

TMR's submission: Review of Queensland's Anti-Discrimination Act (1991)

Overview

TMR supports a thorough review of Queensland's Anti-Discrimination Act (ADA) as it is now over 30 years old. When it came into law it was one of the most modern Anti-Discrimination Acts in Australia. The legislation was able to draw upon federal, state and territory anti-discrimination laws that had been established as early as 1975. As with any piece of legislation, the ADA needs to reflect societal changes and expectations that evolve over time. Much has changed in our state and country since 1991 and this must be reflected in modernised anti-discrimination law.

The objective of all anti-discrimination laws was to eliminate discrimination based on personal attributes which are or should be irrelevant to involvement in areas of public life. For example, access to goods and services should be available to everyone regardless of their race, age, sex or disability.

TMR recognises that the Anti-Discrimination Act has played a significant role in responding to discrimination over the last 30 years. As an organisation we have experienced complaints by people with disability about access to our transport modes and infrastructure. We believe most of these complaints were able to be settled through the Commission's conciliation process.

However, the structure of the current legislation allows for ongoing discrimination, particularly in workplaces, which has a disproportionate impact upon population groups such as our First Nations People, people with a disability and older people. This is partly reflected in the Queensland Human Rights Commission's own data which shows that in 2020-21, 46.2% of accepted complaints were based on impairment discrimination – a trend which has been ongoing for many years. Data on other groups such as First Nations and older people is less compelling. We understand through anecdotal evidence and our own experiences with these population groups that discrimination is under reported via the legislated complaints mechanism.

For older Queenslanders, the onus of proof being on the complainant can pose a significant barrier. Further, the often lengthy and complex complaints process can be a deterrent.

People from culturally and linguistically diverse backgrounds, particularly our First Nations People, experience racial discrimination very regularly and the complaints system is difficult to navigate even with legal support. We believe that the need to provide a written complaint is the first barrier for many people of race, particularly if they have low literacy or English as a second or third language. TMR believes that the need to provide a written complaint is an example of the structural barriers that exist to allow the powerful and privileged to discriminate often via legislation, policies, programs and practice.

Recommendations

Recommendation 1:

That complainants be permitted to submit complaints in non-written formats such as video or audio recordings. Additionally, that the Queensland Human Rights Commission be permitted to offer reasonable help to complainants who may require assistance to put their complaint together.

When the Federal Disability Discrimination Act (DDA) was introduced in 1992, the federal government made funding available to community legal centres to assist people with a disability to make complaints. This has the following benefits.

1. The lawyer could help determine whether the complaint had substance to meet the requirements for the DDA or the ADA to accept the complaint.
2. The complaint would be set out in a way that made it clear what was the basis of the complaint, identify the attribute, area of complaint, and who were the respondent/s and timeframe of the complaint et cetera.
3. The respondent/s would have clarity and certainty about the complaint.
4. Finally, this could help parties in the conciliation process reach a mutually suitable outcome.

Recommendation 2a:

Change the attribute of impairment to disability to better reflect modern language and be consistent with international human rights instruments. Remove references to outdated language such as malfunction, malformation and disfigurement.

Recommendation 2b:

Add an additional attribute of **Physical Features** to include a person's height, weight, size or other bodily characteristics.

Currently, the Act includes 'Direct discrimination' and 'Indirect Discrimination'. The definitions of these types of discrimination need to be updated. The Victorian *Equal Opportunity Act 2010* definitions of direct and indirect discrimination are a much clearer delineation between direct and indirect.

Recommendation 3:

Modernise the Queensland definition of direct and indirect discrimination. The Victorian *Equal Opportunity Act 2010* definitions of direct and indirect discrimination provide a good model.

Currently, the Qld ADA does not place a 'positive duty' on employers and service providers to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation. This limits the ability to take a proactive and preventative approach, particularly in relation to systemic discrimination. The Victorian Equal Opportunity Act places obligations on those with a duty in certain areas of public life including employment, education, accommodation and the provision of goods and services, to eliminate discrimination, sexual harassment and victimisation as far as possible. Transport services are one of the areas that are covered by this positive duty.

Recommendation 4:

Introduce a positive duty requirement to the Qld ADA in line with the Victorian *Equal Opportunity Act 2010*.