

21 March 2024

Anti-Discrimination Act Review
Strategic Policy and Legislation, Justice Policy and Reform
Department of Justice and Attorney-General

By email: adactreview@justice.qld.gov.au

Dear Colleagues

Anti-Discrimination Bill 2024 Consultation Draft ('the Bill')

Thank you for the opportunity to provide feedback in relation to the above.

About QCOSS

Queensland Council of Social Service (QCOSS) is Queensland's peak body for the social service sector. Our vision is to achieve equality, opportunity, and wellbeing for all Queenslanders.

QCOSS' position

This Bill provides major opportunities to further promote and protect human rights in Queensland and we take this opportunity to acknowledge the ongoing work of the Queensland Human Rights Commission (QHRC). The QHRC report *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*,¹ ('the Building Belonging Report') outlined a need for a new Act replacing the *Anti-Discrimination Act 1991* (Qld) ('the Current Act') and made recommendations on key provisions that should be featured in a new Act.

QCOSS provided a submission to the QHRC consultation in connection with the Building Belonging Report in 2021. We have remained highly engaged in this area of law reform through ongoing discussions with QCOSS members to understand important frontline perspectives and priorities. These discussions have informed this submission, along with feedback received from a meeting of the QCOSS Human Rights Network, which featured presentations from the Queensland Human Rights Commissioner and the Acting Deputy Commissioner. This was attended by over 70 people.

While we have consulted with our members to prepare this submission and provide comments on particular aspects of the Bill, we do not consider our consultation to have thoroughly captured the perspectives of community organisations across Queensland. In addition, we note that we have not captured specific feedback from our First Nations community-controlled organisations. We encourage the Department to take active steps to ensure First Nations Peoples and organisations are able to provide feedback on the Bill.

The Bill has significant potential to facilitate substantial positive change

QCOSS supports the commitment to modernising and expanding Queensland's anti-discrimination laws. Participants at our Human Rights Network overwhelmingly supported a new Anti-Discrimination Act for Queensland. There are many examples of new and amended provisions

¹ Queensland Human Rights Commission. (2022). *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*. ('Building Belonging Report') <https://www.qhrc.qld.gov.au/about-us/reviews/ada>



within the Bill that will help facilitate better outcomes for people who experience discrimination, and to support organisations to foster a rights respecting culture.

While this is not an exhaustive list, QCOSS members have particularly highlighted positive features of the Act, such as:

- the shift towards proactive measures reflected in the Bill, including the positive duty and measures to identify and address systemic discrimination
- introduction of affirmative measures
- expansion of protected attributes
- incorporating concepts of intersectionality
- clearer tests for direct and indirect discrimination
- longer timeframes to make a complaint under the Act.

Opportunities to improve the Bill

While QCOSS members are supportive of the Bill, many organisations with substantial experience assisting communities to access and navigate their rights have highlighted opportunities for the Bill to be improved. Community organisations will have considerable duties and obligations under the Bill and want to ensure their role can be effectively and practically navigated. Feedback from QCOSS members has included the following.

- **Clarification is needed on the application of the positive duty:** there are concerns that it is currently unclear who the positive duty will apply to. Feedback received has particularly stressed that the duty should apply to the State, and to institutions such as public and private schools.
- **Vicarious liability should be simplified:** the new provisions regarding vicarious liability are unnecessarily complex, especially when compared to the provisions in the Current Act.² QCOSS members are concerned it may become more difficult to bring a complaint against an organisation who should be vicariously liable, and it may be difficult for organisations to manage and understand their obligations in this context.
- **The reasonable accommodations mechanism should be simplified:** the mechanism regarding reasonable accommodations is currently too complex. This could make it difficult for individuals to have clarity on the reasonable accommodations they can seek, and to understand the steps involved with this process. Complexity in this setting would be challenging for duty holders to navigate.
- **Section 32 regarding irrelevant criminal history should be reviewed:** section 32 permits discrimination against another person on the basis of irrelevant criminal record in relation to work if the work principally involves the care, instruction or supervision of a child; OR providing care, support or assistance to a person with disability or an aged person; AND the discrimination is reasonably necessary to protect the physical, psychological or emotional well-being of the child, person with disability or aged person.

QCOSS members have highlighted that mechanisms and regulatory frameworks are already in place to ensure appropriate screening of workers. QCOSS continues receiving feedback about barriers to attaining certifications such as a BlueCard, and we are concerned about the impacts of permissible discrimination regarding irrelevant criminal records. We have received feedback on situations where historical offending or minor conduct is given disproportionate weight, resulting in difficulties attaining or maintaining a BlueCard. We understand this issue

² *Anti-Discrimination Act 1991 (Qld) ss 132-3.*

disproportionately impacts First Nations Peoples who are overrepresented in the justice system.

- **The definition of ‘disability’ should include addiction:** addiction should be incorporated into the definition of disability, in line with recommendations from the Building Belonging Report.³
- **The definition of ‘physical appearance’ should be reviewed:** there is concern with the definition of physical appearance as a protected attribute, where there are limitations to protection for aspects of physical appearance that are ‘freely chosen’. Concerns include that the limitation is too broad and may cause confusion if it is seen as limiting protections afforded under other protected attributes.
- **The definition of race should be expanded:** appearance and cultural practices should be added to the definition of ‘race’ under the Bill, which would be in line with current case law.
- **The Bill should be reviewed in line with recommendations from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (‘the Disability Royal Commission’):** considering the recently finalised report from the Disability Royal Commission, QCOSS members have highlighted the importance of ensuring the Bill is reviewed in line with any relevant recommendations or findings.⁴ The timing of the development of this Bill so recently after the Disability Royal Commission’s report presents a significant opportunity to ensure the Bill is adopting best practices.

Effective implementation

The Bill represents an ambitious step forward, which must be supported by strategic and effective implementation. In progressing this important work, the Department of Justice and Attorney General should provide further details of plans for implementation.

QCOSS members have emphasised the need for clarity on when the Act will commence, and how implementation will be supported through community and industry awareness and education efforts. Given the range of new measures featured within the Bill, it will be of vital importance to ensure that organisations and activities are fully resourced and funded to ensure these measures can be effectively harnessed. QCOSS members have indicated a need for:

- materials assisting organisations and individuals to understand their rights and responsibilities under anti-discrimination law. Feedback has highlighted that examples and scenarios within legislation and supporting materials are particularly helpful in understanding complex laws.
- guidance on how these reforms will interact with other pieces of legislation and regulatory frameworks. Guidance and materials should be developed in line with key principles of accessibility and inclusivity.

QCOSS members have also highlighted difficulties individuals can face in seeking assistance to understand and enforce their rights under the Current Act. In reviewing anti-discrimination laws in Queensland, it is vital to review current funding for services that assist members of the community to understand and access their rights. An uplift in funding should be considered for the legal assistance sector and other community advocates. We make this comment in the specific context of ensuring individuals can effectively engage with their rights as proposed by the Bill, but also in the broader context of soaring levels of demand for legal assistance.

³ *Building Belonging Report*, pp 270-272.

⁴ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2023) *Final Report*. <https://disability.royalcommission.gov.au/publications/final-report>

This feedback is consistent with recommendations from the QHRC on implementing the reforms through appropriate awareness and education, resourcing key bodies and organisations, and monitoring changes.⁵

Conclusion

QCOSS commends the substantial work and consultation that has gone into the development of the Bill. We encourage close engagement with submissions highlighting improvements on drafting and technical aspects of the Bill, which will help to ensure the goals and objectives in establishing a new Act can be effectively realised. The Bill should be supported by a comprehensive communications and engagement strategy and investment that seeks to raise awareness, educate and ensure people can access their rights.

Thank you again for the opportunity to provide our submission. If you have any questions, please contact Aimee McVeigh, Chief Executive Officer at aimee@qcross.org.au.

Yours sincerely

A handwritten signature in black ink that reads "Aimee McVeigh". The signature is written in a cursive, flowing style.

Aimee McVeigh
Chief Executive Officer

⁵ *Building Belonging Report*, pp 404-409.