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1 March 2022

Mr Scott McDougall
The Commissioner
Queensland Human Rights Commission
Level 20, 53 Albert Street
Brisbane QLD 4000

Via email: adareview@qhrc.qld.gov.au.

Dear Mr McDougall,

Re: Review of the Anti-Discrimination Act 1991 (Queensland)

The Australian Psychological Society (APS) is pleased to be able to provide the following submission focused on the psychological aspects and implications of the proposed legislation. In preparing this submission, the APS has consulted broadly across our national membership base of 27,000 psychologists with specialist knowledge relevant to the area.

Discrimination is psychologically damaging, both for victims and for bystanders[1]. The APS denounces discrimination in any form and supports the review and optimisation of anti-discrimination legislation to protect all Australians, particularly those from 'at risk' and vulnerable groups. In addition to reducing the associated mental health burden [see 2], we acknowledge the importance of this review as a step towards achieving multiple UN Sustainable Development Goals[3] (SDGs) namely, SDG 5 (Gender Equality), SDG 10 (Reduce Inequalities) and SDG 16 (Peace, Justice and Strong Institutions).

Specifically, anti-discrimination legislation has the capacity to reduce inequalities (10.3)[4], empower and promote the inclusion of all (10.2)[4], including helping address discrimination against women and girls (5.1)[5]. In addition, the APS commends the Queensland Human Rights Commission on their efforts to shift the culture away from a complaints-based approach by emphasising prevention and community awareness.

In this submission, we have not addressed all the discussion questions as many of these considerations are outside the scope of the APS' expertise. Other organisations are much better placed to comment. Instead, as suggested, we have focussed on the psychological harm associated with discrimination, being in a discriminatory environment and the impact of complaints processes.

Psychological harm of discrimination

It is well established in the scientific literature that discrimination* is damaging both physically and psychologically[6–8]. However, it is important to acknowledge that research investigating discrimination is likely to have underestimated its effects as they are typically cross-sectional[9,10] and relational in nature.

*These studies specifically refer to discrimination, whereas there are many more which address the mental and physical effects of racism, a related but distinct concept.

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Evidence from cognitive neuroscientific research shows that discrimination has neural sequalae which are akin to chronic social stress which impacts upon critical brain structures including the pre-frontal cortex[11].

In addition, evidence suggests that cumulative exposure to discrimination is particularly challenging and damaging to mental health and wellbeing[7,9,12]. In particular, discrimination in 'public' settings such as shops or in government settings is associated with high psychological distress[7]. Specifically, there is evidence that discrimination is related to:

- **Poor mental health** – Higher reported exposure to racial and disability discrimination is associated with lower mental health[9,13–15]. In an Australian study of Indigenous children and their carers, experiences of discrimination were associated with a higher risk of clinically significant behavioural or emotional difficulties as well as sleep difficulties[12]. Similarly, Asian Americans who reported experiences of racial discrimination were twice as likely to have a mental health disorder in the past 12 months, and three times as likely to have two or more disorders[10]. Similarly, women who experienced sex discrimination were three times more likely to report having PTSD symptoms[16] and/or being clinically depressed and these latter outcomes appear to persist over time[17]. Moreover, women who are paid less than men for equal work, are more likely to experience mood disorders, suggestive of one structural explanation of population-level mental health disparities[18].
- **Negative health outcomes** – 'Mistreatment' perceived as racial discrimination has been shown to be associated with increases in diastolic blood pressure[19] in African American (but not European American) women. Similarly, individuals with a disability who have experienced discrimination or harassment reported higher levels of psychological distress and poorer health[20]. Furthermore, reports of everyday discrimination amongst Asian Americans were associated with pain, indicators of heart disease, and respiratory illness, even when controlling for a number of socio-demographic variables such as income, education, and region[21].

Together, these results highlight the critical need to reduce the prevalence of all forms of discrimination, in both private and public settings, as a matter of public health[22,23].

The relationship between discrimination and health outcomes are further complicated by the compounding effect of intersectional disadvantage[22,24]. When individuals have more than one attribute associated with discrimination (for example being a member of an ethnic or religious minority, having a disability, identifying as having female or non-binary gender, or member of the LGBTIQA+ community), the impacts of discrimination can overlap and amplify [see 25]. Typically, the effects of intersectional disadvantage are difficult to investigate quantitatively as the number of individuals who share particular combinations of characteristics are limited [see 26]. As acknowledged in *The Review of Queensland's Anti-Discrimination Act: Discussion Paper (The Discussion Paper)*, intersectional disadvantage is also legally complex to capture[25,27].

Subtle discrimination, stigma and stereotypes

Despite increasing awareness and decreasing social acceptance of discrimination, it is still pervasive and can be difficult to identify[23]. There is growing evidence highlighting the importance of subtle or 'ambiguous' forms of discrimination in predicting mental (ill) wellbeing[1]. In a large meta-analysis, covert discrimination was found to be at least as damaging as overt discrimination in a range of psychological, physical and work-related domains[28].

Further evidence highlighting the importance of reducing discrimination and harassment is the effects on bystanders who witness the harassment of others. Likened to 'second hand smoke', there is evidence to suggest that awareness of racial harassment (biased behaviours and offensive comments) in the workplace was associated with psychological strain and predicted negative job attitudes for all participants, particularly if the organisation was perceived to tolerate the harassment[1]. This was not the case for more 'blatant' forms of threats or assaults which are presumably less subtle and more likely to be addressed. Similarly, simply being in an unsupportive environment can have negative effects on health and wellbeing. For example, members of the LGB community living in regions of low support of same-sex marriage in the Australian postal plebiscite had comparatively poorer health and wellbeing[29].

Unfortunately, subtle forms of discrimination are often overlooked or normalised which has led to the term 'everyday sexism or discrimination'[23].

It might be differential expectations of entertaining guests at a dinner party, differential treatment by service personnel, differing beliefs about cognitive abilities, or allocation of tasks in a work setting[23].

Despite these behaviours being subtle, evidence suggests they can still explain significant variance in women's psychiatric and physical symptoms[30]. Similarly, 'microaggressions'[31] or small insidious comments, insults or behaviours towards women have been found in male dominated STEM fields[23,32], potentially playing a role in female underrepresentation. This is further complicated by evidence suggesting that men are less likely to accept evidence of gender biases in their own STEM field[33]. Together, these results suggest that, despite advances in addressing blatant discrimination, subtle forms of discrimination are still widespread and damaging, and therefore, must be addressed.

Therapeutic or remedial benefits of discrimination complaint procedures

Despite the pervasiveness of discrimination, it is well established that a large proportion is often not recognised and/or reported[†]. One research centre in the US has found that 99.8% of people who experienced sexual harassment at work did not report it[35]. Of those reported cases, approximately only 19% received any redress, despite 88% being judged to have legal merit[36]. Critically, the interpersonal consequences for those who do file a complaint are confronting: 68% of those reporting sexual harassment experience some kind of employer retaliation and 64% potential job loss[35]. Similarly, 42% of LGBTQ+ discrimination allegations also include employer retaliation[37]. Even in clear cases of discrimination, perceptions of the claimant's character can also be negatively affected[34]. A recent review[37] and other research suggested the following may explain the low rates of reporting discrimination:

- Retaliation (or fear thereof) from the employer or colleagues with the effect of further marginalising the victim[38,39]
- Low likelihood that the victims will receive benefit from reporting discrimination
- Lack of informal, confidential processes to make complaints and lack of anonymity
- Unhealthy workplace culture
- Inaccessible and complex complaint processes

Ideally, remedial and complaint processes should be independent, responsive, transparent, flexible, and convenient[37]. Although these results and recommendations may not perfectly translate to Australian contexts, it is clear that systemic change is also needed here.

Focus on prevention and community awareness

Social expectations and stereotypes are believed to underpin discriminatory behaviour. It is difficult to regulate behaviour and attitudes that are "perpetrated unconsciously, in ways that aren't detectable to everybody" [23, section 2]. Given evidence suggesting gender stereotypes have remained markedly stable over the past 30 years[40], widespread cultural change and awareness is necessary. This would require challenging attitudes and underlying beliefs held commonly throughout Australia.

On an individual level, there is limited evidence of direct interventions which lead to less discriminatory behaviour, presumably due to the stability of the underlying cultural stereotypes [see 40]. One positive example used experiential learning to educate participants about the harms of subtle sexual discrimination in the workplace[41]. The results suggest that experience of discrimination and critical reflection of the harm discrimination can cause are needed[23].

It is important to note, however, that diversity training may lead to mixed or unintended results (for example increasing differential treatment)[28,42]. Ideally, it should occur as part of suite of measures including public awareness and educational initiatives, supportive mediation and appropriate complaint processes and legislation.

[†]For a discussion see 34

However, as recommended in the Australian Human Rights Commission's Respect@Work: Sexual Harassment National Inquiry Report[43], there are a number of ways that the Queensland Government can support the reduction of discrimination throughout schools, workplaces, government, and the public arena.

Although published in 2009, the Victorian evidence-based framework designed to reduce race-based discrimination *Building on our Strengths*[44] may provide a useful starting point to examine the underlying principles that need to be considered when designing effective interventions to proactively and prospectively reduce discrimination of all types. Specifically, the framework's themes include:

- increasing empathy,
- raising awareness,
- providing accurate information,
- recognising incompatible beliefs,
- increasing personal accountability,
- breaking down barriers between groups,
- increasing organisational accountability,
- promoting positive social norms[44(p. 9)].

In addition to the above recommendations, the APS suggests the following:

- Adapting the language of complaint processes and procedures to be more resolution-focussed rather than punitive. As 'complaint' has pejorative connotations, particularly in some cultures, we suggest that 'dispute resolution' or similar may be more acceptable.
- As discussed in *The Discussion Paper,* the comparative process to determine whether treatment is "less favourable" almost necessitates the victim reliving the potentially traumatic nature of their experience. In contrast, "unfavourable treatment" is much more flexible to consider an individual experience.

Thank you for the opportunity to respond to this Inquiry. The APS commends the comprehensive review of the Anti-Discrimination Act (1991) which endeavours to protect some of Queensland's most vulnerable. If any further information is required from the APS I would be happy to be contacted through my office on [redacted] or by email at [redacted]

Yours sincerely,

Dr Zena Burgess FAPS FAICD
Chief Executive Officer

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