



BRIEFING PAPER

ANTI-DISCRIMINATION & VILIFICATION PROTECTIONS FOR SEX WORKERS IN AUSTRALIA



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Introduction

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. Because some or all aspects of our work are criminalised in many states and territories, there is minimal protection or recourse. Two jurisdictions have implemented a decriminalised framework, a third jurisdiction is commencing implementation and the remaining states and territories are moving towards the decriminalisation of sex work. Despite this, sex workers still remain largely unprotected against discrimination and vilification.

The current anti-discrimination frameworks enable, and in some jurisdictions legalise, discrimination against sex workers, with limited opportunities for us to pursue any protections. Challenging discrimination starts with a complaint and then conciliation, which is a dispute resolution process where the complainant (the party who has experienced discrimination) and the respondent (the party who has been

discriminatory) negotiate a remedy for the harm caused by the discrimination. If an agreement can be reached, sex worker complainants are often made to sign non-disclosure agreements covering the discrimination and any settlement agreed upon. This means there is little publicly available information about anti-discrimination cases pursued by sex workers that do not progress beyond conciliation. If not resolved at conciliation, there are significant privacy, safety and financial barriers for a sex worker to take the case to tribunal or a higher court. Unfortunately discrimination against our community is widespread and persistent, taking place daily at systemic and interpersonal levels for sex workers. Simultaneously, there is a lack of accessibility for sex workers to the current mechanisms for redress. This paper sets up a policy framework for best practice anti-discrimination and anti-vilification legislation in Australia. Law reform at federal, state, and territory levels is required for sex workers to access the appropriate legal protections when we are targets of discrimination or vilification.

Scarlet Alliance, Australian Sex Workers Association is the peak national sex worker organisation in Australia. Formed in 1989, the organisation represents a membership of individual sex workers and sex worker organisations, projects, networks and collectives throughout Australia. Through our work and that of our membership, we have consistently maintained high levels of access to sex workers and sex industry workplaces in the major cities and many regional areas of Australia. Scarlet Alliance continues to play a critical role in informing policy through work with governments and the health sector, both in Australia and internationally, on issues affecting sex workers in the Australian sex industry.

Sex Worker Experiences of Discrimination

In 2020, Scarlet Alliance conducted research in partnership with [CSRH](#) 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. Despite decriminalisation in NSW and NT, the legacy of stigma and the absence of specific anti-discrimination and vilification protections for sex workers continues to result in blatant targeted discrimination. Sex workers are viewed and treated as amoral, lawless, or criminal, vectors of disease, a threat to children, deemed unfit parents or guardians, ridiculed as victims, and targeted for deliberate discrimination and vilification. These stereotypes are responsible for historic and current stigmatisation, marginalisation, prejudice, ignorance, and criminalisation.

Laws in Australia facilitate police targeting, over-regulation, criminal records, and forced medical testing of sex workers.

[These laws and policies are a direct result of stigma](#); they tend to be moralistic rather than evidence-based, and create grounds for cruel and deliberate exclusion and control over sex workers in all forms of our lives because we are believed to be a social problem.

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This environment emboldens individuals, organisations, and institutions to discriminate against sex workers with the knowledge that this behaviour is socially and culturally accepted and legally sanctioned. As a result, sex workers both expect and experience discrimination in many areas of our private and public lives. Stigma is exacerbated by vilification of sex workers in television, media, films, newspapers, and by anti-sex work organisations who perpetually portray sex work as dangerous, and sex workers as dead or degraded victims without agency, families, or support. Continued advocacy is required by sex worker organisations to address stigmatising media reporting, and provide education on the harms of these kinds of reports for the sex worker community. Unethical media reporting perpetrates narratives of victimisation and 'othering' of sex workers which increases our risk of experiencing violence. Governments must legislate protections to signal that discrimination and vilification against sex workers and our work is unacceptable.

To illustrate the experiences of discrimination faced by sex workers, we provide this non-exhaustive list of commonly-reported discrimination that we have documented from our community.

Accommodation and housing

Accommodation discrimination against sex workers in some jurisdictions is lawfully enabled. Sex workers are discriminated against when applying for formal lease agreements and other types of secure accommodation when our sex work is disclosed, regardless of whether we intend to work from the property. In some jurisdictions, council staff have been known to take steps such as informing landlords about someone's sex work with the goal of having sex workers evicted. Stigma and discrimination creates housing instability.

We also experience abrupt eviction by hotels and other private short-term rental accommodation. It is common practice for sex workers to be charged more per night, which is enforced by hotel staff who also may call the police on us for no reason apart from our sex work. Anti-discrimination exemptions for accommodation providers mean we are asked for more documentation than others in order to secure a room, and legal extortion such as additional fees for each client or per each extra towel is not unusual. Worse still, some hotels and short-term accommodation platforms have blanket 'no sex work' policies.

Health

Sex workers commonly experience discrimination in healthcare settings, including being subjected to sexual health testing that is not medically indicated or required, having presumptions made about our health risks based on misinformation about sex work, and having our sex work pathologised. When accessing mental health services, we are often stigmatised and have undue analysis placed upon our work as the source of any health issues.

Employment

Sex workers can experience discrimination in non-sex industry workplaces if our sex work is discovered, whether the worker is currently or was formerly a sex worker. Sex workers have been dismissed from their jobs, especially when the role includes the care or education of children. Another barrier to employment is having a record of sex work or criminal charges due to sex work attached to our legal names. This is especially problematic in jurisdictions where sex work remains criminalised and where there are no anti-discrimination protections for people with criminal records. Further, when applying for jobs outside the sex industry, sex workers are reluctant to inform potential employers about our work history for fear of discrimination throughout the recruitment process. Navigating this discrimination means that sex workers may then have gaps on our resumes or feel hesitant to disclose transferable skills and experience we have acquired in the sex industry.

Family matters

In some jurisdictions, sex workers are discriminated against in contexts where we may have contact with children and young adults. This reinforces an unfounded and incredibly unjust stigma about sex workers' suitability to have contact with minors, and can also have painful impacts on our experiences in custody disputes and other family law matters.

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Financial services

Sex workers frequently experience financial discrimination from banks and other financial institutions. This includes having personal and business bank accounts closed, declined merchant facilities, being charged higher fees, and being declined when applying for credit and loans, regardless of whether we have stable incomes or good credit ratings. This discrimination erodes our access to small business opportunities and personal and professional financial security.

Insurance

Sex workers have been denied access to acquiring life insurance policies because sex work is deemed to be a 'dangerous occupation'. We can also be refused

private health insurance and may face higher premiums due to an assumption we are at greater STI/HIV risk than non-sex workers, despite widespread evidence to the contrary.

Advertising

Sex workers experience discriminatory advertising policies, including newspapers refusing to accept advertising for our services, making unapproved changes to pre-paid advertising, charging higher fees, and forcing workers to place the advertisement in person rather than by telephone or internet. In all jurisdictions, sex workers are subject to discriminatory laws and regulations that exceptionalise and/or criminalise sex work advertising.

Current Frameworks for Anti-Discrimination and Vilification Protections

How anti-discrimination and vilification law works in Australia

Within all Australian states and territories, anti-discrimination protections make it illegal to discriminate against people on the basis of various 'protected attributes', such as sex, race, gender identity, disability, religion, lawful sexual activity and profession, trade, or calling. Each jurisdiction protects a different set of attributes in different aspects of life, often using different language. Each also has exceptions and exclusions to the protections it offers. Federal legislation protects attributes relating to sexuality, gender, race, disability, and age, and has a number of established human rights bodies under the Human Rights Commission Act 1986 responsible for addressing discrimination. When someone experiences discrimination, they can make a complaint to the body nominated by their anti-discrimination law. If a complaint is unresolved, it can be escalated to a tribunal or higher court level.

Legally, discrimination is considered to have occurred and is protected against where (a) a person has received unfair or unfavourable treatment, (b) that treatment is because of their status as someone identified within the list of 'grounds' under the law (i.e. race, gender identity, etc), and (c) this unfair treatment has occurred in an area of public life covered under discrimination law (employment, goods and services, education, accommodation, etc).

In the case of vilification, protection is provided where a public act (defined as communication including speaking, writing, etc; conduct including gestures, display of clothing, signs, insignia; and distribution of vilifying content) incites hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the basis of a protected ground under vilification law (race, sex, sexuality, religion).

Protections and exceptions for sex workers in current anti-discrimination law

Exceptions can be understood as ‘loopholes’ that allow for people to ‘lawfully’ discriminate against a group, in this case specifically targeting sex workers. Exceptions currently exist in some states for accommodation providers to discriminate against sex workers when we rent property, including in hotels and other temporary accommodation. These exceptions allow providers to refuse accommodation and housing, evict us, distribute lists of sex worker names to other accommodation providers with the intention of having us banned in entire cities, increase rates per night, charge additional fees for standard amenities and otherwise treat us unfavourably. We can also legally be discriminated against by employers if we want to work with minors.

There are also loopholes for discrimination against sex workers where it can be seen as ‘reasonable’. Any exception that applies only to sex work undermines the benefits of anti-discrimination protections and reflects stereotypes about sex workers that are not founded in evidence. The existence of these exceptions is symbolic of the broader systemic marginalisation that we experience within the Australian legal system.

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Access to existing protections

The ability to exercise autonomy over our privacy as sex workers is essential to our safety. If privacy cannot be guaranteed, accessing protections is risky and dangerous for sex workers. Even where some anti-discrimination protections for sex workers exist, the process is so difficult to access that many of us do not report our experiences. As a result, many instances of discrimination against sex workers go unreported and unaddressed.

Some Australian jurisdictions offer the option to use a pseudonym at the conciliation stage, provided that the respondent can recognise the complainant by that pseudonym (for example, someone’s working name). However, there may be issues with progressing from the conciliation process to a tribunal if a pseudonym has been used and there may also be issues around enforcing the agreement reached in conciliation (such as receiving compensation). Further, if a claim progresses to the tribunal or higher court stage, name suppression and other confidentiality orders must be applied for and are not guaranteed. This forms a major barrier for sex workers who do not want to connect their legal name to their sex work, especially as their personal details and the details of their experience of discrimination are publicly accessible if a confidentiality order is not granted.

The prevalence of non-disclosure agreements (NDA) in conciliations is also a barrier for individual sex workers and our community at large. A series of isolated private settlements does not result in systemic change and greatly restricts our understanding of how anti-discrimination law can succeed at protecting sex workers when we cannot clearly understand the prevalence of cases, nor how they are resolved. Signing an NDA also withdraws a sex worker complainant’s right to pursue the complaint in other legal ways and limits our ability to access post-conciliation support from peers and services.



The Best Practice Model for Robust Anti-Discrimination and Vilification Protections

There is a common misconception that attributes ‘occupation’, ‘trade’, ‘profession’, or ‘calling’, and ‘lawful sexual activity’ provide redress for sex workers. In order for sex workers to effectively access anti-discrimination protections, the following reforms to federal, state, and territory anti-discrimination and anti-vilification legislation are needed.

Name attributes for ‘sex work’ and ‘sex worker’, and include our families and associates

The best model for anti-discrimination protections for past and current sex workers must include the protected attributes ‘sex work’ and ‘sex worker’. Explicitly naming these attributes recognises the unique stigma that we experience as sex workers, and that our work is treated differently than other types of work, even where our work is decriminalised.

The attributes ‘occupation’, ‘trade’, ‘profession’, ‘calling’, or ‘lawful sexual activity’ do not acknowledge the historical and contemporary marginalisation, criminalisation, and stigmatisation that sex workers experience. Like other marginalised communities, sex workers require equitable law reform which recognises the pervasive and unique effect that sex work stigma has on our lives, health, safety, and standing in the community.

Additionally, protections must include past and present sex workers, families and associates of sex workers, and those presumed to hold a characteristic that is generally imputed to persons who are or were sex workers.

Without vilification protections, sex workers remain without redress against public acts that incite hatred, serious contempt, and severe ridicule towards us.

Protection for all sex workers against sexual harassment

Sexual harassment can and does occur against sex workers, despite stigmatising beliefs that sexual harassment is an ‘occupational hazard’ of our work or something we should expect to experience in our personal lives because we are sex workers. The ability to pursue sexual harassment redress must be available to all sex workers. Where it occurs at work, we must be able to pursue redress whether we are employees, contractors, or sole traders.

Protect sex workers who have criminal and/or licensing records

Sex work is still criminalised or subject to restrictive licensing regulations in the majority of Australian jurisdictions. As a result, many sex workers may have criminal convictions or licensing records that negatively impact a wide range of aspects of our lives. Having a criminal record can negatively affect our search for other employment, leasing property, and gaining custody of children and in adoption applications, and protections must be accessible to us regardless of the legal environment in which we work. Protections must exist against discrimination based on past criminal or licensing records for sex work, spent convictions and irrelevant criminal records. Criminal convictions or licensing records related to sex work should be expunged.

Improve access

With current complaints processes the majority of discrimination against sex workers goes unreported. The complaints process needs to be reformed to make it more accessible and supportive for sex workers to navigate.

Allow for representative complaints

Sex worker peer organisations must be empowered to make complaints on behalf of community members, as, for many sex workers, the process of making a complaint is inaccessible.

Representative complaints can also provide a layer of privacy for individual sex workers who experience discrimination.

Protect our privacy

Privacy protections must also be ensured, as connecting our legal names with our sex work status in private or public process is a safety risk and can result in actual harm and negative impacts.

Name suppression currently has to be applied for again and again throughout different stages of the legal process, and can be denied at any point. Name suppression and pseudonymous complaints options must be available and easily accessible to us at all stages of the process, without the necessary assistance of legal professionals. To lessen the precarity and unpredictability of this process, judicial officers should receive appropriate information and training as to why name suppression and confidentiality orders are absolutely necessary for sex workers, for whom privacy is a safety issue.

Financially support legal representation for complainants

Pursuing redress for discrimination can be costly, and the most marginalised members of the community are often those most vulnerable to discrimination. Sex workers who wish to pursue a discrimination case in tribunal or a higher court should have access to funded or subsidised legal support.

Restrict use of release, discharge and indemnity agreements

Sex workers should not be pressured into signing release, discharge, or indemnity agreements during conciliation, as these agreements degrade the possibility of systemic change being achieved through the existing conciliation framework. It also invisibilises sex workers' success in receiving damages as a result of our complaints. It is essential that sex workers are able to speak about our experiences of discrimination publicly, as this encourages others to access redress and holds perpetrators publicly accountable. Enforcing secrecy only perpetuates the notion that sex workers can be lawfully discriminated against without accountability.

Provide and maintain a public register of complaints

The ability to resolve matters in private and off the record allows people and entities who commit discrimination to continue to evade broader accountability and growth. The provision of greater transparency around these processes would allow the public, journalists, researchers, and sex workers to understand the nature, severity and prevalence of discrimination against sex workers, provide us with more information about what might be available to us if we pursue protections, and give us greater confidence to seek support and justice.

No exceptions

There can be no loopholes in which it is appropriate or lawful to discriminate against sex workers in any area of public life. These exceptions position sex workers as less deserving of protection than other people, are based on misinformation and stigma, and significantly weaken our access to recourse. They also signal to the community that sex workers are less 'desirable' members of the Australian community, which encourages other forms of harm towards sex workers and indifference when we are harmed.