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Sent on: Friday, December 3, 2021 12:53:09 AM
To: ADAReview <adareview@qhrc.qld.gov.au>
Subject: Public submission - review of Queensland's Anti-Discrimination Act

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Public submission into the review of Queensland's *Anti-Discrimination Act (ADA)1991*.

COVER SHEET

Note that I wish to keep my name and contact details confidential in this submission please.

Thank you - [REDACTED]

Please accept the below public submission into the review of Queensland's *Anti-Discrimination Act 1991*.

I'm a Queenslader who has experienced discrimination (i.e. refused service) in Queensland when trying to access goods and services from a not-for-profit business. I took my case to the then Queensland Anti-Discrimination Commission, who agreed to accept my complaint - but, sadly, due to current exemptions in the ADA, the discrimination that I experienced was deemed to be legal under the Queensland ADA.

The discrimination that I experienced would have been illegal if it was performed by any other citizen, for-profit business, organisation, or government department.

I will refer primarily to the **current exemptions for religious and not-for-profit (NFP) organisations**, though I will also respond to select other questions raised in the Discussion Paper. .

Discussion question 26:

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

Yes, there should be a new definition.

Gender identity should be defined as the gender, or lack of gender, or mixed genders, that the person self-identifies with. People should be able to self-identify as either male, female, or of intersex or indeterminate gender. This is inclusive of people who are born with Intersex characteristics (a medically-defined condition), or other people, who might not identify as either male or female.

Discussion question 27:

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

Yes, there should be a new definition of sexuality to include people who identify as asexual.

The current definition in the ADA is inclusive of people who are heterosexual, homosexual and bisexual. It also appears to include people who identify as pansexual - however, the ADA should be broadened to include people who also identify as asexual.

Discussion question 34:

Is there a need for the Act to cover discrimination on the grounds of physical features?

Yes, the ADA should specifically include protections for people with tattoos and body piercings. Sadly, many people with tattoos and body piercings are discriminated against, specifically regarding employment.

Discussion question 35:

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

Yes, gender should be a protected attribute under the ADA.

Discussion question 36:

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

Yes, sex characteristics should be a protected attribute under the ADA, to ensure that the ADA is inclusive of intersex people. Possibly this should be defined by using wording similar to that used in the Yogyakarta Principles.

Discussion question 37:

Should an additional attribute of subjection to domestic violence be introduced? Should it be defined, and if so, how?

Yes, subjection to domestic violence should be a protected attribute under the ADA.

Exemptions in the ADA.

General Comments:

The intention of Anti-Discrimination law is to **prevent** discrimination - however, exemptions in the ADA, actually have the reverse effect, by **endorsing** discrimination.

This **legal sanctioning of discrimination** - only for select groups in society - is **counter-productive** to the intentions of Anti-Discrimination law to treat all citizens equally.

There is **no valid reason why blanket exemptions** should apply, which allow select groups to legally discriminate against citizens, **when the same actions would be illegal if performed by any other citizen, business, organisation, or government department.**

Many of the essential public services provided by religious and not-for-profit organisations receive very large amounts of taxpayer funding. It's grossly obscene that these organisations can decide that they do not like a certain person's "lifestyle" and **can legally sack, or refuse to employ, or refuse to provide a taxpayer funded service to a citizen, whose tax dollars have funded this service in the first place.**

I also appreciate that federal legislation may invalidate some legal protections contained in Queensland state law, but this is no reason to delay amending our ADA to ensure fairness. In time, federal legislation will be amended to remove privilege and to treat all citizens equally - and when this happens, the Queensland ADA must be ready and contain no unjust privilege or exemptions.

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 current exemptions for religious organisations - which are not available to others - are unjust, cause hardship, promote inequality and need to be drastically reduced. They are also counter-productive to the intentions of the ADA to remove discrimination.

There must be no provision for religious organisations/individuals to legally practice blanket discrimination, **when the same actions would be illegal if undertaken by any other citizen, business, organisation, or government department.**

There should be some cases where it's legal for a religious organisation to legally discriminate - but this should only be in very narrow and specific areas.

Religious organisations should only be allowed to discriminate when employing a person in a role that directly and solely relates to the teaching of religion - for example a member of the clergy or a lay person who teaches that religion, either in a church or in a church school.

A christian school should be allowed to refuse to employ an atheist or a Hindu who has applied to be a minister of religion or a religion teacher in a christian school - **but, they should not be allowed to refuse to employ someone because they are an atheist or Hindu, when applying for all other non-clergy/theological positions** - e.g. cleaner, administration, driver, English/maths teacher etc.

There have been many media reports of widespread community outrage after (taxpayer funded) religious schools have allegedly sacked teachers for being pregnant while unmarried, or gay, etc. Additionally there are reports of children being refused enrolment in religious schools because their parent/parents are in a same-sex relationship.

These are personal characteristics that are totally unrelated to the person's ability to perform their role as a cleaner, driver or maths teacher.

A quick Google search revealed these media articles (unfortunately I was unable to locate some past Qld articles - some of these articles are from interstate).

- Union in plea for sacked teacher (Caloundra Christian school sacks teacher for being pregnant while unmarried) <https://www.couriermail.com.au/news/queensland/sunshine-coast/union-in-plea-for-sacked-teacher/news-story/0bce5e424583cae1c5c069fd17f21dc4>
- Queensland homosexual teachers fear discrimination if they come out [HYPERLINK "https://www.couriermail.com.au/news/queensland/queensland-homosexual-teachers-fear-discrimination-if-they-come-out/news-story/66205456931748465db8363ad578e973"](https://www.couriermail.com.au/news/queensland/queensland-homosexual-teachers-fear-discrimination-if-they-come-out/news-story/66205456931748465db8363ad578e973)
<https://www.couriermail.com.au/news/queensland/queensland-homosexual-teachers-fear-discrimination-if-they-come-out/news-story/66205456931748465db8363ad578e973>
- Steph Lentz was sacked this year for being gay. It was perfectly legal [HYPERLINK "https://www.smh.com.au/national/steph-lentz-was-sacked-this-year-for-being-gay-it-was-perfectly-legal-20210809-p58gzv.html"](https://www.smh.com.au/national/steph-lentz-was-sacked-this-year-for-being-gay-it-was-perfectly-legal-20210809-p58gzv.html) <https://www.smh.com.au/national/steph-lentz-was-sacked-this-year-for-being-gay-it-was-perfectly-legal-20210809-p58gzv.html>
- Gay parents accuse school of enrolment snub [HYPERLINK "https://www.abc.net.au/news/2011-12-13/gay-parents-accuse-school-of-enrolment-snub/3728660"](https://www.abc.net.au/news/2011-12-13/gay-parents-accuse-school-of-enrolment-snub/3728660) <https://www.abc.net.au/news/2011-12-13/gay-parents-accuse-school-of-enrolment-snub/3728660>

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?

Absolutely not. It's morally repugnant that a religious organisation can legally discriminate and refuse to provide an essential service **when the same actions would be illegal if performed by any other citizen, business, organisation, or government department.**

Religious organisations already receive a huge amount of privilege - including not paying tax. Many also receive very large amounts of taxpayer funding to provide essential public services. It's grossly obscene that these organisations can decide that they do not like a certain person's "lifestyle" and **can legally refuse to provide a taxpayer funded service to a citizen, whose tax dollars have funded this service in the first place.**

Additionally, in many parts of Queensland, a religious organisation is the **only service provider providing (taxpayer funded) health, child care, aged care, housing, adoption, welfare, or other essential public services.** Often, there will be no equivalent government, or other non-government, service for possibly hundreds of kms (especially in rural/remote areas), and it's obscene that additional hardship could be forced on citizens by forcing them to access another service provider possibly hundreds of kms away (this additional travel would not even be possible for many frail elderly people with mobility issues or without private transport).

Discussion question 43:

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

No. Religious organisations should not be allowed to discriminate when providing a commercial service, in the following circumstances:

- When they are charging a fee for the service.
- When they are providing a free service (which may well be provided using taxpayer funds).
- When providing a service to anyone other than their own congregation - i.e. can not discriminate when providing a service to the general public.
- When the organisation receives taxpayer funding.
- When the same actions would be illegal if undertaken by any other citizen, business, organisation, or government department.

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)?

Society's attitudes have changed massively, as represented by - so-called "living in sin" is no longer an issue, getting divorced no longer carries social stigma, having a child out of wedlock is no longer frowned upon, the World Health Organisation removed homosexuality from the official listing of mental illnesses, gay sex between consenting adults is no longer a crime punishable by jail, marriage equality is now legal, etc, etc.

The religious educational institutions and other bodies exemption must be drastically narrowed to reflect these huge societal changes.

Religious organisations should only be allowed to discriminate when employing a person in a role that directly and solely relates to the teaching of religion - for example a member of the clergy or a lay person who teaches that religion, either in a church or in a church school.

A christian school should be allowed to refuse to employ an atheist or a Hindu who has applied to be a religion teacher in a christian school - **but, they should not be allowed to refuse to employ someone because they are an atheist or Hindu, when applying for all other non-clergy/theological positions** - e.g. cleaner, administration, driver, English/maths teacher etc.

There should be no other discrimination allowed against staff - or students - on other grounds, including relationship status, gender identity, or sexuality.

It's morally repugnant that a religious organisation can legally discriminate on the basis of relationship status, gender identity or sexuality when providing an essential service (education), **when the same actions would be illegal if performed by any other citizen, business, organisation, or government department.**

Most religious schools receive very large amounts of taxpayer funding to provide an essential public service. It's grossly obscene that these organisations can decide that they do not like a certain person's "lifestyle" and **can legally refuse to provide a taxpayer funded service to a citizen, whose tax dollars have funded this service in the first place.**

Discussion question 45:

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

This exemption should be removed. Anyone who can obtain a Blue Card should legally be allowed to work with children. It's unethical to target intersex and transgender people and sex workers with additional restrictions - especially as, in some instances, they might be the best person for a job working with children. These people do not pose an inherent risk to children.

Discussion question 46:

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

No. Fertility treatment should be available to all people who request it, regardless of their sexuality or relationship status.

Discussion question 47:

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

This is another example of outdated thinking that is no longer consistent with society's current expectations. This exemption should be repealed.

Discussion question 52:

Should the definition of goods and services that excludes non-profit goods and service providers be retained or changed?
Should any goods and services providers be exempt from discrimination, and if so, what should the appropriate threshold be?

This section should be changed to remove all exemptions for all not-for-profit organisations.

There should be no distinction between how the ADA is applied to different types of organisations. For-Profit and Not-For-Profit organisations should be treated identically with identical rights and responsibilities under law.

In ~2003 I experienced discrimination and was refused entry on the basis of my sex (male) while trying to access goods and services from a Queensland business. I took a case to the then Queensland Anti-Discrimination Commission, who agreed to accept my complaint - but, the business was deemed a not-for-profit by the Tax Office and was therefore exempt from the ADA.

This year, I experienced an identical incident of discrimination from the same business and, instead of lodging a complaint with the Queensland Human Rights Commission (which I knew would be ineffective), I took my case to the Australian Human Rights Commission (AHRC), who accepted my case.

In addition to being covered under the Queensland ADA, my complaint was also covered under the federal Sex Discrimination Act - and importantly - this Act has no exemptions for not-for-profit organisations. The AHRC highlighted to the business, the relevant sections of the Sex Discrimination Act that appeared to have been broken - and the

business immediately changed their policies - thereby removing any chance of future discrimination - and gave me a formal apology. This was an excellent resolution.

My case demonstrates that the federal Sex Discrimination Act - which contains no exemptions for not-for-profit organisations - was effective at stopping gender-based discrimination, when the Queensland ADA was not able to prevent discrimination.

These exemptions cause real harm to real Queenslanders. They are outdated and serve no useful purpose - they need to go.

Note - I have not included specific details of my case (in order to reduce length), but I'm happy to be contacted if you want me to provide details.

Sincerely



"I always wondered why somebody doesn't do something about that. Then I realised I was somebody": Lily Tomlin