



Review of Queensland's Anti-Discrimination Act: Information for Aboriginal and Torres Strait Islander peoples

The Queensland Human Rights Commission is conducting a review of the *Anti-Discrimination Act 1991*.

The Review wants to hear from Aboriginal and Torres Strait Islander people about how well discrimination laws are addressing discrimination, including racism.

If the law isn't working, we want to know why and what needs to change.

You can find more information about the Review [on the Commission's website](#).

What are discrimination laws?

The *Anti-Discrimination Act 1991* is a law about protecting people from discrimination, including because of their race.

Have you ever:

- Had comments made about your race at a job interview?
- Been knocked back by a real estate agent or property owner because you are Aboriginal or Torres Strait Islander?
- Been subjected to racist comments by a service provider?

Discrimination happens when you are treated worse than somebody else because of something about you, such as your race, age, sex, or disability.

These types of behaviour are discrimination and are against the law.

We have included some case examples of race discrimination against Aboriginal or Torres Strait Islander people at the end of this information sheet, and our website has [more examples](#).

How can I have my say?

The Commission has released a [Discussion Paper](#) that explores themes and issues people have raised with us in our consultations.

This information sheet includes the most relevant questions for mob drawn from the Discussion Paper. You don't have to answer all the questions as they are just a guide.

We are also asking people to tell us about their own experiences of discrimination by filling out our [online submission form – or if you prefer](#), you can send us a written document, an audio or video message, image or artwork to adareview@qhrc.qld.gov.au.

What do we want to hear about?

We want to hear about any of your insights and perspectives about discrimination.

If you want to share your own story, use our online submissions form.

If you want to talk more about your thoughts on how the law should change, or more widespread issues, we have included a list of questions below to help inform your submission or what you want to talk to us about.

Experiences of discrimination

During our consultations, we have heard from Aboriginal and Torres Strait Islander organisations and individuals about experiences of discrimination and racism. We have been told that:

- Discriminatory experiences can have significant impacts, including contributing to poor mental health and risk of suicide. These experiences can be traumatic and have a cumulative effect.
- Mob will continue to 'put up with' discrimination because of a lack of knowledge about their rights – there needs to be much more education on how to access and enforce rights.
- The current system requires people who have experienced discrimination and racism to come forward and make a complaint, and yet they experience specific barriers to accessing the complaints process and seeing it through.
- For many Aboriginal or Torres Strait Islander people, discrimination is just one issue among others – like housing and health issues. This often means it's not a top priority, but doesn't mean it's any less harmful.

Discrimination on combined grounds

The law currently allows people to make complaints based on any of the 16 grounds (also called attributes), such as sex, age, impairment, and race. But we have heard that people often experience discrimination because of the combined effect of more than one ground – for example, age and race.

Sometimes it is hard to say if it was a person's race or age alone that caused the discrimination, which may make it hard to prove a complaint of discrimination. This is called 'intersectional discrimination'.

Questions

- *Should the law include discrimination on combined grounds?*
- *Can you think of any examples where this type of discrimination has happened? What is the impact?*

Making complaints

We've heard from mob that not everyone can make a complaint in writing, and this is particularly hard for the older generation.

We also heard the current one-year time limit to make a complaint may not be long enough, particularly when someone has experienced trauma because of the discrimination.

Some people also felt that there is stigma attached to the word 'complaint' and maybe 'dispute resolution' is a better term.

Certain issues for mob are shared by a group or a whole community, and yet the current system requires one person to step forward, which they might not feel comfortable or supported to do. The Review is considering whether organisations, such as Aboriginal Community Controlled Organisations and other organisations that act in the interests of mob, should be able to make a complaint on their behalf.

Questions

- *What would make it easier to make a complaint?*
- *Would it help for the terminology to change?*
- *How long is a fair and reasonable timeframe to make a discrimination complaint?*

- *Should an organisation be able to make a complaint on behalf of a person or group of people? What would be the benefits or issues with this approach?*
- *Should organisations such as Legal Aid Queensland and the Aboriginal and Torres Strait Islander Legal Service be able to support people to make group complaints?*

New grounds for complaints

The Review is considering whether new grounds should be protected under the law, including:

- irrelevant criminal record
- being subjected to domestic violence.

There needs to be good evidence to justify adding new grounds for making a complaint, so the Review is looking for examples of discrimination on these grounds.

Questions

- *Should an additional ground of irrelevant criminal record be added? Do people who have had dealings with law enforcement experience discrimination? Does the discrimination happen when they are looking for work, using government services, or somewhere else?*
- *Should an additional ground of being subjected to domestic violence be added? Do people who experience domestic or family violence experience discrimination?*

A new approach

The law currently relies on individuals to make complaints about discrimination. If people don't make complaints, the situation stays the same. A 'positive duty' on employers and businesses to be proactive in preventing discrimination has been suggested as a different approach.

Questions

- *Do you support including a positive duty in the Anti-Discrimination Act?*
- *What are some examples of how it could protect Aboriginal and Torres Strait Islander peoples from discrimination?*

What the Commission can do

During our consultations, we heard that people from a regional town were being asked whether they were Aboriginal or Torres Strait Islander on rental applications, and then getting knocked back if they said they were. This is not legal, but mob feared making a complaint because they did not want to risk getting blacklisted. Currently, even if the Commission hears a story like this, it can only act if it receives a complaint.

Under the current process, the Commission tries to resolve the complaint through a conciliation process in which the Commission is impartial, and if it doesn't resolve then a tribunal may decide the outcome.

This means that often the law fixes problems for an individual but does not deal with discrimination on a wider scale. This is known as 'systemic discrimination'.

The current law does not respond well to systemic discrimination, for example structural racism.

The Review has been asked to consider whether the Commission, or another body, should have more powers to proactively deal with discrimination – this could include making guidelines or issuing compliance notices that organisations are required to follow to prevent discrimination.

Questions

- *Do you think that the Commission (or another body) should have more powers to take action, even where there has been no complaint made?*
- *If so, why? What difference would this make to Aboriginal and Torres Strait Islander peoples and their communities?*

What happens next?

At the conclusion of the Review, we will provide a report to the Attorney-General by 30 June 2022.

The report will outline what we did, what we found, and our recommendations for updating the law.

It will then be up to the state government to decide whether to implement those recommendations.

Discrimination case studies

Below are some case studies of complaints about race discrimination.

Case study: Racist comments at work

The complainant identified as Aboriginal and South Sea Islander and was a former employee of a non-profit organisation providing services to the Aboriginal and Torres Strait Islander community.

The complainant alleged he had been subjected to racist comments by his supervisor. The complainant chose to pursue his complaint against the organisation as the supervisor had already left the organisation. He was of the view that the organisation should have included questions focussed on cultural awareness and sensitivity when hiring staff to avoid the racist treatment he had experienced, and to ensure appropriate hiring.

At conciliation the parties discussed broader systemic issues around the organisation's hiring process as well the professional supports available for employees who identified as Aboriginal and/or Torres Strait Islander.

The agreement included:

- an undertaking to ensure all Aboriginal or Torres Strait Islander employees had cultural supervision available and they were aware of it;
- a review of the hiring processes for relevant roles including:
 - interview questions had a sufficient cultural component; and
 - panel members included an Aboriginal or Torres Strait Islander person who is a respected member of the local community.
- \$5,000 financial settlement.

Case study: Race discrimination in accommodation

A Torres Strait Islander man alleged he was told a property was taken when he visited a real estate office. He phoned his sister from the car to check its availability. When she phoned back to say the house was still vacant, he asked her to check a second time. However, when he immediately re-entered the real estate office he was told again that the property was unavailable.

He was very upset as he had an exemplary rental record, but thought he was not even considered because of his race. The respondents were unable to field a satisfactory explanation. The matter settled for \$3,000.

Case study: Group of Aboriginal people refused service

A group of six Aboriginal people attended a nightclub in a casino on the Gold Coast. One of the men was thrown out of the nightclub after a female patron complained he had groped her. There was no real enquiry into the allegation, and the tribunal found that the man had been made to leave because of his race.

Other members of the group were then refused service at two of the bars when they tried to order drinks, including soft drinks. The group was then encircled by a number of security officers. One of the women was told she should go downstairs and see the man who had been made to leave, and after she went downstairs, she was not allowed to re-enter the nightclub. The others were then encouraged to go downstairs and they too were refused re-entry. As they left, the security officers said "Piss off you mob". The tribunal found the rest of the group had been made to leave, rather than leaving of their own accord.

The tribunal accepted that the members of the group were not intoxicated and their behaviour was no different to other patrons in the nightclub. Records showed that security had been called because the nightclub wanted to remove a group of Aboriginal people. The tribunal found that the only reasonable explanation for the incidents was the group's race, and their relationship to each other.

The tribunal said the discrimination was serious and blatant, and occurred over a period of time. An enjoyable and special evening had turned into a most upsetting and unfortunate encounter. It was intimidating and embarrassing for the six people, and they had been deeply hurt over the treatment they had to suffer. The tribunal ordered the respondent to pay compensation of \$10,000 plus interest of \$1,375 to each of the six people in the group.

Wharton v Conrad International Hotel Corporation [2000] QADT 18