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Dear Panel Members

### **SWOP NSW Preliminary Submission on the Review of the Anti-Discrimination Act (NSW).**

The Sex Workers Outreach Project (SWOP NSW) welcomes the opportunity to provide a preliminary submission to the NSW Law Reform Commission.

SWOP NSW is the New South Wales sex worker organisation, a non-government organisation that advocates for NSW sex workers to achieve the same access to health, safety, human rights and workplace protections as other Australian workers. SWOP NSW was formed in 1984; making us Australia's longest running sex worker community organisation, and the earliest sex worker organisation to receive direct government funding. SWOP NSW has the highest level of direct contact with sex workers of any agency, government or non-government, in New South Wales.

### **Sex Worker Anti-Discrimination Protections & Other Matters**

We know that sex workers in NSW continue to face pervasive discrimination across various aspects of their lives, which not only hampers their access to basic human rights but also runs counter to the intent of the state's decriminalisation of sex work. This discrimination manifests in numerous ways:

1. **Employment Discrimination:** Sex workers can face discrimination and harassment in non-sex work employment, and from professional qualifying bodies, which often discourages sex workers from pursuing other careers.
2. **Education Discrimination:** Sex workers face discrimination in education and academic research when sex worker status is known.
3. **Housing Exclusion:** Sex workers often encounter exclusion from housing options, including private rentals, Public Housing, and crisis support.
4. **Financial Services Discrimination:** Discrimination extends to the sudden closure of bank accounts, seizure of income, refusal of financial services such as mortgages and other loans, and difficulties in obtaining superannuation or insurance.

5. **Health and Essential Services Discrimination:** Essential service providers, including hospitals, social workers, mental health and crisis support services often hold discriminatory attitudes toward sex workers during times of vulnerability.
6. **Stigma, Vilification, and Isolation:** Sex workers also experience vilification, harassment, and 'outing' by community members and in the media, as well as deeply ingrained societal stigma and whorephobia. These experiences lead to isolation, internalised stigma, the need to hide our sex worker status, and can impact our mental health.
7. **Government, Policies & Police:** Sex workers face discrimination by government agencies and bodies (including the Police), and in the way legal duties are interpreted or implemented.

We know that discrimination protections at law will not alone end stigma and whorephobia, but the positive cultural implications of having 'sex work and sex worker' as protected attributes under the *Anti-Discrimination Act 1977 NSW* ('the Act') cannot be understated.

### **Key proposed areas of reform**

- **The attributes 'sex work' and 'sex worker' must be included as a protected attribute,**

Sex worker and sex work must be a protected attribute, and grounds for seeking relief from discrimination, sexual harassment, and vilification.

It is essential that the definition of the new protected attribute of sex work and sex worker encompasses all forms of sex work, including contact and non-contact work. This could include entertainment (like stripping, pole dancing, and erotic performance), online work (including pornography, live cam work or chat), sexual or erotic practices that do not include intercourse or touching of genitals (erotic massage, sugaring or paid dating, some BDSM practices and kinks), as well as contact (full service) sex work.

It must also be recognised that sex work happens in both formal and informal ways, and opportunistically, and may be compensated for rewards other than monetary payments. Examples include sex for favours, accommodation, drugs, transport, food or other daily needs, and compensated dating.

Recommended definition of 'sex work' and 'sex worker' (in consensus with the sex worker community and accepted by Alex Greenwich for amendment to the Equality Bill currently before NSW Parliament.)

***Sex worker*** means a person who performs sex work.

***Sex work*** means the provision by a person of services that involve participating in sexual activity, including erotic entertainment, in return for payment or reward.

We do not support the use of ‘lawful sexual activity’ as in Queensland<sup>1</sup> or ‘trade, profession, occupation or calling’ as in ACT<sup>2</sup>; or ‘profession, trade or occupation’ in Victoria<sup>3</sup> as a protected attribute instead of ‘sex work’ and ‘sex worker’.

The Queensland Court of Appeal in the matter of *Dovedeen Pty Ltd v GK (2013) QCA 116* came to the conclusion that status as a lawful sex worker can be separated from the actual conduct of sex work for the purposes of the *Anti-Discrimination Act 1991 QLD*. In that case a sex worker was kicked out of a motel because she was ‘doing’ sex work, and not because of her ‘status’ as a sex worker. This limits the usefulness of the provision significantly and was identified as a gap to be remedied in the Queensland Human Rights Commission’s recent review of anti-discrimination protections.

Further, the cultural implications for the complete and unambiguous inclusion of sex workers under anti-discrimination frameworks is significant. This presents an important signal to the community, is a valuable tool for cultural change, and most importantly provides sex workers with access to clear discrimination protection. However, we note that additional provisions securing the personal privacy of complainants must be made available along with this new section.

A new attribute of ‘sex work and sex worker’ should include protection from discrimination in all the same areas available to other protected attributes. That is, employment, education, accommodation, registered clubs, and in the provision of goods and services, etc. As well as include, presumed to be, previously been, currently ‘doing’, having characteristics appertaining generally or imputed to sex workers, as well as our relatives or associates. Sex worker and sex work must be a protected attribute, and grounds for seeking relief from discrimination, sexual harassment, and vilification.

- **No exceptions relating to sport, superannuation, insurance, or public health should apply to sex workers, and no broad exemptions for religious, private educational or charitable bodies**

We note the far-reaching general exemptions to discrimination currently available in the Act for private education institutes, religious bodies, charitable bodies, and adoption services. We do not support these exemptions as they currently carve out discrimination protections in many areas of public life for the LGBTQTI+ community and many others. We do not propose their application to the new protected attribute of ‘sex work and sex worker’.

SWOP NSW endorses the submissions of Equality Australia regarding protections for LGBTQTIA+ people (especially the robust inclusion of all trans and gender diverse people, including non-binary and bisexual people, as well as intersex people), religious discrimination and removing or narrowing existing exceptions. We also support the submissions of ACON, especially in regard to preventing discrimination against people living with HIV/AIDS.

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<sup>1</sup> <https://www.legislation.qld.gov.au/view/html/inforce/current/act-1991-085#sec.7>

<sup>2</sup> <https://www.legislation.act.gov.au/View/a/1991-81/current/html/1991-81.html>

<sup>3</sup> <https://www.legislation.vic.gov.au/in-force/acts/equal-opportunity-act-2010/028>

- **Ensure efficacy of protections against discrimination in housing**

Sex workers face chronic and systematic discrimination and precarity in housing and accommodation in NSW. This discrimination and precarity can create its own cascade of additional obstacles, cause a direct risk to our safety, and be experienced as intersectional marginalisation.

SWOP NSW knows from our community of countless stories of housing related discrimination. Examples of discrimination faced by sex workers in housing and accommodation include :

- direct and brazen discrimination by real estate agents and relators,
- evicted from Public Housing,
- evicted and harassed by Strata Management
- denied crisis housing,
- forcibly removed from hotels or motels in the middle of the night in rural areas,
- charged extra, and
- face demands for sex or face immediate and unfair eviction.

As such, SWOP NSW support strong and unambiguous discrimination protections in housing and accommodation. We do not support any specific exception for sex worker discrimination protections in the area of accommodation, and support increased renters' rights and protections from discrimination.

We note the Queensland Human Rights Commission in their report *Building belonging: Review of Queensland's Anti-Discrimination Act 1991, July 2022* found that a specific Queensland exception allowing for sex worker discrimination in accommodation was too broad, and 'may not be compatible with human rights', and recommended its repeal.

Sex workers and people doing sex work deserve fair and safe access to temporary accommodation and housing. Normal remedies for noise complaints, use of buildings, etc. will continue to apply to sex workers in the same way as any business or resident.

- **Ensure efficacy of protections against discrimination in banking and financial services.**

Sex workers faces ongoing and entrenched discrimination regarding financial services. It is essential that a new provision protects workers and sex worker businesses from financial discrimination.

In Australia, there is no general right to banking or financial services. Financial discrimination protections must be improved generally for all people<sup>4</sup>, and in specific ways for sex workers.

The reason often provided for the sudden closure of accounts belonging to sex workers, or denial of financial services – including those necessary to conduct their lawful business activities, is that the bank

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<sup>4</sup> Such as discrimination faced by people who are pregnant or going on maternity leave being deemed 'high risk' lenders. <https://www.abc.net.au/news/2022-02-10/home-loan-bank-pregnancy-starting-a-family/100815070>

has flagged the account as potentially relating to sex trafficking activities. There appears to often be blanket ban approach to sex work related transactions, which falsely conflate sex work with sex trafficking. When purportedly done under anti-trafficking or anti-slavery efforts, this action, even when discriminatory, is specifically protected under relevant legislation.

Additionally, sex workers who are on otherwise steady income streams are denied mortgages, loans or credit cards. Some financial institutions incorrectly and unfairly assess sex industry employment 'high risk' or unstable, despite evidence of substantial savings and stable income over a significant period. Sex workers are just one marginalised group who face discrimination as 'high risk' customers due to their employment type.

Anti-discrimination laws must effectively protect sex workers from financial discrimination, so that we can access financial services and banking in the same way as everyone else.

- **Ensure government services and agencies (including NSW Police) are fully beholden to anti-discrimination law, including in the approach or way of enacting other legislative goals.**

Sex workers face discrimination, exclusion and stigma when accessing or interacting with essential services such as Public Housing, Centrelink (including employment service providers), NDIS, Local Government and Planning, Police, BorderForce, and Corrective Services.

In many cases the discriminatory or stigmatising conduct is due to policy or stigma rather than strictly required by legislation. Such government agencies or authorities must be properly included and liable under NSW discrimination protections.

This can be done by:

- adding 'in the administration of State laws or programs' as an area of public life,
  - by expanding the definition of 'services',
  - by reviewing or limiting the use of Section 54 'Statutory Authority',
  - conducting a broad review of where other legislation expressly limits liability for discriminatory conduct, and/or
  - the implementation of a Positive Duty to prevent discrimination.
- **Sex workers (and other complainants) must be able to protect their personal identity throughout the complaint process under the Act.**

Once sex work and sex worker are included as protected attributes in the Act, our confidentiality must be protected throughout legal processes. This is an essential safety measure for sex workers who do not routinely share their legal names with clients, or sex services premises owners/operators.

Sex workers must be able to protect their personal identities from the moment a complaint is lodged, even if the complaint does not ultimately resolve successfully.

This protection of a person's identifying information could be extended to information about their disability, gender including gender history, sex characteristics or race, as well as other protected attributes.

- **Reduce burden on individuals to seek redress by:**
  - **improving opportunities for representative complaints and organisational complaints,**
  - **improving Anti-Discrimination NSW's powers to initiate inquiries and systematically review and research issues, and**
  - **a positive duty to prevent harassment, discrimination and vilification, and to make reasonable adjustments.**

The current legislative framework burdens individuals who have been discriminated against with the responsibility of pursuing redress. When organisations representing individuals or a group of people with common complaints, and/or Anti-Discrimination NSW can lodge a claim on the community's behalf, it relieves this significant burden on marginalised communities. Proactive and collective action must be enhanced throughout the anti-discrimination framework.

The Queensland Human Rights Commission in their report *Building belonging: Review of Queensland's Anti-Discrimination Act 1991, July 2022* recommended that organisations should be able to make a discrimination complaint in 'good faith', when it affects the interest of the people they represent and is in the interest of justice. We support this simplified approach in NSW.

Organisational and representative complaints must not require that each affected individual is identified and 'outed' as a person with the protected attribute. This approach was further recommended by the recent Queensland Human Rights Commission.

An example of an unworkable organisational complaint under the current model, is the practice of a manager at a brothel or escort agency quoting different prices for sex services, depending on the ethnicity of the sex worker. Despite outrage within the sex worker community at this race-based discriminatory practice, a representative complaint or organisation-led complaint of discrimination based on race is in practice, near impossible. Under current NSW legislation, this complaint would require the participation of a significant number of culturally and linguistically diverse sex workers, for whom cultural considerations and legal/safety concerns may add to the risks of publicly identifying as a sex worker.

We support ACON's submission in regard to prohibiting discriminatory requests for information, such as patient registration or pre-employment health forms which request HIV status or sex worker history, where this information is irrelevant.

Anti-Discrimination NSW must have expanded powers to initiate inquiries and systematically review and research discrimination issues, including for a broader range of protected attributes (including sex

worker). We also support a Positive Duty to prevent harassment, discrimination, and vilification, and to make reasonable adjustments.

- **Adopt a 'because of' test for discrimination (instead of a comparator test), recognise intersectional discrimination, and provide protection on the basis of:**
  - **homelessness,**
  - **drug use,**
  - **irrelevant criminal record,**
  - **migration or visa status, and**
  - **physical features (such as weight and scars/marks)**

The sex worker community is diverse and includes people who sit at the intersection of multiple marginalisation's or identities.

We support Equality Australia's submissions, particularly on simplifying the test for discrimination, and the recognition of discrimination based on a combination of attributes (intersectional discrimination).

- **Include protection from vilification for sex workers.**

SWOP supports the inclusion of protection from vilification for sex workers under the Act. Media outlets frequently depict sex workers in a manner that incites serious contempt, severe ridicule and dehumanisation of sex workers. This contributes to a social environment whereby the vilification of and violence towards sex workers is normalised. SWOP NSW routinely speaks with sex workers who have experiences of being publicly 'outed', threatened and vilified.

Finally, we would be happy to meet with and discuss our preliminary submission with the NSWLRC, including providing case studies and platforming sex worker community members to speak from their own experiences. In addition, we would like to recommend the Commission accept anonymous submissions from sex workers in the next phase of consultation. There are significant barriers to sex workers engaging with a process that requires the person to be out as a sex worker.

Our preliminary submission is not intended to be the final word on the Inquiry, but an introduction to the key concerns of the NSW sex work community.

Thank you for the opportunity to provide input on the Inquiry into the Anti-Discrimination Act. Please do not hesitate to contact me at

Sincerely,

Joanna Megan  
SWOP NSW CEO