

23 February 2022

QUEENSLAND BAPTISTS
Submission to QHRC Review of the Anti-Discrimination Act

Introduction: We, as Queensland Baptists (QB), welcome this opportunity of making a submission to the Queensland Human Rights Commission (QHRC) in respect to its review of Queensland's discrimination law The Anti-Discrimination Act 1991.

We understand that the Commission has been asked to look at whether our anti-discrimination law protects and promotes equality and non-discrimination to the greatest extent possible and that the review is committed to being evidenced based. QB supports the aim of the QHRC to achieve an equal Queensland where everyone belongs.

The Western intellectual tradition owes much to the historical influence of Christianity, including the development of human rights laws. A high view of human beings is central to the Christian worldview which teaches that all human beings are born with certain natural rights.

Who we are: Queensland Baptists are the third largest Christian worshipping community in Queensland represented by 218 churches and over 53,000 regular attendees.

What we believe: Based upon our understanding of the Bible's teachings, we affirm our belief in, and commitment to the intrinsic value and dignity of all people, regardless of their age, physical or intellectual capacities, race, ethnic background, religious or political beliefs, gender or sexual orientation.

Pastoral Care: Thus, we are genuinely committed to the loving pastoral care of all people who are part of our worshipping communities and are also committed to doing all that we can to ensure the flourishing of our wider society.

What we stand for: Since we believe in intrinsic value and dignity of all people, we are committed to ministering lovingly and faithfully into the lives of all with whom we have contact. We deplore the fact that, all too often within our wider community, discrimination has been subtly perpetrated, often against the most vulnerable members of our society.

In contrast, we seek to follow the teaching and example of Jesus Christ, who gladly opened his arms and heart to all, including those who, too often, were shunned and disempowered by the wider society of his day. We do not see ourselves as an exclusive club, but a community of faith who has at the heart of its mission a deep and profound love for the wider community. This is reflected in the numerous community-focused programs that are part of the life and practice of the vast majority of our local churches. These programs include such things as community foodbanks, community op shops, free courses designed to assist people with a range of life-skills, such as dealing with finances, family budgeting, marriage guidance and enrichment, family programs, children and youth programs, leadership programs (such as Boys' Brigade and Girls' Brigade) and sporting clubs to name just a few.

We are committed to the Christian gospel message which necessitates a genuine concern for the whole person, regardless of age, physical or intellectual capacities, race, ethnic

background, religious or political beliefs, gender or sexuality orientation. While all people may not share our religious convictions or views, we are nonetheless thoroughly committed to treating all people with dignity and respect.

What we request: The QHRC website describes Discrimination as “when you are treated worse than somebody else because of something about you, like your race, age, or sex.” We request the reviewers also take into consideration that the majority of Queenslanders identify as religious and that discrimination on the basis of their belief is a genuine issue in Australia which is becoming more common in their lived experience. Cases are on the rise with almost three in ten Australians (29%) report having experienced religious discrimination.¹

In our submission, we will address discussion questions 41, 42, 43, 44, 45, 47, 54, 55 and 56 from the QHRC Anti-Discrimination Act Discussion Paper dated November 2021.

Ordination, training and selection of religious leaders

The Anti-Discrimination Act currently prohibits discrimination on the ground of religious belief or activity² by exempting religious bodies from the Act with respect to:

- the ordination or appointment of priests, ministers of religion or members of a religious order
- the training or education of people seeking to be ordained or appointed as priests, ministers of religion or members of a religious order
- selecting or appointing people to perform functions or participate in any religious observance or practice.

QB appreciates that the review states that there are strong justifications to retain these protections and agrees with the suggestion that consideration be given to extend these exemptions to lay representatives who play an important spiritual role within a faith community, but whose position falls outside the role of priest or minister.

Discrimination based on religious doctrine and religious sensitivities

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?

Currently In Queensland, a body established for religious purposes may discriminate on the basis of any attribute, except in the areas of work and education, provided the discrimination is in accordance with the doctrine of the religion and is necessary to avoid offending the religious sensitivities of people of the religion.³

QB supports the retention of existing exemptions for religious bodies so that they can be free to live according to their beliefs. Freedom of religion is, as indicated by Acting Chief Justice Mason and Justice Brennan, ‘the essence of a free society’. Acknowledgement of the need to protect freedom of belief is founded upon the Universal Declaration of Human Rights 1948 which states in the preamble, ‘...the

¹ <https://mccrindle.com.au/wp-content/uploads/reports/Australias-Changing-Spiritual-Landscape-Report-2021.pdf>
p.22

² *Anti-Discrimination Act 1991* (Qld) s 7(i).

³ *Anti-Discrimination Act 1991* (Qld) s 109.

advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people’.

Our Australian culture which is committed to a ‘fair go’ is one that accepts diversity and a multiplicity of belief. This has developed a freedom that is the envy of other nations. But that freedom is dependent upon the liberty to express those beliefs and to live according to them. While we may not agree, and even disapprove, of what others believe and say, we must defend their right to their beliefs. The ongoing importance of religious freedom in international law is reflected in the many documents, the most well known of these being Article 18 of the International Covenant on Civil and Political Rights (ICCPR).

Religious service providers

Discussion question 42: Should religious bodies be permitted to discriminate when providing services on behalf of the religious accommodation providers?

The extent to which religious bodies have capacity to provide beneficial services to the community is dependent to a large extent, upon the religious motivations and commitment of the organisations and individuals who commit huge amounts of their resources, time and energy, in many cases as volunteers, to the provision of welfare services to those in need. Religious bodies must be allowed to maintain their religious convictions, and engage staff and volunteers who share those convictions, so that they will be able to continue to provide these essential services with the commitment and compassion they are well known for.

In saying that, QB service providers, including essential services such as aged care, supply services to the whole community, not only to their own community. The QB aged care arm is overseen by Carinity and they provide equal access to the right to health services under other discrimination acts such as the Sex Discrimination Act 2013.

Accommodation exemptions

Discussion question 43: Should religious bodies be permitted to discriminate when providing accommodation on a commercial basis including holiday, residential and business premises?

The definition of accommodation exemptions includes business premises, house or flat, boarding house or hostel, caravan, caravan site, camp site, manufactured home, and building or construction site.⁴

QB submits that religious bodies should continue to be the recipient of exemptions in the accommodation area that permits discrimination where:

- the accommodation is under the direct control of a body established for religious purposes
- the discrimination is in accordance with the doctrine of the religion, and
- is necessary to avoid offending the religious sensitivities of people of the religion.

As noted in the discussion paper regarding exemptions for religious bodies and religious accommodation providers, the right of freedom of thought, conscience, religion and belief is protected in international human rights law, the Human Rights Act and the Australian Constitution. We would note that the ICCPR includes the right to practise or manifest one’s

⁴ *Anti-Discrimination Act 1991* (Qld) ss 90 and sch Dictionary (definition of ‘accommodation’).

religion in private and in public, as well as individually and in community with others. This provision in the Act should be seen as a positive measure to promote this freedom rather than an exemption for 'discriminatory' conduct.

QB's camping arm Queensland Conference and Camping Centres (QCCC) is one of Queensland's largest and most decorated Outdoor Education providers. As part of Queensland Baptists, the QCCC ethos and culture is informed by a shared belief in providing the very best care for our guests through Christlike character and professional competence. As is the case with Carinity, QCCC caters to the whole community.

As a Christian organisation we oppose the removal of our right to discriminate on the basis of our beliefs or to avoiding reasonably offending QB adherents - eg. to deny the use of a campsite by another body for ritualistic practices that would be clearly offensive to our beliefs and practices.

Work exemptions - genuine occupational requirement – religious schools and other bodies

Discussion question 44: Should the religious educational institutions and other bodies exemption⁵ 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)?

Currently there is a limited exemption which applies to work for an educational institution under the direction or control of a body established for religious purposes, or other work for a body established for religious purposes, with the proviso that the work genuinely and necessarily involves adhering to and communicating the body's religious beliefs.⁶ If it is a genuine occupational requirement that a person act in a way consistent with the employer's religious beliefs in the course of, or in connection with the work, the employer may discriminate in a way that is not unreasonable if the person openly acts in a way that is contrary to the employer's religious beliefs.

Whether the discrimination is unreasonable will depend on factors such as whether the employment action is disproportionate to the behaviour, and the consequences for both parties. This exemption does not allow discrimination on the basis of age, race, or impairment, and does not allow an employer to seek information on which discrimination might be based, such as asking questions about a person's relationship status, whether they have children or intend to have children, their gender identity or sexuality.

The Act was amended in 2002 in order to allow religious schools to preference the hiring of teachers, principals, and other school staff who aligned with their beliefs and values. It is imperative that these provisions remain in place. As is the case with other organisations and political parties, the staff play an important role in maintaining the ethos of the organisation. Hiring staff who share the values and beliefs of the organisation is essential if the organisation is to be able to continue to operate in accordance with those values and beliefs.

QB believes that the religious (or spiritual) formation of students is an integral aspect of education. This is in line with the goals of the Alice Springs (Mparntwe) Education Declaration which all jurisdictions across Australia are signatories to. In its Preamble, it

⁵ *Anti-Discrimination Act 1991* (Qld) s 25(2)-(5).

⁶ *Anti-Discrimination Act 1991* (Qld) ss 25(2)-(8).

asserts: “Education plays a vital role in promoting the intellectual, physical, social, emotional, moral, spiritual and aesthetic development and wellbeing of young Australians, and in ensuring the nation’s ongoing economic prosperity and social cohesion.”

QB believes strongly that the education of the whole child is not complete unless it includes spiritual, moral and emotional development alongside intellectual, physical and social, and that social cohesion is served well by such a view of education. Our parents enrol their children with the full knowledge that religious belief, or faith, is at the core of our school community. Protecting the ability of Christian and other faith-based schools to act in this manner goes to the heart of protecting the rights of parents who choose their child’s schooling. This is why QB considers the retention of the existing exemptions is essential.

Use of accommodation by sex workers

Discussion question 47: Should the sex worker accommodation exemption be retained, changed or repealed?

QB supports the retention of the exemption under the Act (section 106C) which allows accommodation owners to disallow their accommodation being used by a sex worker in connection with work. In 2012, the Court of Appeal of the Supreme Court of Queensland⁷ allowed this exemption, saying that the goal of the amendment was to: ... *give (businesses) control over the use that is made of their premises.*⁸

There are many Australians – feminists, people of faith, and those of no faith, who hold deeply held convictions concerning the detrimental effects of prostitution. No accommodation facility should be forced to become known as the local brothel without their express consent.

Other areas of activity

Discussion question 55: Are any additional areas of activity required?

The Change or Suppression (Conversion) Practices Prohibition Act 2021 introduced in the State of Victoria and about to become law in that State, has human rights implications for Queenslanders. The bill bans any conduct, including prayer, directed towards a person who is struggling with their gender identity, even with their consent, and deems such conduct to be a criminal act. This affects private conversations, even consensual ones, on the subject of sexual orientation – all of which are about to be potentially under police investigation.

Legislation of this nature essentially criminalises religious belief and practice, and we would strongly oppose similar legislation in Queensland.

The Terms of Reference also asked us to consider whether the Anti-Discrimination Act is compatible with the *Human Rights Act 2019*.

Discussion question 56: Are any provisions in the Anti-Discrimination Act incompatible with human rights? Are there any restrictions on rights that cannot be justified because they are unreasonable, unnecessary or disproportionate? Where rights are being limited to meet a legitimate purpose, are there any less restrictive and reasonably available ways to achieve that purpose?

⁷ *Dovedeen Pty Ltd v GK* [2013] QCA 116

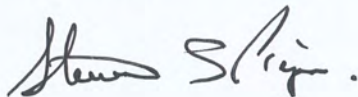
⁸ Queensland, *Parliamentary Debates*, Legislative Assembly, 1 November 2012, 2382 (JP Bleijie, Attorney-General).

In several respects, we are concerned that some of the matters raised in this discussion paper are not consistent with the protection of human rights to freedom of speech, freedom of association and freedom of religion, according to the United Nations Siracusa Principles.

Freedom of speech is a vital part of our democracy, but increasingly religious views are being marginalised. Sharing beliefs is becoming harder as people ridicule or make disparaging remarks if religious beliefs are shared. Research undertaken in 2021 indicates 29% of Australians have experienced religious discrimination, equating to half of the 60% of Australians who identify as people of faith.⁹

It is accepted that anti-discrimination or equal opportunity law inherently involves a balancing of human rights. No human right is absolute, including non-discrimination and equality, and so the desire for equality must at times be balanced. Within international law the limitations upon the balancing process provide very significant protection for certain rights such as religious freedom. The ICCPR provides in this regard that (emphasis added): 'Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.' Clearly the text of the Covenant itself provides a narrow scope for limitation of religious freedom, only when 'necessary ...'. This is further reinforced by the Siracusa Principles which provide a high level of protection for the freedom to hold and manifest religion or beliefs.

We sincerely thank the Queensland Human Rights Commission for considering our submission.



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On behalf of QB Board

⁹ <https://mccrindle.com.au/wp-content/uploads/reports/Australias-Changing-Spiritual-Landscape-Report-2021.pdf> p.22