

8th November 2012

Research Director
Legal Affairs and Community Safety Committee
Parliamentary House
George Street
Brisbane Qld 4000

Reference: Submission regarding the Youth Justice (Boot Camp Orders) and Other Legislation
Amendment Bill 2012

Dear Sir/Madam,

Respect Inc is a peer based sex workers' organisation which was formed by many sex workers throughout Queensland working together for the common goal to have our voices heard when participating in social policy development that directly impacts on our health and wellbeing. Many of our activities are not funded including responding to this request for us to participate in this process.

This submission has been written and approved by the voluntary Management Committee of Respect Inc. Contributions by paid staff have been outside of paid hours and normal service delivery. As Key Stakeholders we are eager for the voices of sex workers who, for many reasons, are not able to participate and are often vulnerable people who are heavily marginalised.

Respect Inc is funded by Queensland Health to provide peer-delivered Workplace Health and Safety Education services. Respect Inc has been delivering information, education, advocacy and support services to sex workers from offices in Brisbane, Townsville and Cairns since January 2010 and from the Gold Coast since July 2011.

The views of Respect Inc are not influenced by commercial competition as is often the case for those stakeholders who argue for various social policy changes and development. Our views are not based on financial concerns; our focus is solely on sex workers' health, safety and civil rights. We are a part of the wider general community and so share an interest in ensuring quality of life and health and safety for local communities.

In Queensland, sex workers have been accessing the Anti Discrimination Commission for over fifteen years in response to the high level of discrimination that is perpetrated against us within the community because of our choice of occupation. Not all situations are covered by the Anti Discrimination Act but we have found that by having some coverage sex workers have a sense of justification to stand up for their rights individually.

Most cases of discrimination on the basis of lawful sexual activity are based on moral attitudes and prejudices rather than real impacts to social amenities. These attitudes are somewhat validated by

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the fact that the majority of the sex industry is regulated under the Criminal Code (Chapter 22A), which is a code designed to cover acts of deviance rather than the regulation of businesses. With the introduction of the Prostitution Act 1999, the government recognised sex work as legitimate work but this has done little to improve the situation for sole traders and other sex workers who cannot work within the narrow confines of the licensed brothel system and the Criminal Code.

Other forms of discrimination which have been identified and addressed through the ADCQ have included:

- Banking facilities such as Eftpos and loans being refused
- Insurance companies not providing coverage for life insurance or income protection. As Workcover Qld still does not provide coverage to sex workers within brothels, these sex workers continue to be recognised as independent contractors.
- Schools refusing children of sex workers to be enrolled
- Training providers refusing to acknowledge the skills and knowledge gained as a sex worker or refusing enrolment by 'out' sex workers
- Churches and clubs refusing enrolment or membership
- Community services refusing to provide assistance
 - in particular homelessness services where evictions on discovery of status or activities outside of the housing provided occur regularly
 - other forms of aid such as Emergency Relief Funding
 - children/family support programs
- Children's community services disadvantaging families where one family member has identified as a sex worker
- Advertising media charging more for sex work ads and refusing to charge on account

We are certain the ADCQ could provide a more comprehensive list of services which have been denied to sex workers or in which sex workers have been treated less favourably than have persons without the attribute.

Respect Inc, as a sex workers' community based organisation, has also experienced direct discrimination due to our status and association with sex workers. For example, we have been refused an office lease in Fortitude Valley, we have been refused advertising services when advertising for staff and our Peer Educators have been refused financial employment support through DEEWR.

Respect Inc has also very recently encountered discrimination by police refusing to investigate a violent crime against a sex worker who was robbed by a client. Police in that case threatened a legal sex worker with criminal charges if she proceeded with the complaint. This was a legal worker and it was only after intervention by Prostitution Enforcement Task Force officers that the case was resolved. We have no doubt that there have been thousands of cases like this that have gone unrecognised.

Many sex workers experience these types of discrimination on a weekly basis and don't report due to barriers to access including internalised stigmatisation, fear of information being used for other purposes, fear of disclosure of personal information being provided to the perpetrator or media, lack of understanding of legislative coverage of sex work, and fear of retaliatory action by the perpetrator or others.

The procedures within the ADCQ, including the use of an alias (e.g. GK), helps to reduce some of the barriers but unfortunately, most cases of discrimination go unreported as do many violent crimes perpetrated against us from clients who understand that their risks of being prosecuted are low.

In 2007, SQWISI (Self Health for Queensland Workers in the Sex Industry Inc) was wound up and closed. This then led to a period of 2 years when there was little support for our peers especially when a crisis occurred. The community development activities that occurred between the closure of SQWISI and the establishment of Respect Inc were minimal and what was in place was focused on establishing another organisation where sex workers could participate without privacy fears or prosecution or persecution.

During this time, many sex workers contacted the Prostitution Licensing Authority or Queensland Police Services (Prostitution Enforcement Task Force) for information about their rights and responsibilities. As these services are neither designed nor funded to provide these information services, many sex workers felt they had nowhere else to turn.

One area that caused much confusion was the legal status of the use of motel accommodation for the provision of sex work. For many years there has been a glaring contradiction between the Qld Police Service interpretation of the Criminal Code and the PLA's interpretation of the Anti-Discrimination Act. Due to the large number of enquiries from both accommodation providers and sex workers requesting clarification about the legality of the use of rented accommodation for sex work activities, the PLA engaged a barrister to provide a legal interpretation of the Criminal Code, 22A, and its lack of coherence with the Anti Discrimination Act. This interpretation¹ provided some evidence to support sex workers in self advocacy and reduced the demand on the PLA for information from individuals.

We have found that many accommodation providers are reasonable and will allow a sex worker to run part or all of their business from their accommodation because they have a realistic view of the situation. Also some can see the financial sense in doing this. Many motels will have rates that are specifically tailored to suit sex workers' lawful sexual activities, such as a specified rates for additional linen.

The fact sheet produced by the Prostitution Licensing Authority appears to have been well utilised by many accommodation providers so that they could understand their obligations within both the ADA and the Criminal Code.

QCAT Case: GK v Dovedeen Pty Ltd, Mrs Joan Hartley

The initial ruling in this case² in particular made a large impact on the sex worker community by validating the perception that it was acceptable to discriminate against a sex worker. Many sex workers considered that the argument revealed negative attitudes towards sex workers held by the Member who heard the matter. The written reason created a support document for some motel operators throughout Queensland who wished to discriminate against sex workers because of moralistic views.

As a result at Respect Inc we had a noticeable increase in access by sex workers asking for support in advocating for refunds of accommodation costs after being evicted on discovery of their lawful sexual activities. When this occurred with Fly-in, Fly-out (FIFO/DIDO) sex workers, this often led to a short period of homelessness and led to people having to take added risks within their businesses.

¹ PLA, Legal advice re: sole operator sex workers providing prostitution from motel rooms [Available at: <http://www.pla.qld.gov.au/theLaw/legalAdviceSoleOprrSxWk.htm>]

² QCAT, GK v Dovedeen Pty Ltd & Anor (No 3) [2011] QCAT 509 (10/ADL134) Brisb Ann Fitzpatrick, Member 25/10/2011 [available at: <http://www.sclqld.org.au/qjudgment/2011/QCAT/509>]

GK appealed this ruling and was successful³. The impact of the QCAT ruling of the appeal by GK has been just as profound. The sex worker community felt that they again had been validated as legitimate business people with rights to use accommodation for part of their business activities in the same way that other people travelling for business purposes do. We were starting to celebrate as more people read and understood the outcome of the appeal. Furthermore, for months many pending complaints to ADCQ had been put 'on hold by the ADCQ' pending the outcome of GK's appeal and we now felt that these complaints could proceed.

This was short lived as we believe the ADCQ are now still unable to process the raft of outstanding similar cases which have accumulated since the first hearing. Now the leave to appeal the appeal has been granted, we are uncertain of the outcome or process for current cases. We agree that this case has public interest repercussions and will strongly influence perceptions of motellers and wider accommodation providers even if the amendments proposed are not passed.

We also believe that the Presiding Member, Mr Peter Roney SC, and Dr Bridget Cullen who heard the appeal also understood that this is of public interest as it makes a large impact on both the accommodation industry and sex workers throughout Queensland. This proposed amendment, too, will not just impact on sex workers and the accommodation industry but it will also adversely affect sex workers families, clients and the wider community.

Many of our members presumed that the Attorney General would continue with his threats to change the Anti Discrimination Act to provide exemptions to accommodation providers when the lawful sexual activities are commercial in nature. We are however disappointed in the lack of consultation with people directly impacted by this legislation and lack of compassion towards people who are already suffering discrimination in areas that the ADA doesn't cover.

Impacts if the ADA changes are passed

Amendment goes further than resolve a contradiction between the Liquor Licensing Act and the Anti Discrimination Act

The rationale given for this exemption to the Anti Discrimination Act is to resolve the contradiction between it and the Liquor Licensing Act but not all motels are licensed and this Amendment covers all accommodation providers. It is evident that this change to the law is to allow discrimination of sex workers in all accommodations and is therefore itself a form of discrimination against legal workers.

Work from Home vs. Separate Accommodation for work and home

As other people do, some sex workers also share their work and home accommodation for many reasons including but not limited to;

- financial constraints,
- minimal work hours leading to the costs benefits of having a separate work premises as not being viable (increased costs would lead to an increase in productivity to cover business operating costs)
- saving of travel time and costs

³ QCAT, GK v Dovedeen Pty Ltd and Anor (No 2) [2011] QCAT 445 (10/ADL134) Brisb C Endicott, Senior Member 15/09/2011 [available at: <http://www.sclqld.org.au/qjudgment/2011/QCAT/445>]; QCATA, GK v Dovedeen Pty Ltd and Anor [2012] QCATA 128 (11/APL416) Brisb PJ Roney SC, Presiding Member Dr B Cullen, Member 31/07/2012 [available at: <http://www.sclqld.org.au/qjudgment/2012/QCATA/128>]

The option of working from home is not always the best option for an individual as some sex workers work from separate premises for equally valid reasons including;

- the clear division of work from home, a common emotional health strategy used by many people in many varied professions and trades
- minimising risks of clients attending the home premises without a previously arranged booking time (this can be particularly problematic if the sex worker has a partner or children also residing at the premises)
- the personal accommodation may not be appropriate for sex work due to location, neighbours or a desire to travel to communities with seasonal work patterns

If the proposed amendments are introduced, there will be an impact on a sex workers' opportunities to seek accommodation that is appropriate for their and potentially their families needs. It is unlikely that most real estate agents are going to accept someone as a tenant knowing that the person is a sex worker regardless of if they are identifying as using the premises for part of their work or not.

If these amendments are passed, potentially this could lead to an increased risk of homelessness not only for an individual but the rest of their household/family.

Forced evictions at night

There is already a high level of violence perpetrated against sex workers in Queensland as a direct result of the criminal sanctions imposed on sole traders for putting in place certain occupational health and safety strategies. As a result, perpetrators of violence are aware that sex workers are generally working in isolation with limited or no security beyond their own self delivered safety strategies. Also, they are unlikely to report violent crimes to the Police due to various reasons such as unwanted media attention and discrimination by police.

We have seen an increase in incidents of motels and hotels evicting sex workers at night as a lot of sex work is done at night. It is also extremely difficult if not impossible within some of the smaller communities within Queensland to get alternate accommodation outside of normal business hours.

Respect Inc is concerned that this will lead to an increased risk of violence perpetrated towards sex workers.

Increasing the potential risk of criminal activities

Clients access sex workers in various forms of accommodation dependent on their individual needs and wants. Most sex workers and their clients have a high desire for anonymity and discretion resulting in most sexual services being provided without any knowledge of neighbours or other patrons/tenants/residents of the accommodation.

Most sex workers that we have contact with either as members of the organisation or as service users express their desire to work within a legal framework regardless of the impacts of isolation and increased risks of violence.

We believe that if this Amendment is passed it could lead to an increase in unlawful forms of sex work activities particularly at times of crisis caused by forced and rushed evictions or lack of appropriate accommodation options.

We believe that there need to be options for people that are appropriate for their needs. Limiting the form of accommodation that can be used to carry out sex work activities for both workers and clients is likely to have detrimental consequences to the community in general.

Existing procedures to respond to disturbances

If sex workers are making a disturbance, as with all other patrons, there are processes of responding to this regardless of the nature of the disturbance. We believe that these proposed changes will allow some people to make decisions to refuse accommodation to sex workers because of a moral bias not because of any **real** issues. People have sex in motel rooms, units, caravans all the time. People do various forms of work activities such as written communication, phone calls, small meetings in motel rooms, units and caravans all the time.

We have been told that the introduction of the Anti Discrimination Act in Queensland was introduced as a response to the growing issues of racism by accommodation providers. We have heard terms and language used around this debate that make it clear to us that accommodation providers are responding to prejudicial concepts. In the initial GK hearing, the accommodation providers said they did not want their motel to "turn into a whorehouse". Media interviewers have made similar comments with recent headlines such as "Hookers on notice" in the Mackay Bulletin. In a recent A Current Affair story on the GK case, the interviewer made a mockery of GK by stating that she did not respond to their request for an interview and then played a 'sexy' voice mail message purporting to be GK. Unfortunately, the comments being made by the accommodation industry through this public debate via the media is evident that the coverage is still needed as discrimination still exists within the accommodation industry and the wider public as represented by the media.

What happens if someone isn't a sex worker?

This Amendment will, in effect, allow discrimination on the basis of *status* as a sex worker, not just allow discrimination on the basis of *sex work activity*. This is because there is no way to prove that someone is actually working as a sex worker while they are residing in accommodations.

This concern was raised amongst our members on the same day of this Bill being proposed. The question was asked: what remedies does someone have if they aren't a sex worker or if they are not working at the time? We have heard many stories in the community regarding motel/hotel operators asking women travelling alone if they are a sex worker and feelings of personal insult and intrusion being expressed by non sex workers.

In reality, if this Amendment is passed, any single person could be asked if they are intending on using the room for sex work either as a service provider or as a client. We believe that there will be little remedy for people who are mistakenly evicted or refused accommodation because of a perception by an accommodation provider.

The fact is we are using the accommodation to have sex as many other people do in their homes or short term accommodation every day. Are people going to be interrupted by accommodation providers in the throes of passion to be asked if someone paid for the experience or not?

Limited opportunities to participate

As Respect Inc is only a small group of community workers who are also sex workers, we are not able to provide as much of a comprehensive view as would be gathered if more sex workers, particularly vulnerable sex workers would be able to provide as a suite of submissions.

When we received the letter from Ray Hopper MP on the 2nd November, there was already a lot of discussion occurring in the community beyond those involved in our organisation. This was as a result of the media coverage, in particular the comments being made by the Attorney-General and Minister for Justice, Hon Jarrod Bleijie MP.

We circulated the letter through our newsletter elist, placed it on our website and face book pages and passed it onto other key sex worker groups. Unfortunately, due to our limited resources and that this activity is not likely to be seen as part of our existing funding agreement with Queensland Health, we have been mindful to participate only with volunteer human resources. We have not been in a position to assist people in expressing their views.

We have noticed that most sex workers were feeling confident enough to respond directly to the Committee and we have not needed to have any involvement in their submissions. Some have asked us to pass on their submission so as to minimise any perceived privacy concerns. We understand that these concerns may be unfounded however; we acknowledge that the internal stigmatisation and continual policing strategies that many deal with on a daily basis creates some incorrect presumptions about processes such as this one.

Some have expressed concerns that no amount of effort from them to present their concerns would change the outcome and have refused to participate. For example the following is a part of an email which we received as a response from the mail out of the letter from Ray Hopper MP.

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Hi Team Respect,  
how can we fight this about motels stopping sex workers?  
is it a petition, that requires full name and address?  
I think is very wrong this happened - most motels i know are happy to have  
sex workers, but now i think all will worry as i do the next step will be  
[for police] to charge the motel operator that allows us to work there.....  
  
Is it to protect legal brothels?  
  
what about honey mooners in motel screwing all night?  
what about, the girl that has a gang bang in motels?  
what about the swinger that meet in motels?  
what about the gays that meet in motels?  
  
Is it really just because us sex workers get paid for an essential service?  
  
I just not sure how to tackle the issue..... i would like to think we all  
unite and stop for a week.  
  
while we organise an alternative in rented units, houses, caravan parks and  
work out how to be on the streets again.....
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This email expresses one sex worker's views and concerns, that this action is somehow related to supporting licensed brothels rather than sole traders, that it will lead to a change in Police interpretation of 'premises' within the Criminal Code, Chapter 22A. This had been problematic for decades, some of our team also share the concern that the impact of this change could be much more far reaching than merely changing the coverage of the ADA.

As the timeframe for submissions has been so brief, we recommend a more comprehensive review of the current legislation that impacts on sex workers including the interaction and contradictions that exist between the sex work related legislation and other legislation including the ADA.

Recommendations

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- We recommend no changes are made to the Anti Discrimination Act in relation to the legalising discrimination by accommodation providers based on lawful sexual activities as it will have a significant negative impact on the health and wellbeing of Queensland sex workers, their clients and their families.
 - We recommend a more comprehensive review is undertaken by Parliament regarding legislation that impacts on sex workers including the Prostitution Act, Criminal Code Chapter 22A, the Anti Discrimination Act, Police Powers and Responsibilities Act, Liquor Licensing Act and other legislation.
 - We recommend that any further reviews of social policy that impacts directly on sex workers such as this one is done with avenues of participation that recognise the concerns of vulnerable sex workers so as their concerns are recognised.
 - We recommend that the Committee assess how other social policies will be contradicted by this change such as the National HIV Prevention Policy which has been agreed to by Queensland Government.

For any further information, the Chairperson, Jenny King, can be contacted directly on 0439 684 411 or jenny@respectqld.org.au.

Yours truly,



Candi Forrest, Treasurer
For the Management Committee