



Balancing the Act

Issue 39 Summer 2016-2017

25 years in stories

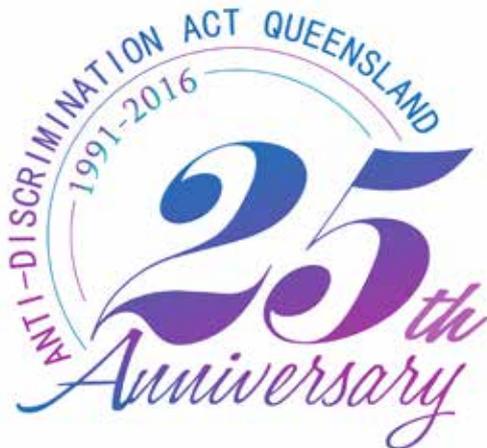
On 3 December 1991, the Queensland Anti-Discrimination Bill was passed by the Queensland Parliament. The following year, on 30 June 1992, the main provisions of the Act came into force, giving Queenslanders specific, state-based protection from discrimination, sexual harassment, and associated objectionable conduct for the first time. It was a legislative expression of the standards of civilized behaviour that society expects and a clear message that discrimination was not appropriate.

To mark the 25th anniversary of the Anti-Discrimination Act 1991, the ADCQ partnered with the State Library of Queensland to produce a collection of digital stories exploring the impact of the Act, and how it has adapted in response to the needs of Queenslanders. The collection reveals personal stories and reflections from a range of people including advocates, complainants, politicians, legal professionals, and activists.

‘Great progress has been made over the past 25 years in terms of changing community standards, and that is important to acknowledge. But what we often don’t get to hear are those personal stories about how individual lives have been affected by discrimination, and the difference the legislation has made in giving people a voice’, said Commissioner Cocks.



Kerriann and Lee from Working Women Queensland viewing the digital stories at the launch event



The digital stories project arose from the ADCQ’s desire to create a lasting legacy from this significant legislative milestone. ‘We saw the 25th anniversary as a platform to further educate Queenslanders about the history and significance of human rights legislation in our State’, said Anti-Discrimination Commissioner, Kevin Cocks.

The digital stories were officially launched at an event at the State Library of Queensland on 17 November. The collection currently contains five stories and a compilation video. All videos can be accessed through the ADCQ website, the State Library YouTube channel, or the library catalogue.

In 2017 a web-based timeline will be released by the ADCQ, highlighting significant cases and events in the life of the Anti-Discrimination Act.

What’s your story?

Do you have your own story about the impact the *Anti-Discrimination Act* has had on your life? We’d love to hear from you.

Email: website@adcq.qld.gov.au

Commissioner's Foreword



Anti-Discrimination Commissioner,
Kevin Cocks AM

Recently, the Premier, Annastacia Palaszczuk, announced plans to introduce a Human Rights Act for Queensland. So, how would a Human Rights Act help us achieve a sea change, a cultural shift to:

- create spaces and places for empathetic leadership and decision-making; and
- operate from a strength-based approach, as opposed to a deficit-based approach?

Much will be heard over the next few months about rights mechanisms being a 'lawyers picnic', or about putting too much power in the hands of an unelected judiciary. But that is not the model proposed for Queensland. The model proposed is based substantially on the Victorian *Charter of Human Rights and Responsibilities* enacted ten years ago. The Victorian model proposed is a 'dialogue model' in which the different arms of government all play a part in developing a human rights culture *from the ground up*.

This dialogue model is preferred by most jurisdictions with a legislative human rights instrument. The UK has it; New Zealand has it; and, to an extent, Canada's Charter is also dialogue-based.

Under a Human Rights Act or Charter, human rights are part of policy decisions and developments from the outset, rather than waiting until a right is violated, or an act of discrimination occurs. In other words, these instruments are about preventing rights violations and discrimination before they happen, rather than trying to repair things after the fact. These instruments are about using government processes in a positive and proactive way.

A Human Rights Act for Queensland offers the opportunity to shift to a strength-based approach. Rather than responding to a problem after it occurs, a Human Rights Act is intended to change the culture of government, the public sector, and broader society so that these problems will not occur in the first place. It is, in the simplest terms, about early intervention, about getting it right the first time rather than fixing it later. It is about the government, community, business, and individuals having a common purpose, and that is to create a society where we dismantle institutional and structural barriers that systematically discriminate against people because of their race, gender, age, impairment, sexuality, or religious belief etc.

The benefits of a Human Rights Act based on the dialogue model would be felt close to home. As Eleanor Roosevelt, one of the driving forces behind the *United Nations Declaration of Human Rights*, explained:

'...universal human rights begin...in small places, close to home — so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination.'

If this is right — and my experience as Queensland's Anti-Discrimination Commissioner certainly suggests it is — then we must look to those 'small places' to ensure whatever occurs in them respects human rights. We must remember that decisions which may seem of little consequence to the decision maker can have profound consequences for the individual involved.

I believe a Human Rights Act would continue the process of transformative cultural change begun with the introduction of the Queensland *Anti-Discrimination Act 1991*. Anti-discrimination laws have raised the standards in which we as a society function. A Human Rights Act would provide us with further cause to see our roles as legislators, policy makers, program/service providers, advocates and citizens within the context of leaders and decision-makers who are guided by human rights principles.

There is a growing collection of case studies from jurisdictions where Human Rights Acts and Charters exist. What strikes me about many of these cases is that the results from conciliation do not often include huge financial compensation, but instead focus more on acknowledgement, apology, and a restorative, human element. In other words, they are about the small things which can be done in small places to make a big difference to individual lives.

The wellbeing and productivity of whole communities is improved when diversity is valued and rights are respected. Equally, the way in which people experience public services can impact on their physical and mental health, as well as on the demands that they place on other public services down the track.

In all, empathetic leadership and decision-making can be as much about common sense and cost-effectiveness as it is about human rights. In the same way, human rights are as much about common sense and practical results as they are about grand statements of principle.

A Human Rights Act for Queensland

At the Queensland Labor Party's state conference on 28 October, the Premier revealed that Cabinet has agreed to introduce a Human Rights Act for Queensland, modelled on the Victorian Charter of Human Rights and Responsibilities Act 2006, into Parliament in 2017.

Queensland Anti-Discrimination Commissioner, Kevin Cocks, believes that Premier Anastacia Palaszczuk's commitment to introduce a Human Rights Act in Queensland is a significant step towards achieving individual dignity and equal opportunity for all Queenslanders. 'This is a welcome announcement from the Premier. There is still some way to go until a Human Rights Act becomes a reality for Queenslanders,' said Commissioner Cocks. 'For human rights legislation to be passed, it requires a majority vote of Queensland's parliamentarians. However, this announcement certainly continues the momentum that was generated through the Parliamentary inquiry earlier this year.'

A Human Rights Act for Queensland



Commissioner Cocks stressed that, 'Human rights belong to all Queenslanders.'

'Queensland desperately needs the cultural reform that would come from a Human Rights Act, and the time for that reform is now. Queensland can learn from, and improve on the Victorian Charter. Strengthening the way that Queenslanders' human rights are respected, protected, and fulfilled is one of the most important contributions the Parliament can make to future generations,' said Commissioner Cocks.

Sunshine Coast community engagement and partnership

This year, in response to rapid demographic changes in the Sunshine Coast, the Anti-Discrimination Commission worked with Multicultural Affairs Queensland, the Sunshine Coast Council, trustees for the Muslim Organisation Sunshine Coast (MoSC), and staff from the University of the Sunshine Coast to build a fairer and more inclusive Sunshine Coast.

The ADCQ and our Sunshine Coast partners have planned a broad community engagement strategy for the region. The aim is to understand and address barriers to participation and social inclusion within the Sunshine Coast's multicultural community. The Commission is committed to empowering individuals and communities to create opportunities for human rights to flourish.

Two community conversations on the topic of 'A fair and inclusive Sunshine Coast' have been held, attracting nearly ninety participants, most of whom were keen to take action on human rights issues that they identified through the conversations.

The Commission continues to partner with the Sunshine Coast Council and other partners in the Multicultural Conversations project. To capture the Sunshine Coast's multicultural story, the Council conducted an online survey, group conversations, and individual interviews. The stories have been collected and will soon be available as a booklet. Six stories were selected for a video that will be available on the Council's website shortly.

Queensland: an age-friendly community

In 2016, the Queensland Government launched a new action plan to build a more age-friendly community. Queensland: an age-friendly community outlines the priorities, initiatives, and services that will enable people of all ages to actively participate in community life. The action plan was put together based on feedback that was received through more than 9000 responses to an online community survey, as well as a seniors' summit, meetings, and forums with a range of stakeholders.



As part of the age-friendly community action plan, the ADCQ is offering free one-hour information sessions on preventing and dealing with age-discrimination. For more information contact our training team on 1300 130 670 or email training@adcq.qld.gov.au.

Language ability a characteristic of race

A woman, Ms Xi, who was of Chinese origin, and had limited ability to communicate in English, alleged that WorkCover failed to provide an interpreter for her when communicating about her claim.

The Queensland Civil and Administrative Tribunal (QCAT) dismissed her complaint, and she appealed against the decision on the basis that QCAT had made errors in applying the law.

Intervention by the Anti-Discrimination Commission

The Commission's functions include intervening in a proceeding that involves human rights issues, if the Commission considers it appropriate, and with the leave of the court hearing the proceeding. The Commission applies to intervene where it may be able to provide expert assistance to the court or tribunal.

The Commission intervened in Ms Xi's appeal, and made submissions about language as a characteristic of race, and about how a term is imposed in indirect discrimination.

Meaning of discrimination

Unlawful discrimination can be less favourable treatment because of an attribute (direct discrimination), or imposing an unreasonable requirement or term that a person cannot comply with because of their attribute (indirect discrimination).

Section 8 of the *Anti-Discrimination Act 1991* extends the meaning of discrimination on the basis of an attribute to include the characteristics of an attribute.

Appeal Tribunal findings

The Appeal Tribunal found there had been two errors of law, namely:

- The tribunal did not consider that having poor English skills was a characteristic of race, or that it was possible to indirectly discriminate against a person on the basis of that characteristic.
- The tribunal incorrectly identified the comparator for direct discrimination as a non-Chinese person with a limited command of English. It was incorrect to include the limited command of English, because this is a characteristic that people of a particular race generally have.

The Appeal Tribunal set aside the original decision, and the complaint was remitted for reconsideration before the same tribunal members who heard it at first instance.

You can access the Commission's submissions to the Appeal Tribunal in *Xi v WorkCover Queensland* [2016]

QCATA 134 (23 May 2016), from the Interventions page on the Commission website (<http://www.adcq.qld.gov.au/resources/legal-information/interventions>).

High Court comes to Brisbane

A complaint by a deaf woman, who was summoned for jury duty but excluded from a jury panel, is the first complaint under the *Anti-Discrimination Act 1991* (Qld) to go all the way to the High Court of Australia.

The woman, Ms Lyons, claimed she had been discriminated against because of her impairment and her reliance on an Auslan Interpreter. In July this year, five judges of the High Court heard the appeal in Brisbane.

The High Court held that by excluding the woman from a jury panel, the Deputy Registrar of the Court was simply applying the *Jury Act 1995* (Qld). The *Jury Act* provides that a person is not eligible for jury service if they have a physical or mental disability that makes them incapable of effectively performing the functions of a juror.

Ms Lyons was not able to effectively perform the functions of a juror because Queensland law does not allow an Auslan interpreter to be part of the jury deliberations. The appeal was dismissed.

The Anti-Discrimination Commission has advocated for amendment of the *Jury Act* to enable deaf people, including those who rely on an Auslan interpreter, to be able to perform jury duty.

You can access the decision of the High Court in *Lyons v Queensland* [2016] HCA 38 (5 October 2016) through the AustLII website (<http://www.austlii.edu.au/au/cases/cth/HCA/2016/38.html>).

Industrial Relations Commission to hear work complaints

The recent passing of the Industrial Relations Bill 2016 by the Queensland Parliament will impact on the way in which complaints in the area of work made to the Anti-Discrimination Commission Queensland, but not resolved through conciliation, are managed.

After the commencement of the Industrial Relations Act 2016, which is expected to be on 1 March 2017, work-related complaints that cannot be resolved through the ADCQ's conciliation process may be referred to the Queensland Industrial Relations Commission (QIRC), rather than the Queensland Civil and Administrative Tribunal (QCAT) for resolution. All non-work matters will continue to be referred to QCAT.

The QIRC will deal with work-related complaints, including when applying for work.

The new provisions apply to all work-related complaints that are currently within the jurisdiction of the Anti-Discrimination Act 1991. This includes complaints of sexual harassment, victimisation, vilification, unlawful requests for information, and reprisal if the allegations are related to work or the work-related areas.

All complaints accepted by the ADCQ prior to the commencement of the new legislation will continue to be referred to QCAT.

**DISCRIMINATION
LAWS
PROTECT
YOUR RIGHTS**

National Injury Insurance Scheme — a significant social reform

Since 1 July 2016, anyone who sustains serious injuries in a motor vehicle accident in Queensland may be eligible to receive necessary and reasonable lifetime treatment, care and support under the National Injury Insurance Scheme Queensland.



On 26 May 2016, the Queensland Parliament enabled a significant social reform by passing the National Injury Insurance Scheme Queensland (NIISQ) Bill. Queensland Treasurer, Curtis Pitt, commented,

'This landmark event would not have been possible without the effort and involvement of key stakeholders such as [the] Anti-Discrimination Commission Queensland. I would like to personally thank you for your valued contribution, including [the Commission's] submission to the Parliamentary Committee, and your engagement with government.'

Importantly, the NIISQ retains participants' common law rights, and provides freedom of choice and self-determination.

The NIISQ Fund will be established and will be fully funded through a levy paid by motorists in conjunction with their compulsory third party premium and registration. This levy will mean, on average, a net additional cost of \$32.00 for a standard car. Once the scheme is introduced, vehicle registration in Queensland will still be well below the national average.

New Stretch Reconciliation Action Plan for ADCQ

In November, the ADCQ launched our new Stretch Reconciliation Action Plan (RAP) for 2016–2019. This is the Commission’s second RAP, and builds on the success of the first RAP which outlined the role ADCQ would play in closing the unacceptable gaps between Aboriginal and Torres Strait Islander peoples and other Australians.

The focus of the initial RAP was on supporting cultural reform by working in ways that respect, value, engage, and support Aboriginal and Torres Strait Islander peoples.

The Stretch RAP focuses on moving closer to achieving our long-term vision of safe, caring, and connected communities, and a fair and inclusive Queensland, by actively promoting ADCQ’s commitment to reconciliation and genuine partnerships.



The Stretch RAP would not be possible without the commitment of Commission staff, the Aboriginal and Torres Strait Islander Unit, and our close partnership with Reconciliation Australia. The three-year commitment to building relationships, respect, and opportunities will be implemented by the Executive Leadership Team and the RAP Working Group. For the Commission, it will mean:

- being aware of current Aboriginal and Torres Strait Islander issues;
- learning the history of local communities;
- standing up and speaking out when racism occurs ;and
- informing others of the facts to help foster a better understanding.

The Commission’s vision is for a fair and inclusive Queensland that respects Aboriginal and Torres Strait Islander peoples.

ADCQ’s new Stretch RAP is available on the Commission’s website at www.adcq.qld.gov.au.

Human Rights Month 2016

Flexible work practices and mentally healthy workplaces were the focus of this year’s Human Rights Month which ran from 10 November to 10 December. Building on the success of the inaugural Fair and Inclusive Workplaces campaign in 2015, this year the ADCQ partnered with Mental Illness Fellowship Queensland (MIFQ) to take the campaign to a broader audience.

‘Our partnership with MIFQ gave the campaign extra gravitas’, said ADCQ Commissioner, Kevin Cocks. ‘We are the experts in anti-discrimination law and creating a fair and inclusive Queensland, but MIFQ are experts in their field of mental health. So, together we were able to deliver evidence-based, practical resources for workplaces’, said Commissioner Cocks.

Feature events during the month included a World Café conversation for workplace champions and human resource practitioners, and a panel discussion featuring experts on mental health, human rights, organisational psychology, management, and leadership.

Workplaces got involved in the campaign by participating in ‘Get Your Head Around It’ sessions presented by MIFQ and ADCQ, hosting conversations about the key topics, displaying key message posters, and pledging their commitment to create fair and inclusive workplaces.

Human Rights Month resources will remain on the ADCQ website for workplaces to access as they continue their work in creating fair and inclusive workplaces.



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New LGBTI rights web page



The Anti-Discrimination Commission Queensland has a vision for a fair and inclusive Queensland that embraces diverse gender identities and sexualities. We believe that educating the community about the protections from discrimination, vilification, and sexual harassment that arise under the Anti-Discrimination Act 1991 (Qld) plays a vital role in promoting the rights of LGBTI Queenslanders.

With this vision in mind, the Commission is producing an LGBTI website page to provide people from the LGBTI community specific information on how the Anti-Discrimination Act 1991 applies to them, as well as providing a resource for employers and the wider community.

- The page will include information on:
- Gender identity and Your Rights;
- Sexuality and Your Rights;
- Barriers to Inclusion for LGBTI Queenslanders;
- FAQs about LGBTI Issues;
- Resources and Where to Get Help

The website will be available to view from January 2017.

Adoption available to same-sex couples in Qld

On 2 November 2016, Queensland Parliament passed the Adoption and Other Legislation Amendment Bill 2016, now allowing for same-sex couples to adopt children in Queensland. These changes bring Queensland into line with most other states in Australia. Extensive social science research confirms that same-sex couples provide as nurturing an environment for children as any other family structure.

The ADCQ supports this important measure to remove discrimination against same-sex couples, as one of the last remaining areas of unfair treatment in legislation involving LGBTI people in Queensland.

Did you know?

Transgender flag



The trans pride flag was designed by an American transgender woman, Monica Helms, in 1999, and is recognised by many trans communities.

Helms describes the meaning of the transgender flag as follows:

'The stripes at the top and bottom are light blue, the traditional color for baby boys. The stripes next to them are pink, the traditional color for baby girls. The stripe in the middle is white, for those who are intersex, transitioning or consider themselves having a neutral or undefined gender. The pattern is such that no matter which way you fly it, it is always correct, signifying us finding correctness in our lives.'

Nearly 1 in 2 Australians will experience Mental illness

The statistics don't discriminate.

Why would you?

adcq ANTI DISCRIMINATION COMMISSION QUEENSLAND
adcq.qld.gov.au 1300 130 670

Public education calendar February-June 2017

Date	Session	Time	Location
7 Feb	Introduction to the Anti-Discrimination Act for Community Organisations	9am - 11am	Townsville
15 Feb	Introduction to the Anti-Discrimination Act ^^	10am - 2pm	Brisbane
16 Feb	Introduction to the Anti-Discrimination Act for Managers	1pm - 5pm	Emerald
17 Feb	Unconscious Bias	8am - 12pm	Emerald
1 Mar	Contact Officer Refresher	12.30pm - 4.30pm	Mackay
2 Mar	Contact Officer	9am - 4.30pm	Brisbane
2 Mar	Contact Officer	9am - 4pm	Mackay
7 Mar	Introduction to the Anti-Discrimination Act for Managers	9.30am - 1.30pm	Rockhampton
13 Mar	Unconscious Bias	9.30am - 1.30pm	Rockhampton
14 Mar	Introduction to the Anti-Discrimination Act	9am - 11am	Cairns
15 Mar	Unconscious Bias	9am - 1pm	Brisbane
15 Mar	Introduction to the Anti-Discrimination Act for Managers	9am - 1pm	Cairns
15 Mar	Introduction to the Anti-Discrimination Act for Managers	9am - 1pm	Townsville
16 Mar	Unconscious Bias	9am - 1pm	Townsville
16 Mar	Recruitment & Selection	9.30am - 1.30pm	Rockhampton
22 Mar	Managing complaints in the workplace	9am - 4pm	Cairns
28 Mar	Recruitment and Selections	9am - 1pm	Cairns

29 Mar	Contact Officer Refresher	9am - 1pm	Brisbane
29 Mar	Contact Officer	9am - 4pm	Townsville
30 Mar	Introduction to the Anti-Discrimination Act for Managers	9am - 1pm	Brisbane
30 Mar	Contact Officer Refresher	9am - 1pm	Townsville
5 Apr	Introduction to the Anti-Discrimination Act for Managers	12.30pm - 4.30pm	Mackay
6 Apr	Unconscious Bias	9am - 1pm	Mackay
6 Apr	Business Benefits of Diverse & Inclusive Workplaces	9am - 12pm	Brisbane
6 Apr	Introduction to the Anti-Discrimination Act for Community Organisations	2pm - 4pm	Mackay
11 Apr	Introduction to the Anti-Discrimination Act for Community Organisations	9am - 11am	Townsville
19 Apr	Contact Officer	9am - 4pm	Cairns
20 Apr	Contact Officer Refresher	9am - 1pm	Cairns
27 Apr	Unconscious bias	9am - 1pm	Cairns
16 May	Introduction to the Anti-Discrimination Act for Managers	9am - 1pm	Bundaberg
17 May	Unconscious Bias	9am - 1pm	Bundaberg
13 Jun	Introduction to the Anti-Discrimination Act for Managers	10am - 2pm	Gladstone
13 Jun	Introduction to the Anti-Discrimination Act for Community Organisations	9am - 11am	Townsville
14 Jun	Unconscious Bias	10am - 2pm	Gladstone

^^ Community Organisations can register free with a maximum of 3 participants per organisation

Can't find a training date that suits you? Check out our online and customised training options at www.adcq.qld.gov.au/training

RACISM. IT STOPS WITH ME

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