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Re: Submission on Review of Queensland's Anti-Discrimination Act: Discussion Paper

To the Queensland Human Rights Commission,

Thank you for the opportunity to respond to the 'Review of Queensland's Anti-Discrimination Act 1991 Discussion Paper'. We are pleased to see consideration of sex work and sex workers throughout the Paper, as Queensland sex workers have long endured the impact of discrmination borne of sex work stigma perpetuated by the outdated, unsafe and problematic sex work legislation that is currently in place.

Scarlet Alliance, Australian Sex Workers Association is the national peak body representing a membership of individual sex workers and sex worker networks, groups, projects, collectives and organisations from around Australia since 1989. Through our objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry, in order for sex workers to be self-determining agents, building their own alliances and choose where and how they work. Scarlet Alliance represents sex workers on a number of government and non government committees and advisory mechanisms.

In addition to our responses below, we would like to formally endorse Respect Inc and DecrimQLD's joint submission. Both have done extensive work supporting Queensland sex workers experiencing and challenging discrimination and problematic legislation. Our member organisation Respect Inc has the highest degree of contact with Queensland sex workers of any other agency or organisation, and are the authority on the needs of the Queensland sex worker community.

Please do not hesitate to contact us if you require further information or wish to discuss any of the issues raised in our submission. We look forward to better outcomes for sex workers experiencing discrimination in Queensland.

Sincerely,

Jules Kim,
Chief Executive Officer
Scarlet Alliance, Australian Sex Workers Association

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Executive Summary

Sex workers welcome consideration of the wide range of changes to Queensland's current *Anti-Discrimination Act 1991* (ADA), as outlined in the 'Review of Queensland's Anti-Discrimination Act 1991 Discussion Paper'. As a community impacted by unique, specific and historical stigma that informs a wide range of experiences of discrimination in many aspects of public life, there are a number of significant changes we believe are necessary in order to provide **all** Queensland sex workers with accessible protection from discrmination.

The changes necessary to provide Queensland sex workers with access to protections and redress against discrimination include replacement of the attribute 'lawful sexual activity' currently assumed to cover sex workers; the removal of exemptions that currently provide for lawful discrimination against sex workers in the areas of accommodation and working with children; the introduction of other attributes that relate to the circumstances of sex workers in Queensland; procedural reforms to remove substantial barriers to sex workers reporting and pursuing redress for discrimination; and consideration of adjustments to the framework for discrimination itself. We make recommendations for a full spectrum of reforms that sex workers know are necessary to protect us from discrimination.

A current QLRC review of the sex work laws in Queensland will investigate the prospect of implementing a decriminalised model for regulating sex work. While this stands to make significant gains in sex workers' access to human rights via the full decriminalisation of sex work, it is not a substitute for the provsion of appropriate and robust anti-discrimination protections that acknowledge the unique and pervasive stigmas associated with sex work and sex workers. Sex workers experience discrimination and vilification under all legal frameworks, and it is important to lay down robust protections *prior to* the implementation of decriminalisation to ensure its maximum benefit. The review of the *ADA* is a timely process that, coupled with significant reform to Queensland's sex work licensing regime and Criminal Code, will drastically improve our access to the protections we desperately need, and take an important step towards dismantling sex work stigma in Queensland.

We have attached our briefing paper on Anti Discrimination and Vilfication Protections for Sex Workers in Australia and accessible at https://scarletalliance.org.au/library/Anti_Discrim2022.

Summary of recommendations

Recommendations relating to protected attributes

1. Replace the attribute 'lawful sexual activity' with the attributes 'sex work' and 'sex worker' to ensure that the Act provides robust protections for the full range of Queensland sex worker experiences of discrimination, including those impacting our family members and associates. (Q. 28)
2. The definitions for the new attribute of 'sex work' is '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)
3. Acknowledge and equitably address sex worker experiences of sexual harassment in areas of public life using a combination of legal, procedural and educative approaches. (Q.9)
4. Adopt measures to ensure that sex workers are protected when we experience sexual harassment. (Q.9)
5. Introduce 'irrelevant criminal record' as a protected attribute to protect sex workers from compounded discrimination. (Q.30)
6. Introduce protections for migrants through an attribute relating to citizenship and visa status.
7. 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)
8. Introduce an attribute that recognises people living with HIV (PLHIV) in line with QPP, HALC and NAPWHA's submission.(Q25)

Recommendations relating to exemptions

9. Repeal the exemption allowing discrimination by religious bodies, services and accommodation providers (Q.41)
10. Remove the exemption to protection in section 28: Work with children. (Q.45)
11. Sex workers should be protected from all forms of financial discrimination. (Q.50)
12. Undertake no change to the exemptions relating to superannuation and insurance that would enable exemptions to discrimination protections for sex workers. (Q.50)
13. Repeal the exemption in 106C that makes accommodation discrimination lawful against sex workers in Queensland. (Q.47)
14. Remove the exemption allowing discrimination based on citizenship/visa status. (Q.49)

Recommendations relating to improving the complaints process

15. Support access to pseudonymous and anonymous complaints from the conciliation stage through to the higher courts. (Q.18)
16. Organisations such as Respect Inc must be able to make complaints on behalf of sex workers in both conciliation and tribunal processes (Q.16)
17. Conduct an inquiry into the use of non-disclosure agreements in conciliation processes, seeking to limit their applicability. (Q.18)

18. Provide direct access to tribunal proceedings. (Q.10)
19. Improve access to complaints for those unable to pay for legal representation. (Q.18)
20. Provide access to conciliation registers to improve public understanding about the prevalence of pursuable discrimination cases, allow sex workers to understand the context of conciliation process outcomes for sex workers, and provide a degree of transparency to these processes that currently doesn't exist. (Q.24)

Recommendations relating to the current anti-discrmination framework

21. Remove the comparative model and replace the 'less favourable test' model with the 'unfavourable treatment test' used in Victoria. The Victorian approach requires 'an analysis of the impact of the treatment on the person complaining of it.' (Q.2)
22. Shift the burden of proof to the respondent in a discrimnation complaint, in line with the Australian approach as in the *Fair Work Act (Cth).* (Q.8)
23. Adopt a positive duty to encourage actors across areas of public life to take responsibility for and share the burden of addressing systemic sex work stigma, the burden of which currently rests on individual sex worker complainants. (Q.21)
24. Engage in active anti-stigma, anti-discrimination and vilification education campaigns , developed in partnership with sex worker peer organisations including Respect, Inc and Scarlet Alliance and directed at the general public as well as public services, media, law enforcement, the judiciary and immigration authorities. (Q.21)
25. Sections 7(l), 28(1) and 106C of the Anti-Discrimination Act (Qld) are not compatible with the Human Rights Act and should be replaced (7l) and repealed (28(1) and 106C). (Q.56)

Sex workers experience systemic discrimination and vilification in QLD

Sex workers in Australia have long been subjected to discrimination and vilification with devastating impacts on our safety, housing and accommodation, financial stability, mental health and well-being. Within Queensland, this has taken place within a number of regulatory enablers, including a weak provision for 'lawful sexual activity' with a range of exemptions, and an arcane licensing regime for regulating sex work, that narrows the range of 'lawful sexual activity' to an incredibly small set of practices that are out of step with the workplace health and safety needs and human rights of sex workers.

Recently, we were heartened to see the QLRC begin its inquiry into decriminalisaing sex work in Queensland. We are hopeful that this process will result in the full decriminalisation of sex work in Queensland. Regardless of the outcome, more robust anti-discrimination protections are vital for sex workers. They are necessary for the complete intent and benefit of decriminalisation to be fully realised, and they are necessary where other legislative models that criminalise or license sex work prevent us from accessing the full suite of rights afforded to other marginalised individuals.

While decriminalisation does break down many of the legal barriers that sex workers face to accessing labour rights, decriminalisation does not eradicate the pervasive stigma surrounding sex work. Sex work stigma is an issue that is informed by the historical and contemporary marginalisation and demonisation of sex work as a moral and social issue that neccesitates control and containment. For example, in NSW where sex work has been decriminalised since 1995, sex workers continue to experience systemic discrimination and vilification, which affects our health, wellbeing and access to basic needs such as housing, financial, legal and health services, education and other employment. This shows that even in the absence of laws which heavily regulate or criminalise some or all aspects of our work, discrimination remains a pervasive issue for sex workers. As such, there is currently a bill before the NSW Parliament to provide anti-discrimination and anti-vilification protections for sex workers, using the attributes 'sex work' and 'sex worker'.[1]

Respect Inc. and DecrimQLD, the only peer-led sex worker organisations and projects in Queensland, conducted consultations, workshops and online discussions followed by a survey of 204 Queensland sex workers to grasp the scale of discrimination and the barriers to reporting expereinced by sex workers. Overall, these processes found that disrimination againt sex workers in Queensland is overexperienced and underreported. The survey found that 72.5% of participants had experienced discrimination and a further 14.2% were unsure if what they had experienced would be considered discrimination. Of those who did experience it, only only 9% reported the discrimination. 91% did not.[2]

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[1] *Anti-Discrimination Amendment (Sex Workers) Bill 2020* (NSW), accessed at <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3774>

[2] DecrimQLD and Respect Inc, 'Unprotected & Under-reported: synopsis on sex workers' experiencs of discrimination and anti-discrimination protections in Queensland', 2022. Accessed at https://respectqld.org.au/wp-content/uploads/Documents/SurveySexWorkersQLD22.pdf

These findings align with a national study conducted by Scarlet Alliance in partnership with the Centre for Social Research in Health at UNSW. It recently surveyed 647 sex workers in relation to stigma and discrimination. Within this survey, 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.[3] 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.[4] This widespread discrimination is a result of deeply embedded stigma and criminalisation of sex workers.

For further data and personal accounts of sex workers' experiences of discrimination in QLD, please refer to the Respect Inc. and Decrim QLD submissions.

The impacts of discrimination and stigma

Sex work stigma manifests in the criminalisation, over-regulation and heavy policing of sex workers; the targeting, deportation and detention of migrant sex workers; public acts of discrimination and vilification against sex workers; and targetted for discrimination. Addressing and reducing sex work stigma is an integral part of preventing discrimination.

Across Australia sex work stigma and discrimination can be seen as a driving force behind many policies and regulatory frameworks that govern sex work, including criminalisation, licensing and policing.[5] Conversely the enforcement of criminalisation and licensing systems, coupled with the extension of police powers, reinforces sex worker stigma and discrimination. It does so by promoting the idea that the community must be protected from sex workers, rather than viewing us as citizens equally deserving of protection under the law. Stigma against sex workers has been identified as a negative health determinant that affects the mental and physical health of workers,[6] our ability to access non-judgemental health care[7] and our access to basic needs like housing, financial security and legal support.[8]

Sex worker stigma compounds differently for sex workers from other marginalised communities for whom experiences of discrimination are exacerbated, such as sex workers who are parents, use drugs, sex workers living with HIV, Aboriginal and Torres Strait Islander sex workers, migrant and

[3] Centre for Social Research in Health and Scarlet Alliance (2021). Stigma Monitoring Project: Sex Workers. Accessed at https://scarletalliance.org.au/library/Stigma_Indicators
[4] Centre for Social Research in Health and Scarlet Alliance (2020). Sex Work Stigma Research Collaboration. Accessed at https://scarletalliance.org.au/library/Sexworkstigmaresearchcollaboration
[5] Z. Stardust, C. Treloar, E.Cama and J. Kim, 'I wouldn't call the cops if I was being bashed to death:Sex Work, Whore Stigma and the Criminal Legal System', *International Journal for Crime Justice and Social Democracy*, vol. 10, no. 3, 2021, p. 2.
[6] C. Treloar, Z. Stardust, E. Cama and J. Kim, 'Rethinking the Relationship between Sex Work, Mental Health and Stigma: A Qualitative Study of Sex Workers in Australia', *Social Science & Medicine,* , vol. 268, 2021, p. 113468.
[7] C. Benoit, S.M. Jansson, M. Smith and J.Flagg, 'Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers', *The Journal of Sex Research,* vol. 5, no. 4-5, 2018, p. 457.
[8] For an in-depth account of examples of discrimination against sex workers see - Scarlet Alliance, 'Unjust and Counter-Productive', Report, 1999 <https://scarletalliance.org.au/library/unjust-counterproductive>.

street based sex workers.[9] This can manifest through targeting by police and immigration. For Aboriginal and Torres Strait Islander sex workers, racism further exacerbates sex worker stigma as they already 'face targeted police interaction and disproportionate rates of incarceration'.[10] Migrant sex workers experience racialised sex worker stigma as well, often based on misguided assumptions that they cannot work independently.

Sex work stigma can also compound depending on what type of sex work we do. Sex workers often refer to this as 'whorearchy', in which different aspects of sex work are viewed as more or less valued or 'respectable' than others. This impacts attitudes towards violent crimes committed against sex workers, including how they are approached by investigatory teams of law enforcement or by the media. It also plays out in how families and communities respond to violence where the victim / survivor is known to be a sex worker, regardless of the context in which the violence takes place. We see this when a victim of violence's sex work status is emphasized by the media, or when a sex worker victim of fatal violence is 'outed' in the private or public spheres following their death.[11]

This makes unique protections for sex workers a necesssary inclusion in reforms to Queensland's *Anti-Discrimination Act 1991.* This is necessary to ensure that the Act itself does not legalise discrimination against us, and to ensure that we have protections that are proportionate to the discrimination we experience, which again, we note is underreported.

Inclusion of 'sex work' and 'sex worker' as protected attributes

Discussion question 28: *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 inadequacy of 'lawful sexual activity'

The attribute 'lawful sexual activity' does not provide adequate protections for Queensland sex workers for a number of reasons, the most prominent being its reference to 'lawful' sex work, which is narrowly prescribed in Queensland. The current licensing regime and the Criminal Code place burdensome and unsafe restrictions onto individual sex workers, forcing us to choose between working safely and working legally. This means that many Queensland sex workers[12] must work outside of the narrow legal framework in order to maximise our workplace health and safety. This means that the majority of Queensland sex workers remain unprotected by the *ADA.*

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[9]Stardust, Treloar, Cama and Kim, 'I wouldn't call the cops if I was being bashed to death', p. 2

[10] Ibid.

[11]J.Kim, G. Vanting and C. Cox, 'Sex workers like Michaela Dunn have the right to feel safe at work like anyone else', *ABC News,* 16 August 2019, <https://www.abc.net.au/news/2019-08-16/sex-workers-like-michaela-dunn-should-feel-safe-at-work/11421118>

[12] Respect, Inc and DecrimQLD: 'Decriminalisation of Sex Work in Queensland: Laws, Facts, Rights and Safety', accessed on https://respectqld.org.au/decriminalise-sex-work/resources/

The attribute also fails sex worker complainants and would-be complainaints in its restrictive application to the 'status' that is a person being a sex worker. It does not provide protection for discrimination committed against a person who is *conducting activities related to sex work*. For sex workers, discrimination can occur both in the course of occupying our sex worker status **and** in the course of the actions we take when sex working - including purchasing advertisements, hiring accommodation, purchasing financial products or services, and other activities. Given the depth of debate surrounding the distinction between status and actions in the available case law for complaints based on the attribute[13], it is also clear that the legislation fails to provide clarity or direction to the courts on what, precisely, is included in the attribute.

We disagree with the statement in the Discussion Paper that the broader attribute of 'lawful sexual activity' in Victoria and Tasmania 'create greater protections for sex workers'[14]. In both jurisdictions, the same issue presents with problematic regulatory frameworks that criminalise a number of aspects of sex work.[15] This leaves a cohort of sex workers unprotected, as evidenced by the low volume of successful anti-discrimination challenges made by sex workers in both jurisdictions. In response to calls by sex workers and in recognition of its ineffectiveness, the Victorian Government has replaced the attribute 'lawful sexual activity' however there is further work to be done to ensure the new attribute is one that will provide effective protections for sex workers.

'Collective' attributes like 'lawful sexual activity', intended to capture a range of sexuality-based attributes, provide only partial protection and fail to acknowledge the unique current and historical stigmas that inform individual and organisational discrimination against sex workers. This is also the case in jurisdictions where 'occupation', 'trade', 'calling' or 'profession' is presumed to capture sex worker's experiences of discrimination. For sex workers, some of our experiences of discrimination are related to beliefs about our sexuality or our profession, but can also fall outside both of these spaces to include beliefs about us being dangerous, criminal, amoral, unfit parents, helpless victims, or vectors of disease.

Changing 'lawful sexual activity' to 'sex work' & 'sex worker'

Explicitly naming 'sex work' and 'sex worker' as protected attributes will improve access for past and present sex workers who wish to challenge experiences of discrimination. It is the **only** option for attributes that acknowledge the unique and pervasive stigmas informing discrimination against us. Naming these attributes also ensures that sex workers are covered regardless of the form of sex work we engage in, whether the person making the complaint identifies as a sex worker or just has sex work experience, is imputed to be a sex worker, or whether they are operating in the regulated or unregulated sex industry. These attributes will also allow for protections for sex workers against

[13] *GK v Dovedeen Pty Ltd and Anor* [2012] QCATA 128, *Payne v APN News & Media* [2015] QCAT 514, *Payne v APN News & Media* [2016] QCATA 140

[14] Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act*, Discussion Paper, p. 246.

[15] While the Victorian Parliament has recently voted to decriminalise most aspects of sex work, it retains several clauses that continue to draw a line between 'legal' and 'illegal' sex work activity.

discrimination and stigma regardless of regulatory, political and judicial environments and viewpoints around sex work.

The definitions for the new attribute of 'sex work' is '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'.

We also draw attention to current processes to add sex work-specific attributes to anti-discrimination legislation in other jurisdictions. *The Anti-Discrimination Amendment (Sex Workers) Bill 2020 (NSW)*, which is currently at the second reading stage in NSW parliament provides a model for this inclusion. Similarly, a recent discussion paper making recommendations for updates to the *Anti-Discrimination Act 1992* (NT) names 'those who engage and have engaged in sex work' as the attribute that will best capture sex worker experiences of discrmination.[16] Both have been approached with careful consultation with sex workers with lived experience of discrimination.

The inclusion of protections for family members and associates of sex workers

Protections provided on the basis of 'sex work' and 'sex worker' attributes must also extend to discrimination on the basis of association with sex workers, including someone assumed to be a sex worker and associates of sex workers, past, present and assumed. The current Act provides protection to person in 'association with, or relation to, a person identified on the basis of any of the above attributes', this includes 'lawful sexual activity' however as most sex workers are not covered by this attribute it has limited value until the attribute is changed to 'sex work and 'sex worker. This is essential to ensure that our friends, family members and associates are also protected against the vicarious discrimination that they can experience as a result of their connections to us.

Sexual harrassment

Like the broader Queensland population, sex workers can and do experience sexual harrassment across all areas of public life. Sex workers also experience the societal stigma attached to naming and reporting sexual harrassment. Due to sex work stigma, however, our 'believeability' as survivors of sexual harrassment is often questioned. The societal presumptions that sex workers are either in a 'perpetual state of consent' or that sexual harrassment is an 'occupational hazard' of sex work, form major barriers to sex workers accessing justice (such as through sections 119 and 120 of the *ADA*) when we are sexually harassed. This stems from a lack of understanding about the negotiability and diversity of services that sex workers offer and our ability to enact boundaries and to give and withdraw consent. Legal, cultural and social narratives[17] expressed through case law, politics and the media further problematise this perceived 'perpetual state of consent'.

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[16] *Achieving Equality in the Northern Territory*, Discussion Paper, tabled 16 February 2022. (See Respect Inc. Submission, Attachment 2.)

[17] Stardust, Treloar, Cama and Kim, 'I wouldn't call the cops if I was being bashed to death', p. 2

Sexual offences taking place at work is neither endemic nor unique to the sex industry, as is becoming more and more obvious as women across the country mobilise to demand justice for sexual harrassment and assaults occurring at work and at home. Sex workers are not inherently more 'at risk' of sexual harrassment or violence than other workers; it is rather the criminalisation of our safety strategies and degradation of our human rights, as expressed in law, policing and media representations that 'responsibilises' sex workers for experiencing work-related harrassment.[18] Thus, sex work stigma has an incredibly powerful impact on sex workers' access to justice when we experience sexual harassment in any area of public life.

We present this background to contextualise our recommendation that the laws addressing sexual harassment in areas of public life take steps to definitively protect sex workers. This can and should be achieved through a variety of measures, including:

- Specific mention or inclusion of sex workers in the Act;
- Inclusion of examples of sex worker experiences of sexual harassment in directions to representatives of the criminal justice system and parties to the Human Rights Commission tribunal and concilitation processes;
- Proactive engagement of and consultation with Respect, Inc in the development of all material relating to sex worker experiences of sexual harassment;
- Professional engagement of Respect, Inc in the provision of sensitivity and awareness training to support all levels of the Commission's work to legitimise and appropriately address sex worker experiences of sexual harassment.

Other attributes

Irrelevant Criminal Record

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

Criminal records, whether current, spent or expunged, form major barriers to accessing housing, financial security, qualifications and employment, and are a source of compounding stigma for Queensland sex workers. Not only do sex workers in Queensland face the risk of criminalisation when we work outside the licensing and Criminal Code requirements, we also experience policing practices such as entrapment. Entrapment involves police attempting to gather evidence that we are working illegally, which most often involves police posing as our clients. This is an invasive and predatory practice that results in heightened criminalisation of sex work and a degradation in relations between sex workers and police.

[18] A. Krüsi ., 'They won't change it back in their heads that we're trash': The intersection of sex work-related stigma and evolving policing strategies', *Sociology of Health & Illness,* vol. 38, no. 7, 2016, p. 1137 cited in Stardust, Treloar, Cama & Kim, 'I wouldn't call the cops if I was being bashed to death', p. 8.

Because sex workers working outside of the narrow framework of 'legal' sex work are so actively pursued in Queensland, many experience the compounding stigmas of sex work and having a criminal record for 'prostitution offences'. Discrimination against people with any form of criminal record or conviction should be recognised as 'unlawful' under the *ADA*.

We support introducing the attribute of 'irrelevant criminal record, spent conviction or expunged homosexual conviction'. Allowing discrimination to continue against people with criminal records is a form of double jeopardy, where people face barriers both whilst incarcerated and then subsequently in areas of public life. **We recommend the attribute 'irrelevant criminal record' be introduced and all sex work convictions be recognised as a irrelevant criminal record, including in relation to Blue Card applications.**

We will be supporting the complete expungement of all criminal records relating to sex work in the upcoming Queensland *Sex Industry Inquiry*.

Citizenship status

Discussion question 32:
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 believe that there is a need for the Act to cover discrimination on the grounds of immigration status, particularly as a marginalised group within a marginalised group. Migrant sex workers experience discrimination in relation to things like accommodation and financial services, and also report high rates of police and immigration harassment, threats, and targeting. Access to redress for these experiences through access to protections for immigration status, as well as a specifically-defined sex work attribute, would go some way to improve migrant sex workers' confidence in pursuing complaints against discriminatory treatment.

Scarlet Alliance also endorses Respect Inc's recommendations in relation to the following attributes:

- Sexuality
- Gender identity
- Immigration status
- Irrelevant medical record
- Criminal record
- Disability
- Physical features
- Gender
- Sex characteristic
- Domestic violence

- Accomodation status
- Other additional attributes
    - People who use drugs

Disability and HIV

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.*[19]

Scarlet Alliance recommends 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.

We support the response to this question in the submission of NAPWHA and QPP, which recognises that for People Living with HIV (PLHIV) there is the need for a separate attribute. PLHIV are subject to systemic, personal and ongoing discrimination in many facets of their lives. It is essential there is a seperate attribute that provides protection and redress for this discrimination and recognises that many PLHIV do not consider HIV as a disability.

Scarlet Alliance recommends the addition of an attribute that recognises people living with HIV (PLHIV) in line with QPP, HALC and NAPWHA's submission.

No exemptions that provide for lawful discrimination against sex workers

Any exemption or defense to discrimination against or vilification of sex workers perpetuates stigma, normalises discrimination, and is not conducive to providing robust anti-discrimination and human rights protections for sex workers. Providing legal loopholes to justify discrimination that would

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

otherwise be unlawful sends a strong message to perpetrators that discrimination against us is acceptable, especially when it comes to exemptions for discrimination by religious bodies, providing accomodation and allowing us to work in other capacities with children.

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)?

No one should be permitted to discriminate on any basis. Enabling exemptions for discrimination by religious bodies will reinforce discrimination and provide government endorsement of discrimination against LGBTQIA+ communities, sex workers, people who use drugs and others.

Where religious groups provide crisis housing, welfare, food boxes and vouchers, sex workers experience blatant discrimination when attempting to access these. This manifests in requirements to stop sex work or claim a willingness to so in order to access support. Further, religious bodies have routinely and offensively vilified sex workers in their fundraising promotions. It is critical that exemptions do not exist that will enable continued vilification by religious bodies such as in their advertisements that depict sex workers and the children of sex workers as debased, exploited and victimised.[20]

Scarlet Alliance recommends that the exemption allowing discrimination by religious bodies, services and accommodation providers be repealed

Working with Children

Discussion question 45: Are there reasons why the work with children exemption should not be repealed?

Under S 28 of the *Anti-Discrimination Act 1991* (QLD), it is lawful to discriminate on the basis of lawful sexual activity or gender identity if that person works in the 'care or instruction of minors' and if the discrimination is reasonably necessary to 'protect the physical, psychological or emotional

[20] 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

wellbeing of minors'. The current Act allows discrimination against sex workers (or intersex, transgender or gender diverse people) in 'work involving the care or instruction of minors'.

This exemption is in itself discriminatory and fuels inaccurate stereotypes that sex workers are a danger or threat to minors or unfit to provide care for them. This unevidenced, stigmatising attitude, particularly when reinforced by laws like this one, can also impact attitudes towards sex workers who are parents or caregivers, which is damaging to our families and communities. While the provision itself deals with discrimination in a professional context, it can also have profound impacts on our personal lives, make it difficult or impossible for us to change careers, and create fear of our sex work history or present being 'outed'.

Queensland currently has a 'Blue Card' system for approving individuals to work with minors, which already provides adequate regulation of the suitability of a person to work with minors. We note that no other jurisdiction allows this type of discrimination. **We strongly recommend the repeal of S 28 of the *ADA*.**

Goods and services discrimination

Financial Discrimination

Sex workers report a high incidence of experiences of financial discrimination in the goods and services area. This is based on stigmatising attitudes that the industry is corrupt, tainted, and untouchable, and banks have historically categorised sex industry professionals' transactions as 'high risk'. This either prevents access to financial services, forces sex workers to find workarounds to avoid disclosing our sex work in setting up these services, causes our accounts to be frozen and funds seized, or results in discriminatory higher overheads. Brothels and escort agencies also have been frozen out of services.[21] Again, this lack of equitable access to basic business infrastructure is a determinant of labour precarity.

According to a 2020 survey on financial discrimination conducted by Scarlet Alliance, sex workers report experiencing discrimination from a range of financial services, including:

- Banks (in particular NAB, CBA, ANZ, Westpac and BankWest)
- Credit unions (such as Queensland country credit union)
- Payment processors (in particular Paypal, Stripe, Square)
- Merchant services (in accessing EFTPOS machines)
- Billing services (in accessing billing for subscription websites)
- Credit card companies (in particular Visa and Mastercard)
- Crowdfunding platforms (for example, GoFundMe)
- Patronage platforms (for example, Patreon)
- Insurance companies (to access life insurance or income protection insurance)
- Mobile phone service providers (Vodafone, Telstra and Optus)

[21] Australian Financial Complaints Authority, 'Determination', 2020, https://service02.afca.org.au/CaseFiles/FOSSIC/687972.pdf accessed 17 Aug 2021

- Superannuation providers

Again, **this widespread discrimination in accessing financial goods and services would be able to be challenged with adoption of the attributes 'sex work' and 'sex worker'.**

Insurance and Superannuation

The Discussion Paper addresses one aspect of goods and services discrimination in **Question 50:** Should the insurance and superannuation exemptions be retained or changed?

While the *ADA* does not name an explicit exemption for discrimination against sex workers seeking to purchase insurance or superannuation products, we must acknowledge that sex workers can and routinely do experience discrimination in this area. This discrimination is based on the same stigmatising beliefs outlined above, and can be a significant barrier to sex workers' ability to access the necessary business infrastructure we require to operate, as well as financial security, healthcare, and other necessities. Thus, **we strongly recommend no change that results in exemptions to discrimination protections for sex workers be undertaken.** There are no grounds for denial of these services based on any attribute that relates to sex work. Sex workers should be protected from all forms of financial discrimination.

Accommodation

Discussion question 47: Should the sex worker accommodation exemption be retained, changed or repealed?

Housing is a human right to which many sex workers do not have secure access. Discrimination is reported from hotels, body corporates, local councils and neighbours; sex workers report being refused accommodation, evicted, or treated unfairly irrespective of whether the sex worker is operating lawfully or intends to be working from the premises.[22]

When accessing housing or accommodation, sex workers can experience difficulties in obtaining rent agreements or housing once our occupation is known, regardless of whether we intend to work from the premises. Sex workers have experienced eviction from hotels as well as private rental accommodation, rude treatment by accommodation staff, and council staff informing landlords about our occupation. In a survey conducted about discrimination and housing, the majority of respondents indicated they would 'never put my occupation because I feel sure my application will be rejected.'[23] Ending discrimination against sex workers in housing and accommodation is crucial for sex workers to have choice and control over the conditions and locations of our work.

[22] Scarlet Alliance, & AFAO, 'Unjust and Counter-Productive: The failure of government to protect sex workers from discrimination', 1999, http://www.scarletalliance.org.au/library/unjust counterproductive. pp 19-20, accessed 17 Aug 2021

[23] Scarlet Alliance and the Australian Federation of AIDS Organisations, Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination, Sydney, 1999, 20, accessed at http://www.scarletalliance.org.au/library/unjust-counterproductive on 06 October 21.

Under 106C of the *Anti-Discrimination Act 1991* (QLD), if an accomodation provider reasonably believes that a person is using or intending to use their premises for sex work, they may lawfully refuse accomodation to that person, evict them or otherwise 'treat them unfavorably'. Under S 62 of the *Equal Opportunity Act 2010* (VIC), a person can refuse accommodation to another person who intends to use the accommodation for, or in connection with, a lawful sexual activity on a commercial basis. While this has been repealed by the *Sex Work Decriminalisation Act 2022*, it has done pervasive damage to Victorian sex workers' access to housing. The *Sex Work Decriminalisation Bill*'s[24] Explanatory Memorandum acknowledges that accomodation exceptions are discriminatory in nature towards sex workers and the repeal of the exception *'is intended to address discrimination against sex workers in accommodation settings'*.[25] We note that this change will leave Queensland as the **only** jurisdiction that legalises accommodation discrimination.

A clear example of this type of insecurity is a high-profile discrimination case in Queensland, between a sex worker who was operating lawfully and a motel operator (*GK v Dovedeen*). In 2012 the sex worker won a discrimination case against the motel operator after being refused accomodation on the basis of the individual's occupation. However shortly after this successful discrimination case, Queensland's attorney general amended the anti-discrimination act to expressly allow discrimination against sex workers in providing accommodation.[26]

Provisions that allow for discrimination against sex workers by accomodation providers contradict evidence that sex work businesses have neutal or positive effects on neighbourhoods[27] and little to no amenity impact, as sex work businesses are often discrete to maintain anonymity, privacy and safety.[28] They contribute to housing precarity for sex workers and prevent us from securing places to safely conduct our work. Where sex workers are discriminated against in accommodation, we may be ejected from short-stay rentals and left without accommodation in isolated or rural areas, evicted at night without access to transport or other accommodation, identified to local authorities or forced out of a geographic area. This reduces our ability to exercise choice in our working conditions. Sex workers operating from private accommodation may also feel less able to report crimes against us or access services.

Sex workers, like other workers, travel for work and are a valid part of the fly-in, fly-out (FIFO) and drive-in, drive-out (DIDO) workforce. Like other professionals, sex workers may travel and migrate for work opportunities, career advancement and improved conditions and pay. Travelling for work like this is not uncommon. Sex workers advertise locally, provide professional services and act as safe sex educators to our clients. Loopholes that allow accommodation providers to discriminate against us restrict our ability to work and travel freely.

When the state provides exceptions, or no protection at all for sex workers, it grants power to organisations, individuals and governments to engage in corrupt practices. For example, an

[24] *Sex Work Decriminalisation Bill 2021 (VIC)*
[25] Ibid, Explanatory Memorandum, p. 10.
[26] Z. Stardust, 'Protecting Sex Worker Human Rights in Australia', 2014, *Scarlet Alliance*, https://scarletalliance.org.au/library/stardust_2014, p. 31, accessed 17 Aug 2021
[27] J. Prior and P.Crofts (2012) 'Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use', New Zealand Geographer 68, 130–140 p. 131.
[28] O'Mullane, M., 'The Subversion of Progressive Intent', p.18

accommodation provider may approach a sex worker and suggest they will not evict them if they provide a free service to the accommodation provider, or provide them with 'hush funds'. This kind of corruption is regularly reported by sex workers to sex worker peer organisations.

Scarlet Alliance recommends the repeal of 106C the exemption that makes accommodation discrimination lawful against sex workers in Queensland.

Other exemptions

Citizenship / visa status

Discussion Question 49: 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?

We recommend that the citizenship/visa status exemption be repealed, and identify migrant sex workers as a group that is unreasonably disadvantaged by the exemption. Migrant sex workers in Queensland experience disproportionate police targeting, racial profiling, and entrapment, and are subject to a wide range of discrimination in aspects of public life. One of the most marked areas is in access to government financial support. During the COVID-19 pandemic, migrant sex workers were among those left behind by Federal and state financial stimulus measures, and the sex worker community witnessed the impact this had and continues to have on migrant sex workers. The lack of access to the public health care system and Medicare benefits also burdens migrant sex workers with unreasonable health care costs and difficulty accessing medical testing currently required by Queensland's sex work laws. Citizenship and visa status must not be a barrier to accessing essential government services and support.

Improving the Complaints Process

Support access to pseudonymous and anonymous complaints

To improve sex worker access to the complaints process, name suppression for sex workers must be available and accessible at every stage, from conciliation to higher courts. Due to the widespread stigma surrounding sex work in Queensland, sex workers have a strong stake in maintaining control over our privacy in any situation that might link our sex work and personal / legal identities, particularly where this information can be made available to authorities, our clients, media, or members of the public. The likelihood of being 'outed' as a sex worker, particularly as sex work is still heavily regulated, policed, criminalised and stigmatised in Queensland, is currently a significant barrier to a sex worker lodging a complaint when experiencing discrimination.

The use of pseudonyms should be guaranteed during the conciliation processes that occur at the Human Rights Commission level. If a claim reaches the tribunal or higher court level, applying for

name suppression and other confidentiality orders should be an accessible process that is made obvious to each complainant and does not require legal support to access. This is essential to ensuring that our privacy, anonymity and safety is guaranteed throughout the process. One option for addressing faciliating equitable access to court proceedings for sex workers could be to allow the entire complaint to be processed under a pseudonym, with this option provided on initial complaint forms. We note that the use of pseudonyms is currently allowed by the Human Rights Commission and we recommend that this option is made plainly obvious on the complaints form. This is essential to ensuring that our privacy, anonymity and safety is guaranteed throughout the process.

Judicial officers, tribunal members and judges should receive appropriate information and training to understand why sex workers must be granted suppression or confidentiality orders if their cases reach the tribunal stage or higher court. This training should be informed or delivered by peer-led sex worker organisations[29] and will reflect our safety needs for privacy and confidentiality.

Allow for organisation complaints

As noted above, sex workers have unique privacy and safety concerns when interacting with legal processes. Another way to accommodate this concern is to **allow for organisations such as Respect Inc., to bring complaints on behalf of sex workers who have experienced discrimination**. Allowing organisation complaints also increases our access to the support offered by sex worker peer organisations, which can improve our sense of safety during a legal process. However, the consent of the individual/s must be given to the organisation before an organisation may make a complaint on their behalf. This reduces the likelihood of oganisations advocating for positions that are not within the best interests of sex workers, which can occur in the case of organisations who view sex work as inherently violent or degrading, and sex workers as victims in need of rescue.

Organisations such as Respect Inc must be able to make complaints on behalf of sex workers in both conciliation and tribunal processes.

Inhibit use of release, discharges and indemnity agreements

It is integral that sex workers are not pressured into signing release, discharge and indemity agreements during conciliation. These agreements degrade the possibility of systemic change being achieved through the existent conciliation framework. It also invisibilises sex workers' success in recieving damages from our complaints, passively discouraging other sex workers from pursuing complaints. It is essential that sex workers are able to speak about our experiences of discriminiation publicly, as this encourages others to access redress and holds perpertrators publicly accountable. Enforcing secrecy only perpetuates the notion that sex workers can be lawfully discriminated against without accountability. **To grasp the scale and practice of these agreements we recommend that**

[29] A list of sex worker peer-led organisations can be found at https://redbook.scarletalliance.org.au/home/sex-worker-orgs/

the Commission conduct a review into the routine use of non disclosure resolutions as standard practice in conciliation processes.

Direct right of access to tribunal

Discussion Question 10: Should the Act include a direct right of access to the tribunals?

The *ADA* currently adopts a 'two-stage enforcement model' of dispute resolution where complainants must go through compulsory conciliation facilitated by the Human Rights Commission. There is presently no direct right of access to tribunals. As noted in the Discussion Paper, this enforcement model has a number of disadvantages: a very small portion of complaints make it to a hearing, decision or published outcome; there is a lack of transparency during conciliation; there is little opportunity for anti-discrimination law to be developed through case law; and the secrecy of conciliation limits the wider community's understanding of discrimination.

For sex workers, the dearth of published decisions relating to sex work discrimination reduces knowledge of the extent of discrimination and successful challenges against acts of discrimination. Conciliation, tribunal and higher court proceedings are arduous, exhausting, and potentially retraumatising. For sex workers, they also pose the risk of breaches to our privacy concerning our legal identities and our sex work status or the act of doing of sex work. Due to the inadequacies of the existing protections, we cannot be assured that the high level of risk associated with initiating a complaint will be returned. **Sex workers will be more likely to report if there is a direct right of access to the tribunal where a systemic case of discrimination could be declared** (e.g. 'forcing sex workers to pay more than other businesses for advertising is discrimination') rather than an individualised private conciliation which may not be perceieved as worth the effort and risk.

Remove financial barriers

Pursuing redress for discrimination can be costly, particularly for those who have experienced discrimination that has resulted in loss of income, which can be the case for sex workers who have experienced financial or accommodation discrimination or sexual harassment that has led to the need to leave a workplace or take time away from work for recovery. **Sex workers who wish to pursue a discrimination case in tribunal or a higher court require access to funded or subsidised legal support.** In order to improve our access to current and future protections under the *ADA*, cost barriers to accessing redress must be removed.

Publicly-accessible conciliation register

Conciliation registers provide de-identified case studies of discrimination and vilification complaints that have been resolved by the conciliation process. These case studies provide the background information and outcome of the case, and the register is intended to provide assistance to people who are considering making a complaint. It is important that all jurisdictions **provide access to comprehensive, de-identified conciliation registers to improve public understanding about the**

prevalence of pursuable discrimination cases, allow sex workers to understand the context of conciliation process outcomes for sex workers, and provide a degree of transparency to these processes that currently does not exist.

Addressing overarching legal issues

The use of 'comparator test' for establishing direct discrimination

Discussion Question 2: Should the test for direct discrimination remain unchanged, or should the 'unfavourable treatment' approach be adopted?

As noted in the Discussion Paper, the current test for direct discrimination in Queensland requires a comparison 'between the treatment of a person because of a prohibited attribute, and treatment that is or would be afforded to a real or hypothetical person – the 'comparator'. A 'comparator test' often involves the construction of a 'hypothetical comparator', which can be further complicated if a sex worker has experienced discrimination on the basis of multiple attributes. This 'construction' can result in a test that is in and of itself discriminatory towards sex workers. For example the case of *Payne v APN News & Media* (2015)[30] involved a sex worker claiming that APN had discriminated against them because they were forced to advertise in the 'Personals' section, which cost more than the other sections such as 'Employment', 'Motoring', 'Real Estate', 'Buy and Sell', or 'Trades'. The sex worker plaintiff argued that the comparator should be another advertiser who was allowed to advertise in a section other than 'Personals'. This argument aligns with the view that sex work is a legitimate occupation that should be treated equally to other forms of skilled labour without special treatment. However the court rejected this, stating that:

> *'comparisons with rates for other categories were beside the point, because, according to uncontradicted evidence, "personals", as matters of some delicacy, required more careful scrutiny by APN staff.'*[31]

The only relevant comparator in this case was held to be someone advertising in the personals section who was not a sex worker, and who was charged less. Discrimination in advertising is an ongoing and pervasive issue for sex workers, which affects our businesses and finacial secuirty. This case represents a fundamental inability on behalf of judicial officers to compare sex work to other forms of skilled labour, which prevents sex work being seen as occupation that does not require 'special treatment'. This case was an opportunity for the courts to assert that existing advertising standards that apply to all businesses are adequate in their application to sex work and that any differential treatment of sex worker advertisers is discriminatory. However, the lack of undertsnaidng that sex work is work found expression in the current comparator test, as it allowed the courts to engage in the artificial exercise of constructing a 'hypothetical comparator' to sex workers. As shown in *Payne*, this inevitably places us at risk of further discrimination and leads to contrived and

[30] *Payne v APN News & Media* (2015). QCAT 514. https://www.qhrc.qld.gov.au/resources/case-studies/lawful-sexual-activity
[31] *Payne v APN News & Media* [2016] QCATA 140

damaging results, ultimately taking the focus away from the impact of discrimination on the sex worker to refocus on a comparative exercise that is ineffective and limits benefits of the *ADA*.

Scarlet Alliance supports the removal of the comparative model and the implementation of the 'unfavourable treatment test'. We support the current Victorian approach - ' the 'unfavourable' approach only requires 'an analysis of the impact of the treatment on the person complaining of it.' Through focusing on the 'impact of treatment', the unfavourable treatment test limits the avenues for sex work stigma to be expressed and appropriately situates the sex worker complainants as the primary focus of the case, rather than a 'hypothetical construction of a non-sex worker'. The unfavourable approach also allows for the consideration of intersectional discrimination.

Shifting the burden of proof to the respondent

Discussion Question 8: Should the onus of proof shift at any point in the process? If yes, what is the appropriate approach?

Sex workers have long faced barriers and discrimination in accessing equitable legal processes. A key barrier is our questioned 'believability' as survivors of any civil or criminal legal infringement. This is largely due to our positioning as 'criminals' within the community and broad misunderstandings about the nature of our work and daily lives. Our questioned 'believeability' is compounded by the current burden of proof placed on the complainant, which serves as a major deterrent for sex workers accessing anti-discrimination protections.

We support the burden of proof shifting to the defendant, similar to the approach taken in the *Fair Work Act 2009* (Cth). This shift makes initiating a complaint seem far less burdensome and daunting for sex workers as we will only have to provide details of the discrimination and establish that we possess the relevant attribute. Shifting the burden of proof also acknowledges the perceivable power imbalances that are often inherent in an act of discrimination. It is inequitable for the person who has been adversely impacted by the discrimination to also shoulder the difficult task of establishing discrimination.

Adopting a positive duty

Discussion Question 21: Do you support the introduction of a positive duty in the Anti-Discrimination Act?

Anti-discrimination law is commonly criticised for embodying a reactive mechanism against discrimination, rather than a preventative one. This leads to anti-discrimination processes having a negligeble effect on systemic issues of discrimination. A reactive approach allows for systemic sex work stigma to remain largely unchallenged and as aforementioned, allows for the use of 'gag orders' during conciliation processes. The current silence within the *ADA* on addressing systemic discrimination is counter-productive to the *ADA*'s intent and effectively places the burden on sex workers to challenge systemic discrimination. Therefore, **Scarlet Alliance supports adopting a positive duty to address the need for a preventative and systemic approach. Enforcing a positive**

duty encourages actors across areas of public life to take responsibility for and share the burden of addressing systemic sex work stigma, the burden of which currently rests on individual sex worker complainants.

Commit to and engage sex worker peer organisations in public education to end discrimination, stigma and vilification against sex workers

We agree with the Discussion Paper that 'the underlying drivers that contribute to discrimination and sexual harrassment…include cultural and social attitudes that can be difficult to identify and shift'.[32] A 'reasonable and proportionate' measure in addressing these 'underlying drivers' is to **engage peer sex worker organisations, such as Respect Inc. to conduct education and training**. A key aspect of these initiatives should be education around the nature of sex work, the diversity of sex work and sex workers and that sex work as a profession, requires no more regulation or scrutiny than other work. **Any 'regulatory mechanisms such as education and industry guidelines' that are designed to embed understanding of a positive duty, must be drafted in consultation with Respect Inc.**

Further, **the Queensland government should engage in active anti-stigma, anti-discrimination and vilification education campaigns directed at the general public as well as public services, media, law enforcement, the judiciary and immigration authorities.** Sex worker organisations must be an integral part of designing and delivering these campaigns to ensure that the messaging is best targeted at preventing discrimination in relevant sectors.

Human rights compatibility

Question 56: 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?

There are several current provisions which we believe are incompatible with Queensland's *Human Rights Act 2019 (HRC)*, including the 'lawful sexual activity' attribute itself. This attribute colludes with the Queensland laws that criminalise sex work and sex workers to draw an arbitrary line between 'lawful' and 'unlawful', dividing the community of sex working indivduals along the same line. This line willingly deprives sex workers forced to work outside the law, of access to the full suite of human rights prescribed in the *HRC,* which provides that *'*A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom'[33]. As evidenced by the QLRC's current investigations into the decriminalisation of sex work in Queensland *and* the collective knowledge and experience of the sex worker community, the laws relating to sex work in Queensland cannot be understood to be

[32] Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act*, Discussion Paper, p. 72.
[33] *Human Rights Act 2019* (QLD) s 13.

‘demonstrably justified in a free and democratic society based on human dignity, equality and freedom’. Thus, nor can an attribute that is based on these laws. This is yet another reason we strongly recommend the replacement of the attribute with ‘sex work’ and ‘sex worker’.

We have raised a number of concerns around the current exemptions provisions that provide lawful discrimination against sex workers when we are seeking to find alternative employment that involves minors or seeking accommodation. Both are based on misinformation and stigma, and importantly are also incompatible with the following provisions of the *HRA:*

- S 15 Recognition and equality before the law
- S 25 Privacy and reputation

As stated above, there is no legitimate evidence behind or reason for the prevention of sex worker access to working with minors. Further, there are existing mechanisms to address suitability for working with children that should apply equitably to all individuals, including sex workers. This provision (28) of the *ADA* signals that sex workers are not equally capable of undertaking employment in this sector. The requirement to disclose an individual’s experience of sex work on application for employment, or the revelation of this information through other means, is also an invasion of sex workers’ right to privacy and has the potential to do reputational damage where the refusal of employment on the grounds of sex work experience is known by other parties to an employment rejection on those grounds. **We therefore recommend the repeal of S 28 from the *ADA.***

In the instance of accommodation, again there is insufficient evidence to suggest that sex workers who are hiring accommodation for use of or intent to use the premises for the purpose of conducting sex work should be lawfully discriminated against. The *HRA* provides for ‘recognition and equality before the law’ and protection of the right to ‘privacy and reputation’ in ways that conflict directly with this exemption. Accommodation is a basic human need, and equity of access is a major issue for Queensland sex workers, as evidenced in the recent survey on sex worker experiences of discrimination conducted by Respect Inc.