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**Sex Worker Outreach Program (SWOP NT) Sex Worker Reference Group (SWRG) Collective Submission in response to the Northern Territory Government Discussion Paper – release September 2017  
Modernisation of the Anti-Discrimination Act**

SWOP NT /SWRG NT

NORTHERN TERRITORY SEX WORKER OUTREACH PROGRAM – SEX WORKER REFERENCE GROUP |  
NORTHERN TERRITORY AIDS AND HEPATITIS COUNCIL (NTAHC)  
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FEBRUARY 2018



February, 2018

Submitted via email directly to: Primary contact officer:

Ms Sarah Witham  
Director, Legal Policy  
Department of the Attorney-General and Justice

Dear Ms Witham

Thank you for facilitating discussion, which has opened up consultation and provided a formal platform for feedback for Northern Territorians to be able to contribute to the modernisation of the *Northern Territory Anti-Discrimination Act*.

Please accept this submission from the Sex Worker Outreach Program (SWOP NT) and the Sex Worker Reference Group (SWRG) in response to the Northern Territory governments Discussion Paper.

SWOP NT is a peer-based health promotion service that engages sex workers and works with other sex work industry stakeholders in the Northern Territory to work safely with competence in knowledge of the industries legal and Work Place Health & Safety (WHS) requirements.

SWOP NT is a member of the Scarlet Alliance Australian Sex Workers Association, our program is located within the Northern Territory AIDS & Hepatitis Council (NTAHC). The program is staffed by sex workers who deliver peer education services across the Territory. The program equips sex workers with knowledge to prevent the transmission of BBV's and STI's and to ensure safety at work.

SWOP NT advocates to reduce stigma and discrimination against us as workers via information resources and sessions to health and legal sectors to facilitate equitable access to services. Our peer led advocacy, health promotion, outreach and broader programming aims to improve sex workers lives by holistically addressing issues that includes our human rights. The program houses six weekly Sex Worker Reference Group (SWRG) meetings.

Sex workers who work and or have worked in the Northern Territory have documented incidences of discrimination in this submission prepared by workers from SWOP NT and the SWRG. This submission is authorised to be open as a "public submission". SWOP NT and the SWRG looks forward to receiving the 'Exposure draft of the revised anti-discrimination legislation'.

Yours Sincerely  
NTAHC, SWOP NT and Northern Territory sex workers from the SWRG

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## Executive Summary

### Introduction Sex Work, Sex Industry Workers & Discrimination

SWOP NT and the SWRG wish to acknowledge that we have compiled this submission with other sex workers to formally document the breadth and depth of discrimination against us.

We welcome this opportunity to put forth our recommendations but wish to highlight that concurrently, as a community in reflection, we have found this a liberating but also painful process detailing incidences of discrimination.

As sex workers we commence from a variable platform of discrimination that is multifaceted and depends often upon fluctuating public opinion and stigma. We know that stigma is different from discrimination. We also know that discrimination is an action that often is a result of our stigmas.

Derogatory actions, attitudes and statements against us due to stigma devalue our worth as individuals and due to internalised stigma, can also be hard to identify or recognise. For example, in collating this submission together SWOP NT and the SWRG noted that when speaking to other sex workers, that some workers who had overlapping stigmas said they found it difficult to quantify their experiences of discrimination as they had identified incidences often daily of being discriminated against.

It is important to note that every state and territory in Australia has vast differences in laws that determine if/how/when/where we are able to work. New South Wales is the only Australian jurisdiction where we are not fully/or partially criminalised as sex workers. In NSW our work is decriminalised and importantly research demonstrates that this model of law reform is a step towards reducing stigma and discrimination that we experience <sup>(1)</sup>.

We cannot ignore that Northern Territory sex workers like other workers, travel distances for work as employees, as sole operators or as sub-contractors, but we are not offered the same protections as other workers. Laws discriminate against us which inadvertently justifies to the public that it is ok to vilify us.

Anti-discrimination protection for sex workers is recommended by various United Nations bodies, including the UN Secretary General, Ban Ki Moon. It is in line with the World Association for Sexual Health's Millennium Declaration of Sexual Rights, Australia's National STI and HIV Strategies, and the whole-of-government approach to Social Inclusion <sup>(2)</sup>.

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<sup>1</sup> "Decriminalisation allows a highly visible focus on workplace health and safety in brothels and massage parlours, and is an important step towards reducing stigma and discrimination experienced by sex workers" Julie bates Urban realists planning & health consultants, research report findings <https://theconversation.com/new-report-shows-compelling-reasons-to-decriminalise-sex-work-83955>

<sup>2</sup> Consolidation - Discussion Paper - 096 - Scarlet Alliance, page 3

The Sex Worker Outreach Program (SWOP NT) <sup>(3)</sup> and the Sex Worker Reference Group (SWRG) <sup>(4)</sup> have endorsed 'sex work' 'sex worker' and 'profession, trade, occupation, or calling' as main attributes for insertion as crucial amendments for sex workers to reform of the Northern Territory's *Anti-Discrimination Act*. We need to have the ability as 'past and current sex workers' to be protected against vilification, against our current or previous employment as sex workers. We need to be able to have an opportunity as workers to come forward as individuals or via our representation to file our complaints to address vilification, harassment and discrimination against us.

Anti-Discrimination protection for sex workers is recommended by United Nations

United Nations Secretary General Ban Ki-Moon states that;

"In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change." <sup>(5)</sup>

Former Australian High Court judge the Hon. Michael Kirby AC CMG states that;

"We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality." <sup>(6)</sup>

UNAIDS and the United Nations Population Fund state that;

"it is essential for governments to create an enabling legal and policy environment which insists upon universal rights for sex workers and ensures our access to justice." <sup>(7)</sup>

Scarlet Alliance Australian Sex Workers Association

"As a member of the Scarlet Alliance the Sex Worker Outreach Program (SWOP NT) endorses in full the submission of recommendations and the supporting evidence of the peak body for sex workers in Australia the Scarlet Alliance <sup>(8)</sup>"

<sup>3</sup> SWOP NT contact with NT sex workers <https://www.ntahc.org.au/programs/sex-worker-outreach-program-swop-nt>

<sup>5</sup> UNAIDS, Joint United Nations Program on HIV/AIDS, UNAIDS Guidance Note on HIV and Sex Work, Geneva, 2009, 2.

<sup>6</sup> UNAIDS and UNFPA, Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work, 2011, 14.

<sup>7</sup> Consolidation - Discussion Paper - 096 - Scarlet Alliance - 31 Jan 2012, pg 9, <https://www.ag.gov.au/Consultations/Documents/ConsolidationofCommonwealthanti-discriminationlaws/Consolidation%20-%20Discussion%20Paper%20-%20096%20-%20Scarlet%20Alliance%20-%2031%20Jan%202012.PDF>

<sup>8</sup> Scarlet Alliance Australian Sex Workers Association [www.scarletalliance.org.au](http://www.scarletalliance.org.au)

## The SWOP NT and the SWRG <sup>(9)</sup> List Recommendations

**Recommendation 1:** “Sexual orientation” must be listed as an attribute under the *Anti-Discrimination Act (NT)* (the Act). *The Yogyakarta Principles* defines ‘sexual orientation’ as “a person’s capacity for emotional, affectional and/or sexual attraction to individuals of a difference gender identity, the same gender identity or more than one gender identity.” <sup>(10)</sup> And must include the ‘*Yogyakarta plus 10*’ <sup>(11)</sup> amendments of terms of areas where sexual orientation intersects as state obligations

**Recommendation 2:** The Act must retain ‘sexuality’ as a protected attribute. ‘Sexuality’ must be redefined as “a sexual behaviour, sexual practice or labour” <sup>(12)</sup>

**Recommendation 3:** The protected attribute of ‘sex’ must be removed and replaced by “gender identity.” “Gender identity” must be defined as “the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person, with or without regard to the person’s designated sex at birth” with a note that “gender identity includes the gender identity that the person has or has had in the past, or is thought to have had in the past” <sup>(13)</sup>

**Recommendation 4:** The Act must be amended to include ‘intersex status’ as a protected attribute

**Recommendation 6:** The Act must list ‘accommodation status’ as a protected attribute. ‘Accommodation status’ must be included with other areas of the definition “Place of home, work, practice, or labour” <sup>(14)</sup>

**Recommendation 6:** “Sex work” must be listed as a protected attribute under the Act. Sex work must be defined as “sex work is the sale/exchange of consensual adult sexual services” <sup>(15)</sup>

**Recommendation 7:** “Sex worker” must be listed as an attribute for protection under the Act. Sex worker must be defined as “a person who provided the sale/exchange of consensual adult sexual services” <sup>(16)</sup>.

**Recommendation 8:** “Profession, occupation, trade or calling” must be inserted as an attribute for protection under the Act <sup>17</sup>. We advise that the definitions be determined by key Northern Territory industry and organisational stakeholders <sup>(18)</sup>

**Recommendation 9:** The *Interpretations Act* must codify the definition “Notice of *initial intention*” for ‘*profession, occupation, trade or calling*’ consistent with *Australian Capital Territory, Hansard* <sup>(19)</sup>

**Recommendation 10:** The Act must ensure that protections be extended to past and present sex workers, associates of sex workers and those who are assumed to be sex workers <sup>(20)</sup>

<sup>9</sup> The Northern Territory Sex Worker Outreach Program (SWOP NT) and the Sex Worker Reference Group (SWRG)

<https://www.ntahc.org.au/programs/sex-worker-outreach-program-swopnt/get-involved-swop>

<sup>10</sup> SWOP NT and SWRG agree with Rainbow Territory submission to *this Act* definition taken from *Yogyakarta Principles 2006* and additionally we propose that the inclusion of *Yogyakarta Principles plus 10*, 2017 amendments to define intersectionality of the definitions

<sup>11</sup> [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf)

<sup>12</sup> SWOP NT and SWRG definition

<sup>13</sup> Definition from the NTAHC Northern Territory AIDS and Hepatitis submission to *this Act*

<sup>14</sup> SWOP NT and SWRG definition and ‘Place of home’ is a space where people sleep that may not be defined as a appropriate shelter, people may couch surf or live out in the elements and must be protected if living under these circumstances

<sup>15</sup> The Lancet- HIV and sex workers, July 2014, Definition, pg. 2 <http://www.thelancet.com/series/HIV-and-sex-workers>

<sup>16</sup> SWOP NT and SWRG definition adapted from ‘sex work’ definition The Lancet- HIV and sex workers, July 2014, Definition, pg. 2

<sup>17</sup> Australian Capital Territory – Discrimination Act 1991, 03.04.2017, (q) profession, trade, occupation or calling, part 2, section 7, pg. 9

<http://www.legislation.act.gov.au/a/1991-81/current/pdf/1991-81.pdf>

<sup>18</sup> “Wording intention is for the protection of all workers that work in the Northern Territory

<sup>19</sup> Notice of initial intention, “MR MOORE (10.32): I present the *Discrimination (Amendment) Bill (No. 4) 1993*,” 15<sup>th</sup> December,

<http://www.hansard.act.gov.au/hansard/1993/pdfs/19931215.pdf>

<sup>20</sup> SWOP NT and SWRG definition adapted from Scarlet Alliance principals for Law Reform

**Recommendation 11:** The Act must offer protection for sex workers against vilification and the Act must extend protections to those who currently have or have previously held the protected attribute, associate with another person with the protected attribute, or are incorrectly assumed to process the protected attribute <sup>(21)</sup>

**Recommendation 12:** The Act must offer protection for individuals against vilification in relation to 'race and other proposed protected attributes' including "Sex work, profession, occupation, trade, or calling, people who use drugs, people who undertake pharmacotherapy programs, people who live with blood born viruses (BBVs) including people who live with HIV, people who are defined as migrant and guest workers must be listed as attributes for protection under the Act" <sup>(22)</sup>

**Recommendation 13:** The Act must protect individuals against 'vilification that occurs in any area of public life, including online and through social media even if engagement in those public online forums takes place from a private environment such as a home or workplace and the vilification protections extend to those who currently have or have previously held the protected attribute, associate with another person with the protected, or are incorrectly assumed to process the protected attribute'. <sup>(23)</sup>

#### New Reforms

**Recommendation 14:** Provisions for a 'representative complaint model' be included in the Act and that the complaint model align to enable the Anti-Discrimination Commission to meet the objectives defined as of "equality and opportunity"

**Recommendation 15:** Provisions to broaden 'restrictive areas of sexual harassment' be included in the Act

**Recommendation 16:** The definition for "service must" be broadened to include "all workers" defined in the Act to enable coverage for workers in in the provision of services.

#### Removing content that Enshrines Discrimination

**Recommendation 17:** There must be "no religious exemptions" in the *new Anti-Discrimination Act* <sup>(24)</sup>

#### Clarifying and Miscellaneous Reforms

**Recommendation 18:** That "profession, occupation, trade and calling" must be listed as protected attributes under the Act and that "profession, occupation, trade and calling" include definitions to protect volunteer workers, sex work industry workers, guest workers, migrant workers, workers who are on bridging and or other visas, workers as people living with BBV's, workers as people who use alcohol and or other drugs, workers who are on opiate substitution programs, workers who are criminalised <sup>(25)</sup>

#### Future Legislative Reforms

**Recommendation 19:** The Northern Territory Government should open an Inquiry to remove provisions from any legislation which discriminates or may lead to discrimination, against any person as provided in the new NT Anti-Discrimination Act 2018. Consider Developing a Bill of Human Rights to work alongside the new Anti-Discrimination protections <sup>(26)</sup>

<sup>21</sup> SWOP NT and SWRG definition adapted in line with Scarlet Alliance submission to the Act

<sup>22</sup> SWOP NT and SWRG defined for protections

<sup>23</sup> NAAJA Northern Australia Aboriginal Justice Agency submission to modernisation of *this Act*

<sup>24</sup> SWOP NT and SWRG believe under the proposed attributes "profession, trade, occupation, or calling".

<sup>25</sup> SWOP NT and SWRG defined areas for protection and definitions

<sup>26</sup> SWOP NT and SWRG identified future reforms in *other Acts* that intersect with the recommendations of a amendments of *this Act* for Northern Territory Government review and adaption of *Bill of Rights* to strengthen 'the Acts'

## Sex worker's experience of discrimination

Sex workers from SWOP NT and the SWRG have formally addressed and documented incidences of stigma and discrimination that directly affects us as *past and current* sex workers, our families, our friends, our work conditions and our colleagues. Additionally, the stigma and discrimination we receive extends to affecting others we broadly associate with <sup>(27)</sup>.

The level of stigma and discrimination towards us in society is so embedded that we require stringent protections from discrimination with intersectional areas listed as "main attributes". The multiple layers of stigmas we experience as part of the sex industry is as a direct result of our choice of work as sex workers.

"Sex worker's daily and ongoing experiences of discrimination, harassment and stigma signal the crucial need for legislative reform. Sex workers experience discrimination in; our access to goods and services, housing and accommodation, employment opportunities and access to justice, which affects our personal and professional lives, families, and health, wellbeing and workplace conditions". <sup>(28)</sup>

As one sex worker explains:

"[Discrimination] means not answering the question 'what do you do?' without considering that at best, I'll probably end up answering a bunch of naff questions to satisfy someone's curiosity, at worst, someone will cut off from me and do something hostile. Discrimination means applying for a job and leaving big chunks of things out, hoping the police check doesn't disqualify me. Discrimination means trying to rent a place to work without being able to declare my income, give a job reference, or tell the landlord what I really intend to do there." <sup>(29)</sup>

The Scarlet Alliance Australian Sex Workers Association, of whom SWOP NT is the Northern Territory member, states that:

"Sex workers experience systemic discrimination in our access to goods and services, housing and accommodation, employment opportunities and access to justice. Further, we experience state-sanctioned discrimination from governments, organisations and the public and suffer criminal record and HIV status discrimination because of the criminalisation of our professions in some states. We experience regular and relentless vilification from media. This discrimination and vilification affects our personal lives, professional lives, families, health, wellbeing and working conditions" <sup>(30)</sup>

<sup>27</sup> SWOP NT and SWRG have documented case studies from sex workers and other Sex Industry workers throughout this submission

<sup>28</sup> Scarlet Alliance, submission, Federal Government's Consolidation of Anti-Discrimination Laws, 2011

[https://www.ag.gov.au/Consultations/Documents/ConsolidationofCommonwealthanti-discriminationlaws/Consolidation%20-%20Discussion%20Paper%20-%20096%20-%20Scarlet%20Alliance%20-31%20Jan%202012%20\(word\).DOC](https://www.ag.gov.au/Consultations/Documents/ConsolidationofCommonwealthanti-discriminationlaws/Consolidation%20-%20Discussion%20Paper%20-%20096%20-%20Scarlet%20Alliance%20-31%20Jan%202012%20(word).DOC)

<sup>29</sup> DD, 'Discrimination is an Odd Thing', Provision: Whore Stigma, Issue 2, Scarlet Alliance, 2007, 20.

<sup>30</sup> Scarlet Alliance - Attorney Generals Department, Consolidation Discussion paper 096, June, 2011

## Northern Territory Accommodation

*SWOP NT recommends that 'accommodation status' as a protected attribute. 'Accommodation status' must be included with other areas of the definition "Place of home, work, practice, or labour" <sup>(31)</sup>*

Sex workers who work in the Northern Territory experience direct and indirect systemic discrimination when securing housing, work accommodation and or services for emergency shelter.

SWOP has documented over a significant period of time examples of discrimination against sex workers in relation to workplace accommodation. The *Northern Territory Prostitution Regulation Act* Definitions state that;

*"brothel" means premises to which people resort for the purpose of prostitution, but does not include premises forming part of a ↵ hotel ⇨ which are used for the purpose of providing prostitution services in cases only where the person providing the services does so as the result of an agreement or arrangement entered into or initiated elsewhere. <sup>(32)</sup>*

The NT-PRA discriminates against sex workers choice of how and where to work by strict zoning that restricts the provision of sexual services and effectively ensures that sex workers are not able to permanently reside in the premises where the work is provided.

SWOP NT notes that a considerable percentage of sex workers who work in the Northern Territory are not financially able to rent private accommodation and pay high costs to work legally out of hotels. The PRA prevents sex workers working from their private residence. The added complication is that sex workers are discriminated against because of the work and hotel staffs' ignorance of the laws governing the work. SWOP NT educates hotel staff but we have found that efforts to train the staff are ineffective because the hotel workforce is highly transient. Hotel staff continue to assume that sex workers who are working from hotels are working illegally, when they are in fact operating according to the law (NT-PRA). Biased assumptions made by hotel staff and management does lead to some sex workers being evicted and becoming homeless.

It is not uncommon for SWOP NT to get calls from sex workers who have been evicted from hotels or serviced apartments requesting referral support for basic need of housing. For sex workers who have not been able to make enough money to move and pay for another night in a different hotel then the 'NT-PRA homeless' <sup>(33)</sup> issue also becomes reality. 'Place of home' is a space where people sleep that may not be defined as appropriate shelter, people may couch surf or live out in the elements and must be protected if living under these circumstances.

Aboriginal and Torres Strait Islander, transgender men and women, brotherboys, and sistagirls who are sex workers experience intersectional discrimination such as racism and homo/transgender-phobia. Sex workers who are of Asian descent or appearance have an added level of stigma due to

<sup>31</sup> SWOP NT and SWRG definition

<sup>32</sup> Northern Territory PROSTITUTION REGULATION ACT - SECT 3, Definitions  
[http://www.austlii.edu.au/forms/search1.html?&mask=au/legis/nt/consol\\_act/ora317/&](http://www.austlii.edu.au/forms/search1.html?&mask=au/legis/nt/consol_act/ora317/&)

<sup>33</sup> The term 'NT PRA homeless' is used as a term in the sex worker community to define homelessness due to conditions of the Northern Territory Prostitution Regulation Act (PRA) and 'Place of home' is a space where people sleep that may not be defined as appropriate shelter, people may couch surf or live out in the elements and must be protected if living under these circumstances.

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assumptions that Asian workers are trafficked and or have no independent agency, so must be working in exploitative conditions, again stigmatising and incorrect.

Aboriginal workers have reported to SWOP NT that they are treated as if they are unable to pay for a room, so hotels will say that the rooms are booked out unless cash can be given upfront and a credit card to secure the booking. Sex workers who may be born in Australia of Asian descent or who have migrated as sex workers are often subjected to immigration checks and unnecessary random police checks due to hotel operators acting on biased assumptions of how the workers and the industry operates rather than the reality.

A sex worker from the SWRG said they are unable to afford both private and hotel accommodation at the same time.

“We are at the whims of a single individual’s prejudice if we want to conduct our business, legally and professionally. In 2015 I was staying at a hotel in Darwin. The law states to operate legally we must work from hotel rooms. I was conducting my business legally from their premises. As I have to collect clients from reception due to their key card system, I had obviously drawn attention to myself. At no point were myself or my clients loud or disruptive. I was very discreet and not high volume. On my second afternoon of my 5 day stay I had a manager knock on my door and tell me he knew I was working there, and I was to pack my belongings and leave as what I was doing was befitting the standards of their hotel. It was humiliating and dehumanising. I was not offered a refund for the remainder of my stay and it was difficult to find other accommodation last minute. Besides me being a sex worker, there were no other reasons offered for my removal from their hotel.”

SWOP NT has documented discrimination against sex workers by hotel establishments, their staff and their investors. SWOP has received from hotel managers complaints about sex workers working from hotels and/or requesting clarification if sex workers are legally able to do so.

Hotel operators have asked sex workers to leave via both verbal and written communication. Notices have been posted under or on the outside of room doors. Hotels that have private investors with body corporate agreements, have sent notices to owners and investors to advise them that the conditions of sub-let agreements are not to include rentals to sex workers and that sex work in the Northern Territory is illegal (which it is not).

See Appendix 1 and 2 for scanned copies of the types of notices that issued to sex workers, or placed under workers doors. Image 1 has been sent to owners and investors of apartments to warn against renting a room to sex workers.

Appendix 1 states that if a sex worker stays in the premises that:

- The worker and owner or investor will be reported to the police
- A levy would be imposed upon the property owner
- Prostitution is illegal in the Northern Territory
- Immigration will be called.

SWOP NT initially became aware of the documents dissemination in 2009. SWOP NT received the carbon copy again in 2017 from a guest who was staying at the hotel’s apartments.

A guest that had been residing at the hotel/apartments, said that he felt uncomfortable receiving this letter on his door as his daughter had visited him for dinner the evening before the notice. He said;

“I felt like people may have thought my daughter was a prostitute, I am a concerned as I have just found this letter on my door, it must have been for someone else”.

These incidences of discrimination have impacted on our human rights as sex workers. SWOP NT knows that it is difficult under the NT-PRA for sex workers to secure safe spaces to work, or access personal housing. Sex workers have been denied private rental accommodation after disclosure of employment status. Sex workers are put at risk via evictions from hotels at all hours, and when SWOP NT has facilitated referrals through for emergency accommodation sex workers have reported that they are unable to go out to work in the evening or they will risk forfeiting their shelter due to curfews.

### Northern Territory Correctional Services

Sex workers, particularly those who overlap with other stigmatised communities, routinely experience discrimination in the correctional setting. Samantha an advocate for sistagirls and a member of the SWRG said:

“.....if the sistagirl goes to jail she must be kept safe like a lady in a lady jail she must not be going to the men’s side and be made to live with men. If this happens the trans and the sistagirls get very depressed, they lose themselves and they will be abused by the men not just because they are trans but especially if people know they are a sex worker and are trans, the men think that it is okay to be violent to us, to abuse us, to do things to us- even when we say no”.

“I learned that for this bad treatment to stop happening we need the laws to change and we need people’s attitudes to change and to respect all trans-men and women and Aboriginal peoples as we are all the same as you. We just want the same basic human rights that everyone else expects, that everyone else takes for granted. We want you to respect us. We want you to help us and for us to help you. We want to be equal. We talked about this and how these things affect us and tried to make all the sex workers understand how we felt and why we felt like this. It felt good to share this with them, even if they didn’t all understand, it is a start”<sup>(34)</sup>.

The Northern Territory has adopted a *Management of Transgender and Intersex Offenders Policy*<sup>(35)</sup> for gradual implementation by correctional services for sentencing magistrates to consider for people who are able to disclose that they are a person who is Intersex, a transgender man and or women, before sentencing.

The issues for persons who are Intersex, Aboriginal and Torres Strait Islander sistagirls and or brotherboys in relation to choosing a women’s or men’s space, is not that simple. One person who is transgender but for the purpose of anonymity as also an Aboriginal sex worker who had been previously detained in the NT prison system said to SWOP NT:

<sup>34</sup> SWOP NT Red Lite Rites, newsletter, December 2017, pg 12

<sup>35</sup> Northern Territory Correctional Services, Management of Transgender and Intersex Offenders Policy TRM Reference, CSDOCI. 611.920, 2016

"I can't afford the operation I am sistagirl, when you visit me in prison I cut my hair off and grow a beard so they leave me alone. I am always scared when I am in prison because it is hard to act like man when I am not. I can't get hormones, I don't have money and don't know how to start, I ask doctors but they don't think I am not serious because I have no money"

"When I say I am sistagirl to the guards they 'laugh' at me, they don't think I am sistagirl because I cut my hair now. They just think I don't want to be here, in this place"

## Northern Territory Courts

SWOP NT has numerous documented examples of sex workers being discriminated against and vilified in both the *Northern Territory Magistrate* and the *Supreme Court*. There have been two separate instances over the last five years where sex workers attended court to support immediate family members. In both cases the actions of their adult children were blamed on the sex worker's parenting. Both sex workers were vilified in the courts as they were portrayed as unfit mothers that had somehow contributed to their children's alleged offences by working in the sex work industry and that this 'alleged hardship' had impacted on their children's upbringing. Both sex workers were horrified at how they were publicly shamed for their sex work as they both worked in compliance with the *Northern Territory Prostitution Regulation Act*. One of the workers had previously worked for a Northern Territory Escort Agency her previous "registration status" was also noted in the court.

Below is the account written by a sex worker who contacted us following a call we put out to document areas of discrimination/vilification. They wanted to share their experience anonymously as an example of the kinds of extreme injustice and discrimination they faced in a Northern Territory court of law:

"I was sitting in court to support my adult daughter who had been remanded in custody and accused of quite serious offences. We were applying for bail, as she had been held in remand for nearly half a year. The Barrister had told me to expect the Police Prosecutor to object strongly and also to expect to have my name 'destroyed publicly', as in within an open courtroom, I said I didn't care.

The worker then said that the police prosecutor reportedly said to the judge;

"Your Honour, prosecution strongly objects to this application for "name withheld" to reside with their mother on the grounds she is of no fixed address, residing only in city hotels, but more importantly her mother is a known sex worker".

"Bail was refused [on these grounds] even though I had maintained residence in the same apartment for 8 months. To add to my injury the Magistrate's assistant handing the paperwork to be signed 'by his Honour' (that sent my daughter back to jail that day) was known to me. The surreal part resonating in my head was that I recognised the assistant, they had been a client of my services as a sex worker and here they were, handing over my kid's doom. I simply could not believe the slide I took instantly on 'societies ladder of morals' I felt degraded and I saw all eyes in that court room stare across my way as the words rang through the court room, I was incensed numb from what I felt, an absolutely outrageous ridiculously insulting moment in my life, I lost a chunk of my mind that day." <sup>(36)</sup>

<sup>36</sup> NT sex worker as mother balancing living in apartments when not working and as per NT PRA working from hotels to comply with legislation. This police prosecution knew that the worker had previously not been able to afford personal rent and hotel rent so was at times between accommodations. At the time of this case their accommodation was stable as stated to the court for eight months.

SWOP NT has accompanied sex workers to court to provide support in open and closed court settings. Many sex workers have had to endure insulting and discriminatory insinuations that they are unfit as parents due to their work as a sex worker. SWOP NT notes that this discrimination extends to other workers who work in the sex work industry such as drivers, receptionists, and managers of Escort Agencies.

SWOP NT staff witnessed a sex worker as a mother break down sobbing in court as she was berated by a female lawyer because of her choice of work. The magistrate did not allow the lawyer to continue with her tirade in the court but the damage had been done. The worker required a short recess before she could respond to further questioning. Again treated as a criminal and vilified as a mother to facilitate an avenue for the male partner to try to obtain full custody of their child.

The following excerpt is from a national sex worker publication, the Pro-Vision, that explains the level of anxiety and complexities for sex workers to consider in relation to presenting in a court of family law:

“Now that I am separated from the father of my child, I am careful not to create waves. He has threatened me with a “woman hating lawyer” in the past, and I get petrified of what a history in sex work would mean in front of a judge. I know that sex work isn’t supposed to be taken into account, but what about the illegal activity? Anyway the fact that there not supposed to let affect their decisions doesn’t mean they won’t. And how would that affect my ability to do sex work and support us without being detected or risking my family, after having my secrets aired in court? So when my child’s father says jump, I say how high!”<sup>(37)</sup>

The Rainbow Territory submission states that:

“Protections must also extend to people who are vilified on the basis that they associate with another person with a protected attribute, previously possessed a protected attribute, or is incorrectly assumed to possess a protected attribute”.<sup>(38)</sup>

A sex worker from South Australia who has worked in the Northern Territory quotes that:

“I have had friends fear being associated with me in case they are presumed ‘one of me’, and friends who stopped talking to me when they found out, or when their partners or families find out. I can’t control when people find out, thanks to all the reasons I have mentioned.

When the stress and judgements get to me or I suffer symptoms of depression or anxiety I have to make a choice. Seek support for the way I am feeling, or avoid professionals. Tell the truth, or lie. To lie would mean I am unable to discuss openly the effects of discrimination I face or get any kind of meaningful support around it. To tell the truth I risk all of my problems being reduced to sex work. My work becomes the focus rather than the discrimination. If I am lucky I may get an open minded professional, but even then I will need to spend half of my paid session time educating them”<sup>(39)</sup>

<sup>37</sup> Known Prostitute, A Reid, Provision, page 13

<sup>38</sup> Rainbow Territory submission to the *Modernisation of the Northern Territory Anti-Discrimination Act 2018*

<sup>39</sup> *Known Prostitute*, A Reid, Provision, page 13

## Northern Territory banking and insurance

Due to discriminatory practices and laws (The NT-PRA) sex workers find it difficult to access banking and insurance services. A sex worker from the SWRG recounts her experiences opening a business account within one of the four major banks in Darwin:

"In 2016 I opened a business account with one of the major banks in Darwin. I had an ABN and everything was in order in terms of legalities and I was open about the line of work I do. I was told that Sex Work was considered a "high risk" enterprise and would be subject to higher fees, I wouldn't be eligible for insurance, and I wouldn't be able to have an EFTPOS <sup>(40)</sup> machine as part of my package. I was also told that I was lucky my accounts weren't closed as that happens with sex workers often, or just depends on the day and the particular manager at the time. There is no industry standard."

The Scarlet Alliance parallels other sex workers experiences in their submission stating that:

"Sex workers reported that businesses regularly refused supply of goods and services or make inappropriate comments upon discovering sex work employment. For example, when attempting to access credit or loans, 'banks do not apply the same business standards as they would to other service industries.' <sup>(41)</sup> Applications for credit cards often sought information about the applicant's occupation rather than their income, and sex workers reported having their applications refused despite no evidence of bad credit rating or unstable or low income. In loan applications, banks often required business records covering a longer period for sex workers than other occupations." <sup>(42)</sup>

"The discrimination by financial institutions continues to be an ongoing issue for sex workers with major banks and financial providers refusing services to sexworkers on "moral grounds" <sup>(43)</sup>

## Northern Territory Health Services

Discrimination in the health setting creates barriers to sex workers accessing services which can negatively impact on our health and wellbeing.

When accessing a clinical service, a sex worker from the SWRG, Ashley Raise said:

"I went to the doctor for a urinary tract infection. I knew the signs, I regularly get problems with UTI's as I have a slight reflux. I took a sample of urine with me in sterile jar to the clinic. The doctor asked me what my work was. I said I was a sex worker and also worked in an office part time in health. He asked me to give another urine sample. He said he would send it off and wrote me a script for Flagyl <sup>(44)</sup>. He said "that will kill any bugs you have with the UTI and it's a good all-rounder for STI's" <sup>(45)</sup>. He then asked me "when was your last HIV test".

<sup>40</sup> Electronic funds transfer at point of sale (EFTPOS)

<sup>41</sup> 6 Ibid, Scarlet Alliance, & AFAO. (1999). *Unjust and Counter-Productive: The failure of government to protect sex workers from discrimination*. <http://www.scarletalliance.org.au/library/unjustcounterproductive>

<sup>42</sup> Scarlet Alliance, submission, Dept. Attorney General, *Modernisation of the Northern Territory Ant-Discrimination Act*, Feb 2018

<sup>43</sup> *Power and Policy*, Elise Thomas, 2017 <http://thequo.com.au/Stories?page=10&pageSize=9&postId=b6f7871d-d979-4f97-9002-ffc4f71b751>

<sup>44</sup> Flagyl, (metronidazole) tablets

<sup>45</sup> Urinary Tract Infection, UTI and Sexually Transmittable Infections STI's'

I said I did not require one as I have not been in a position of risk. I left immediately disgusted and went to another doctor who looked at my urine sample, and said "clearly you have an UTI infection, we will get this tested but until then is a particular antibiotic that you usually are prescribed, we can start you off on that until the tests come back and come back if symptoms get worse over the next couple of days" She then asked me if I need anything else"

Another worker from the SWRG wrote that:

"I went to a doctor because I had a few large red painful bumps on my downstairs and my normal bump eraser remedies hadn't worked. The doctor looked at the bumps and said it looks like infected hair follicles (it was) and then after asking what I did for work (I said stripper) he changed his mind and insisted on swabbing and doing testing for Herpes even though I wasn't stripping on a pole"

When accessing midwifery services, one sex worker noted:

"At the Midwifery clinic this week, did a perinatal depression quiz as a part of my check up, was a little high but still within normal range. I disclosed my sex worker status and was immediately given a psychologist referral"

When accessing mental health services, one sex worker noted:

"In 2017 I engaged the services of a psychiatrist from a Top End Mental Health service. I believe in an open and honest dialogue and I disclosed my sex worker status. From that point of disclosure of my work this was all she focused on.

The assumption was that I was suffering trauma from my job, despite me saying the opposite that my job was a symptom of my poor mental health, that I was obviously engaging in risky behaviour and my job was comparable to self-harm.

Any other areas of my life were dismissed, and the issues I went there seeking to be worked on were dismissed. The psychiatrist then broke confidentiality and discussed my sessions and a diagnosis she didn't even discuss with me but with my ex-partner during their session and said considering my job I obviously have vast mental health issues and she is better off without me. This was a whole new level of unprofessional behaviour that simply would not have occurred if there wasn't the element of discrimination based on sex work her bias towards my job coloured our whole interaction and left me unable to seek further help until only recently. It creates a deep sense of distrust with medical providers and it's affected my mental health management".

Other issues for workers include BBV status and if a person is or has been a person who uses alcohol and other drugs (PWUDs) in particular injecting drug users, illicit and or people who access the governments pharmacotherapies programs and rehabilitation services.

The following case studies are from sex workers in relation to use of drugs.

A sex worker who is a member of the SWRG and is a person who has also injected prescription and other opiates documented her experience in accessing substitution medication from a Northern Territory hospital:

"I gathered strength and self-referred myself to the hospital to access TADS (Tobacco Alcohol and Other Drugs) counsellors and doctors to get on the program for Suboxone<sup>(46)</sup>. I needed at the very least a break and decided to try again to get support.

I find the program really difficult because it takes a couple of weeks to be able to get phamos' (pharmacotherapies) to help get off other drugs from the street. When I said to doctors and staff that I need support on the day or at the very least the next and they said they couldn't help me for two weeks, I said what am I supposed to do? They always say the same thing, "sorry that's the system you will be added and contacted for access to the program in about two weeks, until then you will need to just keep using the drugs you are getting if you can't stop".

This is how difficult it is, no one cares because we are just seen as scum. When I finally did get on the program I was then shamed as a sex worker, that's because I vocalised how I get my money. One nurse said to me "now you don't have to do that anymore" implying that I only got money for drugs for sex work, well hullo I need to live too and I am not on the dole, so I work I get money to live and if I spend some of my cash on drugs or get drugs as a swop then that's not her business."

Another Northern Territory Sex Worker said;

I was in great accommodation, very discreetly located for myself and my clients. I am a person who requires the use of injecting equipment for medicinal purposes. I stored my sterile equipment in a separate makeup bag. I returned to my room to find that the syringes that were still in their packets were visible as the zip had had not been closed. Later that day a person who was a cleaner at the hotel told me that some staff had seen the syringes and told management. The next day I was told by management that there was a mistake with my accommodation, that they had a double booking and that I needed to find an alternative hotel to work from. I instantly knew that it was because I had sterile injecting equipment in my room"

Sex work in the Northern Territory in context of reforming the *Anti-Discrimination Act*

The current regulation (NT-PRA) in Northern Territory exacerbates discrimination against us as sex workers:

"There are many factors that contribute to stigma and discrimination against us, including the reality that in Australia sex work is still fully/and or partially criminalised in the majority of states and territories, with the exception of NSW."<sup>(47)</sup>

"Sex workers in the Northern Territory are challenged with restrictive legislation to comply with that has more criminalised areas than there are avenues for legal compliance. This results in workers being excluded from the legal systems. The NT-PRA and its *table of provisions 2001*, as regulatory conditions have been noted nationally and internationally as "discriminatory and against sex workers, our work and human rights".<sup>(48)</sup>

<sup>46</sup> Suboxone, buprenorphine/naloxone) <https://www.howtoquitheroin.com/drug-rehab-treatment-northern-territory-australia.html>

<sup>47</sup> <https://www.ntahc.org.au/programs/sex-worker-outreach-program-swop-nt/parliamentary-submissions>

<sup>48</sup> Northern Territory sex worker registration branded a misuse of police powers locally and Internationally, 14<sup>th</sup> July, 2010 [http://www.scarletalliance.org.au/media/News\\_Item.2010-07-13.0114](http://www.scarletalliance.org.au/media/News_Item.2010-07-13.0114), Northern Territory's unfair and unsafe sex worker registration

The SWOP NT and SWRG sex workers most recent press release notes in relation to these laws and discrimination that:

“We have to remove dangerous laws and address the social stigma and discrimination that incites violence against sex workers. As sex workers we acutely feel the impact of criminalisation and policing practices that perpetrate violence against us. The Northern Territory system of registration creates ‘perceived criminalisation’ via the unjustified police involvement in the regulation of sex work. This creates barriers to sex workers seeking to access support or justice when they experience violence and sends a message to perpetrators that sex workers can be targeted without legal consequences”

[REDACTED] from the SWRG said:

“I am a 30-something married woman, I am just like any other 30-year old married woman that you know, and I deserve dignity, privacy, justice, and freedom from stigma and discrimination just like everyone else” <sup>(49)</sup>.

As terms “lawful sexual activity” and “lawful sex work” are rejected as there is evidence that by default the terms have gaps that allow for “lawful” discrimination against sex workers and others who work around and with sex workers in the sex industry.

In the context of modernising the *Northern Territory Anti-Discrimination Act* the term “lawful sex work” is not broad enough to adequately protect us as sex workers nor others who work within the industry from discrimination in the Northern Territory.

For example; ‘if’ the term “lawful sexual activity” was applied to protect sex industry workers who work in the Northern Territory then technically *the Act* would ‘only’ cover workers who are able to comply with the current NT-PRA.

Under the NT-PRA, sex workers must work alone out of hotels unless they are registered with the Police to work under an escort agency. It is difficult for workers to comply with the NT-PRA unless we disclose very private information via a lifelong registration process. <sup>(50)</sup> This has resulted in an unworkable, unsafe and discriminatory two tiered system in which many sex workers are criminalised. The modernisation of the Anti-Discrimination Act must not be aligned to work with the current NT-PRA, it must align with workers Work Health and Safety rights and human rights.

Anti-discrimination laws in other states and territories have proven to be inadequate in protecting the sex workers.

Current protections for sex workers are inconsistent and insufficient. Although Queensland protects people from discrimination on the basis of ‘lawful sexual activity’, this protection is limited to people working legally, and does not cover street-based sex workers, private workers operating together or sex workers operating out of unlicensed agencies or brothels. Some protections also exist in Tasmania and Victoria, however the continuing criminalisation of many aspects of sex work renders

*practices* 18th International AIDS Conference in Vienna, Austria this week., *Registration is discrimination*, 2006  
[http://www.scarletalliance.org.au/issues/legalisation/lian\\_06/document\\_view](http://www.scarletalliance.org.au/issues/legalisation/lian_06/document_view)

<sup>49</sup> SWOP NT - SWRG Media Release. D17, <https://www.ntahc.org.au/news/swop-nt-swrg-media-release-d17>

<sup>50</sup> <https://www.ntahc.org.au/programs/sex-worker-outreach-program-swopnt/working-northern-territory>

the use of a 'lawful' sexual activity category inadequate. In addition, in Victoria, while lawful sexual activity is a protected attribute, sex workers are specifically singled out as an *exception*, so it remains lawful to discriminate against people engaging in *commercial* lawful sexual activity when providing accommodation.

Although the Australian Capital Territory protects people from discrimination on the basis of 'profession, trade, occupation or calling' this does not include people who experience discrimination because of their involvement in alternative or stigmatised sexual communities, or people who trade sex in kind but do not identify as a sex worker".<sup>(51)</sup>

#### 'Profession, trade, occupation or calling'

This terminology is used in the Australian Capital Territory only and we know from Hansard that the intention of this clause was to protect sex workers. Otherwise what constitutes 'profession, trade, occupation or calling' is not defined in the Act. In the Northern Territory, where sex work is not decriminalised, this type of protection alone as a main attribute is limiting due to legally sanctioned criminalisation of sex workers

#### 'Lawful sexual activity'

This is the more commonly used terminology though it is extremely restrictive. None of the jurisdictions that use this clause are decriminalised, meaning that for a sex worker to use this protection, they must be working lawfully within the restrictive licensing or registration schemes that are in place in the Northern Territory. This obviously excludes the large amount of sex workers who are currently unable to comply with these schemes:

"Both options depend heavily on the current regulatory and legal environment surrounding sex work in that particular jurisdiction. In a political or judicial climate that doesn't consider sex work to be work, profession, trade occupation or calling wouldn't be considered to cover sex workers. Both options have gaps, and are at the mercy of their environments"<sup>(52)</sup>

Therefore in effect, the term "lawful sex work" must not be included in an attempt to protect sex workers nor to define the work of sex workers or others working in working in the sex industry. The term is not reflective of the working conditions of Sex Industry workers.

*Past and current* sex workers need to be protected in all areas of the modernisation of this Act and therefore sex workers from SWOP NT and the SWRG endorse the use of the term "Sex Work", and Sex Worker" to be added in addition to "profession, occupation, trade or calling" as main attribute/s under the Act. These terms as main attributes will specifically protect us as *past and current* sex workers, our families and associates, our clients, and our working rights.

<sup>51</sup> Scarlet Alliance, submission, *Federal Government's Consolidation of Anti-Discrimination Laws*, 2011, pg [https://www.ag.gov.au/Consultations/Documents/ConsolidationofCommonwealthanti-discriminationlaws/Consolidation%20-%20Discussion%20Paper%20-%20096%20-%20Scarlet%20Alliance%20-31%20Jan%202012%20\(word\).DOC](https://www.ag.gov.au/Consultations/Documents/ConsolidationofCommonwealthanti-discriminationlaws/Consolidation%20-%20Discussion%20Paper%20-%20096%20-%20Scarlet%20Alliance%20-31%20Jan%202012%20(word).DOC)

<sup>52</sup> Scarlet Alliance, National Forum, members consultation, consensus statement 2015

## Inserting and amending protected attributes

### Effective anti-discrimination protection for sex workers

*SWOP NT recommends that "sex work" be listed as a protected attribute under the Act. Sex work must be defined as "sex work is the sale/exchange of consensual adult sexual services" <sup>(53)</sup>. That additionally "sex worker" must be listed as an attribute for protection under the Act. Sex worker must be defined as "a person who provided the sale/exchange of consensual adult sexual services" <sup>(54)</sup> and that "profession, occupation, trade or calling" be inserted as an attribute for protection under the Act<sup>55</sup>. We advise that the definitions be determined by key Northern Territory industry and organisational stakeholders <sup>(56)</sup>.*

*We also recommend that the Interpretations Act codify the definition of "Notice of initial intention" consistent with Australian Capital Territory, Hansard <sup>(57)</sup> and that the Act ensure that protections be extended to past and present sex workers, associates of sex workers and those who are assumed to be sex workers <sup>(58)</sup>.*

SWOP NT rejects the inclusion of 'lawful sexual activity' or 'lawful sex work'.

Instead, SWOP NT strongly recommends the inclusion of 'sex work', 'sex worker' 'profession, occupation, trade and calling' as main attributes. In addition, the Interpretations Act must codify the definition of 'Notice of Initial Intention' consistent with *Australian Capital Territory, Hansard*, Independent MLA, Michael Moore.

In the *Australian Capital Territory (ACT) Parliament in 1993* the Independent MLA, Michael Moore, stated:

*"My proposal to amend the Discrimination Act to include the words 'profession, trade, occupation or calling', ironically enough, paves the way for those in the sex industry to comply with the Government's demand for workers compensation as well as assisting in the arenas of the courts and the community where human rights and justice have been denied through discriminatory practices and ignorance"<sup>59</sup>.*

"Recognition of "sex work" and "sex worker" in conjunction with "profession, occupation, trade or calling" inserted as main attributes would open pathways towards the provision of equal rights for sex industry workers. <sup>60</sup> Strengthening the *Northern Territory Anti-Discrimination Act* by

<sup>53</sup> The Lancet- HIV and sex workers, July 2014, Definition, pg. 2 <http://www.thelancet.com/series/HIV-and-sex-workers>

<sup>54</sup> SWOP NT and SWRG definition adapted from 'sex work' definition The Lancet- HIV and sex workers, July 2014, Definition, pg.2

<sup>55</sup> Australian Capital Territory – Discrimination Act 1991, 03.04.2017, (q) profession, trade, occupation or calling, part 2, section 7, pg. 9 <http://www.legislation.act.gov.au/a/1991-81/current/pdf/1991-81.pdf>

<sup>56</sup> "Wording intention is for the protection of all workers that work in the Northern Territory: that by default with appropriate Northern Territory Industries and organisations recommendations incorporates the protection of the 'majority' of workers"

<sup>57</sup> Notice of initial intention, "MR MOORE (10.32): I present the *Discrimination (Amendment) Bill (No. 4) 1993*," 15<sup>th</sup> December, <http://www.hansard.act.gov.au/hansard/1993/pdfs/19931215.pdf>

<sup>58</sup> SWOP NT and SWRG definition adapted from Scarlet Alliance principals for Law Reform

<sup>59</sup> Notice of initial intention, "MR MOORE (10.32): I present the *Discrimination (Amendment) Bill (No. 4) 1993*," 15<sup>th</sup> December, <http://www.hansard.act.gov.au/hansard/1993/pdfs/19931215.pdf>

<sup>60</sup> Definition, sex industry, this term has been used in preference to 'prostitution'...*The Lancet- HIV and sex workers*, July 2014, Definition, pg. 2 <http://www.thelancet.com/series/HIV-and-sex-workers>, SWOP NT, *Training about sex workers and the sex work industry, Sex Work and Laws – NT & Nationally*, "Northern Territory sex industry workers demographics; sex workers, receptionists, drivers, managers and owners" <https://www.ntahc.org.au/what-we-do/training-and-education/sex-worker-industry>

incorporating added protections specifically for *past and current* <sup>(61)</sup> sex workers as a disproportionately discriminated against sector of our society ensures that protections against discrimination legally allow for participation on the same footing as everyone else in public life” <sup>(62)</sup>.

Sex workers from SWOP NT and the SWRG have formally addressed and documented incidences of stigma and discrimination 2001-2018 that directly affects us as *past and current* sex workers, our families, our friends, our work conditions and our colleagues. Additionally, the stigma and discrimination we receive extends to affecting others we broadly associate with <sup>(63)</sup>.

The level of stigma and discrimination towards us in society is so embedded that we require stringent protections from discrimination with intersectional areas listed as “main attributes”. The multiple layers of stigmas we experience as part of the sex industry is as a direct result of our choice of work as sex workers.

SWOP NT in line with other specific recommendations for sex workers such as ‘sex work, sex worker, profession, occupation, trade or calling’ <sup>(64)</sup> includes additionally that protections be extended to past and present sex workers, associates of sex workers and those who are assumed to be sex workers <sup>(65)</sup>.

In 2017 a Bill to Decriminalise Sex Work in South Australia was passed in the Legislative Council, November, 2017. This Bill achieves by amending ‘four’ other areas of the state’s legislation, rigorous protections for past and *current sex workers* human rights in relation to sex work.

*The Statutes Amendment (Decriminalisation of Sex Work) Bill, 2015*<sup>(66)</sup> has stringent added protections against discrimination for past and current sex workers. ‘An Act to amend the Criminal Law Consolidation Act 1935, the Equal Opportunity Act 1984, the Spent Convictions Act 2009, the Summary Offences Act 1953 and the Return to Work Act 2’

*Excerpt taken from the Statutes Amendment (Decriminalisation of Sex Work) Bill 2015, Part 3, Amendment of Equal Opportunity Act, 1984, Anti-Discrimination protections*

*For the purposes of this Act, a person discriminates on the ground of being, or having been, a sex worker—*

*(a) if he or she treats another unfavourably because the other is, or has in the past been, a sex worker; or*

*(b) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons who are, or who have in the past been, sex workers, or on the basis of a*

<sup>61</sup> Insert “...on the ground of being, or having been, a sex worker” *From the Statutes Amendment (Decriminalisation of Sex Work) Bill 2015,*

<sup>62</sup> SWOP NT and the SWRG, statement in response to the Northern Territory Department of the Attorney-General and Justice -*Discussion Paper -Modernisation of the Anti-Discrimination Act, 2017, Q7, “Lawful sex work”*

[https://justice.nt.gov.au/\\_data/assets/pdf\\_file/0006/445281/anti-discrimination-act-discussion-paper-september-2017.pdf](https://justice.nt.gov.au/_data/assets/pdf_file/0006/445281/anti-discrimination-act-discussion-paper-september-2017.pdf)

<sup>63</sup> SWOP NT and SWRG have documented case studies from sex workers and other Sex Industry workers throughout this submission

<sup>64</sup> SWOP NT and SWRG recommendations No: 7, 8, 9, 10, including 11 past and current sex workers

<sup>65</sup> SWOP NT and SWRG definition adapted from Scarlet Alliance principals for Law Reform

<sup>66</sup> “Legislative Council, No 44, APPENDIX 3, *As introduced and read a first time*, 1 July 2015, LCGP 277, B: the Hon Michelle Lensink MLC, 1, South Australia, *Statutes Amendment (Decriminalisation of Sex Work) Bill, 2015, A BILL FOR An Act to amend the Criminal Law Consolidation Act 1935, the Equal Opportunity Act 1984, the Spent Convictions Act 2009, the Summary Offences Act 1953 and the Return to Work Act 2,*” SELECT COMMITTEE ON THE STATUTES AMENDMENT (DECriminalISATION OF SEX WORK) BILL 2015, pg 36, <http://www.scarletalliance.org.au/library/SASelectCommitteeReportMay2017>

presumed characteristic that is generally imputed to persons who are, or who have in the past been, sex workers; or  
(c) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

*ILO instrument, Discrimination (Employment and Occupation):*

"It requires ratifying states to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in these fields. This includes discrimination in relation to access to vocational training, access to employment and to particular occupations, and terms and conditions of employment" <sup>(67)</sup>.

The 2012 UNAIDS, UNFPA and UNDP (UN Development Fund) report *Sex Work and the Law in Asia and the Pacific* recommends enabling laws and practices that are supportive of HIV responses, including:

"community mobilisation of sex workers, sex worker unions and self-regulatory initiatives; labour laws regulating the sex industry as an occupation; anti-discrimination laws; and legal recognition of the human rights of sex workers, under constitutional provisions or other human rights legislation" <sup>(68)</sup>.

Lack of labour rights and social security rights:

"Sex workers in all countries of the region except New Zealand and the state of New South Wales (Australia) lack the labour rights afforded to other workers, including the legal right to a safe and healthy workplace and to reasonable terms and conditions of employment" <sup>69</sup>.

Scarlet Alliance Australian Sex Workers Association says that *Sex work legislation stands in the way of Australia's commitments: decriminalisation for sex workers health, safety and rights*:

"Australia is a signatory to the 2011 United Nations Political Declaration (UNPD) on HIV and AIDS. By signing the declaration, Australia has committed to protecting and promoting human rights and the elimination of stigma and discrimination for people living with HIV and prioritised communities (including sex workers) as a 'critical element in combating the global HIV epidemic' <sup>(7)</sup> and achieving the UNPD targets".

"The work of the Commonwealth Ministerial Advisory Committee on BBV and STIs (MACBBVS) Legal and Discrimination Working (LDW) Group has contributed to the start of this process in the development of a suite of seven papers including key issues and recommendations, yet there remains no mechanism through which to progress this critical work" <sup>(70)</sup>.

<sup>67</sup> International Labour Organization (*ILO Instrument, Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*) - [ratifications]

<sup>68</sup> *The Principles For Model Sex Work Legislation*, Scarlet Alliance, 2014, introduction, pg 3  
[http://www.scarletalliance.org.au/pub/model\\_principles00/document\\_view](http://www.scarletalliance.org.au/pub/model_principles00/document_view)

<sup>69</sup> *Sex Work and the Law in Asia and the Pacific, Laws, HIV and human rights in the context of sex work*, Executive Summary, pg 3  
<http://www.undp.org/content/dam/undp/library/hivaids/English/HIV-2012-SexWorkAndLaw.pdf>

<sup>70</sup> *Sex work legislation stands in the way of Australia's commitments: decriminalisation for sex workers health, safety and rights*, HIV Australia | Vol. 12 No. 2 | Janelle Fawkes, July 2014 <https://www.afao.org.au/article/sex-work-legislation-stands-way-australias-commitments-decriminalisation-sex-workers-health-safety-rights/>

In addition, Scarlet Alliance and the Australian Federation of AIDS Organisations (AFAO), *Unjust and Counter Productive, The Failure of Governments to Protect Sex Workers from Discrimination*, report states that:

“Laws in the majority of Australian jurisdictions are concerned with controlling the sex industry whilst not ‘legitimising’ or ‘promoting’ sex work as a viable work option. This is achieved by prohibiting work in certain sectors of the sex industry. Further, sex industry laws often actively discriminate against the development of, and sex workers access to, mechanisms and legal remedies to address discrimination” experienced in the workplace or in conducting sex industry businesses. This is particularly applied to sex workers who work in prohibited sectors of the sex industry’<sup>(71)</sup> (f).

## Sexuality

*SWOP NT recommends that The Act must retain ‘sexuality’ as a protected attribute. ‘Sexuality’ must be redefined as “a sexual behaviour, sexual practice or labour”<sup>(72)</sup>*

SWOP NT and the SWRG agree with the Scarlet Alliance that sexuality is important to be retained in the context of sex work.

“Scarlet Alliance welcomes protection on the basis of ‘sexual orientation and gender identity’. However, it is crucial that any provisions include protection on the basis of sexual behaviour, attraction, identity and practice, rather than solely orientation”

In South Australia, sex work is proposed to be covered in the *Equal Opportunity Act* under sexuality which has a number of benefits, such as, it covers people who do not identify as sex workers, or a person who is perceived to be a sex worker or “dressed like a sex worker”.

The term sexuality is broad and not solely defined as per the *initial intention of this Act or definitions* used within the Act.

*The Discussion Paper* proposes an either/or approach in relation to sexuality and sexual orientation. For sex worker we propose to keep both terms.

The term “sexual orientation’ will ensure much more inclusivity of marginalised populations however sexual services, labour and work related sexual expression will still not be defined and therefore to protect us as sex workers we propose separately to retain ‘sexuality’ with ‘redefined’ definitions of protections that do not encroach on the value of definitions for sexual orientation as an alternative.

For sex workers, ‘sexuality’ as a term in context of the provision of the sale of our ‘sexual services’ as labour being defined as ‘sex worker’ and the work as ‘sex work’ requires definitive protections that

<sup>71</sup> *Unjust and Counter Productive, The Failure of Governments to Protect Sex Workers from Discrimination*, Scarlet Alliance and The Australian Federation of AIDS Organisations (AFAO), <http://www.scarletalliance.org.au/library/unjust-counterproductive>

<sup>72</sup> SWOP NT and SWRG definition

warrant the term 'sexuality' to remain within the modernisation of the Act. It is imperative that the intent of 'sexuality' be clearly defined in the context of labour and occupation.

If sexuality with new definitions that clearly encompasses sexual labour and sexual practices is not retained then the Act will ignore that sexuality is part of our work and again limiting this important area of protection will leave sex workers behind.

## Sexual orientation

*SWOP NT recommends that "Sexual orientation" must be listed as an attribute under the Anti-Discrimination Act (NT) (the Act). The Yogyakarta Principles defines 'sexual orientation' as "a person's capacity for emotional, affectional and/or sexual attraction to individuals of a difference gender identity, the same gender identity or more than one gender identity. (73) And must include the Yogyakarta plus 10 (74) amendments of terms of areas where sexual orientation intersects as state obligations*

'Sexual orientation' is the preferred modernised term and sex workers agree with the definitions proposed for 'sexual orientation' by Rainbow Territory with inclusion of *Yogyakarta Principles plus 10* (75) updated in October 2017 as an amendment to the *Yogyakarta Principals 2006*.

*The Yogyakarta Principles plus 10* states that the:

"additional principles, state obligations and recommendations reflect the application of international human rights law to the lives and experiences of persons of diverse sexual orientations, gender identities, gender expressions and sex characteristics, and nothing herein must be interpreted as restricting or in any way limiting the rights and freedoms of such persons as recognised in international, regional or national laws or standards." (76)

Under 'The right to freedom from criminalisation and sanction on the basis of sexual orientation, gender identity, gender expression, or sex characteristics' the *Yogyakarta Principles plus 10*, it states:

STATES SHALL: "B. Repeal other forms of criminalisation and sanction impacting on rights and freedoms on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including the criminalisation of sex work, abortion, unintentional transmission of HIV, adultery, nuisance, loitering and begging;" (77)

<sup>73</sup> SWOP NT and SWRG agree with Rainbow Territory submission to *this Act* definition taken from *Yogyakarta Principals 2006* and additionally we propose that the inclusion of *Yogyakarta Principals plus 10*, 2017 amendments to define intersectionality of the definitions

<sup>74</sup> [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf)

<sup>75</sup> [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf)

<sup>76</sup> *Yogyakarta Principals plus 10*, amended for a daption 2017 Geneva, page 25

<sup>77</sup> [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf)

## Gender identity

*SWOP NT recommends the protected attribute of 'sex' must be removed and replaced by "gender identity." "Gender identity" must be defined as "the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person, with or without regard to the person's designated sex at birth" with a note that "gender identity includes the gender identity that the person has or has had in the past, or is thought to have had in the past" (78)*

SWOP NT endorses in full 'gender identity' and definitions as written in the Northern Territory AIDS and Hepatitis Council (NTAHC) submission to the Act

*The UNAIDS Terminology Guidelines, 2015 state:*

*"The term sexual orientation refers to each person's capacity for profound emotional, affectional and sexual attraction to (and intimate and sexual relations with) individuals of any sex. SOGI, an often used abbreviation, stands for sexual orientation, gender identity" (79)*

## Intersex status

*SWOP NT recommends that the Act must be amended to include 'intersex status' as a protected attribute.*

## Exemptions

### Religious Exemptions

*SWOP NT recommends that there be "no religious exemptions" in the new Anti-Discrimination Act (80).*

In 2011 AFAO submitted to the federal consolidation of Anti-Discrimination laws the following statement in relation to religious exemptions and the introduction of protections for sexual orientation and gender identity:

*"We commend the introduction of a sexual orientation and gender identity as protected attributes and the incorporation of these attributes in the consolidated Anti-Discrimination law. We oppose...the Government's proposal to allow religious organisations to discriminate against individuals on the grounds of sexual orientation and gender identity in relation to, *inter alia*, employment and the provision of services. This exemption has become particularly inappropriate now that many religious organisations are contracted to provide services previously provided by Commonwealth agencies. Religious organisations, like their Commonwealth agency counterparts, must be prohibited from discriminating on the basis of sexual orientation and gender identity." <sup>1</sup>*

<sup>78</sup> Definition from the NTAHC Northern Territory AIDS and Hepatitis submission to *this Act*

<sup>79</sup> The UNAIDS Terminology Guidelines, 2015 pg 42 <https://www.yumpu.com/en/document/view/54135906/un aids-terminology-guidelines/45>

<sup>80</sup> SWOP NT and SWRG believe under the proposed attributes "*profession, trade, occupation, or calling*" all workers are covered and that that coverage does not extend to allowing discrimination against others because of the individuals protection.

The argument to allow for freedom of belief and of speech must not accommodate the discrimination and harm of another person or group. Sex workers are not accepted in religious institutions, sex workers who follow religious faiths are always cast as 'sinners'. Intersectionality overlaps for sex workers who are part of the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) communities. People who are sex workers, gay men, lesbian women, transgender women and men, sistergirls, brotherboys, bisexual, Intersex and persons who identify as queer in our society have historically been targeted by narrow moralistic dogma rather than tolerance and understanding as many religions call parishioner's to follow.

Persons who devote their lives to religious institutions as paid or voluntary religious leaders and or followers would be covered in their work roles under '*profession, trade, occupation, or calling*'.

These terms '*if accepted in the Act*' would protect all workers. People who work for Religious institutions and or organisations and or are called to their "faith" would be also included in protections under the aforementioned areas proposed as attributes by SWOP NT and SWRG for all workers. This inclusion would allow for faith based institutions and organisations to be protected against discrimination due to their work.

This protection does not allow for any person protected under "profession, occupation, trade or calling" to discriminate against others based on their work or calling. This protection 'must not' extend to any exemptions that deviate from the purpose of this Act that is to 'abolish' areas where discrimination is able to take place.

## Other Reforms

### Vilification

*SWOP NT recommends that the Act must offer protection for sex workers against vilification and the Act must extend protections to those who currently have or have previously held the protected attribute, associate with another person with the protected attribute, or are incorrectly assumed to process the protected attribute* <sup>(81)</sup>

*SWOP NT recommends also that protection for individuals against vilification in relation to 'race and other proposed protected attributes' including "Sex work, profession, occupation, trade, or calling, people who use drugs, people who undertake pharmacotherapy programs, people who live with blood born viruses (BBVs) including people who live with HIV, people who are defined as migrant and guest workers must be listed as attributes for protection under the Act" <sup>(82)</sup> and that;*

*"Individuals are protected against 'vilification that occurs in any area of public life, including online and through social media even if engagement in those public online forums takes place from a private environment such as a home or workplace and the vilification protections extend to those who currently have or have previously held the protected attribute, associate with another person with the protected, or are incorrectly assumed to process the protected attribute'.* <sup>(83)</sup>

<sup>81</sup> SWOP NT and SWRG definition adapted in line with Scarlet Alliance submission to the Act

<sup>82</sup> SWOP NT and SWRG defined for protections

<sup>83</sup> NAAJA Northern Australia Aboriginal Justice Agency submission to modernisation of *this Act*

The ACT offers protection for individuals against vilification in relation to 'race and other proposed protected attributes'. The Modernisation of the NT's *Anti-Discrimination Act* must take a similar approach.

SWOP NT and the SWRG recommend protection for sex workers as a main attributes against vilification and we have highlighted with a separate recommendation that this protection must extend to past and present sex workers, our associates of us and to protect those persons against discrimination who are incorrectly assumed to be a sex worker.

For sex workers and people who work in the sex work industry, vilification is heightened by intersectional discrimination that is currently sanctioned because the Northern Territory does not have any vilification protections. This gap in our current legislation has facilitated vilification against us as sex workers, our work colleagues in the sex work industry, our families, our friends and our associates.

Stigmatising myths about the way we work, whom we do or don't work for, who we choose to partner with in private, how we raise our children, how we consume alcohol or other drugs, who we associate with, whether we are mentally stable, whether we are able to budget, own a house, ever leave the job, basically our lives are under the microscope publically every day.

We are targeted and vilified relentlessly in social media, print media, television programs, by legal representatives in courts of law, by researchers and academics, by politicians, by counsellors, by health and justice sectors, we are required to register for life with police as per the *Northern Territory Prostitution Regulation Act*<sup>84</sup> as we are considered suspicious and not trusted as workers, we are heavily monitored by police and immigration, raids are conducted on our workplaces, we are assumed to be associated with organised crime. This is evident in the extent of details in the registration that we must disclose to the police commissioner, because of this registration process and other myths about the way we live and work, we are publically seen as criminals, or as victims having no agency at all.

SWOP NT and SWRG are acutely aware that many workers are forced to live double lives due to myths and subsequently the discrimination that follows. As a cross section of workers in our society we overlap into marginalised social identities where intersectional inequities such as Blood Borne Virus (BBV) related stigma in particular HIV, sexism, racism, and homo/transphobia are also heightened in reporting in relation to sex work industry workers. These overlapping, multifaceted forms are representative of an intersectional model of stigma and discrimination.

Ironically this level of deep stigma and discrimination creates an informal class system *within* marginalised communities. For example some sex workers who live with intersectional discrimination report that other sex workers who only have one level of discrimination to contend with and thus will not understand how damaging deflecting stigma to other sex workers can be.

In 2017 at the annual Scarlet Alliance National Forum Aboriginal sex workers presented workshops and Cultural Awareness Training (CAT) to the Scarlet Alliance membership.

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<sup>84</sup> *Statutory Declaration By A Prostitute, form 2, schedule 2.* Pg 6, <https://legislation.nt.gov.au/en/Legislation/PROSTITUTION-REGULATIONS>

The presentation and workshops presented highlighted many areas including intersectional issues of discrimination and how Aboriginal sex workers are vilified <sup>(85)</sup>. Samantha a sex worker from the NT documented her thoughts in her report back to the SWOP NT Red Lite Rites newsletter of what she reflected upon after assisting in presenting the training and workshops

“With three other sistagirls I presented Aboriginal transgender and Cultural Diversity training. We covered 10 main points about ways that we may experience stigma and discrimination because the white culture is so much different to the black culture and especially even more so if you are black transgender sex worker – sistagirl. Layer upon layer of stigma just for being who we are and trying to live our life as sistagirl and trying to work as a sistagirl and make money so that we can live.

One of the main things that we covered is the violence we experience all the time just because of the way we look and the way we dress and live, some people do not think we are human beings. We said many things and told the other sex workers about ourselves and our stories so they could understand that we are not different and that we are all the same as one, we are all human beings, it is okay if we are not exactly the same. We all bleed like same people and we cry like same people and we die like same people. Being Aboriginal and trans does not mean we should bleed more or cry more or die more.”

See Appendix 3, for examples of 2017 Northern Territory printed and social media articles from a Territory newspaper that were used as case studies by the workshop presenters as examples to explain vilification and intersectional discrimination <sup>(86)</sup>.

SWOP NT supports North Australia Aboriginal Justice Agency (NAAJA) position to cover all aspects of vilification including media:

‘Vilification provisions should be included in the Act, extending to all attributes included in the Act. This should include vilification that occurs in any area of public life, including online and through social media even if engagement in those public online forums takes place from a private environment such as a home or workplace’ <sup>(87)</sup>.

*There are a number of international instruments that advocate for anti-discrimination protection for sex workers. International Labour Standards on Equality of opportunity and treatment:*

“ILO standards on equality provide tools to eliminate discrimination in all aspects of the workplace and in society as a whole.” <sup>(88)</sup>

## Representative Complaint Model

*SWOP NT and the SWRG recommends the introduction of a ‘representative complaint model’ be included in the Act and that the complaint model align to enable the Anti-Discrimination Commission to meet the objectives defined as of ‘equality and opportunity.’*

<sup>85</sup> Media articles vilifying Aboriginal sex workers and intersectionality, [Beachside suburb Nightcliff plagued by booze, prostitutes ... - NT News](#), [Prostitutes, drug dealers and drunks roam Nightcliff Village ... - NT News](#)

<sup>86</sup> NT News subscription only publications, [https://myaccount.news.com.au/sites/ntnews/subscribe.html?sourceCode=NTWEB\\_WRE170\\_a\\_GGI&mode=premium&dest=http://www.ntnews.com.au/news/northern-territory/beachside-suburb-nightcliff-plagued-by-booze-prostitutes-and-drug-abuse-at-night/news-story/282cfb1d8ce98fe0cf826ec8f8b02794&memtype=anonymous](https://myaccount.news.com.au/sites/ntnews/subscribe.html?sourceCode=NTWEB_WRE170_a_GGI&mode=premium&dest=http://www.ntnews.com.au/news/northern-territory/beachside-suburb-nightcliff-plagued-by-booze-prostitutes-and-drug-abuse-at-night/news-story/282cfb1d8ce98fe0cf826ec8f8b02794&memtype=anonymous)

<sup>87</sup> NAAJA Submission *Modernisation of the Anti-Discrimination Act, Vilification*, pg 14 <http://www.naaia.org.au/reform/submissions/>

<sup>88</sup> International Labour Standards on Equality of opportunity and treatment <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/equality-of-opportunity-and-treatment/lang-en/index.htm>

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It is imperative that sex workers and other heavily stigmatised and discriminated against populations have access to advocates that can act on behalf of the individual as a group.

Previously sex workers and SWOP NT have sought assistance from legal advocates that involved disclosure of case studies to prove discrimination, however disclosure of birth names were still required or sex workers to seek justice. The 'representative complaint model' is an important avenue sex workers to seek justice who do not wish to publicly associate their birth name with sex work as employment.

The Scarlet Alliance submission states that:

"Our members have highlighted that sex workers are often deterred from filing legal complaints as it requires them to make a complaint in their legal name and risk further discrimination as a consequence. Having their legal name connected to an anti-discrimination claim forces public disclosure for a sex worker. It connects a sex worker's "work name" with their legal name and personal details that could potentially compromise security and safety. This creates massive barriers for sex workers willingness to engage with the anti-discrimination complaints process. Moreover, the examples of discrimination cited by sex workers are often systemic and ongoing. A further barrier cited by sex workers has been the difficulty for an individual in navigating the complex and often confronting complaints process. This can be particularly challenging for sex workers prone to multiple forms of discrimination, such as sex workers living with a disability and sex workers from culturally and linguistically diverse backgrounds, including migrant and Aboriginal and Torres Strait Islander sex workers. For this reason we support the inclusion of representative complaint model. The introduction of a representative complaints model would enable peer sex worker organisations to bring complaints about acts of systemic discrimination on behalf of sex workers who are unable or unwilling to bring an individual complaint" <sup>(89)</sup>.

## Sexual harassment

*SWOP NT recommends that provisions to broaden 'restrictive areas of sexual harassment' must be included in the Act.*

Sex workers are subjected to sexual harassment as unwelcome sexual behaviour due to the services that we provide in our work <sup>(90)</sup>. Sex workers know that we are looked at and approached differently after disclosing to external parties that we choose sex work as a profession. There is an assumption that because we are sex workers that we are available to provide sexual services 24/7 and that we are sexually active outside of our work hours as a myth of being hyper sexual beings. There has been two incidents where sex workers have been solicited while discussing housing acclimations when applying for private housing rentals. Sex workers equally with other members of our society find this type of harassment humiliating, it is highly offensive and it is intimidating.

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<sup>89</sup> Scarlet Alliance, submission, *Modernisation of the Northern Territory Anti-Discrimination Act, 2018*

<sup>90</sup>Sex worker sues for sexual harassment...and wins <https://www.hcamag.com/hr-news/sex-worker-sues-for-sexual-harassment-and-wins-185297.aspx>

*SWOP NT and the SWRG recommend that the definition for "service" be broadened to include "all workers" defined in the Act to enable coverage for workers in in the provision of services.*

It is essential that sex workers and other workers are protected against discrimination from our clients and or potential customers for the services we provide.

This is an important protection for workers alongside existing definitions for "service" sex workers are routinely discriminated against because of the work we choose and the services we provide. *Unjust and Counter Productive* report has well documented case studies of how sex workers are discriminated against in the provision of our services and our inability to access other services "with equity". Examples of discrimination reported to SWOP and the SWRG is documented throughout this submission.

The Scarlet Alliance submission to the modernisation of *this Act* notes that:

"Sex workers experience a range of direct and indirect, personal and systemic discrimination. These include, but are not limited to: when advertising sex industry services, when purchasing goods and services, when securing housing and accommodation, criminal record discrimination, in custody disputes, in legal processes, in policies and practices, discrimination against friends, family and partners of sex workers, in employment and counterproductive police practices"<sup>(91)</sup>.

Expanding definitions of work

*SWOP NT recommends expanding definitions of work to enable "profession, occupation, trade and calling" be listed as protected attributes under the Act and that "profession, occupation, trade and calling" include definitions to protect volunteer workers, sex work industry workers, guest workers, migrant workers, workers who are on bridging and or other visas, workers as people living with BBV's, workers as people who use alcohol and or other drugs, workers who are on opiate substitution programs, workers who are criminalised* <sup>(92) (93)</sup>.

Definitions of work must be expanded to cover all workers who are paid and voluntary, work informally and formally, work in decent work and work in settings of work that are under duress such as exploitation, human trafficking and or slavery, work in criminalised environments and or who work without papers/or visas, work under Australia's migration/guest work visas, live with a blood borne virus, work in the sex work industry, provide sexual services 'sex work' as sex workers, use drugs and or are workers who are accessing the governments regulated pharmacotherapies and the programs.

Migrant workers

Sex workers from abroad were not entitled to access the 457 visas as per the federal government ruling on what constitutes a skilled occupation <sup>(94)</sup>. Migrant sex workers are more likely to endure police and immigration raids <sup>(95)</sup> than 457 visa workers or guest workers even though the ratio of

<sup>91</sup> Scarlet Alliance Sex Workers association submission to this Act

<sup>92</sup> Workers who are criminalised include; illegal workers, workers who have expired visas, sex workers whose work is underpinned by NT-PRA and are unable to comply, workers who live with BBV's, workers who use drugs who are unable to access pharmacotherapies program

<sup>93</sup> SWOP NT and SWRG defined areas for protection and definitions

<sup>94</sup> <https://www.homeaffairs.gov.au/trav/work/work/skills-assessment-and-assessing-authorities/skilled-occupations-lists>

<sup>95</sup> Sex Worker Outreach Program co-ordinator Leanne Melling said raids by authorities on these parlours by authorities were "inhumane" and perpetuated "stigma, discrimination and disrespect" towards sex workers. <http://www.ntnews.com.au/news/outdated-territory-prostitution-law-changes-flagged/news-story/dc7bb42fb5981625d285b0c823802b36>

offences against guest workers by employers is higher for enslaved conditions. The 457 visas are being phased out with different visas and regulations for migrant workers, but the discrimination against 'migrant sex workers' to access work visas for sex work remains. <sup>(96)</sup>

#### Volunteer workers

SWOP NT as a program of NTAHC utilises the expertise of sex workers who "volunteer" a significant amount of time to the SWRG. NTAHC and SWOP have in place a volunteer pack that outlines responsibilities and conditions of voluntary work. Volunteers in other organisations may not always have such clear guidelines in place for meal breaks and dismissal from roles of volunteering. Volunteers must not be discriminated against because they are unpaid the same benefits of Anti-Discrimination protections must apply.

#### Criminalised workers

Sex workers as part of the sex work industry are discriminated against by legislation. Workers in the sex work industry do not have the luxury of federal laws that are uniform under fair work guidelines. Australia has varied jurisdictions of law for the Industry. Sex work in the industry is either is fully or partially criminalised with the exception of NSW which is fully decriminalised. There is no equality to work like other industries in uniform across Australia.

With the liberal use of the internet for advertising many sex workers are more mobile. Fly in and fly out (FIFO) workers are now the norm in many industries and sex workers are no different. Sex workers do however have to balance and fully understand conflicting legislations for each state and territory as FIFO workers. Therefore SWOP NT and The SWRG recommend that all sex work industry workers must be protected under the new Anti-Discrimination Act whether working in compliance or not with conflicting NT-PRA.

#### Future legislative reforms

*SWOP NT recommends that the Northern Territory Government open an Inquiry to remove provisions from any legislation which discriminates or may lead to discrimination, against any person as provided in the new NT Anti-Discrimination Act 2018. Consider Developing a Bill of Human Rights to work alongside the new Anti-discrimination protections <sup>(1)</sup>*

SWOP NT and the SWRG believe that an 'Inquiry' by the Northern Territory Government to remove provisions from 'any other legislation' which discriminates or may lead to discrimination, against any person as provided in the new NT Anti-Discrimination Act 2018 will enable holistically best practice reforms and will strengthen 'the Acts' of the Northern Territory as a whole. We would like the government to dually consider developing 'a Bill of Human Rights' to work alongside the new Anti-Discrimination Act protections

The Northern Territory government should prepare a complimentary discussion paper that will allow for stakeholders who have submitted recommendations for the current amendments to form the new NT Anti-Discrimination Act to continue to identify overlapping areas of other legislation that requires immediate modernisation and or reforms such as alternative regulations.

<sup>96 96</sup> Scarlet Alliance submission, 457 visa integrity review, A unique opportunity, page 3  
<https://www.homeaffairs.gov.au/ReportsandPublications/Documents/submissions/scarlet-alliance.pdf>

The Northern Territory government should consider opening up an Inquiry in order to remove provisions which discriminate or may lead to discrimination, against any person as provided in the new NT Anti-Discrimination Act 2018.

That the Northern Territory government consider that the Committee be requested to identify provisions in Northern Territory Acts and enactments that operate to discriminate, or may lead to discrimination, against any person and to consider policy considerations for the retention, amendment or repeal of the provisions and make recommendations as to whether the provisions should be retained, amended or repealed taking into account stakeholders submissions and recommendations to the committee.

The Committee should note the objectives of the new Anti-Discrimination Act in preparing the Inquires discussion papers that will promote recognition and acceptance of everyone's right to equality; and eliminate discrimination against people by prohibiting discrimination on the basis of various attributes.

For example; *Northern Territory Prostitution Regulation Act (NT-PRA)* as documented case studies in relation to legislation that "discriminates and may discriminate" against sex workers and sex work industry workers within its regulatory components.

Discrimination, its impact on workers 'mandatory registration for sex workers" the NT PRA

#### *Police Registration*

Many sex workers have protested the invasive nature of the legislation and have cited examples of how it has been used inappropriately by police.

Madeline, a former Darwin based sex worker, said:

"Sex workers feel that being required to register with police is unnecessary, intrusive and open to breaches of confidentiality and misuse at the hands of police. How will having my name on a data base keep me safe at work or guarantee me decent working conditions?" Madeline also described her frustration at the lack of confidentially police accord to Certificates of Registration

"I was in court giving evidence in a trial related to the assault of a sex worker friend and the defence lawyer for the accused felt that it was relevant and appropriate to mention that I was a "known and registered prostitute". This had no pertinence to my friend's case and I can only speculate that it was raised in an effort to besmirch my character and as an attempt to undermine my credibility as a witness. What was equally disturbing was how the defence lawyer had known I was a "registered prostitute"?"

SWOP NT notes that in 2010 a person who was registered as a sex worker in compliance with the NT PRA and who had ceased employment, and in compliance with the Act filled out a deactivation form for the police and her employer, found that 15 years after they ceased employment as a sex worker that their status as a past sex worker was disclosed to a new employer in an area where working with children was required.

The general police check to obtain a *Northern Territory working with children, Ochre card* flagged the past sex workers name with "registered prostitute" to her new employer, as if it was an offence for her to have worked as a sex worker

SWOP NT and the worker formally filed a complaint via Top End Women's Legal Service (TEWLS) at the inappropriate disclosure of the workers registration information. As a result of the complaint, in 2011 the Commissioner of Police made a decision to tighten control of which police had the level of access to the '*deactivated registration of a prostitute forms*' and the active "*registration as a prostitute forms (STATUTORY DECLARATION BY PROSTITUTE)*".

Another sex worker who was registered as "inactive" in working for an Escort Agency was summoned to appear in a *Northern Territory Magistrates Court*. At the time of charge the worker was working as a sex worker privately and was not required to reactivate their registration. They appeared in court on a completely unrelated civil charge. The police prosecutor brought up that that the person being charged was registered with the police as a sex worker to describe their character. This information was used in a way to degrade character and implied to the court that they were a criminal when they were complying with provisional requirements of the legislation for NT-PRA.

In 2006 – 2008 the NTWWC – NT Working Women's Centres' legal advocate for rights of working women and the Anti-Discrimination Commissioner worked with the SWOP NT Coordinators to change where sex workers "Escort Agency employee" registration information was stored and the "registration information with whom in the NT police department; The Police Integrity Commission was forced under a ruling from the Privacy Commissioner and with support from SWOP, NTWWC and Anti-Discrimination Commissioner to look at ethics around storage of information of sex workers this was due to reports from sex workers over three years whose information could be viewed by any member of the police in the force as there was a notification "Alert" flagged as general info when someone's name or licence was presented, Further investigation into the "alert" would state "Registered prostitute" as information.

In 2010 the storage and access to this documentation remained under the control of 3 police from the "serious crimes unit". SWOP NT has been informed by a SWOP NT police liaison officer (PLO) from this unit in 2015, that that number of police who had access to the information had expanded to more than 8.

## Conclusion

SWOP NT and the SWRG do not support the inclusion of 'lawful sexual activity' as it has historically not protected all sex workers. As stated within this submission we support the terms 'profession, trade, occupation or calling' 'sex work' and 'sex worker' as main attributes to be implemented in the new Act to protect us as sex workers in all areas of our work.

We ask for protections as past and current sex workers and for our families, friends and associates of us as sex workers. We urgently need protection of anti-vilification laws to protect us and the people we associate with. The vilification against us and other marginalised communities is so engrained in our society that we also require protections against our previous employment as sex workers and we also require protections for others who may be incorrectly assumed to be a sex worker.

SWOP NT and the SWRG welcome a representative complaints model that enables a complaints process that allows for our sex worker organisation and or other relevant organisations to submit a complaint on our behalf and to be able to ensure anonymity in seeking justice.

It is essential that sex workers who work in the Northern Territory are fully protected against discrimination. The modernisation of this Act will work towards achieving this right for sex workers and in combination with implementing Workplace Health and Safety (WHS) guidelines and the full decriminalisation of sex work, the Northern Territory government would have an opportunity to be a world leader in the protection of sex workers safety and working rights.

SWOP NT and the SWRG implore the Northern Territory government to ratify our recommendations to ensure that the Territory's laws are fair, aligned with human rights that will in turn give us an opportunity to be valued in our choice of work, and with these protections an ability to work towards addressing systemic discrimination and daily associated harms against us as workers.

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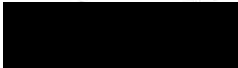
<sup>1</sup> *Unjust and Counter-Productive. The Failure of Governments to Protect. Sex Workers from Discrimination.* SWOP NT and the SWRG sex workers note that this report was published in the year 1999. It is appalling that nearly eighteen years on the research documenting areas of discrimination and clear recommendations for reform to address discrimination have still not been implemented across Australia, systemic discrimination against sex workers prevails. The aforementioned excerpt from *Unjust and Counter Productive, The Failure of Governments to Protect Sex Workers from Discrimination* is just as current as the year the report was released. Sex workers want decriminalisation, sex workers want rights and protections that include Workplace Health and Safety and Anti-Discrimination protections. Sex workers who work in the Northern Territory and other Sex Industry workers want "Sex Work" to be respected and recognised as work.

*The Sex Worker Outreach Program (SWOP NT) and Sex Worker Reference Group (SWRG)*

SWOP NT said:

"Decriminalising sex work is able to be achieved simply by abolishing the *Northern Territory Prostitution Regulation Act*, alongside ensuring that sex workers are able to be protected by

respective Workplace Health & Safety and Anti-Discrimination legislation. There is already existing NT business legislation that would facilitate avenues for these reforms”



“The evidence clearly shows that decriminalisation is the world-renowned, best practice model for sex work. Decriminalisation facilitates higher rates of compliance, minimal opportunities for corruption & exploitation, increased transparency of the Industry and most importantly improved safety for sex workers”

*The Scarlet Alliance Australian Sex Workers Association*

“Anti-Discrimination law must specifically protect sex workers The World Association for Sexual Health Millennium Declaration of Sexual Rights lists a number of fundamental and universal rights, including ‘freedom of choice in adult sexual relationships’ and ‘freedom to experience and express sexual pleasure’, free from ‘legal or social sanctions’. Anti-Discrimination protections for sex workers are a necessary and practical step towards sex worker and community health, safety, inclusion and wellbeing.”

**Appendix 1: Image 1 Disseminated to hotel/apartment guests and to investors who own rooms or serviced apartments**

**To: All owners and residents of units at the [redacted] Apartments**

It has come to the attention of the “Body Corporate Committee” of the [redacted] Apartments that some of the units are being used for the provision of prostitution services. This has lead to residents and guests being hassled by intoxicated males coming in to the complex especially Thursday to Saturday evenings. The committee has noted which rooms it feels are being used for prostitution services.

**PROSTITUTION ACTIVITY WILL NOT BE TOLERATED AT THE [redacted] AND THIS ACTIVITY MUST STOP IMMEDIATELY**

Not only is prostitution against the laws of the Northern Territory of Australia it is also against the house rules of the incorporation of the Body Corporate. If the committee is of the opinion that after this notice that rooms are still being using rooms for the provision of prostitution services the following action will be taken.

- this alleged prostitution activity will be reported to the Northern Territory Police including room numbers. The Northern Territory Police will take appropriate action under the laws of the Northern Territory and be requested to make regular visits to the suspected rooms.
- The prostitution activity will also be reported to the Department of Immigration to check that people in these rooms have appropriate visas etc

If prostitution activity still occurs the committee will also consider placing an additional levy on all unit owners to facilitate the employment of security personal to be employed (especially on Thursday to Saturday evenings) to check and question all people coming in and out of the [redacted]. This levy may also include construction of security gates and fences to restrict entrance into the apartments via the car parks on [redacted] Street and underground car park on [redacted] Street. The committee realises this may be very expensive for owners but is determined to make the [redacted] Apartments “Family Friendly” and stamp out any prostitution activity.

This is the first and only warning that will be sent to owners and residents before one or all of the actions above are implemented if PROSTITUTION or any other illegal activity continues to occur, immediate action will be taken to eliminate the problem without further notice.

If any owners wish to sell their unit this is also very easy. On the committee are current owners that are considering buying additional [redacted] apartments. If you require any more details re selling your property, please contact [redacted] @bigpond.com who will pass your details on to committee members that are considering buying additional [redacted] Apartments.

Appendix 2: **Image 2** Disseminated to hotel/apartment 'selected guests' suspected of conducting sex work



Be advised [redacted] Suites reserves the right to refuse accommodation to any guest the management or its agents feel may be involved in **any form of illegal activity (including soliciting)** without reason.

*All Guests are advised that the hotel has 24 hour recording A/V cameras throughout all public areas of the hotel including entries/exits and lifts.*

- All guests are required to ensure accommodation and additional charges are paid in advance.
- The hotel requires photographic identification for all guests registering to stay within the reserved accommodation, this will be copied, attached and retained to hotel files for identification.
- [redacted] Suites has a no party policy which is available from the reception desk for your review and will be strictly adhered to.

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Appendix 3: Image and excerpt 3, Northern Territory Vilification and Media

Prostitutes, drug dealers and drunks roam Nightcliff Village after dark

Jul 31, 2017 ... NIGHTCLIFF Village remains plagued by drunks, prostitutes and drug ... hub for criminal activity, according to residents and business owners.

[www.ntnews.com.au/.../prostitute s...nightcliff.../ 4270b7d702fd11cbaea263f580f1d10c](http://www.ntnews.com.au/.../prostitute-s...nightcliff.../)

The articles headings

Beachside suburb Nightcliff plagued by booze, prostitutes ... - NT News

[www.ntnews.com.au/news/northern-territory/...booze-prostitutes...drug.../news.../282cfb...](http://www.ntnews.com.au/news/northern-territory/...booze-prostitutes...drug.../news.../282cfb...)

Jul 31, 2017 - Beachside suburb Nightcliff plagued by booze, prostitutes and drug abuse at night. KIERAN BANKS, Crime reporter, NT News ... It's a snapshot of the prostitution, anti-social behaviour and drunkenness residents surrounding Nightcliff Village say plague the neighbourhood.....

Prostitutes, drug dealers and drunks roam Nightcliff Village ... - NT News

[www.ntnews.com.au/news/northern-territory/prostitutes-drug.../news.../4270b7d702fd1...](http://www.ntnews.com.au/news/northern-territory/prostitutes-drug.../news.../4270b7d702fd1...)

Jul 31, 2017 - NIGHTCLIFF Village remains plagued by drunks, prostitutes and drug dealers more than a year after police were moved to Nightcliff to battle the problem. The shopping precinct is home to a thriving Sunday markets but by night it descends into a seedy hub for criminal activity, according to residents.....

April 8<sup>th</sup> 2016

<http://www.ntnews.com.au/news/i-clutched-the-cash-while-he-used-me-former-prostitutes-on-why-they-want-the-industry-banned/news-story/59aa0a6355f12324810a73ed76bc9934>

The NT News

April 8 at 3:30pm

**FORMER prostitutes are joining forces to talk about the world's "oldest profession" in a different way. WARNING: Graphic >>**



**'I WAS clutching the cash as he used me'**

WARNING: Graphic  
NTNEWS.COM.AU

People Who Use Drugs (PWUD)

[https://www.google.com/url?q=http://www.ntnews.com.au/news/northern-territory/darwin-druggie-jailed-for-28-months-over-interstate-recruits-bungled-attempt-to-cook-meth/news-story/7d9579bf3bc121f541c8379b602febe8&sa=U&ved=0ahUKEwj8s52JurXWAhUNTJQKHfscB2YQFggFMAA&client=internal-uds-cse&usg=AFQjCNFvLNle7Q5nwZaoHmVik\\_LzowZF3A](https://www.google.com/url?q=http://www.ntnews.com.au/news/northern-territory/darwin-druggie-jailed-for-28-months-over-interstate-recruits-bungled-attempt-to-cook-meth/news-story/7d9579bf3bc121f541c8379b602febe8&sa=U&ved=0ahUKEwj8s52JurXWAhUNTJQKHfscB2YQFggFMAA&client=internal-uds-cse&usg=AFQjCNFvLNle7Q5nwZaoHmVik_LzowZF3A)