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22 March 2024

Strategic Policy and Legislation
Department of Justice and Attorney-General
GPO Box 149
Brisbane, Qld 4001

By email: adactreview@justice.qld.gov.au

To the Queensland Department of Justice and Attorney-General

Re: Anti-Discrimination Bill 2024 Exposure Draft

Thank you for the opportunity to submit to the consultation on the Anti-Discrimination Bill 2024 Exposure Draft (the Bill).

Scarlet Alliance, Australian Sex Workers Association, is the national peak sex worker organisation. Formed in 1989, 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. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms.

The Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 is currently before Queensland Parliament, and is supported by the Queensland Human Rights Commission (QHRC).¹ It is essential that the decriminalisation of sex work is accompanied by a modern and responsive anti-discrimination framework that provides clear, comprehensive and accessible anti-discrimination protections for sex workers.

¹ Queensland Human Rights Commission (QHRC), [Submission No 113 to the Queensland Housing, Big Build and Manufacturing Committee, Criminal Code \(Decriminalising Sex Work\) and Other Legislation Amendment Bill 2024](#) (8 March 2024).

The Bill provides comprehensive anti-discrimination protections for marginalised communities, provisions allowing for public education, and makes the elimination of discrimination, sexual harassment, vilification and victimisation a shared responsibility for all people in Queensland. The Bill also sends a clear message to governments and government agencies, civil society, institutions and the general public that the prejudices and unfair treatment of the past are no longer acceptable.

Scarlet Alliance supports the Bill as an essential step to delivering human rights to sex workers in Queensland. In addition to our submission, we support the submission by Respect Inc and DecrimQLD.

Yours sincerely,

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

Mish Pony
Chief Executive Officer

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Introduction

Scarlet Alliance supports the Anti-Discrimination Bill 2024 (the Bill) as a significant modernisation of Queensland's anti-discrimination framework. The Bill provides more comprehensive anti-discrimination protections and facilitates greater public education on anti-discrimination. It also sends clear messages that people with disability belong in our communities and that the elimination of discrimination, sexual harassment, vilification and victimisation are a shared responsibility for all people in Queensland.

The Bill also minimises some of the burdens in relation to complaints and complainants' access to the complaints process, although Scarlet Alliance remains concerned that these measures may not be sufficient to reduce the significant barriers for sex workers reporting discrimination and vilification. Our recommendations in relation to the Bill are outlined in this submission.

Recommendation 1: that Queensland Parliament enact the Anti-Discrimination Bill 2024.

Part 1 - preliminary

Commencement

Scarlet Alliance supports the Bill including a specific commencement date of **1 July 2024**. As noted in our submission on the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024, sex workers' access to anti-discrimination protections is long-overdue.² It is vital that the Bill is enacted and implemented without delay to ensure that Queensland sex workers and other marginalised communities can access anti-discrimination protections, and to commence the first steps in systemic and cultural change to increase safety and fairness for all people in Queensland.

Recommendation 2: that the Bill's commencement date (cl 2) be **1 July 2024**.

Protected attributes

Scarlet Alliance supports the proposed list of protected attributes in cl 10, particularly the replacement of 'lawful sexual activity' with the new attribute of 'sex work activity' (cl 10(q)), the replacement of 'impairment' with 'disability' (cl 10(c)), and the new attribute of 'irrelevant criminal record' (cl 10(g)).

Sex work activity

Sex workers in Queensland currently have few opportunities for redress when we experience discrimination, and the current anti-discrimination framework fails to protect Queensland sex workers. Recent discussions note:

...the largest survey of sex workers in Queensland has revealed more than 70 percent of workers face "daily and systemic" discrimination and vilification across key areas such as healthcare, housing and banking. The survey also found there was an "extremely high" rate of unreported discrimination, with 91 percent of workers choosing not to report their experiences due to barriers in reporting and fears they would face further stigma.³

It is likely that 7(l) 'lawful sexual activity' is incompatible with the Human Rights Act 1999 (Qld) as it has the effect of depriving a person who is working unlawfully from accessing protections under the Anti-Discrimination Act.⁴

Sex workers experience significant stigma, discrimination, and barriers to exercising their rights...Protections under the Anti-Discrimination Act need to be strengthened as part of the decriminalisation framework. This is consistent with

² Scarlet Alliance, [Submission No 109 to the Queensland Housing, Big Build and Manufacturing Committee, Criminal Code \(Decriminalising Sex Work\) and Other Legislation Amendment Bill 2024](#) (8 March 2024) 2.

³ Phoebe Hosier, '[Queensland sex workers face 'daily discrimination' with up to 90pc of industry unprotected by laws](#)' ABC News (online, 31 March 2022).

⁴ DecrimQLD and Respect Inc, '[Unprotected and Under-Reported: Sex Workers Experiences of Discrimination and Anti-Discrimination Protections in Queensland](#)' (Survey Synopsis No 1, June 2022) 2.

*the aim of reducing stigma and safeguarding sex workers' human rights, including the right to equal and effective protection against discrimination.*⁵

However, the word 'adult' must be removed from the definition of 'sex work activity' in sch 1. It would be incongruous for anti-discrimination protections to only apply to adult sex workers, but be inapplicable for younger people who may be involved in sex work, especially in relation to access to community services.⁶ Removal of the word 'adult' from the definition of the protected attribute was also endorsed by the Queensland Human Rights Commission (QHRC) in their submission on the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024.⁷

Protection for all People Who Use Drugs

Building Belonging recommended the Bill clarify that 'people with addiction are covered by the attribute of disability'.⁸ However, drug-users and peer-led organisations in Australia reject the term 'addiction' and framing of drug-use as 'disease', noting that these approaches increase stigma and discrimination towards people who use drugs and may limit access to competent and safe healthcare and community services.⁹ The Bill should explicitly prohibit discrimination against individuals who use drugs. Employers should provide adequate support and have policies in place to prevent discrimination in the workplace.

Scarlet Alliance concurs with the Queensland Injectors Health Network (QuiHN), Queensland Injectors Voice for Advocacy and Action (QuiVAA) and the Australian Injecting & Illicit Drug Users League (AIVL) that the definitions of disability in sch 1 1(d) ('impairment or disturbance in the structure or functioning of the person's body or part of the person's body') and (f) ('disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour') are neither appropriate nor adequate to address discrimination experienced by people who use drugs, including those with lived-experience of substance use dependence.

Scarlet Alliance defers to state and national drug-user peer organisations (AIVL, QuiHN and QuiVAA), and recommends that the Queensland Government undertakes focussed consultation with these organisations in order to ensure that the Bill contains appropriate, comprehensive and accessible anti-discrimination protections for people who use drugs.

Recommendation 3: In relation to the Bill's protected attributes (cl 10), that:

- a) Scarlet Alliance supports the new attribute 'sex work activity';

⁵ Queensland Law Reform Commission (QLRC), [A Decriminalised Sex Industry for Queensland](#) (Report No 80, March 2023) vol 1, 98.

⁶ Scarlet Alliance, Submission No 109 (n 2) 2.
See also Respect Inc and DecrimQLD, [Submission No 136 to the Queensland Housing, Big Build and Manufacturing Committee, Criminal Code \(Decriminalising Sex Work\) and Other Legislation Amendment Bill 2024](#) (8 March 2024) 10.

⁷ QHRC, Submission No 113 (n 1) 6.

⁸ QHRC, [Building Belonging: Review of Queensland's Anti-Discrimination Act 1991](#) (Report, July 2022) 272.

⁹ Australian Injecting & Illicit Drug Users League (AIVL), [Submission to the Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine \(ASHM\), Stigma and Discrimination as Barriers to Health Service Access for People Who Use Drugs](#) (May 2017) 11-2.

- b) the word 'adult' is removed from the definition of 'sex work activity' in sch 1, to ensure that discrimination against a young person who may be involved in sex work is not inadvertently permitted;
- c) People Who Use Drugs be protected from discrimination by being listed as an attribute; and
- d) the Queensland Government undertakes focussed consultation with state and national drug-user peer organisations (the Australian Injecting & Illicit Drug Users League (AIVL), Queensland Injectors Health Network (QuIHN) and Queensland Injectors Voice for Advocacy and Action (QuIVAA)) in order to ensure that the Bill contains appropriate, comprehensive and accessible anti-discrimination protections for people who use drugs.

Conduct in relation to protected attribute

Scarlet Alliance supports cl 11 of the Bill, which recognises that discrimination may include conduct in relation to a characteristic that a person with the protected attribute generally has, or a characteristic that is often imputed to the person with the protected-attribute, and applies to discrimination on the basis of more than one attribute or the combined effect of two or more attributes - recognising cumulative and intersectional discrimination.

Recommendation 4: that cl 11 (conduct in relation to a protected attribute) be retained within the Bill.

Part 2 - discrimination

Direct and indirect discrimination

The current legislation requires that in order to prove direct discrimination, complainants must demonstrate that they were treated less favourably compared to another (real or hypothetical) person without a protected attribute in the same circumstances (described as a 'comparator test').¹⁰ If the person who discriminates argues that the unfavourable treatment is for multiple reasons, the complainant must also prove that their protected attribute is a 'substantial reason' for the unfavourable treatment.¹¹

These requirements generate a nearly insurmountable onus of proof for many complainants. The impacts of the operation of this onus on sex workers were apparent in the 2015 case *Payne v APN News & Media*, where the Court found that a sex worker's complaint relating to higher newspaper advertising costs could not be proven by comparison to advertising costs for other businesses within the classified section, but could only be proven by comparison with a hypothetical person advertising in the 'personals' section, who was not a sex worker, and who was charged less.¹²

Scarlet Alliance supports cls 13-15 of the Bill, which:

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

¹¹ *Ibid* s 10(4).

¹² *Payne v APN News & Media* [2015] QCAT 514, [53]-[54].

- clarify that discrimination may be direct or indirect, and that affirmative measures are not discrimination (cl 13);
- remove the current ‘comparator test’ from direct discrimination, instead outlining that a person directly discriminates against another ‘if the person treats, or proposes to treat, the other person unfavourably because the other person has a protected attribute’ (cl 14(1));
- confirm that failure or refusal to make a reasonable accommodation for a person with disability is direct discrimination (cl 14(2));
- clarify that a person’s protected attribute may be only one reason for unfavourable treatment (cl14(3)(a)); and
- remove the current ‘comparator test’ from indirect discrimination, and transfer the onus of proof so that the person imposing the condition, requirement or practice must prove, on the balance of probabilities, that it was reasonable (cl 15).

The replacement of ‘comparator tests’ with objective tests of whether a person was treated unfavourably (direct discrimination) or whether an unreasonable condition, requirement or practice resulted in disadvantage to a person because of their protected attribute (indirect discrimination) also brings Queensland’s approach in line with anti-discrimination legislation in Victoria and the ACT.¹³

Scarlet Alliance supports these reforms as being appropriate and fair measures to ensure that complainants are not faced with insurmountable evidentiary burdens, and enacting objective tests for determining direct and indirect discrimination.

Recommendation 5: that cls 13-15 (when does discrimination occur, direct discrimination and indirect discrimination) be retained within the Bill.

Part 3 - positive duties

Duty to make reasonable accommodation for person with disability

Scarlet Alliance supports cls 12 and 18 of the Bill, which create an obligation to make reasonable accommodation for a person with disability. A person who fails or refuses to make reasonable accommodation for a person with disability must prove on the balance of probabilities that the accommodation would impose an unjustifiable hardship (cl 12(2)), otherwise the failure/refusal amounts to direct discrimination (cl 14(2)).

This approach upholds Australia’s commitment to the United Nations *Convention on the Rights of Persons with Disabilities*,¹⁴ and was recommended by the Queensland Public Advocate.¹⁵ The clauses

¹³ *Equal Opportunity Act 2010* (Vic) ss 7-9; *Discrimination Act 1991* (ACT) s 8.

¹⁴ [Convention on the Rights of Persons with Disabilities](#), opened for signature 30 March 2007, [2008] ATS 12 (entered into force 3 May 2008) art 5.

¹⁵ Queensland Office of the Public Advocate, [Submission 33 to the QHRC, Review of Queensland’s Anti-Discrimination Act](#) (February 2022) 3.

create a baseline expectation that people with disability belong in our communities, and promote access, inclusion and participation.

Recommendation 6: that cls 12 and 18 (duty to make reasonable accommodation for a person with disability) be retained within the Bill.

Duty to eliminate discrimination, sexual harassment, vilification and victimisation

Scarlet Alliance supports the creation of a general positive duty to eliminate discrimination, sexual harassment, vilification and victimisation. While we understand that this general duty exists separately from the Bill's complaints process, we endorse the observations in *Building Belonging* that a positive duty plays a role in preventing discrimination, relieves some of the burden from marginalised groups having to pursue complaints in order to benefit from anti-discrimination protections, and provides opportunities for education and awareness raising.¹⁶

In supporting this part of the Bill, we echo the earlier joint submission from the National Association of People with HIV Australia (NAPWHA), Queensland Positive People (QPP) and the HIV/AIDS Legal Centre (HALC) highlighting the importance of employers and service providers being educated about HIV and Blood Borne Viruses and their management within organisations.¹⁷

Training and education for frontline staff plays a vital role in minimising stigma and discrimination and promoting safety for service-users, especially in healthcare and community services contexts. In research conducted by the University of New South Wales Centre for Social Research in Health, a significant proportion of Australian healthcare workers *self-report* negative treatment towards others due to their injecting drug use (c. 70%), employment as a sex worker (c. 47%) and STI status (c. 43%).¹⁸

To address the negative treatment of people who inject drugs, sex workers and people with STI/BBV by staff in healthcare settings, it is vital that a positive duty to prevent discrimination, sexual harassment, vilification and victimisation is included within the Bill, and that the QHRC promotes that reasonable and proportionate measures for eliminating discrimination (cl 20) include training within organisations to prevent stigma and discrimination.

Recommendation 7: In relation to the positive duty to eliminate discrimination, sexual harassment, vilification and victimisation, that:

- a) cls 19-20 be retained within the Bill; and

¹⁶ *Building Belonging* (n 8) 217-20.

¹⁷ NAPWHA, QPP and HALC, [Joint Submission 122 to the QHRC, Review of Queensland's Anti-Discrimination Act](#) (3 March 2022) 9.

¹⁸ Carla Treloar et al, ['Stigma Snapshot: Health Care Workers 2022'](#) (Research Report, Centre for Social Research in Health, University of New South Wales, October 2023) 2.

- b) the QHRC promotes that reasonable and proportionate measures for eliminating discrimination (cl 20) include training within organisations on preventing stigma and discrimination.

Part 4 - unlawful discrimination

Scarlet Alliance supports cl 21 of the Bill, which clarifies that discrimination is prohibited unless an exemption or exception applies, and specifies that the person seeking to rely on the exemption or exception must prove, on the balance of probabilities, that it applies. This approach is a welcome change for sex workers, who have been significantly impacted by exceptions and exemptions in the current Act.

In 2022, Scarlet Alliance collated a non-exhaustive list of commonly-reported discrimination from our community,¹⁹ which included discrimination in accommodation and housing, employment, health, family matters, financial services, insurance and advertising, and noted:

*Sex workers in Australia have long been subjected to discrimination and vilification with devastating impacts on our safety, housing and accommodation, financial stability, mental health and well-being. ...Unfortunately discrimination against our community is widespread and persistent, taking place daily at systemic and interpersonal levels for sex workers.*²⁰

Discrimination in work and work-related areas

Scarlet Alliance supports the prohibition of discrimination in employment (cl 22), contracting (cl 23), large partnerships (cl 24), industrial and business organisations (cl 25), qualifying bodies (cl 26) and employment agencies (cl 27).

Scarlet Alliance supports the Bill's separation of the general exception for genuine occupational requirement (cl 28) and genuine occupational requirement for religious bodies (cl 29). We also believe that the proposed narrower scope of the exception for religious bodies is fair and appropriate, and brings Queensland's approach in line with proposed Commonwealth and current state/territory legislation.²¹

Scarlet Alliance strongly supports the repeal of the current *Anti-Discrimination Act 1991* s 28, which allows employers to discriminate against both sex workers and LGBTIQ+ people in relation to work involving the care of young people. This provision is based on offensive and outdated stereotypes that sex workers and LGBTIQ+ people are at risk of 'corrupting' young people, and has no basis in evidence.

¹⁹ Scarlet Alliance, [Anti-discrimination & vilification protections for sex workers in Australia](#) (Briefing Paper, February 2022) 4-5.

²⁰ Ibid 2.

²¹ Department of Justice and Attorney General, ['Anti-Discrimination Bill 2024 \(Exposure Draft\)'](#) (Consultation Guide, Queensland Government, February 2024) 24.

Recommendation 8: That cls 22-33 (discrimination in work and work-related areas and exceptions) be retained within the Bill.

Accommodation

Scarlet Alliance supports the prohibition of discrimination in relation to the supply of accommodation (cl 46) and the repeal of the general exemption permitting discrimination relating to ‘accommodation for use in connection with work as sex worker’ in the current Act.²²

The current s 106C provides a general exemption permitting discrimination against sex workers in relation to accommodation, and applies to a broad range of premises, including ‘business premises, houses, flats, hotels, motels, boarding houses and hostels, caravans [and]...camping sites’.²³ Section 106C permits discrimination if an accommodation provider merely ‘reasonably believes’ a person ‘is using, or intends to use, the accommodation in connection with that person’s, or another person’s, work as a sex worker.’ Through consultation conducted by Respect Inc, Queensland sex workers reported being evicted during the night without notice or the opportunity to make alternative arrangements, charged more for short-stay accommodation, and offered unfavourable tenancy terms.²⁴

Repeal of s 106C was recommended by the QHRC in *Building Belonging*,²⁵ and by the Queensland Law Reform Commission (QLRC) as part of the decriminalisation of sex work in Queensland.²⁶ It is vital that this repeal is retained within the Bill in order to ensure Queensland sex workers have access to safe, stable and affordable accommodation options.

Recommendation 9: that, in relation to discrimination in the area of accommodation:

- a) cls 46-50 are retained within the Bill.
- b) the Bill retains its repeal of the *Anti-Discrimination Act 1991* s 106C.

Part 7 - vilification, victimisation and other unlawful conduct

While Scarlet Alliance strongly supports the strengthening of anti-vilification protections in Queensland, we are concerned with their limited application.

We support the definition of ‘public act’ clearly applying to both online and real world behaviour (cl 83), and also support the prohibitions on both engaging ‘in a public act that a reasonable person

²² *Anti-Discrimination Act 1991* (Qld) s 106C.

²³ Ibid - Dictionary - ‘accommodation’.

²⁴ Respect Inc and DecrimQLD, [Joint Submission No 130 to the QHRC, Review of Queensland’s Anti-Discrimination Act](#) 46-50.

See also Eden Gillespie, [‘Forced to move home’: discrimination of Queensland sex workers needs to end, say advocates](#) *The Guardian* (online, 20 April 2022).

²⁵ *Building Belonging* (n 8) 295.

²⁶ *A Decriminalised Sex Industry for Queensland* (n 5) 99.

would consider hateful, reviling, seriously contemptuous, or seriously ridiculing' (cl 84(1)) and engaging in public conduct 'that incites, or is reasonably likely to incite, hatred towards, seriously contempt for, or severe ridicule of a person or group of people' (cl 85(1)),

Protected attributes against vilification

However, these prohibitions are limited to acts done on the basis of age, disability, gender identity, race, religion, sex, sex characteristics, or sexual orientation only. **This proposed list leaves sex workers, as well as other vulnerable people and groups, without protection against vilification under civil or criminal law.**

Sex workers in Queensland are frequent targets for vilification. Reports received by Respect Inc and Scarlet Alliance from Queensland sex workers have included:

- A sex worker who also worked as a teacher's aide was threatened by an ex-partner that if she did not leave the town where they both lived, he would 'make sure she got what she deserved' by putting a post online telling parents at the school about her sex work career.²⁷
- The new girlfriend of a sex worker's ex-husband circulated on an online blog with a link to the advertisement of a sex worker with her personal phone number and home address where she lived with her two small children. She felt unsafe and had to move into temporary accommodation, losing her home and going into debt.²⁸
- A neighbourhood social media group post listed an address and accused the resident of being a sex worker.²⁹
- A sex worker was accused of living with HIV and their photo and address were made public online.³⁰
- Posts made in a suburban social media group about a local massage parlour, accompanied by the distribution of physical flyers, described the location as a 'threat to children.'³¹

In its responses to both the *Inquiry into Serious Vilification and Hate Crimes* and *Building Belonging*, the Queensland Government committed to considering whether the scope of protected attributes against vilification offered sufficient protection.³²

²⁷ Respect Inc and Scarlet Alliance, [Joint Submission to the Queensland Legal Affairs and Safety Committee, *Inquiry into Serious Vilification and Hate Crimes*](#) (25 August 2021) 7.

²⁸ Ibid.

²⁹ Respect Inc and Scarlet Alliance, [Joint Submission to the Queensland Legal Affairs and Safety Committee, *Criminal Code \(Serious Vilification and Hate Crimes\) and Other Legislation Amendment Bill 2023*](#) (12 May 2023) 3.

³⁰ Ibid.

³¹ Ibid.

³² Legal Affairs and Safety Committee, [Inquiry into Serious Vilification and Hate Crimes](#) (Report No 22, 31 January 2022) 2; Queensland Government, [Final Response to the Queensland Human Rights Commission's Report *Building Belonging - Review of Queensland's Anti-Discrimination Act 1991*](#) (Report, 3 April 2023) recommendations 27.1-2.

The Northern Territory *Anti-Discrimination Act 1992* prohibits discrimination that includes ‘any distinction, restriction, exclusion or preference made on the basis of an attribute’ and ‘harassment on the basis of an attribute’,³³ as well as public acts intended to ‘offend, insult, humiliate or intimidate another person or a group of people’ on the basis of *the same protected attributes*,³⁴ meaning that both discrimination *and* vilification on the basis ‘employment in sex work or engaging in sex work, including past employment in sex work or engagement in sex work’³⁵ are unlawful.

We see no reason that Queensland’s anti-discrimination framework cannot adopt this approach. It is incongruous and confusing that discrimination against people/groups with certain protected attributes is prohibited, but vilification of those same groups is permissible. It is unacceptable that as part of the decriminalisation of sex work in Queensland, and as a part of the creation of the comprehensive and accessible anti-discrimination protected attribute of ‘sex work activity’, that this attribute is not part of listed grounds against vilification.

Recommendation 10: that in relation to the prohibitions against vilification in part 7, div 2 of the Bill:

- a) the definition of ‘public act’ (cl 83) is retained; and
- b) ‘sex work activity’ is included as a prohibited ground against vilification.

Part 9 - complaints and resolution

Sex workers experience significant barriers to reporting vilification and discrimination due to Queensland’s process for complaints and resolution. In consultations conducted by Respect Inc, sex workers described reporting discrimination as ‘not worth it’, due to the risk of experiencing further stigma, discrimination and mistreatment during the complaints process, and the risks generated by having their real identities associated with their sex work status, particularly that their real names and residential addresses may be made public.³⁶

The case of *Dovedeen Pty Ltd v GK* demonstrated that these fears are not unfounded. The case involved an anti-discrimination claim from a Queensland sex worker in relation to being charged a higher rate for, and subsequently denied, accommodation in a particular hotel. The minority of the Supreme Court of Queensland held that ‘by commencing a proceeding in QCAT [the sex worker] necessarily took the risk’ that any decision may be appealed and consequently their real name made public,³⁷ and that maintaining a sex worker complainant’s anonymity was not in the interests of justice.³⁸

Scarlet Alliance supports the following measures in the Bill, which go some way to addressing barriers to reporting:

- the ability of the Commissioner and relevant tribunal to prevent identity disclosure (cls 223-225);

³³ *Anti-Discrimination Act 1992* (NT) s 20(1).

³⁴ *Ibid* s 20A.

³⁵ *Ibid* s 19(1)(ec).

³⁶ See Respect Inc and DecrimQLD Joint Submission No 130 to the QHRC (n 24) 26.

³⁷ *Dovedeen Pty Ltd v GK* [2013] QCA 116 [43] (Wilson J).

³⁸ *Ibid* [50].

- extension of the time limit on making complaints to two years (cl 100)
- provision for a ‘relevant body’ to make a complaint about vilification without the need for an individual complainant (cl 103)
- provision for an ‘interested body’ to make a complaint about a breach of the Act on behalf of a specific complainant(s) (cl 104).

However, the requirement in cl 104 for complaints to be on behalf of a ‘named person’ undermines the ability of complainants to retain anonymity by an interested body making a representative complaint on their behalf.

For sex workers, people who use drugs and people living with HIV,³⁹ it is essential that peer-led organisations are able to make representative complaints in order to mitigate power imbalances and preserve anonymity/pseudonymity.

Scarlet Alliance recommends that cl 104 be amended to clarify that while interested bodies may only make complaints on behalf of specific individuals, that the real names and personal details of the specific individuals are not required to be disclosed during a representative complaint.

Scarlet Alliance also recommends that the ability of the Commissioner to prevent identity disclosure (cl 122) be extended to allow individuals to make an anonymous complaint by application to the Commission.

Recommendation 10: that, in order to reduce barriers to reporting complaints:

- a) the ability of a relevant tribunal to prevent identity disclosure and continuing prohibition on identity clauses (cls 224-5) are retained within the Bill;
- b) the Bill extends the time limit on making complaints to two years (cl 100)
- c) provision for a ‘relevant body’ to make a complaint about vilification without the need for an individual complainant (cl 103) is retained within the Bill;
- d) the provision for an ‘interested body’ to make a complaint about a breach of the Act on behalf of a specific complainant(s) (cl 104) is amended to clarify that while the complaint must be on behalf of specific individuals, that the real names and personal details of the specific individuals are not required to be disclosed during a representative complaint.
- e) the ability of the Commissioner to prevent identity disclosure (cl 122) be extended to allow individuals to make an anonymous complaint by application to the Commission.

Part 10 - role of QHRC

Scarlet Alliance supports Part 10 of the Bill, which outlines the Commission's functions in relation to education and research, and preparing guidelines, compliance reviews and action plans in relation to the Bill's positive duties. As discussed in our submission on the [positive duty](#) section above, Scarlet Alliance emphasises the importance of anti-discrimination education within the healthcare, aged care and disability services sectors.

³⁹ NAPWHA, QPP and HALC, Joint Submission 122 to the QHRC (n 17) 8-9.

We also urge the QHRC to collaborate with Respect Inc and Scarlet Alliance to ensure that emerging material and/or criteria impacting sex workers is relevant and appropriate, especially in information and resources relating to the decriminalisation of sex work in Queensland. We encourage similar collaboration with relevant peer and community-led organisations in the development and production of all educational material.

Recommendation 11: In relation to the educational and positive duty compliance functions in Part 10 of the Bill, that:

- a) the healthcare, aged care and disability services sectors are a priority area for anti-discrimination education;
- b) the QHRC collaborates with Respect Inc and Scarlet Alliance to ensure emerging material and/or criteria impacting sex workers is relevant and appropriate, especially in information and resources relating to the decriminalisation of sex work in Queensland; and
- c) the QHRC collaborates with relevant peer and community-led organisations in the development and production of all educational material.

Summary of Recommendations

Recommendation 1: that Queensland Parliament enact the Anti-Discrimination Bill 2024.

Recommendation 2: that the Bill's commencement date (cl 2) be **1 July 2024**.

Recommendation 3: In relation to the Bill's protected attributes (cl 10), that:

- a) Scarlet Alliance supports the new attribute 'sex work activity';
- b) the word 'adult' is removed from the definition of 'sex work activity' in sch 1, to ensure that discrimination against a young person who may be involved in sex work is not inadvertently permitted;
- c) People Who Use Drugs be protected from discrimination by being listed as an attribute; and
- d) the Queensland Government undertakes focussed consultation with state and national drug-user peer organisations (the Australian Injecting & Illicit Drug Users League (AIVL), Queensland Injectors Health Network (QuIHN) and Queensland Injectors Voice for Advocacy and Action (QuIVAA)) in order to ensure that the Bill contains appropriate, comprehensive and accessible anti-discrimination protections for people who use drugs.

Recommendation 4: that cl 11 (conduct in relation to a protected attribute) be retained within the Bill.

Recommendation 5: that cls 13-15 (when does discrimination occur, direct discrimination and indirect discrimination) be retained within the Bill.

Recommendation 6: that cls 12 and 18 (duty to make reasonable accommodation for a person with disability) be retained within the Bill.

Recommendation 7: In relation to the positive duty to eliminate discrimination, sexual harassment, vilification and victimisation, that:

- a) cls 19-20 be retained within the Bill; and
- b) the QHRC promotes that reasonable and proportionate measures for eliminating discrimination (cl 20) include training within organisations on preventing stigma and discrimination.

Recommendation 8: That cls 22-33 (discrimination in work and work-related areas and exceptions) be retained within the Bill.

Recommendation 9: that, in relation to discrimination in the area of accommodation:

- a) cls 46-50 are retained within the Bill.
- b) the Bill retains its repeal of the *Anti-Discrimination Act 1991* s 106C.

Recommendation 10: that, in order to reduce barriers to reporting complaints:

- a) the ability of a relevant tribunal to prevent identity disclosure and continuing prohibition on identity clauses (cls 224-5) are retained within the Bill;
- b) the Bill extends the time limit on making complaints to two years (cl 100)
- c) provision for a 'relevant body' to make a complaint about vilification without the need for an individual complainant (cl 103) is retained within the Bill;
- d) the provision for an 'interested body' to make a complaint about a breach of the Act on behalf of a specific complainant(s) (cl 104) is amended to clarify that while the complaint must be on behalf of specific individuals, that the real names and personal details of the specific individuals are not required to be disclosed during a representative complaint.
- e) the ability of the Commissioner to prevent identity disclosure (cl 122) be extended to allow individuals to make an anonymous complaint by application to the Commission.

Recommendation 11: In relation to the educational and positive duty compliance functions in Part 10 of the Bill, that:

- a) the healthcare, aged care and disability services sectors are a priority area for anti-discrimination education;
- b) the QHRC collaborates with Respect Inc and Scarlet Alliance to ensure emerging material and/or criteria impacting sex workers is relevant and appropriate, especially in information and resources relating to the decriminalisation of sex work in Queensland; and
- c) the QHRC collaborates with relevant peer and community-led organisations in the development and production of all educational material.