

**NSW Law Reform Commission | Review of the
*Anti-Discrimination Act 1977 (NSW)***

Coalition Against Trafficking in Women Australia

www.catwa.org.au



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CATWA: Who we are

The Coalition Against Trafficking in Women Australia (CATWA) is the Australian branch of CATW International, a Non-Governmental Organisation that has Category II consultative status with the United Nations Economic and Social Council. It works locally and internationally to end all forms of sexual exploitation of women, especially in relation to issues of prostitution and trafficking in women. CATWA has been operational in Australia for over 30 years, offering expert insights into the diverse models of prostitution legislation across states and territories, and internationally. CATWA has cultivated a comprehensive understanding through decades of observation of the prostitution system, in order to monitor the impacts of legislation related to prostitution and sex trafficking in Australia.

We appreciate the opportunity to contribute to the NSW Law Reform Commission's call for input into its Review of the *Anti-Discrimination Act 1977* (NSW), and we would be happy to provide evidence in person at relevant hearings.

About this submission

In this submission, we focus on aspects of the *Anti-Discrimination Act 1977* (NSW) that relate to our organisation's expertise: trafficking and the sexual exploitation of women and girls. This section presents our recommendations, providing a brief overview of each in turn. The remainder of this submission details those recommendations.

- 1. Strengthen the sexual harassment provisions under the ADA through the introduction of a positive duty on employers, and extend them to prohibit subjecting someone to a workplace that is hostile on the ground of sex, in line with recent changes to the Commonwealth *Sex Discrimination Act 1984*.**
 - Australia is beginning to take sexual harassment more seriously
 - The Respect@Work report 2020 and subsequent legislative and policy change at the federal level have strengthened legal protections against sexual harassment
 - It is important that the NSW Act takes a similarly strong approach to sexual harassment, as a deterrent and a pathway for restitution
 - These policy and legislative shifts - and the cultural shifts they reflect - are incompatible with the sex industry

- 2. Recognise that legal protections against sexual harassment are incompatible with the sex industry, but do not allow this to become grounds to weaken these protections.**
 - Sexual harassment is inherent in the sex industry

- Although proponents argue that workers' 'consent' negates harassment, consent in the sex industry is rarely freely given, and always murky
- Despite the fact that the existence of the federal SDA and NSW ADA give rise to questions about whether sex industry businesses should exist, this should not be a deterrent to strengthening these provisions
- The Australian Human Rights Commission and Anti-Discrimination NSW should be aware of the incompatibility of the sex industry with the legislation they have responsibility for.

3. In spite of the significant harms faced by women in the sex industry, do not introduce 'sex work' as a new protected attribute.

- 'Sex work' and 'sex worker' are contested, controversial terms.
- Industry advocates tend to use the term expansively to cover anyone working in the sex industry, including those who exploit and harm women in the sex industry.
- Calls to add 'sex work' as a protected attribute are designed to normalise the sex industry.
- Abuse of women in the sex industry should not be normalised.
- People exploited in the sex industry experience elevated harms and risks to their psychological and physical health. It is important that it is lawful to raise concerns about the industry.
- The call to add 'sex work' to any list of protected attributes is designed to silence legitimate criticism of the sex industry.

4. Extend the sexual harassment provisions under the ADA to include sex-based harassment, and retain sex as a protected characteristic.

- The commercial sex trade is a central site of sex- and gender-based violence against women and girls, and is a socialising force that creates and maintains women's and girls' second-class status.
- The abuse of women and girls in the sex industry is predicated on sexual objectification of their bodies and has material impacts on their wellbeing, including sex-specific impacts such as reproductive health.
- It is also predicated on gendered understandings of men's dominance and entitlement to sex.
- Full decriminalisation of the sex industry (and the dominant ideological framing of "sex work" as a legitimate occupation) is a cause and consequence of sex-based violence against women and girls.

5. Recognise that sex industry advertising is questionable under the ADA, but continue to uphold advertising standards.

- The current provision under the ADA that makes it unlawful for advertisements to indicate a contravention of the ADA, should be retained.
- Arguably, any sex industry advertising should be prohibited under the ADA, as it advertises sexual harassment, sex-based inequality and workplaces that are hostile on the ground of sex (proposed amendment).
- Sex industry advertising is also frequently demeaning with regard to race.
- Much sex industry advertising blatantly or indirectly contravenes the ADA or the spirit of the ADA.
- Despite this contradiction, the ADA plays an important role as a backstop, and by setting a cultural standard for advertisers and the community.

Recommendations in full

1. Strengthen the sexual harassment provisions under the ADA and extend them to prohibit subjecting someone to a workplace that is hostile on the ground of sex, in line with the Commonwealth Sex Discrimination Act 1984

The sex industry is a site of sexual harassment, unsafe work practices and sexual violence (UNHRC 2014). Women in the sex industry are among some of the most marginalised workers in Australia. This is due to a range of factors. These include the fact that:

- They often belong to social groups facing discrimination, such as First Nations and migrant women;
- They frequently have complex health, mental health, and substance dependency challenges;
- They have often been victims of, or continue to experience, intimate partner violence, child sexual abuse, and other forms of violence against women;
- They are almost always economically marginalised and facing precarious work conditions;
- The sex industry is a major site of trafficking inflows in Australia, meaning that many women in the industry have experienced significant trauma, have little access to services and support, and are subject to controls on their movement and income (Davidson et al., 2019; Project Respect 2017; Renshaw, 2015; Tyler and Jovanovski 2018; United States Department of State 2019; Wahine Toa Rising & CATWA 2020).

As such, protections in relation to workplace safety, and especially sexual harassment, are particularly critical for women in the sex industry. Ensuring NSW has a strong legal safety net for its most marginalised workers and communities should be at the centre of legislative development and policymaking.

Sexual harassment is acutely harmful to victims, witnesses, their families and loved ones (AHRC 2022). It is a highly gendered issue, with women disproportionately victims and men disproportionately perpetrators (AHRC 2022). Women facing intersecting forms of oppression - such as First Nations women, women with disability, or culturally and racially marginalised women - are at greater risk of being targets of sexual harassment, and precarious work conditions can make certain women more vulnerable (AHRC 2025). Women in the sex industry are particularly exposed.

Sexual harassment has been the focus of significant policy and legislative change in the past five years. Since the Respect@Work report was released in 2020, the federal government has implemented significant changes. These have included changes to the *Sex Discrimination Act 1984 (Cth.)* (SDA), most notably introducing a positive duty (AHRC 2023). This requires employers to proactively work to prevent sexual harassment in their workplaces, shifting the focus from response to also encapsulate prevention. Additionally, a ban on hostile workplaces on the basis of sex was also introduced to the SDA (amongst other changes to the SDA and the *Fair Work Act 2009*).

Changes to the NSW ADA should mirror changes at the federal level, including the introduction of a positive duty to prevent sexual harassment. This should be done not only to harmonise laws at the state and federal level, but also given that the changes to the SDA were based on extensive expert investigation, review and emerging knowledge of good practice. The NSW ADA has a variety of functions. It sets a standard about what the state sees as appropriate, it acts as a deterrent to unlawful actions, it prompts employers to meet a minimum standard of safety for their employees, and it provides a restitution pathway for victims of sexual harassment. As such, it is important that the NSW ADA takes a similarly strong approach to sexual harassment as the federal SDA.

2. Recognise that legal protections against sexual harassment are incompatible with the sex industry, but do not allow this to become grounds to weaken these protections

Sexual harassment is at the core of the sex industry. Sex buyers (predominantly men) purchase access to the bodies of those selling sex (predominantly women) (EU Parliament 2023; UNHRC 2024). Women in the industry are consistently treated as objects, without

any regard to their humanity (EU Parliament 2023; Jovanovski and Tyler 2018; Project Respect 2017; Tyler and Jovanovski 2018; UNHRC 2024). They endure behaviours and treatment that in any other industry would be considered sexual harassment (Jovanovski and Tyler 2018; Tyler and Jovanovski 2018). Importantly, while sexual harassment is inherent to the sex industry, this does not mean it is right, acceptable or something those in the industry should put up with. On the contrary, the fact that sexual harassment is at the heart of the sex industry demonstrates how problematic the industry *is*.

Evidence shows that the sex industry is rife with objectifying and degrading attitudes towards women. It is also a significant site of violence against women, including sexual violence (EU Parliament 2023; UNHRC 2024). Research, backed by accounts from frontline and outreach services, shows that prostitution causes grave physical and psychological harm to women involved, with prostituted people more than twice as likely to develop post-traumatic stress disorder as war victims (Farley et al. 2003, 2022). Women in the industry experience repeated sexual and physical violence. Indeed, evidence demonstrates that male buyers actively seek harmful sexual practices in the sex industry, with men actively seeking to violate and enact violence on women in prostitution (Jovanovski and Tyler 2018; Project Respect 2017; Tyler and Jovanovski 2018). Research into online communities of sex buyers demonstrate that women are frequently pressured into unsafe sexual practices, with attempts for women to assert boundaries or practice safe sex repeatedly undermined by sex buyers (Jovanovski and Tyler 2018; Tyler and Jovanovski 2018). The same research demonstrates extreme levels of objectification, with buyers “referring to women as body parts or objects (e.g., “public toilets”) and intimating both pressurized and overt forms of sexual violence against women” (Jovanovski and Tyler 2018: 1905). Women who have been trafficked into prostitution face additional forms of violence and exploitation. This evidence demonstrates that sexual harassment and sexual harm are rampant throughout the sex industry.

‘Consent’ in the sex industry does not erase its harms. Proponents of the sex industry, including industry lobby groups and supporters, emphasise the role of ‘consent’ (Patten, 2021; Scarlet Alliance, 2025). They argue that the fact that women in the industry ‘consent’ to the sex acts and treatment done to them erases any harassment or harm. This is simply not true. Women in the sex industry are overwhelmingly there out of necessity (EU Parliament 2023; UNHRC 2024; Wahine Toa Rising & CATWA 2020). Due to a lack of options, coercion, substance dependency and other complex reasons, women in the sex industry rarely freely choose to participate in it (EU Parliament 2023; UNHRC 2024). Moreover, women in the sex industry do not freely give consent to the sex acts or treatment they receive. It is always bought. This exchange of money undermines any notion of active consent. As summarised by the European Parliament (2023), consent can only be truly given when there is no power imbalance and no use of threats, violence, deception, or

coercion. In trafficking cases in particular, international law recognises that consent is irrelevant. This is because the Palermo Protocol (which governs trafficking in international law) recognises that where exploitation takes place, consent cannot erase harm (Schloenhardt and Bowcock 2015). This concept applies equally to the sex industry more broadly.

Central to the definition of sexual harassment in the NSW ADA is that the conduct was unwelcome. Where a sex act requires financial coercion to take place, where refusal to pay for that 'service' effectively constitutes rape (as 'consent' was conditional on exchange of money), and where women in the industry are frequently treated as subhuman and are victims of misogyny and racism, the sexual behaviours cannot be classed as 'wanted'. While CATWA recognises that there are many hurdles to women in the industry accessing justice via the NSW ADA, it is critical that the legislation maintains a firm line, regardless of the clear incompatibility with the sex industry as a practice. Hurdles to women in the industry accessing justice via this route include:

- Low socio-economic status, being a victim of violence, experiencing substance dependency issues, and belonging to a marginalised community;
- Precarious work conditions and visa statuses, workplace-related coercion and abuse;
- Dissociation and psychological survival techniques that prevent acknowledgement of harms at the time they are experienced;
- Lack of awareness of legal options, or resources to pursue them;
- Conflict between the sex industry as a source of income (where often other options do not exist) and the sex industry as a site of grievous harm (EU Parliament 2023; Davidson et al. 2019; Project Respect 2017; Renshaw, 2015; UNHRC 2024; United States Department of State 2019; Wahine Toa Rising & CATWA 2020).

In spite of these barriers to accessing justice via the NSW ADA and other legal pathways, it is important that the ADA holds space for this marginalised community, should its members ever wish to pursue justice via this route. Additionally, should a woman exploited in the sex industry seek restitution via the ADA, it is vital that Anti-Discrimination NSW recognises the very real harm that sexual harassment in the sex industry can cause. The incompatibility of the sex industry with the current NSW ADA, and with any potential strengthening of the Act, should not be a deterrent to improving protections against sexual harassment.

Sex industry businesses unequivocally constitute workplaces that are 'hostile on the ground of sex'. Despite this irrevocable fact, the NSW ADA should be strengthened to prohibit anyone being subjected to such a workplace. The evidence above clearly demonstrates that sex industry workplaces are gendered, dangerous, replete with sex-

based and sexual harms, and sites of extreme misogyny and the objectification of women. Recognising such workplaces as unacceptable, and as incompatible with broader legal, policy and social conceptions of gender equality and women's safety,¹ is crucial to making NSW - and Australia more broadly - fairer and more equal. Even though it is unlikely that women in the sex industry will seek to address the unacceptable conditions of sex-based hostility in their workplaces through the NSW ADA, leaving this possibility open - and being receptive should it ever arise - are important steps towards justice for women in the industry.

3. In spite of the significant harms faced by women in the sex industry, do not introduce 'sex work' as a new protected attribute.

'Sex work' and 'sex worker' are contested, controversial terms (EU Parliament 2023). Many survivors of the sex trade reject this language as sanitising their experiences of sexual exploitation and abuse (EU Parliament 2023; SPACE International 2025; UNHRC 2024; Wahine Toa Rising and CATWA 2020). They advocate for language such as 'prostituted person', 'survivor', 'sex trade' and 'sex industry', which more closely align with their experience and with the overwhelming evidence demonstrating the harms of the industry. Moreover, the way that 'work' in the sex industry is structured and experienced aligns with many of the criteria for the International Labor Organization's conception of 'unacceptable forms of work' (Tyler 2020). It undermines human dignity and should not be understood as a legitimate form of work (Tyler 2020).

The term sex work is more frequently used by industry advocates, including those who profit from sexual exploitation (Patten 2021; Scarlet Alliance 2025). Industry advocates tend to use the term expansively to cover anyone working in the sex industry. This may include pimps, brothel owners and others who sexually exploit and harm women in the sex industry.

Calls to add 'sex work' as a protected attribute under the ADA are designed to normalise the sex industry (Scarlet Alliance 2022). Yet, the abuse and sexual objectification of women that the sex industry is predicated on should not be normalised. People exploited in the sex industry experience elevated harms and risks to their psychological and physical health. It is important that it is lawful to raise concerns about the industry and to act on the known harms and risks associated with it. Advocates who support introducing 'sex work' as a

¹ Australia has a range of legislative and policy approaches, across various jurisdictions, to address gender inequality and violence against women and girls. Examples in the policy space include (at the federal level) the 'National Plan to End Violence against Women and Children 2022-2032', or the 'NSW Women's Strategy 2023-2026' at the state level in NSW. Legislative approach include the *Sex Discrimination Act 1984 (Cth.)* or the *Gender Equality Act 2020 (Vic.)*.

protected attribute under anti-discrimination legislation often invoke healthcare as an area where 'sex workers' experience 'stigma' (Scarlet Alliance 2022). While this is no doubt true in some cases, examples provided include treatment whereby healthcare workers identify 'sex work' as dangerous to an individual's health and mental health, and ask medical questions in relation to this (Scarlet Alliance 2022). Advocates use examples such as this to suggest that 'sex work' be added as a protected attribute in discrimination law, so that 'sex workers' who experience these kinds of medical enquiries can seek legal redress. Given the very real, known health and mental health implications of being exploited in the sex industry, it is vital that healthcare workers are protected to provide adequate care. The call to add 'sex work' to any list of protected attributes is designed to silence legitimate criticism of the sex industry and to shut down professional enquiries that recognise the harms of the sex industry.

4. Extend the sexual harassment provisions under the ADA to include sex-based harassment, and retain sex as a protected characteristic.

The sex industry is structured around power differentials and stereotypes in relation to both sex and gender. International and multilateral bodies are increasingly recognising that the sex industry normalises the concept that women's and girls' bodies must be for sale in order to satisfy the male demand for sex, and that men must have a right to sexual access to women (EU Parliament 2023). In this way, the exploitation perpetrated in the sex industry is largely (though not always) a combination of both sex- and gender-based factors. Sex, in that it is access to women's and girls' bodies that is predominantly purchased. And gender, in that assumptions about femininity and women's (and men's) sexuality drive the purchase of sex and the treatment of women in the industry.

Sexual exploitation and sex trafficking is a form sex-based violence against women and girls and one of today's most pervasive human rights abuses. Globally, the vast majority of victims of all forms of sexual exploitation and sexual servitude are women and girls (TIP Report 2021). The sex trade - including all of its various arms - is universally reserved for the world's most marginalised women and girls. Women and girls' sex-based inequality in the sex trade can include direct and material forms of violence as well as other embodied and coercive variants of harm. Coercive harm often stems from intersecting inequalities that compound gender oppression. In Australia, it is Asian women marginalised by race, ethnicity and migration status who make up the majority of those in the commercial sex industry (Renshaw et al. 2015). One study estimates over 90% of women in Sydney's illicit massage businesses are from Asian backgrounds (Davidson et al. 2019). Asian women in Australia's sex industry are more likely to work longer hours, see more clients, and live onsite at a brothel, as well as being less likely to be able to enforce condom use (Davidson et al. 2019). Due to low levels of English language, these women are less able to negotiate with clients, access support services, and report violence or assault (Renshaw et al. 2015).

Although there are many barriers to women in the sex industry being able to access justice through the ADA, it is imperative that the relevant provisions are retained and strengthened. The above shows how extreme and harmful discrimination and ill-treatment on the basis of sex can be. The commercial sex trade is a central site of sex- and gender-based violence against women and girls and a socialising force that creates and maintains women girls' second-class status (EU Parliament 2023; UNHRC 2024). The abuse of women and girls in the sex industry is predicated on sexual objectification of their bodies and has material impacts on their wellbeing, including sex-specific impacts such as reproductive health (UNHRC 2024). It is also predicated on gendered understandings of men's dominance and entitlement to sex. Full decriminalisation of the sex industry (and the dominant ideological framing of "sex work" as a legitimate occupation) is a cause and consequence of sex-based violence against women and girls. The sex-based aspects of the ADA, such as the inclusion of sex as a protected characteristic, and the proposed inclusion of sex-based harassment, retains salience. The sex industry is simply one example of where ill-treatment on the basis of sex (not just gender) is prevalent.

5. Recognise that sex industry advertising is questionable under the ADA, but continue to uphold advertising standards.

The current provision under the ADA that makes it unlawful for advertisements to indicate a contravention of the ADA should be retained. In light of the above evidence in this submission, it is arguable that any sex industry advertising should be prohibited under the ADA (especially if relevant provisions are strengthened), given that:

- It advertises access to sexual harassment
- It advertises workplaces that are hostile on the basis of sex (proposed amendment)
- It advertises access to sex-based harassment (proposed amendment).

Not only is sex industry advertising problematic on the grounds of sex, but often it is demeaning with regard to race (Street and Norma 2016). Racial stereotypes and the fetishisation of race is often invoked to sell sex (Street and Norma 2016). Much sex industry advertising blatantly or indirectly contravenes the ADA or the spirit of the ADA.

However, although there already exists this contradiction between the law as it stands and the sex industry, the ADA plays an important role as a backstop, and by setting a cultural standard. Retaining advertising standards in relation to anti-discrimination sends an important message to advertisers and the community about what is acceptable. Setting this cultural and legal standard for advertising remains important, regardless of whether women exploited in the sex industry are able to meaningfully access legal redress.

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