



SIN submission to the Queensland Anti-Discrimination Act (ADA) Review.

SIN is a peer based sex work organisation funded by SA Health, based in Adelaide, South Australia, on stolen Kaurna Land. SIN is committed to promoting rights and supporting the health and wellbeing of South Australian sex workers. SIN submits this document in support of Respect Inc, and Queensland sex workers, and advise that the committee reviewing the Anti-Discrimination Act (ADA) consider our suggested amendments.

Sex workers face stigma and discrimination and due to this, barriers exist for sex workers when seeking justice. Subsequently, adequate legislative safeguards and mechanisms are required for sex workers to feel represented within the Act under review. This includes the removal of barriers to report and progress instances of discrimination. Exposure to discrimination (both anomalous and ongoing) has been identified as a key determinant of health. Discrimination has been evidenced to lead to poorer health outcomes and reduced access to health care and other support services.

In South Australia sex workers work within a criminalised legislative framework and are not protected by any state based anti-discrimination legislation. In 2011a Bill to decriminalise sex work was created in collaboration with sex workers. A crucial element of the Bill was the inclusion of anti-discrimination legislation; this was considered non-negotiable by sex workers. The SA 'Sex Work Industry' Bill sought to amend 12 entries to the Equal Opportunity Act, 1984, including the interpretation of the Act, the criteria for establishing discrimination, discrimination in the provision of goods and services, and discrimination in relation to accommodation.

Discriminatory attitudes to sex work are often informed by archaic social norms and expectations, religious beliefs, the media, and misinformation. These attitudes and stigmatising beliefs affect sex workers every day. For these, and the above mentioned reasons, SIN supports the following amendments to the ADA.

Discussion question 28 (p98) Should there be a new definition of lawful sexual activity, and if so, what definition should be included in the Act? Should the name of the attribute be changed, and if so, what should it be?

SIN believes the attribute should be changed to 'sex work' and 'sex worker' as all sex workers deserve to be protected, not only some. We also call for the attributes to include protections for 'someone assumed to be a sex worker', and 'associates, past, present and assumed'.

Language is a powerful tool, and can either further stigmatise marginalised groups, or facilitate social change. In this case 'lawful sexual activity' is a euphemism for sex work, but doesn't differentiate between sex work, and any kind of non sex work activity, regardless of it being lawful or not. This lack of a clear definition means that few complaints have been lodged. The term 'sex work' is the preferred term used by sex workers and is also recognised by the World Health Organisation, the United Nations and Amnesty International. The term sex work helps position sex work as work, therefore opening discussions about work rights, and protection under the law. .

The term 'lawful sexual activity' is not adequately used in the act and allows for discrimination to occur when consensual commercial sexual activity takes place, especially when its outside of the law. In jurisdictions where sex work is licensed, like in Queensland, its widely recognised that the law creates a two tiered industry, where majority of the work occurs outside of any legal parameters set by the state or territory. Licensing itself fails sex workers, especially because it makes many sex worker safety strategies and work practices unlawful, forcing sex workers to operate illegally because they choose safety. Therefore, regardless of a sex workers legal status, they must be protected by anti-discrimination legislation. Working outside the law is not always predicated by a desire to be unlawful; language barriers, concerns around confidentiality, personal safety, and a raft of other reasons may come into play. Sex workers unwilling or unable to work within legal parameters must not be further marginalised and stigmatised by the lack of anti-discrimination protections and reporting mechanisms. The current definition of lawful sexual activity differentiates between lawful and unlawful sex work, but all sex workers deserve protection under the Act.

Discussion question 45 (p 119) Are there reasons why the work with children exemption should not be repealed?

SIN believes the work with children exemption should be repealed.

The stereotype around sex workers and minors is dangerous and misinformed. QLD already has legislation that screens people who wish to work with minors, making any sex work specific legislation in this space is discriminatory and unnecessarily targeted.

Discussion question 47 (p 121) Should the sex work accommodation exemption be retained, changed, or repealed?

SIN believes the sex work accommodation exemption must be repealed.

The exemption in the anti-discrimination legislation that makes it legal to discriminate against sex workers if there is a reasonable belief a premises will be used for commercial sexual services is abhorrent, damaging, and in-humane and should be repealed.

Sex workers will be at risk of homelessness if this amendment passes. Delivering more power to landlords or other housing authorities, during a housing crisis, is deplorable public policy. The term 'reasonable belief' is both vague and subjective. This amendment must be repealed to include sex work as an attribute under the anti-discrimination legislation.

Discussion question 16 (p 63) Should a representative body or a trade union be able to make a complaint on behalf of an affected person about discrimination? Why or why not? Should representative complaints be confined to the conciliation process, or should they be able to proceed to the tribunal?

SIN believes that a representative body should be able to make a complaint on behalf of an affected body and that it should be able to proceed to the tribunal.

In the absence of appropriate legislation, peer based representative organisations like SIN in South Australia and Respect in Queensland, must have the legislative ability to report instances of discrimination on behalf of sex workers. Sex workers experience barriers to reporting and in addition stigma and concerns regarding confidentiality can be minimised by peer organisations acting as intermediaries or advocates for affected populations. In South Australia, SIN is used by sex workers as an effective tool to report unlawful behaviours (stalking, for example) to police and other relevant bodies. Sex workers must also have access to all reporting and outcome pathways as the rest of the population, therefore proceeding to tribunal is a must.

Discussion question 18 (p 65): Are there any aspects of the complaint (dispute resolution) process that should be considered by the Review? If so, what are the issues and your suggestions for reform?

There are significant barriers to sex workers making a complaint.

There are several aspects of the complaint (dispute resolution) process that create barriers for sex workers and prohibit sex workers from making complaints. Sex workers are not guaranteed anonymity throughout the process and need to reapply for anonymity at each stage. This creates more unnecessary work and instead sex workers must be assured safety at each stage of the process. This would also mean sex workers can more easily use these processes and move through with confidence and will encourage faith in the system.

Additionally, though the conciliation process is free, aspects of the process are not, therefore removing these financial costs will remove barriers and allow sex workers to use the process without any fears of financial burden.

Lastly, when a complaint is resolved at the conciliation stage an agreement is made which both parties sign. This often results in the person putting in a complaint receiving less than they deserve, for example, not being able to pursue the case further in other ways if they are not happy with the outcome. This process in addition silences transparency and successful discrimination cases are not made public. Therefore, other businesses who also discriminate against sex workers are not able to be held to account because the public are not made aware of new precedents set. Sex workers are also left in the dark because without knowing outcomes of such cases, they are not aware they can pursue their own complaints. Discrimination always reflects structural issues in society, and by keeping the outcomes of discrimination cases outside of the public eye and scrutiny, means that systemic discrimination is left unaddressed.

Discussion question 30 (p 101) Is there a need to cover discrimination on the grounds of irrelevant criminal record, spent criminal record, or expunged homosexual conviction? How should any further attributes be framed?

SIN believes that sex workers need protection from discrimination based on their sex work criminal records.

Sex workers should not be discriminated against due to criminal records. Archaic and discriminatory legislation has burdened many sex workers with unjust criminal histories. These histories create barriers to alternative employment, working with children, and international travel. Fighting sex work charges is financially prohibitive and highly stressful. In SA, sex workers have reported coercion at the hands of SA Police, with officers and prosecutors pushing sex workers to enter guilty pleas (even in the absence of irrefutable evidence) simply to avoid 'embarrassment' and/or being outed in public court listings. Sex workers have ended up with convictions that have been used to paint erroneous pictures of their character and to inform discriminatory behaviour.

Discussion question 50 (p 124) Should the insurance and superannuation exemptions be retained or changed?

SIN believes there should be no exemptions to sex workers accessing insurance and superannuation. Sex workers should not be discriminated against in any financial context.

Insurance providers often discriminate against sex workers, with policies either outrightly refused or offered at increased premiums. These decisions by insurers must be deemed unlawful under legislation. All Australian workers must have legal access to complaint superannuation funds, as well as the ability to choose a fund that aligns with personal/political beliefs and one that works financially for them. Anything less than equity in accessing provisions for retirement must be viewed as counterintuitive in a broader, fiscal sense by the QLD state Government.

Discussion question 55 (p 128) Are any additional areas of activity required? Should any be repealed? Should the scope of any of the areas of activity be further refined?

SIN would like to outline one area where an adjustment must occur. Please see the paragraph below.

The current Act includes specifications outlining the relevant circumstances in which sexual harassment can be deemed an eligible claim. SIN believes these specifications must include the terms sex work and sex worker. It is important that the Act acknowledges the fact that sex workers experience sexual harassment in both professional and personal spaces.

For further information or comment, please contact the SIN General Manager, Kat Morrison – [REDACTED] or the SIN Board President, Roxana Diamond - [REDACTED]

Thank you for taking the time to read our submission.