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26 November 2018

Committee Secretary,
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000
LACSC@parliament.qld.gov.au

Dear Peter Russo MP,

RE: Submission on Human Rights Bill 2018

Thank you for the opportunity to provide this joint submission into the Human Rights Bill 2018.

Respect Inc and Scarlet Alliance welcome the introduction of a Human Rights Bill for Queensland. Sex workers in Queensland are marginalised, and whilst being a sex worker is not illegal many aspects of our work, including the implementation of safety strategies, are criminalised. Stigma and discrimination limit sex workers access to services and avenues of redress available to other Queenslanders. Policing of sex work related offences (usually for petty crimes including advertising offences, working in pairs, texting another sex worker when a client leaves) has increased - by up to 450% according to the 2016-17 Queensland Police Statistics and sex workers report significant barriers to reporting crimes.

The basic human rights of marginalised community members, including sex workers, are not adequately protected by existing laws in Queensland. It is important that sex workers along with all Queenslanders are covered by the benefits and protections of a Human Rights Bill.

For this reason we offer comment on areas where the Bill can be strengthened particularly in relation to review of existing laws that limit the human rights of marginalised communities, and strengthening anonymous reporting and complaints through a representative body, to correct the power imbalance that exists when an individual from a marginalised community attempts to address actions by public entities.

Respect Inc

Respect Inc is the Queensland sex worker organisation. We have offices in Townsville, Cairns, Gold Coast and Brisbane. We are a peer-based organisation; that is, all of our members, staff, volunteers and the elected board is made up of current and past sex workers; offering a comprehensive program of health promotion activities for sex workers in Queensland. Respect is the Queensland member of Scarlet Alliance.

Scarlet Alliance, Australian Sex Workers Association

Scarlet Alliance, the Australian Sex Workers Association, is the peak national organisation representing individual sex workers, sex worker organisations, projects and collectives throughout Australia. Through our work and that of our membership we have the highest level of contact with sex workers of any agency or organisation in Australia. Through our objectives, policies and programs, we aim to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry, in order for sex workers to be self-determining agents, building their own alliances and choosing where and how they work.

Sex workers in Queensland and nationally experience systemic human rights violations.

Many studies have documented the stigma, discrimination and human rights violations that sex workers face in healthcare, legal, social and employment settings.^{[1],[2]} *The Unjust and Counterproductive: The Failure of the Governments to Protect Sex Workers from Discrimination report (the Unjust and Counterproductive report)*, an Australia wide study documenting highlights that stigma and discrimination on basis of sex work employment is perpetuated in a vast number of interconnected ways in Australia. Reports from our membership affirm that these experiences and a range of direct and indirect, personal and systemic discrimination continue to affect sex workers in Australia today. These include, but are not limited to: securing housing and accommodation; accessing health services; in custody and legal processes; in policies and practices; in employment; and counterproductive police practices.^[3]

The Global Network of Sex Work Projects (NSWP) Consensus Statement on Sex Work, Human Rights and the Law outlines the 'fundamental rights for all sex workers' to be:

- the right to associate and organise;
- the right to protected by the law;
- the right to free from violence;
- the right to be free from discrimination;
- the right to privacy and freedom of arbitrary interference;
- the right to health;
- the right to move and migrate; and
- the right to work and free choice of employment.^[4]

***"Human Rights apply to all people, including female, male, trans and gender diverse sex workers and sex workers living with HIV....In reality, sex workers often face high levels of harassment by police and governments, have limited or no access to rights and legal redress and are unprotected by the law. Stigma, discrimination, human rights abuses and criminalisation of our work are challenges that sex workers face daily."* Stepping up the evidence on HIV and sex work, Scarlet Alliance, AIDS2014 Report (2014).**

Comment on the Queensland Human Rights Bill 2018

1) Complaints Mechanisms

Respect Inc and Scarlet Alliance have a particular interest in how institutions will be made accountable for breaches to the Act. Respect Inc and Scarlet Alliance support the Objectives of the Bill, including:

“Rename and empower the Anti-Discrimination Commission Queensland as the Queensland Human Rights Commission to: provide a dispute resolution process for dealing with human rights complaints.”

Sex workers are a vulnerable population and unfortunately a target for discrimination and vilification. Due to the privacy and confidentiality needs of many sex workers, and our current criminalisation under Queensland legislation, there are those in the community who see sex workers as an easy target for vilification, due to the barriers we have when trying to access justice after such an incident.

For example, **in a recent statewide study, of those who had experienced assault at work, only 54% said they had even reported it to management** (Regulating Bodies, pg 21). The evidence shows that sex workers working in licensed brothels in Queensland report barriers to addressing violence within the workplace, and even reporting crime committed against them at work. When asked about reporting violence and assault, sex workers working in licensed brothels answered:

“Because [the police] don’t take us seriously. They think we are asking for any trouble we get.”

“The Police don’t care, you wouldn’t be taken seriously.”

“Not much point - the experience of workers who report is that it’s horrible, **no one believes you**, you get treated badly and if it goes to court you lose.’

“Because **I wouldn’t be treated the same way as others.**”

Sex workers in Queensland have significant barriers to accessing rights they are entitled to have enforced due to stigma and discrimination. We argue that it is in the interests of Queensland sex workers that the Human Rights Act would be **enforceable**.

2) Preventative

We support the objective of the Bill: *“ensure that public functions are exercised in a way that is compatible with human rights.”*

Respect Inc and Scarlet Alliance strongly support a Human Rights Bill that will ensure such institutions have a responsibility to act fairly when they interact with marginalised populations including sex workers. **Preventative measures, not just complaints structures**, including education and awareness raising, are an important part of making human rights a reality for all Queenslanders, including sex workers.

For example recently in Queensland two sex workers successfully brought a fraud case against a person who had offended against many sex workers.

One of the workers, Stacey, decided to come forward and report the crime even knowing that her privacy might be breached as a result.

“It was a hassle reporting it but I felt the offender didn’t deserve to get away with it because he had done this before... I was prepared to risk having my name revealed in court, but the police and magistrate dealt with it very respectfully, and I didn’t need to disclose my name to get the matter resolved.”¹

Stacey took the risk because she was determined to see the person prevented from offending again. Stacey had tried previously to report similar offenders, and had not been taken seriously:

“While in this instance the offender was convicted, when she reported an “almost identical crime” last year she was told it “seemed to be a civil matter as there was an agreed contract of sex for payment”.

She eventually received payment after the officer agreed to contact the offender, but he was never charged.

“I do believe that there needs to be some police awareness of the laws relating to the offences that can occur to sex workers,” she said.

“If police were less ignorant, sex workers would be better able to report incidences like this.”²

In the latest case (Stacey’s second), the police, Courts and Magistrate demonstrated that these institutions *are* able to implement best practice and human rights approaches to sex workers who are reporting crime. The individuals did not have their names outed, or their personal information released by the police. The courts dealt with the case seriously, respectfully and efficiently, removing any possibility for the process to demean or name the two sex workers involved.

These processes should not be reliant on the arbitrary good will and sensitivity from the courts and police and should be available to all sex workers not only a few. Staff in these institutions/roles have access to training, guidelines about confidentiality, human rights frameworks and combatting institutionalised discrimination.

1

<https://www.couriermail.com.au/questnews/southwest/man-taken-to-court-after-defrauding-brisbane-sex-workers/news-story/5f1b7105fb65771ec48bd7d6531b9c9e>

2

<https://www.theguardian.com/australia-news/2018/oct/13/it-absolutely-should-be-seen-as-when-sex-workers-are-conned>

2 (a) Public Institutions

Queensland Public Services.

- All government services should be required to have their policies and procedures in line with the the Human Rights Bill.

All Queensland Local Councils.

- Local Councils should be subject to having their internal policies and procedures and actions of their staff checked and measured against the Human Rights Act, with the intention of preventing discrimination before it occurs.

Child Safety Services, or any institution with the power to remove children from their family.

- Too often in the past policies and actions taken in relation to the removal of children has been a result of endemic, racist, sexist and prejudiced discrimination, even when intended to be for a child's' protection. Parents should not be judged by their profession or work.

Queensland Police Service.

- Respect Inc is aware of discrimination and prejudice within the Queensland Police Service against sex workers. This has led to dozens of sex worker complaints about perpetrators going unheeded and not followed up by members of the Queensland Police Service. It is optimum however that there are preventative measures put into place. **It should not be the responsibility of individual sex workers to have to call the Queensland Police Service to account** when not listened to when reporting crimes committed against them.
- “Police entrap us and use condoms as evidence against us, then are also supported [by government] to be regulating the sex industry” Candi Forrest, Respect Inc Queensland, making representation to the Sex Worker Pre-Conference of AIDS2014.
- For example **50% of participants in a study of brothel based workers in 2017 said they would not report to police.** (Regulating Bodies, pg 21).

2 (b) What about Private Businesses?

Workplaces

- Sex worker workplaces, like all workplaces, should ensure the human rights of staff are protected.
- “Not much point. [management] don’t really care anyway” (Regulating Bodies pg 21)
- Fear of repercussion such as being fired: “I didn’t want [management] to think I was starting trouble as the client was a friend to them.” (Regulating Bodies pg 21)

Hotels, rentals and other accommodation

- In 2012, in the case *GK v Dovedeen Pty Ltd and Anor* [2012] QCATA 128, the Queensland Civil and Administrative Tribunal held that a motel that refused accommodation to a sex worker who had used the accommodation for sex work had

contravened the Anti-Discrimination Act 1991 (ADA), and then lost on appeal in 2013.³ However the Attorney General at the time intervened to amend the Anti-Discrimination Act via the Youth Justice (Boot Camp Orders) and Other Legislative Amendment Bill 2012 (Qld). Accommodation providers in Queensland can now evict a person even when there is no evidence that sex work is taking place, simply on the basis that they reasonably believe there is an intention to do so in the future.

- Anti-discrimination protection for sex workers have been rolled back this decade. **It is now lawful in Queensland to discriminate against a person because they are intending to do something legal in Queensland, if that legal activity is sex work.** Any new Human Rights Bill must address, prevent, and protect sex workers from such discrimination.

2 (c) What about in Health Care?

Most of the participants in a study of trans sex workers, and male sex workers in 2018 “said they attended LGBTI-friendly and sex worker-friendly facilities rather than general medical practices, primarily in Urban Southeast Queensland” and did not have data on rural and regional areas in Queensland. Participants discussed experiences in Southeast Queensland as being treated badly for being a trans woman. (TaMS Report June 2018, Pg 40).

Examples of discrimination include:

- “I don’t know, **I’ve been to some GPs and that and they’re like, ‘Ewwwww sex worker, eww, no.’** You know?” Cis Man sex worker (TaMS Report 2018 Pg 40).
- “I hate them, they hate me. Because I do sex work. So they treat me not kind..... Even sometimes I see a doctor and then all the receptionist and everyone there, you know. **When I go inside the doctor, and me and the doctor coming out, they say, ‘Oh my god, is she a man?’**” Trans Woman Sex Worker (TaMS Report 2018 Pg 40).
- Opportunistic & street based workers, particularly young, Aboriginal and Torres Strait Islander, queer, gay, same-sex attracted, trans and non-binary people report lack of access to sex worker friendly health care and **in some cases there was no access to sexually transmissible infection testing.**

2 (c) (a) Regionality

Respect Inc and Scarlet Alliance assert the promotion of human rights in health care settings will require more attention in rural and regional areas than in Southeast Queensland.

Respect Inc statistics demonstrate that many sex workers in rural and regional areas either don’t have a specialist health care facility in their area, or if they do it takes so long to get an appointment as to work as a deterrent.

³

<https://www.smartcompany.com.au/business-advice/legal/motel-wins-anti-discrimination-case-against-sex-worker-in-a-win-for-business-and-common-sense/>

- In Gladstone there is no sexual health clinic at all.
- Emerald has similar problems to Gladstone.
- Sex workers in Townsville have to wait up to a three weeks for a sexual health check at the sexual health centre.
- Palm Island has problems with confidentiality and the sexual health service is chronically understaffed.
- It is also hard to get an appointment for pregnancy advice and termination in many rural and regional parts of Queensland.

3) Quality assurance and compatibility

Respect Inc and Scarlet Alliance strongly support a Human Rights Bill that will be used as a quality assurance and evaluation tool to measure new Queensland legislation against. However, it is important that a **mechanism is developed through which those existing laws that limit or reduce marginalised communities Human Rights are reviewed for compatibility** and amended.

It is also important that **Codes of Conduct for public entities including the Queensland Police Service are adapted to reflect the Human Rights protections.**

4) Privacy and Confidentiality

The privacy and confidentiality of Queensland sex workers is not currently protected either in practice or within the law. Privacy and confidentiality is of a particular concern for sex workers.

“Mainly for privacy reasons, I wouldn’t want that I work in a brothel on a police file.”
(Regulating Bodies pg 21)

38% said they mistrusted police because of concern their privacy would not be taken seriously (Regulating Bodies, pg 21).

5) Freedom of Association

We recommend section 22 (1) Peaceful assembly and freedom of association to include: allowing any person of any occupation in Queensland to associate, support one another, and share resources without unnecessary police intervention. In addition, 22 (2) should be extended to include professional bodies and representative organisations.

6) The law should not unfairly target particular populations, occupations, ethnic backgrounds, races or people of non-English speaking background.

Proportionality of the law and fairness for people of all backgrounds is of particular concern for sex workers.

The protection of the human rights of migrant sex workers and sex workers of Asian appearance is of concern to us. Racial profiling and targeting by public entities such as Queensland Police Service is a form of racially motivated discrimination.

Minimum requirements necessary to ensure sex workers can access the benefits of the Human Rights Bill 2018 (QLD)

Respect Inc and Scarlet Alliance support sex workers being able to lodge a complaint anonymously, and through a representative organisation.

Section 100 'Anonymity' authorises the commissioner to suppress legal details of any person involved in the complaint where the Commissioner considers it 'necessary to protect the work security, privacy or any human right of the person'. However, *the Human Rights Bill 2018* (the Bill) (QLD) outlines that to lodge a complaint, the individual must initially state their legal name and address.^[10]

Scarlet Alliance and Respect Inc's members have highlighted that sex workers are often deterred from filing legal and anti-discrimination complaints when they are required to make the complaint in their legal name as they risk further discrimination, compromised security and safety and, in some instances, criminalisation as a consequence - particularly in the current Queensland legislative environment.

Respect Inc and Scarlet Alliance recommend a provision clarifying that sex workers and other marginalised community members can lodge a complaint through a representative organisation.^[11]

Access to the protections of the Human Rights Bill will be significantly improved by allowing for a representative body to bring about a complaint on behalf and with the consent of an individual sex worker. 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 who face additional barriers. This may include but is not limited to sex workers from culturally and linguistically diverse backgrounds.

As it stands, the *Human Rights Bill 2018* (QLD) mandates that a third party can only make a complaint on behalf of another individual if they are an agent of the individual or a person authorised in writing by the commissioner to make a complaint for the individual'.^[12]

For another person to be authorised to make a complaint for an individual, the Commissioner must be 'satisfied the individual cannot make the complaint'^[13]. Under these circumstances, it remains unclear whether support groups or organisations will be considered 'an agent of the individual' or whether the Commissioner will authorise sex worker organisations, with the sex workers consent, to make a complaint on behalf of a sex worker.

The *Equal Opportunity Act 2010* in Victoria highlights a model to ensuring sex workers are able to utilise a representative complaints model by explicitly indicating individual's right to utilise a 'representative body' to bring a dispute to the Commissioner.^[14] Explicitly ensuring individuals are able to utilise a representative complaints model would enable peer sex worker organisations to bring about, with the consent of the complainant, acts of breaches of human rights on behalf of sex workers who are unable to bring an individual complaint.

Conclusion:

A Human Rights Bill is essential in ensuring that regard for all Queenslanders human rights are at the core of State legislation, policies, practices and public entities. As evidenced in our submission, current legislative provisions do not adequately protect the human rights of all Queenslanders. This Bill could provide an additional layer of protection to ensure laws and public entities are exercising their functions in a manner compatible with human rights. We argue that for this Bill to realise its aims, an appropriate and accessible mechanism of redress should be available to Queenslanders when their human rights are breached. In considering our submission we request that the Legal Affairs and Safety committee will consider strengthening some aspects of the Bill to ensure sex workers, a legal workforce in Queensland, are also able to also access the protections of this legislation.

Summary of recommendations:

“We will insist on human rights for all, including sex workers. Nothing else is acceptable as a matter of true public morality.”

Former Australian High Court judge the Hon. Michael Kirby AC.

Respect Inc and Scarlet Alliance support a Human Rights Act for Queensland and welcome inclusion of cultural rights. However, there are areas where the Act should be strengthened in order that sex workers are also able to access human rights protections.

We recommend the Human Rights Act:

- must be enforceable
- must have a preventative element
- must include a mechanism through which existing/current laws identified as limiting human rights for marginalised communities, including sex workers, will be scrutinised for compatibility.
- must be extended in Section 22
 - 22 (1) ‘Peaceful assembly and freedom of association’ to include: allowing any person of any occupation in Queensland to associate, support one another, and share resources without unnecessary police intervention.
 - 22 (2) to include professional bodies and representative organisations.
- must address the power imbalance that exists for an individual from a marginalised community attempting to address the actions of a powerful public entity (E.g. Police).
- must include mechanisms to strengthen the complaint/dispute process, providing options for anonymous reporting and complaints via a representative body, to protect the safety of members of marginalised communities and to reduce significant barriers to accessing the protections provided by the Human Rights Act.

Thank you for accepting our submission. Should you require further information we would be available to contribute to the hearings process.

Yours sincerely,

Handwritten signatures of Dr Elena Jeffreys and Jules Kim.

Dr Elena Jeffreys
State Co-ordinator
Respect Inc

Redacted contact information for Dr Elena Jeffreys, consisting of two black rectangular bars.

Jules Kim,
Chief Executive Officer,
Scarlet Alliance, Australian Sex Workers Association

Redacted contact information for Jules Kim, consisting of two black rectangular bars.

Respect Inc Queensland Reports:

Respect Inc, *Regulating Bodies, An in-depth assessment of the needs of sex workers in Queensland's Licensed Brothels* (2017)

Respect Inc and the School of Public Health, The University of Queensland, *Factors influencing transgender and male sex worker access to sexual health care, HIV testing and support study (TaMS) Report* (2018)

News Articles:

2018:

<https://www.theguardian.com/australia-news/2018/oct/13/it-absolutely-should-be-seen-as-when-sex-workers-are-conned>

<https://www.couriermail.com.au/questnews/southwest/man-taken-to-court-after-defrauding-brisbane-sex-workers/news-story/5f1b7105fb65771ec48bd7d6531b9c9e>

2013:

<https://www.smartcompany.com.au/business-advice/legal/motel-wins-anti-discrimination-case-against-sex-worker-in-a-win-for-business-and-common-sense/>

^[1] Amnesty International. (2016). *Amnesty International policy on State obligations to respect, protect and fulfil the human rights of sex workers*. Retrieved from <https://www.amnesty.org/en/documents/pol30/4062/2016/en/> on 23/11/18.

^[2] Network for Sex Worker Projects (NSWP). (2015). *Stigma and Discrimination Experienced by Sex Workers Living with HIV*. Retrieved from <http://www.nswp.org/sites/nswp.org/files/Stigma%20and%20Discrimination%20Experience%20by%20Sex%20Workers%20Living%20with%20HIV%2C%20NSWP%20-%20December%202015.pdf> on 23/11/18.

^[3] Scarlet Alliance, & AFAO. (1999). *Unjust and Counter-Productive: The failure of government to protect sex workers from discrimination*. Retrieved from <http://www.scarletalliance.org.au/library/unjust-counterproductive> on 23/11/18.

^[4] Global Network of Sex Worker Project (NSWP). (2013). *Consensus statement: On Sex Work, Human Rights, and the Law*. Retrieved from <http://www.nswp.org/resource/nswp-consensus-statement-sex-work-human-rights-and-the-law> on 23/11/18.

^[5] Ibid. Pg 8.

^[6] *Anti-Discrimination Act 1991* (Qld), Section 106C.

^[7] UNAIDS. (2012). *UNAIDS Guidance Note on HIV and Sex Work*. Geneva. Retrieved from http://www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf on 23/11/18. Pg 2.

^[8] UNAIDS, & UNFPA. (2011). *Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work*. Pg 14.

^[9] Ibid. Pg 13.

^[10] *Human Rights Bill 2018* (QLD), Section 67 (1) (b).

^[11] Scarlet Alliance, & AFAO. (1999). *Unjust and Counter-Productive: The failure of government to protect sex workers from discrimination*. Retrieved from <http://www.scarletalliance.org.au/library/unjust-counterproductive> on 23/11/18. pp 16.

^[12] *Human Rights Bill 2018* (QLD), Section 64.

^[13] *Ibid.* Section 64.

^[14] *Equal Opportunity Act 2010* (VIC), Section 114.