

Life Without Barriers (LWB) welcomes the opportunity to comment on the review of the Anti-Discrimination Act 1991 (QLD).

## Submissions

### **1. Submission: *Expand who is protected under the Act.***

#### LWB submits:

- 1.1. Section 7 of the Act should be expanded to include expanded categories of recognised attributes. Recognised attributes should include, but not be limited to, victims of family and domestic violence, and interpersonal violence, such as elder abuse, immigration status, socio-economic disadvantage, and irrelevant criminal history in order to reflect the historical and systemic discrimination faced by these groups.
- 1.2. The current law does not recognise that individuals may possess more than one 'discriminatory attribute' and that discrimination may occur due to the way in which the attributes intersect. Currently, the law requires an individual to establish which individual attribute was the basis for the discrimination.

### **2. Submission: *Amend indirect discrimination to increase access to adjustments and flexibility.***

#### LWB submits:

- 2.1. Section 11 of the Act states that whether a proposed term is indirectly discriminatory depends in part on a test of 'reasonableness'. This test has two financial components, namely the 'cost of alternative terms' (s.11(2)(b)) and 'the financial circumstances of the person who imposes, or proposes to impose, the term'(s.11(2)(c)). This calculus fails to address the value inherent in inclusion and equality. The Act also does not adequately address the inequalities that necessitate special facilities or adjustments.
- 2.2. The Act should be amended to reflect that a refusal to accommodate or adjust for an individual with a recognised protected attribute is unlawful unless it is 'strictly necessary' to impose the standard, condition, or requirement without adjustments, as reflected in the Human Rights Act 2019 (Qld).

### **3. Submission: *Amend direct discrimination to remove the comparator.***

#### LWB submits:

- 3.1 Section 10(1) of the Act states:  
Direct discrimination on the basis of an attribute happens if a person treats, or proposes to treat, a person with an attribute less favourable than another person without the attribute is or would be treated in circumstances that are the same or not materially different.

In meeting this standard, an individual must demonstrate that they were treated 'less favourably' than a comparator – a real or hypothetical person – who is in the same or similar circumstances. This test is often artificial, complicated to establish, and may result in protracted court proceedings. This is a barrier to justice.

The test at s.8(1) of the Equal Opportunity Act 2010 (Vic) states:

Direct discrimination occurs if a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute.

This test still requires that mistreatment be proven, but it does not contain a comparator. Whilst s.9 of the Racial Discrimination Act 1975 proposes a longer test, it does not have a comparator. Removal of the Act would provide more equitable outcomes, and greater legislative cohesion nationally.

#### **4. Submission: *The Act should be amended to reflect preventative measures.***

##### LWB submits:

- 4.1 The Act does not adequately address prevention of discrimination, which could be achieved through the inclusion of a positive framework within the Act.

The Respect @Work Sexual Harassment National Inquiry Report (2022) released by the Australian Human Rights Commission has recommended employers develop, implement, and maintain a universally-recognised framework to reduce incidents of sexual harassment as a preventative measure, with the intention that it will decrease incidents of harassment, and the burden on the legal system. This approach should be considered in any review of the Act.

- 4.2 The enforcement of the following requirements should also be considered in any framework:
- a. Development of reasonable adjustments for people with disabilities, older persons and others;
  - b. Maintenance of a policy and the provision of training to prevent sexual, domestic, family and interpersonal harassment in controlled environments such as schools, workplaces, and accommodation; and
  - c. Monitor and remove hateful and racist speech posted to social media work portals.

#### **5. Submission: *Extending limitation period***

##### LWB submits:

- 5.1. Section 138 of the Act establishes a one-year time limit for lodging a claim. Certain groups with particular vulnerabilities should be entitled to two years to initiate and complete the process of a discrimination claim. This submission notes the complexities of the Act, and that historically disempowered groups such as children or persons with intellectual disabilities may not feel able to voice their complaints within time due to fear of further mistreatment and victimisation, and their reliance on third parties including parents, carers, and guardians.

#### **6. Submission: *Implementing a best practice class-action strategy.***

##### LWB submits:

- 6.1. The current structure of the Act makes it increasingly difficult for individuals to understand and access justice, and access requires often expensive individual suits. The Act should be amended to enable class actions to occur, and The Federal Court of Australia Act 1976 (Cth) and the Racial Discrimination Act 1975 (Cth) may be of guidance.

**LWB SUBMISSION**  
REVIEW OF: ANTI DISCRIMINATION ACT 1991 (QLD)

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Please do not hesitate to contact the writer, should you require any additional information.



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28 January 2022