



Chapter 9:

# Implementing reforms

## Contents

Building capacity for change .....	404
Awareness and education .....	404
Increasing awareness of the Act .....	404
Community understanding .....	404
Communicating the changes .....	406
Resourcing reforms .....	406
Legal advice and assistance .....	406
The Commission.....	408
Tribunals .....	408
Monitoring the changes .....	409

# Building capacity for change

This report sets out a suite of recommendations to reform and enhance the Anti-Discrimination Act, including a recommendation for a new, rather than revised, Act.

However, legislative change alone will not eliminate discrimination and sexual harassment to the greatest extent possible, or better protect and promote equality – only people can do that.

In the Discussion Paper, we asked what non-legislative measures would be required to ensure that protections under the Act are available to everyone. Our analysis of submissions, consultations, and research has identified three strategies that are required to make changes to the law effective:

- **Awareness and education:** The Commission should work to improve awareness of the Anti-Discrimination Act and protection available, and changes to the law should be communicated effectively. People and organisations who have new obligations should be supported to make positive change.
- **Resourcing reforms:** Key stakeholders that play a role in enforcing the Act or providing legal and advocacy services to support people to access protections require adequate funding to ensure the law is effective for people who experience discrimination and sexual harassment.
- **Monitoring the changes:** Reforms are more likely to succeed if an oversight committee is tasked with implementing reforms and evaluating the effectiveness of the changes over time.

This section sets out ways to ensure that a change to the law results in a change in practice, and that fewer people experience discrimination and sexual harassment.

## Awareness and education

Increasing awareness of the Anti-Discrimination Act and providing education about the law is essential to ensuring the law is effective, and has two aspects:

- increasing general awareness about the Act and the role of the Commission
- ensuring changes to the law are communicated effectively.

### Increasing awareness of the Act

We were told in submissions that more needs to be done so people understand discrimination is a legal issue and they can make a complaint about it.<sup>1</sup>

In emphasising the need for increased awareness and community legal education about the Act, stakeholders referred to the barriers to making a complaint explored in chapter 2. These barriers include the complexity of the Act and the difficulty of aligning complex legal tests with people's experiences of unfair treatment.

### Community understanding

The Review identified a relationship between levels of awareness and education about the Act and the extent of community understanding of the nature and impact of discrimination and sexual harassment.

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<sup>1</sup> See for example Legal Aid Queensland submission, 55; Caxton Legal Centre submission, 15; Queensland Mental Health Commission submission, 9.

As the Queensland Mental Health Commission told us:

Whilst legislative change is required to make the process of making a complaint about discrimination easier for people with a mental illness, shifts in whole-of-community understanding and de-stigmatisation of mental illness is required.<sup>2</sup>

Awareness about Queensland's discrimination law is not separate from, but intimately connected with, broader public awareness about discrimination in all its forms – including racism, ableism, ageism, sexism, and other prejudices. This sentiment was expressed by the Ethnic Communities Council of Queensland (ECCQ), who told the Review:

ECCQ, our members and staff believe that there needs to be a shift in culture and attitudes. This will be strengthened through a proactive and preventative Anti-Discrimination Act.<sup>3</sup>

We heard that by increasing community understanding about the ways in which discrimination and sexual harassment can occur, what causes it, and the impact it has on people, the number of complaints made to the Commission may be reduced. In turn, this has the potential to enhance efficiencies for duty holders, organisations, the Commission and tribunals.<sup>4</sup>

This discussion about increasing education and awareness to enhance the effectiveness of the Act ties in with our recommendation to introduce a positive duty to take reasonable and proportionate steps to eliminate discrimination and sexual harassment. In chapter 6 we explore the need for education to support compliance with the duty, and to realise its ultimate aims.

### Targeted engagement

The Review also identified the importance of targeting community legal education to people with protected attributes, including First Nations people,<sup>5</sup> culturally and linguistically diverse communities – particularly newly settled migrant populations,<sup>6</sup> young people,<sup>7</sup> people who experience psychosocial disability,<sup>8</sup> sex workers,<sup>9</sup> and others.

Legal Aid Queensland told us that First Nations people have commented on the lack of general understanding about discrimination in their community, including not understanding that discrimination is a legal issue for which a person can bring a formal complaint, or not knowing where to go for information and advice.<sup>10</sup>

Legal Aid Queensland also told us that community legal education delivered to the Queensland African Communities Council received very positive feedback, but continued demand for education and resources outstrips current funding.<sup>11</sup>

Respect Inc and DecrimQLD told us that anti-discrimination laws need to be understood by the broader community if sex workers are to be ensured protection, and that broad public education campaigns are required. They gave the example of a 2011 campaign by the Irish sex worker organisation, Turn Off the Blue Light, that features a poster series aimed at changing the public's perception and awareness of sex workers.<sup>12</sup>

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2 Queensland Mental Health Commission submission, 9.

3 Ethnic Communities Council of Queensland submission, 1.

4 Queensland Mental Health Commission submission, 13.

5 See for example: Queensland Indigenous Family Violence Legal Service consultation, 25 August 2021; Caxton Legal Service submission.

6 See for example: Ethnic Communities Council of Queensland submission.

7 See for example: Youth Advocacy Centre submission; Young peoples' roundtable 17 February 2022.

8 See for example: Queensland Mental Health Commission submission; Australian Psychological Society submission.

9 See for example: Respect Inc and DecrimQLD submission, Scarlet Alliance submission.

10 Legal Aid Queensland submission, 55.

11 Legal Aid Queensland submission, 55.

12 Respect Inc and DecrimQLD submission, 32.

We were also told that stakeholders want the Commission to conduct targeted engagement with communities to ensure that those people understand the protection available to them in particular, and feel comfortable making a complaint. For example, The Islamic Council of Queensland told us that for the Commission to be trusted, they would need to partner with community leaders who are trusted by the community.

## Communicating the changes

To deliver on the objectives of the reform, putting the new Act in place will require a period of change for stakeholders, including the public sector, the private sector and industry, the community sector, and for the Commission itself.

Changes will require shifting the focus of duty holders to prevention, as required by a positive duty. An educational program designed to communicate changes in the Act's coverage will be required, including about reforms to attributes included in the Act and the scope of exceptions. To ensure education and training is meaningful, community engagement will need to be tailored to the audience.

The Commission will have a significant role in communicating the changes to the law and should partner with stakeholders to support and enhance an understanding of the nature and purpose of the changes. A strategic plan to provide education and awareness of these changes should be considered, including to communicate the phases of change to the public.

## Resourcing reforms

Additional resourcing will be required to ensure the Act can meet its core objectives and new focus, and to support the Commission's expanded role.

The resourcing implications that flow from the report's recommendations will be closely considered by government. While the Terms of Reference for the Review do not ask us to assess the costs and benefits of recommendations, or to quantify the cost of discrimination and sexual harassment, we have developed recommendations that promote cost-effectiveness of the overall system.

We consider that the considerable individual, social, and economic costs of discrimination and sexual harassment are important factors to be weighed up in determining the costs and benefits of the reforms.

One of the core recommendations is that the Commission and organisations with legal obligations under the Act take a more proactive role in eliminating discrimination and sexual harassment to the greatest extent possible. We consider that prioritising prevention through the mechanism outlined in chapter 6 can achieve financial efficiencies by reducing the need for complaints to be made and creating positive systemic outcomes.

With those considerations in mind, we have identified that adequate financial investment is required for stakeholders that play a key role in eliminating discrimination and ensuring enforcement of the Act.

## Legal advice and assistance

Legal service providers and other advocacy services that currently advise people about the Act and represent them in proceedings require increased funding. This will enable them to play a role in broader legal education, provide timely legal advice that supports the filtering of complaints that reach the Commission, and ensure all complainants have access to appropriate legal advice and representation.

Through submissions, we were told that Legal Aid Queensland and community legal centres require additional funding to:

- provide legal advice and representation to complainants<sup>13</sup>
- assist complainants who wish to bring representative proceedings under the Act.<sup>14</sup>

Caxton Legal Centre said that:

Urgent action is needed to address chronic underfunding of legal services in this area of law... There are only two community legal centres with funding specifically for disability discrimination (we believe both roles are part time). Most of us who do this work, including Caxton, do so as an internal priority within our generalist programs and there is overwhelming competition for the small allocation of resources for 'generalist' law in Queensland.<sup>15</sup>

This message was also emphasised by non-legal stakeholders, such as Equality Australia that said:

There should be support for people bringing claims, including additional earmarked funding granted to Legal Aid or community legal centres to provide advice and representation for complainants who are financially disadvantaged.<sup>16</sup>

We also identified that First Nations community legal and advocacy centres require a specific funding stream to ensure that people who experience discrimination have access to free and appropriate legal advice and representation.

### Individual and system advocates

Individual advocacy and systemic advocacy play a key role in ensuring the protection afforded by the Act are accessible to everyone. Individual advocacy includes helping people to become aware of the law, supporting them to make a complaint, and supporting them through the process. Systemic advocacy includes advocacy at a systems level to advance the interests of a particular group.

Both forms of advocacy support people to connect with the system and legal services, to make complaints, and to advocate for broader, systemic change. This includes an expanded role for organisations to bring complaints, including representative complaints, that aim to achieve a broader systemic impact.

Legal Aid Queensland noted that resourcing of community groups capable of assisting people to make complaints and/or bring representative complaints is necessary and cost-effective.<sup>17</sup>

The Review observed that community organisations that support groups with specific attributes are indispensable for ensuring the right support is provided.

For example, Queenslanders with Disability Network told us that accessible advice and support is critical for people with disability, and that improving accessibility can range from creating resources in alternative formats (such as plain text or Auslan), providing adequate disability support and client assistance in buildings, and using correct language.<sup>18</sup>

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<sup>13</sup> Legal Aid Queensland submission, 5, 65; Caxton Legal Centre submission, 12.

<sup>14</sup> Legal Aid Queensland submission, 41.

<sup>15</sup> Caxton Legal Centre submission, 22.

<sup>16</sup> Equality Australia submission, 40.

<sup>17</sup> Legal Aid Queensland submission, 65.

<sup>18</sup> Queenslanders with Disability submission, 1.

## The Commission

Additional resourcing of the Commission will ensure the objectives of the new Act and expanded functions of the Commission, including in relation to enforcement of a positive duty, can be achieved.

During the Review, we repeatedly heard that adequate resourcing of the Commission is required to ensure the law is effective. This feedback was particularly focused on ensuring that the Commission has the resources to undertake work to prevent and address systemic discrimination, including having a greater role in enforcing the Act in areas in which people face insurmountable barriers to individual enforcement.

We were told that adequate resourcing is required for the Commission to ensure it can:

- provide appropriate guidance on what a positive duty is, how it is discharged, and to support organisations to meet their obligations<sup>19</sup>
- collect and publish rigorous, de-identified case studies and data about the prevalence and nature of discrimination, and the outcomes negotiated when complaints are settled<sup>20</sup>
- become a more proactive statutory body with a role in enforcement, including by conducting systemic investigations<sup>21</sup>
- continue current dispute resolution services, education, training, and monitoring functions without depleting resources for these services to support additional enforcement initiatives.

## Tribunals

The Review considered the benefits and drawbacks of complainants having a direct right of access to the tribunals, and ultimately our recommendations do not include a direct right of access, but instead retain a filtering role for the Commission.

Notwithstanding that conclusion, our recommendations may have resourcing implications for the tribunals.

In their submission to the Review, the Queensland Civil and Administrative Tribunal (QCAT) commented that while matters of policy are a matter for government, increased workload can flow from additional jurisdiction and any ambiguity in legislation. Their submission also observed that:

...changes to any legislation which has the potential to increase QCAT work load in any respect will need to carry with it additional funding which meets, at least, the Registry and Tribunal costs of that additional workload.<sup>22</sup>

## The Review's position

The Review considers that:

- Appropriate resourcing is required to ensure that changes to the law are effective, and to achieve the objectives of the law. Shifting the focus to prevention may reduce instances of discrimination and sexual harassment and achieve long-term efficiencies and reductions in costs for duty holders, the Commission, and the tribunals.

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19 Queensland Law Society submission, 13.

20 Assoc Prof Dominique Allen submission, 5; Legal Aid Queensland submission, 61.

21 For example: Community Legal Centers Queensland submission, 3; Queensland Advocacy Incorporated submission.

22 Queensland Civil and Administrative Tribunal submission, 7.

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## Recommendation 45

**45.1** The Queensland Government should ensure adequate resourcing is provided to:

- legal and advocacy services, including Legal Aid Queensland, community legal centres, and Aboriginal and Torres Strait Islander legal services
- community groups that undertake individual and systemic advocacy about the Anti-Discrimination Act
- tribunals to ensure that any expansion of their jurisdiction is properly resourced
- the Commission to ensure that it can give effect to its expanded role and functions.

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## Monitoring the changes

If a new Act is introduced, key stakeholders will need to work together to implement the changes required to give effect to the new Act.

Given the potential intersections with other areas of reform, including protections under the Work Health and Safety laws, the Queensland government's implementation of the Respect@Work recommendations, and changes under consideration that may introduce other positive obligations on employers to enhance diversity, this would benefit from a whole-of-government approach.

Monitoring progress to establish whether changes to the law are effective should start after the Queensland Government's response to the report and continue for up to two years after the Act is passed to ensure that the changes are embedded in workplace culture, places of education, the Queensland's public service, and the broader community.

### The Review's position

The Review considers that:

- Creating a time-limited oversight committee to coordinate and oversee implementation of the reforms will help to ensure the objectives of the new Act are achieved in practice.
- This approach will enhance consistency with the ongoing efforts of the Queensland Government to implement reforms of the Respect@Work report and other related reforms.
- The Committee will be well placed to identify, manage, and address any limitations identified in the early stages of implementation.

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## Recommendation 46

**46.1** The Queensland Government should issue a formal response to this Report within three months of being tabled indicating whether the recommendations are accepted, accepted in principle, rejected, or subject to further consideration.

**46.2** A Parliamentary Committee should oversee implementation of the new Act.

**46.3** The Attorney-General should establish an interdepartmental 'Building Belonging' working group to oversee the reforms contemplated by this report. The working group should include representation from the Queensland Government, the Queensland Human Rights Commission, and may include representatives from key stakeholder streams.

