

1 March 2022

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Dear Queensland Human Rights Commission,

Re: Review of Queensland's Anti-Discrimination Act

Thank you for the opportunity to provide a submission for this important and timely review.

I am a sex worker, lawyer and Postdoctoral Research Fellow in the Australian Research Council's Centre of Excellence for Automated Decision-Making and Society at the Digital Media Research Centre at Queensland University of Technology.

Over the last 15 years I have worked in the areas of sex worker rights, LGBTQIA+ health and sexual justice, including as a 2020-21 Fellow at the Berkman Klein Centre for Internet and Society at Harvard Law School.

Between 2016-2019 I was a partner investigator on a national research project examining sex work stigma in Australia conducted by Scarlet Alliance, Australian Sex Workers Association, and the Centre for Social Research in Health at the University of New South Wales. We conducted qualitative focus groups and interviews with sex workers across Australia about their experiences of stigma and discrimination.

Sex workers have historically been neglected under anti-discrimination law, however there are increasing calls from sex worker organisations around Australia to address sex workers' experiences of systemic and institutional discrimination.

In the interests of building a preventative culture, enhancing access to justice and addressing systemic discrimination, I put forward recommendations for how the Queensland *Anti-Discrimination Act 1991* could be amended to improve protections for sex workers.

Sex work stigma is pervasive

Our research indicates that sex workers across Australia experience discrimination in multiple facets of life. Sex workers are often refused services or receive poor treatment in finance, health, education, social services and justice.¹ In Queensland, the continued presence of criminal and licencing laws encourages widespread institutional discrimination, including from health providers, police and judiciary.²

The role of anti-discrimination law

Anti-discrimination and anti-vilification protections for sex workers can play a vital role in undoing the legacies of criminalisation and licensing and supporting the rights and safety of sex workers. As civil mechanisms, anti-discrimination laws provide a broad range of remedies, from reinstatement, compensation and apology to anti-discrimination training and policy and procedural change. Anti-discrimination laws have been successfully used for these purposes – for example, in 2010, the Family Protection Society apologised to sex workers when Scarlet Alliance commenced an action under the Tasmanian *Anti-Discrimination Act 1988* after they printed a series of newspaper advertisements accusing sex workers of 'breaking up marriages'.³ Anti-discrimination

¹ Carla Treloar, Zahra Stardust and Jules Kim, 'Rethinking the relationship between sex work, mental health and stigma: a qualitative study of sex workers in Australia' (2021) *Social Science and Medicine*, doi: 10.1016/j.socscimed.2020.113468; Scarlet Alliance and Australian Federation of AIDS Organisations. *Unjust and Counter Productive: The Failure of Governments to Protect Sex Workers from Discrimination*, (Scarlet Alliance and AFAO, 1999).

² Stardust, Z., Treloar, C., Cama, E., & Kim, J. (2021). 'I wouldn't call the cops if I was being bashed to death': Sex work, whore stigma and the criminal legal system. *International Journal for Crime, Justice and Social Democracy*, 10(3), 142-157.

³ ABC News, 'Family Group Apologises to Sex Workers' 29 April 2010. <<https://www.abc.net.au/news/2010-04-29/family-group-apologises-to-sex-workers/414712>>

therefore law plays an important role in setting the standard by which sex workers can expect to be treated in society.

Existing models are problematic

Limited protections against discrimination are available for sex workers in some states. For example, Tasmania, Victoria and Queensland provide discrimination protection on the grounds of ‘lawful sexual activity’,⁴ and Tasmania further prohibits vilification on this ground,⁵ but these provisions are of little use in the majority of circumstances where sex work is unlawful due to licensing and criminal laws. Further, up until 2022, Victoria provided an exception to this protection in provision of accommodation for commercial sexual services and for anything done by religious bodies, religious schools or as part of religious beliefs or principles.⁶ While the Australian Capital Territory protects people more broadly on the grounds of ‘profession, trade, occupation or calling’,⁷ these protections can be too generalised to be effective for sex workers. In the decriminalisation campaigns in both South Australia and the Northern Territory, sex workers advocated for sex work specific civil anti-discrimination protections.⁸ Queensland’s peer led sex worker organisation Respect Inc. continues to call for specific protections on the basis of sex work activity and sex worker status.

The limits of lawful sexual activity

The protected attribute of ‘lawful sexual activity’ only provides minimal protection for sex workers, because laws in Queensland make many sex worker safety strategies and work practices unlawful.⁹ Simply by looking out for our own safety – such as by taking doubles bookings or letting partners know where we are – sex workers may be working unlawfully. If the Commission wishes to protect other kinds of lawful sexual activity, they should not do this at the expense of protecting sex workers. Sex workers require specific protection.

Repealing the exemption for accommodation providers

The provisions that permit discrimination against sex workers by accommodation providers should be repealed. In 2012, Queensland introduced exemptions for accommodation providers, enabling them to discriminate against another person (by refusing to supply accommodation, evicting them, or treating them unfavourably) if they reasonably believe the person is using or intending to use the accommodation in connection with the person’s sex work.¹⁰ The catalyst for these extremely broad provisions (in which a sex worker could be evicted from their rental property by their landlord without even doing sex work, simply by intending to tend to emails or taking phone calls) was a decision by the Queensland Civil and Administrative Tribunal, which found that a motel that had refused accommodation to a sex worker had contravened the *Anti-Discrimination Act 1991*.¹¹ As a result, many sex workers in Queensland experience accommodation discrimination, housing instability, overcharging and eviction. Victoria’s bill to decriminalise sex work in 2022 repeals the similar law in Victoria and now leaves Queensland as the only jurisdiction allowing this type of discrimination.¹²

⁴ *Equal Opportunity Act 2010* (Vic) s 6(g); *Anti-Discrimination Act 1991* (Qld) s 7(l); *Anti-Discrimination Act 1998* (Tas) s 16(d).

⁵ *Anti-Discrimination Act 1998* (Tas) s 19(c).

⁶ *Equal Opportunity Act 2010* (Vic) ss 62, 82-83.

⁷ *Discrimination Act 1991* (ACT) s 7(1)(q).

⁸ For example, see *Statutes Amendment (Decriminalisation of Sex Work) Bill 2018* (SA) pt 3.

⁹ Jeffreys, E., O’Brien, E., & Fawkes, J. (2019). The case for decriminalisation: Sex work and the law in Queensland. *Crime and Justice Briefing Paper, Issue No, 1*.

¹⁰ *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012* s 50, Insertion of new s 106C.

¹¹ *GK v Dovedeen Pty Ltd and Anor* [2012] QCATA 128.

¹² *Sex Work Decriminalisation Bill 2021* (Vic), s36 (repeal of s62 of the *Equal Opportunity Act 2010*).

Sex work specific protections

In August 2020, a Private Members Bill was introduced to the New South Wales Legislative Council proposing to make it unlawful to discriminate against a person or persons on the ground that they are, or have been, sex workers.¹³ The Bill not only protects current and former sex workers but also provides a general protection from whorephobia whereby it is unlawful to discriminate on the grounds of characteristics that appertain generally to or are generally imputed to sex workers.¹⁴ It would not only prohibit discrimination in work but also in education, goods and services, accommodation and registered clubs. In addition, the Bill includes a vilification provision that makes it unlawful, by public act, to incite hatred towards, serious contempt for, or severe ridicule of sex workers.¹⁵ Sex workers in Queensland are calling for changes to the *Anti-Discrimination Act 1991* to ensure that the grounds include protections for someone assumed to be a sex worker, and sex workers' associates, past, present and assumed.

Preventing criminal record discrimination

The act should prohibit discrimination on the basis of irrelevant criminal record. Prohibiting discrimination only on the basis of spent or expunged criminal records is too high a threshold, particularly given that the law reform processes involved in expunging historical offences are often lengthy. Our research found that sex workers in Queensland face harassment and entrapment from police which contributes to criminalisation.¹⁶ Sex workers in Queensland are calling for the expungement of criminal records for sex workers who have been entrapped and charged by police. One of the key proposals in the recent bid to decriminalise sex work in South Australia involved a spent convictions clause to expunge historical sex work convictions from a person's criminal record.¹⁷ The Northern Territory reforms in 2019 also mandated the destruction of certain records.¹⁸ The inclusion of spent convictions clauses and the destruction of records as part of efforts to decriminalise sex work are so vital precisely because such records are used to discriminate against sex workers, especially those who are seeking employment in other industries, applying for accommodation, finance or to work with children.

Working with children

There is no justification for discrimination against sex workers who work with minors. Many sex workers are parents, sex educators, carers and teachers. Section 28(1) of the act is further problematic because it also allows discrimination on the basis of gender identity where people are involved in the care or instruction of minors. This provision is based on discriminatory and stigmatised stereotypes and should be repealed. Queensland already has a *Blue Card system* that screens people who work with minors, making this law unnecessary.

Reducing barriers to reporting and improving the dispute resolution process

Our research into factors impacting sex workers decision-making in accessing justice avenues found many barriers to sex workers accessing legal advice or contacting authorities, including the risk of having one's legal name connected to their work name. Because of this, a representative body should be able to make a complaint on behalf of an affected person both in conciliation and the tribunal process. Allowing

¹³ *Anti-Discrimination Amendment (Sex Workers) Bill 2020* NSW introduced by MP Abigail Boyd.

¹⁴ *Ibid*, s 50AB.

¹⁵ *Ibid*, s 50A0.

¹⁶ Stardust, Z., Treloar, C., Cama, E., & Kim, J. (2021). 'I wouldn't call the cops if I was being bashed to death': Sex work, whore stigma and the criminal legal system. *International Journal for Crime, Justice and Social Democracy*, 10(3), 142-157.

¹⁷ The *Statutes Amendment (Decriminalisation of Sex Work) Bill 2018* (SA) aimed to amend the *Spent Convictions Act 2009* (SA) by deleting a person's criminal record relating to sex work offences, removing barriers for people wanting to leave the industry.

¹⁸ *Sex Industry Act 2019* (NT) s 28 provides that all personal information obtained under pt 2, div 2 or held in the registers referred to in pt 3, div 7 of the *Prostitution Regulation Act 1992* must be destroyed as soon as practicable.

representative bodies, such as peer sex worker organisations, to be able to make complaints on behalf of an affected person at all stages – from conciliation to tribunal – would reduce these barriers to justice. Further changes to the dispute resolution process could also reduce these barriers, including name suppression, fee waivers at the Queensland Civil and Administrative Tribunal and Supreme Court, opportunities to speak publicly about settlements, and avenues for the Queensland Human Rights Commission to take action in cases of repeated discrimination complaints.

Preventing financial discrimination

Sex workers experience barriers in accessing superannuation, income protection and other insurance policies, as well as in accessing banking, merchant facilities, credit cards, loans, payment processors and billing companies. The denial of financial infrastructure to sex workers is an international phenomenon facing increasing scrutiny and media.¹⁹ Financial providers regularly deny coverage to sex workers, forfeit our funds, suspend our accounts, or offer policies with disproportionate fees or predatory premiums. There should be no exemptions in relation to sex workers accessing insurance and superannuation and sex workers should be protected from financial discrimination.

Preventing sexual harassment in sex industry workplaces

Queensland has recently been reviewing its consent laws in relation to sexual offences. Part of this process has involved expressly acknowledging the fact that sex workers can place limits and boundaries on their sexual consent. Following on from this, the current review into anti-discrimination laws could reinforce the fact that sex workers should not expect sexual harassment in our workplaces. The examples provided on the Queensland Human Rights Commission website could include examples of sexual harassment in sex work settings to encourage sex workers to report such experiences.

Anti-discrimination laws are necessary

Anti-discrimination and anti-vilification protections will still be necessary if Queensland moves to decriminalise sex work. Our research into sex work stigma indicates that sex workers continue to experience stigma, discrimination and vilification in jurisdictions where sex work has been decriminalised. This is because decriminalisation alone is only one step in ensuring the health, rights, safety and justice of sex workers. It is necessary to introduce robust anti-discrimination and anti-vilification protections for sex workers regardless of whether sex work is decriminalised.

Thank you for the opportunity to comment on this review. I recommend the Commission liaise with Queensland's peer-led sex worker organisation Respect Inc. for more information about how the Act could improve justice avenues for sex workers. Please do not hesitate to contact me with any questions about this submission.

Sincerely,



Dr Zahra Stardust

¹⁹ Tusikov, N. (2021). Censoring Sex: Payment Platforms' Regulation of Sexual Expression. In *Media and Law: Between Free Speech and Censorship*. Emerald Publishing Limited; Zahra Stardust, *Alternative Pornographies, Regulatory Fantasies and Resistance Politics* (PhD dissertation, University of New South Wales, 2019) 142-145.