

Submission

to the

Review of Queensland's Anti-Discrimination Act

This Submission is made by The Social Responsibilities Committee of the Anglican Church Southern Queensland (SQ) (Diocese of Brisbane).

Key Points of Submission

The Social Responsibilities Committee (SRC) of the Anglican Church Southern Queensland welcomes both the review of Anti-discrimination Act (AD Act) and this opportunity to participate in that review.

Our concern is for decisive justice, robust law, upholding strong communities, modifying discriminatory practices and cultures, and protecting individuals. We submit that:

1. choosing a **robust process** will prioritise a more positive approach to eliminate discrimination;
2. such a process entails employing **proven dialogue and engagement technologies** to open as yet unimagined ways forward; and
3. such a process can codify **real-world, lived experiences** of discrimination into world-class legislation.

Scope of Our Submission

We address our submission to Paragraph 3(a)-(b) of the Terms of Reference for the review:

- 3. In undertaking this review, the Commission should consider whether there is a need for any reform, and if so, the scope of reform regarding:*
- (a) the compatibility of the AD Act with the Human Rights Act 2019;*
- (b) the preamble and preliminary provisions under Chapter 1 of the AD Act, including whether a more positive approach is required to eliminate discrimination, and other objectionable conduct prohibited in the AD Act;*

A Review is Needed

We submit that a review is justified in that it would appear that the current operation of the processes AD Act is often delivering inadequate outcomes.

Among the reasons for this being the case are:

a. *The length of time it takes for complaints to be addressed.*

As the Commission itself notes, it is not uncommon for 6 months to elapse before a complaint can be addressed. This is manifestly inadequate given the:

- i. The nature of activity that leads to the making of a complaint, and the potential for behaviours to persist long-term while waiting to be addressed, and
- ii. The stresses that the making of a complaint places on a complainant, compounded by the silence of tardy responses, possibly in the presence of ongoing discriminatory behaviours.

It is easy to imagine how the length of such a delay leads to many complainants deciding that their position at a workplace, for example, is untenable. The potential personal cost is massive: lost income, adverse financial and social impacts on family, degradation of mental and physical health, loss of confidence to re-enter the workforce. The potential social cost is massive: unproductive workplaces driven by fear and avoidance, impost on the health system to address mental health, embedding of discriminatory practices in workplaces and society as normative and without consequence. Justice delayed is justice denied.

b. *The power imbalance between the complainant and the respondent.*

Entrenchment of power imbalance enables escalation of discrimination, in the absence of accountability and the capability to be named.

c. *The inherent adversarial and legalistic framing of the processes that pit the complainant against the respondent.*

Once again, it is easy to imagine how even if a complaint is upheld, the nature of the processes involved can irreversibly damage relationships, in say a workplace, leading to the future prospects of the complainant being diminished. In tightly knit industries and professions, future prospects of the complainant outside the immediate workplace may also be diminished. However, chiefly, adversarial and legal framing of a complaint necessarily creates "winners and losers," leading to a more adversarial workplace culture of poor relationships and diminished trust.

All the above makes a high bar for a high stakes concern for the complainant. Also leads to the respondent mounting a defence.

Finding a New Way

It seems to us that any attempt to address the above while **continuing to apply a legalistic framework is unlikely to produce the desired outcomes**, such as ensuring the safety of complainants, modifying the behaviour of respondents and changing the operating culture of businesses and organisations.

The discussion paper limits the nature and scope of possible responses to legalistic provisions and process to these types of outcome. We submit these can only make **incremental improvements**, and are incapable of mechanisms both to protect the

whole-of-person, and to encourage and drive cultural change towards non-discriminatory mindsets.

We suggest that there are a number of **potentially problematic elements in the proposed changes**, such as putting the onus on employers to demonstrate that they are eliminating discrimination. This might prove onerous for not-for-profits and churches operating with constrained resources. It also might result simply in tick box responses.

We suggest that to achieve the desired changes, there is the need to engage in imaginative ways to **uncover as yet undiscovered ways forward**. This would be in keeping with seeking to honour Paragraph 3 of the Terms of Reference, which charges the review to explore *whether a more positive approach is required to eliminate discrimination*.

We commend to the Commission the use of several engagement tools that The Anglican Church SQ and the SRC in particular have found useful in engaging with complex areas of policy. These include **Open Space Technology (OST) and the SenseMaker tool**.

These engagement tools are intentionally designed to be a **positive approach to explore, understand, and advance in complex scenarios**. Importantly, they do not dilute complexity to a false simplicity: they avoid the deep error of proposing simplistic solutions to simplistic (and possibly mis-represented) problems. As such, robustness is assured.

Demonstrated Effectiveness of Engagement Tools

As part of its work, the SRC, following interactions with Juvenile Justice in Queensland, developed the 'Youth Voices' consultation using the SenseMaker Tool.

As the introduction to the Youth Voices report noted:

The Committee [SRC] recognised that youth justice (and youth policy more broadly) is a highly complex and fragmented social policy area, with multiple and diverse stakeholders. Narrow, more traditional policy and program approaches have been shown, over time and in many jurisdictions in Australia and internationally, to be less than effective in addressing these complex interrelationships. It was clear to the SRC that achieving different outcomes requires different input.

Over the same period therefore the SRC explored specifically designed "complexity" methods and tools that work where traditional methods of analysis and design have not delivered the desired results. Youth Voices made use of some of these tools and processes to offer new insights into youth and youth justice issues, drawn unfiltered from the lived experience of young people; and to begin to identify small scale, low risk initiatives and strategies for improvement.

The report summarised the effect of the Youth Voices project in this way:

The Youth Voices project was a channel for young people to influence youth policy, program development and service delivery in government, schools and community organisations — to communicate what they saw as a flourishing life, and the supports they needed to achieve that.

The project was a truly collaborative journey. Young people actively co-designed the questions; participated in the project across 4 states and 20 sites; and were at the core of project workshops bringing together young people, teachers, youth workers, government policy officers and others to explore the data and how it might inform practical initiatives and outcomes for young people.

For more detail: <https://anglicaresq.org.au/about-us/advocacy/youth-voices/>

Details of the SenseMaker Tool can be found here: <https://thecynefin.co/sensemaker-2/>

Our partner in the Youth Voices project and several others we have undertaken since, including a recent project designed to assist faith communities to engage with the complexities created by changes in society and the Covid-19 pandemic was

Complexibility: <https://www.complexability.com.au/>

Another tool that might prove useful is Open Space Technology (OST).

OST works best where conflict is present, things are complex, there is huge diversity of players and the answer was needed yesterday. And the more of all of that you have, the better OST works.

<https://openspaceworld.org/wp2/explore/open-space-key-concepts/>

Specific examples that illustrate its potential for assisting the Commission to pursue this include:

Agenda setting for disability planning at the State level in the USA.

Starting Off Right: Using Open Space Technology to Enable Citizens to Set the Agenda for State Disability Planning

<https://journals.sagepub.com/doi/abs/10.1177/10442073030140010201>

Working with street children in Bogota deciding how better to engage with employment opportunities.

Colombia: How can I contribute to employers not cancelling work for us now and in the future? Open Space Technology. New Stories from the Field. H. Nauheimer (Holman 2005).

Network creation for social transformation through intercultural learning

Nauheimer, H. and E. Ilieva (2005). Bulgaria: Creating Networks for Social Transformation through Intercultural Learning. Open Space Technology. New Stories from the Field. H. Nauheimer (Holman 2005).

The Anglican Church SQ has used OST in a number of different settings. A number of parish communities have used OST to plan and to respond to emerging issues in their area of influence.

We have used OST in both national Anglican and ecumenical contexts to explore how the Church and Churches might respond to the complexity of Climate Change. This led to the development of a document that enables church members to better communicate and advocate about this complex issue.

The Anglican Church SQ used OST during its annual Synod meeting (2019).

90 percent of survey respondents said that incorporating Open Space this year improved their Synod experience and engagement. A number reported highlights such as the opportunity to have a say without judgement; enjoying the collaborative nature of the conversations; building each other up even if we do not agree; enthusiasm and passion for making a difference; tolerance of other's points of view; learning from voices not typically heard; and, hearing stories that people may otherwise have missed.

<https://anglicanfocus.org.au/2019/09/12/open-space-revitalises-synod/>

The Anglican Church in the Diocese of Adelaide used a multi-day OST forum to discuss the complex and divisive issue of the future of marriage.

Participants generally found the experience rewarding, constructive and wished to extend the conversations. As with the previous events, the next conversations will be held under the principles of Open Space Technology, which is designed to provide a respectful and safe place for people to discuss issues of importance to them, and for all voices to be heard.

<https://adelaideanglicans.com/news-events/a-second-conversation-on-the-doctrine-commission-essays/>

We suggest that in order to uncover imaginative and innovative responses and processes that address and minimise discrimination the Commission could host a number of OST gatherings that would give the opportunity for previous complainants and respondents, institutional and business representatives, representatives of social minority groups and at risk cohorts, members of the legal profession, including those who have represented complainants and respondents, and interested members of the public to come together to explore the question of how we better advance the anti-discrimination agenda.

One of the principles that guides any OST gathering is that participants should come 'Prepared to be surprised'.

Be prepared to be surprised — positively. Those who come to an Open Space event with a precise and detailed list of intended outcomes will be frustrated. More than that, they will inevitably miss the positive and useful things that occur. Never before, and never again will the assembled group gather in that time and place. No one could possibly predict the synergism of effect that will take place when those particular people assemble....

<https://openspaceworld.org/wp2/hho/papers/brief-users-guide-open-space-technology/>

We have every expectation that the Commission would find the use of OST as a tool to discover new possibilities very rewarding.

Summary and Recommendations

We suggest that seeking to reduce the amount of discrimination present in our community is no less a challenge than the range of issues addressed by the SRC, as described above. Matters of discrimination, relevant legislation, associated social culture, and workplace/education regulation of discrimination are complex. There is **comparable complexity** in the areas of Youth Justice, climate change activism, and marriage equality (as viewed by religious institutions).

The **SRC has long and deep experience** in the use of dialogue tools: design, workshopping, training, implementation, and consequence action-planning.

The **SRC would be willing to assist** with the facilitation of dialogical tools as a positive approach to reducing discrimination, within the context of the AD Act.

Therefore, we **recommend** that:

1. the present review of the AD Act **prioritises process** above deconstruction of legislation;
2. the review authority recognise and endorse the **positive approach which dialogue tools can bring** to a comprehensive view of complexities surrounding discrimination;
3. dialogical engagement tools are **implemented as a precursor** to any formal legislative review; and
4. the Anglican Church Southern Queensland's **Social Responsibilities Committee be engaged** to advise on and facilitate the dialogical component of the AD Act review.

Submitted on behalf of the Social Responsibilities Committee
Anglican Church Southern Queensland,



The Very Rev'd Dr Peter Catt
Chair