SWLRV
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(Equality. Safety. Justice)

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Director
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12 August, 2022

Dear Director,

Draft Anti-Discrimination Bill – a sex workers' rights perspective

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:

- legislation to better protect sex workers from discrimination

We appreciate this opportunity to comment on the Exposure Draft *Anti-Discrimination Bill 2022* (NT) (**the Bill**) and attach our submission accordingly.

Lisa Dallimore
President of Sex Work Law Reform Victoria Inc.

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Executive Summary

Sex industry workers experience unacceptable levels of discrimination in all Australian jurisdictions, including in the Northern Territory. We recommend an amendment to the *Anti-Discrimination Bill 2022 (*NT) to provide meaningful protection to all sex industry workers. Most importantly, the Bill should not merely protect the bare 'status' of being a sex worker, but also protect sex workers' right to carry out their business activities and earn a living free from stigma and discrimination.

Recommendations

Recommendation 1

The Bill's Explanatory Statement should explicitly state that 'employment as to sex work, including past sex work' intends to protect sex workers while they are carrying out sex work and related activities.

Recommendation 2

Insert 'profession, trade or occupation' as a new attribute. Define this attribute so that it captures:

- part-time, casual or occasional workers;
- a person's job descriptor (e.g. brothel manager) and business activities (e.g. advertising sexual services);
- industry types (e.g. adult services) and is not limited to a specific job descriptors (e.g. sex worker).

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 led by sex workers advocating for the full decriminalisation of consensual adult sex work in Victoria. We also work to increase anti-discrimination protections for sex workers.

Employment as to sex work, including past sex work

We support the inclusion of 'employment as to sex work, including past sex work' as a prohibited ground of discrimination in the *Anti-Discrimination Act 1992*. This ground recognises the incredibly high levels of stigma and discrimination faced by sex workers. Prohibited grounds of discrimination, or 'protected attributes' applicable to sex workers in Queensland, Tasmania and the Australian Capital

Territory have so far failed to offer adequate protection from discrimination.[1] This is because these protected attributes have been narrowly interpreted by courts and tribunals to merely protect the status of being a sex worker, but not sex work itself.[2]

In practice, the artificial distinction between sex work and sex worker referred to above means that it is lawful to discriminate against sex workers because they are performing sex work or sex work related activities. This means it may be lawful to discriminate against sex workers while they are undertaking activities necessary to earn a living doing sex work, including advertising, booking accommodation, or applying for business banking services. For example, it would be unlawful discrimination for a landlord to evict a tenant because the tenant happened to be a sex worker. However, it could be lawful to evict the same tenant on the grounds the tenant had performed sex work on the premises. This narrow interpretation has rendered protected attributes/grounds in other states and territories almost meaningless. Any attribute that protects sex workers so long as they are not engaging in sex work, is of very little use to the sex worker community.

In our view, 'employment as to sex work, including past sex work', is a step in the right direction, because it specifically refers to sex work. This could lead to broader interpretations by courts and tribunals. We recommend that the Bill's Explanatory Statement explicitly state that the ground intends to protect sex workers while they are carrying out sex work and related activities. This would further shield the ground from narrow interpretations by courts and tribunals and help to ensure the *Anti-Discrimination 1992* provides meaningful protection from discrimination.

Additional Prohibited Ground of Discrimination

Discrimination against people working in the adult industry and/or sex industry is not limited to sex workers. The issue with 'employment as to sex work, including past sex work' is that it will not protect the numerous workers in these industries who are not themselves sex workers. These workers can also experience high levels of discrimination. Not all workers in the sex industry or adult industry are sex workers under Northern Territory law. These non-sex workers will therefore not be protected by the new ground.

Sex work is currently defined in the *Sex Industry Act 2019* (NT). It includes a 'person participating in sexual activity with another person' of a commercial nature.[3] This definition would likely exclude many sex industry workers who do not engage in sexual activity as part of their work. For example, this definition excludes strippers, who do not necessarily have physical contact of a sexual nature with clients. Other workers who work alongside sex workers but do not themselves engage in sexual activity at work include escort agency drivers, sex industry managers, brothel operators and receptionists. The ground (employment as to sex work, including past sex work) also excludes adult industry workers, such as adult store retailers.

Some people, such as brothel operators and escort agency drivers, could be protected by their association with sex workers under s 19(1)(r) of the *Anti-Discrimination Act 1992* (NT). However,

[1] Anti-Discrimination Act 1991 (Qld) s 7(1); Discrimination Act 1991 (ACT) s 7(1)(p); Anti-Discrimination Act 1998 (Tas) s 16(d)

[2] Dovedeen Pty Ltd v GK [2013] QCA 116; Capocchi v West [2020] TASADT 8; J v Federal Capital Press of Australia Ltd [1999] ACTDT 2.

[3] See definition of 'sex work' in s 4 of the Sex Industry Act 2019 (NT)

'association' does not necessarily extend to associations of a business or contractual nature.[4] In addition to this, some workers who experience discrimination, such as managers of adult industry retail stores[5] [6] and adult entertainers, may not be protected by this attribute as they are not necessarily associated with sex workers.

The stigma surrounding the sex industry extends to workers who are not directly engaging in sex work. Addressing the issue of discrimination against the sex and adult industries, as it applies to all the workers in these industries, requires the addition of a broader protected attribute. For these reasons, we recommend 'profession, trade or occupation' be inserted into the Bill as a new attribute.

'Profession, trade, occupation or calling' was introduced to the *Discrimination Act 1991* (ACT) with the specific intention of protecting sex workers from discrimination.[7] Victoria amended the *Equal Opportunity Act 2010* (Vic), inserting 'profession, trade or occupation' as a protected attribute, also with the express intention of protecting sex workers from discrimination.[8] This attribute has the obvious benefit breadth, and if accompanied by a carefully drafted definition, could offer protection to all workers in the adult industry and sex industry. However, it must be noted that this attribute has been interpreted narrowly in the Australian Capital Territory in relation to sex workers.[9] Such interpretations have weakened protections under anti-discrimination law for people of all occupations. Broadly, there are three significant issues concerning interpretations of this attribute (profession, trade or occupation) in the ACT:

1. This attribute has been interpreted narrowly, so that it covers the occupation, but not necessarily the business activities associated with that occupation.[10]
2. It is unclear if this attribute covers occupations that are undertaken on a part-time or casual basis, or that are a person's secondary source of income.[11]
3. It covers specific occupations (e.g. sex worker), but not the wider industry of which they form a part (e.g. adult services).[12]

To address these issues, we recommend 'profession, trade or occupation' be defined so that it captures:

[4] Cassidy v Leader Associated Newspapers Pty Ltd [2002] VCAT 1656

[5] Jarryd Bartle, Financial Discrimination Against Adults-Only Businesses (Report, Eros Association, October 2017)

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

[6] Rhiana Whitson, 'Sex Workers, Adult Shops and Gun Businesses Say They Are Being Denied Banking Services', ABC News (online, 12 October 2021) <https://www.abc.net.au/news/2021-10-12/debanking-sex-industry-gunshops/100523118#:~:text=The%20adult%20shop%20owners'%20experience,is%20not%20an%20isolated%20case.&text=A%20spokesman%20confirmed%20the%20bank,case%2Dby%2Dcase%20basis>.

[7] Australian Capital Territory, Parliamentary Debates, Legislative Assembly, 2 March 1994, 12-20.

[8] Sex Work Decriminalisation Act 2022 (Vic) s 34.

[9] J v Federal Capital Press of Australia Limited ACAT, 8 February 1999, DT97/153; Edgley v Federal Capital Press of Australia Pty Ltd [2001] FCA 379.

[10] J v Federal Capital Press of Australia Limited ACAT, 8 February 1999, DT97/153, 22.

[11] Ibid 21.

[12] Ibid 20-23.

1. A person's job descriptor (e.g. brothel manager) and business activities (e.g. advertising sexual services).

2. Part-time, casual, or occasional workers.

3. Industry types (e.g. adult entertainment) and is not limited to specific job descriptors (e.g. stripper).

Ideally, this definition would be included in the *Anti-Discrimination Act 1992*. It could also be included in the Bill's Explanatory Statement.
