit or finance to its members.

40 Sites of cultural or religious significance

A person may restrict access to land or a building of cultural or religious significance on the basis of a person's age, sex, race, religious belief or religious activity if the restriction—

- (a) is in accordance with the culture concerned or is to conform to the doctrines, tenets or beliefs of the religion concerned; and
- (b) is reasonable and proportionate in the circumstances.

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41 Age-based benefits

- (1) A person who supplies goods or services may provide benefits and concessions on the basis of age.

Examples—

- 1 A bus operator may give travel concessions to people under the age of 12 or over the age of 70.
 - 2 The State government may supply, on an age basis, Seniors' Cards that give entitlements to concessions.
- (2) Subsection (1) does not apply in relation to insurance or superannuation.

42 Children to be accompanied by an adult

A person may require, as a term of supplying goods and services to a child, that a child be accompanied by an adult if there would be a reasonable risk that a child may cause a disruption or endanger themselves or others if not accompanied by an adult.

Division 5 Disposition of land area

Subdivision 1 Prohibition on discrimination

43 Disposition of land

A person must not discriminate against another person—

- (a) by failing to dispose of an interest in land to the other person; or
- (b) in the terms on which an interest in land is offered to the other person.

Subdivision 2 Exceptions for discrimination

44 Disposition by will or gift

A person may discriminate against another person in relation to a matter mentioned in subdivision 1 if the discrimination is by way of a testamentary disposition or gift.

45 Sites of cultural or religious significance

A person may discriminate against another person on the basis of age, sex, race, religious activity or religious belief in relation to a matter mentioned in subdivision 1 if—

- (a) the relevant interest in land is an interest in land or a building of cultural or religious significance; and
- (b) the discrimination—
 - (i) is in accordance with the culture concerned or is to conform to the doctrines, tenets or beliefs of the religion concerned; and
 - (ii) is reasonable and proportionate in the circumstances.

Division 6 Accommodation area

Subdivision 1 Prohibitions on discrimination

46 Providing accommodation

- (1) A person must not discriminate against another person—
 - (a) by failing to accept an application for accommodation; or
 - (b) by failing to renew or extend the supply of accommodation; or
 - (c) in the way in which an application is processed; or

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- (d) in the terms on which accommodation is offered, renewed or extended.
- (2) A person must not discriminate against another person—
 - (a) in any variation of the terms on which accommodation is supplied; or
 - (b) in denying or limiting access to any benefit associated with the accommodation; or
 - (c) in evicting the other person from the accommodation; or
 - (d) by subjecting the other person to any other detriment in connection with the accommodation.

47 Reasonable alterations

A person must not discriminate by refusing to allow another person with disability to alter accommodation to meet the other person’s special needs if—

- (a) the alteration is at the expense of the other person; and
- (b) the alteration does not require an alteration to the premises of another occupier; and
- (c) the action required to restore the accommodation to its previous condition is reasonably practicable; and
- (d) the other person undertakes to restore the accommodation to its previous condition before leaving it, and it is reasonably likely that the other person will do so.

Subdivision 2 Exceptions for discrimination

48 Shared accommodation

- (1) A person may discriminate against another person in deciding who is to reside in accommodation that—
 - (a) forms part of, and is intended to continue to form part of, the main home of the person or a near relative; and

(b) is for no more than 3 people, excluding the person, the near relative, another near relative of the person, or a near relative of the near relative.

(2) In this section—

near relative, of a person, means—

- (a) a parent, child, grandparent, grandchild or sibling of the person; or
- (b) the spouse of the person or a person mentioned in paragraph (a); or
- (c) if the person is an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a person mentioned in paragraph (a) or (b) for the person; or
- (d) if the person is a Torres Strait Islander—a person who, under Island custom, is regarded as a person mentioned in paragraph (a) or (b) for the person.

49 Accommodation for students of particular sex or students with disability or particular disability

An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex, or students with disability or disability of a particular kind, may provide accommodation wholly or mainly for students—

- (a) of the particular sex; or
- (b) with disability or disability of the particular kind.

50 Accommodation for students of particular religion

(1) An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular religion may discriminate on the basis of religious belief or religious activity by providing accommodation wholly or mainly for students of the particular religion.

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- (2) A person can not rely on subsection (1) to discriminate against another person on the basis of a protected attribute other than religious belief or religious activity.

Example for subsection (2)—

A person can not rely on subsection (1) to discriminate against another person on the basis of the other person’s sexual orientation.

Division 7 Club membership area

Subdivision 1 Prohibitions on discrimination

51 Club membership

- (1) A club must not discriminate—
- (a) in determining the terms of a particular category or type of membership of the club; or
 - (b) in failing to accept a person’s application for membership of the club; or
 - (c) in the way in which a person’s application is processed; or
 - (d) in the arrangements made for deciding who should be offered membership; or
 - (e) in the terms on which a person is admitted as a member.
- (2) A club must not discriminate—
- (a) in any variation of the terms of membership of the club; or
 - (b) in failing to accept a member’s application for a different category or type of membership; or
 - (c) by denying or limiting access to any benefit, arising from membership, that is supplied by the club; or
 - (d) in depriving a member of membership; or

-
- (e) by subjecting a member to any other detriment in connection with the membership or the management of the club.

Subdivision 2 Exceptions for discrimination

52 Club established for particular class of persons

A club may discriminate against a person if—

- (a) the club is established to benefit a class of persons sharing a particular protected attribute; and
- (b) the discrimination—
 - (i) occurs because the person does not have the protected attribute; and
 - (ii) is reasonable and proportionate in the circumstances.

Division 8 Administration of State laws and programs area

53 Discrimination in administration of State laws and programs

- (1) A person must not discriminate against another person—
 - (a) in performing a function or exercising a power under a law of the State or for the purposes of a State government program; or
 - (b) in carrying out any other responsibility for the administration of a law of the State or the conduct of a State government program.
- (2) In this section—

State government program means a program administered by or for the State government.

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Division 9 Local government area

54 Discrimination by local government member

- (1) A member of a local government must not discriminate against another member in the performance of official functions.
- (2) Subsection (1) does not apply to discrimination on the basis of political belief or activity.

Division 10 General exceptions

55 Application of division

This division applies in relation to discrimination in relation to any of the matters mentioned in divisions 2 to 9.

56 Compliance with legislation or court or tribunal orders

- (1) A person may discriminate against another person if the discrimination—
 - (a) is necessary to comply with, or is authorised by, another Act or an Act of the Commonwealth; or
 - (b) is necessary to comply with an order of a court or tribunal.
- (2) A person may discriminate against another person in relation to insurance or superannuation if the discrimination—
 - (a) is on the basis of age and is permitted under the *Age Discrimination Act 2004* (Cwlth); or
 - (b) is on the basis of disability and is permitted under the *Disability Discrimination Act 1992* (Cwlth); or
 - (c) is on the basis of sex, relationship status or family, carer or kinship responsibilities and is permitted under the *Sex Discrimination Act 1984* (Cwlth).

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- (3) Subsection (4) applies if a person discriminates against another person in relation to insurance or superannuation as provided under subsection (2) by relying on actuarial or statistical data or other relevant factors.
 - (4) The person must, if asked by the other person discriminated against, give the other person within a reasonable time—
 - (a) if the person relied on actuarial or statistical data—
 - (i) either a copy of the data or a written meaningful explanation of the data; and
 - (ii) if the copy or explanation does not include details of the source and date of the data—a written explanation of the source and date of the data; or
 - (b) if the person relied on other relevant factors—a written meaningful explanation of the factors.

57 Citizenship or visa requirements imposed under State government policies etc.

- (1) This Act does not apply in relation to—
 - (a) the inclusion of a prescribed eligibility provision in a relevant policy; or
 - (b) the performance of a function, exercise of a power, or carrying out of a responsibility, by a person in connection with a prescribed eligibility provision in a relevant policy.
- (2) In this section—
 - government entity***—
 - (a) means an entity mentioned in the *Public Sector Act 2022*, section 276(1); but
 - (b) does not include—
 - (i) a GOC, other than to the extent the GOC is directed to perform an obligation under the *Government Owned Corporations Act 1993* or another Act; or

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- (ii) an entity mentioned in the *Public Sector Act 2022*, section 276(2)(a), (b), (c), (d), (e), (f), (g), (i) or (j).

prescribed eligibility provision, in relation to a relevant policy, means—

- (a) a provision requiring that a person must have a particular citizenship or visa status to be eligible for financial or other assistance, services or support under the policy; or
- (b) a provision under which persons who have a particular citizenship or visa status are treated more favourably than other persons in relation to their eligibility for financial or other assistance, services or support under the policy.

relevant policy means a policy of a government entity—

- (a) that relates to any area of activity set out in divisions 2 to 9; and
- (b) under which persons are provided with financial or other assistance, services or support.

visa see the *Migration Act 1958* (Cwlth), section 5.

58 Public health

A person may discriminate against another person to do an act that is reasonably necessary to protect public health.

59 Workplace health and safety

A person may discriminate against another person to do an act that is reasonably necessary to protect the health and safety of people at a place of work.

60 Assistance animals

- (1) A person may ask or require a person with disability who has an assistance animal to ensure the assistance animal is kept under the control of—

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- (a) the person with disability; or
 - (b) another person on behalf of the person with disability.
- (2) For subsection (1), an assistance animal may be under the control of a person even if the animal is not under the person's direct physical control.

61 Roles in religious bodies

- (1) This Act does not apply in relation to—
- (a) the ordination or appointment of people as priests, ministers of religion or members of a religious order or to another religious role; or
 - (b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order or to another religious role; or
 - (c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice.
- (2) For subsection (1)(a) and (b), *another religious role* is a role within a religious body that—
- (a) is the same as, or similar to, the role of a priest, minister of religion or member of a religious order; or
 - (b) otherwise involves the propagation of the doctrines, tenets or beliefs of the religion concerned.

62 Acts by religious bodies

- (1) A religious body may discriminate against a person on the basis of the person's religious belief or religious activity if—
- (a) the act constituting the discrimination conforms to the doctrines, tenets or beliefs of the religious body; and
 - (b) the discrimination is reasonable and proportionate in the circumstances.

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- (2) Subsection (1) does not apply to an activity to which division 2 or 3 applies.

Note—

See, however—

- (a) section 29 in relation to activities to which division 2 applies; and
- (b) section 36 in relation to activities to which division 3 applies.

63 Charities

A person may—

- (a) include a provision that discriminates against a person or a group of persons in a document that provides exclusively for charitable benefits; and
- (b) do an act required to give effect to a provision mentioned in paragraph (a).

64 Sport

- (1) A person may restrict participation in a competitive sporting activity to—
 - (a) people who can effectively compete; or
 - (b) people of a particular age or age group; or
 - (c) people with disability or disability of a particular kind.
- (2) A person may restrict participation in a competitive sporting activity on the basis of sex or gender identity if the restriction is reasonable having regard to—
 - (a) the nature and purpose of the activity, including the strength, stamina or physique requirements of the activity; and
 - (b) the consequences of the restriction for people excluded from the activity; and
 - (c) whether there are other opportunities for people excluded from the activity to participate in an activity of a similar type.

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- (3) Subsection (2) does not apply to a competitive sporting activity for children who are under 12 years of age.
- (4) In this section—
competitive sporting activity does not include—
- (a) the coaching of people engaged in a sporting activity; or
 - (b) the umpiring or refereeing of a sporting activity; or
 - (c) the administration of a sporting activity; or
 - (d) a sporting activity prescribed by regulation.

65 Legal incapacity

A person may discriminate against another person because the other person is subject to a legal incapacity if the incapacity is relevant to the transaction in which they are involved.

Example—

A person may refuse to enter into a contract with a child or a person who has impaired capacity for the contract within the meaning of the *Guardianship and Administration Act 2000* if, because of the child's age or person's impaired capacity, the child or person does not have legal capacity to enter into the contract.

Division 11 Exemptions

66 Application for exemption

An application for an exemption from a provision of this part may be made to the tribunal—

- (a) by a person, on the person's own behalf, or on behalf of the person and another person or other people; or
- (b) by 2 or more people, on their own behalf, or on behalf of themselves and another person or other people; or
- (c) by a person or people included in a class of people on behalf of the people in that class.

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67 Commissioner's role in application for exemption

- (1) Before deciding an application made to the tribunal under section 66, the tribunal must—
 - (a) give the commissioner a copy of the application and a copy of the material filed in support of the application; and
 - (b) have regard to any submission made by the commissioner on the application, including a submission on the process for considering the application.
- (2) Matters the commissioner may make a submission on in relation to the process for considering an application include, but are not limited to, the following—
 - (a) whether the application should be considered by way of public hearing;
 - (b) identification of persons who may be affected by a decision to grant the application;
 - (c) whether the public should be consulted;
 - (d) how consultation with identified persons or the public should be conducted.
- (3) The commissioner must give a copy of a written submission the commissioner makes on an application to the applicant.
- (4) The tribunal may request that the commissioner—
 - (a) inquire into an application; and
 - (b) report to the tribunal the results of the inquiry and a recommendation about the application.

68 Tribunal's power to exempt

- (1) If an application is made to the tribunal under section 66, the tribunal may grant an exemption to the person, people or class of people from the operation of the provision.

Note—

See also section 192 in relation to the tribunal's powers for deciding the application.

- (2) An exemption—
 - (a) may be granted subject to terms decided by the tribunal; and
 - (b) may be granted so that it applies only in particular circumstances, or in connection with particular activities, decided by the tribunal; and
 - (c) may be granted for a stated period of not more than 5 years.
- (3) An exemption under subsection (1) may be renewed for further periods of not more than 5 years, on application by, or for, the person, people or class of people to whom the exemption was granted.

69 Transfer of application from IRC to QCAT

- (1) This section applies if—
 - (a) an application is made under section 66 to the IRC; and
 - (b) the IRC considers the exemption sought relates or includes a matter other than a work-related matter.

Note—

For an application made to QCAT, see the QCAT Act, section 52 in relation to the power to transfer the application.

- (2) The IRC may, by order, transfer the application to QCAT.
- (3) If the IRC makes an order under subsection (2)—
 - (a) an application for the exemption is taken to have been made to QCAT when the application mentioned in subsection (1) was made to the IRC; and
 - (b) the IRC may make the orders, or give the directions, it considers appropriate to facilitate the transfer, including an order that a party is taken to have complied with the

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requirements under this Act, the QCAT Act or another law for making the application to QCAT; and

- (c) QCAT may deal with the application as if the exemption sought did not relate to a work-related matter.
- (4) An order under subsection (3)(b) has effect despite any other Act or law.
- (5) The IRC may act under subsection (2) or (3)(b) on its own initiative or on application by the applicant.
- (6) If the IRC does not make an order under subsection (2), the IRC may deal with the application as if the exemption sought did not relate to a matter that is not a work-related matter.

70 Appeal from tribunal decision

- (1) The commissioner, or a person with a relevant interest, may appeal, as provided under the relevant tribunal Act, against the tribunal's decision on an application mentioned in section 66.
- (2) For the appeal, if the commissioner or person was not a party to the proceeding for the application, the commissioner or person is taken to have been a party to the proceeding.

Part 5 Discrimination against residents of regional communities

71 Application of part

This part—

- (a) provides for circumstances in which a person unlawfully discriminates against another person; and
- (b) applies despite anything stated in part 2.

72 Definitions for part

In this part—

fly-in fly-out worker, for a large resource project, see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

large resource project see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

nearby regional community, for a large resource project, see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

owner, of a large resource project, see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

principal contractor see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

recruitment process, for a large resource project, means any process for considering and selecting a person for employment for the project.

resident, of a nearby regional community, see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

resource project has the meaning given in the *Environmental Protection Act 1994*, section 112.

73 Prohibition on discrimination against persons in nearby regional communities in relation to work on large resource projects

- (1) This section applies to the owner, or the principal contractor, of a large resource project that has a nearby regional community.
- (2) The owner or principal contractor must not—
 - (a) discriminate against a resident of the nearby regional community when recruiting workers for the project; or
 - (b) discriminate against a worker by terminating the worker's employment because the worker is, or

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becomes, a resident of the nearby regional community and chooses to travel to the project other than as a fly-in fly-out worker.

- (3) The owner is taken to contravene subsection (2) whether it is the owner, a related body corporate of the owner, or an agent of the owner or related body corporate, that discriminates against a resident or worker.
- (4) The principal contractor is taken to contravene subsection (2) whether it is the principal contractor, a related body corporate of the principal contractor, or an agent of the principal contractor or related body corporate, that discriminates against a resident or worker.
- (5) For subsections (2)(a), (3) and (4), a person is taken to discriminate against a resident of the nearby regional community if—
 - (a) the person is recruiting workers for the project; and
 - (b) the resident is not offered work on the project, or is disadvantaged in the recruitment process for the project, because of being a resident of the nearby regional community.
- (6) If the principal contractor contravenes this section, both the owner and principal contractor are jointly and severally civilly liable for the contravention, and a proceeding under the Act may be taken against either or both of them.
- (7) In this section—

related body corporate see the Corporations Act, section 50.

worker, for a large resource project, see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

74 Burden of proof—general principle

- (1) For this part, it is for the complainant to prove, on the balance of probabilities, that the respondent contravened a provision of the part.
- (2) However, this section applies subject to section 75.

75 Reason for action to be presumed unless proved otherwise

- (1) This section applies if a complaint about discrimination under this part alleges that—
- (a) the complainant was not offered work on a large resource project, or was disadvantaged in the recruitment process for a large resource project, because the complainant was a resident of a nearby regional community for the project; or
 - (b) the complainant's employment on a large resource project was terminated because the complainant was, or became, a resident of a nearby regional community for the project and chose to travel to the project other than as a fly-in fly-out worker.
- (2) It is presumed the action mentioned in subsection (1)(a) or (b) was taken for the alleged reason, unless the respondent proves otherwise.

76 Particular provisions of this Act do not apply for this part

Sections 92, 94 to 96 and 212 do not apply for this part.

77 Evidentiary aid

In a proceeding about discrimination mentioned in section 73, the matters published under the *Strong and Sustainable Resource Communities Act 2017*, section 13 are evidence of the matters.

Part 6 Sexual harassment

78 Prohibition on sexual harassment

A person must not sexually harass another person.

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79 Meaning of *sexual harassment*

Sexual harassment happens if—

- (a) a person—
 - (i) subjects another person to an unsolicited act of physical intimacy; or
 - (ii) makes an unsolicited demand or request, whether directly or by implication, for sexual favours from the other person; or
 - (iii) makes a remark, orally or in writing, with sexual connotations relating to the other person; or
 - (iv) engages in any other unwelcome conduct of a sexual nature in relation to the other person; and

Examples for subparagraph (i)—

- physical contact such as patting, pinching or touching in a sexual way
- unnecessary familiarity such as deliberately brushing against a person

Example for subparagraph (ii)—

- sexual propositions

Examples for subparagraph (iii)—

- unwelcome and uncalled for remarks or insinuations about a person's sex or private life
- suggestive comments about a person's appearance or body

Examples for subparagraph (iv)—

- offensive telephone calls, emails or text messages
- indecent exposure

- (b) the person engages in the conduct mentioned in paragraph (a)—
 - (i) with the intention of offending, humiliating or intimidating the other person; or
 - (ii) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

80 Circumstances to consider in relation to effect of person's conduct

For section 79, definition *sexual harassment*, paragraph (b)(ii), in deciding whether a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct, the following matters must be considered—

- (a) the age, gender identity, race, relationship status, sex, sex characteristics and sexual orientation of the other person;
- (b) any disability that the other person has;
- (c) any religious belief that the other person has;
- (d) the relationship between the other person and the person engaging in the conduct;
- (e) any other relevant matter.

Part 7 Vilification, victimisation and other unlawful conduct

Division 1 Preliminary

81 Purpose of part

The purpose of this part is to promote equality of opportunity for everyone by prohibiting particular conduct that is inconsistent with the purposes of this Act.

Note—

See also the Criminal Code, section 52A.

82 How contravention of this part may be dealt with

- (1) Generally, a contravention of a provision prohibiting conduct under this part may be dealt with by a complaint under part 9

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brought by a person against the person who has engaged in the conduct.

- (2) However, if a provision of this part includes a penalty, a contravention of the provision may be dealt with—
- (a) by a complaint under part 9 brought by a person against the person who has engaged in the conduct; or
 - (b) by a proceeding for an offence against the provision brought by the commissioner against the person who has engaged in the conduct.

Division 2 **Vilification on grounds of age, disability, gender identity, race, religion, sex, sex characteristics or sexual orientation**

83 **Meaning of *public act***

- (1) In this division, *public act*—
- (a) includes the following conduct—
 - (i) any form of communication, including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods, to the public;
 - (ii) any conduct, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, observable by the public;
 - (iii) the distribution or dissemination of any matter to the public; but
 - (b) does not include the distribution or dissemination of any matter by a person to the public if the person does not know, and could not reasonably be expected to know, the content of the matter.

- (2) Conduct mentioned in subsection (1) may be a **public act** even if it happens on private land or in a place that is not ordinarily accessed by the general public.

Examples of places for subsection (2)—

a place of work, an educational facility

84 Hateful, reviling, seriously contemptuous, or seriously ridiculing conduct

- (1) A person must not, because of the age, disability, gender identity, race, religion, sex, sex characteristics or sexual orientation of another person or a group of persons, engage in a public act that a reasonable person would consider hateful, reviling, seriously contemptuous, or seriously ridiculing the other person or members of the group.
- (2) For subsection (1), **reasonable person** means a reasonable person who has the same age, disability, gender identity, race, religion, sex, sex characteristics or sexual orientation as the other person or members of the group.
- (3) Subsection (1) does not make unlawful—
- (a) the publication of a fair report of a public act mentioned in subsection (1); or
 - (b) the publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or
 - (c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.

85 Inciting hatred, serious contempt or severe ridicule

- (1) A person must not, in a public act, engage in conduct that incites, or is reasonably likely to incite, hatred towards, serious contempt for, or severe ridicule of, a person or group

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of persons on the basis of the age, disability, gender identity, race, religion, sex, sex characteristics or sexual orientation of the person or members of the group.

- (2) Subsection (1) does not make unlawful—
- (a) the publication of a fair report of a public act mentioned in subsection (1); or
 - (b) the publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or
 - (c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.

Division 3 Victimisation

86 Prohibition on victimisation

A person must not victimise another person.

Maximum penalty—

- (a) in the case of an individual—45 penalty units or imprisonment for 3 months; or
- (b) in the case of a corporation—170 penalty units.

87 Meaning of *victimisation*

Victimisation happens if a person (the *respondent*) does an act, or threatens to do an act, to the detriment of another person (the *complainant*)—

- (a) because the complainant or a person associated with, or related to, the complainant—
 - (i) refused to do an act that would amount to a contravention of this Act; or

- (ii) in good faith, alleged, or intends to allege that a person committed an act that would amount to a contravention of this Act; or
- (iii) is, has been, or intends to be, involved in a proceeding under this Act against any person; or
- (b) because the respondent believes that the complainant or a person associated with, or related to, the complainant is doing, has done, or intends to do 1 of the things mentioned in paragraph (a)(i), (ii) or (iii).

88 Victimization continues even if proceedings etc. do not

The application or continued application of section 86 is not affected by—

- (a) the failure or otherwise of the complainant or the person associated with, or related to, the complainant, to do 1 of the things mentioned in section 87(a)(i), (ii) or (iii); or
- (b) the withdrawal, failure to pursue, or determination of a proceeding under this Act.

Division 4 Unlawful advertising

89 Unlawful advertisements

- (1) A person must not publish or display an advertisement, or authorise its publication or display, if the advertisement indicates that a person intends to act in a way that contravenes this Act.

Maximum penalty—

- (a) in the case of an individual—35 penalty units; or
- (b) in the case of a corporation—170 penalty units.
- (2) To remove any doubt, subsection (1) does not apply to an advertisement so far as it advertises for a worker who is under

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21 years of age, whether by specifying a particular age, a particular age group or otherwise.

Example—

An employer may advertise for an 18 year old sales assistant or for a 15 to 17 year old sales assistant.

- (3) It is a defence to a complaint made under this Act for a contravention of subsection (1) if the respondent proves, on the balance of probabilities, that the respondent took reasonable precautions to prevent the publication or display happening.
- (4) It is an excuse to an offence against subsection (1) if the defendant took reasonable precautions to prevent the publication or display happening.

90 Inducing unlawful advertisement

A person must not knowingly or recklessly make a false or misleading statement to another person in order to induce the publication or display of an advertisement that contravenes section 89.

Maximum penalty—

- (a) in the case of an individual—35 penalty units; or
- (b) in the case of a corporation—170 penalty units.

Division 5 Unlawful request or encouragement

91 Request or encouragement of contravention

- (1) A person must not request or encourage another person to contravene this Act.
- (2) If a person requests or encourages another person to contravene this Act and the other person acts, or attempts to act, on the request or encouragement—
 - (a) both persons are jointly and severally civilly liable for the contravention; and

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- (b) a proceeding under this Act may be taken against either or both of the persons.

92 Unnecessary information

- (1) A person must not ask another person, either orally or in writing, to supply information on which unlawful discrimination might be based.
- (2) Subsection (1) does not apply to a request that is necessary to comply with, or is authorised by—
 - (a) a pre-existing provision; or
 - (b) an order of a court; or
 - (c) an order of QCAT or the IRC.
- (3) It is a defence to a proceeding for a contravention of subsection (1) if the respondent proves, on the balance of probabilities, that the information was reasonably required for a purpose that did not involve discrimination.
- (4) In this section—

pre-existing provision means a provision of any of the following in existence on 30 June 1992—

 - (a) an Act;
 - (b) an order or award of a court or tribunal having power to fix minimum wages and other terms of employment;
 - (c) an industrial agreement under the repealed *Industrial Relations Act 1999*.

Part 8 Provisions about liability

93 Definitions for part

In this part—

employee, of an entity, includes a person engaged by the entity under a contract of service.

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representative means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of a partnership—a partner, employee or agent of the partnership; or
- (c) of an unincorporated body—a member of the unincorporated body, or an employee or agent of the unincorporated body; or
- (d) for an individual—an employee or agent of the individual.

94 Application of prohibitions under part 4, 6 or 7

- (1) This section applies in relation to a provision of part 4, 6 or 7 that prohibits a person from engaging in discrimination, sexual harassment, vilification, victimisation or other conduct.
- (2) The provision applies to the person and each representative of the person.
- (3) Any exception, exemption, defence or excuse applying to the person also applies to the representative of the person while the representative is acting for the person.

95 Treatment of partnerships and unincorporated bodies

- (1) Subject to this section, this Act applies in relation to a partnership or unincorporated body as if the partnership or unincorporated body were a corporation.
- (2) A duty or liability that would otherwise be imposed by this Act on a partnership or unincorporated body is imposed on each partner of the partnership or each member of the unincorporated body.
- (3) An amount that would otherwise be payable under this Act by a partnership or unincorporated body is jointly and severally payable by the partners of the partnership or the members of the unincorporated body.

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- (4) An offence against a provision of this Act that would otherwise be committed by a partnership or unincorporated body is taken to have been committed by each partner of the partnership or each member of the unincorporated body.
 - (5) However, it is a defence for a partner of a partnership or member of an unincorporated body to prove—
 - (a) if the partner or member was in a position to influence the conduct of the partnership or unincorporated body in relation to the offence—the partner or member exercised reasonable diligence to ensure the partnership or unincorporated body complied with the provision; or
 - (b) the partner or member was not in a position to influence the conduct of the partnership or unincorporated body in relation to the offence.

96 Responsibility for acts or omissions of representatives

- (1) An act done or omitted to be done in contravention of this Act by a representative of a person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, and—
 - (a) both the person and the representative are jointly and severally civilly liable for the contravention; and
 - (b) a proceeding under this Act for the contravention may be taken against either or both.
- (2) It is a defence to a proceeding for a contravention of this Act against a person arising from an act or omission of a representative of the person, if the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (3) If, in a proceeding for a contravention of this Act, it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
 - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

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- (b) the representative had the state of mind.
- (4) In this section—
state of mind of a person includes—
 - (a) the person’s knowledge, intention, opinion, belief or purpose; and
 - (b) the person’s reasons for the intention, opinion, belief or purpose.

Part 9 **Complaints about contraventions of Act**

Division 1 **Preliminary**

97 **Application of part**

This part does not apply in relation to a contravention or an alleged contravention of the general duty.

98 **Commissioner’s functions**

The commissioner’s functions under this part include—

- (a) to consider and, if appropriate, inquire into complaints about alleged contraventions of this Act; and
- (b) to provide services to facilitate resolution of complaints about alleged contraventions of this Act accepted by the commissioner.

99 **Who is the *complainant* for a complaint**

The *complainant* for a complaint is—

- (a) for a complaint made by a relevant body as provided under section 103—the relevant body; or

- (b) for a complaint made by an interested body as provided under section 104—a person named in the complaint as a person on whose behalf the complaint is being made; or
- (c) for a representative complaint—the person who made the complaint; or
- (d) otherwise—the person who made the complaint or on whose behalf the complaint is made.

Division 2 Making a complaint generally

100 Period within which complaint may be made

The period for making a complaint (the *complaint period*) is within 2 years after—

- (a) the alleged contravention of this Act to which the complaint relates happened; or
- (b) if the complainant was a child when the alleged contravention of this Act to which the complaint relates happened—the child turns 18.

101 Who may make a complaint

- (1) Any of the following may make a complaint for an alleged contravention of this Act—
 - (a) a person the subject of the alleged contravention or, if the person is a child—
 - (i) the child; or
 - (ii) the child’s parent;
 - (b) an agent of the person;
 - (c) a person authorised in writing by the commissioner to make the complaint for the person;
 - (d) a relevant body as provided under section 103;

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- (e) an interested body as provided under section 104.
- (2) For subsection (1)(c), the commissioner may authorise a person to make a complaint for a person if satisfied the person can not make the complaint.

Note—

See also section 140.

102 Joint complaints

Two or more persons may jointly make a complaint.

103 Complaint by relevant body about vilification

- (1) A relevant body may make a complaint for an alleged contravention of section 84 or 85.
- (2) However, the commissioner may accept a relevant body's complaint about an alleged contravention of section 84 or 85 only if the commissioner is satisfied—
 - (a) the complaint is made in good faith; and
 - (b) the alleged contravention is about conduct that has affected or is likely to affect represented persons for the relevant body; and
 - (c) it is in the interests of justice to accept the complaint.
- (3) In this section—

relevant body means a body corporate or an unincorporated body whose primary purpose is, or whose primary purposes include, the promotion of the interests or welfare of persons of a particular age, gender identity, race, religion, sex or sexual orientation or with a particular disability or particular sex characteristics.

represented persons, for a relevant body, means persons the promotion of whose interests or welfare is a primary purpose of the relevant body.

104 Complaint by interested body on behalf of 1 or more complainants

- (1) An interested body may make a complaint about an alleged contravention of this Act on behalf of 1 or more named persons if—
 - (a) each named person—
 - (i) is entitled to make a complaint under section 101(1)(a) about the alleged contravention; and
 - (ii) has consented to the complaint being made by the body on the person’s behalf; and
 - (b) if the complaint is made on behalf of more than 1 person, the alleged contravention relates to, or arises out of, the same conduct.
- (2) In this section—

interested body, in relation to a complaint, means a body corporate or unincorporated body that has an interest in the complaint because—

 - (a) the body represents the interests or welfare of a group of persons with a protected attribute; and
 - (b) the conduct constituting the alleged contravention to which the complaint relates is a matter of genuine concern to the body because of the way conduct of that nature adversely affects or has the potential to adversely affect the interests of the body or the interests or welfare of the persons it represents.

105 Complaints by dismissed workers

- (1) This section applies to a worker who is dismissed in circumstances entitling the worker to—
 - (a) make a complaint; and
 - (b) apply for industrial relief.
- (2) If, in relation to the circumstances, the worker makes a complaint and the complaint is accepted before the worker

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applies for industrial relief, the worker may only proceed with the complaint and may not later apply for industrial relief in relation to the circumstances.

- (3) If, in relation to the circumstances, the worker applies for industrial relief before making a complaint or before a complaint is accepted, the worker may proceed with both the complaint and the application for industrial relief, but the tribunal may not make an order in relation to the complaint requiring the reinstatement or re-employment of the worker.
- (4) In this section—

industrial relief means relief under the *Industrial Relations Act 2016*, chapter 8, part 2.

106 Complaint may allege more than 1 contravention

A complaint may be made in relation to more than 1 alleged contravention of this Act.

Example—

C applies to real estate agent R to rent a house and is asked to fill out a form which includes a question about C's country of birth. C is not offered a house, and believes this is on the basis of C's national origin. C may make a complaint about being required to answer a question about C's national origin contrary to section 92 (Unnecessary information), or a complaint about unlawful discrimination under section 46 (Providing accommodation), or both.

107 Form of complaint

- (1) A complaint made to the commissioner must—
 - (a) be in writing; and
 - (b) state the complainant's name and address for service; and
 - (c) include enough details to indicate the alleged contravention to which the complaint relates.
- (2) If the commissioner is satisfied the complainant needs help to put the complaint in writing, the commissioner must give

reasonable help to the complainant to put the complaint in writing.

Division 3 Representative complaints

108 Who may make representative complaint

- (1) A person may make a complaint, for an alleged contravention of this Act, as a representative complaint on behalf of a class of persons of which the person is a member if—
 - (a) all members of the class may make a complaint under section 101 about the alleged contravention; and
 - (b) all of the complaints the members of the class may make under section 101 about the alleged contravention—
 - (i) relate to, or arise out of, conduct of the same person; and
 - (ii) relate to, or arise out of, the same, similar or related circumstances; and
 - (iii) give rise to a substantial common issue of law or fact.
- (2) A complaint may be made under subsection (1) on behalf of a class of persons without the consent of all members of the class.
- (3) The commissioner may accept a complaint that does not satisfy subsection (1) as a representative complaint if the commissioner is satisfied—
 - (a) the complaint was made as a representative complaint in good faith; and
 - (b) it is in the interests of justice that the matter be dealt with as a representative complaint.

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109 Additional requirements for form of representative complaint

- (1) A representative complaint must—
 - (a) describe or otherwise identify the members of the class of persons for which the complaint is made; and
 - (b) specify the nature of the complaints made on behalf of the members of the class; and
 - (c) specify the nature of the relief sought.
- (2) In describing or otherwise identifying the members of the class of persons, it is not necessary to name them or specify how many there are.

110 Effect of representative complaint on persons who are members of the class represented

A person who is a member of a class of persons for which a representative complaint is made—

- (a) may, by written notice given to the commissioner at any time before the complaint is accepted, opt out of the representative complaint; and
- (b) is not entitled to make a separate complaint in relation to the conduct constituting the alleged contravention of this Act to which the representative complaint relates, unless the person opts out under paragraph (a).

111 Effect of representative complaint on persons who are not members of the class represented

The making of a representative complaint in relation to an alleged contravention of this Act does not prevent a person who is not a member of the class of persons for which the representative complaint is made making a complaint in relation to the conduct constituting the alleged contravention.

112 Complaint may be amended to be a representative complaint

If the commissioner is satisfied that a complaint made by or on behalf of a number of persons could be dealt with as a representative complaint if the persons on whose behalf the complaint is made are increased, reduced or otherwise altered, the commissioner may amend the complaint so that the complaint can be dealt with as a representative complaint.

113 Representative complaint may be amended to be a non-representative complaint

- (1) This section applies if the commissioner is satisfied—
 - (a) that a complaint has been wrongly made as a representative complaint; or
 - (b) it is in the interests of justice that the matter the subject of a complaint made as a representative complaint be dealt with other than as a representative complaint because—
 - (i) the complaint will not provide an efficient and effective way of dealing with the complaints of the class members for the complaint; or
 - (ii) the complainant is not able to adequately represent the interests of the class members for the complaint.
- (2) The commissioner may amend the complaint by removing the names of any persons on whose behalf the complaint is made so that the complaint can be dealt with as a complaint other than as a representative complaint.

114 Commissioner may give directions

The commissioner may give directions about the conduct of a representative complaint while it is being dealt with by the commissioner.

[s 115]

Division 4 Dealing with complaint

115 Preliminary inquiries

The commissioner may make preliminary inquiries about a complaint to decide how to deal with the complaint under this division.

116 Commissioner must not deal with particular complaints

- (1) The commissioner must not deal with, or continue to deal with, a complaint that the commissioner considers is—
 - (a) frivolous, trivial or vexatious; or
 - (b) misconceived or lacking in substance.

Notes—

- 1 See section 121 for the requirement that the commissioner give written notice of not dealing with, or continuing to deal with, the complaint.
 - 2 Under section 122, a complaint to which this section applies lapses and the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint.
- (2) Subsection (3) applies if, after a complaint is accepted and before the complaint is referred to the tribunal, the commissioner is considering not to continue to deal with the complaint under subsection (1).
 - (3) Before the commissioner decides not to continue to deal with the complaint, the commissioner must give the complainant an opportunity to show, within a period of at least 14 days, to the commissioner's satisfaction that the complaint is not frivolous, trivial, vexatious, misconceived or lacking in substance.

117 Commissioner may decide not to deal with complaint

- (1) The commissioner may decide not to deal with, or continue to deal with, a complaint if—

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- (a) the complaint was not made to the commissioner within the complaint period; or
 - (b) the commissioner considers the alleged contravention the subject of the complaint has been appropriately dealt with by a court or tribunal; or
 - (c) the commissioner considers the alleged contravention the subject of the complaint would be more appropriately dealt with by a court or tribunal; or
 - (d) there are concurrent proceedings in a court or tribunal in relation to the alleged contravention the subject of the complaint; or
 - (e) the commissioner considers there are insufficient details to indicate the alleged contravention the subject of the complaint; or
 - (f) having regard to all the circumstances, the commissioner considers it is not appropriate to deal with, or continue to deal with, the complaint.

Notes—

- 1 See section 121 for the requirement that the commissioner give written notice of not dealing with, or continuing to deal with, the complaint.
 - 2 Under section 122, a complaint to which this section applies lapses and the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint.
- (2) If subsection (1)(a) applies, the commissioner may decide to deal with the complaint if the commissioner considers there are exceptional circumstances and it is in the interests of justice to do so, having regard to the following matters—
- (a) the reason for the complaint being made after the complaint period ended;
 - (b) the impact that not dealing with the complaint may have on the complainant or another person on whose behalf the complaint is made;
 - (c) the impact that dealing with the complaint may have on the respondent.

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- (3) If subsection (1)(d) applies, the commissioner may decide to stay the complaint instead of deciding not to deal with, or continue to deal with, the complaint.
- (4) A time limit for doing anything under this Act in relation to a complaint does not run while a complaint is stayed.

118 Dealing with complaint under Human Rights Act 2019

- (1) This section applies if the commissioner considers a complaint made to the commissioner under this Act would be more appropriately dealt with by the commission as a complaint about an alleged contravention of the *Human Rights Act 2019*.
- (2) The commissioner may, with the consent of the complainant, deal with the complaint under the *Human Rights Act 2019* as an alleged contravention of that Act.
- (3) For dealing with the complaint as mentioned in subsection (2), the complaint—
 - (a) is taken to be a complaint about an alleged contravention of the *Human Rights Act 2019* that is accepted by the commissioner under section 76 of that Act; and
 - (b) is taken to be made on the day the complaint was made under this Act.

119 Complainant may withdraw complaint

- (1) The complainant may give the commissioner written notice stating that the complainant wishes to withdraw the complaint.
- (2) The commissioner may give the complainant an opportunity to decide to continue with the complaint before deciding to accept the withdrawal.
- (3) If the commissioner accepts the withdrawal, the commissioner—
 - (a) must not continue to deal with the complaint; and

- (b) must give the complainant and respondent written notice that the complaint has been withdrawn.

Note—

Under section 122, a complaint to which this subsection applies lapses and the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint.

- (4) However, the commissioner need not give notice of the withdrawal to the respondent if the commissioner considers it is not appropriate in the circumstances to do so.

Example of circumstances for subsection (4)—

The respondent is not aware of the complaint or has not been contacted by the commissioner in relation to the complaint.

120 Commissioner may withdraw complaint on behalf of complainant

- (1) This section applies if the commissioner considers the complainant for a complaint may have lost interest in continuing with the complaint.
- (2) The commissioner may, by written notice, ask the complainant to confirm within a stated reasonable period whether or not the complainant wishes to continue with the complaint.
- (3) If, within the time stated in the notice, the complainant confirms that the complainant no longer wishes to continue with the complaint, the commissioner—
- (a) must not continue to deal with the complaint; and
- (b) must give the complainant and respondent written notice that the complaint has been withdrawn.
- (4) If the complainant does not respond to the commissioner's notice within the time stated in the notice, the commissioner must not continue to deal with the complaint.

Notes—

- 1 See section 121 for the requirement that the commissioner give written notice of not continuing to deal with the complaint under subsection (4).

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- 2 Under section 122, a complaint to which subsection (3) or (4) applies lapses and the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint.

121 Notice about not dealing with a complaint

- (1) This section applies if the commissioner decides not to deal with, or continue to deal with, a complaint—
 - (a) under section 117; or
 - (b) because section 116 or 120(4) applies in relation to the complaint.
- (2) The commissioner must give the complainant and respondent a written notice stating—
 - (a) the decision; and
 - (b) the reasons for the decision; and
 - (c) the effect of section 122; and
 - (d) for a decision that may be reviewed under part 14, division 3—information about how and when a person may apply for a review under that division.
- (3) However, the commissioner need not give notice of the decision to the respondent if the commissioner considers it is not appropriate in the circumstances to do so.

Example of circumstances for subsection (3)—

The respondent is not aware of the complaint or has not been contacted by the commissioner in relation to the complaint.

122 Complaint not dealt with lapses

If the commissioner does not deal with, or stops dealing with, a complaint under this division—

- (a) the complaint lapses; and
- (b) the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint.

123 Acceptance of complaint by commissioner

- (1) If the commissioner decides to accept a complaint, the commissioner must give the complainant and respondent notice of the acceptance.
- (2) The notice must state—
 - (a) the role of the commissioner in trying to resolve the complaint; and
 - (b) the powers the commissioner may exercise in trying to resolve the complaint.
- (3) The notice given to the respondent must also state—
 - (a) the substance of the complaint; and
 - (b) that the respondent will be given an opportunity to make submissions in writing in response to the complaint; and
 - (c) that the respondent must advise the commissioner of the respondent's address for service; and
 - (d) that the commissioner may seek information or documents from the respondent in relation to the complaint.

124 Commissioner may ask or direct relevant person to give information

- (1) This section applies in relation to the commissioner for making preliminary inquiries under section 115 or dealing with a complaint under this part.
- (2) The commissioner may, by written notice given to a relevant person, ask or direct the person to give the commissioner information about the complaint within the reasonable period stated in the notice.
- (3) The notice must state the purpose for making the request or giving the direction.
- (4) For information in an electronic document, compliance with the request or direction requires the giving of a clear written reproduction of the information.

[s 125]

- (5) The relevant person must comply with a direction unless the person has a reasonable excuse.
- (6) It is a reasonable excuse for a relevant person to fail to comply with a direction because, for example, complying with the direction—
 - (a) would require the person to disclose information that is the subject of legal professional privilege; or
 - (b) for an individual—might tend to incriminate the individual or make the individual liable to a penalty.
- (7) The commissioner may enforce a direction by filing a copy of the direction with a court of competent jurisdiction.
- (8) The direction is then enforceable as if it were an order of the court.
- (9) In this section—
 - information* includes a document.
 - relevant person*, for a complaint, means—
 - (a) the complainant or respondent; or
 - (b) for a representative complaint, a class member for the complaint; or
 - (c) another person the commissioner considers has information relevant to the complaint in the person's possession or control.

125 Timeframe for dealing with complaint

The commissioner must use the commissioner's best endeavours to finish dealing with a complaint within 12 months after the complaint is made.

Note—

See, however, section 127 in relation to requesting the complaint to be referred to the tribunal if the commissioner has not finished dealing with it within 6 months after the commissioner accepts the complaint.

126 Complaint not able to be resolved

- (1) If the commissioner believes that a complaint accepted by the commissioner can not be resolved by dispute resolution under division 5, the commissioner must promptly tell the complainant and the respondent by written notice.
- (2) The obligation in subsection (1) arises whether or not dispute resolution has been attempted.
- (3) Within 28 days after the written notice is given or a longer period agreed by the commissioner under subsection (6), the complainant may, by written notice, require the commissioner to refer the complaint to—
 - (a) if the complaint is or includes a work-related matter—the IRC; or
 - (b) otherwise—QCAT.

Note—

If the complaint includes a work-related matter and a matter other than a work-related matter, the complaint must be referred to the IRC. However, the IRC may transfer the complaint to QCAT under section 201.

- (4) The commissioner must promptly—
 - (a) refer the complaint to the IRC or QCAT; and
 - (b) give the respondent a copy of the complaint.
- (5) The complainant is the applicant for the purposes of the relevant tribunal Act.

Note—

If the complainant does not give written notice under subsection (3), the commissioner finishes dealing with the complaint—see section 139(e).

- (6) The commissioner may agree to a longer period for subsection (3) if—
 - (a) the complainant asks the commissioner, in writing, for an extension within the 28-day period mentioned in the subsection; and
 - (b) the commissioner considers—
 - (i) there are reasonable grounds for the request; and

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- (ii) the extension will not cause undue hardship to the respondent.
- (7) If the commissioner gives notice under subsection (1) for a complaint, section 127 does not apply, or stops applying, in relation to the complaint.

127 Complainant or respondent may seek referral after 6 months

- (1) If the commissioner has not finished dealing with a complaint 6 months after accepting the complaint, either the complainant or the respondent may, by written notice, request the commissioner to refer the complaint to—
 - (a) if the complaint is or includes a work-related matter—the IRC; or
 - (b) otherwise—QCAT.

Note—

If the complaint includes a work-related matter and a matter other than a work-related matter, the complaint must be referred to the IRC. However, the IRC may transfer the complaint to QCAT under section 201.

- (2) The commissioner may defer acting on a request for up to 28 days, if there is a significant prospect that the matter can be resolved by dispute resolution under division 5 within that period.
- (3) If the matter is not resolved at the end of 28 days, the procedures in subsection (4) or (5) apply.
- (4) If the respondent requests the commissioner to refer the complaint—
 - (a) the commissioner must ask the complainant whether the complainant agrees to the complaint being referred; and
 - (b) if the complainant agrees in writing—the commissioner must refer the complaint to the IRC or QCAT; and
 - (c) if the complainant does not agree in writing within 28 days—the complaint lapses, and the complainant can

not make a further complaint relating to the alleged contravention the subject of the complaint; and

- (d) the commissioner may extend the 28-day period, but only if the complainant asks, in writing, for an extension before the 28 days have passed.
- (5) If the complainant requests the commissioner, in writing, to refer the complaint, the commissioner must comply.
- (6) If the commissioner refers the complaint to the IRC or QCAT, the commissioner must promptly give the respondent a copy of the complaint.
- (7) The complainant is the applicant for the purposes of the relevant tribunal Act.

Division 5 Dispute resolution

Subdivision 1 General provisions

128 Principles for dispute resolution

The following principles apply in relation to a complaint accepted by the commissioner—

- (a) dispute resolution should be provided for the complaint as early as possible;
- (b) the type of dispute resolution provided for the complaint should be appropriate to the nature of the complaint;
- (c) the dispute resolution process provided for the complaint should be fair to all parties;
- (d) dispute resolution for the complaint should be consistent with the purposes of this Act.

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129 Action to be taken for dispute resolution

- (1) If the commissioner accepts a complaint, the commissioner must take action the commissioner considers appropriate to provide dispute resolution for the complaint.
- (2) Without limiting subsection (1), the commissioner may—
 - (a) ask the respondent to make submissions to the commissioner in writing in response to the complaint; or
 - (b) give the complainant a copy of the respondent's submissions; or
 - (c) ask or direct the complainant or respondent to give the commissioner information relevant to the complaint, including under section 124; or
 - (d) make enquiries of, and discuss the complaint with, the complainant and the respondent; or
 - (e) facilitate discussions between the complainant and the respondent; or
 - (f) give information or advice to the respondent about how to comply with this Act; or
 - (g) cause the complaint to be conciliated under subdivision 2.
- (3) The commissioner may take action to provide dispute resolution in the way the commissioner considers appropriate, including, for example—
 - (a) by communicating with the complainant or respondent in person or by telephone, email or another electronic means; and
 - (b) by engaging with the complainant and respondent separately or together or by using an intermediary to engage with the complainant and respondent.

Subdivision 2 Conciliation

130 Commissioner may conduct conciliation conference

If the commissioner accepts a complaint, the commissioner may conduct a conference (a *conciliation conference*) under this subdivision for the purpose of conciliating the complaint.

131 Purpose of conciliation

The purpose of conciliation of a complaint is to promote the resolution of the complaint in a way that is informal, quick and efficient.

132 Attendance at conciliation conference

- (1) The commissioner may invite any of the following persons to take part in a conciliation conference—
 - (a) the complainant or respondent;
 - (b) for a representative complaint, a class member for the complaint;
 - (c) a person who the commissioner considers may be able to give information relevant to the conciliation of the complaint;
 - (d) a person whose presence at the conference the commissioner considers is likely to be conducive to the conciliation of the complaint.
- (2) The commissioner may, by written notice, direct a person mentioned in subsection (1) to take part in a conciliation conference, whether or not the person was invited to take part in the conciliation conference under the subsection.
- (3) The commissioner may enforce the direction by filing a copy of it with a court of competent jurisdiction.
- (4) The direction is then enforceable as if it were an order of the court.

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133 Party fails to attend conciliation conference

- (1) If a complainant, without reasonable excuse, does not comply with a direction to attend a conciliation conference, the commissioner may, by written notice, dismiss the complaint and direct the complainant to pay costs to the respondent.
- (2) If a respondent, without reasonable excuse, does not comply with a direction to attend a conciliation conference, the commissioner may, by written notice, direct the respondent to pay costs to the complainant.
- (3) A party may enforce a direction as to costs by filing a copy of it with a court of competent jurisdiction.
- (4) The direction is then enforceable as if it were an order of the court.

134 Representation

- (1) A person may be represented by a person (a *representative*) at a conciliation conference only with the commissioner's consent.
- (2) The commissioner may give consent for subsection (1) if satisfied—
 - (a) it is appropriate in the circumstances for the person to be represented; and
 - (b) the person's representation by the representative would help the conciliation; and
 - (c) the representative has sufficient knowledge of matters relating to the complaint to effectively represent the person.
- (3) The commissioner may—
 - (a) give the consent on conditions the commissioner considers reasonable; and
 - (b) withdraw the consent if the person or the representative does not comply with the conditions.

135 Use of interpreters and other persons

A person may be helped at a conciliation conference by—

- (a) an interpreter; or
- (b) another person necessary or desirable to make the conciliation conference intelligible to the person, including, for example, a person with appropriate cultural or social knowledge and experience.

136 Conduct of conciliation conference

- (1) In conducting a conciliation conference, the commissioner—
 - (a) must take all reasonable steps to ensure the conduct of the conference does not disadvantage the complainant or respondent or, for a representative complaint, a class member for the complaint; and
 - (b) is not bound by the rules of evidence.
- (2) A conciliation conference must be held in private.
- (3) Subject to subsections (1) and (2), a conciliation conference is to be conducted in the way the commissioner considers appropriate, including, for example—
 - (a) by the commissioner hearing from the complainant and respondent separately in separate rooms; and
 - (b) by teleconferencing, videoconferencing or another form of communication that allows persons taking part in the conference to hear and take part in discussions as they happen.

137 Confidentiality of conciliation conference

Nothing said or done in the course of a conciliation conference for a complaint is admissible in any criminal, civil or administrative proceeding, unless the complainant and respondent agree.

Division 6 Action on dealing with complaint

138 Resolution of complaint

- (1) If a complaint is resolved by dispute resolution under this part, either the complainant or respondent may ask the commissioner to make a record of the agreement.
- (2) If the complainant or respondent makes the request, the commissioner must make a record of the agreement and have the record signed by the complainant and the respondent.
- (3) The commissioner must provide a copy of the record of the agreement to each party and file the record with the tribunal.
- (4) The agreement is then enforceable as if it were an order of the tribunal.

139 End of dealing with complaint

The commissioner finishes dealing with a complaint if and when—

- (a) the commissioner stops dealing with the complaint under division 3 or section 140(3); or
- (b) the complainant and respondent give the commissioner written notice of their agreement to resolve the complaint; or
- (c) the complaint is resolved during or at the end of a conciliation conference held under division 5, subdivision 2; or
- (d) the complaint is resolved by dispute resolution under this part and the commissioner files a record of the agreement between the complainant and respondent with the tribunal under section 138; or
- (e) the period within which the complainant may require the complaint to be referred to the tribunal under section 126(3) passes without the complainant requiring the complaint to be referred; or

- (f) the respondent asks for the complaint to be referred to the tribunal under section 127 and the complainant does not agree to the referral within the time allowed under section 127(4); or
- (g) the commissioner refers the complaint to the tribunal under section 126 or 127.

Division 7 Other provisions about complaints

140 Commissioner may withdraw authorisation

- (1) The commissioner may, by written notice, withdraw an authorisation under section 101(1)(c) if the commissioner believes there is good reason to do so.
- (2) The commissioner may, by written notice, authorise another person to act on behalf of the complainant.
- (3) If the commissioner does not act under subsection (2) and no further authorisation is requested by the complainant within 28 days after the withdrawal under subsection (1)—
 - (a) the complaint lapses, and the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint; and
 - (b) the commissioner must—
 - (i) stop dealing with the complaint; and
 - (ii) tell the complainant and the respondent in writing that the complaint has lapsed.
- (4) Subsection (3) does not apply if the complainant notifies the commissioner that the complainant will continue with the complaint personally.

141 Commissioner may extend time limits

- (1) The commissioner may extend a time limit specified in this part for the doing of anything, whether by a party or the commissioner, if the commissioner believes that—

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- (a) the extension will not cause undue hardship to any party; and
 - (b) there are reasonable grounds for granting the extension.
- (2) In this section, a reference to a party in relation to a representative complaint includes a reference to a class member for the complaint.

142 Applications for orders protecting complainant's interests (before reference to tribunal)

- (1) At any time before a complaint is referred to the tribunal, the complainant or the commissioner may apply, as provided under the relevant tribunal Act, to the tribunal for an order prohibiting a person from doing an act that might prejudice—
- (a) dispute resolution of the complaint under this part; or
 - (b) an order that the tribunal might make after a hearing.
- (2) A party or the commissioner may apply, as provided under the relevant tribunal Act, to the tribunal for an order varying or revoking an order made under subsection (1).
- (3) If the tribunal is satisfied it is in the interests of justice, an application for an order under subsection (1) may be heard in the absence of the respondent to the application.

Part 10 Commission's compliance functions

Division 1 Education and research

143 Commission's educative functions

The commission must establish and undertake education and training programs about—

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- (a) the importance of equality and non-discrimination in society; and
 - (b) how the duties and prohibitions under this Act, particularly the duties under part 3, promote equality and non-discrimination in society; and
 - (c) how persons may comply with the duties and prohibitions under this Act, particularly the duties under part 3; and
 - (d) how persons may make complaints under this Act; and
 - (e) how complaints under this Act are dealt with under this Act; and
 - (f) any other matter about compliance with this Act the commission considers appropriate.

144 Commission's research functions

- (1) The commission may undertake research into any matter arising from, or incidental to, the operation of this Act that it considers would help achieve the purposes of this Act.
- (2) The commission may conduct reviews into policies, programs, procedures, practices and services used by entities to identify non-compliance issues of a systemic nature generally.

145 Report on matter arising from research

- (1) The commissioner may prepare, and give to the Minister, a report about a matter arising from the performance of the commission's function under section 144.
- (2) A report prepared under subsection (1)—
 - (a) 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

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- (b) must not include an adverse comment about a person unless—
 - (i) the person has been given an opportunity to make submissions in relation to the adverse comment; and
 - (ii) the person's submissions are fairly stated in the report.
- (3) For subsection (2)(b), an adverse comment does not include a statement that a respondent did not participate in resolving a complaint.
- (4) If the Minister is given a report under subsection (1), the Minister must table the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

Division 2 Guidelines

146 Commission guidelines

- (1) The commission—
 - (a) must issue guidelines about each of the following—
 - (i) how persons may comply with the duty under section 18;
 - (ii) how persons may comply with the general duty; and
 - (b) may issue guidelines on any other matter relating to this Act.
- (2) In preparing guidelines, the commission must consult with persons or bodies that the commission considers represent the areas or persons to whom the guidelines will relate.
- (3) The guidelines under subsection (1)(a)(ii) must be issued at least 6 months before part 12 starts to apply in relation to the general duty.

Note—

See section 260 in relation to when part 12 starts to apply in relation to the general duty.

147 Effect of guidelines

Guidelines under this division are not legally binding but a court or the tribunal may consider evidence of compliance with the guidelines if relevant to any matter before the court or tribunal under this Act.

148 Publication of guidelines

The commission must publish any guidelines issued under this division—

- (a) on the commission's website; and
- (b) in any other way the commission considers appropriate.

Division 3 Compliance reviews and action plans

149 Commission may conduct review of compliance

- (1) On request of a person, the commission may enter into an agreement with the person to review that person's programs and practices to determine their compliance with this Act (a *compliance review*).
- (2) An agreement for a compliance review may provide for payment of the commission's reasonable costs of conducting the review.
- (3) If, after conducting a compliance review, the commission gives the person advice about whether programs or practices are compliant with this Act, the giving of that advice does not give rise to—
 - (a) any liability of, or other claim against, the commission; or

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- (b) any right, expectation, duty or obligation that would not otherwise be conferred or imposed on the person who has been given the advice; or
- (c) any defence that would not otherwise be available to that person.

150 Report about compliance

- (1) With the consent of a person, the commission may publish a report about the steps taken by the person to comply with this Act.
- (2) The commission may publish the report—
 - (a) on the commission's website; and
 - (b) in any other way the commission considers appropriate.

151 Action plans

- (1) A person may prepare an action plan that specifies steps necessary to improve compliance with this Act.
- (2) The commission may—
 - (a) provide advice about preparing and implementing action plans; and
 - (b) set minimum requirements for action plans.
- (3) An agreement between the commission and a person for the commission's advice about the person's action plan may provide for payment of the commission's reasonable costs of providing the advice.
- (4) An action plan is not legally binding, but a court or the tribunal may consider an action plan if relevant to any matter before the court or tribunal under this Act.

152 Register of action plans

- (1) A person who prepares an action plan may give a copy of the action plan to the commission.

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- (2) The commission may include the action plan in a register of action plans.
 - (3) The commission must make the register of action plans available on the commission's website and may publish the register in any other way the commission considers appropriate.

Part 11 Opinions

153 Commissioner may seek tribunal opinion

If a person asks the commissioner for advice about how this Act applies in a specific situation, the commissioner may ask the tribunal for its opinion.

154 Constitution of tribunal for this part

For the purpose of providing an opinion under this part, the tribunal must be constituted by—

- (a) if the tribunal is the IRC—a member of the Industrial Court of Queensland; or
- (b) if the tribunal is QCAT—a judicial member.

155 Tribunal has discretion

The tribunal has a discretion whether or not to provide an opinion.

156 Tribunal may request further information

If the tribunal decides to provide an opinion, it may require the person who requested the advice to provide information relevant to the matter.

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157 No complaint if compliance with opinion

A person may not make a complaint under this Act against a person acting in accordance with an opinion provided by the tribunal in response to a request for advice from the person.

158 Revocation of opinion

The tribunal may revoke an opinion if—

- (a) it formed the opinion on the basis of false or misleading information; or
- (b) the Supreme Court or the High Court makes a contrary ruling on a question of law covered by the opinion.

159 Appeal from opinion

- (1) The commissioner, or a person with a relevant interest, may appeal, as provided under the relevant tribunal Act, against a tribunal opinion.
- (2) For an appeal by a person with a relevant interest, the person is taken to have been a party to the proceeding for the opinion.

Part 12 Investigations

Division 1 Starting investigation

160 Commissioner may conduct investigation

The commissioner may conduct an investigation into a matter relating to this Act if the commissioner believes on reasonable grounds—

- (a) the matter—
 - (i) raises an issue that is serious in nature; and
 - (ii) relates to a class or group of persons; and

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- (iii) cannot reasonably be expected to be resolved by a complaint under part 9; and
 - (b) that 1 or more contraventions of this Act may have happened in relation to the matter; and
 - (c) the investigation would help achieve the purposes of this Act.

161 Commissioner must notify person about investigation

- (1) This section applies if an investigation under this part relates to a particular person.
- (2) The commissioner must notify the person of the investigation.
- (3) The notice must—
 - (a) be in writing; and
 - (b) invite the person to make submissions in relation to the investigation within a stated reasonable time.

Division 2 Conduct of investigation

162 Conduct of investigation generally

The commissioner may conduct an investigation under this part in the way the commissioner considers appropriate.

163 Power to require information or document

- (1) If the commissioner considers a person may have information relevant to an investigation under this part, the commissioner may, by written notice, direct the person—
 - (a) to give the commissioner the information within a stated reasonable time; or
 - (b) to attend before the commissioner at a stated reasonable time and place to give the information to the commissioner.

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- (2) For information in an electronic document, compliance with the direction requires the giving of a clear written reproduction of the information.
- (3) The person must comply with the direction unless the person has a reasonable excuse.
- (4) It is a reasonable excuse for the person to fail to comply with the direction because, for example, complying with the direction—
 - (a) would require the person to disclose information that is the subject of legal professional privilege; or
 - (b) for an individual—might tend to incriminate the individual or make the individual liable to a penalty.
- (5) The commissioner may enforce the direction by filing a copy of it with a court of competent jurisdiction.
- (6) The direction is then enforceable as if it were an order of the court.
- (7) A person who attends before the commissioner under subsection (1)(b) is entitled to be paid by the commission an amount equivalent to the amount the person would receive under the *Supreme Court of Queensland Act 1991* if the person's attendance before the commissioner were attendance in a Magistrates Court as a witness.
- (8) In this section—
information includes a document.

Division 3 Outcome of investigation

164 Commissioner's action after investigation

After conducting an investigation under this part, the commissioner may do 1 or more of the following—

- (a) decide to take no further action;

- (b) prepare a report about the investigation and give the report to the Minister under section 165;
- (c) help a person to whom the investigation relates to prepare an undertaking for the purposes of section 166;
- (d) accept an undertaking from a person to whom the investigation relates under section 166;
- (e) give a compliance notice to a person to whom the investigation relates under section 168.

165 Report on investigation

- (1) The commissioner may prepare, and give to the Minister, a report about an investigation under this part.
- (2) A report prepared under subsection (1)—
 - (a) 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
 - (b) must not include an adverse comment about a person unless—
 - (i) the person has been given an opportunity to make submissions in relation to the adverse comment; and
 - (ii) the person's submissions are fairly stated in the report.
- (3) For subsection (2)(b), an adverse comment does not include a statement that a respondent did not participate in resolving a complaint.
- (4) If the Minister is given a report under subsection (1), the Minister must table the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

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166 Undertakings

- (1) This section applies if, after conducting an investigation under this part, the commissioner considers a person has contravened, is contravening, or is likely to contravene a provision of part 3, 4, 6 or 7.
- (2) The commissioner may accept a written undertaking from the person under which the person undertakes to take, to stop taking, or not to take, stated action to comply with the provision.
- (3) If the commissioner refuses to accept a written undertaking from the person, the commissioner must give the person a written notice stating the commissioner's decision not to accept the undertaking and the reasons for the decision.
- (4) The commissioner and person may agree to amend an undertaking at any time.

167 Compliance with undertaking

- (1) This section applies if the commissioner has accepted an undertaking from a person under section 166.
- (2) If the person fails to comply with the undertaking—
 - (a) the commissioner may apply to the tribunal to enforce the undertaking; and
 - (b) the tribunal may make an order requiring the person to comply with the undertaking.

Note—

See the *Industrial Relations Act 2016*, section 544 in relation to enforcing orders of the IRC and the QCAT Act, section 132 in relation to enforcing orders of QCAT that are not monetary decisions.

- (3) If the person fails, or continues to fail, to comply with the undertaking after an order is made under subsection (2), the commissioner may withdraw the commissioner's acceptance of the undertaking.

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- (4) Before withdrawing the commissioner's acceptance of the undertaking under subsection (3), the commissioner must give the person an opportunity to show, within a period of at least 14 days, to the commissioner's satisfaction that the person is complying with the undertaking.

168 Compliance notices

- (1) This section applies if—
- (a) after conducting an investigation under this part, the commissioner considers a person has contravened, is contravening, or is likely to contravene a provision of part 3, 4, 6 or 7 (the *relevant provision*); and
 - (b) either—
 - (i) the person has not offered an undertaking acceptable to the commissioner in relation to the contravention or likely contravention; or
 - (ii) the commissioner accepted an undertaking in relation to the contravention or likely contravention under section 167 but—
 - (A) the person has failed to comply with the undertaking as required by an order under section 167(2)(b); and
 - (B) the commissioner has withdrawn the commissioner's acceptance of the undertaking under section 167.
- (2) The commissioner may issue a written notice (a *compliance notice*) to the person requiring the person to take, to stop taking, or not to take, stated action to comply with the relevant provision.
- (3) The compliance notice must state—
- (a) the name of the person to whom the notice is issued; and
 - (b) the basis on which the commissioner considers the person has contravened, is contravening, or is likely to contravene the relevant provision; and

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- (c) the nature of the contravention or likely contravention of the relevant provision; and
 - (d) the action the person is required to take, to stop taking, or not to take, to comply with the relevant provision; and
 - (e) the time within which the person must comply with the notice; and
 - (f) the further action the commissioner may take under this Act if the person does not comply with the notice; and
 - (g) that the person may apply to the tribunal for a review of the decision to issue the notice or the terms of the notice.
- (4) A person may, within 28 days after receiving a compliance notice and as provided under the relevant tribunal Act, apply to the tribunal for a review of the issuing of the compliance notice or of any term of the compliance notice.

169 Compliance with compliance notice

- (1) This section applies if the commissioner has issued a compliance notice to a person under section 168.
- (2) If the person fails to comply with the compliance notice—
 - (a) the commissioner may apply to the tribunal to enforce the notice; and
 - (b) the tribunal may make an order requiring the person to comply with the notice.

Note—

See the *Industrial Relations Act 2016*, section 544 in relation to enforcing orders of the IRC and the QCAT Act, section 132 in relation to enforcing orders of QCAT that are not monetary decisions.

Part 13 Administration

Division 1 The Queensland Human Rights Commission and Human Rights Commissioner

170 The Queensland Human Rights Commission and Human Rights Commissioner

- (1) The Queensland Human Rights Commission established under the repealed *Anti-Discrimination Act 1991*, section 234 is continued in existence under this Act.
- (2) There is to be a Human Rights Commissioner.
- (3) The commission consists of the commissioner and the staff of the commission.

171 Commission's functions

- (1) The commission has the following functions—
 - (a) to promote and help achieve the purposes of this Act and to be an advocate for this Act;
 - (b) to examine Acts and, when requested by the Minister, proposed Acts, to determine whether they are, or would be, inconsistent with the purposes of this Act, and to report to the Minister the results of the examination;
 - (c) when requested by the Minister, to research and examine additional attributes and to make recommendations to the Minister for the inclusion of the attributes as protected attributes under this Act;
 - (d) any other function conferred on the commission—
 - (i) under this Act or another Act; or
 - (ii) under an arrangement with the Commonwealth under division 3; or
 - (iii) by the Minister.

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- (2) In performing its functions, the commission must prioritise its functions that promote or facilitate voluntary compliance with this Act, including, for example, through advice, education, research, guidelines and other support.

172 Commissioner's powers

- (1) The commissioner has the powers given by this Act.
- (2) The commissioner also has power to do all things that are necessary or convenient to be done for or in connection with the performance of the commission's functions.

173 Application of other Acts

The commission is—

- (a) a statutory body under the *Financial Accountability Act 2009*; and
- (b) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

Note—

The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way that Act affects the commission's powers.

174 Appointment of commissioner

- (1) The commissioner must be appointed by the Governor in Council.
- (2) Subject to sections 178 and 179, the commissioner holds office for the term, not longer than 5 years, stated in the instrument of appointment.
- (3) The commissioner is appointed under this Act, and not under the *Public Sector Act 2022*.

175 Terms of appointment

- (1) The commissioner is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) For matters not provided for by this Act, the commissioner holds office on the terms decided by the Governor in Council.

176 Leave of absence

The Minister may grant leave of absence to the commissioner on the terms the Minister considers appropriate.

177 Preservation of rights

- (1) This section applies to a person appointed as the commissioner if, immediately before the appointment, the person was a public service officer.
- (2) The person is entitled to retain all existing and accruing rights to superannuation or recreation, sick, long service or other leave as if service as the commissioner were a continuation of the person's service as a public service officer.

178 Resignation

- (1) The commissioner may resign from office by signed notice given to the Governor.
- (2) The resignation takes effect—
 - (a) on the day the notice is given; or
 - (b) if a later day is stated in the notice—on the later day.

179 Termination of appointment

- (1) The Governor in Council may terminate the appointment of the commissioner if the commissioner—
 - (a) becomes incapable of performing the duties of office because of physical or mental incapacity; or

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- (b) is guilty of misconduct of a kind that could justify dismissal from the public service if the commissioner were a public service officer; or
 - (c) is absent, without the Minister's approval or without reasonable excuse, for 14 consecutive days or a total of 28 days in any year.
- (2) The Governor in Council must terminate the appointment of the commissioner if the commissioner—
- (a) is convicted of an indictable offence, whether in Queensland or elsewhere; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (c) engages in paid employment outside the duties of office without the Minister's approval.

180 Acting commissioner

The Governor in Council may appoint a person to act as commissioner—

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the commissioner is absent from duty or otherwise unable to perform the duties of the office.

181 Commission staff

- (1) The commission may employ the staff the commission considers appropriate to perform the commission's functions.
- (2) The staff of the commission are to be employed under the *Public Sector Act 2022*.

182 Delegation of functions by commissioner

- (1) The commissioner may delegate to an appropriately qualified person the commissioner's functions under—
 - (a) this Act or another Act; or
 - (b) an arrangement made by the Minister with a Commonwealth Minister.
- (2) In this section—

functions includes powers.

Division 2 Strategic reviews

183 Strategic review of commission

- (1) Strategic reviews of the commission must be conducted under this division.
- (2) A strategic review must be conducted at least every 5 years, counting from when the report for the most recent earlier strategic review (the *most recent report*) was given to the Minister and the commissioner under section 185(4), up to when the reviewer is appointed under subsection (4) to conduct the latest strategic review.
- (3) However, if the parliamentary committee reported to the Legislative Assembly about the most recent report, and the committee's report made recommendations to which a Minister was required to respond under the *Parliament of Queensland Act 2001*, section 107, the 5 years is counted from when the Minister's response was tabled under that section.
- (4) Each strategic review must be conducted by an appropriately qualified person (*reviewer*), appointed by the Governor in Council, who must give a report on the review under section 185.
- (5) For subsection (4), a corporation is an appropriately qualified person if a director, employee or other staff member of the corporation is appropriately qualified to conduct the review.

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- (6) The terms of reference for a strategic review are to be decided by the Governor in Council.
- (7) Before a reviewer is appointed to conduct a strategic review, the Minister must consult with the parliamentary committee and the commissioner about—
 - (a) the appointment of the reviewer; and
 - (b) the terms of reference for the review.
- (8) The remuneration and other terms of appointment of the reviewer are as decided by the Governor in Council.
- (9) In this section—

strategic review includes—

 - (a) a review of the commission’s functions; and
 - (b) a review of the commission’s performance of the functions to assess whether they are being performed economically, effectively and efficiently.

184 Powers of reviewer

In conducting a strategic review—

- (a) the reviewer has the powers an authorised auditor has under the *Auditor-General Act 2009* for an audit of an entity; and
- (b) that Act and other Acts apply to the reviewer as if the reviewer were an authorised auditor conducting an audit of an entity.

185 Report of strategic review

- (1) The reviewer for a strategic review must give a copy of the proposed report on the review to the Minister and the commissioner.
- (2) The commissioner may, within 21 days after receiving the proposed report, give the reviewer written comments on anything in the proposed report.

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- (3) If the commissioner comments under subsection (2), the reviewer must—
 - (a) if the reviewer and commissioner can agree about how to dispose of a comment—incorporate into the report any agreed amendment necessary to dispose of the comment; or
 - (b) if the reviewer and commissioner can not agree about how to dispose of a comment—include the comment, in full, in the report.
 - (4) After complying with subsections (1) and (3), the reviewer must give the report (*review report*) to the Minister and the commissioner.
 - (5) The review report must be substantially the same as the proposed report given to the Minister and the commissioner under subsection (1), apart from any changes made under subsection (3).
 - (6) The Minister must table the review report in the Legislative Assembly within 3 sitting days after the Minister receives the report.
 - (7) For the *Parliament of Queensland Act 2001*, section 92(2), the review report is referred to the parliamentary committee.

Division 3 Commonwealth/State arrangements

186 Arrangement for performance of functions

- (1) The Minister may make an arrangement with a Commonwealth Minister for or in relation to—
 - (a) the performance on a joint basis of any functions of the commission or the registrar of the tribunal; or
 - (b) the performance by the Commonwealth or a Commonwealth instrumentality on behalf of the State of any functions of the commission or the registrar of the tribunal; or

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- (c) the performance by the commission or the registrar of the tribunal of functions on behalf of the Commonwealth.
- (2) The arrangement may provide for any incidental or supplementary matters that the Minister and the Commonwealth Minister consider necessary.

187 Form of arrangement

- (1) An arrangement under this division, or an amendment or revocation of an arrangement under this division, must be in writing.
- (2) A copy of each instrument by which an arrangement under this division is made, amended or revoked must be published in the gazette.

188 Act performed under arrangement

An act done by or in relation to the Commonwealth or a Commonwealth instrumentality acting, whether on a joint basis or otherwise, under an arrangement made under this division is taken to have been done by or in relation to the commission.

189 Arrangement to prevail

To the extent that an arrangement made under this division is inconsistent with sections 173 to 181, the arrangement is to prevail.

Part 14 **Functions and powers of the tribunal**

Division 1 **Functions and powers generally**

190 **Functions of QCAT**

QCAT has the following functions—

- (a) to review decisions of the commissioner not to deal with, or continue to deal with, complaints as provided under division 3;
- (b) to enforce agreements for resolution of complaints filed with QCAT under section 138;
- (c) to make orders under section 142 in relation to complaints not yet referred to QCAT;
- (d) to make orders under section 199 in relation to complaints referred to, but not yet decided by, QCAT;
- (e) to hear and decide complaints referred to QCAT;
- (f) to grant exemptions from this Act, other than in relation to work-related matters;
- (g) to provide opinions about the application of this Act, other than in relation to work-related matters;
- (h) any other function conferred on QCAT by this Act;
- (i) to take any other action necessary for, or conducive and appropriate to, the effective performance of a function mentioned in paragraph (a) to (h).

191 **Functions of IRC**

The IRC has the following functions—

- (a) to review decisions of the commissioner not to deal with, or continue to deal with, complaints as provided under division 3;

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- (b) to enforce agreements for resolution of complaints filed with the IRC under section 138;
- (c) to make orders under section 142 in relation to complaints not yet referred to the IRC;
- (d) to make orders under section 199 in relation to complaints referred to, but not yet decided by, the IRC;
- (e) to hear and decide complaints referred to the IRC;
- (f) to grant exemptions from this Act in relation to work-related matters;
- (g) to provide opinions about the application of this Act in relation to work-related matters;
- (h) any other function conferred on the IRC by this Act;
- (i) to take any other action necessary for, or conducive and appropriate to, the effective performance of a function mentioned in paragraph (a) to (h).

192 Powers of tribunal under relevant tribunal Act

- (1) If this Act confers jurisdiction on the tribunal in relation to a complaint or other matter, the tribunal may exercise the powers conferred on it under this Act or the relevant tribunal Act.
- (2) Nothing in this Act limits the IRC's powers under the *Industrial Relations Act 2016*, section 539.

Division 2 Complaints

Subdivision 1 General matters

193 Constitution of tribunal—QCAT

- (1) This section applies to a hearing conducted by QCAT in relation to a complaint.

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- (2) Subject to section 154, QCAT must be constituted by a legally qualified member for conducting the hearing.

194 Tribunal may join a person as a party

- (1) The tribunal may join a person as a party to a complaint proceeding, whether or not the person was a complainant for, or respondent to, the complaint.
- (2) This section does not limit a provision of the relevant tribunal Act about joining a party to a proceeding.

195 Complaints may be amended

- (1) The tribunal may allow the complainant to amend a complaint referred to the tribunal.
- (2) Subsection (1) applies even if the amendment concerns matters not included in the complaint.

196 Solicitor or barrister helping the tribunal

The tribunal may make arrangements for a solicitor or barrister to appear at a complaint proceeding to help the tribunal.

197 Commission officer helping the tribunal

- (1) The tribunal may make arrangements for an officer of the commission to appear at a complaint proceeding to help the tribunal.
- (2) An officer of the commission helping the tribunal under subsection (1) is subject to the tribunal's direction and control.

198 Resolution before tribunal order

- (1) If the complainant and respondent resolve a complaint before it has been decided by the tribunal, they must record the terms

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of the agreement in a document signed by the complainant and the respondent and file the document with the tribunal.

- (2) The tribunal must provide a copy of the document to each party.
- (3) The agreement is then enforceable as if it were an order of the tribunal.

199 Interim orders protecting complainant's interests (tribunal)

- (1) This section applies if a complaint has been referred to, but not yet decided by, the tribunal.
- (2) The complainant may apply to the tribunal for an order prohibiting a person from doing an act that might prejudice an order the tribunal might make after a hearing.
- (3) A party may apply to the tribunal for an order varying or revoking an order made under subsection (2).
- (4) This section does not limit the tribunal's powers under the relevant tribunal Act.

200 Complainant may withdraw complaint

- (1) The complainant for a complaint referred to the tribunal may give the tribunal written notice stating that the complainant wishes to withdraw the complaint.
- (2) If the complainant gives a notice under subsection (1)—
 - (a) the complaint lapses; and
 - (b) the tribunal—
 - (i) must not continue to deal with the complaint; and
 - (ii) must give the respondent written notice that the complaint has been withdrawn.

201 Transfer of complaints from IRC to QCAT

- (1) This section applies if—

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- (a) a complaint is referred to the IRC; and
 - (b) the IRC considers the complaint includes a matter that is not a work-related matter.

Note—

For a complaint referred to QCAT, see the QCAT Act, section 52 in relation to the power to transfer the complaint.

- (2) The IRC may, by order, transfer the complaint to QCAT.
- (3) If the IRC makes an order under subsection (2)—
 - (a) a complaint relating to the matter is taken to have been referred to QCAT when the complaint mentioned in subsection (1) was referred to the IRC; and
 - (b) the IRC may make the orders, or give the directions, it considers appropriate to facilitate the transfer, including an order that a party is taken to have complied with the requirements under this Act, the QCAT Act or another law for referring the complaint to QCAT; and
 - (c) QCAT may deal with the work-related matter included in the complaint as if the complaint did not include a work-related matter.
- (4) An order under subsection (3)(b) has effect despite any other Act or law.
- (5) The IRC may act under subsection (2) or (3)(b) on its own initiative or on an application of a party to the complaint proceeding.
- (6) If the IRC does not make an order under subsection (2), the IRC may deal with the complaint as if it did not relate to a matter that is not a work-related matter.

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Subdivision 2 Representative complaints

202 Tribunal may deal with a complaint as a representative complaint

- (1) The tribunal may deal with a complaint referred to it as a representative complaint if—
 - (a) before the referral, the complaint was being dealt with by the commissioner as a representative complaint under part 9; or
 - (b) the tribunal decides to deal with the complaint as a representative complaint.
- (2) The tribunal may decide to deal with a complaint made by or on behalf of a class of persons as a representative complaint if the tribunal is satisfied—
 - (a) all members of the class may make a complaint under section 101 about the alleged contravention to which the complaint relates; and
 - (b) all of the complaints the members of the class may make under section 101 about the alleged contravention to which the complaint relates—
 - (i) relate to, or arise out of, conduct of the same person; and
 - (ii) relate to, or arise out of, the same, similar or related circumstances; and
 - (iii) give rise to a substantial common issue of law or fact.
- (3) The tribunal may decide to deal with a complaint that does not satisfy subsection (2) as a representative complaint if the tribunal is satisfied—
 - (a) the complaint was initially made to the commissioner as a representative complaint in good faith; and
 - (b) it is in the interests of justice that the matter be dealt with as a representative complaint.

203 Effect of representative complaint on persons who are members of the class represented

- (1) A person who is a member of a class of persons to which a representative complaint before the tribunal relates—
 - (a) may, by giving written notice to the tribunal before the date fixed under subsection (2), opt out of the representative complaint; and
 - (b) is not entitled to make a separate complaint in relation to the conduct constituting the alleged contravention of this Act to which the representative complaint relates, unless the person opts out under paragraph (a).
- (2) The tribunal must fix a date before which a person may opt out of a representative complaint under subsection (1).
- (3) On the application of the complainant, respondent or a class member for a representative complaint, the tribunal may fix a later date to extend the period during which a person may opt out of the representative complaint under subsection (1).
- (4) Except by leave of the tribunal, the hearing of a representative complaint must not start earlier than the date before which a person may opt out of the representative complaint under subsection (1).

204 Effect of representative complaint on persons who are not members of the class represented

The tribunal dealing with a complaint as a representative complaint in relation to an alleged contravention of this Act does not prevent a person who is not a member of the class of persons to which the representative complaint relates making a complaint in relation to the conduct constituting the alleged contravention.

205 Tribunal may order complaint to be dealt with as a representative complaint

If the tribunal is satisfied that a complaint made by or on behalf of a number of persons could be dealt with as a

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representative complaint if the persons on whose behalf the complaint is made are increased, reduced or otherwise altered, the tribunal may, by order, direct—

- (a) that the complaint be dealt with as a representative complaint; and
- (b) the complainant to amend the complaint to allow it to be dealt with as a representative complaint.

206 Excessive distribution costs

- (1) This section applies if—
 - (a) the relief sought in a representative complaint is or includes payment of money to the class members for the complaint, other than for costs; and
 - (b) on application by the respondent, the tribunal considers it is likely that, if an order were to be made in favour of the complainant, the cost to the respondent of identifying the class members for the complaint and distributing to them the amounts ordered to be paid to them would be excessive, having regard to the likely total of those amounts.
- (2) The tribunal may, by order—
 - (a) direct that the complaint no longer continue as a representative complaint; or
 - (b) stay the complaint so far as it relates to relief of the kind mentioned in subsection (1)(a).

207 Tribunal may discontinue representative complaint in particular circumstances

- (1) The tribunal may, on application by the respondent or on its own initiative, order that a complaint no longer continue as a representative complaint if the tribunal considers it is in the interests of justice to do so because—

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- (a) the complaint will not provide an efficient and effective way of dealing with the complaints of the class members for the complaint; or
 - (b) the complainant is not able to adequately represent the interests of the class members for the complaint.
- (2) If the tribunal dismisses an application by the respondent made under this section, the tribunal may order that no further application under this section may be made by the respondent in relation to the representative complaint except with the leave of the tribunal.
- (3) For subsection (2), leave may be granted subject to the conditions about costs the tribunal considers just.

208 Effect of representative complaint discontinuing

If the tribunal makes an order under section 206 or 207 that a complaint no longer continue as a representative complaint—

- (a) the complaint may be continued as a complaint by the person who made the complaint on the person's own behalf against the respondent; and
- (b) on the application of a class member for the complaint, the tribunal may order that the person be joined as a joint complainant in the continued complaint.

209 Tribunal approval needed for settlement or withdrawal of representative complaint

- (1) A representative complaint may not be settled or withdrawn without the approval of the tribunal.
- (2) If the tribunal gives approval under subsection (1), the tribunal may make any orders it considers just for the distribution of money paid under a settlement or paid to the tribunal.

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210 Notices for representative complaint

- (1) Notice of the following matters for a representative complaint must be given to each class member for the complaint—
 - (a) the making of the complaint and the right of the member to opt out of the complaint before the date fixed by the tribunal under section 203;
 - (b) the giving of a notice of withdrawal of the complaint to the tribunal under section 200;
 - (c) an application to the tribunal for the dismissal of the complaint;
 - (d) an application to the tribunal for approval of a settlement of the complaint.
- (2) The notice must be given by the person, in the way and within the time directed by the tribunal.
- (3) The tribunal may, by order, direct the person who is required to give the notice to include other information in the notice.
- (4) A notice about a matter for which the tribunal's leave or approval is required must state the period within which a person may apply to the tribunal, or take some other step, in relation to the matter.
- (5) The tribunal must not direct that notice be given personally to each class member for the representative complaint unless the tribunal considers it is reasonably practicable and not unduly expensive to do so.
- (6) The failure of a class member for the representative complaint to receive or respond to a notice does not affect a step taken, or an order made, in the representative complaint.

211 Directions about conduct of a representative complaint

The tribunal may give directions about the conduct of a representative complaint before the tribunal.

Subdivision 3 Hearings

212 Burden of proof

- (1) In a complaint proceeding, the complainant must prove, on the balance of probabilities, that in the absence of any other explanation the respondent contravened the provision of this Act the subject of the alleged contravention.
- (2) If the complainant proves the matter under subsection (1), the tribunal may decide the respondent contravened the provision of this Act the subject of the alleged contravention unless the respondent proves, on the balance of probabilities, that the respondent did not contravene the provision.
- (3) Subsection (1) and (2) apply in addition to any other provision of this Act that provides for who has the onus of proving a particular matter.

Note—

See, for example, sections 13(5), 15(4) and 21(4).

213 Commissioner may provide report about complaint

- (1) The commissioner may give the tribunal a report about how the commissioner dealt with a complaint that the tribunal is hearing.
- (2) The report must not contain a record of oral statements made by any person in the course of dispute resolution under part 9.
- (3) The tribunal must give a copy of the report to the complainant and the respondent.

214 Evaluation of evidence

- (1) The tribunal is not bound by the rules of evidence and—
 - (a) must have regard to the purposes of this Act; and
 - (b) may draw conclusions of fact from any proceeding before a court or tribunal; and

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- (c) may adopt any findings or decisions of a court or tribunal that may be relevant to the hearing; and
 - (d) may receive in evidence a report of the commissioner, but only if each party to the hearing has a copy of the report; and
 - (e) may permit any person with an interest in the proceeding to give evidence; and
 - (f) may permit the commissioner to give evidence on any issue arising in the course of a complaint proceeding that relates to the administration of this Act.
- (2) Anything said or done in dispute resolution under part 9 can not be admitted as evidence in a hearing before the tribunal, unless the complainant and respondent agree.

Subdivision 4 Decisions

215 Orders the tribunal may make if complaint is proven

- (1) If the tribunal decides that the respondent in a complaint proceeding contravened this Act, the tribunal may make 1 or more of the following orders—
- (a) an order requiring the respondent not to commit a further contravention of this Act against the complainant or another person stated in the order;
 - (b) an order requiring the respondent to pay to the complainant or another person, within a stated period, an amount the tribunal considers appropriate as compensation for loss or damage caused by the contravention;
 - (c) an order requiring the respondent to do stated things to redress loss or damage suffered by the complainant and another person because of the contravention;

Examples of things respondent may be required to do—

- 1 employ, reinstate or re-employ a person
- 2 promote a person

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- 3 transfer a person to a stated position within a stated time
- (d) an order requiring the respondent to make a private apology or retraction;
 - (e) an order requiring the respondent to make a public apology or retraction by publishing the apology or retraction in the way, and in the form, stated in the order;
 - (f) an order requiring the respondent to implement programs to eliminate discrimination, sexual harassment, vilification and victimisation;
 - (g) an order requiring a party to pay interest on an amount of compensation;
 - (h) an order declaring void all or part of an agreement made in connection with a contravention of this Act, either from the time the agreement was made or subsequently.
- (2) An order may be made under subsection (1)(b) in favour of a class member for a representative complaint, without the necessity for the class member to make an individual complaint, if on the evidence before it the tribunal is able to assess the loss or damage of the class member.
- (3) Subsection (4) applies if the tribunal—
- (a) decides that the respondent to a representative complaint contravened this Act; but
 - (b) is unable, on the evidence before it at the hearing of the representative complaint, to assess the loss or damage of a class member for the complaint.
- (4) The person may subsequently make a request for the tribunal to assess the class member's loss or damage.
- (5) The tribunal—
- (a) may order costs in a representative complaint against the person who made the complaint or the respondent; and

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- (b) may not order costs against a class member for the complaint other than the person who made the complaint.
- (6) In this section—
 - complainant*, in relation to a representative complaint, includes a class member for the complaint.
 - damage*, in relation to a person, includes the offence, embarrassment, humiliation, and intimidation suffered by the person.

216 Orders in representative complaint

- (1) An order of the tribunal made for a representative complaint—
 - (a) must describe or otherwise identify the class members for the complaint affected by the order; and
 - (b) binds the class members described.
- (2) An appeal against an order of the tribunal for a representative complaint may be brought by the complainant or the respondent.

217 Tribunal may dismiss complaint

After hearing a complaint proceeding, the tribunal may make an order dismissing the complaint.

Division 3 Reviews

218 Application of division

This division applies in relation to a decision of the commissioner not to deal with, or continue to deal with, a complaint—

- (a) under section 117; or

- (b) because section 116 or 120(4) applies in relation to the complaint.

219 Leave for particular decisions

The complainant may apply to the tribunal for the review of the following decisions only with the tribunal's leave—

- (a) a decision of the commissioner not to deal with, or continue to deal with, a complaint under section 117; or
- (b) a decision of the commissioner not to deal with, or continue to deal with, a complaint because section 116 applies in relation to the complaint.

220 Application for review

The complainant may apply for the review of the decision—

- (a) within 28 days after—
 - (i) if leave is required for the application—the leave is given; or
 - (ii) otherwise—the complainant is given notice of the decision; and
- (b) as provided under the relevant tribunal Act.

221 Decision on review

In deciding an application for a review of the decision, the tribunal may—

- (a) confirm the commissioner's decision not to deal with, or continue to deal with, the complaint; or
- (b) direct the commissioner to deal with, or continue to deal with, the complaint under this Act, with or without other directions.

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222 Power to award costs

The tribunal may make an order requiring the complainant to pay all or a stated part of the costs of the commissioner if the tribunal considers the complainant's application for the review of the decision, or application for leave to apply for the review of the decision, is frivolous or vexatious.

Part 15 Miscellaneous provisions

Division 1 Anonymity and confidentiality

223 Commissioner may prohibit identity disclosure

- (1) If the commissioner considers that the preservation of anonymity of a person who is, or has been, involved in a proceeding under this Act is necessary to protect the work security, privacy or any human right of the person, the commissioner may give a direction prohibiting the disclosure of information that identifies, or is likely to lead to the identification of, the person.
- (2) A person must comply with a direction unless the person has a reasonable excuse.

Maximum penalty—

- (a) in the case of an individual—35 penalty units; or
- (b) in the case of a corporation—170 penalty units.

224 Tribunal may prohibit identity disclosure

- (1) If the tribunal considers that the preservation of anonymity of a person who is, or has been, involved in a proceeding under this Act is necessary to protect the work security, privacy or any human right of the person, the tribunal may make an order prohibiting the disclosure of information that identifies, or is likely to lead to the identification of, the person.

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- (2) A person must comply with an order.
Maximum penalty—100 penalty units.

225 Continuing prohibition on identity disclosure

- (1) This section applies if—
- (a) the commissioner makes a direction under section 223(1), or the tribunal makes an order under section 224(1), prohibiting the disclosure of the identity of a person (the *relevant person*); and
 - (b) a court is hearing—
 - (i) a prosecution for an offence against section 223(2) relating to the direction or against section 224(2) relating to the order; or
 - (ii) an appeal relating to a prosecution for an offence against section 223(2) relating to the direction or against section 224(2) relating to the order; and
 - (c) the court considers that the preservation of the anonymity of the relevant person is necessary to protect the work security, privacy or any human right of the relevant person.
- (2) The court may make an order prohibiting the disclosure of information that identifies, or is likely to lead to the identification of, the relevant person.
- (3) A contravention of an order made under subsection (2) is contempt of the court.

226 Confidentiality of personal information

- (1) This section applies to a person who—
- (a) is or has been an official or former official; and
 - (b) in that capacity, has acquired or has access to personal information about another person.

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- (2) The person must not disclose the personal information to anyone else, or use the personal information, other than under this section.

Maximum penalty—

- (a) in the case of an individual—85 penalty units or imprisonment for 12 months; or
- (b) in the case of a corporation—170 penalty units.
- (3) The person may disclose or use the personal information to the extent the disclosure or use is—
- (a) necessary to perform a function under or relating to the administration of this Act; or
- (b) otherwise required or permitted under this Act or another law.
- (4) Also, the person may disclose the personal information to a person in accordance with an arrangement under part 13, division 3.
- (5) The person may not be required to give the personal information to a court, tribunal or any other entity with power to require production of documents or giving of evidence, unless the giving of the information is—
- (a) required for the performance of a function under or relating to the administration of this Act; or
- (b) required or permitted under this Act or another law.
- (6) In this section—

disclose includes give access to.

information includes a document.

personal information means information about a person's affairs.

Division 3 Proceedings

230 Proceedings for offences

- (1) A proceeding for an offence against this Act or the *Human Rights Act 2019* must be heard and decided summarily, on complaint of the commissioner.
- (2) A proceeding for an offence against this Act or the *Human Rights Act 2019* must start—
 - (a) within 1 year after the commission of the offence; or
 - (b) within 6 months after the offence comes to the complainant's knowledge and within 2 years after the commission of the offence.
- (3) In addition to the places where a complaint for an offence against this Act or the *Human Rights Act 2019* may be heard under the *Justices Act 1886*, section 139, the complaint may also be heard at a place within the Magistrates Courts' district in which the defendant lives.
- (4) In this section—

Magistrates Courts' district means the district appointed under the *Justices Act 1886* for the purposes of Magistrates Courts.

231 Proceeding involving unincorporated body

- (1) If a proceeding under this Act involves an unincorporated body, 1 of the following persons must be the nominal party—
 - (a) the officer appointed or elected to preside over the body, by whatever name called;
 - (b) the secretary of the body;
 - (c) another member of the body's committee of management.
- (2) If the nominal party ceases to hold office, the person's successor, whether or not acting, is to be substituted as the nominal party.

- (3) In this section—

committee of management, in relation to an unincorporated body, means the group of people, by whatever name called, that manages the affairs of the body.

232 Commission may intervene in proceedings

- (1) The commission may intervene in and be joined as a party to a proceeding before a court or tribunal in which a question of law arises that relates to the application of this Act.
- (2) If the commission intervenes, the commission becomes a party to the proceeding for the purpose of any appeal from an order made in the proceeding.

Division 4 Service of documents

233 Address for service

The address for service for a party to a complaint as advised to the commissioner must be a residential or business address, a post office box address, or an email address.

234 No address for service advised

- (1) This section applies if the address for service of a party to a complaint is not known—
- (a) because of the party's failure to comply with a requirement for advising an address for service; or
- (b) because the party is a respondent, and has not yet been given a notice under section 123.
- (2) The party's address for service is taken to be—
- (a) for an individual—the individual's last known place of residence or business; or
- (b) for a body corporate—the body corporate's head office or its principal or registered office; or

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- (c) for another entity—the entity’s principal office.
- (3) For subsection (1)(a), a party’s failure to comply with a requirement for advising an address for service includes a respondent’s failure to advise the commissioner of the respondent’s address for service after receiving a notice under section 123.

235 Service of documents

- (1) For a complaint, the address for service of a party to the complaint is the party’s address for service—
 - (a) for the commissioner—as most recently notified to the commissioner; or
 - (b) for another party to the complaint—as most recently notified to the other party.
- (2) If a document is required or permitted to be given to a party to a complaint, the document is taken to be given to the party if 1 of the following applies—
 - (a) the party is an individual, and the document is handed to the party personally;
 - (b) the document is posted to the party’s address for service;
 - (c) the party’s address for service is a residential address, and the document is left with someone apparently living at the address who is apparently at least 16 years;
 - (d) the party is a body corporate, its address for service is a business address, and the document is left at the address for service.
- (3) Despite subsection (2)(c) and (d), if the party’s address for service is a residential or business address and is a place in a building or area to which a person delivering a document is denied access, the document is taken to be given to the party if it is left at the building or area in a position where it is reasonably likely to come to the attention of the party.

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- (4) Subsection (2)(b) does not stop the party from establishing that the party was not given the document by proving that the document was not delivered to the address for service.
 - (5) If the document is given to a party under subsection (2)(c) or (d) or (3), the giving of the document is taken to have been effected on the business day after the document is left in the way required.

236 Communication of documents by commissioner

- (1) This section applies if the commissioner is required or permitted under this Act, in relation to a complaint, to communicate with a party to the complaint including, for example, by doing any of the following—
 - (a) notifying the party of something, whether or not in writing;
 - (b) asking or telling the party something, whether or not in writing;
 - (c) giving the party reasons for something, whether or not in writing;
 - (d) giving the party a direction, or otherwise ordering the party to do something, whether or not in writing;
 - (e) writing to the party to tell the party something.
- (2) The commissioner may effect the communication by—
 - (a) putting the substance of the communication into a document; and
 - (b) giving the document to the party in a way provided for under this division for the giving of a document to a party to a complaint.

Example—

Section 120(2) provides for the commissioner to ask a complainant who may have lost interest in the complaint to confirm whether or not the complainant wishes to continue with the complaint. The commissioner may ask the complainant for the confirmation by including the request in a document and posting the document to the complainant's address for service.

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Division 5 Reporting requirements

237 Commission report about operation of Act

- (1) As soon as practicable after the end of each financial year, the commissioner must prepare a report about the operation of this Act during the year.
- (2) The report must include the following information for the financial year—
 - (a) the number of complaints made or referred to the commissioner;
 - (b) the types of complaints made or referred to the commissioner;
 - (c) the number of complaints made or referred to the commissioner that were not accepted, and the reasons for the non-acceptance;
 - (d) the outcome of the complaints made or referred to the commissioner that were accepted, including whether or not the complaints were resolved by dispute resolution or otherwise;
 - (e) the number of complaints made or referred to the commissioner that were—
 - (i) by individuals; or
 - (ii) by relevant bodies under section 103; or
 - (iii) representative complaints;
 - (f) for complaints made or referred to the commissioner about discrimination—the protected attributes and areas of activity to which the complaints related;
 - (g) for complaints made or referred to the commissioner about vilification—the protected attributes to which the complaints related;
 - (h) the number of investigations into non-compliance with this Act conducted under part 12, and the outcomes of

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- the investigations, including whether the commissioner—
- (i) accepted any undertakings under section 166 in relation to the matters investigated; or
 - (ii) issued any compliance notices under section 168 in relation to the matters investigated;
- (i) the number and nature of compliance notices issued by the commissioner under part 12, division 3;
 - (j) the number of times the commission intervened in a proceeding under section 232.
- (3) The report may include other information the commissioner considers appropriate.
 - (4) However, the 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.
 - (5) The commissioner must give the report to the Minister as soon as practicable after it is prepared.
 - (6) The Minister must table a copy of each report given to the Minister under this section in the Legislative Assembly within 6 sitting days after receiving the report.

238 Matters to be included in QCAT report

The president of QCAT must ensure the report prepared under the QCAT Act, section 232 includes the following information—

- (a) the number of complaints referred to QCAT;
- (b) the outcome of complaints referred to QCAT;
- (c) the number of the complaints referred to QCAT that were representative complaints;
- (d) for complaints referred to QCAT about discrimination—the protected attributes and areas of activity to which the complaints related;

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- (e) for complaints referred to QCAT about vilification—the protected attributes to which the complaints related;
- (f) the following information about reviews under part 14, division 3—
 - (i) the number of applications for leave under section 219 made to QCAT for which leave was granted and for which leave was not granted;
 - (ii) the number of applications for the review of the commissioner’s decision not to deal with, or continue to deal with, a complaint that were made to QCAT;
 - (iii) the outcome of the applications mentioned in subparagraph (ii).

239 Matters to be included in IRC report

The president of the IRC must ensure the report prepared under the *Industrial Relations Act 2016*, section 594 includes the following information—

- (a) the number of complaints referred to the IRC;
- (b) the outcome of complaints referred to the IRC;
- (c) the number of the complaints referred to the IRC that were representative complaints;
- (d) for complaints referred to the IRC about discrimination—the protected attributes and areas of activity to which the complaints related;
- (e) for complaints referred to the IRC about vilification—the protected attributes to which the complaints related;
- (f) the following information about reviews under part 14, division 3—
 - (i) the number of applications for leave under section 219 made to the IRC for which leave was granted and for which leave was not granted;

- (ii) the number of applications for the review of the commissioner's decision not to deal with, or continue to deal with, a complaint that were made to the IRC;
- (iii) the outcome of the applications mentioned in subparagraph (ii).

Division 6 Review of Act and related matters

240 First review

- (1) The Minister must ensure the operation of this Act and related matters is reviewed within 5 years after the commencement.
- (2) The review must include a review of the following—
 - (a) whether any additional attributes should be the subject of duties or prohibitions under this Act;
 - (b) whether any additional compliance or enforcement functions or powers should be conferred on the commissioner or commission;
 - (c) the operation of the Criminal Code, part 2, chapter 7A, including—
 - (i) whether any additional offences should be prescribed offences under the Criminal Code, section 52B; and
 - (ii) the effect the Criminal Code, part 2, chapter 7A has had on Aboriginal peoples and Torres Strait Islander peoples.
- (3) The review must be carried out by an independent and appropriately qualified person.
- (4) The terms of reference for the review are the terms decided by the Minister.
- (5) The Minister must table a copy of the report about the outcome of the review in the Legislative Assembly within 14 sitting days after receiving the report.

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- (6) The report must include a recommendation about whether a further review under this section is necessary.

241 Further review

- (1) This section applies if the report of a review under section 240 recommends a further review under that section is necessary.
- (2) The Minister must ensure the further review is carried out within 5 years after the report mentioned in subsection (1) is tabled under section 240.
- (3) Section 240(2) to (6) apply in relation to the review.

Division 7 Other matters

242 Commissioner may obtain information about actuarial or statistical data or relevant factors

- (1) This section applies if a person discriminates against another person in relation to insurance or superannuation, as provided under section 56(2), by relying on actuarial or statistical data or other relevant factors.
- (2) The commissioner may, by written notice, direct the person to give the commissioner, within 21 days after the direction is given, any information about the actuarial or statistical data or the relevant factors.
- (3) The commissioner may enforce the direction by filing a copy of it with a court of competent jurisdiction.
- (4) The direction is then enforceable as if it were an order of the court.

243 Protection from liability

- (1) An official or former official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act or the *Human Rights Act 2019*.

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- (2) If subsection (1) prevents a civil liability attaching to an official or former official, the liability attaches instead to the State.
 - (3) This section does not apply to an official or former official who is a prescribed person under the *Public Sector Act 2022*, section 267 engaging in conduct in an official capacity under section 269 of that Act.

Note—

For protection from civil liability in relation to prescribed persons under the *Public Sector Act 2022*, section 267, see the *Public Sector Act 2022*, section 269.

244 Giving of information protected

- (1) This section applies if a person, acting honestly, gives information under this Act to the commissioner or another entity in relation to a complaint.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) Also, merely because the person gives the information, the person can not be held to have—
 - (a) breached any code of professional etiquette or ethics; or
 - (b) departed from accepted standards of professional conduct.

245 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may make provision about—
 - (a) the exercise of the commissioner’s powers; and
 - (b) the fees payable for making a complaint.
- (3) A regulation may provide that contravention of a regulation is an offence and prescribe a maximum penalty for the offence of not more than 20 penalty units.

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Part 16 **Repeal provision**

246 **Repeal**

The Anti-Discrimination Act 1991, No. 85 is repealed.

Part 17 **Transitional provisions**

Division 1 **Preliminary**

247 **Definition for part**

In this section—

repealed Act means the repealed *Anti-Discrimination Act 1991*.

Division 2 **Exemptions for discrimination**

248 **Existing superannuation fund conditions**

- (1) This section applies in relation to a superannuation fund condition that—
 - (a) immediately before the commencement, applied in relation to a member of the fund; and
 - (b) was permitted to apply in relation to a member under the repealed Act, section 60.
- (2) A person does not discriminate against the member on the basis of age or disability by retaining the superannuation fund condition in relation to the member.
- (3) In this section—

superannuation fund means a superannuation or provident fund or scheme.

superannuation fund condition, in relation to a superannuation fund, means the terms that relate to membership of, or benefits payable from, the superannuation fund.

249 Compulsory retirement age under former instrument

- (1) This section applies in relation to a person who, under the repealed Act, section 106A, was required to retire on or after reaching a particular age under a former instrument.
- (2) This Act has no effect on the imposition of the compulsory retirement age under the former instrument.
- (3) In this section—

former instrument means any of the following, as in force on or before 30 June 1994—

- (a) an Act;
- (b) an award, certified agreement, enterprise flexibility agreement or industrial agreement under the repealed *Industrial Relations Act 1999*;
- (c) a policy, standard or other instrument of a previous unit of the public sector applying to an employee of the unit.

previous unit of the public sector means an entity that was a unit of the public sector on 30 June 1994 under the repealed *Public Sector Management Commission Act 1990*.

250 Existing exemptions by tribunal

- (1) An exemption granted by the tribunal under the repealed Act, section 113 continues in effect under this Act.
- (2) The exemption may be renewed or otherwise dealt with under this Act as if the exemption had been granted under part 4, division 11.

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251 Existing applications for exemption by tribunal

- (1) This section applies to an application for an exemption made under the repealed Act, section 113 before the commencement that has not been finally dealt with immediately before the commencement.
- (2) The tribunal must decide the application under this Act as if the application had been made under section 66.

252 Appeals against tribunal decision about exemption

- (1) This section applies to an appeal against a decision of the tribunal under the repealed Act, section 113 that has not been finally dealt with immediately before the commencement.
- (2) The entity hearing the appeal may continue to hear and decide the appeal under the repealed Act.
- (3) If the outcome of the appeal is that an exemption is granted, the exemption continues in effect under this Act, and may be renewed or otherwise dealt with under this Act, as if the exemption had been granted under part 4, division 11.

Division 3 Complaints

253 Definition for division

In this division—

complaint means a complaint about an alleged contravention of the repealed Act.

254 Existing complaints made to commissioner

- (1) This section applies to a complaint made to the commissioner under the repealed Act before the commencement that, immediately before the commencement, has not lapsed or been finally dealt with by the commissioner.

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- (2) If the commissioner accepted the complaint under the repealed Act before the commencement, the commissioner must—
 - (a) deal with, or continue to deal with, the complaint under the repealed Act; or
 - (b) if both the complainant and respondent agree in writing to have the complaint dealt with under this Act—deal with the complaint under this Act as if the complaint had been made under part 9.
 - (3) If the commissioner had not accepted the complaint under the repealed Act before the commencement, the commissioner must deal with the complaint under this Act as if the complaint had been made under part 9.
 - (4) For subsection (2)(a)—
 - (a) the repealed Act continues to apply in relation to the complaint as if this Act had not been enacted; and
 - (b) the complaint may be referred to the tribunal under the repealed Act after the commencement, as if this Act had not been enacted.
 - (5) If the complaint is referred to the tribunal as mentioned in subsection (4)(b), the tribunal must deal with the complaint under this Act as if the complaint had been referred to the tribunal under part 9.
 - (6) For subsections (2)(b), (3) and (5), this Act applies in relation to dealing with the complaint under this Act, subject to the following—
 - (a) the complaint continues as a complaint about the alleged contravention of the repealed Act;
 - (b) the decision about whether the contravention happened must be decided on the basis of the repealed Act as in force when the contravention happened, including on the basis of the burden of proof applying under the repealed Act at that time;
 - (c) the timeframe for doing anything in relation to the complaint under the repealed Act continues to apply in

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relation to the complaint, despite anything to the contrary in this Act.

255 Existing complaints referred to tribunal before commencement

- (1) This section applies to a complaint referred to the tribunal under the repealed Act before the commencement that, immediately before the commencement, has not lapsed or been finally dealt with by the tribunal.
- (2) The tribunal must deal with, or continue to deal with, the complaint under the repealed Act, and the repealed Act continues to apply in relation to the complaint, as if this Act had not been enacted.

256 New complaints about pre-commencement conduct

- (1) This section applies in relation to an alleged contravention of the repealed Act that happened before the commencement if, on the commencement—
 - (a) a complaint has not been made about the alleged contravention; and
 - (b) the time within which a complaint could have been made under the repealed Act about the alleged contravention has not passed.
- (2) A person who could have made a complaint about the alleged contravention under the repealed Act may make a complaint about the alleged contravention under this Act within the period mentioned in subsection (1)(b).
- (3) This Act applies in relation to making and dealing with the complaint.
- (4) However—
 - (a) the complaint continues to be about the alleged contravention of the repealed Act; and
 - (b) the decision about whether the contravention happened must be decided on the basis of the repealed Act as in

force when the contravention happened, including on the basis of the burden of proof applying under the repealed Act at that time.

257 New complaints about pre-commencement conduct continuing after commencement

- (1) This section applies in relation to a course of conduct that includes—
 - (a) conduct constituting an alleged contravention of the repealed Act before the commencement; and
 - (b) conduct constituting to an alleged contravention of this Act after the commencement.
- (2) A complaint may be made in relation to the course of conduct under this Act as if all of the conduct happened after the commencement.
- (3) However, subsection (2) does not apply in relation to conduct that is or was the subject of a complaint—
 - (a) made under the repealed Act before the commencement; or
 - (b) made under section 256.

258 Review of decision of commissioner under repealed Act that complainant has lost interest

A review of the commissioner's decision under the repealed Act, section 169 (including as continued under section 254(4)) may be started, or continued, and dealt with under the repealed Act as if this Act had not been enacted.

Division 4 Compliance and enforcement

259 Tribunal orders continue

An order made by the tribunal under the repealed Act, section 209 that is still in effect immediately before the

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commencement continues in effect as if it were an order made under section 215.

260 Contravention of general duty

Part 12 does not apply in relation to a contravention of the general duty that happens before, or within 1 year after, the commencement of section 19.

261 Delayed effect of provisions about undertakings and compliance notices

Sections 166 to 169 do not take effect until 2 years after the commencement.

Division 5 Other provisions

262 Anonymity

- (1) A direction given by the commissioner under the repealed Act, section 145 that is still in effect immediately before the commencement continues in effect as if it were a direction given under section 223.
- (2) An order made by the tribunal under the repealed Act, section 191 that is still in effect immediately before the commencement continues in effect as if it were an order made under section 224.
- (3) An order made by a court under the repealed Act, section 226A that is still in effect immediately before the commencement continues in effect as if it were an order made under section 225.

263 Appointment of commissioner

The appointment of the commissioner under the repealed Act, section 238 continues under this Act.

264 Strategic review

- (1) This section applies in relation to a strategic review conducted before the commencement if, immediately before the commencement, the review report for the review has not been given under the repealed Act, section 249(4).
- (2) The repealed Act, chapter 9, part 2 continues to apply in relation to the strategic review as if this Act had not been enacted.
- (3) For section 183(2), the first 5 year period must be counted from when the report for the most recent earlier strategic review was given to the Minister and the commissioner under the repealed Act, section 249(4), including as applying under this section.

265 Existing Commonwealth/State arrangement

- (1) An arrangement made under the repealed Act, chapter 9, part 3 that is still in effect immediately before the commencement continues in effect under this Act.
- (2) In the arrangement, if the context permits—
 - (a) a reference to the repealed Act is taken to be a reference to this Act; and
 - (b) a reference to a provision of the repealed Act is taken to be a referenced to the corresponding provision of this Act.
- (3) The repealed Act, section 260 continues to apply in relation to acts done under the arrangement before the commencement.
- (4) In this section—

corresponding provision, for a provision of the repealed Act, means the provision of this Act dealing with the same matter as the provision of the repealed Act.

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266 Protection from civil actions

The repealed Act, sections 265 and 266 continue to apply in relation to acts done or omissions made before the commencement.

267 References to repealed Act

In an instrument, a reference to the repealed Act may, if the context permits, be taken to be a reference to this Act.

Part 18 Amendment of legislation

Division 1 Amendment of this Act

268 Act amended

This division amends this Act.

269 Amendment of long title

Long title, from ‘, and to repeal’—
omit.

Division 2 Amendment of Corrective Services Act 2006

270 Act amended

This division amends the *Corrective Services Act 2006*.

Note—

See also the amendments in schedule 2.

271 Amendment of s 319A (Definitions)

(1) Section 319A, definition *relevant person*—
omit.

(2) Section 319A—
insert—

protected attribute see the Anti-Discrimination Act, section 10.

relevant person, in relation to a prisoner, means a person who may make a complaint under the Anti-Discrimination Act, part 9 about an alleged contravention of that Act committed by a person in relation to the prisoner.

Note—

See the Anti-Discrimination Act, section 101 for the persons who may make complaints under part 9 of that Act.

(3) Section 319A, definition *protected defendant*, paragraph (c)—
omit.

(4) Section 319A, definition *protected defendant*, paragraph (e), from ‘an offender’ to ‘or (f)’—
omit, insert—

a prisoner against and entity mentioned in paragraph (a), (b), (c) or (e)

(5) Section 319A, definition *protected defendant*, paragraph (f), ‘, (d) or (e)’—
omit, insert—

or (d)

(6) Section 319A, definition *protected defendant*, paragraphs (d) to (f)—
renumber as definition *protected defendant*, paragraphs (c) to (e).

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272 Amendment of s 319B (Purpose of part and its achievement)

- (1) Section 319B, ‘offenders’—
omit, insert—
prisoners
- (2) Section 319B(1)(b), ‘offenders’—
omit, insert—
prisoners’

273 Replacement of s 319E (Complaint to chief executive required first)

Section 319E—
omit, insert—

319E Requirement for making complaint

- (1) A relevant person may make a complaint to the human rights commissioner under the Anti-Discrimination Act, part 9 about an alleged contravention of that Act committed by a protected defendant in relation to a prisoner only if—
- (a) the human rights commissioner is satisfied a complaint about the alleged contravention the subject of the complaint has been made to the chief executive by or on behalf of the prisoner; and
 - (b) at least 45 business days have elapsed since the complaint mentioned in paragraph (a) was made; and
 - (c) the person who made the complaint mentioned in paragraph (a) has not received a response to the complaint or has received a response the person or the prisoner considers to be an inadequate response.

- (2) However, the human rights commissioner may accept a complaint made before the period mentioned in subsection (1)(b) has elapsed if the commissioner considers it appropriate because of exceptional circumstances.

274 Amendment of s 319G (When treatment of offender by protected defendant is not direct discrimination)

- (1) Section 319G, heading, ‘offender’—
omit, insert—
prisoner
- (2) Section 319G(1)—
omit, insert—
(1) This section applies if a protected defendant treats, or proposes to treat, a prisoner unfavourably because the prisoner has a protected attribute.
- (3) Section 319G(2), ‘section 10’—
omit, insert—
section 14
- (4) Section 319G(2), (3) and (4), ‘offender’—
omit, insert—
prisoner
- (5) Section 319G(3)(d)—
omit.
- (6) Section 319G(3)(h), ‘offenders’—
omit, insert—
prisoners’
- (7) Section 319G(3)(i), ‘offenders’—
omit, insert—

[s 275]

prisoners

- (8) Section 319G(3)(e) to (j)—
renumber as section 319G(3)(d) to (i).

275 Amendment of s 319H (When term imposed on offender by protected defendant is not indirect discrimination)

- (1) Section 319H, heading, ‘on offender’—
omit.
- (2) Section 319H(1)—
omit, insert—
- (1) This section applies if a protected defendant imposes a term that has, or is likely to have, the effect of disadvantaging a prisoner because the prisoner has a protected attribute.
- (3) Section 319H(2), ‘section 11(1)(c)’—
omit, insert—
- section 15(1)(b)
- (4) Section 319H(2)(a) and (g), ‘offender’—
omit, insert—
- prisoner
- (5) Section 319H(2)(d)—
omit.
- (6) Section 319H(2)(h), ‘offenders’—
omit, insert—
- prisoners’
- (7) Section 319H(2)(i), ‘offenders’—
omit, insert—
- prisoners
- (8) Section 319H(2)(e) to (j)—

renumber as section 319H(2)(d) to (i).

276 Amendment of sch 4 (Dictionary)

(1) Schedule 4—

insert—

protected attribute, for chapter 6, part 12A, see section 319A.

(2) Schedule 4, definition *Anti-Discrimination Act*, ‘*Anti-Discrimination Act 1991*’—

omit, insert—

Anti-Discrimination Act 2024

(3) Schedule 4, definition *prisoner*—

insert—

4 Further, prisoner does not include a person who is released on parole for the following provisions—

- chapter 6, part 12A
- chapter 6, part 12B.

Division 3 Amendment of Criminal Code

277 Code amended

This division amends the Criminal Code.

278 Amendment of s 52A (Offence of serious racial, religious, sexuality or gender identity vilification)

(1) Section 52A, heading—

omit, insert—

[s 278]

52A Offence of serious vilification on grounds of age, disability, gender identity, race, religion, sex, sex characteristics or sexual orientation

- (2) Section 52A(1), ‘race, religion, sexuality or gender identity’—

omit, insert—

age, disability, gender identity, race, religion, sex, sex characteristics or sexual orientation

- (3) Section 52A(2)—

omit, insert—

- (2) In this section, **public act**—

(a) includes the following conduct—

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

(b) does not include the distribution or dissemination of any matter by a person to the public if the person does not know, and could not reasonably be expected to know, the content of the matter.

- (3) Conduct mentioned in subsection (2)(a) may be a **public act** even if it happens on private land or in a place that is not ordinarily accessed by the general public.

Examples of places for subsection (3)—
a place of work, an educational facility

279 Amendment of s 52B (Circumstances of aggravation for particular offences)

Section 52B(1), ‘race, religion, sexuality, sex characteristics or gender identity’—

omit, insert—

age, disability, gender identity, race, religion, sex, sex characteristics or sexual orientation

280 Amendment of s 52C (Prohibited symbols)

Section 52C(5), definition *relevant group*, ‘race, religion, sexuality, sex characteristics or gender identity’—

omit, insert—

age, disability, gender identity, race, religion, sex, sex characteristics or sexual orientation

Division 4 Other amendments

281 Legislation amended

Schedule 2 amends the legislation it mentions.

Schedule 1 Dictionary

section 9

accommodation includes—

- (a) business premises; and
- (b) a house or flat; and
- (c) a hotel or motel; and
- (d) a boarding house or hostel; and
- (e) a caravan or caravan site; and
- (f) a manufactured home, or a site, under *Manufactured Homes (Residential Parks) Act 2003*; and
- (g) a camping site; and
- (h) a building or construction site.

advertisement includes every form of advertisement or notice, however displayed, and whether or not displayed to the public, and includes, for example, an advertisement—

- (a) in a newspaper or other publication; or
- (b) by television or radio; or
- (c) by broadcasting and communicating through social media and other electronic methods; or
- (d) by display of notices, signs, labels or goods; or
- (e) by distribution of samples, circulars, catalogues, price lists or other material; or
- (f) by exhibition of pictures, models or films.

affirmative measure see section 16.

agent means a person who has actual, implied or ostensible authority to act on behalf of another.

assistance animal, in relation to a person with disability, means—

-
- (a) an assistance dog, guide dog or hearing dog as defined under the *Guide, Hearing and Assistance Dogs Act 2009*, schedule 4; or
 - (b) a dog or other animal accredited under a law of another State that provides for the accreditation of animals trained to assist people with disability to alleviate the effect of the disability; or
 - (c) a dog or other animal trained—
 - (i) to assist a person with disability to alleviate the effect of the disability; and
 - (ii) to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.

class member, for a representative complaint, means each person named or otherwise identified in the complaint as a person on whose behalf the complaint is made, other than a person who has opted out of the complaint under section 110 or 203.

club means an association, whether incorporated or unincorporated, of persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that provides and maintains facilities, in whole or in part, from the funds of the association.

conciliation conference, for part 9, division 5, subdivision 2, see section 130.

commission means the Queensland Human Rights Commission continued under section 170.

commissioner means the Human Rights Commissioner.

complainant, for a complaint, see section 99.

complaint means a complaint to the commissioner about an alleged contravention of this Act.

complaint period, for making a complaint, see section 100.

complaint proceeding, in relation to the tribunal, means a proceeding relating to a complaint before the tribunal.

direct discrimination see section 14.

disability—

- 1 *Disability* in relation to a person means—
 - (a) total or partial loss of the person’s bodily or mental functions; or
 - (b) total or partial loss of a part of the person’s body; or
 - (c) the presence in the person’s body of organisms causing, or capable of causing, disease or illness; or
 - (d) an impairment or disturbance in the structure or functioning of the person’s body or a part of the person’s body; or
 - (e) a disorder or condition that results in the person learning differently from a person without the disorder or condition; or
 - (f) a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.
- 2 *Disability*, in relation to a person, includes a disability mentioned in paragraph 1 that—
 - (a) presently exists; or
 - (b) previously existed but no longer exists; or
 - (c) may exist in the future, including, for example, because of a genetic predisposition to the disability; or
 - (d) is imputed to a person.
- 3 Also, *disability*, in relation to a person, includes behaviour that is a symptom or manifestation of a disability mentioned in paragraph 1.

discriminate see section 13.

educational authority means an entity administering an educational institution.

educational institution means a school, college, university or other institution providing any form of training or instruction, and includes a place at which training or instruction is provided by an employer.

employee, of an entity, for part 8, see section 93.

fly-in fly-out worker, for a large resource project, for part 5, see section 72.

former official means—

- (a) a member of the former tribunal; or
- (b) the registrar of the former tribunal; or
- (c) a member of the staff of the former tribunal; or
- (d) a person acting under the direction or authority of a member of the former tribunal.

former tribunal means the Anti-Discrimination Tribunal established under the repealed *Anti-Discrimination Act 1991* that was abolished by the *Queensland Civil and Administrative Tribunal Act 2009*, section 247.

gender identity, of a person—

- (a) is the person's internal and individual experience of gender, whether or not it corresponds with the sex assigned to the person at birth; and
- (b) without limiting paragraph (a), includes—
 - (i) the person's personal sense of the body; and
 - (ii) if freely chosen—modification of the person's bodily appearance or functions by medical, surgical or other means; and
 - (iii) other expressions of the person's gender, including name, dress, speech and behaviour.

general duty means the duty under section 19.

human rights see the *Human Rights Act 2019*, section 7.

indirect discrimination see section 15.

insurance includes—

- (a) an annuity; and
- (b) life insurance; and
- (c) accident insurance; and
- (d) illness insurance.

involved in a proceeding under this Act, for a person, includes the person—

- (a) making a complaint and continuing with the complaint; or
- (b) being a respondent to a complaint; or
- (c) being involved in a prosecution for an offence against this Act; or
- (d) giving information or documents to a person who is performing a function under this Act; or
- (e) appearing as a witness in a proceeding under this Act.

IRC means the industrial relations commission.

irrelevant criminal record, in relation to a person, means a record, or an imputation of a record, relating to an offence or alleged offence, if—

- (a) the person has been charged with the offence but—
 - (i) a proceeding for the offence is not finalised; or
 - (ii) the charge has lapsed, been withdrawn or discharged, or struck out; or
- (b) the person has been acquitted of the offence; or
- (c) the person has had a conviction for the offence quashed or set aside; or
- (d) the person is proceeded against for the offence only by way of an infringement notice under the *State Penalties Enforcement Act 1999*; or
- (e) the person has a conviction for the offence, but the circumstances of the offence are not directly relevant to the situation in which the record is being considered; or
- (f) the person has a spent conviction for the offence; or

- (g) the person has an expunged conviction for the offence under the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*.

large resource project, for part 5, see section 72.

nearby regional community, for a large resource project, for part 5, see section 72.

official means—

- (a) the commissioner; or
- (b) a member of the staff of the commission; or
- (c) a person acting under the direction or authority of the commissioner.

order, of the tribunal, in relation to an agreement, the terms of which are recorded in a document filed under section 138 or 198, means—

- (a) if the document is filed with the IRC—a decision of the IRC under the *Industrial Relations Act 2016*; or
- (b) if the document is filed with QCAT—a final decision of QCAT in a proceeding under the QCAT Act.

owner, of a large resource project, for part 5, see section 72.

parent includes—

- (a) step-parent; and
- (b) adoptive parent; and
- (c) foster parent; and
- (d) guardian; and
- (e) for an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a parent of the person; and
- (f) for a Torres Strait Islander person—a person who, under Island custom, is regarded as a parent of the person.

parental status means whether or not a person is a parent.

parliamentary committee—

- (a) if the Legislative Assembly resolves that a particular committee of the Assembly is to be the parliamentary committee under this Act—that committee; or
- (b) if paragraph (a) does not apply and the standing rules and orders state that the portfolio area of a portfolio committee includes the commissioner—that committee; or
- (c) otherwise—the portfolio committee whose portfolio area includes the department, or the part of a department, in which this Act is administered.

physical appearance, of a person, means—

- (a) the person’s weight, size or height; or
- (b) the presence of a birth mark or scar on the person’s face or body; or
- (c) anything else about the person’s physical appearance other than—
 - (i) the person’s chosen hairstyle; or
 - (ii) any other part of the person’s physical appearance that has been freely chosen, including, for example, by cosmetic surgery, piercing or tattooing.

principal contractor, for part 5, see section 72.

protected attribute see section 10.

public act, for part 7, division 2, see section 83.

race includes—

- (a) colour; and
- (b) descent or ancestry; and
- (c) ethnicity or ethnic origin; and
- (d) nationality or national origin; and
- (e) immigration or migration status.

reasonable accommodation, in relation to a person with disability, see section 12.

recruitment process, for a large resource project, for part 5, see section 72.

registered employee organisation means an organisation of employees that is registered under the *Industrial Relations Act 2016* or the *Fair Work (Registered Organisations) Act 2009* (Cwlth).

registrar, of the tribunal, means—

- (a) for the IRC—the registrar under the *Industrial Relations Act 2016*; or
- (b) for QCAT—the principal registrar under the *Queensland Civil and Administrative Tribunal Act 2009*.

relation, of a person, means—

- (a) a person who is related to the person by blood, spousal relationship, adoption or a foster relationship; or
- (b) a person on whom the person is completely or mainly dependent; or
- (c) a person who is completely or mainly dependent on the person; or
- (d) a person who is a member of the same household of the person; or
- (e) if the person is an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a relative of the person; or
- (f) if the person is a Torres Strait Islander person—a person who, under Island custom, is regarded as a relative of the person.

relationship status means whether a person is—

- (a) single; or
- (b) married; or
- (c) married to another person, but living separately and apart from the other person; or
- (d) divorced; or
- (e) widowed; or

- (f) a de facto partner; or
- (g) a civil partner.

relevant tribunal Act means—

- (a) in relation to a work-related matter—the *Industrial Relations Act 2016*; or
- (b) in relation to any other matter—the QCAT Act.

religious activity means engaging in, not engaging in or refusing to engage in a lawful religious activity.

religious belief means holding or not holding a religious belief.

religious body means—

- (a) a body established for a religious purpose; or
- (b) an entity that established, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, tenets or beliefs.

representative, for part 8, see section 93.

resident, of a regional nearby community, for part 5, see section 72.

resource project, for part 5, see section 72.

respondent, in relation to a complaint, means a person alleged in the complaint to have contravened this Act.

services includes—

- (a) access to and use of any place, vehicle or facilities that members of the public are permitted to use; and
- (b) services relating to banking, insurance, superannuation or the provision of grants, loans, credit or finance; and
- (c) recreation, including entertainment, sports, tourism and the arts; and
- (d) the supply of refreshments; and
- (e) services relating to transport and travel; and

- (f) services of any profession, trade or business; and
- (g) services provided by the State or local government; and
- (h) the provision of scholarships, prizes or awards.

sex characteristics, of a person, means the person's physical features and development related to the person's sex, and includes—

- (a) genitalia, gonads and other sexual and reproductive parts of the person's anatomy; and
- (b) the person's chromosomes, genes and hormones that are related to the person's sex; and
- (c) the person's secondary physical features emerging as a result of puberty.

sexual orientation, of a person, means the person's capacity, or lack of capacity, for emotional, affectional and sexual attraction to, or intimate or sexual relations with, persons of a different gender or the same gender or more than one gender.

sex work activity—

- (a) means the provision by an adult person of the following services for payment or reward—
 - (i) services that involve the person participating in a sexual activity with another person;
 - (ii) services that involve the use or display of the person's body for the sexual arousal or gratification of another person; and
- (b) includes being or having been a person who provides services mentioned in paragraph (a).

subjection to domestic or family violence, in relation to a person, means the person is or has been subject to domestic violence within the meaning given by the *Domestic and Family Violence Protection Act 2018*, section 8.

term includes condition.

trade union activity means any of the following activities—

- (a) being, or not being, a member of a registered employee organisation;
- (b) joining, not joining, or refusing to join a registered employee organisation;
- (c) establishing, or being involved in establishing, a registered employee organisation;
- (d) organising or promoting, or proposing to organise or promote, a lawful activity on behalf of a registered employee organisation;
- (e) encouraging, assisting or participating in, or proposing to encourage, assist or participate in, a lawful activity organised or promoted by a registered employee organisation;
- (f) not participating in, or refusing to participate in, a lawful activity organised or promoted by a registered employee organisation;
- (g) representing or advancing the views, claims or interests of members of a registered employee organisation.

tribunal means—

- (a) in relation to a work-related matter—the IRC; or
- (b) in relation to any other matter—QCAT.

unlawful discrimination see section 21.

work includes—

- (a) work in a relationship of employment, whether on a full-time, part-time, casual, permanent or temporary basis; and
- (b) work under a contract for services; and
- (c) work remunerated in whole or in part on a commission basis; and
- (d) work under a statutory appointment; and
- (e) work under a work experience arrangement within the meaning of the *Education (Work Experience) Act 1996*, section 4; and

- (f) work under a vocational placement; and
- (g) work on a voluntary or unpaid basis; and
- (h) work by a person with disability in supported employment; and
- (i) work under a guidance program, an apprenticeship training program or other occupational training or retraining program.

work-related matter means a complaint or other matter relating to, or including, work or another activity to which part 4, division 2 applies.

Schedule 2 Other amendments

section 281

Adoption Act 2009

1 Section 8, heading, ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

2 Section 8(1), ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

Australian Catholic University (Queensland) Act 2007

1 Section 12, ‘Anti-Discrimination Act 1991, section 41’—

omit, insert—

Anti-Discrimination Act 2024, section 36

Crime and Corruption Act 2001

1 Section 335(7), definition *civil liability*, examples, first dot point, ‘Anti-Discrimination Act 1991’—

omit, insert—

- 6 Section 319J, definition *award of compensation*, paragraph (a), ‘section 209(1)(b) or (g)’—**
omit, insert—
section 215(1)(b) or (g)
- 7 Section 319J, definition *award of compensation*, ‘an offender’—**
omit, insert—
a prisoner
- 8 Section 319J, definition *award of damages*, ‘an offender’—**
omit, insert—
a prisoner
- 9 Sections 319L(1) and 319M(1), ‘an offender’—**
omit, insert—
a prisoner
- 10 Section 319O(3), definition *prescribed protected defendant*, paragraph (a), ‘to (e)’—**
omit, insert—
to (d)
- 11 Section 319O(3), definition *prescribed protected defendant*, paragraph (b), ‘paragraph (f)’—**
omit, insert—
paragraph (e)

12 Section 319P(4), definition *prescribed protected defendant*, paragraph (a), ‘to (e)’—

omit, insert—

to (d)

13 Section 319P(4), definition *prescribed protected defendant*, paragraph (b), ‘paragraph (f)’—

omit, insert—

paragraph (e)

Disability Services Act 2006

1 Schedule 8, definition *complaints agency*, paragraph (c), ‘*Anti-Discrimination Act 1991*’—

omit, insert—

Anti-Discrimination Act 2024

Education (General Provisions) Act 2006

1 Section 429B, heading, ‘*Anti-Discrimination Act 1991*’—

omit, insert—

Anti-Discrimination Act 2024

2 Section 429B(1), ‘*Anti-Discrimination Act 1991*’—

omit, insert—

Anti-Discrimination Act 2024

Fair Work (Commonwealth Powers) and Other Provisions Act 2009

- 1 **Section 3(1), definition *excluded subject matter*, paragraph (a), ‘*Anti-Discrimination Act 1991*’—**
omit, insert—
Anti-Discrimination Act 2024

Family and Child Commission Act 2014

- 1 **Schedule 1, definition *complaints entity*, paragraph (c), ‘*Anti-Discrimination Act 1991*’—**
omit, insert—
Anti-Discrimination Act 2024
- 2 **Schedule 1, definition *relevant agency*, paragraph (ba), ‘*Anti-Discrimination Act 1991*’—**
omit, insert—
Anti-Discrimination Act 2024

Government Owned Corporations Act 1993

- 1 **Schedule 5, entry for, ‘*Anti-Discrimination Act 1991*’—**
omit, insert—

<i>Anti-Discrimination Act 2024</i>	section 57(2), definition <i>government entity</i>
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Guide, Hearing and Assistance Dogs Act 2009

- 1 Section 12A(4), note and section 13(2), note,
'*Anti-Discrimination Act 1991*'—

omit, insert—

Anti-Discrimination Act 2024

Health Ombudsman Act 2013

- 1 Section 30(a), '*Anti-Discrimination Act 1991*'—

omit, insert—

Anti-Discrimination Act 2024

Human Rights Act 2019

- 1 Section 75, heading, '*Anti-Discrimination Act 1991*'—

omit, insert—

Anti-Discrimination Act 2024

- 2 Section 75(1), (2) and (3)(a), '*Anti-Discrimination Act 1991*'—

omit, insert—

Anti-Discrimination Act 2024

- 3 Section 75(3)(a), '*section 141*'—

omit, insert—

section 123

4 Section 101, ‘Anti-Discrimination Act 1991, section 226’—

omit, insert—

Anti-Discrimination Act 2024, section 230

5 Schedule 1, definitions *commission* and *commissioner*, ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

6 Schedule 1, definition *discrimination*—

omit, insert—

discrimination, in relation to a person, includes direct discrimination or indirect discrimination, within the meaning of the *Anti-Discrimination Act 2024*, on the basis of a protected attribute stated in section 10 of that Act.

Note—

The *Anti-Discrimination Act 2024*, section 10 lists protected attributes in relation to which discrimination is prohibited, including, for example, age, disability, gender identity, political belief or activity, race, religious belief or religious activity, sex, sex characteristics and sexual orientation.

Industrial Relations Act 2016

1 Section 51(7), from ‘a welfare’—

omit, insert—

an affirmative measure for the purposes of the *Anti-Discrimination Act 2024*, section 16.

2 Sections 157(2)(b), 253(1)(e), 295(3)(e), 530(1)(c), 548(1)(a) and 551(3)(a)(iv), ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

3 Chapter 11, part 5, division 6, heading, ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

4 Schedule 2, heading, ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

5 Schedule 2, section 1, definition *commission*, ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

6 Schedule 5, definitions *discrimination*, *Queensland Human Rights Commission* and *sexual harassment*, ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

7 Schedule 5, definition *industrial cause*, paragraph (c), ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

Information Privacy Act 2009

- 1 Section 165(2)(c), '*Anti-Discrimination Act 1991*'—
omit, insert—
Anti-Discrimination Act 2024

Integrity Act 2009

- 1 Schedule 1, '*Anti-Discrimination Act 1991*'—
omit, insert—
Anti-Discrimination Act 2024

Judges (Pensions and Long Leave) Act 1957

- 1 Sections 18(5) and 18AA(3), '*Anti-Discrimination Act 1991*'—
omit, insert—
Anti-Discrimination Act 2024

Labour Hire Licensing Act 2017

- 1 Schedule 1, definition *relevant law*, paragraph (b), examples, third dot point, '*Anti-Discrimination Act 1991*'—
omit, insert—
Anti-Discrimination Act 2024

Ombudsman Act 2001

- 1 **Schedule 3, definition *complaints entity*, paragraph (a), examples, second dot point, ‘*Anti-Discrimination Act 1991*’—**

omit, insert—

Anti-Discrimination Act 2024

Parliament of Queensland Act 2001

- 1 **Section 67(1)(a), ‘*Anti-Discrimination Act 1991*’—**

omit, insert—

Anti-Discrimination Act 2024

Personal Injuries Proceedings Act 2002

- 1 **Section 6(5)(a)—**

omit, insert—

(a) the *Anti-Discrimination Act 2024*, section 215(1)(b);

Police Service Administration Act 1990

- 1 **Section 6A.1(3) and (5), ‘*Anti-Discrimination Act 1991*’—**

omit, insert—

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Anti-Discrimination Act 2024

- 2 Section 9.7(6), definition *civil liability*, examples, first dot point, ‘*Anti-Discrimination Act 1991*’—**

omit, insert—

Anti-Discrimination Act 2024

- 3 Section 10.5(6), definition *civil liability*, examples, first dot point, ‘*Anti-Discrimination Act 1991*’—**

omit, insert—

Anti-Discrimination Act 2024

Public Guardian Act 2014

- 1 Section 144(5), definition *complaints agency*, paragraph (a), ‘*Anti-Discrimination Act 1991*’—**

omit, insert—

Anti-Discrimination Act 2024

Public Health Act 2005

- 1 Section 66(3), ‘*Anti-Discrimination Act 1991*, section 107’—**

omit, insert—

Anti-Discrimination Act 2024, section 58

Public Interest Disclosure Act 2010

1 Section 44, heading, ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

2 Section 44(1) to (4), ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

3 Section 44(2), ‘chapters 6 and 7’—

omit, insert—

parts 9 and 14

4 Section 50, heading, ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

5 Section 50, ‘Anti-Discrimination Act 1991 about’—

omit, insert—

Anti-Discrimination Act 2024 about

6 Section 50, note—

omit, insert—

Note—

See the *Anti-Discrimination Act 2024*, sections 142 and 199 in relation to tribunal orders for protecting the complainant’s interests while the complaint is being dealt with under that Act.

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Public Sector Act 2022

- 1 **Section 25, definition *unlawful discrimination*, ‘*Anti-Discrimination Act 1991*’—**
omit, insert—
Anti-Discrimination Act 2024
- 2 **Section 254(2)(eb), ‘*Anti-Discrimination Act 1991*’—**
omit, insert—
Anti-Discrimination Act 2024
- 3 **Section 269(6), definition *civil liability*, example 1, ‘*Anti-Discrimination Act 1991*’—**
omit, insert—
Anti-Discrimination Act 2024
- 4 **Schedule 1, entry for Queensland Human Rights Commission, ‘*Anti-Discrimination Act 1991*’—**
omit, insert—
Anti-Discrimination Act 2024

Retirement Villages Act 1999

- 1 **Section 26, ‘*Anti-Discrimination Act 1991*’—**
omit, insert—
Anti-Discrimination Act 2024

Summary Offences Act 2005

1 Sections 23(2) and 23B(4), ‘Anti-Discrimination Act 1991, section 46’—

omit, insert—

Anti-Discrimination Act 2024, section 38

Transport Operations (Passenger Transport) Act 1994

1 Section 26(c), ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

Transport Operations (Road Use Management) Act 1995

1 Section 150AA(2), ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024

Youth Justice Act 1992

1 Section 301S(2)(g), ‘Anti-Discrimination Act 1991’—

omit, insert—

Anti-Discrimination Act 2024