



Review of Queensland's Anti-Discrimination Act: Information for people with disability

The Queensland Human Rights Commission is currently conducting a Review of the Anti-Discrimination Act.

The *Anti-Discrimination Act 1991* is a law about protecting people from discrimination, including because of disability. Discrimination happens when you are treated worse than somebody else because of something about you, such as your race, age, sex, or disability.

More information about the Review is [available 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 age.

Have you ever:

- Been treated poorly at your workplace because of your disability?
- Been discriminated against at a shop or a business, or when using a taxi, rideshare, or public transport, because of your disability?

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. You can read more about the law at <https://www.qhrc.qld.gov.au/your-rights/discrimination-law/easy-read-guide-to-the-anti-discrimination-act>.

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 people with disability 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 <mailto: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

Most complaints received by the Commission are about ‘impairment discrimination’ (46.2% in 2020-21). But we know that complaints only represent some of the issues happening in the community.

Questions

- *What are the areas of your daily life (such as in the workplace, at a school or place of study, at a shop or business) in which discrimination because of disability is most likely to happen?*
- *What are some of the impacts of discrimination on the lives of people with disability over their lifetimes?*
- *What makes it difficult for people with disability to report their experiences?*

Terminology

The word ‘impairment’ was used in the Anti-Discrimination Act when it was introduced in 1991, and at that time was said to be the community’s preferred term. But many people now prefer the word ‘disability’. The Review would like to hear your views about whether the word should change to ‘disability’.

The Review needs to consider the scope and implications of each of these words – whether one word is broader than the other, and whether this has advantages or disadvantages.

Question

- *Do you have any views about which word is best – disability or impairment?*

Meaning of 'impairment'

The current definition of 'impairment' is broad, but some of the words used may not be current and inclusive, or make it clear who is covered. For example, neurodiverse variations (which includes autism, ADHD, and dyslexia) are not adequately covered by the definition in (c) of a 'person learning more slowly'.

This is the current definition:

impairment, in relation to a person, means—

- a) the total or partial loss of the person's bodily functions, including the loss of a part of the person's body; or
- b) the malfunction, malformation or disfigurement of a part of the person's body; or
- c) a condition or malfunction that results in the person learning more slowly than a person without the condition or malfunction; or
- d) a condition, illness or disease that impairs a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; or
- e) the presence in the body of organisms capable of causing illness or disease; or
- f) reliance on a guide, hearing or assistance dog, wheelchair or other remedial device;

whether or not arising from an illness, disease or injury or from a condition subsisting at birth, and includes an impairment that—
- g) presently exists; or
- h) previously existed but no longer exists.

Questions

- *Do you think the definition of 'impairment' (disability) needs to change?*
- *If so, how?*

Assistance animals

People with disability who have a guide, hearing, or assistance dog are currently protected from discrimination. But the law does not protect people who have assistance animals other than dogs.

Questions

- *Should the law protect people from discrimination because they have an assistance animal?*
- *Do you know of any examples where this kind of discrimination has happened?*

Physical features discrimination

The law does not currently protect people from discrimination because of their physical features, which includes a person's height, weight, size, or other features of their bodies or faces.

Questions

- *Should the law protect people from discrimination because of their physical features?*
- *Do you know of any examples where this kind of discrimination has happened?*

Discrimination on combined grounds

The law currently allows people to make complaints on the basis of any of the 16 'attributes', such as sex, age, impairment, or race. But we have heard that people often experience discrimination because of the combined effect of more than one attribute – e.g. age and impairment, or race and impairment.

Sometimes it is hard to say if it was a person's race or age or impairment alone that caused the discrimination. This is called 'intersectional discrimination'.

Question

- *Should the law include discrimination on combined grounds?*

Making reasonable accommodations

Providing accessible toilets is an example of providing reasonable accommodation for people with disability.

Currently, businesses and employers do not have a duty to make reasonable accommodations, unless the person with a disability can prove it is 'indirect discrimination' – that is imposing an unreasonable requirement that the person cannot comply with because of their disability. This makes it difficult for a person to prove their complaint.

Questions

- *Should there be a duty to make reasonable accommodations for people with a disability?*
- *Should this duty extend to other attributes as well – for example, family responsibilities?*

Hardship on businesses and employers

Currently, businesses and employers do not have to provide special services or facilities to people with disability where the business or employer can prove that this would be an 'unjustifiable hardship' for them. An example of unjustifiable hardship is provided in the current Act, where making a workplace accessible for a person in a wheelchair would be 'very expensive'. Whether supplying special services or facilities would impose an unjustifiable hardship is based on a cost-benefit analysis, which includes:

- a) the nature of the special services or facilities; and
- b) the cost of supplying the special services or facilities and the number of people who would benefit or be disadvantaged; and
- c) the financial circumstances of the person; and
- d) the disruption that supplying the special services or facilities might cause; and
- e) the nature of any benefit or detriment to all people concerned.

Questions

- *Should 'unjustifiable hardship' for businesses and employers be a defence to discrimination?*
- *Can you share with us any examples of where this is causing particular hardship for people with disability?*

- *What are the factors that should be considered in working out what is fair to the business or employer and the person with disability?*

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. The concept of a 'positive duty' on employers and businesses to not discriminate has been suggested as a different approach. This may require organisations to have effective anti-discrimination policies and provide training on discrimination and sexual harassment.

Questions

- *Do you support including a positive duty in the Anti-Discrimination Act?*
- *What are some examples of how it could protect people with disability from discrimination?*

What the Commission can do

The Commission can only act if it receives a complaint. The Commission then tries to resolve the complaint through an impartial conciliation process, and if it doesn't resolve a tribunal may decide the outcome.

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

The current law does not respond well to systemic discrimination. For example, if a person made a complaint about the rail network being inaccessible, a tribunal could order remedies for the one rail user, but not fix the underlying problem that the rail network is not accessible.

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.

Question

- *Do you think that the Commission (or another body) should have more powers to take action, even where there has been no complaint made?*