

15 February 2022

Queensland Human Rights Commission  
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Dear colleagues,

## **Response to the Queensland Human Rights Commission's consultation for a review of the Anti-Discrimination Act**

Thank you for the opportunity to make a submission as part of the review of the Anti-Discrimination Act (the 'Act').

### **About QCOSS**

The Queensland Council of Social Service (QCOSS) is the peak body for the social service sector in Queensland. Our vision is for equality, opportunity, and wellbeing for every person, in every community.

### **QCOSS' position**

This review presents an opportunity to further protect and promote human rights. Accompanied by other measures, laws do have the ability to influence culture. It is timely to review the Act to reflect contemporary community values and also add to legal frameworks, such as the *Human Rights Act 2019*, which help us toward a more inclusive and fair future.

The Act should respond to the evolving needs of all people in Queensland. It should be based on the direct consultation provided by individuals, communities and groups who are impacted by discrimination. It should reflect consultation with First Nations People, people with disability, LGBTIQ+ people, people from culturally and linguistically diverse backgrounds, older and younger people, people subjected to domestic violence and those who experience intersectional discrimination.

On 12 October 2021, QCOSS held an online interactive webinar with more than 200 people from across the social service sector. This webinar included a presentation by the Queensland Human Rights Commissioner, who discussed the significant harm caused by discrimination and sexual harassment to individuals, families, communities, and society. At this webinar, participant feedback was obtained through Zoom polls and comments.

The feedback represents the key issues encountered by Queensland's community service sector workforce. This included issues such as discrimination in the workplace, discrimination experienced by service users (including groups not recognised in the Act), intersectional discrimination, the efficacy of the current complaints model, exemptions for not-for-profit



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organisations and the meaning of systemic discrimination. This feedback was used to inform our response to this review.

QCOSS continues to advocate for people, groups and communities who experience discrimination. We also recognise the specialist skills of our member organisations and other social service organisations with expertise using the Anti-Discrimination Act to advance human rights. QCOSS endorses the [Ten-Point Plan for a Fairer Queensland](#), developed by The Alliance of Queensland Lawyers and Advocates.

### Responses to the discussion paper

We have selected questions from the Discussion Paper that we believe reflect the concerns and opinions raised by QCOSS members. We have not responded to every question in your discussion paper.

#### Discussion question 1:

- *Should the Act clarify that direct and indirect discrimination are not mutually exclusive?*

As outlined in the discussion paper, the distinction of direct and indirect discrimination can be difficult for people involved in a complaint, particularly if they do not have legal representation. QCOSS supports a change of language that is easily understood for people who are involved in a complaint and people working in the community services sector.

#### Discussion question 7:

- *Is there a need to protect people from discrimination because of the effect of a combination of attributes?*
- *What are some examples of where the current law does not adequately protect people from discrimination on combined grounds?*

The effects of intersectional discrimination through combined attributes have been increasingly recognised, particularly by QCOSS members who consistently advocate for and support individuals, groups and communities who are impacted by several identified attributes, such as age, sex, disability, and race. Many organisations consulted were in support of protecting people who face discrimination because of a combination of attributes. As one respondent commented:

*Currently when we support sex workers to file a discrimination complaint, the legal advice is to choose ONE category that is the MOST clear. So, the other types of discrimination are not usually brought to the complaint.*

Additionally, it was discussed that attributes such as low socio-economic status and sex work contribute to intersectional discrimination, although they are not currently recognised in the Act. In support of this, another respondent commented: *‘Often sex workers will take a case forward only when it relates to a different attribute to avoid more stigma.’*

Legislative amendments should aim to protect people who experience discrimination on combined grounds. The introduction of additional attributes is necessary to protect individuals from the effect of a combination of attributes and, by extension, intersectional discrimination.<sup>1</sup>



*Discussion question 10:*

- *Should the Act include a direct right of access to the tribunals?*

We acknowledge the inherent complexity of creating a dispute resolution model that serves everyone fairly and equally. Nevertheless, webinar responses were largely in favour of addressing systemic issues which, arguably, could be facilitated by providing individuals the option of a direct access to the tribunals.

One respondent described the need to think carefully about re-design of the dispute resolution process to prevent further harm being caused. *‘There is some complexity here – for some communities, systemic action might not be ... popular. For people who could experience harm from a courts process (sex workers being outed...), conciliation could provide an option.’*

*Discussion question 14:*

- *Is 1 year the appropriate timeframe within which to lodge a complaint? Should it be increased and if so, by how long?*
- *Should there be provisions that apply to children or people with impaired decision-making capacity?*

Respondents noted that dispute processes can cause further harm to complainants, particularly through power imbalances, re-traumatisation, financial difficulties, timeframe constraints and inadequate provisions for children and people with impaired decision-making capacity. These factors were identified as major barriers for individuals to initiate a complaint process at all. QCOSS support the solution stated by the Alliance of Queensland Lawyers and Advocates of establishing a specialist division or reinstating the Anti-Discrimination Tribunal.<sup>1</sup>

*Discussion question 19:*

- *What should be the overarching purposes of the Anti-Discrimination Act?*

Webinar participants identified institutional and organisational structures, procedures and practices as perpetuating factors of systemic discrimination. Eliminating systemic discrimination is central to protecting marginalised individuals and communities. As described by one webinar participant: *‘It’s indirect discrimination playing out in major ways’*.

The meaning and impact of systemic discrimination should be highlighted in the overarching purpose of the Act. Initially, the Act was intended to bring about systemic change by addressing individual discrimination cases to permeate out into larger groups, communities, and society. While a well-intended method, settlements and outcomes have largely remained hidden at the detriment of others who experience similar cases of discrimination.<sup>1</sup>

*Discussion question 21:*

- *Do you support the introduction of a positive duty in the Anti-Discrimination Act?*
- *Should a positive duty apply to all areas of activity in which the Act operates, or be confined to certain areas of activity, such as employment?*
- *Should a positive duty apply to all entities that currently hold obligations under the Anti-Discrimination Act?*



The introduction of positive duties could play a dual role in the prevention and protection of those who experience discrimination. When presented with a poll on the introduction of a positive duty in the Act, 96 per cent of webinar participants supported this change.

Respondents stated that organisations should 'lead by example' by shifting or sharing the individual's responsibility of reporting discrimination. Further, organisations were identified as possible drivers of change in eliminating internal and external discrimination if positive duties were effectively adopted.

Institutions and organisations could set the standard by proactively making reasonable adjustments for people who experience discrimination and, further, by providing training and maintaining policies to prevent all forms of harassment in controllable environments.<sup>1</sup>

*Discussion questions 25-29:*

*Current attributes*

Notably, QCOSS members offered numerous examples of forms of discrimination they had experienced, as well as those experienced by service users whom they support. Racism was most reported by webinar participants (51 per cent), followed by disability discrimination (11 per cent), ageism (11 per cent), and sexism (11 per cent). The prevalence of discrimination based on these attributes needs to be carefully considered, particularly in terms of whether the current definitions are inclusive, representative of those who experience it and, overall, effective at eliminating discrimination.

*Discussion questions 30-39:*

*Additional attributes*

Webinar participants were directly asked what attributes they believed should be added to the Act from their professional and personal experience. This included protections for the following attributes:

- Low socio-economic status
- Gender
- Sex workers
- Individuals subjected to domestic and family violence
- Medical choices
- Health conditions.

*Discussion question 52:*

- *Should the definition of goods and services that excludes non-profit goods and service providers be retained or changed?*
- *Should any goods and services providers be exempt from discrimination, and if so, what should the appropriate threshold be?*

A poll completed by webinar participants showed mixed opinions on narrowing the scope of the exemptions on not-for-profit associations providing goods and services. While the majority supported a change (53 per cent), 36 per cent acknowledged that it depends on the



association and 11 per cent supported no change at all. Participants largely commented that they were unaware of this exemption.

Some respondents noted that exemptions must be well-defined, carefully considered, and dependent on the type and size of a provided service. One participant asked: *'How do we decide what views / values are 'allowed'? How do we define harm for some groups excluding people who don't align?'*

Notably, similar exemptions apply to government institutes, health care services, accommodation providers and insurers.<sup>1</sup> Flow-on effects have been well-documented since the introduction of these exemptions, with notable impacts for sex workers, prisoners, LGBTIQ+ community members, and those with a history of mental illness. As stated by the Alliance of Queensland Lawyers and Advocates in the Ten-Point Plan for a Fairer Queensland, the simple solution is to remove all discriminatory exemptions that allow unfair treatment.<sup>1</sup>

## Conclusion

Community organisations and those working in the social services sector have demonstrated an active interest in this review. Our members work with people experiencing the most disadvantage and marginalisation in our community and can see how particular characteristics make people more susceptible to discrimination. For this reason, the community services sector supports strong and easily accessible anti-discrimination laws that do not cause further harm.

Discrimination is inherently connected to power. When laws aim to correct a power imbalance it is sensible to place a greater burden on the more powerful actor. Accordingly, our sector has clearly indicated that preventative measures that impose a positive duty are supported.

We endorse the Ten-Point Plan for a Fairer Queensland and those solutions presented by the Alliance of Queensland Lawyers and Advocates, noting that many of the organisations involved in developing this work are QCOSS members who work extensively with people most likely to experience discrimination.

QCOSS welcomes the review of the Act as it provides an opportunity to ensure anti-discrimination laws not only reflect contemporary community standards but also helps to pave the way toward the inclusive and fair society we envisage in the future.

Thank you again for the opportunity to provide our submission.

Yours sincerely,



Aimee McVeigh  
Chief Executive Officer

1. The Alliance of Queensland Lawyers and Advocates. *Ten-Point Plan for a Fairer Queensland*. 2021. <https://www.communitylegalqld.org.au/wp-content/uploads/2021/11/Ten-Point-Plan-1.pdf>

