



Australian Sex Workers Association

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6 October 2023

NSW Law Reform Commission
Locked Bag 5000
Parramatta NSW 2124

Via email: nsw-lrc@dcj.nsw.gov.au

To the New South Wales Law Reform Commission

Re: Call for preliminary submissions - review of the *Anti-Discrimination Act 1977 (NSW)*

Thank you for the opportunity to submit a preliminary submission to the review of the *Anti-Discrimination Act 1977 (NSW)*, and for providing our organisation with an extended deadline to make our submission.

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, Australian Sex Workers Association, is the national peak sex worker organisation. Our membership includes state and territory-based and national sex worker organisations and individual sex workers across unceded Australia. Scarlet Alliance uses a multifaceted approach to strive for equality, justice and the highest level of health for past and present workers in the sex industry. We achieve our goals and objectives by using best practices including peer education, community development, community engagement and advocacy.

Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. Through our work and that of our member organisations and projects, we have the highest level of contact with sex workers and access to sex industry workplaces throughout Australia of any agency. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms.

Anti-discrimination and vilification protections are current [key issues](#) for sex workers across unceded Australia. Most states and territories do not have anti-discrimination and/or vilification protections accessible to sex workers,¹ and sex workers frequently report experiencing stigma and discrimination in areas such as accommodation, healthcare and social services, financial services and internet technologies. Due to this stigma and discrimination, sex workers also face barriers in reporting discrimination and vilification on the basis of other attributes, such as race, religion, disability, gender or sexuality.

¹ With the exception of the Northern Territory, which prohibits discrimination on the basis of 'employment in sex work or engaging in sex work, including past employment in sex work or engagement in sex work' (*Anti-Discrimination Act 1992 (NT)* s 1(ec)) and Victoria, where the Victorian Equal Opportunity and Human Rights Commission has stated that the protected attribute of 'profession, trade or occupation' in the *Equal Opportunity Act 2010 (Vic)* s 6(la) '[includes sex work.](#)'

This is a preliminary submission highlighting issues of concern for sex workers within the Review's terms of reference, and does not contain detailed arguments or specific recommendations. We hope that this short submission provides useful background on the impacts of discrimination and vilification for sex workers in New South Wales, and we look forward to engaging with the Commission as the Review progresses.

In addition to our submission, Scarlet Alliance endorses the submission of the Sex Workers Outreach Project New South Wales (SWOP NSW). Please contact our CEO, Mish Pony on (02) 9517 2577 or mish.pony@scarletalliance.org.au if you have any further questions.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Mish Pony', with a stylized, cursive script.

Mish Pony
Chief Executive Officer
Scarlet Alliance, Australian Sex Workers Association

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Background

Despite sex work being largely decriminalised in New South Wales since 1995, sex workers across the state experience stigma, discrimination and vilification from members of the general public, media, private organisations, law enforcement, and government service and agencies. Entrenched stigma and discrimination, historic criminalisation and a lack of consistent and comprehensive anti-discrimination and anti-vilification protections for sex workers have meant that sex workers throughout Australia are treated as ‘easy targets’ for vilification, both as individuals and collectively.

Since its inception, Scarlet Alliance has received reports from sex workers in every state and territory experiencing discrimination in the areas of accommodation and housing, employment, healthcare, family law, financial and insurance products and services, and advertising/business products and services.²

In 2020, [Scarlet Alliance conducted research in partnership with CSRH](#) that surveyed 647 sex workers in relation to stigma and discrimination. 96% of participants reported experiencing any stigma or discrimination related to their sex work within the last 12 months, including 34% who indicated that this ‘often’ or ‘always’ occurred. 91% of participants reported any negative treatment by health workers, including 24% who indicated this ‘often’ or ‘always’ happened. In 2015, [research by CSRH](#) found that 31% of health workers self-reported they would behave negatively toward sex workers because of their sex work. Among the general public, 64% self-reported they would behave negatively toward sex workers because of their sex work.³

This research indicates that even in jurisdictions where sex work is decriminalised, sex workers continue to be impacted by stigma and discrimination. It is vital for NSW legislation to provide comprehensive and accessible anti-discrimination and vilification protections for sex workers in order for all sex workers to be able to access the benefits and responsibilities of sex work decriminalisation and fully participate in our communities.

² Scarlet Alliance, [‘Anti-Discrimination and Vilification Protections for Sex Workers’](#) (Briefing Paper, February 2022) 3-4.

³ Ibid 2.

Protected attributes against discrimination

In order to best protect sex workers from discrimination, Scarlet Alliance supports the creation of new attributes of 'sex work' and 'sex worker', prohibiting discrimination in all the same areas available to other protected attributes. This includes employment, contracting and recruitment, education, accommodation, membership of registered clubs, industrial organisations and professional bodies, and in the provision of goods and services.

Our experience demonstrates that specifically naming 'sex work' and 'sex worker' as protected attributes is the best model to ensure that sex workers can access anti-discrimination protections, and to acknowledge the historical and contemporary marginalisation, criminalisation, and stigma sex workers experience. This approach was favoured by the Northern Territory in its review of anti-discrimination legislation, where it became the first jurisdiction in the world to specifically protect sex workers from discrimination.⁴

Scarlet Alliance endorses the definition for this protected attribute proposed by SWOP NSW:

Sex worker means a person who performs sex work. Sex work means the provision by a person of services that involve participating in sexual activity, including erotic entertainment, in return for payment or reward.

We believe that this definition should include people presumed to be sex workers, current and former sex workers, and people who have characteristics appertaining generally or imputed to sex workers, as well as our relatives or associates.

Vilification protections

Sex work and sex workers are routinely vilified by the media and general public, and anti-sex worker rhetoric is frequently and uncritically perpetuated by mainstream media outlets.⁵

In Queensland, sex workers report experiencing vilification as a result of malicious and widespread circulation of legal names, home or work addresses. Recent reports have included: residents leafleting the neighbourhood circulating the address of a sex worker, a social media group post listing an address and accusing the resident of being a sex worker, a social media post including a photo and an address identifying a sex worker allegedly living with HIV, and discussion in a social media group of a suburban massage parlour, resulting in the distribution of fliers naming the location as a 'threat to children'.⁶ In each of these examples, the point of circulating personal details was to incite hate and action by others against the individual or group.

⁴ Sarah Spina-Matthews, ['With anti-discrimination changes, Northern Territory has some of the world's most progressive sex work laws. It wasn't always that way'](#), ABC News (online, 27 November 2022).

⁵ Zahra Stardust, ['The stigma of sex work comes with a high cost'](#), *The Conversation* (online, 10 August 2017).

⁶ Scarlet Alliance and Respect Inc, Joint Submission to the Queensland Legal Affairs and Safety Committee, [Criminal Code \(Serious Vilification and Hate Crimes\) and Other Legislation Amendment Bill 2023 Inquiry](#) (12 May 2023) 3.

We propose that NSW's anti-vilification protections are extended towards sex workers. While the circulation of personal details ('doxing') would in most circumstances be covered by the definition of vilification, we urge that this Review consider the adequacy of the statutory defence that acts 'done reasonably and in good faith...[for] purposes in the public interest, including discussion or debate' will not constitute vilification, and whether this sufficiently protects the human rights of marginalised groups.

Exceptions

As well as the creation of a new protected attribute of 'sex work' and 'sex worker', Scarlet Alliance recommends strong limitations on specific exceptions relating to this new attribute, and also to the general exceptions in part 6 of the Act. In relation to a new protected attribute of 'sex work' and 'sex worker', we propose:

- no exceptions relating to sport,
- no exceptions relating to superannuation or insurance, noting the widespread financial discrimination experienced by sex workers, even in decriminalised jurisdictions,⁷ and
- no exceptions relating to public health (i.e. similar to those in s 49P).

In relation to the general exceptions, we urge the Review to consider limiting the general exceptions for:

- charities (s 55),
- religious bodies (s 56),
- voluntary bodies (s 57), and
- acts done under statutory authority, (s 54) expanding the application of anti-discrimination law to government bodies and authorities, including police.

Sexual harassment

Scarlet Alliance notes that NSW's commitment to recognising sex work as work includes recognising that sex work workplaces are *workplaces*. This also involves the recognition that sexual harassment is unacceptable in any workplace, and providing clear avenues of redress for sex workers who experience sexual harassment.

Scarlet Alliance endorses the submission of SWOP NSW to the *National Inquiry into Sexual Harassment in Australian Workplaces*, reiterating:

Just like in other industries in Australia, sexual harassment happens in sex industry workplaces. However there are complicating, and perhaps unique factors in the sex industry, which make sexual harassment harder to identify, report and eliminate.

⁷ Scarlet Alliance, Submission to AUSTRAC, [Providing financial services to customers that financial institutions assess to be higher-risk: consultation on Draft Guidance](#) (13 January 2023) 2-3.

From the outset we would like to make it clear that while sex workers provide very clearly defined negotiated sexual services – and there are limits – this does not mean that sex workers are available for anything and everything. Belief in this fallacy can be a driver of sexual harassment in sex industry workplaces.⁸

Sex workers, sex work business owners and members of the wider community must be provided with information and education that sexual harassment is unacceptable in sex industry workplaces. Reform of the sexual harassment provisions must include making these provisions more accessible to sex workers through a reformed complaints process (discussed below), development of media reporting guidelines for sexual harassment cases, and culturally-appropriate, peer-led education for combatting bullying and harassment in all workplaces.

Complaints procedures and remedies

Sex workers face many barriers when attempting to report discrimination, vilification and/or sexual harassment, including potential loss of income,⁹ migration status, cultural background and lack of access to culturally-appropriate translated information,¹⁰ fear of being ‘outed’ and having sex work status attached to personal information,¹¹ and wider social stigma.

We recommend strengthening the NSW Anti-Discrimination Board’s representative complaints process, introducing anonymous/pseudonymous complaint mechanisms, and note the importance of complainants being able to access free advice and support.¹² Scarlet Alliance also urges that the Review examine current practices relating to the signing of releases and non-disclosure agreements during conciliation processes, and to what extent these inhibit research, education and understanding of discrimination, vilification and bullying, and minimise perpetrator accountability.

⁸ SWOP NSW, Submission to the Australian Human Rights Commission, [National Inquiry into Sexual Harassment in Australian Workplaces](#) (26 February 2019) 5.

⁹ Ibid 9-10.

¹⁰ Ibid 8-9.

¹¹ Ibid 7.

¹² ‘Anti-Discrimination and Vilification Protections for Sex Workers’ (n 2) 7.