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2021 Code Review  
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6 August, 2021

Dear Mr Callaghan,

**2021 Code Review – A perspective from a sex worker organisation**

Sex Work Law Reform Victoria Inc. (SWLRV) is an independent non-partisan volunteer group led by sex workers, lobbying for the legal rights of sex workers in Victoria.

SWLRV advocates for, amongst other things:

- Increased access to all forms of banking services for sex workers and sex industry businesses.

We appreciate this opportunity to contribute to the 2021 Code Review and attach our submission accordingly.

Sincerely,

Lisa Dallimore

On behalf of Sex Work Law Reform Victoria Inc.

# Contents

1. Executive Summary .....	3
2. Summary of Recommendations.....	3
3. Sex Work Law Reform Victoria - fighting for the legal rights of Victorian sex workers .....	4
4. The Sex Industry and Adult Industry Contribute \$2.6 Billion to the Economy .....	5
5. Laws regulating sex industry businesses and sex workers.....	5
6. Sex workers and sex industry businesses face denial of access to services.....	5
6.1 Who is Being Consistently Refused Services? .....	6
6.2 Other Industries Also Experience Banking Discrimination .....	6
6.3 Lack of Access to Banking Widespread.....	6
6.4 Anti-discrimination law offers limited practical legal recourse .....	7
6.5 How Do Banks Justify Refusing Services to the Sex Industry?.....	8
6.6 Vulnerable Small Business Customers .....	9
6.7 Perceived or Actual Risk? .....	10
6.8 Incentivising Non-Compliance .....	12
6.9 Working with Cash - A Safety Issue for Sex Workers .....	12
6.10 Criminalising Cash Transactions, AUSTRAC and ATO Audits .....	13
7. Australian Parliaments Increasingly Comfortable Decriminalising Sex Work .....	14
8. Responses to Objectives and Scope .....	14
9. Small Business Needs to be Fully Incorporated into the Code.....	15
10. Consultation Note Questions.....	15
11. Conclusion.....	18
12. Appendices.....	19
Appendix 1 .....	19
Appendix 2.....	20
13. Glossary/Acronyms.....	20

## 1. Executive Summary

Despite contributing around \$2.5 billion to the Australian economy each year, lawful sex industry businesses and individual sex workers continue to experience denial of service by some Australian Banking Associations' member banks. In order to address this persistent issue, we support the full integration of the term 'small business' into the Banking Code of Practice, particularly into Chapter 13 Inclusive and Accessible Banking.

## 2. Summary of Recommendations

### **Recommendation 1**

Insert three new clauses within Chapter 13 as follows:

*When refusing banking services to any small business*

*38. We will provide information in writing as to the reason we are declining to provide banking services to them.*

*39. If we make a risk-based decision to refuse to provide banking services to a small business, we will provide and explain in writing the nature of the risks relied upon.*

*40. If we make a decision to refuse to provide banking services to a small business, we will provide credible evidence, specifics and details to support that decision.*

### **Recommendation 2**

Amend Clause 32 by inserting underlined text as follows:

*32. We are committed to providing banking services which are inclusive of all people and small businesses including:*

- a. older customers*
- b. people with a disability*
- c. Indigenous Australians, including in remote locations;*
- d. people with limited English; and*
- e. small business customers.*

### **Recommendation 3**

Amend Clause 33 by inserting underlined text as follows:

*33. We will train our staff to treat our diverse and vulnerable customers, including small business customers, with sensitivity, respect and compassion. Diverse and vulnerable customers may include small business customers from a wide range of industries and occupations.*

## **Recommendation 4**

Amend Clause 34 by inserting underlined text as follows:

*34. We are committed to improving the accessibility of our banking services for people with a disability, older customers, people with limited English and small business customers. We will take reasonable measures to enhance their access to those services.*

## **Recommendation 5**

Insert a new clause 146 in Chapter 36 (Closing any of your banking services) as follows:

*We may provide you with information about state/territory anti-discrimination dispute resolution services*

*146. If a self-employed small business customer alleges discrimination when we cease to provide banking services, we will provide them with information about state/territory anti-discrimination dispute resolution services.*

## **Recommendation 6**

Insert a new clause after clause 203 in Chapter 48 (Resolving your complaint) as follows:

*We may refer individual and small business customers to anti-discrimination dispute resolution services*

*204. If a small business customer's complaint includes allegations of discrimination, when we have completed our investigation, our written response will include information about state/territory anti-discrimination dispute resolution services.*

## **3. Sex Work Law Reform Victoria - fighting for the legal rights of Victorian sex workers**

Sex Work Law Reform Victoria, founded in 2018, is a registered not-for-profit organisation led by sex workers advocating for the full decriminalisation of consensual adult sex work in Victoria. We also work to increase access to basic banking services for all sex workers and sex industry businesses in Australia. In 2020, we investigated all 22 of the ABA's member banks<sup>1</sup>. We contacted all 22 banks and examined their publicly available policies or access/accessibility clauses relating to the sex industry. None of the banks had access/accessibility clauses/policies, although one member, NAB, released a public statement confirming its exclusion of all lawfully operating sex industry businesses.

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<sup>1</sup> Sex Work Law Reform Victoria, *Financial Institutions which ones Discriminate* (Web Page, 18 July 2021) <<https://sexworklawreformvictoria.org.au/financial-institutions-which-ones-discriminate/>>

## 4. The Sex Industry and Adult Industry Contribute \$2.6 Billion to the Economy

In any given year there are around 23,000 sex workers in Australia<sup>2</sup>. In addition to this there are around 1,000 sex industry and adult industry businesses employing a further 25,000 people<sup>3</sup> <sup>4</sup>. Sex industry businesses are estimated to generate an annual turnover of around \$2.6 billion.

More generally, small businesses as defined by the Code, represent 95% of all businesses in Australia in 2020<sup>5</sup>. Other definitions of small business, as used by the Australian Small Business and Family Enterprise Ombudsman, estimate small businesses contribute 32% of Australia's total economy, employing 41% of the business workforce, making it Australia's biggest employer<sup>6</sup>.

## 5. Laws regulating sex industry businesses and sex workers

Sex work laws vary significantly in each Australian state and territory, with five jurisdictions having legalised or decriminalised sex work (New South Wales, Australian Capital Territory, Queensland, Northern Territory and Victoria). This means thousands of sex workers in Australia operate lawfully.

## 6. Sex workers and sex industry businesses face denial of access to services

Denial of access to basic banking services occurs when lawfully operating individuals or sex industry businesses are refused financial services (including basic transaction accounts) by banks. This occurs when a bank assesses the risk of a potential customer (self-employed or otherwise), based on their industry/occupation rather than on the merit of their particular business.

When banks refuse services to lawfully operating sex workers and lawfully operating sex industry businesses, all business banking services can and often are refused, including:

- basic business debit accounts, basic transaction accounts, business debit cards
- personal debit accounts, basic transaction accounts, personal debit cards
- merchant facilities (EFTPOS, Credit card facilities etc.)
- business loans
- mortgages on property where the business is located
- personal loans

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<sup>2</sup> Antonia Quandara, 'Sex Workers and Sexual Assault in Australia: Prevalence, Risk and Safety' (2008) 8 *Australian Centre for the Study of Sexual Assault* 1, 3.

<sup>3</sup> Eros Association, *Financial Discrimination Against Adults Only Businesses* (Report, October 2017).  
<[https://www.eros.org.au/wp-content/uploads/2018/10/Financial\\_Discrimination\\_Report\\_2017.pdf](https://www.eros.org.au/wp-content/uploads/2018/10/Financial_Discrimination_Report_2017.pdf)>

<sup>4</sup> Australian Small Business and Family Enterprise Ombudsman, *Banks assume role of moral compass for legitimate businesses* (Web Page, 11 September 2019)  
<<https://www.asbfeo.gov.au/news/news-articles/banks-assume-role-moral-compass-legitimate-businesses>>

<sup>5</sup> Pottinger, *Independent Review of the Definition of Small Business* (Independent Review Report, 26 October 2020) 5, 1.3.  
<[https://www.pottinger.com/uploads/1/9/5/1/19512909/pottinger\\_-\\_independent\\_review\\_of\\_the\\_definition\\_of\\_small\\_business\\_-\\_26\\_october\\_2020.pdf](https://www.pottinger.com/uploads/1/9/5/1/19512909/pottinger_-_independent_review_of_the_definition_of_small_business_-_26_october_2020.pdf)>

<sup>6</sup> Australian Small Business and Family Enterprise Ombudsman, *Small Business Counts December 2020* (Report, December 2020) 5.  
<<https://www.asbfeo.gov.au/sites/default/files/ASBFE0%20Small%20Business%20Counts%20Dec%202020%20v2.pdf>>

## 6.1 Who is Being Consistently Refused Services?

In the sex industry: individual sex workers, brothel managers, brothel owners, escort agency drivers, cleaners, sex work website advertising platforms, sex industry businesses and anyone else working in the sex industry.

In the stripping industry: strippers, strip clubs and anyone else working in the stripping industry.

In adult only businesses (adult product shops): adult only businesses and anyone who works there, including retail staff.

In pornography: individuals and businesses filming, performing in or publishing pornographic content depicting consenting adults.

## 6.2 Other Industries Also Experience Banking Discrimination

Although ABA's member banks rarely disclose the industries they refuse to provide services to, payment processors<sup>7 8</sup> in Australia are more explicit about the industries they exclude. Excluded are lawfully operating industries including gambling, legal drugs such as tobacco and medical marijuana, and the firearms industry.

Gig economy workers, such as Uber drivers, also face banking access issues.

Therefore, denial of access to basic banking services is not only an issue for the sex industry, it is an issue for small business in general.

## 6.3 Lack of Access to Banking Widespread

Refusal to provide services to the sex industry by ABA's member banks appears to be widespread across Australia. Australia's leading adult industry association, the Eros Association, conducted a 2017 survey of sex industry businesses<sup>9</sup>. The study surveyed 24 businesses which had experienced financial discrimination and found that:

- 23 of the 24 had experienced financial discrimination more than once
- small, medium, and large banks engaged in financial discrimination, including the big four banks (NAB, ANZ, Commonwealth and Westpac)

Along with the small businesses surveyed by Eros, Sex Work Law Reform Victoria has documented that lawfully operating individual sex workers have also experienced financial discrimination. One of the most frequent complaints our organisation receives relates to sex workers being refused services by banks.

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<sup>7</sup> Square, *Payment Terms* (Web page, 2021)  
<<https://squareup.com/au/en/legal/general/payment>>

<sup>8</sup> Stripe, *Restricted Businesses Australia* (Web Page, January 29 2021)  
<<https://stripe.com/au/restricted-businesses>>

<sup>9</sup> Eros Association, *Financial Discrimination Against Adults Only Businesses* (Report, October 2017).  
<[https://www.eros.org.au/wp-content/uploads/2018/10/Financial\\_Discrimination\\_Report\\_2017.pdf](https://www.eros.org.au/wp-content/uploads/2018/10/Financial_Discrimination_Report_2017.pdf)>

In 2019 the then Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, released a statement highlighting the prevalence of financial discrimination experienced by sex workers and adult industry businesses, and deploring the actions of banks<sup>10</sup>. We reproduce part of the statement below.

### **Banks assume role of moral compass for legitimate businesses**

The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, says banks are wrong to discriminate against legitimate small businesses in the adult industry by blocking their access to essential financial services.

“My office is continuously contacted by sex workers who have complained they have been denied banking services such as merchant facilities to allow them to conduct their business,” Ms Carnell says.

“This is an ongoing issue and we have expressed our concerns to the Australian Banking Association and individual banks involved.

“There aren’t too many Australians who would rely on banks to be the moral arbiter for society.”

## **6.4 Anti-discrimination law offers limited practical legal recourse**

Anti-discrimination legislation refers to protected attributes (the basis on which discrimination against individuals is prohibited by law). Anti-discrimination laws provide limited protection to sex workers, or to the protected attribute ‘occupation’ more generally. Furthermore, such laws differ in each state, complicating the situation for sex workers who often travel across state borders as part of their work. Victoria’s anti-discrimination protected attribute ‘lawful sexual activity’<sup>11</sup> has never been tested by a sex worker at tribunal. The protected attribute ‘profession, trade, occupation or calling’ arguably provides the best protection for sex workers, but this has only been adopted in the Australian Capital Territory<sup>12</sup>. New South Wales decriminalised sex work in 1995; now thousands of sex workers operate there lawfully, however, the state provides no anti-discrimination protections for those sex workers<sup>13</sup>.

It should be noted that anti-discrimination laws apply to individuals (for example, sole traders), not businesses. In our experience, enforcing anti-discrimination laws requires a sex worker to engage lawyers and gather evidence to present at a tribunal. While it is not mandatory for applicants to engage a lawyer, the complexity of discrimination law means legal representation and/or advice is usually necessary.

Such tribunals do not specialise in financial service provider regulation. The burden of proof makes it difficult to obtain a favourable tribunal finding. The applicant, in this case the sex worker, also must

<sup>10</sup> Australian Small Business and Family Enterprise Ombudsman, *Banks assume role of moral compass for legitimate businesses* (Web Page, 11 September 2019)

<<https://www.asbfeo.gov.au/news/news-articles/banks-assume-role-moral-compass-legitimate-businesses>>

<sup>11</sup> *Equal Opportunity Act 2010* (Vic) s 6(g).

<sup>12</sup> *Discrimination Act 1991* (ACT) s 7(q).

<sup>13</sup> *Anti-Discrimination Act 1977* (NSW).



reveal their legal name publicly and link it to their occupation as a sex worker. It is our explicit understanding that the possibility of public exposure of one's legal name creates a significant barrier to sex workers lodging anti-discrimination.

On the other hand, banking access provisions in the Code are enforced by Australian Financial Complaints Authority (AFCA), at no cost to the complainant, without the need to engage lawyers. Unlike tribunals, AFCA has specialist knowledge and experience of financial service provider regulation. AFCA's determinations publish the name of the financial firm but redact the name of the complainant (in this context, the sex industry worker), providing a level of privacy to the sex industry worker not afforded by anti-discrimination tribunal findings.

For these reasons, enforcing access provisions in the Code via AFCA is a more accessible option available to sex workers when compared to enforcing state/territory anti-discrimination laws via a tribunal. There has been a small number of successful challenges to sex work financial discrimination at tribunals, however, it would be preferable for financial disputes to be resolved through the Code and AFCA.

### **I spent 20 Years Hiding My Occupation**

"I was a sex worker in NSW and the ACT for twenty years. I hid my occupation from my bank throughout my time as a sex worker, instead telling them I was a personal trainer. I didn't trust the bank with my private occupation information, I was afraid of discrimination on the part of the ATO and from bank staff at the branch."

*Monique, former sex worker*

## **6.5 How Do Banks Justify Refusing Services to the Sex Industry?**

As part of our 2020 investigation into banking discrimination we contacted all 22 of the ABA's member banks. None were willing to discuss, admit to, or explain their practice of refusing services, except for NAB, which openly acknowledges its refusal to provide services to lawfully operating brothels and escort agencies (the refusal does not extend to individual sex workers). NAB said,

*"....NAB no longer banks brothels and escort agencies due to different laws and licensing requirements across states and territories. This is a risk-based decision we have made to ensure we meet legislative requirements under the anti-money laundering and modern slavery laws."*

(NAB statement to SWLRV, September 2019)



### **NAB excludes small business despite it being assessed as low risk**

For over 27 years Caroline's\* lawfully operating escort agency<sup>34</sup> used NAB for business banking services. In 2020 NAB terminated all her business services, based on the type of industry within which she was operating, citing an apparent heightened risk of money laundering and or human trafficking associated with the sex industry. Following her complaint to the Australian Financial Complaints Authority (AFCA), the Authority found no breach of the Banking Code of Practice or of NAB's Terms. This is Caroline's story.

"Out of the blue, I received a letter from NAB threatening to close my business account. Shocked, I called the bank and they sent a Senior Specialist Banking Manager to my escort agency office to try and resolve the problem. He sat in the office chair and went through all my credit card records, scrutinising everything. He concluded "I'm very impressed with your record keeping. It all looks above board; I think you are a low-risk business." He even helped me set up direct payments using my iPad. He later informed me the decision to ban me had been reversed as it was a mistake, following verification of my sex industry licenses and criminal record checks.

Six months later NAB notifies me they will be closing all my accounts. I've written to and phoned NAB, but they won't listen. The Australian Small Business and Family Enterprise Ombudsman's dispute resolution failed to convince NAB to reverse the decision. The Australian Financial Complaints Authority (AFCA) determined in NAB's favour. The ABA won't consider my case, as AFCA backed the bank.

When searching for a new bank, I had no idea who would ban me. As it turned out, three other ABA member banks refused me merchant services (Bendigo Bank, Commonwealth Bank and ANZ). Over the phone, one bank staff member was so rude, she said, "There's no chance we'll take you" and then hung up the phone. Where's the respect?

NAB left me crying in my office during the height of lockdown in 2020, spending hours in an empty office building manually writing down all the pay details of all sex workers who work for me. I had to manually transfer the details of hundreds of women, then hundreds more suppliers, contractors, and payees.

Since then, I've heard so many other brothel owners also got banned by NAB."

*\*not her real name*

## **6.6 Vulnerable Small Business Customers**

Not only individual banking customers can be vulnerable and require specific access provisions in the Code. A range of small businesses (including, but not limited to sex industry businesses) frequently classified by banks as belonging to 'prohibited' industries, are vulnerable to exclusion by banks. Small business owners who are Indigenous, elderly, have poor English or belong to a highly stigmatised

<sup>14</sup> Australian Financial Complaints Authority, Case number 687972: National Australia Bank (Determination, 12 May 2020) <<https://service02.afca.org.au/CaseFiles/FOSSIC/687972.pdf>>.

industry such as the sex industry, are vulnerable and therefore it follows that they experience barriers when attempting to access basic transaction bank accounts. As such, small business needs to be explicitly included in the access provisions in the Code.

### **Sex Worker Shocked She Was Not Excluded by Bank**

'I've been a private escort for eight years and have a sex work licence so I can work legally. From the start I lied to my bank, pretending I was a beautician so I could open my business bank account and merchant facility. Just last year I got sick of lying and thought I'd risk discrimination and 'out' myself to my bank. It was a bit embarrassing, as twice I had to say quite loudly "I'm a sex worker" to the staff member at the busy branch. The male staff member seemed quite shocked. Worse still, there was a long queue behind me, and I'm sure the other customers all heard. I'm still surprised, because the bank hasn't banned me yet, but I expect they will one day.'

*Mandy, lawfully operating sex worker*

## **6.7 Perceived or Actual Risk?**

When ABA members deny financial services to sex workers and sex industry businesses, they often cite a heightened risk of money laundering and sex slavery/human trafficking in the sex industry. We are not aware of any evidence to support such a heightened level of assessed risk.

The majority<sup>15</sup> of Australian sex workers operate independently, as sole traders<sup>16</sup>, therefore for individual sex workers working for and by themselves, the risk of human trafficking<sup>17</sup> and sex slavery hardly applies. To the extent that human trafficking and sex slavery does occur, this happens in brothels<sup>18</sup>.

Australian Federal Police (AFP) statistics suggest human trafficking/sex slavery related offences are rare in Australia's sex industry, with only 10 offenders convicted over a twelve-year period (2005 – 2016, see Appendix 1). AFP referrals between 2013 and 2017 also reveal that most exploitation and human trafficking occurred outside the sex industry, with only 13% of referrals in 2017 relating to the sex industry (Appendix 2), thus 87% of these referrals occurred *outside* the sex industry.

The claimed link between the sex industry and money laundering is very weak, at best. The 2020 Senate Inquiry into the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019 [Provisions]* heard from sex industry critics<sup>19</sup> who made

<sup>15</sup> Selvey, L et al. School of Public Health, Curtin University, *Western Australian Law and Sex Worker Health (LASH) Study. A summary report to the Western Australian Department of Health* (Executive Summary Report, August 2017) 18.

<sup>16</sup> Sex Work Law Reform Victoria, *Private Sex Workers* (Web Page, 12 August 2020)

<https://sexworklawreformvictoria.org.au/private-sex-workers/>

<sup>17</sup> Sex Work Law Reform Victoria, *Human Trafficking in Victoria's Sex Industry* (Web Page, 9 July 2021)

<https://sexworklawreformvictoria.org.au/human-trafficking-in-victorias-sex-industry/>

<sup>18</sup> Sex Work Law Reform Victoria, *Brothel Sex Workers* (Web Page, 7 August 2020)

<https://sexworklawreformvictoria.org.au/brothel-sex-workers/>

<sup>19</sup> The Legal and Constitutional Affairs Committee, The Senate, *Anti Money Laundering and Counter Terrorism Financing and other Legislation Amendment Bill Provisions* (Report, March 2020) 7, 2.24.

[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024415/toc\\_pdf/Anti-MoneyLaunderingandCounter-TerrorismFinancingandOtherLegislationAmendmentBill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024415/toc_pdf/Anti-MoneyLaunderingandCounter-TerrorismFinancingandOtherLegislationAmendmentBill2019[Provisions].pdf;fileType=application%2Fpdf)

unsubstantiated claims linking sex work to money laundering to support their call for the Bill to explicitly refer to the sex industry<sup>20</sup>. The Committee recommended passing the Bill without referring to the sex industry, simply saying such proposals, ‘warrant serious policy consideration.’<sup>21</sup>

The Australian Institute of Criminology (AIC) has published numerous reports<sup>22</sup> about money laundering in Australia. The only reference linking money laundering to the sex industry was from a 2012 report<sup>19</sup> which referred to a single instance – in Hong Kong. An AIC 2013 report titled ‘*Money laundering and financing of terrorism risks in non-financial sector businesses and professions*’ identified a number of occupations likely to be attractive to money launderers<sup>20</sup>. The report identified and examined several professions including legal practitioners, accountants, real estate agents, trust and company service providers and dealers in precious metals and stones. There was no reference in the report to sex work or the sex industry.

Australia’s financial crime fighting agency, AUSTRAC, provides industry specific guidance on its website about the detection and reporting of money laundering and other financial crimes. Several industries are listed as high risk; the sex industry is *not* one of the eleven industries listed<sup>21</sup>.

### **Recommendation 1**

Insert three new clauses within Chapter 13 as follows:

*When refusing banking services to any small business*

*38. We will provide information in writing as to the reason we are declining to provide banking services to them.*

*39. If we make a risk-based decision to refuse to provide banking services to a small business, we will provide and explain in writing the nature of the risks relied upon.*

*40. If we make a decision to refuse to provide banking services to a small business, we will provide credible evidence, specifics and details to support that decision.*

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<sup>20</sup> The Legal and Constitutional Affairs Committee, The Senate, Anti Money Laundering and Counter Terrorism Financing and other Legislation Amendment Bill Provisions (Report, March 2020) 1, 1.1.

<[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024415/toc\\_pdf/Anti-MoneyLaunderingandCounter-TerrorismFinancingandOtherLegislationAmendmentBill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024415/toc_pdf/Anti-MoneyLaunderingandCounter-TerrorismFinancingandOtherLegislationAmendmentBill2019[Provisions].pdf;fileType=application%2Fpdf)>

<sup>21</sup> Walters J *et al.* 2012, Australian Institute of Criminology, *Anti-money laundering and counter-terrorism financing across the globe: A comparative study of regulatory action* (Research and Public Policy Series no. 113, 10 February 2012).

<<https://www.aic.gov.au/publications/rpp/rpp113>>

Sullivan C & Smith E 2012, Australian Institute of Criminology, *Trade-based money laundering: Risks and regulatory responses* (Research and Public Policy Series no. 115, 2 February 2012). <<https://www.aic.gov.au/publications/rpp/rpp115>>

Walters J *et al.* 2012, Australian Institute of Criminology, *The anti-money laundering and counter-terrorism financing regime in Australia: Perceptions of regulated businesses in Australia* (Research and Public Policy Series no. 117, 1 August 2012).

<<https://www.aic.gov.au/publications/rpp/rpp117>>

Walters J *et al.* 2013, Australian Institute of Criminology, *Money laundering and financing of terrorism risks in non-financial sector businesses and professions* (Research and Public Policy Series no. 122, 1 May 2015).

<<https://www.aic.gov.au/publications/rpp/rpp122-1>>

<sup>22</sup> Walters J *et al.* 2012, Australian Institute of Criminology, *Anti-money laundering and counter-terrorism financing across the globe: A comparative study of regulatory action* (Research and Public Policy Series no. 113, 10 February 2012) 28.

## 6.8 Incentivising Non-Compliance

Excluding sex workers from accessing basic business bank accounts provides an incentive for tax avoidance as well as non-compliance with state/territory sex work laws. It also discourages an open and transparent exchange between bank customers and their bank; sex worker customers quickly learn to NOT be honest.

Sex workers have adopted a number of responses to banking exclusion. Some only accept cash and declare none of their income to the ATO. Others deposit some or all their business income in personal bank accounts, risking audits by the ATO. Some do manage to obtain business bank accounts – by lying. This occurs by using a ‘cover occupation’ in their dealings with the bank, a non sex work occupation. Anecdotally, it seems the ‘cover occupation’ strategy is most widely adopted, with most sex workers obtaining business bank accounts using this strategy.

### **Sex Workers Excluded from Formal Economy**

Thousands of sex workers operate legally, but in 2018-2019, only 115 people reported income to the ATO using the ‘sex worker’ occupation code.

Australian Taxation Office statistics reveal that only 115 individuals declaring income to the ATO nominated their occupation as ‘sex worker/prostitute/escort service’ (occupation code 451813) in 2019<sup>23</sup>. To put this statistic in context, there are thousands of lawfully operating sex workers in Australia. In 2019 in Victoria alone, registered sex workers in one sector (private sex workers) of the sex industry numbered 1,167<sup>24</sup>. There are multiple types of sex work (sectors) in Australia, with lawfully operating sex workers in multiple states, suggesting the total number of lawful sex workers in Australia is well into the thousands.

The vast majority of lawfully operating sex workers are yet to be incorporated into the formal economy, and exclusion by ABA’s member banks is a significant factor driving this economic exclusion. There are obviously income tax compliance concerns associated with such exclusion.

## 6.9 Working with Cash - A Safety Issue for Sex Workers

Many clients of sex workers prefer to pay cash for lawful sexual services, in order to prevent their identity being linked to the sex industry. Most non-sex industry small businesses paid partly in cash are able to promptly deposit that cash into a business bank account, however, for sex workers without business bank accounts, depositing cash is not an option. Hourly rates of pay for sex workers range from \$100/hr–\$1000/hr.

The busiest time for self-employed escorts is usually the evening. If a sex worker goes to a client’s house, the sex worker may have to catch public transport or walk alone at night with large sums of cash on their person. Would be offenders may be aware that sex workers might be carrying large sums of cash and take advantage of this situation.

<sup>23</sup> Australian Tax Office, *Average and Median Taxable Income, Salary or Wages, and Total Income, by Occupation and Sex, 2018–19 Income Year* (Table No 15) Table 15A, cell D2086

<[https://data.gov.au/data/dataset/taxation-statistics-2018-19/resource/1341b1a4-d857-49bd-8d88-5609921688d2?inner\\_span=True](https://data.gov.au/data/dataset/taxation-statistics-2018-19/resource/1341b1a4-d857-49bd-8d88-5609921688d2?inner_span=True)>.

<sup>24</sup> Source: Documents released via freedom of information from the Business Licensing Authority (Victoria) reveal 1,167 registered private sex workers (small owner operators) on the register referred to in s 24 of the *Sex Work Act 1994* (Vic) as at 30 June, 2019.

If a client visits a sex worker at the sex worker's home, the client might be aware that large sums of cash may be about, creating an additional level of vulnerability for the sex worker.

## Case Study <sup>25</sup> <sup>26</sup>

### Man Uses Box Cutter Knife to Demand Cash from Sex Worker

In 2016 a female sex worker in the ACT was visited at her apartment by a prospective client. This man subsequently wielded a box cutter knife against her while demanding cash. The offender, Ahmed Al Abassi, pleaded guilty in the ACT Supreme Court to multiple rape and aggravated robbery offences. The victim said flashbacks “remind me of being stuck in that apartment and I feel the same feelings of being trapped and helpless.” “I'm a strong person, but I'm not the same person I was.”

## 6.10 Criminalising Cash Transactions, AUSTRAC and ATO Audits

Safety issues aside, cash transactions could soon create legal issues for sex workers. The Australian Government recently made an unsuccessful attempt to criminalise cash transactions over \$10,000 for the purchase of *legal* goods or services, such as second-hand cars. Although the controversial *Currency (Restrictions on the Use of Cash) Bill 2019* (Cth) was abandoned in 2020, similar attempts to ban large cash transactions are expected in the future.

Cash bans aside, it is mandatory for banks to report cash deposits of over \$10,000 to AUSTRAC within 10 days<sup>27</sup>. Suspicious cash deposits of under \$10,000 are also reported to AUSTRAC within three days<sup>28</sup>. In both these scenarios, notifications to AUSTRAC are likely to increase the chance of an ATO audit of the depositor<sup>29</sup>.

Lack of access to basic banking services for sex workers contributes to low tax compliance on their part and creates barriers to their ability to secure rental accommodation and home loans.

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<sup>25</sup> Megan Gorrey ‘I Was Raped Whilst Doing My Job: Canberra Sex Worker Speaks of Violent Attack’ *Canberra Times* (online, 21 August 2017)  
<<https://www.canberratimes.com.au/story/6029165/i-was-raped-whilst-doing-my-job-canberra-sex-worker-speaks-of-violent-attack/>>.

<sup>26</sup> Megan Gorrey, ‘Canberra Men Plead Guilty to Rape, Aggravated Robbery Over Sex Worker Attacks’ *Canberra Times* (online, 31 July 2017)  
<<https://www.canberratimes.com.au/story/6029935/canberra-men-plead-guilty-to-rape-aggravated-robbery-over-sex-worker-attacks/>>.

<sup>27</sup> ‘Reporting Transactions of \$10,000 and Over: Threshold Transaction Reports (TTRs)’ *Australian Government AUSTRAC* (Web Page, 19 April 2021)  
<<https://www.austrac.gov.au/business/how-comply-guidance-and-resources/reporting/cash-transactions-over-10000-ttr>>; *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and s 43(2).

<sup>28</sup> ‘Suspicious Matter Reports (SMRs)’ *Australian Government AUSTRAC* (Web Page, 29 April 2021)  
<<https://www.austrac.gov.au/business/how-comply-guidance-and-resources/reporting/suspicious-matter-reports-smr>>.

<sup>29</sup> ‘Tax Problems When You Make Cash Deposits in Your Bank Account’, *King Lawyers Australia* (Web Page)  
<<https://www.kinglawyers.com.au/tax-problems-ato-cash-deposits-bank-account/>>.



## 7. Australian Parliaments Increasingly Comfortable Decriminalising Sex Work

Australia is seeing a trend towards the decriminalisation of consensual adult sex work. In 1995, New South Wales largely decriminalised sex work<sup>30</sup>. In 2019, the Northern Territory followed suit<sup>31</sup>. The Victorian Government is expected to table a sex work decriminalisation bill in late 2021<sup>32</sup>. The South Australian Parliament is currently considering its own sex work decriminalisation bill<sup>33</sup>. Such reforms and trends across the country reflect changing community attitudes and expectations that sex industry businesses should be regulated and afforded similar rights as other service businesses. State and territory parliaments, as well as the public, are increasingly taking a pragmatic and secular approach to sex industry regulation. We strongly encourage the ABA to recognise and accept that in most Australian jurisdictions, the sex industry is a legal and regulated industry.

## 8. Responses to Objectives and Scope

### **Objective 1: The Code continues to respond appropriately to the contemporary environment, and to benefit customers and subscribers.**

RESPONSE: As a result of shifting community attitudes towards the sex industry, the Code does not respond appropriately to the contemporary environment as it fails to provide accessible and inclusive banking to sex industry small business customers.

### **Objective 3: Consumers of banking services, regulators and other key stakeholders play a part in the ongoing development of the Code.**

RESPONSE: Given the sex industry's systemic exclusion from basic business banking services, sex worker, sex industry and adult industry bodies should be recognised as key stakeholders and play an ongoing part in the development of the Code.

### **Scope 4.a. The effectiveness of the provisions of the Code and whether these provisions meet consumer and community expectations for banks to act in a fair, reasonable and ethical manner.**

RESPONSE: There is increasing community and consumer expectation that banks should be fair and reasonable in their dealings with all small businesses, which would include lawfully operating sex workers and sex industry businesses. The Code's inclusive and accessible banking provisions fail to explicitly refer to small businesses (including sex industry businesses). In failing to provide accessible and inclusive banking to small businesses (including sex industry businesses), the Code does not meet consumer and community expectations for banks.

### **Scope 6: Particular matters of concern raised by stakeholders and considered by the reviewer to be important to address.**

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<sup>30</sup> Basil Donovan et al, 'The Sex Industry in New South Wales: A Report to the NSW Ministry of Health' (Research Report, Kirby Institute, University of New South Wales, 2012) 10 [Table 1].

<sup>31</sup> See *Sex Industry Act 2019* (NT).

<sup>32</sup> Sumeyya Ilanbey, 'Laws On Sex Work "Enshrine" Prejudice' *Age* (online, 7 February 2021)

<<https://todaypaper.smedia.com.au/theage/shared/ShowArticle.aspx?doc=AGE%2F2021%2F07%2F02&entity=Ar00101&sk=EE461513&mode=text>>.

<sup>33</sup> See *Statutes Amendment (Repeal of Sex Work Offences) Bill* (SA).

RESPONSE: We raise a particular matter of concern regarding the systemic exclusion of certain small businesses from basic business banking services by ABA's member banks.

## 9. Small Business Needs to be Fully Incorporated into the Code

The 2021 Code Review's Objectives and Scope repeatedly refer to the needs of small businesses customers. The Scope's introduction refers to:

*'promoting effective relationships between banks and....small business customers.'*

Clauses 1, 3 and 4.d. also explicitly refer to small business customers. Significantly, Scope 3 refers to the need for accessible and inclusive banking to be applied to small businesses:

*'The extent to which the Code contributes to banking services being inclusive, affordable and accessible for all customers, including: small business customers.....'*

Despite this, the term 'small business' has *not yet* been explicitly incorporated into most parts of the existing Code. Most Chapters, including Chapter 13 (Inclusive and Accessible Banking), make no reference to small businesses.

## 10. Consultation Note Questions

### **Inclusive and accessible services and supporting vulnerable customers**

#### **Question 1: Has the Code contributed to banking services being inclusive, affordable, and accessible to all customers?**

RESPONSE: No. The Banking Code of Practice has not contributed to banking services being inclusive, affordable, and accessible for small business customers, particularly sex workers and sex industry businesses. That is because there is no specific mention of small business in Chapter 13 (Inclusive and Accessible Banking).

#### **Question 2: Does the Code meet consumer and community standards for banks to support customers experiencing vulnerability?**

RESPONSE: As outlined in this submission, small businesses in certain industries are vulnerable due to their being routinely denied basic banking services due to the stigma associated with certain industries (including the sex industry). The existing Code does not meet consumer and community standards for banks to support vulnerable small business customers.

#### **Question 3: Could the Code be strengthened in terms of helping to ensure that services are inclusive and accessible and vulnerable customers are appropriately supported?**

RESPONSE: Some small businesses, such as sex industry businesses, are vulnerable and should be considered such. The Code could be strengthened to help ensure services are inclusive and accessible to vulnerable small business customers by fully incorporating the term 'small business' into Chapter 13 (Inclusive and Accessible Banking) of the Code.



## **Recommendation 2**

Amend Clause 32 by inserting underlined text as follows:

*32. We are committed to providing banking services which are inclusive of all people and small businesses including:*

- a. Older customers*
- b. people with a disability*
- c. Indigenous Australians, including in remote locations;*
- d. people with limited English; and*
- e. small business customers.*

## **Recommendation 3**

Amend Clause 33 by inserting underlined text as follows:

*33. We will train our staff to treat our diverse and vulnerable customers, including small business customers, with sensitivity, respect and compassion. Diverse and vulnerable customers may include small business customers from a wide range of industries and occupations.*

## **Recommendation 4**

Amend Clause 34 by inserting underlined text as follows:

*34. We are committed to improving the accessibility of our banking services for people with a disability, older customers, people with limited English and small business customers. We will take reasonable measures to enhance their access to those services.*

**Question 4: Do banks take a broad approach to ensuring their products and services are sufficiently inclusive or accessible, or is it largely focused on physical aspects of accessibility, such as branch set up?**

RESPONSE: Banks fail to understand that their systemic exclusion of lawfully operating sex workers and sex industry businesses amounts to a lack of access. Clearly a small business customer excluded completely from a bank has zero access and is not experiencing ‘inclusive banking’.

**Question 5: Should the Code include more specific undertakings regarding the steps that banks will implement so that services are inclusive and accessible to all customers?**

RESPONSE: Yes. See our recommendations 1 -4.

## **Enforceable Provisions**

**Question 1: What are the features of provisions in the Code that could be considered by ASIC and the ABA in deciding which provisions should be designated as enforceable?**

RESPONSE: Clauses 32-34 (Being inclusive and accessible) of the Code should be designated as enforceable.

**Question 2: What are the provisions which represent specific commitments and where a breach is likely to cause significant detrimental harm to a customer?**

RESPONSE: Breaches of clauses 32-34 as applied to small businesses, are likely to cause significant detrimental harm to a customer, as such breaches typically result in small businesses being refused all types of banking services.

**Small business owner loses \$1 million after bank closes accounts**

Christine McQueen is a private escort who also runs an escort agency. This is her story.

“Around 10 years ago, Bendigo Bank closed my account following a charge-back claim from a client. Without consulting me, the bank sided with the client, refunding him all the money. They then closed our accounts, which had been operating without drama for around four years. I then searched high and low for a new bank. ANZ, NAB and the Commonwealth Bank all knocked me back. My accountant and I have estimated that annually my small business lost around \$200,000 per year as a direct result of lack of access to payment processing facilities. Over time, I lost more than \$1 million.”

**Recommendation 5**

Insert a new clause 146 in Chapter 36 (Closing any of your banking services) as follows:

*We may provide you with information about state/territory anti-discrimination dispute resolution services*

*146. If a self-employed small business customer alleges discrimination when we cease to provide banking services, we will provide them with information about state/territory anti-discrimination dispute resolution services.*

**Recommendation 6**

Insert a new clause after clause 203 in Chapter 48 (Resolving your complaint) as follows:

*We may refer individual and small business customers to anti-discrimination dispute resolution services*

*204. If a small business customer's complaint includes allegations of discrimination, when we have completed our investigation, our written response will include information about state/territory anti-discrimination dispute resolution services.*

## 11. Conclusion

We value the opportunity to submit to this inquiry. We look forward to reading the final report and hope the Banking Code of Practice will be made more inclusive and accessible for all Australian small businesses.

In preparing this submission, we consulted closely with Adjunct Professor Denis Nelthorpe AM<sup>34</sup>. Professor Nelthorpe is a former board member with the Financial Ombudsman Scheme and a member of the Code Compliance Committee – Victorian LPG Industry. In the 1980's, Professor Nelthorpe supported sex workers via workshops on banking discrimination he delivered to the Prostitutes Collective of Victoria.

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<sup>34</sup> 'Professor Dennis Nelthorpe' *Victoria University* (Web Page) <<https://www.vu.edu.au/contact-us/denis-nelthorpe>>.

## 12. Appendices

### Appendix 1

<b>Human Trafficking Related Offences in Australia's Sex Industry (2005 – 2016)</b>			
<b>Offences</b>	<b>Offenders Apprehended</b>	<b>Offenders Charged</b>	<b>Offenders Convicted</b>
97	18	17	10

#### Notes on Data

1. Human trafficking related offences defined under ss 270.3, 270.5, 270.6, 270.7, 270.7C and 271.2 – 271.7 of the *Criminal Code Act 1995* (Cth).
2. Geographical area: All Australian states and territories.
3. Years are calendar years.
4. Number of offenders is not necessarily the same as the number of offences, as one offender may be charged with more than one offence.
5. Number of offenders is not necessarily the same as the number of victims, as there may be more than one victim per offender.
6. Source: Australian Federal Police

## Appendix 2

### Referrals to Australian Federal Police by financial year and type of exploitation<sup>35</sup>

	2013-2014		2014-2015		2015-2016		2016-2017	
	n	%	n	%	n	%	n	%
Forced Marriage	11	16	33	28	69	41	70	47
<b>Sexual Exploitation</b>	<b>31</b>	<b>44</b>	<b>34</b>	<b>29</b>	<b>39</b>	<b>23</b>	<b>20</b>	<b>13</b>
Labour Exploitation	22	31	33	28	36	21	38	25
Other*	6	9	19	16	25	15	22	15
Total	70		119		169		150	

## 13. Glossary/Acronyms

### ABA

Australian Banking Association

### Adult Only Business

Adult product shops (adult films, adult magazines, sex toys etc.), strip clubs, adult film businesses.

### AFCA

Australian Financial Complaints Authority

### AIC

Australian Institute of Criminology

### AUSTRAC

The Australian Transaction Reports and Analysis Centre

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<sup>35</sup> The Interdepartmental Committee on Human Trafficking and Slavery, Australian Government, Trafficking in Persons: The Australian Government Response 1 July 2016 – 30 June 2017 (Ninth Report, 2020) 68 <<https://www.homeaffairs.gov.au/criminal-justice/files/interdepartmental-committee-human-trafficking-and-slavery-07-2016-06-2017.pdf>>

## The Code

### The Banking Code of Practice

## Protected Attribute

Something about a person, the basis on which discrimination is prohibited by law.

## Sex Industry

Businesses and individuals providing sexual services for financial gain. This includes sex industry businesses (brothels and escort agencies) as well as individual self-employed sex workers. Five Australian states/territories have legalised or decriminalised sex work.

## Sex Industry Business

Includes businesses that provide for or arrange sex work. Brothels and escort agencies. Five Australian states/territories have legalised or decriminalised sex work.

## Sex Worker

An adult who provides services that involve the person participating in consensual sexual activity with another adult in return for payment or reward. Sex workers can work in brothels, escort agencies, be self-employed (private sex work) or engage in street-based sex work. Five Australian states/territories have legalised or decriminalised sex work.