



Queensland Alliance for Mental Health

# Anti-Discrimination Act Review

## Submission

1 March 2022

## Who is QAMH?

Queensland Alliance for Mental Health (QAMH) is the peak body for the Community Mental Health and Wellbeing Sector in Queensland. We represent more than 100 organisations and stakeholders involved in the delivery of community mental health and wellbeing services across the state.

Our role is to reform, promote and drive community mental health and wellbeing service delivery for all Queenslanders, through our influence and collaboration with our members and strategic partners.

At a national level, we have a formal collaboration with Community Mental Health Australia and provide input and advice to the work of Mental Health Australia and the National Mental Health Commission where appropriate. Locally, we work alongside our members, government, the Queensland Mental Health Commission and other stakeholders to add value to the sector and act as a strong advocate on issues that impact their operations in Queensland communities.

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## Our Response

QAMH welcomes the opportunity to provide a submission to the Queensland Human Rights Commission (the Commission) as part of its review of the *Anti-Discrimination Act 1991* (AD Act). We believe this review is an important part of ensuring the AD Act continues to provide strong protections for Queenslanders against discrimination. We understand that the AD Act was heralded as a forward-thinking piece of legislation when it was first enacted in 1991. However, we agree it is time to reconsider whether the AD Act, in its current form, has kept pace with the changing needs of society and community expectations, and whether it still provides those protections integral to a fair and inclusive society.

Our response to this public consultation has been informed by our extensive knowledge of the Community Mental Health and Wellbeing Sector in Queensland, and conversations with our members who work with marginalised people and communities at increased risk of experiencing discrimination.

This submission will address the following areas:

- Ensuring protections for the gender diverse community
- Mental illness is not an impairment
- Promoting equality of access for diverse communities
- Reviewing insurance company exemptions

## Ensuring protections for the gender diverse community

### *Definition of gender identity*

QAMH strongly advocates for a change to the definition of gender identity in the AD Act. The current definition of gender identity states that the person—

- (a) identifies, or has identified, as a member of the opposite sex by living or seeking to live as a member of that sex; or
- (b) is of indeterminate sex and seeks to live as a member of a particular sex.

We believe that gender identity is more diverse and fluid than what is represented in this definition and call for the Commission to expand the definition to more accurately reflect the broad range of genders existing in society. QAMH supports the view that gender is not binary and believes people who

may not identify as exclusively male or female should be protected under the AD Act. We support the definition of gender identity in the recently amended *Public Health Act 2005* which provides for identities outside the gender binary.

### **Section 23 (1)**

QAMH believes that the working with children exemption allowing discrimination on the basis of sexual activity or gender identity should be repealed. The exemption states that it is not unlawful to discriminate on the basis of sexual activity or gender identity if—

- (a) the work involves the care or instruction of minors; and
- (b) the discrimination is reasonably necessary to protect the physical, psychological or emotional wellbeing of minors having regard to all the relevant circumstances of the case, including the person's actions.

QAMH believes this infers transgender people are fundamentally dangerous to children, which is not in any way keeping with contemporary attitudes. Clearly it is essential that the highest safety standards are met in environments where children are taught and this is why Queensland has the Blue Card system, which includes rigorous background checks. We do not envisage any situation where such an exemption would specifically need to be applied to people based on their gender identification and appears to run counter to the human rights of LGBTIQ+ people to participate freely in the workforce free from discrimination. We therefore call on the Commission to repeal Section 28 (1).

### **Section 25 (3)**

QAMH is concerned that Section 25 (3) provides an exemption for employers to discriminate against a person if—

- (a) the person openly acts in a way that the person knows or ought reasonably to know is contrary to the employer's religious beliefs; and
- (b) it is a genuine occupational requirement of the employer that the person, in the course of, or in connection with, the person's work, act in a way consistent with the employer's religious beliefs.

This exemption gives protection to religious schools to discriminate against staff who are 'openly' members of the LGBTIQ+ community. QAMH believes that this protection does not ensure LGBTIQ+ people have full protection of the law to be employed free from discrimination on the bases of their gender or sexuality. It is an example of the structural prejudice and discrimination experienced by

LGBTIQ+ communities which can have lasting mental health impacts. Everyone should be free to 'openly' act in accordance with their sexuality and gender identity. We therefore recommend the Commission insert a clause stating that, while religious schools should be able to hire and retain staff of their same faith, sexual orientation or gender identification should not be an exemption for discrimination by an employer.

## Mental illness is not an impairment

QAMH is concerned that the AD Act, in its current form, uses the broad umbrella term "impairment" to refer to a heterogenous group of disabilities including physical, intellectual and psychosocial. Psychosocial disability, with its fluctuating/episodic nature and ongoing attempts to achieve personal recovery is distinct from physical and intellectual disability. People living with psychosocial disability also encounter different types of discrimination, based on the enduring stigma attached to mental illness and its propensity to be invisible and not easily quantified. This can be a barrier to seeking help and affect housing and employment opportunities in a way different to people living with physical or intellectual disability.

Moreover, this focus on impairment or disability that underpins the AD Act is diametrically opposed to a wellness and recovery framework. It exacerbates the stigma and does not align with how our sector sees mental illness and the recovery journey. As such, QAMH believes that a new attribute listing of "mental illness" should be created in the AD Act to move away from the focus on impairment and highlight the specific discrimination people with mental distress experience.

## Promoting equality of access for diverse communities

QAMH is concerned that the current AD Act does not provide for the right to access culturally appropriate services. We believe that equitable access to health services for people from culturally and linguistically diverse (CALD) backgrounds and Aboriginal and Torres Strait Islander backgrounds is a fundamental human right and as such needs to be reflected in the AD Act. This could include, among other things, ensuring the right to:

- Access mental health and wellbeing programs and services that align with one's cultural values;
- A professional interpreting service for consumers who are not proficient in English;
- Provision of resources and mental health information in a format that is meaningful and easy to understand, including translated information; and
- Provision of a culturally competent workforce and where not available, implementing strategies to build cultural capability of the workforce.

Currently in Queensland, CALD and Aboriginal and Torres Strait Islander populations regularly experience interactions with the health system which are culturally inappropriate and yet they have no protection under the AD Act to demand these services. QAMH calls on the Commission to explore avenues for providing such protections for these marginalised communities.

## Reviewing insurance company exemptions

Currently, the AD Act allows insurance companies to discriminate against people with a history of mental illness. The severity, recency, relevance or response to treatment is not necessarily considered, giving insurance companies impunity to discriminate against people with mental illness by raising premiums or denying them access to cover. The consequences of this exemption have been significant with people failing to seek appropriate care for fear a potential diagnosis may need to be disclosed to their insurance company. A law that actively disincentivises vulnerable people to seek care is surely not fair and equitable, or in the Queensland community's best interests. QAMH strongly advocates for a review of this exemption so that people with mental illness are not unfairly discriminated against for seeking help in their distress.

Thank you for the opportunity to contribute to this important review. We look forward to reading the recommendations put forward by the Commission. Please do not hesitate to contact QAMH should you require any further information.