

Anti-Discrimination Bill 2024 consultation

**Submission by the
Queensland Independent Disability Advocacy
Network (QIDAN)**

To the Department of Justice and Attorney-General
(DJAG)

27 March 2024

About the Queensland Independent Disability Advocacy Network

The Queensland Independent Disability Advocacy Network (QIDAN) is a group of organisations that provide individual advocacy services to Queenslanders living with disability. The member organisations include Aboriginal and Torres Strait Islander Disability Network Queensland; Aged and Disability Advocacy; Amparo Advocacy Inc; Capricorn Citizen Advocacy; Mackay Advocacy Inc; People with Disability Australia; Queensland Advocacy for Inclusion; Rights in Action; Speaking Up For You; and TASC.

QIDAN has three aims:

- **Systemic advocacy:** coordinated action to address systemic issues experienced by people with disability,
- **Member support:** a collaborative space for the exchange of information, resources and issues affecting disability advocacy organisations, and
- **Sector advocacy:** to promote the importance and value of independent disability advocacy on a local, state, and national basis.

The members of QIDAN offer various independent disability advocacy services across Queensland, including general disability advocacy, specialized individual advocacy (including National Disability Insurance Scheme appeals), citizen advocacy and systemic advocacy. QIDAN's understanding and recommendations are grounded in the collective experiences of independent advocates.

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Introduction

QIDAN submits this response to the Department of Justice and Attorney-General (DJAG), contributing insights and providing comments on the proposed draft Anti-Discrimination Bill 2024 (the draft Bill). This submission is grounded in the collective experiences of independent advocates, to address the distinct discriminatory challenges faced by people with disability. In the 2022-2023 financial year, Queensland State-funded individual disability advocacy services addressed 2458 advocacy issues. We assist individuals with human rights and discrimination concerns, with the following key mainstream problem areas tackled by our advocates:

- 10.2% housing and tenancy issues,
- 7.1% employment and education issues,
- 5.2% health or mental health issues,
- 3.2% community inclusion, participation and access,
- 2.9% child protection issues,
- 2.8% abuse / neglect / violence issues.

Demographic data from QIDAN services revealed additional complexities:

- 15.9% identified as Aboriginal and / or Torres Strait Islander,
- 21.1% identified as culturally and linguistically diverse (CALD),
- 14.7% disclosed experiencing domestic and / or family violence,
- 33.9% identified with a psychosocial disability and 16.3% identified with an intellectual disability,
- 33.1% aged between 50 and 64 years,
- 50.3% identified as female, 47.4% identified as male and 0.7% identified as intersex.

Disability advocacy services were consulted and provided submissions to the Queensland Human Rights Commission for the “Building belonging: Review of Queensland’s Anti-Discrimination Act 1991” (the Building Belonging report).¹ We welcome the Building Belonging report and its proposed recommendations.

¹ https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf

QIDAN welcomes the human rights approach and anti-discrimination reforms proposed by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the DRC Report). The first section of our submission recommends that the proposed reforms made by the DRC Report are incorporated in this draft Bill. This is a great opportunity for the Queensland Government to be a leader in advancing the rights of people with disability and realising an inclusive society by implementing the DRC recommendations into this draft Bill. In the second section of our submission, we address the nine consultation questions included in the “Equality and non-discrimination for people with disabilities consultation paper”.² This submission aims to present solutions and recommendations based on QIDAN’s extensive advocacy experience.

² <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/8c1d2d3d-a18b-4a48-94b4-c503251615f1/anti-discrimination-bill-2024-consultation-paper-equality-non-discrimination-for-people-with-dis.pdf?ETag=139c5f03f378a0669b8ef2590a7b2fd9>.

The human rights and anti-discrimination reforms proposed by the DRC

Given that certain proposed changes in the draft Bill were inspired by the approach in the current *Disability Discrimination Act 1992* (Cth) (the DDA), it is important to highlight that the DRC Report has recommended some significant changes to enhance the DDA. Such recommendations have not been implemented yet. Given the importance of these recommendations and the opportune moment to embrace pertinent ones, we strongly recommend that the following DRC recommendations are included into the draft Bill (adapted from proposals for the DDA).

The following table provides references to the relevant recommendations in the DRC Report and QIDAN's proposal for implementing the recommendations.

DRC Rec.	QIDAN proposal:
4.2, 4.16, 4.33 and 4.34	<p>The objects of the draft Bil should give effect to Australia's obligations under, and the general principles set out in, the <i>Convention on the Rights of Persons with Disabilities</i>.</p> <p>The draft Bill should include a provision that its interpretation will be compatible with the <i>Convention on the Rights of Persons with Disabilities</i>, and with the <i>United Nations Declaration on the Rights of Indigenous Peoples</i>.</p>
4.3	<p>The draft Bill should include a set of guiding principles designed to promote and advance the rights of people with disability in Queensland. Furthermore, a person or entity exercising functions under the new Act should have regard to the principles.</p>
4.5-4.9	<p>The rights of people with disability should be acknowledged and protected in the draft Bill, including:</p> <ul style="list-style-type: none"> • The right to non-discrimination and equality before the law • The right to equal recognition before the law • The right to live free from exploitation, violence and abuse • The right to liberty and security of person • The right to equitable access to health services

DRC Rec.	QIDAN proposal:
4.11	The draft Bill should require that people with disability are consulted by the Queensland government in developing and evaluating policies, laws, programs and any new initiatives or major changes to public services. Consequences of a failure to consult should be provided in the draft Bill.
4.12	This recommendation refers to the positive duty to promote disability equality and inclusion by advancing policy objectives of equality, inclusion and respect for dignity of people with disability. Whilst Part 3 of the draft Bill include provisions that move towards achieving equality and inclusion, it should include the specific requirements for a public entity to take the necessary steps recommended by the DRC under this recommendation.
4.13	The DRC recommends a duty to provide an interpreter. Clause 135 of the draft Bill proposes that “A person may be helped at a conciliation conference by an interpreter”. We suggest that this is changed to make it a duty for public entities to provide trained and credentialed interpreters when required by a person with disability, as per this recommendation.
4.14	Similarly, this recommendation proposes that a public entity has a duty to provide accessible information. It is essential that the draft Bill provides that communications and information will be accessible for people with disability. For example, Part 10 Commission’s compliance functions of the draft Bill does not include any provisions to ensure accessible information.
4.15	<p>The proposed clause 144 of draft Bill should include the compliance mechanisms proposed under this recommendation. For example:</p> <ul style="list-style-type: none"> • annual reporting • disability impact assessments when needed • self-assessment audit for disability inclusion every four years • publish specific measures
4.18-4.19	The functions of the Queensland Human Rights Commission, including the use of remedies and enforcements, should be reviewed and amended to reflect

DRC Rec.	QIDAN proposal:
	these proposed DRC recommendations. For example, we strongly recommend that the complaint mechanism for people with disability should be co-created with people with disability.
4.20	<p>This recommendation refers to enabling remedies through the courts. Whilst this is largely covered by the draft Bill, we suggest some amendments to enhance the DRC proposal:</p> <ul style="list-style-type: none"> • Clauses 103 and 104 of the draft Bill should be consistent in allowing relevant bodies to bring representative complaints without needing to rely on a named individual. • The draft Bill did not include recommendation 42.1 of the Building Belonging report which says: “Sections 319G, 319H and 319I of the Corrective Services Act 2006 (Qld), which alter the tests for direct and indirect discrimination, and create restrictions on compensation orders should be repealed.” • Clause 15 of the draft Bill should reflect this DRC recommendation, enhancing the positive duty by way of a remedy.
4.21	This recommendation addresses the need to strengthen awareness and understanding of disability rights, which should be added to the proposed clause 143 that refers to the Commission’s education functions.
4.23	The DRC recommends that the alleged discriminator should bear the burden of proof in direct discrimination. We recommend that a full reversal of the burden of proof should be included in the draft Bill.
4.24	We welcome both this recommendation and the proposed clause 15 of the draft Bill which are both consistent with the unjustifiable hardship test. Please see recommendation 4.32 of the DRC Report about the circumstances that must be taken into account when “unjustifiable hardship” is considered.
4.25	We agree with the view of the DRC that “reasonable adjustments” should be replaced by “adjustments” only. We note that in the draft Bill these are called

DRC Rec.	QIDAN proposal:
	<p>“reasonable accommodation” (clause 12). We support the DRC’s explanation on this: “The focus would then be on whether there has been a refusal to make an adjustment, and if so, whether making the adjustment would impose unjustifiable hardship on the respondent”.³ Therefore, we recommend that the word “reasonable” is removed from the term “reasonable accommodation” throughout the draft Bill.</p>
4.26	<p>This DRC recommends a specific amendment to include the following provision in the DDA:</p> <p style="text-align: center;">Duty to make adjustments</p> <p>It is unlawful for a person to fail or refuse to make an adjustment for:</p> <ul style="list-style-type: none"> (a) a person with a disability; or (b) a group of persons with disability <p>unless making the adjustment would impose an unjustifiable hardship on the person.</p> <p>Although clauses 12 and 18 create a positive duty to make reasonable accommodations for people with a disability, we suggest that the above proposed amendment is included in the draft Bill, potentially under Part 4, to ensure clarity.</p>
4.27	<p>This recommendation refers to a positive duty to eliminate disability discrimination. This should be implemented and applied throughout Part 3 Positive duties of the draft Bill. For instance, clause 20 does not include:</p> <ul style="list-style-type: none"> • consideration of a disability action plan and • the nature and extent of the person’s consultation with any person with disability concerned. <p>which are proposed by the DRC under this recommendation.</p>

³ DRC Report, Volume 4, page 308.

DRC Rec.	QIDAN proposal:
4.29	The DRC recommends that “Offensive behaviour because of disability” should be inserted in the DDA. We recommend that a similar provision be included in the draft Bill, which could be inserted under Part 7.
4.30	Divisions 2 and 3 of Part 7 of the draft Bill should be considered for the purpose of extending the provisions to include “the act involves threats by the first person to perpetrate or encourage violence or serious abuse directed at another person” as recommended by the DRC.
4.32	The proposed clause 12 of the draft Bill refers to unjustifiable hardship. This provision reflects the DRC recommendation only partially. We recommend that clause 12, especially subsection 3, reflects the legislative amendment recommended by the DRC on “unjustifiable hardship”.
7.1	In addition to the above, in order to provide equal access to mainstream education and enrolment, the draft Bill should provide under Schedule 2 Other amendments that Education legislation in Queensland should provide that the right to enrolment is subject only to ‘unjustifiable hardship’ in the sense used in the draft Bill.
7.2	Clause 34(2)(c) of the draft Bill should be amended to cover “suspension and exclusion”, adapted from the recommendation by the DRC. Our proposed wording to replace this clause is “by expelling or suspending a student”.
7.3	We suggest that this recommendation to “Improve policies and procedures on the provision of reasonable adjustments to students with disability” is incorporated in clause 143 of the draft Bill, to expand the Commission’s educative functions.
7.26	Division 2 of Part 4 of the draft Bill should be amended to reflect the DRC recommendation on the factors that must be taken into consideration when “determining whether a prospective or existing employee would be able to carry out the inherent requirements of a particular role”.

DRC Rec.	QIDAN proposal:
8.19	This DRC recommendation should be implemented to include ‘services provided by police officers in the course of performing policing duties and powers’ in the definition of ‘services’ in Schedule 1 of the draft Bill.

Consultation questions

Our responses below are informed by the recommendations made in the Building Belonging report, the DRC report and our collective experience working with people with disability.

1. Should the new legislation include:

- a. **Option One: the current definition of disability in the *Disability Discrimination Act*; or**
- b. **Option Two: the updated definition of disability above, adapted from the definition of disability in the *Disability Discrimination Act*?**

QIDAN recommends that the proposed definition under option two should be adopted.

2. Do you have any other comments on the definition of disability?

QIDAN suggests that the definition of ‘disability’ should include ‘addiction’, as per recommendation 21.1 of the Building Belonging report.

Still on the definition point, we strongly suggest that ‘language’ is added to the definition of ‘race’.

3. Do you agree with the proposed approach to assistance animals, carer and disability aids?

Yes, QIDAN agrees with the draft Bill proposal in relation to the approach that discrimination against a person with a disability who relies on a carer, assistant, assistance animal or disability aid, because of their disability, is the same as discrimination against a person on the grounds of disability.

4. Do you have any feedback about the definitions of: assistance animal, carer or disability aid?

QIDAN proposes that the definition of support person should include “support” after “means a person who provides paid or unpaid”, so the whole text would look like this:

*A **support person***, in relation to a person with disability, means a person who provides paid or unpaid support, assistance or services to the person, because of the disability, including, for example, as an assistant; a carer, interpreter or reader.

In addition, QIDAN proposes that the definition of disability aid should include “or any other type of assistive technology” after “means equipment”, so the whole text would look like this:

Disability aid, in relation to a person with disability, means equipment or any type of assistive technology, including a palliative or therapeutic device...

The definition of assistance animals reflects recommendation 21.3 of the Building Belonging report.

5. Do you agree with the proposed approach to providing for reasonable accommodation?

We acknowledge the change of the terminology ‘reasonable adjustments’ to ‘reasonable accommodations’.

We reiterate that recommendation 4.25 of the DRC Report proposed a change to the DDA to replace “reasonable adjustments” with “adjustments” only. Adapting this recommendation to the draft Bill, we recommend that the word “reasonable” is removed from the term “reasonable accommodations” throughout the draft Bill, so clause 12 is titled ‘accommodations’. The change should be applied throughout the draft Bill where ‘reasonable accommodations’ appear.

6. Are the factors for determining whether an accommodation is reasonable appropriate?

In addition to our recommendations above, it is crucial that the definition of unjustified hardship is revisited. QIDAN strongly recommends that the definition proposed by the DRC under its recommendation 4.32 is fully incorporated into the draft Bill. For easy reference, we have included the proposed amendment, adapted from the DRC suggestion for the DDA:

Unjustifiable hardship

(1) For the purposes of this Act, in determining whether a hardship that would be imposed on a person (the *first person*) would be an *unjustifiable hardship*, all relevant circumstances of the particular case must be taken into account, including the following:

- (a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
- (b) the nature and extent of the first person's consultations with any person with disability concerned;
- (c) the first person's consideration of all available and appropriate alternative measures or actions;
- (d) the effect of the disability of any person concerned;
- (e) the financial circumstances, and the estimated amount of expenditure required to be made, by the first person;
- (f) the availability of financial and other assistance to the first person;
- (g) any relevant action plans given to the Queensland Human Rights Commission.

(2) The person relying on unjustifiable hardship must:

- (a) create and retain all documents recording the person's consideration (if any) of each of the factors in subsection (1); and
- (b) provide reasons to the person concerned, if so requested, for contending that unjustifiable hardship existed at the time of the alleged unlawful discrimination.

(3) For the purposes of this Act, the burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.

7. Do you agree with the proposed approach to the general requirements for affirmative measures?

Yes. QIDAN would like to suggest that the elimination of an existing substantive inequality should be added to clause 16(1) as an appropriate basis for an affirmative measure.

8. Do you agree with the additional proposed requirements for affirmative measures for realising substantive equality for groups or individuals of a particular race?

QIDAN has concerns that the measures proposed under clause 16(3) might stop affirmative action that is not solely for the purpose of race but might have an intersectional purpose (for example, race and disability).

9. Should there be any further requirements?

No further comments.

In addition to the questions above we also suggest that both clause 32 and 65 are removed from the draft Bill as they seem to not serve any purpose, and they further stigmatise people.

Conclusion

QIDAN thanks the Department of Justice and Attorney-General (DJAG) for the opportunity to provide comments on the proposed draft Anti-Discrimination Bill 2024. We are happy to provide further information or clarification of any of the matters raised in this submission upon request.

We hope to see QIDAN's recommendations embedded in future policies, regulations, and structural changes.