

01 April 2022

QDN Submission to the Queensland Anti-Discrimination Act Review

Queenslanders with Disability Network (QDN) is an organisation of, for, and with people with disability. The organisation's motto is "nothing about us without us". QDN operates a state-wide network of over 2,000 members and supporters who provide information, feedback and views from a consumer perspective to inform systemic disability policy and disability advocacy. This submission is informed by the lived experience of our members, all of whom have disability.

QDN welcomes the opportunity to make a brief, high level submission to this important review. QDN has had a long history of promoting, protecting and advancing the human rights of people with disability in Queensland. In preparation for this review, QDN was pleased to host a consultation with the Queensland Human Rights Commission (QHRC) to ensure the voices of Queenslanders with disability were heard during this review. QDN's motto is "Nothing about us, without us" and therefore our submission is informed by the views of our members.

QDN believes it is important to cross-reference this Review with the preliminary findings of the Disability Royal Commission to ensure any issues of violence, abuse, exploitation or neglect that may arise from discrimination or discriminatory practices are captured and addressed in this Review.

Experiences of people with disability

QDN is aware that people with disability face discrimination every day of their lives, in potentially every aspect of their lives, from finding a place to call home and trying to go out for a meal or go to a play, through to trying to get a meaningful job or an education. QDN members tell us that discrimination against people with disability happens everywhere. This is mainly due to a combination of factors including, but is not limited to:

- **inaccessibility:** physical environment and infrastructure, information, websites. Improving accessibility can range from resources being created in alternative formats (such as plaintext or Auslan), adequate disability support and client assistance around buildings and the use of the correct language.
- **arduous systemic processes making even the most everyday activities, complex for people with disability:** having to ring a 'special' number to book tickets instead of going

online like everyone else, or filling out copious, complex forms to get your basic needs met and

- **attitudinal barriers:** attitudes from other parties that lead to direct or indirect discrimination of people with disability

Intersectionality

QDN is also aware that disability is a cross-cutting issue and people with disability can experience intersectional discrimination additional to their disability based on their Aboriginal and Torres Strait Islander background (A&TSI), or their Culturally and Linguistically Diverse background (CALD), their gender and/or gender identity, their sexual orientation, their age and if they live in prison or detention or are homeless or in housing distress. Sometimes it is difficult to determine whether discrimination is occurring solely due to disability or another factor.

For example, QDN supports Multicultural Australia's submission which states that:

Social isolation (especially for older people, people with disability or women with care roles within families); limited English proficiency limiting communication; lack of culturally appropriate health services (including, mental health or disability supports) and interactions with key systems especially police and criminal justice systems can all often cloud experiences of migrants, refugees and new arrivals in the country... and visa conditions can deny access to essential services like disability supports and early intervention supports for children.

Additionally, the submission of the Queensland Council of LGBTI Health states:

Our communities are telling us that they experience discrimination because of a combination of attributes, such as if they are living with a disability and are gay, or because of their diverse bodies and gender identity...

Key areas of concern

QDN members report the following issues are key areas people with disability experience discrimination:

- **Employment and access to income support:** QDN members report difficulties with both getting and keeping a job. This is often due to several factors including personal biases, workplace cultures not accepting of diversity, inaccessible workplaces and Human Resources practices. Employment is fundamental to people getting out of cycles of poverty and is linked to improvement in mental health and wellbeing. Demonstrating disability with Centrelink is becoming more difficult with many people being moved to Job Seeker payment which has more mutual obligation requirements and is a lower

payment with less security than the Disability Support Pension (DSP). Advocacy around income support is important to ensure people do not experience discrimination.

- **Health:** inaccessible facilities, not enough awareness of the health needs of people with disability or being flexible in meeting the health needs of people with disability in hospital settings, not allowing people with disability to have agency/ authority over their bodies and decisions concerning their healthcare, inaccessible practices during the COVID Pandemic – such as Rapid Antigen Tests inaccessible to people who are blind or with vision impairment.
- **Housing:** finding and keeping accessible, affordable housing – QDN members have experienced difficulties in accessing private rental accommodation, many feeling overwhelmed by the process of negotiating basic modifications. Many members have also faced barriers in getting into the home ownership market.
- **Getting out and about in the community and enjoying public spaces:** an area of great importance that people have the freedom and dignity to be able to engage in the community, when and how they like. QDN members regularly report issues of inaccessible public transport and infrastructure, ineffective taxi systems (long waits and refusal of service if drivers can't claim the \$20.00 booking fee) and lack of accessible footpaths and other amenities and poor access to public venues and spaces.

Barriers around making complaints

QDN members have also spoken to us about barriers around making a complaint and fear of possible retribution and losing essential services if things go badly. QDN strongly asserts that processes need to be easy to understand and accessible to people and support needs to be readily available for people seeking assistance to understand the process and meet the requirements they need to make a complaint.

QDN recommends that the QHRC work with people with disability in the codesign of their processes to make them more user friendly and accessible to the people that need to use them. Our members also discussed the barriers in cost of seeing a complaint through as many people cannot afford expensive lawyers and many people do not qualify for Legal Aid anymore. This often makes engaging in anti-discrimination processes prohibitive for many people.

QDN also supports Multicultural Australia's recommendation of:

... building sector and community capacity to identify and address discrimination – especially the capacity of services supporting diverse community members (including, Aboriginal and Torres Strait Islander, migrant and refugee, people with disability, and LGBTIQ+ communities).

QDN also believes complainants with a disability may need more time to make a complaint and people with disability living in closed settings such as prisons will experience additional barriers in making complaints.

To make processes more accessible and welcoming to people with disability, QDN agrees with a recommendation made in the Queensland Law Society's submission that a panel approach is considered in complaints that includes a person with a disability on the panel. This aligns with QDN's codesign approach and motto: Nothing about us, without us! People with disability should be involved at all levels.

COVID-19

The COVID pandemic has raised issues too, in terms of people with disability being more isolated and women with disability being more at risk of Domestic and Family Violence as some have had to cope with reduced services and therefore become more reliant on informal supporters.

Language

Person-first language, such person with disability, is generally considered a more appropriate term. However, in recent years there has been a rise up in people with disability reclaiming language and using the term disabled person to describe themselves. QDN believes this is the individual choice of the person and needs to be respected. When in doubt QDN encourages the approach of checking in with the person and asking them what language is right for them.

Disability is generally considered a more appropriate term than impairment as there have been many negative connotations associated with the term impairment as it usually is used to describe a person's lack of function and is linked to arduous assessments an individual must go through to 'prove their disability'.

QDN endorses both a social model and human rights model of disability that recognises current barriers to participation for people with disability. We would further welcome explicit recognition of 'mental health condition' or 'psychosocial disability' to be recognised to provide assurance of protection on these grounds.

QDN also acknowledges that many people experiencing mental health issues do not identify with the language of disability and many people with a HIV positive status also do not identify as people with disability.

Comparison Test

QDN agrees with an assertion made in the Queensland Law Society submission that

... the comparator test is problematic because different types of disability might not be well understood, and that you are often comparing like with unlike

We also refer to the comments made in the “Ten-Point Plan for a Fairer Queensland” produced by the Alliance of Queensland Lawyers and Advocates which states: “(T)here are a range of Commonwealth laws (in Australia) that deal with discrimination on the basis of sex, age, disability and race and that do not require anyone to prove that their protected attribute was the main or only reason for the discrimination.

Reasonable Adjustments vs Unjustifiable Hardship

Many QDN members have expressed their dissatisfaction over the years that unjustifiable hardship can be used to justify inaccessibility or processes which could ordinarily be viewed as discriminatory. For this reason, QDN supports the assertions made in the Queensland Collective Unions submission which state:

Finally, while industrial laws provide a mechanism for employers and employees to enter into flexible work arrangements, the focus of equality or discrimination law should be on effecting positive changes and removing systemic practices and conditions that limit the achievement of substantive equality, for example, between women and men, or for people with an impairment/disability.

The introduction of a positive duty for both workers with family and caring responsibilities, and for workers with an impairment or disability with new regulatory powers and functions is consistent with positive measures to achieve substantive equality and are therefore supported.

The QCU therefore supports the adoption of a more positive obligation to prevent discrimination by requiring employers to prevent discrimination on the grounds of impairment so far as possible and to make a reasonable adjustment for a worker who has a disability, including a work or non-work related injury consistent with sections 15 and 20 of the EO Act (Vic).

It is also recommended that sections 34 to 36 be replaced with the more proactive obligation on an employer to make a reasonable adjustment for a person with a disability unless they could not or cannot adequately perform the genuine and reasonable requirements of the employment even after the adjustments are made.



Combined grounds and positive duty

QDN supports that the law includes discrimination on combined grounds and positive duty and supports that this is done in way that balances impacts, includes education and awareness development for all parties so that it can be an effective tool in prevention and protection.

Thank you for this opportunity to submit this brief submission. QDN looks forward to further involvement in the work of the review and of the QHRC generally. Please contact QDN on 32528566 if you would like to discuss our submission further.

Yours sincerely

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