

Dr Grazia Catalano

27 February 2022

Mr Scott MacDougall
Queensland Human Rights Commissioner
Queensland Human Rights Commission
Brisbane, Queensland

adareview@qhrc.qld.gov.au

Dear Commissioner MacDougall,

Review of the *Anti-discrimination Act 1991 (Qld)*

Thank you for the opportunity to provide input to the review of this legislation. I would like to submit that as part of this review the Commission engage directly with people with a disability; that there is a need for an additional attribute of health status within the Anti-Discrimination Act (ADA); and that complaints to the Queensland Human Rights Commission in relation to access to specialised disability supports could be accepted as discrimination complaints under the ADA rather than referred to the NDIS Commission.

Voice of people with a disability

I have been involved in delivery, reform, audit and review of services and supports to people with disabilities, and worked alongside people with disabilities for long enough to understand the crucial importance of anti-discrimination law and its enforcement, and to recognise the significant role of the Human Rights Commission in protecting the rights of people with disabilities and of Queenslanders more broadly.

Disability and human rights advocates and peak bodies will provide very valuable advice to the review of this legislation with regard to its effectiveness in mandating protections from discrimination and unfair treatment of people with disabilities.

For many decades now the message of the primacy of the voice of people with disabilities has been advocated and must be heeded. I would respectfully submit that the Commission make efforts to engage directly with people with disabilities as part of the review of the legislation.

A person's health status

There is a case to be made for the addition of a separate attribute in the ADA for health status or health condition which is not directly linked to the attribute of impairment. The attribute of impairment or disability should not be defined in such a way that health or medical conditions are considered to be characteristic of disability or imputed to a person with disability. To do so reinforces the concept of disability based on a medical model rather than a socially constructed one.

The ADA includes as part of its definition of impairment "(e) the presence in the body of organisms capable of causing illness or disease". This language is not consistent with developments since 1991 in relation to the right to health, and offers an inadequate and inappropriate definition for discrimination on the basis of health status or health condition. A separate attribute for health status would enable any person to bring a complaint of unfair treatment on the basis of health status, not just persons attributed with impairment or disability.

The introduction of a separate attribute for health status under the ADA would align with the mandated right to health in Queensland's *Human Rights Act 2019* (Section 37) which states that every person has the right to access health services without discrimination; and provide a pathway for redress in cases where Section 37 is alleged to have been breached.

The Tasmanian *Anti-Discrimination Act 1998* provides a first step in considering how the right to health may be protected as part of anti-discrimination law. The Tasmanian Act provides as a ground of attribute *irrelevant medical record*. The Office of the Anti-Discrimination Commissioner (Equal Opportunity Tasmania) published an information sheet (undated) which states that:

It is discrimination when a person's medical record is used as a basis for treating them unfairly or excluding them from the same opportunities as others, unless the medical record is relevant to the situation. A medical record is any document or record containing information about a person's health or medical status. This includes:

- a person's worker's compensation history
- records relating to a person's genetic makeup (including predisposition to a particular medical condition)
- records of past medical conditions
- records relating to a person's mental health
- records relating to a person's sex, sexual characteristics or gender identity.

To be against the law, the discrimination must be related to:

- Work – whether the work is paid or voluntary
- Training or studying – for example at school, TAFE or university, or workplace training
- Providing or accessing facilities or services
- Buying or selling goods
- Club membership or club-related activities
- Hotels and pubs
- Housing and accommodation – including short-term accommodation such as a hotel or hostel
- Office and other business premises
- The design or implementation of state laws or programs
- Making or implementing industrial awards, enterprise agreements or industrial agreements
- a person's worker's compensation history
- records relating to a person's genetic makeup (including predisposition to a particular medical condition)
- records of past medical conditions
- records relating to a person's mental health
- records relating to a person's sex, sexual characteristics or gender identity.

I submit that a new and separate attribute for health status be included in the ADA which prohibits unfair treatment of any person on the basis of information contained in irrelevant medical records or health conditions imputed to the person.

Complaints about specialised disability services and supports

While the issue of Australian residency status falls within Commonwealth jurisdiction, the issue of access to specialised disability services by asylum seekers residing in Queensland is also a matter for Queensland and its own anti-discrimination and human rights legislation. Many asylum seekers are on temporary visas making those with disabilities ineligible to receive supports through the National Disability Insurance Scheme. As Queensland residents, their right to protection under Queensland's anti-discrimination and human rights legislation should be upheld and considered as part of the current review of the ADA and its mechanisms.

There were approximately 900 asylum seekers living in Queensland on Bridging Visas (BVE) based on a Report of the Refugee Council of Australia, 2020. Other temporary visas include the Temporary Protection Visa (TPV 785) provided for a 3-year duration, a Safe Haven Enterprise Visa (SHEV 790) provided for a 5-year duration, and a Special Category Visa (Special Class 444) which can continue for as long as a person from New Zealand remains a New Zealand citizen residing in Australia. Data on

prevalence of disabilities in the group is not available, however anecdotal information provided by disability advocacy and settlement services in Queensland indicates they are dealing with cases of severe to moderate disability including physical, intellectual, sensory and psychosocial disabilities.

As part of the arrangements between the Australian Commonwealth Government and the States and Territories, all funding for specialised disability services was to be channelled through the NDIS Commission. There was also agreement for “continuity of supports” to persons who were already receiving specialised disability support through State and Territory disability service providers, where a person may not now be considered eligible for NDIS. Some states have continued to provide supports to a cohort of non-permanent residents who were accessing disability supports prior to the NDIS transition and who have been deemed ineligible for the NDIS based on residency. Anecdotally, these cases receiving continued support have been reported to be mainly New Zealanders.

A range of programs and services are provided by the Queensland health and education departments to refugees and asylum seekers but these, while meeting essential service needs, do not extend to providing ongoing specialised disability supports. Special programs provided by the Queensland government for re-settlement support do not provide for specialised disability supports.

Under Queensland’s human rights legislation (Section 73 (5)), if the subject of a human rights complaint could be the subject of an NDIS complaint, the commissioner may refer the human rights complaint to the NDIS commissioner, if the human rights commissioner considers the complaint would be more appropriately dealt with by the NDIS. It appears generally considered that complaints about access to specialised disability services and supports should be referred to the NDIS Commissioner. I would respectfully submit that, such a complaint should be able to be submitted as a human rights complaint and/or as a discrimination complaint in Queensland on the ground of impairment, or possibly on the dual grounds of race and impairment and not necessarily referred to the NDIS Commissioner.

Thank you for your consideration of my submissions that:

1. the Commission make efforts to engage directly with people with disabilities as part of the review of the legislation
2. a new and separate attribute for health status be included in the ADA which prohibits unfair treatment of any person on the basis of information contained in irrelevant medical records or health conditions imputed to the person
3. a complaint about specialised disability services and supports should be able to be submitted as a human rights complaint and/or as a discrimination complaint in Queensland on the ground of impairment, or possibly on the dual grounds of race and impairment and not necessarily referred to the NDIS Commissioner.

Yours sincerely,



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