

# Experiences of sex workers with disability in Australia

*Adapted excerpts from a report compiled by Scarlet Alliance, Australian Sex Workers Association for the Australian Disability Royal Commission*

## Scarlet Alliance recommendations to the Royal Commission

### Our submission to the Royal Commission

The Australian Government established the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, known as the Disability Royal Commission or the ADRC in 2019. It is an independent group set up to investigate the issues and recommend changes to laws, policies, structures and practices. The ADRC will report its findings to government in September 2023

Scarlet Alliance consulted with sex workers with disability to inform our submission to the Royal Commission. The findings can be used by the ADRC, law and policy makers, and practitioners who wish to be more inclusive of sex workers with disability. We hope that interest in providing accessible and inclusive services to sex workers with disability will also increase as a result of this report.

### Our recommendations

The experiences of the sex workers with disability who inform this report point to an urgent need for change at the nexus of sex work and disability law, policy, and support systems. This work must be undertaken with the aim of improving the existing support systems available to people with disability in unceded Australia in ways that are inclusive of, and ensure culturally-safe and appropriate services for sex workers with disability.

We present recommendations for action on disability-specific law and policy, but this alone will not support sex workers with disability to access the full suite of human and labour rights that must be afforded to all people in unceded Australia. In order for sex workers to be meaningfully served by the agencies and services intended to support people with disabilities, we need access to legislative and policy environments that enable us to seek help without fear of stigma or criminalisation, and that recognise our sex work as work.

We provide these recommendations together as a single set to reflect their interdependence. Without sex work law and policy reform, any reform to disability law and policy will be limited in what it achieves.

## **Recommendation 1: Support the full decriminalisation of sex work across Australia to remove barriers to access to health, safety, rights and justice for sex workers with disability.**

In many jurisdictions in unceded Australia, some or all aspects of sex work are criminalised or licensed through a complex matrix of laws that perpetuate the stigma that sex workers must be carefully controlled or abolished in order to ‘protect’ the public from sex work. These laws are outdated and discriminatory. They do not align with the best available evidence. Decriminalisation of sex work is the only framework that enables sex workers’ better access to health, safety, workplace rights, and justice. While any sex worker is still framed as a criminal, sex workers with disability will experience these barriers, compounded by those that relate to disability. As one participant in our research participant commented:

“I believe the only way forward, is full decriminalisation of sex work, and full workers rights instated, this is the only way disability rights will be implemented for workers.”

### **What is decriminalisation?**

Scarlet Alliance’s Briefing Paper on the ‘Full Decriminalisation of Sex Work in Australia’ describes the best practice regulatory model for sex work:

‘Full decriminalisation of sex work is the removal of all sex work-specific criminal and licensing laws that apply only to sex workers, our workplaces, clients, and third parties. Criminal laws that apply to everyone are still enforced by police. Civil laws are implemented by government agencies and regulators, not the police. Civil laws protect people’s health, safety, privacy, autonomy, human and industrial rights, and are meant to apply to everyone.’

Decriminalisation of sex work enables sex workers to focus on our workplace health and safety, enables choice over how and where we work, and drastically improves access to justice, services, and rights. The removal of criminal penalties for all aspects of sex work opens up access to a greater degree of choice and control over our work and enables regulation via the laws and regulations that govern other industries. It limits the ability of violent actors from holding the knowledge of illegal sex work as power over us, enables the sharing of safety information and peer education among sex workers without fear of criminalisation, and is a necessary step in de-stigmatising sex work. Criminalisation always begets stigma, and stigma is a root cause of violence against sex workers. There is growing support for decriminalisation in unceded Australia, with New South Wales adopting the model in 1995, the Northern Territory in 2019, and Victoria voting to implement it in 2022. There are active decriminalisation campaigns currently in play through law reform processes in Queensland and South Australia.

While decriminalisation alone will not end violence against sex workers, it is a fundamental

requirement in moving towards this goal. We elaborate below on other measures that are necessary in order to meaningfully include sex workers, but an alignment with decriminalisation as the best practice model for sex work legislation that supports sex workers to prevent, take action against, and recover from violence, is imperative.

**Recommendation 2: Advocate for robust anti-discrimination protections for sex workers to enable sex workers with disability to challenge experiences of intersectional discrimination.**

Sex workers have long been subjected to discrimination and vilification with devastating impacts on our safety, housing and accommodation, financial stability, mental health and well-being. Because some or all aspects of our work are criminalised in many states and Territories, there is minimal protection or recourse when this occurs. In order for the benefits of the decriminalisation of sex work to be fully realised, sex workers must have access to protection when we experience discrimination.

Many current state and territory anti-discrimination frameworks enable, and in some jurisdictions legalise, discrimination against sex workers, with limited opportunities for us to pursue any protections. Challenging discrimination starts with a complaint and then conciliation, which is a dispute resolution process where the complainant (the party who has experienced discrimination) and the respondent (the party who has been discriminatory) negotiate a remedy for the harm caused by the discrimination. If an agreement can be reached, sex worker complainants are often made to sign non-disclosure agreements covering the discrimination and any settlement agreed upon. This means there is little publicly available information about anti-discrimination cases pursued by sex workers that do not progress beyond conciliation. If not resolved at conciliation, there are significant privacy, safety and financial barriers for a sex worker to take the case to tribunal or a higher court.

Discrimination against our community is widespread and persistent, taking place daily at systemic and interpersonal levels. Simultaneously, there is a lack of accessibility to the current mechanisms for redress. Law reform at Federal and state, and Territory levels is required for sex workers to access the appropriate legal protections when we are targets of discrimination or vilification.

“Despite living in a state where [sex work] is decriminalised, individuals and private enterprise can still discriminate. I don’t disclose my job and have significant anxiety around people finding out in case of discrimination that could limit my access to housing and necessary services.”

(Survey Respondent)

### **Recommendation 3: Remove financial and stigma-based barriers to accessing diagnosis and address cost of living pressures that disproportionately impact marginalised people, including people with disabilities.**

The prevalence of financial barriers to accessing diagnosis, care, and support was of the most commonly-iterated themes among all research participants. The need for full access to health care for all people in unceded Australia has never been more clear than amidst the COVID-19 pandemic, and continues to be a major issue for sex workers with disability generally. Sex workers participating in our research named the following as actions that would significantly improve their experiences relating to accessing care:

- Public funding for all diagnostic processes
- Ensuring fair access to diagnostics and medication for people with prior or current drug use
- Increases to Jobseeker and the DSP, to reflect ever-increasing costs of living and skyrocketing costs of health care
- Improved access to NDIS to reduce out of pocket expenses associated with accessing services

### **Recommendation 4: ADRC outputs, including recommendations for reform, must acknowledge and validate sex work as work.**

Sex workers with disability who participated in our research provided a range of examples of experiences where the failure of government agencies and other social support gatekeepers, to treat sex work as work, has compromised access to support. This is particularly concerning given the circumstances that lead many people with disabilities to seek out sex work as it is a more accessible form of income-generating work than many 'mainstream' employment pathways. Sex work is a valid and, in many cases, preferable work choice for people responding to the inadequacies of the existing disability support structures in unceded Australia. This is absolutely essential to acknowledge.

A foundational aspect of our inclusion in the work of the ADRC, and in its success achieving holistic wellbeing outcomes for people with disabilities, must be to recognise that sex work is work. 'Sex work is work' acknowledges that sex work is a legitimate and skilled occupation and that sex workers deserve to access rights and redress equitably with other workers.

Scarlet Alliance's ['Principles for Model Sex Work Legislation'](#) states the importance of acknowledging sex work as legitimate work within law and policy:

'Understanding sex work as 'work' – in law and policy – brings a range of industrial and occupational health and safety protections to sex workers. Legislation that recognises sex work as a legitimate occupation affords sex workers better control over our working rights and conditions, improves our abilities to implement safer sex

practices, enhances opportunities for collective bargaining and advocacy (for holiday pay, sick leave, superannuation, parental leave, industrial awards), recognises contracts made for working purposes (between sex worker and client, or in the hiring of premises, drivers or security), legitimises income (paying taxes, claiming work-incurred expenses and applying for loans), and gives sex workers better legal redress unfair dismissal and other injustices in the workplace. Recognising sex work as legitimate occupation also has important flow-on effects for Australia's whole-of-government approach to Social Inclusion, which envisages an inclusive society in which 'all Australians feel valued and have the opportunity to participate fully in the life of our society.'<sup>1</sup>

For sex workers with disability, the recognition of sex work as work is a first step in improving access to:

- Support at work, including disability access and workplace health and safety standards for sex industry businesses, and occupational therapy support for the material work of sex work.
- Income support. Where sex work is understood as a legitimate occupation, sex workers are able to feel safe to disclose it when seeking income support.
- Appropriate and supportive sexual and reproductive health care, where sex workers with disability are not shamed, patronised, or provided with inadequate or inappropriate care due to sex work disclosure.
- Justice when reporting violence, harm, or crimes committed against us to relevant authorities and agencies. Treating sex work as work is particularly supportive for sex workers seeking support for workplace-related matters, but would also support those who experience sex work stigma in the course of their daily lives, including in the context of disability support, to access redress.
- Holistic support as people with disability. Failing to recognise sex work as work reinforces sex work stigma and prevents sex workers with disability from living full and self-determined lives as whole individuals.

### **Recommendation 5: Resource peer sex worker organisations to deliver education and consultation on the provision of culturally-appropriate services and supports to sex workers with disability**

Dismantling sex work stigma happens on all levels of culture, from structural to interpersonal. Sex workers and our representative organisations and allies work to demystify and humanise sex work through a wide range of activities from advocacy and policy development; to the provision of practitioner training for service delivery in health, law enforcement, social services, and other sectors; to storytelling to the broader public. Doing

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<sup>1</sup> Scarlet Alliance, 2014, 'The Principles for Model Sex Work Legislation', [https://scarletalliance.org.au/library/principles\\_2014](https://scarletalliance.org.au/library/principles_2014).

this work enables us to present sex work as we experience it, rather than as it is presumed to be by those who've only been exposed to stigmatising or misrepresentative stories. This work can be vital to ensuring that services delivered to sex workers are helpful rather than harmful, and should be delivered to public sector, private sector and frontline workers engaged in disability support infrastructure in Australia.

A disability-sector-wide investment in this type of training and awareness-raising is essential and is one potential activation of the cultural change needed to ensure that sex workers are able to interact with the disability sector safely. In order to be impactful, it must also be reinforced by high-level policy and guidance that accepts work as work and explicitly validates and supports people with disabilities who do sex work. Acknowledgement and inclusion of sex workers **must be informed by sex worker peer organisations like Scarlet Alliance and our member organisations** in the development or amendment of any Federal guidelines, national standards of care or support, or other guidance provided. We are available for and committed to this work, and urge the ADRC to recommend it in its report.

### **Recommendation 6: Resource sex worker peer organisations to provide peer support services and input mechanisms for sex workers with disability**

When discussing the lack of appropriate, non-stigmatising services available to sex workers with disability, participants in our survey and roundtable sessions identified that this lack comes from both the sex work and disability sectors. Sex worker peer organisations often lack the resources to provide peer support and advocacy services in a way that maximises inclusion of sex workers with disability.

Many funded sex worker peer organisations provide specialised peer education services for particular cross-sections of the sex worker community, including LGBTIQI+, male, First Nations and language-specific positions for peer educator staff. Similar positions for peer educators with disability would offer support to sex workers with disability navigating workplace health and safety, income support, and disability support mechanisms. They would also be able to lead SWWD peer-only spaces and activities, improving the experiences of sex workers with disability in seeking support from sex worker peer organisations.

“An additional barrier is lack of funding for disability services in sex work orgs. Having support with navigating accessibility from sex worker orgs would be so helpful. We need support and referrals from people who are familiar. And there just isn't. It is a significant issue. The ADRC needs to know that our orgs are not funded [for this work].”

(Roundtable Participant)

Disability awareness education programs delivered to sex worker peer organisations from providers who are able to understand sex work as work and offer us sex work-affirming

education would support staff and volunteers of our organisations to better support sex workers with disability. For unfunded or underfunded sex worker peer organisations, access to this type of education may also need to be subsidised. This work is essential to ensuring that sex worker peer organisations are able to take active steps that enable meaningful inclusion of sex workers with disability, including input on approaches to peer education, advocacy, policy development, and other frontline service provision provided by sex worker peer organisations.

### **Recommendation 7: Adopt a holistic response to violence against people with disability that includes recognition of systemic violence against sex workers and improves access to justice for sex workers with disability**

Like other survivors of violence, sex workers experience the existent stigma surrounding survivorship, especially regarding sexual violence. For sex workers, however, existent stigma intersects with and is compounded by both disability and sex work stigma and discrimination. In our submission on the draft *National Plan to End Violence Against Women and Children*, we outline common discriminatory stereotypes leveraged against sex workers who are survivors of sexual assault.<sup>2</sup> An understanding of how violence against sex workers is perpetrated by the state, within workplaces, in the home, in public, and by non-state organisational actors is essential in providing a clear picture of violence against sex workers with disability. This violence is informed by *and reinforces* the following stigmatising assumptions:

- Sex workers provide blanket consent and are thus ‘unrapeable’
- Assault is an ‘occupational hazard’ of sex work
- Sex workers are not ‘good’ or believable victims
- Sex workers are victims of our own work

Sex workers expect to experience stigma when interacting with the legal system. This stems from a long and continuing history of criminalisation, stigmatising laws and discriminatory legal case outcomes. This lack of trust that we have in the justice system can often result in opting out of the system entirely to ‘avoid re-traumatisation, stigmatisation and discrimination’.<sup>3</sup> Sex workers also have unique privacy and anonymity concerns within legal processes as many of us do not want to connect our legal names with our sex work. Legal responses and processes currently do not have adequate safeguards to protect our privacy or to protect us from discrimination and potentially, further violence. Unfortunately, sex work stigma is built into the legal system, especially in criminalised and licensed jurisdictions and without supportive legal and policy frameworks and anti-discrimination protections, we often choose not to interact at all.

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<sup>2</sup> Scarlet Alliance submission on the draft National Plan to End Violence Against Women and Children 2022-2032, Pages 9-17. Accessed on [https://scarletalliance.org.au/wp-content/uploads/SCARLET-ALLIANCE\\_National-Plan-to-End-Violence-Against-Women-2022-2032-\\_Redacted.pdf](https://scarletalliance.org.au/wp-content/uploads/SCARLET-ALLIANCE_National-Plan-to-End-Violence-Against-Women-2022-2032-_Redacted.pdf)

<sup>3</sup> Z Stardust, Treloar, Cama & Kim, ‘I wouldn’t call the cops if I was being bashed to death’, p. 10.