



SEX WORKER OUTREACH PROGRAM
SEX WORKER REFERENCE GROUP

22nd August 2022

Department of the Attorney-General and Justice
GPO Box 1722
DARWIN NT 0801

Submission Emailed to: Policy.AGD@nt.gov.au
cc: Hannah.Clee@nt.gov.au

To Director, Legal Policy, AGD Policy Staff
Department of the Attorney-General and Justice

Thank you for the opportunity to submit our collective response to the Northern Territory Exposure Draft Anti-Discrimination Amendment Bill 2022

Please accept this submission from the Scarlet Alliance, Australian Sex Workers Association, the Northern Territory Sex Worker Outreach Program (SWOP NT) and the Sex Worker Reference Group (SWRG)

Scarlet Alliance, Australian Sex Workers Association

Scarlet Alliance is the Australian Sex Workers Association. 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.

Formed in 1989, Scarlet Alliance is Australia's national peak body representing a membership of individual sex workers, and sex worker networks, groups and community-based projects and organisations from around Australia. Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. Our member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Through our projects and the work of our membership we have a high level of access to sex industry workplaces in the major cities. Scarlet Alliance represents sex workers on a number of Commonwealth committees and ministerial advisory mechanisms.

The Northern Territory Sex Worker Outreach Program (SWOP NT)

SWOP NT is a member of the Scarlet Alliance Australian Sex Workers Association; our peer based and led program is located within the Northern Territory AIDS & Hepatitis Council (NTAHC). SWOP NT's health promotion service engages sex workers and other sex work industry stakeholders to gain knowledge about the Northern Territory's legal and sex work laws, and work, health, and safety requirements. SWOP NT's advocacy, health promotion, training/workshops, outreach, and broader programming aims to improve sex workers lives by holistically addressing issues including our human rights. SWOP NT advocates to reduce stigma and discrimination against us as workers via advocacy, information resources and education sessions to health and legal sectors to facilitate equitable access to services and to inform policy development for a safer framework for sex workers.

The Sex Worker Reference Group (SWRG)

The SWRG is comprised of past and current sex workers who work in NT, inclusive of NT sex workers who fly in and out for work to other jurisdictions, including Queensland. The SWRG co-represents alongside SWOP NT at roundtables, departmental and political meetings, delivers training to stakeholders and presents at conferences

and forums. The SWRG documents best practice and case studies to support our submissions, recommendations and evidence for reforms for sex workers rights based on the lived experience of workers.

Scarlet Alliance, SWOP NT and the SWRG wish to draw attention to areas that directly impact on sex workers in the Exposure Draft. In this submission we also highlight overlaps of areas where sex workers intersect.

We are members of Trade Unions, we are a part of LGBTIQ+ communities, we are also employed in other industries and other specialised trades. We are service providers; we are as diverse in our skills as sex workers as we are in our personal and professional lives.

We are a socio-economically and culturally and linguistically diverse workforce that has additional overlaps in precarious work and the gig economy. Sex workers are not a homogenous group. There are intersectional layers of discrimination and vilification that we experience. Past, part-time and occasional sex workers in the Northern Territory are employed in many other industries and trades.

We have a long standing engagement with all of the stakeholders listed below. Due to time constraints many NT stakeholders have not been able to fully share or draft content with each other. We have, however, continued to discuss areas to address in our feedback to the NT ADA Exposure Draft review. The submissions submitted by the following organisations address issues that intersect or are directly related to sex work and us as sex workers in all of our diversity. Scarlet Alliance, SWOP NT and the SWRG have been able to sight areas of or full submissions from:

- **Rainbow Territory**
- **Unions NT – NT peak Union Body representative of 13 member Unions**
- **NT & QLD United Workers Union (UWU)**
- **NT & SA ASU – Australian Services Union**
- **NT AEU – Australian Education Union**
- **IEUA-QNT – The Independent Education Union: Queensland and Northern Territory Branch**
- **NTCOSS – Northern Territory Council of Social Services**
- **NTAHC – Northern Territory AIDS and Hepatitis Council**
- **NTWWC – Northern Territory Working Women's Centre**
- **DCLS – Darwin Community Legal Service**

We wish to thank the Northern Territory Labor Government for their continual work in ensuring that comprehensive consultation has been provided throughout a very long and careful process to achieve the best possible amendments to protect Territorians, and ultimately fully modernise The Northern Territory *Anti-Discrimination Act 1992*.

In 2018 during the initial consultation process, Scarlet Alliance, SWOP NT and the SWRG provided extensive evidence and case studies that demonstrated systemic discrimination against sex workers and our work. We have collectively maintained clear direction and have been relentless in ensuring that every Attorney General appointed who has held the position between 2016-2022 has been thoroughly briefed of the importance of insertion of protections for sex workers and sex work.

The Northern Territory Government has enabled opportunity for input through the discussion papers, the release of the Principal Paper and the Exposure Draft Anti-Discrimination Amendment Bill 2022. This last stage is very welcome and an integral part of the ongoing process for sex workers to gain protections against systemic stigma, discrimination and vilification. Sex workers in the Northern Territory and across Australia continue to contribute to reforming laws that do not protect our rights to work safely.

Scarlet Alliance, SWOP NT and the SWRG note the work of many Labor governments for their leadership in recognising sex work as a legitimate form of work that needs to be regulated through standard business, Work Health & Safety, and other industrial protections to safeguard worker's safety and rights. Although sex work has

been decriminalised through the reforms of the *Sex Industry Act 2019*, sex workers remain unprotected from discrimination and vilification against us and our work. A crucial and necessary part of the reforms brought about by decriminalisation is strong, supporting anti-discrimination and vilification protections within the NT *Anti-Discrimination Act 1992*. This is vital unfinished business to ensure the work health and safety, respect and dignity of sex workers in the NT.

To achieve this outcome the Northern Territory government must continue to work with us as sex workers and our local peer organisations, SWOP NT, the SWRG and from our national association the Scarlet Alliance, Australian Sex Workers Association to maintain strong partnerships to advance crucial areas and implement these reforms.

Discrimination against sex workers and our work is systemic worldwide. Australia is already leading the way forward to start the first steps to address injustices against sex workers, and recognising that the stigma of sex work comes with a high cost.¹

Together we must all change this discourse.

Regards,



Jules Kim

Chief Executive Officer

Scarlet Alliance, Australian Sex Workers Association

P: (02) 9517 2577 F: (02) 9517 2488 M: +61 411 985 135

203/1 Erskineville Road, Newtown NSW 2042

PO Box 854, Newtown NSW 2042

www.scarletalliance.org.au



Leanne Melling

SWOP NT Coordinator

Sex Workers Outreach Program (SWOP NT)

Northern Territory AIDS & Hepatitis Council (NTAHC)

Mobile: 0447022332

Leanne.Melling@ntahc.org.au



Sienna Charles & Accalia Dalmore

Representatives Sex Worker Reference Group (SWRG)

SWOPNT@ntahc.org.au

¹ Z Stardust, *The stigma of sex work comes with a high cost*, The Conversation, 10 August 2017, <<https://theconversation.com/the-stigma-of-sex-work-comes-with-a-high-cost-79657>>.

Table of Contents

Executive Summary	5
Summary of Recommendations	7
Discrimination against Sex Workers and Our Work	11
Protected Attributes	13
Recommendations	16
Definitions	17
Recommendations	19
Positive Duty to Eliminate Discrimination, Sexual Harassment and Victimisation	20
Recommendations	20
Anti-Vilification and/or Offensive Behaviour	21
Recommendations	24
Sexual Harassment	25
Recommendations	26
Exemptions	27
Exemptions for religious organisations	27
Exemptions for charitable organisations	29
Exemptions regarding ‘irrelevant criminal record’	29
Exemptions regarding ‘public health’	30
Recommendations	31
A Representative Complaints Process	32
Representative complaints	32
Support access to pseudonymous and anonymous complaints	32
Third party complaints	33
Recommendations	34
Conciliation and Other Matters	36
Inhibit the use of release, discharges and indemnity agreements	36
Publicly-accessible conciliation register	36
Remove financial barriers	36
Access to anti-discrimination protections for people who are incarcerated	37
The Need for a Human Rights Act	38
Recommendations	40

Executive Summary

Sex workers in Australia have long been subjected to discrimination and vilification with devastating impacts on our safety, housing and accommodation, financial stability, and mental health and well-being. While decriminalisation does break down many of the legal barriers that sex workers face in accessing labour rights, decriminalisation does not eradicate the pervasive stigma surrounding sex work and discrimination against sex workers and our 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 necessitates control and containment.

This submission outlines the pervasive discrimination, vilification and sexual harassment experienced by sex workers in the Northern Territory and the detrimental effects that this has on our work, health, relationships, safety and experience of equity. We make recommendations as to how the NT *Anti-Discrimination Act 1992 (ADA)* must be amended, as well as recommendations regarding the conciliation process. This submission is one of the many policy documents that Scarlet Alliance, SWOP NT and other sex worker peer organisations have produced in the fight to obtain robust anti-discrimination protections. We urge the Commission to review this policy work and more importantly to meet our demands therein. As a community, sex workers collectively resist, mobilise and advocate for our human rights, industrial rights and right to be free from discrimination. We urge the NT Government to continue to support sex workers in our resistance to the criminalisation, targeting and surveillance of our work as well as our fight to obtain robust anti-discrimination protections for all sex workers.

We acknowledge that the Northern Territory government is world-leading in its approach to the human rights of sex workers, and this is reflected in the recent decriminalisation of sex work and the current attempt to protect sex workers from discrimination under the *ADA*. However, we believe that the Exposure Draft Bill does not go far enough in some areas, and will unfortunately fail to protect all sex workers under the suggested wording and definitions for the proposed attributes. In order to wholly support the benefits of decriminalisation, and the full intention of the *Sex Industry Act 2019*, it is essential that this Exposure Draft Bill enacts protections for sex workers in a way that protects all sex workers through the attributes of 'current or past sex work' and 'sex worker, current or past'.

Through our extensive consultation process we are able to provide definitions that will adequately protect all sex workers and our work including 'Erotic Live Performers and Adult Entertainers'.

The Northern Territory Labor Government in the implementation of the *Sex Industry Act 2019* has already fully decriminalised sex work, aligning sex work to existing laws and regulations as well as enabling access to industrial rights, protections, and responsibilities. This enables the sex industry to operate in accordance with the laws of the Territory and the Commonwealth as they apply to all individuals and businesses generally, including laws governing employment, occupational health and safety, workers compensation and rehabilitation, planning, taxation and discrimination.²

² NORTHERN TERRITORY OF AUSTRALIA, SEX INDUSTRY ACT 2019, Act No. 40 of 2019
<<https://legislation.nt.gov.au/Bills/Sex-Industry-Bill-2019?format=assented>>.

In 2022, the Northern Territory Government has documented in the Principle Paper for Achieving Equality in the Northern Territory 2021 (tabled in Parliament 16 February 2022), that the amendments to the *ADA* in 2022 will protect past and current sex workers and sex work.

The active engagement of Australian politicians and governments with sex workers affirms that workers' knowledge is integral to assist in developing and implementing a fully decriminalised framework. This engagement is recognised as best practice for sex industry workers and their businesses to obtain effective safety protections and industrial rights. The Northern Territory has demonstrated the importance of best practice partnerships between sex workers and government and provides evidence for the critical reforms to decriminalise sex work, in other states and territories throughout Australia. Ensuring robust anti-discrimination and vilification protections through the attributes of 'sex work' and 'sex worker' in the *ADA* will be another best practice example of leadership by the NT government to protect the rights, health and safety of all workers.

The failure to protect sex workers under anti-discrimination law has been detrimental in NSW, the first jurisdiction in the world to decriminalise sex work in 1995. Despite decriminalisation, sex workers continue to experience systemic discrimination and vilification, which affects our health, well-being 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. It further shows that a lack of robust anti-discrimination protections can effectively undermine the beneficial intent of decriminalisation. Fortunately, in NSW 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'³ – the attributes that we believe afford the strongest protections for sex workers.

³ *Anti-Discrimination Amendment (Sex Workers) Bill 2020* (NSW), accessed at <<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3774>> .

Summary of Recommendations

Protected Attributes

1.1 Recommendation: replace proposed attribute of ‘employment as to sex work, including past sex work’ with ‘current or past sex work’ and ‘sex worker, current or past’.

1.2 Recommendation: Include ‘current or past citizenship and visa status’ as a protected attribute.

1.3 Recommendation: Include ‘current or past use of drugs’ as a protected attribute, and include the use of medication in the definition of drug use.

1.4 Recommendation: Include HIV status as a protected attribute.

1.5 Recommendation: Include hepatitis status as a protected attribute

Definitions

2.1 Recommendation: Replace the proposed definition of ‘sex work’ to read:

‘the provision by a person of services that involve the person participating in sexual activity with another person in return for payment or reward; including involving the use or display of the body of the person providing the services for the sexual arousal or sexual gratification of others.’

2.2 Recommendation: Insert the definition of ‘sex worker’ as ‘means a person who performs sex work’.

2.3 Recommendation: Insert the definition of ‘association’ (s 19(f)) into s 4(1) of the ADA to include ‘family members, partners, friends, colleagues, associates and acquaintances’.

2.4 Recommendation: amend the definition of irrelevant criminal record under section 4(1) to include:

‘A record for offences under the Acts repealed by the Sex Industry Act 2019 (NT)’.

2.5 Recommendation: amend the proposed definition of systemic discrimination under s 4(1) to read:

‘systemic discrimination means behaviour, practices, policies or programs of an organisation, institution, company, club, collective or body, that have the effect of creating or perpetuating disadvantage for a group that shares a protected attribute.’

Positive Duty

3.1 Recommendation: Enact a positive duty within the ADA to address systemic issues of discrimination, including both the proposed clauses in the Bill.

3.2 Recommendation: Engage SWOP NT in any sex work related information that is developed by the Commission to implement the positive duty.

Anti-Vilification and/or Offensive Behaviour

4.1 Recommendation: Ensure that sex workers are protected by the attributes ‘current or past sex work’ and ‘sex worker, current or past’ so that vilification protections are accessible to all sex workers

4.2 Recommendation: Amend section 20A(3)(a) to read:

‘causes words, sounds, images or writing to be communicated to the public, including online communication or’.

4.3 Recommendation: Engage SWOP NT and Scarlet Alliance to deliver anti-stigma and anti-vilification campaigns directed at the general public as well as public services, media, law enforcement, the judiciary and immigration authorities.

Sexual Harassment

5.1 Recommendation: Proactively engage and consult with SWOP NT in the development of all Commission material relating to sex worker experiences of sexual harassment;

5.2 Recommendation: Professionally engage SWOP NT 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.

Exemptions

6.1 Recommendation: Repeal section 37A, which exempts religious educational institutions on the basis of ‘religious belief or activity; or sexuality’.

6.2 Recommendation: Repeal section 40(3) which allows religious accommodation providers to discriminate if it ‘is in accordance with the doctrine of the religion concerned and is necessary to avoid offending the religious sensitivities of people of that religion’.

6.3 Recommendation: Repeal section 51(d), which exempts ‘an act by a body established for religious purposes if the act is done as part of any religious observance or practice’.

6.4 Recommendation: Repeal section 40(4) which exempts charitable organisations from providing accommodation without discrimination.

6.5 Recommendation: Repeal section 37, concerning irrelevant criminal records.

6.6 Recommendation: Repeal section 55, concerning ‘public health’.

A Representative Complaints Process

7.1 Recommendation: Introduce a representative complaints model as proposed in the Exposure Draft with the following amendment. Amend s.62A(1) to read:

'A representative complaint must allege systemic discrimination against more than one individual resulting from the behaviour, practice, policy or program of one or more organisations, institutions, companies, corporations, clubs, collectives or bodies.'

7.2 Recommendation: Name suppression for sex workers must be available and accessible at every stage, from conciliation to higher courts.

7.3 Recommendation: The use of pseudonyms must be guaranteed during the conciliation processes that occur at the Anti-Discrimination Commission level, with their availability made plainly obvious on complaint forms.

7.4 Recommendation: Engage and resource SWOP NT to provide training and information to judicial officers, tribunal members and judges should receive appropriate information and training to understand why sex workers must be granted suppression or confidentiality orders.

7.5 Recommendation: Amend the wording of 60(b) to read:

*(b) a **third party**, authorised in writing by the Commissioner, on behalf of a person referred to in paragraph (a), [...] can make a complaint to the Commissioner.*

7.6 Recommendation: Amend the wording of ss.62(1) and 62(2) from 'person' to 'third party' to read:

- (1) The Commissioner may authorise a **third party** nominated by a complainant or respondent to act on behalf of the complainant or respondent in any proceedings under this Act in respect of the complaint, and the person may act accordingly.*
- (2) The Commissioner may authorise a **third party** nominated by a complainant or respondent to accompany the complainant or respondent in any proceedings under this Act in respect of the complaint and the person may assist the complainant or respondent in the proceedings.*

Conciliation and Other Matters

8.1 Recommendation: Conduct a review into the routine use of release, discharges and indemnity agreements as standard practice in conciliation processes.

8.2 Recommendation: In order to improve our access to current and future protections under the ADA, cost barriers to accessing redress must be removed.

8.3 Recommendation: The Commission must provide a conciliation register to improve public understanding about the prevalence of pursuable discrimination and vilification cases.

8.4 Recommendation: Explicitly grant people who are incarcerated access to complaints mechanisms within the *Anti-Discrimination Act*.

8.5 Recommendation: Develop and publish a guide for people who are incarcerated on how to make anti-discrimination, vilification and sexual harassment complaints. This must be done in consultation with appropriate community legal and advocacy services such as SWOP NT, Rainbow Territory, NTAHC, Living Well and Care and Support Program, North Australian Aboriginal Justice Agency (NAAJA), Northern Territory Legal Aid Commission, and NT Women's Legal Services – Top End Women's Legal Service (TEWLS), Katherine Women's Information & Legal Service (KWILS), Central Australian Women's Legal Service, (CAWLS), and Northern Territory Working Women's Centre (NTWWC).

8.6 Recommendation: Legislate a Human Rights Act in the Northern Territory through consultation with key stakeholders.

8.7 Recommendation: Establish a Human Rights Commissioner role supported by a well-resourced Commission.

8.8 Recommendation: The Northern Territory government, alongside the Anti-Discrimination Commission must commit to engaging and consulting with SWOP NT and Scarlet Alliance when addressing the discrimination, vilification and sexual harassment of sex workers.

Discrimination against Sex Workers and Our Work

Despite decriminalisation in NT, the legacy of stigma and the absence of specific anti-discrimination and vilification protections for sex workers continues to result in blatant and targeted discrimination. Sex workers are viewed and treated as amoral, lawless or criminal, as vectors of disease, as 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.

In 2020, Scarlet Alliance conducted research in partnership with the Centre for Social Research and Health (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' happened⁴.

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 work⁵. This widespread discrimination is a result of deeply embedded stigma and criminalisation of sex workers.

SWOP NT has qualitative evidence of discrimination against sex workers in the NT. The discrimination extends to those who work with sex workers including escort agency, massage parlour and brothel operators and support staff. Areas of incidence of discrimination and vilification most dominant in the Northern Territory include within the Magistrate, Family and Supreme Courts, medical settings inclusive of private and public hospitals, real estate and hotel and apartment rentals, banks, financial consultants, accountants, crisis support services, counselling and psychiatric services.

Despite the Northern Territory's removal of criminalisation in favour of the right to sex workers to work safely as defined in the *Sex Industry Act 2019*, sex workers' daily and ongoing experiences of discrimination, harassment and stigma signal the crucial need for legislative reform. Sex workers experience discrimination in our access to goods and services, education, housing and accommodation, employment opportunities and access to justice, which affects our personal and professional lives, families, and health, wellbeing, and workplace conditions⁶.

⁴ Scarlet Alliance and Centre for Social Research and Health, *Stigma Indicators Monitoring Project: Sex Workers*, 2020, <https://scarletalliance.org.au/library/Stigma_Indicators>.

⁵ Scarlet Alliance and Centre for Social Research and Health, *Sex Work Stigma Research Collaboration*, 2015, <<https://scarletalliance.org.au/library/Sexworkstigmaresearchcollaboration>>.

⁶ Sex Worker Outreach Program (SWOP NT) Sex Worker Reference Group (SWRG) Northern Territory, submission in response to the Queensland Anti-Discrimination Act (ADA) Review, page 8 <https://www.ghrc.qld.gov.au/_data/assets/pdf_file/0006/38616/SUB128~1.PDF>.

The case study below highlights an example of discrimination where redress was not possible due to gaps in the *ADA*.

In June 2022, SWOP NT referred a woman ('the tenant') who had a private lease on a large apartment in the Darwin region to the Northern Territory Anti-Discrimination Commission. The apartment was in a complex that has a general manager and caretaker. The tenant had friends visit and stay from the beginning of the 2022 dry season; her employment was external to the apartment, and the majority of her friends who stayed with her were tourists with the exception of two guests who worked externally as FIFO sex workers on occasion in Darwin. The manager of the apartment sent invoices to be paid for significant amounts, claiming that the tenant was running an escort agency and that an unnamed person from the Northern Territory Department of Planning had allegedly advised the manager to send a letter with reference under the Planning Scheme of the breach. This reference within the letter was justification from the manager that the additional money should be paid by the tenant to the body corporate. The letter claimed breaches of a very different area of the planning regulations, i.e., 'a development application breach' and the deception included the attempt to extort money from the tenant claiming this was done under the authority of the Department of Planning. Additionally, the manager started sending still shots of women who either visited the tenant or female friends who stayed with her from the complex security cameras; these shots were exclusively of women. The manager then tried to match all of the images of women who had visited or stayed at the apartment to random advertisements online of sex workers and/or escort agency websites.

The Anti-Discrimination Commission was unable to assist as the current Act does not protect sex workers or those who associate with sex workers or sex work. The woman who was discriminated against as a tenant unsurprisingly terminated her lease early. SWOP NT believes it was the intention of the manager to try to force her to break the lease. This example is unfortunately not uncommon, where sex workers are routinely discriminated against in housing and accommodation and forced to pay excessive sums or leave.

Protected Attributes

Attributes are a key determinant of who can access anti-discrimination protections under the *Anti-Discrimination Act 1992 (ADA)*. As the Northern Territory does not have specific human rights legislation (such as the *Human Rights Act 2018 (Qld)*), the *ADA* is the primary way for people in the NT to assert their rights. Therefore, it is essential that the attributes contained within the *ADA* are written and defined in a way that is accessible to as many people as possible. We acknowledge that the Northern Territory government is world-leading in its approach to the human rights of sex workers; this is reflected in the recent decriminalisation of sex workers and the current attempt to protect sex workers under the *ADA*. **However, the Exposure Draft Bill does not go far enough in some areas and will fail to protect all sex workers under the proposed amended attributes.** In order to support the benefits of decriminalisation, it is essential that this Exposure Draft Bill enacts protections for sex workers in a way that protects *all* sex workers.

Sex workers come from a range of backgrounds and often have intersecting identities that are marginalised and discriminated against. As such, in this section, we make recommendations as to the current proposed wording in the Exposure Draft Bill of ‘employment as to sex work, including past sex work’ and recommendations to include new attributes/amend existing attributes that affect members of our community.

Sex work and sex workers

SWOP NT, SWRG and Scarlet Alliance reject the proposed attribute of ‘employment as to sex work, including past sex work’ as it will not protect all sex workers.

To adequately protect sex workers, the attributes of both ‘current or past sex work’ and ‘sex worker, current or past’ must be included in s 19 of the *ADA*. This position has been outlined repeatedly in policy documents such as: Scarlet Alliance’s briefing paper ‘*Anti-Discrimination and Vilification Protections for Sex Workers in Australia*’⁷, SWOP NT and Scarlet Alliance’s submission to the *Modernisation of the Anti-Discrimination Act 1992 Inquiry* (NT, 2018)⁸, and in various other submissions made across Australia⁹.

Including ‘current or past sex work’ and ‘sex worker, current or past’ protects us from discrimination regarding both our status as sex workers and any activities that we conduct which

⁷ Scarlet Alliance, *Anti-Discrimination and Vilification Protections for Sex Workers in Australia*, 2022, <https://scarletalliance.org.au/library/Anti_Discrim2022>.

⁸ Sex Worker Outreach Program (SWOP NT) Sex Worker Reference Group (SWRG), Collective Submission (no. 126) to the Northern Territory Government *Discussion Paper: Modernisation of the Anti-Discrimination Act, 2018* <https://justice.nt.gov.au/_data/assets/pdf_file/0004/1082533/submission-162-sex-worker-outreach-program-and-sex-worker-reference-group-collective-submission.PDF>.

Scarlet Alliance, Submission no. 146, *Discussion Paper: Modernisation of the Anti-Discrimination Act, 2018* <https://justice.nt.gov.au/_data/assets/pdf_file/0006/1082517/submission-146-scarlet-alliance.PDF>.

⁹Sex Worker Outreach Program (SWOP NT) Sex Worker Reference Group (SWRG) Northern Territory, submission in response to the *Queensland Anti-Discrimination Act (ADA) Review* <https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0006/38616/SUB128~1.PDF>.

Scarlet Alliance, Submission on Review of Queensland’s *Anti-Discrimination Act: Discussion Paper, 2022* <https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0020/38612/Sub.129-Scarlett-Alliance.-Australian-Sex-Workers-Association_Final.pdf>.

relate to our sex work. The issues caused by protecting either our status or work related activities has become evident in Queensland case law, where the current protected attribute of ‘lawful sexual activity’¹⁰ which is exhaustively defined in the *Anti-Discrimination Act 1991* (Qld) as meaning a ‘person’s status as a lawfully employed sex worker, whether or not self employed’¹¹.

In the Queensland decision of *Dovedeen Pty Ltd & Anor v GK* [2013] QCA 116, the Court of Appeal made clear that this express statutory definition in the Act necessarily 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 work¹².

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.”¹³*

(Emphasis ours.)

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 alleged discrimination is based on the activity of engaging in sex work, as opposed to their status as a sex worker. It is worth noting here that the case of *Dovedeen* occurred before the Queensland government introduced the exemption (s 106C) into the *Anti-Discrimination Act 1991* (Qld) which allows for accommodation providers to lawfully discriminate against sex workers. The issues of interpretation noted in *Dovedeen* stand separately to the accommodation exemption and are applicable to the exclusions that the proposed attribute of ‘employment as to sex work, including past sex work’ will cause.

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 attribute¹⁴, it is also clear that the Queensland legislation fails to provide clarity or direction to the courts on what, precisely, is included in the attribute.

Scarlet Alliance and SWOP NT assert that the current wording of ‘employment as to sex work, including past sex work’ will cause similar issues in Northern Territory. As sex workers experience pervasive discrimination and stigma within all areas of public life, it is essential that we are protected by dedicated and specific attributes that alleviates any possible limitations that may evolve in case law. **We strongly reject ‘employment as to sex work, including past sex work’ as the most**

¹⁰ *Anti-Discrimination Act 1991* (Qld) s 7(1)

¹¹ *Ibid* Sch. 1.

¹² *Dovedeen Pty Ltd & Anor v GK* [2013] QCA 116 per Fraser and Gotterson JJA at [18]-[24].

¹³ *Ibid* at [22]

¹⁴ *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

appropriate option for sex workers. Instead, the protected attributes must be ‘current or past sex work’ and ‘sex worker, current or past’.

The inclusion of the term ‘employment’ within the proposed amendment will present limitations. Sex workers are typically not ‘employed’ by third parties, we are most often independent contractors or sole traders and we may subcontract third parties or services to help run our businesses such as room hire, receptionists, security, drivers and cleaners. As there is no definition of ‘employment’ within the current *ADA*, we are concerned that this term will be construed to exclude most sex workers within the Northern Territory.

Additional protected attributes that must be included in the Bill

Current or past citizenship and visa status

Scarlet Alliance and SWOP NT believe that there is a need for the *ADA* to cover discrimination on the grounds of citizenship and visa status. 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 citizenship and visa status, as well as a specifically-defined sex work and sex worker attributes, would go some way to improve migrant sex workers’ confidence in pursuing complaints against discriminatory treatment. **We recommend the inclusion of ‘current or past citizenship and visa status’ as a protected attribute.**

HIV status

People Living with HIV (PLHIV) are subject to systemic, personal and ongoing discrimination in many facets of their lives. It is essential there is a separate attribute that provides protection and redress for this discrimination and recognises that many PLHIV do not consider HIV as a disability. The *Eighth National HIV Strategy Plan 2018-2022* identifies stigma as a key barrier to an effective public health response, as it has ‘a significant impact on health outcomes as well as relationships and employment prospects and can lead to social isolation and mental ill health’.¹⁵ An enabling environment free of stigmatisation and criminalisation is essential to ensuring that people living with HIV, including sex workers living with HIV are protected under a specific attribute. **We recommend including ‘HIV status’ as a protected attribute.**

Current or past hepatitis status

Similarly, people living with hepatitis C and hepatitis B face systemic discrimination, stigma and barriers to accessing health care and support services. Both the *Fifth National Hepatitis C Strategy 2018-2022* and the *Third National Hepatitis B Strategy* state in their guiding principles that:

‘People with hepatitis C/B have a right to participate fully in society, without experience of stigma or discrimination. They have the same rights to comprehensive and appropriate

¹⁵Department of Health, ‘Eighth National HIV Strategy Plan 2018-2022’, *Australian Government*, 2018, Canberra. P 30.

*information and health care as other members of the community, including the right to the confidential and sensitive handling of personal and medical information.*¹⁶

It is important that the Northern Territory government acknowledge the unique and detrimental stigma faced by people, including sex workers, with Hep B and/or C through the **protected attribute ‘past or present hepatitis status’**.

Current or past drug use

People who use drugs, undertake pharmacotherapy programs or are in recovery for past drug use experience high levels of discrimination¹⁷ and are not covered by a current attribute. Drug use still remains heavily criminalised, policed and stigmatised within the Northern Territory. Discrimination against a person who uses drugs only compounds barriers that are faced to accessing employment, accommodation and health, social and financial services. It is essential that the Northern Territory government acknowledge the ongoing discrimination, vilification and harassment that people who use drugs, have a history of drug use or are presumed to use drugs face in all areas of public life. **As such, we recommend adding the protected attribute of ‘past or current drug use’.**

The definition of drug use should also include the use of medication. It is important that people who have/or are taking newly prescribed medicines are not stigmatised by the mere fact they have been/were prescribed a particular medication to address an injury or illness.

Recommendations

1.1 Recommendation: replace proposed attribute of ‘employment as to sex work, including past sex work’ with ‘current or past sex work’ and ‘sex worker, current or past’.

1.2 Recommendation: Include ‘current or past citizenship and visa status’ as a protected attribute.

1.3 Recommendation: Include ‘current or past use of drugs’ as a protected attribute, and include the use of medication in the definition of drug use.

1.4 Recommendation: Include HIV status as a protected attribute.

1.5 Recommendation: Include hepatitis status as a protected attribute.

1.6 Recommendation: Include current or past health status as a protected attribute.

1.7 Recommendation: replace proposed attribute of ‘subjected to domestic violence’ with ‘Domestic, Family and Sexual Violence’ as a protected attribute.

¹⁶ Department of Health, *Fifth National Hepatitis C Strategy 2018-2022*, 2018, p. 8
<<https://www.health.gov.au/sites/default/files/documents/2022/06/fifth-national-hepatitis-c-strategy-2018-2022.pdf>>.

Department of Health, *Third National Hepatitis B Strategy*, 2018, p. 8
<<https://www.health.gov.au/sites/default/files/documents/2022/06/third-national-hepatitis-b-strategy-2018-2022.pdf>>.

¹⁷ AIVL. (2017). Stigma and Discrimination as Barriers to Health Service Access for People Who Use Drugs.
<<https://removingbarriers.ashm.org.au/>>.

Definitions

Sex Work and Sex Worker

Limitations of the current definition of 'sex work'

The Bill references the definition of sex work under the *Sex Industry Act 2019*. The definition of sex work under section 4 of the *Sex Industry Act 2019* reads:

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

Scarlet Alliance and SWOP NT are concerned that erotic live performers and adult entertainers will not be protected by the current referenced definition. It is integral that erotic live performers and adult entertainers are protected as they also experience high levels of stigma and discrimination. SWOP NT have consulted with erotic live performers and adult entertainers in the NT who were explicit in their preference to be included in the definition of sex work and sex worker as protected attributes in the *ADA*.

Therefore, the definition of 'sex work' under the *ADA* must be inclusive of erotic live performers and adult entertainers. This is an important opportunity for the NT government to ensure that no sex workers are left behind in the effort to modernise the *ADA*. We recommend that the definition of 'sex work' in s 4(1) of the *ADA* integrate the definition of sex work in the *Sex Industry Act 2019* and wording inclusive of erotic live performers and adult entertainers. As such we recommend the following definition for the purposes of the *ADA*:

'the provision by a person of services that involve the person participating in sexual activity with another person in return for payment or reward; including involving the use or display of the body of the person providing the services for the sexual arousal or sexual gratification of others;'

The definition of 'sex worker'

The inclusion of the protected attribute 'sex worker, current or past', 'sex worker' must be defined as:

'Sex worker means a person who performs sex work.'

This is the definition of 'sex worker' under the *Sex Industry Act 2019* s 4. However, the definition of 'sex work' under the *ADA* must correspond with our written definition of 'sex work' (as above) rather than the definition of sex work under the *Sex Industry Act 2019*. This is to ensure the inclusion and adequate protection of erotic live performers and adult entertainers.

Club

The current definition of club fails to adequately protect sex workers while we are working at social events (such as bucks and hens nights or corporate events) and in bars and clubs. SWOP NT and

Scarlet Alliance support the Unions NT proposal in their submission to the Draft Exposure Bill to amend the *ADA*, to insert a new provision under the definition of 'club' to read:

1. *Clause 5 Section 4 amended (Interpretation).*

a. *Section 4 (1) definition **club** insert (c) An establishment or venue that provides sex work activities or services.*

Including sex worker activities and services in this interpretation acknowledges the stigma by association that sex workers and clientele experience when attending clubs where sex work services are provided (such as bucks and hens nights, or end of year club celebrations etc).

Association

We note that under section 19(1)(f), the *ADA* protects a person on the grounds of 'association with a person who has, or is believed to have, an attribute referred to in this section'. Scarlet Alliance, SWOP NT and the SWRG support this protection. However, as 'association' is not defined in the *ADA*, **we recommend that the definition of 'association' be clarified to include 'family members, partners, friends, colleagues, associates and acquaintances'.**

Our family members (including partners) and friends often experience discrimination on the basis of our sex work.

Irrelevant criminal record

Sex workers, past and current, have reported having previous convictions for sex work as a barrier in range of areas of their life, including future employment. The current protected attribute of 'irrelevant criminal record' does not adequately protect majority of people with a criminal record, including sex workers who have historical criminal records from when sex work was criminalised in the Northern Territory. Criminal record discrimination can occur across all areas of public life. Criminal records form major barriers to accessing housing, financial security, qualifications and employment, and are a source of compounding stigma for Northern Territory sex workers. Additionally, if an employer requests a police check and a worker has a 'prostitution offence' charge on their record, this places us at risk of being outed which can be detrimental to our safety and privacy. Given that the Northern Territory government failed to expunge criminal records in the wake of decriminalisation, it is integral that the government implement anti-discrimination protections for sex workers who still have criminal records as a result of historical criminalisation. **Accordingly, we recommend that the following provision be added to the definition of irrelevant criminal record under section 4(1) of the *ADA*:**

'A record for offences under the Acts repealed by the Sex Industry Act 2019 (NT).'

Systemic Discrimination

The proposed definition of 'systemic discrimination' under the Exposure Draft Bill reads:

‘systemic discrimination means behaviour, practices, policies or programs of an organisation that have the effect of creating or perpetuating disadvantage for a group that shares a protected attribute.’

SWOP NT and Scarlet Alliance are concerned that ‘organisation’ is too narrow and will limit the efficacy of pursuing a complaint under the ADA for systemic discrimination. The ADA must acknowledge that systemic discrimination occurs not only within organisations, but also institutions (political, legal, carceral, educational, religious), companies, corporations, clubs, collectives and bodies. Discrimination and vilification are endemic issues that permeate all aspects of public life. It is essential that the ADA reflects this reality, rather than limiting to efficacy of what could otherwise be a leading approach to anti-discrimination law. To ensure the scope of experiences of systemic discrimination is captured we recommend the following definition:

*‘systemic discrimination means behaviour, practices, policies or programs of an organisation, **institution, company, corporation, club, collective or body**, that have the effect of creating or perpetuating disadvantage for a group that shares a protected attribute.’*

Recommendations

2.1 Recommendation: Replace the proposed definition of ‘sex work’ to read:

‘the provision by a person of services that involve the person participating in sexual activity with another person in return for payment or reward; including involving the use or display of the body of the person providing the services for the sexual arousal or sexual gratification of others;’

2.2 Recommendation: Insert the definition of ‘sex worker’ as ‘means a person who performs sex work’.

2.3 Recommendation: Insert the definition of ‘association’ (s 19(f)) into s 4(1) of the ADA to include ‘family members, partners, friends, colleagues, associates and acquaintances’.

2.4 Recommendation: amend the definition of irrelevant criminal record under section 4(1) to include:

‘A record for offences under the Acts repealed by the Sex Industry Act 2019 (NT)’.

2.5 Recommendation: amend the proposed definition of systemic discrimination under s 4(1) to read:

‘systemic discrimination means behaviour, practices, policies or programs of an organisation, institution, company, corporation, club, collective or body, that have the effect of creating or perpetuating disadvantage for a group that shares a protected attribute.’

Positive Duty to Eliminate Discrimination, Sexual Harassment and Victimisation

Anti-discrimination law is commonly criticised for embodying a reactive mechanism against discrimination, rather than a preventative one. The current model places the responsibility of resisting discrimination on individual complainants, which for many sex workers, is an inaccessible and burdensome requirement. The reactive approach embodied in NT *Anti-Discrimination Act 1992* has led to anti-discrimination processes having a negligible effect on systemic issues of discrimination against sex workers and/or our work. **Therefore, Scarlet Alliance and SWOP NT support the inclusion in the Exposure Draft Bill of a positive duty to address the need for a preventative and systemic approach**, including both clauses 1 and 2.

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. We do express concerns about the narrow scope of positive duty to exclude other sections of prohibited conduct covered in Division 2 of the *ADA* beyond discrimination, sexual harassment and victimisation. Positive duty should extend to all areas of prohibited conduct covered in the *ADA*.

Enacting a positive duty will necessarily involve educational initiatives, to inform people of their new obligations and rights under the *ADA*. **Any initiatives that are designed to embed understanding of a positive duty, must be drafted in consultation with SWOP NT, Unions and other representative bodies.** Sex worker organisations must be an integral part of designing and delivering these initiatives to ensure that the messaging is best targeted at preventing discrimination in relevant sectors.

Limitations of proposed investigative process

If systemic issues of sex work discrimination are investigated by the Commissioner alone, this will not result in adequate outcomes for sex workers. SWOP NT, Unions and other representatives must be contacted and included in the process where it is relevant, to ensure that the investigation does not result in biased and discriminatory findings - which is a potential outcome if the investigation is handled by the Commissioner alone. Inclusion of sex-worker peer organisations in such investigations will lead to informed, beneficial and accurate findings and will mitigate the risk of the Commission conducting their investigation in a way that perpetuates discrimination against sex workers.

Recommendations

3.1 Recommendation: Enact a positive duty within the *ADA* to address systemic issues of discrimination, including both the proposed clauses in the Exposure Draft Bill.

3.2 Recommendation: Engage SWOP NT in any sex work related information that is developed by the Commission to implement the positive duty.

Anti-Vilification and/or Offensive Behaviour

Scarlet Alliance and SWOP NT support the inclusion of an anti-vilification provision via clause 11 of the Exposure Draft Bill. Entrenched stigma and discrimination, historic criminalisation and a lack of consistent and comprehensive anti-discrimination and anti-vilification protections for sex workers has meant that sex workers are treated as an 'easy target' for vilification in the Northern Territory. This targeting, paired with insufficient avenues of redress has meant that vilification and hate crimes enacted against sex workers go undocumented and unreported.

However, as the proposed provision corresponds with attributes, it is essential that the attributes include 'current or past sex work' and 'sex worker, current or past' for the reasons outlined above. The efficacy of the anti-vilification provision will be hindered if sex workers are not adequately covered by the listed attributes.

Examples of vilification against sex workers in the Northern Territory

SWOP NT has documented numerous examples of sex workers being discriminated against and vilified in all aspects of public life. This is also experienced by sex workers when attempting to access justice and even within parliamentary debate¹⁸. SWOP NT have highlighted below some typical examples of sex worker's experiences of vilification and discrimination in the Northern Territory Magistrates Court, the Family Court and the Supreme Court.

There have been two separate instances over the last five years where sex workers attended court to support immediate family members. In both cases the actions of their adult children were blamed on the sex worker's parenting. Both sex workers were vilified in the courts and portrayed as unfit mothers that had somehow contributed to their children's alleged offences by working in the sex industry and that this alleged 'hardship' had impacted on their children's upbringing. Both sex workers were horrified at how they were publicly shamed for their sex work, as they both worked in compliance with the NT Prostitution Regulation Act. One of the workers had previously worked for a Northern Territory escort agency; her previous registration status was also noted in the court.

Below is another account written by a sex worker who contacted SWOP NT following a call out to document areas of discrimination and vilification. They wanted to share their experience anonymously as an example of the kinds of extreme injustice and discrimination they faced in a Northern Territory court of law:

"I was sitting in court to support my adult daughter who had been remanded in custody and accused of quite serious offences. We were applying for bail, as she had been held in remand for nearly half a year. The Barrister had told me to expect the Police Prosecutor to object

¹⁸ Examples related to Sex Industry Bill introduction and debates, Hansard - 2019 (1), debates and questions - day 2 - 18 September 2019, Hansard intro SI Bill, debates and questions - day 1 - 26 November, 2019.

<<https://parliament.nt.gov.au/business/parliamentary-records>>

Examples related to the introduction of proposal to insert sex services business into the Planning Scheme and Planning Act amendments debates and questions - day 3 - 13 February 2020.

<<https://parliament.nt.gov.au/business/parliamentary-records>>

strongly and also to expect to have my name 'destroyed publicly', as in within an open courtroom, I said I didn't care.

"The Police Prosecutor said to the judge: 'Your Honour, prosecution strongly objects to this application for (name withheld) to reside with their mother on the grounds she is of no fixed address, residing only in city hotels, but more importantly her mother is a known sex worker'.

"Bail was refused [on these grounds] even though I had maintained residence in the same apartment for 8 months. To add to my injury the Magistrate's assistant handing the paperwork to be signed 'by his Honour' (that sent my daughter back to jail that day) was known to me. The surreal part resonating in my head was that I recognised the assistant, they had been a client of my services as a sex worker and here they were, handing over my kid's doom. I simply could not believe the slide I took instantly on 'societies ladder of morals' I felt degraded and I saw all eyes in that court room stare across my way as the words rang through the court room, I was incensed numb from what I felt, an absolutely outrageous, ridiculously insulting moment in my life, I lost a chunk of my mind that day."

The previous licencing framework in the Northern Territory provided perpetrators of sexual assault a space to target sex workers who they thought would not report crimes to police, due to the criminalised environments that sex workers were forced to work within. SWOP NT have evidenced that incidences of stealthing (which is the non-consensual removal of condoms) during sexual services and violence were significantly higher under the previous *Prostitution Regulation Act 1992*. Since the implementation of decriminalisation through the *Sex Industry Act 2019*, the ability of sex workers to report sexual assault to police has improved. This reporting has often been with the support of SWOP NT, and/or the Sexual Assault and Referral Centre (SARC). Sex workers report that decriminalisation has assisted in raising their confidence that crimes against sex workers will be taken seriously. The decriminalisation of sex work in the Northern Territory has put in place a barrier of safety that has minimised areas where these perpetrators can commit crimes as easily or with an expectation of impunity.

These critical improvements under decriminalisation are undermined by the public reporting and experiences of sex workers in court. The following example highlights the 'slut shaming' of survivors of sexual violence by the courts during rape cases and the continuation of the vilification in reporting by media and quotes by defence counsel.

This was evidenced in the Supreme Court case of [Queen v Wilcocks 2018](#)¹⁹.

A SWOP NT worker reports the following on the rape trial:

"SWOP NT staff and SWRG members together with other workers who work as strippers set up a roster to record the trial. The words describing the anatomical parts of the woman's body and how large parts of her body were and what sort of objects could go where, were absolutely so disgusting we would not dare put in writing. Transcripts are accessible as evidence. This case was one of the worst that SWOP staff have experienced in the way a person who had been raped was being described in a court of law. Unfortunately this type of

¹⁹ The Queen v Wilcocks [2018] NTSC 21

vilification occurs too often against not just sex workers but women including transwomen when coming forward to seek justice for sex crimes.”

Examples of blatant vilification and offensive conduct by the defence lawyer were reported in the media²⁰, continuing the experience of slut shaming against the survivor of sexual assault²¹. These reports are incredibly harmful and continues the misinformation around sex work that compromises the dignity of the victim/survivor and of a sex worker’s right to feel safe at work. The intention of the Sex Industry Act 2019 was to ensure the workplace safety of sex workers in the NT. The treatment of sex worker survivors by the courts and in the media continue to jeopardise this aim.

Explicitly protect sex workers from online vilification

We support the insertion of the amendments in clause 11 to protect people from *publicly offensive* behaviour because of an attribute. However, while the clause clarifies what is meant by ‘public’ under 20A(3), it does not clarify whether online spaces are covered. The online vilification of sex workers is prevalent, under-protected, unreported and can take many forms. Individuals can target workers by ‘outing’ them online, identifying their address and advertisements and publicising this information to the worker’s family and friends and the broader community. This is done to mobilise contempt against the sex worker and can be exacerbated if the worker is also a parent, carer or a worker in another industry (such as education or childcare) or because of their gender or sexuality. Online vilification of sex workers also takes the form of groups of people, including sex work abolitionists that target sex workers, ridiculing them for their choice of work, referring to their children and threatening that they know where the person lives. There are also countless Facebook groups that crop up with the specific intent of vilifying sex workers. **We recommend amending section 20A(3)(a) to read: ‘causes words, sounds, images or writing to be communicated to the public, including online communication; or’.**

Address vilification in partnership with SWOP NT and Scarlet Alliance

An effective measure in addressing the prohibition of hate speech within NT communities is to engage peer sex worker organisations, such as SWOP NT, to conduct education and training. A key aspect of these initiatives should be education that addresses myths and misconceptions around sex work and sex workers by affirming that sex work is 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.

Further, the NT Anti-Discrimination Commission 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, such as SWOP NT and Scarlet Alliance, must be resourced to work in partnership with the Commission as an integral part of designing and delivering these campaigns to ensure that the

²⁰ ABC News (2019) *Man accused of beer-bottle rape of buck's night performer tells Darwin court he has 'seen worse things'* <<https://www.abc.net.au/news/2019-02-27/man-accused-of-beer-bottle-rape-of-bucks-performer-examined/10852584>> Accessed 22/08/2022

²¹ NT News (2020) *Man convicted of raping stripper with beer bottle was a 'larrikin who made a mistake', court hears* <<https://www.ntnews.com.au/truecrime/police-courts/man-convicted-of-raping-stripper-with-beer-bottle-was-a-larrikan-who-made-a-mistake-court-hears/news-story/d0e45da08b89e38590799a95978cc632>> Accessed 22/08/2022

messaging is best targeted at preventing discrimination, including systemic discrimination and vilification.

Recommendations

4.1 Recommendation: Ensure that sex workers are protected by ‘current or past sex work’ and ‘sex worker, current or past’ so that vilification protections are accessible to all sex workers.

4.2 Recommendation: Amend section 20A(3)(a) to read:

‘causes words, sounds, images or writing to be communicated to the public, including online communication; or’.

4.3 Recommendation: NT Anti-Discrimination Commission to actively engage in anti-stigma, anti-discrimination and vilification education campaigns resourced in partnership with SWOP NT and Scarlet Alliance to design and deliver campaigns directed at the general public as well as public services, media, law enforcement, the judiciary and immigration authorities.

Sexual Harassment

Scarlet Alliance and SWOP NT support extending the prohibition of sexual harassment to all areas of public life. The ability to pursue sexual harassment redress must be available to all sex workers, regardless of where this harassment occurs.

Like the broader Northern Territory population, sex workers can and do experience sexual harassment across all areas of public life. Sex workers also experience the societal stigma attached to naming and reporting sexual harassment. Due to sex work stigma, however, our ‘credibility’ as survivors of sexual harassment is often questioned. The societal presumptions that sex workers are either in a ‘perpetual state of consent’ or that sexual harassment is an ‘occupational hazard’ of sex work, form major barriers to sex workers accessing justice 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 narratives²² expressed through case law, politics and the media further problematise this perceived ‘perpetual state of consent’.

Sexual harassment taking place at work is neither endemic nor unique to the sex industry. Sex workers are not inherently more ‘at risk’ of sexual harassment than other workers²³; it is rather the criminalisation of our safety strategies and degradation of our human rights, as expressed in law, policing practices and media representations that blames and forces responsibility upon sex workers for experiencing any work-related harassment²⁴. **Thus, sex work stigma has an incredibly powerful impact on sex workers’ ability access to justice when we experience sexual harassment in any area of public life.**

An important example of challenging sexual harassment at work in a decriminalised environment was evidenced in the 2020 case of a New Zealand sex worker who was awarded compensation for sexual harassment by a business owner²⁵. The director of New Zealand’s Office of Human Rights Proceedings, Michael Timmins, stated that the sexual harassment settlement served as an important message to businesses across the country:

*“All workers, regardless of the type of work they do, have the right to freedom from sexual harassment in the workplace. We encourage all business owners and employers to ensure that they understand and respect those rights”.*²⁶

This case demonstrates what is possible in the NT in a decriminalised environment when sexual harassment against any worker is seen as unacceptable. **Given the widespread sex-work stigma and**

²²Stardust, Z., Treloar, C., Cama, E., & Kim, J. (2021). ‘I Wouldn’t Call the Cops if I was Being Bashed to Death’: Sex Work, Whore Stigma and the Criminal Legal System. *International Journal for Crime, Justice and Social Democracy*, 10(3), 142-157.

²³ Australian Human Rights Commission (2020). Respect@Work: Sexual Harassment National Inquiry Report <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>> accessed 22/08/2022

²⁴ 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.

²⁵ BBC News (14 December 2020) New Zealand sex worker given six-figure sum in sexual harassment case <<https://www.bbc.com/news/world-asia-55298303>> Accessed 22/08/2022

²⁶ Ibid

problematic legal, cultural and social misconceptions of sexual harassment against sex workers, we recommend proactive engagement and consultation with SWOP NT in development of Commission materials that explicitly recognise sexual harassment can occur in sex work. Additionally, SWOP NT must be resourced to provide training to support all levels of the Commission's work to recognise and appropriately address sex worker experiences of sexual harassment.

Recommendations

5.1 Recommendation: Proactively engage and consult with SWOP NT in the development of all Commission material relating to sex worker experiences of sexual harassment;

5.2 Recommendation: Professionally engage SWOP NT 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.

Exemptions

Exemptions for religious organisations

All provisions that exempt religious bodies should be repealed. 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.

Repeal section 37A

Section 37A exempts religious educational institutions from discriminating against prospective and current employees on the grounds of ‘religious belief or activity; or sexuality’, if the discrimination is ‘in good faith to avoid offending the religious sensitivities of people of the particular religion’. While the Exposure Draft Bill proposes to repeal ‘sexuality’ from 37A(a)(ii), we argue that this does not go far enough and the provision should be repealed in its entirety. Peer to peer privilege for targeted employment is already permitted under federal law in Schedule 1- Convention concerning Discrimination in respect of Employment and Occupation of the *Australian Human Rights Commission Act 1986* which states that, ‘*Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination*’. Therefore **section 37A is unnecessary, whilst also sending a public message that religious educational institutions can exempt themselves from unlawful discriminatory conduct.**

Discrimination against our teachers because of their sexuality

It is significant that a religious school in the NT has rejected the exemptions in an effort to increase inclusion in their policies and enterprise agreements for employment. This demonstrates the contradictions inherent in this exemption to the purposes of the ADA.

The Independent Education Union (IEU-QNT) in their submission stated that the proposed amendment to 37A is ‘inappropriate and should be deleted’²⁷. The IEU states that they are aware that there are, within the Northern Territory, faith-based schools that have committed, in enterprise bargaining agreements, to non-discriminatory practices, by explicitly excluding themselves from using the provisions of section 37A²⁸. **We support the calls from the unions to repeal section 37A in its entirety.**

Unions NT have stated in their submission to this Draft Exposure Bill:

²⁷ Independent Education Union– Queensland and Northern Territory Branch (IEU-QNT). Submission NT Exposure Draft Anti Discrimination Amendment Bill 2022
<<https://ieuqnt.org.au/wp-content/uploads/2022/08/IEU-QNT-Submission-NT-Exposure-Draft-Anti-Discrimination-Amendment-Bill-2022.pdf>>

²⁸ Ibid

“For future proofing and to maintain currency, Unions NT believes section 37A and 51(d) should be omitted in totality. This clause is archaic in nature, divisive, and does not meet the progressive nature of the Northern Territory’s way of life.”²⁹

The Australian Education Union, Northern Territory Branch (AEU NT) have stated in their submission that they:

“Support all other contributors, especially the Independent Education Union (IEU) in the push to remove 37A completely. Societal expectations and attitudes have changed, and a compromise position is not acceptable.”³⁰

Repeal section 40(3)

Section 40(3) is an accommodation exemption that allows for ‘accommodation under the direct or control of a body established for religious purposes’ to discriminate if it ‘is in accordance with the doctrine of the religion concerned and is necessary to avoid offending the religious sensitivities of people of that religion’.

Accommodation provided by religious organisations has long been fraught with discrimination and paternalism enacted against sex workers. Where religious organisations provide crisis housing, sex workers have experienced blatant discrimination. This discrimination has occurred in the form of requirements that involve us stopping our work or purporting a willingness to do so in order to access support. Such discrimination has occurred in tandem with religious bodies vilifying sex workers in public statements, teachings and even in their fundraising promotions.³¹ Sex workers ability to access emergency housing should not be at the whim of someone’s ‘religious sensitivities’ - this is a matter of human rights and access to housing and should be treated with the seriousness that it deserves. **Scarlet Alliance and SWOP NT assert that under no circumstances should religious bodies or organisations have the ability to discriminate against others seeking accommodation.**

Repeal section 51(d)

As outlined above, SWOP NT and Scarlet Alliance do not accept the retention of any exemptions that enable unfair discrimination by religious bodies under the ADA. Section 51(d) is dangerously broad and provides general exemptions from the conditions of the ADA for ‘an act by a body established for religious purposes if the act is done as part of any religious observance or practice’. The Northern Territory Government has an opportunity to set an important precedent by repealing section 51(d) and thus reducing the ADA’s capacity to perpetuate lawful discrimination under the guise of ‘religious observance or practice’.

²⁹ Unions NT (2022) Submission into the Draft Exposure Bill to Amend the Anti-Discrimination Act 1992. Pg 2

³⁰ Australian Education Union, Northern Territory Branch (AEU NT) Submission to the consultation of the Exposure Draft Anti-Discrimination Act (1992) Amendments, August 2022

³¹ 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>

Exemptions for charitable organisations

Repeal section 40(4)

Section 40(4) states that:

A person may discriminate against a person with respect to a matter that is otherwise prohibited under this Division if:

- (a) the accommodation concerned is under the direction or control of a body established for a charitable purpose; and*
- (b) the discrimination is in accordance with the particular purpose for which the accommodation was established by the body.*

SWOP NT and Scarlet Alliance recommend that section 40(4) be repealed to protect sex workers seeking accommodation services from charitable organisations. Similarly to our concern with the religious exemptions to the accommodation provisions, sex workers have historically and presently experience discrimination from charitable organisations. This can occur through organisations aiming to ‘rescue’ sex workers through forcing us to participate in ‘exit programs’ if we want to access their accommodation support services, including crisis accommodation. A lot of our interactions with charitable organisations are predicated on the damaging presumption that sex workers are ‘victims’ who are unable to make decisions about our own lives, work and health. Additionally Scarlet Alliance and SWOP NT have received numerous reports from transwomen sex workers, including sistergirls who have been excluded from appropriate crisis accommodation on the basis of discriminatory gender policies. **It is important that sex workers can feel safe to access a charitable organisation’s accommodation services with the knowledge that such organisations are not exempt from discrimination.**

Exemptions regarding ‘irrelevant criminal record’

Repeal section 37

Section 37 of the *ADA* exempts a person from discriminating against another person on the grounds of irrelevant criminal record in the area of work if:

- (a) the work principally involves the care, instruction or supervision of vulnerable persons; and*
- (b) the discrimination is reasonably necessary to protect the physical, psychological or emotional well-being of those vulnerable persons, having regard to all of the relevant circumstances of the case including the person's actions.*

SWOP NT and Scarlet Alliance believe that section 37 must be repealed as it is discriminatory and counter-productive to the overarching aims of the *ADA*. In their summary of the Discussion Paper on Criminal Record Discrimination, the then Human Rights and Equal Opportunity Commission wrote that ‘Australians who have a criminal record often face significant barriers to full participation in the Australian community. Trying to find a job is one of the areas of greatest

difficulty for former offenders.³² **Discrimination in seeking employment and during the course of employment remains a pertinent issue that disproportionately affects sex workers, especially sex workers with a prior criminal record for sex work.**

We note the definition of ‘irrelevant criminal record’ includes a range of inconsequential records in relation to this exemption such as, ‘a record expunged under the Expungement of Historical Homosexual Offence Records Act 2018’ or ‘a record relating to arrest, interrogation or criminal proceedings where no further action was taken’ or when charges were ‘not laid’, ‘dismissed’, ‘withdrawn’ or ‘found not guilty’. This exemption is in itself discriminatory and fuels inaccurate stereotypes that an ‘irrelevant criminal record’ can be used to determine a person’s fitness to be around ‘vulnerable persons’.

This stereotype is compounded for sex workers, as we are often stereotyped as 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 on 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’.**

Exemptions regarding ‘public health’

Repeal section 55

Section 55 of the *ADA* reads:

*A person may discriminate against a person on the ground of impairment if the discrimination is reasonably necessary to protect public health.*³³

SWOP NT and Scarlet Alliance believe that section 55 must be repealed. Matters of ‘protecting public health’ should stay within the specialised ambit of Northern Territory’s public health legislation, policies, processes, services and health professionals. There are already established mechanisms within the Northern Territory that determine how to ‘protect public health’. **It is inappropriate to include such a broad exemption within the *ADA* and poses the risk of further marginalising and stigmatising people who live with an ‘impairment’ as a risk to public health.** This is especially true for sex workers living with HIV, Hepatitis, STI or any other perceived ‘impairment’, as sex workers face the pervasive yet inaccurate stereotype of being ‘vectors of disease’. The Northern Territory government must repeal section 55 to reduce avenues for ‘lawful’ discrimination, rather than providing an exemption.

³² Australian Human Rights Commission, *Discrimination in Employment on the Basis of Criminal Record*, 2004, <<https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-discrimination-employment-basis-criminal-record>>.

³³ *Anti-Discrimination Act 1992*, s 55.

Recommendations

6.1 Recommendation: Repeal section 37A, which exempts religious educational institutions on the basis of 'religious belief or activity; or sexuality'.

6.2 Recommendation: Repeal section 40(3) which allows religious accommodation providers to discriminate if it 'is in accordance with the doctrine of the religion concerned and is necessary to avoid offending the religious sensitivities of people of that religion'.

6.3 Recommendation: Repeal section 51(d), which exempts 'an act by a body established for religious purposes if the act is done as part of any religious observance or practice'.

6.4 Recommendation: Repeal section 40(4) which exempts charitable organisations from providing accommodation without discrimination.

6.5 Recommendation: Repeal section 37, concerning irrelevant criminal records.

6.6 Recommendation: Repeal section 55, concerning 'public health'.

A Representative Complaints Process

Representative complaints

SWOP NT and Scarlet Alliance support the introduction of a representative complaints model into the ADA. Due to pervasive sex work stigma and a history of state sanctioned criminalisation, sex workers have unique privacy and safety concerns when interacting with legal processes in the NT. A way to accommodate this concern is to allow for organisations such as SWOP NT, to bring complaints on behalf of sex workers who have experienced discrimination. Allowing representative complaints increases our access to the support offered by sex worker peer organisations, which can improve our sense of safety during a legal process. **Also, representative complaints target systemic discrimination without placing the administrative burden on individual sex workers.**

As stated in the above section on definitions of systemic discrimination, the ADA must acknowledge that systemic discrimination occurs not only within organisations, but also institutions (political, legal, carceral, educational, religious), companies, clubs, collectives and bodies. Therefore we recommend the following amendment to the wording of 62A(1);

*‘A representative complaint must allege systemic discrimination against more than one individual resulting from the behaviour, practice, policy or program of one or more organisations, **institutions, companies, corporations, clubs, collectives or bodies**’.*

7.1 Recommendation: Introduce a representative complaints model as proposed in the Exposure Draft with the an amendment to s 62A(1) to read:

*‘A representative complaint must allege systemic discrimination against more than one individual resulting from the behaviour, practice, policy or program of one or more organisations, **institutions, companies, corporations, clubs, collectives or bodies**’.*

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 the NT and the inconsistent legal framework around sex work nationally, 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 stigmatised in the NT, 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 Anti-Discrimination 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 the need to facilitate 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 in most cases by the Anti-Discrimination Commission during the conciliation process 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.

Data from the Australian Bureau of Statistics shows the Northern Territory has the nation's highest victimisation rate for selected family and domestic violence-related offences. Between 2016 and 2017, the NT's victimisation rate increased from 1,635 to 1,815 victims per 100,000 people³⁴. Territorians fleeing or preventing domestic, family and sexual violence (DFSV), including through Domestic Violence Orders (DVOs) and or Personal Violence Orders (PVOs) would also benefit from being able to use pseudonyms in *ADA* processes.

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 SWOP NT and reflect our safety needs for privacy and confidentiality.

7.2 Recommendation: Name suppression for sex workers must be available and accessible at every stage, from conciliation to higher courts.

7.3 Recommendation: The use of pseudonyms must be guaranteed during the conciliation processes that occur at the Anti-Discrimination Commission level, with their availability made plainly obvious on complaint forms.

7.4 Recommendation: Engage and resource SWOP NT to provide training and information to judicial officers, tribunal members and judges should receive appropriate information and training to understand why sex workers must be granted suppression or confidentiality orders.

Third party 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 third parties such as NT SWOP, to bring complaints on behalf of sex workers who have experienced discrimination**. We note that under section 60(b) of the *ADA* a 'person' can make a complaint on behalf of an aggrieved person with the written permission of the Commissioner. Moreover, in ss.62(1) and 62(2), the Commissioner can authorise a 'person' to act for, accompany or assist a complainant or respondent in any proceedings under the *ADA*. **We argue that the terminology of 'person' under sections 60(b), 62(1) and 62(2) is too limiting and must be expanded to 'third party'**. Allowing third party complaints also increases our access to the support offered by sex worker peer organisations, which can improve a

³⁴ ABC News (2020) Northern Territory's high domestic violence rates under the spotlight as Parliament considers new bill.

<<https://www.abc.net.au/news/2020-03-03/nt-police-speak-out-on-domestic-violence/12019986#:~:text=Data%20from%20the%20Australian%20Bureau,1%2C815%20victims%20per%20100%2C000%20people>>

sex workers sense of safety during a legal process. Additionally this removes the burden of the complainant potentially being exposed to further discrimination, vilification and being retraumatised by accounts of harassment or victimisation during the proceedings.

However, it is essential the consent of the individual must be given to the third party before making a complaint on their behalf. This reduces the likelihood of third parties 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.

7.5 Recommendation: Amend the wording of 60(b) to read:

*(b) a **third party**, authorised in writing by the Commissioner, on behalf of a person referred to in paragraph (a), [...] can make a complaint to the Commissioner.*

7.6 Recommendation: Amend the wording of ss.62(1) and 62(2) from 'person' to 'third party' to read:

*(a) The Commissioner may authorise a **third party** nominated by a complainant or respondent to act on behalf of the complainant or respondent in any proceedings under this Act in respect of the complaint, and the person may act accordingly.*

*(b) The Commissioner may authorise a **third party** nominated by a complainant or respondent to accompany the complainant or respondent in any proceedings under this Act in respect of the complaint and the person may assist the complainant or respondent in the proceedings.*

Recommendations

7.1 Recommendation: Introduce a representative complaints model as proposed in the Exposure Draft with the following amendment. Amend s.62A(1) to read:

'A representative complaint must allege systemic discrimination against more than one individual resulting from the behaviour, practice, policy or program of one or more organisations, institutions, companies, corporations, clubs, collectives or bodies.'

7.2 Recommendation: Name suppression for sex workers must be available and accessible at every stage, from conciliation to higher courts.

7.3 Recommendation: The use of pseudonyms must be guaranteed during the conciliation processes that occur at the Anti-Discrimination Commission level, with their availability made plainly obvious on complaint forms.

7.4 Recommendation: Engage and resource SWOP NT to provide training and information to judicial officers, tribunal members and judges should receive appropriate information and training to understand why sex workers must be granted suppression or confidentiality orders.

7.5 Recommendation: Amend the wording of 60(b) to read:

*(b) a **third party**, authorised in writing by the Commissioner, on behalf of a person referred to in paragraph (a), [...] can make a complaint to the Commissioner.*

7.6 Recommendation: Amend the wording of ss.62(1) and 62(2) from 'person' to 'third party' to read:

- (1) The Commissioner may authorise a **third party** nominated by a complainant or respondent to act on behalf of the complainant or respondent in any proceedings under this Act in respect of the complaint, and the person may act accordingly.*
- (2) The Commissioner may authorise a **third party** nominated by a complainant or respondent to accompany the complainant or respondent in any proceedings under this Act in respect of the complaint and the person may assist the complainant or respondent in the proceedings.*

Conciliation and Other Matters

Inhibit the use of release, discharges and indemnity agreements

It is integral that sex workers are not pressured into signing release, discharge and indemnity agreements during conciliation. These agreements degrade the possibility of systemic change being achieved through the existent conciliation framework. It also erases sex workers' successes in receiving 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 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.

8.1 Recommendation: Conduct a review into the routine use of release, discharges and indemnity agreements as standard practice in conciliation processes.

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 and expected outcomes for sex workers, and provide a degree of transparency to these processes that currently does not exist.**

8.2 Recommendation: The Commission must provide a conciliation register to improve public understanding about the prevalence of pursuable discrimination cases.

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. Further barriers exist for sex workers who are unable to pay for legal representation. The burden of proof remains on the complainant and those who experience discrimination may often be less capable of paying for legal representation than the respondents. This is especially the case where the respondent is a business, agency, institution, company or corporation. Sex workers who experience discrimination should not be disadvantaged or limited by finances in pursuing proceedings under the *ADA*. **Sex workers who**

wish to pursue a discrimination case in tribunal or a higher court require access to funded or subsidised legal support.

8.3 Recommendation: In order to improve our access to current and future protections under the ADA, cost barriers to accessing redress must be removed.

Access to anti-discrimination protections for people who are incarcerated

The ADA does not explicitly ensure that people who are incarcerated can access anti-discrimination protections. In Queensland, the Human Rights Commission provide a guide on ‘Human Rights in Prison’,³⁵ which explains how people who are in prison can make an anti-discrimination complaint. Conversely, the NT Government web page on ‘Prisoners Rights’ only provides the following avenues for complaints:

Prisoners who have a complaint can:

1. *Talk to their sector or block officer, or supervising officer.*
2. *If the issue isn’t resolved, the prisoner can submit a superintendent’s parade request form to speak to the superintendent’s delegate.*
3. *For serious complaints, the prisoner can inform the Ombudsman NT using the prisoner telephone system, or contact their lawyer.*
4. *For very serious complaints, the prisoner can speak with the official visitor, who represents the Minister for Justice.*

*Prisoners should allow time for complaints to be resolved.*³⁶

There is minimal Australian-based research on the effectiveness of such internal complaints mechanisms within prisons. However, a study conducted in the UK found that within the penal system only 1% of inmates won their discrimination case against staff, while 75% of staff won against inmates in internal disputes.³⁷ **The current procedure outlined by the Northern Territory government website and the lack of resources for prisoners developed by the Anti-Discrimination Commission, is inappropriate, untransparent and ineffective.**

The experiences of discrimination are exacerbated for trans and intersex people in prison. The Northern Territory has adopted a ‘Management of Transgender and Intersex Offenders Policy’ for gradual implementation by correctional services and for sentencing magistrates to consider for people who are able to disclose that they are a person who is intersex, a trans man or a trans woman, before sentencing.

The issues for persons who are Aboriginal and Torres Strait Islander sisters and/or brotherboys in relation to choosing a women's or men's space are complex and impacted by cultural lore. An

³⁵ Queensland Human Rights Commission, *Human Rights in Prison*, 2021, <https://www.ghrc.qld.gov.au/data/assets/pdf_file/0020/25526/QHRC_guide_humanrightsinprison.pdf>

³⁶ Northern Territory Government, *Prisoner’s Rights*, 2021, <<https://nt.gov.au/law/prisons/prisoners-rights>>.

³⁷ Mark Townsend, ‘Just 1% of prisoners win discrimination cases against staff’, *The Guardian*, 2017, <<https://www.theguardian.com/society/2017/apr/01/prison-racial-religious-discrimination-complaints-report>>.

Aboriginal trans woman sex worker who had been previously detained in the NT prison system said to SWOP NT:

“I can't afford the operation. I am sistagirl, when you visit me in prison I cut my hair off and grow a beard so they leave me alone. I am always scared when I am in prison because it is hard to act like a man when I am not. I can't get hormones, I don't have money and don't know how to start. I ask doctors but they don't think I am serious because I have no money.”

Another sistergirl reported to SWOP NT:

“When I say I am sistagirl to the guards they laugh at me, they don't think I am sistagirl because I cut my hair now. They just think I don't want to be here, in this place.”³⁸

8.4 Recommendation: Explicitly grant people who are incarcerated access to complaints mechanisms within the *Anti-Discrimination Act*.

8.5 Recommendation: Develop and publish a guide for people who are incarcerated on how to make anti-discrimination, vilification and sexual harassment complaints. This must be done in consultation with appropriate community legal and advocacy services such as SWOP NT, Rainbow Territory, NTAHC, Living Well and Care and Support Program, North Australian Aboriginal Justice Agency (NAAJA), Northern Territory Legal Aid Commission, and NT Women's Legal Services – Top End Women's Legal Service (TEWLS), Katherine Women's Information & Legal Service (KWILS), Central Australian Women's Legal Service, (CAWLS), and Northern Territory Working Women's Centre (NTWWC).

The Need for a Human Rights Act

Human rights bodies globally recognise the need for governments to assert the human rights of sex workers. Several examples are provided below:

United Nations Secretary General Ban Ki -Moon states that;

“In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change.”³⁹

Former Australian High Court judge, the Hon. Michael Kirby AC CMG, states;

“We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality.”⁴⁰

UNAIDS and the United Nations Population Fund state that;

³⁸ Sex Worker Outreach Program (SWOP NT) Sex Worker Reference Group (SWRG), Collective Submission (no. 126) to the Northern Territory Government *Discussion Paper: Modernisation of the Anti-Discrimination Act*, 2018 <https://justice.nt.gov.au/_data/assets/pdf_file/0004/1082533/submission-162-sex-worker-outreach-program-and-sex-worker-reference-group-collective-submission.PDF>.

³⁹ UNAIDS, Joint United Nations Program on HIV/AIDS (2009) UNAIDS Guidance Note on HIV and Sex Work, Geneva, pg 2.

⁴⁰ UNAIDS and UNFPA (2011) Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work, pg 14.

“it is essential for governments to create an enabling legal and policy environment which insists upon universal rights for sex workers and ensures their access to justice.”⁴¹

UNAIDS, UNFPA and UNDP in their report on ‘Sex Work and the Law in the Asia Pacific’ recommend that there should be;

- *community mobilization of sex workers, sex worker unions and self-regulatory initiatives;*
- *labour laws regulating the sex industry as an occupation;*
- *anti-discrimination laws; and*
- *legal recognition of the human rights of sex workers, under constitutional provisions or other human rights legislation⁴².*

The Global Network of Sex Work Projects (NSWP) Consensus Statement on Sex Work, Human Rights and the Law outlines the ‘fundamental rights for all sex workers’ to be:

- *the right to associate and organise;*
- *the right to protected by the law;*
- *the right to free from violence;*
- *the right to be free from discrimination;*
- *the right to privacy and freedom of arbitrary interference;*
- *the right to health;*
- *the right to move and migrate; and*
- *the right to work and free choice of employment.⁴³*

Australia is currently the only Western democracy without some kind of national Human Rights Act or bill of rights.⁴⁴ Our human rights are largely encased within the Constitution and federal and state/territory based anti-discrimination law. However, in the last 20 years a few Australian jurisdictions such as the ACT, Victoria and most recently Queensland have implemented a Human Rights Act which sits alongside anti-discrimination, vilification and sexual harassment laws. The basic human rights of marginalised community members, including sex workers, are not adequately protected by existing laws in the Northern Territory. It is important that sex workers along with all Northern Territorians are covered by the benefits and protections of a Human Rights Act.

8.6 Recommendation: Legislate a Human Rights Act in the Northern Territory through consultation with key stakeholders.

8.7 Recommendation: Establish a Human Rights Commissioner role supported by a well-resourced Commission.

⁴¹ Ibid. pp. 13-15

⁴² UNAIDS, UNDP, UNFPA (2012) Sex Work and the Law in the Asia Pacific.
<<https://www.undp.org/publications/sex-work-and-law-asia-and-pacific>>

⁴³ Global Network of Sex Worker Project, *Consensus statement: On Sex Work, Human Rights, and the Law*, 2013. Retrieved from https://www.nswp.org/sites/nswp.org/files/consensus_statement_with_artwork_final.pdf

⁴⁴ Australian Human Rights Commission. Ten common questions about a Human Rights Act for Australia.
<https://humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRA_questions.pdf>

8.8 Recommendation: The Northern Territory government, alongside the Anti-Discrimination Commission must commit to engaging and consulting with SWOP NT and Scarlet Alliance when addressing the discrimination, vilification and sexual harassment of sex workers.

Recommendations

8.1 Recommendation: Conduct a review into the routine use of release, discharges and indemnity agreements as standard practice in conciliation processes.

8.2 Recommendation: In order to improve our access to current and future protections under the *ADA*, cost barriers to accessing redress must be removed.

8.3 Recommendation: The Commission must provide a conciliation register to improve public understanding about the prevalence of pursuable discrimination and vilification cases.

8.4 Recommendation: Explicitly grant people who are incarcerated access to complaints mechanisms within the *Anti-Discrimination Act*.

8.5 Recommendation: Develop and publish a guide for people who are incarcerated on how to make anti-discrimination, vilification and sexual harassment complaints. This must be done in consultation with appropriate community legal and advocacy services such as SWOP NT, Rainbow Territory, NTAHC, Living Well and Care and Support Program, North Australian Aboriginal Justice Agency (NAAJA), Northern Territory Legal Aid Commission, and NT Women's Legal Services – Top End Women's Legal Service (TEWLS), Katherine Women's Information & Legal Service (KWILS), Central Australian Women's Legal Service, (CAWLS), and Northern Territory Working Women's Centre (NTWWC).

8.6 Recommendation: Legislate a Human Rights Act in the Northern Territory through consultation with key stakeholders.

8.7 Recommendation: Establish a Human Rights Commissioner role supported by a well-resourced Commission.

8.8 Recommendation: The Northern Territory government, alongside the Anti-Discrimination Commission must commit to engaging and consulting with SWOP NT and Scarlet Alliance when addressing the discrimination, vilification and sexual harassment of sex workers.