



# Supporting Vulnerable Communities through Queensland's *Anti-Discrimination Act*

A comparative investigation of the *Queensland Anti-Discrimination Act 1991* (Qld) to measure alignment with Australian and International best policy practices.

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## Executive Summary

This report presents recommendations for consideration in the review of the *Anti-Discrimination Act 1991* (Qld) [AD Act] to make it more fully compliant with relevant Australian and United Nations policy instruments. It aims to examine how the AD Act can be improved to reduce the disproportionate impact of discrimination on Indigenous Queenslanders in the areas of: (1) raising the age of legal criminal responsibility from 10 to 14 years of age; and (2) land rights and the protection of sacred sites for Indigenous Queenslanders. Through working with the United Nations Association of Australia Queensland Division (UNAAQ) to conduct a comparative analysis of policy against the AD Act, and meeting with the Queensland Human Rights Commission (QHRC) to present preliminary recommendations, two key findings emerged. First, there is a need for the inclusion of positive discrimination and explicit acknowledgment of the distinct cultural needs of Australia's First Nations people. Second, the current models for regulation in the AD Act are ineffective. Changing the Act based on these findings will work to facilitate Indigenous voices to help combat discrimination. It will also create a more specific instrument for reducing the disproportionate impacts these communities face. Future research may want to examine the role of First Nations community-controlled organisations in preventing and combatting discrimination. The scope of research could also be expanded to explore the aims and effectiveness of specific anti-discrimination policy documents internationally.

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## 1.0 Introduction

Queensland's Anti-Discrimination Act has not been updated since 1991. The current iteration of the AD Act does not promote the realisation of human rights, equality, and non-discrimination to the fullest extent for Aboriginal and Torres Strait Islander peoples in Queensland. This is evident in observing community and activist mobilisation<sup>1,2</sup> in areas regarding the age of criminality and land rights. It was recognised that First Nations Australians are disproportionately impacted by systemic discrimination, and in Queensland, there currently two key areas of human rights challenges prevalent in policy discussion. These are: (1) raising the age of legal criminal responsibility from 10 to 14 years of age; and (2) land rights and the protection of sacred sites for Indigenous Queenslanders. Aligning with the *United Nations Convention on the Rights of the Child* (CRC) and the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), this report provides ten recommendations for reform and enhancement related to these two areas in the *Anti-Discrimination Act 1991* (Qld) [AD Act].

## 2.0 Research Process & Methods

Research for this report was conducted by working with the United Nations Association of Australia Queensland Division (UNAAQ) to examine Australian and international policy documents that related to non-discrimination and the realisation of human rights. A comparative analysis was conducted to measure the alignment of the AD Act against relevant Queensland policy and legislative instruments including the *Human Rights Act 2019* (Qld), and the *Aboriginal and Torres Strait Islander Cultural Heritage Acts 2003* (Qld), focussing on support measures for First Nations Australians. A second comparative analysis was conducted to the alignment of the AD Act against relevant United Nations instruments including the UNDRIP, and the CRC. Finally, these comparisons and

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<sup>1</sup> Allam, Lorena. 2021. "Jailing of nearly 500 children aged 13 and under a 'failure' by Australia's top legal officers, advocates say." *The Guardian*. July 27. Accessed September 14, 2021. <https://www.theguardian.com/australia-news/2021/jul/27/jailing-of-nearly-500-children-under-13-a-failure-by-australias-top-legal-officers-advocates-say>.

<sup>2</sup> #StopAdani. 2021a. "Further environmental breaches on Adani rail line despite QLD government commitment to monitor compliance." #StopAdani. August 5. Accessed September 14, 2021.

accompanying recommendations were presented in consultation with the Queensland Human Rights Commission to identify areas of priority or ambiguity in the AD Act.

## 3.0 Background & Relevance

### 3.1 Raising the Age of Criminal Responsibility from 10 to 14

Between 2016 and 2017, the Australian Government pushed almost 9,000 children aged 10, 11, 12 and 13 years through the criminal justice system, and locked up 566 of these children<sup>3</sup>. On an average night in 2019, there were 949 children behind bars in Australia<sup>4</sup>. In 2020, 499 children aged between 10 and 13 were imprisoned, with at least 65% of them being Aboriginal or Torres Strait Islander children<sup>5</sup>. Aboriginal and Torres Strait Islander children are disproportionately represented in these statistics, being jailed at 22 times the rate of non-Indigenous young people<sup>6</sup>. Dehumanising and abusive practices have been consistently reported to take place in Australian child-prisons<sup>7</sup>, with clear evidence of accompanying racial abuse<sup>8</sup>. There are significantly detrimental outcomes that result from detaining children, profoundly impacting their mental and physical well-being, their education, and their employment<sup>9</sup>. Discrimination towards Aboriginal and Torres Strait Islander children aged from 4-12 has been shown to increase the risk for interrelated mental health factors which can lead to outcomes such as: socioemotional and behavioural difficulties, weight fluctuations, and substance use<sup>10</sup>. The growth and development that children under the age of 14 are undergoing means that they do not

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<sup>3</sup> Amnesty International. 2018. "The sky's the limit: Keeping young children out of prison by raising the age of criminal responsibility." *Amnesty International*. September 23. Accessed September 15, 2021. <https://www.amnesty.org.au/wp-content/uploads/2018/09/The-Sky-is-the-Limit-FINAL-1.pdf>.

<sup>4</sup> Allam, Lorena, and Laura Murphy-Oates. 2021. "Australia's anguish: the Indigenous kids trapped behind bars." *The Guardian*. January 17. Accessed September 15, 2021. <https://www.theguardian.com/australia-news/2021/jan/18/australias-anguish-the-indigenous-kids-trapped-behind-bars>.

<sup>5</sup> Allam, "Jailing of nearly 500 children".

<sup>6</sup> Allam, Lorena. 2020. "Indigenous imprisonment, suicide and self-harm rates have risen, report finds." *The Guardian*. December 2. Accessed September 15, 2021. <https://www.theguardian.com/australia-news/2020/dec/03/indigenous-imprisonment-suicide-and-self-harm-rates-have-risen-report-finds>.

<sup>7</sup> Marchant, Gabriella. 2020. "Landmark report details experiences of young people detained at Adelaide Youth Training Centre." *ABC News*. July 25. Accessed September 15, 2021. <https://www.abc.net.au/news/2020-07-25/inside-look-at-the-adelaide-youth-detention/12474990>.

<sup>8</sup> Moore, Roxanne. 2017. "Abuse of Children in Don Dale and other Prisons is a National Shame." *Amnesty International*. November 20. Accessed September 15, 2021. <https://www.amnesty.org.au/abuse-children-don-dale-prisons-national-shame/>.

<sup>9</sup> Holman, Barry, and Jason Ziedenberg. 2007. "The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities." *Justice Policy Institute*. December 9. Accessed September 15, 2021. [https://assets.aecf.org/m/resourcedoc/aecf-dangers\\_of\\_detention\\_report-2007.pdf](https://assets.aecf.org/m/resourcedoc/aecf-dangers_of_detention_report-2007.pdf).

<sup>10</sup> Cave, Leah, et al. 2019. "Caregiver-perceived racial discrimination is associated with diverse mental health outcomes in Aboriginal and Torres Strait Islander children aged 7–12 years." *International Journal for Equity in Health* 18(142): 1-10.

necessarily have the capacity to be criminally responsible<sup>11</sup>, and placing them into the prison system is likely to be more harmful to a child still in the process of neurobiological, psychological, social, and moral development<sup>12</sup>.

### 3.2 Land Rights and the Protection of Sacred Sites for Indigenous Queenslanders

Destruction, disrespect, and damage to the land can have significant negative impacts on the wellbeing of Indigenous Australians. This connection is described by Lajamanu man, Andrew Johnson: “[the land] is our life. If they come and destroy our land and our sacred site, that takes away our life too”<sup>13</sup>. Sites of traditional spiritual and cultural heritage are often subjugated to the country’s largest and most important industry: mining<sup>14</sup>. In Western Australia, Rio Tinto has 13,300 ethnographic and cultural sites on its Pilbara mining leases, Fortescue manages more than 5,900, and BHP manages about 8,000<sup>15</sup>. A specific issue of contention in Queensland is the Adani coal mine—a project that would destroy Wangan & Jagalingou Country, impacting totemic plants and animals, polluting, and draining billions of litres of groundwater, and obliterating the sacred Doongmabulla Springs system<sup>16</sup>. Land dispossession has a significant negative impact on the wellbeing of Indigenous Australians, with foreign control resulting in the loss of their economic base frequently accomplished with violence, brutality, and family dislocations<sup>17</sup>. It is important to note that living on traditional lands is not itself determinative of health outcomes; and focus should be on the quality of life and the ability to connect to country<sup>18</sup>.

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<sup>11</sup> Change the Record. 2017. "Free to be Kids: National Plan of Action." *Change the Record Coalition*. November 27. Accessed September 15, 2021. [https://nacchocommunique.com/wp-content/uploads/2017/11/ctr\\_free\\_to\\_be\\_kids\\_national\\_plan\\_of\\_action\\_2017\\_web.pdf](https://nacchocommunique.com/wp-content/uploads/2017/11/ctr_free_to_be_kids_national_plan_of_action_2017_web.pdf).

<sup>12</sup> Arredondo, David. 2003. "Child Development, Children’s Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making." *Stanford Law and Policy Review* (14) 13-28.

<sup>13</sup> Australians Together. 2021. "The importance of land." *Australians Together*. July 1. Accessed September 15, 2021. <https://australianstogether.org.au/discover/indigenous-culture/the-importance-of-land/#landref1>.

<sup>14</sup> Albeck-Ripka, Livia. 2020. "Mining Firm Plans to Destroy Indigenous Australian Sites, Despite Outcry." *The New York Times*. June 11. Accessed September 15, 2021. <https://www.nytimes.com/2020/06/11/world/australia/indigenous-caves-BHP-mining.html>.

<sup>15</sup> Allam, Lorena, and Calla Wahlquist. 2020. "More than 100 Aboriginal sacred sites – some dating before the ice age – could be destroyed by mining companies." *The Guardian*. August 27. Accessed September 15, 2021. <https://www.theguardian.com/australia-news/2020/aug/28/more-than-100-aboriginal-sacred-sites-some-dating-before-the-ice-age-could-be-destroyed-by-mining-companies>.

<sup>16</sup> #StopAdani. 2021b. "Trashes Indigenous Rights." *#StopAdani*. September 15. Accessed September 15, 2021. [https://www.stopadani.com/trashes\\_indigenous\\_rights](https://www.stopadani.com/trashes_indigenous_rights).

<sup>17</sup> Devitt, Jeannie, Gillian Hall, and Komla Tsey. 2001. "Underlying causes." *The health and welfare of Territorians* 9-18.

<sup>18</sup> Ganesharajah, Cynthia. 2009. "Indigenous Health and Wellbeing: The Importance of Country." *Native Title Research Report (1)*: 1-48.

## 4.0 Findings

### 4.1 Comparative analysis of AD Act to Relevant Queensland Policy

The two key Queensland policy documents of relevance that have been used as a measure of alignment with the AD Act are the *Human Rights Act 2019* (Qld), and the *Aboriginal and Torres Strait Islander Cultural Heritage Acts 2003* (Qld).

#### 4.1.1 Age of Criminal Responsibility in the *Human Rights Act 2019* (Qld)

In direct reference to anti-discrimination, section 26 of the *Human Rights Act* advocates for the protection of children in the statement:

(2) Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.

Comparatively, areas of the AD Act with provisions for the protection of children are limited. Section 28 allows for lawful discrimination in working with children, and section 50 allows for lawful discrimination of the sale of goods and services to children. There are no areas dedicated explicitly to positive discrimination which can allow for the provision of services designed specifically for the protection of children within Part 5 of the AD Act. Section 33 of the *Human Rights Act* also outlines the rights of children involved in the criminal process, these are:

- (1) An accused child who is detained, or a child detained without charge, must be segregated from all detained adults.
- (2) An accused child must be brought to trial as quickly as possible.
- (3) A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age

Again, the specific reference to the rights of a child is not something that exists in the AD Act aside from the references made within s28 and s50.

#### 4.1.2 Indigenous Land Rights in the *Human Rights Act 2019* (Qld)

Division 2 [s28] outlines the cultural rights of Aboriginal and Torres Strait Islander peoples in Queensland. These rights are as follows:

- (1) Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.
- (2) Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community to enjoy, maintain, control, protect and develop their identity and cultural heritage...
- (3) Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.

These rights are presented separately to general cultural rights [s27], acknowledging the distinct value of Aboriginal peoples and Torres Strait Islander peoples' connection to land. The AD Act does not recognise this connection separately in the outlined areas of cultural land rights. Chapter 2 [s48 and s80] provides exemptions for discrimination in goods and services area, and exemptions for discrimination in disposition of land area. Both sections state that:

- A person may restrict access to land or a building of cultural or religious significance by people who are not of a particular sex, age, race, or religion if the restriction—
- (a) is in accordance with the culture concerned or the doctrine of the religion concerned;
- and
- (b) is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion

This generalised statement does not convey recognition of Indigenous peoples' "distinctive spiritual, material and economic relationship" that the *Human Rights Act 2019* (Qld) provides. The AD Act lacks the explicit acknowledgement of Aboriginal and Torres Strait Islander peoples evidenced in the *Human Rights Act*.

#### **4.1.3 Indigenous Land Rights in the *Aboriginal and Torres Strait Islander Cultural Heritage Acts 2003* (Qld)**

In the *Aboriginal Cultural Heritage Act 2003* (Qld), Section 5 is of key relevance. It outlines these two fundamental principles that underlie the Act's main purpose:

- (a) the recognition, protection and conservation of Aboriginal cultural heritage should be based on respect for Aboriginal knowledge, culture, and traditional practices.
- (b) Aboriginal people should be recognised as the primary guardians, keepers, and knowledge holders of Aboriginal cultural heritage.



This basis of “respect for Aboriginal knowledge, culture and traditional practices” is an approach found lacking in the AD Act. Related sections in the AD Act [s48 and s80] explain the justification for lawful discrimination as to “avoid offending the cultural or religious sensitivities”, which fails to promote the same principle outlined in the *Aboriginal and Torres Strait Islander Cultural Heritage Acts*. The enforcement mechanisms within these Acts have been criticised for the lack of power they grant First Nations’ communities. Section 5(b) aligns with one of the criticisms that states: “heritage negotiations should maintain a holistic approach to the ‘community’, involving a disposition that acknowledges the interests of those who may not be captured within the description of native title claimants or holders”<sup>19</sup>.

## 4.2 Comparative analysis of AD Act to Relevant United Nations Instruments

### 4.2.1 Age of Criminal Responsibility in The *United Nations Convention on the Rights of the Child (CRC)*

The Committee on the Rights of the Child provided their concluding observations for the combined fifth and sixth report under the CRC on 27 September 2019. They expressed regret that previous recommendations had not been implemented, remaining seriously concerned about numerous issues, including the very low age of criminal responsibility, and the enduring overrepresentation of Aboriginal and Torres Strait Islander children and their parents and carers in the justice system<sup>20</sup>. Australia ratified the CRC on 17 December 1990<sup>21</sup> and have a responsibility to uphold the recommendations of this agreement. There are four articles of key relevance to the policy issue regarding raising the age of criminality in Australia, however it is important to consider these within the context of the full text. The article summaries are as follows:

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<sup>19</sup> Martin, Richard, Andrew Sneddon, and David Trigger. 2016. "Conservation, Commodification and Indigenous Heritage in Queensland." In *The right to protect sites: Indigenous heritage management in the era of native title*, by Pamela Faye McGrath, 137-158. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies.

<sup>20</sup> Committee on the Rights of the Child. 2019. "Concluding observations on the combined fifth and sixth periodic reports of Australia." *Treaty Body Reporting*. September 27. Accessed September 15, 2021. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAUS%2fCO%2f5-6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAUS%2fCO%2f5-6&Lang=en).

<sup>21</sup> Alston, Philip. 1991. "The UN Children's Convention and Australia (1991)." *Australian Human Rights Commission*. September 1. Accessed September 15, 2021. <https://humanrights.gov.au/our-work/childrens-rights/publications/un-childrens-convention-and-australia-1991>.

Article 19: Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.

Article 36: Children should be protected from any activities that could harm their development.

Article 37: Children who break the law should not be treated cruelly. They should not be put in a prison with adults and should be able to keep in contact with their family.

Article 40: Children who are accused of breaking the law should receive legal help. Prison sentences for children should only be used for the most serious offences.

Of the recommendations provided by the Committee on the Rights of the Child in response to Australia's violation of these articles, the AD Act could be most successful in helping:

(d) To actively promote non-judicial measures, such as diversion, mediation, and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences such as probation or community service; and

(e) In cases where detention is unavoidable, to ensure that children are detained in separate facilities and, for pretrial detention, to ensure that detention is regularly and judicially reviewed<sup>22</sup>.

There are no existing areas in the AD Act that directly supplement these measures. Section 28 allows for lawful discrimination in working with children and could be used to support the promotion of non-judicial measures by making sure to assign child-focussed workers within the justice system to make sure the needs of children are met. Again, there is a lack of any explicit policy promoting the provision of services specifically for children under Chapter 2, Part 5 of the AD Act.

#### **4.2.2 Indigenous Land Rights in the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)***

Within the UNDRIP there are numerous articles that the AD Act does not yet align with. The most evident is the lack of its mention in the AD Act's preamble. This is due to the fact it was only adopted by the General Assembly of the United Nations in September

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<sup>22</sup> Committee on the Rights of the Child, "Concluding observations".

2007 and supported by the Australian Government in 2009<sup>23</sup>--18 years after the creation of the AD Act. The following articles from the Declaration are the most relevant for comparative analysis and consideration against the AD Act:

Article 11: Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present, and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 29: Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

Article 32: Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

As previously identified in the comparison with Queensland policy and legislation, the AD Act does not explicitly acknowledge the value of Aboriginal and Torres Strait Islander peoples' connection to land and resources. As Article 29 of the UNDRIP outlines, programs must be established for conservation and protection of Indigenous land without discrimination, something that does not yet exist in the AD Act. Additionally, Article 32 begins to refer to the priorities that states should develop policy and enforcement mechanisms around. The current enforcement instrument for violations of the AD Act is the Queensland Civil and Administrative Tribunal (QCAT), which has been heavily criticised for its inability to provide "effective, accessible remedies and causes of action for individuals who allege that their rights have been violated"<sup>24</sup>.

### **4.3 Consultation with the Queensland Human Rights Commission (QHRC)**

These findings and the associated recommendations were presented to the QHRC for review and consideration in their reform of the AD Act. This meeting was used to evaluate

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<sup>23</sup> Australian Human Rights Commission. 2018. "United Nations Declaration on the Rights of Indigenous Peoples." *United Nations Declaration on the Rights of Indigenous Peoples*. September 18. Accessed September 7, 2021. <https://declaration.humanrights.gov.au/>

<sup>24</sup> Schetzer, Louis. 2020. "Queensland's Human Rights Act: Perhaps not such a great step forward?" *Alternative Law Journal* 45(1): 12-17.

their relevance and identify any further areas that needed to be explored. In relation to the two topics of focus, the QHRC expressed that in their previous consultations with organisations and individuals, the AD Act's enforcement instruments had been met with the most consistent public call for reform. The complexity of this emerges in an examination of the QHRC 'Terms of Reference for the Review', which state that the AD Act should be made to align with the Human Rights Act 2019 (Qld) which also employs the criticised enforcement instruments<sup>25</sup>.

#### 4.4 Summary of Key Findings

1. There is a need for the inclusion of positive discrimination in the AD Act to promote the rights of a specific group—Australia's First Nations people—through explicit acknowledgment of their distinct cultural needs.
2. The current models for regulation by QCAT in the AD Act are ineffective. The State Government needs to take a more active role in reducing opportunities for discrimination and educating people about the process of reporting incidents of discrimination.

### 5.0 Implications

In Australia's 2014-2015 National Aboriginal and Torres Strait Islander Social Survey, 33.5% of Aboriginal and Torres Strait Islander people aged 15 years and over felt that they had been treated unfairly at least once in the previous 12 months because of their Indigenous origins<sup>26</sup>. Data from a population study of 23 countries, provides evidence of poorer health and social outcomes for Indigenous peoples than for their respective non-Indigenous populations<sup>27</sup>. Discrimination towards Aboriginal and Torres Strait Islander children increases the likelihood of them suffering from damaging interrelated health outcomes<sup>28</sup>. The United Nations' 2030 Agenda for Sustainable Development makes

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<sup>25</sup> Queensland Human Rights Commission. 2021. *Terms of Reference: Queensland Human Rights Commission review of the Anti-Discrimination Act 1991 (Qld)*. March 23. Accessed August 30, 2021. [https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0005/32396/2021-Review-of-the-ADA-Terms-of-Reference.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0005/32396/2021-Review-of-the-ADA-Terms-of-Reference.pdf).

<sup>26</sup> Australian Bureau of Statistics. 2019. *National Aboriginal and Torres Strait Islander Social Survey, 2014-15*. October 3. Accessed September 14, 2021. <https://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4714.0>

<sup>27</sup> Anderson, et al. 2016. "Indigenous and tribal peoples' health (The Lancet–Lowitja Institute Global Collaboration): a population study." *The Lancet* 388(10040): 131-157.

<sup>28</sup> Cave, Leah, et al. "Caregiver-perceived racial discrimination".

explicit reference to Indigenous peoples six times<sup>29</sup>, demonstrating the necessity of addressing these specific inequalities to assist the realisation of global human rights. Anti-discrimination policy plays a significant role in reducing the health<sup>30</sup> and economic<sup>31</sup> disparities that disproportionately impact Aboriginal and Torres Strait Islanders. Amending the AD Act based on these findings to better facilitate Indigenous voices and help combat discrimination. Improving the Act will create a more specific instrument that can be used to reduce the disproportionate impact these communities face in areas of Indigenous land rights, the protection of sacred sites, and the age of legal criminal responsibility.

## 5.1 Explicit Acknowledgement of Targeted Groups

The lack of explicit acknowledgement of First Nations communities in the AD Act means that there is minimal ability to implement positive discrimination. Positive discrimination in this case being the “aim to give special considerations to individuals on the basis of their membership of a social group which has been identified on some basis of disadvantage”<sup>32</sup>. Critics of the concept express that it is unable to change attitudes, cultures, or power structures<sup>33</sup>; however, when applied to the revision of policy, “positive discrimination creates the favourable conditions for transformative change to permeate organisations more rapidly and extensively”<sup>34</sup>.

## 5.2 Models of Enforcement

The AD Act does not include provisions to allow the regulatory body of QCAT jurisdiction to hear applications for relief or remedy in relation to discriminatory conduct, resulting in

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<sup>29</sup> United Nations. 2015. *Transforming our world: the 2030 Agenda for Sustainable Development*. October 21. Accessed September 14, 2021. <https://sdgs.un.org/2030agenda>.

<sup>30</sup> Kairuz, Camila, Lisa Casanelia, Keziah Bennett-Brooke, Julieann Coombes, and Uday Narayan Yadav. 2020. "Impact of racism and discrimination on the physical and mental health among Aboriginal and Torres Strait Islander peoples living in Australia: a protocol for a scoping review." *Systematic Reviews* 9(223): 1-6.

<sup>31</sup> Elias, Amanuel. 2015. *Measuring the economic consequences of racial discrimination in Australia*. PhD Dissertation, Melbourne: Deakin University.

<sup>32</sup> Dockery, Michael. 2011. "Traditional culture and the wellbeing of Indigenous Australians: An analysis of the 2008 NATSISS." *Centre for Labour Market Research*: 1-24.

<sup>33</sup> Cockburn, C. 1989. "Equal Opportunities: The Short and Long Agenda", *Industrial Relations Journal* 20(3): 213–25

<sup>34</sup> Noon, Mike. 2010. "The shackled runner: time to rethink positive discrimination?" *Work, Employment and Society* 24 (4): 728-739.

an expensive and inaccessible process for those making a submission<sup>35</sup>. This means taking action is likely to be significantly more difficult for already marginalised First Nations communities. Effective dispute resolution mechanisms are required under international law and considered essential in any regime with the goal of protecting human rights<sup>36</sup>.

## 6.0 Recommendations

### 6.1 General Recommendations

1. The preamble should refer to the fulfilling of obligations under the specific international human rights instrument of the *Declaration on the Rights of Indigenous Peoples*.
2. The preamble should be made to include specific reference to the Aboriginal peoples and Torres Strait Islander peoples of Queensland.
3. The addition of *First-Nations Identity* or *Aboriginal and Torres-Strait Islander Identity* as an attribute of discrimination introduced to Section 7 of the AD Act.
4. The addition of *Transport* and *Media and Digital Platforms*, as areas of activity where discrimination is prohibited under Part 4 of the AD Act.

### 6.2 Land Rights and the Protection of Sacred Sites for Indigenous Queenslanders Recommendations

5. The addition of a section dedicated to *Land Rights and the Protection of Sacred Sites for Indigenous Queenslanders* separated from the *General Sites of Cultural or Religious Significance* [s48 and s80] under Part 4 of the AD Act (Exemptions for discrimination in goods and services area, and exemptions for discrimination in disposition of land area).
  - a. Align this with Section 28 of the *Human Rights Act 2019* (Qld) to ensure Indigenous Queenslanders are granted protection from any destructive economic activities by outside corporations.

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<sup>35</sup> Human Rights Law Centre. "Submission No 101 to the Legal Affairs and Community Safety Committee". Queensland Parliament, Inquiry into the Human Rights Bill 2018 (26 November 2018), 13–14.

<sup>36</sup> Schetzer, "Queensland's Human Rights Act".

6. Adjustment to the existing wording in understanding that “offending the cultural or religious sensitivities of people of the culture or religion” does not correctly represent Indigenous Australians’ relationship with land under Part 4 [s48 and s80] of the AD Act. Exchange this term with “impact the identity and wellbeing of Aboriginal and Torres Strait Islander peoples”.

### **6.3 Age of Criminal Responsibility Recommendations**

7. The addition of *Spent Criminal Conviction or Irrelevant Criminal Record* as an attribute of discrimination introduced to Section 7 of the AD Act.
8. The addition of a section outlining exemptions for the provision of *services specifically for children* under Chapter 2, Part 5 of the AD Act.
9. The addition of a section outlining exemptions for the provision of *Services Specifically for Aboriginal and Torres Strait Islander Peoples* under Chapter 2, Part 5 of the AD Act.
  - a. Outline exemptions for Aboriginal & Torres Strait Islander community-led and controlled organisations and programs.
  - b. Utilise this additional section to supplement the current *Exemptions for Discrimination in Club Membership and Affairs Area* [s97] which does not fully encompass the importance of Aboriginal & Torres Strait Islander led organisations.

### **6.4 Enforcement Recommendations**

10. Under Chapter 7 of the AD Act, the inclusion of provisions to grant QCAT jurisdiction to hear applications for relief or remedy in relation to discriminatory conduct.

## **7.0 Conclusion**

The current *Anti-Discrimination Act 1991* (Qld) requires reform if it is to effectively promote human rights, equality, and non-discrimination to the fullest extent for Aboriginal and Torres Strait Islander peoples in Queensland. After a comparative analysis with Queensland and international policy documents, there are two consistent areas of deficit

in the AD Act: (1) the lack of explicit acknowledgement of targeted groups; and (2) the ineffectiveness of the existing model for enforcement. Changes made to the AD Act in line with the provided recommendations aim to transform it into an instrument that can be used to reduce the disproportionate impact of discrimination on First Nations communities.



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