



# Anti-Discrimination Act consultation paper submission

March 2024



The Ethnic Communities Council of Queensland acknowledges the Aboriginal and Torres Strait Islander peoples of this state and nation. We acknowledge the Traditional Owners of the lands on which we live, learn and work.

We pay our respects to ancestors and Elders past, present and future. We honour Aboriginal and Torres Strait Islander peoples' unique culture and spiritual connection to the land, waters and seas and their contribution to enriching Queensland and Australia's communities.

### **About the Ethnic Communities Council of Queensland**

The Ethnic Communities Council of Queensland (ECCQ) is the peak body representing culturally and linguistically diverse (CALD) communities in Queensland. We have a membership base of over 450 individuals, ethno-specific organisations and multicultural owned businesses. We have been pioneering this work for over 45 years, since 1976.

Our work focuses on strengthening and advocating for the needs of CALD communities throughout Queensland. We do this by building their capacity through the delivery of leadership training, strengthening community associations as well as through the delivery of culturally tailored healthcare programs.

We believe that Australia's systems should allow for every Australian, irrespective of their background, to be able to participate and contribute in all aspects of Australian society. We know that the diversity of our multicultural society is one of Australia's greatest strengths.

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## Introduction

ECCQ welcomes the Queensland Government's move to update the Anti-Discrimination Act 1991, which will support multicultural Queenslanders by legislating against the discrimination and racism they face. 22.7% of Queensland's population were born overseas, as at the 2021 census<sup>1</sup>. ECCQ believes that the wellbeing of culturally and linguistically diverse (CALD) people is part of the foundation of a strong, cohesive multicultural society and a stronger Queensland.

ECCQ commends the Queensland government on incorporating some important changes to the draft Anti-Discrimination Act bill, including:

- the emphasis on substantive equality,
- the inclusion of immigration and migration status in the definition the protected attribute of 'race' (Schedule 1),
- the definition of discrimination being broadened to include direct or indirect discrimination in the draft bill (clause 15),
- the inclusion of a focus on positive duties (including clause 19),
- the requirement for the Commissioner to give help to a complainant to put a complaint in writing if satisfied that the complainant needing help to do so (clause 107),
- the extended timeframe for complaints to be made and the ability to accept complaints after 2 years, if there are exceptional circumstance (clause 117).

ECCQ has identified several areas for further consideration as this draft bill is being reviewed. These include:

- the omission of discrimination of based on language spoken,
- the omission of discrimination of people due to their cultural dress, cultural jewellery, cultural hairstyles and cultural tattoos within the definition of protected aspects of physical appearance (Schedule 1),
- the need for the complaints process to include the ability to make complaint with the support of interpreter transcribing and audio-visual methods,
- that a communication and education strategy be developed and implemented once the Act is in place to ensure that community members who are affected by this bill are aware of their rights and responsibilities.

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<sup>1</sup> Australian Bureau of Statistics (2022) *Cultural diversity of Australia*.

Whilst the updates to the new bill are welcomed by ECCQ, we recommend these further changes be made to ensure the system is accessible to everyone, particularly migrant, refugee-background and asylum-seeker background people.

## Draft Bill Consultation process

The request to respond to the draft Anti-Discrimination Bill consultation paper was published by Queensland Government on 6<sup>th</sup> March 2024 with a response to be provided by 22<sup>nd</sup> March 2024. This occurred during Queensland's Women's Week and in the lead up to Harmony Week, which traditionally require many non-government organisations - and particularly those in the multicultural sector - to conduct and participate in numerous events. ECCQ takes this opportunity to ask the government to consider allowing more time for responses to the draft bill to be sent, and encourage them to carry out more inclusive consultations, so that even the most vulnerable and hard-to-reach community members - specifically migrant-background, refugee-background, and asylum seekers - can have a say on matters of significant impact on their lives. Given the minimal time provided to submit feedback on the consultation paper, ECCQ discussed the updates with key members to inform our response.

ECCQ believe a positive future is possible through changes to policies, legislation, and mandatory requirements for government agencies. Proactive policies and legislation can bring the needed change in the norms which shape social and systemic relationships and practices so that culture and attitudes are changed, and Queensland can become a flourishing, unified state.

## Omissions in the draft Anti-Discrimination Act

ECCQ has identified three key omissions to the protected attributes in the draft Anti-Discrimination Act, which has been published.

Language spoken is the first attribute identified by ECCQ that has been omitted from the list of protected attributes of a person in Clause 10 of the draft bill. It has been regularly reported to ECCQ that discrimination occurs due to the language a person speaks, or even the accent a person has. Members have reported to us that the behaviour of people towards them is often discriminatory when their first language is a language other than English, or they have an accent. This includes the questions people receive regarding their qualifications, their understanding of English, their ability to fulfill a job role, their ability to complete a qualification and more. This occurs in many settings, including workplaces, educational institutions and at government services. One example of this, was shared by a participant in the recent research conducted in partnership between the Scanlon Foundation, ECCQ and Griffith University shared in [the Report: Racism within Australian Schools – Impacts and Possible Solutions](https://eccq.com.au/publications/report-racism-within-australian-schools-impacts-and-possible-solutions/)<sup>2</sup>. In the report there is a description given by a teaching support staff

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<sup>2</sup> Bosco Ngendakurio, J. (2024) Report: Racism within Australian Schools – Impacts and Possible Solutions. <https://eccq.com.au/publications/report-racism-within-australian-schools-impacts-and-possible-solutions/>

member of a school changing a students' subjects to move them into Vocational Education Training subjects, as opposed to mainstream subjects. This action prevented them following a direct pathway into university.

Another example is what a complainant to the Australian Human Rights Commission experienced while seeking employment. The person advised that she is from Switzerland and speaks English with a French accent. She applied for a position as a conference producer through a recruitment agency. A staff member from the agency left a message for her, but when she called back and spoke to this person, she was notified that the placement was not available anymore. She later asked her partner and friend, who do not have French accents, to call and enquire about the position, and they were told the position was still open. The complainant claimed the respondent agency discriminated against her because of her origin and her accent.<sup>3</sup>

The case “Xi v WorkCover Queensland” in 2016 further shows discrimination based on language spoken while dealing with complaints in institutions. It is an example of when a tribunal did not have specific elements in the law to protect a person who was discriminated against on the basis of language spoken. In this case a woman of Chinese origin, who had limited ability to communicate in English, alleged that WorkCover had failed to provide an interpreter for her while trying to communicate her claim. Her complaint was dismissed by the Queensland Civil and Administrative Tribunal, and she appealed this decision. The Queensland Human Rights Commission intervened in this appeal and made submissions about language as a characteristic of race, also imposing a term in indirect discrimination. The Appeal Tribunal found that the tribunal “was unable to properly consider whether the complainant had demonstrated that a term had been imposed on her, because it did not approach the complaint on the basis that having poor English skills was a characteristic of the attribute of race, and that it was possible to indirectly discriminate against a person on the basis of that characteristic”<sup>4</sup>. Furthermore, discussing about direct discrimination and section 8 of the Anti-Discrimination Act 1991, the Appeal Tribunal considered that the person, not having English as a first language, and therefore, having poor spoken and written English skills, possibly needing assistance with English, are often imputed to a person with the attribute of race.

Having language considered as a protected attribute by itself, and not interpreted within the attribute of race, prevents misinterpretations that could happen within tribunals, and complaints - like the previous example illustrates - from being dismissed.

Another area that ECCQ has identified as being omitted in the draft bill, is the cultural hairstyle, clothing, jewellery or tattoos a person has. ECCQ propose that this has been omitted from the definitions of physical appearance, which is a protected attribute in the draft bill. Currently the

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<sup>3</sup> <https://humanrights.gov.au/our-work/race-discrimination/racial-discrimination-act-complaints-conciliated-outcomes-examples>

<sup>4</sup> QLD Human Rights Commission Race Case Studies. <https://www.qhrc.qld.gov.au/resources/case-studies/race-case-studies>

definition of physical appearance excludes a person’s chosen hairstyle or “any other part of the person’s physical appearance that has been freely chosen, including, for example, by cosmetic surgery, piercing or tattooing”<sup>5</sup>, whereas a person’s weight, size or height and the presence of a birth mark or scar on a person’s face or body are protected within the definition.

One example that shows how discrimination can include cultural practices around hairstyle, is the case of *Taniela v Australian Christian College Moreton* in 2020<sup>6</sup>. This case concerned a complaint made on behalf of five-year-old Cyrus Taniela, which argued that his school’s decision to discontinue his enrolment, unless he cut his hair to satisfy the school’s uniform policy, amounted to discrimination on the basis of race and sex, under section 39 of the Queensland Anti-Discrimination Act 1991. Cyrus was of Cook Island and Niuean descent, and in keeping with a Cook Island custom, his hair had remained uncut since birth so he could take part in a hair cutting ceremony at around age seven or eight. This ceremony ‘is a male rite-of-passage that symbolises the boy’s transition to manhood’ and was scheduled to take place on Cyrus’s seventh birthday in September 2021 in Sydney. Among other arguments, the tribunal held that in the circumstances, the cultural practice and its timing is a characteristic of the attribute of race. It said that excluding a child from school is a serious step to take, and has the potential to cause dislocation, emotional distress and embarrassment, and long-lasting effects on the child’s perception of their place in a community.

Another example of this is *Morale James*, who was turned away from entering a night club in June 2022, due to her cultural facial tattoos<sup>7</sup>. Ms James shared that her tattoos were an important tradition in her mother’s Papua New Guinean village, Gaba Gaba, where women’s full-body tattooing dates back generations. Due to Ms James following this tradition, she was refused entry to a public venue. This has also occurred to Maori woman Juanita McNamara, who claimed the Maya Mexican in Fortitude Valley refused her entry, due to her cultural face tattoos<sup>8</sup>.

One example shared by the Sikh Nashkam Society of Australia, was that school students were not allowed to “have articles of faith on them”. These included:

- the kara (iron/steel band on dominant wrist).
- the uncut hair and the wearing of a turban or a patka (smaller turban) and

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<sup>5</sup> Draft Anti-Discrimination Act Bill, p.166.

<sup>6</sup> *Taniela v Australian Christian College Moreton Ltd* [2020] QCAT 249 <https://law.uq.edu.au/research/human-rights-case-law/taniela-v-australian-christian-college-moreton-ltd-2020-qcat-249#:~:text=This%20case%20concerned%20a%20complaint,basis%20of%20race%20and%20sex.>

<sup>7</sup> Brisbane nightclub’s tattoo policy brings Queensland anti-discrimination law into focus (2022) <https://www.abc.net.au/news/2022-06-30/queensland-tattoo-ban-has-cultural-implications/101191558>

<sup>8</sup> Its happened again! More cultural tattoo discrimination at Brisbane venues (2023) <https://discriminationclaims.com.au/cultural-face-tattoo-discrimination/>

- male students cannot remove facial hair.<sup>9</sup>

Also, “Sikh children are asked to cut their hair to comply with the school uniform policies. If they don’t cut their hair, their enrolments are not accepted.” The impact of this discrimination is harmful, and has wide-reaching impacts on individuals, their families, their friends, their communities, and Queensland society.

***Recommendation: that ‘language spoken’ be added to the list of protected attributes within clause 10 of the Anti-discrimination Act.***

***Recommendation: that cultural dress, cultural hairstyles, cultural jewelry and cultural tattoos be included as protected attributes within the definition of physical appearance.***

## Complaints process

ECCQ recommends that in implementing the proposed complaints process in the updated Anti-Discrimination Act, alternatives to completing forms in English be provided. English is often an additional language for people from culturally diverse backgrounds, and dependent on an individual’s migration journey and settlement experience they may not have the comprehension of English to understand the complaints process. In addition, spoken and written English are different skills. If complaints are only being accepted in written form (clause 107), the system is adding a layer of complexity, which inadvertently further discourages people from diverse backgrounds from acting when they have experienced discrimination.

ECCQ recommend that complaints can be submitted and accepted through audio and visual means, including through face-to-face transcribing. However, when translating or interpreting a complaint, accredited interpreters must be used, with a secondary quality check and confirmation of the translation by the person making the complaint. Also, that the complaints form is available in multiple languages and able to be completed in multiple languages with the same translation quality check implemented when assessing the complaint.

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<sup>9</sup> Sikh Nishkam Society of Australia (2022) Submission to the Human Rights Commission Qld: Review of Queensland’s Anti-Discrimination Act 1991. Accessed 15 June, 2023 from: [https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0008/38618/Sub.067-Sikh-Nishkam-Society-of-Australia\\_Final.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0008/38618/Sub.067-Sikh-Nishkam-Society-of-Australia_Final.pdf)

***Recommendation: Complaints should be accepted in audio-visual modes and also, by having accredited translators transcribe alleged discrimination.***

***Recommendation: Complaints forms should be available in multiple languages and able to be submitted in multiple languages.***

Migrant and refugee-background individuals often have a general mistrust in systems, and support is required to submit a complaint process. Additionally, we know that the Sikh Nashkam Society of Australia in their submission to the Queensland Human Rights Commission, have stated that a lack

***“I would be worried, if I was going to make a complaint, being a multicultural person, that I wouldn’t be heard, so would complaint to the ombudsman or my local MP as well”***

of awareness of laws and reporting mechanisms, the long complaint processes, and “limited faith in favourable outcomes following lodging a complaint”, are some of the barriers keeping people from reporting discrimination<sup>10</sup>.

Overwhelmingly, all respondents support the statement that the Commission should be allowed to provide reasonable help to those who require assistance to lodge a complaint including free legal advice, explanations of the complaints process, interpreter support and a support person when making a complaint. If a complaint progresses to a court, access to Legal Aid would be necessary, to ensure equitable access to the court system, especially due to this being related to human rights.

***Recommendation: Complainants should be supported by the QHRC and other agencies, such as Legal Aid, with free legal advice, information on the complaints process and interpreters / translators.***

***Recommendation: Complainants that proceed to court should be eligible for free legal support through Legal Aid.***

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<sup>10</sup> Sikh Nishkam Society of Australia (2022) Submission to the Human Rights Commission Qld: Review of Queensland’s Anti-Discrimination Act 1991. Accessed 15 June, 2023 from: [https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0008/38618/Sub.067-Sikh-Nishkam-Society-of-Australia\\_Final.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0008/38618/Sub.067-Sikh-Nishkam-Society-of-Australia_Final.pdf)



## The education we need

When the Anti-Discrimination Act 2024 is implemented, there is a need for a targeted communications and education strategy, designed for the specific needs of culturally and linguistically diverse communities. ECCQ members identified that spaces, such as social media, at bus stops and other public spaces should be used to communicate messages once this act has been approved. ECCQ also proposes that this act is made available in multiple languages, and for infographics and explainers to be made available in easy English. This is to ensure that those who are impacted by the new act, understand their rights and responsibilities.

***“If you want to water a tree, which part of the tree do you water, the leaves or the roots of the tree?”***

Importantly, education specifically for migrant populations would be needed to ensure that communities are proactively aware of what their rights are and that they have a cause of action that they can follow, if they are discriminated against. Ideally, the education strategy would target community leaders, international students, refugee and asylum-seeker background individuals and school students. Education should include lived-experience stories from migrant or refugee-background individuals, so as to be more effective<sup>11</sup>.

***Recommendation: A communication strategy be implemented once the Anti-Discrimination Act revision is approved, targeting migrant and refugee-background populations.***

***Recommendation: The Anti-Discrimination Act 2024 should be made available in multiple languages once approved.***

***Recommendation: Infographics and explainers on the definitions of discrimination and complaints process included in the Anti-Discrimination Act should be advertised through social media and in public spaces.***

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<sup>11</sup> Eastmond, M. (2007). Stories as Lived Experience: Narratives in Forced Migration Research. *Journal of refugee studies*, 20(2), 248-264. <https://doi.org/10.1093/jrs/fem007>

## List of recommendations:

Recommendation: that 'language spoken' be added to the list of protected attributes within clause 10 of the Anti-discrimination Act.

Recommendation: that cultural dress, cultural hairstyles, cultural jewelry, and cultural tattoos be included as protected attributes within the definition of physical appearance.

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Recommendation: Complaints forms should be available in multiple languages and able to be submitted in multiple languages.

Recommendation: Complainants should be supported by the QHRC and other agencies, such as Legal Aid, with free legal advice, information on the complaints process and interpreters / translators.

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