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Queensland Human Rights Commission

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Submission: Review of the Anti Discrimination Act - Queensland 2022

Dear Commissioner,

Please accept our submission that recommends changes to the Anti-Discrimination Act to provide discrimination protection for sex workers, a community experiencing high levels and largely unreported discrimination and vilification.

About SWOP

As an independent peer-led and peer-only organisation, the Sex Workers Outreach Project (SWOP) has been working for over 35 years to provide NSW sex workers with the same access to health, safety, human rights, and workplace protections as all other Australian workers. We provide direct support and peer education to sex workers across the state by outreaching regularly to a broad range of sex industry work places (including street based, home based, brothels and massage parlours), as well as providing services at our office and via phone, email and a variety of online platforms. We collaborate extensively with community members, researchers and clinicians, and government and non-government organisations from a range of disciplines to ensure that NSW sex workers receive the services and support vital to sustaining low rates of STIs and virtual elimination of HIV. This effective holistic approach to health (benefiting both sex workers and the general public) is heavily reliant on the decriminalised framework within which we operate.

Anti discrimination protections for sex workers are necessary independent of law reform

The benefits of the 1995 legislative reforms (mostly) decriminalising NSW sex work were profound, and have been recognised locally and globally. Whilst NSW can proudly lay claim to some of the best outcomes in the world in terms of health, safety and human rights as a result, it also provides a clear example of the importance of anti discrimination protections for sex workers regardless of the regulatory model.

As we approach thirty years of improved laws, in NSW we are acutely aware that the honourable intentions of these legislative improvements are routinely undermined by the lack of adequate anti-discrimination protections for sex workers. Despite law reform, sex workers in NSW still regularly experience discrimination in relation to education, provision of goods and services, professional qualification/membership, employment, housing, banking, and vilification. Our lesson from New South Wales is that Anti-Discrimination protections are essential to sex workers accessing the full benefits of decriminalisation.

Recommendation: The QHRC recognises the importance of recommending changes to the Anti-Discrimination Act to provide effective Anti-Discrimination protections for sex workers in Queensland regardless of the outcome of the current enquiry into decriminalisation which may or may not result in legislative changes.

Sex Work and Sex Worker must be protected attributes (Q.28)

The Anti-Discrimination Amendment (Sex Workers) Bill 2020 currently being considered by NSW parliament would add an attribute to provide discrimination protection and vilification protection covering sex workers and sex work, and includes coverage for people who previously worked as sex workers. This Bill has been informed by the experiences of sex workers and when passed will mean NSW has a best practice approach to Anti-Discrimination protections for sex workers.

Queensland Anti-Discrimination laws intend to make discrimination against sex workers unlawful under the attribute 'lawful sexual activity'. While the intent of the law was good, cases of discrimination against sex workers have failed in the Queensland Tribunal because the attribute is unclear and the laws in Queensland make many components of sex work, including safety strategies, unlawful. Courts have taken the meaning of 'lawful sexual activity' to be limited by excluding discrimination based on the act of doing sex work. This leaves sex workers unprotected for much of the discrimination experienced.

A minor change to the attribute definition to bring it in line with Tasmania and Victoria is mentioned in the discussion paper. We would not support this change. The 'lawful sexual activity' attribute is significantly limited however defined. Sex workers in Victoria have advocated for many years to have that attribute changed to sex work and sex worker because of its limitations.

Recommendation: The attribute is changed from 'lawful sexual activity' to 'sex work' and 'sex worker' and protection is extended to include previous sex workers.

Sex work experience (or gender) does not warrant working with children discrimination (Q.45)

In the same way that many historical laws relating to women's rights are now universally recognised as abhorrent remnants of the past, we hope the Queensland Human Rights Commission will recognise current laws allowing for discrimination against sex workers, intersex people and transgender people in the context of roles working with or responsible for the direction of children are the offensive and embarrassing relic that they are, and take this opportunity to recommend their repeal.

There is absolutely no evidence base for excluding sex workers, intersex people or transgender people as inappropriate to work with children. However, there is substantial evidence demonstrating the harmful impacts of discrimination like this.

Recommendation: Repeal exemption 28 Work with Children

Exemption allowing accommodation discrimination against sex workers (Q. 47)

Earlier this month the Victorian government passed legislation that repeals the law allowing accommodation discrimination. Queensland should also repeal this law as part of updating the Anti-Discrimination Act.

Accommodation discrimination is a major concern for sex workers in NSW and many sex workers who work in both jurisdictions indicate the same of Queensland. Precarious housing has long term impacts and any law that singles out sex workers for lesser access to stable housing or accommodation should be repealed.

Research in NSW that considered the amenity impact on neighbours of sex workers undertaking sex work from their home (owned or rented) and found the impact to be minimal.¹ The perception that sex workers create disturbance is unfounded.

¹ Crofts P, and J Prior (2012) Home Occupation or Brothel? Selling Sex from Home in New South Wales. *Urban Policy and Research* 30(2): 127-143. DOI: 10.1080/08111146.2012.679923.

It is our understanding that prior to this amendment, accommodation providers were not permitted to discriminate against sex workers in Queensland and that since this time charging sex worker more for accommodation, denying bookings for sex workers or requiring a person to leave the accommodation even though they have paid for the booking is widespread in Queensland.

Recommendation: Repeal exemption 106C Accommodation for use in connection with work as sex worker

Sex worker organisation representation (Q.16)

In each jurisdiction there is a sex worker organisation that represents the interests of sex workers. Our organisations are often the place that sex workers come to, to seek support when experiencing discrimination or vilification. We support an addition to the Act that allows for a sex worker organisation or trade union to make a discrimination complaint on behalf of an affected person.

We consider this change as important for a number of situations including when sex workers experience discrimination from police or other large businesses and fear retaliation, for sex workers who are unable to risk their sex work experience being known and for others whose health or disability would prevent them from reporting discrimination.

Organisation representation should be allowed in both the conciliation process and tribunal process.

Recommendation: Amend the Act to allow for Organisation representation in both the conciliation and tribunal process.

Complaint process (Q.18)

Sex workers experience high levels of discrimination² and there are significant barriers to reporting discrimination due to sex work stigma³ and the very real harms sex workers experience from privacy breaches. For this reason there must be a option for sex workers to anonymously report discrimination and for those cases to be progressed.

² https://scarletalliance.org.au/library/Anti_Discrim2022

³ <https://www.crimejusticejournal.com/article/view/1894>

The Commission should also review the use of non-disclosure agreements as a standard practice in discrimination cases resolved at conciliation. The use of non-disclosure agreements results in other sex workers not being aware they can successfully address discrimination, hides the level of discrimination occurring and means other institutions are not aware of the potential impact of their actions. The overall impact is that there is no change to the culture of discrimination against sex workers.

Thank-you for accepting our submission and please contact us if you would like further information.

Yours Sincerely,

Joanna Megan & Victoria Powell

Handwritten signatures of Joanna Megan and Victoria Powell. The signature on the left is 'JMM' and the signature on the right is 'V Powell'.

Acting Chief Executive Officers
Sex Workers Outreach Project Inc.