

**The *Sexuality Discrimination Bill 2006* (Commonwealth)
and the *Anti-Discrimination Act 1991* (Queensland):
a comparative analysis**

**Kyla Hayden
For the Queensland Association for Healthy Communities
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PART 1: EXECUTIVE SUMMARY

1. Purpose of paper

The purpose of this paper is to inform discussion on the provisions of the *Sexuality Discrimination Bill 2006* as proposed by the former Shadow Attorney-General, Nicola Roxon MP. The paper sets out the major provisions of the *Sexuality Discrimination Bill 2006*, compared with the equivalent provisions in the *Anti-Discrimination Act 1991* in Queensland.

Every attempt has been made to explain the effect of the differences between the provisions, but without reference to whether one provision is “better” than the other. The terms of the consultancy were that this document provides the legal analysis without making any determinations of policy.

2. Explanation of Terms

References to the “Queensland Act” mean the *Anti Discrimination Act (Queensland) 1991*. References to the “Roxon Bill” mean the *Sexuality Discrimination Bill 2006* as proposed by Nicola Roxon MP.

References to “HREOC” mean the Commonwealth Human Rights and Equal Opportunity Commission established under the *Human Rights and Equal Opportunities Commission Act 1986*.

References to the “ADC” mean the Queensland Anti-Discrimination Commission established under the *Anti Discrimination Act (Queensland) 1991*.

References to the “Tribunal” mean the Queensland Anti-Discrimination Tribunal established under the *Anti Discrimination Act (Queensland) 1991*.

The acronym “GLBT” is used to refer to people who identify as gay, lesbian, bisexual or transgender.

3. Acknowledgements

The analysis in this paper has been informed by discussions with several people with expertise in the area of gay and lesbian discrimination law and the procedures of the Queensland Anti-Discrimination Tribunal and Commission. Their advice and time spent in assisting this project was invaluable, but of course, any errors that may have occurred in the final analysis remain my responsibility.

4. Status of *Sexuality Discrimination Bill 2006*

The *Sexuality Discrimination Bill 2006* (“the Roxon Bill”) was drafted as a private member’s Bill by Nicola Roxon MP in her former capacity as shadow Federal Attorney-General, as a means to implement the policy of the Federal Labor Party to eliminate discrimination against people on the grounds of gender identity and sexual orientation. The Bill had not been introduced into Parliament before the change in Opposition leadership, from Kim Beazley to Kevin Rudd.

The current Shadow Attorney-General is Senator Joe Ludwig, Senator for Queensland. Mr Ludwig’s adviser, Simon Every, has indicated that the Federal Labor Party led by Kevin Rudd has not formally adopted a policy in relation to the specific proposals in the Roxon Bill.

However, he confirmed that the ALP platform since 2004 has committed the Federal Labor Party to the removal of discrimination against gay and lesbian people. Mr Ludwig's adviser indicated he expects that the Shadow Attorney-General will be briefed on this issue in the near future (but could not give a time estimate) and indicated that he was interested in any analysis of the Roxon Bill as it compared with the Queensland Act.

5. Overview

The Roxon Bill proposes to eliminate discrimination, harassment, victimisation and incitement to violence on the grounds of sexual orientation and gender identity. The Queensland *Anti Discrimination Act 1991* ("the Queensland Act") is the principal legislation prohibiting discrimination on a number of grounds including gender identity and sexuality. The Queensland Act also prohibits sexual harassment and other associated objectionable conduct including victimisation and incitement to violence.

If the Roxon Bill had been enacted, the two Acts would operate concurrently only to the extent they are consistent. If there is any inconsistency, the Roxon Bill provisions would prevail. If a person has already made a complaint or instituted proceedings under Queensland law however, the Queensland Act must be used – the Roxon Bill cannot apply.

Both the Roxon Bill and the Queensland Act are similar in general effect: both prohibit direct and indirect discrimination, with specific and general exemptions. Both pieces of legislation prohibit victimisation, harassment and incitement to violence.

Part 2 of this paper sets out, in detail, the differences between the two pieces of legislation, explaining the effect of the differences. Some of those differences are small matters of wording in the legislation that would be useful in making submissions in the event that another Bill is proposed.

Other differences are more significant. Part 2 details those significant differences. Set out in Part 1 below is a summary of the significant differences that would be useful when considering a policy statement on the issue of discrimination on the grounds of sexual orientation and gender identity.

These differences are significant as identified through the prism of legal policy analysis. It is a matter of policy for the community to determine whether a particular matter, though small in legal effect, offends against a principle that therefore determines that it is a significant matter of policy. The summary of significant differences, and Part 2 of this paper, with all differences identified, is meant to inform that debate.

6. Summary of significant differences between the Roxon Bill and the Queensland Act

6.1 Review of acts and automatic disqualification of discriminatory provisions (see Part 2, para 15)

The most significant provision in the Roxon Bill (that has no directly corresponding provision in the Queensland Act) is the requirement to conduct an audit of Commonwealth laws with the ultimate effect of ensuring, after three years, that all Commonwealth laws that require discrimination on the grounds of sexual orientation or gender identity are to be ineffective. The scope of this provision is not limited to the specific matters set out in the Roxon Bill and could therefore possibly effect the validity of recent amendments introduced by the Commonwealth Government that invalidates marriages between people of the same sex.

The final effect of these provisions in the Roxon Bill is unclear given the recent review conducted by HREOC of discrimination against people in same-sex relationships under Commonwealth legislation. It is possible that the outcome of the review, in identifying the legislation that is discriminatory, could be used as a starting point for the audit referred to in the Roxon Bill.

6.2 Harassment (see Part 2, para 12)

There are significant differences between the Roxon Bill and the Queensland Act in the way harassment is framed. The definition of harassment in the Roxon Bill is much wider as it refers to *any* action that offends, humiliates, intimidates, insults or ridicules another person on the basis of their sexual orientation or gender identity (cl35). The equivalent definition in the Queensland Act (s.119) requires conduct of a sexual nature.

The Roxon Bill also does not require intent – all that is required to establish the offence is that a reasonable person, having regard to the circumstances, would have anticipated the offence caused. The Queensland provision requires proof of the conduct, *and* that the harasser had the intention of offending, humiliating or intimidating the victim *or* where a reasonable person would have anticipated the offence caused.

6.3 Incitement to violence (see Part 2, para 14)

The Queensland Act makes incitement to violence with threats of physical harm or damage to property, or incitements to others to do the same, an offence prosecuted by the Director of Public Prosecutions before the court (s. 131A). The equivalent offence under the Roxon Bill is prosecuted privately by the person complaining of the conduct. Singling out specific behaviour to be prosecuted as a criminal offence makes a clear public policy statement that this is criminal behaviour that should be dealt with as such.

However, incitement to violence, despite being a criminal offence in the Queensland Act, has a lower penalty (70 penalty units [\$5,250] or six months imprisonment for an individual for 350 penalty units [\$131,250] for a corporation, whereas the Roxon Bill provides for 1 year and/or 200 penalty units [\$15,000] for incitement to commit violence or damage property, or threats to damage property and 2 years and/or 400 penalty units [\$150,000] for threats of physical harm.

There are also differences in the definition of the offences (see Part 2, para 14.5). The most significant difference is that the Roxon Bill does not include “reckless acts” – acts committed without a direct intention to incite violence. Such acts - despite having the same effect - would therefore escape prosecution under the Roxon Bill.

6.4 Definition of gender identity (see Part 2, para 2)

Both pieces of legislation prohibit discrimination on the grounds of “gender identity (cl 3 and s.7(m)) .

Both definitions have similar effect: the identification by the person (of indeterminate sex or not) seeking to identify as a member of a certain sex.

However, in order to satisfy the definition in the Roxon Bill, the person must identify “on a bona fide basis” as a person of one sex when they are the other sex. This means the person seeking to rely on the Bill to claim discrimination must also establish their identification as one gender is not a “sham”. It is difficult to see the policy purpose of the Roxon Bill’s requirement of bona fides. The Queensland Act has no such requirement, and simply requires the person to point to their actions of living or seeking to live as a member of a particular sex (as the Roxon Bill does, in addition to the requirement to prove bona fides).

6.5 Unconscious direct discrimination (see Part 2, para 6.2)

The Queensland Act specifies that it is not necessary for the discriminator to consciously intend to discriminate or to consider the treatment less favourable (s.10 (2)) and the motive of the discriminator is irrelevant (s.10 (3)). The Roxon Bill is silent on both these points.

It is important to ensure unconscious discrimination is expressly included in the definition to ensure prosecution when discrimination has still occurred, but the discriminator is simply unaware of the effect of their actions (as occurred in the recent complaint on the basis of age by ex-Virgin Blue employees discussed in detail in Part 2, para 6.2).

6.6 Exemptions in work related areas (see Part 2, para 8)

There are several differences in the exemptions between the two pieces of legislation but three issues are of particular significance:

- (a) **Notice:** The Roxon Bill requires a person to give their employer “adequate notice” of their gender identity if they seek to rely on the protection from discrimination (cl 24). Note this does not relate to grounds of discrimination on basis of sexuality, only gender identity. What would be considered “adequate notice” is not defined, and as such could vary from case to case and may, in some circumstances, be difficult to determine. It is unclear why this provision was included in the Bill. Whether a person wants to notify their employer of the issue of their gender identity would more appropriately be left to the discretion of the individual, on assessment of their needs and the attitude of the employer, rather than being directed under legislation to take this action. The Queensland Act has no such requirement to put the employer on notice of the person’s gender identity in order to obtain protection from discrimination.
- (b) **Genuine occupational requirements:** The Queensland Act ensures work related exemptions only apply when it is established that the discriminatory act is part of a *genuine* occupational requirement (s 25). The Roxon Bill however allows for discrimination (if they have given notice of a person’s gender identity) when it is reasonable for the employer to make decisions that treat the person less favourably on the basis of their gender identity.

The Queensland Act provision that determines the requirement is “genuine” means the assessment is a more objective one, and able to be determined perhaps by an expert third party. The Roxon Bill provision by comparison requires the employer to argue whether the discrimination is reasonable in the circumstances - a more subjective test.

- (c) **Child related employment:** The Roxon Bill has no specific exclusions for child related employment, which means it would be unlawful for employers to discriminate against a person on the basis of their gender identity or sexuality in child related employment. The Queensland Act allows discrimination in work related areas including residential child care services, and working with children (ss.25, 28).

6.7 Religious education and employment (see Part 2, para 8.4)

The exemption relating to religious bodies in the Roxon Bill is framed much more widely than the Queensland Act. The Queensland Act also exempts these bodies, but has strict limitations on the exemption (including that the work must genuinely and necessarily involve adhering to and communicating the body’s religious beliefs).

Under the Roxon Bill, discriminatory acts, widely defined as “any act or practice” by schools, charitable organisations or religious employment agencies or “any other body established for religious purposes”, would be exempted under the Roxon Bill.

There is an argument that the ability of the religious body to enter into specific agreements (under cl 23(2)) means religious bodies could make agreements that would reduce the effect of those exemptions. However, any benefit from this provision relies upon the religious bodies seeking to enter agreements, rather than having a general provision that limits certain acts from protection against discrimination, as occurs under the Queensland Act.

6.8 Exemptions for assisted reproductive technology (see Part 2, para 8.8)

The Queensland Act specifically allows discrimination on the basis of sexuality when providing assisted reproductive technology services (s. 45A). There is no such provision in the Roxon Bill, which means an action could be taken under the Roxon Bill against assisted reproduction technology services that discriminate against a person on the basis of their gender identity or sexuality.

6.9 Additional areas of prohibition against discrimination: superannuation and insurance (see Part 2, para 8.15)

The Queensland Act has two additional areas for which discrimination is prohibited that are covered to a lesser extent under the Roxon Bill: superannuation and insurance. The Roxon Bill does include superannuation in its work related areas, but the Queensland provision is far more comprehensive in application.

There does not appear to be a provision prohibiting discrimination in the insurance area in the Roxon Bill at all. This means it would be lawful to discriminate against a person on the basis of their sexuality for example, in charging them additional insurance premiums. Under the Queensland provision this can only occur if it relates to an impairment (for example statistical data relating to a person’s likelihood of suffering from AIDS related illness).

6.10 General exemptions (see Part 2, para 9)

The Roxon Bill does not provide for the additional general categories of exemptions that could arguably benefit the GLBT community, for example acts that would benefit members of a group or acts to promote equal opportunity for a group.

6.11 Specific exemptions (see Part 2, para 10)

Both the Roxon Bill and the Queensland Act provide for processes whereby specific exemptions can be granted in specific cases. However, there are differences in the way these processes work when granting the specific exemptions.

Whilst the Roxon Bill (unlike the Queensland Act) *requires* the Commission to advertise the fact it proposes to grant an exemption and *must* give interested persons reasonable opportunity to make written submissions, it could be argued the net practical effect of this is less than the Queensland provisions (as the requirement could be met simply by placing a notice in a newspaper that may or may not reach the intended audience).

The Queensland Act has additional provisions, both before and while the decision is made that enhances the openness and accountability of the decisions that are detailed at in Part 2, para 10. However, the Roxon Bill’s appeal processes are wider than the Queensland Act, detailed in Part 2, para 10.4.

PART 2: DETAILED ANALYSIS OF PROVISIONS

1. General discrimination provisions

The Queensland Act prohibits discrimination on grounds of gender identity (s.7(m)) and sexuality (s.7(n)). The Roxon Bill prohibits discrimination on grounds of sexual orientation or gender identity (cl 3).

2. Definition of “gender identity”

- 2.1 Both definitions have similar effect: the identification by the person (of indeterminate sex or not) seeking to identify as a member of a certain sex.
- 2.2 However, in order to satisfy the definition in the Roxon Bill, the person must identify “on a bona fide basis” as a person of one sex when they are the other sex. This means the person seeking to rely on the Bill to raise discrimination must also establish that their identification as one gender is not a “sham”. The Queensland Act has no such requirement, and simply requires the person to point to their actions of living or seeking to live as a member of a particular sex (as the Roxon Bill does as well).
- 2.3 The Roxon Bill states expressly that it is irrelevant whether the person is recognised as of a particular sex and refers specifically to assuming the characteristics by way of medical intervention, style of dressing or otherwise. The Queensland Act instead has a broad provision that would incorporate these factors (that the person identifies, or has identified as a member of the opposite sex by living or seeking to live as a member of that sex).
- 2.4 Neither definition expressly includes people who have undergone sexual reassignment surgery and who are regarded in law as persons of a sex as reassigned (for example by virtue of s.24 of the *Births, Deaths and Marriages Registration Act 2003* (BDMR Act). This means that people who have undergone sexual reassignment surgery and registered as the new sex may be excluded from protection from discrimination on the grounds of gender identity as they are not recognised as a member of “the opposite sex” – by virtue of the legal recognition of their true sex.
- 2.5 This point was made in *May vs Queensland Police Service* [2005] QADT 38: unless the definition expressly refers to the re-assignment, a person who has undergone gender reassignment and then registered under s.24 of the BDMR Act would not satisfy the test that the person identifies as a person “of the opposite sex”. Although this case considered the Queensland Act, it is relevant to the Roxon Bill provisions, as similar Cwth laws could apply.
- 2.6 In the exposure draft of the Roxon Bill, Roxon seeks views on the definition of gender identity and in particular the terms used, for example whether “intersex” is better than “indeterminate sex”. There is unlikely to be any difference in legal effect between the two terms. However, this is a matter where the cultural implications of a particular term may dictate that as a matter of policy, one term is preferred over another.
- 2.7 Another option could be to use neither term. In the UK, the definition of gender identity in the *Gender Recognition Act 2004* does not use the term indeterminate sex or intersex: this Act refers instead to people living with “gender dysphoria, gender identity disorder and transsexualism”.

3. Definition of sexual orientation/ sexuality

- 3.1 The Queensland Act uses the term “sexuality”. The dictionary in the schedule to the Act defines this as heterosexuality, homosexuality or bisexuality.
- 3.2 The Roxon Bill however uses the term “sexual orientation”. Cl 4 defines this to mean homosexuality (including lesbianism) bisexuality or heterosexuality.
- 3.3 The Roxon Bill’s further definition of homosexuality specifically includes lesbianism, whereas Queensland simply uses the word homosexuality. There appears to be no legal difference in effect of this (if the Queensland provision was tested, the accepted Macquarie Dictionary definition of homosexuality refers to sexual feeling for a person of the same sex). It is a matter of policy whether it is better to acknowledge the commonly accepted term of lesbianism in the legislation.

4. Discrimination against aggrieved person and relative of aggrieved person

- 4.1 The Queensland Act (s.7) prohibits discrimination on the basis of association with or relation to any person with the attribute of gender identity or sexual orientation. The definition in the schedule for “relation to” means: relation to the person by blood, marriage, affinity or adoption, and includes a person who is wholly or mainly dependent on, or is a member of the household of, the first person.
- 4.2 The Roxon Bill (cl 5) simply refers to discrimination on basis of gender identity or sex of the aggrieved person or a relative of the aggrieved person.
- 4.3 The Queensland Act provision is marginally wider in that it defines “relative” to include a person with a relationship by “affinity or adoption”. There is no specific definition of relative in Roxon Bill, which means the standard dictionary definition would therefore apply: “one who is connected with another by blood or marriage”. The Queensland provision would therefore include a wider group of people, including Indigenous relationship structures.

5. Definition of discrimination (direct and indirect)

- 5.1 Both the Queensland Act and the Roxon Bill provide for direct and indirect discrimination. That is, direct discrimination occurs when a person treats another person less favourably on the basis of the attribute (for present purposes, gender identity or sexual orientation). Indirect discrimination occurs when a person is required to comply with an unreasonable term that, by not being able to comply, disadvantages them compared to people without the attribute.
- 5.2 For both direct and indirect discrimination, the language used to describe the types of discrimination is similar in both pieces of legislation. Both include discrimination on the basis of a characteristic that is applied generally or is imputed for people of the sex or gender identity of the complainant (Queensland: s.8 (a) and (b); Roxon: s. 5(1)(b) and (c)).
- 5.3 However, there are some differences in the scope of the behaviour that is unlawful.

6. Direct discrimination differences.

6.1. Presumed attributes at any time:

- 6.1.1. The Queensland Act specifically refers to characteristics the person had or was presumed to have had at any time (s.8(c)), even if the person did not have the attribute at the time of the discrimination (s.8(d)). The Roxon Bill only refers to imputed characteristics (whether or not that is true), and does not have a similar reference to characteristics that apply to behaviour in the past (s. 5(3)).
- 6.1.2. The effect of this is that under the Roxon Bill, a person who was discriminated against because (for example) at some time in the past the person was a lesbian or gay person, would have no action.

6.2. Motive:

- 6.2.1. The Queensland Act specifies that it is not necessary for the discriminator to consciously intend to discriminate or to consider the treatment less favourable (s.10 (2)) and the motive of the discriminator is irrelevant (s.10 (3)). The Roxon Bill is silent on both these points.
- 6.2.2. The importance of ensuring unintentional discrimination is unlawful was highlighted in the decision of the Queensland Anti-Discrimination Tribunal in *Hopper & Others v. Virgin Blue Airlines Pty Ltd* (confirmed on appeal in the Court of Appeal in 2006) where discrimination was found to have occurred when the interviewers unconsciously but invariably preferred younger people to older people in making assessments of competency. This unconscious discrimination prevented the complainants being fairly considered for employment.

6.3. Multiple reasons:

- 6.3.1. If there are two or more reasons for the discriminatory act, to succeed in an action under the Queensland Act, the reason that is discriminatory must be a substantial reason (s.10 (4)).
- 6.3.2. There is no such requirement in the Roxon Bill (unlike similar provisions in other Cwth discrimination legislation eg: Cwth Disability Discrimination Act). This means it may be easier to satisfy the test under the Roxon Bill – if there are two or more reasons for the discrimination, the complainant only has to establish one reason was discriminatory under the Act, without having to then establish that was a substantial reason (but note, not the substantial reason).

7. Indirect discrimination differences

7.1. Reasonableness of condition or term:

- 7.1.1. Under the Queensland Act, in order for the term to be discriminatory, it must be unreasonable. Whether a term is reasonable or not depends on all relevant circumstances and the Act includes specific examples: the consequences of failing to comply with the term, the cost of alternative terms, and the financial circumstances of the person who imposes the term (s.11 (2)).

7.1.2. The Roxon Bill does not have a similar general requirement for the term to be unreasonable – the term must simply have the effect of disadvantaging others in the same way as it disadvantages the complainant. The Roxon Bill is therefore a lower test and possibly easier to satisfy – you must simply prove the effect is a disadvantage to a class of people - without having to show the term is also unreasonable in all the circumstances

7.1.3. However, the final effect of this is ameliorated as the Roxon Bill also has exemptions to specific areas, with the concept of considering whether the discrimination is reasonable or not, taking into account similar factors (cost to employer, feasibility, financial impact, financial circumstances etc (cl. 24(2)) – further discussed below).

7.2. Knowledge of effect:

7.2.1. The Queensland Act specifically states the discriminator does not have to be aware of the indirect discrimination to be liable (s.11 (3)). The Roxon Bill is silent on this point.

7.2.2. Whilst the legal effect may not be different (in some cases, the test may still be satisfied regardless of whether the person knew they were in fact discriminating) there are strong public policy reasons why a statement that ignorance is no excuse should be expressly included in legislation. Including such a statement could mean fewer matters end up in costly and timely hearings (and perhaps are settled instead) as the defendant may not seek to rely on a lack of awareness as a way to avoid liability (as it is no defence, whether made expressly or not).

7.3. Definition of condition or term:

7.3.1. The Queensland Act defines “term” to include a condition, requirement or practice that does not need to be written (s.11(4)). The Roxon Bill uses the same words “condition, requirement or practice” but does not specify whether the term is to be verbal or written, which arguably makes the provision narrower.

7.3.2. **Examples:** The Queensland Act uses two detailed examples of indirect discrimination that assist the Tribunal (and the public) in understanding the effect of the indirect discrimination provisions. Again this may achieve the public policy outcome of fewer matters going to expensive and lengthy trials if it is clear to solicitors and members of the public the intricacies of what can be a very confusing provision.

8. Areas of discrimination

8.1 Both pieces of legislation only prohibit discrimination in specified areas of activity, but there are differences in the type of areas covered, as well as differences in how those areas are defined. Each area is described separately below, including the exemptions that apply.

8.2 Work and work related areas

8.2.1 The definition of work in the Queensland Act is broader than in the Roxon Bill. “Work” in the Queensland Act is defined as including casual work (in addition to

part-time and temporary in Roxon Bill). Work performed for commission is included in the Roxon Bill, but the Queensland Act refers to remuneration in whole or in part on a commission basis. Voluntary work is covered in both, but the Queensland Act definition is clear that unpaid work (that is not voluntary – for example if performing work as part of a direction or sentence for an offence) is included.

8.2.2 Other areas specifically included in the definition in the Queensland Act (but not in the Roxon Bill) are:

- a. Work under a statutory appointment;
- b. Work experience (as defined under the *Education (Work Experience) Act 1996*);
- c. Vocational placement under the *Vocational Education, Training and Employment Act 2000*;
- d. Work by a person with impairment in a sheltered workshop (whether paid or unpaid);
- e. Work under a guidance program, apprenticeship program or other occupation training or retraining program.

8.2.3 The Queensland Act applies to a greater range of specific activities in the work related areas than the Roxon Bill. Examples include:

- a. The Queensland Act also refers to specific contract provisions for workers who are not a party to a contract of work (s.15A). The Roxon Bill does not include this category of workers.

The effect of this is significant, as people who are placed in employment by an employment agency often do not have a contract with the employer, but with the employment agency. This means a person placed in this way would have no action under the Roxon Bill if the employer (as opposed to the employment agency) discriminates against the individual.

- b. The Roxon Bill makes it unlawful for an employer to discriminate in offering work, but does not include the specific range of pre-work activities listed in the Queensland Act (including the arrangements for deciding who should be offered work (s.14(1)(a)), failing to offer work (s.14(1)(b)) and denying a person seeking work to access occupational training or re-training programs (s.14(1)(e)). c. The Roxon Bill includes discriminatory actions relating to “terms and conditions” of work, but the Queensland Act also includes denying or limiting access to opportunities for promotion, transfer, training or other benefits to a worker (s.15(1)(b)).
- d. However the Roxon Bill does refer to discrimination in relation to the payment of a benefit or provision of benefits to or because of a relative or associate of the employee (s.14(1)(d) and (e)). Queensland has no similar provision.

8.3 Exemptions for work related areas

8.3.1 **Notice:** The Roxon Bill allows for discrimination when the person (the aggrieved) has not given the employer adequate notice of the person’s gender identity (cl 24). Note this does not relate to grounds of discrimination on basis of sexuality – it

appears specifically designed to require a person to put the employer on notice that the person has a specific gender identity. What would be considered “adequate notice” is not defined, and as such may be difficult to determine in some cases.

- 8.3.2 It is difficult to determine why this provision was included in legislation. Whether a person wants to notify their employer of the issue of their gender identity would usually be left at the discretion of the individual, on assessment of their needs and the attitude of the employer.
- 8.3.3 The Queensland Act has no such requirement to put the employer on notice of the person’s gender identity.
- 8.3.4 The Roxon Bill also allows for discrimination when the person **does** give the employer adequate notice of the person’s gender identity **but it is unreasonable** in the circumstances for the employer **not** to discriminate. That is, when it is reasonable for the employer to make decisions that treat the person less favourably on the basis of their gender identity. The Roxon Bill defines unreasonable as “unreasonable after considering all relevant facts and circumstances including cost to employer, feasibility, financial impact, financial circumstances, impact of proposed discrimination on the person, and any other relevant factors”. (s. 24(2)).
- 8.3.5 The Queensland Act ensures the work related exemption only applies when it is established that the discriminatory act is part of a **genuine** occupational requirement (s 25). This means the assessment of what is required is a more objective one, able to be determined perhaps by an expert third party. Requiring the employer to argue whether the discrimination is reasonable in the circumstances is far more subjective.
- 8.3.6 **Child related employment:** The Queensland Act refers to more specific categories of exemptions in work related areas including residential child care services, and working with children (ss.25, 28). The Roxon Bill has no specific exclusions for child related employment, which means it would be unlawful for employers to discriminate against a person on the basis of their gender identity or sexuality in child related employment.
- 8.3.7 The Queensland Act also has a wider application of the general work related exemption, for example during the selection process and doing something connected to work, not just in performing the work (ss.25, 26, 27 and 28).

8.4 Religious education and employment

- 8.4.1 The Queensland Act specifically exempts certain actions when employed by a religious school or when performing other work for a body established for religious purposes (s25(2) and (3)). However, there are express limitations to these (including that the work must genuinely and necessarily involve adhering to and communicating the body’s religious beliefs, and that the person acts in a way that the person knows, or ought reasonably to know, is contrary to the employer’s religious beliefs).

- 8.4.2 The exemption relating to religious bodies in the Roxon Bill is framed more widely (cl 23). The Roxon Bill refers to any act or practice of a body established for religious purposes that conforms to the doctrines, tenets or beliefs of that religion and is necessary to avoid injury to the religious susceptibilities of adherents of that religion.
- 8.4.3 It includes specific mention of certain matters, but that does not limit the general effect of the provision. This means discriminatory acts (widely defined as “any act or practice” by schools, charitable organisations or religious employment agencies (or any other body established for religious purposes) would be exempted under the Roxon Bill.
- 8.4.4 There is an argument that the ability of the religious body to enter into specific agreements (under cl 23(2)) means religious bodies could make agreements that would reduce the effect of those exemptions. However, any benefit from this provision relies upon the religious bodies seeking to enter agreements, rather than having a general provision that limits certain acts from protection against discrimination, as occurs under the Queensland Act.

8.5 Education

- 8.5.1 The Queensland Act provides protection against discrimination to a greater range of specific activities in the education area than the Roxon Bill. Examples include:
- a. For prospective students, the Roxon Bill makes it unlawful for an employer to discriminate in refusing or failing to accept a person’s application and the terms and conditions of acceptance (cl 15(1)). However, the Queensland Act includes the way the application is processed and arrangements made for, or the criteria used in deciding who should be offered admission (s.38).
 - b. In relation to current students, the Roxon Bill covers the same areas as the Queensland Act, but the Queensland Act includes variation of terms of enrolment and exclusion of a student, ensuring that suspensions are covered as well as expulsions.

8.6 Exemptions for education

- 8.6.1 No exemptions specifically apply to gender identity or sexuality discrimination under the Roxon Bill, except as they apply to religious bodies (see cl 23). As discussed in the religious bodies provisions above, more limited exemptions apply to religious bodies in the Queensland Act (s. 25(2)(3)).

8.7 Goods and services

- 8.7.1 Both pieces of legislation have similar protections against discrimination in the provision of goods and services.
- 8.7.2 However, the Queensland Act refers to “failing to provide or supply” goods or services (s. 46(1)(a)) whereas the Roxon Bill refers to “refusing to provide or supply”. It is questionable what effect this distinction would have in practice – however it could mean the Roxon Bill requires evidence of a decision (a

“refusal”) whereas the Queensland Act simply requires evidence of the fact of the failure to supply.

8.7.3 In addition to the specific provisions in both, the Queensland Act has a catch-all provision that makes the provision possibly wider in application: “or by treating the person unfavourably in any way in connection with the supply of goods and services” (s46(1)(d)).

8.8 Exemptions for goods and services

8.8.1 The Queensland Act specifically allows discrimination on basis of sexuality when providing assisted reproductive technology services (s. 45A). There is no such provision in the Roxon Bill, which means assisted reproduction technology services could not discriminate against a person on the basis of their gender identity or sexuality.

8.8.2 Also s. 46(2) in the Queensland Act specifically allows discrimination for not-for-profit associations established for social/literary, cultural, political, sporting, athletic, recreational, community services or any other similar lawful purpose. This would ensure organisations established for the benefit of the GLTB community can continue to operate without threat of complaints of discrimination. Refer also to provisions relating to clubs below.

8.9 Land

8.9.1 Both pieces of legislation have a similar effect in prohibiting discrimination by failing to dispose of land or discriminating in the terms in which it is offered (s. 76-77 in the Queensland Act, cl 18 in the Roxon Bill).

8.9.2 However, the Roxon Bill includes an additional provision prohibiting discrimination in relation to access to public land, whether or not for payment.

8.10 Exemptions for land

8.10.1 Both the Roxon Bill and the Queensland Act provide for exemptions in the disposition of land if it is by way of a testamentary disposition or gift (cl 18(2) and s.78)

8.11 Accommodation

8.11.1 The Queensland Act has more provisions specifying actions in the pre-accommodation area including:

- a. Failing to renew or extend the supply of accommodation;
- b. Ways in which applications are processed;
- c. Terms include offering/renewing/extending.

8.11.2 However the Roxon Bill does include an additional area not covered by Queensland: deferring a person’s application or according a lower order of precedence in any list of applicants for that accommodation.

8.11.3 Both pieces of legislation have similar effect in relation to the current accommodation area. Whilst the Queensland Act has more specific provisions,

including variation in terms, the Roxon Bill has a general catch-all provision: by subjecting the other person to any other detriment in relation to accommodation (cl 17(2)), which arguably ensures a wider application of the section.

8.11.4 It is arguable the Roxon Bill would not apply to prohibit discrimination between neighbouring flats or units (as opposed to tenants in a share house). The vilification provisions could be relied upon, but the test for that offence would have to be made out, rather than simply meeting the elements to make out discriminatory conduct. Note the Queensland Act has a similar failing on this issue.

8.12 Exemptions for accommodation

8.12.1 The Roxon Bill has no specific exemptions for accommodation, so arguably a wider number of circumstances are protected (although under the Queensland Act? a person could apply for an exemption granted by the Commission under cl 27).

8.12.2 Note, the Queensland Act exempts: shared accommodation (when the accommodation forms part of the main home of the discriminator or a near relative of that person and when there is a maximum of 3 other people (s. 87)); and accommodation for religious purposes (if discrimination is in accordance with doctrine of the religion; **and** the discrimination is necessary to avoid offending religious sensitivities (s. 90)).

8.13 Clubs

8.13.1 Both pieces of legislation prohibit discrimination in relation to clubs. However the Queensland Act provides more specific prohibitions in both the pre-membership area (s.94) and in the membership area (s.95). In the pre-membership area Queensland provides for:

- determining terms of a particular category or type of membership of the club;
- the way the person's application is processed; and
- arrangements made for deciding who is to be offered membership.

8.13.2 In the membership area additional prohibitions are:

- failing to accept membership for a different category or type of membership;
- treating a member unfavourably in any way in connection with the membership or the affairs of the club.

8.14 Exemptions for clubs

8.14.1 The Roxon Bill does not provide an exemption for clubs for minority cultures as is provided for in the Queensland Act (s. 97). It is arguable therefore that a national club established wholly for the benefit of GLTB groups could be subject to a discrimination action if they excluded a person who was not a member of the group.

8.15 Additional areas of prohibition against discrimination

- 8.15.1** The Queensland Act has two additional areas for which discrimination is prohibited that are not covered under the Roxon Bill: superannuation and insurance.
- 8.15.2** However the Roxon Bill does refer to superannuation as a specific provision in the employment area (cl 14 makes it unlawful to discriminate on the basis of sexual orientation or gender identity in the payment of a superannuation benefit). However, the Queensland Act provision relating to superannuation is far more comprehensive in application.
- 8.15.3** There is no similar provision relating to insurance in the Roxon Bill. This means it would be lawful to discriminate against a person on the basis of their sexuality, for example, in charging them additional insurance premiums. Under the Queensland provision this can only occur if it relates to an impairment (for example statistical data relating to a person's likelihood of suffering from AIDS related illness - see s. 74 and definition of "impairment").

8.16 Requests for information

- 8.16.1** Both provisions relating to discriminatory requests for information have the same general effect, although they are framed differently which does change the specific effect of certain provisions.
- 8.16.2** Both, after requiring the complainant to prove the complaint, place the onus on the defendant to prove that the request for information was lawful. In Roxon's Bill this is expressed as: that the information required had no bearing on the alleged discrimination (cl 21(3)). In the Queensland Act the respondent must prove the information was reasonably required for a purpose that did not involve discrimination.
- 8.16.3** The Queensland Act places the provision in Chapter 4 (s.124): associated objectionable conduct. It is therefore not "discriminatory behaviour" but objectionable conduct that is prohibited. This means the provision is not limited by having to establish the ground, or type, of discrimination in an area of activity prescribed by the Act. The complainant must show instead the person asked for information "on which unlawful discrimination might be based".
- 8.16.4** The Roxon Bill does not define "information", except to say "by way of completing a form or otherwise". The Queensland Act however specifically refers to statements made orally or in writing (s. 124). The general effect is the same, although it could be argued that to specifically refer to such matters in the legislation avoids having to be put to proof on that specific element of the allegation.

8.17 Exemptions for requests for information

- 8.17.1** There are no specific exemptions provided in the Queensland Act. The Roxon Bill (cl 21(2)) however allows discriminatory information relating to the person's medical history to be requested in the course of providing or receiving medical

services, or in any other circumstances prescribed by regulation. It is a matter of policy whether this exemption should be supported. However, placing the scope to make exemptions in the regulation offends against fundamental legislative principles (a “Henry VIIIth clause”) because it allows for the intent of the Act to be altered by the making of a regulation. This also means the provision allowing discrimination is not subject to same level of debate, accountability or public scrutiny that occurs when the principal Act is considered by Parliament.

8.17.2 The general exemptions in the Queensland Act relating to acts that are necessarily to protect the health and safety of a person (s.108) or public health generally (s.107) would also apply. There are no general exemptions of this nature in the Roxon Bill.

8.18 Extended liability

8.18.1 Both the Roxon Bill and the Queensland Act have provisions that extend liability to people who are not directly involved in the discriminatory acts (cl 54 in Roxon Bill and s. 122 in the Queensland Act), but the Roxon Bill is wider in application.

8.18.2 The Queensland Act only applies when a person “requests or encourages” a person to contravene an Act – which requires a positive act. The Roxon Bill is wider in that it says “causes, instructs, induces or aids” and also when a person “permits” an unlawful act. The inclusion of the word “permit” means a person could be liable for discrimination when they simply allowed a practice to occur and where there might otherwise be no vicarious liability. For example: if a university, in allowing a group to use its premises, turned a “blind eye” to discriminatory behaviour by a group, the university as well as the group who actively discriminated could be liable. There would be limits to this – the extent of knowledge by the university in “permitting” the act would be relevant.

9. General exemptions

9.1 The Roxon Bill does not provide for the additional general categories of exemptions that could arguably benefit the GLBT community. In particular:

- 9.1.1 s.101: can do an act that benefits the members of a group if the purpose of the act is not inconsistent with this Act;
- 9.1.2 s. 105: can do a discriminatory act to promote equal opportunity for a group if purpose is not inconsistent with the Act (but only until equal opportunity achieved); and
- 9.1.3 s. 107, 108: can do an act reasonably necessary to protect public health/health and safety of people at a workplace.

9.2 General exemption for religious bodies

9.2.1 Both pieces of legislation provide for general exemptions for religious bodies (cl 23 and s. 109) – discussed above.

9.3 General exemption for charities

9.3.1 Both pieces of legislation provide for general exemptions for charities (cl 22 and s. 110).

9.3.2 However, if the provision is analysed in terms of its ability to allow positive discrimination for GLBT people, the Roxon Bill allows for deeds not exclusively for charitable purposes, and also operates retrospectively, thereby allowing a greater number of provisions to be upheld.

9.4 General exemptions for sport

9.4.1 Both the Roxon Bill and the Queensland Act have general exemptions for sporting activities.

9.4.2 However, the Roxon Bill only allows the discriminatory acts on the basis of gender identity in which strength, stamina or physique is relevant (cl 25).

9.4.3 The Queensland Act (s.111) however allows restrictions if the restriction is reasonable having regard to strength, stamina or physical requirements of the activity. Instead of the determination being made on an objective basis (whether it is relevant or not), the Queensland provision instead has a more subjective test that allows the employer to argue whether the restriction is reasonable or not.

9.4.4 The Queensland Act provision does not allow discriminatory provisions for children's sports and applies a restrictive definition of activities ie specifically ensures that coaching, umpiring, administration and other sports specified by regulation are not able to be restricted. The Roxon Bill only refers to allowing restrictions for those participating. The same general effect is arguably achieved however, as umpiring/refereeing requires stamina etc.

10. Specific exemptions granted for individual cases

10.1. Both pieces of legislation have provisions allowing for specific exemptions to be granted (by the Anti-Discrimination Tribunal in the Queensland Act s. 113, and by HREOC in the Roxon Bill cl 27). Both allow for a person to apply for exemptions for classes of people (on basis of application of one person in the class of people). Both provide for the exemptions to be for no more than 5 years at a time, with the opportunity to apply for further extensions (of not more than a further 5 years at a time). There are some differences in the effect of these provisions in practice as detailed below.

10.2. Actions before decision made:

10.2.1. The Roxon Bill (unlike the Queensland Act) requires the Commission to advertise the fact it proposes to grant an exemption and must give interested persons reasonable opportunity to make written submissions.

10.2.2. There is no similar requirement to advertise in the Queensland Act, although the Tribunal has the discretion to do this. However, it could be argued the practical effect of the requirement is simply to place a notice in a newspaper that may or may not ensure wide advertisement of the application for exemption.

- 10.2.3. The Queensland Act has additional provisions before the decision is made that enhances the openness and accountability of the decisions including:
- i. Requiring the Tribunal to give the Commissioner notice of any application for exemptions and ensuring the Tribunal **must** have regard to any submissions on the application (including the way the application is to be processed) (s113(2));
 - ii. Enabling the application to be heard in public (with appropriate restrictions on identification of persons who may be affected by decision) (s.113(3));
 - iii. Enabling the Tribunal to direct that the Commissioner inquires into the application and report to the Tribunal on the inquiry and make recommendations on this. This inserts an additional role for the Commissioner that assists vulnerable groups to ensure their interests are represented before any exemption decisions are made (s.113(5)).

10.3. **Actions after decision**

10.3.1. Cl 29 of the Roxon Bill ensures that after every decision granting an exemption, the Commission must place a notice in the Gazette setting out the findings and the evidence to support the findings, notifying the public of the appeal process.

10.3.2. The Queensland Act does not require automatic notification of the decision, but has provisions that allow for the Tribunal to determine whether the application is to be heard as a public hearing and whether the public should be consulted and how that should take place. This allows input from members of the public as well as interested parties before the decision is made, rather than highlighting possible appeal processes after the decision has been made.

10.4. **Appeal processes**

10.4.1. The appeal process is slightly wider under the Roxon Bill. Cl 28 specifically provides for an appeal to the Administrative Appeals Tribunal on decisions to grant an exemption and there is no time limit. No specific provision applies to the Queensland Act – the general appeal process applies under s. 217. This means an appeal can only be instigated on a matter of law, by application to the Supreme Court.

11. **Procedural matters – way complaints are heard/investigated**

- 11.1. Under the Queensland Act, the matter is heard before the Anti-Discrimination Tribunal, which, as a tribunal, has more relaxed rules of evidence than the courts. Matters brought under the Roxon Bill are heard either in the Federal Magistrates Court or the Federal Court, and strict rules of evidence apply.
- 11.2. The decision in a court however is binding on inferior courts, whereas decisions of a tribunal are only persuasive for other decisions in that tribunal, and are not binding on the courts.
- 11.3. Costs are more likely to be awarded in matters before the court, whereas specific provisions in the Queensland Act guide the decision to award costs.

12. Harassment

- 12.1. The harassment provisions are significantly different under the Roxon Bill compared to the more general provision under the Queensland Act.
- 12.2. The Roxon Bill specifically prohibits harassment that offends, humiliates, intimidates, insults or ridicules another person on the basis of their sexual orientation or gender identity (cl 35). The Queensland Act simply refers to sexual harassment, defined as the making of unwelcome sexual advances or an unwelcome request for sexual favours, or engaging in other unwelcome conduct of a sexual nature with the intention of offending, humiliating or intimidating the victim (s. 119).
- 12.3. The Queensland Act harassment provision therefore requires some kind of conduct of a sexual nature. The Roxon Bill harassment provision is satisfied simply by any action that offends, humiliates, intimidates, insults or ridicules another person, without having to be of a sexual nature.
- 12.4. As occurs under the other Commonwealth Act that deals with sexual harassment generally (the *Sex Discrimination Act 1984*) the Roxon Bill makes intention irrelevant – all that is required is that a reasonable person, having regard to all the circumstances would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.
- 12.5. The Queensland provision requires proof of the unwelcome conduct, but also requires the harasser to have intended offending, humiliating or intimidating the victim or where a reasonable person would have anticipated the offence caused.
- 12.6. The Roxon Bill provision only applies to those areas covered under the specific areas in the Bill (employment, educational institutions, provision of goods and services, accommodation, land and clubs (clauses 36-44). It does not prohibit the conduct in any situation (as occurs with the general sexual harassment provision in the Queensland Act).
- 12.7. Both provisions are not offences and are instituted by complaint to the relevant Commission. This means in both cases, the police do not prosecute the matter – the individual who is complaining must bring the complaint privately.

13. Victimisation

- 13.1. Both the Roxon Bill and the Queensland Act make it unlawful to victimise a person who refuses to do an act which would be in contravention of the Act or who brings or intends to bring a complaint under the Act.
- 13.2. The definition of victimisation is very similar under both pieces of legislation (s.130 and cl 4). The Queensland Act definition is slightly broader as it includes a specific reference to when a person appears as a witness in a proceeding under the Act (s.130(2)(d)) – rather than just those responding to a direction to appear as witness. More significantly, the definition in the Queensland Act is satisfied even if the action under the Act fails, is withdrawn or there is a failure of the complaint (s.131).

- 13.3. The penalties are different. Under the Queensland Act, the penalty in the case of an individual is a maximum of 45 penalty units or imprisonment of up to 3 months, and for corporations 170 penalty units. The current penalty unit rate is \$75 per unit and \$375 for corporations.
- 13.4. The Roxon Bill provision, whilst making victimisation “unlawful” only enables a person to bring a complaint under the Act, and penalties are therefore limited to those sanctions imposed under the Human Rights and Equal Opportunities Act (awards of damages assessed without reference to a maximum/minimum penalty level).
- 13.5. Both pieces of legislation include provisions to ensure successful prosecution if there is more than one reason for the victimisation. The effect of s .131(1)(a) of the Queensland Act and cl 47(3) of the Roxon Bill are therefore the same: the reasons set out as unlawful (listed in the definition sections) do not have to be the dominant reason – only a substantial reason for the action.
- 13.6. Note: The Queensland Act uses the English spelling of the term: “victimisation”. The Roxon Bill uses the American spelling of the term: “victimization”.

14. **Incitement to violence**

- 14.1. There are differences in the way the offences are framed.
- 14.2. The Queensland Act sets up two tiers of offending conduct. The first (lower) tier makes vilification on the grounds of sexuality or gender identity “objectionable conduct” prosecuted by the individual before the Tribunal (s.124A). The second (higher) tier creates an offence that requires threats of physical harm or damage to property, or incitements to others to do the same (s.131A). This offence is prosecuted by the Director of Public Prosecutions before the court, not the Tribunal as in first tier conduct.
- 14.3. The Roxon Bill separates out the threats of physical harm or damage to property from the incitement offences, but does not make it a criminal offence prosecuted by the police. Complaints are therefore brought by the person privately before the court.
- 14.4. Whilst anecdotally it appears that under the Queensland Act, proceedings for the offence are rarely initiated, and matters are usually prosecuted by way of private complaint under the lesser offence, having the provision makes a clear public policy statement that this is criminal behaviour that should be dealt with as such.
- 14.5. There are also differences in definitions between the provisions.
 - (a) Successful prosecution under the Roxon Bill of the threats to violence or damage to property offences (cl 49 and 50) do not require proof of a public act, or that this was done for the purpose of inciting hatred, serious contempt or severe ridicule. Public acts are required for the Roxon Bill’s incitement to commit violence or damage to property offence (cl 51).
 - (b) Unlike the Queensland Act provision, reckless acts are not included in the definition of the provision and therefore could not be prosecuted.
- 14.6. The Roxon Bill provides for higher penalties: 1 year and/or 200 penalty units [\$15,000] for incitement to commit violence or damage property, or threats to damage property

and 2 years and/or 400 penalty units [\$150,000] for threats of physical harm. The Roxon Bill makes no distinction in penalty for corporations or individuals.

- 14.7. The Queensland Act only provides for a maximum of 70 penalty units [\$5,250] or six months imprisonment for an individual or 350 penalty units [\$131,250] for a corporation for the criminal offence. The first tier provision heard in the Tribunal would only involve an award of damages within the range allowable by the Tribunal.

15. Review of discriminatory laws

- 15.1. The singular provision in the Roxon Bill that does not appear in the Queensland Act is the requirement to conduct an audit of Commonwealth laws to identify laws that authorise acts that would otherwise be unlawful under the new sexuality discrimination provisions in the Roxon Bill (cl 11).

- 15.2. The Roxon Bill ensures that after three years, all Commonwealth laws that require discrimination on the grounds of sexual orientation or gender identity are to be ineffective (cl 12). This could possibly include the Marriage Act amendments recently introduced by the Commonwealth Government ensuring that marriages between people of the same sex are not recognised.

- 15.3. The Queensland Act (s.235) has a provision that allows the Commission to examine Acts (when requested by the Attorney-General) to determine whether they are inconsistent with the purposes of the Act. There is no automatic disqualification of those provisions – the Commission is merely empowered to report to the Minister the results of the analysis. A significant audit of Queensland legislation was conducted in 2002, resulting in the passage of the *Discrimination Law Amendment Act 2002*. That Act amended the *Acts Interpretation Act 1954* to change the meaning of “defacto partner” across the statute book to ensure that defacto partners (regardless of sexual orientation) had rights and obligations consistent with those of married spouses wherever possible.

- 15.4. Within one month of the commencement of the Roxon Bill, the Federal Attorney-General is required to establish a Ministerial Advisory Council to advise the Attorney-General on the operation of the Sexuality Discrimination Act (cl 13).

- 15.5. The final effect of these provisions is unclear, given the recent review conducted by HREOC of discrimination against people in same-sex relationships under Commonwealth legislation. It is possible the outcome of the review, in identifying the legislation that is discriminatory could be used as a starting point for the audit referred to in this legislation.

16. Operation of State vs Commonwealth laws

- 16.1. The two Bills operate concurrently to the extent of any inconsistency, in which case the Roxon Bill prevails (according to s. 109 of the Constitution). If a person has already made a complaint or instituted proceedings under Queensland law, the Queensland Act must be used – the Roxon Bill cannot apply.

- 16.2. Offences under the Roxon Bill can be dealt with either under Queensland legislation or the Roxon Bill (but not both).

17. General drafting points

17.1. The Queensland Act uses many examples as a useful way to illustrate the effect of a provision that is particularly complex. In accordance with the general Commonwealth drafting practice, the Roxon Bill uses no examples at all.

17.2. In addition to providing clarity for the legal interpretation of the provision, examples are a very useful way in which to ensure the law is clear to the layperson. In practice, this can reduce the number of matters that are disputed, as parties are less likely to be drawn into dispute over interpretations of the legal effect of the provisions.

18. Summary of key points of community commentary on Roxon Bill

18.1. Most of the commentary that was available on discrimination against the GLBT community available via web-based searching focused on the Commonwealth Government's proposal to disallow civil unions, which is outside the scope of this paper.

18.2. The comments that are relevant to this discussion were principally from Jen Van Achteren, from the Tasmanian Gay and Lesbians Rights Group and included:

- (a) "It would be counterproductive to enact national sexuality and gender identity anti-bias laws if they provide less protection than current state laws;
- (b) "...There is a concern that extensive exemptions will have the opposite effect of encouraging religious groups to demand more exemptions in state legislation, [and there should be] no automatic exemptions for religious groups;
- (c) Transgender protection was limited in the Roxon Bill; and
- (d) Criticism that a 3 year waiting period for the audit of provisions was too long.