

SUBMISSION TO
REVIEW OF THE ANTI-DISCRIMINATION ACT 1991 (QLD) (ADAQ)

Suggesting the inclusion of a definition of “institutional racism” and/or “institutional discrimination” in the *Anti-Discrimination Act*

Introduction

The *Hospital and Health Boards (Health Equity Strategies) Amendment Regulation 2021* (Qld) commenced on 30 April 2021.¹ The Regulation makes reference to “institutional racism” in Section 8 (a)(i)², however does not define the term. “Institutional racism”, however, is defined as follows in the Explanatory notes for SL 2021 No. 34 made under the *Hospital and Health Boards Act 2011* (Qld).³

Institutional racism, for the purpose of the Regulation, refers to the ways in which racist beliefs, attitudes or values have arisen within, or are built into the operations and/or policies of an institution in such a way that discriminates against, controls or oppresses, directly or indirectly, a certain group of people to limit their rights, causing and/or contributing to inherited disadvantage. (page 8)

In our view this would be the first time in any jurisdiction in Australia (and possibly the world) that a definition of institutional racism as a form of racism has been referenced in a statutory law – albeit within a regulation.

It is also our view that the Queensland Government, and in particular Queensland Health (QH), has set an outstanding precedent in responding to what was a very confronting institutional racism matrix audit of their 16 Hospital and Health Services in the report *Addressing Institutional Barriers to Health Equity for Aboriginal and Torres Strait Islander people in Queensland Public Hospital and Health Services* (also referred to as *The Health Equity Report*)⁴ and that, in particular, the partnership between QH and Queensland Aboriginal and Islander Health Council, as embodied in the Making Tracks discussion paper⁵, provides a template which could be emulated nationally and which will

¹ Subordinate Legislation 2021 No. 34 made under the *Hospital and Health Boards Act 2011*

² “8 Insertion of new ss 13A and 13B After section 13— insert— 13A Prescribed requirements for health equity strategies For section 40(3)(a) of the Act, a health equity strategy of a Service must— “

(a) state the Service’s key performance measures, as agreed by the Service and the chief Aboriginal and Torres Strait Islander health officer, that relate to improving health and wellbeing outcomes for Aboriginal people and Torres Strait Islander people, including—

(i) actively eliminating racial discrimination and institutional racism within the Service; and...”

³ Hospital and Health Boards (Health Equity Strategies) Amendment Regulation 2021 Explanatory notes for SL 2021 No. 34 made under the Hospital and Health Boards Act 2011. Accessed at: <https://www.legislation.qld.gov.au/view/pdf/published.exp/sl-2021-0034>

⁴ Marrie, A. (2017). *Addressing Institutional Barriers to Health Equity for Aboriginal and Torres Strait Islander people in Queensland Public Hospital and Health Services*. Anti-Discrimination Commission Queensland [now the Queensland Human Rights Commission] and Queensland Aboriginal and Islander Health Council, Brisbane. Accessed at: https://www.qhrc.qld.gov.au/_data/assets/word_doc/0017/16550/Health-Equity-Report-2017.docx

⁵ QAIHC and Queensland Health, (2021). *Making Tracks towards health equity with Aboriginal and Torres Strait Islander peoples—working together to achieve life expectancy parity by 2031 Discussion paper: a shared conversation*. Brisbane. Accessed at: https://www.health.qld.gov.au/_data/assets/pdf_file/0035/1028879/health-equity-discussion-paper.pdf

assist in achieving many of the 16 outcomes and their targets detailed in the 2020 COAG National Agreement on Closing the Gap. The COAG National Agreement is also referred to in the above Regulation.⁶

The COAG Agreement also sets out four areas for priority reform:

- Priority Reform One: Formal Partnerships and Shared Decision Making (which the QH-QAIHC Making Tracks discussion paper embodies)
- Priority Reform Two: Building the Community Controlled Sector
- Priority Reform Three: Transforming Government Organisations
- Priority Reform Four: Shared Access to Data and Information at a Regional Level

In the context of dealing with institutional racism, Priority Reform Three is particularly relevant.⁷ The first of the transformation elements identified in the Agreement is:

a. Identify and eliminate racism – Identify and call out institutional racism, discrimination and unconscious bias in order to address these experiences. Undertake system-focused effort to address disproportionate outcomes and overrepresentation of Aboriginal and Torres Strait Islander people by addressing features of systems that cultivate institutionalized racism. (p. 11)⁸

While the Matrix is proving to be an effective tool in identifying and addressing elements of institutional racism, whether it will be used elsewhere, or even in the context of Priority Reform Three, is unknown. Ultimately, we think, if institutional racism is to be effectively addressed across all jurisdictions in Australia, it will need to be effectively defined and recognized as a form of racism in all relevant federal, state and territory laws.

Again, in our view, the government which might be most receptive in achieving this (beyond defining institutional racism with reference to a regulation) is the Queensland Government.

⁶ “8 Insertion of new ss 13A and 13B After section 13— insert— 13A Prescribed requirements for health equity strategies For section 40(3)(a) of the Act, a health equity strategy of a Service must—
(c) state how the strategy aligns with—

.....

(iv) other national, state and local government strategies, policies, agreements and standards relevant to promoting shared decision-making, shared ownership and working in partnership with Aboriginal people and Torres Strait Islander people.

Examples— • the National Agreement on Closing the Gap (2020)....

⁷ “PRIORITY REFORM THREE – TRANSFORMING GOVERNMENT ORGANISATIONS The Parties commit to systemic and structural transformation of mainstream government organisations to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people. Priority Reform Three was strongly supported by the 2019 engagement process.” *Closing the Gap in Partnership: National Agreement on Closing the Gap July 2020*, p. 11.

⁸ “Transformation elements

59. The Government Parties commit to implement the following transformation elements within government mainstream institutions and agencies:

a. **Identify and eliminate racism** – Identify and call out institutional racism, discrimination and unconscious bias in order to address these experiences. Undertake system-focused efforts to address disproportionate outcomes and overrepresentation of Aboriginal and Torres Strait Islander people by addressing features of systems that cultivate institutionalised racism. The feedback from the engagements included that more Aboriginal and Torres Strait Islander people should be employed in mainstream institutions and agencies, including through more identified positions, more Aboriginal and Torres Strait Islander people in senior positions, and appointments to boards.” *Ibid.*

Our submission

Our submission is simply that the above definition of “institutional racism” contained on p.8 of Explanatory notes for SL 2021 No. 34 should be inserted into the *Anti-Discrimination Act 1991* (Qld), however, it should also contain the word “governance” as follows:

Institutional racism, for the purpose of the Act, refers to the ways in which racist beliefs, attitudes or values have arisen within, or are built into the governance, operations and/or policies of an institution in such a way that discriminates against, controls or oppresses, directly or indirectly, a certain group of people to limit their rights, causing and/or contributing to inherited disadvantage.

We would also like to see inserted into the ADAQ a similar definition which covers all forms of institutional discrimination (gender, disability, age, religion, etc)

Institutional discrimination, for the purpose of the Act, refers to the ways in which racist beliefs, attitudes or values have arisen within, or are built into the governance, operations and/or policies of an institution in such a way that discriminates against, controls or oppresses, directly or indirectly, a certain group of people to limit their rights, causing and/or contributing to their disadvantage.

If so inserted into the ADAQ, this would set a national precedent, and possibly also internationally, and would be a signature legacy of the current Queensland Government in addressing and advancing human rights.

Professor Henrietta Marrie AM
Gimuy Walubara Yidinji Senior Elder

Adrian Marrie

7 February 2022