

**Submission to the**

**Review of Queensland's  
*Anti-Discrimination Act 1991***

**March 2022**



**Tenants Queensland**

## 1 About Tenants Queensland

Tenants Queensland ('TQ') is a state-wide community and legal service providing free tenant advisory services for residential tenants. TQ aims to protect and improve the rights of all people who rent their home in Queensland. This includes renters in private rental accommodation or social housing and renters in more marginal tenures such as caravan parks and boarding houses.

TQ is the manager and lead provider of the Queensland State-wide Tenant Advice and Referral Service ('QSTARS') program initiated by the Queensland Government in 2015. QSTARS provides quality, free, independent advisory services to tenants across Queensland. Through QSTARS and our Community Legal Centre's Program work, TQ assists renters to understand and exercise their legislative rights and responsibilities, and ultimately to manage and sustain their tenancies.

TQ has been at the forefront of tenancy law reform and policy development since its establishment and conducts research into a range of tenancy issues and contributes to the development of legislation and policy in Queensland and nationally.

TQ's state-wide network of tenant advisory services speak to tens of thousands of renting households every year. Our policy positions are developed by drawing on the knowledge and understanding of the situation for renting households, including tenants experiencing discrimination at both an individual and societal level.

## 2 Our Submission

TQ welcomes the opportunity to contribute to the Review of the *Anti-Discrimination Act 1991* (Qld) ('the Act') as there is a demonstrated need for the Queensland Government to revisit the practical operation and effectiveness of the Act to achieve more meaningful systemic change.

This submission responds to various questions raised by the Discussion Paper published on 30 November 2021.

### 2.1 Reframing to a positive obligation

TQ submits that a positive duty to identify, manage and mitigate discrimination and accommodate special needs is required to achieve substantive equality and allow for active participation by all members of society.

TQ supports the recommendations made in Point 6 of the 'Ten-Point Plan for a Fairer Queensland',<sup>1</sup> to take a pre-emptive approach through the implementation of a positive duty.

Victoria's *Equal Opportunity Act 2010* contains a positive statutory duty requiring that "a person must take reasonable and proportionate measures to eliminate that discrimination, sexual harassment or victimisation as far as possible",<sup>2</sup> regardless of whether a person has made a complaint.

TQ considers that implementing a similar positive obligation is necessary to encourage access to areas such as accommodation, work, and goods and services for a much wider range of people.

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<sup>1</sup> Alliance of Queensland Lawyers, 'Ten-Point Plan for a Fairer Queensland' [https://www.communitylegalqld.org.au/reviewofantidiscrimination/?fbclid=IwAR28ORY3TzdDEtDrtRN6zOh8vMonHAJkRSeV3sfVQNhH\\_KbOCToarO2MSk#expand](https://www.communitylegalqld.org.au/reviewofantidiscrimination/?fbclid=IwAR28ORY3TzdDEtDrtRN6zOh8vMonHAJkRSeV3sfVQNhH_KbOCToarO2MSk#expand)

<sup>2</sup> *Equal Opportunity Act 2010* (Vic) s 15(2)

This will necessarily involve a consideration of ‘reasonable’ adjustments and will require enforcement powers by the QHRC and consequence for non-compliance.

## 2.2 Discrimination on combined grounds

The Act presently defines discrimination by reference to ‘an attribute’,<sup>3</sup> and fails to recognise that it can be difficult to ascribe one single attribute as being the reason for the discriminatory conduct, and to establish the complaint to the relevant threshold.

For example, a prospective tenant who has applied for a rental property, who is Aboriginal and a sole parent may find it difficult to determine whether unfair treatment and refusal to consider a tenancy application is due to their Indigeneity or parental status or family responsibilities, or a combination of these attributes.

### **Case study**

*Letitia\* is a young transgender person living in a rental property due for renewal of the tenancy agreement. The real estate agent offered a new lease. Letitia was experiencing significant mental illness and recovering from attempted suicide so delayed in responding to the offer. The real estate agent assumed the tenant did not want to stay, and was notified of the circumstances of the tenant’s mental health and gender identity. The agent withdrew the offer of a new lease renewal shortly after this disclosure. After some persistent advocacy by the tenants’ parent and two organisations, the notice to leave was withdrawn, and the lease renewed for a few months to provide Letitia time to find alternate accommodation.*

TQ supports the recommendations made in Point 2 of the ‘Ten-Point Plan for a Fairer Queensland’,<sup>4</sup> to:

1. expand the list of protected attributes (we make further submissions in relation to this below);
2. allow people to combine attributes to adequately protect from discrimination where they experience disadvantage on two or more grounds; and
3. adopt the Commonwealth position requiring the complaint to demonstrate that the protected attribute was one of the reasons for the discrimination, and not the main or only reason for the discrimination.

## 2.3 Time limits

TQ submits that the time limit contained within section 138(1) of the Act must be extended. It is submitted that the significant imbalance of power between a renter and an agent, lessor or other accommodation provider creates an environment where individuals are reluctant to complain of discrimination for fear of retaliatory conduct.

Examples of retaliatory conduct when a tenant tries to assert a right under tenancy law can have serious impacts on their housing stability including:

<sup>3</sup> *Anti-Discrimination Act 1991* (Qld) s 8.

<sup>4</sup> Alliance of Queensland Lawyers, ‘Ten-Point Plan for a Fairer Queensland’ [https://www.communitylegalqld.org.au/reviewofantidiscrimination/?fbclid=IwAR28ORY3TzdDEtDrRN6zOh8vMonHAJkRSeV3sfVQNhH\\_KbOCToarO2MSk#expand](https://www.communitylegalqld.org.au/reviewofantidiscrimination/?fbclid=IwAR28ORY3TzdDEtDrRN6zOh8vMonHAJkRSeV3sfVQNhH_KbOCToarO2MSk#expand)

- the tenancy agreement is not renewed, and the tenant is issued with a Notice to Leave without grounds;
- the agent provides negative references in relation to the tenant’s applications for prospective properties;
- the agent lists a tenant on a tenancy database which is unlawful

Extending the time limit to 2 years or more, may provide tenants with time to move to another tenancy, and make the complaint without concern about the potential impact on their tenancy.

## 2.4 Representative complaints model

TQ, like many community legal centres, provides legal advice and casework to people who experience barriers to enforcing their rights, meeting their obligations and accessing remedies. Clients often present with legal issues which are an indication of systemic and re-occurring problems that are not adequately addressed if clients try to pursue their complaint individually.

The present complaint model which assumes that a person is able to engage in the complaints process and that the complaint can be made without further repercussion to that person. Further, an individual complaint may only result in an individual outcome, without any impact on wider systemic issues. The present model treats discrimination as if it is a private issue.

TQ submits that a more accessible representative complaints process will allow TQ and other community organisations to advocate for groups of people and this will minimise further victimisation. It will allow clients who lack the resources, ability or confidence to make their complaints on an individual basis, or for those who wish to remain anonymous to obtain a remedy.

A representative complaints model also enables organisations who are a point of first contact to make a complaint of discrimination in relation to a practice or policy decision, that impacts on a group of people.

TQ supports the introduction of representative body complaints which are modelled on the New South Wales<sup>5</sup> and Victorian provisions,<sup>6</sup> but which allow the nomination of a person to appear for the representative body at conciliation and at hearing if the matter is referred to the Queensland Civil and Administrative Tribunal.

## 2.5 Reliance on an assistance animal

TQ supports the recommendation to broaden the current legislative protection under section 85 for ‘assistance dogs’ to ‘assistance animals’.

### **Case study**

*Samantha\* was experiencing major depression, anxiety and PTSD. She had been advised by her doctor and psychologist that an assistance dog would be useful in alleviating her symptoms. Samantha’s residential tenancy agreement permitted her to have a guide, hearing or assistance dog inside the premises, but noted that other pets were to be kept outside. During a routine inspection Samantha was reminded of this special term of her tenancy and that her “pet” would not be permitted to reside inside the house. Further that the dog was not*

<sup>5</sup> *Anti-Discrimination Act 1977* (NSW) ss 87A(1)(c), 87C(1).

<sup>6</sup> *Equal Opportunity Act 2010* (Vic) ss114(1), 124.

*permitted inside the premises until it was certified as having completed an accredited training program.*

*This presented difficulties for Samantha in that her assistance dog, although being trained by an accredited trainer, needed to be trained by spending time with Samantha in all aspects of her personal and public life. Samantha was asked to sign an agreement that she would leave her pet outside, and when she refused, was issued with a Notice to Remedy Breach and then a Notice to Leave for failure to remedy the breach.*

*Samantha continued to face similar unfair treatment in the application process when searching for other rental properties.*

TQ recommends that:

- the definition of ‘assistance dog’ be extended to include other animals;
- that the definition be broadened as under the *Disability Discrimination Act*<sup>7</sup> to include animals which are not necessarily certified, but which are trained to assist a person with a disability to alleviate the effect of the disability; and to meet standards of hygiene and behaviour that are appropriate for an animal in a public place;
- that the definition of ‘trained’ incorporate the approach adopted in *Jackson v Ocean Blue Queensland Pty Ltd*<sup>8</sup> where training by an approved trainer or approved training institution was not required, but that the animal perform identifiable physical tasks and behaviour to reduce a person’s need for supports.
- that the protection be extended to ‘assistance animals in training’ to recognise that part of the training of an assistance animal is individualised and must be carried out with that individual inside and outside of their home.

## **2.6 Additional attribute – Irrelevant criminal record**

TQ recommends that the Act should be amended to include the protected attribute of “irrelevant criminal record” in all areas of activity including accommodation.

### ***Case study***

*Dylan\* had been an inpatient in a mental health facility. A service provider was assisting Dylan to apply for a tenancy, where ongoing support would be in place. A suitable property was found, and Dylan was assisted with the online application for the tenancy. One of the questions asked whether the applicant had a criminal history, and if yes, to provide details of that criminal history.*

Almost certainly had the applicant disclosed such sensitive information, the application for tenancy would not have been considered for the property, despite that criminal record having no bearing on the tenancy.

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<sup>7</sup> 1992 (Cth).

<sup>8</sup> [2020] QCAT 23.

## 2.7 Additional attribute - Subjection to domestic violence

Domestic violence is a significant concern in Queensland with the impacts experienced predominantly by women, especially Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse communities, women living with a disability, and people in the LGBTIQ+ community.

TQ supports the recommendation to include an attribute of 'subjection to domestic violence' to protect people who are experiencing or have experienced domestic violence, particularly as it relates to improving safety and housing security.

The *Housing Legislation Amendment Act 2021* received royal assent on 20 October 2021, amending the *Residential Tenancies and Rooming Accommodation Act 2008* to incorporate a number of provisions relating to domestic and family violence ('the DFV provisions'). The majority of these DFV provisions mirrored provisions which were introduced under the *Residential Tenancies and Rooming Accommodation Act 2008 (COVID-19 Emergency Response) Regulations 2020*.

These DFV provisions allow people experiencing violence to end their tenancies and rooming accommodation agreements quickly, where they believe they can no longer safely continue to occupy the premises because of the domestic violence they have experienced. These provisions also prevent the recovery of break lease fees or reletting costs from people who end their tenancies or accommodation agreements due to domestic violence and removes their liability for repairs for damage caused to the property by perpetrators of domestic and family violence.

TQ continually assists people who have experienced unfavourable treatment based on their experiences of domestic violence since the implementation of these provisions.

Some examples of unfavourable treatment due to experiences of domestic violence include:

- tenants receiving poor references from previous real estate agents because of noise complaints or damage to the property because of domestic violence;
- tenancy agreements not being renewed after reporting damage to the property following a domestic violence incident;
- social housing tenants receiving show cause notifications after police attend at the property because of a domestic violence incident;
- tenants being listed on tenancy databases due to damage caused during incidents of domestic violence;
- real estate agents' excessive and invasive scrutiny of prospective tenants who are residing in women's refuges, and refusing tenancy applications on the basis of minor breaches during historical tenancies;
- lessors and real estate agents' refusal to ensure properties are reasonably secure, and refusal to allow tenants to make reasonable adjustments to the property, such as affixing security devices; and
- issuing tenants experiencing domestic violence with notices to remedy breach which allege for interference with the reasonable peace and comfort of neighbours.

People experiencing domestic violence who apply for private rental properties, experience unfair discrimination based on stereotyping that they carry a risk that damage will be caused to the property, and that their ability to pay rent is compromised.

#### *Defining the attribute*

TQ submits that the attribute of ‘subjection to domestic violence’ should draw definitions from the *Domestic and Family Violence Protection Act 2012* (Qld) (‘the DFV Act’) to avoid inconsistency between the definitions contained in various pieces of legislation. This approach has been taken in the implementation of the various DFV provisions in the RTRA Act which refers directly to the definition of ‘domestic violence’ contained in the DFV Act.<sup>9</sup>

TQ recommends that the DFV Act definition of ‘associated domestic violence’<sup>10</sup> should also be included to protect children and other family members or associates who have been affected by the domestic violence.

The inclusion of an attribute protecting people who experience or have experienced domestic violence from unfavourable treatment, is required to ensure people are not further victimised on the basis of that experience.

## **2.8 Accommodation status**

TQ recommends that the attribute of ‘accommodation status’ be added to protect people living in insecure or informal accommodation. People are discriminated against on the basis that they have no fixed address or security of tenure when couch surfing, residing temporarily in a hotel, hostel or refuge, or are homeless.

With the present housing crisis, a disproportionate number of people who are homeless or living in insecure accommodation are from marginalised groups, including Aboriginal and Torres Strait Islander people and women escaping domestic violence.

The Australian Capital Territory’s *Discrimination Act 1991* defines ‘accommodation status’ to include:

- (a) A tenant; and
- (b) An occupant within the meaning of the *Residential Tenancies Act 1997* (ACT); and
- (c) In receipt of, or waiting to receive, housing assistance within the meaning of the *Housing Assistance Act 2007* (ACT); and
- (d) Homeless.<sup>11</sup>

TQ strongly recommends that the attribute of accommodation status be defined inclusively to refer to a tenant, resident, boarder, lodger, licensee, a person in receipt of or waiting to receive housing assistance, or a person who is homeless to capture marginalised groups.

## **3 Conclusion**

The *Anti-Discrimination Act* was written over 30 years ago and a lot has changed in this time we note that the law may have fallen behind modern-day standards in relation to equality. TQ strongly

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<sup>9</sup> *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) Schedule 2 Dictionary.

<sup>10</sup> *Domestic and Family Violence Protection Act 2012* (Qld) s 9.

<sup>11</sup> *Discrimination Act 1991* (ACT) Dictionary

supports the review of the *Anti-Discrimination Act* and thanks the Commission for the opportunity to make submissions.