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Australian Human Rights Commission
GPO Box 5218
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By email: TGD.Submissions@humanrights.gov.au

To the Australian Human Rights Commission

Re: Call for Submissions on current and emerging threats to the human rights of trans and gender diverse people

Thank you for the opportunity to provide a submission on current and emerging human rights threats to trans and gender diverse people.

Scarlet Alliance, Australian Sex Workers Association, is the national peak sex worker organisation. Formed in 1989, our membership includes state and territory-based and national sex worker organisations and individual sex workers across unceded Australia.

Scarlet Alliance uses a multifaceted approach to strive for equality, justice and the highest level of health for past and present workers in the sex industry. We achieve our goals and objectives by using best practices including peer education, community development, community engagement and advocacy.

Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. Through our work and that of our member organisations and projects, we have the highest level of contact with sex workers and access to sex industry workplaces throughout Australia. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms.

Trans and gender diverse sex workers are a vital and vibrant section of our sex worker community, across unceded Australia and globally. However, trans and gender diverse sex workers face specific intersectional discrimination as both trans and gender diverse people *and* as sex workers, leading to marginalisation in areas including employment, access to safe, competent and affordable healthcare and community services, and accommodation/housing.

This submission is based on our advocacy informed by consultation with our member organisations and individual sex workers, who frequently report:

- instances of discrimination and vilification that are either not covered by existing anti-discrimination law, or that victims do not feel safe to report;
- police targeting and lack of access to justice;
- mainstream platforming of anti-trans and anti-sex worker rhetoric, which is uncondemned and in some cases supported by law and policy makers;

- loss of digital access and deplatforming, including financial discrimination/de-banking, access to social media and access to other tech services; and
- negative treatment by health practitioners and lack of access to safe, affordable and confidential sexual health care.

Trans and gender diverse community organisations and other representative groups must lead responses to these three policy areas. Trans and gender diverse people are in the best and most informed position to drive law reform and create change within government and civil society. Scarlet Alliance looks forward to participating in future actions to prevent, address and reduce the impact of marginalisation experienced by trans and gender diverse people.

Yours sincerely,



Mish Pony

Chief Executive Officer

Anti-discrimination and vilification protections

Sex workers experience high levels of discrimination¹ and vilification,² and experience significant barriers to reporting to both police and human rights bodies.³ While discrimination against trans and gender diverse people is theoretically prohibited by the Commonwealth and in every state and territory, a lack of mechanisms for anonymous and/or representative complaints (where some complaints processes will require a complainant to use a non-preferred or 'dead' name, which is then disclosed to the respondent) creates barriers to reporting.⁴

Even in situations where trans and gender diverse people are able to report, the scope of the protected attribute against discrimination may not be sufficient,⁵ or there may be anti-discrimination protections but no prohibitions against vilification.⁶ For trans and gender diverse sex workers facing intersectional discrimination, anti-discrimination protections for sex workers currently only exist in the Northern Territory and Victoria.⁷

¹ Recent examples include a former sex worker in Victoria being dismissed from her job at a real estate agency after her employer discovered she had previously been a sex worker, and Queensland sex workers being 'forced to move home' after being evicted due to their sex work status: Rachel Clayton, ['Former sex industry worker challenges employer over claims she was fired due to her past'](#) ABC News (online, 27 March 2024); and Eden Gillespie, ["Forced to move home": discrimination of Queensland sex workers needs to end, say advocates'](#) *The Guardian* (online, 20 April 2022).

² During consultations on anti-vilification law reform in Queensland, we received reports from sex workers of online and real-world vilification including doxxing (publication of sex workers' real names and addresses), publication of HIV status, and threats of violence: Respect Inc and Scarlet Alliance, [Joint Submission to the Queensland Legal Affairs and Safety Committee, Inquiry into Serious Vilification and Hate Crimes](#) (25 August 2021) 7 and [Joint Submission to the Queensland Legal Affairs and Safety Committee, Criminal Code \(Serious Vilification and Hate Crimes\) and Other Legislation Amendment Bill 2023](#) (12 May 2023) 3.

³ DecrimQLD and Respect Inc, ['Unprotected and Under-Reported: Sex Workers Experiences of Discrimination and Anti-Discrimination Protections in Queensland'](#) (Survey Synopsis No 1, June 2022); Scarlet Alliance, [Anti-discrimination & vilification protections for sex workers in Australia](#) (Briefing Paper, February 2022).

⁴ 'Unprotected and Under-Reported' (n 3) 4; *Anti-discrimination & vilification protections for sex workers in Australia* (n 3) 5.

⁵ In Western Australia, TGD discrimination is only unlawful against a ['gender reassigned' person](#), i.e. a person who has undergone a 'reassignment procedure' and has been issued with a 'recognition certificate' under the *Gender Reassignment Act 2000* (WA).

⁶ Vilification is not prohibited by the Commonwealth, South Australia or Western Australia. In Victoria, vilification is only unlawful if it rises to the level of ['grossly offensive public conduct'](#), which does not include online vilification.

⁷ The Northern Territory prohibits discrimination on the basis of ['employment in sex work or engaging in sex work'](#) and the Victorian Government has explicitly stated that the protected attribute of ['profession, trade or occupation' extends to sex workers](#). The current [Anti-Discrimination Bill 2024 \(Qld\)](#) prohibits discrimination on the basis of 'sex work activity' and the [Equality Legislation Amendment \(LGBTIQA+\) Bill 2023 \(NSW\)](#) prohibits discrimination and vilification against a person who 'is, or has been, a sex worker', however both of these Bills are yet to be passed.

These inconsistent approaches generate confusion as to when and how trans and gender diverse people can access anti-discrimination and anti-vilification protections, and fail to provide safe and clear avenues for reporting. A more uniform approach is required to ensure that trans and gender diverse people in all jurisdictions have access to comprehensive anti-discrimination and anti-vilification protections and safe reporting mechanisms.

Criminalisation, policing and access to justice

The criminalisation of all or parts of sex work generates significant barriers for trans and gender diverse sex workers. Aside from the Northern Territory,⁸ every Australian jurisdiction retains criminal offences relating to consensual sex work, including states which have purported to decriminalise sex work, such as New South Wales and Victoria.⁹

Sex work offences are disproportionately enforced, with trans and gender diverse sex workers being frequent targets of police harassment and overreach. Globally, this can be seen in 'walking while trans' policing, where trans and gender diverse people are targeted and arrested for street-based sex work offences, regardless of whether they are actually doing (or have ever done) sex work.¹⁰ In uncaded Australia, many trans and gender diverse sex workers report police harassment and targeting, even in circumstances where they are working lawfully.¹¹

This targeted policing creates a climate of mistrust where trans and gender diverse sex workers feel unable to approach police for assistance when required, and also results in these sex workers developing practices of discretion and evasion (even when working lawfully), creating access barriers to sex worker, harm reduction and other community outreach services.¹²

Trans and gender diverse sex workers are often among the most marginalised sex workers in uncaded Australia. The full decriminalisation of all forms of sex work in every state and territory is vital to ensuring that trans and gender diverse sex workers have equitable access to justice, employment, housing, healthcare and other community services.

Campaigns to rollback sex worker and trans and gender diverse rights

⁸ See *Sex Industry Act 2019* (NT). A Bill to fully decriminalise sex work is also currently before Queensland Parliament: [Criminal Code \(Decriminalising Sex Work\) and Other Legislation Amendment Bill 2024](#) (Qld).

⁹ *Summary Offences Act 1966* (Vic) s 38B; [Summary Offences Act 1988](#) (NSW) ss 14-21. The Equality Bill 2023 (NSW) (n 7) also contains provisions repealing the remaining sex work offences in NSW.

¹⁰ See, eg, Jaclyn Diaz, ['New York Repeals "Walking While Trans" Law'](#), *NPR* (online, 3 February 2021).

¹¹ Scarlet Alliance, [Submission No 31 to the Legislative Assembly Committee on Community Services, Equality Legislation Amendment \(LGBTIQ+ Bill 2023 Inquiry](#) (14 April 2024) 9-10.

¹² *Ibid* 9.

Scarlet Alliance is highly concerned with the increasing and unfounded moral panic against trans and gender diverse people occurring both in uncensored Australia and across the globe. The alignment of anti-trans activists (sometimes referred to as trans-exclusionary radical feminists, or TERFs) with far-right and neo-nazi organisations,¹³ accompanied by irresponsible media reportage and policing and political responses, has generated a culture of permissiveness of a societal 'debate' on the existence of trans and gender diverse people.

It is important to note that many anti-trans/TERF activists are also ideologically and/or politically aligned with sex worker exclusionary radical feminists (SWERFs). The mainstream platforming of these neo-fascist ideals therefore generates a compounding existential threat for trans and gender diverse sex workers.

The consequences of platforming and mainstreaming what is appropriately classified as hate speech can be seen in recent legislative developments across the country, for example the introduction of the Commonwealth Childhood Gender Transition Prohibition Bill 2023 and the South Australian Summary Offences (Prostitution Law Reform) Amendment Bill 2023, which attempted to introduce the harmful 'Nordic model' of sex work regulation in South Australia. While the Bill was narrowly defeated during its second reading, South Australian Liberal leader Nicola Centofanti MLC has confirmed that she will continue to advocate for this dangerous model of sex work regulation in South Australia.¹⁴

The introduction of these types of legislation without meaningful engagement or consultation with the communities that they affect, demonstrates that Australian lawmakers feel emboldened to legislate absent of both expertise and empathy. It is not acceptable that trans and gender diverse sex workers become scapegoats in the nationwide conservative backlash against gains made by the wider LGBTQ+ community. It is essential that civil society, media and law and policymakers promote inclusion and human rights, recognise sex work as work, and unequivocally condemn anti-trans rhetoric.

AI, algorithmic bias and digital participation

Shadowbanning, deplatforming and loss of access to digital services are a significant concern for sex workers of all genders. During the past decade, sex workers in Australia and overseas have experienced a loss of access to technological tools and services at exponential rates, largely as a result of laws and policies that create obligations for private

¹³ Scarlet Alliance ['Scarlet Alliance notes the rise of violent fascist tactics against trans & queer community, reaffirms the need to curb anti-trans and anti-sex work criminalisation'](#) (Media Release, 28 March 2023).

['Victorian government may consider amending laws after Nazi salutes at Parliament rallies'](#), ABC News (online, 19 March 2023).

¹⁴ Duncan Evans, ['SA votes down Nordic model sex work reform by single vote'](#), NCA NewsWire (online, 2 May 2024).

entities to respond to what governments envision as online and real-world harms.¹⁵ Examples reported by sex workers in Australia include losing access to web-hosting,¹⁶ social media,¹⁷ and payment processors and merchant facilities.¹⁸

Harms generated by algorithmic technologies have been documented in both public and private sectors contexts,¹⁹ and risk entrenching systemic discrimination on an 'unprecedented scale.'²⁰

The consequences of digital discrimination for sex workers include loss of income,²¹ diminished ability to share health and safety information,²² negative mental health impacts,²³ chilling effects on information sharing and engagement in political speech,²⁴ and vulnerability to exploitation from managers and advertising platforms.²⁵

Scarlet Alliance members have observed negative financial impacts on trans and gender diverse sex workers such as:

- advertising platforms being automated to deprioritise trans and gender diverse content, which results in being less visible to clients, or harder for clients to find;
- social media platforms using algorithmic technologies to close accounts of trans and gender diverse sex workers not in breach of terms of service agreements,

¹⁵ See Scarlet Alliance, Submission to the Department of Industry, Science and Resources, [Safe and Responsible AI in Australia Inquiry](#) (26 July 2023) and Scarlet Alliance, Submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts on the [Online Safety \(Basic Online Safety Expectations\) Amendment Determination 2023](#) (16 February 2024).

¹⁶ Julie Fenwick, ['Australian Sex Workers Have Been Removed From Linktree. What They Are Doing Is Not Illegal'](#), Vice (online, 21 January 2022).

¹⁷ James Purtill, ['Sex workers fear a new wave of deplatforming – and the proposed Online Safety Bill'](#) ABC News (online, 20 February 2021).

¹⁸ Amber Schultz, ['It's sex discrimination: banks strip brothels and escort agencies of their rights'](#) Crikey (online, 20 May 2020); Lavender Baj, ['How Banks Are Exploiting A Loophole To Legally Discriminate Against Sex Workers'](#) Junkee (online, 10 November 2021).

¹⁹ Australian Human Rights Commission (AHRC), [Human Rights and Technology](#) (Final Report, 27 May 2021) 105-7.

²⁰ Tendayi Achiume, [Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance](#), UN Doc A/HRC/44/57 (18 June 2020) [6].

²¹ Danielle Blunt and Ariel Wolf, ['Erased: The Impact of FOSTA-SESTA and the Removal of Backpage on Sex Workers'](#) (2020) (14) *Anti-Trafficking Review* 117, 118-9.

²² Ibid 119-20.

²³ Hacking/Hustling, [Posting into the Void](#) (Community Report, October 2020) 52-3.

²⁴ Ibid.

²⁵ See Erin Tichenor, ["'I've Never Been So Exploited": The Consequences of FOSTA-SESTA in Aotearoa New Zealand'](#) (2020) (14) *Anti-Trafficking Review* 99.

resulting in income streams disappearing overnight, without warning and with no avenue for recourse;

- trans and gender diverse sex workers investing unpaid time and effort to maintain online presence, without corresponding income security;
- trans and gender diverse-friendly online advertising options (such as Backpage and Cracker) becoming less available, with no affordable alternatives developed.

Research indicates that algorithmic bias and digital discrimination disproportionately affect both sex workers *and* trans and gender diverse people.²⁶ AI systems and automated decision-making tools are increasingly utilised both within the tech sector and in 'real-world' scenarios, by both state and private-sector organisations. It is essential that the developers of these technologies, and the organisations implementing them, are aware of biases perpetuated by AI and automated decision-making, and work to continuously address these impacts.

Safe, competent and accessible health care

The negative physical and mental health outcomes experienced by trans and gender diverse people in uncensored Australia have been well documented.²⁷ Fear of negative treatment, inadequate care and having to 'educate' medical professionals on trans health generate significant barriers to healthcare access.²⁸ Trans and gender diverse sex workers are likely to

²⁶ In a 2021 survey of Instagram users, 83.9% of sex worker users and 69.7% trans/non-binary users reported unfair deplatforming and/or content removal. Shakira Smith et al, [Censorship of Marginalised Communities on Instagram](#) (Report, Salty Algorithmic Bias Collective and University of Michigan, 27 September 2021) 4. See also Gianluca Mauro and Hilke Schellmann, ["There is no standard": investigation finds AI algorithms objectify women's bodies](#), *The Guardian* (online, 8 February 2023) and; Chanté Joseph, ["Instagram's murky "shadow bans" just serve to censor marginalised communities"](#) *The Guardian* (online, 9 November 2019).

²⁷ Using a self-reported measure of depression in the past two weeks, researchers found 76.4% of TGD young people experienced moderate to severe depressive symptoms, compared with 7.7% of adolescents in the general population: Penelope Strauss et al, [Trans Pathways: the mental health experiences and care pathways of trans young people](#) (Final Report, Telethon Kids Institute, September 2017) 25.

Only 3.4% of TGD people in Australia rated their health as 'excellent', about half reported a time in the last year where they needed healthcare but did not receive it, and over 20% reported harassment or assault from a healthcare practitioner: Lucille Kerr et al, [TRANScending Discrimination in Health & Cancer Care A Study of Trans & Gender Diverse Australians](#) (ARCSHS Monograph Series No. 117, Australian Research Centre in Sex, Health & Society, La Trobe University, 2019) 6-7.

²⁸ Kerr et al (n 20) 6-7; see also Damien Riggs et al, ["Healthcare experiences of gender diverse Australians: a mixed-methods, self-report survey"](#) (2014) 14(230) *BMC Public Health* 4.

experience further stigma and discrimination in healthcare settings, as 47% of healthcare workers *self-report* that they treat others negatively because of their sex work.²⁹

An ongoing and significant area of concern for trans and gender diverse sex workers is access to affordable and confidential sexual healthcare. Especially since the beginning of the COVID-19 pandemic, many sexual health services now require patients to disclose their name as it appears on identity documents (which may be a non-preferred or 'dead' name for many trans and gender diverse people) and/or require patients to disclose their Medicare information.

Lack of access to affordable and confidential sexual health testing and treatment is just one of many healthcare barriers faced by trans and gender diverse people in Australia, but presents catastrophic consequences for trans and gender diverse sex workers. Trans and gender diverse sex workers must be able to access sexual health testing without fear of criminalisation,³⁰ maintain anonymity or pseudonymity, and not be forced to link their Medicare record to sexual health testing.

International research indicates that availability of voluntary and anonymous testing increases the likelihood of engagement with testing, and is 'significantly associated with earlier entry into medical care.'³¹ Ensuring the availability of affordable and anonymous sexual health care in every state and territory is a small step in addressing the health inequities experienced by trans and gender diverse people in Australia, and will have significant benefits for trans and gender diverse sex workers.

²⁹ Timothy Broady et al, [Stigma Snapshot: Health care workers 2022](#) (Report, Centre for Social Research in Health, UNSW Sydney, 2022) 2. As part of the same study, 88% of sex workers reported negative treatment by healthcare professionals during the same period: Broady et al, [Stigma Snapshot: Sex workers 2022](#) (Report, Centre for Social Research in Health, UNSW Sydney, 3 January 2023) 2.

³⁰ In 2006, high profile proceedings were commenced against an ACT sex worker living with HIV, despite no evidence of transmission occurring, or the sex worker engaging in any unsafe sex practices. The sex worker was publicly outed and prosecuted for providing a sexual service whilst knowingly HIV positive. Due to fear generated by the publicity of the case, clinicians and peer workers observed a 'dramatic drop in sex worker attendance at outreach medical services'; and '[i]n the four-week period following the court case, the numbers attending the service dropped from an average of 40 per night to three'; Elena Jeffreys et al, [Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention](#) (2012) 2(3) *World Journal of AIDS* 203, 204-5.

³¹ Andrew Bindman et al, [Multistate Evaluation of Anonymous HIV Testing and Access to Medical Care](#) (1998) 280(16) *JAMA* 1416.