REVIEW OF QUEENSLAND'S *ANTI-DISCRIMINATION ACT 1991*

Submissions from TASC National Ltd – we are a community legal centre located in Toowoomba, Queensland with outreach offices in Ipswich, Roma and Goondiwindi.

The following is our considered answers to some of the topics covered in the discussion paper from November 2021.

Time Limits

Current legislation:

- 1 year to make a complaint – QLD. Shorter than limitations for a personal injury claim or a tort claim.
    - Nothing special for children or people with impaired decision making but would be relevant circumstances
- Section 138 *Anti-Discrimination Act 1991* (Qld)
    - (2) if more than 1 year after, commissioner must decide whether to accept the complaint (only if satisfied the complainant has shown good cause).
- Section 141A deferral of acceptance of complaint for out-of-time contravention
    - Can defer decision under s 138(2) until conciliation attempt made

Changing the time limit

For a complaint to be made, the individual needs to recognise they have experienced unlawful discrimination.

The 1 year time limit provides certainty of a timely resolution to complaints. However, the time limit may not be sufficient for the individual to recognise they have experienced discrimination, seek advice, gather evidence to substantiate the claim and lodge a complaint. There may be further reluctance to make a complaint particularly if the person has experienced trauma, is not yet removed from the circumstances where they experienced discrimination, and/or is fearful of potential consequences in making a complaint. It may also take some time for the person to find appropriate assistance from a service they feel safe and comfortable engaging with. The experience of discrimination may cause the person to be more reluctant to seek assistance from services out of fear they may be further discriminated against.

It may be appropriate to consider Federal time limits. The *Sex Discrimination Act 1984* provides 24 months. Alternatively, the *Victims of Crime Assistance Act 2009* (Qld) provides 3 years. Increasing the time limit may allow the person to recover, feel safer and/or be in a better frame of mind before taking legal action.

Impaired decision-making capacity

To recognise the vulnerability of particular complainants, children or people with impaired decision-making capacity ought to have additional time. The *Victims of Crime Assistance Act 2009* (Qld) provides for 3 years from when the child turns 18[1]. This special provision recognises the barriers facing children particularly in disclosing what may be a traumatic experience and their reliance on adults for assistance.

A child at 12 or 13 may not have the knowledge to recognise what they are experiencing as discrimination. This knowledge may not come to them till much later. They may also not have adults in their life at that time who are willing to assist them in making a complaint.

Similarly, people with impaired decision-making capacity may also rely more on the assistance of others to recognise what they are experiencing as discrimination, be aware of the complaint options available, and have the capacity to take action. A special provision that provides for the time limit to apply from the date the person with impaired decision-making capacity becomes aware of their legal options may be appropriate. Alternatively, this could be an explicit exception to enable the person to make an otherwise out-of-time complaint.

Objectives of the Act

The general purposes for inclusion of objects clauses in legislation include:

- Giving a general understanding of purpose, aims or principles of legislation
- Assisting in interpretation and/or resolving ambiguity.

If there is to be an overhaul of the existing legislation there may be some value in including an objects clause. Objects should contain references to:

- Elimination of discrimination
- Need to address systemic nature of discrimination
- Creating a better understanding of how systemic racism effects individuals;
- Streamlining a process for dispute resolution and/or complaints

Positive Duties

The implementation of positive duties would require organisations to consider and address the attitudes, behaviours and systems that lead to prohibited conduct including discrimination, sexual harassment and victimization.

---

[1] *Victims of Crime Assistance Act 2009* (Qld) s54

Our current understanding of racism highlights a need for systemic change which can only be done by addressing not only the behavior or conduct when it arises but also the environment from which they arise. For this reason, the positive duties should be imposed on the entities and activities that are subject to the *Anti-Discrimination Act 1991* (Qld).

Similar to what has been seen in Victoria, with the implementation of positive duties under the *Equal Opportunity Act 2010* (Vic), the matters that are taken into account when determining reasonable and proportionate should allow for some flexibility given that there is an immensely broad range of organisations with varying levels of resources that would be subject to the positive duties.

The *Work Health and Safety Act 2011* (Qld) provides that employers have an obligation to ensure the health and safety of their employees. The imposition of positive duties in this area would perhaps address the limitations in the WHS Act, one of these limitations being that there is a noticeable absence of legislative provisions within the Act to address the link between experiences of discrimination and the health and safety of an employee.

Grounds of discrimination

The Anti-Discrimination Act 1991 (Qld) was developed at least thirty years ago (30) to promote and protect equality. Section 7 sets out the grounds of discrimination that are protected by the Act and refers to them as 'attributes', for impairments. However, since that time, developments in health, politics, religion, science, media and technology have had a significant impact on what the community understands equality to be. On that basis, it is suggested that the current grounds of discrimination in which the act seeks to promote and protect need to be amended so that they reflect modern times.

The problem is two-fold and well identified by the Discussion Paper; that is:

a. In some cases, the definitions of the listed attributes do not reflect the community's current understanding of the that attribute; and
b. Although the current list of attributes is substantial, particularly given it was developed some time ago, there are vulnerable groups whose rights are not adequately promoted or protected by the Act.

Attributes that need further development

The language used and the definitions of attributes should be guided by industry experts. For example, health experts and the health industry no longer refer to a disability as an impairment, it is now referred to simply as a disability. This terminology would be consistent with the terminology used, for example, by the National Disability Insurance Scheme.

As it is currently understood, an impairment does not necessarily include a mental health condition. The Australian Institute of Health and Welfare defines disability as a continuum from having no impairment or limitation to the complete loss of functioning or ability to complete tasks and can be the result of genetic disorders, illnesses, accidents, ageing or a combination of these factors. For clarity, health experts and the health industry agree that mental health conditions can, and often are, a disability, including dependency and addiction related conditions, and this should be reflected in the Act.

Some definitions are unnecessarily narrow, and it is suggested that where appropriate, they be broadened so as to not disadvantage individuals. For example, the current definition of impairment does include those people who rely on a guide, hearing or assistance dog, wheelchair or other remedial service. This is inconsistent with industry experts who note that a person may benefit from guidance, assistance or support from animals other than dogs. The Disability Discrimination Act 1992 (Cth)[2] and the Discrimination Act 1991 (ACT)[3] have intentionally referred to 'assistance animals' so as to ensure that the rights of individuals are adequately promoted and protected. To ensure that individuals aren't taking advantage of the system, the aforementioned jurisdictions require assistance animal to be accredited or certified and it is noted that this is an appropriate course of action.

Other examples of attributes that may need to be further broadened include but are not limited to: Gender, sexuality, identity, relationship status, sexual activity and religious activity.

Attributes that need further inclusion

Other examples of attributes that may need to be further broadened include but are not limited to: Irrelevant Criminal Record (see more specific discussion below); Medical history (impacting individuals' ability to travel, to gain employment, housing and insurance); Immigration status; and physical features.

As discussed above, social norms and expectations have shifted over the previous thirty (30) years. Previously, the community may have taken the view that the criminal law system reflected a system that advocated for punishment. However today, the criminal law system is seen by many as a system of rehabilitation.

There is established literature which highlights that securing employment, housing, licences and even travelling can be unnecessarily difficult for individuals who have a criminal history or

[2] *Disability Discrimination Act 1992* (Cth) s9(2)
[3] *Discrimination Act 1991* (ACT) s5AA

record, regardless of the outcome (eg charge dropped or withdrawn), and regardless of the relevance.[4]

It is, therefore, our submission that there should be provisions which relate to irrelevant criminal record because all too often job applicants in particular are losing out on positions because they have a criminal conviction, regardless of what that conviction is and its impact on the applicant's ability to do the job.

One of our TASC workers previously worked in administration at a furniture distribution warehouse. One of their co-workers was a dispatch worker whose position primarily involved loading and unloading furniture on trucks. The dispatch worker had been hired and they had worked at the warehouse for a number of weeks and when the Manager of the warehouse said that he had to let this worker go because a criminal history check had revealed a criminal conviction from around three years prior. The manager did not want to terminate the worker's employment and he said that the person was one of his best workers, however, the company's head office had ordered him to fire the worker on the basis of his criminal conviction. Our TASC worker does not recall the exact offence from which the conviction arose, however, it was not for dishonesty or stealing as an employee and it was not for a violent crime. It was also a one-off conviction as opposed to being one of many. The warehouse manager did not believe that this conviction was a barrier to the worker doing his job, or being trusted in the workplace, and there were no safety issues but the manager was not allowed to argue this point with head office.

This is just one example of why this area should be considered because if we do not, we are hindering people who are trying to come back from the poor decisions of their past. In addition, businesses/organisations, as well as society in general, are doing themselves out of people who may be excellent and dedicated workers/tenants etc but who are not even being given opportunities because they are being stopped at the door due to a criminal record.

Having legislation in place on this issue will essentially make the employers and other decision-makers consider how relevant the conviction (or other record) is and whether it is a genuine barrier to the person's application being considered.

In the Northern Territory case of *Hosking v Fraser Central Recruiting* (1996) EOC 92-859 the Northern Territory Anti-Discrimination Commission determined that a nurse was not required to have a clean criminal record in order to perform her duties and so criminal record checks violated the Act.

[4] Caxton Legal Centre Inc, Effect of Criminal Convictions: Criminal Records (Web Page, 8 January 2019).

> *This case demonstrates that the guiding principle in all decisions relating to employment is that each person applying for or working in a particular job must be considered on his or her own merits rather than as a member of a group of 'former offenders'*[5]

In the event that Qld decides to cover this area in their anti-discrimination legislation, the next consideration is what should be covered and how it should be worded.

As stated in the discussion paper, there are other states and territories which have already included provisions relating to criminal history and several different approaches have been taken, with the ACT, NT, Tasmania and the Commonwealth taking a broader approach, with very similar coverage relating to "irrelevant criminal record" including:

- A spent criminal record;
- An expunged record;
- A record relating to arrest, interrogation or criminal proceedings where:
    - No further action was taken in relation to the arrest, interrogation or charge of the person; or
    - No charge has been laid; or
    - The charge was dismissed; or
    - The prosecution was withdrawn; or
    - The person was discharged, whether or not on conviction; or
    - The person was found not guilty; or
    - The person's finding of guilt was quashed or set aside; or
    - The person was granted a pardon; or
    - The circumstances relating to the offence for which the person was found guilty are not directly relevant to the situation in which the discrimination arises.[6]

In Western Australia, this issue is addressed in the *Spent Convictions Act 1988* whereby it is unlawful for a variety of entities to discriminate against a person on the basis of a spent conviction in the following situations:

1. Job applicants and employees;
2. Commission agents;
3. Contract workers;
4. Organisations of employees and organisations of employers;
5. Authorities that confer qualifications; and

---

[5] Human Rights and Equal Opportunity Commission, *Discrimination in Employment on the basis of Criminal Record Discussion Paper*, 2004, 35

[6] See *Anti-Discrimination Act 1992* (NT) s4, *Discrimination Act 1991* (ACT) Dictionary, *Anti-Discrimination Act 1998 (Tas)* s3

6. Employment agencies.[7]

When Qld considers whether to cover discrimination on the grounds of irrelevant criminal record, it is our recommendation that the wording from NT, ACT and Tasmania be used as a basis for the Qld provisions on this issue.

This wording covers far more than a spent criminal record and it allows a person to argue that the contents of their criminal record are not directly relevant to what they are applying for, particularly where a conviction is more recent. It also means that the person/people considering the application must also consider whether it is relevant rather than simply discarding the application for the generic reason that there is a criminal record.

The Western Australian provisions only apply to discrimination on the basis of spent convictions but it leaves people open to discrimination on all other records as listed in the NT, ACT and Tasmanian legislation.

In particular, NT and Tasmania have exemptions to discrimination due to irrelevant criminal record but they differ slightly in their approach. Tasmania's exception states:

> *A person may discriminate against another person on the ground of irrelevant criminal record in relation to education, training or care of children if it is reasonably necessary to do so in order to protect the physical, psychological, or emotional well-being of children having regard to the relevant circumstances.*[8]

The Northern Territory exception states:

> *(1) A person may discriminate against another person on the grounds of irrelevant criminal record in the area of work if:*
>
> *(a) The work principally involves the care, instruction or supervision of vulnerable person; and*
>
> *(b) The discrimination is reasonably necessary to protect the physical, psychological or emotional well-being of those vulnerable persons, having regard to all of the relevant circumstances of the case including the person's actions.*
>
> *(2) In subsection (1):*
>
> *"vulnerable persons" includes children, aged persons and persons with a physical or intellectual disability or mental illness.*[9]

It is expected that states will act protectively of our most vulnerable people and so including exemptions will allow employers to act protectively on an immediate level. Having said this,

---

[7] *Spent Convictions Act 1988 (WA)* ss 17-23
[8] *Anti-Discrimination Act 1998 (Tas)* s50
[9] *Anti-Discrimination Act 1992 (NT)* s37

once again, consideration should be given to how this may be used in practice. For example, a person may have a conviction for a serious crime (not an offence against a vulnerable person) from twenty (20) years ago and they have not been charged with an offence since but the Tasmanian exemption would allow for an application to be rejected without any consideration given to the fact that the person has not offended in the past twenty (20) years or even the circumstances around the offending.

This being the case, we would advocate for a provision similar to that of the Northern Territory where the employer is to show that the decision to not employ a person was reasonably necessary to protect the well-being and that all relevant information was considered prior to the decision being made.

Exemptions

The general rule

The *Anti-Discrimination Act 1991* (Qld) ('*Act*') prohibits direct and indirect discrimination on the basis of certain attributes.[10] This applies in relation to:

1. work and work-related area;
2. education area;
3. goods and service area;
4. superannuation area;
5. insurance area;
6. disposition of land area;
7. accommodation area;
8. club membership and affairs area;
9. administration of State laws and programs area; and
10. local government area.

Exemptions in work and work-related areas - religion

The Act provides an exemption from discrimination in work and work-related areas if:

1. the person openly acts in a way that the person knows or ought reasonably to know is contrary to the employer's religious beliefs—
    a. during a selection process; or

[10] *Anti-Discrimination Act 1991* (Qld) ('*Act*') s 7 (sex, relationship status, pregnancy, parental status, breastfeeding, age, race impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality, family responsibilities, association with, or relation to, a person identified on the basis of any of the above attributes).

b. in the course of the person's work; or
c. in doing something connected with the person's work; and

2. it is a genuine occupational requirement of the employer that the person, in the course of, or in connection with, the person's work, act in a way consistent with the employer's religious beliefs.[11]

This exemption is subject to the requirement that the discrimination be 'not unreasonable' which depends on:

1. whether the action taken or proposed to be taken by the employer is harsh or unjust or disproportionate to the person's actions;
2. the consequences for both the person and the employer should the discrimination happen or not happen.[12]

Exemptions in education - religion

The Act provides an exemption from the prohibition on discrimination in relation to discrimination in the education area for educational authorities that operate for students of a particular sex or religion, or who have a general or specific impairment.[13]

Other exemptions – religion

The Act also provides exemptions from the prohibition on discrimination on religious grounds in relation to the goods and service area,[14] the disposition of land,[15] and the accommodation area.[16]

The Act also incorporates the exemptions found in the *Sex Discrimination Act 1984* (Cth) in relation to superannuation and insurance.[17]

General exemption - religion

The Act also provides a general exemption in relation to religious bodies, the effect of which is that the Act does not apply in relation to:

[11] Act s 25(3).
[12] Act s 25(5).
[13] Act s 41.
[14] Act s 48.
[15] Act s 80.
[16] Act s 90.
[17] Act ss 59, 73,

1. the ordination or appointment of priests, ministers of religion or members of a religious order; or
2. the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; or
3. the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice; or
4. an act by a body established for religious purposes if the act is—
    a. in accordance with the doctrine of the religion concerned; and
    b. necessary to avoid offending the religious sensitivities of people of the religion.

Freedom of religion and freedom from discrimination

Whether, and to what extent, the interests of religious bodies and their adherents should prevail over individuals involves weighing conflicting values, in particular, freedom of religion and freedom from discrimination.

Freedom of religion

Freedom of religion is the freedom to have and adopt a religion and the freedom to manifest religious belief. It is a fundamental human right recognised in international law.[18] Freedom of religion is a non-derogable right. In Australia, freedom of religion is given constitutional assurance in that Commonwealth legislation cannot legislate to establish any religion, impose any religious observance, or prohibit the free exercise of any religion.[19] The freedom to practice religion is not absolute and may be limited by laws made for the protection of the community and in the interests of social order.[20] However, the Commonwealth Constitution's protection of freedom of religion does not apply to the States.[21] Instead, the protection of freedom of religion in Queensland is at the discretion of the Parliament.

Freedom from discrimination and equality

Article 7 of the *Universal Declaration of Human Rights 1948* provides:

> *All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any*

[18] *Universal Declaration of Human Rights 1948* Art 18; *International Covenant on Civil and political Rights* Art 18.
[19] Australian Constitution s 116.
[20] *Adelaide Co of Jehovah's Witnesses Inc v Commonwealth* (1943) 67 CLR 116.
[21] *Grace Bible Church v Reedman* (1984) 36 SASR 376.

discrimination in violation of this Declaration and against any incitement to such discrimination.

This protection is reiterated in Article 26 of the *International Covenant on Civil and Political Rights*.

The High Court of Australia has continually reaffirmed that no guarantee of equality can be read into Commonwealth Constitution.[22] However, the common law has in some respects protected individuals from discriminatory application of the law, largely through the principles of equality associated with the rule of law. All Australian legislatures have now supplemented the development of the common law by enacting laws making certain kinds of discrimination unlawful.[23]

Freedom of religion and freedom from discrimination are in conflict

The exemptions in the Act enable lawful discrimination by religious bodies on grounds which would otherwise be unlawful. The exemptions therefore provide religious bodies with a legal benefit that is not available to other educational institutions and individuals and lowers the legal standing of individuals and other educational institutions.

Removing the exemptions would:

1. subject religious bodies to the Act which would render them the same as other educational institutions and individuals;
2. raise the legal standing of individuals; and
3. discriminate against religious bodies and their adherents whose religious susceptibilities would be injured by compliance with the Act.

Whether the exemptions are removed or not, a degree of inequality is inevitable.

Balancing conflicting values

John Locke and the doctrine of tolerance

[22] *Kruger v Commonwealth* (1997) 190 CLR 1.
[23] *Racial Discrimination Act 1975* (Cth); *Sex Discrimination Act 1984* (Cth); *Disability Discrimination Act 1992* (Cth); *Australian Human Rights Commission Act 1986* (Cth); *Age Discrimination Act 2004* (Cth); *Discrimination Act 1991* (ACT); *Human Rights Act 2004* (ACT); *Anti-Discrimination Act 1992* (NT); *Anti-Discrimination Act 1977* (NSW); *Anti-Discrimination Act 1991* (Qld); *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1998* (TAS); *Equal Opportunity Act 2010* (VIC); *Charter of Human Rights and Responsibilities Act 2006* (VIC); *Equal Opportunity Act 1984* (WA).

Lock's doctrine of tolerance may be considered balanced in that it dictates that the government 'has no power to impose [or forbid] by his laws' outward worship.[24] Alzate argues that 'religious exemptions undermine' this balance and that such exemptions are inconsistent with Locke as 'the practice of exempting some individuals from otherwise neutral laws of general applicability introduces inequality in the rule of law'.[25] This argument does not have regard to the indirect discrimination religious societies would be subject to under the general rule.[26] Rather, the government, in pursuing equality and anti-discrimination, may provide an exemption to religious bodies in order to preserve the liberties 'of all the members of that society as far as is possible'.[27]

Approximately 70% of the population have some form of religion, while 30% have no religion.[28] If the exemptions were removed 70% of the population would potentially be subject to indirect discrimination through compliance with the general rule. This would not be the case if the exemptions remain or are amended, however 30% of the population would potentially be subject to direct discrimination under certain circumstances.

Although it is difficult to quantify the impact of the exemptions, this data indicates that the exemptions are necessary to preserve freedom of religion for the majority of the population. The extent of the exemptions remains unclear.

Siracusa principles

The Siracusa Principles provide that restrictions on human rights must meet standards of legality, necessity, proportionality and gradualism. Furthermore, limitations on rights must be, among other provisions, 'strictly necessary', meaning that the limitations respond to a pressing public or social need and proportionately pursue a legitimate aim, and are the least restrictive means required for achieving the purpose of the limitation.[29]

Notwithstanding that the Siracusa Principles have not been implemented into domestic law, they ought to be considered in determining the extent of the exemptions in the

[24] John Locke, *Second Treatise of Civil Government and a Letter Concerning Toleration*, ed B. Blackwell (Oxford, 1948)145.
[25] Elissa Alzate, *Religious Liberty in a Lockean Society* (Palgrave Studies in Religion, Politics, and Policy 2017) 33-37, 21, 38, 98, 89.
[26] Reid Mortensen, 'A Reconstruction of Religious Freedom and Equality: Gay, Lesbian and de facto rights and the Religious schools in Queensland' (2003) 3(2) *QUT Law and Justice Journal* 320.
[27] *Second Treatise* (n 15) ss 88, 123.
[28] Australian Bureau of Statistics, *Religion in Australia, 2016* (Catalogue No. 2071.0, 28 June 2017).
[29] UN Commission on Human Rights, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* UN Doc E/CN.4/1985/4 (28 September 1984)

Act. In particular, the high threshold for limiting freedom of religion under international law should be noted.[30]

The Court's approach

Several cases suggest that the Court would approach the exemptions by undertaking a balancing act by weighing the injury to the free exercise of religion and the injury to the community interests.[31] The constitutional preference for freedom of religion over anti-discrimination should also be borne in mind.[32]

General exemptions – religious bodies and state services

Marginalised, vulnerable, and/or disadvantaged members of the community often rely on the provision of subsidised, public services to obtain essential care and support across various areas. This is especially evident in service sectors such as healthcare, aged care, education, and social services. The provision of these services to the public aims to promote equal access to fundamental human rights, such as the right to health services without discrimination.

As such, if public funds are sustaining the provision of an essential service that is intended to benefit the wider population, it should not be permissible for the service provider to discriminate when providing these services. Public funds should not be spent in a manner that is discriminatory against any particular group.

Accordingly, it should not be permissible for religious bodies who are providing services to the public on behalf of the state to discriminate against any particular group. If a religious body receives funding for the provision of a service on the basis that this service will be provided to the whole community, it should not be permitted to discriminate and/or exclude community members on the basis of their religious views or doctrines. The spending of public funds on a public service that is not technically available to the wider community arguably defeats the purpose of funding the service in the first place. This would affect a number of rights under the *Human Rights Act 2019*, including the right to equality (s 15) and right to health services (s 37).

[30] Ibid Art 18(3).
[31] *Krygger v Williams* [1912] HCA 65; *Adelaide Co of Jehovah's Witnesses Inc v Commonwealth* (1943) 67 CLR 116; *Minister of Immigration and Ethnic Affairs v Lebanese Moslem Association* [1987] FCA 49.
[32] Alex Deagon, 'Definition the Interface of Freedom and Discrimination: Exercising Religion, Democracy and Sam-Sex Marriage' (2017) 20 *International Trade and Business Law* 239, 282; Reid Mortensen, 'Rendering to God and Caesar: Religion in Australian Anti-discrimination law' (1995) 18 *University of Queensland Law Journal* 208, 231.

However, consideration should be given to the protection of other rights and freedoms, including religious beliefs. It would be remiss not to acknowledge that conflict may arise between the religious doctrines or sensitivities of the service provider when providing services to members outside of their community. To attempt to address this and strike the appropriate balance, the recommendation of the South Australian Law Reform Institute (referenced in the Discussion Paper) should be adapted to an apposite degree. This should include the minimum requirement that the scope of any religious exemption be narrowed to clearly exclude essential services, namely healthcare, child and adoption services, social services, accommodation and health services. Ideally, any religious exemption should clearly state that it does not extend to discrimination in the provision of services to the general public, such as health, aged care, and other social services.

Accommodation exemption – sex workers

Businesses often have the authority to regulate the provision of other services from their premises, including the use of the premises for purposes other than that which is permitted. However in the context of this exemption, it is worth considering the point to which this control extends – does this mean that people cannot work remotely or conduct any business whatsoever from their premises or accommodation? Why should sex work be considered differently? Should this be a blanket rule? Is this feasible? This question is complicated further by the discussion around 'lawful' sexual activity in the context of sex work.

The current scope of the definition of "accommodation" is extremely broad, as it includes all types of accommodation from business premises, residential properties, hotel or motel, boarding house or hostel, caravan park or manufactured home site, camping sites and building or construction sites[33]. The inclusion of all types of accommodation opens people up to the risk of being turned away from lodging, and/or may result in homelessness. As such, the sex worker accommodation exemption should at the very least be amended to narrow the definition of "accommodation" to ensure that accommodation is afforded regardless of a person's occupation.

The exemption also allows accommodation providers to discriminate on the basis of a "reasonable belief". This does not require any actual evidence that the premises is being used for sex work by a person, and could allow a person's reputation to be unfairly attacked or scrutinised. As it currently stands, the exemption affects sections 24 and 25 of the *Human*

[33] *Anti-Discrimination Act 1991 (Qld)* sch Dictionary

Rights Act 2019 in respect of property rights, privacy and reputation (including ‘home’). In this respect, there is an argument for the sex worker accommodation exemption to be repealed.

We thank you for considering our submission.

TASC National Ltd

1 March 2022