



**MULTICULTURAL  
AUSTRALIA**  
*it's who we are*

# **Review of the Anti- Discrimination Act 1991**

*Queensland Human Rights Commission*

01 March 2022

The Queensland Human Rights Commission

Email submission: [adareview@ghrc.qld.gov.au](mailto:adareview@ghrc.qld.gov.au)

## **Re: Review of Queensland's Anti-Discrimination Act 1991**

Multicultural Australia is pleased to provide this submission to the Review of Queensland's Anti-Discrimination Act 1991.

Multicultural Australia strongly supports the strengthening of the Queensland Anti-Discrimination Act 1991, to appropriately reflect community expectations in an increasingly diverse Queensland.

The current Review of the Anti-Discrimination Act 1991, following the recent Parliamentary Inquiry into serious vilification and hate crimes in Queensland, is a very significant step forward for the Queensland community. Both the Parliamentary Inquiry and the current review have opened an opportunity for promoting positive conversations about inclusion and ways to prevent situations that may foster exclusion and hate in our community. Multicultural Australia is deeply committed to engaging constructively in this important work.

Multicultural Australia exists to create a welcoming and inclusive community for all new arrivals to Queensland. We are Queensland's lead settlement service provider for migrants and refugees, and we have been welcoming refugees, people seeking asylum, international students, and other new arrivals for over 23 years. Our mission is to create a fairer, more prosperous society for all Queenslanders.

This submission is based on our long-standing service experience as a settlement service provider and the work we do in community development and engagement, informed through our contacts with diverse multicultural community members in Queensland.

We support a broad-based Anti-Discrimination regime that is accessible and available to those seeking justice against acts of discrimination – while actively working to promote and secure equality for all Queenslanders to the greatest extent possible. We seek an explicit recognition to eliminate discrimination as far as possible – and this would require identification of ways to add expectations of attitudinal and value changes to the current system that relies on individual complaints to eliminate discrimination. Ideally, the anti-discrimination system in Queensland should enable the wider community to know the Act, understand the impacts of discrimination,

empower those who are discriminated against to understand their rights and encourage the community at large, to comply with the Act.

We would be happy to assist with any further information or consultation, as required. For further communication, please contact [REDACTED] (Chief Client Officer, Multicultural Australia) – [REDACTED] or [REDACTED]

Yours sincerely,



**Susanne Behrendt**

Acting Chief Executive Officer

## Introduction

The Queensland Anti-Discrimination Act 1991 has been fundamental in shaping community expectations that overt discrimination is unacceptable and unlawful. It has sought to eliminate discrimination against people by prohibiting discrimination based on various attributes and providing opportunity for redress to people who have been discriminated against. One of the identified purposes of the Act is to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity, including work, education and accommodation. This has provided an important baseline for our current discussions on a possible rethink of the Anti-Discrimination system in Queensland.

In intervening decades since the commencement of the Anti-Discrimination Act (ADA), community expectations have shifted significantly. We now increasingly recognise the need for people to achieve real equality in the community – against a formal equality guaranteed through law. While the ADA makes discrimination explicitly unlawful, we continue to hear from individuals and communities that they continue to experience direct and indirect discrimination. Further, protections under law are not easily accessible against the many different expressions of discriminatory attitudes and behaviour in community, particularly for those who experience cultural and language barriers. The harmful impacts of discrimination are compounded when opportunities for redress are not accessible or operate in ways that reinforce feelings of exclusion and trauma – perpetuating harm on individuals and communities in the longer-term.

As a community, we are continuously reminded about the need to eliminate and appropriately respond to all forms of discrimination. In Queensland, the passing of the *Human Rights Act 2019*, further shifted our recognition that every individual has the right to equal and effective protection against discrimination.

Multicultural Australia's submission is premised around highlighting the many ways members of Queensland's migrant and refugee communities face discrimination. The current system is characterised by many barriers for members of our diverse communities – and any review of the ADA will only be effective if it recognises and addresses these legislative and systemic barriers.

## Experiences of discrimination

In our work with diverse multicultural communities, Multicultural Australia hears of the many forms of discrimination experienced by individuals and communities – and these are often linked to attitudes, biases, and stigma (as noted in the discussion paper to the current review).

Discrimination can be overt or subtle and can occur in interpersonal interactions between individuals or at structural or institutional levels.

People from migrant and refugee backgrounds are affected by interactions of systems, practices and programs that may perpetuate disadvantage and inequality. Even in the absence of direct discrimination or racism against individuals, structural or systemic inequalities and disadvantage may persist.

Inherent barriers such as language proficiency, poverty or migration status can render certain groups of people more disadvantaged than others. In Multicultural Australia's interactions with migrant and refugee communities, we note that while migration may be a common factor within this cohort, the experiences of individuals vary significantly based on the reason for migration and the mode of arrival in Australia. Individual experiences may further vary upon intersection with factors like age, ability, sex, gender identity, sexual orientation, religion, education and professional qualifications, language skills etc. These intersections influence people's ability to participate in the economic, social, cultural and political life in the community and also shapes perceptions of others towards them, including perpetuating harmful stereotyping and racism.

Through our work and interactions with clients and community, people share their experiences of discrimination (and vilification, or violence) based on their ethnic, racial, cultural or linguistic background. While vilification and hate crimes are not within the purview of this review, community experiences shared include racism, or discrimination and vilification in:

- the workplace – for example, difficulties in obtaining employment or issues relating to qualification recognition or racist comments/attitudes held by employers, co-workers, or customers
- accessing services – for example, discrimination faced by new migrants in seeking rental accommodation, education or health services
- racism and bullying in schools or in in public spaces (name-calling, profiling) or even offensive or racist coverage in media.

Community members also note other experiences that negatively impact the creation of a 'culture of belonging' within the community. 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.

Community members try and make sense of these experiences – often sharing these as discriminatory or racist experiences.

**Appendix A** to this submission includes a range of client/community experiences Multicultural Australia has heard over years through our service delivery, community consultations and specific issues-based investigations. For example, over the last year we investigated specific community experiences to inform submissions to Inquiries like the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability; Inquiry into Serious Vilification & Hate Crimes in Queensland; Inquiry into Social Isolation and Loneliness in Queensland as well as documenting experiences of women and children in considering options for legislating coercive control and standalone DV offence in Queensland.

Community members often sense their experiences may be discriminatory or racist – but these are not identified or shared with Multicultural Australia staff with intent to seek recourse currently available under the Anti-Discrimination legislation. Many of these examples may not even reach the threshold of proof required to proceed. Others do not proceed to complaint because the process threshold is not met (e.g., seeking to conciliate the matter with the other party may not occur because of language barriers) or because the affected individual does not want to relive the experience or deal with the process challenges.

Our concern is if such experiences remain unchecked, they could serve to further entrench inequality and disadvantage in the community. Employment discrimination can leave migrants and refugees with insecure or unsatisfactory jobs leading to financial insecurity; discrimination in real estate and housing can entrench housing insecurity or risks to homelessness; and visa conditions can deny access to essential services like disability supports and early intervention supports for children. Through an examination of such experiences, we understand clearly that **intersectionality** should be incorporated in all spheres of policy and practice, from legal rights to provision of services.

## Options for reform

Terms of reference of the current review are broad – and look at ways to reflect protections, processes and enforcement mechanisms better suited to community need. This includes a consideration of ways to establish discrimination, improve accessibility of making/defending discrimination complaints, improved access to justice for victims of discrimination as well as

option for dispute resolution that would enable systemic discrimination to be addressed.

Multicultural Australia welcomes this broad-based review and suggests that all considered options be tested for suitability and accessibility across diverse communities.

Starting with a definition of discrimination – we would recommend that this reflects community understanding of how discrimination is felt and experienced. Without exception, all experiences on the topic of discrimination shared with Multicultural Australia, include instances where people have felt excluded, unfavourably treated or restricted/stopped from receiving a right or freedom available to others. This fits in with the United Nations Human Rights Committee definition of discrimination as *any distinction, exclusion, restriction or preference based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms*. This leads us to naturally endorse an ‘unfavourable treatment’ approach to test for direct discrimination. With indirect discrimination as well, we would prefer the adoption of a ‘disadvantage’ approach - considering whether a requirement, condition, or practice has, or is likely to have, the effect of unreasonably disadvantaging persons with an attribute. On matters of adopting a unified test for direct and indirect discrimination – Multicultural Australia can see merit in considering a unified approach as a possibility to address systemic discrimination, given that the negative and exclusionary impact of both indirect and direct discriminatory behaviour is equally damaging.

On process issues, it is our strong sense that for new migrants and refugees in Queensland, the dispute resolution process is overly intimidating, formal and complex and there is genuine fear and apprehension in lodging complaints. Uncertainty around availability of supports to assist in this process (including access to easy/simple information and resources, possible assistance to bring forth a complaint and ready access to translators and interpreters) impact this further. Ability to prove discrimination around one ground or attribute is extremely difficult. We however understand that there may often be combined grounds for discrimination. It is exceedingly important that the legislation qualitatively recognise the intersection of multiple attributes to produce discrimination. Equal care and attention should also be paid to bring the Queensland community along to a similar understanding. Terminology of the complaints-based system, concepts like tests and thresholds to establish direct or indirect discrimination, requirement of the burden of proof for elements of those tests, and the ability to prove discrimination on multiple, combined grounds are difficult to understand. These presume a familiarity with, and understanding of the broader Anti-Discrimination system and legislation. Many of these

concepts and terms – indeed, knowledge of the Anti-Discrimination Act itself – are not easily available in community conversations and considerations.

Further, explicit requirements around processes (written complaints) and timelines and the lack of options for trusted organisations and representatives to bring complaints on behalf of affected individuals make this process inaccessible to most. In Multicultural Australia's experience, migrant and refugee community members do not immediately consider their discriminatory experiences through a dispute resolution or legal recourse lens. Any reform to existing processes like ability for people to provide audio/video complaints in language; flexible timelines in submitting complaints would necessarily improve the current system.

Human rights and discrimination are specialist areas of law. For meaningful access to justice in human rights and discrimination complaints a system of early strategic support and advice for individuals to bring forth their complaints is exceedingly important. Our recommendation would be for the consideration of a *specific culturally-capable service* for the delivery of advice and assistance to assist community members with their complaints. Location of such a service within the Queensland Human Rights Commission or delivered through partnerships by the Commission with the community sector could be considered – with an added requirement that any such service informs and consistently educates itself on recognising the diversity of community need and expectations and the need to consistently tackle barriers to access to justice.

Multicultural Australia strongly supports the need for legislative reform to ensure a contemporary and effective approach to tackling discrimination. However, we would also like to equally emphasise the need for reform of systems and processes to make the system more accessible for everyone in the Queensland community with an emphasis on providing appropriate information, support and education on how the Act works in practice.

## Eliminating Discrimination

Under the current individual complaint-based system, individual complaints have limited capacity to help identify or eliminate broader systemic forms of discrimination or prevent discrimination from occurring in the future. Experiences of discrimination within diverse communities, intersections of various attributes and factors leading to discrimination, current limitations in access to justice – all require a reconsideration of the current legislative framework. This requires a necessary consideration of preventative focus to the ADA to be embedded alongside the individual complaint-based system. Multicultural Australia strongly



supports the consideration of additional mechanisms to supplement the existing (complaints-based) model.

A simple, yet strong option would be insertion of an **Objects Clause** that would provide an explicit statement of intent of the legislation; provide context and meaning. Multicultural Australia strongly supports the inclusion of following objectives of the Act:

- eliminating discrimination, sexual harassment, and other objectionable conduct to the greatest extent possible
- to further promote and protect the right to equality set out in the Human Rights Act
- to encourage identification and elimination of systemic causes of discrimination
- to recognise the cumulative effect of discrimination based on a combination of attributes
- to promote and facilitate the progressive realisation of equality, as far as reasonably practicable
- to progress the aim of substantive equality.

In addition to the above, it could also consider recognising the importance of education and information specific to individuals to understand and enforce their rights; as well as to support individuals and organisations in their compliance with the Act.

The review is seeking input into the possible introduction of a *positive duty* approach to the ADA. This approach is strongly supported because it will, among other things, move the onus to take action against the offending behaviour from resting solely on individuals who experience discrimination. Legislative obligations can set clear expectations and inform cultural norms - however, in doing so, we can also anticipate attitudinal barriers as well as varying levels of capacity, capability and willingness within public, private, not for profit agencies to take appropriate steps. Multicultural Australia supports a transition period with a focus on raising community awareness and knowledge to ensure that legislative change is underpinned by cultural and attitudinal change.

Progressing the aim of substantive equality requires the whole community to recognise and accept diverse identities and experiences. We support a committed and ongoing community awareness focus approach that underpins implementation and enforcement of the legislative so that community capability is lifted in support of adopting a positive duty approach.

The above considerations (specific to education, information, and community awareness) would require an examination of the regulatory/compliance framework for the enforcement of the ADA.

Multicultural Australia supports the incorporation of a role within the statutory framework to regulate compliance with the ADA and eliminate discrimination. We are strongly supportive of the Queensland Human Rights Commission to undertake this regulatory role. An enforcement pyramid model – with a strong education and persuasion focus; supporting co-regulation with organisations to develop a preventative culture (understanding legislative obligations and preventing discrimination); to strong enforcement options (addressing non-compliance) – would be an ideal framework for the Commission to undertake any regulatory role.

We particularly support a strong education and research focus for the Commission to investigate the experiences and conditions of diverse groups of people. We agree that evidence-based research and information could help identify issues, trends and experiences in discrimination – and assist the Commission with its education role as well. If we were to progressively move towards a positive duty under the Act, a role for the Commission to provide guidelines on obligations and compliance with the law would be important. Allowing the Commission to undertake investigations into systemic issues would be an important way to address inadequacies of the current framework that does not allow an examination of the inequality and harm to particular groups of people.

We see a role for the Queensland Human Rights Commission in:

- actively changing community attitudes and social norms based on discriminatory attitudes (in diverse settings like workplaces, educational settings, real estate/housing; law enforcement; media; sport and the arts)
- investigating specific incidents of discrimination as well as broad systemic issues – including issues that could undermine the achievement of substantive equality
- 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)
- Challenging sensationalised or stereotyped views including, sexist, racist, or discriminatory depictions that can contribute to a culture of exclusion of individuals
- Providing an appropriately resourced complaints response system that is able to sensitively support individuals making complaints.

In relation to other matters within the purview of the current review, Multicultural Australia would like to comment on the current grounds of discrimination under the ADA. We strongly support consideration of 'immigration status' as a separate attribute under the ADA. In our experience, visa status/immigrant status often determines arbitrary deprivation of basic rights – people may be denied housing or employment (even when the visa itself may not restrict individuals from lawfully working); or workers on temporary visas may be subject to exploitative work conditions, discrimination or harassment based on the assumption of a precarious visa. Inclusion of an 'immigration status' as a protected attribute would strengthen protections for this cohort.

We would also welcome a change in terminology from the current attribute of 'impairment' to use of the term 'disability'. We endorse a social 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 – either under the attribute of disability or as a standalone ground to provide assurance of protection on these grounds.

## Concluding Statement

Multicultural Australia strongly supports reform to ensure the ADA takes a strong positive approach to eliminate discrimination and embed a notion of the progressive realisation of equality and to progress the aim of substantive equality.

We welcome strengthening current provisions under the ADA for individuals to access protections under the law – amending and adapting processes under the Act so that they are clearer and accessible across diverse groups in the community. At the same time, the anti-discrimination framework should include a strong message around addressing systemic discrimination – explicitly moving away from a reliance on individual complaints to eliminate discrimination.

Promoting a substantive equality approach requires strong investment in developing community awareness and Multicultural Australia supports a key role for the Queensland Human Rights Commission, working closely with the community services sector in progressing this awareness.

## APPENDIX A – COMMUNITY EXPERIENCES

This section includes some experiences shared by Multicultural Australia client/community contacts and staff - collected over time. These experiences or statements are broadly categorised into themes, but they cut across a range of factors.

### **Employment**

*"I am a male having qualifications in woodwork. I do a good job but couldn't get employment. After asking a lot about the reason I have got feedback to change my name to a Western name. I don't get employment because my name is foreign and difficult to pronounce so I get discriminated at this."*

*An individual went through university and graduated, and then applied for jobs. She secured a job after a phone interview and was asked to come in the next day. When they saw her and saw that she was South Sudanese, they said 'you are not the same person, we employed someone who spoke English like an Australian person'. They asked her to leave and said that they would call her back, but they never did. She felt that she "couldn't do anything about it because it was a big institution."*

*"I went for an interview, as a support worker. There were 5 or 6 of us, they asked me many questions, and said that yes you have the job, and you can start. Now they are telling me no first we have to check with management ... and I haven't heard from them, maybe they won't call me. Is it my age? Is it my colour?"*

*An individual lodged several job applications – but "due to cultural background, religious/ethnic appearance – got the application rejected'. These claims are based on evidence 'noted at the day of the interview'*

*"My husband is a professional and speaks pretty good English. But his supervisor keeps complaining to him to improve his English to get a full-time job...I think the supervisor is being racist. My husband has also had a couple of experiences where he is not allowed to enter client's houses because he looks different than Australia. He even tried to speak with his supervisor about this, but they did not take any action, rather asked him to leave or digest these*

*works and keep on working.”*

*“I have qualifications but could not find a job in my professional field. Finally, I was offered a job at an industry I have worked for six years. A position was advertised in the same company when I have experience and qualification. Unfortunately (I) was not offered. Instead, it was given to someone without experience, and I was not because of my background. This is racism and discrimination always experienced at work.”*

### **Housing**

*“People from different cultural backgrounds get less opportunity to buy or rent in the market.”*

*Multicultural Australia staff support clients with accommodation – sometimes securing head leased properties to support clients to overcome barriers in securing rental properties with no rental history, limited IDs and understanding of private rental market etc. When securing head leases for our clients, real estate agencies and/or landlord often request our clients’ cultural backgrounds. There have been occasions where real estate agencies and/or landlord do not approve tenants from certain cultural background. Ultimately our intention is for clients to transition to independent lease agreement for the property which they have been residing under head lease arrangements. There have been cases where real estate agencies/landlords do not approve our clients into direct lease agreements - one reason being our clients do not speak English. Recently a single mother with 6 children had her application for direct lease agreement for the property declined. The family has been residing there for last 7 months – and the property is well cared for...*

### **Health**

*Interpreter access for medical appointments remains a challenge. Appointments for medical assessments at a GP clinic for a newly arrived family suddenly become unavailable when interpreting support is requested. Service providers insist that family members or Multicultural Australia bi-cultural staff (who are not supposed to provide interpreting services) assist at appointments. Recently, a woman scheduled for an Ultrasound would not be provided interpreter support by the provider. As the only English-speaking member of the family would*

*not be the appropriate person to assist with the appointment, a bi-cultural staff was required to assist.*

### ***Disability and immigration (visa status)***

*A family seeking asylum in Australia was increasingly concerned about the social attention and communication behaviours of their child. However, they were unable to secure any early intervention assessments or supports for the child as they were ineligible for NDIS.*

*Families seeking asylum and living in community face hardships (e.g., financial, housing, employment), and many individuals requiring disability supports, and aids are not receiving these. Daily indignities wear people down, such as, not being able to access incontinence pads for adults, and bibs and nappies for children with spina bifida. There are no support options available to many people; they are dependent on charities to secure basic needs.*

### ***Disability and Employment***

*A community member with vision impairment managed to secure appropriate NDIS supports. However, he struggles to secure employment even as a qualified IT professional. As with most humanitarian entrants, he faces a labour market disadvantage including lack of local work experience and/or overseas qualification. Coupled with his vision impairment, this poses a dual disadvantage. He is left feeling frustrated, unsettled, and feels he does not belong to this society, even after many years in Australia*

### ***Disability – Mental Health***

*Experiences of humanitarian entrants with disability can include struggles around obtaining accurate diagnoses and resulting interventions; finding appropriate care and supports; addressing access barriers into our public systems (e.g., language, transport costs, complicated referral processes etc.). This absence of appropriate supports, access issues, or delayed access to care can poorly impact their enjoyment of rights and delay their settlement process itself. Multicultural Australia recently supported a vulnerable client with significant mental health issues - not diagnosed over years. While the individual has been in Australia for six years, they have not been able to secure appropriate assessments – and therefore, the necessary*

*supports. (In our experience, timely and culturally appropriate mental health assessments are not easily available or accessible for refugees and humanitarian entrants.) In this case, the individual was supported by Multicultural Australia Case Managers to secure a psychologist's report to facilitate a secure a Disability Support Pension referral (successfully granted). Case Managers are now looking into supporting the client to secure an NDIS assessment.*

### **Onus on the broader community to educate themselves on aspects of discrimination**

*We need to educate employers .... Most people that 'get rejected are refugees or migrants into the country'. We focus more on the people knowing how the employment market works – but forget about the 'important issues which is educating our companies and employers'.*

*"I speak fluent English but still had a hard time finding a job. I think there is some racial discrimination that migrant and refugee people face in Australia. I had a very bad experience in a childcare centre. The teacher ... abused me for no reason. I had to make a complaint and later she got fined but I came to know that she was treating and abusing people from different nationalities the same way.... People think we are stupid and make judgement about migrant, refugee and CALD people. More awareness and education should be provided to the community and people in school, workplace and everywhere..."*

### **Young people and experiences in different settings**

*Multicultural Australia staff supporting refugee youth to participate in sporting activities, note the racial targeting, and bullying that the young students are being subjected to, by other mainstream school students.*

*A young client identifying as LGBTIQ has to field questions and comments from their contemporaries in class. While shopping in the men's section is followed, stared at, and told by shop staff that she is in the wrong section and pointed towards the women's section. Client felt that she was being discriminated*

*A young student ██████ felt she was treated differently by her teacher – in relation to her peers in class. The teacher was always unavailable to assist – while easily making time to assist other*

*students. The young student left class after being made fun of – and became aware that this experience was shared by other students of diverse ethnic backgrounds. This was significantly impacting the student's mental health. The student however, pursued support options through other teachers at TAFE and their Multicultural Australia Case Manager – seeking escalation of the issue with the Director of Faculty. The matter was taken seriously by TAFE who provided assurances that such behaviour was unacceptable.*

*Multicultural Australia bi-cultural staff supporting young refugee students in classroom feels there is a differential treatment of this cohort as compared to other mainstream students. Feels some teachers are a lot 'harsher' and more 'patronising' in their treatment...*

### **Community experiences and Interactions with Police**

*"Neighbour came to visit me one day to say you have to go back where you came from. I said I am not going, we called the police but they didn't come for three hours. He tried to come inside the house and threw rocks at our house and our car. It made me fearful of who neighbours might be."*

*Client reported to Multicultural Australia Case Manager, that they met with the police who met with the client to take details to file a report and collected the evidence of attempted robbery which resulted in the client being stabbed by an intruder in their residence. Client stated that they advised police "my family and I left Iraq to seek safety, have I known I would be unsafe in Australia, I would not come here", to which the police officer responded, "you have every right to return to Iraq if you wish".*

#### **Possible Case to Test under the Anti-Discrimination Act**

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[Redacted text block containing multiple lines of blacked-out content]