

TO: Department of Attorney-General and Justice, Northern Territory Government
Sent via email: policy.agd@nt.gov.au

12 August 2022

Amendments to the Anti-Discrimination Act 1992

The Eros Association is Australia's industry association for adults-only retail, wholesale, media and entertainment. We welcome the opportunity to provide a submission in response to the Exposure Draft Anti-Discrimination Bill 2022.

Sex industry workers experience unacceptable levels of discrimination in all Australian jurisdictions, including in the Northern Territory. In our submission, we recommend changes to the Draft Bill to provide more meaningful protection to all sex industry workers. Most importantly, the Draft Bill should not merely protect the bare "status" of being a sex worker, but also protect sex workers' - and other sex industry workers' - right to carry out their profession, trade or occupation free from stigma and discrimination.

Prohibition of discrimination: Employment as to sex work, including past sex work

The Draft Bill proposes to insert a new protected attribute of "employment as to sex work, including past sex work."¹ Sex work is to be defined as "the provision by a person of services that involve the person participating in sexual activity with another person in return for payment or reward."²

Whilst the Draft Bill may provide protections to sex workers under the new protected attribute, there are three major limitations with the proposed wording. First, it does not protect the thousands of people in the sex industry who may have sex as part of their work but not conform to a definition of "sex worker", such as performers or strippers, or who do *not* have sex as part of their work, such as brothel owners, brothel managers, brothel receptionists, escort agency drivers, security guards, escort advertising services, etc., except if they have a personal association with a sex worker.³ It also does not protect adult industry workers, such as adult store operators. This is a major limitation of provisions providing protections solely on the basis of a person's status as a sex worker.

¹ Exposure Draft Anti-Discrimination Bill 2022 cl 10(3).

² Exposure Draft Anti-Discrimination Bill 2022 cl 5(11) referencing *Sex Industry Act 2019* s 4.

³ *Anti-Discrimination Act 1992* s 19(1)(r).

Second, a person's *activities* as a sex worker, as opposed to *employment* as a sex worker, are not protected under the new protected attribute - a concern that has been raised about similar provisions in Queensland.⁴

Third, it could be challenging to prove a person's employment status as a sex worker, particularly given that many operate as independent contractors or sole traders. In conclusion, the new protected attribute has major shortcomings and will cause confusion in its application.

In our view, there should be a new protected attribute of "profession, trade or occupation." As the Victorian Equal Opportunity and Human Rights Commission has noted, this would provide protection to sex workers and those in the sex industry, as well as workers in other industries.⁵ This would also align with similar protections in the Australian Capital Territory,⁶ which has been held to include sex workers,⁷ and in Victoria.⁸ As many in our industry work across state and territory borders, we believe in harmonisation of laws in this area; that is, the law should reflect other provisions in interstate equal opportunity laws, such as that in the Australian Capital Territory and Victoria (which also prohibit discrimination based on employment status⁹ or employment activity¹⁰). This would also protect people from financial discrimination, including from banks, insurers, landlords and suppliers, on the basis of their profession, trade or occupation.

Prohibition of discrimination: Sexuality

The Draft Bill proposes to replace the protected attribute of "sexuality" with a new protected attribute of "sexual orientation."¹¹ Sexual orientation is to be defined as "each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of the same gender, a different gender or more than one gender."¹²

In our view, this definition is narrow and should either be removed or replaced with a broad definition that includes a person's involvement in sexual activity and not be based solely on sexual identity.

⁴ Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act: Discussion Paper* (2021) 98 referencing *Dovedeen v GK* [2013] QCA 116 (17 May 2013).

⁵ Victorian Equal Opportunity and Human Rights Commission, *Submission to Review into the Decriminalisation of Sex Work* (July 2020) 3-4

<https://www.humanrights.vic.gov.au/static/2aaf9da86629d99172feb50ac58d79fd/Submission-Review_into_the_Decriminalisation_of_Sex_Work-Jul20.pdf>.

⁶ *Discrimination Act 1991* (ACT) s 7(1)(p).

⁷ *Edgley v Federal Capital Press of Australia* [1999] ACTSC 95 (1 October 1999). See also ACT Human Rights Commission, 'Profession, trade, occupation or calling' <<https://hrc.act.gov.au/discrimination/profession-trade-occupation-calling/>>.

⁸ Sex Work Decriminalisation Bill 2021 (Vic) cl 34.

⁹ *Discrimination Act 1991* (ACT) s 7(1)(f).

¹⁰ *Equal Opportunity Act 2010* (Vic) s 6(c).

¹¹ Exposure Draft Anti-Discrimination Bill 2022 cl 10(2).

¹² Exposure Draft Anti-Discrimination Bill 2022 cl 5(11).

Conclusion

The Eros Association welcomes the opportunity to discuss with you further our views on these issues.

If there is any way we can assist, please don't hesitate to contact us.

A handwritten signature in black ink, appearing to read 'Graeme Dunne', written in a cursive style.

Graeme Dunne
General Manager
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