



15 August 2025

NSW Law Reform Commission  
Locked Bag 5000  
Parramatta NSW 2124

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To the New South Wales Law Reform Commission

Thank you for the opportunity to provide a submission on Consultation Paper 24 - Unlawful Conduct as part of the review of the *Anti-Discrimination Act 1977*.

Scarlet Alliance and the Sex Workers Outreach Project (SWOP NSW) welcome the opportunity to contribute to the review of the *Anti-Discrimination Act 1977* (NSW) (the ADA).

Despite the partial decriminalisation of sex work in NSW since 1995, sex workers continue to experience stigma, discrimination, and exclusion across employment, housing, education, healthcare, and in interactions with government services.

This submission recommends targeted reforms to introduce anti-discrimination protections for sex workers, align NSW with national and international best-practice, and ensure that the ADA protects NSW's marginalised communities.

In addition to our submission below, SWOP NSW and Scarlet Alliance endorse the submissions of:

- Equality Australia
- HALC (HIV/AIDS legal Centre), ACON, the National Association of People Living with HIV Australia (NAPWHA), Positive Life NSW and the Bobby Goldsmith Foundation
- ICLC (Inner City Legal Centre)
- RACS (Refugee Advice Casework Service)
- NUAA (NSW Users and AIDS Association)
- Touching Base Inc
- Respect Inc
- SWOP NT.

Yours sincerely,

Mish Pony  
Chief Executive Officer  
Scarlet Alliance, Australian Sex Workers Association

Kerrie Jordan  
Chief Executive Officer  
SWOP NSW

## About Us

Scarlet Alliance is Australia's national peak sex worker organisation. Formed in 1989, our membership includes state and territory-based and national sex worker organisations and individual sex workers across unceded Australia.

Scarlet Alliance advocates for equality, justice and the highest level of health for past and present workers in Australia's sex industry. We achieve our goals and objectives by using best practices including peer education, community development and community engagement. Through our work and the work of our member organisations, we have the highest level of contact with sex workers and access to sex industry workplaces throughout Australia. Scarlet Alliance also represents sex workers on a number of government and non-government committees and advisory mechanisms.

The Sex Workers Outreach Project New South Wales (SWOP NSW), a member of Scarlet Alliance, has delivered peer-led services to the sex industry in NSW for over 35 years to provide NSW sex workers with the same access to health, safety, human rights, and workplace protections as all other Australian workers.

We provide direct support and peer education to sex workers across the state by outreaching regularly to a broad range of sex industry workplaces (including street based, home based, brothels, strip clubs, and massage parlours), as well as providing services at our office and via phone, email and a variety of online platforms. We collaborate with community members, researchers and clinicians, and government and non-government organisations to ensure that NSW sex workers receive the services and support vital to sustaining low rates of sexually transmissible infections (STIs) and virtual elimination of HIV.



# Submission to the Review of the *Anti-Discrimination Act 1977*

## Executive Summary and Recommendations

New South Wales' anti-discrimination laws are outdated and fail to protect sex workers. NSW needs clear and accessible anti-discrimination law that protects and promotes the human rights of all our communities. To this end, Scarlet Alliance and SWOP NSW recommend the following changes to the *Anti-Discrimination Act 1977* (NSW) (the ADA):

### Recommendations 1 - 4: Defining and recognising discrimination

**Recommendation 1 (structure):** That the ADA is restructured to outline:

1. What discrimination is prohibited (definition of discrimination)
2. Who is protected from discrimination (list of **protected attributes**)
3. What situations people are protected from discrimination in (prohibited areas of discrimination).

All protected attributes should be protected from both **direct** and **indirect discrimination** in every prohibited area.

**Recommendation 2 (tests for discrimination):** That the ADA states that:

- **Direct discrimination** occurs when a person treats, or proposes to treat, another person unfavourably because of a protected attribute
- **Indirect discrimination** occurs when a person imposes, or proposes to impose, a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging persons with an attribute, and that requirement is not reasonable.

**Recommendation 3 (past and presumed attributes):** That the ADA includes that both **direct** and **indirect** discrimination may be based on:

- a **protected attribute** that a person has had in the past
- a **protected attribute** that a person is presumed to have.

**Recommendation 4 (discrimination against associates):** That the ADA includes a **protected attribute** of **'personal association with a person with a protected attribute.'**

**Recommendation 5 (intersectional discrimination):** That the ADA prohibits discrimination based on **'one or more protected attributes, or the combined effect of two or more attributes.'**

### Recommendations 6 - 7: existing protected attributes

**Recommendation 6 (infectious disease exception):** That the ADA repeals the exception allowing discrimination towards people living with infectious diseases if 'reasonably necessary to protect public health' (s 49P).

**Recommendation 7 (LGBTQIA+ protections):** That the ADA's **protected attributes** of *'homosexuality,' 'sex,'* and *'transgender grounds'* are replaced with:

- **'sexual orientation'**



- **'gender identity or expression'** and
- **'sex characteristics.'**

## Recommendations 8 - 11: new protected attributes

**Recommendation 8 (new protected attribute):** That the ADA includes a protected attribute of **'sex work activity'** with the following definition:

**sex work activity** means the provision of the following services for payment or reward:

- (i) services that involve the person participating in a sexual activity with another person;
- (ii) services that involve the use or display of the person's body for the sexual arousal or gratification of another person.

**sex worker** means a person who engages, has previously engaged, or who is thought to engage in **sex work activity**.

This attribute should be protected from direct discrimination, indirect discrimination, and vilification. There should be no specific exceptions for the attribute of **'sex work activity.'**

**Recommendation 9 (new protected attribute):** That the ADA includes a protected attribute of **'irrelevant criminal record.'**

**Recommendation 10 (new protected attribute):** That the ADA includes a protected attribute of **'immigration status.'**

**Recommendation 11 (new protected attribute):** That the ADA includes a protected attribute of **'medical condition or health status.'**

## Recommendations 12 - 15: prohibited areas of discrimination

**Recommendation 12 (discrimination in work - exceptions):**

- That the ADA repeals exceptions permitting discrimination in work by small businesses and partnerships, and
- That the ADA repeals the exception permitting discrimination in work if a person is 'addicted to a prohibited drug' (s 49PA).

**Recommendation 13 (existing prohibited areas):** That the ADA prohibits discrimination based on all protected attributes (including **'sex work activity'**) in all currently recognised areas of public life (being work, education, provision of goods and services, accommodation and registered clubs).

**Recommendation 14 (new prohibited area):** That the ADA prohibits discrimination in the area of **'government functions and the administration of laws.'**

**Recommendation 15 (religious bodies exceptions):** That the ADA:

- repeals the exception permitting discrimination by any 'act or practice of a body established to propagate religion' (s 56(d))
- repeals the exception permitting discrimination by aged care providers (s 59)
- repeals the exception permitting discrimination by faith-based adoption services (s 59A)



- repeals all provisions permitting private educational authorities to discriminate in the areas of work and education.

## **Recommendations 16 - 17: vilification and sexual harassment**

**Recommendation 16 (vilification):** That the ADA:

- Expands the test for vilification to state that vilification may include incitement of hate *or* conduct that is 'reasonably likely to offend, insult, humiliate, intimidate or ridicule a person with a protected attribute'
- Explicitly states that a 'public act' includes public online conduct, broadcasting and public conduct that is visible from private land.
- Expands anti-vilification protections to all **protected attributes**, including '**sex work activity.**'

**Recommendation 17 (sexual harassment):** That the ADA includes a general prohibition against sexual harassment.



# Submission to the Review of the *Anti-Discrimination Act 1977*

## Background

New South Wales was once a world leader in recognising the human rights of sex workers, being the first jurisdiction in the world to decriminalise sex work. However, NSW now lags behind other states and territories who have implemented laws that fully decriminalise sex work and protect sex workers from discrimination.<sup>1</sup> NSW politicians recognise that 'discrimination and vilification against sex workers is common and takes many forms,'<sup>2</sup> and that 'hate and discrimination have no place in NSW.'<sup>3</sup> Despite this, sex workers in NSW remain unprotected by anti-discrimination law.

NSW's *Anti-Discrimination Act 1977* (the ADA) also falls behind anti-discrimination laws in other states/territories in several key areas. These include:

- Complex tests for discrimination that are difficult to prove
- No recognition of intersectional discrimination, intended discrimination, or discrimination based on past or presumed attributes
- Protections for only a narrow group of attributes that use outdated language and definitions
- Discrimination is only prohibited in select areas of public life
- Broad exceptions for religious bodies that permit discrimination in essential services such as education, aged care and crisis support
- Narrow protections against civil vilification
- Insufficient protection against sexual harassment
- Lack of safe and accessible complaint pathways.

It is vital that this review carefully considers the human rights of NSW's most marginalised communities. The ADA requires reform to provide robust and accessible anti-discrimination and anti-vilification protections, and to promote inclusion and equity for all people in NSW.

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<sup>1</sup> See *Sex Industry Act 2019* (NT) and *Anti-Discrimination Act 1992* (NT) s 19(1)(ec); *Sex Work Decriminalisation Act 2022* (Vic) and *Equal Opportunity Act 2010* (Vic) s 6(la); *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* (Qld) and *Anti-Discrimination Act 1991* (Qld) s7(l).

<sup>2</sup> New South Wales Parliamentary Debates, Legislative Assembly, 24 August 2023, 9145 (Alex Greenwich) <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-134163>.

<sup>3</sup> New South Wales Parliamentary Debates, Legislative Assembly, 16 October 2024, 39 (Dr Marjorie O'Neill) <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardFull.aspx#/DateDisplay/HANSARD-1323879322-146273/HANSARD-1323879322-146293>.



# Defining and Recognising Discrimination

## Legislative structure of the ADA

Australian anti-discrimination law recognises that people are often treated unfairly because of a characteristic they have, like their age, ethnicity or the fact that they are a sex worker. These characteristics are called **protected attributes**.

Australian law recognises two main types of discrimination:

- **Direct discrimination** happens when a person is treated unfairly because of a **protected attribute** that they have (e.g. their age or ethnicity).
- **Indirect discrimination** happens when a rule or set of circumstances applies to everyone, but is unfair to people who have a **protected attribute**. For example, if a university says all students must take exams in a room that you can only reach by stairs, this rule indirectly discriminates against students who use wheelchairs or have mobility difficulties.

The ADA currently has a section for each **protected attribute** that states:

- whether that attribute is protected from **direct discrimination, indirect discrimination**, or both
- what situations (areas of life) a person will be protected in (e.g. education or work)
- whether any exceptions apply.

Not all **protected attributes** have the same protections: for example, people with carer's responsibilities are only protected from discrimination at work, and not in other situations.<sup>4</sup>

This structure is complex and confusing. The ADA should be restructured to reflect anti-discrimination legislation in Victoria, the ACT, Queensland, Tasmania and the Northern Territory, which all:

1. Explain **what** discrimination is prohibited (e.g. **direct discrimination** and **indirect discrimination**)
2. Explain **who** is protected from discrimination (a list of protected attributes)
3. Explain **where** people are protected from discrimination (the areas of public life where discrimination is prohibited).

This is the most straightforward approach to ensure that all people with protected attributes can understand and access anti-discrimination protections. **All protected attributes should be protected from both direct and indirect discrimination in every prohibited area.**

**Recommendation 1:** That the ADA is restructured to outline:

1. What discrimination is prohibited (definition of discrimination)
2. Who is protected from discrimination (list of **protected attributes**)
3. What situations people are protected from discrimination in (prohibited areas of discrimination).

All protected attributes should be protected from both **direct** and **indirect discrimination** in every prohibited area.

<sup>4</sup> *Anti-Discrimination Act 1977* (NSW) part 4B.

## Comparator tests and future discrimination

Currently, if someone wants to make a discrimination complaint in NSW, they must prove either:

- that they were treated worse *compared to* a real or imaginary person who did not have their attribute (**direct discrimination**),<sup>5</sup> or
- that they could not comply with a requirement or condition *compared to* most people who do not have their attribute (**indirect discrimination**).<sup>6</sup>

These are called **comparator tests**.

In other states, **comparator tests** have created difficulties for sex workers to prove that they have experienced discrimination. This is because the **comparator test** required them to prove that they were treated worse than a non-sex worker *in the same situation*.

For example, in 2014, a Queensland sex worker made a complaint against a newspaper that charged higher prices for sex work advertising. The newspaper forced all sex work ads to be in the 'personals' section, which cost more than other advertising sections. However, the Court decided that the '**comparator**' was not another business advertising in the newspaper, but another person advertising in the 'personals' column who was *not* a sex worker.<sup>7</sup> This made it impossible to prove discrimination.

The ADA should follow the approach of Victorian and ACT anti-discrimination legislation in outlining tests for discrimination. These laws:

- Focus on whether a person is treated unfairly (rather than whether a person is treated unfairly *compared to* somebody else.)<sup>8</sup>
- Allow people to complain about discrimination that they know is going to happen (for example, if you know a company won't hire sex workers, you can complain before applying for the job.)<sup>9</sup>

**Recommendation 2:** That the ADA states that:

- **Direct discrimination** occurs when a person treats, or proposes to treat, another person unfavourably because of a protected attribute
- **Indirect discrimination** occurs when a person imposes, or proposes to impose, a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging persons with an attribute, and that requirement is not reasonable.

<sup>5</sup> See e.g., *Anti-Discrimination Act 1977* (NSW) s 7(1)(a).

<sup>6</sup> See e.g., s 7(1)(c).

<sup>7</sup> *Payne v APN News & Media* (2015) QCAT 514.

<sup>8</sup> *Discrimination Act 1991* (ACT) s 8; *Equal Opportunity Act 2010* (Vic) ss 8-9.

<sup>9</sup> This is achieved by saying that discrimination includes *proposing* to treat someone unfairly, or *proposing* to make an unfair rule: *Discrimination Act 1991* (ACT) s 8(2)-(3); *Equal Opportunity Act 2010* (Vic) ss 8(1), 9(1).



## Past and presumed attributes, personal association and intersectional discrimination

### Past and presumed attributes

The ADA currently only provides limited protections for discrimination based on attributes that a person has had in the past, or attributes that a person is presumed to have. As stigma and stereotypes are the primary drivers of discrimination, this gap reduces the effectiveness of current protections, especially for marginalised communities.<sup>10</sup>

The ADA should protect people from both **direct** and **indirect discrimination** based on past attributes (like past sex work) or presumed attributes (like being assumed to be a sex worker).<sup>11</sup>

**Recommendation 3:** That the ADA includes that both **direct** and **indirect discrimination** may be based on:

- a **protected attribute** that a person has had in the past
- a **protected attribute** that a person is presumed to have.

### Personal association

The ADA also currently only protects the relatives and associates of a person with a **protected attribute** from **direct discrimination**, and does not protect the relatives or associates of a person with carer's responsibility.

Sex workers' relatives and other loved ones frequently experience discrimination based on their association with a sex worker. In preparation for this submission, Scarlet Alliance and SWOP NSW conducted a small community survey (discussed in detail below).

One respondent said:

*Everything is a secret. I have to lie, my children have to lie. No one at my kids' school can know the truth otherwise my kids will be bullied and ostracised.*<sup>12</sup>

<sup>10</sup> For example, United States police departments have received international criticism for assuming that transgender women in public spaces are committing street-based sex work offences. See Jaclyn Diaz, 'New York Repeals "Walking While Trans" Law', *NPR* (3 February 2021) <https://www.npr.org/2021/02/03/963513022/new-york-repeals-walking-while-trans-law>. While outside the scope of this review, Scarlet Alliance and SWOP NSW note that NSW's proactive policing practices generate significant risks of discrimination by law enforcement: see Paul Farrell et al., 'A Dangerous Numbers Game', *ABC News* (18 March 2024) <https://www.abc.net.au/news/2024-03-18/how-proactive-policing-quotas-sent-nsw-police-searches-soaring/103579210>.

<sup>11</sup> This is already recognised in anti-discrimination legislation in the ACT, Victoria, Queensland and the Northern Territory: *Discrimination Act 1991* (ACT) s 7(2); *Equal Opportunity Act 2010* (Vic) s 7(2); *Anti-Discrimination Act 1991* (Qld) s 8; *Anti-Discrimination Act 1992* (NT) s 20(2).

<sup>12</sup> Survey respondent (sex worker), *Scarlet Alliance and SWOP NSW Sex work, Disability and Discrimination Survey* (11 August 2025).



The ADA's current protections for personal associates are confusing and narrow. Other states and territories protect people who are associated with someone who has a **protected attribute** by including 'personal association with a person who has a protected attribute' as its own separate **protected attribute**.<sup>13</sup> The ADA should follow this approach.

**Recommendation 4:** That the ADA includes a protected attribute of '**personal association with a person with a protected attribute.**'

### Intersectional discrimination

NSW sex workers are a diverse population. Our community includes:

- LGBTQI+ sex workers
- Aboriginal and Torres Strait Islander sex workers
- sex workers who use drugs
- sex workers living with HIV
- sex workers with disability
- migrant sex workers.

Many sex workers face discrimination for multiple reasons. For example, an Asian migrant sex worker might face unfair treatment because they are a sex worker, because they are Asian, or because they are a migrant - or all three reasons combined. This is called **intersectional discrimination**.

The ADA does not currently recognise this kind of discrimination. In order to respond to **intersectional discrimination**, the ADA should prohibit discrimination based on 'one or more protected attributes, or the combined effect of two or more attributes.'

**Recommendation 5:** That the ADA prohibits discrimination based on '**one or more protected attributes, or the combined effect of two or more attributes.**'

## Existing protected attributes

### Disability

Many sex workers also identify as disabled/living with disability,<sup>14</sup> as do many of our clients. To inform the content of this submission, Scarlet Alliance and SWOP NSW conducted a small community survey titled *Sex work, Disability and Discrimination*, seeking responses from sex workers with disability, disabled clients

<sup>13</sup> *Equal Opportunity Act 2010* (Vic) s 6(q); *Discrimination Act 1991* (ACT) s 7(1)(c); *Anti-Discrimination Act 1992* (NT) s 19(1)(r); *Anti-Discrimination Act 1998* (Tas) s 16(s); *Anti-Discrimination Act 1991* (Qld) s 7(q).

<sup>14</sup> Scarlet Alliance, *Experiences of Sex Workers with Disability in Australia* (Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, December 2022) <https://scarletalliance.org.au/library/australian-disability-royal-commission-submission/>. In this submission, Scarlet Alliance and SWOP NSW use the terms 'people with disability' and 'disabled people' interchangeably. This reflects feedback we have received from disabled sex workers and community allies. We acknowledge that people with disability are not a monolith - some people prefer person-first language and others prefer identity-first language.

of sex workers, and disability support workers/community allies. Responses received from this survey appear throughout this submission.

*Sex work is one of few viable work options for me as someone living with dynamic disability. It's the only way I can afford my appointments, also have time to attend them, and have time to rest. Sex work buys me back some of the time that disability takes away from me.*<sup>15</sup>

*As a sex worker, my clients with disability often confide in me about their experiences of ableism, or their masking due to the fear of ableism, especially at work...They are socially ignored, spoken down to, and so on. Their innovation and unique skills are expected to be provided unpaid. Requesting accommodations is interpreted as a sign of not coping, rather than a sign of commitment. My clients with disability understand my experiences of paternalism as a sex worker.*<sup>16</sup>

### Public health exception

The ADA currently allows discrimination on the grounds of disability 'if the disability concerned is an infectious disease and the discrimination is reasonably necessary to protect public health.'<sup>17</sup> We believe this exception is unnecessary and harmful, as it reinforces stigma and discrimination towards people living with HIV and other blood-borne viruses (BBV).

Most people living with HIV in Australia are receiving treatment that means they cannot transmit the virus to other people.<sup>18</sup>

Existing public health<sup>19</sup> and criminal laws<sup>20</sup> deal with the transmission of infectious conditions in NSW. If not amended or repealed, other exceptions in the ADA permitting disability discrimination would also continue to apply to people living with infectious conditions.<sup>21</sup>

Repeal of this exception is a small step towards NSW recognising the entrenched and systemic discrimination towards people living with HIV and other BBVs, and that laws protecting public health should be focused on evidence-based measures rather than supporting widespread discrimination.

<sup>15</sup> Survey respondent (sex worker), *Scarlet Alliance and SWOP NSW Sex work, Disability and Discrimination Survey* (11 August 2025).

<sup>16</sup> Survey respondent (sex worker), *Scarlet Alliance and SWOP NSW Sex work, Disability and Discrimination Survey* (11 August 2025).

<sup>17</sup> *Anti-Discrimination Act 1977* (NSW) s 49P.

<sup>18</sup> National Association of People with HIV Australia (NAPWHA), *What Is HIV?* (Web Page) <https://napwha.org.au/what-is-hiv/>. While outside the scope of this review, SWOP NSW and Scarlet Alliance note that NSW continues to endorse the criminalisation and stigmatisation of people living with BBV through the *Mandatory Disease Testing Act 2021* (NSW): see NAPWHA, *HIV and the Law in Australia: National Audit* (Report, 15 March 2023) <https://napwha.org.au/the-law-and-hiv/>.

<sup>19</sup> NSW public health law gives the government broad powers to manage public health risks: *Public Health Act 2010* (NSW) ss 7-12. Public health laws also require people living with sexually transmissible infections to take 'reasonable precautions' to prevent transmission: *Public Health Act 2010* (NSW) s 79; *Public Health Regulation 2022* (NSW) r 63.

<sup>20</sup> Lying about STI status to induce a person to participate in sexual activity is a violation of consent in NSW and can give rise to sexual assault offences: *Crimes Act 1900* (NSW) s 61HJ(1)(k). Grievous bodily harm offences (ss 33(1), 35(2) and 54) also include 'causing a person to contract a grievous bodily disease': see s 4 (definition of 'grievous bodily harm').

<sup>21</sup> *Anti-Discrimination Act 1977* (NSW) ss 49D(3)-(4), 49L(3)-(4), 49M(2), 49N(3)-(6), s 49O(5).



**Recommendation 6:** That the ADA repeals the exception permitting discrimination towards people living with infectious diseases if ‘reasonably necessary to protect public health’ (s 49P).

## ‘Homosexuality,’ ‘sex’ and ‘transgender grounds’

Sex workers include people of all sexualities and gender identities.<sup>22</sup> SWOP NSW and Scarlet Alliance support the joint submission of HALC, ACON, NAPWHA, Positive Life NSW and the Bobby Goldsmith Foundation, as well as the submission of Equality Australia. The ADA must provide clear and accessible protections for LGBTQIA+ people of all sexualities and gender identities. To achieve this, the ADA’s existing **protected attributes** of ‘homosexuality,’ ‘sex’ and ‘transgender grounds’ should be replaced with ‘sexual orientation,’ ‘gender identity or expression,’ and ‘sex characteristics.’

These attributes align with how LGBTQIA+ people describe ourselves, current understandings of LGBTQIA+ rights within global advocacy,<sup>23</sup> and with anti-discrimination legislation in other states and territories.<sup>24</sup>

As noted below, SWOP NSW and Scarlet Alliance recommend that *all* **protected attributes** are protected from both discrimination and vilification (see **Recommendation 16**).

**Recommendation 7:** That the ADA’s **protected attributes** of ‘homosexuality,’ ‘sex,’ and ‘transgender grounds’ are replaced with:

- **‘sexual orientation’**
- **‘gender identity or expression’** and
- **‘sex characteristics.’**

## New Protected Attributes

### Sex work activity

Discrimination towards sex workers is common and occurs across many areas of public life.<sup>25</sup> Anti-discrimination protections are essential to ensure that all sex workers can access the benefits of sex work decriminalisation, and to promote inclusion and participation within our communities.

<sup>22</sup> In the survey conducted in preparation for this survey, over 70% of sex worker respondents identified as being LGBTQIA+: *Scarlet Alliance and SWOP NSW Sex work, Disability and Discrimination Survey* (11 August 2025).

<sup>23</sup> International Commission of Jurists, *Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* (10 November 2017) <https://yogyakartaprinciples.org/principles-en/yp10/>.

<sup>24</sup> *Discrimination Act 1991* (ACT) s 7(1)(g),(v),(w); *Equal Opportunity Act 2010* (Vic) s 6(d),(oa),(p); *Anti-Discrimination Act 1992* (NT) s 19(1)(ba),(c),(ca); *Anti-Discrimination Act 1991* (Qld) s 7(m),(n),(o); *Anti-Discrimination Act 1998* (Tas) s 16(c),(ea),(eb).

<sup>25</sup> Scarlet Alliance, *Anti-Discrimination and Vilification Protections for Sex Workers* (Briefing Paper, February 2022) <https://scarletalliance.org.au/anti-discrimination-and-vilification-protections/>.



Anti-discrimination protections for sex workers were introduced as part of sex work decriminalisation in the Northern Territory, Queensland and Victoria.<sup>26</sup> While sex work in NSW has been partially decriminalised since the late 1990s, this important aspect of decriminalisation has not yet been part of NSW's law reform.<sup>27</sup>

The ADA must introduce a **specific and comprehensive protected attribute for sex workers**:

- It must protect all sex workers, regardless of the type of sex work we do
- It must prohibit both direct and indirect discrimination
- It must protect both current and former sex workers
- It must protect our relatives and associates.

SWOP NSW and Scarlet Alliance recommend introducing a **protected attribute of 'sex work activity.'**

*Sex work activity means the provision of the following services for payment or reward:*

- services that involve the person participating in a sexual activity with another person;*
- services that involve the use or display of the person's body for the sexual arousal or gratification of another person.*

We also recommend that the ADA include a definition of **'sex worker'** being a person who engages, has previously engaged, or who is thought to engage in **'sex work activity'** as described above.

Our expertise and experience across multiple jurisdictions demonstrates that a specific and comprehensive protected attribute is the **only** effective approach to protect sex workers from discrimination.

For example, introducing a protected attribute of 'lawful sexual activity' would not protect many of NSW's marginalised sex workers whose work remains criminalised under the *Summary Offences Act 1988*,<sup>28</sup> even though these laws are not enforced.<sup>29</sup>

Courts in other states have also interpreted 'lawful sexual activity' in confusing ways. Prior to the introduction of a specific protected attribute for sex workers, a Queensland sex worker was refused hotel accommodation for work purposes. The Queensland Court of Appeal decided that this was not discrimination, because 'lawful sexual activity' only prohibited discrimination based on a lawful sex worker's identity, not discrimination based on doing (lawful) sex work. The Court stated that in order to prove discrimination, the sex worker had to prove that she was treated worse compared to a non-sex worker hiring accommodation *for the purpose of doing sex work*.<sup>30</sup>

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<sup>26</sup> See above (n 1).

<sup>27</sup> Recently, the Equality Legislation Amendment (LGBTIQ+) Bill 2023 (the Equality Bill) proposed to prohibit discrimination based on being, or previously being, a sex worker, however these provisions were removed before the legislation was passed: *Equality Legislation Amendment (LGBTIQ+) Bill 2023* (NSW), First Print, sch 1 [39].

<sup>28</sup> Scarlet Alliance, Submission No 31 to the NSW Legislative Assembly Committee on Community Services, *Equality Legislation Amendment (LGBTIQ+) Bill 2023 Inquiry*, 5-10.

<sup>29</sup> SWOP NSW, Submission No 33 to the NSW Legislative Assembly Committee on Community Services *Equality Legislation Amendment (LGBTIQ+) Bill 2023 Inquiry*, 3-4.

<sup>30</sup> *Dovedeen Pty Ltd v GK* (2013) QCA 116. In our combined collective experience, neither of our organisations have encountered a non-sex worker hiring accommodation for the purposes of doing sex work.

If interpreted similarly in NSW, 'lawful sexual activity' would not protect sex workers from discrimination in relation to:

- accommodation and housing
- banking and financial services
- any other goods and services required in the course of a sex worker's normal business activities.

Similarly, we do not support a protected attribute of 'trade, profession, occupation or calling'<sup>31</sup> or 'profession, trade or occupation.'<sup>32</sup> There is no evidence of widespread discrimination based on other forms of work. However, discrimination against sex workers has been clearly documented in Australian and international research over several decades.<sup>33</sup> Without clear evidence of need, an overly-broad **protected attribute** could create administrative burdens for Anti-Discrimination NSW's complaints processes, creating access barriers and delays in resolving complaints.

Introducing a protected attribute of '**sex work activity**' will provide clear inclusion of sex workers within NSW's anti-discrimination framework. This sends an important signal that sex workers are part of NSW communities, acts as a valuable tool for cultural change, and provides sex workers with clear access to anti-discrimination protections.

This attribute should be protected from direct discrimination, indirect discrimination, and vilification. There should be no specific exceptions for the attribute of '**sex work activity**.'

**Recommendation 8:** That the ADA includes a protected attribute of '**sex work activity**' with the following definitions:

**sex work activity** means the provision of the following services for payment or reward:

- (i) services that involve the person participating in a sexual activity with another person;
- (ii) services that involve the use or display of the person's body for the sexual arousal or gratification of another person.

**sex worker** means a person who engages, has previously engaged, or who is thought to engage in **sex work activity**.

<sup>31</sup> As used in the ACT: see *Discrimination Act 1991* (ACT) s 7(1)(p).

<sup>32</sup> As used in Victoria: see *Equal Opportunity Act 2010* (Vic) s 6(1a).

<sup>33</sup> A small sample of this research includes: Zahra Stardust, 'The stigma of sex work comes with a high cost', *The Conversation* (10 August 2017)

<https://theconversation.com/the-stigma-of-sex-work-comes-with-a-high-cost-79657>;

Cecilia Benoit et al, 'Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers' (2018) 55(4-5) *Journal of Sex Research* 457, <https://doi.org/10.1080/00224499.2017.1393652>;

Zahra Stardust et al, "'I Wouldn't Call the Cops If I Was Being Bashed to Death": Sex Work, Whore Stigma and the Criminal Legal System' (2021) 10(3) *International Journal for Crime, Justice and Social Democracy* 142, <https://doi.org/10.5204/ijcjsd.1894>.

Kahlia McCausland et al, "'It Is Stigma That Makes My Work Dangerous": Experiences and Consequences of Disclosure, Stigma and Discrimination among Sex Workers in Western Australia' (2022) 24(2) *Culture, Health & Sexuality* 180, <https://doi.org/10.1080/13691058.2020.1825813>;

Zahra Stardust et al, 'High Risk Hustling: Payment Processors, Sexual Proxies and Discrimination by Design' (2023) 26(1) *City University of New York Law Review* 57, <https://academicworks.cuny.edu/clr/vol26/iss1/4/>.



This attribute should be protected from direct discrimination, indirect discrimination, and vilification. There should be no specific exceptions for the attribute of **'sex work activity.'**

## Irrelevant criminal record

Despite the partial decriminalisation of sex work in NSW, some sex workers continue to have a high level of contact with the criminal legal system,<sup>34</sup> making this gap particularly harmful for some sex workers. Disclosure of criminal offences can substantially limit a person's ability to enter employment or access goods and services.<sup>35</sup>

In Victoria, Southside Justice's Sex Worker Legal Program reported a recent case study where a former sex worker applied for a job requiring a criminal record check. The applicant had prior convictions for street-based sex work offences, which were considered spent convictions under Victorian law. Despite this, the convictions were incorrectly disclosed during the check, and the applicant was not offered the job.<sup>36</sup>

Scarlet Alliance and SWOP NSW support the submission of the Inner City Legal Centre that the ADA should introduce a protected attribute of 'irrelevant criminal record.' The Australian Human Rights Commission have also recommended the introduction of this attribute within Commonwealth anti-discrimination legislation.<sup>37</sup>

**Recommendation 9:** That the ADA includes a protected attribute of **'irrelevant criminal record.'**

## Immigration status

Sex workers on temporary visas and sex workers with precarious or irregular visa status experience heightened discrimination. This particularly affects Asian migrant sex workers, who face racist assumptions that all sex work involves trafficking or slavery. These assumptions underlie policy agendas

<sup>34</sup> As noted in this review's discussion paper: NSW Law Reform Commission, *Review of the Anti-Discrimination Act 1977* (NSW) (Consultation Paper 24, May 2025) 5.28.

<sup>35</sup> See Woor-Dungin, *Criminal Record Discrimination Project* (Submission to the 49th Aboriginal Justice Forum, December 2017) <https://cij.org.au/research-projects/criminal-record-discrimination-project/>; Inner City Legal Centre, Preliminary Submission PAD40 to the NSW Law Reform Commission *Anti-Discrimination Act Review* (29 September 2023) 2, <https://lawreform.nsw.gov.au/current-projects/anti-discrimination-act-review/preliminary-submissions.html>. While the Australian Human Rights Commission can investigate and try to resolve complaints about discrimination in employment on the basis of irrelevant criminal record, this is not a legislated or enforceable right and there is no judicial recourse: Australian Human Rights Commission, *Information for people making complaints* (Web Page) <https://humanrights.gov.au/our-work/complaint-information-service/information-people-making-complaints>.

<sup>36</sup> Southside Justice, *Southside Justice's Sex Worker Legal Program 18-Month Impact Report* (April 2024) 3, [https://southsidejustice.org.au/news\\_articles/sex-worker-legal-program-18-month-impact-report](https://southsidejustice.org.au/news_articles/sex-worker-legal-program-18-month-impact-report).

<sup>37</sup> Australian Human Rights Commission, *Free and Equal: An Australian Conversation on Human Rights* (Report, December 2021) 268, <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/free-and-equal-reform-agenda-federal-discrimination-laws>.



that result in workplace raids, racial profiling and detention at the border, under the guise of ‘disrupting workplace exploitation.’<sup>38</sup>

The compounding effects of discrimination increase barriers for migrant sex workers to reporting crime,<sup>39</sup> as well as accessing crisis support,<sup>40</sup> housing and other essential services.

To address these barriers, Scarlet Alliance and SWOP NSW support the submission of the Refugee Advice and Casework Service (RACS). While we note that RACS are providing a late submission to this review, we understand that their recommendation will be that the ADA includes a protected attribute of ‘immigration status.’<sup>41</sup>

**Recommendation 10:** That the ADA includes a protected attribute of **‘immigration status.’**

### Medical condition or health status

Scarlet Alliance and SWOP NSW support the joint submission of HALC, ACON, NAPWHA, Positive Life NSW and the Bobby Goldsmith Foundation, who recommend the introduction of a new protected attribute of ‘medical condition or health status.’ This attribute would protect several marginalised groups who experience stigma and discrimination that is distinct in nature from other forms of disability discrimination, and who may not conceptualise their health condition as a disability. These may include:

- people living with mental health conditions
- people with sexually transmissible infections (STI) or blood-borne viruses (BBV)
- people who use, or have used, alcohol or other drugs, irrespective of the level of use.

**Recommendation 11:** That the ADA includes a protected attribute of **‘medical condition or health status.’**

### Prohibited Areas of Discrimination

Scarlet Alliance and SWOP NSW believe that discrimination based on all **protected attributes** should be prohibited in all areas of public life covered by the ADA. This means that discrimination based on our recommended attribute of **‘sex work activity’** would be prohibited in the existing ADA areas of work,

<sup>38</sup> Scarlet Alliance, *Asian Migrant Sex Workers Respond to Recent Brothel Raids* (Media Release, 9 August 2023) <https://scarletalliance.org.au/asian-migrant-sex-workers-respond-to-recent-brothel-raids>;  
Asian Migrant Sex Worker Advisory Group (AMSWAG), *Statement on Continued Deportation and Mistreatment of Asian Migrant Sex Workers* (Media Release, 20 March 2025) <https://scarletalliance.org.au/amswag-statement-on-continued-deportation-and-mistreatment-of-asian-migrant-sex-workers>.

<sup>39</sup> “I Wouldn’t Call the Cops If I Was Being Bashed to Death” (n 33) 148-9.

<sup>40</sup> Lauren Renshaw et al, *Migrant sex workers in Australia* (AIC Research and Public Policy Series Report No. 131, 2015) 56, <https://www.aic.gov.au/publications/rpp/rpp131>.

<sup>41</sup> This is already a protected attribute in the ACT: *Discrimination Act 1991* (ACT) s 7(1)(i).

education, provision of goods and services, accommodation and registered clubs (see **Recommendation 13** below).

We also believe that there are gaps in the areas of public life currently covered by the ADA. We support the introduction of a new area of discrimination, being 'government functions and the administration of laws' (see **Recommendation 14** below).

### **Discrimination in work**

Current and former sex workers frequently experience discrimination in non-sex work employment if their sex work status is discovered.

In 2024, a Victorian former sex worker was fired from her job at a real estate agency, after her employer told her that her previous sex work was not 'in keeping with its branding and reputation in the business community.'<sup>42</sup> In 2023, NSW nurses were warned by the Nursing and Midwifery Board that using platforms such as OnlyFans may amount to a breach of professional standards, insinuating that this could be a threat to 'public safety' and 'distraction for patients,' even when there is no identifiable link to you as a registered health practitioner.'<sup>43</sup>

A NSW sex worker reported to SWOP NSW that:

*I'm an independent, straight male escort, I'm extremely proud of the work I do... It's an absolute honour and a privilege to offer intimacy, affection, caring and kindness to clients who crave a basic human right.*

*This year, I was sacked by my employer once they discovered that I provide sexual services. I was ushered from the building five minutes after a very short meeting with my manager. As a result, I felt shamed and humiliated and believe my future job prospects will be irrevocably harmed.*

*My escorting work had no impact whatsoever on the job I was hired to do. I've worked in this (non-escorting) profession for more than 20 years with an exemplary record of achievement and respect.<sup>44</sup>*

To mitigate these impacts, the ADA must prohibit discrimination based on '**sex work activity**' in the area of work (see **Recommendation 13** below).

### **Exceptions for small businesses and partnerships**

We also support the removal of exceptions permitting discrimination by small businesses and partnerships.<sup>45</sup> In 2023, 264,152 businesses across NSW employed 1-4 workers, making these employers

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<sup>42</sup> Rachel Clayton, 'Former sex industry worker challenges employer over claims she was fired due to her past,' *ABC News* (27 March 2024)

<https://www.abc.net.au/news/2024-03-27/sex-work-discrimination-laws-victoria-employment-vcac/103632868>.

<sup>43</sup> Ben Grubb and Ben Cubby, 'NSW nurses told to stop posting explicit content on OnlyFans,' *The Sydney Morning Herald* (1 March 2023)

<https://www.smh.com.au/politics/nsw/nsw-nurses-told-to-stop-posting-explicit-content-on-onlyfans-20230301-p5conk.html>.

<sup>44</sup> Direct Report from Anonymous Sex Worker NSW to SWOP NSW, April 2024 (at community feedback forum).

<sup>45</sup> See e.g., *Anti-Discrimination Act 1977* (NSW) ss 10A, 25(3)(b).



a significant part of the labour market.<sup>46</sup> This means that most NSW employers - including cafes, shops, small offices, and other common workplaces - can legally discriminate against their workers. This exception is not reasonable.

### Exception permitting discrimination in work (s 49PA)

Finally, we support the submission of NSW Users and Aids Association (NUAA) in recommending the repeal of the exception permitting discrimination in work if a person is 'addicted to a prohibited drug.'<sup>47</sup> The term 'addicted' is not defined in the legislation, and thus is left to the discretion of an employer. This provision is based on stigma rather than evidence, and:

- creates unfair barriers to employment for people who use or have used drugs.
- creates barriers for workers to access harm reduction or alcohol and other drug (AOD) treatment services, as discovery by their employer provides broad scope for adverse action because of their perceived 'addiction.'

Existing employment law measures provide employers with mechanisms to address workers performance-related issues. The ADA also already permits discrimination in work if a worker who uses drugs is 'unable to carry out the inherent requirements' of the employment.<sup>48</sup> As such, this exception is based in stigma rather than necessity, and should be repealed.

#### Recommendation 12:

- That the ADA repeals exceptions permitting discrimination in work by small businesses and partnerships, and
- That the ADA repeals the exception permitting discrimination in work if a person is 'addicted to a prohibited drug' (s 49PA).

## Discrimination in education

Sex workers in NSW experience discrimination in education.<sup>49</sup> Especially within tertiary education and post-graduate research institutions, this discrimination undermines the development of research and knowledge essential for sex worker community development.<sup>50</sup>

<sup>46</sup> For comparison, 75,438 NSW businesses employed 5-19 workers, while only 21,841 businesses had 20 employees or more: 'Location of Australia's Small Businesses by State and Territory: NSW' *Australian Small Business and Family Enterprise Ombudsman* (Web Page, 2023) (see 'Table 2: Businesses in NSW by size, 30 June 2023') <https://www.asbfeo.gov.au/small-business-data-portal/location-australias-small-businesses-state-and-territory/nw-south-wales>.

<sup>47</sup> *Anti-Discrimination Act 1977* (NSW) s 49PA.

<sup>48</sup> *Anti-Discrimination Act 1977* (NSW) s 49D(4)(a).

<sup>49</sup> In the survey conducted in preparation for this survey, over 16% of sex worker respondents reported experience discrimination in educational settings: *Scarlet Alliance and SWOP NSW Sex work, Disability and Discrimination Survey* (11 August 2025).

<sup>50</sup> See, e.g. Roxana Diamond, "'Come as You Are': Peer Research Exploring the Everyday Lives of Sex Workers in South Australia' (PhD thesis, Flinders University, 16 June 2022), 55, 65-7, <https://theses.flinders.edu.au/view/dd7c7db2-9f02-4ba9-a1d4-55967ede6a75/1>;

Mistress Snow, 'I Told My Mentor I Was a Dominatrix: She Rescinded Her Letters of Recommendation,' *Chronicle of Higher Education* (5 December 2019) <https://www.chronicle.com/article/i-told-my-mentor-i-was-a-dominatrix/>.

*I don't declare [sex work] on rental applications, don't have it on my resume, and don't tell my university.<sup>51</sup>*

*I have not disclosed my sex worker status to banks, accommodation or education providers due to fear of discrimination.<sup>52</sup>*

To mitigate these impacts, the ADA must prohibit discrimination based on **'sex work activity'** in the area of education (see **Recommendation 13** below).

### **Discrimination in the provision of goods and services**

*I was refused medical care by a GP after disclosing I was a sex worker because it 'didn't align with his values.'<sup>53</sup>*

Essential service providers, including hospitals, social workers, mental health and crisis support services, often hold discriminatory attitudes toward sex workers, impacting us during times of vulnerability and deterring us from seeking care. This is supported by 2024 research from the UNSW Stigma Indicators Monitoring Project, which found that 37% of healthcare workers self-reported likely negative behaviour towards sex workers.<sup>54</sup>

SWOP NSW receives frequent reports of discrimination in healthcare. One service user said:

*In 2020, I was denied admission for inpatient mental health treatment at a facility...The NUM told me I was being excluded on the basis that a patient from my previous admission later became a sex worker, and [the facility] was concerned that I would be 'grooming people into sex work.'*

*I was very out and proud of being a worker. I had no idea that I could be denied medical treatment because of it, that it was lawful for that facility to discriminate based on my sex worker status. I deteriorated significantly from this experience, and was unable to return to work for 2 years. I went from being completely out, to not telling another person for years.<sup>55</sup>*

To mitigate these impacts, the ADA must prohibit discrimination based on **'sex work activity'** in the area of provision of goods and services (see **Recommendation 13** below).

### **Discrimination in accommodation**

*I have to have a second [non-sex work] job to try get a rental now...even though I have the money and all the things I need.<sup>56</sup>*

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<sup>51</sup> Survey respondent (sex worker), Scarlet Alliance and SWOP NSW Sex work, Disability and Discrimination Survey (11 August 2025).

<sup>52</sup> Survey respondent (sex worker), Scarlet Alliance and SWOP NSW Sex work, Disability and Discrimination Survey (11 August 2025).

<sup>53</sup> Survey respondent (sex worker), Scarlet Alliance and SWOP NSW Sex work, Disability and Discrimination Survey (11 August 2025).

<sup>54</sup> Timothy Broady et al, *Stigma snapshot: Health care workers 2024* (6 September 2024) <https://doi.org/10.26190/unsworks/30442>.

<sup>55</sup> Direct Message from Anonymous Sex Worker in NSW to SWOP NSW, May 2024 (via Instagram).

<sup>56</sup> Survey respondent (sex worker), Scarlet Alliance and SWOP NSW Sex work, Disability and Discrimination Survey (11 August 2025).

Sex workers experience discrimination in the area of accommodation - both in short-term accommodation (e.g. hotels, Airbnb) and in residential tenancies. In a 2021 survey of Queensland sex workers, 95% of respondents identified discrimination in accommodation as a 'very important' issue.<sup>57</sup>

In most cases, sex workers operating from both residential rental accommodation or temporary accommodation like hotels go completely unnoticed, and are indistinguishable from other patrons or neighbours.

When sex workers use hotel rooms for work, this doesn't change the building's land use under planning laws - just like when people use hotels for business meetings or conferences. Similarly, non-sex work home-based businesses are usually able to operate from residential rental accommodation without additional approval.<sup>58</sup>

Despite this, SWOP NSW has received anecdotal reports of:

- sex workers in NSW being evicted from residential tenancies after their sex work has been discovered, despite not receiving any complaints about amenity impact.
- sex workers in NSW being charged higher prices for hotel accommodation, being asked to leave or otherwise treated poorly, despite behaving discreetly and not generating complaints or attention from other hotel guests.

To mitigate these impacts, the ADA must prohibit discrimination based on '**sex work activity**' in the area of accommodation (see **Recommendation 13** below).

**Recommendation 13:** That the ADA prohibits discrimination based on all **protected attributes** (including '**sex work activity**') in all currently recognised areas of public life (being work, education, provision of goods and services, accommodation and registered clubs).

## Extending Prohibited Areas of Discrimination

### Government functions and the administration of laws

Currently, the ADA only prohibits discrimination by government (e.g. local councils, state government departments, police and other workers in the criminal and civil legal systems) if they are providing a 'service.' This is confusing, as it can be unclear what counts as a 'service' and what doesn't. We believe that the ADA should clearly prevent all government discrimination.

SWOP NSW and Scarlet Alliance support the introduction of '**government functions and the administration of laws**' as a new prohibited area of discrimination. This would protect sex workers from discrimination by local government (councils), state government departments, and within prisons and the court system.

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<sup>57</sup> Respect Inc and DecrimQLD, Submission to the Queensland Human Rights Commission on the *Anti-Discrimination Act Review* (2 March 2022) 8, <https://www.qhrc.qld.gov.au/about-us/reviews/ada/submissions>.

<sup>58</sup> See 'Getting Approval for a Home Business,' *NSW Small Business Commissioner* (Web Page, 2023) <https://www.smallbusiness.nsw.gov.au/help/common-questions/getting-approval-for-a-home-business>.

## Discrimination by local government

Discrimination by local government is a significant issue for NSW sex workers. This mainly occurs through planning instruments (Local Environmental Plans).

Under NSW planning rules, there are two types of sex work workplaces:

- 'sex services premises' - businesses with 2 or more sex workers
- 'home occupations (sex services)' - individual sex workers operating from their own residence.

Planning laws discriminate against both types of sex work businesses by treating them differently from other businesses:

- 'Sex services premises' (SSP) are usually restricted to industrial areas,<sup>59</sup> or subject to strict rules (development control plans) that make it practically impossible, or unreasonably expensive to operate compliantly.<sup>60</sup>
- Unlike other home businesses, 'home occupations (sex services)' usually require permission from Council to operate.<sup>61</sup> Sex work home businesses are often restricted to industrial areas,<sup>62</sup> or prohibited altogether.<sup>63</sup>
- NSW Councils have refused SSPs and other sex work venues on the basis of potential criminal activity, public interest considerations or perceived amenity impacts with insufficient evidence.<sup>64</sup>

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<sup>59</sup> For example, Hornsby Council bans all home occupations (sex services), while sex services premises (SSPs) are only permitted in Zone E4 General Industrial: *Hornsby Local Environmental Plan 2013*, pt 2 (land use table 'Zone E4 - General Industrial') [https://legislation.nsw.gov.au/view/html/inforce/current/epi-2013-0569#pt-cg1.Zone\\_E4](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2013-0569#pt-cg1.Zone_E4); or Lithgow City Council, which permits both home occupations (sex services) and SSPs only in Industrial 4 Zone: See Lithgow City Council, *Policy 7.8 - Sex Services Premises and Home Occupation (Sex Services) Premises Requirements*, <https://council.lithgow.com/policies/sec7/Policy%207.8%20RestrictedAndSexServicesPremisesRequirements.pdf>.

<sup>60</sup> See e.g., 'Wollongong Council does not collect trade waste. Operators are to make their own arrangements for trade waste collection' *Wollongong Development Control Plan 2009*, Chapter C16: Sex Services Premises and Restricted Premises, [https://www.wollongong.nsw.gov.au/\\_data/assets/pdf\\_file/0030/8949/wollongong-dcp-2009-chapter-c16-sex-services-premises-and-restricted-premises-sex-shops.pdf&sa=D&source=docs&ust=1754022711193363&usg=AOvVaw0P3J7KjJYo\\_e5anj\\_2fcOH](https://www.wollongong.nsw.gov.au/_data/assets/pdf_file/0030/8949/wollongong-dcp-2009-chapter-c16-sex-services-premises-and-restricted-premises-sex-shops.pdf&sa=D&source=docs&ust=1754022711193363&usg=AOvVaw0P3J7KjJYo_e5anj_2fcOH).

<sup>61</sup> Rare exceptions include the Cities of Sydney and Uralla, which classify home occupation (sex services) as 'exempt development' that does not require consent to operate: *Sydney Local Environmental Plan 2012*, sch 2, <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2012-0628#sch.2-sec-oc.3>; *Uralla Local Environmental Plan 2012*, pt 2 (land use tables) <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2012-0119#pt>.

<sup>62</sup> For example, Camden Council only permits home occupation (sex services) in the General Industrial zone with consent (i.e. a development application is required): *Camden Local Environmental Plan 2010*, pt 2 (land use table 'Zone E4 - General Industrial') [https://legislation.nsw.gov.au/view/html/inforce/current/epi-2010-0514#pt-cg1.Zone\\_E4](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2010-0514#pt-cg1.Zone_E4).

<sup>63</sup> For example, Inner West Council prohibits home occupation (sex services) in all zones: *Inner West Local Environmental Plan 2022*, pt 2 (land use tables) <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2022-0457#pt>.

<sup>64</sup> See *Xiao Ping Ai v Newcastle City Council* [2004] NSWLEC 17 at [54], [81]; *Cirillo v Council of the City of Sydney* [2018] NSWLEC 1018 [52]-[62];



Research indicates that restricting SSPs to industrial zones that are ‘poorly serviced at night, with no public surveillance, poor lighting, and little or no public transport...raises safety issues for clients and workers.’<sup>65</sup> Introducing a new prohibited area of **‘government functions and the administration of laws’** is an essential step in preventing discrimination against sex workers by local councils.

### Discrimination by courts, police, or the legal system

*I’ve been discriminated against by police, who claimed that my sexual assault wasn’t legitimate because of my job. They refused to take a statement and were very obviously making fun of me away from where we were talking.*<sup>66</sup>

Introducing a prohibited area of discrimination of **‘government functions and the administration of laws’** is also necessary to prevent discrimination against sex workers within criminal and civil legal systems. Stigma and discrimination towards sex workers from and within government and legal institutions provides strong endorsement for stigma and discrimination within the wider community. It also forces us to avoid interacting with government and legal systems, limiting our access to justice and our rights to participate in public life.

Within the criminal legal system, sex worker victim-survivors are often disbelieved, perceived as undeserving of support or justice, and blamed or told to expect violence as a consequence of sex work.<sup>67</sup>

When the wider community receives the message that sex workers are acceptable targets for discrimination, particularly by law enforcement, sex workers become targets for perpetrators. Our vulnerability to violence is increased,<sup>68</sup> alongside our ability to report crime.<sup>69</sup>

Examples of discrimination faced by sex workers from police, courts, or the legal system include:

- Police denying reports from sex workers, advising that assaults will be too difficult to prove in court due to the nature of the complainant’s work, or failing to pursue reports<sup>70</sup>

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<sup>65</sup> Penny Crofts, ‘A Decade of Licit Sex in the City,’ (2006) 12(1) *Local Government Law Journal* 5, 11, <https://ssrn.com/abstract=2701634>;

See also Jason Prior et al, ‘Planning, Law, and Sexuality: Hiding Immorality in Plain View’(2013) 51(4) *Geographical Research* 354, <https://doi.org/10.1111/1745-5871.12033>.

<sup>66</sup> Survey respondent (sex worker), *Scarlet Alliance and SWOP NSW Sex work, Disability and Discrimination Survey* (11 August 2025).

<sup>67</sup> Antonia Quadara, *Sex Workers and Sexual Assault in Australia: Prevalence, Risk and Safety* (ACSSA Issues Paper No. 8, 2008) 19-25, <https://apo.org.au/node/985>;

Emma Brancatisano, ‘Why women in the sex industry are feeling “left out” of conversations on sexual violence,’ *SBS News* (27 March 2021) <https://www.sbs.com.au/news/article/why-women-in-the-sex-industry-are-feeling-left-out-of-conversations-on-sexual-violence/81y3xzzlz>.

<sup>68</sup> NSW Domestic Violence Death Review Team, *Report 2017-2019* Victorian Royal Commission into Family Violence Report and Recommendations (Report, vol V March 2016) 252-3, <http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>.

<sup>69</sup> *Sex Workers and Sexual Assault in Australia* (n 67) 20-25; “I Wouldn’t Call the Cops If I Was Being Bashed to Death” (n 33) 147, 149-51.

<sup>70</sup> For example, in 2023, a sex worker reported to SWOP NSW that a police officer investigating serious sexual assault accused her of “wasting police resources” after she disclosed she was a sex worker.

- A parent's sex work being a factor considered by the Family Court when making child custody decisions<sup>71</sup>
- Lenient sentencing for perpetrators of violence against marginalised sex workers.<sup>72</sup>

**Recommendation 14:** That the ADA prohibits discrimination in the area of **'government functions and the administration of laws.'**

## Exceptions

### Acts and practices of faith-based bodies

The ADA currently does not apply to 'act or practice of a body established to propagate religion that conforms to the doctrines of that religion.'<sup>73</sup> This exception is extremely broad - it allows religious groups to discriminate in ways that would be unlawful for anyone else. The ADA also provides broad exceptions for:

- aged care providers<sup>74</sup>
- faith-based organisations providing adoption services<sup>75</sup>
- 'private educational authorities' to discriminate in the areas of work and education.<sup>76</sup>

Many essential services like schools, aged care homes, food banks and crisis support services are run by faith-based organisations. These organisations provide services reaching many of NSW's most marginalised communities. Many of these services, including aged care, adoption services and educational institutions, receive significant state and federal funding, yet are still permitted to discriminate against the communities they claim to serve.

Scarlet Alliance and SWOP NSW believe that organisations receiving public funding should not be permitted to discriminate in work, education or the provision of goods and services. These exceptions undermine NSW's commitment to inclusivity and safety for LGBTQI+ people, and create barriers for many marginalised communities to access support and practical assistance.

<sup>71</sup> Janelle Koh, 'Sex worker parents in the Family Court: sex workers first, parents second?' *Carr & Co* (Web Page, 8 November 2021)

<https://carrco.com.au/2021/11/sex-worker-parents-in-the-family-court-sex-workers-first-parents-second/>.

<sup>72</sup> Australian Associated Press, 'Sex workers "devastated" by "lenient" sentence for student who killed two women in 24 hours in Melbourne,' *The Guardian* (7 November 2024)

<https://www.theguardian.com/australia-news/2024/nov/07/student-who-killed-two-women-in-24-hours-in-melbourne-sentenced-to-nine-years-jail-ntwnfb>.

<sup>73</sup> *Anti-Discrimination Act 1977* (NSW) s 56(d).

<sup>74</sup> *Ibid* s 59.

<sup>75</sup> *Ibid* s 59A.

<sup>76</sup> See e.g. *Ibid* s 38K(3); 38C(3)(c).



**Recommendation 15:** That the ADA:

- repeals the exception permitting discrimination by any 'act or practice of a body established to propagate religion' (s 56(d))
- repeals the exception permitting discrimination by aged care providers (s 59)
- repeals the exception permitting discrimination by faith-based adoption services (s 59A)
- repeals all provisions permitting private educational authorities to discriminate in the areas of work and education.

## Anti-Vilification Protections

As noted in the initial stages of this review, sex workers experience high levels of vilification.<sup>77</sup> This is supported by 2020 research from the UNSW Stigma Indicators Monitoring Project, which found that 64% of the general public self-reported likely negative behaviour towards sex workers.<sup>78</sup>

SWOP NSW often receives reports of vilification against NSW sex workers. One service user reported:

*There is a strange ritual in the Illawarra for a certain group of young men and disturbingly in the last decade young women. It is to go to... Port Kembla... and throw eggs and McDonalds leftovers at the sex workers.*

*Cars with P plates are to be avoided at best... It's a dangerous and aggressive experience. Sometimes there are confrontations and also accidents.*<sup>79</sup>

The anti-vilification protections in the ADA are **civil protections**. This means that:

- this type of vilification is not a crime
- police do not enforce these laws - they are resolved through complaints to Anti-Discrimination NSW.

However, civil anti-vilification protections prohibit hateful conduct, and send a message to the community that bigotry and exclusion are unacceptable.

Scarlet Alliance and SWOP NSW believe that significant reform is required in order to provide comprehensive and accessible civil anti-vilification protections in NSW:

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<sup>77</sup> ACON, Preliminary Submission PAD44 to the NSW Law Reform Commission *Anti-Discrimination Act Review* (September 2023) 7;  
Respect Inc, Preliminary Submission PAD57 to the NSW Law Reform Commission *Anti-Discrimination Act Review* (29 September 2023) 1;  
Scarlet Alliance, Preliminary Submission PAD74 to the NSW Law Reform Commission *Anti-Discrimination Act Review* (6 October 2023) 5-6;  
SWOP NSW, Preliminary Submission PAD77 to the NSW Law Reform Commission *Anti-Discrimination Act Review* (September 2023) 7,  
<https://lawreform.nsw.gov.au/current-projects/anti-discrimination-act-review/preliminary-submissions.html>.

<sup>78</sup> Timothy Broady et al, *Stigma Indicators Monitoring Project: Summary Report Phase Two* (May 2020), <https://doi.org/10.26190/5ebca29f38662>.

<sup>79</sup> Direct Message from Anonymous Sex Worker NSW to SWOP NSW, July 2024 (via SWOPConnect).



- The ADA currently requires people making vilification complaints to prove that someone was trying to 'incite' hatred - which means encouraging other people to hate or harm. This is difficult to prove. We want the ADA to also cover conduct that is 'reasonably likely to offend, insult, humiliate, intimidate or ridicule a person with a protected attribute' (also known as a harm-based test)<sup>80</sup>
- The ADA should explicitly state that 'public act' includes public online conduct, broadcasting and public conduct that is visible from private land,<sup>81</sup> and
- Civil anti-vilification protections should extend to **all protected attributes** (i.e., the same attributes should be protected from both discrimination and vilification).<sup>82</sup>

**Recommendation 16:** That the ADA:

- Expands the test for vilification to state that vilification may include incitement of hate or conduct that is 'reasonably likely to offend, insult, humiliate, intimidate or ridicule a person with a protected attribute'
- Explicitly states that a 'public act' includes public online conduct, broadcasting and public conduct that is visible from private land.
- Expands anti-vilification protections to all **protected attributes**, including '**sex work activity.**'

## Sexual Harassment Protections

NSW sex workers experience significant barriers to reporting sexual harassment, including:

- Complex regulatory environment - many sex workers are self-employed or independent contractors. Even with recent changes expanding sexual harassment protections available via Fair Work and Workplace Health and Safety mechanisms, most sex workers and business owners don't understand how these laws work or how to access them.
- Access and information barriers for migrant workers
- Precarity and sham contracting
- Stigma and misunderstanding - many workers, business operators, clients, regulators and the wider community assume that because sex work involves sexual content, sexual harassment is just 'part of the job.' While sexual conversation and activity are normal parts of sex work, harassment is never acceptable.<sup>83</sup>

<sup>80</sup> This language is used in the tests for the Commonwealth civil prohibition against offensive behaviour based on race, and the Tasmanian and Northern Territory tests for prohibited conduct based on a protected attribute: *Racial Discrimination Act 1975* (Cth) s 18C(1)(a); *Anti-Discrimination Act 1988* (Tas) s 17(1); *Anti-Discrimination Act 1992* (NT) s 20A.

<sup>81</sup> This could be achieved through harmonisation with the definition of 'public act' in NSW criminal vilification offences: see *Crimes Act 1900* (NSW) s 93Z (definition of 'public act').

<sup>82</sup> This is currently the case in the Northern Territory: *Anti-Discrimination Act 1992* (NT) s 20A.

<sup>83</sup> SWOP NSW, Submission No 347 to the Australian Human Rights Commission, *National Inquiry into Sexual Harassment in Australian Workplaces* (26 February 2019), <https://humanrights.gov.au/our-work/sex-discrimination/national-inquiry-sexual-harassment-australian-workplaces-submissions>.



To access the benefits of decriminalisation and realise our workplace rights, sex workers need accessible avenues of recourse for sexual harassment. Scarlet Alliance and SWOP NSW support the approach of Queensland and Northern Territory anti-discrimination legislation, which prohibits sexual harassment by any person at any time.<sup>84</sup> This would:

- allow an additional avenue for complaints from people who may have access barriers to workplace sexual harassment processes
- provide a complaints avenue for people who experience sexual harassment in all areas of life, including in education, social settings and harassment in public spaces.

**Recommendation 17:** That the ADA includes a general prohibition against sexual harassment.

## Other Matters

*SWOP NSW or Scarlet Alliance being able to make a complaint on my behalf is essential for me - otherwise I would not be able to report discrimination especially where there is a power imbalance, e.g. police. I would like [these organisations] to also be able to take forward complaints where there is repeated discrimination or vilification against sex workers as a group.*<sup>85</sup>

While acknowledging this will be addressed in the next phase of the ADA review, SWOP NSW and Scarlet Alliance note the significant barriers for sex workers in accessing anti-discrimination protections in NSW. Additional reform will be required to ensure that:

- Anti-Discrimination NSW can accept **representative complaints**. Organisations (such as SWOP NSW, Scarlet Alliance or other peer-based or community organisations) should be able to make complaints on behalf of sex workers (with their permission). This would help sex workers who are afraid to make complaints in their own names.
- Anti-Discrimination NSW can accept **pseudonymous complaints**. Sex workers should be able to make complaints without giving their real names to the people who discriminated against them. This would protect sex workers' safety and privacy.

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<sup>84</sup> *Anti-Discrimination Act 1991* (Qld) s 118; *Anti-Discrimination Act 1992* (NT) s 22. Including a similar blanket sexual harassment prohibition in the *Sex Discrimination Act 1984* (Cth) was also recently recommended by the Australian Law Reform Commission (ALRC): ALRC, *Safe, Informed, Supportive: Reforming Justice Responses to Sexual Violence* (Final Report No. 143, January 2025) 39 (Recommendation 49), <https://www.alrc.gov.au/publication/jrsv-report-143/>.

<sup>85</sup> Survey respondent (sex worker), *Scarlet Alliance and SWOP NSW Sex work, Disability and Discrimination Survey* (11 August 2025).