

1 March 2022

Jane Vasey  
Review Team Leader  
Queensland Human Rights Commission  
Level 20, 53 Albert Street  
BRISBANE QLD 4000

By email: [adareview@ghrc.qld.gov.au](mailto:adareview@ghrc.qld.gov.au)

Dear Ms Vasey,

### **Submission – Review of Queensland’s Anti-Discrimination Act**

Clubs Queensland thanks the Queensland Human Rights Commission (**the Commission**) for the opportunity to provide a submission in response to the Review of Queensland’s Anti-Discrimination Act Discussion Paper (**the Discussion Paper**).

#### **Clubs Queensland**

Clubs Queensland (**CQ**) is the peak industry association and union of employers of registered and licensed community clubs in Queensland. CQ engages in a range of professional activities such as the provision of expert policy and operational advice and the representation of industry interests to Government, media and other bodies.

#### **General comment on the Discussion Paper**

The majority of CQ’s member Clubs are not-for-profit associations that play a critical role in supporting communities and building a safe, strong and healthy Queensland.

The surplus generated by community clubs is used to deliver important and highly valued services in their surrounding communities and to visitors of their regions. This support includes cash contributions, non-cash benefits, community assets and mobilisation of volunteers.

Clubs are important community hubs for social interaction and engagement. Members have shared values and a sense of belonging that strengthens the social fabric and promotes strong community cohesion.

With the community at the heart of what Clubs do, it is important to our member Clubs that they continue to be safe spaces where the values of equality and non-discrimination are practiced and promoted. When these values are emphasised, Clubs can continue to great work to serve and strengthen their communities.

Given the importance of these values for Queensland Clubs, CQ is supportive of the Commission’s review of whether there is a need for any reform to enhance and update the Act to best protect and promote the values of equality and non-discrimination in Queensland.

## **Discrimination on the grounds of criminal record**

The Discussion Paper asks whether there is a need for the Act to cover discrimination on the grounds of irrelevant criminal record, spent criminal record or expunged homosexual conviction.

CQ is not opposed to the creation of a protected attribute of irrelevant criminal record, spent criminal record or expunged homosexual conviction.

However, should the need be identified for the Act to cover discrimination on the ground of criminal record, it is imperative that it worded in way that Clubs are able to continue to meet their obligations under other legislative instruments, including Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) legislation.

Due to the inclusion of gaming machines in Clubs, many Clubs are considered 'reporting entities' under AML/CTF legislation. Reporting entities are required to have an AMLCTF program specifying how they comply with AMLCTF legislation, including how they undertake due diligence on their employees to minimise the risk of money laundering and terrorism financing.

In roles where employees are working with or around gaming machines, or large amounts of money, it may be contrary to the Club's AML/CTF program to employ, or maintain employment of, a person with a relevant criminal conviction.

For these reasons, it is of upmost importance that any protected attribute on the ground of criminal record provide adequate exemptions to ensure Clubs can continue to reject prospective employees, or dismiss current employees, due to a relevant criminal conviction.

## **Goods and services exemption**

The Discussion Paper asks whether the definition of goods and services that excludes non-profit goods and services providers in the Act should be retained or changed.

Section 46 of the Act protects persons with a protected attribute from being discriminated against by a person who supplies goods or services.

However, the Act proceeds to state that a reference to a person who supplies goods and services does not include an association that is:

- established for social, literary, cultural, political, sporting, athletic, recreational, community service or other similar lawful purposes; and
- does not carry out its purposes for the purpose of making a profit.

In the matter of *Yeo v Brisbane Polo Club Inc* [2014] QCAT 66, it was confirmed that hospitality venues run by Clubs are captured by the definition of not-for-profit associations established for social, literary, cultural, political, sporting, athletic, recreational, community service or other similar lawful purposes.

In the first instance, CQ submits that the current definition of goods and services, exempting not for profit associations, such as Clubs, from these provisions, should be retained.

However, CQ understands that, outside of Queensland, this exemption only exists in Tasmania and the Northern Territory.

As such, and in the alternative, CQ submits that a criteria for exclusion should exist, exempting smaller not-for-profit organisations from section 46 of the Act. We submit that it would be appropriate to continue to exclude not-for-profit organisations that have an annual turnover of less than \$500,000 from the section 46 of the Act.<sup>1</sup>

### **Definition of a Club**

The Discussion Paper requests consideration of how the Act should define a Club.

Under Division 9, Subdivision 1 of the Act, a Club must not discriminate in a number of areas pertaining to membership of the Club.

The Act defines a Club as an association that:

- is established for social, literary, cultural, political, sporting, athletic, recreational, community service or any other similar lawful purpose; and
- carries out its purposes for the purpose of making a profit.

Importantly, under Division 9, Subdivision 2 of the Act, there is an exemption that allows Clubs to exclude applicants for membership of the Club who are not members of the group of people with an attribute for whom the Club was established if the Club operates wholly or mainly to:

- preserve a minority culture; or
- to prevent or reduce disadvantage suffered by people of that group.

There is also an exemption allowing Clubs to discriminate on the basis of sex by limiting access to any benefit that is provided by the Club if it is not practicable for males and females to enjoy the benefit at the same time and access to the same or an equivalent benefit is supplied for the use of males and females separately, or access arrangements offer males and females a reasonably equivalent opportunity to enjoy the benefit.

As the majority of our member Clubs do not carry out their purposes for the purpose of making a profit, they do not currently meet the definition of a 'Club' and are not covered by these provisions.

CQ understands that there may be appetite in Queensland to amend the definition of a Club to align with the definition adopted in other states. Such a change would likely mean that the majority of our member Clubs would be covered by these provisions.

In the Commonwealth, Victoria, Western Australia, Northern Territory and Tasmania, the definition of a 'club' includes the following elements:

- an association of more than 30 members;
- associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes;
- has a license to supply liquor; and
- operates its facilities wholly or partly from its own funds.

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<sup>1</sup> This is consistent with the *Registered and Licensed Clubs Award 2020* which provides \$500,000 as the figure to distinguish a large and small Club.

Importantly, these jurisdictions also have exemptions to allow particular Clubs to discriminate in the area of membership. These include exemptions for the following types of Clubs:

- clubs for minority cultures;
- clubs for political purposes;
- clubs and benefits for particular age groups;
- single sex clubs; and
- clubs with separate access benefits for men and women.

These exemptions are essential to permitting the operation of Clubs that exist to benefit a certain proportion of the population. In Queensland, there are a number of Clubs that exist to benefit a certain proportion of the population. These include:

- **The Moreton Club** – a private social Club founded in 1924 as a ‘home away from home’ for women who wished to meet in convivial surroundings, and that restricts membership to women.
- **The Polish Club Milton** – an association with the objects of promoting Polish culture and traditions in Australia, and assisting citizens of Polish origin, and Polish Immigrants in Australia, that restricts ordinary membership to persons of Polish descent. Other types of memberships are open to persons not of Polish descent.
- **Indian Cultural and Sports Club** – an organisation working to connect with wider communities while celebrating Indian culture, dance, music, sports and festivals.

For these reasons, it is of utmost importance that any change to the definition of Club to include not-for-profit associations contain adequate exemptions to allow Clubs that exist to benefit a certain proportion of the population to continue to benefit their communities.

## Conclusion

CQ, as the representative body for Queensland’s community clubs, is supportive of the Commission’s review of whether there is a need for any reform to enhance and update the Act to best protect and promote the values of equality and non-discrimination in Queensland.

However, CQ wishes to emphasise the importance of the following for community clubs:

- That any protected attribute on the ground of criminal record provide adequate exemptions to ensure Clubs can continue to reject prospective employees, or dismiss current employees, due to a relevant criminal conviction.
- That the current definition of goods and services exempting not for profit associations, such as Clubs, from the goods and services provisions be retained.
- Any change to the definition of Club to include not-for-profit associations contain adequate exemptions to allow Clubs that exist to benefit a certain proportion of the population to continue to restrict access or membership to persons with a particular attribute.



If you have any questions or require any further clarification, please do not hesitate to contact Nastassja Milevskiy, Senior Workplace Relations and Compliance Advisor on (07) 3252 0770.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kelly Egan', with a horizontal line underneath.

**Kelly Egan**  
Chief Executive Officer  
Clubs Queensland