

**TO: Queensland Human Rights Commission**  
**Sent via email: [adareview@qhrc.qld.gov.au](mailto:adareview@qhrc.qld.gov.au)**

1 March 2022

## **Review of Queensland's Anti-Discrimination Act**

The Eros Association is Australia's industry association for adults-only retail, wholesale, media and entertainment. We welcome the opportunity to provide a submission in response to the Commission's Discussion Paper on a Review of Queensland's *Anti-Discrimination Act*.

### **Lawful sexual activity**

The Act provides protection on the ground of "lawful sexual activity"<sup>1</sup> which is defined as "a person's status as a lawfully employed sex worker."<sup>2</sup>

Whilst the Act may provide protections to sex workers under the attribute of "lawful sexual activity", it may fail to protect some who may have sex as part of their work but not conform to a definition of "sex worker", such as performers. This is a major limitation of provisions providing protections solely on the basis of a person's status as a sex worker. Furthermore, as the Discussion Paper notes, "a person's *activities* as a sex worker, as opposed to *being* a sex worker are not protected by the Act... In practice, it can be challenging to differentiate between a person's activities from their status as a sex worker."<sup>3</sup>

In Victoria, the ground of lawful sexual activity refers to "engaging in, not engaging in or refusing to engage in a lawful sexual activity",<sup>4</sup> and includes engaging in lawful sex work,<sup>5</sup> as well as other sexual activity,<sup>6</sup> including lawful homosexual activity or homosexuality,<sup>7</sup> bisexuality,<sup>8</sup> In Tasmania, the ground is not defined, but has been

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<sup>1</sup> *Anti-Discrimination Act 1991* s 7(l).

<sup>2</sup> *Anti-Discrimination Act 1991* sch 1.

<sup>3</sup> Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act: Discussion Paper* (2021) 98 referencing *Dovedeen v GK* [2013] QCA 116 (17 May 2013).

<sup>4</sup> *Equal Opportunity Act 2010* (Vic) s 4.

<sup>5</sup> *Cassidy v Leader Associated Newspapers* [2002] VCAT 1656 (21 November 2002).

<sup>6</sup> *Pearson v Martin* [2015] VSC 696 (9 December 2015).

<sup>7</sup> *Packer v Vagg* [2001] VCAT 2218 (22 November 2001); *Richman v Quix Food Stores* [1997] VADT 58 (23 July 1997).

<sup>8</sup> *MacGregor v Maztan* [1997] VADT 37 (23 July 1997).

held to include status as a lawfully employed sex worker,<sup>9</sup> homosexuality,<sup>10</sup> as well as engaging in intermale sex,<sup>11</sup> or being in a homosexual relationship.<sup>12</sup>

In our view, the definition of lawful sexual activity should either be removed or replaced with a definition based on that of Victorian law. Furthermore, the work with children exemption should also be repealed as it is discriminatory and fuels inaccurate stereotypes about sex workers. As the Discussion Paper notes, “no other jurisdiction specifically permits discrimination against sex workers... in this way.”<sup>13</sup>

### **Profession, trade or occupation**

Another issue with the definition of “lawful sexual activity” is that it does not protect thousands of people in the sex industry who do *not* have sex as part of their work, such as brothel owners, brothel managers, escort agency drivers, security guards, escort advertising services, etc., except if they have a personal association with a sex worker.<sup>14</sup>

In our view, there should be a new protected attribute in the Act of “profession, trade or occupation.” As the Victorian Equal Opportunity and Human Rights Commission has noted, this would provide protection to sex workers and those in the sex industry, as well as workers in other industries.<sup>15</sup>

This would also align with similar protections in the Australian Capital Territory,<sup>16</sup> which has been held to include sex workers,<sup>17</sup> and in Victoria.<sup>18</sup> As many in our industry work across state and territory borders, we believe the law should reflect other provisions in interstate equal opportunity laws, such as that in the Australian Capital Territory and Victoria (which also prohibit discrimination based on employment status<sup>19</sup> or employment activity<sup>20</sup>).

This would also protect people from financial discrimination, including debanking, on the basis of their profession, trade or occupation.

### **Sexuality**

<sup>9</sup> *Capocchi v West* [2020] TASADT 8 (25 November 2020).

<sup>10</sup> *Williams v Threewisemonkeys and Durston* [2015] TASADT 4 (30 June 2015).

<sup>11</sup> *Cain v The Australian Red Cross Society* [2009] TASADT 3 (27 May 2009).

<sup>12</sup> *Jago v Magistrates Court of Tasmania (Coronial Division)* [2018] TASADT 7 (5 October 2018).

<sup>13</sup> Queensland Human Rights Commission, *Review of Queensland’s Anti-Discrimination Act: Discussion Paper* (2021) 119.

<sup>14</sup> *Anti-Discrimination Act 1991* s 7(p).

<sup>15</sup> Victorian Equal Opportunity and Human Rights Commission, *Submission to Review into the Decriminalisation of Sex Work* (July 2020) 3-4

<https://www.humanrights.vic.gov.au/static/2aaf9da86629d99172feb50ac58d79fd/Submission-Review-into-the-Decriminalisation-of-Sex-Work-Jul20.pdf>.

<sup>16</sup> *Discrimination Act 1991* (ACT) s 7(1)(p).

<sup>17</sup> *Edgley v Federal Capital Press of Australia* [1999] ACTSC 95 (1 October 1999). See also ACT Human Rights Commission, ‘Profession, trade, occupation or calling’

<https://hrc.act.gov.au/discrimination/profession-trade-occupation-calling/>.

<sup>18</sup> Sex Work Decriminalisation Bill 2021 (Vic) cl 34.

<sup>19</sup> *Discrimination Act 1991* (ACT) s 7(1)(f).

<sup>20</sup> *Equal Opportunity Act 2010* (Vic) s 6(c).

The Act provides protection on the ground of “sexuality”<sup>21</sup> which is defined as “heterosexuality, homosexuality or bisexuality.”<sup>22</sup> As the Discussion Paper notes, “the definition of sexuality is... narrow.”<sup>23</sup> We also note that the definition under the *Public Health Act 2005* is narrow, as it refers to a person’s capacity for sexual attraction or relations with other persons of different and/or same genders.<sup>24</sup>

In our view, the definition of sexuality should either be removed or replaced with a broad definition that includes a person’s involvement in sexual activity.

## **Criminal history**

In our view, there is a need to cover discrimination on the ground of irrelevant criminal record, and that attribute should apply to all areas of activity, not just work. As the Discussion Paper notes, “some real estate agents are seeking information on criminal record during the application process” and this can also arise in licensing applications.<sup>25</sup>

This would provide protection from discrimination on the basis of a criminal record, unless the criminal record is of relevance. This is particularly important as the Queensland Law Reform Commission is currently considering sex work law reform, including potentially decriminalisation. It would be wrong for people to be discriminated against on the basis of out-of-date criminal laws.

## **Conclusion**

The Eros Association welcomes the opportunity to discuss with you further our views on these issues and the Act more generally.

If there is any way we can assist, please don’t hesitate to contact us.



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<sup>21</sup> *Anti-Discrimination Act 1991* s 7(n).

<sup>22</sup> *Anti-Discrimination Act 1991* sch 1.

<sup>23</sup> Queensland Human Rights Commission, *Review of Queensland’s Anti-Discrimination Act: Discussion Paper* (2021) 97.

<sup>24</sup> *Public Health Act 2005* s 213E.

<sup>25</sup> Queensland Human Rights Commission, *Review of Queensland’s Anti-Discrimination Act: Discussion Paper* (2021) 101.