

# DISCRIMINATION IN WAGE SUBSIDY SCHEMES

Eros Association Report  
November 2020

## **ABOUT EROS**

With over 25 years of experience in providing services and advocacy to adults-only businesses, the Eros Association is Australia's longest serving adult industry association. Eros is an incorporated, not-for-profit membership-based organisation.

The core focus of the Eros Association is ensuring members success through a combination of professional representation, education, advocacy and service provision.

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## **ABOUT THE AUTHORS**

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## EXECUTIVE SUMMARY

This report summarises the experiences of Eros Association members in accessing Federal wage subsidy schemes designed to incentivise employment.

The identified source of discrimination is the jobactive Deed 2015-2022 which explicitly excludes “*employment, including a retail position, involving nudity or the sex industry*”.

Our findings suggest that adult retailers and wholesalers, viable employers within the Australian economy, are being excluded under Federal policy despite offering positions far removed from “nudity and the sex industry”.

Employment Services Providers are often not aware of the exclusion of adult retail and wholesale businesses, frequently approaching members to place jobseekers and promising eligibility under Federal wage subsidies.

There are no explicit explanations why adults-only businesses are excluded under Federal schemes. However, some possible reasons are:

- A misunderstanding by the Department of Education, Skills and Employment regarding the status of sex workers and adult entertainers, which are most commonly independent contractors and *not* employees.
- A mistaken belief that adult retail and wholesale employment involves sexually explicit acts or nudity.
- Moral objections to adult-oriented businesses.

**Eros recommends a review of the current jobactive Deed 2015-2022 to expand the definition of eligible employers to include adult retailers and wholesalers.**

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## INTRODUCTION

Adults-only retailers (sometimes referred to as “sex shops” or “erotic shops”) have been a key feature of the Australian economy since the mid-20<sup>th</sup> century.

The first Australian adults-only wholesaler was launched in 1972,<sup>1</sup> and by 1986 there were around 150 adult retailers in Australia.<sup>2</sup>

In 2020, it is estimated that there are over 1,000 adult retail stores operate in Australia making the industry a significant employer.

The Eros Association, Australia’s adult industry association, currently has a membership of over 170 businesses, many of which operate several adult retail stores.

Adult retail stores in Australia have changed their primary product line over time. Whilst in the 1990s most sales consisted of adults-only videos and magazines, now the primary adult retail products are “female pleasure products” including vibrators and other adult toys.

Adult retailers are a widely accepted part of the Australian economy,<sup>3</sup> having far surpassed their previously “sleazy” or stigmatised reputation.

Despite this, Australian adult retailers and wholesalers still experience frequent discriminatory practices based on industry type.<sup>4</sup> With an increasingly common complaint being exclusion from Federal wage subsidy schemes.

The following draws on the experiences of Eros Association membership in their encounters with job service providers and exclusion from Federal subsidy schemes.

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## WAGE SUBSIDY SCHEMES

Federal Wage Subsidy Schemes provide funding for employers who hire job seekers registered with general Employment Service Providers or Disability Employment Service Providers.

These schemes provide funding of up to \$10,000 for general job seekers,<sup>5</sup> and \$1650 for job seekers living with a disability,<sup>6</sup> if employers hire and retain those eligible for the scheme.

Eligibility for wage subsidies is subject to conditions under the jobactive Deed 2015 – 2022, which connects job seekers with potential employers through employment service providers.

Under the current Deed the definition of ‘Non-Payable Outcome’ states the following as ineligible for subsidy:

*“(a) Employment, **including a retail position**, involving nudity or in the sex industry”*

This clause excludes adult retailers and wholesalers from wage subsidies. The definition is echoed in the definition of an unsuitable vacancy under the Deed which includes:

*“a position, **including a retail position**, involving nudity or in the sex industry”*

In the first iteration of the Deed, the phrase “including a retail position” was not present. However, this clarification was added in 2016 seemingly to explicitly exclude the adult retail industry.

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1. Claredale Holdings, launched by John Conroy.
  2. Full history of the industry available via the Sex69 Project:  
<https://www.sex69project.com/history.php>
  3. Paul Maginn and Christine Steinmetz, ‘Sex in the city: the changing face of adult retailing’ 5 September 2011  
<https://theconversation.com/sex-in-the-city-the-changing-face-of-adult-retailing-3083>
  4. See Jarryd Bartle, ‘Financial Discrimination Against Adults-Only Businesses’ Eros Association Reports October 2017  
[https://www.eros.org.au/wp-content/uploads/2018/10/Financial\\_Discrimination\\_Report\\_2017.pdf](https://www.eros.org.au/wp-content/uploads/2018/10/Financial_Discrimination_Report_2017.pdf)
  5. Commonwealth Wage Subsidy Scheme  
<https://business.gov.au/grants-and-programs/Wage-subsidies>
  6. Commonwealth Disability Support Scheme  
<https://business.gov.au/grants-and-programs/Wage-Subsidy-Scheme>

## MEMBER EXPERIENCES

The Eros Association has selected 8 members in its records who have been excluded from Wage Subsidy Schemes for analysis.

Of the members selected, 6 are adult retailers whilst 2 are adult wholesalers.

Most involved clients of Employment Service Providers (7), however one was a client of a Disability Employment Service.

These records were analysed to identify the circumstances leading up to exclusion along with details of a resolution (if relevant).

The aim of this analysis was to provide a narrative of member experiences with wage subsidy discrimination.

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### **Placement of Job Seekers**

Most members (7 on record) were approached by an Employment Service Provider in order to place a job seeker, who made promises regarding wage subsidies.

Of these, five sought clarification from the Employment Service Provider regarding eligibility before hiring the employee, whilst two hired the employee on assurances by providers that they were eligible.

#### **Correspondence from Eros Adult Retail Member to Department of Employment:**

*We have two stores in South Australia and have recently advertised for positions vacant.*

*The advertisement was placed with Seek for a retail shop assistant.*

*We had many applicants. One of them was from a young woman who is 23 years old and has had retail experience in our industry with another shop. This particular shop closed approximately 2 years ago.*

*During her interview I asked if she was placed with job active. She replied that she was, but was advised by her case worker that "this type of job" doesn't qualify for any subsidies.*

*For many years both our staff and ourselves have had to endure people's opinions about owning/working "in one of those type of shops "*

*Can someone please explain why we being discriminated against?*

### **Outcome**

Of the five who sought clarification from the providers, all were told that they were ineligible for wage subsidies. In only three cases were job seekers hired despite not being eligible for wage subsidies.

Amongst the two members who hired the job seekers on assurances of Employment Service Providers, one member was subsequently told they were ineligible, but retained the job seeker anyway. This member was only told it was a "non-payable outcome" after two invoices were due for the scheme.

Another member entered into dispute resolution processes with the Employment Service Provider over misleading assurances and was awarded compensation as a result.

#### **Correspondence from Employment Service Provider to Eros Adult Retail Member:**

*We have further investigated this matter and sought clarification and can confirm that we are not able to assist with a Wage Subsidy offer on this occasion.*

*As the Wage Subsidy program is Government funded there are strict guidelines governing the eligibility criteria, this includes the nature of the industry relating to the employment position.*

*Unfortunately [X]'s position with your business is classified as ineligible due to the employment being involved in the sex industry, the exact wording from the guidelines is "employment in the sex industry or involving nudity, including retail positions". We have discussed this with the governing body and clarified that an adult store is classified as being involved in the sex industry.*

*We apologise that we are unable to assist but unfortunately, we must ensure all wage subsidy agreements adhere to the relevant guidelines.*

#### **Key Themes**

One key theme from our analysis of Eros' records is a lack of understanding amongst Employment Service Providers and Disability Employment Service Providers of eligibility for wage subsidy schemes and exclusion of the industry.

Providers frequently approached members seeking to place job seekers despite the exclusion. Indeed, working in adult retail / wholesale appears to be popular amongst job seekers, with the exclusion from wage subsidy schemes acting as a barrier to employment.

#### **Correspondence from Employment Service Provider to Eros Adult Retail Member:**

*As I am new to the industry I was not aware of the government guidelines, and that is that we cannot offer support to anyone in the sex industry even though it is retail. I am on your side and feel that it is not fair, but it is in the guidelines of our DEED (Which is our laws on employment services)*

*I am so sorry to offer something I should never have offered.*

*You have my sincerest apology and I never meant to offend in any way at all, you have a great business in our local area*

## **RATIONALE FOR EXCLUSION**

Despite frequent correspondence with the Department of Employment, Eros is yet to receive an adequate explanation as to why adult retail and wholesale is excluded from wage subsidy schemes.

It is not uncommon for government funding to be subject to limitations due to moral concerns.

In regard to wage subsidies, government statements sometimes hint at excluding businesses to avoid "public scrutiny" and to avoid "bringing Employment Provider Services or the Government in disrepute".

However, it's unclear why adult retail and wholesale businesses falls within this exclusion.

### **Correspondence from Department of Employment and Eros Adult Retail Member:**

*In providing employment services, jobactive organisations are required to consider on a case by case basis whether employment opportunities satisfy the terms and conditions of the jobactive 2015-2020 Deed and Wage Subsidies Guideline.*

*Under the Wage Subsidies Guideline a wage subsidy is not payable for “Non-Payable Outcome” as defined under the jobactive 2015-2020 Deed.*

*Non-payable Outcomes are defined in the Deed and include employment involving nudity or in the sex industry. The Department determined Non-payable Outcomes so as to ensure the integrity of the jobactive programme.*

*Furthermore, the Wage Subsidies Guideline requires that wage subsidies must be negotiated and approved in line with the principles of: withstanding public scrutiny; and not bringing Employment Provider Services or the Government into disrepute.*

One possibility is that government schemes are mindful of vulnerable job seekers being incentivised into sex work. However, there are a number of issues with this rationale.

Firstly, sex work services operate separately to adult retail and wholesale businesses, with very little overlap. Secondly, sex workers in Australia overwhelmingly operate as independent contractors, and would not be eligible for the scheme. Thirdly, this does not explain why retail is specifically targeted under the jobactive Deed 2015-2022.

### **The following is a position description within a recently advertised adult retail position:**

*X Is seeking a casual team member.*

*If you have outstanding customer service skills and have great availability weekdays & weekends, we want to hear from you!*

*Essential*

- *Ability to work unsupervised*
- *Exceptional customer service skills*
- *18+ applicants only*

As can be seen from above, a typical adult retail position is customer service oriented and is not associated with nudity, the sex industry or adult entertainment.

Seemingly, the only justification for current exclusion is a moral objection to adult retail and wholesale – a position which is out of step with community expectations.

## **CONCLUSION**

In a time when so many industries are struggling and many Australians have been left unemployed due to COVID-19, adult retailers and wholesalers have not just survived – they have thrived!

It is time to allow adult retail and wholesale to be fully recognised as part of the Australian economy, and for exclusions under wage subsidy schemes to be removed.

It should not be the role of government to act as a moral arbiter for job seekers being employed in an industry of their choosing.