Youth Justice (Boot Camp Orders) & Other Legislation Amendment Bill 2012
Submission 002

3/11/2012

[redacted]

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

A submission in relation to proposed amendments to the *Anti-Discrimination Act 1991*, introduced to Parliament in *the Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012*. (1 November 2012)

Dear Sir/Madam,

I am alarmed and dismayed by the proposal introduced by Attorney-General and Minister for Justice, Hon Jarrod Bleijie MP, to amend the **Anti-Discrimination Act 1991** to amend the said Act to allow lawful, selective discrimination against a specific group of people, namely, sex workers, as detailed in the following extract from the Bill.

> *Section 106C provides that it is not unlawful for an accommodation provider to discriminate against another person in relation to accommodation if the accommodation provider reasonably believes that the other person is using or intends to use the accommodation in connection with that person's, or another person's, work as a sex worker. The discrimination may involve refusing to supply accommodation, eviction of the other person or unfavourable treatment of the other person.*

Under extant Queensland laws, namely the **Prostitution Act 1999** and Chapter 22A of the Queensland **Criminal Code Act 1899**, within specific parameters defined within, sex work is recognised as a legal activity. Likewise, under the current terms of the **Anti-Discrimination Act 1991**, sex work is recognised as "lawful sexual activity".

To amend the **Anti-Discrimination Act 1991** to allow very specific discrimination against a specific group of people by another group diminishes the entire concept of *Anti-Discrimination.* The Anti-Discrimination Act exists as a framework by which ALL people are treated fairly and equally and should not be amended on an *ad-hoc* basis to favour one person or group in favour of another on the basis of personal opinion, judgement or morality. I can understand that moral values may play a part, but as I have previously mentioned, the Government of Queensland recognises sex work as a legal activity.

At this point, I would like to introduce an extract from the finding handed down in the case (cited by The Attorney General as a catalyst for this amendment) of *GK v Dovedeen Pty Ltd and Anor* [2012]

> *[39] At another point, the Respondents" Counsel made the submission that in some way these provisions of the AD Act ought be construed as not preventing business people like motel operators from making business decisions, if it was thought that the basis for that decision was to protect their commercial interests. For example, the submission went on, if a motelier perceived that its trade might be negatively affected by the perception that its accommodation was being used for the purposes of prostitution, the operators might be entitled to refuse accommodation in those circumstances.* ***Nothing in the Anti-Discrimination Act 1991 provides an exclusion from the operation of its provisions because it is perceived to suit the business interests of the discriminator. It is not difficult to understand why it does not do so, because it would provide a broad discretion for persons who might be inclined to discriminate against persons on any basis, including for example their race, on the basis that they perceived other clientele might look unfavourably upon them if persons of certain race were permitted to stay at those premises. This is the very mischief that the Act directed itself to in the first place.***
>
> (http://archive.sclqld.org.au/qjudgment/2012/QCATA12-128.pdf)

Please consider the section of text which I have highlighted. This is precisely the reason why the Anti-Discrimination Act (1991) exists. Passage of the amendments will completely negate this.

In statements to the media, the Attorney-General has stated that the amendments will rectify a discrepancy between the Liquor Act 1992 insofar as section 152 of the Liquor Act prohibits the licensee from conducting or allowing to be conducted, on the premises, a business other than that authorised by the licence. The inference is that in complying with the Anti-Discrimination Act, the licensee would be infringing the Liquor Act. The reality is, many guests of hotels and motels conduct business activities inside their rooms and on the premises. Many hotels and motels specifically provide facilities such as conference/meeting rooms, internet access and so-on for the convenience of their guests. The Attorney-General has stated publicly that the amendments seek to reconcile the two Acts:

> "*It is about levelling the playing field so the laws suit the majority not the minority," he said.*
>
> (http://www.brisbanetimes.com.au/queensland/leading-civil-libertarian-slams-discrimination-against-sex-workers-20121101-28m7p.html#ixzz2B8cnXW4O)

However, this is clearly not the case. The proposed amendments are manifestly unbalanced. If the purpose is to reconcile the Anti-Discrimination Act with the Liquor Act, then on that basis it should be the case that *any* business activities by *any* other parties should not be allowed on licenced premises and so following, accommodation should be denied to anyone wishing to conduct business activities on the premises. However, this amendment targets one specific group (namely sex-workers)

In relation to a potential conflict between the Anti-Discrimination Act and the Liquor Act, this was addressed in *GK v Dovedeen Pty Ltd and Anor* [2012]

> *[49] Moreover, the language of section 152 makes reference to the conduct of "a business", other than that authorised by the licence. This mirrors the language of section 3A which also refers to one of the underlying principles as being that to supply liquor, a person may obtain a licence to sell it as part of conducting a business on the premises. In this context, it seems to us that there is a difference between the conduct of "a business", and the mere conduct of business activity. For example, it would be difficult to imagine that one conducts a business at every location which any activity related to that business is discharged. Insofar as section 152 is directed at some mischief, it is to ensure that in the context of regulation of the activities licensees, only those businesses authorised by the licensing authority are conducted by that licensee, or permitted by the licensee to be conducted. In this context, it is impossible to imagine that the licensing authorities could be required to consider whether ordinary guests at a motel which is licensed might not be permitted to carry on activity in or concerned with their individual businesses without putting a licensee at risk of prosecution for contravention of section 152.*
>
> (http://archive.sclqld.org.au/qjudgment/2012/QCATA12-128.pdf)

In closing, I submit that the proposed amendments are unnecessary and if passed will introduce an element of lawful discrimination targeted at one specific group of people. It will, in effect destroy the integrity of the **Anti-Discrimination Act 1991** and dilute its utility. Please do not allow a precedent to be established whereby laws which exist for the protection of all people can be selectively amended to disadvantage specific chosen groups to the advantage of others, without consultation and due process.

Thank you for your time in reading and considering this submission.

Yours sincerely,

Philip Ho,

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