

Response to the Queensland Human Rights Commission's review of the Queensland 'Anti-Discrimination Act'

Neami National (Neami) was established in 1986 and is a specialist community mental health provider supporting people to improve their wellbeing, live independently and pursue a life based on their strengths, values and goals. We support over 27,000 individuals nationally across services spanning community and residential mental health, suicide prevention, and housing and homelessness. In Queensland, we deliver a range of services including:

- Connect to Wellbeing supporting people into mental health care via a *no wrong door* approach
- Townsville Women's Health and Wellbeing service which includes support to address domestic and family violence
- Living and Learning Centres in Ipswich and Strathpine offering one-to-one and group psychosocial support by peer and non-peer staff
- Nundah House step-up, step-down residential service for people transitioning between hospital and community.

Neami's vision is for full citizenship for all people living with mental health issues in Australian society. We provide mental health support and advocacy to people with mental ill-health, their carers and families across a wide range of needs including healthcare, housing and employment. We deliver services to meet the needs of vulnerable communities including young people, veterans, culturally and linguistically diverse and First Nations Australians. Consumers supported by Neami are likely to experience a range of intersectional issues including disability, problematic alcohol and drug use, family and domestic violence and homelessness.

The Act lacks a preventative focus, preferencing a reactive complaints-focussed approach that does not adequately address systemic and institutional discrimination against people with a mental illness.

Discrimination experienced by people with mental health issues is deeply entrenched into the systems in which we live and work and can be difficult to bring to light under the predominantly complaints-focussed process that is central to the Queensland Anti-Discrimination Act (the Act). Other factors such as prohibitive time limits on lodging complaints and a lack of protections afforded to people with mental health issues within the complaints process have the potential to further marginalise people with mental health concerns. Neami welcomes the Queensland Human Rights Commission's review of the current Queensland Anti-Discrimination Act to ensure that it meets the needs of people with mental health concerns and that they are not further discriminated against by the very process designed to protect them.

The Queensland Human Rights Commission's (QHRC) review of the Anti-Discrimination Act provides an opportunity to shift the current reactive and reparations focus of the Act towards instigating change that will positively impact the behaviour of social systems (i.e. workplaces, media, society) and the community in a way that will reduce systemic and institutional discrimination against people with mental illness. Discrimination and the impact of stigma, particularly where there is a sense of hopelessness that it will be addressed, has significant and wide-reaching impacts on people with mental illness including:



- Reducing motivation to lodge a complaint through the Act and impacting capacity to sustain motivation when the complaints process is drawn out
- Reducing the desire to seek or engage in treatment
- Increased difficulties in the workplace or other settings where discrimination occurs
- Reduced hope
- Lower self-esteem
- Exacerbating mental health symptoms (Rössler, 2016; UN Human Rights Council, 2017).

Discrimination is often informed by negative stereotypes of people with mental illness. A study of stigma reported that 'there is no country, society or culture where people with mental illness have the same societal value as people without mental illness (Rössler, 2016). The review of the Act provides an opportunity to speak to and engage with people with mental ill-health affected by discrimination, to identify how the Act could shape the way people with mental illness can be protected and accepted as full and capable members of society.

Owing to Neami's long history of supporting people from diverse communities to address their mental health, we are also highly cognisant of the impact of intersectional discrimination on individuals. The individuals we support experience complex discrimination including discrimination based on multiple factors, such as race, gender and homelessness; intersectional discrimination, according to the UNHCR Special Rapporteur is 'both the cause and the consequence of poor mental health' and compounds vulnerable and marginalised person's ability to meet their mental health needs.

The Community Legal Centres Queensland (CLCQ) have responded to QHRC's call for submissions with a 10-Point-Plan. To use the language of CLCQ, the review of the Act offers an opportunity to 'compel' systems in society to proactively operate in ways that ensure all environments are safe, inclusive and free of discrimination. Neami supports the CLCQ's recommendation that the Act should spell out pre-emptive 'duties', as opposed to remedies, that will set the expectations for how society including its institutions must treat all people to reduce discrimination at every level of Australian society. A proactive approach that targets systemic and institutional discrimination is likely to deliver positive outcomes that will protect all members of society including people with mental health concerns and those experiencing intersectional discrimination.

The onus is on the complainant to articulate how they have been discriminated against and provide proof of this when lodging a complaint. This represents a key barrier to people with mental illness who have experienced discrimination.

The Act is highly complaints-focussed and relies heavily on the person with a mental health issue who has been discriminated against, to provide proof that they were discriminated against on the basis of their mental ill-health. Mental illness is called the 'invisible disability' by the United Nations as it may not be visible and can be episodic in nature. Because of this tendency, it can be difficult for a person to prove that the discrimination that they experienced was due to mental illness. Together with the overwhelming evidence that discrimination on the basis of mental health is ubiquitous, wide-ranging and operates at all levels of society (Rössler, 2016), Neami recommends that the onus on the person experiencing the discrimination to provide proof they have been discriminated against should be subject to more rigorous consideration by the QHRC. CLCQ has recommended a *10-Point Plan for a fairer Queensland* that includes 'partially removing the onus of proof' from the person who has been discriminated against to the person/party who is being accused of discrimination. Neami supports this recommendation as it would contribute to ensuring a more level playing field for people with mental illness who are disproportionately impacted by discrimination on the basis of a mental health condition.



The expectation of complaints being lodged within 12 months presents a barrier to certain groups, including people with mental illness.

Neami recommends that the current lodgement period of 12 months be increased to at least 2 years as currently occurs with the Commonwealth Sexual Discrimination Act 1984. This will benefit a range of groups including people who have an active mental health condition that impairs decision-making and self-advocacy, people with cognitive disabilities and people who experience frequent hospitalisations or incarceration. People who are highly disengaged from systems that might support and advocate for them, require time to accept and articulate how discrimination has affected them. Whilst two years is still somewhat limiting, we support the evidence from the QCLC that 'at least two years' would provide a greater ability for people to bring forward and prepare their anti-discrimination case.

The current system relies heavily on people who have been discriminated against to bring forward and resource their case. This can result in a David and Goliath situation where unwell people are in a position of being discriminated against but without adequate resources to lodge a complaint.

Neami agrees with the recommendation of the CLCQ that a regulatory enforcement body with adequate powers would reduce the pressure on people with mental illness to bring forward, resource (e.g. engaging lawyers, time spent sourcing evidence) and engage in what could be a complex and protracted process for some. The Act does not currently include provisions to enable Queensland Civil and Administrative Tribunal (QCAT) to hear applications and enforce behaviour to address discriminatory conduct (Gorton 2021, pp.12-13). Neami supports the CLCQ's recommendation for a statutory body to regulate, enforce and arbitrate in complex cases of discrimination (CLCQ 2022) however we also support an investigation into the efficacy of strengthening the powers of the QHRC to increase its ability to compel compliance with the outcomes of anti-discrimination cases where protection of human rights is central.

CLCQ have also recommended the instigation of either a tribunal for hearing complex anti-discrimination matters or the development of a specialist division of QCAT/QIRC. Neami strongly supports this recommendation; discrimination of people with mental ill-health, despite occurring at every level of society, and within every community, is an area of anti-discrimination that is complex, systemic and often hidden. Neami's position is that whatever method is taken to review complex anti-discrimination cases where a person is claiming to have been discriminated against on the basis of mental ill-health, those professionals engaging in the arbitration must have adequate knowledge of mental illness and discrimination to ensure a fair and just process. We believe that the onus to carry the weight of addressing discrimination rests too heavily on already vulnerable cohorts. A regulatory enforcement body and an anti-discrimination tribunal (or specialist division of QCAT/QIRC) would ensure that Queensland's most vulnerable and marginalised persons are able to bring forward their anti-discrimination case in a fair and inclusive environment, where decision-making is informed and just.

Conclusion

Neami would like to see more nuanced protections in the Act that will remove the barriers that prevent people with mental ill-health from articulating and bringing forward cases of discrimination. We hope that the review leads to shifting the reactive, complaints focus of the Act to establishing proactive anti-discrimination policies that will create systemic change. The establishment of a regulatory enforcement body and tribunal will ensure that people with mental health concerns are treated fairly in the complaints process. We would like to see the lodgement period extended to ensure adequate time is available for a person to seek support and prepare their case. Neami



welcomes the timely review of the Act and encourages the Queensland Human Rights Commission to ensure the voice of people with mental illness is included in the review process.

References

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