

Strategic Review of the Queensland Human Rights Commission and related reviews: Discussion Paper

HIA Submission

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EXECUTIVE SUMMARY

The Housing Industry Association (HIA) welcomes the opportunity to provide feedback on the Discussion Paper, in particular Part C of the review on the proposed amendments made by the *Respect at Work and Other Matters Amendment Act 2024* ('Respect at Work Act') amending the *Anti-Discrimination Act 1991* ('ADA').

As the peak body representing Australia's residential building industry, HIA strongly supports protections against discrimination and sexual harassment in the workplace that are balanced, practical and effective. However, regulatory reform should be evidence-based, proportionate and targeted at genuine gaps in the legislative framework or protection regime. HIA notes that many of the proposed reforms duplicate existing obligations under various Commonwealth and Queensland laws.

HIA has a clear position in opposing any regulatory reform that purports to impose greater compliance obligations, increased costs and regulatory pressure on residential home builders. HIA has called on all levels of government to ensure that any proposed reform needs to be considered in the context of the broader operating environment facing small and medium businesses. Each new compliance burden risks making it harder for small builders to invest, employ and deliver new homes.

HIA notes that Queensland, like most of Australian jurisdictions, is facing housing affordability and housing supply challenges. While the Review seeks to strengthen anti-discrimination protections, HIA cannot support any additional and unnecessary regulatory obligations that will add to complexity and likely reduce housing productivity, particularly for small businesses, and in turn, raise the cost of overall construction of homes.

Housing and human rights are deeply intertwined.[1] Access to housing underpins stability, security and full participation in economic and social life, while productive businesses play a critical role in delivering the homes, jobs and opportunities communities rely on. For this reason, any review of Queensland's human rights and anti-discrimination framework must also recognise housing supply, meaningful employment and economic participation as key considerations when factoring in any major reform likely to impact on housing outcomes.

HIA also notes with concern that the Reviewer has not included any employer representative or industry body among the preliminary consultations in preparing the Discussion Paper (as outlined in Appendix 2). This is particularly alarming as union/employee representatives and community service organisations were afforded the opportunity for this initial consultation.

[1] Australian Human Rights Commission 2009, *Submission to the National Human Rights Consultation*: https://humanrights.gov.au/resource-hub/by-resource-type/pages-missing-assets/submission-to-national-human-rights-consultation-2009

RECOMMENDATIONS

HIA opposes a number of the as yet to be commenced reform proposals within the Respect at Work Act, for the reasons outlined:

- C12 - that the positive duty in proposed s 131 not commence unless a clear legislative need and net benefit are demonstrated, and in any event not before the Commonwealth review of the *Sex Discrimination Act 1984 (*Cth) positive duty is complete.
- C13 - that the QHRC not be given regulatory and enforcement functions; and that its role be confined to a focus on education, guidance and training, appropriately funded and co-delivered with industry bodies.
- C2-C3 - that the new prohibitions be removed, consistent with the Building Belonging Report and the Review's preliminary view.
- C11 - that ss204 to 206 of the ADA be retained.
- C14 - that the QHRC's power to investigate complaints be replaced with a power to make preliminary inquiries, as in the Draft Anti-Discrimination Bill 2024.
- C15-C17 - that a new systemic investigation power not be conferred in the form proposed. If one is conferred, that it must require the Minister's consent, be a matter of public concern and reasonable grounds exist. Additionally, the QHRC's powers be limited to reports and recommendations, with procedural fairness for any entity referred to and no undertakings or compliance notices.
- C1 - that 'equality of opportunity' be retained and 'equitable outcomes' are removed.
- C4-C5 - that the criminal record attributes be confined to expunged convictions, spent convictions (subject to the exceptions in the *Criminal Law (Rehabilitation of Offenders) Act 1986*) and matters dealt with by youth caution or restorative justice, and that the balance of the definition of 'irrelevant criminal record' be omitted.
- C6 - that 'irrelevant medical record' not be introduced as an attribute.
- C7 - that the free-standing attribute of 'a combination of two or more of any of the above attributes' not be introduced, with proposed s 8(2) retained instead.
- C18-C19 - that the QHRC have an express power to issue guidelines developed in consultation with industry, with general guidance free of charge; that proven compliance with an applicable guideline satisfy any positive duty and constitute reasonable steps under s 133; and that non-compliance not of itself be evidence of a contravention.
- C21-C23 - that the definition of 'public act' not extend to conduct between workers at a place of work and, if the harm-based prohibition is retained, that it be assessed against a reasonable member of the community.

In response to Part A questions, HIA makes the following recommendations:

- A18 - that the one-year time limit for complaints be retained, with the stricter 'exceptional circumstances and interests of justice' test for out-of-time complaints; that the respondent's 28-day right of written reply be retained; and that the expanded discretion to decline complaints, flexible dispute resolution, industry association representation and the 12-month best endeavours standard be adopted.
- A19 - that the QHRC publish complaint outcome data by area and attribute, including conciliation and tribunal outcomes.

Responses to Discussion Paper Questions

HIA provides the following detailed feedback in response to specific questions of relevance to the residential building sector, as posed in the Discussion Paper.

C12: "Are there any unintended consequences that may arise if the positive duty were implemented in Queensland?"

HIA notes that the proposal to introduce a positive duty in the ADA duplicates extensive obligations not to unlawfully discriminate that already exist under both Commonwealth and Queensland legislation, as well as adopted Codes. Queensland employers are already subject to:

- the positive duty under the *Sex Discrimination Act 1984* (Cth) to prevent sex discrimination, sexual harassment, and hostile workplace environments,[2]
- the *Fair Work Act 2009* (Cth), which provides worker protections against adverse action based on attributes such as sex, sexual orientation, age, disability and race, as well as separate protections against unlawful termination,[3]
- the *Work Health and Safety Act and Regulation 2011* (Qld), which requires PCBUs to ensure workers' physical and psychological health and safety (including prevention of bullying and occupational violence),[4] and
- the *Managing the Risk of Psychosocial Hazards at Work Code of Practice 2022*, including risk assessment and implementation of control measures.[5]

Further, HIA is concerned, and the Discussion Paper confirms this, that there still has been no accurate or detailed cost-benefit analysis undertaken by government to assess the costs that a positive duty would impose on businesses. This is despite the proposed reforms being considered quite some time ago. HIA views this as problematic as it is acknowledged that a proposed positive duty will increase compliance costs and unnecessary regulatory burdens for Queensland businesses. The cost of regulation in Queensland has already doubled in two years to approximately $50,000 per business, with businesses on average devoting the equivalent of a full-time employee just to manage compliance obligations and requirements.[6] This means the allocated funding to the QHRC is likely to be insufficient in terms of supporting implementation and does nothing to address or offset any compliance cost to industry.

Critically, the Victorian experience provides a cautionary tale. Despite a positive duty operating under the *Equal Opportunity Act 2010* (Vic),[7] recent research by Monash University found it has had limited practical impact, with many stakeholders regarding it as difficult to enforce, poorly understood and a "toothless tiger" in driving organisational change.[8] The Discussion Paper at [422] has also identified that the Victorian

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[2] s 47C.

[3] s 772 (unlawful termination); s 351 (adverse action because of protected attributes).

[4] ss 17, 18, 19 and r. 55C.

[5] 3.2 – 3.4.

[6] Minnikin, S. 2025, *A Fresh Start for Queensland: small and family businesses to have their say on red tape*, Media Statement, Queensland Government <https://statements.qld.gov.au/statements/102078>.

[7] s 15.

[8] Allen, D. 2019, *Addressing Discrimination Through Individual Enforcement: A Case Study of Victoria*, Monash University; and Allen, D. 2020, 'An evaluation of the mechanisms designed to promote substantive equality in the Equal Opportunity Act 2010 (Vic)', *Melbourne University Law Review*, vol. 44, no. 2, pp. 459–500.

positive-duty investigation powers have only been used once since their enactment in 2010, which provides little evidence to demonstrate a justified need for this approach to begin with.

Accordingly, HIA does not support the introduction of a positive duty under the ADA unless a clear legislative need and clear net benefit can be demonstrated. This position somewhat aligns with the Reviewers preliminary view that the implementation should be further delayed until the outcome of a potential Commonwealth duty introduction and subsequent review is carried out under the Sex Discrimination Act framework.

C13: "Would it be appropriate for the QHRC to have a regulatory and enforcement function as contemplated by the positive duty provisions?"

Flowing from the comments above, HIA does not support conferring additional regulatory and enforcement powers on the QHRC in relation to the proposed positive duty, given the extensive existing framework governing workplace health, safety, discrimination and harassment, additional enforcement functions risk overlapping with existing regulators and creating duplication for employers. Furthermore, the limited examples in other jurisdictions provide legitimate reasons for concern regarding the impartiality of such a body to have enforcement functions, with the Discussion Paper at [443] outlining the ACT HRC choosing not to adopt such powers due to the explicit concerns around the Commission continuing to operate as an impartial complaints-handling body, while making determinations regarding compliance with the positive duty.

For small businesses, the practical consequence would be the need to pause or redirect operations to respond to QHRC investigations, and to incur legal costs managing the risks associated with undertakings, compliance notices and published QHRC reports. The QHRC would need substantial additional funding and resources allocations to absorb a new and extensive regulatory function, based on the precedent of current performance (Discussion Paper at [35]-[36] stating QHRC received a record 2,439 complaints in 2025–26 (+60%), with 142 days to allocation and 353 days to finalise.

Accordingly, HIA considers the QHRC's role should focus on education, guidance and training rather than punitive enforcement and overlapping obligations. This approach is more likely to assist employers to understand and meet their obligations. Any education and training initiatives should be appropriately funded and co-delivered with industry bodies, including HIA, to ensure strong industry collaboration and buy-in.

C2: "Are there any unintended consequences of introducing a new prohibition on harassment on the basis of sex?"

For the reasons outlined above, HIA is concerned that this reform would largely duplicate existing protections under Commonwealth and Queensland legislation. The unintended consequences are regulatory complexity and overlapping legal obligations. HIA cannot support introducing a separate prohibition unless a clear deficiency in the current legislative framework can be demonstrated.

Importantly, the Building Belonging Report did not recommend these prohibitions, reportedly due to existing protections against the relevant conduct in addition to a number of significant inequity and complexity concerns, as stated in the Discussion Paper at [321-329]. HIA supports the Reviewer's preliminary view that these concerns are well founded [at 330].

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?"

As previously stated, HIA is concerned that the proposed prohibition would overlap with existing employer obligations to prevent workplace sexual harassment and manage psychosocial risks under Commonwealth and Queensland legislation. Further, the Building Belonging Report noted responsibility for "creating" an environment is unclear and may make bystanders with limited control liable, as stated in the Discussion Paper [at 334]. In the residential building setting, on a multi-contractor site, there is significant ambiguity on who creates and is responsible for the environment – it could be the head contractor, subcontractor, or supervisor.

HIA therefore agrees with the Reviewer's preliminary view that the concerns are well founded, and recommends that the Government focus on improving awareness, training and education.

C11: "Should the current burden of proof be changed to a 'shifting' burden of proof?"

HIA does not support replacing ss 204 to 206 of the ADA with the shifting burden of proof in the Respect at Work Act.

Under proposed s 204, if the facts could establish, in the absence of any other explanation, that the respondent contravened the ADA, the respondent is presumed to have done so unless it proves otherwise on the balance of probabilities.[9] In practical terms, once a low threshold is met, the respondent is presumed liable and must disprove the allegation.

HIA's concerns with this proposed reform are as follows:

- **No Australian precedent beyond the ACT:** As the Discussion Paper notes [at 421], no Australian anti-discrimination statute other than the ACT's provides a shifting burden of proof for direct discrimination. The ACT model is narrower than the Queensland provision on two counts: it applies only where a complaint has been referred to the ACT Civil and Administrative Tribunal, and the complainant must first prove that the treatment was unfavourable. HIA has concerns with Queensland adopting a broader version of an approach taken in only one other Australian jurisdiction.
- **The Respect at Work Act goes beyond the Building Belonging Report:** The Building Belonging Report recommended a shared burden of proof for direct discrimination only. It recommended no change to s 205 (the respondent's onus to prove that a term is reasonable in indirect discrimination) or s 206 (exemptions) [419-420]. The Respect at Work Act nonetheless applies the new presumption to all complaints, including indirect discrimination, and replaces s 205. A respondent to an indirect discrimination complaint would therefore face a statutory presumption of contravention on top of the onus of proving reasonableness.[10] HIA is not aware of any justification for that extension.
- **Respondents would be required to prove a negative.** The respondent must prove that the attribute was not a reason for its conduct. Under the proposed new definition of direct discrimination, the attribute need only be one of the reasons for the treatment, not a substantial reason.[11] Read together, the provisions require a respondent to prove that the attribute played no part at all in its decision. If the decision-maker has left the business, cannot be called or cannot accurately recall the decision, the presumption stands regardless of the true reason. Liability would turn on the quality of the respondent's

[9] Discussion Paper, [413], [417].

[10] Proposed new s 204(3), which provides that the presumption applies 'in addition to' any other provision allocating the onus of proof.

[11] Discussion Paper, [405]. Compare existing s 10(4) of the ADA, which requires the attribute to be 'a substantial reason' for the treatment.

records and the availability of its witnesses rather than on what actually occurred. QCAT made this point to the Building Belonging review, observing that, on anecdotal experience under the Fair Work Act, requiring employers to prove the negative has made cases longer.[12]

- **The trigger is low and its meaning unsettled.** The burden shifts on 'facts from which it could be decided, in the absence of any other explanation' that a contravention occurred. That is a threshold of possibility, not a finding on the balance of probabilities, and it is lower than the ACT test which first requires proof of unfavourable treatment. The equivalent words in UK legislation have been litigated repeatedly at appellate level since 2005.[13] HIA contends that Queensland would import that uncertainty, and the cost of resolving it would thereby fall on the parties to individual complaints.
- **The reform compounds the other Respect at Work amendments.** The burden of proof cannot be assessed in isolation. It would operate alongside the removal of the comparator test, the 'one of the reasons' test, ten new or amended attributes (including the open-ended combination attribute) and the positive duty. Each of these elements has the effect of lowering the threshold for establishing facts from which a contravention 'could be decided'. The proposed new s 204 would convert that lower threshold into a presumption of liability. HIA has concerns with the outcome that even if non-compliance with the positive duty does not itself give rise to a complaint, the absence of documented policies, training or decision-making could readily be relied on as facts sufficient to shift the burden.
- **The impost falls hardest on small business.** The residential building industry is dominated by small and micro businesses. Decisions about hiring, allocating work and ending engagements at project completion are typically made on site by the owner or a supervisor, largely without a human resources function or contemporaneous documentation due to limited resources and operational realities of many small to medium home builders. To discharge the proposed burden, these businesses would need to reconstruct and evidence the reasons for routine decisions, potentially years after the event if the complaint period is extended to two years as proposed in the Draft *Anti-Discrimination Bill 2024*.[14] The rational responses are defensive documentation of every employment decision, or settlement, which is clearly not a reasonable burden to place on businesses.
- **It will increase pressure to settle unmeritorious complaints.** Where parties generally bear their own costs, a presumption of contravention is likely to increase the settlement value of weak complaints. For a small business, the cost of running a hearing in which it carries the onus will often exceed the cost of settling, whatever the merits. That outcome does not benefit those workers with genuine complaints and claims and works to undermine confidence in the entire system.
- **The case for necessity has not been made.** The Building Belonging Report's principal rationale was that the respondent is often the only person who knows why it acted. Existing law already addresses that problem. Tribunals may infer discrimination from circumstantial evidence and may draw adverse inferences where a respondent fails to call an available witness or produce evidence within its control, and the QHRC can direct the production of information and documents.[15] HIA is not aware of any evidence that meritorious complaints are failing at hearing for want of proof. Most complaints resolve at conciliation, where the burden of proof has little practical operation. Even academic proponents of a shifting burden accept that it is likely to matter mainly in finely balanced cases.

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[12] Queensland Civil and Administrative Tribunal, Submission No 160 to Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act 1991* (2021–22), [24].

[13] Section 136 of the *Equality Act 2010* (UK) is the model for proposed new s 204: *Explanatory Notes, Respect at Work and Other Matters Amendment Bill 2024*, amendment 15 (new clause 47A).

[14] Discussion Paper, [115].

[15] Discussion Paper, [48], [109].

- **It creates inconsistency across jurisdictions.** The Commonwealth anti-discrimination statutes keep the onus on the complainant for direct discrimination. The Commonwealth proposed a reversal in its 2012 exposure draft Human Rights and Anti-Discrimination Bill. It was the most contested element of that draft, which did not proceed. A Queensland-only presumption would mean that who bears the onus in a workplace discrimination matter depends on the forum the complainant chooses.

While HIA agrees that individuals with genuine discrimination claims should have access to effective remedies, significant protections already exist in the employment context. The vast majority of private sector employees in Queensland are covered by the Fair Work Act, whose general protections provisions already contain a reverse onus of proof. Where adverse action is alleged, the employer bears the burden of proving that a prohibited reason was not a substantial and operative reason for the action.[16] The incremental benefit of the proposed reform in the area of work is therefore limited, while its cost falls on the employers.

Introducing a similar burden-shifting model under the ADA would further increase record-keeping, administrative and legal obligations for employers. Importantly, additional compliance obligations impose real costs on employers, reduce productivity and divert resources away from the delivery of new housing, including social housing for vulnerable people and Specialist Disability Accommodation (SDA).

Small businesses construct most new homes in Australia, employ a significant share of skilled tradespeople, and train many of the apprentices our industry depends on. Many small businesses lack the operational and financial capacity to absorb duplicative and layered compliance burdens. Alarmingly, the HIA Small Business Conditions Survey 2026 found that 68% of small businesses surveyed have considered reducing the size of their business or closing entirely as a result of growing red tape and onerous compliance requirements.[17]

HIA's primary position is that ss 204-206 should be retained in their current form. If the Government nonetheless proceeds with a shifting burden, HIA submits that:

- it should apply only to direct discrimination, with existing ss 205 and 206 retained and no additional presumption layered over indirect discrimination, consistent with the Building Belonging Report;
- before any burden shifts, the complainant should be required to prove, on the balance of probabilities, that the treatment occurred, that it was unfavourable and that the complainant had the attribute, and to establish facts (not allegations) from which the tribunal could reasonably conclude that the attribute was a substantial reason for the treatment, consistent with existing s 10(4);
- only an evidential burden should then shift, requiring the respondent to adduce evidence of the reason for its conduct, with the legal burden remaining on the complainant throughout; and
- the tribunal should be required to have regard to the size and resources of the respondent in assessing the adequacy of its records and explanation.

Ultimately, while protections against discrimination and harassment are essential, equal consideration should be given to the social and economic benefits of housing supply, productive businesses, job creation and career pathways, supported by a thriving building industry.

[16] *Fair Work Act 2009* (Cth) ss 360–361.

[17] Housing Industry Association 2026, *Small Business Conditions Survey 2026* <https://hia.com.au/our-industry/advocacy/small-business-conditions-survey>.

C14–C17: QHRC investigations and systemic powers

HIA supports addressing genuine systemic discrimination. However, for the reasons outlined above, we are concerned that expanding the QHRC's investigative and enforcement powers risks duplicating the functions already performed by WorkSafe Queensland, the Fair Work Ombudsman and Commission, and the Australian Human Rights Commission.

- **C14:** HIA supports separating the power to inquire into a complaint from the QHRC's investigative function, consistent with the Review's preliminary view.[18] The QHRC has told the Review that it uses its power to investigate complaints only in a very limited way, principally to identify the proper respondent.[19] A power to make preliminary inquiries, as in the Draft *Anti-Discrimination Bill 2024* and the *Human Rights Act 2019*, matches that practice. A coercive investigation power over a complaint the QHRC is also conciliating would undermine its impartiality in the eyes of respondents and discourage frank engagement at conciliation.
- **C15:** HIA does not support a new power to investigate systemic contraventions in the form proposed. The QHRC already has power, with the Minister's agreement, to investigate a possible contravention against a group or class of people where the matter is of public concern, and does not use it.[20] The case for a broader power, exercisable whenever the Commissioner believes an investigation would 'help achieve the purposes of this Act', has not been made.[21]

  If the Government is nonetheless minded to strengthen the QHRC's systemic function, a targeted and conditioned systemic investigation power is a more proportionate tool than a positive duty imposed on every duty holder in Queensland. The Review has identified that option.[22] It directs regulatory attention to demonstrated problems, rather than imposing compliance costs on every small business regardless of risk.
- **C17:** The QHRC's powers following a systemic investigation should be limited to reporting and recommendations. In particular:
  - the QHRC should not be able to accept undertakings or issue compliance notices following a systemic investigation. The Respect at Work Act confines those powers to positive duty investigations, and HIA opposes them there for the reasons given at C13;
  - a report should not find that a named entity has contravened the ADA. That is a matter for a tribunal;
  - any entity referred to in a report should receive the draft and a reasonable period to respond, and its response should be published with the report rather than merely 'fairly stated' in it;[23] and
  - referral of an unresolved matter to the tribunal should remain the only route to a binding outcome.

[18] Discussion Paper, [468]–[469].

[19] Discussion Paper, [50].

[20] Discussion Paper, [47], [52].

[21] Discussion Paper, [479].

[22] Discussion Paper, [457].

[23] Discussion Paper, [475].

C1: "Does the phrase 'equality of opportunity' require any amendment?"

HIA supports retaining 'equality of opportunity' and opposes its replacement with 'equal opportunity and equitable outcomes'.

'Equitable outcomes' is undefined, was not recommended by the Building Belonging Report and does not appear in Commonwealth legislation.[24] HIA notes that Departmental representatives could not precisely and consistently explain its meaning to the Parliamentary Committee.[25] As the phrase would sit in the purpose provision, it would inform the interpretation of the whole Act, including the tests for direct and indirect discrimination.[26] For employers, the practical question is whether a selection decision made on merit could be impugned because it did not produce an 'equitable outcome'. The law should not leave that question open.

C4 and C5: Irrelevant criminal record and expunged convictions

HIA supports the Review's preliminary view [at 370] in relation to protections for expunged convictions, for spent convictions (subject to the exceptions in the *Criminal Law (Rehabilitation of Offenders) Act 1986*) or for matters dealt with by caution or restorative justice under the *Youth Justice Act 1992*. HIA does oppose the balance of the definition of 'irrelevant criminal record'.

The very nature of the residential building industry means that builders and trades regularly work inside occupied homes, including the homes of children, vulnerable people, older people and people with a disability, in Specialist Disability Accommodation and in schools. For much of this work, there is no licensing or screening scheme between the client and the worker meaning that the employer's assessment of a worker's history is the safeguard. Employers also owe a duty to ensure that other persons are not put at risk from work carried out as part of the business.[27]

The proposed definition would prevent an employer from taking into account, among other things:

- a pending charge, however serious, including a charge for a violent or sexual offence against a client in their home [344];
- a conviction the employer reasonably considers relevant, but which a tribunal later decides was not 'directly relevant' to the role [352-354; and
- a pattern of offences dealt with by infringement notice, such as repeated traffic offences by an applicant for a role that requires driving [349-350].

The 'directly relevant' test is subjective, and as such, reasonable people will differ in applying it. There is no carve-out for serious offences and no mechanism to weigh rehabilitation. Combined with the proposed burden of proof, an employer that declined to engage a worker because of a conviction would be presumed to have discriminated against that person and would carry the onus of proving the conviction was directly relevant. The exceptions for genuine occupational requirements (s 25) and workplace health and safety (s 108) do not cure this [371]. The respondent must prove that an exception applies, and the exceptions do not address the uncertainty of the threshold test.

The Discussion Paper [at 341] notes that criminal record is a protected ground at the Commonwealth level. However, HIA notes that this protection is limited. The Australian Human Rights Commission may inquire

[24] Discussion Paper, [318].

[25] Discussion Paper, [315](a).

[26] Discussion Paper, [317].

[27] *Work Health and Safety Act 2011* (Qld) s 19(2).

into and conciliate a complaint of criminal record discrimination in employment, but the discrimination is not unlawful.[28] The Respect at Work Act would go materially further than this protection, making it unlawful in every area to which the ADA applies.

C6: "Are there any unintended consequences of retaining the present definition of 'irrelevant medical record'?"

HIA supports the Review's preliminary view that 'irrelevant medical record' should not be introduced as an attribute [at 376].

Residential construction is physically demanding work with a recognised injury risk. Employers assess whether a prospective worker can safely perform the inherent requirements of a role, both to meet their WHS duties and to avoid aggravating an existing injury. The proposed definition of 'medical record' expressly includes a record of workers' compensation claims. That conflicts with a scheme the Queensland Parliament has already legislated under the *Workers' Compensation and Rehabilitation Act 2003* (Qld), where a prospective employer may ask a candidate to disclose pre-existing injuries that could reasonably be expected to be aggravated by the duties of the role and, with the candidate's consent, may obtain the candidate's claims history.[29] Employers would be competing with regulatory requirements under one state statute that permits these inquiries, and another that presumes their use to be discriminatory. This is clearly an untenable outcome.

HIA further notes that people with an impairment are already protected. The Building Belonging Report concluded that existing attributes provide sufficient protection, and the Review considers that any remaining gap is not significant [at 374; 376].

C7: "Are there any unintended consequences of retaining the new attribute 'a combination of two or more of any of the above attributes'?"

HIA supports the Review's preliminary view at 382. Proposed new s 8(2), which makes clear that discrimination may occur on the basis of two or more attributes or their combined effect, addresses the gap identified in the Building Belonging Report, and HIA does not oppose it.[30]

A free-standing attribute of 'a combination of two or more of any of the above attributes' adds an undefined category whose content would be fixed only by the facts of each complaint. A duty holder cannot train staff against, or take 'reasonable and proportionate measures' to prevent, discrimination on an attribute that cannot be identified in advance. Under the proposed burden of proof, that uncertainty would operate against the respondent.

C18 and C19: Guidelines

HIA supports an express power for the QHRC to issue guidelines, and supports compliance with a guideline being taken into account in a proceeding. This is consistent with HIA's view that the QHRC's role should focus on education and guidance. HIA submits that:

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[28] *Australian Human Rights Commission Act 1986* (Cth) s 3(1) (definition of 'discrimination') and s 31(b).

[29] *Workers' Compensation and Rehabilitation Act 2003* (Qld) ss 571B–571D.

[30] Discussion Paper, [378]–[380].

- guidelines should be developed in consultation with industry and should include practical guidance scaled for small business, including sector-specific guidance for residential building;
- funding should be made available to industry bodies such as HIA that are well positioned to access industry and assist with training and education on guidelines and general compliance;
- guidelines should explain how to comply with existing obligations and must not create new ones;
- general guidance should be published free of charge. HIA does not oppose an entity seeking specific guidance at its own cost, but cost recovery must not substitute for funded, publicly available guidance;
- compliance should count for more than a 'relevant circumstance'. A respondent that proves it took all reasonable steps to implement and comply with an applicable guideline should be taken to have complied with any positive duty, and to have taken reasonable steps for the purposes of the vicarious liability defence in s 133; and
- non-compliance with a guideline should not of itself be evidence of a contravention, and, if a shifting burden is adopted, should not be capable of supplying the facts that shift the burden.

C21 and C23: Vilification – 'public act' and the harm-based prohibition

HIA's comments are confined to the effect of these provisions on home building employers.

C21. The proposed definition of 'public act' would expressly extend to conduct at a place of work, even where the place is not ordinarily accessed by the public.[31] An employer is liable for a worker's contravention of the ADA in the course of work unless it proves it took reasonable steps to prevent it.[32] Together, these provisions would expose employers to vilification complaints arising from conversations and conduct between workers on a building site, and potentially from workers' social media posts. Workplace conduct of this kind is already regulated by the prohibitions on discrimination and sexual harassment, the Commonwealth positive duty and WHS obligations to manage psychosocial hazards, including bullying. The definition of 'public act' should not extend to conduct between workers at a place of work.

C23. The harm-based prohibition in proposed s 124C would be assessed against a reasonable person who shares the protected attribute of the person or group targeted.[33] That standard varies with each attribute and each group, and an employer cannot readily translate it into a workplace standard of conduct for training and policy. Combined with the extension of 'public act' to workplaces, it would substantially widen employer exposure. If the prohibition is retained, the standard should be that of a reasonable member of the community, as proposed in the Statement of Reservation to the Parliamentary Committee's report.[34]

A18 and A19: The complaints framework

HIA supports measures that resolve complaints faster and filter out complaints without substance or merit. The QHRC received a record 2,439 complaints in 2025–26, an increase of almost 60 per cent on the previous year, and took on average 353 days to finalise an accepted complaint. Delay of that order disadvantages both parties, and particularly small business respondents, for whom an unresolved complaint is an ongoing cost.

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[31] Discussion Paper, [505].

[32] *Anti-Discrimination Act 1991* (Qld) s 133.

[33] Discussion Paper, [518].

[34] Discussion Paper, [520](a).

HIA's position on aligning the ADA complaints framework with the Draft *Anti-Discrimination Bill 2024* is as follows.

- **Time limit.** HIA opposes extending the period for making a complaint from one year to two years.[35] The time limit cannot be assessed separately from the burden of proof. If proposed s 204 commences, a respondent could be required to prove the reasons for a decision made two years before the complaint, and longer still before any hearing. HIA does, however, support replacing the 'good cause' test for accepting out-of-time complaints with the stricter requirement of exceptional circumstances and the interests of justice.
- **Complaints the QHRC may decline.** HIA supports the expanded discretion to decline complaints with insufficient detail, or that it is not appropriate to deal with.[36] The Review has noted that generative AI is increasing both the number and the complexity of complaints.[37] The QHRC needs clear power to decline complaints that do not disclose an arguable contravention.
- **Respondent's right of reply.** HIA opposes removing the requirement to notify the respondent that it may respond in writing within 28 days.[38] A respondent, particularly a small business without in-house legal support, should have a guaranteed opportunity to put its position in writing before it is required to attend a conciliation conference.
- **Dispute resolution.** HIA supports a more flexible approach, including early resolution and conferences by telephone or electronic means,[39] provided the QHRC remains impartial and the process used is appropriate for both parties.
- **Representation.** HIA supports the proposed criteria for consent to representation at conciliation.[40] They should be applied so that small and medium businesses may be assisted or represented by their industry association.
- **Timeliness.** HIA supports requiring the Commissioner to use best endeavours to finish dealing with a complaint within 12 months,[41] and submits that the QHRC should report publicly against that standard.

In response to A19, HIA submits that the QHRC should publish outcome data by area and attribute, including the proportion of complaints resolved at conciliation and the proportion referred to a tribunal and upheld. That data is needed to test claims, including those made in support of a shifting burden of proof, that meritorious complaints are failing for want of proof.

[35] Discussion Paper, [107], [115].

[36] Discussion Paper, [116].

[37] Discussion Paper, [39].

[38] Discussion Paper, [113]–[114].

[39] Discussion Paper, [118].

[40] Discussion Paper, [119].

[41] Discussion Paper, [120].