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Queensland Human Rights Commission  
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28 February 2022

Re: Review of Queensland's Anti-Discrimination Act

Dear Sir/Madam/Committee of the Commission

Please consider this submission in your review of Queensland's Anti-Discrimination Act

This submission is in response to discussion questions in the Review of Queensland's Anti-discrimination Act: Discussion Paper.

Diversity Queensland Incorporated is a volunteer run organisation with the objects: To facilitate and support projects, programs and movements which increase the well-being and challenge negative perceptions of people marginalised by non-evidence based prejudices and social stigma.

In agreeance with the discussion paper, we are also aware that discrimination is harmful. We recognise that privileged positions of power can be exploited to justify discrimination toward marginalised groups. Where this dynamic is supported, sensitivities can develop in the privileged group leading to offence distress in situations where the rights of marginalised groups are increased in relation to those who have held the privileged position. We do not agree that a challenge to these sensitivities is sufficient reason to maintain legal discrimination toward marginalised groups.

**Attributes**

***Discussion question 26:***

*Should there be a new definition of gender identity, and if so, what definition should be included in the Act?*

There are numerous traits a person may relate to gender identity and some of these traits may change over time. The aggregate of these traits may fall anywhere on a gender spectrum and also change over time. In a world with only two gender options many would find they don't fit but would likely identify with one for a sense of group belonging. In a connected world a full spectrum of gender identity has been realised and a binary system no longer represents the diversity now being identified. Therefore we support changing the current definition to one that reflects a full spectrum of gender identity.

The example given from the Public Health Act 2005 is a vast improvement, although reference to the non-binary aspect of gender would be a welcome inclusion.

We also recognise that where gender identity and gender expression are incongruent, this may cause some confusion for those raised with understanding limited to a congruent gender & sex binary. However, greater acceptance of gender diversity is likely to decrease

incidents of gender identity/expression incongruence, as often gender expression varies from gender identity in order to avoid prejudice or discriminatory behaviour from others.

**Discussion question 27:**

*Should there be a new definition of sexuality, and if so, what definition should be included in the Act?*

In recent culture, “bisexual” has taken a broader meaning of “same and other gender” so the current definition would appear to be adequate. However to prevent future legal contestation we recommend the more explicitly inclusive definition from the Queensland Public Health Act 2005, section 213E is adopted.

**Discussion question 28:**

*Should there be a new definition of lawful sexual activity, and if so, what definition should be included in the Act? Should the name of the attribute be changed, and if so, what should it be?*

Sex is a natural act with numerous health benefits when carried out safely. We do not agree that any lawful sexual activity can be subject to legal discrimination. Whether it be commercial, same sex, with multiple sex partners or inanimate objects, etc.

There are already other laws in place regarding causing harm to other people or property and we see no reason for any activity to be subject to greater discrimination because it intersects with a sexual act. E.g. sex in accommodation is lawful, commercial activity in accommodation is lawful, therefore commercial sex in accommodation should also be lawful. We recommend removing the specificity of the legal definition of lawful sexual activity as “sex work” to instead include all lawful sexual activity.

**Discussion question 29:**

*Does the terminology used to describe any existing attributes need to be changed?*

*For attributes that have a legislative definition in the Act, do those definitions need to change?*

*For attributes that do not have a legislative definition, should a definition be introduced?*

*Should the Act separately prohibit discrimination because a person with a disability requires adjustments for their care, assistance animal, or disability aid?*

If lawful sexual activity is not amended to include all lawful sexual activity, we would like to see non-monogamy protected from discrimination, either in lawful sexual activity as having multiple sex partners and/or in relationship status as being in polyamorous relationships. We are not aware of any evidence of harm from these attributes when carried out safely and ethically.

**Discussion question 35:**

*Should an additional attribute of 'gender' be introduced? Should it be defined, and if so, how?*

We agree with gender as an attribute, however it could include many facets of gender including gender identity and gender expression. If the gender attribute could have a wider definition such as the example given from the Public Health Act 2005 in discussion question 26 then the current attribute of gender identity could be removed.

**Discussion question 36:**

*Should an additional attribute of sex characteristics be introduced? Should it be defined, and if so, how?*

Sex characteristics would be a welcomed protected attribute. With the recent increase of anti-transgender bills being introduced around the country it would be good to offer further protection for intersex people with ambiguous sex characteristics and transgender people who have sex characteristics incongruent with their gender.

**A general note on attributes**

It is conceivable that a person could be subject to discrimination based on any attribute including those not already covered by the legislation. Some attributes may pose an increased risk of harm and as such, discrimination may be reasonable. However, where an attribute does not pose an increased risk of harm beyond offending sensitivities which have been enhanced by a long term privileged position, we see no reason for the attribute not to be protected. We understand this would present a near infinite list of attributes, so propose that a definition of protected attributes replace the current limited list of protected attributes. An example definition could be: "Attributes, where the discriminator is unable to provide empirically based evidence that the attribute increases risk of harm."

**Exemptions****Discussion question 40:**

*Should the sport exemption be retained, amended, or repealed?*

*Should competitive sporting activity be more clearly defined?*

*Is strength, stamina or physique the appropriate consideration when restricting access to competitive sporting activity based on sex, gender identity, and sex characteristics? If not, what would be an alternative test to ensure fairness and inclusion in sporting activities?*



This is a complex issue. Ultimately we would like to see gender and sex removed from competitive sports, but understand that in some sports, groups with lower levels of testosterone may be at a disadvantage if there was not a low testosterone category (e.g. traditionally women's) for them to compete in.

One solution may be to add extra categories for those who are currently being excluded, but this may result in unworkable low numbers of competitors and "out" a competitor's identity unnecessarily. Another solution could be to categorise by testosterone levels over a set period pre and during competition. We note that some sports, such as boxing and wrestling, where body weight is an advantage, are categorised by body weight, so categorisation on attributes other than sex or gender already exist.

***Discussion question 41:***

*Should the scope of the religious bodies' exemption be retained or changed?*

*In what areas should exemptions for religious bodies apply, and in relation to which attributes?*

The scope of the religious bodies' exemptions should be reduced. We have noted that within religious groups there are disagreements as to what constitutes religious beliefs or values or how religious texts are interpreted. We understand that for a religious role a person who upholds the values of that religion would be most suitable, however we would draw the line at the point where the religious freedom to discriminate via exemptions harms other members of the community or restricts their right to equality. This includes gender, sexuality lawful sexual activity and relationship status.

Public religious benevolent services play an important role in our society to meet the needs of those struggling at any given time. They dominate in many areas, likely due to the economic advantage of a tax free status. When they discriminate against a minority group at a time they are most in need, it exacerbates the already poor wellbeing outcomes for the minority group.

This response also applies to questions 42, 43 and 44

***Discussion question 42:***

*Should religious bodies be permitted to discriminate when providing services on behalf of the state such as aged care, child and adoption services, social services, accommodation and health services?*

Religious bodies should not be permitted to discriminate when providing services on behalf of the state such as aged care, child and adoption services, social services, accommodation and health services See response to question 41



**Discussion question 43:**

*Should religious bodies be permitted to discriminate when providing accommodation on a commercial basis including holiday, residential and business premises?*

Religious bodies should not be permitted to discriminate when providing accommodation on a commercial basis including holiday, residential and business premises. See response to question 41

**Discussion question 44:**

*Should the religious educational institutions and other bodies exemption be retained, changed, or repealed?*

*If retained, how should the exemption be framed, and should further attributes be removed from the scope (currently it does not apply to age, race, or impairment)?*

The religious educational institutions and other bodies exemption should be repealed. See response to question 41

**Discussion question 45:**

*Are there reasons why the work with children exemption should not be repealed?*

We are not aware of any credible evidence which indicates that people who are sex workers, transgender or intersex risk increased harm to children. We are aware that discrimination toward transgender and intersex people does risk harm to children in these groups if it is perceived by them. We see no evidence based reason why this exemption should not be repealed.

**Discussion question 46:**

*Are there reasons why the Act should not apply to provision of assisted reproductive technology services?*

We see no reason for an exemption in this area. It should be repealed.  
We are not aware of any evidence that heterosexual couples provide better parenting outcomes for children than single parents, same sex parents or co-parenting groups.

**Discussion question 47:**

*Should the sex worker accommodation exemption be retained, changed or repealed?*

We see no reason for this exemption. There is already legislation relating to doing business in accommodation. Hotels and motels also often have conditions relating to visitor behaviour.



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Many sex workers chose to work from home in rental accommodation for economic reasons as many other business operators do. We see no reason why sex workers should be singled out from other business operators and put at increased risk of losing their homes and livelihood.

We are concerned that the exemption was introduced in response to a sex worker fighting to protect their rights. We see this as unethical and should not have happened.

We thank you for your consideration

Annie Mundy  
Secretary  
On behalf of the Diversity Queensland Management Committee