Youth Justice (Boot Camp Orders) & Other Legislation Amendment Bill 2012
Submission 040

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8 November 2012

Dear Research Director,

Amendment to *Anti-Discrimination Act Queensland 1991*, 106C 'Accommodation for use in connection with work as sex worker'

Thank you for the opportunity to comment on the amendments to the *Anti-Discrimination Act Queensland 1991* within the *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012.*

Scarlet Alliance, the Australian Sex Workers Association, is the peak national sex worker organisation in Australia. Formed in 1989, the organisation represents a membership of individual sex workers and sex worker organisations. Through our project work and the work of our membership we have very high access to sex industry workplaces in the major cities and many regional areas of Australia.

Scarlet Alliance has played a critical role in informing governments and the health sector, both in Australia and internationally, on issues affecting sex workers in Australia.

Please find attached our submission. Although our organisation appreciates the opportunity to provide a submission, alongside our membership and individual sex workers, we do not support this Amendment and believe it is likely to sanction and increase discrimination against sex workers. This Amendment is also unnecessary as it is clear that the *Liquor Act* provides for eviction of individuals creating nuisance. We are also concerned by the extremely short turnaround for submissions and a lack of consultation with sex workers (the key stakeholders) about these reforms.

For any further information on this submission or its content please contact our Chief Executive Officer, Janelle Fawkes, at our organisations head office in New South Wales.

Regards,

Ari Reid, Acting President

Scarlet Alliance Submission

Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012

Amendments to the *Anti-Discrimination Act Queensland 1991*

Excessively short notice and lack of consultation

This Bill has been introduced to Queensland Parliament without consultation with the key stakeholders, sex workers. Consultation with the Prostitution Licensing Authority and the Queensland Anti-Discrimination Commission does not suffice or replace the need for sex worker consultation. The short one-week turn-around for submissions is inadequate to provide comprehensive feedback on the Bill.

106C Exemption - 'Accommodation for use in connection with work as sex worker'

The proposed section 106C of the *Anti-Discrimination Act* 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 legislation makes three types of discrimination lawful:

- Refusing to supply accommodation
- Evicting a person from accommodation
- Treating the person unfavourably in any way in connection with the accommodation.

A Government licence to discriminate

These changes mean that people can legally discriminate against sex workers, and this discrimination is sanctioned by the Queensland Government. The scope of this discrimination is wide – 'treating the other person unfavourably in any way' will be permissible and legal.

Extraordinarily wide ambit

The section states that such discrimination is lawful where the accommodation provider *reasonably believes* the person is using *or intending to use* the accommodation *in connection with* sex work. There are three problematic elements to this section.

Reasonable belief

The element of reasonable belief is a subjective one that will lead to arbitrary decision-making by accommodation providers. An accommodation provider may 'reasonably believe' an 'out' or 'known' sex worker staying at the accommodation intends to work when they are actually on holidays with family or friends (or living short term in accommodation) and evict them. As a result, this Bill means that sex workers will experience discrimination not only on the basis of their work activities, but also in their private lives as a result of their known sex work status. This Bill permits discrimination against sex workers in both our professional *and* private lives.

Intention

Under this Bill, the person evicted, refused accommodation or treated unfavourably need not have actually sex worked from the room. The provider must only reasonably believe the person *intends* to

use the accommodation for that purpose. An accommodation provider could evict a person even where there was no sex work taking place, but they may reasonably believe there was an intention to do so in future. This means it is lawful to discriminate against somebody because they are *intending* to do something *legal* in Queensland.

Connection

The wording covers conduct or indented conduct *in connection with* their work as a sex worker. This means a person may be evicted or treated unfavourably under this Bill for doing work emails or taking phone calls from their room, if those communications were connected with their work as a sex worker.

Accommodation

The definition of 'accommodation' in the Schedule to the ADA, means that these reforms will have extraordinarily wide ambit. A person may be evicted or refused accommodation from a business premises, house, flat, hotel, motel, boarding house, hostel, caravan, caravan site, manufactured home, camping site or building construction site. There is no definition of who constitutes an 'accommodation provider' - whether it be owners, managers, staff or even landlords. Under this Bill, a sex worker could be evicted from their rental property by a landlord without evidence, recourse, and even without sex working, and be left homeless.

Open to misuse and corruption

Accommodation providers may use this Bill as an excuse to repeatedly refuse known sex workers from accommodation. The amendments will lead to corruption and misuse – an accommodation provider may approach a sex worker and suggest they will not evict them if they provide a free service to the accommodation provider. This kind of corruption is regularly reported by sex workers from authorities.

Arbitrary decision-making will capture sex workers, clients and the general public

The Parliamentary Reading Speech specifically states that this section would cover sex workers, agents, or clients. However, the 'reasonable belief' element gives this Bill widespread ambit to cover members of the public who are *reasonably believed* to be sex workers, agents or clients. This could have extensive ramifications. It means accommodation providers will begin policing the behavior, work patterns and sexualities of their patrons. It opens up opportunities for accommodation providers to make arbitrary decisions based on the way a person dresses or acts, assuming that they are intending to sex work from their room.

Accommodation providers may mistakenly identify people engaging in non-commercial sexual activities, because of ambiguous factors such as their number of guests, dress, gender, presentation, luggage or sleeping patterns. This Bill gives accommodation providers a licence to scrutinize the sexuality of every guest and screen people on the basis of their assumed sexual practices. It will lead to offence, embarrassment and confusion (of staff and patrons) – how will they identify (or train staff to identify) who is a sex worker?

Reducing sex workers choices, placing us in danger, posing barriers to health promotion, and increasing stigma

This Bill effectively treats sex workers as second class citizens, and will increase discrimination, stigma and marginalisation of sex workers throughout the state, particularly those working in regional areas.

The Bill will have serious negative impacts for sex workers: it threatens to leave sex workers without accommodation in isolated areas, evict sex workers in the night without other transport or accommodation, reduce sex workers' choices over working conditions, and identify us and force us out of towns. Sex workers operating their businesses under the amended legislation may feel less able to report crimes against themselves or to access services.

In Sweden where it is illegal to rent an apartment/room to sex workers, such laws have put sex workers in danger, forcing sex workers into more isolated and less visible areas. It is crucial for health and safety that sex workers have choice and control over the conditions and locations of our work.

Protection on the basis of lawful sexual activity: *GK v Dovedeen Pty Ltd and Anor*

Current legislation in Queensland prevents discrimination on the basis of lawful sexual activity. Under the ADA, 'lawful sexual activity' is defined to mean '*a person's status as a lawfully employed sex worker, whether or not self-employed*.'

In the recent case of *GK v Dovedeen Pty Ltd and Anor*, the Queensland Civil and Administrative Tribunal held that a motel that refused accommodation to a sex worker who had used the accommodation to provide sex work had contravened the *Anti-Discrimination Act 1991* (ADA). QCAT found that the conduct constituted direct discrimination on the basis of 'lawful sexual activity.' This high-profile case sent a clear message that discrimination against sex workers is unacceptable.

The Government is effectively permitting discrimination that is currently unlawful under the protected category of 'lawful sexual activity'.

This Bill has come about in reaction to this particular case and this is evident in the Explanatory Notes and the Attorney General's press release. The Attorney General announced in the media release his intention to 'overturn' this decision. The intention expressed in the media release, Explanatory Notes and reading speech is that the Bill will 'give accommodation providers certainty and control in the use that is made of their premises' and 'to protect businesses from this sort of complaint'. The Government has stated that it 'supports business owners' ability to make decisions about what does or does not occur on their premises.' The Attorney General is using this particular case to introduce laws that have far-reaching, long-term and damaging consequences.

Amendments are unnecessary: There is no inconsistency between the *Liquor Act 1992* and *Anti Discrimination Act 1991*

The Government is also using a perceived inconsistency between the *Liquor Act* and *Anti-Discrimination Act* to justify this dangerous Bill. The Attorney General stated in his press release that 'The Liquor Act states a hotel or motel owner is prohibited from allowing someone to operate a private business from their premises... Now both pieces of legislation contain the same provisions to avoid future confusion.' This is an inaccurate reading of both the *Liquor Act* and the *Anti-Discrimination Act*.

In *GK v Dovedeen Pty Ltd and Anor*, the QCAT found no inconsistency between the *Liquor Act* and *ADA.* The *Liquor Act*, they found at [45], is concerned with 'regulating what businesses are carried on

by licensees on licensed premises. They are not concerned with regulating the activities of guests who utilise licensed premises.'

To read the *Liquor Act* as if it prevents guests from engaging in any kind of business activity from their accommodation is clearly absurd, and inconsistent with the aims of the Act, which are concerned with minimising harm caused by alcohol abuse and misuse. The QCAT stated at [46]:

> It is an unremarkable and daily occurrence on licensed premises to be found across the length and breadth of Queensland, and probably the entirety of the Australian continent, that many guests who are travelling, are travelling for the purposes of conducting their business in the location where the licensed premises or motel is located. Many business people, from all walks of life in some way or another conduct business in and from licensed premises every day. Some licensed premises actually offer as an incentive to business travellers specific "business centres" upon the licensed premises. It may be readily inferred that the Legislature did not intend to impede the commonplace and ordinary lawful use of motel accommodation, whether with or without a liquor licence, by the enactment of section 152.

To read the *Liquor Act* in the way the Attorney General has, would mean that licensees would commit an offence, risking prosecution, attracting penal consequences, for *not preventing* their guests from conducting business. As the QCAT states at [47], 'That would probably catch most licencees, on most days.'

The QCAT also differentiated between the conduct of 'a business' and 'the mere conduct of business activity' at [49]. They reiterated that the focus of the *Liquor Act* is on the conduct of the licensee, rather than the guest. A licensee cannot be said to be permitting a business simply because they let a room to a person they know or suspect may sex work from it. The licensee would need to be soliciting sex workers to stay in their accommodation for that purpose or imposing special levies to amount to a participation in that business [48].

The QCAT finally noted at [51] that there was *no evidence* that a desire to comply with s152 of the *Liquor Act* played any part in the motelier's decision to evict GK in that case, nor that they ever desired to police the business activities of other guests:

> There is no suggestion that they had ever interfered with or intervened in the conduct of any other business activity by any other guest apart from GK. In those circumstances, it does not seem to us that section 152 of the *Liquor Act 1992* is inconsistent with any provision of the AD Act insofar as it concerns provision of accommodation to persons may or will carry on lawful sexual activity therein.

This is clearly a case of discrimination on the basis of lawful sexual activity, which should provide remedy under the *Anti-Discrimination Act*. There is no requirement for accommodation providers to prevent their guests from engaging in business activities under the *Liquor Act*. There is no need for these amendments to the *Anti-Discrimination Act*, which are blatantly intended to provide Government sanction for prejudice and discrimination against sex workers.

Amendments are unnecessary: Disruptive behavior covered by existing legislation

Section 165 of the *Liquor Act* already provides that licensees can remove persons from their premises if they are disorderly, intoxicated or creating a disturbance. In this case, the licensee can use necessary and reasonable force to remove the person, and if they fail to leave the person may face penalties. Section 165A allows licensees to refuse entry to a person if they are intoxicated or disorderly. Section 148A places obligations on licensees too preserve the peace and good order of

the neighbourhood and maintain a safe environment for patrons and staff. There is no need for accommodation providers to discriminate against sex workers.

Minimal amenity impacts of sex work

Accommodation provider's fears are unjustified and founded on stereotype. There are little to no amenity impacts of sex industry businesses on surrounding communities or other guests. Motel concerns about sex industry businesses have no evidential basis. Amenity impacts on the community such as noise or nuisance rarely manifest or justify motel bias.

The *Liquor Act* already allows operators to evict patrons in the case of nuisance. However, in the case of *GK*, the worker had visited the motel 17 times in 2 years and had received zero complaints from other guests. The QCAT said at [4]:

> There was no suggestion that there was any basis for any other complaint about her conduct whilst making use of the room, apart from the very fact that it was being used to provide sexual services. In other words, there were no suggestions that GK's use of that room had caused some kind of nuisance, had been disruptive to other guests, or had caused any noise or other associated difficulty. Indeed, the Tribunal Member who heard GK's complaint below indicated acceptance of GK's evidence she had carried on her business discreetly, and that there had been no obvious detrimental impact on the management of the motel.

Sex workers are an identified population in need of anti-discrimination protection

Sex workers are a distinct group who share unacceptable levels of stigma and discrimination and are recognised as a 'priority population' by the Australian Government's *National HIV* and *STI Strategies.* Concern for sex worker human rights has been raised in many human rights forums within Australia and internationally over many years. Four states in Australia have anti-discrimination categories aimed at protecting sex workers from discrimination.

United Nations Secretary General Ban Ki-Moon states that 'In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change.'[1] Former Australian High Court judge the Hon. Michael Kirby AC CMG states that 'We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality.'[2] UNAIDS and the United Nations Population Fund state that it is essential for governments to create an enabling legal and policy environment which insists upon universal rights for sex workers and ensures our access to justice.[3]

Protecting sex workers from discrimination is consistent with a number of international treaty provisions, including: the right to self determination (Art 1 ICCPR; Art 1 ICESCR); the right not to be subjected to arbitrary or unlawful interference with their privacy (Art 17 ICCPR); the right to freedom of association with others (Art 22 ICCPR); the right to work and opportunity to gain a living by work which one freely chooses (Art 6, ICESCR); the right to just and favourable conditions of work, including safe and healthy working conditions (Art 7 ICESCR); the right to freedom of movement and

[1] UNAIDS, Joint United Nations Program on HIV/AIDS, *UNAIDS Guidance Note on HIV and Sex Work*, Geneva, 2009, 2.
[2] UNAIDS and UNFPA, *Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work*, 2011 at 14.
[3] Ibid at 13-15.

residence within the borders of each state (UDHR 13); and the right to free choice of profession (CEDAW Art 11).

Against United Nations recommendations, anti-discrimination objectives and National Strategies

The Queensland Government announced this Bill days after the publication of a new report by the UN Population Fund (UNFPA), UN Development Fund (UNDP) and UNAIDS on *Sex Work and the Law in Asia and the* Pacific, which recommends governments protect sex workers from discrimination. It is announced in the context of the Federal Government Human Rights Framework which seeks to consolidate Australia's anti-discrimination legislation.

The Bill is wholly out of step with recommendations from the United Nations Secretary General, UNAIDS, UNFPA and UNDP, inconsistent with Australia's National STI and HIV Strategies, and contrary to best-practice approaches to sex work law reform, human rights and health promotion.

It is contrary to the objectives of anti-discrimination legislation, by allowing discrimination against a particular class of people and enabling arbitrary discrimination on the grounds of personal prejudice. Such aims are clear in the Attorney General's press release – his intention is that 'the laws suit the majority not the minority.' Section 6 of the *Anti Discrimination Act* states:

> One of the purposes of the Act is to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity, including work, education and accommodation.

That section states that the Queensland Parliament considers that:

> (a) everyone should be equal before and under the law and have the right to equal protection and equal benefit of the law without discrimination; and
> (b) the protection of fragile freedoms is best effected by legislation that reflects the aspirations and needs of contemporary society; and
> (c) the quality of democratic life is improved by an educated community appreciative and respectful of the dignity and worth of everyone.

This Bill will create barriers to health promotion

This Bill will pose a new serious barrier to health promotion delivery in Queensland. This type of lawful discrimination against sex workers will promote sex workers disguising or hiding their location in fear of identification, stigma and eviction. Community outreach, peer education and health promotion are essential to the low rates of STIs and HIV among sex workers in Australia and include the delivery of services to locations where sex workers work. The *National HIV and STI Strategies* recognise that 'the incidence of HIV/STIs in sex workers in Australia is among the lowest in the world. This is largely because of the establishment of safe-sex as a norm, the availability of safe-sex equipment, and community-driven health promotion and peer-based interventions.'[4] This Bill will inadvertently threaten the successful delivery of health promotion.

Damaging Australia's international reputation

[4] Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16; Australian Government Department of Health and Ageing, *Second National STI Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16. Comparatively low rates of STIs among Australian Sex Workers are also cited in NSW Health, *STI Strategy Environmental Scan*, 2006.

This Bill effectively undoes years of anti-discrimination law reform. Anti-discrimination legislation was first introduced in Queensland because hoteliers and moteliers were refusing service to Indigenous Australians. These amendments are an enormous step backwards in terms of human rights, health promotion and anti-discrimination protection. This step will damage Australia's international reputation.

In Section 1, the 'reasons for enacting' Queensland's *Anti-Discrimination Act*, the legislation includes recognition that the 'international community has long recognised the need to protect and preserve the principles of dignity and equality for everyone.'