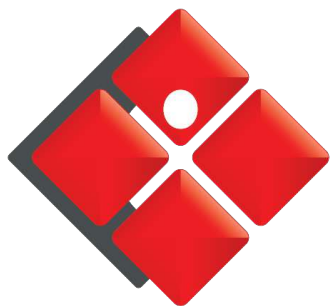


Submission to the
Department of Justice and Attorney-
General

Draft Anti-Discrimination Bill 2024

18 March 2024



PeakCare
Queensland Inc.

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INTRODUCTION

On 28 February 2022, PeakCare Queensland Incorporated (PeakCare) provided information in response to the Queensland Human Rights Commission's *Discussion Paper on the Review of Queensland's Anti-Discrimination Act*. In the submission, we included a response to each question raised in the initial discussion paper for the Commission's consideration. We now welcome the opportunity to provide feedback on the draft new Anti-Discrimination Bill 2024 (the draft Bill) which is intended to replace the *Anti-Discrimination Act 1991* (Qld).

ABOUT PEAKCARE

PeakCare is the peak body for child and family services in Queensland, providing an independent voice representing and promoting matters of interest to the non-government sector.

Across Queensland, PeakCare has more than 80 member organisations which include small, medium and large, local, state-wide and national non-government organisations which provide prevention and early intervention, generic, targeted, and intensive family support to children, young people, adults and families. Member organisations also provide child protection services, foster care, kinship care and residential care services for children and young people and their families who are at risk of entry to, or who are in the statutory child protection system.

A network of associate members and supporters also subscribe to PeakCare. This includes individuals with an interest in child protection, youth justice and related services, and who are supportive of PeakCare's policy platform around the rights and entitlements of children, young people and their families to safety, wellbeing and equitable access to life opportunities.

ABOUT PEAKCARE'S SUBMISSION

PeakCare strongly contends that legislation designed to prevent discrimination needs to appropriately protect the human rights of all people, regardless of their gender, age or sexuality. We know there is a direct link between social inclusion and the promotion of acceptance, with improved wellbeing and a person's willingness and capacity to participate in society. PeakCare supports the move to a more proactive approach for addressing the scourge of discrimination in Queensland. The draft Bill builds on the previous Act's successes and learnings will help create a more cohesive, inclusive and welcoming community for all Queenslanders.

PEAKCARE'S SUBMISSION

PeakCare believes the draft Bill achieves its purpose, namely to:

- promote and protect the rights to equality and non-discrimination
- eliminate discrimination, sexual harassment, vilification and other unlawful conduct to the greatest extent possible
- promote and facilitate the identification and elimination of systemic causes of discrimination, sexual harassment, vilification and victimisation
- promote and facilitate voluntary compliance with the legislation
- establish a flexible and efficient process for resolving complaints about alleged contraventions of the legislation.

Substantive equality

To achieve substantive equality we believe there is a need to focus on equalising the starting point, recognising that it may be necessary to accommodate differences, and treat various groups differently to achieve real (and substantive) equality. We are therefore in support of the affirmative measures included in the draft Bill for the purpose of promoting or realising substantive equality for members of a group with a protected attribute or a particular combination of protected attributes (clause 16).

Positive duties

PeakCare supports the positive duties incorporated in the draft Bill – to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, vilification and victimisation as far as possible (clause 19) and to make reasonable accommodation for a person with disability (clause 18).

Ensuring human rights are upheld is of great importance, particularly where there is additional vulnerability. To this end, we are in support of the compliance functions for the Queensland Human Rights Commission including a new regulatory approach for promoting compliance with the new duties and obligations under the Bill (part 10). We are particularly interested in how we can support the work of the Commission in the first level of the regulatory pyramid: Building an understanding of obligations. The first level is directed at building a level of understanding of obligations by duty holders and the community more generally, with the aim of both preventing discrimination, sexual harassment, vilification and other unlawful conduct as well as educating people about their rights to be protected from this conduct. We believe greater investment by Government in advocacy services including peak bodies and consumer representative groups can support the work of the Queensland Human Rights Commission in raising the awareness of available protections for all Queenslanders.

Terminology

In our previous submission to the Queensland Human Rights Commission about the Review of the Anti-Discrimination Act, we recommended a shift away from ‘complaint-based’ terminology so as to not perpetuate negative connotations or create barriers for people who may already face significant disadvantage. While the terminology does not appear to have changed in the draft Bill, we appreciate the shift to a focus on substantive equality, and the positive duty to prevent discrimination and other unlawful conduct. Other updates to terminology, for which we expressed support in our previous submission, have been incorporated. These include sexual orientation (previously sexuality) and sex work activity (previously lawful sexual activity).

PeakCare supports the expanded dispute resolution function for the Queensland Human Rights Commission and amendments intended to provide a more flexible and efficient dispute resolution process. PeakCare understands the definition of sexual harassment has been retained, as per the recommendation in the Building Belonging Report, to avoid confusion and a potentially narrowing of the law. We are in support of the clarification in the draft Bill that a remark with sexual connotations can occur orally and in writing, so as not to imply sexual harassment is always of a physical nature.

Responding to vulnerability and disadvantage

Intersectional disadvantage has been considered in the draft Bill through the provisions in clause 11 that recognise cumulative (discrimination on the basis of two or more protected attributes) and intersectional discrimination (where a person experiences discrimination based on a particular combination of protected attributes). Given the particular vulnerabilities of children, we support the increased timeframe within which to make a complaint from one (1) year to two (2) years after a person turns 18 if they were a child when the alleged contravention occurred (clause 100). We are also pleased to note the additional flexibility afforded to the Commissioner to deal with a complaint that was not made within the complaint period if the Commissioner considers there are exceptional circumstances and it is in the interests of justice to do so (clause 117).

We re-affirm our support for additional attributes such as physical features, gender, irrelevant criminal record, sex characteristics, subjection to domestic or family violence, homelessness and the inclusion of immigration status as an aspect of race. PeakCare strongly believes legislation designed to prevent discrimination needs to appropriately protect the human rights of all people and are pleased to see the inclusion of these additional attributes as protected from discrimination in the draft Bill.

Increasing accessibility

PeakCare is pleased to note the new requirement for the Commissioner to give help to a complainant to put a complaint in writing if satisfied that the complainant needs help to do so (clause 107), and capacity to authorise another person to make a complaint if satisfied that a person cannot make it (clause 101), because this promotes participation and increases accessibility for people from a diverse range of abilities and from culturally and linguistically diverse backgrounds. PeakCare notes the draft Bill also contains amendments to the *Corrective Service Act 2006* (Qld) for discrimination complaints made by offenders (a prisoner or person who is subject to a community-based order), modifying the internal complaints process to be consistent with the internal complaint process under the *Human Rights Act 2019* (Qld). As per our previous submission to the Queensland Human Rights Commission, we are in support of this modification in better supporting prisoners' human rights and entitlements.

Further, as per the recommendation of the Building Belonging Report and comments made in our previous submission, PeakCare supports the inclusion of the provision that allows for complaints by organisations who have an interest in promoting the interests or welfare of persons with protected attributes (interested body complaints) and representative complaints in certain circumstances (Part 9). We are pleased to see the inclusion of this provision in the draft Bill as an important mechanism for ensuring all people can have a voice and be appropriately represented when seeking to address discrimination, particularly those who already face significant disadvantage and systemic discrimination.

Exceptions

While PeakCare supports the draft Bill not permitting discrimination by a religious body on the basis of attributes such as sexual orientation or gender identity, we are concerned with the inclusion of an exception whereby discrimination is permitted if in accordance with the doctrines, tenets or beliefs of the religious body concerned (clause 62). As per our previous submission, PeakCare does not support any legislative provision that empowers or provides permission for religious organisation to discriminate, particularly when providing services on behalf of the State.

While others hold a greater level of expertise on the issue of inclusion in sporting activities, we look forward to being part of continued discussions about the impact of the restricted participation in competitive sports for people over 12 years on the basis of sex or gender identity (clause 64). We hope there will be ongoing monitoring and transparent reporting on the instances in which the definition of 'reasonable' restriction is used to exclude a young person from a sporting activity on this basis, so as to determine the impact of this section of the draft Bill on vulnerable young people.

CONCLUDING REMARKS

PeakCare believes the draft Bill is an important step for Queensland towards the promotion and protection of human rights, equality and non-discrimination. We appreciate the inclusion of additional protections for people experiencing significant disadvantage and removal of barriers to access for various groups. If you have any questions in relation to this submission, please contact Ms Kate Bjur, General Manager, Policy, Research and Advocacy by phone at (07) 3368 1050 or email at kbjur@peakcare.org.au.

Thank you for the opportunity to provide a submission on the draft Anti-Discrimination Bill 2024.

Yours sincerely,



Mr Tom Allsop

Chief Executive Officer

PeakCare Queensland Incorporated

(Pronouns: he/his)

18 March 2024