

28 February 2022

Queensland Human Rights Commission  
City East Post Shop  
PO Box 15565  
City East QLD 4002

Dear Scott

Thank you for the opportunity to provide a submission to the current review of the *Anti-Discrimination Act 1991* (Qld). The Queensland Network of Alcohol and other Drugs (QNADA) submission is attached.

QNADA represents a dynamic and broad-reaching specialist network within the non-government alcohol and other drug (NGO AOD) sector across Queensland. We have more than 50 member organisations, representing the majority of specialist NGO AOD providers. This submission is made following consultation with QNADA members.

QNADA is pleased to provide further information or discuss any aspect of this submission. Please don't hesitate to contact me at [REDACTED].

Yours sincerely



Rebecca Lang

**CEO**



Submission to the *Review of  
Queensland's Anti-  
Discrimination Act*

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*February 2022*

This submission has been prepared by the Queensland Network of Alcohol and Other Drug Agencies (QNADA). Its' content is informed by consultation with QNADA member organisations providing treatment and harm reduction services across Queensland, as well as a review of relevant research and reports.

It focuses predominantly on issues identified within the *Review of Queensland's Anti-Discrimination Act: Discussion Paper (2021)* and touches on the importance of:

- recognising the compounding impact for people who experience multiple forms of stigma and discrimination and the need to protect people from discrimination because of the effect of a combination of attributes,
- removing the attribute of impairment, and ensuring any replacement is not inherently deficit-based,
- recognising that the stigma and discrimination faced by people who use alcohol and other drugs is not limited to those who experience dependent or problematic use, and has far-reaching impacts (including in relation to employment opportunities, and service access/responsiveness),
- covering discrimination on the grounds of irrelevant or spent criminal records which extends to people who have been convicted of supply or possession offences, as well as irrelevant mental health records, and
- ensuring that religious bodies who receive public funding are not allowed to discriminate when providing services (such as social, accommodation and health services) on behalf of the state.

Overall QNADA welcomes recognition of the need to shift towards a more proactive, preventative system which aims to address systemic discrimination and inequality, including that faced by people who use alcohol and other drugs.

Our 2019 [Policy position paper](#) discusses the stigma and discrimination faced by people who use alcohol and other drugs in more detail, and calls for person first language to be adopted across services; improved media reporting; and the implementation of a range of reform options to address this issue.

This aims to build upon issues identified within *Changing attitudes, Changing lives (2018)*<sup>1</sup> which found that experiences of stigma and discrimination were common among people with a lived experience of problematic alcohol and other drug use and that it created barriers in seeking help, compounded social disadvantage, led to social isolation, and detrimentally affected a persons' mental and physical health. This report identified a number of options to reduce stigma and discrimination for people experiencing problematic alcohol and other drug use, including dedicated training, information, and public awareness strategies; promoting social inclusion and economic participation; and improving justice responses.

These issues were also discussed in a follow-up report *Don't Judge, And Listen* which explored the impact of stigma and discrimination related to problematic alcohol and other drug use on Aboriginal and Torres Strait Islander communities, families and individuals living in Queensland<sup>2</sup>. This report

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<sup>1</sup> Queensland Mental Health Commission (2018) *Changing attitudes, Changing lives: options to reduce stigma and discrimination for people experiencing alcohol and other drug use*.

<sup>2</sup> [https://www.qmhc.qld.gov.au/sites/default/files/qmhc\\_dont\\_judge\\_and\\_listen\\_report.pdf](https://www.qmhc.qld.gov.au/sites/default/files/qmhc_dont_judge_and_listen_report.pdf)

found that research participants experienced multiple forms of stigma and discrimination related to race, clan, location and alcohol and other drug use. This acted to intensify their experiences of stigma and discrimination even further, with multiple barriers to accessing services identified.

In this respect, QNADA applauds the recognition of the need to address the barriers faced by people who have experienced discrimination in making a complaint and supports any proposed steps to enhance awareness, improve access to and timeliness of complaint processes, and ensure a more streamlined approach is taken. This includes extending provisions to allow for non-written complaints to be permitted and/or for reasonable assistance to be provided to support a person to put their complaint in writing. It would be also supported by the introduction of a more flexible approach to resolving complaints, and an option for early intervention or resolution (particularly for lower threshold complaints).

Repealing the additional requirements for prisoners to make complaints and extending provisions to allow representative bodies, such as QNADA, to make a complaint on behalf of an affected person/s would also help to better support people who have experienced discrimination. This is likely to be particularly beneficial in circumstances where the issue identified may be reflective of broader systemic concerns, and also helps to alleviate the burden of making a complaint on individuals.

The introduction of a positive duty in the Anti-Discrimination Act to embed greater responsibility for relevant entities to take active steps to prevent discrimination from occurring, supported by a regulatory framework, is also supported. Within the context of people who use alcohol and other drugs this could extend to the introduction of processes to require an assessment of potentially discriminatory provisions as part of law reform and legislative review projects, alongside the introduction or inclusion of processes and/or training for legislators and policy makers to ensure that due consideration is given to ways to reduce the potentially stigmatising and discriminatory effects of legislation<sup>3</sup>.

Building workforce capability across the alcohol and other drug sector to understand any amendments made to the act and equipping agencies to support individual and systemic advocacy and assist people to connect with relevant services will also be beneficial in improving the way Queensland prevents and responds to discrimination across the state.

While this review is commendable it is however necessary to highlight the inherent problems with the current definition of impairment, including the proposed applicability of this definition to people who experience addiction. As outlined within our [Responsive Systems Summary Paper](#) *language matters* when discussing alcohol and other drug use. Specifically, inaccurate or alarmist portrayals of alcohol and other drug use leads to the stigmatisation and marginalisation of people who use alcohol and other drugs and their families.

Global research shows that the vast majority of people who use alcohol and other drugs do so infrequently and without problems<sup>4</sup>. For the significant majority of people, the risk of harm to both

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<sup>3</sup> Lancaster, K., Seear, K., & Ritter, A. (2017) Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use, Drug Policy Modelling Program, National Drug and Alcohol Research Centre: University of New South Wales

<sup>4</sup> United Nations Office on Drugs and Crime, "Global Overview of Drug Demand and Supply: Latest Trends, Cross-Cutting Issues," World drug report 2018 (Vienna: United Nations, 2018), quoted in (QNADA), "Effective Responses to Drug Use Position Paper.

*The World Health Organisation has identified illicit drug dependence as the most stigmatised health concern in the world<sup>1</sup>.*

themselves and others is increased primarily as a result of the social, policy and legislative responses to their use rather than the substance itself.

However, all people who use alcohol and other drugs are at risk of experiencing stigma and discrimination, it is not just limited to those who experience problematic use. This can present differently dependent on the setting but may include, for example, screening employees for the presence of drugs and not

for impairment; or requesting information about past (lifetime) illicit drug use as part of obtaining a security clearance. Broadening the scope of testing or screening in this way does not help to meaningfully determine an employee's fitness to work, and perpetuates unhelpful stereotypes about people who have used, or currently use, substances.

In this respect while it is important that there is greater recognition of the stigma and discrimination faced by people who use alcohol and other drugs this should not be considered under the category of 'impairment'. A more appropriate solution would be for this protected attribute to be amended to 'health status' with specific guidance that this extends to people who use alcohol and other drugs provided (irrespective of their level of use). Removal of the limiting definition of '*a condition, illness or disease that impairs a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour*' also helps shift from a deficit based approach and recognises that while most people's functional capacity, mental health concerns or patterns of substance use may vary over time, the stigma and discrimination experienced by people does not similarly vary as it is not based on a (perceived or apparent) level of impairment.

Additional attributes should also be included for spent criminal conviction, and irrelevant criminal records to better protect people who use alcohol and other drugs who have come into contact with the criminal justice system. This is particularly relevant for people who have been convicted for drug possession or supply offences, as while there has been a long-standing policy position to divert people from the criminal justice system for (minor) drug related offending, actual practice falls well below the stated ideal.

Recent analysis of the first twenty years of diversion conducted by the Drug Policy Modelling Program found inter-jurisdictional learning had reduced over time and alarmingly that Queensland provides the lowest rate of diversion per 100 000 people in the nation. The rate is so low that it noticeably shifts the national proportion of people with a principal offence of use/possession given a police drug diversion.

Specifically, this report found that '*Queensland accounted for the largest increase in people detected for use/possession in Australia and the highest rates of offenders being sentenced to prison for use/possession alone*'. The DPMP went on to note that such a finding reflects the longer term upward trend in Queensland, as evidenced by a recent analysis by the Queensland Sentencing Advisory Council that showed the number of offenders sentenced for possessing dangerous drug as their most serious offence more than doubled between 2005-06 to 2015-16 (Queensland Sentencing Advisory Council, 2017).

This is despite the fact that as far back as 2011-12, the Queensland Drug Action Plan noted '*early intervention and diversion programs, which help prevent people apprehended for drug use from*

*getting caught up in the criminal justice cycle and divert them to treatment, have become an established and successful part of Queensland's response to drug issues'.*

Criminalisation of some drugs has created significant costs and unintended harms and can have ongoing impacts for a person's future access to employment, and for this reason steps to prevent discrimination on the grounds of irrelevant criminal record or spent criminal record is strongly supported.

The inclusion of irrelevant medical record under the Act is also similarly supported, with amendments to insurance and superannuation exemptions implemented to remove any excessive restrictions on policies or increased premiums that are associated with a person's alcohol and other drug use.

Finally, and taking into account the identified need to consider the compatibility of the Anti-Discrimination Act with the Human Rights Act outlined within the *Discussion Paper*, the [International Guidelines on Human Rights Policy](#) recognise that responding to the harms associated with drug use and the illicit drug trade is one of the greatest social policy challenges of our time, and that all aspects of this challenge have human rights implications. In particular they highlight measures that should be undertaken (or avoided) to comply with human rights obligations and concurrent drug control conventions.

The guidelines recognise that drug legislation and policy tends to have disproportionate and compounding impacts for lower socio-economic and marginalised populations. They further recognise that while a person's involvement in drug-related offending may affect the enjoyment of some rights, in no case are human rights entirely forfeited.

We urge you take into consideration this important body of work as part of this review and in future planning processes.