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21 December 2021

To the Parliamentary Joint Committee on Human Rights,

Thank you for the opportunity to provide input on the Religious Discrimination Bill 2021, the Religious Discrimination (Consequential Amendments) Bill 2021, and the Human Rights Legislation Amendment Bill 2021.

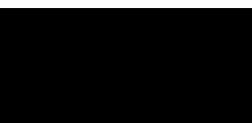
Scarlet Alliance, Australian Sex Workers Association is the national peak body representing a membership of individual sex workers, and sex worker networks, groups, projects, collectives and organisations from around Australia since 1989. Through our objectives, policies and programs, Scarlet Alliance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

Protecting sex workers from experiencing discrimination is a key area of our current advocacy and law reform work. Sex workers report extremely high rates of stigma and discrimination, both of which serve as barriers to accessing health, justice, labour rights and the full suite of human rights that all community members should be able to expect.

Scarlet Alliance recommends that the committee reject the Religious Discrimination Bill 2021 and related bills. Anti-Discrimination laws should be fair, protect all people from discrimination equally, and not value the rights of any individual or group over another. The legislation in its current form enables people of faith to discriminate against others and overrides existing anti-discrimination protections.

Please find our submission below. If you have any questions relating to our submission please do not hesitate to contact our National Programs Manager Gala Vanting at [REDACTED]

Regards,



Jules Kim  
Chief Executive Officer

## Executive Summary

The Religious Discrimination Bill 2021 and related bills enables people of faith to lawfully encroach upon the human rights of other people and groups. In addition to working counter to the aim of anti-discrimination legislation - to promote equity and human rights - the Bills also overrides important federal and jurisdictional legislation designed to protect against discrimination, and enshrines into law permission for one protected group to discriminate against others. This is divisive and counters the advances made in human rights law in Australia.

While people holding religious beliefs are currently protected against genuine experiences of discrimination, these bills unnecessarily propose additional protections on the basis of religious belief at the cost of the safety of other marginalised groups. No individual or group, including people expressing religious faith, or those with no religious faith, should be provided with legal protections when they discriminate against other protected groups. For this reason, we reject the bills and hold concern for our own community of sex workers in relation to several sections of the bills in their current form.

Sex workers report high rates of discrimination and are deeply impacted by sex work stigma at systemic and interpersonal levels. The full decriminalisation of sex work is the best-practice model for sex work legislation and a key policy change required across the jurisdictions to achieve equitable access to health, safety and human rights for sex workers. Decriminalisation has been achieved in two Australian jurisdictions and is under way in many others. Anti-discrimination protections are a cornerstone of decriminalisation efforts in the jurisdictions, as they work in concert with industrial protections to unlock sex workers' access to many of the benefits of a decriminalised framework. Scarlet Alliance and our members are currently mounting anti-discrimination and anti-vilification law reform campaigns throughout Australia.

Existing anti-discrimination protections for sex workers are non-existent in some jurisdictions and weak in others and can be difficult to access. The sex worker community cannot afford further erosion of existing protections, nor curtailing of access to any gains made in the jurisdictions through the creation of inequitable provisions that elevate the rights of one group at the expense of others. In its current form, *the Religious Discrimination Bill 2021 and related bills* are incompatible with our obligation to provide healthcare, access to justice, and other fundamental human rights to all Australians.

We wish to raise our concerns with the survey provided by the Committee to enable individual members of the Australian public to provide input on the Bills. We do not believe that the survey adequately captures the complexity of the legislation, nor does it provide enough information to support individuals to respond. Its framing is selective and oversimplifying, does not allow for users to answer provisionally or with context for their responses, and divides what is a complex set of ethical and legislative questions into binary 'yes / no' answers. We do not believe that the survey provides a useful instrument for measuring public sentiment on the three bills.

We endorse the submission of Equality Australia in full as a rigorous analysis of the legislation and its impacts on allied members of the LGBTIQ+ community, of which many sex workers are a part. Our

submission is endorsed by the Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM) and Hepatitis Australia.

### **The Religious Discrimination Bill 2021 will undermine existing and future anti-discrimination protections for sex workers**

As Australia has neither a constitutional bill of rights nor a constitutional guarantee of equality, anti-discrimination laws are the primary means of protecting rights to equality and freedom from discrimination. Until this point, federal, state and territory anti-discrimination law has operated in tandem. However, the Religious Discrimination Bill 2021, if implemented, will override the small amount of protections available to sex workers at state and territory levels.<sup>1</sup> This is alarmingly unprecedented and places greater value on the human rights of people expressing presence or absence of religious belief over others, which fundamentally contradicts the purpose of anti-discrimination law: equality.

### **Sex worker experiences of discrimination**

Discrimination against sex workers can be understood as a result of deeply-embedded stigma and misinformation, and the criminalisation of sex workers. Sex workers have long been viewed and treated as amoral, lawless or criminal, vectors of disease, a threat to children, unfit parents or guardians, victims deserving of ridicule, or as otherwise less-than-deserving of the full suite of human rights afforded to others. These stereotypes are associated with a long history of stigmatisation, marginalisation and criminalisation.

This environment emboldens individuals and organisations to discriminate against sex workers, knowing that there is a social and cultural acceptability around this behaviour. As a result, sex workers expect to and do experience discrimination in many areas of our private and public lives. As one sex worker writes, we experience ‘years of overt, systemic, structural, ongoing, accepted, supported, celebrated discrimination.’<sup>2</sup> Stigma is exacerbated by the vilification of sex workers in television, films and newspapers and by some organisations, where sex work is perpetually portrayed as dangerous to sex workers or to the public, and sex workers as dead or degraded victims without agency, families, or support. This has a direct impact on our non-discriminatory access to housing, healthcare, justice, social services, and other services. If we are to see the necessary changes to enable equitable treatment for sex workers in all aspects of our lives, governments must signal to the public that discrimination against and vilification of sex workers is unacceptable.

Many harmful stereotypes and value judgements of sex workers find their origins in religious doctrine, and continue to be perpetuated by beliefs held by people of faith. We see the legacy of

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<sup>1</sup> Clause 12 of the Religious Discrimination Bill 2021 overrides all federal, state and territory anti-discrimination law to make “statements of belief” immune from legal consequences under those laws.

<sup>2</sup> Because I’m a Whore, ‘An Open Letter to Australian Feminists Concerned about Sex Worker Exploitation’, *Feminaust: Contemporary Australian Feminism*, 20 August 2011, accessed at <https://feminaeaustralis.wordpress.com/2011/08/20/open-letter-to-australian-feminists-concerned-about-sex-worker-exploitation/> on 31 August 2021.

these beliefs in tropes that view sex workers as ‘unclean’ or ‘diseased’, or in faith-based crusades to ‘save’ sex workers that position us as helpless victims. Passed in its current form, the Bills would allow for statements of such beliefs in public acts or in the course of professional engagement to be protected, allowing one individual to encroach on another’s human rights and favour the rights of people of faith over others, legally protecting them against such explicit acts of discrimination.

### **Discrimination is detrimental to the health and safety of sex workers**

Discrimination and stigma have powerfully negative impacts on marginalised communities’ access to health. An ongoing study at the Centre for Social Research in Health tracks sex worker experiences of stigma and its impact on various aspects of our lives. Stigma against sex workers has been identified as a negative health determinant that affects the mental and physical health of workers,<sup>3</sup> our ability to access non-judgemental health care,<sup>4</sup> and our access to basic needs like housing, financial security and legal support. In 2020, an indicator measuring experienced stigma was included in a qualitative survey of sex workers in Australia. 96% of participants reported experiencing 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 negative treatment by health workers, including 24% who experienced it ‘often’ or ‘always’.<sup>5</sup>

Maintaining a stigmatised approach to sex work is counter-productive to broader public health initiatives. The federal Department of Health’s blood-borne virus and sexually transmitted infection strategies explicitly aim to ‘eliminate the negative impact of stigma, discrimination, and legal and human rights issues on people’s health’, and the *Eighth National HIV Strategy Plan 2018-2022*, for example, 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’.<sup>6</sup> This impact on mental health is reinforced in research:

‘Research into sex workers’ mental health help-seeking indicates that sex workers’ perceived experiences of stigma and discrimination significantly impact upon their intentions to seek mental health support in future (Rayson and Alba, 2019).’<sup>7</sup>

An environment free of stigma and discrimination is essential to ensuring that sex workers have access to the same levels of health care and support as all members of the community. By enabling discriminatory statements made on the basis of faith, as well as restricting qualifying bodies’ ability to maintain standards of non-discriminatory practice, the Religious Discrimination Bill 2021 **directly conflicts with best-practice approaches to equitable access to healthcare.**

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<sup>3</sup> Carla Treolar et al., ‘Rethinking the Relationship between Sex Work, Mental Health and Stigma: A Qualitative Study of Sex Workers in Australia’ (2021) 268 *Social Science & Medicine* 113468.

<sup>4</sup> Cecilia Benoit et al., ‘Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers’ (2018) 55(4–5) *The Journal of Sex Research* 457, 458.

<sup>5</sup> Centre for Social Research in Health, UNSW Sydney, ‘Stigma Indicators Monitoring Project briefing, accessed 17 December 2021, <[https://scarletalliance.org.au/library/Stigma\\_Indicators](https://scarletalliance.org.au/library/Stigma_Indicators)>

<sup>6</sup> Department of Health, ‘Eighth National HIV Strategy Plan 2018-2022’, *Australian Government*, 2018, Canberra. P 30.

<sup>7</sup> Carla Treolar et al., ‘Rethinking the Relationship between Sex Work, Mental Health and Stigma: A Qualitative Study of Sex Workers in Australia’ (2021) 268 *Social Science & Medicine* 113468.

## **The current state of anti-discrimination protections for sex workers**

Currently, federal and jurisdictional anti-discrimination law does not adequately protect sex workers. In a number of jurisdictions, discrimination and vilification against sex workers is considered to be lawful, and in the jurisdictions that do offer protection, protections are conditional and not available to all sex workers. The introduction of the Religious Discrimination Bill 2021 and related bills will not only degrade the existing protections available to sex workers; it will also undermine the continuous efforts and advocacy of sex workers to achieve equity, equality, access to justice, safety and improved wellbeing through meaningful anti-discrimination reform. **The introduction of the Religious Discrimination Bill 2021 and related bills would mark a significant reversal in the progression of human rights that sex workers and other marginalised communities in Australia have fought tirelessly to achieve.**

### ***Decriminalisation and anti-discrimination protections enable sex worker human rights***

Many jurisdictions in Australia have already or are currently moving to fully decriminalise sex work. Decriminalisation is the removal of all sex work-specific criminal and licensing laws and police powers for all sex workers, including sex workers from marginalised groups.<sup>8</sup> The full decriminalisation of sex work is the only model that adequately protects sex workers' human rights and work health and safety. It is recognised as a necessary intervention by a number of international health and human rights bodies and authorities including the UNAIDS, UNFPA, UNDP, Amnesty International, International Labor Office, World Health Organisation, the Lancet Medical Journal, and the Global Alliance Against Trafficking in Women. New South Wales and the Northern Territory currently operate under decriminalised frameworks for sex work legislation, with Victoria and Queensland both actively engaged in decriminalisation processes and active decriminalisation campaigns in most other jurisdictions.

In order for sex workers to realise the benefits of decriminalised models, anti-discrimination protections must be in place as a structural enabler. This acknowledges the unique character and historical and cultural contexts of sex work stigma and discrimination. Below we elaborate on existing protections theoretically available to sex workers and why they are inadequate as a means of explaining why gaining anti-discrimination protections is such a substantial area of our current work - work that would be undermined by the passage of the Religious Discrimination Bill 2021 and related bills.

### ***Existing protections must not be further degraded by the Religious Discrimination Bill 2021***

In the Australian Capital Territory, sex workers are provided with some protection under the attribute 'profession, trade, occupation or calling'. In Victoria, Queensland and Tasmania, sex workers are provisionally protected under 'lawful sexual activity'. Victoria is currently progressing legislation that would also protect sex workers on professional grounds. These attributes do not adequately provide

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<sup>8</sup>Scarlet Alliance, 'Full Decriminalisation of Sex Work in Australia: Briefing Paper', March 2021, accessed 17 December, 2021 <[https://scarletalliance.org.au/library/briefing\\_paper\\_full\\_decrim](https://scarletalliance.org.au/library/briefing_paper_full_decrim)>

anti-discrimination or vilification protections for *all* sex workers, and do not acknowledge the historical and contemporary marginalisation, criminalisation and stigmatisation that sex workers experience. They are also substantially undermined by a number of legislated exceptions, eroding sex workers' access to protections in essential areas like housing, employment, and the care of children and young people.

### ***Undermining current progressions***

Legislative reform to provide stronger anti-discrimination protections to sex workers is currently under way in Victoria, the Northern Territory and New South Wales. Queensland sex workers have also been actively engaged in current review processes for the state's anti-discrimination and anti-vilification legislation. This, coupled with the decriminalisation efforts in Victoria and Queensland, are evidence of a shift towards acknowledging sex work as work and developing the legislative frameworks that will best support sex workers' human rights. Indeed, the tireless work of sex workers and our representative organisations and allies is progressing towards introduction of evidence-based policy. These gains are key to creating equitable access to services, justice, and self-determination for sex workers.

The protections that do exist in the jurisdictions, as well as any further gains on protections made in the jurisdictions, would be seriously undermined by the ability to override them with Federal legislation legalising discrimination against us by individuals expressing faith. We raise concern about some of the ways in which this could take place:

1. By allowing people expressing religious faith, or lack thereof, in workplaces, schools or service provision to do so in a way that is discriminatory, by word or action, against a sex worker or sex workers. This is particularly concerning in the context of healthcare service provision, where sex workers already experience very high rates of stigma and discrimination. (Section 12, Religious Discrimination Bill)
2. By allowing faith-based organisations, including charities, to refuse services including emergency accommodation, refuge, or other material assistance to sex workers on the basis that an anti-sex work viewpoint is an expression of faith. Faith-based organisations could also require that in order to receive these services, a sex worker must align themselves with the faith of the organisation. (Sections 7-9, 40(2-7), Religious Discrimination Bill 2021)
3. By allowing qualifying bodies, including those who qualify practitioners of services commonly accessed by sex workers (i.e. legal, medical, social, and emergency support services), to enforce standards of professional conduct. Sex workers already report low levels of trust in these types of service providers due to their collective experiences of discriminatory treatment in these areas. The ability for sex workers to seek accountability for discriminatory behaviour based on religious faith, or lack thereof, is a vital aspect of our pursuit of human rights and is undermined by Section 15 of the Bill.

**The Religious Discrimination Bill 2021 is counter-productive to Australia's international human rights obligations**

Former United Nations Secretary General Ban Ki-Moon states that '[i]n most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change.'<sup>9</sup> Former Australian High Court judge the Hon. Michael Kirby AC CMG states that 'We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality.'<sup>10</sup> UNAIDS and the United Nations Population Fund state that it is essential for governments to create an enabling legal and policy environment which insists upon universal rights for sex workers and ensures our access to justice.<sup>11</sup> Overriding of current and future jurisdictional anti-discrimination protections for sex workers is incompatible with our obligation to align Australian law with the principles of human rights.

The Australian Lawyers' Alliance submission to the Parliamentary Joint Committee on Human Rights speaks to the importance of equity in the design of anti-discrimination legislation:

'According to the United Nations Special Rapporteur on freedom of religion and belief, there is no hierarchy of human rights and where freedom of religion (as protected by article 18 of the ICCPR) clashes with the right to non-discrimination and equality, or laws of general effect, the focus should be on ensuring that all human rights are protected, including through reasonable accommodation.'<sup>12</sup>

## Recommendations

1. We recommend that the committee reject the Religious Discrimination Bill 2021 and related bills. Anti-Discrimination laws should be fair, protect all people from discrimination equally, and not value the rights of any individual or group over another. The legislation in its current form enables people of faith to discriminate against others and overrides existing anti-discrimination protections.
2. We recommend that Section 12 be removed from the Religious Discrimination Bill 2021 to prevent statements of belief that may currently constitute discrimination being made in areas of public life without consequence.
3. We recommend that anti-discrimination protections should not enable discrimination against others nor create further inequality for other federal, state and territory protected groups in the letter of the law or in its implementation.
4. We recommend that the committee consider the human rights of all and support anti-discrimination laws that protect us all equally and fairly.

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<sup>9</sup> UNAIDS, Joint United Nations Program on HIV/AIDS, UNAIDS Guidance Note on HIV and Sex Work, Geneva, 2009, 2.

<sup>10</sup> UNAIDS and UNFPA, Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work, 2011, 14.

<sup>11</sup> Ibid at 13.

<sup>12</sup> Australian Lawyers Alliance, Submission to the Parliamentary Joint Committee on Human Rights on the Religious Discrimination Bill 2021 and related bills, accessed 17 December 2021, <<https://www.lawyersalliance.com.au/documents/item/2218>>