



S I E N N A C H A R L E S

**Sienna Charles**



*1 March, 2022*

Submitted via email to [adareview@ghrc.qld.gov.au](mailto:adareview@ghrc.qld.gov.au)

## **Re: the QHRC ADA Review**

*Dear Commissioner Scott Dougall and the QHRC,*

My name is Sienna; I'm an independent full service sex worker in Meanjin (Brisbane), Queensland and passionate activist for law reform for social justice. Thank you for the opportunity to submit to this process; I welcome changes to the *Anti-Discrimination Act 1991*, 'the Act', as a chance to further the rights of sex workers, who are some of Queensland's most vulnerable and stigmatised community members. I felt it was important to submit publicly to the Review as a testament to the gravity of this issue.

I am going on my sixth year as a sex worker in Australia and having worked previously in other industries, it is increasingly clear to me that once you start in this sector, you are forever looking over your shoulder and keeping secrets because of the way people treat sex workers and sex work, even if you leave. As someone who is from a relatively privileged group – white, educated, cisgendered and financially stable – it has appalled me to listen to the experiences of my less privileged peers and realise that all the fear, anxiety, discrimination and difficulties I may experience are significantly magnified for those who have a range of additional intersecting attributes. We need protection under the Act, and we need it now.

I endorse the submissions from Scarlet Alliance, Australian Sex Worker's Organisation, SWOP NT, and Respect Inc with DecrimQLD.

Sincerely,

**Sienna Charles**

QLD sex worker and activist

## Recommendations

1. That the attributes 'sex work' and 'sex worker' are protected in the updated Act.
  2. Repeal s 106C that permits accommodation providers to discriminate against sex workers when supplying accommodation.
  3. That financial institutions are not exempted from discrimination against sex work and sex workers.
  4. Repeal s 28(1) that deals with permitting employers to discriminate against sex workers in jobs that '[involve] the care or instruction of minors'.
  5. Amend s 119 to reflect that sex workers can also face sexual harassment in their places of work.
  6. That a representative body or a trade union should be able to make a complaint on behalf of an affected person about discrimination, and that this should proceed past the conciliation process and onto the tribunal.
  7. That any name suppression should simply carry on to successive stages of the process without having to reapply at each stage, in order to protect the anonymity and therefore safety of sex workers engaging in complaints.
  8. That pseudonymous complaints be permitted as a default for sex workers.
  9. That the process is made more financially accessible and balanced in terms of power dynamics.
  10. That the requirement for a release, discharge and indemnity agreement be removed from the process so that complainants can help create systemic change by sharing their experiences.
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## Discrimination Examples

Currently, the only protection enjoyed by sex workers in Queensland regarding discrimination relates to 'lawful sexual activity'<sup>1</sup>. This is obviously problematic due to the current legislation<sup>2</sup> around sex work in Queensland, though I am hoping for a favourable outcome to the proposed review<sup>3</sup> of those laws in the coming months. It means that the only time protection can be extended to sex workers is if we work within a truly reprehensible and unworkable framework that actively jeopardises our safety. The existing laws are such that most sex workers in Queensland have, at one point, worked outside of them out of need, no matter their income.

Changes to the Act need to protect sex workers; the most pressing concern is the need for 'sex work' and 'sex worker' to be added as protected attributes. It's quite clear from case precedents that the 'lawful sexual activity' attribute just isn't enough to protect us from harm; since 2003, the

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<sup>1</sup> [Anti-Discrimination Act 1991](#) (Qld). ch. 2, pt. 2, s. 8.

<sup>2</sup> [Prostitution Act 1999](#) (Qld).

<sup>3</sup> Office of the Attorney General. (2021, August 28th). *Considering a safe and regulated sex work industry* [Press release]. <https://statements.qld.gov.au/statements/93061>

definition of this attribute was modified to mean ‘the status of being a lawful sex worker’<sup>4</sup>, which means the activity itself is no longer covered under the Act.

**Recommendation 1:** That the attributes ‘sex work’ and ‘sex worker’ are protected in the updated Act.

## Accommodation

I shouldn’t have to be fearful that my landlord or the hotelier where I stay will feel safe evicting me due to my work – the fear of having sex workers work from a residence you own is unjustified and based on outdated and offensive stereotypes which paint us as undesirables who trash accommodation and carry on parties at all hours. Currently, I seek out hotels and accommodation which have discreet entry for clients and staff that are either unobservant or respectfully turn a blind eye; I don’t, under any circumstances, share that I am a sex worker or intend to work out of the premises, for fear that I will be denied service or charged extra fees. This in spite of the fact that I, and the vast majority of my peers, leave hotels and short-stay accommodation in immaculate condition and frequently tip housekeeping staff; our industry is naturally inclined towards discretion, and being clean and quiet contributes to this. It is illegal for an accommodation provider to decline service to people based upon their age and sex, even in cases where they believe the people to be more likely to have a disruptive party because they’re a small group of men in their early 20s; so why is it permissible to deny sex workers? Accommodation providers should not be granted an exemption to discriminate against sex workers based on their work when it’s demonstrably true that we are not worse tenants than the general population.

I have told one landlord in my entire history of renting and hotel booking that I am a sex worker, but this was only because we were on friendly terms and I was not going through an agency to rent the premises. He was accepting, but I was extremely fearful that it would result in him terminating my lease – he did not know that I worked from the premises, just that I was employed as a sex worker. I currently work from a different premises to the place where I live, and I am extremely secretive with the real estate agency and the building management; they just believe I am a young professional who is quiet, pays rent on time, and leaves the place spotless. It is exhausting to have to constantly maintain secrecy and keep track of what information I have provided in order to maintain my accommodation.

**Recommendation 2:** Repeal s 106C that permits accommodation providers to discriminate against sex workers when supplying accommodation.

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<sup>4</sup> QHRC. (n.d.). *Lawful sexual activity case studies*.  
<https://www.qhrc.qld.gov.au/resources/case-studies/lawful-sexual-activity>

## Financial Institutions

It's not just accommodation providers who feel perfectly justified in discriminating against us; banking discrimination is rife, as is discrimination in employment and hiring. AUSTRAC put out a truly damaging financial guide in February this year<sup>5</sup>, ostensibly to help financial institutions to prevent sexual servitude; the guide itself lists many activities that sex workers and even *regular women* engage in every day. Below are some examples from the Financial Indicators<sup>6</sup> section that demonstrate this othering of our perfectly legal, safe, and servitude-free business activities:

1. *"Payments to multiple online merchants or classified sites, which can be as high as \$10,000 per month"* – I certainly pay around \$400-500 per month on advertising for myself, as an independent sex worker with no employees. A registered brothel (or indeed, an agency in any other state) will have much higher outlay and shouldn't be singled out as potential traffickers based on this data point.
2. *"Regular payments to hotels or short-term accommodation providers, that total over \$2,000 per month"* – Many independent sex workers primarily stay in or work out of hotels, and this is not an unusual amount to spend. I spend more *on rent*, but this month I've spent at least \$2,500 on hotels between trips to Sydney, Melbourne, and Canberra.
3. *"Receiving frequent third-party ATM cash deposits from multiple locations in Australia, usually amounts of between \$200 and \$800 per transaction"* – This sounds exactly like my pattern of deposits when I have travel dates organised interstate.
4. *"Receiving domestic transfers predominantly from third party males, as payment for sexual services. Payments may range between approximately \$100 and \$800 per transaction, with an average of \$250."* – I'm unsure how they know these things are payment for sexual services, as most clients of sex workers don't put "for sex" in the description, but once again this looks like the normal business practices of myself and many of my peers. It is interesting to note that simply because anyone is receiving payments from third party males, they may get caught up here – my newest hobby is making knives; the primary customer base for smith-handmade knives... is third party males.
5. *"Spending habits linked to victims may include: frequent or large adult store purchases; a high volume of purchases from clothing, make-up, beauty and lingerie retailers."* – Not only is this something the average consensual sex worker might spend their money on, it's also a pattern many sexually liberated women I know display. It's discriminatory and ineffective as a data point.

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<sup>5</sup> AUSTRAC. (February 2022). *Detecting and stopping forced sexual servitude in Australia*. [Financial crime guide].

[https://www.austrac.gov.au/sites/default/files/2022-02/AUSTRAC\\_FCG\\_DetectingAndStoppingForcedSexualServitude\\_web.pdf](https://www.austrac.gov.au/sites/default/files/2022-02/AUSTRAC_FCG_DetectingAndStoppingForcedSexualServitude_web.pdf)

<sup>6</sup> AUSTRAC. (February 2022). p. 11-13.

This document was created without any consultation with sex worker organisations<sup>7</sup>, and sets up a system of discrimination that means we can never truly be free of the stigma of our work, as banks and other financial institutions will see any business activity as a liability, shutting us out of lending and even regular bank accounts. If and when we choose to leave the industry, financial institutions feel justified in holding our completely legal transaction history against us because there is no real protection from discrimination in this sector.

Merchant facilities and business bank accounts<sup>8</sup> are often hard if not impossible to obtain, and this isn't just limited to individual sex workers; the entire adult industry is maligned by banking institutions Australia-wide<sup>9</sup>, with institutions citing 'moral grounds' to refuse service<sup>10</sup>. There is no available income protection insurance for sex workers, and life insurance is very difficult to obtain; banks are not the only financial institutions who openly refuse our service with no repercussion. I have searched and found that the banks that declare themselves to be 'ethical banking' institutions all explicitly do not 'have exposure to, invest in or trade with... pornography or sex slave trade'<sup>11</sup>. Global payment processors are not exempt, with countless examples of service being refused by companies like PayPal, Mastercard, and Stripe.

**Recommendation 3:** That financial institutions are not exempted from discrimination against sex work and sex workers.

## Employment

Sex workers are excluded from jobs that have any interaction with minors; presumably due to the offensive and untrue notion that people who work in the sex industry must be generally deviant. There is absolutely no evidence to suggest that people who engage with the sex industry are at a higher risk of exploiting or acting inappropriately around children, and it is harmful to suggest otherwise by not amending s 28(1). It is not just teaching and childcare jobs where sex workers must hide their side job or former employment; Blue Cards are required for all medical roles including in the disability sector and emergency services, in church related roles, sport, and accommodation facilities that deal with minors<sup>12</sup>. Entire sectors of work and

<sup>7</sup> Scarlet Alliance [@scarletalliance]. (2022, February 5). *We are the national peak body for sex workers and sex worker organisations in Australia. We sit on the national trafficking roundtable & have been representing sex workers on this for decades. We were not contacted or consulted at any point in the production of this document.* [Tweet]. Twitter.

[https://twitter.com/scarletalliance/status/1489842582557376516?s=20&t=XSL9NMNT8J4WFNo20s0w\\_A](https://twitter.com/scarletalliance/status/1489842582557376516?s=20&t=XSL9NMNT8J4WFNo20s0w_A)  
<sup>8</sup> Baj, L. (2021, November 10). How Banks Are Exploiting A Loophole To Legally Discriminate Against Sex Workers. *Junkee*. <https://junkee.com/banking-sex-work-australia/313285>

<sup>9</sup> Whitson, R. (2021, October 12). Sex workers, adult shops and gun businesses say they are being denied banking services. *ABC News*.

<https://www.abc.net.au/news/2021-10-12/debanking-sex-industry-gun-shops/100523118>

<sup>10</sup> Chau, D. & Evlin, L. (2018, January 4). Sex industry faces 'financial discrimination' from banks, ombudsman says. *ABC News*.

<https://www.abc.net.au/news/2018-01-04/sex-industry-businesses-face-financial-discrimination/9303376>

<sup>11</sup> Hunter Galloway, Mortgage Broker Brisbane. (n.d.). *Ethical Banks in Australia: the Ultimate Guide*. <https://www.huntergalloway.com.au/ethical-banks-australia/>

<sup>12</sup> [Working with Children \(Risk Management and Screening\) Act 2000](#). (Qld). pt. 2.

volunteering are off limits to people who have worked in a legal industry with no anti-discrimination protections.

Personally, I have experience in a health field (in which I no longer work) and I also wish to volunteer with a state service such as the RFS or SES. I must either lie on the Blue Card form or risk not being permitted to work or volunteer in Queensland. I have gathered a great number of skills and plentiful experience in this industry that can be applied elsewhere, but I am afraid to list much of it on my resumé as I may be asked in an interview to back it up. How do I explain the large gaps in my CV? This leads to sex workers missing out on jobs in other sectors when they may be an excellent fit for the role.

**Recommendation 4:** Repeal s 28(1) that deals with permitting employers to discriminate against sex workers in jobs that '[involve] the care or instruction of minors'.

Sex workers experience sexual harassment in their places of work, and this is something the Act needs to clarify. For example: in a brothel, if the owner decides that in order to work there you must perform some services on him for free as if you are auditioning, that is sexual harassment. At this time, it is not acknowledged that sex workers can be sexually harassed at all – in fact, many people still hold the stigmatising and repugnant belief that sex workers can't be sexually assaulted, so sexual harassment in the workplace is not even on the radar.

**Recommendation 5:** Amend s 119 to reflect that sex workers can also face sexual harassment in their places of work.

## Other Essential Services

Sex workers experience general discrimination when it comes to other essential services including justice, medical services, education, and government assistance.

### Medical services

I have personally learned to be careful which of my medical practitioners I disclose my job to, as I have seen it negatively impact my quality of care – it isn't particularly nice to be told that the reason you have a mental illness is because of your job and you should quit. Especially when the mental illness is pre-existing, and quitting would simply leave me with no ability to pay for my treatment. I know I'm definitely not alone in this, as many sex workers network with one another and with outreach services to swap their recommendations for medical professionals who won't treat us like walking pathologies or the personification of sexually transmitted disease.

### Education

Many universities have 'morality clauses' that mean you can be expelled just because you work in a legal industry. I personally know a Masters student who was prevented from writing their thesis on a specific, sex work related topic because of the views of the supervisor around that topic. These instances of discrimination alter the course of sex workers' lives and further restrict their career options.

I have recently restarted tertiary study, and have made some very deliberate choices about my online portal bio; there is no mention of this work for my own safety.

## **Justice**

Our access to justice is affected as well, both due to the previously mentioned unworkable laws, and due to discriminatory behaviour demonstrated by the police themselves. Fortunately for me, I don't have personal experiences to share in this regard, and I know this is likely because I am white, educated, and perceived as higher class, but I still don't feel safe going to the Queensland Police if something were to occur because of their historic treatment of my peers. The entire study is worth reading, but an excerpt here of '*I Wouldn't Call the Cops if I was Being Bashed to Death: Sex Work, Whore Stigma and the Criminal Legal System*<sup>13</sup> very succinctly highlights the general community experience of police interaction:

*I had to engage with the police in reporting [of a sexual assault] ... as part of reporting it, it became clear to the police that I was a sex worker ... and a lot of things were said to me during that time that were completely unacceptable and I noticed it was just like everything is going along and you're being treated with respect and then just you know, click your fingers and all of a sudden, everything is very different ... I was really just treated with no dignity, with no humility, with no respect (Focus Group 3).*

There are some particularly harrowing accounts involving the QPS in particular in this study, and I should highlight that although I don't have any personal experience, I have friends who have recent and terrifying stories of poor police behaviour with no possible avenue for recourse that would be taken seriously or progress further than a filing cabinet. A warning that the cited study contains graphic and upsetting accounts of violence and assault.

## **Government Assistance**

Proving your income is already difficult when financial institutions are allowed to discriminate against you, but if you're a low income, disabled, or student sex worker who needs to apply for Centrelink benefits it adds yet another layer of difficulty. Many officials don't treat sex work as a 'real job', and will insist that sex workers who are on benefits apply for other work to maintain their benefits; disclosing sex work can result in discriminatory treatment that may mean benefits are withheld or the process is slowed.

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<sup>13</sup> 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. <https://doi.org/10.5204/ijcjsd.1894>

## An Untenable Position

Many opponents of sex work decriminalisation say that they want to help people to leave the sex industry; what is the use when the stigma continues to such an extent that we have restricted access to justice, housing, employment, and essential services? Especially when that restricted access is supported by an Act that excludes sex workers. This makes many feel trapped in the industry, whether we wish to leave or not; our choice seems to have been taken away. Providing us with protected attributes under the Act will go some way to making life changing improvements for those in the industry; I'd absolutely like to have the ability to openly list the contributions I've made to sex work law reform in my resumé, but at this point in time I think we all know that I would simply be quietly removed from the hiring pool.

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## The Conciliation and Tribunal Process

Changes need to be made to the actual process that complainants engage in to make it safer and more accessible for sex workers. Due to the stigma of their work, sex workers are rightfully fearful of their legal names and details being made public. With that in mind, discussion question 16 sums up what is needed: a representative body or a trade union should be able to make a complaint on behalf of an affected person about discrimination, and this should proceed past the conciliation process and onto the tribunal without the unnecessary hardship of having to reapply for name suppression at each stage.

**Recommendation 6:** That a representative body or a trade union should be able to make a complaint on behalf of an affected person about discrimination, and that this should proceed past the conciliation process and onto the tribunal.

**Recommendation 7:** That any name suppression should simply carry on to successive stages of the process without having to reapply at each stage, in order to protect the anonymity and therefore safety of sex workers engaging in complaints.

Sex workers use pseudonyms to identify themselves to clients, employers, and peers; these are our stage names, if you will. It should be possible to allow sex workers to use these names to make *pseudonymous* complaints. These are distinctly not anonymous complaints (a separate consideration), as the complainant is still identified by what is basically their business name, but it means that a sex worker's legal details are protected from the respondent, who likely did not know the sex worker's legal details to begin with.

**Recommendation 8:** That pseudonymous complaints be permitted as a default for sex workers.



The case of *Dovedeen Pty Ltd v GK*<sup>14</sup> (2013) proves that even when a sex worker attempts to utilise the existing and unworkable ‘lawful sexual activity’ attribute to seek justice, that exemptions are granted (and become ratified case law) and we are forced to pay for the respondent’s legal fees<sup>15</sup>. This is an outcome that terrifies me – I have enough savings for a modest amount of emergency expenditure, but I certainly don’t have enough that I would be willing to risk taking up a complaint with the QHRC if and when someone discriminates against me for my work. Most do not have these funds and there is no effective potential for justice for us, as all evidence points to us losing the case and having to pay the respondent’s fees as well as our own.

Further, the case of *Payne v APN News & Media* (2015)<sup>16</sup> demonstrates the power imbalance that is inherent in many cases that go to conciliation and tribunal regarding discrimination (or indeed, the justice system as a whole); one person, representing themselves (or with one lawyer, if they have some money), coming up against a conglomerate with a team of lawyers and significant capital. Often these cases are prohibitively expensive for people on lower incomes; and people on lower incomes are disproportionately likely to have one or several attributes that are protected by the Act. Financial barriers should be removed or significantly mitigated to allow equal access and a fairer balance of power in the courtroom.

**Recommendation 9:** That the process is made more financially accessible and balanced in terms of power dynamics.

The best way for marginalised communities to work together in the fight against discrimination is to share their experiences. The current process often requires both parties to sign a release, discharge and indemnity agreement, meaning that complainants cannot share their experiences publicly with the community to create systemic change. These agreements frequently mean that the complainant cannot pursue the case through other courts and even if they win, they often accept far less in compensation than they deserve. This should be optional and not a requirement.

**Recommendation 10:** That the requirement for a release, discharge and indemnity agreement be removed from the process so that complainants can help create systemic change by sharing their experiences.

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<sup>14</sup> *Dovedeen Pty Ltd v GK* (2013). QCA 116.

<https://www.queenslandjudgments.com.au/caselaw/qca/2013/116>

<sup>15</sup> *Dovedeen Pty Ltd v GK* (2013). QCA 194.

<https://www.queenslandjudgments.com.au/caselaw/qca/2013/194>

<sup>16</sup> *Payne v APN News & Media* (2015). QCAT 514.

<https://www.queenslandjudgments.com.au/caselaw/qcat/2015/514>