leading community mental wellbeing

Queensland Alliance for Mental Health

Queensland Anti-Discrimination Bill – QAMH Submission

March 2024

Who is QAMH?

The Queensland Alliance for Mental Health (QAMH) is the peak body for the Community Mental Health and Wellbeing Sector and people with experiences of psychosocial disability in Queensland. We represent more than 100 organisations and stakeholders involved in the delivery of community mental health and wellbeing services across the state. Our role is to reform, promote and drive community mental health and wellbeing service delivery for all Queenslanders, through our influence and collaboration with our members and strategic partners. We provide information about services, work to build community awareness, education and training to influence attitudes and remove barriers to inclusion and advise government on issues affecting people with experiences of psychosocial challenges. At a national level, we have a formal collaboration with Community Mental Health Australia and provide input and advice to the work of Mental Health Australia and the National Mental Health Commission where appropriate. Locally, we work alongside our members, government, the Queensland Mental Health Commission and other stakeholders to add value to the sector and act as a strong advocate on issues that impact their operations in Queensland communities.

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Acknowledgement of Country

QAMH acknowledges the Traditional Custodians of the land on which we live, learn, and work and recognises their continuing connection to land, waters and community. We pay our respects to them and their cultures; and to Elders past, present and emerging.

Recognition of Lived Experience

QAMH recognises that the Community Mental Health and Wellbeing Sector exists because of people with Lived Experience of mental distress, their families, carers and support people. We acknowledge the expertise and the courage of people with Lived Experience, and we commit to work with and alongside people with Lived Experience in all we do.

QAMH Priorities

Background

QAMH welcomes the opportunity to provide a submission to the Department of Justice and Attorney-General on the draft new Anti-Discrimination Bill 2024 (the draft Bill). We agree that new State based legislation is required and that it should reflect current best practice, be up to date and provide a framework from which to improve standards of behaviour proactively at every level of society.

Mental health is a key component of overall health and wellbeing for all Australians. For Aboriginal and Torres Strait Islander people, good health is a holistic concept that includes physical, social, emotional, cultural and spiritual wellbeing for both the individual and the community.

The National Study of Mental Health and Wellbeing (NSMHW) estimates that 43 per cent of the population aged 16-85 from 2020-22 had experienced a mental illness at some time in their life. A staggering 4.3 million, or 22 per cent had experienced a mental illness in the previous 12 months[1]. The enormity of the situation in Australia cannot be ignored as the effect of mental ill health on Australian society is profound.

People with diverse mental health experiences and psychosocial disability often face significant stigmatising attitudes and discrimination, which can lead to disadvantages in many aspects of life such as work, education and the justice system. It can also limit opportunities in access to healthcare[2] with an evidence review commissioned by the National mental Health Commission finding that structural discrimination also manifests in the reduced life expectancy of people with low prevalence mental illness[3]. This is partly ascribed to diagnostic 'overshadowing' in which a person's physical health problems are ignored due to a focus on their mental health. International research shows that individuals with severe mental illness are likely to die 10–20 years younger than those who do not have these illnesses[4]. In 2019, Australia had the highest standardised rate of healthy years of life lost due to

[1] Australian Bureau of Statistics. (2020-2022). *National Study of Mental Health and Wellbeing*. ABS. https://www.abs.gov.au/statistics/health/mental-health/national-study-mental-health-and-wellbeing/latest-release

[2] Behavioural Economics Team of the Australian Government. (2022). National Survey of Mental Health-Related Stigma and Discrimination. https://behaviouraleconomics.pmc.gov.au/sites/default/files/projects/stigma-survey-report.pdf

[3] Reavely, N. and Morgan, A. (2021). Structural Stigma and Discrimination: Evidence review. Structural stigma and discrimination: Evidence review (amazonaws.com)

[4] de Mooij, L. D., Kikkert, M., Theunissen, J., Beekman, A. T. F., de Haan, L., Duurkoop, P. W. R. A., Van, H. L., & Dekker, J. J. M. (2019). Dying Too Soon: Excess Mortality in Severe Mental Illness. *Frontiers in psychiatry*, *10*, 855. https://doi.org/10.3389/fpsyt.2019.00855

mental disorders among high-income countries (2,399.5 per 100,000 persons). Aboriginal and/or Torres Strait Islander peoples are more significantly affected[5].

Two recent reports, including one by Safe Work Australia[6] and one by the Behavioural Economics Team of the Australian Government (BETA)[7] show that people facing mental health challenges currently experience significant levels of discrimination in both workplaces and the community.

The Safe Work Australia report shows that mental health conditions accounted for nine per cent of all serious workers' compensation claims. The leading cause of claims for mental health conditions was work related harassment and/or workplace bullying (27.5 per cent). The median time lost and compensation paid for mental health conditions was more than four times greater than that of all injuries and illnesses. Worryingly, workers claiming for mental health conditions reported poorer return to work outcomes and were more likely to describe a culture of stigma from colleagues and their employers when they returned to work.

The November 2022 BETA report estimated over four million Australians experienced mental health-related stigma and discrimination in the prior 12 months. Most commonly this came from people close to them, although experiences of discrimination in the workplace were also common. People with complex mental health challenges such as schizophrenia were disproportionately affected by stigma and discrimination with nine out of 10 respondents reporting any kind of discrimination and 8 out ten having difficulties finding employment.

The report also assessed beliefs and intentions of the general population towards people with personal lived experience. Although the report found evidence that stigmatising beliefs remain entrenched in society, for example, over a quarter of people said that they would not like to work closely with someone with depression, there are some more encouraging signs emerging. Most respondents supported action to address mental health related stigma and discrimination. Furthermore, four out of five respondents agreed more needs to be done to eliminate discrimination towards people with lived experience of mental health challenges and psychosocial disability.

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[5] Everson, G., Spring, B., Middleton, J., Richardson, A., Gardiner, F.W. (2024). Culturally appropriate psychotherapy and its retention: an example from Far North Queensland (Australia). Acta Psychologica, 242. Retrieved from: https://doi.org/10.1016/j.actpsy.2023.104122

[6] Safe Work Australia. (2024). Psychological health and safety in the workplace report. Safework Australia https://data.safeworkaustralia.gov.au/report/psychological-health-and-safety-workplace

[7] Behavioural Economics Team of the Australian Government. (2022). National Survey of Mental Health-Related Stigma and Discrimination. https://behaviouraleconomics.pmc.gov.au/sites/default/files/projects/stigma-survey-report.pdf

QAMH supports the purpose of the draft Bill in principle and supports the list of attributes being extended for which discrimination should not be permitted.

QAMH welcomes the draft Bill's shift in focus to prevention moving from a reactive framework to a proactive one through the introduction of positive duty. In particular, we are pleased to see the introduction of measures which will make it easier for employers to take affirmative action to employ workers with protected attributes, including psychosocial disability. QAMH also notes that with the introduction of positive duty there will be an opportunity for the Human Rights Commission to take a stronger proactive role in prevention (education and awareness raising with stakeholders) regarding discrimination.

We also believe that language matters and the choice of language adopted in this Bill is an important platform from which to reduce stigma and discrimination for people with lived experience of mental health challenges in the first place.

We ask that the following recommendations are considered as the Bill is further developed.

Recommendations

- **Review the definition of "disability" included in the Bill.** The proposed definition of disability reflects the definition of "impairment", rather than the contemporary social model of disability. This may be construed as stigmatising, and we recommend that this definition is reviewed with this consideration in mind. We also recommend that the proposed definition replaces part f) with "a disorder, illness or disease that may affect a person's thought processes, perception of reality, emotions, judgment, social interaction and/or behaviour".
- **Clarify which duty holders are covered by positive duty**. A clearer definition is required under Clause 19 to remove ambiguity. We recommend that *all* duty holders, including government and schools, should have a positive obligation to apply the Act rather than select duty holders.
- **Provide clear guidance and support for employers.** Clear guidance for all employers regarding how they can meet the requirements of this new legislation in relation to psychosocial disability is needed, including how it differs to Managing the Risk of Psychosocial Hazards at Work Code of Practice they already meet, and how they can reasonably accommodate a wide range of individual needs within the workplace.
- **Reduce unnecessary complexities regarding vicarious liability.** We support the Queensland Human Rights Commission recommendations to maintain section 133 of the existing Anti-discrimination Act 1991 (the Act) and reduce complexity in clauses 94, 95 and 96.
- **Clarify reasonable accommodations.** Reasonable accommodations for both the complainant and the duty holder are unnecessarily complex and need to be framed more clearly. We agree with the recommendation of the Queensland Human Rights Commission to remove clause 18

as it is applied already within broader positive duty, and that this should be replaced with another standalone provision that makes it unlawful to refuse or fail to provide a reasonable accommodation.

Comments on proposed changes

The Community Mental Health and Wellbeing Sector understands the challenges involved in addressing stigma and discrimination within the community, and the imperative to do so. We purposefully seek to employ people with diverse mental health experiences and psychosocial disability, actively promote and support our Lived / Living Experience workforce and believe we are at the leading edge of reforms in this area.

While we welcome changes that will reduce complexity and bring current legislation up to date with contemporary disability approaches and understandings, we also note that the proposed definition of "disability" (below) paints a very large brushstroke when applied to psychosocial disability:

Disability[8] *in relation to a person means –*

a) total or partial loss of the person's bodily or mental functions; or (current subclause a) of the Disability Discrimination Act definition)
b) total or partial loss of a part of the person's body; or (current subclause b) of the Disability Discrimination Act definition)
c) the presence in the person's body of organisms causing, or capable of causing, disease or illness; or (combined current subclauses c) and d) of the Disability Discrimination Act definition)
d) an impairment or disturbance in the structure or functioning of the person's body or a part of the person's body; or (adapted from current subclause e) of the Disability Discrimination Act definition)
e) a disorder or condition that results in the person learning differently from a person without the disorder or condition; or (adapted from current subclause f) of the Disability Discrimination Act definition)
f) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

Disability, in relation to a person, includes a disability mentioned in paragraph 1 that—

e) presently exists; or

[8] Department of Justice and Attorney General. (2024). *Consultation Paper – Anti-Discrimination Bill 2024 (Exposure Draft) – Equality and Non-Discrimination for People with Disability*. Anti-Discrimination Bill 2024 consultation - Equality and non-discrimination for people with disabilities consultation paper (publications.qld.gov.au)

f) previously existed but no longer exists; or
g) may exist in the future, including, for example, because of a genetic predisposition to the disability; or
h) is imputed to a person.

Also, disability, in relation to a person, includes behaviour that is a symptom or manifestation of a disability mentioned in paragraph 1.

QAMH understand that the definition being proposed is a modified version of the definition of "impairment" from the current Act as recommended by the Building Belonging Report. It aligns with the Commonwealth Disability Discrimination Act 1992.

However, the definition is problematic as it does not reflect contemporary understanding of the term disability, which is more closely aligned with the social model of disability – a model which ascribes disability to the social and environmental barriers a person faces rather than attributes of the person themselves, in order to reduce stigma. In particular, the definition doesn't align well with recovery-oriented approaches to psychosocial disability which focus on person-led approaches that may go beyond health outcomes to find new meaning and purpose in life[9]. It also may not reflect how people with Lived or Living Experience of mental health challenges view or identify their experience, as - while disability can certainly arise from the impacts of impairment (mental ill-health) - it would be incorrect to say that everyone who is currently experiencing or has ever experienced a challenge with their mental health is living with disability, as the proposed definition could be taken to imply. While we recognise that the purpose of the legislation is to proactively address the social and environmental factors that create barriers and lead to disability in the first instance, we believe that substituting "impairment" with "disability" is not accurate and could potentially reinforce stigma by ascribing disability to people and impairments rather than their social environment.

Likewise, the language contained in the proposed definition doesn't capture the impacts of psychosocial disability well, or in a neutral way. Using phrases like "disturbed behaviour" perpetuates stigma associated with mental health challenges, presenting a narrow, unhelpful and dated view. We suggest that neutral language describing the functional impacts of disability such as that used in the NDIS Act 2013 (e.g. may impact social interaction or behaviour) is more appropriate when referring to the impact mental-ill health may have. Further consultation with people with a disability and Lived and/or Living Experience of mental health challenges would be useful to ensure that the definition is appropriate once these changes are made.

Finally, we also believe that the proposed definition may be difficult for employers and the general community to navigate. It's worth noting that employers also align with legislation regarding managing

[9] National Disability Insurance Scheme. (2021). NDIS Psychosocial Disability Recovery-Oriented Framework. PB NDIS Psychosocial Disability Recovery Oriented Framework PDF (5).pdf

psychosocial risks and hazards in the workplace and ensuring that employers understand the difference between the two pieces of legislation will be important. It's also important to recognise that employers within the wider landscape are not necessarily mental health experts and may have difficulty recognising mental health needs as these are not always immediately obvious or disclosed by employees. In addition, workplace accommodations might be different for each person adding to the need for employer guidance on what is required. It is also crucial that clear employer guidance and support regarding the proposed changes also be made available to reduce the already high burden on Community Mental Health and Wellbeing providers so that they can continue to support workers and people requiring services in our communities.

QAMH also believe that vicarious liability provisions in the draft Bill (clauses 94, 95 and 96) are currently too complex. Our concern is that the additional layers of complexity will make it harder for complainants to prove their case against vicariously liable parties. We support the Queensland Human Rights Commission suggestion that no changes are necessary as this aspect of the existing Act is well established across Queensland, other State and Commonwealth laws regarding what the tests should be.

QAMH also acknowledge that there is significantly complexity in the current provisions for reasonable accommodations. While the proposed changes aim to allow a person to bring a complaint about both indirect discrimination and reasonable accommodations under the Bill, greater clarity is needed to make it easier for a person to lodge a complaint. Similarly, we agree with Queensland Human Rights Commissioner that removing clause 18 would help to reduce unnecessary complexity it is already covered in the broader positive duty requirements. Overall, we suggest that less complex legislation is better for both complainants and duty holders.

Thank you for the opportunity to contribute to this consultation process. We look forward to continuing to work with the Queensland Govt to better the lives of both people living with psychosocial disability and those representing the Lived Experienced workforce. Please do not hesitate to contact QAMH should you require any further information.