



## 8 key points for sex workers and organisations making a written submission to the Queensland Anti-Discrimination Act (ADA) Review



*This info sheet can be used as a guide for individual sex workers, sex worker organisations and others making a written submission. The aim of these submissions is for the Anti-Discrimination Act to be amended to protect sex workers from discrimination in Queensland and remove the barriers to lodging a complaint and having the discrimination experienced by sex workers addressed.*

Sex workers disproportionately experience discrimination in many areas of life. Discrimination is when a person is treated less favourably because of an 'attribute', for example because they are a sex worker. The majority of discrimination cases in Queensland go unreported because the legislation and complaints process does not meet our needs.

### *Stage One - Anonymous Online Survey*

The Anti-Discrimination Act (QLD) is being reviewed in Queensland. Many sex workers have already contributed to the Human Rights Commission [anonymous survey](#) to show how discrimination is happening. This survey is still open until 1 March, 2022. Read info on this process [here](#).

### *Stage Two - Written Submissions by 1 March, 2022*

As a result of so many sex workers outlining the way discrimination impacts on us, the Queensland Human Rights Commission has included three questions specific to sex work in its Discussion Paper. The discussion questions ask if the attribute (or what is protected) should change from 'lawful sexual activity', if discrimination against sex workers in accommodation should continue or be repealed, and if the working with children discrimination exemption based on being a sex worker should be repealed. Other questions relate to the complaints process and sexual harassment.

The Queensland Human Rights Commission [Discussion Paper](#) asks for submissions responding to the discussion questions by **1 March, 2022**.

#### **To Lodge your Written Submission - confidential options**

For your submission to be considered, it **must** be accompanied by a **submission consent form**. The submission consent form asks whether you want your submission to be **confidential or public**. Providing a name is optional for individual submissions. <https://www.qhrc.qld.gov.au/law-reform/documents>

**Email your submission (and consent form) to: [adareview@qhrc.qld.gov.au](mailto:adareview@qhrc.qld.gov.au)**  
**Submissions close Tuesday, 1 March, 2022**

On the following pages we have selected the main questions relevant to sex workers in Queensland and have provided some discussion on these eight points for you to consider when responding in your submission. Contact us for more information.

With the upcoming review of the sex work laws and the potential for decriminalisation of sex work in Queensland there has been some suggestion that anti-discrimination protections for sex workers will no longer be necessary, but this is incorrect. Sex workers experience discrimination and vilification under all legal frameworks, and it is important to lay down robust protections prior to the implementation of decriminalisation.

**Discussion question 28 (p 98):** Should there be a new definition of lawful sexual activity, and if so, what definition should be included in the Act? Should the name of the attribute be changed, and if so, what should it be? **The attribute of ‘lawful sexual activity’ should change to ‘sex work’ and ‘sex worker’.**

‘Attributes’ set out who or what is protected from discrimination. Under the Anti-Discrimination Act (Qld), *lawful sexual activity*, which means someone’s status as a ‘lawful sex worker’, is a protected attribute. The intention of this protection is undermined by this attribute being limited to lawful work. This is because the current laws in Queensland make many sex worker safety strategies and work practices unlawful. As a result, this attribute provides minimal protection. For example, a sex worker may be deemed to be working unlawfully if another sex worker is staying at the same hotel, even if they do not know the person and could not have known of their intention.

The attribute ‘lawful sexual activity’ as a euphemism for sex work in the Act has always been problematic because not all lawful sexual activity is sex work and not all sex work is lawful.

We do not agree with the statement in the Discussion Paper that the broader attribute of lawful sexual activity in Victoria and Tasmania is less restrictive.

*“In Victoria and Tasmania, the attribute of lawful sexual activity is less restrictive. It refers to all sexual activity (not only as a sex worker) and includes ‘engaging in, not engaging in or refusing to engage in’ lawful sexual activity. 246 This creates greater protections for sex workers.”*

This refers to all sexual activity (not only as a sex worker) and includes ‘engaging in, not engaging in or refusing to engage in’ lawful sexual activity. We do not agree that this creates greater protections for sex workers. The experiences of sex workers in both jurisdictions demonstrate the attribute does not provide adequate protection and has resulted in very few complaints lodged.

It is important that all sex workers be protected under a clearly defined attribute that covers both their status and practical engagement in sex work, and regardless of whether they have previously done or currently do sex work in a lawful manner.

Along with sex workers in other states and territories we are calling for:

- the protected attribute to change from ‘lawful sexual activity’ to both ‘sex worker’ and ‘sex work’ in order to protect sex workers in status and in practice.
- the attributes to include protections for ‘someone assumed to be a sex worker’, and ‘associates, past, present and assumed’.

### *Exemptions*

Some sections of the Act specifically allow for sex workers to be discriminated against. These 'exemptions' are dealt with in Questions 45 and 47 below. Any law that allows for discrimination against sex workers should be repealed.

**Discussion question 45 (p 119): Are there reasons why the work with children exemption should not be repealed? No, the work with children exemption must be repealed.**

The current Act allows discrimination against sex workers (or intersex or transgender people) in 'work involving the care or instruction of minors'.

This exemption is discriminatory and fuels inaccurate stereotypes. Queensland has a *Blue Card system* that screens people who work with minors, making this law also unnecessary. No other jurisdiction allows this type of discrimination.

**Discussion question 47 (p 121): Should the sex worker accommodation exemption be retained, changed or repealed? The sex worker accommodation exemption must be repealed.**

An amendment to the anti-discrimination laws makes it lawful for accommodation providers to discriminate against sex workers. They can do this by refusing to supply accommodation, evicting, charging more or treating someone less favourably if the accommodation provider reasonably believes the other person is using, or intends to use, the accommodation in connection with that person's, or another person's, work as a sex worker. This applies to all types of accommodation including apartments, houses, hotels, motels and business premises.

As a result of this amendment a large percentage of sex workers experience accommodation discrimination in Queensland, resulting in housing instability, excessive costs, safety risks (when evicted from a hotel in early hours of the morning), etc. It is necessary therefore to repeal this amendment and that the attribute include both one's status as a sex worker and one's practice of sex work.

Victoria's Bill to decriminalise sex work repeals a similar law in Victoria and if passed will leave Queensland as the only jurisdiction allowing this type of discrimination.

**Discussion question 16 (p 63): Should a representative body or a trade union be able to make a complaint on behalf of an affected person about discrimination? Why or why not? Should representative complaints be confined to the conciliation process, or should they be able to proceed to the tribunal? A representative body must be able to make a complaint on behalf of an affected person both in conciliation and the tribunal process.**

Organisation complaints would allow Respect Inc, Queensland's sex worker organisation, to make a complaint on behalf of a sex worker or group of sex workers. This would also assist in protecting the anonymity of sex workers wishing to lodge a complaint.

The likelihood of being 'outed' as a sex worker is a significant barrier to a sex worker lodging a complaint when experiencing discrimination. Allowing Respect Inc to make a complaint on

behalf of a sex worker would remove this barrier to a considerable degree. Being outed as a sex worker can result in very real impacts to sex worker safety and mental health and has resulted in loss of custody of children, physical and psychological harm, disconnection from family and other social engagements, and vilification. This advocacy should be allowed in both conciliation and tribunal proceedings because the issues relating to 'outing' do not end at the conciliation stage.

**Discussion question 18 (p 65):** Are there any aspects of the complaint (dispute resolution) process that should be considered by the Review? If so, what are the issues and your suggestions for reform?

There are significant barriers to sex workers making a complaint. Further changes to the conciliation process should reduce barriers by:

- The anonymity of a sex worker must be protected at every stage of the process, instead of having to be applied for at each stage. This would make the process less intimidating and reduce the risk for sex workers. Protecting sex workers' anonymity throughout the entire process is critical to being able to make a complaint as a sex worker. The procedures should make it clear that the anonymity of a sex worker will be protected at every stage, up to and including in the Supreme Court. This must occur to allow sex workers to have faith in, and use, these processes available to other citizens.
- Removing financial barriers. Although the conciliation process is free to access, if the person/organisation you have made a complaint about refuses to 'settle' the matter, it is then referred to the Queensland Civil and Administrative Tribunal (QCAT), and then the Supreme Court (if not resolved at QCAT). This can result in huge financial costs.

When a complaint is resolved at the conciliation stage, the agreement often includes a release, discharge and indemnity agreement (both parties sign) and this can:

- withdraw the right to pursue the case further in other ways.
- result in people accepting way less than they deserve.
- include a non-disclosure or 'gag' clause (especially where financial compensation is agreed) that prevents the parties discussing the discrimination or the agreement with anyone else.

The current process does not result in systemic or behavioural change because the results cannot be made public and so other similar businesses (who discriminate) don't know about it and other sex workers also don't get the information needed to know they could pursue their own complaints.

The Queensland Human Rights Commission should be able to take action where discrimination is occurring repeatedly, is systemic discrimination against an individual or a group, or where they are unable to progress a complaint themselves.

**Discussion question 30 (p 101):** Is there a need to cover discrimination on the grounds of irrelevant criminal record, spent criminal record, or expunged homosexual conviction? How should any further attributes be framed? **Yes, sex workers need protection from discrimination on the basis of their sex work criminal records.**

In the upcoming review of sex work laws in Queensland, sex workers will be calling for the expungement of criminal records for sex workers who have been entrapped and charged by police. People who have criminal records relating to sex work should not be discriminated against. Some sex workers live with sex work charges issued by corrupt police during the pre-Fitzgerald era and many others with charges issued by police during entrapment since then. Sex workers have been denied appropriate treatment by authorities when presenting as victims of crime. They are also denied approval for taxi driver's licences, Blue Cards, etc. An attribute may be framed as an *irrelevant criminal record*. This would provide protection from discrimination on the basis of a criminal record, where the sex work criminal record is not of relevance. In interactions with police, sex workers are interrogated on their sex work criminal history in circumstances where it is irrelevant.

**Discussion question 50 (p 124):** Should the insurance and superannuation exemptions be retained or changed? **There should be no exemptions in relation to sex workers accessing insurance and superannuation and sex workers should be protected from financial discrimination.**

Sex workers experience barriers in accessing superannuation, and income protection and other insurance policies. Insurance and superannuation companies regularly deny coverage to sex workers or offer policies at unreasonable cost.

#### *Financial Discrimination in Goods and Services*

Sex workers should be protected against financial discrimination, and it should not be enabled by exemptions in state or federal law. Currently sex workers in Queensland experience a high level of financial discrimination, including having banking accounts closed, being refused access to merchant facilities and being refused access to business accounts.

Protection against financial discrimination towards sex workers in the area of goods and services, in both personal and business-related products, is necessary. This is an area of discrimination that is regularly experienced by sex workers, partners of sex workers and sex industry businesses. Without amendment to the Act, there is a significant probability of this increasing in occurrence and severity.

**Discussion question 55 (p 128):** Are any additional areas of activity required? Should any be repealed? Should the scope of any of the areas of activity be further refined?

#### **Sexual Harrassment**

Sexual harassment is an important issue for sex workers. Sections 119 through 120 of the Act define the meaning of, and the relevant circumstances which deem eligibility for sexual harassment claims. These sections must include 'sex work' and 'sex workers' and also recognise that sex workers can, and do, experience sexual harassment, including in sex work workplaces. The examples in the Act and depicted on the QHRC website should include sex work scenarios to illustrate the opportunity to report these experiences.