



## **Submission to the Australian Human Rights Commission**

National Inquiry into Sexual Harassment in Australian Workplaces

**26 February 2019**

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## Recommendations

*Recommendation 1:* Include sex industry workplaces in media campaigns about sexual harassment. This will aid the general public, including sex workers, to recognise sexual harassment when it occurs, across a wider breadth of Australian workplaces.

*Recommendation 2:* Ensure peer-based education services to sex workers are resourced to develop and implement culturally appropriate strategies to counter workplace sexual harassment.

*Recommendation 3:* Sexual harassment complainants are able to maintain anonymity through a representative complaints model.

*Recommendation 4:* Reduce barriers to complainants reporting sexual harassment with media guidelines regarding the reporting of sexual harassment cases, similar to those in place for other sensitive issues, like suicide.

*Recommendation 5:* Overhaul of Australia's federal anti-discrimination laws to ensure consistent coverage of other important areas of discrimination, including discrimination due to occupation.

*Recommendation 6:* Reforming all state and territory laws which criminalise the sex industry would substantially remove barriers to sex workers in Australia reporting sexual harassment.

*Recommendation 7:* Resources and campaigns to combat workplace sexual harassment are developed in a range of community languages.

*Recommendation 8:* Educate employers and employees to avoid favouritism, particularly using sex as a manipulative tool, in the workplace to close the gap for those who would leverage favouritism to enable sexual harassment.

*Recommendation 9:* Australian regulators to supervise labour law compliance in all Australian industries.

*Recommendation 10:* It is crucial that sexual harassment and bullying be included in all workplace guidelines, like those produced by SafeWork NSW for the NSW sex industry.

*Recommendation 11:* Simplify the legislative system to aid all Australian workers to reporting workplace bullying and sexual harassment.

*Recommendation 12:* Foster an environment where all Australian workplaces are encouraged to use consultative processes to develop workplace policies addressing sexual harassment and bullying.

## **About SWOP**

The Sex Workers Outreach Project (SWOP) would like to thank the Australian Human Rights Commission (AHRC) for the opportunity to contribute to the National Inquiry into Sexual Harassment in Australian Workplaces.

SWOP is a non-government organisation that exists to provide New South Wales (NSW) sex workers with the same access to health, safety, human rights and workplace protections as other Australian workers. SWOP is primarily funded by NSW Health to sustain the low rates of sexually transmitted infections (STIs) amongst sex workers; sustain the virtual elimination of HIV transmission within the sex industry; and reduce hepatitis infections in sex workers. We do this by bringing together sex workers, researchers and clinicians, government and non-government organisations from a range of disciplines, and advocating for a collaborative, holistic approach to the health services provided to NSW sex workers.

SWOP provides direct services to sex workers across the state via peer-based outreach and a range of other direct support services. SWOP has the highest level of direct contact with sex workers of any agency, government or non-government, in Australia.

Protecting the health and safety, including workplace safety, of NSW sex workers is the key driver in our organisation's work, and in our decision to submit to this particular inquiry.

## The NSW sex industry

Just like in other industries in Australia, sexual harassment happens in sex industry workplaces. However there are complicating, and perhaps unique factors in the sex industry, which make sexual harassment harder to identify, report and eliminate.

From the outset we would like to make it clear that while sex workers provide very clearly defined negotiated sexual services – and there are limits – this does not mean that sex workers are available for anything and everything. Belief in this fallacy can be a driver of sexual harassment in sex industry workplaces.

Sex services premises in NSW were decriminalised in 1995. The removal of criminal penalties pertaining to the sex industry has largely served workplace health and safety well, improving the human rights of NSW sex workers, though stigma and discrimination against sex workers still persists.

The NSW sex industry can have a high turnover, with a large number of sex workers only spending a short period (three to five years) working in the industry. Work in the NSW sex industry may be part-time or intermittent work, to meet other commitments, such as family and study. The largest proportion of the workforce would consist of female workers whose median age moved between 25 and 29 years between 1992 and 2009<sup>1</sup>.

This comparatively young workforce is spread over a number of workplace environments, including, but not limited to, sexual service premises (SSPs), strip clubs, escort agencies, and home occupation sex services premises (HOSSPs). Sex workers in different workplaces may experience sexual harassment differently, stemming from different perpetrators, and using different methodologies. For example, with SSPs largely insulating sex workers from direct phone or internet contact with clients, harassment tends to be face-to-face, rather than online or electronic as it might be for HOSSP workers.

In the next section, we set out some of the unique factors that drive workplace sexual harassment in the sex industry.

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<sup>1</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., et al. (2012), *The Sex Industry in NSW: a Report to the NSW Ministry of Health*, Sydney: Kirby Institute, University of New South Wales, 17.

# The drivers of workplace sexual harassment in the sex industry

## 1. Identifying sexual harassment in sex industry workplaces

When work revolves around sex, it can be harder for victims, bystanders and even perpetrators, to identify the line between acceptable sexual discussions and comments that would be considered sexually harassing. For example, when a worker commences in a sex services business, it is usual for management to ask about sexual practices and discuss attribute-based marketing. Descriptions of workers and services they wish to provide are needed for advertising and for communication by a receptionist to would-be clients. This high emphasis on physical appearance is common to other Australian industries, including film, television and fashion industries. It can also represent an area of vulnerability in terms of sexual harassment, particularly when employers and their agents take it as permission to make repeated, unwanted and humiliating comments about physical appearance that border on bullying. We have also heard that some managers/owners of sex industry businesses inappropriately create casting-couch scenarios, under the guise that the would-be worker needs to demonstrate their skills in erotic services. This is just as unacceptable in the sex industry as it is in the film and television industry, but new to industry workers may not realise this.

New sex workers are often most the vulnerable to sexual harassment because of their unfamiliarity with workplace norms and behaviours in SSPs. While most people know that it is a criminal offence to work in a SSP or escort agency under the age of 18; that might be the limit of their industry knowledge. What is unique to this industry is that the bulk of workers are in their twenties. With such a young workforce, there can be low awareness of workplace health and safety, industrial standards, and complaint mechanisms. Broad education campaigns rarely (if ever) depict sexual harassment and other industrial issues as occurring inside sex industry workplaces; so often workers who are new to sex services do not know if regular industrial standards and conditions apply.

For people who are new to sex work, there is a lack of readily available information on what a job interview in a SSP entails; questions they will be asked, and what sort of trials a new employee can appropriately be asked to engage in. This lack of knowledge creates opportunity for exploitation, including sexual harassment, which may take similar forms to other industries where would-be employees are asked for unpaid trials to prove they can do the job.

New to the industry workers are rarely provided with information on their workplace rights to enable work conditions to be negotiated. This is exacerbated by the sex industry being mostly comprised of small-medium businesses, which may lack the skills, time or resources to create internal policies and procedures relating to sexual harassment. Without better resourced industry players, industry-appropriate policies also do not filter down to smaller, less well-resourced SSPs.

While sex worker peer organisations like SWOP have the experience to help new sex workers identify appropriate and inappropriate behaviour by employers and their agents, this aspect of our work is rarely funded. However, as health-seeking behaviour is impacted by experiencing workplace sexual harassment, SWOP regularly supports workers to advocate for appropriate workplace behaviour, or to seek out a better workplace when that fails.

*Recommendation 1:* Include sex industry workplaces in media campaigns about sexual harassment. This will aid the general public, including sex workers, to recognise sexual harassment when it occurs, across a wider breadth of Australian workplaces.

*Recommendation 2:* Ensure peer-based education services to sex workers are resourced to develop and implement culturally appropriate strategies to counter workplace sexual harassment.

## 2. Stigma, social attitudes to sex work and gender equality are barriers to reporting

Many workers have told SWOP of being sexually harassed in sex industry workplaces. Despite it being a persistent issue, few sex workers complain to non-offending managers in their workplace. SWOP is unaware of any sex worker making a formal complaint to Anti-Discrimination Board of NSW or the Australian Human Rights Commission. Formal research would identify all of the factors which impede sex workers from reporting sex harassment, however we are able to point to some overarching issues which specifically disempower sex workers, namely stigma, negative social attitudes to sex work, and gender inequality.

Media stereotypes about sex work can make it seem that being a sex worker is the equivalent of asking for sexual harassment. Media reportage on cases with sex worker complainants can leave sex workers with the impression that it is a waste of time to seek legal redress for any sort of sexual offences committed against them. It can also incline sex workers to believe that they will be treated in a prejudicial manner by any justice system they engage with.

Working in a stigmatised occupation can mean that sex worker complainants have to weigh up access to justice with the potential impact that bringing a case against their harasser may have upon their privacy and safety, especially if it is reported upon in the media. As was evident during SWOP's participation in the AHRC's Sydney consultation for people working in media, entertainment and the arts<sup>2</sup>, reporting on legal cases involving sex workers tends to over-emphasise occupation, just like it does for our colleagues working in media, entertainment and the arts.

Sex workers, particularly those working in adult films, also share the concerns of media, entertainment and arts workers about reputational damage and the resulting loss of income, and see these issues as key barriers to reporting sexual harassment. This is because, like the Australian film industry, the Australian adult film industry has a comparatively small pool of employers and future employment often depends upon positive verbal references from previous employers. The idea of a representative complaints model that preserves complainant anonymity was raised at this consultation, and SWOP agrees it would likely work to reduce reporting barriers for sex workers too.

However unlike our colleagues working in media, entertainment and the arts, a bigger concern for most sex workers is not simply how reporting sexual harassment will impact their sex industry career, it is also the fear that their identity as sex worker will be publically revealed, and they will thereafter face discrimination across other forms of employment, housing and in other seemingly unrelated areas of their life.

The use of pseudonyms is a common safety method utilised by sex industry workers. Pseudonyms help sex workers protect their privacy and safety using a clear demarcation between work life and private life. Media reporting that uses a sex workers real name, photograph and a headline about their occupation, can open the door to stalking and online harassment. Outing sex workers in the media can also have a multitude of indirect consequences that impact the prerequisites for health as set out in the Ottawa Charter<sup>3</sup>. For example, being outed as a sex worker may expose a sex worker to homelessness if they rent a property where the property owner or real estate agent discriminates against sex workers; or if they own an apartment when the body corporate discriminates against sex workers.

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<sup>2</sup> Australian Human Rights Commission consultation with people working in media, entertainment and the arts, held Monday 10 December, 2018 at 10am, attended by SWOP Policy Officer, Jackie McMillan. <https://www.eventbrite.com.au/e/national-workplace-sexual-harassment-inquiry-sydney-consultation-with-people-working-in-media-tickets-52896911085>

<sup>3</sup> World Health Organisation, *The Ottawa Charter for Health Promotion*, accessed 19 February, 2019 at <https://www.who.int/healthpromotion/conferences/previous/ottawa/en/>.

As our peak body, Scarlet Alliance, points out: “Discrimination comes from private, public and government spheres. Anti-discrimination laws for sex workers in Australia remain inconsistent and ineffective.”<sup>4</sup> With NSW being one of the Australian states that does not currently have occupational discrimination legislation, the fear of being outed as a sex worker is magnified for local sex workers, and represents a significant barrier to reporting sexual harassment.

With much sexual harassment also involving bullying and discrimination, when these cases come to bear, they tend to use anti-discrimination legislation, as Redfern Legal Centre<sup>5</sup> explains. For NSW sex workers, the lack of occupational discrimination legislation knocks this out as a potential pathway to justice. SWOP notes that a decade ago, in 2009, the Australian Human Rights Commission (AHRC) recommended a full overhaul of Australia’s anti-discrimination laws to cover some important areas of discrimination that have been left out, including discrimination by occupation<sup>6</sup>. We continue to support the AHRC in this endeavour, as overhauling anti-discrimination laws is vital for sex workers to achieve the same access to human rights as other Australian people.

*Recommendation 3:* Sexual harassment complainants are able to maintain anonymity through a representative complaints model.

*Recommendation 4:* Reduce barriers to complainants reporting sexual harassment with media guidelines regarding the reporting of sexual harassment cases, similar to those in place for other sensitive issues, like suicide.

*Recommendation 5:* Overhaul of Australia’s federal anti-discrimination laws to ensure consistent coverage of other important areas of discrimination, including discrimination due to occupation.

### **3. Legal barriers to reporting sexual harassment**

The sex industry is just one of many industries that readily employs recent migrants. One reason for this is that sex work is generally considered a form of unskilled labour, where one can earn an income without qualifications, extensive training, prior experience, or advanced English. Migrant workers may enter the sex industry for a similarly short period to their Australian counterparts, and then return to their country of origin. When sex work is criminalised in their home country, it is a barrier to these sex workers reporting crimes against them.

SWOP is cognisant that many recently arrived migrants are not aware that sex work is lawful in NSW. Fear about persecution here would mean these workers would rarely report crimes against them to authorities. In our experience working with sex workers here on visas, everyone worries about their visa before they make any sort of complaint, even if they have the correct visa. Across a range of Australian industries, visa threats are also leveraged against migrant workers to discourage them from complaining or reporting poor workplace behaviour. Migrant workers on short term visas usually put up with sexual harassment, because it is easier to keep their focus on making money, and getting out.

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<sup>4</sup> Stardust, Zahra, *Protecting Sex Worker Human Rights in Australia*, International Bar Association Human Rights Working Group News, Volume 1, Issue 2, September 2014.

<sup>5</sup> Redfern Legal Centre, *Bullying, harassment and discrimination at work webinar* (2016), accessed online 19 February, 2019 at <https://rlc.org.au/training/bullying>.

<sup>6</sup> Australian Human Rights Commission, *National Human Rights Consultation*, 2009, 616, accessed 19 February, 2019 at [www.hreoc.gov.au/legal/submissions/2009/200906\\_NHRC.html](http://www.hreoc.gov.au/legal/submissions/2009/200906_NHRC.html).

Intersecting fears about encountering racism when making complaints is another barrier to migrant workers reporting crimes against them. English not being the workers' first language can be another barrier to addressing sexual harassment in the sex industry. While the job itself can be performed with rudimentary English, advocating for appropriate workplace behaviour requires a more advanced command of English and some familiarity with Australian cultural norms. These intersecting barriers make complaints about sexual harassment very unlikely from the migrant sector of the NSW sex industry.

It is not just the migrant workforce who experience legal barriers to reporting sexual harassment. Differing laws with respect to the lawfulness of sex work from state to state act as barriers to sex workers reporting sexual harassment. When sex workers have doubt about the legality of their work; or they work at a workplace that might not have correct development approval; or they move between jurisdictions with different laws pertaining to sex work; they are less likely to approach authorities regardless of the legal environment they find themselves working within.

All the barriers we have detailed in this section as impacting sex industry workers should also be contextualised as occurring in addition to the broader context of the AHRC's research detailing low reporting rates by workers in other Australian workplaces. Sex workers are not immune to the overall impression expressed by many Australian workers that "a formal complaint would be viewed as an overreaction or that it was easier to stay quiet."<sup>7</sup>

*Recommendation 6:* Reforming all state and territory laws which criminalise the sex industry would substantially remove barriers to sex workers in Australia reporting sexual harassment.

*Recommendation 7:* Resources and campaigns to combat workplace sexual harassment are developed in a range of community languages.

#### **4. Fiscal barriers to reporting sexual harassment**

Some sex workers anecdotally report to SWOP that sexualised interactions with receptionists and management results in the individual worker receiving more clients when they are on shift, so reporting these conversations as sexual harassment would have a fiscal impact. In these cases, behaviour that might be labelled by some sex workers as sexual harassment, is described by other workers as necessary flirtation, and returned with some reciprocity in order to garner favour and improve income.

SWOP has received reports about favouritism occurring across a variety of sex services workplaces, from male only SSPs, to migrant workplaces, to strip clubs. Our culturally and linguistically diverse outreach officers report that reciprocal favours – you look after me, and I'll look after you – can be a culturally expected practice which weighs heavily upon some individual workers. In the same way that gendered norms mean that women can be socialised to feel their role is to be agreeable and not make a fuss, some cultural groups are raised to respect their elders, and would see refusing a request from a boss as disrespectful, even if the request itself was unreasonable.

Among some groups of migrant workers there can be a fear about making complaints and being labelled as a trouble-maker, which could lead to being sacked or being given less client bookings. The number of workplaces that might employ a migrant worker with limited English can be comparatively small, and like for workers in other industries, there can be fear about reputational damage resulting from reporting bad employer behaviour making it hard to find a new workplace.

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<sup>7</sup> Australian Human Rights Commission, *Everyone's Business: Fourth national survey on sexual harassment in Australian workplaces*, 2018, 9.

This can give SSP staff, like receptionists, a lot of power. Unscrupulous staff can leverage favouritism – like encouraging high profile clients to see certain workers, or scheduling the worker on the SSP’s most profitable shifts – against taking sexual liberties that sexually harass the worker.

SWOP provides education to both sex workers and receptionists about the importance of fairness in creating harmony in sex services workplaces. We also reinforce to sex workers working in sex services premises that it is their right to say no to any sort of activity that they do not think is appropriate. We encourage sex workers who cannot find common ground with their employer to move to other places to work, though this would be aided by guidelines that discuss favouritism as a key factor in workplace disharmony.

*Recommendation 8:* Educate employers and employees to avoid favouritism, particularly using sex as a manipulative tool, in the workplace to close the gap for those who would leverage favouritism to enable sexual harassment.

## **5. The matrix of workplace health and safety, discrimination, industrial issues and sexual harassment**

Most sex industry business operators view their workers as sub-contractors. However in NSW these businesses do have obligations for workers compensation to cover all staff (sex workers, along with receptionists and other allied staff). Complaints to the State Insurance Regulatory Authority (SIRA) by sex workers are rare, but not unheard of, mostly because sex workers are rarely aware that they’re covered by the *Workers Compensation Act 1987*. Fears about discrimination resulting from revealing their legal name to aberrant employers can also hamper sex workers from making formal workers compensation complaints.

“Sham contracting — when a company lists employees as contractors to avoid having to pay tax and benefits — and charging workers illegal fines are widespread practices in the sex industry,”<sup>8</sup> writes Clare Adams in 2014. Since that time, while the Fair Work Ombudsman has commenced legal actions about sham contracting in other Australian industries, including the food delivery industry, there have been very few cases about similar practices in the sex industry. Dr Alice Orchiston, Associate Lecturer at the University of Sydney Law School, points out that the “failure on the part of Australian regulators to supervise labour law compliance in the sex industry means that the legal brothel sector is predominantly regulated by market forces, and sex workers are vulnerable to exploitation.”<sup>9</sup>

It is also SWOP’s view that workers engaged on an ad-hoc basis under verbal agreements or under sham contracts as a sub-contractor when in fact the work conditions are that of an employee, are more vulnerable to mistreatment that includes sexual harassment. Across all industries sexual harassment is less likely to flourish in businesses that meet workplace health and safety obligations and clearly define unacceptable behaviours.

*Recommendation 9:* Australian regulators to supervise labour law compliance in all Australian industries.

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<sup>8</sup> Adams, Clare, *Sham contracting is rife in sex industry*, Green Left, Issue 1012, June 13, 2014 accessed online 26 February, 2019 at <https://www.greenleft.org.au/content/sham-contracting-rife-sex-industry>.

<sup>9</sup> Orchiston, Dr Alice, *Brothels as Workplaces: Exploring Labour Regulation and Compliance in Australia's Legal Sex Industry*, University of Sydney, (2017) accessed online 26 February, 2019 at <https://ses.library.usyd.edu.au/handle/2123/17223>.

## The current legal framework with respect to sexual harassment

For NSW sex industry workplaces, how to adhere to the complex matrix of relevant workplace laws is simplified using industry guidelines produced by the NSW Government. After the introduction of *The Disorderly Houses Amendment Act 1995* that made SSPs lawful workplaces, the NSW Government's *Health and Safety Guidelines for Sex Services Premises in NSW* were developed. From 1997, these guidelines have been used widely by sex industry workers and employers.

To date, information produced for sex industry workplaces has tended to focus upon preventing the transmission of sexually transmitted infections, including the employers' role in the provision of personal protective equipment (PPE), along with the prevention of physical violence and other workplace injuries. Since decriminalisation, and the subsequent provision of these guidelines, we have seen improvements across these areas of workplace health and safety. This is best captured in *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*<sup>10</sup>, which states: "These reforms that decriminalised adult sex work have improved human rights; removed police corruption; netted savings for the criminal justice system; and enhanced the surveillance, health promotion, and safety of the NSW sex industry. International authorities regard the NSW regulatory framework as best practice." However, as workplace sexual harassment is given little attention in these guidelines, sex industry employers and employees may doubt its importance. It is SWOP's view that employers do not know about developing policies and procedures around bullying and sexual harassment.

In NSW, SafeWork can only help workers with workplace bullying as it is defined in the *Work Health and Safety Act 2011 No 10 (NSW)*. On the SafeWork website, bullying complainants (sexual harassment is not discussed) are directed to mental health services for immediate emotional support; the Anti-Discrimination Board if their issue relates to discrimination (but not occupational discrimination); the Fair Work Ombudsman if their complaint includes being forced to do things (unclear if that includes being forced to provide unwanted sexual services); NSW Police if the complaint includes threats of physical violence, but not work-related violence; and to the office of the e-Safety Commissioner if it is regarding online bullying, but only if it is image-based abuse. That is a bewildering array of options for someone experiencing workplace sexual harassment.

When considered Australia-wide, there is an even more bewildering array of options, further complicated by different laws, different jurisdictions, different regulatory bodies each with their own reporting mechanisms, all relating to things that happen in Australian workplaces. It should be unsurprising that workers rarely know where or how to handle sexual harassment and bullying in the workplace, even if they do understand it as unlawful behaviour.

**Recommendation 10:** It is crucial that sexual harassment and bullying be included in all workplace guidelines, like those produced by SafeWork NSW for the NSW sex industry.

**Recommendation 11:** Simplify the legislative system to aid all Australian workers to reporting workplace bullying and sexual harassment.

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<sup>10</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., et al. (2012), *The Sex Industry in NSW: a Report to the NSW Ministry of Health*, Sydney: Kirby Institute, University of New South Wales, 7.

## Existing measures and good practice; impacts on individuals and business

In SWOP's support and counselling service to sex workers, we have spoken with workers experiencing psychological distress resulting from sexual harassment at work. They describe feeling stressed and anxious about going to work, especially if likely to encounter the harasser during the work shift. Some workers readily identify their rights and speak up against sexual harassment; others describe feeling unusually powerless at work. Sometimes sexually harassing behaviours go unrecognised or are minimised within SSPs and agencies. Many sex workers solve this individually by working elsewhere, believing that there is no solution in their current workplace.

With appropriate sex worker-led research, the causes for high staff turnover and absenteeism in the NSW sex industry could be investigated. Anecdotally, SWOP can report that absenteeism is likely low, as most sex workers in SSPs are considered (rightly or wrongly) sub-contractors, so if they don't go to work, they don't get paid. We also know of workplaces that penalise absenteeism with less shifts and/or unlawful fines. While unlawful fines can often be addressed by connecting sex workers with free legal advice via SWOP's connections with community legal centres, like Inner City Legal Centre, subtler forms of punishment like rostering impacts are harder to address, and likely contribute to high turnover and movement between SSPs.

The role of sex work as insecure work, from independent contractors, to recognised and unrecognised casual employees, to workplaces using hybrids of contractor and casual employee conditions, cannot be over emphasised when we talk about sex industry turnover. Appropriate peer-led research would be better placed to determine how often sex worker decisions to move workplaces are influenced by workplace bullying and sexual harassment, versus say, not having leave entitlements that make it worth staying around for during quiet times.

During the course of writing this submission, SWOP invited NSW sex workers to contribute their stories electronically<sup>11</sup>, and consulted with NSW sex workers via a face-to-face forum held on December 17, *International Day to End Violence Against Sex Workers*. Sex workers provided anecdotal evidence that in SSPs where there is female management; there are fewer problems with sexual harassment. For example, a female manager walking into a largely female work room where workers may be in the process of getting dressed or undressed might be experienced differently to a male manager doing the same thing.

Sex workers at SWOP's forum felt that unlike sexual assault, sexual harassment in SSPs when it comes from clients, is generally easily handled in the booking face-to-face. Some sex workers expressed dissatisfaction however, on the few occasions where they ended bookings with clients who engaged in harassing behaviour, about not being backed up by SSP management. For example, workers expressed this might include SSP management banning the client from the workplace. Some workers reported that clients, who in the past had engaged in harassing behaviour, were given to new sex workers, with full knowledge that they were likely to engage in this behaviour with a staff member who might be less skilled in managing sexual harassment.

It is SWOP's view that healthy and safe workplaces require employers to have effective policies and procedures around bullying and sexual harassment that instruct SSP staff on how to handle situations with harassing clients and staff. It is also our view that the most effective policies in these areas are ones constructed in conjunction with the people they cover. By getting staff buy in, a

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<sup>11</sup> SWOP Twitter callout 9 October, 2018, accessed online 26 February, 2019 at <https://twitter.com/SWOPnsw/status/1049476146788614144>

business is best able to find balance between the business' fiscal imperatives and having a happy and safe workforce (who are also there to earn a living wage).

*Recommendation 12:* Foster an environment where all Australian workplaces are encouraged to use consultative processes to develop workplace policies addressing sexual harassment and bullying.

## Conclusion

SWOP would like to take this opportunity to again thank the Australian Human Rights Commission for the opportunity to discuss sexual harassment as it pertains to sex industry workplaces. Sex workers are experts in sexual matters, especially in the crucial arena of sexual consent, but like all other Australian workers, we are vulnerable to sexual harassment and bullying in our workplaces.

*"Sex workers are as much entitled to protection from sexual harassment as those working in other occupations," the ruling said. "The fact that a person is a sex worker is not a licence for sexual harassment - especially by the manager or employer at the brothel."<sup>12</sup>*

Taking our inspiration from this case in New Zealand, one of the only other global jurisdictions to implement (partial) decriminalisation, we firmly believe that the Australian sex industry has the potential to implement best practice in this, and many other, areas of workplace health and safety. To do this sex workers, and their peer-led organisations, need to be properly consulted and comprehensively supported by Government. It is our view that with the Australian Human Rights Commission adopting the Recommendations we have outlined on Page 3 of this submission, we will see equivalent access to justice for local sex workers experiencing sexual harassment at work. Together we can work to eliminate sexual harassment from all Australian workplaces.

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<sup>12</sup> ABC, *Prostitute wins damages for sexual harassment in 'world first' case*, 1 March 2014, accessed online 26 February, 2019 at <https://www.abc.net.au/news/2014-03-01/an-nz-prostitute-harassment-case/5292738> .