6 November 2026

Secretariat Support

Strategic Review of the Queensland Human Rights Commission

c/- Office of the Deputy Director-General, Corporate Services

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Dear Mr Peter Flanagan KC

Review of the Queensland Human Rights Commission and Queensland's Anti-Discrimination and Human Rights statutory framework

1. Thank you for the opportunity to make written submissions to the Review of the Queensland Human Rights Commission (**QHRC**) and Queensland's Anti-Discrimination and Human Rights statutory framework (the **Review**), in response to the discussion paper released on 30 September 2026 (**Discussion Paper**).

2. Queensland Advocacy for Inclusion (**QAI**) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our purpose is to advocate for the protection and advancement of the needs, rights, and lives of people with disability in Queensland. QAI's Management Committee is comprised of a majority of persons with disability, whose wisdom and lived experience guides our work and values.

3. QAI has been engaged in systems advocacy for over thirty-five years, advocating for change through campaigns directed at attitudinal, law and policy reform.

4. QAI also provides individual advocacy services in the areas of human rights, disability discrimination, guardianship and administration, involuntary mental health treatment, criminal justice, NDIS appeals, and non-legal advocacy for young people with disability, including in relation to education. Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

5. Since 1 January 2022, QAI has also been funded by the Queensland Government to establish and co-ordinate the Queensland Independent Disability Advocacy Network (**QIDAN**). QIDAN members work collaboratively to raise the profile of disability advocacy while also working towards attitudinal, policy and legislative change for people with disability in Queensland.

6. QAI welcomes the opportunity to respond to all three parts of the Review. QAI is strongly supportive of the Review's overarching aim of ensuring that Queensland's human rights and anti-discrimination framework is modern, practical and responsive to the needs of the community, including people with disability, who continue to experience discrimination and barriers to accessing justice at disproportionate rates. QAI's submission focuses on recommending amendments to this framework that would ensure the law is effective in this respect, as informed by its extensive experience advocating for people with disability.

7. In light of this, QAI's submission focuses on three recurring themes, namely:

   (a) the need to retain and strengthen, rather than narrow, the QHRC's existing functions and judicial oversight mechanisms;

   (b) the importance of improving access to justice, particularly for people with disabilities, including by removing unnecessary procedural barriers to making complaints; and

   (c) the need for robust and enforceable protections against discrimination, including the introduction of a positive duty under the Anti-Discrimination Act 1991 (Qld) (**ADA**) and improved remedies for breaches of the Human Rights Act 2019 (Qld) (**HRA**).

8. QAI also emphasises the need for its submission to be considered in its totality, rather than as individual responses to each of the Discussion Paper questions. For certain proposed changes to be effective, others must also be implemented. Given the interconnected nature of Queensland's human rights and anti-discrimination framework, each proposal must be considered in terms of its impact on the broader system.

9. QAI's full response to each question raised in the Discussion Paper is set out in the table at Schedule 1. However, to assist the Review, QAI has summarised its key submissions below.

Key submissions regarding the *Human Rights Act 2019* (Qld)

A. Enforcement of conciliation agreements under the HRA

10. QAI considers that the enforcement framework under the HRA requires significant improvement and that the ADA should also be further improved.

11. With respect to the HRA, QAI submits that the framework should include a mechanism for a conciliation agreement to be filed and treated as a tribunal order, similar to the mechanism at section 164 of the ADA. Presently, no such mechanism exists in the HRA, leaving a complainant who obtains an outcome at a conciliation with no statutory recourse beyond a fresh general-law claim. A significant amount of QHRC and party resources are expended to bring a complaint to a conciliated agreement, yet once that agreement is signed, there is no QHRC-assisted pathway to enforce it if breached, undermining the value of the process that produced it.

12. Additionally, both the HRA and ADA should incorporate features from comparative jurisdictions to develop a stronger enforcement model, including:

    (a) enabling the QHRC to itself apply to the Queensland Civil and Administrative Tribunal (**QCAT**) to have a conciliated agreement made an enforceable order of QCAT where a respondent fails to comply, removing the burden of enforcement from the individual complainant; and

    (b) providing real legal remedies including declarations, restraining orders and damages where non-compliance has occurred.

13. Finally, the Queensland Government should consider providing funded representation to individuals to bring claims in respect of breaches of the HRA and ADA, to address the cost barrier to enforcement.

14. QAI has addressed this issue in detail in its submission at A31, contained in the table at Schedule 1.

B. Override declaration provisions of the HRA

15. QAI shares the concerns expressed in submissions to the First Review about the override declaration provisions, including whether their use has been confined to exceptional circumstances. The Discussion Paper records that submissions criticised both the need for an override power and the way it had been exercised. Human rights are universal, inalienable and indivisible, deriving from the inherent dignity of every person. Their protection should not depend on changes in the political climate.

16. QAI is concerned that removing the override without strengthening scrutiny in other ways would not address the underlying community concern, particularly if accompanied by a reduction in judicial scrutiny.

17. Accordingly, QAI submits that, if the existing provisions are removed, they should be replaced with a process requiring an administrative declaration of exceptional circumstances by the executive before Parliament may make an override declaration. This would allow the threshold decision to be

subject to administrative law requirements and judicial review, while preserving Parliament's responsibility for determining the legislative response.

18. QAI has addressed this issue in detail in its submission at B6, contained in the table at Schedule 1.

C. Retention of the interpretation provision (section 48)

19. QAI submits that section 48 of the HRA should be retained in its current form.

20. At the time the Review was prepared, as noted at [213] of the Discussion Paper, s 48 of the HRA was in the process of being considered by the High Court. The High Court's decision has since been handed down (Smith v Chief Executive, Queensland Corrective Services [2026] HCA 37 (Smith)). The High Court's judgment in Smith demonstrates that s 48 has a real role to play in statutory interpretation.

21. QAI has addressed this issue in detail in its submission at B10, contained in the table at Schedule 1.

D. Retention of the procedural limb of section 58(1)

22. QAI submits that the procedural limb in section 58(1)(b) should be retained. The two limbs of s 58(1) address different aspects of public decision-making. Relevantly, the procedural limb is concerned with whether relevant human rights were properly considered in reaching that outcome.

23. A compatible outcome reached without proper consideration of relevant human rights does not demonstrate that the procedural obligation is unnecessary. Rather, it may mean that the compatible outcome was reached despite, rather than because of, the decision-making process.

24. Additionally, QAI considers that s 58(1)(b) embeds a comparable discipline in administrative decision-making by requiring public entities to turn their minds to relevant human rights before making a decision.

25. QAI has addressed this issue in detail in its submission at B12, contained in the table at Schedule 1.

Key submissions regarding the *Anti-Discrimination Act 1991* (Qld)

E. Introduction of the 'positive duty'

26. QAI is strongly supportive of the introduction of a positive duty under the ADA and is particularly supportive of the duty covering discrimination against all protected attributes, including disability/impairment. QAI does not consider that such a positive duty, if properly implemented, would give rise to unintended consequences that should prevent its adoption.

27. QAI acknowledges that some further amendments to the proposed drafting could be made, to ensure the wording of the positive duty is best tailored to achieve the aim of promoting equality and non-discrimination as far as possible.

28. QAI has addressed this issue in detail in its submission at C12, contained in the table at Schedule 1.

F. Inclusion of 'irrelevant medical records' as a protected attribute within the ADA

29. QAI supports including 'irrelevant medical record' as a protected attribute. The existing protected attributes do not expressly cover some circumstances, such as where discrimination occurs because a person:

    (c) may have a disability in the future, including because of a genetic predisposition to that disability;

    (d) has had a vaccination;

    (e) is taking certain medication, such as PrEP to protect them from contracting HIV; or

    (f) has had an abortion.

30. QAI has addressed this issue in detail in its submission at C6, contained in the table at Schedule 1.

G. Definitions of 'direct discrimination' and 'indirect discrimination'

31. QAI is generally supportive of adopting the new definitions of 'direct discrimination' and 'indirect discrimination', however, we consider that two additional improvements can be made:

    (a) Failure to make adjustments should be a ground of 'direct discrimination'. This is broadly consistent with the approach taken in the *Disability Discrimination Act 1992* (Cth) (**DDA**). However, while the federal legislation uses the term 'reasonable adjustments', QAI submits (in line with the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the **Disability Royal Commission** or **DRC**))[1] that the term 'adjustments' would be more appropriate, as it would:

        i. avoid any suggestion that the adjustment must be 'reasonable' or the respondent must act reasonably when making an adjustment; and

        ii. better reflect the law and avoid unnecessary confusion.

[1] See Recommendation 4.25 of *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 29 (*'DRC Final Report'*).

(b) Equal dignity and worth should be added to the reasonableness test for 'indirect discrimination'.

32. QAI has addressed this issue in detail in its submission at C10, contained in the table at Schedule 1.

H. Prohibition of vilification on the ground of disability

33. QAI has consistently advocated for including protections relating to disability (impairment) in vilification laws, including in previous submissions.[2]

34. The Australian Bureau of Statistics (ABS) reported that in 2025, 24% of people with disability aged 15 and over reported experiencing some form of discrimination during the past year.[3] In 2024 – 2025, 47% of complaints to the Australian Human Rights Commission (**AHRC**) were about disability discrimination, more than any other form of discrimination.[4] These statistics illustrate the ongoing need for disability to be included within vilification protections and QAI considers there is more evidence than ever that a stronger legal response is required to protect people with disability from vilification.

35. QAI has addressed this issue in detail in its submission at C20, contained in the table at Schedule 1.

Conclusion

36. QAI is grateful for the opportunity to contribute to the Review. We are happy to provide further information or clarification of any of the matters raised in this submission upon request.



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[2] See Queensland Advocacy for Inclusion, Submission No 75 to Legal Affairs and Safety Committee, *Inquiry into serious vilification and hate crime* (30 July 2021) ('*QAI submission to vilification and hate crime inquiry*').
[3] Australian Institute of Health and Welfare, *People with disability in Australia 2026* (Report, 2026) 8 ('*AIHW Report*').
[4] Ibid.

Schedule 1 – List of QAI responses to Discussion Paper questions

Part A – Strategic Review and complaints framework

Question	Response
A1 Should there be any changes to the drafting of the QHRC's functions or powers?	QAI opposes any amendments that would reduce the QHRC's functions or powers. In particular, QAI opposes removing functions on the basis of infrequent use. The fact that the QHRC does not have regular need to use a particular power does not mean that power is not necessary or appropriate. Two examples illustrate this point. • First, the function to research and develop new grounds of discrimination for consideration by government under section 235(f) of the ADA is a critical mechanism for ensuring that anti-discrimination law keeps pace with evolving social and scientific understanding. The recognition of new protected attributes has historically required sustained research and advocacy over many years before legislative change occurred. The infrequency with which this function has been exercised reflects the long-term nature of law reform processes, not a lack of utility. Removing it would deprive the QHRC of the formal mandate to engage in the proactive, evidence-based research necessary to identify emerging forms of discrimination and make the case for legislative reform. • Second, the power to seek an opinion from QCAT regarding how the ADA applies in a specific situation under section 228 of the ADA serves an important clarificatory function that benefits not only the parties to a particular dispute but the broader community of duty-holders and complainants. Where the application of the ADA to a novel or complex situation is uncertain, this power provides a mechanism for resolving that uncertainty without requiring a full contested proceeding. The fact that it is rarely used does not diminish its value, in fact, its availability may itself facilitate earlier resolution of disputes by deterring parties from taking entrenched positions on unsettled questions of law. QAI agrees that there is scope for redrafting the QHRC's functions across the ADA and HRA to achieve improved clarity and reduced duplication. Any such legislative amendment should not diminish existing functions or powers. Additionally, QAI considers that both the ADA and HRA should be amended to expressly reference the QHRC's functions in relation to human rights. Specifically, the ADA should be amended to include, within the QHRC's general functions, an express reference to

Question	Response
	its role in administering and enforcing the HRA, so that the ADA operates as a consolidated and coherent source of the QHRC's functions across both frameworks. The HRA should in turn be amended to set out the QHRC's human rights functions in full, with appropriate cross-references to the ADA, so that the two statutes operate together to give the QHRC a clear and comprehensive mandate. The QHRC should also be given a mandate to protect and promote human rights, consistent with the mandate conferred on the AHRC under sections 11(1)(f)-(h) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), which together empower the AHRC to inquire into acts inconsistent with human rights, promote public understanding of human rights, and undertake educational programs for the purpose of promoting human rights.
A2 What is your experience of the QHRC's complaints handling processes?	QAI's experience of the QHRC's complaints handling process is broadly positive, however, resourcing constraints significantly undermine its effectiveness. The QHRC experiences significant backlogs in the handling of complaints. These backlogs have the potential to, and do, cause real harm to complainants, many of whom are already placed in vulnerable positions, and undermine confidence in the complaints process. QAI recommends that the QHRC be provided with sufficient resourcing to address existing backlogs and manage complaints within reasonable timeframes.
A3 Does the QHRC appropriately determine which complaints to accept and which to reject?	QAI's experience is that the QHRC generally appropriately determines which complaints to accept and which to reject. The distinction between mandatory and discretionary grounds for acceptance is an important one, and QAI's position is that mandatory grounds for rejection should be interpreted narrowly, and discretionary grounds exercised cautiously, so as not to create additional barriers to access to justice for complainants, particularly those with disability, impaired capacity, or without legal representation. The time limit for making a complaint is one of the most significant grounds on which complaints may be rejected. QAI refers to its submissions at A30 in this regard. QAI notes the availability of Judicial Review for decisions made in relation to accepting or rejecting a complaint (e.g. *Sandy v Queensland Human Rights Commissioner* (2022) 12 QR 556.)

Question	Response
A4 Are there any improvements you would make to the QHRC's complaints handling processes, including to improve the efficiency of the process?	The Discussion Paper itself acknowledges increasing complaint volume and complexity, as well as delay and backlog in the current system. The QHRC must be adequately resourced to address these pressures. Use of investigative powers early in the complaints process may assist the parties to better understand the response to a complaint. In QAI's experience, documents and explanations that are relevant are sometimes withheld until later in the process, when early exposure could facilitate resolution. Further, as technology plays an increasing role in complaints involving conduct such as vilification, effective investigative powers to identify the individuals behind online comments and posts are vital.
A5 Does the QHRC engage appropriately with parties to a complaint, and how could they improve their engagement?	QHRC engage appropriately with parties.
A6 What is your experience (whether as a complainant or a respondent) of the conciliation conference process?	QAI represents complainants on matters related to disability.
A7 Is the conciliation process effective and how could it be improved?	QAI's view is that the effectiveness of the conciliation process is materially undermined by: • **The absence of material legal consequences for public entities that do not engage constructively**: QAI shares the Review's view, expressed in the Discussion Paper, that 'some public entities take a legalistic and adversarial approach to dispute resolution, possibly driven by a lack of legal consequence if the matter cannot be resolved. This does not achieve the goals

Question	Response
	of the Act's dialogue model to build a culture in the Queensland public sector that respects and promotes human rights'. Providing for greater legal consequences, including greater access to remedies such as compensation, would assist to overcome this. • **The absence of real enforcement mechanisms in respect of agreements reached:** Even where conciliation does result in an agreement between the parties, there is no mechanism under the HRA to enforce that agreement if the respondent subsequently fails to comply with it. QAI refers to its submission at A31 in this respect. • **The limited scope for individuals with a disability to be represented at conciliation conferences:** QAI submits that the QHRC should have a greater opportunity to respond to the needs of people with disability when determining whether a person with disability should be represented at a HRA conciliation conference, as the current language of section 83 of the HRA limits the scope for individuals with disability to be represented. Section 83(2)(b) frames the question of representation by reference to whether it 'would help the conciliation' rather than the needs or wellbeing of the person seeking representation. A person with disability may have a profound individual need for a representative to participate meaningfully, even where representation does not materially advance the conciliation itself. In addition to the above, section 83(2)(c)'s requirement that the representative have 'sufficient knowledge of matters relating to the complaint' may exclude informal support persons, carers or trusted family members who are best placed to assist a person with disability to communicate and participate, but who may not have detailed knowledge of the substantive complaint.
A8 Should there be more, or different, avenues to resolve complaints?	QAI's understanding is that the QHRC uses the alternative options for dispute resolution set out at [42] of the Discussion Paper but has insufficient resources to fully utilise them. In any event, QAI supports those alternative avenues. Ultimately, however, QAI's view is that the most meaningful additional avenue for resolving complaints would be allowing complainants to bring human rights complaints as an independent cause of action before the courts, rather than having to rely solely on the QHRC's internal dispute resolution processes.
A9 Should the QHRC have a right to appear as amicus	QAI supports the QHRC having a right to appear as *amicus curiae* in proceedings, in addition to its existing power to intervene. It agrees with the views expressed by the Commission on this issue, as set out in the Discussion Paper.

Question	Response
curiae ('friend of the court') in a proceeding, whether instead of or in addition to its existing power to intervene?	Further, QAI considers that the QHRC having the power to intervene or appear as amicus curiae would allow the QHRC to engage with proceedings in a manner proportionate to the nature and complexity of the human rights issues raised and allocate its limited resources more appropriately, whilst preserving its independence and impartiality.
A10 Should there be any conditions on when, where and how the QHRC can participate in a proceeding before a court or tribunal?	N/A
A11 Should the QHRC's intervention function in the ADA be repealed?	QAI's position is that the QHRC's intervention function under the ADA should not be repealed. The Discussion Paper notes that the function has not been used by the QHRC and questions its utility given the existence of an express intervention power under the HRA. However, QAI submits that non-use is not, of itself, a sufficient reason for repeal. The ADA and the HRA serve complementary but distinct purposes, and the existence of a dual intervention power provides flexibility that may become relevant as the human rights and anti-discrimination landscape continues to develop in Queensland. More broadly, repealing an existing enforcement mechanism, even one that has been rarely exercised, risks sending the wrong signal about Queensland's commitment to robust human rights and anti-discrimination protections. QAI recommends that the function be retained and that the QHRC be encouraged to develop clearer guidance on when and how it will exercise its intervention powers across both the ADA and HRA frameworks.
A12 What is your experience of the QHRC's education services and are	QHRC's role in education is important and should be supported. We have used education materials from the QHRC internally to train staff, to emphasise or describe the law in conciliation conferences and to assist clients to better understand their rights.

Question	Response
any improvements required?	
A13 What should be the role of the QHRC in participating in public debate on policy and legislation development in Queensland?	QHRC has an important role to play in public debate. Advocacy for the important rights contained in the ADA and HRA is undertaken in a wide variety of means including engaging with the media and public events and engagements. The involvement of the QHRC in parliamentary processes is an important reminder of the impact of these laws across other areas of legislative activity.
A14 At what stage in the process for the development of policy and legislation should the QHRC be involved?	QAI supports earlier engagement by the QHRC in the development of policy and legislation. QAI's experience confirms that the HRA is most effective as a tool for accountability when human rights considerations are embedded at the earliest possible stage of the policy and legislative development process, rather than being applied retrospectively once a Bill has been introduced to Parliament. QAI has previously observed that when the Queensland Government overrode the HRA in 2023, with the enactment of the *Strengthening Community Safety Bill 2023* (Qld), the HRA nonetheless served an important accountability function by centring human rights considerations in the public and parliamentary debate around the relevant legislation. However, QAI's view is that this kind of retrospective scrutiny is a poor substitute for genuine early engagement. Earlier involvement by the QHRC in policy development would allow disproportionate impacts on people with disability to be identified and addressed before legislation is introduced. The ACT model of engagement where early consultation is facilitated is generally supported. However, there is a need for transparency in such a model as the Commission may be seen as endorsing a law that is not compliant with human rights where this engagement is entirely behind closed doors.
A15 Would earlier involvement of the QHRC in government decision-making processes	Earlier involvement of the QHRC in government decision-making processes need not compromise, and should not be assumed to compromise, the independence of the QHRC.

Question	Response
compromise the independence of the QHRC?	Independence is a function of institutional design, not of the timing of engagement. A well-resourced and properly mandated QHRC can engage at an early stage in policy and legislative development whilst retaining its capacity to provide independent, impartial analysis and, where necessary, to publicly criticise government decisions that fall short of human rights standards.
A16 What is your experience of the engagement activities undertaken by the QHRC?	In QAI's experience, the QHRC undertakes its engagement activities effectively.
A17 Are there any improvements you would recommend to the QHRC's engagement activities, including ways to better promote a culture of human rights in Queensland?	QAI recommends that the QHRC's engagement activities be expanded and better targeted to reach those communities and public entities that most need to improve their understanding of human rights obligations. In particular, there is a need for a greater understanding of the HRA among many public entities, including hospitals and health services, as well as the broader community more generally. More targeted community legal education is therefore required to ensure the objectives of the HRA are fully realised for all Queenslanders. Additionally, QAI considers that there is significant merit in the approach taken to the composition of the AHRC, in which: • each commissioner is tasked with a distinct human right mandate; and • together, the commissioners advocate for indivisible human rights. QAI recommends that the QHRC adopt a similar model, which would enable it to better describe and advocate for particular communities.
A18 Do you support aligning the complaints framework in the ADA with the Draft Anti- Discrimination Bill 2024?	QAI broadly supports aligning the complaints framework in the ADA with the framework outlined in the Draft Anti-Discrimination Bill 2024.

Question	Response
A19 Should there be any further or different changes to that complaints framework?	N/A
A20 Are there any changes that could be made to the process for making human rights complaints to public entities to better align it with other government complaints processes?	The requirement to first complain to the public entity and wait 45 business days before escalating to the QHRC is a significant barrier in practice, particularly where there is ongoing harm or urgent need. QAI's position, as set out at A24, is that a complainant should not be required to engage with the relevant public entity prior to complaining to the QHRC. If the requirement to first complain to the public entity is retained, QAI submits that a shorter waiting period should apply. Further, QHRC should be given discretion to accept complaints earlier where the public entity has failed to engage in good faith or where circumstances are urgent. QAI has direct experience of clients who have been unable to resolve human rights concerns through a public entity's internal complaints process. The requirement to exhaust those processes before escalating to the QHRC can delay or prevent access to justice, particularly for people with disability.
A21 Should there be a prescribed process for when a human rights complaint made to a public entity involves more than one public entity?	Many people making complaints do not know the specific government department responsible or the appropriate complaint mechanism. There should be a 'no wrong door' approach to exhausting the requirement to make an internal complaint.
A22 Should the HRA specify that a 'human rights complaint' may only be made against a public entity, and not an individual in the	QAI does not support an amendment to the HRA that would limit complaints to be made only against a public entity and not individuals. QAI acknowledges that, in most cases, it will be appropriate and practical for a human rights complaint to be directed at the public entity, which bears ultimate responsibility for the acts and decisions of its staff and contractors. However, legislatively precluding any complaint against an individual would remove a potentially important avenue for accountability, particularly in cases where the individual has acted outside the scope of their authority or in a manner contrary to their employer's own policies.

Question	Response
employ of, or contracted to, that public entity?	Currently HRA complaints can attach to other causes of action, such as Judicial Review or Anti-discrimination complaints where individuals can be named.
A23 Would a representative action for human rights complaints be necessary or desirable?	QAI strongly supports the introduction of a representative action process for human rights complaints, similar to the ADA representative complaint provisions introduced in the Respect to Work Act. The Discussion Paper acknowledges that whilst section 64(3) of the HRA allows two or more persons to jointly make a human rights complaint, that provision does not deal with a third party bringing a complaint on behalf of two or more people. QAI agrees that this gap should be addressed. The ADA representative complaint provisions have worked well, and QAI has been pleased to see the new opportunities for representative complaint since the commenced provisions of the Respect at Work Act, resulting in new avenues for class complaints (for example, the ongoing QCAT matter of *Sy by Py v State of Queensland* (ADL056-25)). QAI considers that these provisions have significantly improved access to justice for persons with disabilities. QAI former CEO Kevin Cocks was the complainant in the case of *Cocks v State of Queensland* (1994) 1 QADR 43, which resulted in disability access to the Brisbane Convention Centre. The process of obtaining that outcome would have been significantly improved if the proceeding could have been brought by a representative body, rather than the burden of bringing legal action falling onto Mr Cocks. A similar representative action mechanism in respect of human rights complaints would ensure individuals impacted by human rights breaches are not denied access to justice simply because they cannot navigate the complaints process alone. It will ensure justice is available to a greater number of people with disability, who often have to navigate multiple complex legal avenues to procure supports and remedies.
A24 Should a complainant be required to engage with the relevant public entity prior to complaining to the QHRC?	No. QAI submits that a complainant should not be required to engage with the relevant public entity prior to complaining to the QHRC. While internal complaint processes and attempts to informally resolve issues can be a valuable way of addressing discriminatory treatment, such processes are often inadequate and can result in substantial delays. Further, while an individual may not have made a formal complaint with the public entity, an individual impacted by a breach will often have engaged informally with the public entity about the issue, such that making a formal complaint simply causes further delays, reinforces the consequences of the breach and acts as an additional barrier to justice.

Question	Response
	This is illustrated by the case of Ruby, a child with Autism Spectrum Disorder. Ruby's mother first raised concerns about the appropriate supports and adjustments in place at her school, in respect of her diagnosis of Autism Spectrum Disorder, between 2020 and 2022, but did not receive an adequate response. In 2021, Ruby's mother attempted to raise these concerns with the school and regional office, which directed her to QAI for assistance. The QAI Advocate attempted to resolve the concerns with the regional office without success. In 2022, the QAI Advocate drafted and sent a formal complaint on behalf of Ruby to the Department of Education, requesting a separate regional office review the complaint due to the region's previous involvement. The Department decided to send the complaint back to the same regional office for an outcome. Despite numerous attempts to follow up the complaint and seek an outcome, it took 15 weeks for the regional office to provide a response. Further, delays with such processes can have the effect of rendering a complaint to the QHRC out of time. The QHRC may refuse to deal with a complaint if it was not made or referred to the QHRC within 1 year of the alleged contravention to which the complaint relates to.[5] In practice, however, a person who makes a complaint to a public entity less than 45 business days before the 1 year period elapses has an additional barrier to justice. While the QHRC has discretion to accept a complaint made within the 45 business day period, it may only do so if it considers it appropriate because of exceptional circumstances.[6] Further: 1. Mandatory pre-complaint engagement requirements favour well-resourced respondents, who are better placed to manage and delay an internal process, over individual complainants who are often already in vulnerable circumstances. 2. The Review's concern that removing the requirement would result in the QHRC receiving many more complaints assumes that internal complaint processes are an effective filter. QAI's experience is that internal complaint processes in public entities are frequently slow, inaccessible and inadequate. Requiring complainants to exhaust those processes before accessing the QHRC does not reduce the burden on the system but rather delays and discourages legitimate complaints.

[5] *Human Rights Act 2019* (Qld) s 70(1)(d).
[6] Ibid s 65(2).

Question	Response
	3. The Review's concern that the QHRC will not have access to the resources relied upon by the public entity which made the decision is not a sufficient basis for maintaining the requirement. The QHRC is well placed to engage directly with public entities in the course of investigating a complaint, and the pre-complaint requirement should not operate as a barrier that disadvantages complainants by requiring them to first engage with the very entity whose conduct is being challenged. 4. Finally, the pre-complaint requirement places the burden of navigating internal processes on the complainant rather than the respondent. This is inconsistent with the objects of the HRA and with the idea that the complaints process should be accessible and trauma-informed. For the reasons set out above, QAI considers that the decision whether to first complain to the public entity should rest with the complainant, not be imposed as a legislative precondition to accessing the QHRC.
A25 Is the timeframe of 45 business days appropriate, including where a complaint engages multiple complaints frameworks?	QAI's primary position is that there should be no mandatory requirement to engage with the relevant public entity before making a complaint to the QHRC, as set out in QAI's response to A24. If, however, a mandatory waiting period is retained, QAI's strong submission is that 45 business days is excessive and should be substantially reduced to no longer than 14 days. Where a mandatory waiting period applies and a public entity fails to respond promptly, the complainant bears the consequences, including the risk that delay in the internal process eats into the overall time available to make a complaint to the QHRC. In practice, this reduces the period within which a complaint must be made to the QHRC by 45 business days. For example, if an individual made a complaint to a public entity 340 days after the alleged breach occurred, the 45 business day waiting period effectively prevents the individual from complaining to the QHRC within one year of the alleged breach (being the existing time limit). While the QHRC does have discretion to accept a complaint made within the 45 business day waiting period, in practice many individuals would not be aware that they could submit a complaint to the QHRC within that period such that this discretion does not sufficiently deal with the issue caused by the imposition of the waiting period.
A26 Should there be a prescribed form for human rights complaints for the	No. QAI submits that a prescribed form should not be required. A prescribed form would create an additional barrier for people with disability, many of whom face communication, literacy or capacity barriers that would make compliance difficult or impossible. It would act as a deterrent for those who have experienced discrimination and are most in need of protection, and is contrary to the

Question	Response
purposes of the initial complaint to the relevant public entity and any subsequent complaint to the QHRC?	goals of the HRA in ensuring accessible and inclusive complaints processes. The existing obligation on the QHRC to assist complainants who need help putting their complaint in writing is the appropriate mechanism for ensuring consistency. A non-mandatory form may be of assistance, but a mandatory form would create barriers.
A27 Should a person be able to make an oral complaint to the QHRC in exceptional circumstances?	Yes. QAI submits that a person should be able to make an oral complaint to the QHRC in exceptional circumstances, including where a person with disability is unable to make a written complaint due to communication barriers, literacy difficulties, or impaired capacity. A requirement to complain in writing in all circumstances would exclude some people from the complaints process entirely. Permitting oral complaints in exceptional circumstances is consistent with the HRA's objectives of accessibility and inclusion, and with the existing obligation on the QHRC to assist complainants who need help putting their complaint in writing.
A28 Are the QHRC's powers to enquire into human rights complaints sufficient for the purposes of its functions in dealing with and conciliating complaints?	Yes. QAI's direct experience confirms that the QHRC's enquiry powers have been vital in practice. In some matters in which QAI has been involved, the QHRC's ability to make preliminary enquiries has been essential to clarifying: • in particular in identifying the correct respondent to a complaint; and • which public entity bears responsibility for the act or decision the subject of the complaint, which would otherwise have caused significant delay or prevented the complaint from proceeding altogether.
A29 Should the complainant's consent be a prerequisite to any referral by the QHRC to another entity?	QAI's position is that the complainant must retain meaningful control over their complaint at all stages of the process. Consent to referral should be informed and the QHRC should explain clearly to the complainant which entity the complaint would be referred to, for what purpose, and what the practical implications of referral would be.
A30 Should a time limit for the making of a human	Section 70 of the HRA presently provides the QHRC with discretion to refuse to deal with a complaint if it was not made or referred to the QHRC within 1 year after the alleged contravention. QAI strongly supports extending that time period, such that the QHRC

Question	Response
rights complaint be imposed and, if so, what is the appropriate timeframe and in what circumstances (if any) would it be appropriate to accept an out of time complaint?	cannot refuse to deal with a complaint if it was made less than 3 years after the alleged contravention. Further, the QHRC should retain a broad discretion to accept complaints made beyond that time. There are several reasons that an individual who has experienced a breach of their human rights might be unable to take action to enforce their rights within a short period of the breach, such as: • the individual may remain within the environment in which they are mistreated and fear of further mistreatment and victimisation if they make a complaint; • the individual may have suffered trauma or a psychological injury as a consequence of the breach; • the individual may not be aware that what occurred is a breach of their human rights; or • the individual may have a disability or another vulnerability that makes the complaints process particularly challenging. The above factors can also compound. For example, a person with a disability who experiences a breach perpetrated by their disability accommodation provider may be fearful of making a complaint against their provider until they have been able to change accommodation providers, a process which can take more than a year. Any time limit must also be extended to account for any period that a person is without capacity to initiate proceedings. The discretion to accept out of time complaints should be framed broadly and should not be limited to exceptional circumstances. Many complainants, particularly people with disability, children and those in institutional settings, face structural barriers to timely complaint making that are foreseeable and should be accommodated as a matter of course rather than exception.
A31 Do you support alignment, where appropriate, of the complaints processes under the HRA with the changes proposed to the ADA, while	QAI supports alignment, where appropriate, of the complaints processes under the HRA with the changes proposed to the ADA. However, QAI submits that alignment should not be limited to replicating the current ADA position, but should instead take the opportunity to strengthen the enforcement framework under both Acts. Under section 164 of the ADA, a conciliated agreement must be filed with QCAT and treated as an order of the Tribunal, providing at least a baseline enforcement pathway for complainants whose agreements are subsequently breached. Under the HRA, no equivalent mechanism exists. Sections 88 to 90 of the HRA do not convert a conciliated agreement into an enforceable order, leaving

Question	Response
the complaint is being dealt with by the QHRC?	a complainant with no statutory recourse beyond a fresh general-law claim. This disparity is difficult to justify. A significant amount of QHRC and party resources are expended to bring a complaint to a conciliated agreement, yet once that agreement is signed, there is no QHRC-assisted pathway to enforce it if breached, undermining the value of the process that produced it. A mechanism similar to that in s 164 of the ADA should be introduced to the HRA as a minimum step. Additionally, QAI submits that both the HRA and ADA should go further and incorporate a stronger enforcement model, drawing on comparative jurisdictions that have addressed this gap more effectively. In Canada, the Human Rights Commission must certify the terms of a settlement, and the Commission itself (not only the complainant) may apply to have the settlement made an enforceable court order.[7] This model is particularly strong because it both: • safeguards the quality of settlements at the point of agreement; and • removes the burden of enforcement from the individual complainant. QAI submits that this model should be adopted under both the ADA and the HRA, so that the QHRC has standing to apply to have a conciliated agreement made an enforceable order of QCAT where a respondent fails to comply. In New Zealand, under the *Human Rights Act 1993* (NZ), breached settlements may be referred to the Human Rights Review Tribunal.[8] Crucially, funded representation is available through the Director of Human Rights Proceedings which addresses the cost barrier to enforcement, which is a significant practical obstacle for people with disability, rather than the procedural one alone. Finally, in New Zealand, a broad remedy suite exists including declarations, restraining orders, damages and compliance orders. It is absolutely essential that real legal remedies exist in the case of non-compliance. QAI submits that the Canadian and New Zealand models are complementary and consideration should be given to whether a model incorporating the key features from each jurisdiction could be adopted in Queensland, which would ensure that the enforcement pathway is genuinely accessible to complainants who lack the resources to pursue enforcement proceedings independently.

[7] *Canadian Human Rights Act*, RSC 1985, c H-6, ss 48, 57.
[8] *Human Rights Act 1993* (NZ) s 92I.

Question	Response
A32 Should there be any changes to the reporting process where a human rights complaint is unable to be resolved at conciliation?	QAI generally supports the approach proposed at paragraph [151] of the Discussion Paper. In particular, QAI supports the proposals that the respondent should be required to reply within a specified timeframe to any recommended action in the QHRC's report, that the respondent must subsequently inform the QHRC in writing of any action taken in response to those recommendations, and that the QHRC must publish the substance of the complaint, the recommended action, the respondent's reply, and any action taken. QAI agrees with the Review's preliminary view that such a process would promote public accountability, improve the culture of human rights in the Queensland Government, and encourage systemic change in policies, procedures and practices. However, QAI considers that the current process falls short of providing real remedies to complainants and should be strengthened in the following respects: • First, the QHRC's report following an unresolved complaint may, but is not required to, include details of action the QHRC considers the respondent should take to ensure its acts and decisions are compatible with human rights. QAI submits that this should be a mandatory requirement. Where a complaint has not been resolved, the complainant has received no remedy and the respondent's conduct remains unaddressed. A report that does not include any assessment of what action the respondent should take provides no practical benefit to the complainant and no meaningful incentive for the respondent to change its conduct. • Second, there is no requirement on the respondent to reply to the report or to take any action in response to it. This renders the reporting process largely symbolic. QAI submits that the HRA should be amended to require respondents to provide a written response to the QHRC's report within a specified timeframe, setting out what steps, if any, they intend to take in response to the QHRC's recommendations. Further, where the recommendations will take time to complete, the QHRC should have the discretion to require progress reports to be provided.

Part B – Further review of the Human Rights Act 2019

Question	Response
B1 Should any human rights be expressed as absolute and not subject to any limitation?	QAI supports expressing certain human rights under the HRA as absolute and not subject to limitation under section 13. QAI supports the view of Professor Susan Harris Rimmer, expressed in the *Placing People at the Heart of Policy: First Independent Review of the Human Rights Act 2019 (Qld)* (***First Review***) and summarised at [160] of the Discussion Paper that certain rights under the International Covenant on Civil and Political Rights (***ICCPR***) are absolute rights, and that the HRA should clarify that no limitation can be justified where those rights are reflected in the HRA. In addition to the examples listed at [160] of the Discussion Paper, QAI considers that the freedom from being subjected to torture, or to cruel, inhuman or degrading treatment or punishment (s 17) should also be an absolute right, in accordance with the ICCPR (Article 7). QAI submits that there are no reasonable limits that could justifiably be applied to these rights. Each of the absolute rights should be expressly excluded from the operation of s 13 of the HRA.
B2 Should any additional human rights be recognised in the HRA?	QAI reiterates its position, as set out in its 2024 submission to the First Review,[9] that the HRA should be amended to include all rights enshrined in the Convention on the Rights of Persons with Disabilities (**CRPD**) including a participation duty and equal access to justice duty, and a right to an adequate standard of living and housing:[10] • **Participation Duty (Article 4(3)):** This requires States to closely consult with and actively involve people with disability, including children with disability, through their representative organisations, in developing and implementing legislation and policies to implement the CRPD and in other decision making processes concerning disability issues.[11] QAI considers the HRA should require public entities to provide meaningful opportunities for people with disability to participate in decisions affecting them. Consistent with article 12(3) of the CRPD, the HRA should also provide access for persons with disabilities to the support they may require in exercising their legal capacity.[12]

[9] Queensland Advocacy for Inclusion, Submission to Professor Susan Rimmer, *Independent review of the Queensland Human Rights Act* (June 2024).
[10] *Convention of the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) ('*CRPD*')
[11] Ibid art 4(3).
[12] Ibid art 12(3).

Question	Response
	• **Equal access to justice duty (Article 13):** This requires the provision of effective access to justice for people with disability on an equal basis with others,[13] including procedural and age-appropriate accommodations to facilitate participation in legal proceedings (as complainants, witnesses and at investigative and preliminary stages) as well as promoting appropriate training for those administering justice, including police and prison staff. QAI supports a positive duty requiring public entities to take practical steps to facilitate access to justice, including through sufficient access to legal assistance, interpreter and disability supports. • **Right to an adequate standard of living (Article 28):** This recognises the right of people with a disability and their families to an adequate standard of living, including food, clothing and housing and to the continuous improvement of living conditions.[14] It requires appropriate steps to safeguard and promote that right without disability discrimination, alongside measures supporting social protection, access to clean water and access to public housing programmes. Consistent with article 4(2), implementation of these economic and social rights should involve measures to the maximum of available resources toward their progressive realisation, without displacing immediate applicable obligations.[15] QAI further submits that the right to self-determination for First Nations peoples should be recognised directly in the HRA, rather than referred to the Queensland Law Reform Commission for further exploration as recommended in the First Review. Self-determination for First Nations people with disability has additional significance because of the dual risk of institutionalisation. QAI refers to the speech given by its Chairperson, Byron Albury, to the United Nations in 2017, which serves as a reminder of the importance of self-determination and autonomy (extracts below): 'Around 1980 I was forcibly placed in an institution and special school for children with disability. I was 5 years old when my mother was not able to look after me any more.

[13] Ibid art 13.
[14] Ibid art 28.
[15] Ibid arts 4(2), 28.

Question	Response
	In the institution, I was told I was dumb and would never amount to anything. I missed out on learning my Indigenous culture. Physical scars heal, emotional ones take years. We were told when to go to bed, what to eat, who to be friends with. It was a hospital setting with communal showers and restricted movements. I was ashamed to tell other children I lived in a home with 72 other children with disabilities. When I turned 16, I was moved into what was called an independent living unit but I was abused by the service I was forced to use there. I still didn't have my own room or independence. Toileting was done in the open in front of the other kids in my room. If you didn't do what you were told, you were tagged a difficult client and medication like valium was used to calm you down. I was forcibly removed from this institution on 22 May 1994 because I turned 18. When I woke up on my birthday, I was told I had one hour to pack all my belongings and leave the building. I got help from the government to move to a 2 bedroom unit but no one prepared me for living independently. I didn't even know how to buy a meal. Not knowing what to do made me feel dumb, but it was just because I was never taught. The best thing about my childhood was the friendships for life I made with other children. However, the emotional toll is something I will never get back. Neither is my lack of culture. Now I have a university degree and have been the chairperson of QAI for over 2 decades. I have worked to reconnect with culture and family. I want to make sure that no one else goes through what I went though.' QAI considers that self-determination for First Nations peoples would avoid the harms caused by protectionist policies and ensure that First Nations persons like Byron can live autonomous and free lives.
B3 Should new human rights be included in the HRA to protect victims of crime?	QAI supports the recommendations of the First Review, namely: A new right should be incorporated into the Human Rights Act that recognises victims should be treated in a respectful and trauma-informed manner, which includes providing information in a timely manner that reduces the stress and trauma on victims.

Question	Response
B4 If any new human rights are included, are there any unintended consequences in how those rights would operate alongside existing rights?	Yes. QAI submits that, depending on the wording, recognising a new right protecting victims of crime may have unintended consequences for the operation of existing rights, particularly in corrective services settings. However, this need not necessarily be the case. The rights of victims are addressed in international human rights in a way that reflects their indivisible nature from other human rights. See for example, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power | OHCHR. This approach is distinct from the interpretation of victims rights we have seen domestically. For example, existing restrictions on prisoners' human rights protections under the *Corrective Services Act 2006* (Qld) (**CSA**), combined with the introduction of a new right for victims of crime, may skew the proportionality assessment under sections 8 and 13 of the HRA. There is a risk that protecting victims could be relied on as an additional justification for restricting prisoners' rights, while existing corrective services restrictions are treated as having already resolved the balance against prisoners. This could lead to insufficient consideration of whether a particular restriction would advance victims' rights, the extent of its impact on the prisoner, and whether the same objective could be achieved through a less restrictive measure. QAI submits that recognising a new victims' right should be implemented in a way that reflects the international standards of human rights so as to not create a juxtaposition that implies rights are competing and divisible. Any new right should be considered alongside the existing corrective services framework, with safeguards to ensure that limitations on prisoners' rights remain subject to an individual and proportionate assessment.
B5 How has the process of scrutinising new legislation under the HRA operated, and are any improvements required?	QAI agrees in strengthening the legislative framework to require a response to human rights concerns raised by a committee and improving processes for statements of compatibility.

Question	Response
B6 Should the override declaration provisions of the HRA be repealed?	QAI shares the community concern about the override provisions. Human rights belong to every person by virtue of their inherent dignity and are universal, inalienable and indivisible. QAI understands the calls for removal of the override as reflecting a desire to strengthen human rights protections by removing the ability to override them without sufficient justification or scrutiny. The Discussion Paper records that submissions to the First Review criticised both the need for an override power and the way it had been exercised. In particular, submissions questioned whether the circumstances relied upon met the intended threshold of exceptional circumstances. QAI shares this concern. Describing circumstances as exceptional should not be a substitute for meaningful scrutiny of whether that characterisation is justified. The first two uses of the override concerned youth justice legislation the *Strengthening Community Safety Act 2023* (Qld) and the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld). The former introduced measures including a breach of bail offence for children and requirements returning children to detention following breaches of conditional release orders. QAI considers that the influence of the political climate on these reforms illustrates the importance of scrutinising the circumstances relied upon to justify an override. Political pressure to adopt a particular legislative response should not, of itself, establish exceptional circumstances. **The implications of repeal** QAI acknowledges the Review's preliminary view that the override provisions should be repealed because the HRA already preserves Parliament's authority to enact legislation incompatible with human rights. However, this also identifies the limitation of repeal as a response to community concern. Removing the express override provisions would not prevent Parliament from enacting incompatible legislation through ordinary legislative processes, including by expressly restricting the application of the HRA and its interpretive provisions. The existing override expressly signals Parliament's intention to depart from human rights protections. Although it excludes scrutiny that would otherwise occur under the HRA, it also provides for expiry. QAI questions the gap that would be left if the mechanism were removed without strengthening scrutiny of legislative departures from human rights protections.

Question	Response
	Repeal would not itself remove the ordinary scrutiny and interpretive provisions of the HRA. Nevertheless, Parliament could expressly restrict their application, and committee scrutiny may remain limited in practice. QAI is concerned that removing the override without strengthening scrutiny in other ways would mask, rather than address, the underlying community concern. This concern is heightened by the issues raised at B7 to B9 of the Discussion Paper regarding the retention of judicial scrutiny within the human rights framework. **An executive declaration of exceptional circumstances** QAI proposes that, if the existing override provisions are removed, they be replaced with a provision improving the decision-making process for determining whether exceptional circumstances exist. Specifically, an administrative declaration of exceptional circumstances by the executive should be required before Parliament may make an override declaration. This would separate the determination that exceptional circumstances exist from the parliamentary decision about the legislative response. Framing the threshold determination as an administrative decision would allow it to be subject to the disciplines of administrative law and the rule of law, including consideration of relevant matters, procedural fairness appropriate to the circumstances and judicial review. The purpose would be to provide scrutiny of the circumstances relied upon to justify an override, rather than leave that assessment solely to the political process. QAI considers that determining whether the relevant exceptional circumstances exist is better suited to an executive decision-making process. Queensland legislation provides relevant reference points in the *Public Health Act 2005* (Qld), *Public Safety Preservation Act 1986* (Qld), *Biosecurity Act 2014* (Qld) and *Environmental Protection Act 1994* (Qld). In particular, the public health emergency declaration provisions provide an example of a separate executive declaration process.[16] Under QAI's proposed approach, Parliament would retain responsibility for determining the legislative response to the declared circumstances. Requiring a prior executive declaration would therefore preserve Parliament's legislative role while providing an additional avenue for scrutiny of the circumstances said to justify an override.

[16] *Public Health Act 2005* (Qld) ss 319 - 326.

Question	Response
	International and comparative approaches Article 4 of the ICCPR provides support for a formal declaration requirement. It contemplates derogation from certain obligations in an officially proclaimed public emergency, subject to conditions, while identifying obligations from which no derogation is permitted.[17] This supports distinguishing exceptional departures from human rights protections from ordinary limitations on rights. It does not suggest that every limitation requires an emergency declaration. Article 15 of the European Convention on Human Rights similarly provides an emergency derogation framework.[18] These international approaches support the principle that exceptional circumstances relied upon to justify departures from human rights protections should be formally identified. Canada's 'notwithstanding clause' provides a different comparison. Section 33 of the Canadian Charter of Rights and Freedoms permits express legislative departures from certain Charter protections for periods of up to five years, with the possibility of re-enactment.[19] It illustrates the use of express declarations and temporal limits but does not provide the separate executive determination of exceptional circumstances proposed by QAI. These comparative approaches provide support for elements of QAI's proposal, rather than an identical precedent. QAI submits that the absence of an identical model should not prevent consideration of a process adapted to Queensland's framework. The objective should be to strengthen justification and scrutiny of departures from human rights protections, rather than simply remove the existing mechanism.
B7 Is it an appropriate function of the Supreme Court of Queensland to make declarations of	Yes. The Supreme Court of Queensland's power to make a declaration of incompatibility is fundamental to the operation of the 'dialogue model' under the HRA. As the Review itself recognises, the dialogue model can only operate as intended if the Supreme Court first exercises its discretion to make a declaration without this function, there is no mechanism by which the judiciary can signal to Parliament that a statutory provision cannot be interpreted compatibly with human rights.

[17] *International Covenant on Civil and Political Rights* art 4, particularly art 4(2).
[18] *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) art 15.
[19] *Canadian Charter of Rights and Freedoms* s 33.

Question	Response
incompatibility which have no effect on the validity of a statutory provision?	The value of the dialogue model lies in the distinct institutional roles it preserves. The Supreme Court is best placed to identify, through the ordinary judicial process, where a statutory provision genuinely cannot be reconciled with human rights. Parliament, as the body ultimately responsible to the electorate, retains the authority to determine whether and how to respond to such a declaration. A declaration of incompatibility respects this separation of powers as it does not permit the Court to invalidate legislation, but it ensures that Parliament cannot remain silent or uninformed about an incompatibility once identified by the Supreme Court. The fact that legislative change has not resulted from issuing of a declaration of incompatibility demonstrates that the separation of powers remains unimpacted. The power to issue declarations of incompatibility has been rarely used in other jurisdictions, but does not indicate that it is not an important or appropriate power to provide to the Supreme Court. Rather, it demonstrates that the Courts are well-equipped to understand the importance of exercising their discretion carefully and only issuing such declarations where the Court considers it necessary to do so.
B8 Is it appropriate for the 'dialogue model' between the courts and Parliament to remain?	Yes. QAI submits that the dialogue model should remain as it plays an important role. However, QAI's position remains that human rights should be legally enforceable, rather than dependent on a non-binding dialogue between the courts and Parliament. QAI has previously recommended that the HRA establish a standalone cause of action under which a person can bring a claim that a duty-holder has acted in contravention of the HRA, so that complainants can bring a human rights complaint as an independent cause of action before the courts, rather than being required to 'piggy-back' their complaint onto another type of legal action, with access to the full range of remedies including compensation. QAI's experience is that the absence of legal consequence for a breach encourages some public entities to take a legalistic and adversarial approach to dispute resolution, which undermines the dialogue model's own stated goal of building a culture in the Queensland public sector that respects and promotes human rights. Until that reform is adopted, the dialogue model is better than no judicial involvement in human rights compatibility at all, and QAI's support for retaining it is conditional on no weaker alternative being substituted in its place.

Question	Response
B9 Should sections 53 to 57 of the HRA be repealed?	No, for the reasons set out at B7 and B8, above.
B10 Should the interpretation provision in the HRA be retained and, if so, should it be amended to clarify its operation?	Yes. QAI submits that section 48 of the HRA should be retained in its current form. At the time the Review was prepared, as noted at [213] of the Discussion Paper, s 48 of the HRA was in the process of being considered by the High Court. The High Court's decision in *Smith* has since been handed down. In *Smith*, the key issue was whether s 22 of the CSA, which prohibited a prisoner from participating in 'assisted reproductive technology', prohibited the applicant prisoner from having her eggs extracted and frozen. The Court unanimously held that the prisoner was not prohibited from doing so. Edelman J discussed the provision extensively in his Honour's reasons. While his Honour did not ultimately find it necessary to rely on s 48, his Honour found that the provision had a real impact on the way that courts are required to interpret legislation. For example, his Honour stated that: '*If, … the meaning given to an open-textured statutory provision were found to have an unintended application, which is not a necessary consequence of the purpose of the provision but is incompatible with one of the specified human rights, then the command in s 48 of the Human Rights Act could not be ignored*'.[20] As such, the High Court's judgment in *Smith* demonstrates that s 48 has a real role to play in statutory interpretation. For these reasons, QAI submits that s 48 of the HRA should be retained unchanged.
B11 Should the referral process be repealed?	QAI is broadly concerned about a potential retreat from judicial involvement in human rights questions. Unlike section 48, which QAI submits at B10 continues to do real interpretive work, the referral process does not appear to have produced any substantive benefit yet. It can also carry a practical cost, where a referral can delay the underlying proceeding while the referred question is before the Supreme Court and where the same question could instead be decided by the court and appealed if necessary. In those circumstances, QAI submits that while there is no reason why questions of law that arise relating to

[20] *Smith v Chief Executive, Queensland Corrective Services* [2026] HCA 37, [49] (Edelman J) ('*Smith*').

Question	Response
	the application of the HRA cannot be determined by the relevant court or tribunal and thereafter appealed, we do not think there has been sufficient time to evaluate the effectiveness of the referral process to recommend its removal.
B12 Should the 'procedural' limb in section 58(1)(b) be retained? If it is retained, should the consequence of non-compliance with the 'procedural' limb mean the act or decision is unlawful?	Yes. QAI submits that the procedural limb in section 58(1)(b) should be retained. The Review raises the concern that the procedural limb does no more than seek to secure compliance with the substantive limb, and that a decision-maker may fail to comply with the procedural limb despite reaching an outcome that is substantively compatible with human rights. QAI submits that this understates the distinct purpose served by the procedural obligation. The two limbs of s 58(1) address different aspects of public decision-making: 1. the substantive limb (a) is concerned with whether the outcome is compatible with human rights; and 2. the procedural limb (b) is concerned with whether relevant human rights were properly considered in reaching that outcome. A compatible outcome reached without proper consideration of relevant human rights does not demonstrate that the procedural obligation is unnecessary. Rather, it may mean that the compatible outcome was reached despite, rather than because of, the decision-making process. Additionally, QAI considers that section 58(1)(b) embeds a comparable discipline in administrative decision-making by requiring public entities to turn their minds to relevant human rights before making a decision. That requirement helps ensure that human rights form part of the decision-making process itself, rather than compatibility being assessed only retrospectively by reference to the outcome. QAI also notes that the Review's preliminary consultations indicate that compliance with the procedural limb has assisted in developing a culture of human rights within public entities.[21] This is consistent with the broader purpose served by a procedural obligation, requiring decision-makers to consider human rights at the point a decision is made embeds human rights considerations

[21] Department of Justice (Qld), *Strategic Review of the Queensland Human Rights Commission and related reviews* (Discussion Paper, 30 September 2026) 38 [233] (*'Discussion Paper'*).

Question	Response
	within ordinary administrative processes. Queensland Government guidance similarly treats the requirement to give proper consideration to human rights as a distinct procedural obligation applying before a decision is made.[22] In QAI's experience, the procedural limb often provides a check against decision-makers acting on information at the date of an incident, and not considering current circumstances where human rights are engaged. By way of example, QAI assisted with a child with disabilities who was excluded from school after harming another student. The proportionality of the school's response was assessed by reference to the child's NDIS plan, however, the plan relied upon was outdated and did not reflect the additional supports he had since received, which were directly relevant to whether exclusion was a proportionate response in the circumstances. In this example, the question of whether the school's ultimate decision to exclude the child was substantively compatible with his human rights is separate from the question of whether the decision-maker properly turned their mind to his current circumstances in reaching that decision. Had the decision-maker had regard to the child's up-to-date supports, as section 58(1)(b) requires, the proportionality assessment may have been different, or at least would have been undertaken on a proper basis. QAI acknowledges the Review's concerns regarding the compliance burden associated with the procedural limb, including the time and cost of compliance and the potentially conservative approach taken by public entities when identifying rights that may be engaged. However, QAI does not consider those concerns justify removing the procedural obligation. The obligation does not require a formulaic or unduly technical exercise in every case. Existing authority indicates that proper consideration generally requires evidence that the decision-maker seriously turned their mind to the possible impact of the decision on human rights, its implications for the affected person and any countervailing interests or obligations.[23]

[22] Department of Justice (Qld), *Government's obligation to protect your rights* (18 June 2026) <https://www.qld.gov.au/government/rights-privacy/rights/obligation-to-protect>.
[23] See *Mizner v State of Queensland* [2025] QCA 169 [277] and *BZN v Chief Executive, Department of Children, Youth Justice and Multicultural Affairs* [2023] QSC 266 [256]-[259].

Question	Response
	To the extent that uncertainty or disproportionate compliance practices impose unnecessary burdens, QAI submits that these concerns are better addressed through clear guidance, training and appropriate resourcing for decision-makers, rather than removing the obligation to consider human rights before making a decision.
B13 What remedies should be available for a contravention of section 58(1) of the HRA?	QAI supports stronger remedies for a breach of section 58(1) than are presently available. This is consistent with QAI's long-standing position. In its 2024 submission to the First review, QAI recommended that the Act establish a standalone cause of action allowing a person to bring a claim that a duty-holder has contravened the HRA, rather than requiring that claim to be attached to another, separate legal action as section 59 currently requires. This remains QAI's view. QAI agrees with each of the four additional options for reform the Review has identified at [255] of the Discussion Paper: allowing a human rights complaint made to the QHRC to be referred to QCAT or the QIRC, as already happens under the ADA; making declaratory and injunctive relief available where a complaint is established; creating a separate cause of action, similar to the ACT model; and creating a new ground of judicial review, so a decision that breaches section 58(1) can be challenged under the *Judicial Review Act 1991* (Qld).[24] QAI also submits that the remedies available should be modelled on those already available under section 209 of the ADA.
B14 Should section 5(2)(a) of the HRA be repealed?	No. QAI does not support repealing section 5(2)(a). The Queensland Court of Appeal recently clarified this provision in *Huang v Body Corporate for Dorchester* CTS 10749. The Court found that section 5(2)(a) does not give courts and tribunals a freestanding duty to apply human rights under Part 2 of the HRA. That provision points to the specific obligations set out elsewhere in the Act, and does not require a court to go looking for human rights issues on its own initiative when deciding a case. QAI's position is that section 5(2)(a) should still be retained as it connects courts and tribunals to their role under Part 3, Division 3 of the HRA.

[24] *Discussion Paper* (n 21) 41 [255].

Question	Response
B15 Should the definition of 'court' be amended to include the Land Court, the Land Appeal Court, the Planning & Environment Court, the Mental Health Court, and the Industrial Court of Queensland?	Yes. QAI agrees that the definition of 'court' in the HRA should be amended to include the Land Court, the Land Appeal Court, the Planning and Environment Court, the Mental Health Court, and the Industrial Court of Queensland. QAI also submits that QCAT should be included within the scope of the HRA's protections to the same extent as these courts.
B16 Should the definition of 'discrimination' be amended to make it clear it is exhaustive?	No. QAI does not support amending the definition of 'discrimination' in the HRA to make it exhaustive. QAI acknowledges the Review's observation that the current definition, which includes direct and indirect discrimination within the meaning of the ADA, is inclusive rather than exhaustive, and that this has created uncertainty as to whether other forms of discrimination are also captured by the HRA. QAI submits that this uncertainty should be resolved in favour of retaining an open, inclusive definition, rather than confining 'discrimination' strictly to the ADA's definition. Confining the definition of 'discrimination' to the ADA would mean that if a future form of discrimination is recognised internationally, the HRA's protection would not necessarily keep pace. Adopting an inclusive definition allows the HRA to respond to a broader or evolving understanding of discrimination, consistent with Queensland's human rights obligations, without needing to wait for a corresponding amendment to the ADA. This approach is consistent with the treatment of discrimination under international human rights instruments. By way of illustration:

Question	Response
	• Article 2 of the CRPD defines discrimination on the basis of disability as any distinction, exclusion or restriction on that basis which has the purpose or effect of impairing or nullifying the equal recognition, enjoyment or exercise of human rights and fundamental freedoms. It expressly includes 'all forms of discrimination, including denial of reasonable accommodation'.[25] • Additionally, the test for discrimination under the *Racial Discrimination Act 1975* (Cth), which derives from the International Convention on the Elimination of All Forms of Racial Discrimination, is framed by reference to open-ended concepts, namely conduct that nullifies or impairs the enjoyment of any human right in the political, economic, social, cultural or any other field of public life, rather than a closed list of categories. QAI considers that this rights-focused approach supports retaining a definition capable of recognising the different ways discrimination may be experienced by people with disability. The HRA's protection should not be confined to whether discriminatory conduct falls within the categories expressly identified in the ADA.
B17 Should section 9(4)(b) of the HRA be amended so that a court or tribunal is not a public entity for the purposes of the application of the Act irrespective of whether it is acting judicially or administratively?	No. QAI does not support amending section 9(4)(b) to remove courts and tribunals from the definition of 'public entity' irrespective of capacity. Rather, QAI considers that the difficulties identified by the Review at [279] and [280] of the Discussion Paper can be adequately addressed by the provision of clearer guidance on the circumstances in which a court or tribunal acts in an administrative capacity as opposed to a judicial capacity. Administrative conduct by a court or tribunal, such as registry decisions, case management directions affecting a person's substantive rights, or other operational decisions, is capable of engaging human rights in the same way as administrative conduct by any other public entity, and should remain subject to the HRA.
B18 Do sections 9(1)(h), 9(2)(a) and 10 of the HRA require amendment to	Yes. QAI submits that sections 9(1)(h), 9(2)(a) and 10 of the HRA should be amended to clarify what constitutes a functional public entity, including by putting beyond doubt that private schools and supported accommodation providers are public entities where they receive public funding and perform public functions.

[25] *CRPD* (n 10) art 2.

Question	Response
clarify what constitutes a functional public entity, for example non-government service providers?	**Private Schools** Education is a fundamental human right, and private schools receive government funding and access to state resources to provide it. QAI's Young People's Program has repeatedly encountered instances where the rights of students in private schools are not adequately protected because of the current exemption, and where there is less transparency around private schools' policies than around those of state schools, making it difficult for students and families to understand and uphold their rights. For some families, there is no real alternative to a private school, whether because of geography, the need for boarding, or past negative experiences with state schools, so the exemption leaves no comparable human rights protection available to those students. QAI's casework has shown practical consequences, including an example where a young person in regional Queensland was excluded from the only private school within reach, with no public transport available to any state school. The family's complaint to the school's governing board was investigated by solicitors appointed by the board, without the young person or family being consulted and no further avenue was available without the prospect of legal costs. A complaint to the Queensland Human Rights Commission would have offered greater procedural fairness. **Supported Accommodation Providers** QAI submits that the same reasoning applies to supported accommodation providers. Many perform the same public function as registered NDIS providers but fall outside the definition of 'public entity' because they do not provide services 'for the State', leaving residents exposed to the same risk of abuse, neglect and exploitation without comparable protection. QAI recommends that all accredited residential service providers be designated as public entities, so that protection does not depend on a provider's functioning model or corporate structure.
B19 Should section 5A of the Corrective Services Act 2006 and sections 263(7)–(8) of the Youth Justice Act 1992 be retained?	No. QAI supports the repeal of section 5A of the CSA and sections 263(7)-(8) of the *Youth Justice Act 1992* (Qld). The Court of Appeal's decision in *Mizner v State of Queensland (Corrective Services)* [2025] QCA 169 confirms that section 5A does no more than declare that taking into account the security and good management of corrective services facilities, or the safe custody and welfare of prisoners, will not of itself contravene section 58(1) of the HRA. It does not determine whether a person's rights under section 30 have been limited, which still requires separate consideration under sections 8 and 13.

Question	Response
	Those considerations are already properly addressed through the ordinary proportionality test, and the provisions add nothing beyond confirming what sections 8 and 13 already require. Their only practical effect is to create a risk that decision-makers treat the listed factors as a separate justification, rather than engaging with the proportionality analysis the HRA actually requires. For the reasons set out above, QAI agrees with the First Review's recommendation that both provisions should be repealed.
B20 Is a further review of the HRA necessary and, if so, in what timeframe?	N/A
B21 Are there any other issues that you would like to raise about the operation of the HRA?	N/A

Part C – Review of the Respect at Work Act

Question	Response
C1 Does the phrase 'equality of opportunity' require any amendment?	Yes. QAI agrees with the QHRC's view, as set out in the Building Belonging: Review of Queensland's Anti-Discrimination 1991 Report (July 2022) (the ***Building Belonging Report***), that the phrase 'equality of opportunity' requires amendment to ensure that the ADA promotes substantive equality, rather than simply equality of opportunity. A focus on substantive equality is crucial to removing systemic discrimination against people with disability. The DRC's Final Report explicitly acknowledged that:

Question	Response
	'It will take more than formal equality – addressing discrimination and treating everyone in the same way – to achieve the aims of preventing violence against, and abuse, neglect and exploitation of, people with disability. There needs to be a greater focus on delivering substantive equality and equality of outcomes in practice.'[26] The recent High Court decision in *Smith* illustrates that both the HRA and CSA already require a substantive interpretation of equality. The Court drew on notions of the need to respect human dignity under both the HRA and CSA, as well as the humane containment and special needs of some offenders under the CSA, in recognising that safeguarding a prisoner's basic entitlement to medical treatment requires taking into account the dignity and special needs of that prisoner. This decision clearly privileges a substantive equality approach, as opposed to a formal equality approach, by acknowledging that some people need to be treated differently to ensure they are treated equally. Explicitly including 'substantive equality' within the ADA is necessary to ensure that the concept of 'equality' is interpreted and applied consistently across the CSA, HRA and ADA. QAI agrees with the QHRC's view at [319] of the Discussion Paper that consistency between Queensland and Commonwealth legislation is desirable. Consequently, QAI supports the use of the phrase 'substantive equality' (as opposed to 'equal opportunity and equitable outcomes') in place of 'equality of opportunity'.
C2 Are there any unintended consequences of introducing a new prohibition on 'harassment on the basis of sex'?	QAI agrees with the Review's preliminary view set out at [330] of the Discussion Paper and the concerns expressed in the Building Belonging Report. In particular, QAI is concerned that strengthening protections solely for a single attribute – sex – may lead to an inconsistent and less cohesive approach in the way that discrimination on the basis of sex is dealt with as compared to discrimination on the basis of other protected attributes. The case of *Magar v Khan* [2025] FCA 874, which was the first case considering the equivalent 'harassment on the ground of sex' prohibition under the federal *Sex Discrimination Act 1984* (Cth), highlights the issues with introducing this prohibition. The applicant, who was a female employee employed by the respondent's business, alleged that the respondent and a group of male

[26] *DRC Final Report* (n 1) vol 4, 172.

Question	Response
	staff had made derogatory and sexual comments about women while at work. However, the applicant's allegations of sex-based harassment were not upheld. The Court reasoned that the wording of the prohibition meant the conduct had to occur 'in relation to' the applicant, finding that the proven comments did not contain reference to *her* being harassed. However, previous caselaw has established that similar conduct involving sexual or sexist behaviour can be sexual harassment or sex discrimination, even when not directed at a particular person.[27] This is a clear illustration of the concern raised in the Building Belonging Report and set out at [329(c)] of the Discussion Paper: introducing new legislative provisions will override the general discrimination and sexual harassment protections that have been working well. This is particularly concerning when the existing provisions actually may offer greater protection in cases like *Magar v Khan*. We are also concerned about the impact of additional protections on the basis of sex alone, as creating an awkward interaction between the attribute of sex and disability. This is particularly the case in matters where a combination of attributes is relevant. We do not want to see case law developing where disability attribute protections are of a lower standard than sex attribute protections. Accordingly, QAI submits that it is not necessary to introduce a new prohibition on harassment on the ground of sex; existing provisions and the new positive duty will provide sufficient protection.
C3 Are there any unintended consequences of introducing a new prohibition on subjecting a person to a work environment that is hostile on the basis of sex?	QAI agrees with the Review's preliminary review set out at [335] of the Discussion Paper and the concerns expressed in the Building Belonging Report for the reasons set out in its answer to question C2, above.

[27] See *G v R and Dept of Health* [1993] HREOCA 20, 1993.

Question	Response
C4 What are the unintended consequences of retaining the present definition of 'irrelevant criminal record'?	QAI is supportive of amending the present definition of 'irrelevant criminal record' to remove unintended consequences. We consider that it may be appropriate to align more closely with the federal law, namely the AHRC Act, which also protects against discrimination based on 'irrelevant criminal record', with an exception for where the person's criminal record is directly relevant to the inherent requirements of a job.
C5 Are there any unintended consequences from retaining the proposed new attribute of 'expunged conviction'?	QAI is not aware of any unintended consequences from retaining this new attribute.
C6 Are there any unintended consequences of retaining the present definition of 'irrelevant medical record'?	QAI is not aware of any unintended consequences or broader significant risks from retaining 'irrelevant medical record' as a protected attribute in section 7 of the ADA, as introduced by the *Respect at Work and Other Matters Amendment Act 2024* (Qld) (**Respect at Work Act**). Further, QAI considers that including 'irrelevant medical record' as a protected attribute will be beneficial, as the existing protected attributes do not clearly cover some circumstances, such as where discrimination occurs because a person: 1. may have a disability in the future, including because of a genetic predisposition to that disability; 2. has had a vaccination; 3. is taking certain medication, such as PrEP to protect them from contracting HIV; or 4. has had an abortion. In respect of point 1., as noted by the Review at [375] of the Discussion Paper, the Respect at Work Act did not adopt the recommendation given in the Building Belonging Report to update the definition of 'impairment' to 'disability'. A key basis for the recommendation was that it would 'expand coverage to disability that may exist in the future (including because of a genetic predisposition to that disability)',[28] which is currently covered by the definition of 'disability' under the federal DDA.

[28] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination 1991 Report* (Review, July 2022) 271 ('*Building Belonging Report*').

Question	Response
	Further, neither the current definition of 'impairment' nor any of the existing attributes in the ADA would provide sufficient protection to people in circumstances such as those set out above at points 2-4. QAI supports including the attribute of 'irrelevant medical record' to address such gaps in the existing framework. QAI considers that section 124 of the ADA, which protects individuals against being asked for unnecessary medical information on which discrimination might be based, is insufficient. For example: • In *Qantas Airways Ltd v Gama* [2008] FCAFC 69, the respondent's medical records – being his workers compensation history – were already known to his managers and colleagues, as the claims had been made for work injuries that had occurred during the course of his employment. The respondent alleged that, by reason of his workers compensation history, he had suffered a range of taunts from his managers and colleagues, as well as detriment to his career prospects in the form of denial of opportunities for promotion, training and transfer. While the Court ultimately found that the respondent had separately been discriminated against on the basis of his race, the respondent's allegations of discrimination based on his workers compensation history were not upheld. The Court reasoned that criticisms of the respondent allegedly abusing the workers compensation system were directed at his character, rather than any particular disability, despite the fact that the respondent having suffered a number of different workplace injuries was not in dispute. This outcome illustrates a clear gap in protection for people who are experiencing discrimination on the basis of medical records already in the possession of their employer. • In *Matthews v Hargreaves (No 4)* [2013] FMCA 4, the respondent obtained information about the applicant's Hepatitis C diagnosis from various sources, including the applicant's ex-wife, then disseminated this information to the applicant's colleagues, the community and the press. The Court found that the applicant, who was the Chief Executive Officer of a Western Australian shire at the time, had suffered stress, upset and depression due to this information being disseminated and it was ultimately decided that the conduct constituted discrimination on the basis of disability. However, this case illustrates how section 124 may fail to offer protection to individuals whose medical records are obtained unlawfully, unless they are already covered by a protected attribute.

Question	Response
	Finally, QAI notes that Tasmania and the Northern Territory currently include 'irrelevant medical record' as a protected attribute. From 2025 to 2026, the Northern Territory's Anti-Discrimination Commission reported receiving 23 allegations related to irrelevant medical record discrimination, while Tasmania's Office of the Anti-Discrimination Commissioner reported receiving 15 allegations across 2024 and 2025.[29] As such, experience from other jurisdictions demonstrate that there is value in including the definition.
C7 What are the unintended consequences of retaining the new attribute 'a combination of two or more of any of the above attributes'?	QAI is not aware of any unintended consequences of retaining the new attribute 'a combination of two or more of any of the above attributes'. Proposed new sections 7(4) and 8(2) of the Respect at Work Act serve different purposes and we support retaining both. The new attribute under section 7(4) is necessary, as it protects people who may experience discrimination because of multiple, inseparable attributes, without requiring them to artificially dissect causation. This recognises that the categorisation of attributes as separate and distinct does not represent the way that many people experience discrimination. Section 8(2) protects against discrimination where two or more grounds can be identified independently, where the effect may also be cumulative. These two provisions are both needed, particularly given the Building Belonging Report's recommendation that: *'A person should be entitled to make a claim on the basis that the discrimination was caused by one or more attributes, or on the basis of the cumulative impact of the combination of two or more attributes.'*[30] Additionally, QAI notes that the amendments to Chapter 4 Part 4 of the ADA in respect of vilification, contained in the Respect at Work Act, do not appear to apply where a person experiences discrimination on the basis of two or more protected attributes, even where those attributes individually are subject to the vilification protections. QAI submits that Chapter 4 Part 4 of the ADA should be amended accordingly.
C8 Should the definition of 'homelessness' in section 52	QAI is supportive of repealing the definition of 'homelessness' and not defining the term, in accordance with the approach taken in other jurisdictions.

[29] Northern Territory Anti-Discrimination Commission, *Annual Report 2025/2026* (Report, 2026) 18; Office of the Anti-Discrimination Commissioner, *Annual Report 2024-25* (Report, 2025) 9.
[30] *Building Belonging Report* (n 28) 109.

Question	Response
of the Respect at Work Act be repealed?	
C9 Are there any unintended consequences of retaining any or all of the other additional new or amended attributes?	QAI is supportive of retaining the other new or amended attributes and is not aware of any unintended consequences of doing so.
C10 Are there any unintended consequences of retaining the new definitions of 'direct discrimination' and 'indirect discrimination'?	QAI is generally supportive of retaining the new definitions of 'direct discrimination' and 'indirect discrimination', however, we consider that some additional improvements could be made. QAI considers that the proposed definitions will assist people with disability, including students, to make complaints, by removing the comparator requirement that has been a specific barrier in disability cases. This barrier is well illustrated in *Kiefel v State of Victoria* [2013] FCA 1398, where a student with autism failed to establish indirect discrimination, in part because the court found that even a 'tightly framed' requirement remains legally unworkable without clear professional consensus on the student's needs and whether an adjustment would have helped. This is precisely the kind of evidentiary burden the proposed 'disadvantage' test is designed to remove. The proposed definitions could be improved with two further amendments: **1. Failure to make adjustments should be a ground of 'direct discrimination'** (a) Section 5(2) of the federal DDA recognises the failure to make 'reasonable adjustments' as a ground of direct disability discrimination. This recognition was introduced following the High Court decision in *Purvis v New South Wales (Department of Education and Training)* [2003] HCA 62, which exemplified the need for a codified obligation to provide

Question	Response
	accommodation to people with disability. The DRC went even further in its Final Report, with its recommendation to introduce a standalone duty in the federal DDA to make adjustments for people with disability.[31] (b) Although this concept of the need to provide reasonable adjustments or accommodations is well-established under discrimination law, there is currently no explicit recognition in the ADA that failing to provide adjustments for people with disability could be discriminatory. QAI supports introducing the failure to make adjustments as a ground of direct discrimination under the ADA to align with the federal approach and to ensure the law is clear and enforceable. (c) In line with the DRC's recommendations, QAI also submits that the terminology of 'adjustments' should be used, rather than 'reasonable adjustments'.[32] This is to avoid any suggestion that the adjustment must be 'reasonable' or the respondent must act reasonably when making an adjustment, which is not how this terminology has been interpreted by the courts.[33] QAI agrees with the DRC's view that the terminology of 'adjustments' better reflects the law and will avoid unnecessary confusion. **2. Equal dignity and worth should be added to the reasonableness test for 'indirect discrimination'** (a) In *Cocks v State of Queensland* [1994] QADT 3, the Tribunal required that the nature of the benefit to those with mobility impairment must be weighed against the detriment to the respondent. In conducting this proportionality test, the Tribunal explicitly considered the 'equal dignity and worth' of people with mobility impairment as members of the community. Codifying this factor would aid in consistent interpretation in subsequent caselaw, going forward. (b) In *Petrou v Bupa Aged Care Australia Pty Ltd* [2017] VCAT 1706, the Tribunal held that assessing 'disadvantage' under Victoria's indirect discrimination test requires a 'common sense and practical approach' that takes into account the extent to which a measure diminishes a person's 'right to dignity and self-worth'. This shows dignity is already treated as integral

[31] *DRC Final Report* (n 1) vol 4, 30: see Recommendation 4.26.
[32] Ibid vol 4, 29: see Recommendation 4.25.
[33] Ibid vol 4, 307.

Question	Response
	to the reasonableness inquiry under the Victorian model that the Review recommends adopting, supporting QAI's position that it should be made an express statutory factor, not left to be read in by courts. (c) Section 319H of the CSA adds additional factors that the Tribunal must consider submissions on, when considering the application of the reasonableness test for indirect discrimination to a term imposed by a protected defendant on an offender. QAI submits that two of these factors, being 'the need to respect offenders' dignity' and whether the term 'adequately meets the needs of the offender', could be adapted and included within the reasonableness test factors under the ADA itself.
C11 Should the current burden of proof be changed to a 'shifting' burden of proof and, if so: **(a) should a 'shifting' burden of proof apply only to complaints of direct discrimination?** **(b) what should a complainant be required to prove prior to the burden shifting to the respondent?**	Yes. QAI supports changing the current burden of proof to a 'shifting' burden of proof. QAI submits that the 'shifting' burden of proof should apply to all complaints of discrimination – both direct and indirect. However, it is particularly important that the 'shifting' burden apply to direct discrimination complaints. This will ensure that a complainant will not be required to prove the reasons behind a respondent's decision, in a situation where the respondent is the only one who can access these reasons. QAI has worked with multiple students with disability where schools have refused to enrol them because of the child's disability. This is despite specific funding being available to facilitate adjustments. If the burden was shifted, it would mean the school would have to show why they could not enrol the student in the first instance. QAI is of the view that the model of shifting burden of proof in the *Fair Work Act 2009* (Cth) would be the most appropriate approach to ensure positive change throughout the hearing process for a complaint. This model involves a full reversal of the burden of proof. That is, the complainant should only be required to establish that the allegedly discriminatory conduct occurred and that they had a protected attribute. The burden should then shift to the respondent to prove that discrimination was not the reason for the conduct.
C12 Are there any unintended consequences that may arise if the positive duty were implemented in Queensland?	QAI is strongly supportive of the introduction of a positive duty under the ADA and does not consider that such a positive duty, if properly implemented, would give rise to unintended consequences that should prevent its adoption. However, QAI does consider that some further amendments to the proposed drafting could be made, to ensure the wording of the positive duty is best tailored to achieve the aim of promoting equality and non-discrimination as far as possible.

Question	Response
	As expressed in its previous submission to the Community Safety and Legal Affairs Committee on the Respect At Work and Other Matters Amendment Bill 2024 (Qld), QAI welcomes the introduction of a positive duty to eliminate discrimination on 'duty holders' by requiring them to take reasonable and proportionate measures to eliminate discrimination as far as possible.[34] QAI is particularly supportive of the duty covering discrimination against all protected attributes, including impairment. Compliance with the positive duty requires taking a proactive and preventative approach to addressing discrimination. This will not only aid in the prevention of discrimination against individuals before it happens but will also actively encourage greater awareness and education about discrimination within community and industries, which is crucial to addressing systemic issues. With impairment (disability) discrimination continuing to be the QHRC's most commonly accepted complaint,[35] it is clear that better education and a more effective means of changing community attitudes about people with disability is needed. In light of the above, QAI submits that the positive duty should also extend to an explicit obligation to make adjustments or accommodations for people with disability, in accordance with Recommendation 5 of the Building Belonging Report. This would assist in clarifying what steps are necessary for compliance with the positive duty, in relation to eliminating impairment or disability discrimination. QAI also submits that the criteria to be listed in the ADA to assist in determining whether a measure is 'reasonable and proportionate' for the purposes of proposed section 131I(3) should expressly include the nature and extent of any consultation undertaken with any person with a protected attribute concerned. For example, any measures taken by a business to eliminate disability discrimination should involve consultation with people with disability that would be affected by these measures. In the context of disability, introducing this factor would be consistent with the DRC's Recommendation 4.27[36] and reflect the requirement under Article 4(3) CRPD that States Parties closely consult with and actively involve persons with disability in the development and implementation of legislation and policies.

[34] Queensland Advocacy for Inclusion, Submission No 4 to Community Safety and Legal Affairs Committee, *Respect At Work and Other Matters Amendment Bill 2024* (26 June 2024) 10.
[35] Queensland Human Rights Commission, *Annual Report 2025-26* (Report, August 2026) 23.
[36] *DRC Final Report* (n 1) vol 4, 30.

Question	Response
	Additionally, QAI supports the Review's proposal at [455] of the Discussion Paper for the QHRC to publish guidelines to promote voluntary compliance until the positive duty comes into effect and acknowledges that a staged implementation approach may be appropriate. However, QAI submits that it is important that the introduction of the QHRC's investigative and enforcement powers is not too delayed, as a positive duty without adequate enforcement will fail to deliver real change. Accordingly, QAI supports the QHRC's proposed new powers of investigation and enforcement regarding compliance with the ADA and the positive duty specifically, including the ability to refer matters to QCAT where conciliation fails, accept written undertakings, and issue compliance notices. These enforcement mechanisms should be retained and strengthened to ensure compliance with the positive duty. However, QAI also emphasises that in developing a stronger enforcement model, resourcing for additional enforcement initiatives must not deplete resourcing required for ongoing education, training and monitoring functions. There is a risk that without adequate resourcing over time for community education, a positive duty will be misunderstood or ignored by duty-holders. Nevertheless, enforcement powers for positive duties should be legislated even without resourcing, as a legislative shift will change culture greatly, as it has for sexual harassment in the Federal jurisdiction.
C13 Would it be appropriate that the QHRC to have a regulatory and enforcement function as contemplated by the positive duty provisions?	Yes. QAI is very supportive of the QHRC having additional regulatory and enforcement powers to ensure it can take an active role in eliminating discrimination and harassment. As the Review notes at [436] of the Discussion Paper, the QHRC would not be the first Queensland public sector entity to exercise multiple functions, including receiving and conciliating complaints and acting as a regulator. Further, as the Review notes at [429] of the Discussion Paper, the proposed investigation and enforcement powers are similar to those that exist in the Commonwealth and Northern Territory models. The QHRC will be well-placed to learn from the experience of the AHRC to transition into exercising an additional regulatory and enforcement role. Of course, in order for the QHRC to carry out its multiple roles effectively, it will need to be funded adequately. QAI acknowledges that it may be appropriate for the introduction of the QHRC's regulatory and enforcement functions to be staged, as proposed by the Review at [456], noting (as the Review has) that the AHRC's powers were also staged.

Question	Response
C14 Should the power to inquire into a complaint be separate from the QHRC's investigative function?	QAI is of the view that section 154A of the ADA, which allows the QHRC to investigate a complaint at any time after the complaint is received by the Commissioner, does not require amendment. That it is difficult to identify circumstances in which the QHRC would need to investigate a complaint beyond making preliminary inquiries for the purpose of attempting to facilitate a resolution between the parties (as set out at [469] of the Discussion Paper) does not mean such circumstances do not exist, and QAI considers QHRC should retain the power to investigate more broadly, if and when required.
C15 Should the QHRC have a power to investigate potential systemic contraventions of the ADA?	Yes. QAI submits that it is important for the QHRC to have a power to investigate potential systemic contraventions of the ADA, in order to alleviate the burden on people with disability to bring individual complaints. QAI engages with a number of individuals who complain of discrimination, but for various reasons are unable to bring a complaint individually. Accordingly, QAI is very supportive of the lower threshold for representative complaints under the ADA that was introduced by the Respect at Work Act and considers this to be a positive step towards reducing this burden on individuals. However, QAI submits that more still needs to be done. Systemic discrimination is a broad, societal issue – not just an individual one – and should be treated accordingly. Providing the QHRC with the power to investigate systemic contraventions would be a powerful means of ensuring that individuals placed in position of vulnerability who have experienced systemic discrimination do not exclusively carry the burden of taking action to address these issues. The QHRC is also uniquely well-placed to identify potential systemic contraventions of the ADA. Accordingly, QAI submits that allowing the QHRC to investigate systemic contraventions will increase access to justice, including for people with disability, and create additional opportunities to address systemic discrimination.
C16 Should this power be subject to any conditions, for example the Minister's consent and the matter being of public interest?	No. QAI submits that the proposed new power to investigate a systemic contravention should not be subject to any conditions. The QHRC being an independent statutory body, QAI's view is that placing conditions on the exercise of this power, such as Ministerial consent or the matter being of public interest, places unnecessary constraints on, and introduces political considerations into, the QHRC's exercise of independent discretion. Further, QAI agrees with the Review at [484] of the Discussion Paper that it is unclear why there would be a higher threshold for commencing an investigation into a non-systemic contravention than a systemic contravention. However, QAI submits that this

Question	Response
	inconsistency should not be addressed by increasing the threshold for commencing an investigation into a systemic contravention, but rather, by lowering the threshold for commencing an investigation into a non-systemic contravention. QAI submits that increasing the QHRC's discretion in relation to both of these powers would alleviate any threshold concerns, as well as protect the QHRC's independence.
C17 What powers should the QHRC have following completion of an investigation into potential systemic contraventions of the ADA?	QAI is supportive of the QHRC being provided with strong mechanisms to enforce compliance and encourage systemic change following the completion of an investigation into potential systemic contraventions of the ADA. In addition to the current powers proposed to be provided to the QHRC under the Respect at Work Act, QAI submits that QHRC should have the following powers: • making findings on any contraventions of the ADA, as well as recommendations; • entering into an enforceable undertaking or agreement with a person about action required to rectify any contraventions; • referring the matter to a tribunal for determination; • referring the matter to another regulatory authority (eg the police or the Office of the Health Ombudsman); and • issuing a compliance notice and, if breached, applying to a tribunal or court to seek civil penalties.
C18 Should the QHRC have an express power to issue guidelines, including at the request and cost of a person or entity with duties under the ADA?	Yes. QAI is supportive of QHRC being empowered to issue and publish guidelines, including at a person's or entity's own request and cost. The Commonwealth DDA allows the Minister to develop disability standards. This has led to broad changes across a range of industries, including education (with the *Disability Standards for Education 2005* (Cth)) and construction (with the *Disability (Access to Premises — Buildings) Standards 2010* (Cth)). While guidelines published by the QHRC would not have the same legal effect as standards, QAI considers that they would have a real impact and would encourage proactive steps to be taken to ensure compliance with the ADA. However, QAI considers that such a power should not be granted in place of the introduction of a positive duty – rather, any power to issue guidelines should complement the positive duty and the QHRC's regulatory and enforcement role in respect of the positive duty.

Question	Response
C19 Should compliance with a guideline issued by the QHRC be a relevant circumstance that may be taken into account in a proceeding for contravention of the ADA?	QAI agrees with the Review at [489(b)] of the Discussion Paper that compliance with a guideline issued by the QHRC should be a relevant, but not determinative, circumstance, that may be taken into account in a proceeding for contravention of the ADA.
C20 Are there any unintended consequences of prohibiting vilification on the additional grounds of sex, age, impairment and the updated definition of sexual orientation?	QAI is very supportive of expanding coverage for these protected attributes and is not aware of any unintended consequences of prohibiting vilification on these grounds. QAI has consistently emphasised, including in previous submissions,[37] the necessity of including protections relating to disability (impairment) in vilification laws. We maintain this position and submit that there is more evidence than ever that a stronger legal response is required to protect people with disability from vilification. The ABS reported that in 2025, 24% of people with disability aged 15 and over reported experiencing some form of discrimination during the past year.[38] In 2024 – 2025, 47% of complaints to the AHRC were about disability discrimination, more than any other form of discrimination.[39] These statistics illustrate the ongoing need for disability to be included within vilification protections. Further, the vilification experienced by people with disability is often intersectional. For example, the ABS reported in 2022 that LGB+ people with disability were almost three times as likely to experience discrimination, as compared to heterosexual people with disability.[40] Expanding the list of protected attributes will assist in ensuring the law recognises, and is capable of responding to, the overlapping and interconnected nature of disability discrimination. A number of recent cases highlight the importance and utility of these vilification protections for addressing identity-based hatred:

[37] *QAI submission to vilification and hate crime inquiry* (n 2).
[38] *AIHW Report* (n 3) 8.
[39] Ibid.
[40] Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings* (Web Page, 2022) <https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/2022>.

Question	Response
	1. In August 2025, the NSW Local Court found that two transgender women had been unlawfully vilified, after they were publicly identified and misgendered in a series of social media posts that targeted their involvement with their local football clubs.[41] The NSW Supreme Court largely dismissed an appeal of this decision in July 2026.[42] 2. In the case of *Hill & Valkyrie v Shelton (No 2)* [2026] QCATA 46, the Queensland Civil and Administrative Tribunal Appeal Tribunal found that an earlier decision that two drag performers had not been unlawfully vilified by a series of blog posts comparing them to 'creeps like Harvey Weinstein, Jeffrey Epstein and Prince Andrew' was incorrectly decided. In its decision, the Tribunal acknowledged that 'homophobia and transphobia are not a thing of the past', providing recognition to ongoing protection needed for LGBTQI+ people. 3. Most notably, in the case of *Hanson v Faruqi* [2026] FCAFC 96, the Federal Court upheld a finding that a social media post telling the respondent to 'piss off back to Pakistan' constituted racial vilification. The Court expressly acknowledged the impact of intersectional discrimination, providing that the categories of race and religion did not 'exist in a silo', but were 'identities that have associations and connections between them'.[43] This decision recognises that a person can experience discrimination through various aspects of their identity, emphasising the need to ensure vilification protections extend to a broad range of attributes that may intersect and compound.
C21 Are there any unintended consequences of retaining the updated definition of 'public act'?	QAI is supportive of retaining the updated definition of 'public act' in the ADA and is not aware of any unintended consequences of doing so. Vilification experienced by people with disability often occurs in various areas of public life such as residential care facilities, workplaces and schools. The updated definition ensures that vilification that occurs in these areas will be appropriately captured, which fills in gaps in protection that are particularly significant for people with disability.
C22 Are there any unintended consequences of retaining the	QAI is supportive of retaining the objective incitement test in proposed section 124D of the ADA and is not aware of any unintended consequences of doing so.

[41] *Smith v Blanch; Smith v Dennis* [2026] NSWSC 879, [3]–[6].
[42] Ibid [261]–[262].
[43] *Hanson v Faruqi* [2026] FCAFC 96, [377].

Question	Response
objective incitement test in the new proposed section 124D of the ADA?	
C23 Are there any unintended consequences of retaining the 'harm-based' prohibition on vilification in the new proposed section 124C of the ADA?	QAI is supportive of retaining the harm-based model in proposed section 124C of the ADA and is not aware of any unintended consequences of doing so. As such, QAI agrees with the view of the Parliamentary Committee set out at [521] of the Discussion Paper that the proposal to strengthen the vilification protections would limit the right to freedom of expression in a manner that is reasonable and demonstrably justifiable in a free and democratic society.