

UNPROTECTED & UNDER-REPORTED

SYNOPSIS 1: SEX WORKERS' EXPERIENCES OF DISCRIMINATION & ANTI-DISCRIMINATION PROTECTIONS IN QUEENSLAND

Sex workers in Queensland experience excessively high levels of discrimination and vilification. The majority of cases are unreported. This synopsis summarises the outcome of consultations, workshops, online discussions and a recent survey of 204 sex workers who work in Queensland on experiences of discrimination and barriers to reporting. The outcomes demonstrate the failure of the current Anti-Discrimination Act to provide adequate protections for sex workers or an effective process to report these experiences.

"I avoid discrimination as much as possible by anticipating it and concealing my sex work. That comes at a cost to ME. I avoid disclosing it, even where it would be an appropriate disclosure, because of the fear of discrimination, and the lack of redress I have if it occurs."

SEX WORK DISCRIMINATION



Survey participants described a wide range of circumstances under which they were discriminated against with some listing as many as six different types in one response and many stressing the continuous and oppressive nature of the discrimination experienced.

**72.5% OF SEX WORKERS EXPERIENCED DISCRIMINATION
A FURTHER 14.2% WERE NOT SURE IF THEIR EXPERIENCE WOULD COUNT AS DISCRIMINATION**

The main areas of discrimination or vilification sex workers described: Accommodation and Housing * Advertising * Education * Financial services * Goods and services * Health care Immigration/Visas * Legal framework as systemic discrimination * Online platforms Other employment * Policing * Sexual harassment & stalking * Workplace.

"Been treated with undue suspicion, assumption I am a criminal"

"Denied access to tax and accounting assistance/services"

"In non sex work workplaces I have been bullied and sexually harassed"

"A doctor I told, had the receptionist call to cancel my follow up appointment"

"Advertising prices, advertising laws, extra hotel room bond"

"Mostly through health care, rentals and insurance/banks"

"COUNTLESS, banned from social media, kicked off airbnb"

"I have been denied housing unless I did sexual favours"

"I have had doctors assume any complaint I had was due to STIs"

"People at my civilian job found out and I am now treated like a dirty outsider"

"I have been discriminated against in education"



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CHANGE THE ATTRIBUTE

QLD anti-discrimination laws include the protected attribute 'lawful sexual activity', which means a person's status as a lawfully employed sex worker, whether or not self-employed. Discrimination is unlawful when a person is treated less favourably because they are a lawful sex worker, than someone who is not a lawful sex worker, in similar circumstances.

"I did not believe I had grounds for a discrimination complaint because I was not a 'lawful' sex worker."

"Nobody would take it seriously, and there aren't any anti discrimination laws with sex worker as a protected class."

Our consultation with sex workers, including sex workers who have lodged complaints with the Commission, demonstrates the significant limitations of this attribute, specifically:

- Protection is limited to one's 'status' as a sex worker and does not cover discrimination on the basis of the practice of performing sex work;
- Many aspects of sex work are not 'lawful' in Queensland, including practicing basic safety strategies, and the licensing laws criminalise the majority of workplaces, leaving many sex workers not protected under 'lawful sexual activity';
- The attribute fails to provide clear direction to the tribunal or courts, demonstrated by the lengthy legal debates over the attribute in the case of *Dovedeen Pty Ltd v GK* (2013);
- The attribute obscures the fact that sex workers are protected from discrimination, limiting its impact on reducing discrimination by providers of goods and services and conveying the opportunity to sex workers to report discrimination.

REPLACE LAWFUL SEXUAL ACTIVITY WITH PROTECTED ATTRIBUTES 'SEX WORKER' AND 'SEX WORK'

As sex workers are already intended to be covered by Queensland's Act, this change to the attribute is to ensure more effective protections for sex workers. It is not a question of whether sex workers should be protected.

"Not good enough coverage in the Act. Not knowing about any other cases where a sex worker has been successful in reporting."

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

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.

'The effect of the legislative history and the decision in *Dovedeen* for sex workers in Queensland is that there is not sufficient protection from discrimination by the current Anti-Discrimination Act 1991 (Qld) in circumstances where:

- The person is a sex worker without the status of a "lawfully employed" sex worker; and / or,
- The alleged discrimination is based on the activity of engaging in sex work, as opposed to their status as a sex worker.'

Cairns Community Legal Centre,
February, 2022



"I have been judged, looked down on, harassed, assaulted, bullied, denied care, ignored, the list goes on, just because I am a sex worker."



HEALTH CARE

Sex workers surveyed felt highly discriminated against on the basis of their sex work in interactions with doctors and other health professionals. Many listed and then described discrimination experienced in health care settings. The discrimination tended to be moralistic (practitioners would simply refuse further appointments), paternalistic (being told that their sex work would affect their mental or other health) or based on inaccurate and stereotypical ideas about sex workers being 'vectors of disease'.

57.8% OF SEX WORKERS DID NOT FEEL COMFORTABLE DISCLOSING TO HEALTH CARE PROVIDERS THAT THEY ARE A SEX WORKER

The most common reason sex workers did not feel comfortable disclosing to health care providers was because of past experiences of, and/or perceived risk of experiencing stigma, discrimination, judgement and ignorance from healthcare professionals. Several respondents who said they would not disclose their sex work status said they had felt degraded, dehumanised, shamed and embarrassed by healthcare professionals in the past.

"I have had to go to 11 different doctors in the space of 12 months to find a doctor that would treat me as a patient and be respectful of my work and actually care about my health."

Many felt it would negatively affect the quality of care they were provided; that they would be pathologised or that they would experience medical discrimination

"Psychologist didn't want to continue to see me after 6 years."

Respondents spoke about experiences of healthcare professionals changing their conduct once they disclosed that they were a sex worker. Specifically, healthcare providers would emphasise the need for sexual health testing (even when the worker had recently been tested or did not have a sexual health concern); would ignore other health issues that the worker was seeking treatment for;

would blame the worker for their health;

would assume drug use; and would

overemphasise the role of sex work in the health concern (especially in mental health contexts).



"The practitioner I disclosed information about the assault to claimed that it was not assault because I was a sex worker."

"I have had doctors deny my healthcare or assume any complaint I had was due to STIs despite never having tested positive for any STI in over 10 years of sex work."

"A doctor who I told had the receptionist call to cancel my follow up appointment and told me to see another doctor at the practice or go elsewhere."

"In 2020, **Scarlet Alliance** conducted research in partnership with Centre for Social Research in Health that surveyed 647 sex workers in relation to stigma and discrimination; **96%** of participants reported experiencing any stigma or discrimination related to their sex work within the last 12 months, including **34%** who indicated that this 'often' or 'always' occurred. **91%** of participants reported any negative treatment by health workers, including **24%** who indicated this 'often' or 'always' happened.

In 2015, research by CSRH found that **31%** of health workers self-reported they would behave negatively toward sex workers because of their sex work. Among the general public, **64%** self-reported they would behave negatively toward sex workers because of their sex work. This widespread discrimination is a result of deeply embedded stigma and criminalisation of sex workers."

www.scarletalliance.org.au/library/Anti_Discrim2022

31% OF HEALTH WORKERS SELF REPORTED THEY WOULD BEHAVE NEGATIVELY TOWARD SEX WORKERS BECAUSE OF THEIR SEX WORK



BARRIERS TO REPORTING DISCRIMINATION

In the survey of 204 sex workers who have worked in Queensland, participants reported significant barriers to lodging a complaint or reporting discrimination. The outcome is an extremely high percentage of unreported discrimination.



91% OF SEX WORKERS DID NOT REPORT DISCRIMINATION EXPERIENCED

"I reported earlier cases of discrimination but have learnt over time that I am discriminated against in the process of reporting discrimination... you have to face the person that has discriminated against you - and sit in a room where people talk about you as a sex worker."

Survey participants who had experienced discrimination were asked to outline the barriers to lodging a complaint. There were 6 main themes:

- concern they would not be taken seriously.
- burden of going through the process and the risk of experiencing further stigma, discrimination and mistreatment.
- did not feel they were adequately protected under the current laws.
- privacy concerns and fear of consequences in their personal lives if they chose to report, as well as a lack of confidentiality and anonymity in the reporting process.
- facing discrimination from police and other institutions, and feeling there is a significant power imbalance.

This was compounded by the belief among respondents that reporting would not lead to a productive outcome. Sex workers' fear of not being believed and pessimism about the outcome of reporting were framed by experiences of institutional discrimination and a lack of protection under the law.



ONLY 9% OF SEX WORKERS SURVEYED WHO EXPERIENCED DISCRIMINATION REPORTED IT

"I was denied rentals by hundreds of agents, I couldn't possibly report them all..."

RECOMMENDATIONS:

ENABLE SEX WORKERS TO REPORT ANONYMOUSLY

ALLOW SEX WORKER ORG'S TO LODGE COMPLAINTS & REPRESENT SEX WORKERS

REFORM COMPLAINTS SYSTEM TO REMOVE BARRIERS TO SEX WORKERS LODGING A DISCRIMINATION COMPLAINT

REFORM THE PROTECTED ATTRIBUTE TO CLEARLY COVER SEX WORKERS AND SEX WORK

"No one cares. in many instances the law PROTECTS the people and businesses who are engaged in the discrimination. Unless the laws change, businesses and individuals will continue to legally discriminate against sex workers."

"I tried to report multiple occurrences, but apparently it's legal to discriminate and harm sex workers."

"The reporting requirements are too long and also every formal document wants your real name. Need to be able to report using your working name. Also no real system in place to ensure privacy and confidentiality at all levels."

"Legal name connected to my sex work would have had a even worse impact than the discrimination. Having to sit in a meeting with the persons who discriminated against me seemed like reliving it. Never heard of a sex worker winning a case in Queensland but I've read how one sex worker tried to fight it and the government changed the laws so she couldn't win."



EXEMPTIONS THAT ALLOW DISCRIMINATION AGAINST SEX WORKERS IN QLD

ACCOMMODATION

A 2013 amendment to the Act made it lawful for accommodation providers to discriminate against sex workers.

If an accommodation provider believes there is an intention for a person to use the location in connection with their own or someone else's sex work, they can lawfully discriminate against sex workers, including:

- eviction;
- refusing accommodation; or
- treating unfavourably in any way in connection with accommodation, including being required to pay more.

The outcome in the nine years since this exemption became law is frequent, widespread direct discrimination against sex workers, housing instability, excessive overheads and sex workers placed in unsafe situations susceptible to exploitative accommodation arrangements.

In effect, this law has created a practice of unfavourable treatment of sex workers that did not exist before this exemption was introduced.



REPEAL S106C LAWFUL DISCRIMINATION AGAINST SEX WORKERS BY ACCOMMODATION PROVIDERS

"I am regularly charged a lot more per night. Hotels also make up ridiculous extra charges because I am a sex worker. When touring NQ the police told the hotel they could throw me out if they wanted to."

95% (194) SEX WORKERS SURVEYED SAID REPEAL OF ACCOMMODATION DISCRIMINATION WAS VERY IMPORTANT

"The manager of the body corporate threatened to tell the neighbours if I didn't provide sex for free."

"My stay at hotels have been cut short unless I paid more."

Queensland is now the only state with lawful accommodation discrimination against sex workers Victoria's Decriminalisation of Sex Work Act 2022 repeals Section 62 of the Equal Opportunity Act 2010, which stated that "A person may refuse to provide accommodation to another person if the other person intends to use the accommodation for, or in connection with, a lawful sexual activity on a commercial basis". Accommodation discrimination against sex workers in Victoria will be unlawful from 10 May, 2022 leaving Queensland as the only jurisdiction to endorse accommodation discrimination against sex workers.

WORKING WITH CHILDREN

The Anti-Discrimination Act makes it lawful to discriminate against sex workers, transgender, gender diverse and intersex people when in a work role directing children.

This law is both stigmatising and not evidence based. Sex workers, transgender, gender diverse and intersex people are not a risk to children.



"I would like to study... being a teachers aid but know I cannot do that... because I would be excluded from employment because of my sex worker status."

REPEAL S28 THAT MAKES WORKING WITH CHILDREN DISCRIMINATION AGAINST SEX WORKERS LAWFUL