



2 March, 2022

Queensland Human Rights Commission
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adareview@qhrc.qld.gov.au

Submission on Queensland Anti-Discrimination Act Review

Dear Commissioner,

Thank you for the opportunity to submit to this process to modernise the Anti-Discrimination Act, 'the Act'. This reform is important in furthering and cementing the rights of all Queenslanders, and sex workers are an integral part of the Queensland community who urgently require more effective protection under the Act to address the excessively high levels of discrimination.

Respect Inc is the state-wide sex worker organisation in Queensland that provides a comprehensive health promotion and peer education program for sex workers. Respect Inc has offices and sex worker drop-in spaces in Cairns, Brisbane, Townsville and the Gold Coast and provides regional outreach in other locations.

DecrimQLD is a committee of sex workers who have joined with Respect Inc to progress the removal of harmful and discriminatory sex work laws and achieve decriminalisation in Queensland.

Our submission asserts that the Act needs amending by: replacing the 'lawful sexual activity' attribute with the new attributes of 'sex work' and 'sex worker'; repealing exceptions to the Act that make accommodation and working with children discrimination against sex workers lawful; making changes to the complaints process to address significant barriers to reporting discrimination for sex workers, and a change to enable a representative organisation like Respect Inc to make a complaint on behalf of a sex worker.

We appreciate your recognition of the barriers that exist to lodging discrimination complaints and your inclusion of the option of anonymous survey responses and submissions to maximise input into your process. Many sex workers have already utilised this option.

DecrimQLD and Respect Inc also endorse the submission made by Scarlet Alliance, Australian Sex Workers Association and are happy to discuss these matters further.

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Respect Inc State Coordinator

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DecrimQLD Campaign Leader

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Executive Summary

Sex workers in Queensland experience extremely high levels of discrimination, and reporting of discrimination is incredibly low. Consultation with sex workers and a review of discrimination cases in Queensland demonstrates that the attribute 'lawful sexual activity' does not provide adequate discrimination protection for sex workers and fails to provide clear direction to the courts or the community. Significant barriers to reporting and problems with the complaint and conciliation processes are also clear.

This submission is informed by consultations, workshops and online discussions held by Respect Inc and a survey by DecrimQLD of 204 sex workers on experiences of discrimination and barriers to reporting. In the recent survey, 72.5% of participants had experienced discrimination and a further 14.2% were unsure if what they had experienced would be considered discrimination.

This scale of discrimination points to widespread and normalised unfavourable treatment of sex workers across many areas of life. Survey participants provided detailed examples in the areas of goods and services provision, health care settings, accommodation, banking, superannuation and insurance, education, work and administration of state laws and programs as well as sexual harassment and vilification.

***Survey participant 7: "It is a day to day experience that compounds over time. I have been called names and dumped on a dark street by a taxi driver, told by a nurse that HIV positive sex workers should be jailed and then refused treatment when I disagreed with her, told by a real estate agent that 'whores are dirty' and not given a short term lease, charged more for accommodation, advertising and other services."*¹**

Survey participant 96: "There are honestly too many different and varying instances to count."

The attribute 'lawful sexual activity' is severely limited, to such a degree that it is wholly ineffective in the majority of cases. Courts have determined the attribute as only covering the 'status' of being a lawful sex worker and not the activity of the work itself. It is also limited to covering only individuals who undertake 'lawful' sex work, in a context where approximately 90% of sex work occurs unlawfully as a result of outdated criminal code laws that criminalise many day-to-day activities essential to being a sex worker, including many safety strategies, alongside licensing laws that deem all sex industry businesses to be illegal, except for 20 licensed brothels across the state.

'Lawful sexual activity' also fails to provide clear direction as to who is covered by the attribute and what activities are protected from unlawful discrimination to the Queensland community, services and institutions as well as to the Human Rights Commission, QCAT, and the courts. This is demonstrated by the lengthy legal debates over the attribute and definition that have ensued in each case heard by the tribunal and the confusion among lawyers, sex workers and services as to rights and responsibilities.

¹ Each quotation is from the 2022 survey of 204 sex workers who have worked in Queensland.

The majority of cases of discrimination against sex workers are not reported. Of sex workers surveyed who experienced discrimination, only 9% reported the discrimination, 91% did not.

The lack of a clear and effective attribute contributes to under-reporting, but there are also significant other barriers to sex workers reporting discrimination in Queensland. Survey participants described barriers to reporting such as feeling as if reporting is not worth the effort considering the burden of going through the process and the risk of experiencing further stigma, discrimination or mistreatment, as well as a belief that they would not be taken seriously or nothing would be done. We see this as a result of non-disclosure agreements that have prevented cases successfully resolved at conciliation from being shared with the wider sex worker community.

Privacy concerns related to a complainant's sex work being connected to their legal name, and fear of consequences in their personal lives if they chose to report, were quoted as significant barriers to survey participants reporting discrimination. This highlights the concerns raised in Q.18 about the conciliation process not including options that protect a person's identity sufficiently, along with our assertion that organisational representation is needed in Q.16. Numerous survey participants stated that they would not report discrimination because they know the law does not adequately cover sex workers and it is legal to discriminate against them. This demonstrates the impact of the significant limitations of the current attribute and the impact of the areas of the Act that make it lawful for accommodation providers to discriminate against sex workers. The enormity of the risk to an individual sex worker reporting discrimination by police and other institutions was also a factor listed by survey participants, pointing to the need for processes to address and protect against the power imbalance between complainants and respondents, and the need to reform the current onus of proof approach discussed in Q.8.

Victoria's parliament recently passed the *Decriminalisation of Sex Work Act 2022*², which repeals section 62 of their *Equal Opportunities Act 2010* from 10 May, 2022. This law made accommodation discrimination lawful in Victoria, similar to s 106C of the Queensland *Anti-Discrimination Act 1991*, but with this reform, Queensland is now the only jurisdiction to make discrimination against sex workers lawful in this sector. In the nine years since this exemption was introduced, sex workers have experienced widespread discrimination. Over-charging sex workers is common; eviction, including sex workers threatened with eviction unless they pay more or provide sex for free (notably offered in the middle of the night when changing accommodation in regional areas is impossible) is rife. The outcome of this amendment is that sex workers are placed in dangerous, exploitative situations and experience overall housing instability.

The Queensland Law Reform Commission is currently reviewing the decriminalisation of sex work. Regardless of the outcome of this process, it is clear that enhancing anti-discrimination protections for sex workers in Queensland is essential in addressing what is widespread, and in some cases, systemic discrimination.

² [Decriminalisation of Sex Work Act 2022 \(Vic\).](#)

UNPROTECTED & UNDER-REPORTED

SYNOPSIS ON SEX WORKERS' EXPERIENCES OF DISCRIMINATION & ANTI-DISCRIMINATION PROTECTIONS IN QUEENSLAND

Sex workers in Queensland experience excessively high levels of discrimination and vilification. The majority of cases are unreported. This synopsis summarises the outcome of consultations, workshops, online discussions and a recent survey of 204 sex workers who work in Queensland on experiences of discrimination and barriers to reporting. The outcomes demonstrate the failure of the current Anti-Discrimination Act to provide adequate protections for sex workers or an effective process to report these experiences.

"I avoid discrimination as much as possible by anticipating it and concealing my sex work. That comes at a cost to ME. I avoid disclosing it, even where it would be an appropriate disclosure, because of the fear of discrimination, and the lack of redress I have if it occurs."

SEX WORK DISCRIMINATION



Survey participants described a wide range of circumstances under which they were discriminated against with some listing as many as six different types in one response and many stressing the continuous and oppressive nature of the discrimination experienced.

**72.5% OF SEX WORKERS EXPERIENCED DISCRIMINATION
A FURTHER 14.2% WERE NOT SURE IF THEIR EXPERIENCE WOULD COUNT AS DISCRIMINATION**

The main areas of discrimination or vilification sex workers described: Accommodation and Housing * Advertising * Education * Financial services * Goods and services * Health care Immigration/Visas * Legal framework as systemic discrimination * Online platforms Other employment * Policing * Sexual harassment & stalking * Workplace.

"Been treated with undue suspicion, assumption I am a criminal"

"Denied access to tax and accounting assistance/services"

"In non sex work workplaces I have been bullied and sexually harassed"

"A doctor I told, had the receptionist call to cancel my follow up appointment"

"Advertising prices, advertising laws, extra hotel room bond"

"Mostly through health care, rentals and insurance/banks"

"COUNTLESS, banned from social media, kicked off airbnb"

"I have been denied housing unless I did sexual favours"

"I have had doctors assume any complaint I had was due to STIs"

"People at my civilian job found out and I am now treated like a dirty outsider"

"I have been discriminated against in education"



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www.respectqld.org.au/decriminalise-sex-work



CHANGE THE ATTRIBUTE

QLD anti-discrimination laws include the protected attribute 'lawful sexual activity', which means a person's status as a lawfully employed sex worker, whether or not self-employed. Discrimination is unlawful when a person is treated less favourably because they are a lawful sex worker, than someone who is not a lawful sex worker, in similar circumstances.

"I did not believe I had grounds for a discrimination complaint because I was not a 'lawful' sex worker."

"Nobody would take it seriously, and there aren't any anti discrimination laws with sex worker as a protected class."

Our consultation with sex workers, including sex workers who have lodged complaints with the Commission, demonstrates the significant limitations of this attribute, specifically:

- Protection is limited to one's 'status' as a sex worker and does not cover discrimination on the basis of the practice of performing sex work;
- Many aspects of sex work are not 'lawful' in Queensland, including practicing basic safety strategies, and the licensing laws criminalise the majority of workplaces, leaving many sex workers not protected under 'lawful sexual activity';
- The attribute fails to provide clear direction to the tribunal or courts, demonstrated by the lengthy legal debates over the attribute in the case of *Dovedeen Pty Ltd v GK* (2013);
- The attribute obscures the fact that sex workers are protected from discrimination, limiting its impact on reducing discrimination by providers of goods and services and conveying the opportunity to sex workers to report discrimination.

REPLACE LAWFUL SEXUAL ACTIVITY WITH PROTECTED ATTRIBUTES 'SEX WORKER' AND 'SEX WORK'

As sex workers are already intended to be covered by Queensland's Act, this change to the attribute is to ensure more effective protections for sex workers. It is not a question of whether sex workers should be protected.

"Not good enough coverage in the Act. Not knowing about any other cases where a sex worker has been successful in reporting."

It is important that all sex workers be protected under a clearly defined attribute that covers both the status as a 'sex worker' and practical engagement in 'sex work', and regardless of whether they have previously done or currently do sex work in a lawful manner.

It is likely that 7(l) 'lawful sexual activity' is incompatible with the Human Rights Act 1999 (Qld) as it has the effect of depriving a person who is working unlawfully from accessing protections under the Anti-Discrimination Act.

'The effect of the legislative history and the decision in *Dovedeen* for sex workers in Queensland is that there is not sufficient protection from discrimination by the current Anti-Discrimination Act 1991 (Qld) in circumstances where:

- The person is a sex worker without the status of a "lawfully employed" sex worker; and / or,
- The alleged discrimination is based on the activity of engaging in sex work, as opposed to their status as a sex worker.'

Cairns Community Legal Centre,
February, 2022




#DecrimQLD

"I have been judged, looked down on, harassed, assaulted, bullied, denied care, ignored, the list goes on, just because I am a sex worker."




Respect
Inc

HEALTH CARE



Sex workers surveyed felt highly discriminated against on the basis of their sex work in interactions with doctors and other health professionals. Many listed and then described discrimination experienced in health care settings. The discrimination tended to be moralistic (practitioners would simply refuse further appointments), paternalistic (being told that their sex work would affect their mental or other health) or based on inaccurate and stereotypical ideas about sex workers being 'vectors of disease'.



57.8% OF SEX WORKERS DID NOT FEEL COMFORTABLE DISCLOSING TO HEALTH CARE PROVIDERS THAT THEY ARE A SEX WORKER

The most common reason sex workers did not feel comfortable disclosing to health care providers was because of past experiences of, and/or perceived risk of experiencing stigma, discrimination, judgement and ignorance from healthcare professionals. Several respondents who said they would not disclose their sex work status said they had felt degraded, dehumanised, shamed and embarrassed by healthcare professionals in the past.

"I have had to go to 11 different doctors in the space of 12 months to find a doctor that would treat me as a patient and be respectful of my work and actually care about my health."

Many felt it would negatively affect the quality of care they were provided; that they would be pathologised or that they would experience medical discrimination

"Psychologist didn't want to continue to see me after 6 years."

Respondents spoke about experiences of healthcare professionals changing their conduct once they disclosed that they were a sex worker. Specifically, healthcare providers would emphasise the need for sexual health testing (even when the worker had recently been tested or did not have a sexual health concern); would ignore other health issues that the worker was seeking treatment for;

would blame the worker for their health;

would assume drug use; and would

overemphasise the role of sex work in the health concern (especially in mental health contexts).



"The practitioner I disclosed information about the assault to claimed that it was not assault because I was a sex worker."

"I have had doctors deny my healthcare or assume any complaint I had was due to STIs despite never having tested positive for any STI in over 10 years of sex work."

"A doctor who I told had the receptionist call to cancel my follow up appointment and told me to see another doctor at the practice or go elsewhere."

"In 2020, **Scarlet Alliance** conducted research in partnership with Centre for Social Research in Health that surveyed 647 sex workers in relation to stigma and discrimination; **96%** of participants reported experiencing any stigma or discrimination related to their sex work within the last 12 months, including **34%** who indicated that this 'often' or 'always' occurred. **91%** of participants reported any negative treatment by health workers, including **24%** who indicated this 'often' or 'always' happened.

In 2015, research by CSRH found that **31%** of health workers self-reported they would behave negatively toward sex workers because of their sex work. Among the general public, **64%** self-reported they would behave negatively toward sex workers because of their sex work. This widespread discrimination is a result of deeply embedded stigma and criminalisation of sex workers."

www.scarletalliance.org.au/library/Anti_Discrim2022

31% OF HEALTH WORKERS SELF-REPORTED THEY WOULD BEHAVE NEGATIVELY TOWARD SEX WORKERS BECAUSE OF THEIR SEX WORK



BARRIERS TO REPORTING DISCRIMINATION

In the survey of 204 sex workers who have worked in Queensland, participants reported significant barriers to lodging a complaint or reporting discrimination. The outcome is an extremely high percentage of unreported discrimination.



91% OF SEX WORKERS DID NOT REPORT DISCRIMINATION EXPERIENCED

"I reported earlier cases of discrimination but have learnt over time that I am discriminated against in the process of reporting discrimination... you have to face the person that has discriminated against you - and sit in a room where people talk about you as a sex worker."

Survey participants who had experienced discrimination were asked to outline the barriers to lodging a complaint. There were 6 main themes:

- concern they would not be taken seriously.
- burden of going through the process and the risk of experiencing further stigma, discrimination and mistreatment.
- did not feel they were adequately protected under the current laws.
- privacy concerns and fear of consequences in their personal lives if they chose to report, as well as a lack of confidentiality and anonymity in the reporting process.
- facing discrimination from police and other institutions, and feeling there is a significant power imbalance.

This was compounded by the belief among respondents that reporting would not lead to a productive outcome. Sex workers' fear of not being believed and pessimism about the outcome of reporting were framed by experiences of institutional discrimination and a lack of protection under the law.



ONLY 9% OF SEX WORKERS SURVEYED WHO EXPERIENCED DISCRIMINATION REPORTED IT

"I was denied rentals by hundreds of agents, I couldn't possibly report them all..."

RECOMMENDATIONS:

ENABLE SEX WORKERS TO REPORT ANONYMOUSLY

ALLOW SEX WORKER ORG'S TO LODGE COMPLAINTS & REPRESENT SEX WORKERS

REFORM COMPLAINTS SYSTEM TO REMOVE BARRIERS TO SEX WORKERS LODGING A DISCRIMINATION COMPLAINT

REFORM THE PROTECTED ATTRIBUTE TO CLEARLY COVER SEX WORKERS AND SEX WORK

"No one cares. in many instances the law PROTECTS the people and businesses who are engaged in the discrimination. Unless the laws change, businesses and individuals will continue to legally discriminate against sex workers."

"I tried to report multiple occurrences, but apparently it's legal to discriminate and harm sex workers."

"The reporting requirements are too long and also every formal document wants your real name. Need to be able to report using your working name. Also no real system in place to ensure privacy and confidentiality at all levels."

"Legal name connected to my sex work would have had a even worse impact than the discrimination. Having to sit in a meeting with the persons who discriminated against me seemed like reliving it. Never heard of a sex worker winning a case in Queensland but I've read how one sex worker tried to fight it and the government changed the laws so she couldn't win."



EXEMPTIONS THAT ALLOW DISCRIMINATION AGAINST SEX WORKERS IN QLD

ACCOMMODATION

A 2013 amendment to the Act made it lawful for accommodation providers to discriminate against sex workers.

If an accommodation provider believes there is an intention for a person to use the location in connection with their own or someone else's sex work, they can lawfully discriminate against sex workers, including:

- eviction;
- refusing accommodation; or
- treating unfavourably in any way in connection with accommodation, including being required to pay more.

The outcome in the nine years since this exemption became law is frequent, widespread direct discrimination against sex workers, housing instability, excessive overheads and sex workers placed in unsafe situations susceptible to exploitative accommodation arrangements.

In effect, this law has created a practice of unfavourable treatment of sex workers that did not exist before this exemption was introduced.



REPEAL S106C LAWFUL DISCRIMINATION AGAINST SEX WORKERS BY ACCOMMODATION PROVIDERS

"I am regularly charged a lot more per night. Hotels also make up ridiculous extra charges because I am a sex worker. When touring NQ the police told the hotel they could throw me out if they wanted to."

95% (194) SEX WORKERS SURVEYED SAID REPEAL OF ACCOMMODATION DISCRIMINATION WAS VERY IMPORTANT

"The manager of the body corporate threatened to tell the neighbours if I didn't provide sex for free."

"My stay at hotels have been cut short unless I paid more."

Queensland is now the only state with lawful accommodation discrimination against sex workers
Victoria's Decriminalisation of Sex Work Act 2022 repeals Section 62 of the Equal Opportunity Act 2010, which stated that "A person may refuse to provide accommodation to another person if the other person intends to use the accommodation for, or in connection with, a lawful sexual activity on a commercial basis". Accommodation discrimination against sex workers in Victoria will be unlawful from 10 May, 2022 leaving Queensland as the only jurisdiction to endorse accommodation discrimination against sex workers.

WORKING WITH CHILDREN

The Anti-Discrimination Act makes it lawful to discriminate against sex workers, transgender, gender diverse and intersex people when in a work role directing children.

This law is both stigmatising and not evidence based. Sex workers, transgender, gender diverse and intersex people are not a risk to children.



"I would like to study... being a teachers aid but know I cannot do that... because I would be excluded from employment because of my sex worker status."

REPEAL S28 THAT MAKES WORKING WITH CHILDREN DISCRIMINATION AGAINST SEX WORKERS LAWFUL

Recommendations³

1. **Respect Inc and DecrimQLD recommend** that the Act clarifies that direct and indirect discrimination are not mutually exclusive, by adopting the approach taken in current ACT legislation. **(Q.1-4)**
2. **Respect Inc and DecrimQLD recommend** the removal of the requirement for a comparator, allow for combined attributes (intersectionality), and make judgments on the basis of 'unfavourable treatment' rather than 'less favourable', and 'disadvantage' rather than 'ability to comply'. **(Q.1-4)**
3. **Respect Inc and DecrimQLD recommend** the introduction of a unified test for both indirect and direct discrimination. **(Q.1-4)**
4. **Respect Inc and DecrimQLD recommend** the adoption of a positive duty to make 'reasonable adjustments' or 'reasonable accommodations' in all areas to prevent discrimination against sex workers both within the workplace and outside of it. **(Q.6)**
5. **Respect Inc and DecrimQLD recommend** an approach that protects people who experience discrimination on the basis of combined grounds and does not require a person to prove that their protected attribute is the only or main reason for the discrimination; instead it is preferred that it is only necessary to prove the protected attribute is one of the reasons for the discrimination. **(Q.7)**
6. **Respect Inc and DecrimQLD recommend** shifting the onus of proof to the respondent in order to prove that they did not discriminate. **(Q.8)**
7. **Respect Inc and DecrimQLD recommend** against explicitly prohibiting creating an intimidating, hostile, humiliating, or offensive environment on the basis of sex due to the potential for overreach. **(Q.9)**
8. **Respect Inc and DecrimQLD recommend** that 'in the presence of a person' be included in the Act. **(Q.9)**
9. **Respect Inc and DecrimQLD recommend** an amendment to the Act so that it specifically refers to sexual harassment covering sex workers and sex work workplaces and for HRC resources to include examples and information to that effect, including on their website. **(Q.9)**
10. **Respect Inc and DecrimQLD recommend** against introducing a further contravention of sex-based harassment due to the lack of clarity on the definition and need for more inclusivity. **(Q.9)**
11. **Respect Inc and DecrimQLD recommend** that the Act include a direct right of access to the tribunals and a right to apply directly to the Supreme Court in all circumstances. **(Q.10)**
12. **Respect Inc and DecrimQLD recommend** a review into the use of non-disclosure agreements as standard practice in conciliation agreements as the outcome is erasure of the outcome of decisions, and knowledge of the ability to pursue complaints. **(Q.10)**
13. **Respect Inc and DecrimQLD recommend** accepting complaints in non-written form and providing assistance with complaint lodgement. **(Q.12)**
14. **Respect Inc and DecrimQLD recommend** the law be adapted to allow a more flexible approach to resolving complaints by ensuring the approach is more individually tailored and the potential for external interference is mitigated. **(Q.13)**

³ All recommendations are important but red highlight to draw attention to some key sex work recommendations.

15. **Respect Inc and DecrimQLD recommend** that the timeframe to lodge a complaint be extended to at least five years. **(Q.14)**
16. **Respect Inc and DecrimQLD recommend** that representative bodies including Respect Inc and trade unions be able to make a complaint on behalf of an affected person in both the conciliation process and the tribunal. **(Q.16)**
17. **Respect Inc and DecrimQLD recommend** that the Act not retain barriers that create undue difficulty for prisoners to access anti-discrimination protections. **(Q.17)**
18. **Respect Inc and DecrimQLD recommend** a process allowing anonymous complaints to be made by sex workers and other groups who have significant barriers to lodging a complaint. **(Q.18)**
19. **Respect Inc and DecrimQLD recommend** the current approach, which allows for discretionary decisions on anonymity should instead be guaranteed for all sex workers lodging complaints. **(Q.18)**
20. **Respect Inc and DecrimQLD recommend** that financial barriers to sex workers progressing cases beyond QCAT be mitigated. **(Q.18)**
21. **Respect Inc and DecrimQLD recommend** a review into the use of non-disclosure agreements as standard practice in conciliation agreements as the outcome is erasure of the outcome of decisions, and knowledge of the ability to pursue complaints. **(Q.18)**
22. **Respect Inc and DecrimQLD recommend** a change that clarifies the intention of the legislation to the courts and to those considering reporting discrimination. **(Q.19)**
23. **Respect Inc and DecrimQLD recommend** that welfare measures and equal opportunity measures be retained and collapsed into a single special measures provision. **(Q.20)**
24. **Respect Inc and DecrimQLD recommend** that the Act adopt an approach similar to Victoria's Equal Opportunity Act 2010 to ensure the special measures are assessed in a way that is not open to misuse. **(Q.20)**
25. **Respect Inc and DecrimQLD recommend** a positive duty requiring services to take reasonable and proportionate measures to prevent discrimination, sexual harassment and vilification. A positive duty should cover all aspects of discrimination. **(Q.21)**
26. **Respect Inc and DecrimQLD recommend** that the statutory framework be changed to include organisation complaints in order to better inform the members of that community on how to act going forward given the case outcome, and to effect change in cases where there is systemic discrimination and insurmountable access barriers for individual sex workers exist **(Q.22)**
27. **Respect Inc and DecrimQLD recommend** that the Human Rights Commission be given the power to take action, including progressing a discrimination case where there is evidence of systemic discrimination, sexual harassment or vilification. **(Q.22)**
28. **Respect Inc and DecrimQLD recommend** that a specialist list be created. In relation to sex work cases, a tribunal decision-maker should be required to have extensive professional subject matter knowledge. **(Q.23)**
29. **Respect Inc and DecrimQLD recommend** that decisions from all conciliation and tribunal hearings should be published, with the name/s of the sex worker or PLHIV complainant protected. **(Q.23)**
30. **Respect Inc and DecrimQLD recommend** that sex worker outreach organisations be specifically resourced to provide education to the broader community on how anti-discrimination legislation protects sex workers. **(Q.24)**

31. **Respect Inc and DecrimQLD recommend** the addition of a broader attribute of disability that covers all types of physical and mental impairment in line with the Convention on the Rights of Persons with Disabilities. **(Q.25)**
32. **Respect Inc and DecrimQLD recommend** the addition of an attribute that recognises people living with HIV in line with the NAPWHA and QPP submission. **(Q.25)**
33. **Respect Inc and DecrimQLD recommend** a new definition of gender identity in the Act, to remove the binary language and promote inclusiveness of all identities. **(Q.26)**
34. **Respect Inc and DecrimQLD join with Queensland Council of LGBTI Health to recommend** expanding the protected attributes referred to in the Anti-Discrimination Act 1991 (Qld) to specifically refer to a person's sexual expression, including all identities. **(Q.27)**
35. **Respect Inc and DecrimQLD recommend** the protected attribute 'lawful sexual activity' be replaced by a new attribute with both 'sex work' and 'sex worker'. **(Q.28)**
36. **Respect Inc and DecrimQLD recommend** definitions for the new attributes of 'sex work' and 'sex worker': 'sex work means the provision by a person of services that involve the person participating in sexual activity with another person or persons in return for payment or reward' and 'sex worker means a person who performs sex work'. **(Q.29)**
37. **Respect Inc and DecrimQLD recommend** that the attribute *irrelevant criminal record* be added to the Anti-Discrimination Act. **(Q.30)**
38. **Respect Inc and DecrimQLD recommend** that the attribute *irrelevant medical record* be added to the Anti-Discrimination Act. **(Q.31)**
39. **Respect Inc and DecrimQLD recommend** that the attribute *immigration status* be added to the Anti-Discrimination Act. **(Q.32)**
40. **Respect Inc and DecrimQLD recommend** that the attribute *physical features* be added to the Anti-Discrimination Act. **(Q.34)**
41. **Respect Inc and DecrimQLD support the Queensland Council of LGBTI Health recommendation** for the attribute *to be expanded to specifically refer to a person's gender identity and gender expression*, while also expanding the definition of gender identity to clearly include non-binary and gender diverse people. **(Q.35)**
42. **Respect Inc and DecrimQLD support the Queensland Council of LGBTI Health and IHRA recommendations** to expand the attributes to cover sex characteristics. **(Q.36)**
43. **Respect Inc and DecrimQLD recommend** that the attribute *subject to domestic violence* be added to the Anti-Discrimination Act. **(Q.37)**
44. **Respect Inc and DecrimQLD recommend** that the attribute *accommodation status* be added to the Anti-Discrimination Act. **(Q.38)**
45. **Respect Inc and DecrimQLD recommend** that the protected attribute 'lawful sexual activity' be replaced with a new attribute of both 'sex work' and 'sex worker'. **(Q.39)**
46. **Respect Inc and DecrimQLD recommend** the introduction of a new attribute to protect people who use drugs. **(Q.39)**
47. **Respect Inc and DecrimQLD recommend** that the exemption that allows religious bodies, service and accommodation providers to discriminate be repealed. **(Q.41-44).**
48. **Respect Inc and DecrimQLD recommend** the repeal of exemption 28(1) that allows discrimination against sex workers (or intersex, gender diverse, non-binary or transgender people) in 'work involving the care or instruction of minors'. **(Q.45)**

49. **Respect Inc and DecrimQLD recommend** that the exemption for assisted reproductive technology services be repealed. **(Q.46)**
50. **Respect Inc and DecrimQLD recommend** that exemption 106C be repealed to make accommodation discrimination against sex workers unlawful. **(Q.47)**
51. **Respect Inc and DecrimQLD recommend** that the citizenship/visa status exemption be repealed. **(Q.49)**
52. **Respect Inc and DecrimQLD recommend** that there should be no exemptions to insurance and superannuation providers allowed on the basis of sex work. **(Q.50)**
53. **Respect Inc and DecrimQLD recommend** that non-profit goods and services providers should not be exempt from discrimination toward sex workers or on the basis of sex work **(Q.52)**
54. **Respect Inc and DecrimQLD recommend** that financial discrimination of sex workers should not be allowed under exemptions in State or Federal law. **(Q.55)**
55. **Respect Inc and DecrimQLD recommend** that sections 28 (1) and 106C be repealed as they are incompatible with the *Human Rights Act 2019* (Qld). **(Q.56)**
56. **Recommendation 56:** Respect Inc and DecrimQLD recommend that Attribute 7 (I) be replaced by the attribute 'sex work' and 'sex worker' as it is incompatible with the *Human Rights Act 2019* (Qld). **(Q.56)**

Discussion Question Responses

Q.1-4: Direct vs indirect discrimination

Should the Act clarify that direct and indirect discrimination are not mutually exclusive? Should the test for direct discrimination remain unchanged, or should the ‘unfavourable treatment’ approach be adopted? Alternatively, is there a different approach that should be adopted? If so, what are the benefits of that approach? Should the test for indirect discrimination remain unchanged, or should the ‘disadvantage’ approach be adopted? Alternatively, is there a different approach that should be adopted? If so, what are the benefits of that approach? Do you support a unified test for both direct and indirect discrimination? Why or why not?

Discrimination against sex workers may be direct, indirect or a combination of both. In some cases it may be difficult to distinguish between them. For example, a recent publication by AUSTRAC (2022)⁴ sets out financial indicators of alleged criminal activity relating to sexual servitude; however, the list provided includes most of the normal work activities engaged in by sex workers in Australia.

AUSTRAC indicates the publication was created to enable financial institutions to be ‘on the look-out’ for possible criminal activities. In practice, the intent is that financial institutions will directly discriminate against their customers who are sex workers. The AUSTRAC document itself creates a system of indirect discrimination as financial institutions directly discriminate against sex workers, using the document as their guideline. The current ACT legislation using the words, ‘when a person discriminates either directly or indirectly, *or both*, against someone else’⁵ is an approach we would endorse in the Act.

Recommendation 1: Respect Inc and DecrimQLD recommend that the Act clarifies that direct and indirect discrimination are not mutually exclusive, by adopting the approach taken in current ACT legislation.

Comparators

It is our opinion that the case *Payne v APN News & Media* (2015)⁶ demonstrates how the application of a comparator test does not support sex workers seeking redress for discrimination. Sex workers are routinely charged more for advertising in the personals section of classifieds pages, set aside for sex work advertisements. Settlements at conciliation for this type of discrimination have not been uncommon. However, the ruling in this case caused the case to fail when it was decided that another advertiser in a different section of the newspaper was not a suitable comparator. Instead, it was suggested that the comparison would need to be to someone advertising in the personals section who was not

⁴ 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

⁵ *Discrimination Act 1991*. (ACT). s. 8.

⁶ *Payne v APN News & Media* (2015). QCAT 514.

<https://www.qhrc.qld.gov.au/resources/case-studies/lawful-sexual-activity>

a sex worker, and who was charged less. We do not accept that this decision was made with an adequate understanding of the issues. Equally, the case of *Dovedeen Pty Ltd v GK* (2013) demonstrates the impact of arguments about the 'correct' comparator reducing the effectiveness of the Act. Over three hearings the issue of the comparator was debated ad nauseum to the detriment of fairness.

Combined attributes

The sex worker community is diverse, encompassing sex workers who are part of the LGBTIQ+ communities, Aboriginal and Torres Strait Islander people, people living with HIV (PLHIV), people with disability, people who use drugs, and a wide range of ages, racial and cultural backgrounds, and religions. When sex workers experience discrimination it is often due to the combined affect of attributes (intersectionality), as discussed in Q.7 below.

We support changes that remove the need for use of a comparator test, allow for combined attributes (intersectionality) and make judgments on the basis of 'unfavourable treatment' rather than 'less favourable', and 'disadvantage' rather than 'ability to comply'. A unified approach which determines that a policy or practice is invalid if it disadvantages a protected group, whether directly or indirectly, could be helpful.

Recommendation 2: Respect Inc and DecrimQLD recommend the removal of the requirement for a comparator test, allow for combined attributes (intersectionality), and make judgments on the basis of 'unfavourable treatment' rather than 'less favourable', and 'disadvantage' rather than 'ability to comply'.

Recommendation 3: Respect Inc and DecrimQLD recommend the introduction of a unified test for both indirect and direct discrimination.

6: Reasonable adjustments/accommodations and adopting a positive duty

Should the Act adopt a positive duty to make 'reasonable adjustments' or 'reasonable accommodations'? If you consider that this approach should be adopted: Should this be a standalone duty? What factors should be considered when assessing 'reasonableness' of accommodations? Should it apply to disability discrimination, other specific attributes, or all attributes? Should it apply to specific areas of activity or all areas? For example, should it apply to goods and services, work, education, and accommodation? How would any amendments interact with exemptions involving unjustifiable hardship? Would there be a need to retain the concept of unjustifiable hardship at all?

A positive duty to make reasonable accommodations in all areas of discrimination against sex workers is necessary to effect systemic change.

Sex workers are commonly discriminated against in the areas of provision of goods and services, especially housing/accommodation, health care, financial services and online platforms, police services, advertising and education.

These are a sample of the areas of discrimination reported to Respect Inc

Finance	Banking facilities such as Eftpos and loans being refused.
	Accounts being closed or refused without notice or cause.
	Insurance companies refusing coverage for life insurance or income protection. As Workcover QLD still does not provide coverage to sex workers within brothels, these sex workers continue to be recognised as independent contractors.
Education	Schools refusing children of sex workers to be enrolled.
	Training providers refusing to acknowledge the skills and knowledge gained as a sex worker or refusing enrolment by 'out' sex workers.
Community groups	Churches and clubs refusing enrolment or membership.
Welfare programs	Community services refusing to provide assistance: <ul style="list-style-type: none"> ● Forms of aid such as Emergency Relief Funding ● Children/family support programs ● Homeless outreach charities ● Domestic violence support services
	Homelessness support services where evictions upon discovery of sex worker status or discovery of sex work activities outside of the housing provided occur regularly.
	Children's community services disadvantaging families where one family member has identified as a sex worker.
	Centrelink threatening to cut off payments due to sex work.
	Centrelink-associated job providers not acknowledging that sex work is a valid form of employment.
Media	Advertising media charging more for sex work ads and refusing to charge on account, insisting on pre-paid accounts and refusing to allow the option of opting out of additional, expensive online advertising.
	Vilifying media articles.
Policing	Refusal to take reports across a variety of criminal actions towards sex workers, using stigma and discrimination to drive unbelieveability of the sex worker making the report.
	Accusing sex workers of conducting illegal activity due to lack of knowledge on sex work laws.

Employment	Where a person is dismissed or harassed until they resign due to knowledge of their past or current sex worker status.
	Refusal to grant Blue Cards to allow employment in sectors that work with minors if a person discloses their sex work.
Accommodation	Eviction.
	Refusing an accommodation booking.
	Charging more per night, additional fees.
	Inability to rent a premises or house due to stigma and discrimination around sex workers being bad tenants or attracting more traffic to the location.
	Adding sex workers to a banned list.
	Supplying untrue or derogatory references to other housing or accommodation providers.
Health	When sex worker status is discovered refusal to continue with diagnostics unless an STI test is performed.
	Obsessive focus around sexual health, STI's and BBV's.
	Mental health professionals blaming sex work for a broad range of health conditions, regardless of the sex worker's experiences.
	Recommendations to stop work as the remedy for all difficulties or diseases.

In a recent survey of sex workers in Queensland, participants described a wide range of circumstances under which they were discriminated against with some listing as many as six different types in one response and many stressing the continuous and oppressive nature of the discrimination they face.

Survey participant 50: "I have been judged, looked down on, harassed, assaulted, bullied, denied care, ignored, the list goes on."

In interactions with doctors and other health professionals sex workers felt highly discriminated against on the basis of their sex work. Some discrimination was moralistic (practitioners would simply refuse to engage) or paternalistic (being told that it would affect their mental or other health).

Survey participant 48: "A doctor who I told had the receptionist call to cancel my follow up appointment and told me to see another doctor at the practice or go elsewhere."

Survey participant 65: "Have been to health care that has blamed all [my] issues on sex work and not been able to give bone marrow to someone due to being a sex worker."

Survey participant 108: "Psychologist didn't want to continue to see me after 6 years."

Other discrimination from health professionals is based on inaccurate and stereotypical ideas about sex workers being vectors of disease. Sex workers are often exposed to invasive questioning in regards to health access, including limiting access to diagnostic treatments on the basis of STI presumption.

Survey participant 13: "Kept in hospital rooms waiting because they ran needless STI tests for issues, that clearly weren't STI related, once they heard I was a worker."

Survey participant 84: "I have had doctors deny my healthcare or assume any complaint I had was due to STIs despite never having tested positive for any STI in over 10 years of sex work."

Banning and shadow-banning⁷ on common social media platforms for assumed sex work activity is a normal and documented process among all large social media platforms. This severely limits sex workers' ability to conduct financial transactions online, advertise and network among peers. Sex workers are often removed from these platforms for unrelated indiscretions due to their profile or social engagement being viewed as sex worker-positive or for expressing sex worker-positive views. This has been widely noted across multiple platforms with increasing suppression of sex worker profiles, whether outed as sex workers or assumed as such.

Survey participant 26: "I have been kicked off a number of online platforms (including those I was not participating in as a sex worker - ie dating apps) and been refused banking services."

Survey participant 105: "I have experienced censorship and discrimination by most mainstream online platforms including payment platforms. I have been discriminated against by 2 major banks."

Sex workers who did the survey identified many problems where discrimination by police had thwarted their ability to report crimes against them or where the police had been rude and abusive.

Survey participant 169: "Police did not even bother responding to my complaints of harassment and assault."

Survey participant 174: "The police BELITTLED ME FOR BEING A SEX WORKER WHEN I WAS NOT COMMITTING ANY CRIMES THEY JUST ASKED WHAT I DO FOR WORK."

⁷ Definition, Oxford Languages: 'to block (a user) from a social media site or online forum without their knowledge, typically by making their posts and comments no longer visible to other users.'

Survey participant 181: "Police yelled and abused me for 30 minutes on the street in front of many spectators 'Prostitution is illegal!!', after I came out of my outcall booking where I did nothing illegal."

Sex workers often experience discrimination in sex work workplaces because of other, often combined, attributes. For example, under the current legal framework it is very difficult for male, transgender, larger-bodied and mature-age sex workers to obtain work in licensed brothels. Licensed brothels and strip clubs routinely employ people on the basis of age, ethnicity, sex, gender, parental status, body type, etc., making it almost impossible to get on a brothel roster if one is not a young, white cisgender woman. Also, the length and timing of shifts makes it difficult to comply if one is a single parent or living with a disability. It would be helpful if these workplaces were required to adopt a positive duty to make reasonable accommodations to provide access to sex workers with all attributes.

Previous attempts to obtain justice and effect change through the courts have largely failed, causing more emotional and financial damage, especially when the complainant is required to pay the legal expenses of the respondent (as seen in the cases of *Dovedeen Pty Ltd v GK* (2013)⁸ and *QCAT v Payne* (2017)⁹). These sorts of negative outcomes result in other sex workers being reluctant to make a complaint, and so it is important to bring in reasonable accommodations so that people do not have to make a complaint in the first place.

Recommendation 4: Respect Inc and DecrimQLD recommend the adoption of a positive duty to make 'reasonable adjustments' or 'reasonable accommodations' in all areas to prevent discrimination against sex workers both within the workplace and outside of it.

7: Combination of attributes (intersectionality)

Is there a need to protect people from discrimination because of the effect of a combination of attributes? If so, how should this be framed in the Act? Should other legislative amendments be considered to better protect people who experience discrimination on the basis of combined grounds? What are some examples of where the current law does not adequately protect people from discrimination on combined grounds?

We agree with Community Legal Centres Queensland that 'We need better coverage for more recently recognised attributes and intersectionality, and flexibility to ensure other areas of social inequality are protected in the future'.¹⁰ Discrimination can be the result of multiple factors (or attributes), and Queensland's discrimination legislation should protect against intersectional discrimination related to one or more, or a combination of grounds.

⁸ *Dovedeen Pty Ltd v GK* (2013). QCA 194.

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

⁹ *QCAT v Payne* (2017). QCA 16. <https://www.queenslandjudgments.com.au/caselaw/qca/2017/16>

¹⁰ Community Legal Centres Queensland, Reviewing the Anti-Discrimination Act – 10 point plan for a fairer Queensland, <https://www.communitylegalqld.org.au/news/reviewing-the-anti-discrimination-act-a-ten-point-plan-for-a-fairer-queensland/>

Survey participant 66: "It seemed pointless coz it's constant also it's often due to multiple factors and many reporting methods fail to account for this and want it to be blamed on one specific thing when it's often hard to say - the worst discrimination I've faced is presumably on account of being a sex worker who uses drugs and is autistic and a woman and 'acting odd' (autistic)."

When sex workers experience discrimination it is often due to the combined effect of attributes. Sex workers of Asian ethnicity are targeted by police because some of their work practices and work places are illegal in Queensland, and police incorrectly assume that they do not have valid visas to work in Australia. Police often use language barriers to their advantage when pursuing charges against Asian sex workers. They are also vilified in the media, as are sex workers who are Aboriginal or Torres Strait Islander people, people living with HIV, drug users or street-based.

We support an approach similar to that under Commonwealth law, which does not require a person to prove that their protected attribute is the **only** or **main reason** for the discrimination; instead it is preferred that it is only necessary to prove the protected attribute is **one of the reasons** for the discrimination.

Recommendation 5: Respect Inc and DecrimQLD recommend an approach that protects people who experience discrimination on the basis of combined grounds and does not require a person to prove that their protected attribute is the only or main reason for the discrimination; instead it is preferred that it is only necessary to prove the protected attribute is one of the reasons for the discrimination.

8: Shifting the onus of proof

Should the onus of proof shift at any point in the process? If yes, what is the appropriate approach?

The current **onus of proof** requiring a sex worker to prove discrimination against us is a major barrier to addressing discrimination in Queensland, including systemic discrimination. In our experience some businesses, once aware of the legislation, will change the reason they provide for denying services but the overall outcome is the same: they continue to discriminate against sex workers.

The onus of proof should shift to the respondent; similar to the approach the *Fair Work Act 2009* (Cth)¹¹ takes where the complainant needs to show that they have the attribute, and then the respondent must prove that they did not discriminate.

¹¹ *Fair Work Act 2009* (Cth). s 361.

In the *Payne v APN News & Media* (2015)¹² case this would have significantly reduced the burden to prove that the higher costs to advertise in the sex work sections in the personals classifieds, as well as the obligatory pre-paid account, were discriminatory and not due to 'reasonable business expenses' required due to the nature of the advertising.

Recommendation 6: Respect Inc and DecrimQLD recommend shifting the onus of proof to the respondent in order to prove that they did not discriminate.

9: Adding 'in the presence of a person'

Should the additional words 'in the presence of a person' be added to the legal meaning of sexual harassment in the Act? What are the implications of this outside of a work setting? Should a further contravention of sex-based harassment be introduced? If so, should that be applied to all areas of activity under the Act? Should the Act explicitly prohibit creating an intimidating, hostile, humiliating, or offensive environment on the basis of sex? If so, should that apply to all areas of activity under the Act?

Sexual harassment

Sexual harassment is an important issue for sex workers. Sections 119 through 120 of the Act define the meaning of, and the relevant circumstances which deem eligibility for, sexual harassment claims. These sections must include 'sex work' and 'sex workers' and also recognise that sex workers can, and do, experience sexual harassment, including in sex work workplaces. The examples in the Act and depicted on the QHRC website should include sex work scenarios to illustrate the opportunity to report these experiences.

In Queensland, sex workers working in licensed brothels have expressed concerns about not having doors on the workers' change room and the presence of cameras in the workers' change room.

In New Zealand where many aspects of sex work were decriminalised in 2003, the Human Rights Review Tribunal ruled that sex workers were protected against sexual harassment. This allowed for a settlement in favour of a sex worker who lodged a sexual harassment complaint against a sex industry business owner. The settlement was intended to compensate the woman for emotional harm and lost earnings. Her identity and all other details were suppressed.

We anticipate that there will be an opportunity in the upcoming decriminalisation review for sex workers to produce detailed OH&S guidelines that can more specifically outline sexual harassment in sex work workplaces. Unwelcome sexual harassment of sex workers in workplaces can be 'focused on the person' but also occurs 'in the presence of the person'. In New Zealand the tribunal decided that context was relevant and that even in a brothel sexual language can be inappropriate if it is suggestive or abusive. However, it is important to

¹² *Payne v APN News & Media* (2015). QCAT 514.
<https://www.qhrc.qld.gov.au/resources/case-studies/lawful-sexual-activity>

balance the need for protection against a 'hostile environment' with the potential dangers of overreach in a service industry which traditionally uses sexual language and imagery.

Recommendation 7: Respect Inc and DecrimQLD recommend against explicitly prohibiting creating an intimidating, hostile, humiliating, or offensive environment on the basis of sex due to the potential for overreach.

Recommendation 8: Respect Inc and DecrimQLD recommend that 'in the presence of a person' be included in the Act.

Recommendation 9: Respect Inc and DecrimQLD recommend an amendment to the Act so that it specifically refers to sexual harassment covering sex workers and sex work workplaces and for HRC resources to include examples and information to that effect, including on their website.

Sex-based harassment

The subject of sex-based harassment as indirect sex discrimination is already addressed in the Act, and it would be remiss to include a contravention specific to sex-based harassment without also including gender- and gender-identity-based harassment. The review would need to include a more thorough definition of 'sex-based harassment' that shows this specific contravention belongs in the same category as sexual harassment, as the Discussion Paper seems to merge the ideas of harassment based upon sex and sexual harassment.

Recommendation 10: Respect Inc and DecrimQLD recommend against introducing a further contravention of sex-based harassment due to the lack of clarity on the definition and need for more inclusivity.

10: Direct right of access to tribunals

Should the Act include a direct right of access to the tribunals? Should a complainant or respondent be entitled to refer the complaint directly to a tribunal? Should a person be entitled to apply directly to the Supreme Court where the circumstances of a complaint raises matters of significant public interest? If so: Should it be confined to certain matters? What remedies should be available to the complainant? Who would have standing to bring the complaint? What are the risks and benefits of any direct right of access? What circumstances could this right of access apply to? How could the process be structured to ensure that tribunals and the Supreme Court are not overwhelmed with vexatious or misconceived claims?

We support a direct right of access to the tribunals, and even the Supreme Court, especially in circumstances where conciliation would result in an outcome that cannot be published or create systemic change. It has been the experience of Respect Inc that the conciliation process shuts down the public visibility of outcomes, making it difficult to use this process for community education about discrimination and systemic change. When a complaint is

resolved at the conciliation stage, the agreement often includes a release, discharge and indemnity agreement (both parties sign) and this can:

- withdraw the right to pursue the case further in other ways.
- result in people accepting far less than they deserve.
- include a non-disclosure or 'gag' clause (especially where financial compensation is agreed) that prevents the parties discussing the discrimination or the agreement with anyone else.

Recommendation 11: Respect Inc and DecrimQLD recommend that the Act include a direct right of access to the tribunals and a right to apply directly to the Supreme Court in all circumstances.

Recommendation 12: Respect Inc and DecrimQLD recommend a review into the use of non-disclosure agreements as standard practice in conciliation agreements as the outcome is erasure of the outcome of decisions, and knowledge of the ability to pursue complaints.

12: Non-written complaints and assistance

Should non-written requests for complaints be permitted, for example by video or audio? Alternatively, should the Commission be allowed to provide reasonable help to those who require assistance to put their complaint in writing? How would this impact on respondents? How can the right balance be achieved between ensuring certainty for the respondent about the contents of the complaint while addressing the barriers to access?

The ability to provide complaints in non-written formats (such as video and audio) would definitely make the process more accessible to all sex workers. Sex workers often use contemporary digital technology in their work and may feel more comfortable providing evidence in non-written formats. Non-written formats also provide sex workers with disabilities or chronic illness access to provide a complaint with or without assistance.

Also, sex workers with English as a second language would benefit from assistance with written forms in English. It should be possible with current technology to convert video, audio and non-English text into a format that the respondent can understand and use in their defence.

Recommendation 13: Respect Inc and DecrimQLD recommend accepting complaints in non-written form and providing assistance with complaint lodgement.

13: Adaptations for flexibility

How can the law be adapted to allow a more flexible approach to resolving complaints? Should the current provisions that require set notification and conference timeframes be retained, changed or repealed? Should all complaints

proceed through the same conciliation model, or should early intervention be an option? What legislative or non-legislative measures should be in place to ensure procedural fairness, timeliness, and efficiency?

We would support a more flexible and individually tailored approach to dispute resolution if this will reduce formality and pressure on the complainant. However, it is important that interference with processes is protected against. We note that in relation to sex workers, stigma and discrimination are the norm and governments should not be able to interfere in cases. An example was the Attorney General's interference in the final Supreme Court case via *amicus curiae* in the case of *Dovedeen v GK* (2013)¹³.

We are also concerned that an attempt to create speedier outcomes may see more cases pushed to resolve in conciliation when those settlements are not published and therefore do not create systemic change for sex workers as a community.

Recommendation 14: Respect Inc and DecrimQLD recommend the law be adapted to allow a more flexible approach to resolving complaints by ensuring the approach is more individually tailored and the potential for external interference is mitigated.

14: Appropriate timeframe for lodging

Is 1 year the appropriate timeframe within which to lodge a complaint? Should it be increased, and if so, by how long? Should there be special provisions that apply to children or people with impaired decision-making capacity? Should out of time complaints that have been accepted at the Commission as showing 'good cause' be subjected to the further requirement of proving 'on the balance of fairness between the parties, it would be reasonable to do so' before being dealt with by the tribunal? Should the tribunal review the Commission's decisions to decline complaints instead of the Supreme Court?

It is our experience that sex workers are subject to so much stigma and discrimination that it becomes 'normalised' to expect that this is a part of life. It may take some time for a sex worker to realise that what they have experienced is discrimination and that there are legal means to obtain justice. Furthermore, discrimination resulting in eviction and other harmful repercussions can be traumatising to the extent that it takes time for the sex worker to stabilise their lives and be emotionally ready to make a complaint, particularly if they believe they will be outed by the process. What is the time frame that should be put on an incident or pattern of behaviour that has fundamentally affected someone's life? When a thesis supervisor declines to continue working with a Master's student due to their objections to sex work, or a university invokes their morality clause to expel a student who is participating in sex work, these have drastic and long-lasting impacts on lives. We believe that a more appropriate timeframe would be more than one year, and at least five years.

¹³ *Dovedeen Pty Ltd v GK* (2013). QCA 194.
<https://www.queenslandjudgments.com.au/caselaw/qca/2013/194>

Survey participant 117: “university supervisor female sexual harassment emotional trauma ruined career”.

Recommendation 15: Respect Inc and DecrimQLD recommend that the timeframe to lodge a complaint be extended to at least five years.

15: Representative complaints

Are there any changes that would improve the accessibility and utility of representative complaints? What factors influence the capacity for affected people to assert their rights as a representative complaint?

Sex workers often experience discrimination as a class, and representative complaints would be a good way to obtain justice without individual sex workers having to take up the cause by themselves. According to Community Legal Centres Queensland, Queensland higher courts have the same class action regime as exists in the *Federal Court of Australia Act 1976* (Cth)¹⁴ and the *Racial Discrimination Act 1975* (Cth)¹⁵ in higher courts, but it does not exist in QCAT, where anti-discrimination cases are conducted. We need the same class action regime to apply to cases under the Anti-Discrimination Act.

16: Organisation complaints

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?

Organisation complaints would allow Respect Inc, Queensland’s sex worker organisation, to make a complaint on behalf of a sex worker or group of sex workers. This would also assist in protecting the anonymity of sex workers wishing to lodge a complaint.

Sex workers experience extreme societal stigma, which means they are more likely to proceed with a complaint if they are able to access an organisation they trust to lodge a complaint on their behalf.

The likelihood of being ‘outed’ as a sex worker is a significant barrier to a sex worker lodging a complaint when experiencing discrimination. Allowing Respect Inc to make a complaint on behalf of a sex worker would remove this barrier to a considerable degree. Being outed as a sex worker can result in very real impacts on sex worker safety and mental health and has resulted in loss of custody of children, physical and psychological harm, disconnection from family and other social engagements, and vilification. This advocacy should be allowed in both conciliation and tribunal proceedings because the issues relating to ‘outing’ do not end at the conciliation stage.

¹⁴ [Federal Court of Australia Act 1976](#). (Cth).

¹⁵ [Racial Discrimination Act 1975](#). (Cth).

Recommendation 16: Respect Inc and DecrimQLD recommend that representative bodies including Respect Inc and trade unions be able to make a complaint on behalf of an affected person in both the conciliation process and the tribunal.

17: Prisoner provisions

Should the additional requirements for prisoners to make complaints be retained, amended, or repealed? Do the current provisions strike the right balance in ensuring access to justice while encouraging early resolution? Should any internal complaint requirements for prisoners be retained, and if so, how can they be simplified to overcome practical concerns?

Community Legal Centres Queensland support this, stating, 'Where prisoners or people on community service orders experience sexual harassment or discrimination while serving their sentence, the state government is a "protected defendant" and it is much more onerous to bring a complaint against them. The government should have the same obligations to follow the law as everyone else, and all people in Queensland should have the same level of protection'.¹⁶

As sex work is still criminalised in Queensland we argue that exemptions that make it more difficult for a prisoner to bring about a claim would be a further barrier to sex workers who are held in prison.

Recommendation 17: Respect Inc and DecrimQLD recommend that the Act not retain barriers that create undue difficulty for prisoners to access anti-discrimination protections.

18: Improving complaints process

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?

Survey participant 7: "I reported earlier cases of discrimination but have learnt over time that I am discriminated against in the process of reporting discrimination and the reports are not taken seriously. In QLD you have to face the person that has discriminated against you - and sit in a room where people talk about you as a sex worker."

¹⁶ Community Legal Centres Queensland, Reviewing the Anti-Discrimination Act – 10 point plan for a fairer Queensland, <https://www.communitylegalqld.org.au/news/reviewing-the-anti-discrimination-act-a-ten-point-plan-for-a-fairer-queensland/>

There are significant barriers to sex workers making a complaint. A recent survey of 204 sex workers reported that it was 'not worth it' to report discrimination, considering the burden of going through the process and the risk of experiencing further stigma, discrimination and mistreatment. Many sex workers also spoke about privacy concerns and fear of consequences in their personal lives if they chose to report. Numerous survey participants stated that they would not report discrimination because they know the law does not adequately cover sex workers and it is, in some cases, legal to discriminate against them. Moreover, many sex workers reported facing discrimination from police and other institutions, feeling that there was no one to support or protect them in these cases where there is a significant power imbalance.

Changes to the conciliation process should reduce barriers by:

Providing options for anonymous complaints

It is essential that there is a process that enables sex workers to lodge a complaint anonymously. As discussed above, sex workers are reluctant to make complaints that have the potential of connecting their sex work to their legal name. There is a very real safety impact for some sex workers if this cannot be assured. Two sections of the Act¹⁷ deal with anonymity; if there is a 'reasonable opinion that the preservation of anonymity of a person who has been involved in a proceeding under the Act is necessary to protect the work security, privacy or any human right of the person', an order can be made 'prohibiting the disclosure of the person's identity'. We believe that this anonymity should be applied to sex workers at all stages to assure their safety in the face of rampant stigma and discrimination, and that this decision should be the default ruling in sex work cases rather than discretionary.

The current process does allow for the anonymity of complainants at the discretion of the Commissioner. However, currently it needs to be applied for at each stage of the process. We assert that the anonymity of a sex worker must be guaranteed at every stage of the process, instead of having to be applied for multiple times.

The case of *Dovedeen Pty Ltd v GK* (2013)¹⁸ demonstrates the way the current system can be a barrier to sex workers progressing a complaint. In this case the tribunal had allowed for the complainant to have their name substituted with the letters GK. However, in the Court of Appeal against the Appeal Tribunal's decision¹⁹, Justices Fraser and Gotterson were persuaded that it would not be appropriate to amend the title of the proceedings to substitute the sex worker's name for initials that she had been identified with up to this point. Justice Wilson dissented, otherwise the non-publication order would have resulted in the effective 'outing' of the person's legal name identifying them as a sex worker. This points to the tenuous and adhoc nature of the current options for anonymity and the potential risk that sex workers must currently weigh up before making a decision to make a complaint.

¹⁷ [Anti-Discrimination Act 1991](#) (QLD). s. 145, 191.

¹⁸ *Dovedeen Pty Ltd v GK* (2013). QCA 116.
<https://www.queenslandjudgments.com.au/caselaw/qca/2013/116>

¹⁹ Crown Law. (2013, July 1). *Court of Appeal rules sex worker not discriminated against by motel operator*.
<https://www.crownlaw.qld.gov.au/resources/publications/court-of-appeal-rules-sex-worker-not-discriminated-against-by-motel-operator>

The added benefit of allowing for organisation complaints, as discussed in Question 16, is that the name of the complainant can remain anonymous to both publication and to the respondent, especially if revealing their name may put them in danger from said respondent.

Survey participant 64: "The reporting requirements are too long and also every formal document wants your real name. Need to be able to report using your working name. Also no real system in place to ensure privacy and confidentiality at all levels."

Provisions for anonymity that are clear and certain would make the process less intimidating and significantly reduce the risk for sex workers. Protecting sex workers' anonymity throughout the entire process is critical to being able to make a complaint as a sex worker. The procedures should make it clear that the anonymity of a sex worker will be protected at every stage. This must occur to allow sex workers to have faith in, and use, these processes available to other citizens.

Removing financial barriers and power imbalance

Although the conciliation process is free to access, if the respondent refuses to settle the matter, it is then referred to the Queensland Civil and Administrative Tribunal (QCAT), and then the Supreme Court (if not resolved at QCAT). This may result in high financial costs.

A considerable power imbalance exists when sex workers, who are already unfavourably treated by courts and government processes, attempt to hold large companies accountable for crimes and in this case discrimination. This can include the ability to afford legal representation and impact on the outcome. In the *Payne vs APN* case a sex worker who was self-represented had to fight against a well represented media consortium.

In cases where an individual sex worker has lodged a complaint against a large company, sex workers regularly describe feeling unsafe and frustrated that they must carry the weight of addressing systemic discrimination against the entire sex worker community, especially when faced with a large team of lawyers and an unsympathetic conciliator or Justice. See recommendation on Q.22 that the Commission should be able to take cases or action to address systemic discrimination, it should not rely on individual sex workers.

Non-disclosure clauses should also be reviewed

When a complaint is resolved at the conciliation stage, the agreement often includes a release, discharge and indemnity agreement (both parties sign) and this can:

- withdraw the right to pursue the case further in other ways.
- result in people accepting much less than they deserve.
- include a non-disclosure or 'gag' clause (especially where financial compensation is agreed) that prevents the parties discussing the discrimination or the agreement with anyone else.

The current process does not result in systemic or behavioural change because the results cannot be made public; they therefore do not set a precedent so other similar businesses (who discriminate) remain unaware and other sex workers also do not obtain the information needed to know they could pursue their own complaints.

A complainant's identity should be protected, but information about the outcome of the process should be available publicly.

Recommendation 18: Respect Inc and DecrimQLD recommend a process allowing anonymous complaints to be made by sex workers and other groups who have significant barriers to lodging a complaint.

Recommendation 19: Respect Inc and DecrimQLD recommend the current approach, which allows for discretionary decisions on anonymity should instead be guaranteed for all sex workers lodging complaints.

Recommendation 20: Respect Inc and DecrimQLD recommend that financial barriers to sex workers progressing cases beyond QCAT be mitigated.

Recommendation 21: Respect Inc and DecrimQLD recommend a review into the use of non-disclosure agreements as standard practice in conciliation agreements as the outcome is erasure of the outcome of decisions, and knowledge of the ability to pursue complaints.

19: Objects clause and purpose

What should be the overarching purposes of the Anti-Discrimination Act? Should an objects clause be introduced? If so, what are the key aspects that it should contain? If the purposes of the Act change, should the name of the legislation change to ensure it reflects those purposes?

Recommendation 22: Respect Inc and DecrimQLD recommend a change that clarifies the intention of the legislation to the courts and to those considering reporting discrimination.

20: Welfare and equal opportunity measures

Should welfare measures and equal opportunity measures be retained or changed? Is there any benefit to collapsing these provisions into a single special measures provision? Should special measures provisions continue to be an exemption to discrimination, or incorporated into the meaning of discrimination?

Organisations that advocate for and employ people who are vulnerable to discrimination must be granted special measures so that they can employ 'peers'. Respect Inc is one such organisation that employs only peers in order to provide the most effective support to our community and to comply with the credentialing requirements of our national peak body, Scarlet Alliance. Occasionally, sex worker outreach organisations need to employ people to specifically address the needs of a sub-community, and those positions will require that applicants have a particular attribute in order to understand and represent that sub-community

effectively. This approach is necessary to provide safe spaces for sex workers and for our organisation to do our work without malicious claims of discrimination.

We support the special measures assessment guidelines as laid out in Victoria's *Equal Opportunity Act 2010*²⁰ that the review listed in the Discussion Paper.²¹

Recommendation 23: Respect Inc and DecrimQLD recommend that welfare measures and equal opportunity measures be retained and collapsed into a single special measures provision.

Recommendation 24: Respect Inc and DecrimQLD recommend that the Act adopt an approach similar to Victoria's Equal Opportunity Act 2010 to ensure the special measures are assessed in a way that is not open to misuse.

21: Positive duties

Do you support the introduction of a positive duty in the Anti-Discrimination Act? Should a positive duty cover all forms of prohibited conduct including discrimination, sexual harassment, and victimisation? Why, or why not? Should a positive duty apply to all areas of activity in which the Act operates, or be confined to certain areas of activity, such as employment? Should a positive duty apply to all entities that currently hold obligations under the Anti-Discrimination Act? What is the extent of the potential overlap between WHS laws and a positive duty in the Anti-Discrimination Act? If a positive duty is introduced, what considerations would apply to the interface between existing WHS laws and the Anti-Discrimination Act? What matters should be considered in determining whether a measure is reasonable and proportionate?

Respect Inc and DecrimQLD support a positive duty requiring entities to take reasonable and proportionate measures to prevent discrimination, sexual harassment and vilification. A positive duty should cover all aspects of discrimination.

Respect Inc currently undertakes training with a number of organisations and institutions to address high levels of stigma and discrimination experienced by sex workers. Respect Inc is also often required to undertake reactive work with entities that are discriminating against, or vilifying, sex workers. Often the goods and services providers do not understand the law or believe no-one will complain. Our experience is that both legislative changes and education on responsibilities are required. Reinforcement within the Act via required positive duty would to some degree address this.

Recommendation 25: Respect Inc and DecrimQLD recommend a positive duty requiring services to take reasonable and proportionate measures to prevent discrimination, sexual harassment and vilification. A positive duty should cover all aspects of discrimination.

²⁰ [Equal Opportunity Act 2010](#). (Vic). s. 12.

²¹ p. 71.

22: A regulatory approach

Should the statutory framework be changed to incorporate a role in regulating compliance with the Anti-Discrimination Act and eliminating discrimination? If so, do you consider that the Commission should undertake this regulatory role, or is there a more appropriate entity? What are the strengths and limitations of the Commission undertaking a regulatory role? What should be the core components of the regulatory model, and what mechanisms and powers should it include? What key features should a regulatory approach adopt to ensure it achieves the right balance between supporting organisations to comply with the Act and ensuring organisations, particularly small and medium-sized entities, are not unnecessarily burdened with regulation? If you recommend an expansion of the Commission’s functions and powers, what is the justification for this expansion?

Rather than relying solely on dispute resolution processes, which require an individual or group to make a claim, it would be beneficial for sex workers’ organisations such as Respect Inc to be able to submit reports to QHRC, or another regulatory body, on areas of concern so that action, warnings and/or educational material could be issued to the potential respondents. For example, when Respect Inc is receiving many complaints from sex workers about discrimination from advertising media or hotels it should be possible to report this to QHRC and receive some material that would serve as a ‘warning’ to members of the discriminating sector. It would also be beneficial to provide the QHRC with the power to proceed with cases where there is systemic discrimination occurring and the barriers to access for sex workers are insurmountable. This is also consistent with point 9 of the Community Legal Centre Queensland’s 10 Point Plan for a Fairer Queensland.²²

The Queensland Human Rights Commission should be able to take action where discrimination is occurring repeatedly, is systemic discrimination against an individual or a group, or where they are unable to progress a complaint themselves.

Recommendation 26: Respect Inc and DecrimQLD recommend that the statutory framework be changed to include organisation complaints in order to better inform the members of that community on how to act going forward given the case outcome, and to effect change in cases where systemic discrimination and insurmountable access barriers for individual sex workers exist.

Recommendation 27: Respect Inc and DecrimQLD recommend that the Human Rights Commission be given the power to take action, including progressing a discrimination case where there is evidence of systemic discrimination, sexual harassment or vilification.

²² Community Legal Centres Queensland, Reviewing the Anti-Discrimination Act – 10 point plan for a fairer Queensland, <https://www.communitylegalqld.org.au/news/reviewing-the-anti-discrimination-act-a-ten-point-plan-for-a-fairer-queensland/>

23: Role of the tribunals

Should there be a specialist list for the tribunals? If so, what would the appropriate qualifications be for a tribunal decision-maker? Should a uniform set of procedural rules be developed to apply across both tribunals? Should the tribunals be required to publish all decisions/substantive decisions? Could data sharing be permitted and encouraged between Commission and tribunals to form a better overall picture? On what basis should the Commission be permitted to intervene in proceedings under the Anti-Discrimination Act. Should leave of the court or tribunal be required? Why or why not? What other issues relating to the functions, processes, power and outcomes of the Tribunals should be considered by the Review?

Specialist lists

We agree that it is necessary to have specialists making decisions in tribunals on matters of discrimination. The *Dovedeen Pty Ltd v GK* (2013)²³ and *Payne v APN News & Media* (2015)²⁴ cases both seem to have suffered from tribunal members who did not have discrimination law as a speciality, and in the case of *Payne* there was an appeal request partly based on the fact that the tribunal 'committee' was made up of one non-judicial member. In addition, it would greatly benefit the sex work community and positively influence the quality of the outcome if at least one member of tribunals in these cases had experience in sex work law.

Recommendation 28: Respect Inc and DecrimQLD recommend that a specialist list be created. In relation to sex work cases, a tribunal decision-maker should be required to have extensive professional subject matter knowledge.

Publishing decisions

The tribunal has non-publication options to suppress '*information that may enable a person who has appeared before the tribunal, or is affected by a proceeding, to be identified*'. While this is important for sex workers (and other communities), it is not enough to ensure that sex workers are able to make a report. As noted in Q.18 of this submission, anonymity is essential to sex worker safety.

It would benefit sex workers to have all results of cases made public, not just those from the tribunals. The identity of the complainant should be protected, particularly for sex workers or PLHIV; however, this should not prevent the outline and decision from being publicly available. This is necessary because sex workers need to know what is possible and also to allow for broader public education.

Recommendation 29: Respect Inc and DecrimQLD recommend that decisions from all conciliation and tribunal hearings should be published, with the name/s of the sex worker or PLHIV complainant protected.

²³ *Dovedeen Pty Ltd v GK* (2013). QCA 116.

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

²⁴ *Payne v APN News & Media* (2015). QCAT 514.

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

24: Non-legislative measures

What non-legislative measures are required to ensure protections under the law are available to everyone?

For sex workers to be ensured protection it is necessary for the anti-discrimination laws to be understood by the broader community. This would require broad public education campaigns; an example of a poster series aimed at changing the public's perception and awareness of the sex workers is in the 2011 campaign by Irish sex worker organisation Turn Off the Blue Light.²⁵

It would help if there were specific examples on the QHRC website of areas that are misunderstood, e.g. sexual harrassment in sex work settings.

Recommendation 30: Respect Inc and DecrimQLD recommend that sex worker outreach organisations be specifically resourced to provide education to the broader community on how anti-discrimination legislation protects sex workers.

25: Grounds of discrimination

Should the attribute of impairment be replaced with disability? Should a separate attribute be created, or the definition amended to refer specifically to mental health or psychosocial disability? Should the law be clarified about whether it is intended to cover people who experience addiction? Should reliance on a guide, hearing or assistance dog be broadened to be reliance on an assistance animal? Should it only apply to animals accredited under law? How would this approach work with the Guide, Hearing and Assistance Dogs Act 2009?

We support the addition of a broader attribute of disability that covers all types of physical and mental impairment in line with the Convention on the Rights of Persons with Disabilities:

*'Discrimination on the basis of disability' means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.*²⁶

We support the response to this question in the submission of NAPWHA and QPP, which recognises that for People living with HIV there is the need for a separate attribute.

²⁵ Natalie. (2011, May 16). Turn Off the Blue Light. *Tits and Sass*.

<https://titsandsass.com/turn-off-the-blue-light/>

²⁶Michael Small. (2007, October 24). *The Convention on the Rights of Persons with Disabilities*.
<https://humanrights.gov.au/about/news/speeches/convention-rights-persons-disabilities>

Recommendation 31: Respect Inc and DecrimQLD recommend the addition of a broader attribute of disability that covers all types of physical and mental impairment in line with the Convention on the Rights of Persons with Disabilities.

Recommendation 32: Respect Inc and DecrimQLD recommend the addition of an attribute that recognises people living with HIV in line with the NAPWHA and QPP submission.

26: Gender identity

Should there be a new definition of gender identity, and if so, what definition should be included in the Act?

The Sex Discrimination Act 1984 (SDA) has a broader definition and makes it unlawful to treat people less favourably than another person in a similar situation because of their sexual orientation, gender identity or intersex status.

Under the Queensland Act, gender identity means that a person identifies as a member of the opposite sex to which they were assigned at birth. It can also mean an intersex person who seeks to live as a member of a particular sex.

We agree with the review Discussion Paper that the current definition excludes people who identify outside of the gender binary, and needs to be remedied. The definition from the World Health Organization sets out the differences between gender, sex, and gender identity quite succinctly:

Gender interacts with but is different from sex, which refers to the different biological and physiological characteristics of females, males and intersex persons, such as chromosomes, hormones and reproductive organs. Gender and sex are related to but different from gender identity. Gender identity refers to a person's deeply felt, internal and individual experience of gender, which may or may not correspond to the person's physiology or designated sex at birth.²⁷

Diverse gender identities are represented in the sex worker community²⁸ compared with the general Queensland population, and therefore disproportionately experience intersectional discrimination based on this characteristic and several others.

We endorse the definition set out in the *Public Health Act 2005* (Qld)²⁹, and believe that a version of this should be included in the Act. This definition specifically uses the Yogyakarta Principles (2007)³⁰ and we note Intersex Human Rights Australia and Queensland Council

²⁷ World Health Organization. (n.d.). *Gender and Health*.

https://www.who.int/health-topics/gender#tab=tab_1

²⁸ Callander D, Wiggins J, Rosenberg S, Cornelisse VJ, Duck-Chong E, Holt M, Pony M, Vlahakis E, MacGibbon J, Cook T. (2019). *The 2018 Australian Trans and Gender Diverse Sexual Health Survey: Report of Findings*. Sydney, NSW: The Kirby Institute, UNSW Sydney.

https://kirby.unsw.edu.au/sites/default/files/kirby/report/ATGD-Sexual-Health-Survey-Report_2018.pdf

²⁹ *Public Health Act 2005*. (Qld).

³⁰ Yogyakarta Principles. (2007). <https://yogyakartaprinciples.org/>

for LGBTI Health also recommend the use of these principles in their submission to this review .

Recommendation 33: Respect Inc and DecrimQLD recommend a new definition of gender identity in the Act, to remove the binary language and promote inclusiveness of all identities.

27: Sexuality

Should there be a new definition of sexuality, and if so, what definition should be included in the Act?

The *Public Health Act 2005* (Qld)³¹ contains a definition of sexual orientation that is based on international human rights principles:

Sexual orientation, of a person, means the person's capacity for emotional, affectional and sexual attraction to, and intimate and sexual relations with, persons of a different gender, the same gender or more than 1 gender.

The World Health Organization also has a broad definition of sexuality that encompasses the ways in which sexuality is experienced by people and influenced by internal and external factors:

...a central aspect of being human throughout life encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, legal, historical, religious and spiritual factors. (WHO, 2006a)³²

A diverse range of sexuality is represented in the sex worker community, and we see the need for greater inclusion of differing sexualities to ensure effective protections in the Act.. We agree with the Queensland Council of LGBTI Health submission that 'sexuality as defined in The Act is also confined to 'heterosexuality, bisexuality or homosexuality' which does not reflect the full spectrum of sexual orientation and expression'.

Recommendation 34: Respect Inc and DecrimQLD join with Queensland Council of LGBTI Health to recommend expanding the protected attributes referred to in the Anti-Discrimination Act 1991 (Qld) to specifically refer to a person's sexual expression, including all identities.

³¹ [Public Health Act 2005](#). (Qld). Ch. 5B, s. 213 E.

³² World Health Organization. (n.d.). *Sexual and Reproductive Health and Research*. <https://www.who.int/teams/sexual-and-reproductive-health-and-research/key-areas-of-work/sexual-health/defining-sexual-health>

28: Lawful sexual activity

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?

The attribute 'lawful sexual activity' has proven to be extremely ineffective in providing anti-discrimination coverage for sex workers in Queensland. The outcome is excessively high levels of discrimination as demonstrated in a recent survey of 204 sex workers who worked in Queensland; 72.5% had experienced discrimination and a further 14.2% were unsure if what they had experienced would be considered discrimination. The majority of discrimination goes unreported and while many factors contribute to this, the limitations of the attribute are partly to blame. Of sex workers who experienced discrimination in the same survey, only 9% reported the discrimination experienced, 91% did not.

'Lawful sexual activity' is an ineffective attribute due to a number of factors, specifically:

- Protection is limited to one's *status* as a sex worker only and does not cover discrimination on the basis of the practice of performing sex work;
- Many aspects of sex work are not 'lawful' in Queensland, including practicing basic safety strategies, leaving many sex workers not protected under 'lawful sexual activity';
- The attribute fails to provide clear direction to the tribunal or courts;
- The attribute obscures from both sex workers and services or providers of goods and services who may discriminate, that sex workers are protected against discrimination, limiting its impact on reducing discrimination and conveying the opportunity to report discrimination.

Rather than a new definition under this attribute, a new attribute replacing 'lawful sexual activity' with both 'sex work' and 'sex worker' is necessary.

Survey participant 156: "Not certain if it counted as discrimination, and concerned that it would backfire on me. I didn't want to lose my day job or home." (survey participant on why they did not report discrimination)

Survey participant 87: "Not good enough coverage in the Act. Not knowing about any other cases where a sex worker has been successful in reporting." (survey participant on why they did not report discrimination)

History³³

The attribute of 'lawful sexual activity' has been contained in the Act since it was first passed in 1991; however, it did not include any statutory definition.³⁴ The attribute was a broad category that encompassed all lawful sexual activity, including sex work. References to the

³³ This section is per the Cairns Community Legal Centre legal opinion provided to Respect Inc 25 February, 2022.

³⁴ *Anti-Discrimination Act 1991* (Qld) (as passed, No. 85/1991).

attribute in the second reading speech and debate in the Legislative Assembly focused on how this new attribute would provide protection for lawful same-sex sexual activity.³⁵

This position changed significantly with the passage of the amendments in the *Discrimination Law Amendment Act 2002 (Qld) (No. 74/2002)*. This amending legislation inserted new, separate attributes into section 7 of the Act, relevantly including ‘gender identity’ and ‘sexuality’, extricating these categories from the broader category of ‘lawful sexual activity’. As no new separate attribute was similarly created for sex work and sex workers, reliance continued for this cohort on the attribute of ‘lawful sexual activity’.

During the same amendments the current exhaustive definition of ‘lawful sexual activity’ as meaning ‘a person’s status as a lawfully employed sex worker, whether or not self-employed’ was inserted (Schedule 1, p.145).

In the decision of *Dovedeen Pty Ltd & Anor v GK [2013] QCA 116*³⁶, the Court of Appeal made it clear that this express statutory definition in the Act limits the attribute to that definition—the protected attribute is a person’s ‘status’ and does not extend to the ‘activity’ of engaging in sex work.³⁷

Relevantly, Fraser JA explains at [22]:

*If the definition were not present in the Act, that Act could be read as prohibiting discrimination against a person in the supply of accommodation on the basis that the person has engaged in or will engage in lawful sexual activity in that accommodation. The definition precludes that approach by making it clear that the relevant prohibited basis of discrimination is only ‘a person’s status as a lawfully employed sex worker’.*³⁸

Legal advice received by Respect Inc states:

The effect of the legislative history and the decision in Dovedeen for sex workers in Queensland is that there is not sufficient protection from discrimination by the current Anti-Discrimination Act 1991 (Qld) in circumstances where:

- *The person is a sex worker without the status of a “lawfully employed” sex worker; and / or,*
- *The alleged discrimination is based on the activity of engaging in sex work, as opposed to their status as a sex worker.*³⁹

Protection required for both being a ‘sex worker’ and doing ‘sex work’

Sex workers in Queensland experience high levels of discrimination in both areas, informing our organisation’s call for a change to the attribute to include ‘sex work’ (performing sex work) and ‘sex worker’ (the status of being a sex worker). It is our strong assertion that it is essential that sex workers are protected from discrimination for both being a sex worker and doing sex work.

³⁵ Hansard, Legislative Assembly, 26 November 1991 and 3 December 1991.

³⁶ *Dovedeen Pty Ltd & Anor v GK* (2013). QCA 116.

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

³⁷ *Dovedeen Pty Ltd & Anor v GK* (2013). QCA 116. Per Fraser and Gotterson JJA at [18]-[24].

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

³⁸ *Dovedeen Pty Ltd & Anor v GK* (2013). QCA 116. Per Fraser JA at [22].

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

³⁹ Per legal advice provided to Respect Inc by Cairns Community Legal Centre.

Survey participant 110: "Nobody would take it seriously, and there aren't any anti discrimination laws with sex worker as a protected class." (survey participant on why they did not report discrimination)

Majority of sex work in Queensland is not lawful

The attribute is also ineffective because not all lawful sexual activity is sex work and not all sex work is currently lawful. In this way the attribute fails to clearly communicate who is protected and in what circumstances. The outcome of obscuring who is protected is that many sex workers are unsure if they are covered, demonstrated by several responses to the DecrimQLD survey of Queensland sex workers.

Survey participant 23: "I did not believe that I had grounds for discrimination complaint because I was not a 'lawful' sex worker." (survey participant on why they did not report discrimination)

In any day, a sex worker in Queensland will cross the line between lawful and unlawful at many points, as many aspects of the work are criminalised including essential safety strategies. In addition, the legislation itself is confusing and open to interpretation so that sex workers cannot be certain whether they are operating lawfully or unlawfully much of the time. This is the case for approximately 90% of sex workers, making it very unclear to sex workers who experience discrimination whether they would be protected by this attribute.

Lack of clear direction to courts and to the community

The attribute 'lawful sexual activity' also fails to provide clear direction as to who and what is unlawful discrimination, to the Queensland community, services and institutions as well as to the Human Rights Commission, QCAT and the courts. This is demonstrated by the lengthy legal debates⁴⁰ over the attribute and definition that have ensued in each case heard by the tribunal and the confusion among lawyers, sex workers and services as to rights and responsibilities.

Survey participant 86: "Because it's legal to be discriminated against because of my profession." (survey participant on why they did not report discrimination)

'Lawful'

The inclusion of 'lawful' in this attribute has the effect of dividing sex workers into those covered by the Act and the majority who are not. The impact is that more marginalised members of the sex worker community, who are likely to experience discrimination at a higher level of frequency or with more extreme outcomes, are not covered. We note that for other attributes anti-discrimination law applies to all people with that attribute, for example the attribute of pregnancy applies to all Queenslanders who are pregnant regardless of whether they may have at some time or are currently undertaking activities that are unlawful.

⁴⁰ *Dovedeen Pty Ltd v GK* (2013). QCA 116.

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

Payne v APN News & Media (2015). QCAT 514.

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

As discussed in response to Q.56, it is likely that 7(l) is incompatible with the *Human Rights Act 1999* (Qld) as it has the effect of depriving a person who is working unlawfully from accessing protections under the Anti-Discrimination Act.

Victorian and Tasmanian options are not effective

The Scarlet Alliance Briefing Paper: Anti-Discrimination & Vilification Protections For Sex Workers in Australia⁴¹ states:

There is a common misconception that attributes ‘occupation’, ‘trade’, ‘profession’, or ‘calling’, and ‘lawful sexual activity’ provide redress for sex workers.

We strongly disagree with the statement in the Discussion Paper that the broader attribute of ‘lawful sexual activity’ in Victoria and Tasmania ‘creates greater protection for sex workers...’. The attributes in both jurisdictions are not defined and therefore have fewer limitations than the Queensland attribute. However, the experiences of sex workers in both jurisdictions demonstrate that the attribute does not provide adequate protection and has resulted in very few complaints lodged. In recent law reform⁴², sex workers in Victoria advocated for the attribute ‘lawful sexual activity’ to be replaced by ‘sex work’ and ‘sex worker’ as a result of the significant limitations of the current attribute. In Tasmania, the Equal Opportunity Commission’s website identifies that the attribute does not cover certain types of sex work.⁴³

It is important that all sex workers be protected under a clearly defined attribute that covers both their status and practical engagement in sex work, and regardless of whether they have previously done or currently do sex work in a lawful manner.

Jurisdictions throughout Australia are progressing changes to anti-discrimination laws. The Northern Territory government tabled the *Achieving Equality in the Northern Territory* paper⁴⁴, in NT Parliament on 16 February, 2022 outlining its intention to make a range of changes to that jurisdiction’s anti-discrimination protections. The tabled paper outlines the intention to change the attributes to include ‘those who engage and have engaged in sex work’.

The *Anti-Discrimination Amendment (Sex Workers) Bill 2020*⁴⁵ before the NSW parliament will establish new attributes to cover sex work and sex workers, past and present, and create vilification protections.

Recommendation 35: Respect Inc and DecrimQLD recommend the protected attribute ‘lawful sexual activity’ be replaced by a new attribute with both ‘sex work’ and ‘sex worker’.

⁴¹ Scarlet Alliance, Australian Sex Workers Association. (2022). *Briefing Paper: Anti-Discrimination & Vilification Protections For Sex Workers in Australia*.
https://scarletalliance.org.au/library/Anti_Discrim2022

⁴² Victorian Government. (2022, February 22). *Decriminalising sex work in Victoria*. [Press release].
<https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>

⁴³ Equal Opportunity Tasmania. (n.d.). *Lawful sexual activity discrimination*.
https://equalopportunity.tas.gov.au/html_version/lawful_sexual_activity_discrimination

⁴⁴ Refer to Attachment 2.

⁴⁵ *Anti-Discrimination Amendment (Sex Workers) Bill 2020* (NSW).

29: Other current attributes

Does the terminology used to describe any existing attributes need to be changed? For attributes that have a legislative definition in the Act, do those definitions need to change? For attributes that do not have a legislative definition, should a definition be introduced? Should the Act separately prohibit discrimination because a person with a disability requires adjustments for their care, assistance animal, or disability aid?

As answered in Q.28, the terminology for 'lawful sexual activity' should be replaced with an attribute of 'sex work' and 'sex worker', covering both the 'status' of being a sex worker and the 'activity' of doing sex work.

Our preferred definitions, adapted from the NT *Sex Industry Act 2019*⁴⁶ are:

- sex work means the provision by a person of services that involve the person participating in sexual activity with another person or persons in return for payment or reward.
- sex worker means a person who performs sex work.

Recommendation 36: Respect Inc and DecrimQLD recommend definitions for the new attributes of 'sex work' and 'sex worker': 'sex work means the provision by a person of services that involve the person participating in sexual activity with another person or persons in return for payment or reward' and 'sex worker means a person who performs sex work'.

30: Special attributes

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 attribute(s) be framed? Should they apply to all areas? What are some examples of how people who have had interactions with law enforcement experience discrimination, including by whom and in what settings? How would the inclusion of these attributes interact with the working with children checks (Blue Cards)?

In the upcoming review of sex work laws in Queensland, sex workers will be calling for the expungement of criminal records for sex workers who have been entrapped and charged by police. People who have criminal records relating to sex work should not be discriminated against. Some sex workers live with sex work charges issued by corrupt police during the pre-Fitzgerald era, and many others with charges issued by police during entrapment since then. Sex workers have been denied appropriate treatment by authorities when presenting as victims of crime. They are also denied approval for taxi drivers' licences, Blue Cards, etc. An attribute may be framed as an 'irrelevant criminal record'. This would provide protection from discrimination on the basis of a criminal record, where the sex work criminal record is not of relevance. In interactions with police, sex workers are interrogated on their sex work criminal history in circumstances where it is irrelevant, such as routine traffic stops.

⁴⁶ [Sex Industry Act 2019](#) (NT). pt. 1, s. 4.

We strongly reject the exclusion of a person for a Blue Card on the basis of a sex work offence for example. Only offences relating to children should be relevant when assessing eligibility for a Blue Card.

Recommendation 37: Respect Inc and DecrimQLD recommend that the attribute *irrelevant criminal record* be added to the Anti-Discrimination Act.

31: Irrelevant medical records

Is there a need for the Act to cover discrimination on the grounds of irrelevant medical record?

Sex workers in Queensland's licensed brothels currently need to provide a medical certificate to show that they have attended for a sexual health check every 3 months. In the upcoming review of the sex work laws we will argue for the repeal of this so that sexual health testing is voluntary, in the same way that the equivalent law has been repealed in Victoria's Sex Work Decriminalisation Bill 2021⁴⁷ and suggest that thereafter it will be necessary for sex workers to be protected from discrimination on the basis of irrelevant medical record.

Recommendation 38: Respect Inc and DecrimQLD recommend that the attribute *irrelevant medical record* be added to the Anti-Discrimination Act.

32: Immigration status

Is there a need for the Act to cover discrimination on the grounds of immigration status? If so, should it stand alone or be added as another aspect of 'race'?

We agree that immigration status should be included as an attribute. Migrant sex workers, from Asian countries in particular, report that police and border force officers threaten to use their immigration status to coerce them into providing information, assistance and testimony to charge others. Immigration status has been reported as being used by police to deny sex workers the ability to report crime or receive support. A disproportionate number of migrant sex workers report feeling targeted by police and provided with inaccurate information about their rights.

Survey participant 37: "They can record that I am a sex worker on my file which can threaten my identity and be used to target me for scrutiny. Police often target disadvantaged workers or migrants and I am a migrant. The risk of me being set up and deported is very real. Police are also the ones who perpetrate abuses and abuse their powers knowing that I have less rights as others."

⁴⁷ [Decriminalisation of Sex Work Bill 2021](#) (Vic).

Survey participant 116: "Police Discrimination (huge both in QLD and NSW) - also outed and reported to border control as a sw."

Recommendation 39: Respect Inc and DecrimQLD recommend that the attribute *immigration status* be added to the Anti-Discrimination Act.

34: Physical features

Is there a need for the Act to cover discrimination on the grounds of physical features?

Sex workers in Queensland may find it difficult to obtain work in brothels, agencies and parlours if they do not fit into a standardised concept of attractiveness that the business owner/manager decides upon using their own subjective judgement. Physical features such as body size and shape, hair lengths and styles, facial features, etc., may be used to determine that a sex worker is not 'marketable', but our experience is that these distinctions are often not accurate and based on narrow considerations of what is desired by clients.

Recommendation 40: Respect Inc and DecrimQLD recommend that the attribute *physical features* be added to the Anti-Discrimination Act.

35: Additional gender attribute

Should an additional attribute of 'gender' be introduced? Should it be defined, and if so, how?

We support the Queensland Council for LGBTI Health recommendation to expand the protected attributes referred to in the Anti-Discrimination Act 1991 (Qld) to specifically refer to a person's gender identity and gender expression, while also expanding the definition of gender identity to clearly include non-binary and gender diverse people.

Recommendation 41: Respect Inc and DecrimQLD support the Queensland Council of LGBTI Health recommendation for the attribute *to be expanded to specifically refer to a person's gender identity and gender expression*, while also expanding the definition of gender identity to clearly include non-binary and gender diverse people.

36: Sex characteristics

Should an additional attribute of sex characteristics be introduced? Should it be defined, and if so, how?

Yogyakarta Principles + 10 includes a definition of 'sex characteristics' as '*each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty*'.⁴⁸

Queensland's Anti-Discrimination Act does not currently cover discrimination based on sex characteristics. We agree with the Queensland Council of LGBT Health submission that recommends that the protected attributes referred to in the Anti-Discrimination Act 1991 (Qld) be expanded to specifically refer to a person's sex characteristics, in support of recommendations from Intersex Human Rights Australia (IHRA) and their submission, in particular discrimination against people with innate variations of sex characteristics should start from a clean slate. A new attribute of 'sex characteristics' and other provisions should not inherit exemptions or regulations from prior versions of the Act.

Recommendation 42: Respect Inc and DecrimQLD support the Queensland Council of LGBTI Health and IHRA recommendations to expand the attributes to cover sex characteristics.

37: Domestic violence

**Should an additional attribute of subsection to domestic violence be introduced?
Should it be defined, and if so, how?**

Like many other workers, sex workers experience issues with domestic violence and this causes problems for them in the workplace for all the reasons identified by the QHRC in the Discussion Paper. Time off may be required to deal with a sudden need to move away and hide from a violent partner. Sex work is largely a client-facing job, and so time off may be needed to deal with visible injuries. Violent partners can, and do, create disruptions in the workplace. Sex workers who experience domestic violence often find it difficult to get police to take them seriously when they report assault.

Survey participant 17: "I was attacked (not work related) and when the police officer involved asked for my name i told him and he put his note pad down and looked at me and asked 'what do you do for work' he knew and the incident wasn't taken seriously."

Survey participant 64: "not believed when trying to report a non-client/ predatory/ stalking behaviour."

Recommendation 43: Respect Inc and DecrimQLD recommend that the attribute *subject to domestic violence* be added to the Anti-Discrimination Act.

⁴⁸ Yogyakarta Principles. (2007). <https://yogyakartaprinciples.org/>

38: Accommodation status

Should an additional attribute of accommodation status be introduced? Should it be defined, and if so, how?

The issues of homelessness and housing instability are increasing in Australia, leading to more people who have no fixed address or secure accommodation. For sex workers, housing instability is a major concern, and it is exacerbated by accommodation providers being able to lawfully discriminate against us, as discussed throughout this submission.

Survey participant 188: "I have found it difficult to get leases - I have been refused on the grounds that I'm a sex worker. I have been evicted on the grounds that I'm a sex worker. I have been evicted from hotels I was working from."

Survey participant 205: "Picked out by neighbours and ridiculed publicly. My stay at hotels have been cut short unless I paid more... The manager of the body corporate threatened to tell the neighbours if I didn't provide sex for free."

Recommendation 44: Respect Inc and DecrimQLD recommend that the attribute *accommodation status* be added to the Anti-Discrimination Act.

39: Other additional attributes

Should any additional attributes be included in the Act? If so, what evidence can you provide for why these attributes should be protected? How should they be defined? How would inclusion of the attribute promote the rights to equality and non-discrimination?

Sex work and sex worker

Yes; the attributes 'sex work' and 'sex worker' must be included in the Act to promote rights to equality and non-discrimination of sex workers. It is important that all sex workers be protected under a clearly defined attribute that covers both the status as a sex worker and practical engagement in sex work, and regardless of whether they have previously done or currently do sex work in a lawful manner.

Recommendation 45: Respect Inc and DecrimQLD recommend that the protected attribute 'lawful sexual activity' be replaced with a new attribute of both 'sex work' and 'sex worker'.

People who use drugs

People who use drugs and undertake pharmacotherapy programs experience high levels of discrimination⁴⁹ and are not covered by a current attribute. It is important that this section of the Queensland community is afforded protection under the Act.

Survey participant 87: "I've heard the way cops talk about sex workers, even the ones who think they're friendly still hate the workers who aren't highly educated or use drugs. There's always some stigma."

Recommendation 46: Respect and DecrimQLD recommend the introduction of a new attribute to protect people who use drugs.

41-44: Religious bodies, service providers, accommodation providers, work exemptions

Should the scope of the religious bodies' exemption be retained or changed? In what areas should exemptions for religious bodies apply, and in relation to which attributes? Should religious bodies be permitted to discriminate when providing services on behalf of the state such as aged care, child and adoption services, social services, accommodation and health services? Should religious bodies be permitted to discriminate when providing accommodation on a commercial basis including holiday, residential and business premises? Should the religious educational institutions and other bodies exemption be retained, changed, or repealed? If retained, how should the exemption be framed, and should further attributes be removed from the scope (currently it does not apply to age, race, or impairment)?

Religious bodies should not be permitted to discriminate on any basis. These exemptions allow and reinforce discrimination against LGBTQIA+ communities, sex workers and other marginalised groups. Religious affiliation cited in the 2016 census⁵⁰ shows that the percentage of people who answered 'no religion' rose by 48% between 2011 and 2016. Australians who identify as Christian decreased by 7% in the same period.

In the area of crisis housing and accessing welfare, food boxes and vouchers from organisations, sex workers experience blatant discrimination. Additionally, it is important that religious bodies do not have a religious exemption to vilify sex workers as they have done in the past, with fundraising advertisements that depict sex workers and the children of sex workers as debased, exploited and victimised.⁵¹

⁴⁹ AIVL. (2017). *Stigma and Discrimination as Barriers to Health Service Access for People Who Use Drugs*. <https://removingbarriers.ashm.org.au/wp-content/uploads/2017/05/ASHM-project-AIVL-Stigma-submission.pdf>

⁵⁰ Australian Bureau of Statistics, Census reveals Australia's religious diversity on World Religion Day, https://www.abs.gov.au/AUSSTATS/abs@.nsf/mediareleasesbyReleaseDate/8497F7A8E7DB5BEFC_A25821800203DA4?OpenDocument

⁵¹ Scarlet Alliance. (2016, June 2). *Salvation Army again exploits discrimination of sex workers for financial gain*. [Media release]. https://scarletalliance.org.au/media/News_Item.2016-06-02.5038

Recommendation 47: Respect Inc and DecrimQLD recommend that the exemption that allows religious bodies, service and accommodation providers to discriminate be repealed.

45: Working with children

Are there reasons why the work with children exemption should not be repealed?

This exemption is discriminatory and fuels inaccurate stereotypes. According to advice received from Cairns Community Legal Centre Inc, 'This exemption provision at s 28(1) is incompatible with human rights, including privacy/reputation and recognition/equality before the law: Human Rights Act 2019 (Qld) ss 15, 25.'⁵²

Sex workers who are teachers or do other work with minors have been negatively impacted, up to and including termination of employment⁵³, in the past when their sex work has become known. Those who responded to our survey were understandably afraid that their sex work would cause them to lose their jobs, if their current or former choice of employment became public.

Survey participant 35: "I would like to study social work or being a teachers aid but know I cannot do that as the same time as being a sex worker because I would be excluded from employment because of my sex worker status." (survey participant on discrimination in other employment)

Survey participant 156: "Things people (former friends) would say, which caused me to worry about losing my Blue Card." (survey participant on discrimination in other employment)

Queensland has a Blue Card system implemented under the *Working with Children (Risk Management and Screening) Act 2000*⁵⁴ that provides a mechanism to screen people who work with minors.

We note from the Discussion Paper that no other jurisdiction allows this type of discrimination. This is an outdated exemption that does not match current community standards, and while it might not be generally used, it has the potential to enable discrimination without any sound logic.

Recommendation 48: Respect Inc and DecrimQLD recommend the repeal of exemption

⁵² Per the Cairns Community Legal Centre Inc legal opinion provided to Respect Inc 25 February 2022.

⁵³ Giles, D. (2005, November 6). Sex-job teacher back at school. *Courier Mail*. [Transcript].

https://scarletalliance.org.au/nm/australia/qld/Giles_2005/

Odgers, R. (2005, November 7). Teachers may face second job ban. *Courier Mail*. [Transcript].

https://scarletalliance.org.au/nm/australia/qld/Odgers_2005/

Public servants should uphold public standards. (2005, November 7). *Courier Mail*. [Transcript].

https://scarletalliance.org.au/nm/australia/qld/Couriermail_2005/

Sex work allowed for teacher: Anti-Discrimination Commissioner Susan Booth. (2005, November 8).

Herald Sun. [Transcript]. https://scarletalliance.org.au/media/News_Item.2005-11-08.0932

⁵⁴ [Working with Children \(Risk Management and Screening\) Act 2000](#). (Qld).

28(1) that allows discrimination against sex workers (or intersex, gender diverse, non-binary or transgender people) in 'work involving the care or instruction of minors'.

46: Goods and services exemptions

Are there reasons why the Act should not apply to provision of assisted reproductive technology services?

As acknowledged in the Discussion Paper, there are no "current clinical or ethical standards that prevent offering fertility treatment to people based on their sexuality or relationship status. The largest fertility service provider in Queensland, Queensland Fertility Group, actively advertises to and provides services for same sex couples and single parents." Respect Inc and DecrimQLD see no reason to keep this exemption in the Act, as it explicitly allows discrimination with no basis.

Recommendation 49: Respect Inc and DecrimQLD recommend that the exemption for assisted reproductive technology services be repealed.

47: Accommodation exemption

Should the sex worker accommodation exemption be retained, changed or repealed?

Exemption 106C

Sex worker organisations and others including the Queensland Law Society warned, when it was first proposed, that this amendment would cause widespread accommodation discrimination against sex workers; that has been the outcome. Accommodation providers of any type can discriminate by refusing to supply accommodation, evicting, charging more or treating someone less favourably if the accommodation provider **reasonably believes** the other person is using, or **intends** to use, the accommodation in **connection** with that person's, or another person's, work as a sex worker. This applies to all types of accommodation including rental of apartments/houses, hotels, motels and business premises.

It is very common for a sex worker to be charged more for accommodation. As well as an increased nightly rate or fee in addition to the price they paid when booking the accommodation online, sex workers have reporting being charged an extra amount per booking or extra fees for items that are usually provided including towels. This practice is so widespread that a sex worker who tours regularly states: *'I've found it's better to tell the hotel upfront that I'm a sex worker and cop the inflated price than to be thrown out in the middle of the night'*.

It is even more abhorrent that there are also reports of sex workers offered the option to provide sexual services/favours for free in order to not be evicted.

Survey participant 84: "I have been denied housing unless I did sexual favours."

Survey participant 204: "My stay at hotels have been cut short unless I paid more."

"The manager of the body corporate threatened to tell the neighbours if I didn't provide sex for free."

While this practice is illegal, sex workers have been so disenfranchised by this exemption and experienced such high levels of unfavourable treatment in this area that some have felt they have no choice but to comply. Notably, this often occurs at times when relocating to other accommodation is not possible; for example, in the middle of the night in regional areas or during busy periods when hotel accommodation is heavily booked etc. The majority of sex workers, 76.5% in our recent survey, would not report crime to police noting that they did not believe reports would be taken seriously, and that knowledge of the negative treatment of sex workers by police were key reasons for this, along with concerns over further police surveillance or targeting.

Survey participant 203: "[I have been] been profiled on the street and demanded to show Id many times in my own neighbourhood by police."

Eviction of sex workers is extremely common, and in the vast majority of cases this is not because the person has created a nuisance but because it is now well known by accommodation providers that they can evict sex workers with little to no pushback. This can happen because the accommodation provider or the staff on duty morally object to sex work, misunderstand the legality of sex work, or if the sex worker refuses to pay more than other guests. In addition, there are several reports of police in NQ becoming aware of touring sex workers through regularly surveilling advertising, and then advising accommodation providers that they can evict the person if they like, even though the person was neither creating a nuisance nor breaking the law. Media often reinforces this when discussing sex work, contributing to further vilification and stigmatisation.

In effect, this law has created a practice of unfavourable treatment of sex workers that did not exist before this exemption was introduced.

In a government submission prior to 2013, Respect Inc indicated that most accommodation providers treated sex workers reasonably. The organisation now notes that this has changed noticeably in the past nine years whereby reports of sex workers experiencing accommodation discrimination to the organisation are frequent.

"I can't count the number of times the Respect Inc phone message bank has a message from a sex worker who has been evicted in the middle of the night and had no where to go." Respect Inc staff member.

Awareness of the ability to discriminate has resulted in some accommodation providers adopting this approach as a standard practice. It has also resulted in sex workers, when not working, experiencing eviction or demands for extra fees. Partly, this is the result of the broad nature of this exemption allowing accommodation providers to treat sex workers

unfavourably (overcharging, eviction, etc.) purely on the ‘reasonable belief’ the person ‘intends to use the accommodation in connection with that person’s, or another person’s, work as a sex worker’. A number of cases reported to Respect Inc relate to evictions from rentals, hotels and short-stay apartments when the person was not undertaking sex work, or in some situations when the person was no longer a sex worker.

We note that there have been media reports of sexually active women being told to leave accommodation, accused of being sex workers—experiencing the stigma and discrimination that is now routine for sex workers.

In a recent survey of sex workers in Queensland, responded to by 204 participants who were asked how important the repeal of the accommodation exemption was to them, 95.1% said it was very important.

Participants provided extensive evidence of discrimination made legal by this exemption. Some examples are:

Survey participant 37: “Hoteliers and moteliers have stolen deposits and often charge additional fees for towels, higher prices for accommodation and justify it to cover additional cleaning over and above. They can and do kick us out at short or no notice and force us into homelessness and/or left stranded in unsafe situations, at night or stuck in the middle of nowhere with little regard to our humanity because they see us as being unworthy.”

Survey participant 7: “told by a real estate agent that ‘whores are dirty’ and not given a short term lease, charged more for accommodation.”

Survey participant 30: “motels just being a single female travelling can see you kicked out even if it wasn’t you with visitors it makes it unsafe for all female travellers such discrimination laws shouldn’t exist.”

Survey participant 71: “Countless lease applications denied as a sex worker. Eventually I lied, saying I was on parental support instead of sex work.”

Survey participant 99: “Charged more for the hotel. Told because my friend stayed in the hotel that we both have to pay double. Called names by a hotel owner in Mt Isa. My money stolen from the room and the hotel wouldn’t do anything.”

Survey participant 125: “unable to get a rental property unless I lie and say I am a sole contractor for something else, past landlord trying to evict me and accuse me of running an illegal brothel even though I was the only person living in the house and did not do private work at the time.”

Survey participant 174: "I am unable to use Airbnb anymore for violating the terms and conditions because landlords are legally allowed to discriminate. I am a landlord - and a sex worker and I know for a fact that sex workers are among the most respectful tenants."

This exemption is one of those identified by the Community Legal Centres⁵⁵ as 'exemptions, excuses and defences [that] have crept into the anti-discrimination regime – sometimes as a reaction to one specific incident or hype around a particular case'.

This was the case of *Dovedeen Pty Ltd v GK* (2013)⁵⁶, that in a number of hearings throughout 2011-2013 saw a legal sex worker claim discrimination on the basis of lawful sexual activity against a Moranbah motel. GK had stayed in the accommodation a number of times over a two-year period, but on this occasion was charged an additional fee and told not to return. The case drew media attention that hyped up the issue in the broader community and fueled discriminatory sentiment against sex workers. This was used by the Attorney General to interfere in the final Supreme Court case via *amicus curiae* and then push an amendment through parliament that now provides accommodation providers an exemption to discriminate against sex workers.

Queensland is now the only state to allow accommodation discrimination against sex workers.

According to advice from Cairns Community Legal Centre Inc., 'the [accommodation] exemption provision is incompatible with human rights, namely: recognition/equality before the law, freedom of movement, property rights, privacy/reputation: Human Rights Act 2019 (Qld) ss 15, 19, 24, 25. These human rights are limited beyond the extent that is reasonable and demonstrably justifiable'.⁵⁷

Victoria's *Decriminalisation of Sex Work Bill 2021*⁵⁸ passed the upper house on 10 February, 2022 and repeals Section 62 of the *Equal Opportunity Act 2010*, which stated that 'A person may refuse to provide accommodation to another person if the other person intends to use the accommodation for, or in connection with, a lawful sexual activity on a commercial basis'. This means accommodation discrimination against sex workers in Victoria will be unlawful from 10 May, 2022.

As a result, s106C of the *Queensland Anti-Discrimination Act 1991* is now the only law country-wide that makes discrimination against sex workers in relation to accommodation lawful.

Impact of lawful accommodation discrimination on current and former sex workers

⁵⁵ Community Legal Centres.

https://www.communitylegalqld.org.au/reviewofantidiscrimination/?fbclid=IwAR0slrEt22TkIGZM_YmC_Kz-JXABVOixlh_IGSA9hLs9ODL04pu3lSoMjBqw#expand

⁵⁶ *Dovedeen Pty Ltd v GK* (2013). QCA 116.

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

⁵⁷ Per the Cairns Community Legal Centre Inc legal opinion provided to Respect Inc 25 February 2022.

⁵⁸ *Decriminalisation of Sex Work Bill 2021* (Vic).

The impact of this amendment is that sex workers are placed in unsafe, dangerous and exploitative situations that were not experienced prior to its introduction nine years ago. Sex workers are treated unfavourably on a regular basis with no opportunity to address these practices. Sex workers experience high levels of housing instability in Queensland as well as excessive costs, safety risks (including when evicted from a hotel in the early hours of the morning with nowhere to go) and systemic barriers to accessing long-term affordable housing.

Recommendation 50: Respect Inc and DecrimQLD recommend that exemption 106C be repealed to make accommodation discrimination against sex workers unlawful.

49: Citizenship visa status

Should the citizenship/visa status exemption be retained, changed, or repealed? Are there certain groups in Queensland that are being unreasonably disadvantaged by this exemption?

Sex workers without valid working visas, permanent residence or citizenship are disadvantaged by this exemption. During the COVID-19 pandemic, sex worker organisations themselves raised funds to assist migrant sex workers who could not work due to the lockdowns but were ineligible for government assistance due to their citizenship status. Migrant sex workers who are not eligible for Medicare find it difficult to obtain the relevant health care (sexual health checks, testing, treatment and prevention technologies). Sexual health checks are needed for sex workers to work in licensed brothels and maintain their own sexual healthcare. This lack of access also perpetuates racist and stigmatising rhetoric throughout society and contributes to the enactment of negative, dangerous or unnecessary legislation.

Survey participant 58: *"My willingness to disclose depends on the laws and my visa status in the country or region I am working."*

Survey participant 114: *"Since I am on a bridging visa, I need to make sure I comply with all the laws. Also concerned about cops doing compliance checks around Covid procedures, and making sure I'm following all of those rules correctly."*

Recommendation 51: Respect Inc and DecrimQLD recommend that the citizenship/visa status exemption be repealed.

50: Superannuation and insurance exemptions

Should the insurance and superannuation exemptions be retained or changed?

Sex workers experience significant barriers in accessing superannuation, income protection and other insurance policies. Insurance and superannuation companies regularly deny

coverage to sex workers or offer policies at unreasonable cost. Discrimination against sex workers, similar to all other occupations should not be legal. Allowing this type of discrimination creates an underclass of people afforded fewer protections and less financial stability.

Survey participant 32: "I have been denied income insurance."

Survey participant 72: "Financial...that I can't have work cover."

Survey participant 57: "It's impossible to get insurance such as public liability which I would love to have. We also can't bank with certain banks or get home loans at decent interest rates which leaves us in a cycle of rental unable to accumulate wealth or financial stability."

Recommendation 52: Respect Inc and DecrimQLD recommend that there should be no exemptions to insurance and superannuation providers allowed on the basis of sex work.

52: Non-profit service providers

Should the definition of goods and services that excludes non-profit goods and service providers be retained or changed? Should any goods and services providers be exempt from discrimination, and if so, what should the appropriate threshold be?

Sex workers experience discrimination from a wide range of service providers including non-profit providers of goods and services. There is no reason to maintain this exemption as allowing it leaves a gap in discrimination protections for sex workers and other marginalised communities.

We note that the Discussion Paper refers to some jurisdictions having different 'voluntary bodies' exemptions, but that only Tasmania and Queensland permit discrimination by all entities that do not 'carry out their purposes for the purpose of making a profit'.

Recommendation 53: Respect Inc and DecrimQLD recommend that non-profit goods and services providers not be exempt from discrimination toward sex workers or on the basis of sex work.

55: Other areas of activity

Are any additional areas of activity required? Should any be repealed? Should the scope of any of the areas of activity be further refined?

Financial discrimination in goods and services

Sex workers should be protected against financial discrimination, and it should not be enabled by exemptions in state or federal law. Currently, sex workers in Queensland experience a high level of financial discrimination, including having banking accounts closed, being refused access to merchant facilities and being refused access to business accounts.

Protection against financial discrimination towards sex workers in the area of goods and services provision, in both personal and business-related products, is necessary. As discussed in Q.6, there is increasing discrimination in online platforms that impact on sex workers' ability to engage in business. This is an area of discrimination that is regularly experienced by sex workers, partners of sex workers and sex industry businesses. Without amendment to the Act, there is a significant probability of this increasing in occurrence and severity.

As discussed in Q.1-4, the new AUSTRAC financial guide creates and perpetuates a system of indirect discrimination towards sex workers. Many other examples exist of the poor service provided to sex workers in the financial services sector, and the survey responses below give a cross-section of these:

Survey participant 12: "Can't use payment processors, can't have bank accounts at certain banks."

Survey participant 26: "I have been kicked off a number of online platforms (including those I was not participating in as a sex work - ie dating apps) and been refused banking services."

Survey participant 28: "Unable to get financial services like a bank loan."

Survey participant 39: "I've had trouble getting a credit card due to being a sex worker (Bendigo Bank). I've also had social media accounts banned (Instagram and YouTube)."

Survey participant 162: "Before I had access to a bank that I could deposit money in without seeing a person, I would routinely be asked a variation of 'did this money come from a reputable source'... It forced me to explain where the money came from, to people whose business it was not. I cannot get eftpos or merchant services (and I have tried many times)."

Survey participant 201: "difficulty in accessing home loan and having to lie about my occupation to get a loan."

Recommendation 54: Respect Inc and DecrimQLD recommend that financial discrimination of sex workers should not be allowed under exemptions in state or federal law

56: Human rights compatibility

Are any provisions in the Anti-Discrimination Act incompatible with human rights? Are there any restrictions on rights that cannot be justified because they are unreasonable, unnecessary or disproportionate? Where rights are being limited to meet a legitimate purpose, are there any less restrictive and reasonably available ways to achieve that purpose?

s 28(1) Working with children exemption is incompatible with the *Human Rights Act 2019 (Qld)*

In legal opinion provided by Cairns Community Legal Centre⁵⁹, we are advised:

This exemption provision at s 28(1) is incompatible with human rights, including privacy/reputation and recognition/equality before the law: Human Rights Act 2019 (Qld) ss 15, 25. It provides an exemption for discrimination against sex workers (and on the basis of gender identity), as well as separately those convicted of sexual offences against children or disqualified by law from working with children.

While acknowledging that the threshold test is different for these groups, implicit in the exemption is an unreasonable assumption that sex workers (and those with particular gender identity) pose an elevated risk to the physical, psychological or emotional wellbeing of minors that needs to be mitigated. This assumption cannot be justified.

It is recommended that the exemption provision at section 28(1) be repealed.

There are less restrictive means available to ensure the protection of the physical, psychological or emotional wellbeing of minors when they are being cared for or instructed by a person who is at work. For example, the minors are protected by the existing protections provided by the Working with Children (Risk Management and Screening Act) 2000 (Qld) as well as the Education (Queensland College of Teachers) Act 2005 (Qld).

s106C Accommodation for use in connection with work as sex worker is incompatible with the *Human Rights Act 2019 (Qld)*

In legal opinion provided by Cairns Community Legal Centre⁶⁰, we are advised:

The section was inserted into the Act in response to the proceedings in Dovedeen⁶¹. It is recommended that the exemption provision be repealed.

⁵⁹ Per the Cairns Community Legal Centre Inc legal opinion provided to Respect Inc 25 February 2022.

⁶⁰ Per the Cairns Community Legal Centre Inc legal opinion provided to Respect Inc 25 February 2022.

⁶¹ *Dovedeen Pty Ltd v GK* (2013). QCA 116.

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

The advice goes on to outline that:

[T]he exemption provision is incompatible with human rights, namely: recognition/equality before the law, freedom of movement, property rights, privacy/reputation: Human Rights Act 2019 (Qld) ss 15, 19, 24, 25. These human rights are limited beyond the extent that is reasonable and demonstrably justifiable.

And:

No legitimate purpose of the limitation can be ascertained beyond the purpose of making lawful discrimination related to sex work in the area of accommodation.

Recommendation 55: Respect Inc and DecrimQLD recommend that sections 28 (1) and 106C be repealed as they are incompatible with the *Human Rights Act 2019 (Qld)*

Attribute 7(l), 'lawful sexual activity', is incompatible with the *Human Rights Act 2019 (Qld)*

Preventing a sex worker who is operating unlawfully from accessing the same anti-discrimination rights as a lawful sex worker has the effect of depriving the person of protection from discrimination under this law. This treats them in such a way as to make them feel a sense of inferiority, and punishes the person a second time which is likely incompatible with human rights. Namely: recognition/equality before the law, prevention from cruel/degrading treatment, and the right not to be tried or punished more than once per the *Human Rights Act 2019 (Qld)*, ss 15, 17(b), 34.

Recommendation 56: Respect Inc and DecrimQLD recommend that Attribute 7 (l) be replaced by the attribute 'sex work' and 'sex worker' as it is incompatible with the *Human Rights Act 2019 (Qld)*

Attachments

Attachment 1: Scarlet Alliance Briefing Paper: Anti-Discrimination and Vilification Protections for Sex Workers (February, 2022)
https://scarletalliance.org.au/library/Anti_Discrim2022

Attachment 2: Achieving Equality in the Northern Territory PP, Tabled in NT Parliament 16 February, 2022 demonstrating that jurisdiction's government's intention to change the attributes to include 'those who engage and have engaged in sex work'.