

SWLRV

Safety. Equality. Justice.

Sex Work Law Reform Victoria Inc.
(Equality. Safety. Justice)

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Manager

Financial Services Reform Taskforce

Treasury

Langton Cres

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By email: FSRCconsultations@treasury.gov.au

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Dear Manager,

Sex Work Law Reform Victoria Inc. (SWLRV) is an independent non-partisan volunteer group led by sex workers, lobbying for the legal rights of sex workers in Victoria.

SWLRV advocates for, amongst other things:

- An end to financial discrimination against sex workers and sex industry businesses by banks and other financial institutions.

We appreciate this opportunity to contribute to the Financial Services Reform Taskforce and attach our submission accordingly. Our submission comments on some elements of the Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Bill 2019.

Specifically, we comment on the following three recommendations from the Financial Services Royal Commission:

- Recommendation 1.8 - The Australian Banking Association should amend the Banking Code to provide greater access to banking services
- Recommendation 1.15 - Enforceability of financial services industry codes
- Recommendation 1.16 – The ABA and ASIC should work to designate enforceable code provisions in the Banking Code

Sincerely,



On behalf of Sex Work Law Reform Victoria Inc.

Executive Summary

Despite contributing around \$2.5 billion to the Australian economy each year, lawful sex industry businesses and individual sex workers can face financial discrimination, whereby banks and other financial service providers refuse to provide them services. We support the implementation of Recommendations 1.8, 1.15 and 1.16, which will contribute to combating financial discrimination against the sex industry.

Glossary

We refer to the following sex industry specific terms:

Adult Only Business

Adult product shops (adult films, adult magazines, sex toys etc.), strip clubs, adult film businesses.

Financial Discrimination

Discrimination against adult-only businesses and/or sex workers by banks and other financial service providers. This includes limiting the provision of loans or other financial services on the grounds of the applicant's industry or occupation.

Protected Attribute

Something about a person, the basis on which discrimination is prohibited by anti-discrimination law.

Sex Industry

Businesses and individuals providing sexual services for financial gain. This includes sex industry businesses (brothels and escort agencies) as well as individual self-employed sex workers.

Sex Industry Business

Includes businesses that provide for or arrange sex work. Brothels and escort agencies.

Sex Worker

An adult who provides services that involve the person participating in consensual sexual activity with another adult in return for payment or reward. Sex workers can work in brothels, escort agencies, be self-employed (private sex work) or engage in street-based sex work.

Sex Work Law Reform Victoria - fighting for the legal rights of Victorian sex workers

Sex Work Law Reform Victoria, founded in 2018, is a registered not-for-profit organisation made up of sex workers advocating for the full decriminalisation of consensual adult sex work in Victoria. We also work to end financial discrimination faced by sex workers and sex industry businesses.

The Australian Sex Industry – Demographics and Contribution to the Economy

In any given year there are around 23,000 sex workers in Australia (Quandara 2008). In addition to this there are around 1,000 sex industry businesses employing 25,000 people (Bartle 2017, Carnell 2019). Sex industry businesses are estimated to generate an annual turnover of around \$2.6 billion. The income of sex workers is difficult to estimate as many forms of sex work remain illegal in some parts of Australia, and the sex industry comprises predominantly cash-based businesses.

Laws regulating sex industry businesses and sex workers

Sex work laws vary significantly in each Australian state and territory, from a model of full criminalisation in South Australia to decriminalised models in New South Wales and the Northern Territory. Laws applying to other sex industry businesses also vary greatly, with certain types of adult only businesses deemed illegal in some jurisdictions.

Sex workers and sex industry businesses face financial discrimination

Financial discrimination occurs when lawfully-operating individuals or sex industry businesses are refused insurance or other financial services by banks, insurance companies, or other financial service providers. Financial discrimination occurs when a financial service provider assesses the risk of a potential customer (self-employed or otherwise), based on their industry/occupation rather than on the particular merit of their business.

Financial discrimination against the sex industry appears to be widespread across Australia. Australia's leading adult industry association, The Eros Association, conducted a 2017 survey of sex industry businesses (Bartle, 2017). The study surveyed 24 businesses which had experienced financial discrimination and found that:

- 23 of the 24 had experienced financial discrimination more than once
- small, medium and large banks engaged in financial discrimination, including the big four banks (NAB, ANZ, Commonwealth and Westpac)

Along with the sex industry businesses surveyed by Eros, it is clear that lawfully operating individual sex workers have also experienced financial discrimination.

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) recognises the need to gather evidence in order to better understand the full extent of this discrimination. As such, in 2019 the ASBFEO urged sex workers to come forward and report such discrimination directly to the

ASBFEO (Carnell 2019). In 2019 the Ombudsman, Kate Carnell, released a statement highlighting the prevalence of financial discrimination experienced by sex workers and deploring the actions of banks. We reproduce part of the statement, below.

Banks assume role of moral compass for legitimate businesses

The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, says banks are wrong to discriminate against legitimate small businesses in the adult industry by blocking their access to essential financial services.

“My office is continuously contacted by sex workers who have complained they have been denied banking services such as merchant facilities to allow them to conduct their business,” Ms Carnell says.

“This is an ongoing issue and we have expressed our concerns to the Australian Banking Association and individual banks involved.

“There aren’t too many Australians who would rely on banks to be the moral arbiter for society.”

Discrimination is unlawful against individuals when prohibited by state/territory anti-discrimination laws based on a number of protected attributes. A protected attribute is something about a person, for example, gender or race, the basis on which discrimination is prohibited by anti-discrimination law. Anti-discrimination laws differ in each state and territory, with each protecting slightly different protected attributes. ‘Occupation, trade or calling’ is arguably the basis upon which sex workers and others working in the sex industry (e.g. escort agency drivers, brothel managers, etc), face financial discrimination. Only the Australian Capital Territory’s anti-discrimination laws provide a legal remedy to sex workers who experience financial discrimination, by including ‘occupation, trade or calling’ as a protected attribute. Most banks engage in financial discrimination without openly acknowledging that they do so. However, the NAB openly discriminates against brothels and escort agencies (but not individual sex workers), saying,

“...NAB no longer banks brothels and escort agencies due to different laws and licensing requirements across states and territories. This is a risk based decision we have made to ensure we meet legislative requirements under the anti-money laundering and modern slavery laws.”

(NAB statement, September 2019)

Financial discrimination against sex workers contributes to low tax compliance on their part and creates barriers to their ability to secure rental accommodation and home loans.

We comment on the following three recommendations from the Financial Services Royal Commission:

Recommendation 1.15 - Enforceability of financial services industry codes

We support these amendments to implement Recommendation 1.15 of the Financial Services Royal Commission. Codes of Conduct provide a practical method for regulating the way financial institutions engage with businesses and self-employed businesspeople. One of the most significant Codes of Conduct, the Australian Banking Association's *Banking Code of Practice*, currently has no provisions prohibiting financial discrimination against either lawfully operating self-employed sex workers or lawfully operating sex industry businesses. However, the *Banking Code of Practice* is required to be reviewed regularly, and it is possible that future versions may protect the sex industry against financial discrimination.

The establishment of enforceable code provisions, outlined in statute, the breach of which carries the potential of imposition of civil penalties enforced by ASIC, could provide an additional disincentive to financial institutions engaging in such discrimination against the sex industry.

Recommendation 1.8 - The Australian Banking Association should amend the Banking Code to provide greater access to banking services

We support these amendments to implement Recommendation 1.8 of the Financial Services Royal Commission. At present it appears that a large number of lawfully operating self-employed sex workers and sex industry businesses have no access, or at least great difficulty gaining access, to banking services. We support the Australian Banking Association amending the Banking Code in a manner which explicitly provides greater access to banking services to the sex industry.

Recommendation 1.16 – The ABA and ASIC should work to designate enforceable code provisions in the Banking Code.

We support these amendments to implement Recommendation 1.16 of the Financial Services Royal Commission. To date, it appears that some Australian Banking Association member banks have engaged and continue to engage in financial discrimination against the sex industry. Should the Banking Code ever contain provisions prohibiting financial discrimination, we would support the Australian Banking Association designating the relevant provisions as enforceable code provisions. This would provide an additional disincentive to banks engaging in financial discrimination.

We appreciate this opportunity to contribute to the Financial Services Reform Taskforce's consultation on enforceability of financial services industry codes. If you require further information, or wish to discuss any part of this submission, please contact us.

References

Bartle, J., *Financial Discrimination Against Adults Only Businesses* (Eros, 2017)

<https://www.eros.org.au/wp-content/uploads/2018/10/Financial_Discrimination_Report_2017.pdf>

Carnell, K., *Banks assume role of moral compass for legitimate businesses*
(11 September 2019) Australian Small Business and Family Enterprise Ombudsman

><https://www.asbfeo.gov.au/news/news-articles/banks-assume-role-moral-compass-legitimate-businesses>>

NAB statement, September 2019

Quandara, A. *Sex workers and sexual assault in Australia: Prevalence, risk and safety*, (Australian Centre for the Study of Sexual Assault, Volume 8, 2008)

NB: This paper estimated 20,000 sex workers in Australia in 2008, which, accounting for population increase, has been calculated to be just over 23,000 sex workers in 2020.