



Queensland
Human Rights
Commission

Review of the Anti-Discrimination Act: Overview of *Building Belonging* report

Acknowledgement of Country



The Queensland Human Rights Commission acknowledges Aboriginal and Torres Strait Islander peoples as the First Australians and recognises their culture, history, diversity, and their deep connection to the land, waters and seas of Queensland and the Torres Strait.

I would like to pay my respect to the traditional owners of the land we meet on today and pay my respects to the elders, past, present and emerging.

Introduction

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Queensland Human
Rights Commissioner

Building belonging

Review of Queensland's
Anti-Discrimination Act 1991

July 2022



Today's presentation

- Our approach
- Key reforms
- Key concepts
- Process updates
- Eliminating discrimination
- Attributes
- Exceptions



Poll

How familiar are you with the Anti-Discrimination Act?

- Not at all familiar
- Quite familiar
- Reasonably familiar
- Very familiar



Our approach

- Reference group
- Consultations
 - 120+ stakeholder meetings
 - 6 roundtables
 - 4 public engagements
- Submissions
 - 130 responses to our discussion paper
 - 1,200 responses to our online survey
- Research and analysis



What does the Anti-Discrimination Act cover now?

Protects people against:

- unlawful discrimination
- sexual harassment
- vilification
- victimisation
- unlawful requests for information

Discrimination is only unlawful if it occurs:

- on the basis of a protected attribute
- in an area of public life, e.g. education, work, receiving goods and services.



The need for reform

- Limitations of a reactive system
- Problems with the law
- Gaps in protection



Key reforms

- **Shifting the focus to prevention** of discrimination and harassment before it happens, instead of solely relying on people subjected to it to make complaints.
- **Extending protections** to ensure everyone who needs protecting under the Act is included.
- **Making the law easier to understand and apply** by modernising the language and definitions, and streamlining the complaints process to make it more flexible and efficient.



Refining discrimination

- Direct discrimination
- Indirect discrimination
- Combined grounds
- Reasonable accommodations



Direct discrimination

Current approach:

- Less favourable treatment
- Comparator – same/similar circs
- Discrimination must be ‘a substantial reason’ for the treatment

Changes proposed:

- ‘Unfavourable’ treatment because of attribute/s
- Removes comparator
- ‘One of the reasons’



Indirect discrimination

Current approach:

- Imposing a term (requirement, condition or practice)
- Unable to comply
- Higher proportion without attribute can comply

Changes proposed:

- Disadvantage test
- Simplifies, removes 'cannot comply' and 'higher proportion' aspects
- Retain reasonableness, expand factors to consider



Combined grounds

Current approach:

- Language of the Act presumes discrimination occurs because of 'an attribute', but a complaint can be made about more than one. Act currently covers:
 - Different grounds on different occasions (sequential)
 - Same occasion but two grounds (additive)
- Not covered:
 - Two or more operate at same time creating a distinct form of discrimination (intersectional, combined, compounding)

Changes proposed:

- Discrimination can occur because of 'one or more attributes or because of the effect of a combination of attributes'.



Reasonable accommodations

Current:

- Duty to make reasonable adjustments incorporated through indirect discrimination and implied by exceptions e.g. circs of impairment cause unjustifiable hardship

Changes proposed:

- Replace unjustifiable hardship exceptions with a positive, standalone duty to make reasonable accommodations for a person with a disability
- Non-exhaustive list of criteria to establish reasonableness



Improving the complaints system

- Increasing flexibility and efficiency
- Improving accessibility
- Increasing access to justice



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Which of the potential changes to the complaint process do you think is the most important?

- More flexible processes for the Commission
- Option of non-written complaints
- Longer time limitation (2 years)
- Option for organisations to make a complaint on behalf of affected groups
- Clearer representative complaints process
- Other: _____



Proving discrimination

Current approach:

- Onus or proof with the complainant (C) except:
 - Respondent (R) must prove reasonableness for indirect
 - Respondent must prove exemption applies

Changes proposed:

- Shared burden of proof (not a reverse onus)
 - Is there a prima facie case of discrimination? [C]
 - Was the treatment for a reason other than discrimination? [R]



Eliminating discrimination

- Positive duty to take *reasonable and proportionate measures* to eliminate discrimination and sexual harassment as far as possible
- Factors to determine if reasonable and proportionate, e.g. size, nature and circumstances of business/operations, practicality/costs
- Staged implementation – allowing time for duty holders to take these steps



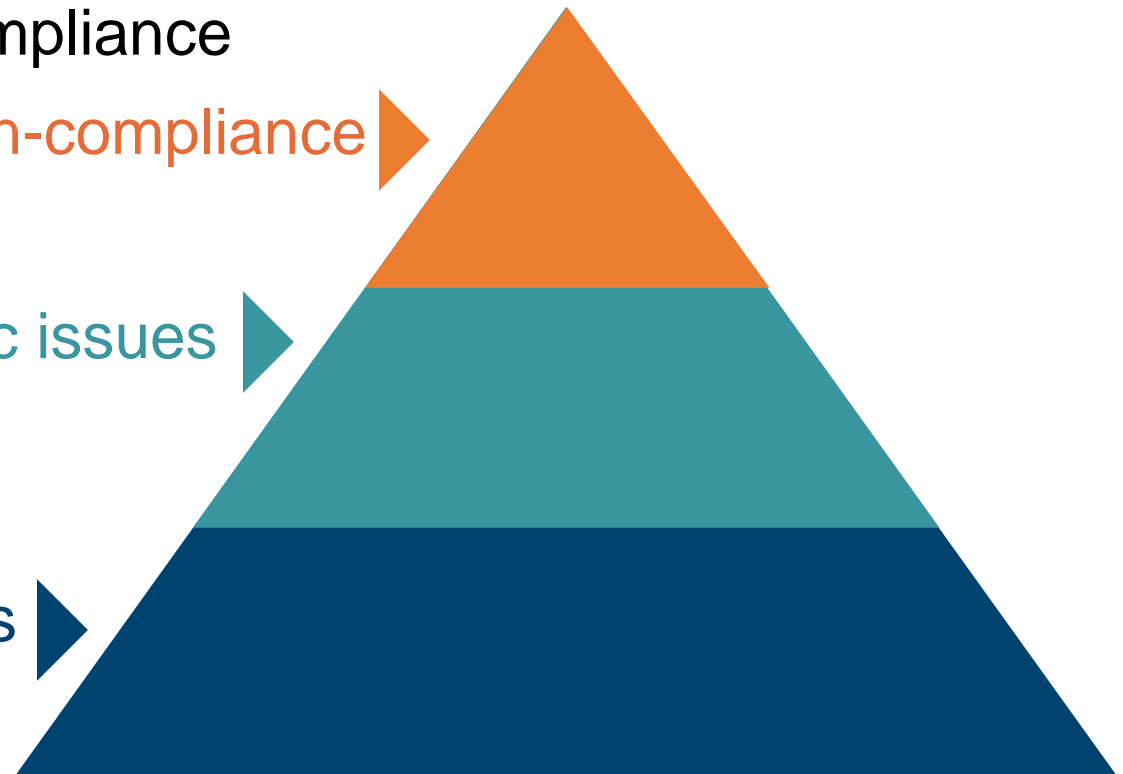
Eliminating discrimination

- Mechanisms to promote compliance
- Role of the Commission
- Tools to promote and enforce compliance

Addressing non-compliance

Cooperating to address systemic issues

Education and awareness



Updating attributes

- Impairment **becomes** Disability
- Gender identity
- Sexuality **becomes** Sexual orientation
- Lawful sexual activity **becomes** Sex worker
- Race (includes immigration or migration status)
- Family responsibilities **becomes** Family, carer or kinship responsibilities



Protecting new attributes

Additional attributes:

Sex characteristics; irrelevant criminal record; physical features; being subject to domestic or family violence; homelessness.

Considerations:

- Last changes 20 years ago – change in community expectations and groups experiencing discrimination
- Avoid diluting effectiveness of law with long list of attributes, particularly if overlapping

Criteria for inclusion:

- Is there a gap in protection?
- Is the proposed attribute of a comparable nature to those already covered by the Act?



Exceptions to discrimination

- **Considerations:**
 - Purpose?
 - Nature/impact of discrimination permitted?
 - Approaches of other jurisdictions
 - Harmony with federal laws
 - Human rights considerations
- **Changes to:** non-profits, clubs, sport, religious bodies, superannuation and insurance, prisoners.
- **Removal of:** work with children, assisted reproductive technology.



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If these recommendations become law, what is the single most important factor that will contribute to a successful implementation?

- Commission engagement with duty holders
- Commission community engagement with potential complainants
- Funding for the community legal sector
- Funding for courts and tribunals
- Monitoring progress of reforms through an oversight committee
- Other: _____



What's next?

What does this mean for the legal sector and for your clients?



Questions?

