

NOVEL SEX WORK ANTI-DISCRIMINATION PROTECTIONS

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Sex workers throughout the world experience ubiquitous and acute discrimination in every facet of their lives due to deep-rooted stigma. Societal fear and hatred of sex workers often lead to their exclusion from healthcare services, financial institutions, and accessible housing, as well as their marginalization by the carceral state, family law systems, media, and politicians. Between 2022 and 2024, the Australian jurisdictions of the Northern Territory, Queensland, and Victoria passed groundbreaking legislation codifying novel anti-discrimination protections for sex workers. These laws are the first in the world to explicitly protect sex workers against discrimination in accommodation, employment, government services, and other areas. Novel anti-discrimination protections exist outside of traditional anti-discrimination categories like age, ethnicity, nationality, race, and sex. The goal of this article is to contribute to a nascent literature on the promises and challenges of novel sex work anti-discrimination legislation. We do so by conducting a comparative analysis of novel categories of anti-discrimination protection in U.S. law, including the protected statuses of caregiver, caste, domestic violence survivor-victim, homelessness, and source of income, to derive and apply valuable lessons learned to the sex work context.

Our comparative analysis reveals that sex work does not fit comfortably under umbrella categories of anti-discrimination protection. Instead, we argue that the distinct nature of sex work anti-discrimination legislation can raise public awareness and serve a symbolic function in the fight against “whore stigma” and “whorephobia,” effectuate the broader goals of sex work decriminalization, and confront intersectional discrimination against sex workers who suffer at the crossroads of whorephobia and racism, xenophobia, homophobia, and transphobia. We also use our comparative case studies to highlight and address substantive and procedural concerns when pursuing novel sex work anti-discrimination protections, including the challenges of defining the protected category; implementing, enforcing, and tracking the effectiveness of these unique laws; and pursuing complementary legislation and social interventions to overcome the limits of anti-discrimination law. Ultimately, we seek to support the expansion of anti-discrimination frameworks in the direction of sex workers’ rights.

INTRODUCTION

As a result of deeply entrenched stigma, sex workers around the world face rampant discrimination in all areas of their lives including, but not limited to, healthcare, financial systems, housing, and police interactions.¹ Sex workers in Argentina report traumatic experiences of medical neglect and discrimination by healthcare workers, and, consequently, as one sex worker noted, “many decide not to go [to the doctor] and they self-medicate.”² Advocates in the United States and Australia have documented sex workers’ exclusion from digital financial technology, including credit card companies that employ censorship technologies to remove sex workers from their platforms.³ In Norway, landlords forcibly evict Nigerian migrant sex workers from their rental accommodations.⁴ Sex workers in Myanmar face discrimination from police who profile known sex worker rights activists and target them for arrest.⁵ Queer sex workers in Tanzania report lack of access to justice when reporting abuses to law enforcement due to the intersecting stigmas of whorephobia and homophobia.⁶ These few examples are indicative of countless reports of widespread and entrenched discrimination against sex workers throughout the world.

There was hope among advocates that the decriminalization of sex work would result in a significant lessening of stigma and discrimination against sex workers, but this has not yet been the case, despite decriminalization’s unquestionable status as the only human rights-based legal

¹ See *infra* Part I.B. Erving Goffman classically defined stigma as “an attribute that is deeply discrediting” and reduces the stigmatized person “from a whole and usual person to a tainted, discounted one.” See ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* 2–3 (1963). Bruce Link and Jo Phelan famously built on this definition by conceptualizing stigma as having the following interconnected elements: “the identification of differentness, the construction of stereotypes, the separation of labeled persons into distinct categories, and the full execution of disapproval, rejection, exclusion, and discrimination,” all dependent on stigmatizers’ “access to social, economic, and political power” to put these practices into play. See Bruce G. Link & Jo C. Phelan, *Conceptualizing Stigma*, 27 ANNU. REV. SOCIOLOGY 363, 367 (2001). Thus, within this conception, discrimination is one of the negative practices that results in the unfavorable treatment of stigmatized individuals. See *id.*

² AMNESTY INT’L, “WHAT I’M DOING IS NOT A CRIME”: THE HUMAN COST OF CRIMINALIZING SEX WORK IN BUENOS AIRES, ARGENTINA 33, AI Index AMR 13/4042/2016 (May 26, 2016).

³ Zahra Stardust, Danielle Blunt, Gabriella Garcia, Lorelie Lee, Kate D’Adamo & Rachel Kuo, *High Risk Hustling: Payment Processors, Sexual Proxies, and Discrimination by Design*, 26 CUNY L. REV. 57, 67–71, 74 (2023).

⁴ AMNESTY INT’L, THE HUMAN COST OF ‘CRUSHING’ THE MARKET: CRIMINALIZATION OF SEX WORK IN NORWAY 41, AI Index EUR 36/4034/2016 (May 26, 2016).

⁵ FRONTLINE DEFENDERS, SEX WORKERS RIGHTS DEFENDERS AT RISK 62, 67 (2021).

⁶ See HUMAN RIGHTS WATCH, “TREAT US LIKE HUMAN BEINGS”: DISCRIMINATION AGAINST SEX WORKERS, SEXUAL AND GENDER MINORITIES, AND PEOPLE WHO USE DRUGS IN TANZANIA 67–8 (2013).

framework governing sex work and its other documented positive effects.⁷ Decades after New Zealand and New South Wales became the first in the world to decriminalize sex work, stigma and discrimination against sex workers in those jurisdictions stubbornly persist.⁸ These findings helped spark the successful creation of novel anti-discrimination protections for sex workers in Australian jurisdictions where sex workers' rights advocates sought to avoid a similar fate post-decriminalization.⁹ These path-breaking laws in Australia's Northern Territory, Queensland, and Victoria are the first in the world to protect sex workers against discrimination.¹⁰ In 2022, the Northern Territory explicitly included "[current or past] employment in sex work or engagement in sex work" as protected attributes with the amendment of the Anti-Discrimination Act 1992, which prohibits discrimination in education, employment, accommodation, insurance, and government services and also provides anti-discrimination protections for sex workers' families and associates.¹¹ In 2024, Queensland amended the Anti-Discrimination Act 1991 to include "sex work activity" and ban discrimination against sex workers in areas including education, work, housing, and the provision of goods and services.¹² In Victoria, a 2022 amendment to the Equal Opportunity Act 2010, which bars discrimination in education, employment, and the provision of goods and services, added a new attribute of "profession, trade, or occupation" to protect sex workers,

⁷ See Laura Agustín, *The Sex Worker Stigma: How the Law Perpetuates Our Hatred (and Fear) of Prostitutes*, SALON, Aug. 18, 2013, at 23:30 ET, https://www.salon.com/2013/08/17/the_whore_stigma_how_the_law_perpetuates_our_hatred_and_fear_of_prostitutes_partner/ (on file with the Virginia Journal of Social Policy & the Law ("VJSPL")) ("For advocates of the decriminalization of all commercial-sex activities, the disappearance of whore stigma would occur through recognizing and normalizing the selling of sex as labor. We don't yet know how long it may take for stigma to die out in places where some forms of sex work are decriminalized...one would expect it to diminish unevenly and slowly but steadily."); see Chi Adanna Mgbako, Christine ElDabh, Bianca Butler, & Joy Kemunto, *A Roadmap for Sex Workers' Rights Reform: Lessons Learned from Recent Legal Advancements*, 29 BERKELEY J. CRIM. L. 103, 114–15 (2024) ("Decriminalisation of sex work is recognized by policy and lawmakers as the most evidence-based, human rights-respecting, legislative framework to regulate sex work.") (quoting *Strategic Plan 2021-2025*, EUR. SEX WORKERS RTS. ALL. 22 (2021), https://d3n8a8pro7vnmx.cloudfront.net/eswa/pages/90/attachments/original/1631532137/ESWA_strategic_plan.pdf?1631532137 (on file with VJSPL)). For more on the positive effects of decriminalization see *infra* Part II.A.1.

⁸ See *infra* Part II.A.2.

⁹ See, e.g., SCARLET ALL., SWOP NT & SWRG, SUBMISSION TO THE NORTHERN TERRITORY EXPOSURE DRAFT ANTI-DISCRIMINATION AMENDMENT BILL 6 (2022), https://scarlettalliance.org.au/wp-content/uploads/FINAL_SCARLET-ALLIANCE_SWOPNT_SWRG_NT-ADA-Submission_AUG2022_Redacted.pdf (on file with VJSPL); see also Hon. Yvette D'Ath, *Reforms promise better protections for Queensland's sex workers*, QUEENSLAND GOV'T (May 2, 2024, at 17:13 AEST), <https://state-ments.qld.gov.au/state-ments/100231#:~:text=The%20health%2C%20safety%20and%20workplace.sex%20workers%20will%20be%20repealed> (on file with VJSPL).

¹⁰ See Mgbako et al., *supra* note 7, at 106–7, 125, 127–9.

¹¹ See generally *Anti-Discrimination Act 1992* (NT) (Austl.).

¹² See generally *Anti-Discrimination Act 1991* (Qld) (Austl.).

in addition to explicitly banning discrimination against sex workers seeking accommodation.¹³

This early developmental period of sex work anti-discrimination law presents an opportunity to contribute to an emerging yet sparse literature unearthing key insights into why these safeguards are necessary and spotlighting the substantive and procedural issues at play in their drafting, execution, and aftermath.¹⁴ Novel anti-discrimination protections exist beyond long established and globally recognized anti-discrimination categories such as age, color, ethnicity, language, nationality, race, religion, and sex.¹⁵ Considering the novelty of anti-discrimination protections for sex workers, we conducted a comparative analysis of other non-traditional anti-discrimination categories—including the protected statuses of caregiver, caste, domestic violence survivor-victim, homelessness, and source of income in U.S. anti-discrimination law—to reveal key insights and potential pitfalls for future sex-work anti-discrimination legislation. There is a normative counterargument that the expansion of traditional anti-discrimination frames devalues the anti-discrimination endeavor and that governments should protect individuals who experience

¹³ See generally *Equal Opportunity Act 2010* (Vic) (Austl.).

¹⁴ There are currently several law review articles that, to varying degrees, examine the recent passage of anti-discrimination laws for sex workers. See Nina Cheles-McLean, *Sex, Money and the Law: Financial Discrimination Against Sex Workers*, 45(2) ADEL L. REV. 273 (2024) (providing an in-depth examination of anti-discrimination law as a potential answer to the specific challenge of financial discrimination against sex workers); Stardust et al., *supra* note 3 (documenting and analyzing financial discrimination against sex workers with brief analysis on the limitations of anti-discrimination law); Mgbako et al., *supra* note 7 (briefly touching upon the passage of anti-discrimination protections in Australian jurisdictions to highlight recent global developments in sex work legal reform).

¹⁵ Traditional categories of anti-discrimination law are recognized in various legal instruments throughout the world. For example, the African Charter on Human and Peoples' Rights pledges to dismantle discrimination based on "race, ethnic group, color, sex[,], language, religion or political opinion[.]" African [Banjul] Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1981), reprinted in 21 I.L.M. 58 (1982) (Preamble). The American Convention on Human Rights protects against discrimination based on "race, color, sex, language, religion, political or other opinion, national or social origin, economic status, [and] birth[.]" Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, Article 1(1). The European Union (EU) Charter of Fundamental Rights, prohibits discrimination based on grounds including "sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation[.]" Charter of Fundamental Rights of the European Union, 2012 O.J. (C 326) 391, 391, Article 21. The International Covenant on Civil and Political Rights requires State Parties to guarantee rights irrespective of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." International Convention on Civil and Political Rights, Mar. 23, 1973, 999 U.N.T.S. 171, Article 2. U.S. federal anti-discrimination law, under Title VII of the Civil Rights Act of 1964, prohibits employment discrimination based on "race, color, religion, sex, or national origin[.]" 42 U.S.C. § 2000e et seq., 703(a)(1). On the expansion of the traditional anti-discrimination framework by subnational governments in the United States, see Olatunde C. A. Johnson, *The Local Turn: Innovation and Diffusion in Civil Rights Law*, 79 LAW & CONTEMP. PROBS. 115 (2016) at 118–22.

discrimination based on more permanent, not transitory, identities.¹⁶ We reject this reasoning and contend that all suffering and harm caused by societies' biases and fears deserve a state response and remedy. We hope this article's findings will support the growth of anti-discrimination frameworks towards the realization of sex workers' rights and provide advocates pursuing future sex work anti-discrimination protections with a constructive pathway for reform.

In Part I, we examine how "whore stigma" and "whorephobia" drive discrimination against sex workers and present efforts by sex workers' rights advocates to dismantle stigma and address discrimination prior to the advent of anti-discrimination legal protections for sex workers. We begin by defining the concepts of whore stigma and whorephobia and explore their basis in socio-cultural norms around gender and sexuality. We briefly discuss how whore stigma and whorephobia are entrenched in legal regimes fully or partially criminalizing or regulating sex work that reinforce beliefs that sex workers are "deviants" who must be controlled or rescued. We then highlight whore stigma and whorephobia's insidious manifestations in social, legal, and political efforts to dehumanize sex workers. We examine how they contribute to discrimination against sex workers worldwide in all parts of their lives, including in healthcare, financial systems, housing, criminal and family adjudication, and media portrayals. We also explore how intersecting stigmas compound the marginalization faced by sex workers of color, migrant sex workers, queer and trans sex workers, and HIV-positive sex workers, and how government officials deepen stigma against sex workers through the practice of "political whorephobia." Finally, we present collective efforts by sex workers' rights advocates to confront discrimination through media, art, and political and labor organizing.

In Part II, we spotlight persistent stigma and discrimination post-decriminalization in New Zealand and New South Wales, with novel anti-discrimination protections for sex workers in the Northern Territory, Queensland, and Victoria suggesting a path forward. First, we review how sex work was decriminalized in New Zealand and New South Wales and highlight positive developments that followed these reforms, such as improvements in sex workers' sexual health and wellbeing and reductions in exploitative work conditions. We next discuss how, despite these significant advances, stigma and discrimination continue to affect the lives of sex workers in these jurisdictions, impacting their mental health, access to financial institutions, representation in the media, and making them targets of local discriminatory regulations. Pending legislation in New South Wales seeks to address these lingering abuses. We then look at

¹⁶ See Johnson, *supra* note 15, at 125. See also Christopher McCrudden, *Not the Way Forward: Some Comments on the Northern Ireland Human Rights Commission's Consultation Document on a Bill of Rights for Northern Ireland*, 52 N. IRELAND LEGAL Q. 379–80 (2001) (asking whether the expansion of prohibited grounds of discrimination based on identity essentializes groups and contributes to stereotyping).

groundbreaking novel anti-discrimination protections for sex workers in the Northern Territory, Queensland, and Victoria. We explore the background and substance of these pioneering laws, which have been celebrated by sex workers' rights advocates and offer the promise of a potential path for recourse for sex workers facing pervasive stigma and discrimination.

In Part III, which comprises our original contribution to the field, we conduct a comparative analysis of novel anti-discrimination protections, including the statuses of caregiver, caste, domestic violence survivor-victim, homelessness, and source of income, to unearth insights for the development of novel sex work anti-discrimination safeguards. By way of background, we briefly lay out the types of discrimination these laws address and the legal status of the protected categories. Then we explore how our comparative case studies reveal several key arguments in favor of the creation of novel sex work anti-discrimination protections. The disparate novel categories we examine, including sex work, are unified by lacking formal coverage by traditional categories of anti-discrimination law. This, along with the contention that other umbrella categories of protection, like "profession" and "source of income," may not adequately or holistically cover many sex workers who face discrimination, is one of the strongest arguments for why novel anti-discrimination laws that explicitly cover sex work are needed.

We also utilize our comparative case studies to argue that the codification of novel anti-discrimination laws can serve as powerful and public means of challenging societal stigma and raising awareness about hidden forms of discrimination against sex workers. Additionally, it will be difficult to address the broader goal of sex work decriminalization without legal protection against rampant discrimination. And, furthermore, because migrant sex workers, queer sex workers, and sex workers of color are often victims of intersectional discrimination, novel sex work anti-discrimination protections can be an additional bulwark against bias fueled by xenophobia, homophobia, transphobia, and racism.

In Part III's final section, we put forth substantive and procedural lessons from our comparative analysis for the development of novel sex work anti-discrimination safeguards, including: the importance of crafting precise, holistic, and expansive definitions of protected categories to avoid court misapplication and misinterpretation; essential issues regarding implementation, enforcement, and measurement of the effectiveness of these laws; and the conclusion that, ultimately, anti-discrimination protections are necessary but not sufficient—they need to exist with other positive legal, policy, and community-based interventions to ensure sex workers can live free from discrimination.

I. DISCRIMINATION AND STIGMA AGAINST SEX WORKERS

Part I highlights the theoretical concepts of “whore stigma” and “whorephobia” and documents how stigma drives discrimination against sex workers throughout the world. We begin by linking the concepts of whore stigma and whorephobia to socio-cultural norms around gender and sexuality. We then examine how they fuel discrimination against sex workers, including in relation to healthcare, financial institutions, housing, access to justice, family adjudication, media representation, intersectionality, and politics. We end by spotlighting sex worker rights advocates’ efforts to confront discrimination through public education, media, political organizing, and art.

A. Theoretical Underpinnings of Whore Stigma and Whorephobia

In her 1996 book *The Prostitution Prism*, Gail Pheterson defined whore stigma as the “social and legal branding of women who are suspected of being or acting like prostitutes.”¹⁷ Pheterson theorized that “whore stigma, although it explicitly targets prostitute women, implicitly controls *all* women.”¹⁸ Sex workers and non-sex workers are subject to the conditions of whore stigma for behavior that goes against “compulsory virtue,” which Jill Nagle defines as “a mandate not only to *be* virtuous, but also to *appear* virtuous.”¹⁹ Whore stigma deters women who are not sex workers from expressing solidarity with sex workers, and as Melissa Gira Grant writes, “[w]hore stigma makes central the racial and class hierarchy in the dividing of women into the pure and impure, the clean and unclean, the white and virgin and all the others.”²⁰

The theory of whore stigma preceded and underpins the concept of “whorephobia.”²¹ Societies across the world have long viewed sex workers as dehumanized “others” due to deeply entrenched fears around female sexual “deviancy.”²² Whorephobia is defined as “the fear or the hate of sex workers.”²³ Reflecting deep-seated norms and fears around gender and sexuality, whorephobia is a mechanism to police and control female sexuality.²⁴ Whorephobia encompasses the many manifestations of the dehumanization of sex workers in the media, law, and cultural discourse, and as Melinda Chateauvert writes, whorephobia “reduc[es] ‘hookers,’

¹⁷ GAIL PHETERSON, *THE PROSTITUTION PRISM* 30 (1996).

¹⁸ *Id.* at 12.

¹⁹ JILL NAGLE ed., *WHORES AND OTHER FEMINISTS* 5 (1997).

²⁰ MELISSA GIRA GRANT, *PLAYING THE WHORE: THE WORK OF SEX WORK* 77 (2014).

²¹ Chi Adanna Mgbako, *The Mainstreaming of Sex Workers’ Rights as Human Rights*, 43 HARV. J.L. & GENDER 91, 105–6 (2020).

²² CHI ADANNA MGBAKO, *TO LIVE FREELY IN THIS WORLD: SEX WORKER ACTIVISM IN AFRICA* 51 (2016).

²³ Thierry Schaffauser, *Whorephobia Affects All Women*, THE GUARDIAN (June 23, 2010, at 10:30 ET), <https://www.theguardian.com/commentisfree/2010/jun/23/sex-workers-whorephobia> (on file with VJSPL).

²⁴ SUNNY SINHA, *RISK, STIGMA, AGENCY: LIFE HISTORIES OF WOMEN INVOLVED IN SEX WORK IN KOLKATA, INDIA* 7 (2024); Schaffauser, *supra* note 23.

‘prostitutes,’ ‘whores,’ and ‘hustlers’ to people who aren’t worthy of concern and, indeed, people who should be chased out of neighborhoods or locked up in prison.”²⁵ Thierry Schaffauser contends that whorephobia “embraces paternalistic attitudes that deem [sex workers] a public nuisance, spreaders of disease, offenders against decency or unskilled victims who don’t know what is good for them and who need to be rescued.”²⁶

Legal regimes that fully or partially criminalize or regulate sex work, including criminalization, partial criminalization, and legalization, further entrench fear and hatred of sex workers. Under criminalization frameworks, the sale and purchase of sex work and/or all sex work-related activities, including brothel-keeping and living off the earnings of sex work, are illegal.²⁷ Laura Agustín contends that criminalization frames sex workers as “outlaw[s]” who deserve punishment, institutionalizing and reproducing whore stigma.²⁸ The Global Network of Sex Work Projects argues that laws that criminalize people engaged in sex work “perpetuate the belief that sex workers are morally deviant, victims, or vectors of disease.”²⁹ Partial criminalization, commonly known as the “Nordic model,” is a legal framework where the sale of sex is decriminalized but the purchase of sex and sex-work related activities are illegal, criminalizing clients and third parties.³⁰ The Nordic model’s goal to abolish sex work disempowers sex workers by disrespecting their “will and choice,” which reinforces the stigma associated with the sex industry.³¹ Jurisdictions that have adopted legalization frameworks permit the sale and purchase of sex only under highly regulated and restrictive conditions and often impose stigmatizing requirements like mandatory health checks and public registration.³² Under legalization, sex workers and third parties who do not meet regulation requirements remain criminalized and are forced to work underground.³³ The primary purpose of legalization frameworks and their stringent regulations is not to protect sex workers but to shield the broader public from the sex industry by restricting sex work, which reinforces whore stigma and whorephobia.³⁴

²⁵ See Marlise Richter, Zia Wasserman & Ishtar Lakhani, *Targets of Hate, Shame, or Exploitation? The (Violent) Conundrum of Sex Work in South Africa*, 3(1) INT’L J. CRITICAL DIVERSITY STUD. 9, 13–14 (2020); *Human Rights for Sex Workers: An Interview with Melinda Chateauvert*, BEACON BROADSIDE (Dec. 10, 2013), <https://www.beaconbroadside.com/broadside/2013/12/human-rights-for-sex-workers.html> (on file with VJSPL).

²⁶ Schaffauser, *supra* note 23.

²⁷ Mgbako, *supra* note 21, at 120.

²⁸ See Agustín, *supra* note 7.

²⁹ GLOB. NETWORK OF SEX WORK PROJECTS, LET’S TALK ABOUT SEX WORK: A TERMINOLOGY AND STATEMENT GUIDE 2 (2024), https://www.nswp.org/sites/default/files/terminology_guide_english_prf03.pdf (on file with VJSPL).

³⁰ MGBAKO, *supra* note 22, at 148.

³¹ Agustín, *supra* note 7.

³² Mgbako et al., *supra* note 7, at 112.

³³ *Id.*

³⁴ See *id.*

B. Global Accounts of Discrimination

Deeply ingrained whore stigma and whorephobia lead to myriad forms of discrimination against sex workers. In this section, we consider the ways in which stigma is institutionalized across multiple sectors, resulting in global accounts of discrimination against sex workers in healthcare, financial systems, housing, law enforcement, and child custody issues that threaten sex workers' health, safety, and livelihoods. We also elucidate how negative media narratives and "political whorephobia" reinforce and deepen stigma.

1. Healthcare Discrimination

Whore stigma and whorephobia influence how health care workers treat sex workers seeking medical care, leading to discrimination and harassment.³⁵ Healthcare providers often view sex workers as "vectors of disease" rather than patients deserving of care.³⁶ Sex workers encounter various forms of mistreatment by healthcare providers, including abuse and harassment, breaches of confidentiality, substandard care, medical neglect, or outright refusal of treatment.³⁷ These experiences discourage sex workers from seeking adequate medical care or compel them to travel to distant hospitals to avoid discrimination from local providers.³⁸

Sex workers throughout the world report overt discrimination by healthcare providers. Human Rights Watch recorded testimonies of sex workers in Tanzania who were humiliated and shamed by healthcare workers, including a documented instance where a male sex worker taken to the hospital after being a victim of physical violence was told by a doctor that the sex worker caused and deserved his own abuse.³⁹ A sex worker in Mount Hagen, Papua New Guinea, where sex workers reported commonplace discrimination from healthcare workers, told Amnesty International that while in the waiting room at private health clinics, staff who suspect she is a sex worker often curse at her.⁴⁰ A multi-country report from the Asia Pacific Network of Sex Workers (APNSW) reports that in Bangladesh, some doctors refuse to interact with sex workers, particularly in government-run hospitals.⁴¹ A Frontline Defenders report documents

³⁵ See MGBAKO, *supra* note 22, at 67.

³⁶ *Id.*

³⁷ *Id.*

³⁸ GLOB. NETWORK OF SEX WORK PROJECTS, GLOBAL FINDINGS ON SEX WORKERS' ACCESS TO SOCIAL PROTECTION AND SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS 20 (June 2024), https://www.nswp.org/sites/default/files/social_protection_srhr_english.pdf (on file with VJSPL).

³⁹ HUMAN RIGHTS WATCH, *supra* note 6, at 75.

⁴⁰ AMNESTY INT'L, OUTLAWED AND ABUSED: CRIMINALIZING SEX WORK IN PAPUA NEW GUINEA 48 (May 2016), <https://www.amnesty.org/en/documents/asa34/4030/2016/en/> (on file with VJSPL).

⁴¹ ASIA PACIFIC NETWORK OF SEX WORKERS, A REGIONAL REPORT: ACCESS TO HEALTH SERVICES AND COMMUNITY ASSESSMENT OF QUALITY OF SERVICE DELIVERY OF HIV, SEXUALLY TRANSMITTED INFECTIONS AND SEXUAL & REPRODUCTIVE HEALTH

instances in Tanzania where healthcare workers “leave injured sex workers unattended in hospital waiting rooms for days at a time, while several rounds of other patients with less severe injuries are seen.”⁴²

Sex workers also report experiencing discrimination when seeking mental healthcare. Human Rights Watch collected testimonies from sex workers working in web cam studios in Colombia who lamented the absence of trained individuals and a lack of privacy and confidentiality when they sought mental health support.⁴³ They “expressed concern over studio monitors and managers claiming to be psychologists and conducting personal conversations with models about their mental health in public areas.”⁴⁴

Whore stigma and HIV stigma institutionalized in healthcare settings increase sex workers’ vulnerability to HIV and undermine HIV prevention efforts.⁴⁵ The Lancet reports that stigma is a significant barrier to sex workers’ abilities to access HIV medical care, and sex workers can be denied care when seeking STI and HIV testing, counseling, and treatment.⁴⁶ Similar accounts emerged from Argentina, where Amnesty International reports that some doctors have refused to provide treatment to sex workers because of biased assumptions about sex workers’ HIV status.⁴⁷

2. Financial Discrimination

Whore stigma and whorephobia are institutionalized in financial systems and manifest as discrimination against sex workers by banks, payment processors, and other financial institutions, resulting in threats to sex workers’ economic security and mobility, health, and safety.⁴⁸ Sex workers report lack of access to bank accounts, credit, loans, pensions, and social security.⁴⁹ Exclusion from financial services poses risks to sex workers’ livelihoods and significantly restricts their agency, limiting their capacity to improve their working conditions and attain economic security.⁵⁰ In Vietnam, sex workers are often excluded from formal financial services,

SERVICES FOR FEMALE SEX WORKERS IN BANGLADESH, CAMBODIA, INDONESIA AND VIETNAM 104 (2022), <https://apnsw.info/wp-content/uploads/2022/09/A-Regional-Report-.pdf> (on file with VJSPL).

⁴² FRONTLINE DEFENDERS, *supra* note 5, at 55.

⁴³ HUMAN RIGHTS WATCH, “I LEARNED HOW TO SAY NO”: LABOR ABUSES & SEXUAL EXPLOITATION IN COLOMBIAN WEBCAM STUDIOS 83–84 (Dec. 2024), https://www.hrw.org/sites/default/files/media_2025/05/colombia_wrd1224%20web.pdf (on file with VJSPL).

⁴⁴ *Id.*

⁴⁵ Michele R. Decker et al., *Human Rights Violations Against Sex Workers: Burden and Effect on HIV*, 385 (9963) LANCET 186, 191 (2015).

⁴⁶ *Id.*

⁴⁷ AMNESTY INT’L, *supra* note 2, at 11, 33–34.

⁴⁸ See generally Stardust et al., *supra* note 3.

⁴⁹ GLOB. NETWORK OF SEX WORK PROJECTS, ECONOMIC EMPOWERMENT FOR SEX WORKERS 1, 13 (Oct. 2020), https://www.nswp.org/sites/default/files/economic_empowerment_for_sws_bp_prf01.pdf (on file with VJSPL); Stardust et al., *supra* note 3, at 58.

⁵⁰ GLOB. NETWORK OF SEX WORK PROJECTS, *supra* note 49, at 4.

leading many to rely on informal credit sources that can involve unstable terms and harsh repayment demands.⁵¹ Scholars and advocates have also documented how sex workers are excluded from digital financial technology in the United States and Australia: “They report refusals of merchant services, being unable to open accounts, being denied loans, finance or insurance, higher premiums, and having money frozen, withheld, or forfeited.”⁵² In 2021, the payment processor company Mastercard imposed content bans and vague acceptable use policies on online platforms that severely restrict sex workers’ opportunities in the United States and significantly harm their livelihoods.⁵³ Access to digital payment systems is critical to sex workers’ ability to exercise agency and perform their work in safe and economically viable ways that suit their needs, and “[f]or those who do not have access to banks or credit cards, such as sex workers without stable housing, payment processors may be one of their only access points to monetary resources besides cash.”⁵⁴

3. Housing Discrimination

Sex workers report facing discrimination when seeking short-term and long-term housing.⁵⁵ The result is widespread housing instability among sex workers and heightened vulnerability to violence, particularly among transgender sex workers, who disproportionately experience housing discrimination.⁵⁶ Landlords may refuse to rent to individuals they know are sex workers, charge them higher rent, or force them to pay higher daily rates or deposits.⁵⁷ Sex workers also encounter discrimination in short-term accommodations, including hotels and temporary rentals.⁵⁸ Many are denied bookings, have reservations canceled, or are evicted immediately if their occupation is suspected.⁵⁹ Even housing shelters for the general public engage in discriminatory practices against sex workers.⁶⁰ An Amnesty International report includes testimony from a sex worker in Papua New Guinea who explained that “when some women continued to do sex work to buy additional food, they were forced to leave the

⁵¹ Nadine Gloss et al., *Visibilizing the Economic Oppression of Sex Workers and the Imperative of Donor Support*, 81 INT’L J.L., CRIME & JUST. 1, 4 (2025).

⁵² Stardust et al., *supra* note 3, at 58.

⁵³ *Id.* at 69, 134; *see generally* LaLa B. Holston-Zannell, *How Mastercard's New Policy Violates Sex Workers' Rights*, ACLU (Oct. 15, 2021), <https://www.aclu.org/news/lgbtq-rights/how-mastercards-new-policy-violates-sex-workers-rights> (on file with VJSPL).

⁵⁴ Stardust et al., *supra* note 3, at 69, 134.

⁵⁵ GLOB. NETWORK OF SEX WORK PROJECTS, BRIEFING PAPER: THE RIGHT TO HOUSING AND THE UNMET NEEDS OF SEX WORKERS 1–2 (2024), https://www.nswp.org/sites/default/files/bp_right_to_housing_unmet_needs_english_prf02.pdf (on file with VJSPL).

⁵⁶ *Id.* at 2–4, 6, 11.

⁵⁷ *Id.* at 2.

⁵⁸ *Id.* at 11.

⁵⁹ *Id.*

⁶⁰ AMNESTY INT’L, *supra* note 40, at 47.

shelter.”⁶¹ Police raids of sex workers’ homes or temporary accommodations heighten sex workers’ vulnerability to housing instability.⁶²

4. Police Discrimination

Police have institutionalized whore stigma and whorephobia, and sex workers throughout the world are routinely subject to police harassment and discrimination.⁶³ Police harass, threaten, and profile sex workers, often resulting in their extortion, arbitrary arrest, and detention.⁶⁴ Sex workers with other marginalized identities, including queer and transgender sex workers, migrant sex workers, and sex workers of color, are disproportionately targeted by police and face a high risk of being harmed during police encounters.⁶⁵ Frontline Defenders report that in Myanmar, law enforcement are permitted to arrest without warrants individuals who they assume are soliciting sex, resulting in the frequent arrests of “known” sex workers, particularly sex workers’ rights activists.⁶⁶ Amnesty International notes similar patterns in Buenos Aires, where sex workers report being targeted by police and frequently experience profiling and harassment.⁶⁷ In India, sex workers are “highly vulnerable to police surveillance and excesses such as seizure of condoms and syringes, arbitrary arrest, and extortion or the imposition of high fines.”⁶⁸

Sex workers throughout the world also experience physical and sexual abuse at the hands of the police.⁶⁹ Sex workers’ rights organizations in the United States have documented widespread patterns of physical and sexual assault of sex workers by police.⁷⁰ The European Sex Workers’ Rights Alliance (ESWA) conducted research on sex workers’ experiences with the police in eleven European countries and found that sexual abuse occurred “during routine patrols, raids, and sting operations targeting sex work venues, as well as during arrest and detention” and in “situations in which they were coerced into having sex with police officers in exchange for avoiding arrest, fines, or deportation, or in return for so-called

⁶¹ *Id.*

⁶² *Id.* at 5–6.

⁶³ See Mgbako, *supra* note 21, at 110.

⁶⁴ GLOB. NETWORK OF SEX WORK PROJECTS, BRIEFING PAPER: SEX WORKERS’ LACK OF ACCESS TO JUSTICE 4–5 (2020), https://www.nswp.org/sites/default/files/bp_sws_lack_of_access_to_justice.pdf (on file with VJSPL).

⁶⁵ INT’L PLANNED PARENTHOOD FED’N, IPPF POLICY ON SEX WORK 6–7 (Oct. 2022), <https://www.ippf.org/file/13636/download?token=W1xMCnki> (on file with VJSPL).

⁶⁶ FRONTLINE DEFENDERS, *supra* note 5, at 67.

⁶⁷ AMNESTY INT’L, *supra* note 2, at 22–23.

⁶⁸ SINHA, *supra* note 24, at 10.

⁶⁹ See Mgbako, *supra* note 21, at 112–13.

⁷⁰ See BEST PRAC. POL’Y PROJECT, DESIREE ALL. & THE SEXUAL RTS INITIATIVE, REPORT ON THE UNITED STATES OF AMERICA, 9TH SESSION OF THE UNIVERSAL PERIODIC REVIEW – NOVEMBER 2010 3 (2010), https://upr-info.org/sites/default/files/documents/2013-10/js5_hsri_joint_submission5_js.pdf (on file with VJSPL).

protection.”⁷¹ Sex workers surveyed by ESWA cite their experiences of victimization by police as the reason they do not report crimes perpetrated against them.⁷² The Kenya Sex Workers Alliance reports that “[s]ex workers still cannot report incidences of rape or violence against them for fear of arrest by the law enforcers. When we report violence to the authorities, we are faced with prejudice and further violated by the same law enforcers who should protect us.”⁷³

5. Discrimination in Family Adjudication

Discrimination against sex workers extends into the private sphere, resulting in the ostracization of sex workers by family courts. Sex workers often face discrimination in the legal system when navigating child custody issues.⁷⁴ Courts can use sex work as a basis for denying sex workers who are parents custody of their children, irrespective of a parent’s actual ability to care for their child.⁷⁵ Chi Adanna Mgbako notes that some African sex workers’ rights organizations partner with legal services organizations to provide assistance to sex workers in such family law cases.⁷⁶ She cites a case in Kenya where a mother was separated from her newborn twins due to her occupation as a sex worker, only regaining custody after legal intervention by sex worker advocacy organizations.⁷⁷

6. Discrimination in Media

Media narratives spread and entrench stigma and discrimination against sex workers.⁷⁸ Media reporting on sex work often erases sex workers’ voices and fails to depict the history and demands of the sex workers’

⁷¹ EUR. SEX WORKERS’ RTS ALL., POLICE VIOLENCE AGAINST SEX WORKERS IN EUROPE 25 (2025), https://assets.nationbuilder.com/eswa/pages/1975/attachments/original/1748343186/Policy_brief_Police_violence_against_sex_workers_in_Europe_EN_FINAL.pdf?1748343186 (on file with VJSPL).

⁷² *Id.* at 30.

⁷³ KENYA SEX WORKER ALL. & BAR HOSTESS EMPOWERMENT AND SUPPORT PROGRAMME, “AREN’T WE ALSO WOMEN?” KENYA SEX WORKERS’ SHADOW REPORT SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 68TH SESSION 7 (2017), https://www.nswp.org/sites/default/files/kenya_sex_workers_cedaw_shadow_report_bhesp_and_keswa_-_2017.pdf (on file with VJSPL).

⁷⁴ See GLOB. NETWORK OF SEX WORK PROJECTS, *supra* note 64, at 7. The stigma of sex work also impacts the children of sex workers, who themselves face discrimination when accessing education. INT’L PLANNED PARENTHOOD FED’N, *supra* note 65, at 6; GLOB. NETWORK OF SEX WORK PROJECTS, CEDAW: THE SMART SEX WORKER’S GUIDE TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 24 (2018), https://www.nswp.org/sites/default/files/smart_guide_to_cedaw_-_nswp_2018_0.pdf (on file with VJSPL); see also MGBAKO, *supra* note 22, at 63, 191.

⁷⁵ INT’L PLANNED PARENTHOOD FED’N, *supra* note 65, at 6.

⁷⁶ MGBAKO, *supra* note 22, at 138.

⁷⁷ *Id.*

⁷⁸ See AMNESTY INT’L, note 4, at 89–91.

rights movement.⁷⁹ Instead, the media tends to center narratives constructed by anti-prostitution advocates that aim to abolish sex work and argue that sex workers are victims of oppression.⁸⁰ These narratives conflate sex work with trafficking and nullify sex workers' agency, which deepens stigma and discrimination against them.⁸¹

Media coverage of violence against sex workers often uses stigmatizing language, fails to disclose crime victims' occupations as sex workers, or denies sex workers' individuality by treating them as interchangeable.⁸² Whorephobic and xenophobic language by the media can intersect to compound the stigmatization of migrant sex workers. In its report on sex work in Norway, Amnesty International referenced a study documenting the dehumanizing language employed by the media when reporting on the population of Nigerian migrant sex workers in the country, cataloguing the use of terms like "'explosions,' 'invasions' and 'floods' of 'foreign prostitutes' or 'foreign whores' who are controlled by 'foreign criminals.'"⁸³ The same study noted how the Norwegian media often portrayed sex workers as "a 'threat' to public decency."⁸⁴

7. Intersectional Discrimination

Sex workers with multiple marginalized identities, including sex workers of color, migrant sex workers, queer and trans sex workers, and HIV-positive sex workers, are particularly vulnerable to discrimination due to the compounding effects of whorephobia and racism, homophobia, transphobia, and xenophobia, and, in some jurisdictions, may face multiple levels of criminalization.⁸⁵ Sex workers of color, especially street-based Black and Latine sex workers or Black and Latina women profiled as sex workers, are disproportionately the targets of the carceral state.⁸⁶ Thus, as Juno Mac and Molly Smith note, "[i]ncreases in prostitution enforcement mean increases in the arrests of women of colour."⁸⁷ Migrant sex workers experience heightened profiling by police, are targets of raids,

⁷⁹ Emily Coombes, *When Sex Workers Speak, Who Listens?*, THE NATION (Sep. 6, 2021), <https://www.thenation.com/article/society/only-fans-sex-work/> (on file with VJSPL).

⁸⁰ GLOB. NETWORK OF SEX WORK PROJECTS, BRIEFING PAPER: THE CONSEQUENCES OF MISINFORMATION ABOUT SEX WORK AND SEX WORKERS 3 (2021), https://www.nswp.org/sites/default/files/bp_misinformation_sw_prf01.pdf (on file with VJSPL).

⁸¹ *Id.* at 3–4.

⁸² Agustín, *supra* note 7.

⁸³ AMNESTY INT'L, *supra* note 4, at 89.

⁸⁴ *Id.* at 90.

⁸⁵ See generally MGBAKO, *supra* note 22, at 67–86.

⁸⁶ JUNO MAC & MOLLY SMITH, REVOLTING PROSTITUTES: THE FIGHT FOR SEX WORKERS' RIGHTS, 120 (2018).

⁸⁷ *Id.*

and face deportation.⁸⁸ The Global Network of Sex Work Projects reports that in addition to facing increased risks of criminalization, migrant sex workers are often “excluded from accessing essential services including housing and healthcare, particularly HIV/STI prevention, and sexual and reproductive health programmes, due to being non-nationals, undocumented, or simply unaware of how to access them because of language and cultural barriers.”⁸⁹ Transgender sex workers are often the most stigmatized sex workers due to deeply entrenched transphobia in many societies.⁹⁰ Transphobic and whorephobic discrimination heighten trans sex workers’ vulnerability to discrimination in accessing justice, employment, education, healthcare, and housing.⁹¹ Sex workers with HIV face discrimination in all facets of their lives, and laws that criminalize HIV non-disclosure, exposure, or transmission deepen HIV stigma and erect barriers to accessing justice for HIV-positive sex workers.⁹²

8. Political Discrimination

Government officials contribute to stigma against sex workers by publicly attacking them and undermining their advocacy, resulting in “political whorephobia,” a term coined by Mgbako “to explain how state violence against sex workers is enacted and justified by the government.”⁹³ The term stems from “political homophobia,” a theory developed by sexuality studies scholars to describe state-sanctioned attacks on LGBTQ+ people and activism as “a deliberate strategy some leaders use to silence political opponents, to defend cultural sovereignty, and to deflect public attention away from internal conflicts.”⁹⁴ Like political homophobia, political whorephobia is a “gendered political strategy” espoused by political leaders to scapegoat marginalized groups and bolster nationalist agendas while distracting the public from the failures of their political regimes.⁹⁵ Indeed, “both strategies are deliberate attempts to police communities characterized as gender and sexual dissidents.”⁹⁶ Some African

⁸⁸ GLOB. NETWORK OF SEX WORK PROJECTS, BRIEFING PAPER: MIGRATION AND SEX WORK 3 (2022), https://www.nswp.org/sites/default/files/bp_migration_sw_prf01.pdf (on file with VJSPL).

⁸⁹ *Id.*

⁹⁰ GLOB. NETWORK OF SEX WORK PROJECTS, BRIEFING PAPER: THE NEEDS AND RIGHTS OF TRANS SEX WORKERS 2 (2014), <https://www.nswp.org/sites/default/files/Trans%20SWs.pdf> (on file with VJSPL).

⁹¹ *Id.* at 5.

⁹² GLOB. NETWORK OF SEX WORK PROJECTS, BRIEFING PAPER: STIGMA AND DISCRIMINATION EXPERIENCED BY SEX WORKERS LIVING WITH HIV 12 (2015), <https://www.nswp.org/sites/default/files/Stigma%20and%20Discrimination%20Experienced%20by%20Sex%20Workers%20Living%20with%20HIV,%20NSWP%20-%20December%202015.pdf> (on file with VJSPL).

⁹³ See Coombes, *supra* note 79.

⁹⁴ MGBAKO, *supra* note 22, at 172 (quoting ASHLEY CURRIER, OUT IN AFRICA: LGBT ORGANIZING IN NAMIBIA AND SOUTH AFRICA 175–76 (2012)).

⁹⁵ *Id.*

⁹⁶ *Id.* at 174.

politicians, for instance, publicly condemn and malign sex workers, labeling them as “un-African” and threats to national identity.⁹⁷ Politicians have also wielded political whorephobia to blame sex workers for the spread of HIV, “shifting emphasis from their own governmental shortcomings in HIV prevention and treatment efforts.”⁹⁸ These damaging and false narratives attacking sex workers reflect government attempts to suppress sex worker activism and quell their political resistance.⁹⁹

C. *Organized Sex Worker Resistance to Discrimination and Stigma*

In the face of unrelenting stigma and discrimination, sex workers’ rights advocates have used various methods prior to the development of sex work anti-discrimination legislation to attempt to confront and dismantle whore stigma and whorephobia. They foreground their agency and work to shape narratives and cultural attitudes around sex work through public education, media, engagement in political and union organizing, and art.

Sex workers’ rights advocates have implemented public education and media campaigns by engaging in public discourse as well as using digital and social media, print media, radio, and television.¹⁰⁰ Advocates use these tools to emphasize sex workers’ agency, raise public consciousness around the idea of sex work as labor, correct misperceptions about sex work, and challenge narratives that conflate sex work and trafficking.¹⁰¹ For example, members of U.S.-based sex worker rights organizations the Sex Workers Outreach Project (SWOP) and the Desiree Alliance have spoken on sex trafficking panels to counter narratives that conflate sex work and trafficking.¹⁰² Global advocates have organized annual international sex work-related initiatives, including the International Day to End Violence Against Sex Workers, that educate the public about the abuses sex workers face throughout the world.¹⁰³ The Sex Workers Education and Advocacy Taskforce (SWEAT) in South Africa has used social media to connect with and sensitize journalists to issues facing sex workers, and the Female Sex Worker Association (FSWA) in Malawi has helped train journalists to center the testimonies of justice-impacted sex workers.¹⁰⁴

⁹⁷ *Id.* at 173.

⁹⁸ *Id.* at 174.

⁹⁹ *Id.* at 173.

¹⁰⁰ Alison Grittner & Christine Walsh, *The Role of Social Stigma in the Lives of Female-Identified Sex Workers: A Scoping Review*, 24(7) *SEXUALITY & CULTURE* 1653, 1674 (2020); MGBAKO, *supra* note 22, at 145.

¹⁰¹ Crystal Jackson, *Framing Sex Worker Rights: How U.S. Sex Worker Rights Activists Perceive and Respond to Mainstream Anti-Sex Trafficking Advocacy*, 59(1) *SOCIO. PERSPS.* 27, 31, 39 (2016); Grittner & Walsh, *supra* note 100, at 1674.

¹⁰² Jackson, *supra* note 101, at 39.

¹⁰³ Cecilia Benoit, S. Mikael Jansson, Michaela Smith & Jackson Flagg, *Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers*, 55(4/5) *J. SEX RSCH.* 457, 466 (2018).

¹⁰⁴ MGBAKO, *supra* note 22, at 145; Mgbako et al., *supra* note 7, at 146.

Sex workers and allies challenge stigma by centering sex workers' labor rights in their political organizing and unionization efforts, insisting that sex work is work.¹⁰⁵ For example, AMMAR Córdoba, a sex worker organization in Argentina, adopted a union structure for its members, provides political training for sex workers, and maintains strategic partnerships with other labor unions to unite sex workers and other workers against exploitation.¹⁰⁶ In the United Kingdom, the Women's Strike Assembly, a national coalition of feminist groups and projects, developed a unionization campaign for sex workers, resulting in the formation of United Sex Workers, a member-led union for sex workers that fights for the recognition of sex workers' labor rights, challenges discrimination against sex work, and advocates for decriminalization.¹⁰⁷

Advocates also use various art mediums to challenge the stigmatization and dehumanization of sex workers.¹⁰⁸ The Indian sex worker collective Veshya Anyay Mukti Parishad (VAMP) performs a travelling theater program that uses community storytelling to confront whorephobia.¹⁰⁹ The Empower Foundation in Thailand uses visual art, film, performance, and writing to influence cultural perceptions of sex workers.¹¹⁰ Empower also established a museum to confront stigma and educate the public about the history of sex work in Thailand.¹¹¹

Sex worker advocates and scholars stress that strategies resisting stigma and discrimination must be intersectional. Caty Simon recognizes that confronting the many stigmas that interact with whorephobia

¹⁰⁵ See, e.g., AMMAR Córdoba, *Politics Is the Heart of All Sex Worker Organizing*, OPENDEMOCRACY (Apr. 16, 2020), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/politics-heart-all-sex-worker-organising/> (on file with VJSPL).

¹⁰⁶ See *id.*; *Sex Workers, Join the Union for Sex Workers and Stand Up for Your Rights!*, UNITED VOICES OF THE WORLD, <https://www.uvwunion.org.uk/en/sectors/united-sex-workers/> (on file with VJSPL) (last visited Aug. 4, 2025).

¹⁰⁷ Ava Caradonna, *Unionisation + Decriminalisation + Feminist Education = The Red Feminist Horizon*, OPENDEMOCRACY (Feb. 17, 2020), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/unionisation-decriminalisation-feminist-education-red-feminist-horizon/> (on file with VJSPL); UNITED VOICES OF THE WORLD, *supra* note 106.

¹⁰⁸ See, e.g. Sruthi Srinivas, *Combatting Sex Work Stigma Using Arts Advocacy*, 34TH STREET (May 3, 2022), <https://www.34st.com/article/2022/05/arts-advocacy-whorephobia-prostitution-sex-workers-decriminalization-sexual-liberation-policy-performing-fear-stigmatization> (on file with VJSPL).

¹⁰⁹ See MGBAKO, *supra* note 22, at 190.

¹¹⁰ See Empower Foundation, 'Sweet, Smart, Strong and Sexy': The Sex Workers Taking a Stand in Thailand, OPENDEMOCRACY (Feb. 19, 2020), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/sweet-smart-strong-and-sexy-the-sex-workers-taking-a-stand-in-thailand> (on file with VJSPL).

¹¹¹ *Empowering Sex Workers: Bangkok's Sex Work Museum*, UNDER THE ROPES (May 29, 2016), <https://undertheropes.com/2016/05/29/empower-bangkok-sex-work-museum/> (on file with VJSPL). The museum's exhibits emphasize that sex work is work and include references to Empower's efforts to push for labor protections for sex workers. One exhibit includes visual references to Muay Thai boxing, using the "philosophy of the sport as a tool for defending their work and fighting exploitation and stigma." *Id.*

necessitates deep collaboration and solidarity with other social movements.¹¹² Wendy Chapkis notes that ending whore stigma “requires challenging gender and race inequality; poverty and class privilege; and homo- and trans-phobia.”¹¹³ As early as 1986, what was then the European Parliament’s International Committee for Prostitutes’ Rights “endorsed a strategy of radical alliance among those facing whore stigma,” specifically focused on the dignity of “women stigmatized for their color, class, ethnic difference, history of abuse, marital or motherhood status, sexual preference, disability or weight.”¹¹⁴ Activists challenging whore stigma also address how it is entrenched in societal systems themselves, including criminal law and police powers.¹¹⁵ The Rhode Island chapter of the sex workers’ rights organization Call Off Your Old Tired Ethics (COYOTE RI) aligns with racial justice organizations advocating for prison reform and abolition.¹¹⁶

II. DECRIMINALIZATION AND DISCRIMINATION

In addition to the methods discussed above, anti-discrimination law is a powerful tool sex workers’ rights advocates can use to address stigma and discrimination. Part II explores how pioneering novel sex work anti-discrimination laws recently passed in the Australian jurisdictions of the Northern Territory, Queensland, and Victoria were, in part, a response to the fact that stigma and discrimination against sex workers have long stubbornly persisted in the Australian state of New South Wales and in New Zealand, the first two jurisdictions in the world to decriminalize sex work, despite the otherwise positive documented effects of decriminalization. We highlight research showing that stigma and discrimination continue to impact sex workers’ mental health, access to financial institutions, depictions in the media, and regulation by local laws in New Zealand and New South Wales. Then we discuss the pending sex work anti-discrimination bill in New South Wales and the substance of the groundbreaking sex work anti-discrimination laws passed in the Northern Territory, Queensland, and Victoria, including differences in their approaches to defining the protected attribute.

¹¹² Fey Marrow, *It Has to Go Way Beyond the Decriminalization of Sex Work: An Interview with Caty Simon*, THE SHOESTRING, (Aug. 13, 2018), <https://theshoe-string.org/2018/08/13/it-has-to-go-way-beyond-the-decriminalization-of-sex-work/> (on file with VJSPL).

¹¹³ Wendy Chapkis, *Commentary: Response to Weitzer ‘Resistance to Sex Work Stigma’*, 21 SEXUALITIES 743, 745 (2016).

¹¹⁴ *Id.*

¹¹⁵ Zahra Stardust, Carla Treor, Elena Cama, & Jules Kim, *‘I Wouldn’t Call the Cops if I was Being Bashed to Death’: Sex Work, Whore Stigma and the Criminal Legal System*, 10(3) INT’L J. FOR CRIME, JUST. & SOC. DEMOCRACY 142, 154-155 (2021).

¹¹⁶ Bella Robinson & Katherine Chin, *Decarceral Alliances in the Fight to Decriminalize Sex Work*, OPENDEMOCRACY (Feb. 10, 2020), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/decarceral-alliances-fight-decriminalize-sex-work/> (on file with VJSPL).

A. Persistent Discrimination after Decriminalization in New Zealand and New South Wales

In the 1980s, sex workers in New Zealand began organizing and advocating for decriminalization and formed the influential Aotearoa New Zealand Sex Workers' Collective (NZPC).¹¹⁷ Calls for decriminalization in New Zealand grew stronger in the 1990s as NZPC worked to garner support for reform and public awareness of the sex work industry increased.¹¹⁸ During this time, NZPC formed a working group to collaborate with the broader women's rights movement and began drafting a bill for decriminalization.¹¹⁹ In 2003, New Zealand decriminalized sex work with the passage of the Prostitution Reform Act (PRA).¹²⁰ The PRA removed all criminal penalties for sex work and decriminalized related activities, including living off the earnings from sex work, solicitation, procurement, and operating a brothel.¹²¹ The goal of realizing the human rights of sex workers is at the heart of New Zealand's decriminalization reform.¹²² The Act gave sex workers "the same rights as any other worker" and afforded them access to governmental agencies focused on occupational health and safety standards.¹²³ NZPC and the New Zealand government also collaborated to create workplace health and safety rules to accompany decriminalization.¹²⁴

Sex workers' rights advocates in the Australian state of New South Wales (NSW) started advocating for decriminalization as early as the 1970s.¹²⁵ The Australian Prostitutes Collective (APC) played an integral role in advocacy efforts, liaising with state representatives and the New South Wales Attorney General to push for decriminalization.¹²⁶ APC also conducted pioneering research and documented sex workers' experiences

¹¹⁷ GLOB. NETWORK OF SEX WORK PROJECTS, DECRIMINALISATION: THE SMART SEX WORKERS GUIDE 13 (2020), https://www.nswp.org/sites/default/files/sg_to_decriminalisation_prf05.pdf (on file with VJSPL).

¹¹⁸ PAUL BELLAMY, PARLIAMENTARY LIBR., N.Z. PARLIAMENT, PROSTITUTION LAW REFORM IN NEW ZEALAND 3 (July 10, 2012), <https://www.parliament.nz/en/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand> (on file with VJSPL).

¹¹⁹ GLOB. NETWORK OF SEX WORK PROJECTS, *supra* note 117, at 13.

¹²⁰ GLOB. NETWORK OF SEX WORK PROJECTS, CASE STUDIES: HOW SEX WORK LAWS ARE IMPLEMENTED ON THE GROUND AND THEIR IMPACT ON SEX WORKERS 7 (2019), https://www.nswp.org/sites/default/files/how_sw_laws_are_implemented_their_impact_-_nswp_2019_0.pdf (on file with VJSPL).

¹²¹ *Id.*

¹²² See Ceri Warnock & Nicola Wheen, *Sex Work in New Zealand: The Re-Importation of Moral Majoritarianism in Regulating a Decriminalized Industry*, 24 CAN. J. WOMEN & L. 414, 416 (2012).

¹²³ GLOB. NETWORK OF SEX WORK PROJECTS, *supra* note 120, at 7.

¹²⁴ GLOB. NETWORK OF SEX WORK PROJECTS, *supra* note 117, at 17. Notably, the PRA does not offer the same safeguards to migrant sex workers. *Id.* at 3.

¹²⁵ *Id.* at 9.

¹²⁶ *Id.* APC is now known as the New South Wales Sex Workers Outreach Project (SWOP).

with violence.¹²⁷ The New South Wales Select Committee used this research in its review of sex work laws in the 1980s, recognizing the role of police corruption in the regulation of sex work and the need for legal reform.¹²⁸ In 1995, after approximately 20 years of advocacy, New South Wales decriminalized sex work with the passage of the Disorderly Houses Amendment Act.¹²⁹

1. Positive Impact of Decriminalization

As the first jurisdictions to decriminalize sex work, New Zealand and New South Wales achieved critical reforms that improved sex workers' lives. Decriminalization has resulted in the creation of safer work environments and labor protections, enhanced access to healthcare, and reduced sex workers' susceptibility to violence.¹³⁰ Following the passage of the PRA, many sex workers in New Zealand reported that decriminalization and the legal recognition of their labor, health, and safety rights gave them a sense of empowerment and legitimacy—armor to resist stigma.¹³¹ Evidence also shows that decriminalization in New Zealand has promoted the sexual health and well-being of sex workers and has contributed to reductions in unfair labor practices.¹³² Participants in one study reported that “legislative change provided a powerful stage from which to negotiate” safe sex in their work.¹³³ The Prostitution Law Review Committee also found that fifty-seven percent of sex workers surveyed said that police attitudes to sex workers improved because of the law.¹³⁴ One study found that street-based workers in particular reported improvements in police attitudes since the implementation of the PRA, though some still reported hesitance to report crimes against them to police because of concern that their work would be publicly revealed: “The stigma associated

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ See *id.* at 10. Some forms of street-based sex work in New South Wales remain criminalized. *Id.* at 11. Street-based sex workers “cannot operate within view of a school, church, hospital, or house.” *Id.* Further, local councils impose strict regulations on brothels and independent sex workers and can reject applications to open sex-work premises on a number of grounds. *Id.*

¹³⁰ See GLOB. NETWORK OF SEX WORK PROJECTS, *supra* note 117, at 3.

¹³¹ See Gillan Abel & Lisa Fitzgerald, *Decriminalisation and Stigma*, in *TAKING THE CRIME OUT OF SEX WORK: NEW ZEALAND SEX WORKERS' FIGHT FOR DECRIMINALISATION* 239, 256 (Abel et al. eds., 2010).

¹³² P.G. Macioti, Jennifer Power & Adam Bourne, *The Health and Well-being of Sex Workers in Decriminalised Contexts: A Scoping Review*, 20 *SEXUAL RSCH. AND SOC. POL'Y* 1013, 1027 (2023).

¹³³ Gillan Abel & Lisa Fitzgerald, *Risk and Risk Management in Sex Work Post-Prostitution Reform Act: A Public Health Perspective*, in *TAKING THE CRIME OUT OF SEX WORK: NEW ZEALAND SEX WORKERS' FIGHT FOR DECRIMINALISATION* 217, 221 (Abel et al. eds., 2010).

¹³⁴ Fraser Crichton, *Decriminalising Sex Work in New Zealand: Its History and Impact*, *OPENDEMOCRACY* (Aug. 21, 2015), <https://www.opendemocracy.net/en/beyond-traffic-ficking-and-slavery/decriminalising-sex-work-in-new-zealand-its-history-and-impact/> (on file with VJSPL).

with their occupation created an obstacle to contacting the police.”¹³⁵ Other sex workers generally reported a greater trust in the law post-decriminalization,¹³⁶ and as a result have increased confidence in using the justice system when they are victims of crimes or unfair labor practices.¹³⁷ Further, the combination of legal recognition of their rights and their ability to negotiate freely with clients has the potential to reduce violence against sex workers, as “[t]he more control sex workers have over the location in which they have sex with the client, the less likely they are to experience violence from the client.”¹³⁸

Research also shows that there has been significant improvement in sex workers’ health in New South Wales post-decriminalization.¹³⁹ As in New Zealand, sex workers reported improvements in their sexual health, access to health services, and reductions in unfair labor practices.¹⁴⁰ A 2010 study that compared the healthcare services offered to sex workers in three Australian cities with different legal frameworks found that Sydney, the capital of New South Wales, “had the best work safety, peer-education and support measures due to decriminalisation and reduced police interventions.”¹⁴¹ Post-decriminalization, there was some reporting that sex workers in New South Wales are now able to report crimes against them without risking arrest.¹⁴² Migrant sex workers in Sydney reported feeling “more empowered to leave exploitative work conditions” due to more legal employment opportunities under decriminalization.¹⁴³ Some individuals interviewed by the Global Network of Sex Work Projects described increased feelings of security in their workplaces.¹⁴⁴

2. Enduring Effects of Discrimination

Despite the largely positive impacts of decriminalization in New Zealand and New South Wales, stigma and discrimination remain an issue in both jurisdictions. Scarlet Alliance, a leading Australian sex workers’ rights organization, reports that sex workers across all Australian jurisdictions, including New South Wales, continue to “experienc[e] discrimination in the areas of accommodation and housing, employment, healthcare, family law, financial and insurance products and services, and advertising/business products and services.”¹⁴⁵ In New Zealand, sex workers

¹³⁵ See Abel & Fitzgerald, *supra* note 133, at 228–29.

¹³⁶ GLOB. NETWORK OF SEX WORK PROJECTS, *supra* note 120, at 7.

¹³⁷ Gillian Abel, *A Decade of Decriminalization: Sex Work ‘Down Under’ but Not Underground*, 14(5) CRIMINOLOGY & CRIM. JUST. 580, 585 (2014).

¹³⁸ Abel & Fitzgerald, *supra* note 133, at 223.

¹³⁹ Macioti, Power & Bourne, *supra* note 132, at 1027.

¹⁴⁰ *Id.*

¹⁴¹ GLOB. NETWORK OF SEX WORK PROJECTS, *supra* note 117, at 10.

¹⁴² *Id.* at 11.

¹⁴³ Macioti, Power & Bourne, *supra* note 132, at 1020.

¹⁴⁴ See GLOB. NETWORK OF SEX WORK PROJECTS, *supra* note 117, at 12.

¹⁴⁵ Scarlet Alliance, Australian Sex Workers Association, Preliminary submission to the review of the Anti-Discrimination Act 1977 (NSW), NEW SOUTH WALES LAW REFORM

reveal that stigmatizing attitudes persist despite decriminalization and that they are “regarded by society as ‘inferior.’”¹⁴⁶ They admit withholding information about their occupation to protect themselves and their family and friends from stigma.¹⁴⁷ In one study, the majority of participants reported concealing their occupation, selectively choosing “who they would take into their confidence and who they would leave in ignorance.”¹⁴⁸

Additional accounts of lingering stigma and discrimination have also been recorded in the areas of mental health, financial institutions, media, and local regulations. While a study reported that post-decriminalization, sex workers in New Zealand have general health and well-being comparable to those in the general population, significant differences in mental health status were recorded.¹⁴⁹ Reports from male and female sex workers revealed more significant mental health issues among the sex worker population compared to the general public.¹⁵⁰ For example, sex workers take on emotional stress when stigma and fear of discrimination force them to separate their private and professional lives.¹⁵¹ Participants in one study “identified that this posed a risk to their mental and physical health and required the adoption of different roles.”¹⁵² In addition to directly affecting sex workers’ mental health, stigma also influences sex workers’ ability to access mental health services, even in decriminalized environments.¹⁵³ A 2017 study on stigma “among 31 diverse sex workers in Australia (of whom 23 worked in [New South Wales]) found that sex workers’ mental health and their access to quality mental health support are overwhelmingly impacted by enduring stigma.”¹⁵⁴

Financial discrimination remains rampant even in decriminalized environments, in part due to the “lack of legal avenues for redress, including the lack of anti-discrimination protections that recognize this phenomenon.”¹⁵⁵ Sex workers told Radio New Zealand that they experience financial discrimination which “makes it hell” to try to open bank accounts, secure mortgages, or open businesses.¹⁵⁶ Similarly, Dame Catherine

COMMISSION (2023), https://lawreform.nsw.gov.au/documents/Current-projects/ada/preliminary_submissions/PAD74.pdf (on file with VJSPL).

¹⁴⁶ Abel & Fitzgerald, *supra* note 133, at 255–56.

¹⁴⁷ See Abel & Fitzgerald, *supra* note 131, at 244, 247–48.

¹⁴⁸ See *id.* at 244–45.

¹⁴⁹ Abel & Fitzgerald, *supra* note 133, at 231.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 248.

¹⁵² *Id.*

¹⁵³ Maciotti, Power & Bourne, *supra* note 132, at 1019–20.

¹⁵⁴ *Id.* at 1019 (citing Carla Treloar et al., *The Relationship Between Sex Work, Mental Health and Stigma: A Qualitative Study of Sex Workers in Australia*, 268 SOC. SCI. & MED. (2021)). This study’s findings conflict with an older 2012 report from the New South Wales Ministry of Health that found that sex workers’ mental health was comparable to the general populace. GLOB. NETWORK OF SEX WORK PROJECTS, *supra* note 117, at 10.

¹⁵⁵ See Stardust et al., *supra* note 3, at 127, 130.

¹⁵⁶ *Sex Worker Discrimination "Hell" to Do Everyday Finances*, RADIO N.Z. (Sep. 16, 2022),

Healy, founder of NZPC, reports that the collective has handled many cases where sex workers were denied loans or were unable to open bank accounts.¹⁵⁷

Media operating in decriminalized contexts continue “to draw on moral discourses that perpetuate stereotypes of sex workers and contribute to their ongoing experiences of stigmatization.”¹⁵⁸ Some street-based sex workers in New Zealand report that “the heightened media attention following decriminalisation...made them more visible and exacerbated” abuse from the public.¹⁵⁹ They shared experiences of verbal abuse as well as “having objects thrown at them from cars.”¹⁶⁰ A graduate dissertation study of media portrayals of sex work before and after the passage of the PRA in New Zealand found that there was only a slight decrease in the media’s use of derogatory terms to refer to sex workers post-decriminalization.¹⁶¹

Discriminatory bylaws and zoning regulations also remain an issue. In New Zealand, public participation during the parliamentary review of the PRA significantly influenced the final legislation, resulting in provisions that allow local governments to regulate the location of brothels through bylaws and zoning that contribute to discrimination against sex workers.¹⁶² As local regulations are informed by public submissions, this “enabled a backlash against decriminalization and the reassertion of legal moralism in the control of sex work.”¹⁶³ After the PRA was passed, roughly a third of local councils took steps to control where brothels could operate by implementing local bylaws or planning controls.¹⁶⁴ Public submissions on proposed bylaws reflected moral and religious opposition to sex work and persistent stigma regarding sex work post-decriminalization.¹⁶⁵ In fact, “there was little evidence in public submissions that the brothels that had been operating in residential areas before the controls were put into place had...any actual deleterious effect on the properties and communities around them.”¹⁶⁶

<https://www.rnz.co.nz/national/programmes/morningreport/audio/2018858984/sex-worker-discrimination-hell-to-do-everyday-finances> (on file with VJSPL).

¹⁵⁷ *Id.*

¹⁵⁸ Abel & Fitzgerald, *supra* note 131, at 256.

¹⁵⁹ Abel & Fitzgerald, *supra* note 133, at 227.

¹⁶⁰ *Id.*

¹⁶¹ Dana Hayward, *The Social Consequences of Close Votes: The Narrow Decriminalization of Sex Work in New Zealand* 15, 30 (Dec. 2021) (Ph.D. dissertation, Yale University).

¹⁶² Warnock & Wheen, *supra* note 122.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 421. Many local authorities have passed bylaws which exclude brothels, including small owner-operated brothels, from residential areas and force sex workers into commercial or industrial zones. *See id.* at 424.

¹⁶⁵ *Id.* at 423–24.

¹⁶⁶ *Id.* at 424.

In New South Wales, local land use regulations push sex work into industrialized areas,¹⁶⁷ based on “enduring moral attitudes that deem the sex industry an undesirable land use[.]”¹⁶⁸ In addition to “morally biased land use planning,” councils have required private sex workers working from home to obtain developmental approval.¹⁶⁹ These private sex workers are often required to meet planning benchmarks that are the same as those for sex work premises.¹⁷⁰ These requirements “are based on moral judgements against the sex industry, and they do not reflect the minimal impact home-based sex workers have on amenities.”¹⁷¹

3. Proposed Anti-Discrimination Protections in New South Wales

In response to ongoing stigma and discrimination against sex workers post-decriminalization, New South Wales is currently crafting anti-discrimination protections for sex workers.¹⁷² The proposed bill would amend the Anti-Discrimination Act of 1977 to add a number of protections for sex workers.¹⁷³ Abigail Boyd, Greens MP in the New South Wales Parliament, introduced the bill and emphasized that while decriminalization was an essential life-saving development, sex workers still face routine discrimination: “They are denied housing, refused services and forced to endure the entrenched stigma embedded deep within our society, day in and day out.”¹⁷⁴ The bill was drafted in collaboration with several sex workers’ rights organizations, including Scarlet Alliance, the Sex Workers Outreach Project (SWOP), and Touching Base.¹⁷⁵ The bill establishes an individual’s current or former status as a sex worker as a protected attribute, and prohibits discrimination on the basis of this attribute in the sectors of employment, education, and in the provision of goods and services.¹⁷⁶ It also protects against “discrimination on the grounds of characteristics that appertain generally to or are generally imputed to sex workers.”¹⁷⁷ The proposed bill attempts to prevent discrimination via zoning or development application requirements by making it illegal for a government institution charged with determining qualifications or issuing authorizations to discriminate against sex workers.¹⁷⁸

¹⁶⁷ See Macioti, Power & Bourne, *supra* note 132, at 1027.

¹⁶⁸ *Id.* at 1022.

¹⁶⁹ *Id.* at 1027.

¹⁷⁰ *Id.* at 1022.

¹⁷¹ *Id.*

¹⁷² See generally *Anti-Discrimination Amendment (Sex Workers) Bill 2020* (NSW) (Austl.).

¹⁷³ *Id.*

¹⁷⁴ New South Wales, *Parliamentary Debates*, Legislative Council, 4 Aug. 2020 (Abigail Boyd) (Austl.).

¹⁷⁵ *Id.*

¹⁷⁶ *Anti-Discrimination Amendment (Sex Workers) Bill 2020* (NSW) ss 50AB, 50AC, 50AK, 50AL (Austl.).

¹⁷⁷ Stardust et al., *supra* note 3, at 130.

¹⁷⁸ New South Wales, *Parliamentary Debates*, *supra* note 174.

B. Pathbreaking Novel Anti-Discrimination Protections for Sex Workers in Australia's Northern Territory, Queensland, and Victoria

In the struggle to realize human rights for sex workers, decriminalization is a necessary and foundational step.¹⁷⁹ Still, as the case studies of New Zealand and New South Wales demonstrate, further legal and policy interventions, including anti-discrimination protections, are necessary to combat harmful stereotypes and stigmas that drive widespread discrimination against sex workers and continue post-decriminalization.¹⁸⁰ States and territories in Australia have been at the forefront of legal reform in the sphere of sex workers' rights, repealing old criminal laws and instituting novel sex work anti-discrimination protections.¹⁸¹ In response to the demands of Australian sex workers' rights advocates for legal protections beyond decriminalization, the Northern Territory, Queensland, and Victoria have modified their anti-discrimination statutes.¹⁸² These jurisdictions have incorporated new protected attributes for sex workers, either as part of the decriminalization process or in post-decriminalization reforms.¹⁸³

Following the decriminalization of sex work in the Northern Territory in 2019, anti-discrimination measures were adopted in 2022 via amendments to the territory's existing Anti-Discrimination Act 1992.¹⁸⁴ The expertise and leadership of sex workers were instrumental in the achievement of this monumental reform.¹⁸⁵ Advocates recognized that without the implementation of anti-discrimination legislation, decriminalization would be insufficient to counter entrenched stigma and discrimination, frustrating the full exercise of sex workers' rights across multiple sectors.¹⁸⁶ In fact, the well-documented discrimination in New South Wales following decriminalization was one of the factors that motivated activists in the Northern Territory to advocate for explicit anti-discrimination protections in their own jurisdiction.¹⁸⁷

During the consultation process for amending the Northern Territory's anti-discrimination framework, sex workers' rights organizations recommended that the protected attribute be defined as "current or past sex work" and "sex worker, current or past."¹⁸⁸ The final amendment

¹⁷⁹ See Mgbako et al., *supra* note 7, at 114–15.

¹⁸⁰ See *id.* at 125.

¹⁸¹ See *id.* at 119–25, 127–29.

¹⁸² See *id.* at 128, 141.

¹⁸³ See *id.* at 127–29.

¹⁸⁴ See *id.* at 120, 127–28.

¹⁸⁵ See *Northern Territory Becomes the First Place in the World to Explicitly Protect Sex Workers From Discrimination*, SCARLET ALL. (Nov. 25, 2022), <https://scarletalliance.org.au/northern-territory-becomes-first-place-in-the-world-to-explicitly-protect-sex-workers-from-discrimination/> (on file with VJSPL).

¹⁸⁶ *Id.*; see also Sarah Spina-Matthews, *With Antidiscrimination Changes, Northern Territory Has Some of the World's Most Progressive Sex Work Laws. It Wasn't Always That Way*, ABC NEWS (Nov. 26, 2022), <https://www.abc.net.au/news/2022-11-27/northern-territory-world-first-sex-worker-protections-laws/101697764> (on file with VJSPL).

¹⁸⁷ See SCARLET ALL., *supra* note 9.

¹⁸⁸ *Id.* at 13.

passed by the legislature reflects these recommendations. The Anti-Discrimination Act, which prohibits discrimination in education, employment, accommodation, insurance, and government services,¹⁸⁹ stipulates that “a person shall not discriminate against another person on the ground of...employment in sex work or engaging in sex work, including past employment in sex work or engagement in sex work.”¹⁹⁰ Importantly, the law also now protects those associated with sex workers, including family members, from discrimination.¹⁹¹ Advocates in the Northern Territory expressed hope that other Australian jurisdictions would view the achievements of these novel anti-discrimination amendments as a model to emulate.¹⁹²

Legislators in Queensland decriminalized sex work and modified the state’s anti-discrimination law to extend protections to sex workers by passing the Criminal Code (Decriminalizing Sex Work) and Other Legislation Amendment Act 2024.¹⁹³ The new legislation replaced the protected attribute “lawful sexual activity” with “sex work activity” in the Anti-Discrimination Act 1991.¹⁹⁴ Nina Cheles-McLean has highlighted the potential limitations of anti-discrimination protections considering how the Australian judiciary has interpreted the contours of protected attributes.¹⁹⁵ As she explains, the judiciary has a “tendency to separate the ‘named attribute from the activities or manifestations that are inherently associated with it.’”¹⁹⁶ Consider *Dovedeen Pty Ltd v. GK*, a case litigated in Queensland, where, at the time it was decided in 2013, “lawful sexual activity” was codified as a protected attribute in the state’s anti-discrimination law and the protected attribute “sex work activity” had not yet been legislated.¹⁹⁷ *Dovedeen* involved a sex worker who had been denied

¹⁸⁹ See generally *Anti-Discrimination Act 1992* (NT) pt 4 (Austl.).

¹⁹⁰ *Anti-Discrimination Act 1992* (NT) pt 3 div 1 s 19(1)(ec) (Austl.). How the Northern Territory’s Anti-Discrimination Commission decides on a pending complaint invoking the newly amended law is likely to be an early indicator of the effectiveness of this choice of language for the protected attribute. See, e.g., Samantha Dick, *Darwin Sex Worker's Discrimination Complaint Against NT Police could have 'Wide-Reaching' Effects*, *Advocates Say*, ABC NEWS (Oct. 11, 2023), <https://www.abc.net.au/news/2023-10-12/darwin-sex-worker-files-nt-police-anti-discrimination-complaint/102938002> (on file with VJSPL) (discussing how Lisa Lewis, a sex worker, brought a complaint, the first of its kind following the amendment of the anti-discrimination framework in the jurisdiction, after she faced discriminatory treatment during the hiring process with the Northern Territory police).

¹⁹¹ Mgbako et al., *supra* note 7, at 128.

¹⁹² See SCARLET ALL., *supra* note 185.

¹⁹³ See Mgbako et al., *supra* note 7, at 121, 129; see also D’Ath, *supra* note 9.

¹⁹⁴ Explanatory Notes, Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (Qld) 3 (Austl.), <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2022-034> (on file with VJSPL).

¹⁹⁵ See Cheles-McLean, *supra* note 14, at 284.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 285.

accommodation at a motel where she had previously stayed and worked.¹⁹⁸ The Queensland Court of Appeal held that while the status of being a sex worker was covered by the protected attribute “lawful sexual activity,” the actual conduct of sex work was not.¹⁹⁹ Per the court’s reasoning, “[d]iscrimination on the basis that [GK] was a lawfully employed sex worker was prohibited, but discrimination on the basis that she proposed to perform work as a sex worker at the motel was not prohibited.”²⁰⁰ While Dovedeen quite plainly demonstrates the shortcomings of the protected attribute “lawful sexual activity,” it remains to be seen whether newer anti-discrimination interventions, such as the addition of “employment in sex work or engagement in sex work, including past employment in sex work or engagement in sex work” as a protected attribute in the Northern Territory’s laws or “sex work activity” in Queensland’s framework, will be interpreted and applied by adjudicatory bodies so as to actually cover the discrimination sex workers face.²⁰¹

The Anti-Discrimination Act prohibits discrimination in accommodation, education, employment, and the provision of goods and services, as well as other areas.²⁰² It was amended to remove a provision that allowed accommodation providers to discriminate against sex workers by denying them accommodation, evicting them, or mistreating them.²⁰³ This amendment represented an essential reform because sex workers’ rights advocates had linked the former iteration of the Anti-Discrimination Act to housing instability among sex workers in Queensland.²⁰⁴

Before these reforms were implemented, sex workers in Queensland faced rampant discrimination.²⁰⁵ Statistics from DecrimQLD, the leading campaign for decriminalization of sex work in Queensland, painted a stark picture: 72.5 percent of the 204 sex workers surveyed reported that they had faced discrimination in accessing accommodations, financial services, and healthcare, and in their encounters with police.²⁰⁶ Prior to the 2024 reforms, sex workers in Queensland had limited tools to pursue recourse for discrimination.²⁰⁷ Indeed, one of these purported tools, the protected

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ According to Claire Barclay, even courts in more progressive jurisdictions, such as Canada and South Africa, which have explicitly adopted substantive approaches to equality law, fall victim to essentialist interpretations of protected characteristics. See Claire Barclay, *Toward Substantive Equality: A Feminist Critique of the Notion of Difference in the Canadian and South African Equality Tests*, 5 INTL. J. DISCRIMINATION AND THE L. 167, 171–74, 177–78 (2001).

²⁰² See generally *Anti-Discrimination Act 1991*, *supra* note 12.

²⁰³ See Mgbako et al., *supra* note 7, at 129.

²⁰⁴ Eden Gillespie, ‘Forced to Move Home’: Discrimination of Queensland Sex Workers Needs to End, Say Advocates, THE GUARDIAN (Apr. 19, 2022, at 13:30 ET), <https://www.theguardian.com/australia-news/2022/apr/20/forced-to-move-home-discrimination-of-queensland-sex-workers-needs-to-end-say-advocates> (on file with VJSPL).

²⁰⁵ See *id.*

²⁰⁶ See *id.*

²⁰⁷ See *id.*

attribute “lawful sexual activity” in the state’s anti-discrimination framework, covered only “sex work in licensed brothels or...sole operators visiting clients or working out of their own homes,” excluding many sex workers and forms of sex work from its protections.²⁰⁸

Lawmakers in Victoria took a different approach than their peers in the Northern Territory and Queensland in extending anti-discrimination protections to sex workers.²⁰⁹ While the Northern Territory and Queensland specifically name “sex work” and “sex worker” as protected attributes, in Victoria, legislators amended the state’s anti-discrimination framework, the Equal Opportunity Act of 2010, to include a new protected attribute of “profession, trade, or occupation” as part of decriminalization in 2022.²¹⁰ We discuss the limitations of defining the protected attribute solely as “profession, trade, or occupation” in detail in Part III.²¹¹ Another key amendment to the Equal Opportunity Act of 2010 made it unlawful for “[a]ccommodation providers...[to] refuse accommodation to someone on the basis that they w[ould] use the accommodation for, or in connection with, lawful commercial sexual services.”²¹² The Act also bans discrimination in education, employment, and the provision of goods and services.²¹³

Sex workers’ rights advocates have celebrated these cutting-edge advancements, particularly in the Northern Territory and Queensland, as a significant step forward in the fight for sex workers’ rights. For example, Jules Kim from the Scarlet Alliance said that the passage of anti-discrimination measures in the Northern Territory represents “a momentous day for all sex workers and sets a positive example that sex workers are valued members of the community, deserving of rights and protections against vilification and discrimination and mechanisms for redress.”²¹⁴ Similarly, following the decriminalization of sex work and implementation of anti-discrimination reforms in Queensland, Janelle Fawkes from DecrimQLD stated that “[s]ex work is work and the framework set out in this Bill both repeals criminalisation and provides protections for sex workers.”²¹⁵

²⁰⁸ *Id.*

²⁰⁹ See Mgbako et al., *supra* note 7, at 127–29.

²¹⁰ *Id.* Prior to 2022 and the addition of “profession, trade, or occupation” to the Equal Opportunity Act, if sex workers faced discrimination, they could attempt to seek redress by bringing complaints before the Victorian Equal Opportunity and Human Rights Commission under the protected attribute of “lawful sexual activity.” See *Lawful Sexual Activity*, VICTORIAN EQUAL OPPORTUNITY & HUMAN RIGHTS COMMISSION, <https://www.human-rights.vic.gov.au/for-individuals/lawful-sexual-activity/> (on file with VJSPL) (last visited Oct. 29, 2025).

²¹¹ See *infra* Part III(B).

²¹² CONSUMER AFFAIRS VICTORIA, OVERVIEW OF THE DECRIMINALISATION OF SEX WORK IN VICTORIA 3 (2023), <https://www.consumer.vic.gov.au/library/publications/resources-and-education/other-languages/english/sex-work-decriminalisation/factsheet-1--overview-of-decriminalisation--december-2023.docx> (on file with VJSPL).

²¹³ See *generally Equal Opportunity Act 2010*, *supra* note 13.

²¹⁴ SCARLET ALL., *supra* note 185.

²¹⁵ D’Ath, *supra* note 9.

III. COMPARATIVE ANALYSIS OF NOVEL ANTI-DISCRIMINATION PROTECTIONS: LESSONS FOR THE SEX WORK CONTEXT

The pathbreaking developments discussed in Part II that legally codify sex work anti-discrimination protections present an opportunity to mine lessons from comparative experiments in novel anti-discrimination law, an examination that helps clarify why sex work anti-discrimination protections are necessary and highlights the pressing substantive and procedural issues at play. Part III presents the results of our comparative analysis of novel anti-discrimination protections in U.S. law, including the protected classes of caregiver, caste, domestic violence survivor-victim, homelessness, and source of income, which offer key insights and lessons for the development of future sex work anti-discrimination legislation.

We begin by providing a brief background on the types of discrimination that are related to our comparative categories as well as the legal status of the protected classes. We then draw insights from our comparative case studies to make several arguments in favor of novel sex work anti-discrimination protections. Like sex work, the novel categories in our case studies lack formal coverage by existing traditional categories of anti-discrimination law. Further, other umbrella categories of protection, like “profession,” and “source of income,” are insufficient to provide broad protective coverage to sex workers. We argue that distinct novel sex work anti-discrimination legislation can send a powerful public message challenging sex work stigma, effectuate the broader goals of decriminalization, and help address intersectional discrimination against sex workers. We also share substantive and procedural lessons from our comparative case studies. In crafting novel categories of protection for sex workers, we argue it is necessary to create precise, holistic, and expansive definitions of the protected class. We also emphasize the importance of implementation, enforcement, and tracking the impact of such laws, and the need to combine novel anti-discrimination protections with complementary legislation and community-based interventions.

A. Comparative Novel Anti-Discrimination Categories

Our comparative case studies spotlight novel categories of anti-discrimination protection, including the protected statuses of caregiver, caste, domestic violence survivor-victim, homelessness, and source of income, that focus on communities that experience documented but often overlooked forms of discrimination and have been afforded some legal anti-discrimination protections at the federal, state, municipal, or local level in the United States. This section includes brief background information on the types of discrimination implicated for each category as well as the legal anti-discrimination protections in effect.

1. Caregiver

The novel anti-discrimination category of “caregiver,” an individual with primary caregiving responsibilities for children and/or adults, seeks

to protect caregivers from discrimination connected to certain norms around the “ideal” employee that overlook or disregard an individual’s obligations outside of work.²¹⁶ Indeed, as one scholar explains, “[e]xpectations around when, where, and how work is performed continue to assume employees are unfettered by care responsibilities and can outsource such care to a stay-at-home spouse, other family members, or paid providers[.]”²¹⁷ Caregivers can experience discrimination in the form of lower pay, workplace harassment, failure to secure job promotions, and job termination.²¹⁸ These negative outcomes are often fueled by bias on the part of employers who view workers balancing caregiving responsibilities as “unreliable, uncommitted, and less valuable as employees—regardless of their actual job performance.”²¹⁹ Anti-discrimination protections for caregivers exist in states including Alaska, Delaware, Illinois, Maine, Minnesota, and New York, and in more than 200 local jurisdictions, covering “caregiver” or “parental” status.²²⁰

2. Caste

Over the last several years in the United States, the issue of caste discrimination has come into focus.²²¹ It has manifested most publicly in incidents involving Dalit employees in the technology sector, who have reported hiding their identities at work to protect themselves from potential abuse by individuals from privileged castes.²²² There have also been reports of caste discrimination in educational settings, as well as reports of

²¹⁶ See Madeleine Gyory, *Legislating Flexibility in the Post-Pandemic Workplace*, 69 VILL. L. REV. 209, 215–17, 226 (2024); see also STATE INNOVATION EXCH. & CTR. FOR WORKLIFE L., FAMILY CAREGIVER DISCRIMINATION: POLICY GUIDANCE 2 (2025), <https://worklifelaw.org/wp-content/uploads/2025/04/Family-Caregiver-Discrimination-Policy-Guidance.pdf> (on file with VJSPL).

²¹⁷ Gyory, *supra* note 216, at 215.

²¹⁸ STATE INNOVATION EXCH. & CTR. FOR WORKLIFE L., *supra* note 216, at 2.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ “Caste is a structure of social stratification that is characterized by hereditary transmission of a set of practices, often including occupation, ritual practice, and social interaction...[C]aste is often related to concepts of ritual purity and pollution, and serves as the basis for discrimination, and indeed severe oppression.” Guha Krishnamurthi, *The Constitutionality of Prohibiting Caste Discrimination*, U. CHI. L. REV. ONLINE *1, *3 (July 13, 2023), <https://lawreview.uchicago.edu/constitutionality-prohibiting-caste-discrimination> (on file with VJSPL).

²²² Rohit Chopra & Ajantha Subramanian, *Caste Discrimination Exists in the U.S., Too—But a Movement to Outlaw It Is Growing*, TIME (Feb. 11, 2022, at 13:54 ET), <https://time.com/6146141/caste-discrimination-us-opposition-grows/> (on file with VJSPL). In the Indian caste system, there are four classes that comprise the social hierarchy: “Brahmin (priest), Kshatriya (warrior and ruler), Vaishya (trader or merchant), and Shudra (servant or peasant).” Sangh Rakshita & Sofia Ranchordas, *California’s Attempt to Outlaw Caste-Based Discrimination*, THE REGUL. REV. (Nov. 20, 2023), <https://www.theregview.org/2023/11/20/rakshita-ranchordas-californias-attempt-to-outlaw-caste-based-discrimination/> (on file with VJSPL). Dalits are considered to exist outside this system below even the Shudra class “and have faced severe socio-economic dispossession and suppression, along with stigma.” *Id.*

labor exploitation and housing discrimination.²²³ Adding caste as a novel protected class to anti-discrimination laws and policies has been on the agenda of government bodies and universities. In early 2023, Seattle became the first jurisdiction in the United States, and the first outside of South Asia, to include caste in its anti-discrimination framework.²²⁴ The city amended its municipal code to protect individuals from discrimination based on caste in employment, housing, public accommodations, and other spheres.²²⁵ The city of Fresno, California, followed Seattle's example in September of the same year.²²⁶ Several universities, including Brandeis University, Brown University, the University of California at Davis, and the California State University system, have amended their anti-discrimination policies to include caste.²²⁷

3. Domestic Violence Survivor-Victim²²⁸

The physical and emotional harms that domestic violence survivor-victims endure because of abuse extend beyond the home environment to discrimination they may face in different sectors because of associated stereotypes and stigma related to their identities as survivor-victims. They may face discrimination in securing safe housing,²²⁹ acquiring health and life insurance,²³⁰ or keeping jobs and advancing in their careers.²³¹ Employers may penalize domestic violence survivor-victims based on stereotypes or because of how violence can affect survivor-victims' work performance.²³² As of 2023, eleven U.S. states, as well as Puerto Rico and

²²³ Rakshita & Ranchordas, *supra* note 222.

²²⁴ See *Seattle Becomes the First U.S. City to Ban Caste Discrimination*, NPR (Feb. 22, 2023, at 4:38 ET), <https://www.npr.org/2023/02/22/1158687243/seattle-becomes-the-first-u-s-city-to-ban-caste-discrimination> (on file with VJSPL).

²²⁵ Harmeet Kaur, *Seattle Becomes the First City in the US to Ban Caste Discrimination*, CNN (Feb. 23, 2023, at 7:01 ET), <https://www.cnn.com/2023/02/22/us/seattle-bans-caste-discrimination-cec> (on file with VJSPL).

²²⁶ See Kanishka Singh, *Fresno in California Becomes Only Second US City to Ban Caste Discrimination*, REUTERS (Sept. 30, 2023), [https://www.reuters.com/world/us/fresno-california-becomes-only-second-us-city-ban-caste-discrimination-2023-09-30/#:~:text=Sept%2029%20\(Reuters\)%20%2D%20Fresno,categories%20into%20its%20municipal%20code](https://www.reuters.com/world/us/fresno-california-becomes-only-second-us-city-ban-caste-discrimination-2023-09-30/#:~:text=Sept%2029%20(Reuters)%20%2D%20Fresno,categories%20into%20its%20municipal%20code) (on file with VJSPL).

²²⁷ Krishnamurthi, *supra* note 221, at *2.

²²⁸ We use the binary term “survivor-victim” to acknowledge the dual reality of both experiencing and overcoming personal harm.

²²⁹ See LEGAL MOMENTUM, STATE LAW GUIDE: HOUSING PROTECTIONS FOR VICTIMS OF DOMESTIC AND SEXUAL VIOLENCE AND STALKING 1 (2013), https://www.legalmomentum.org/sites/default/files/reports/Housing.Disc._05.2013.pdf (on file with VJSPL).

²³⁰ FAM. VIOLENCE PREVENTION FUND, COMPENDIUM OF STATE STATUTES AND POLICIES ON DOMESTIC VIOLENCE AND HEALTH CARE 4–5 (2010), https://acf.gov/sites/default/files/documents/fysb/state_compendium.pdf (on file with VJSPL).

²³¹ Marianne DelPo Kulow & Maria Granik, *Intimate Partner Violence Workplace Legislation: Minimizing Costs and Maximizing Benefits*, 62 HARV. J. ON LEGIS. 180, 184–5 (2024).

²³² LEGAL MOMENTUM, STATE GUIDE ON EMPLOYMENT RIGHTS FOR SURVIVORS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING 1 (2024),

Washington D.C., have created anti-discrimination protections specific to survivor-victims of domestic violence and intimate partner violence.²³³ For example, in Connecticut, “an employer cannot (1) refuse to hire or employ, (2) bar or discharge an individual from employment, or (3) discriminate against any individual in compensation or terms, conditions or privileges of employment because of their status as a victim of domestic violence.”²³⁴

4. Homelessness

Unhoused people are frequently targeted for various forms of harassment and discrimination as a result of their status.²³⁵ This bias leads to violence, with unhoused individuals being the victims of “thrill kills” and other kinds of senseless assaults.²³⁶ Unhoused people are also subject to discrimination by local governments in the form of laws that criminalize “sleeping in public or sitting down on sidewalks.”²³⁷ Unhoused individuals are forcefully segregated in mass shelters, with the threat of imprisonment or a court summons for non-compliance.²³⁸ Local governments also withhold essential services from their unhoused populations, such as access to public restroom facilities, then “criminalize them for necessary bodily functions like urination.”²³⁹ Because unhoused individuals lack a home address, they face significant barriers to accessing government services and securing employment.²⁴⁰

In 2022, Washington D.C. became the first jurisdiction in the United States to include homelessness as a protected anti-discrimination class.²⁴¹ The district amended its Human Rights Act to make it illegal for employers, schools, health insurers, real estate owners, and the local government to discriminate against unhoused people or deny them access to public

<https://www.legalmomentum.org/library/state-guide-employment-rights-survivors-domestic-violence-sexual-assault-and-stalking> (on file with VJSPL).

²³³ The eleven states are California, Connecticut, Delaware, Hawaii, Illinois, Nevada, New Hampshire, New York, Oregon, Vermont, and Washington. *See id.* at 3–4.

²³⁴ *Id.* at 16.

²³⁵ *See* NAT’L. L. CTR. ON HOMELESSNESS & POVERTY, FROM WRONGS TO RIGHTS: THE CASE FOR HOMELESS BILL OF RIGHTS LEGISLATION 6 (2014), https://homelesslaw.org/wp-content/uploads/2018/10/Wrongs_to_Rights_HBOR.pdf (on file with VJSPL).

²³⁶ Sara K. Rankin, *A Homeless Bill of Rights (Revolution)*, 45 SETON HALL L. REV. 383, 392 (2015).

²³⁷ NAT’L. L. CTR. ON HOMELESSNESS & POVERTY, *supra* note 235, at 6.

²³⁸ ACLU OF S. CAL., OUTSIDE THE LAW: THE LEGAL WAR AGAINST UNHOUSED PEOPLE 4 (2021), <https://www.aclusocal.org/sites/default/files/outsidethelaw-aclufdnsca-report.pdf> (on file with VJSPL).

²³⁹ *Id.*

²⁴⁰ NAT’L. L. CTR. ON HOMELESSNESS & POVERTY, *supra* note 235, at 6.

²⁴¹ *See* Thomas Stanley-Becker, *District of Columbia Becomes First Jurisdiction to Define People Experiencing Homelessness as a Protected Class*, GEO. J. ON POVERTY L. & POL’Y ONLINE (Feb. 15, 2023), <https://www.law.georgetown.edu/poverty-journal/blog/district-of-columbia-becomes-first-jurisdiction-to-define-people-experiencing-homelessness-as-a-protected-class/> (on file with VJSPL).

accommodation.²⁴² Homeless bills of rights have also gained some traction, with legislation passed in states like Connecticut, Illinois, and Rhode Island.²⁴³ These measures often affirm the right for unhoused people to be free from employment discrimination and discrimination in attaining government services.²⁴⁴

5. Source of Income

U.S. federal housing voucher programs like Section 8, in which the U.S. government issues vouchers to low-income renters that cover a significant portion of their rent to private landlords, are a mechanism to promote residential integration in the United States, yet recipients of housing vouchers are often negatively impacted by source of income discrimination.²⁴⁵ Studies analyzing voucher holders' neighborhood preferences show that tenants often prefer to live in neighborhoods with more economic opportunities but face barriers to doing so because of discrimination from landlords.²⁴⁶ Federal civil rights law, specifically the Fair Housing Act, does not mandate that landlords accept housing vouchers.²⁴⁷ There are however, many jurisdictions at the state, local, and municipal levels where tenants are specifically protected from source of income discrimination: As of 2022, seventeen states, twenty-one counties, and eighty-five cities prohibit discrimination based on source of income.²⁴⁸ New York state's broad law, for example, makes it illegal to deny someone housing based on their "lawful source of income."²⁴⁹ The law does not only address voucher discrimination—it prohibits housing discrimination based on "any form of federal, state, or local public assistance"; "any form of federal, state, or local housing assistance"; "child support"; "alimony"; "foster care subsidies"; "Social Security or Supplement Security Income"; or "any other form of lawful income or government assistance."²⁵⁰

²⁴² *Id.*

²⁴³ NAT'L. L. CTR. ON HOMELESSNESS & POVERTY, *supra* note 235, at 6.

²⁴⁴ *Id.* at 6–7.

²⁴⁵ See J. Rosie Tighe, Megan Hatch & Joseph Mead, *Source of Income Discrimination and Fair Housing Policy*, 32 J. PLAN. LITERATURE 3, 3 (2016); see also Armen H. Merjian, *Marginalizing the Marginalized: Source of Income Discrimination and the Critical Need for Federal Protection*, A.B.A., HUM. RTS. MAG. (Mar. 19, 2025), <https://www.americanbar.org/groups/crsj/resources/human-rights/2025-march/source-of-income-discrimination-critical-need-federal-protection/> (on file with VJSPL).

²⁴⁶ See Tighe, Hatch & Mead, *supra* note 245, at 3.

²⁴⁷ *Id.* at 6.

²⁴⁸ 14-1 *Advancing Tenant Protections: Source-of-Income Protections*, NAT'L LOW INCOME HOUS. COAL. (Feb. 7, 2023), <https://nlihc.org/resource/14-1-advancing-tenant-protections-source-income-protections> (on file with VJSPL).

²⁴⁹ *Source-of-income discrimination*, OFF. N.Y. STATE ATT'Y GEN., <https://ag.ny.gov/publications/source-income-discrimination> (on file with VJSPL) (last visited Aug. 7, 2025).

²⁵⁰ See *id.*

B. Arguments in Favor of Novel Sex Work Anti-Discrimination Protections

In Part I of this article, we documented invidious, varied, and widespread patterns of stigma and discrimination against sex workers throughout the world to highlight the need for legal pathways to remedy these harms. Our goal in this section is to use insight from our comparative case studies to highlight additional key arguments in favor of anti-discrimination protections for sex workers. We argue that novel sex work anti-discrimination safeguards are necessary because: 1) there is not a traditional or other umbrella category of anti-discrimination protection that sex work falls under that would provide the necessary breadth of protection; 2) these laws can serve as anti-stigma tools by educating the public about lesser-known forms of discrimination; and 3) many of the victims of sex work stigma and discrimination disproportionately hail from groups that bear the weight of traditional forms of exclusion, and thus these novel laws can simultaneously serve as additional systems to address discrimination based on racism, sexism, homophobia, transphobia, and xenophobia.

1. Unsuitability of Umbrella Categories of Anti-Discrimination Protection

One of the main reasons scholars and advocates in our comparative case studies promote novel categories of anti-discrimination protection is because traditional categories either do not apply or are untested in relation to novel categories. This was particularly stressed in our case studies focused on caste, domestic violence survivor-victims, and caregivers.

Whether caste should be a novel category of protection or subsumed under traditional categories of anti-discrimination law has been a focus of debate. Some have asserted that remedying caste discrimination could be possible using traditional protected anti-discrimination classes already codified in law. In vetoing a bill that would have amended California's Civil Rights Act to add caste as a protected attribute, California Governor Gavin Newsom used this reasoning, asserting that individuals experiencing caste discrimination could bring claims under the existing anti-discrimination category of ancestry.²⁵¹ In the absence of an explicit codification of caste as a protected class for employment discrimination under Title VII of the federal Civil Rights Act, scholars have suggested that the federal Equal Employment Opportunity Commission (EEOC) should provide formal guidance that Title VII's prohibitions on race, national origin, and religious discrimination in employment should be interpreted to include caste discrimination.²⁵²

But while arguments can be made that caste discrimination is covered by protected classes already included in anti-discrimination frameworks

²⁵¹ See Rakshita & Ranchordas, *supra* note 222.

²⁵² Guha Krishnamurthi & Charanya Krishnaswami, *Title VII and Caste Discrimination*, 134 HARV. L. REV. F. 456, 481 (2021).

like Title VII, proponents of codifying caste as a distinct protected class draw on multiple arguments to buttress their position. They raise concerns about imposing an added burden on victims of discrimination by necessitating “protracted arguments” on their part to make the connection between caste and a current protected class.²⁵³ They are also wary of leaving the establishment of this connection to court interpretation when “judicial interpretation of Title VII’s protections are in flux.”²⁵⁴ They also argue that cases leveraging the established protected classes of national origin, race, or religion to litigate a claim of caste discrimination have not yet been brought before the courts and, therefore, remain “untested.”²⁵⁵ Proponents assert further that a separate protected class for caste is necessary because of caste’s “distinctive” nature.²⁵⁶ They also contend that “[c]aste is not limited to one religion, nor is it considered an ethnicity” and it cannot “be narrowed down to national origin alone nor be determined based on skin color.”²⁵⁷

Regarding the need for a novel anti-discrimination category to protect domestic violence survivor-victims, scholars have underscored the limitations of federal laws and traditional categories of protection.²⁵⁸ For example, Title VII disallows gender discrimination in employment, and although survivors may attempt to bring claims under this rubric,²⁵⁹ most courts have not yet interpreted domestic violence survivor-victim status as falling under that traditional category.²⁶⁰

Scholars note that caregivers are protected “only indirectly” by other laws, such as Title VII, the Americans with Disabilities Act (ADA), the Pregnancy Discrimination Act (PDA), and the Family Medical Leave Act (FMLA).²⁶¹ Because federal law does not explicitly proscribe employer discrimination against caregivers, an individual facing discrimination because they are a caregiver “must use a different legal ‘hook’ to trigger protection under federal law,” for example, arguing that they are experiencing discrimination not directly because they are a caregiver but indirectly because they are caring for someone with a disability in violation

²⁵³ Rakshita & Ranchordas, *supra* note 222.

²⁵⁴ Krishnamurthi & Krishnaswami, *supra* note 252, at 481.

²⁵⁵ Krishnamurthi, *supra* note 221, at *3.

²⁵⁶ *Id.*

²⁵⁷ Rakshita & Ranchordas, *supra* note 222.

²⁵⁸ “[A]lthough survivors of domestic violence who face adverse work consequences may be able to articulate a claim of gender based discrimination under Title VII, a failure to accommodate under the ADA, or violations of the Federal Medical Leave Act, the absence of federal laws more directly addressing the effect of domestic violence on the workplace has left a significant gap in domestic violence legislation.” Deseriee A. Kennedy, *Using the NFL as a Model? Considering Zero Tolerance in the Workplace for Batterers*, 45 UNIV. OF BALT. L. REV 293, 308 (2016).

²⁵⁹ *See id.* at 307–8.

²⁶⁰ *See* Stephen R. Arnott & Margaret C. Hobday, *It’s a Human Right: Using International Human Rights Principles to Assist Employees Experiencing Domestic Violence*, 18 EMP. RTS. & EMP. POL’Y J. 1, 10 (2014).

²⁶¹ Gyory, *supra* note 216, at 225.

of the ADA or unable to take family leave to care for dependents under the FMLA.²⁶²

“Sex Work” as a Distinct Protected Category

Our comparative analysis reveals that the lack of applicable and tested traditional anti-discrimination categories is a valid and dominant reason to create novel categories of protection; this applies to the sex work context as well. Not only are traditional categories not applicable to sex work, but other umbrella categories under which sex work could be subsumed, like “occupation” and “source of income,” are either inapplicable in situations of continued criminalization of sex work or they do not on their own provide adequately broad protection. For example, in New York City, both “lawful occupation” and “lawful source of income” are protected anti-discrimination classes in housing.²⁶³ But sex work is still a misdemeanor in the municipality, so it would qualify neither as “lawful occupation” nor “lawful source of income.”²⁶⁴ Stardust et al. make the same argument in connection to jurisdictions that have anti-discrimination protections for “lawful sexual activity” but still criminalize some forms of sex work—these umbrella categories in the context of criminalization are useless for sex workers.²⁶⁵

But what about jurisdictions that have decriminalized sex work, where “lawful occupation” and “source of income” would potentially be applicable? Would the existence of these umbrella categories provide adequate protection? The Australian experience provides useful background. As we noted in Part II, lawmakers in Victoria took a different approach than their peers in the Northern Territory and Queensland in enshrining sex work anti-discrimination protections.²⁶⁶ Whereas anti-discrimination laws in the Northern Territory and Queensland use “sex work” and “sex worker” as protected attributes, in Victoria, legislators amended the state’s anti-discrimination framework to include a protected class for sex workers of “profession, trade, or occupation.”²⁶⁷ Debates among legislators in Victoria give some insight into the drafting decisions.²⁶⁸ During parliamentary debates, certain members of the legislative body, namely Animal Justice Party MP Andy Meddick, in consultation with sex workers’ rights organizations Scarlett Alliance and Vixen Collective, advocated for the addition

²⁶² See *id.* at fn 61.

²⁶³ Bianca B. Li, Note, *Toward “The Most Freedom”: Decriminalizing Sex Work Alleviates Housing Discrimination and Housing Instability Faced By Sex Workers in New York City*, 32 J. L. & POL’Y 164, 173–74 (2023).

²⁶⁴ *Id.*

²⁶⁵ See Stardust et al., *supra* note 3, at 130.

²⁶⁶ See *supra* Part II.B.

²⁶⁷ See Mgbako et al., *supra* note 7, at 127–29.

²⁶⁸ See generally, Victoria, *Parliamentary Debates*, Legislative Council, 10 Feb. 2022 (Austl.).

of “sex work” and “sex workers,”²⁶⁹ alongside “profession, trade, or occupation,” but his attempts to persuade his fellow lawmakers were unsuccessful: It was solely “profession, trade, or occupation” that won the day.²⁷⁰ Meddick’s colleagues gave two justifications for their opposition. First, they argued that the policy goals driving the amendment of combating discrimination sex workers face would be met without the inclusion of “sex work” or “sex worker” as attributes.²⁷¹ Second, they claimed that the broader category of “profession, trade, or occupation” would hold up and fulfill its protective function over time, managing to adapt and cover potential changes in the sex work industry.²⁷²

At one point, sex workers’ rights organizations and activists in Victoria supported the phrasing “profession, trade, or occupation.”²⁷³ Broadly speaking, arguments in favor of this classification have asserted that it has the capacity to capture more individuals working across the sex and adult industries within its parameters.²⁷⁴ The Scarlet Alliance, though, has moved away from this position.²⁷⁵ The organization has argued that the category “profession, trade, or occupation” does not adequately recognize the deep historical and present reality of ostracism and stigma faced by sex workers, as compared to the protected attributes of “sex work” and “sex worker.”²⁷⁶ Moreover, with “profession, trade, or occupation” codified as the only protected attribute for sex workers to seek recourse against discrimination in a given jurisdiction, sex workers may face obstacles in meeting an adjudicatory body’s interpretation of and threshold for “occupation.”²⁷⁷ Specifically, judges may find that part-time sex work or intermittent work in the industry may not rise to the level of occupation, therefore precluding certain individuals from protection against discrimination under this attribute.²⁷⁸

Like the similar arguments regarding burdens of proof related to caste, asking sex worker plaintiffs to pursue claims solely under “profession, trade, or occupation” may place an added unfair duty on complainants to prove that their work rises to that level and provide a convenient out for judges to rule their activities do not. Stardust et al. argue that a jurisdiction

²⁶⁹ See Benita Kolovos, *How will Victoria’s sex work decriminalisation bill work and will it make the industry safer?*, THE GUARDIAN (Feb. 6, 2022), <https://www.theguardian.com/australia-news/2022/feb/07/how-will-victorias-sex-work-decriminalisation-bill-work-and-will-it-make-the-industry-safer> (on file with VJSPL); see also Victoria, *Parliamentary Debates*, *supra* note 261, at 256.

²⁷⁰ See *Equal Opportunity Act 2010* (Vic) pt 2 s 6(la) (Austl.).

²⁷¹ Victoria, *Parliamentary Debates*, *supra* note 268, at 256.

²⁷² *Id.*

²⁷³ See Cheles-McLean, *supra* note 14, at 308.

²⁷⁴ See *id.*

²⁷⁵ *Id.*

²⁷⁶ SCARLET ALL., BRIEFING PAPER: ANTI-DISCRIMINATION & VILIFICATION PROTECTIONS FOR SEX WORKERS IN AUSTRALIA 6 (2022), https://scarletalliance.org.au/wp-content/uploads/2022/07/Anti_Discrim2022.pdf (on file with VJSPL).

²⁷⁷ See Cheles-McLean, *supra* note 14, at 308.

²⁷⁸ See *id.*

which includes “profession, trade, or occupation” as the sole protected attribute for sex work relies “upon the arbitrator to recognize sex work as work.”²⁷⁹ Indeed, in this regard sex workers would likely run into the same challenges faced by domestic violence survivor-victims where courts have not routinely recognized discrimination against them as falling under a separate umbrella attribute like gender discrimination. As we will argue further in our subsection on definitional issues in Part III(B)(1), the goal should be an anti-discrimination framework with protected attributes that are clearly defined and provide holistic coverage for the broadest swath of sex workers possible.

2. Awareness-Raising, Destigmatization, and Effecting Broader Change

Proponents of novel anti-discrimination protections stress the role these laws could play in raising public awareness about under-the-radar forms of discrimination. In this way, the laws themselves could reduce stigma. Advocates for the codification of caste anti-discrimination protections argue they would have the effect of “destigmatiz[ing] caste identification” and “highlighting prejudices that have been invisible for too long.”²⁸⁰ Moreover, they contend that these new frameworks could assist in raising awareness and educating the public “about a phenomenon that, at least in U.S. workplaces, remains invisible to many.”²⁸¹ Supporters of the failed bill to codify caste discrimination in California noted that the bill’s major goal was “to send a symbolic message that acknowledges the societal and cultural existence of a distinct disadvantage.”²⁸²

Advocates have raised these same arguments in the context of advocacy for homeless anti-discrimination protections. Proponents contend that another benefit of homeless bills of rights is their potential impact on stigma, confronting “the foundation of prejudice upon which discrimination against homeless people is based.”²⁸³ Supporters have raised similar arguments in efforts outside of the United States to craft homeless anti-discrimination protections. European scholars have reasoned that creating a specific protective anti-discrimination framework for homelessness would ensure not only a means of seeking redress for harms but also serve as a symbolic message that would raise public awareness and promote social acceptance of the unhoused population.²⁸⁴

In addition to the role novel anti-discrimination laws can play in awareness-raising and destigmatization, our comparative case studies reveal that it is also difficult to enact broader social change without these laws. Advocates raise this argument in the context of source of income

²⁷⁹ Stardust et al., *supra* note 3, at 130.

²⁸⁰ Chopra & Subramanian, *supra* note 222.

²⁸¹ Krishnamurthi & Krishnaswami, *supra* note 252, at 458.

²⁸² Rakshita & Ranchordas, *supra* note 222.

²⁸³ NAT’L. L. CTR. ON HOMELESSNESS & POVERTY, *supra* note 235, at 7.

²⁸⁴ Roxani Fragkou & Alexandros Tsadiras, *Breaking the Vicious Circle between Discrimination and Homelessness*, 12 INT. HUM. RTS. L. REV. 213, 242 (2023).

anti-discrimination frameworks. Federal housing voucher programs like Section 8 face a core challenge impacting their effectiveness: Landlords are not required to accept housing vouchers.²⁸⁵ Protections against source of income discrimination seek to address this challenge, and scholars and advocates point out that it is a waste of resources for the government to fund a housing subsidy program “and then allow its frustration by letting people discriminate against the program’s participants.”²⁸⁶ In other words, if the worthy goal of federal housing voucher programs is to effect the broader change of residential integration that allows low-income people to have more access to a wider range of economically developed neighborhoods, then addressing source of income discrimination is necessary to help ensure that broader change can be realized. Advocates for the unhoused make similar arguments regarding the need for novel anti-discrimination protections to achieve the broader goal of ending homelessness: It is essential to tackle discrimination against unhoused people, they argue, especially in access to housing and employment, because if unhoused people are ““facing housing discrimination, that makes solving homelessness harder, not easier. If employers are discriminating in who they hire, that makes ending homelessness harder not easier.””²⁸⁷

Application to the Sex Work Context

Novel anti-discrimination laws can play a similarly powerful role in the sex work context. The public knows very little about the lives of sex workers and the myriad forms of discrimination they face. Sex work anti-discrimination protections could raise awareness among the public by sending a message that sex workers are a marginalized class whose rights are worthy of state protection and therefore challenge the whore stigma and whorephobia deeply ingrained in societies. Through their advocacy, sex workers’ rights advocates have proven adept at directing the public’s empathy towards the sex work community. In the recent push for decriminalization in Belgium, for example, sex workers’ rights advocates demonstrated how the public is ripe for sensitization regarding sex workers’ rights.²⁸⁸ Belgian sex workers’ rights advocates engaged in a sophisticated media campaign that exposed the public to the fact that during the COVID-19 pandemic, sex workers faced discrimination from the government and were initially one of the only sectors excluded from government

²⁸⁵ Johnson, *supra* note 15, at 122.

²⁸⁶ See, e.g., Jamie Langowski, William Berman, Grace Brittan, Catherine LaRaia, Jee-Yeon Lehmann, & Judson Woods, *Qualified Renter Need Not Apply: Race and Housing Voucher Discrimination in the Metropolitan Boston Rental Housing Market*, 28 GEO. J. ON POVERTY L. & POL’Y 35, 67 (2020).

²⁸⁷ Carey L. Biron, *Sexism, Racism...Home-ism? D.C. Bans Discrimination for Homeless*, CONTEXT NEWS (Oct. 7, 2022), <https://www.context.news/socioeconomic-inclusion/sexism-racismhome-ism-dc-bans-discrimination-for-homeless> (on file with VJSPL).

²⁸⁸ See Mgbako et al., *supra* note 7, at 146–47.

assistance programs and unemployment benefits, with some sex workers forced to seek handouts on the streets.²⁸⁹ These revelations shocked and sensitized the public, which helped turbocharge the sex work decriminalization campaign in Belgium.²⁹⁰ Anti-discrimination protections would give advocates more opportunities to sensitize the public about sex workers' marginalization and the harms of discrimination and stigma against the community.

Parallel arguments can also be made to the sex work context regarding the potential role of novel anti-discrimination laws in effectuating broader change. The goal of the decriminalization of sex work is for sex workers to be able to do their work safely and with dignity, in full realization of their human rights.²⁹¹ Yet, if sex workers post-decriminalization continue to face unchecked stigma and discrimination that preclude them from activities such as accessing safe places to do their work, renting an apartment, storing their money in bank accounts, or getting their health checked, then they cannot do their work safely, securely, and with dignity, and it makes it impossible to effect the broader change that the decriminalization of sex work seeks.

3. Confronting Intersectional Discrimination

In our case studies, we found that individuals who experience intersectional discrimination often disproportionately bear the brunt of the distinctive discrimination that novel categories of anti-discrimination protection seek to address. Novel laws can therefore also serve the purpose of simultaneously confronting deeply entrenched, historical forms of discrimination, including racism, sexism, homophobia, transphobia, xenophobia, and discrimination against people with disabilities. Those affected by source of income discrimination, for example, “are typically individuals already suffering under the weight of society’s prejudices.”²⁹² Advocates and scholars note that “source of income discrimination has frequently served as a proxy for race, disability, and gender discrimination.”²⁹³ Black and Latine people comprise sixty-six percent of federal housing voucher Section 8 recipients.²⁹⁴ Twenty-six percent of

²⁸⁹ *See id.* at 147.

²⁹⁰ *See id.* Belgian sex workers’ public education and media campaigns during the Covid-19 pandemic “successfully influenced the media’s tone and portrayal of sex workers...which no longer portrayed sex workers as helpless victims but as empowered, capable individuals working in solidarity to create their own safety net.” *Id.* at 147. These campaigns included a virtual live debate which “engaged sex workers in discussions with criminal lawyers, international sex worker rights activists, and politicians.” *Id.*

²⁹¹ *See supra* Part II; *see also*, Mgbako et al., *supra* note 7, at 114–15.

²⁹² Merjian, *supra* note 245.

²⁹³ *Id.* *See also* Robert G. Schwemm, *Source of Income Discrimination and the Fair Housing Act*, 70 CASE W. RES. L. REV. 573, 618 (2020) (arguing that banning source of income discrimination would also “advance the FHA’s goals of reducing racial discrimination,” as SOI discrimination disproportionately impacts people of color.).

²⁹⁴ Merjian, *supra* note 245.

housing voucher households include a person with a disability.²⁹⁵ And almost eighty percent are led by women.²⁹⁶ Even though caregivers come from all demographics, women, people of color, and low-wage workers who provide unpaid care work for loved ones disproportionately face the brunt of discrimination in the workplace based on their caregiver status.²⁹⁷ Although Black people make up only thirteen percent of the U.S. population, they comprise more than forty percent of the nation's unhoused population.²⁹⁸ Thus, novel anti-discrimination protections targeting source of income, caregivers, and the unhoused would also indirectly fight against other historical stigmas.

Application to the Sex Work Context

Scholars have long asserted that the criminalization of sex work reveals “underlying structures that seek to preserve a social order embedded with stigmas related to the race, gender, sexuality, class, and migration status of sex sellers.”²⁹⁹ As we explored briefly in Part I, migrant sex workers, queer sex workers, and sex workers of color experience intersectional discrimination; they face stigma and discrimination not only because they are sex workers but also because of xenophobia, homophobia, transphobia, and racism.³⁰⁰ Migrant sex workers are victimized by punitive sex work frameworks as well as strict border regimes often masked as anti-trafficking policies.³⁰¹ Due to discrimination against queer communities in employment, education, and other social services, sex work has been a means of economic survival for some in the queer community, especially transgender sex workers.³⁰² Sex workers of color and trans sex workers are disproportionately the targets of sex work arrests, feeding the carceral system.³⁰³ As with other novel categories of protection, by

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ STATE INNOVATION EXCH. & CTR. FOR WORKLIFE L., *supra* note 216, at 2.

²⁹⁸ *Racial Disparities in Homelessness in the United States*, NAT'L ALL. TO END HOMELESSNESS (June 6, 2018), <https://endhomelessness.org/resources/sharable-graphics/racial-disparities-homelessness-united-states/> (on file with VJSPL).

²⁹⁹ See Cecilia Benoit & Andrea Mellor, *Decriminalization and What Else? Alternative Structural Interventions to Promote the Health, Safety, and Rights of Sex Workers*, 12 SOC. SCI. 1, 1 (2023).

³⁰⁰ See *supra* Part I.B.7.

³⁰¹ See INT'L COMM. ON THE RTS. OF SEX WORKERS IN EUR., DIVERSE, RESILIENT, POWERFUL: INTERSECTIONAL ACTIVISM TOOLKIT FOR SEX WORKERS AND ALLIES 13 (2018), https://d3n8a8pro7vbm.cloudfront.net/eswa/pages/149/attachments/original/1631375244/ICRSE_Intersectional_Activism_Toolkit_final-2.pdf?1631375244 (on file with VJSPL).

³⁰² *Sex Work is an LGBTQ Issue*, SURVIVORS AGAINST SESTA (Mar. 11, 2018), <https://survivorsagainstsesta.org/lgbtq/> (on file with VJSPL).

³⁰³ See LaLa B. Holston-Zannell, *Sex Work is Real Work, and it's Time to Treat it That Way*, ACLU OF S.D. (Mar. 7, 2024), <https://www.aclusd.org/en/news/sex-work-real-work-and-its-time-treat-it-way#:~:text=Those%20incarcerated%20tend%20to%20be,two%20trans%20people%20of%20color> (on file with VJSPL).

confronting discrimination against sex workers, with the understanding that abuses against sex workers disproportionately affect people from historically marginalized groups, these novel anti-discrimination laws can serve as another instrument in the struggle against xenophobia, homophobia, transphobia, racism, and other long-established systems of oppression.

C. Substantive and Procedural Concerns

In this section, we examine substantive and procedural concerns in the development of novel sex work anti-discrimination protections based on our comparative case studies. We spotlight issues surrounding definitional concerns regarding the crafting of novel categories of protection; the importance of navigating implementation, enforcement, and the tracking of the effectiveness of these laws; and finally, how novel anti-discrimination protections for sex workers should be combined with other laws and positive interventions to strengthen the effect of these laws and help ensure lasting change.

1. Definitional Challenges of Protected Attributes

Our comparative analysis, as well as the differences in language used to define protected categories in the laws of the Northern Territory, Queensland, and Victoria, reveal that it is crucial for novel categories in anti-discrimination law to include precision of language as well as expansive, holistic, and all-encompassing definitions that can afford broad coverage to protected classes and avoid interpretive narrowing of protection by courts and other adjudicatory bodies.³⁰⁴

Definitional questions regarding protected attributes have been a thorny issue in debates regarding caste. Advocates point to definitional challenges that have emerged in instances where institutions have attempted to include or have successfully included caste as a protected class in bills and policies, citing examples where definitions of caste were too vague or inconsistent.³⁰⁵ More problematically, critics of the codification of caste claim that “where caste has been described or defined, it has not been in a manner that is facially neutral nor generally applicable, and instead creates a suspect class singling out and targeting only people of Indian or subcontinental descent.”³⁰⁶

³⁰⁴ Wrestling definitional control away from courts may also ameliorate some scholars’ concerns of essentializing, stereotyping, or ascribing immutable characteristics to particular groups. See, e.g., Barclay, *supra* note 194, at 171–74; McCrudden, *supra* note 16, at 379–80; Sandra Fredman, *Equality: A New Generation*, 30 INDUS. L.J. 145, 157–60 (2001).

³⁰⁵ Samir Kalra & Suhag Shukla, *Casting Aspersions: Solving a Problem or Creating a New One with Caste as a Novel Protected Class?*, 24 RUTGERS J.L. & RELIGION 1, 33–34 (2024-2025).

³⁰⁶ *Id.* at 34.

Definitional challenges have also arisen regarding homelessness as a novel category. One concern is the breadth of protection offered by the definitions in existing legislation. Homeless protection statutes in Rhode Island and Illinois, for example, do not cover individuals at imminent risk of homelessness.³⁰⁷ As a result, these statutes protect a smaller swath of people than, for example, the Connecticut statute, which defines the protected category as including those at risk of homelessness.³⁰⁸ In advocating for an expansion of anti-discrimination protections for the unhoused in Europe, scholars note the difficulty of defining homelessness as a class.³⁰⁹ When developing a definition of homelessness as a protected class, they argue that it is necessary to consider both the “quality and security of housing” in addition to the “physical absence of a home or shelter[.]”³¹⁰ They suggest a more comprehensive and adaptable definition of homelessness as a class, which would “capture the experience of people living in temporary or crisis accommodations, those living in severely inadequate and insecure accommodations, as well as people who lack access to affordable housing.”³¹¹

In the context of caregiver anti-discrimination protections, advocates highlight an Illinois law passed in 2024 for its definitional posture that provides broad coverage for caregivers as an example of a more expansive definition of the caregiver-care recipient relationship.³¹² The law recognizes care relationships between a caregiver and their “child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent.”³¹³ Further, it stipulates that caregiving responsibilities cover the provision of personal care which “includes, but is not limited to: [t]aking a family member to a doctor’s appointment[;] [t]ending to a family member’s basic medical, hygiene, nutritional, or safety needs[;] [or] [p]roviding emotional support to a family member with a serious health condition who is receiving inpatient or home care.”³¹⁴ The law is also specific and expansive about the types of discrimination it covers, making it illegal “[f]or any employer to refuse to hire, to segregate, to engage in harassment..., or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of...family

³⁰⁷ Sarah Golabek-Goldman, *Ban the Address: Combating Employment Discrimination Against the Homeless*, 126 YALE L.J. 1788, 1839 (2017).

³⁰⁸ *Id.*

³⁰⁹ See Fragkou & Tsadiras, *supra* note 284, at 216.

³¹⁰ *Id.* at 237.

³¹¹ *Id.* at 216–17.

³¹² STATE INNOVATION EXCH. & CTR. FOR WORKLIFE L., *supra* note 216, at 3.

³¹³ Press Release, *Protections for Family Responsibilities in Employment Take Effect January 1*, ILL. DEP’T OF HUM. RTS. (Dec. 27, 2024), <https://www.illinois.gov/news/release.html?releaseid=30774> (on file with VJSPL).

³¹⁴ *Id.*

responsibilities.”³¹⁵ Advocates pushing for caregiver protections have also stressed that attention must be devoted to word choice in the drafting of these laws to avoid future interpretation issues or misapplication in the courts.³¹⁶ They emphasize that the language must be “specific and inclusive enough with respect to various types of caregiv[ers] [while] not creat[ing] unintended proof burdens.”³¹⁷

Defining “Sex Work” as a Protected Category

All the lessons from our comparative case studies regarding definitional specificity, inclusivity, expansiveness, and breadth can be applied to the sex work context. Scholars and advocates rightly note the need to include “sex work” and “sex worker” as part of the protected attribute in sex work anti-discrimination laws, as opposed to only including “profession, trade, and occupation.”³¹⁸ Advocates will ultimately need to decide to what extent those categories should be defined to include a broad array of people in the sex industry, including “strippers, adult web-cammers, phone sex operators, brothel managers, escort agency managers, and adult product retailers,”³¹⁹ but our comparative analysis reveals strength in broader and more inclusive conceptions of protected anti-discrimination attributes. Novel sex work anti-discrimination protections should strike a balance of language that is both precise, as well as inclusive and flexible, to avoid courts or other authorities intentionally narrowing or declining to apply these protections.

Definitions of the protected category should include a broad definition of sex work that can serve as a catch-all for different forms of sexual commerce. The Northern Territory’s anti-discrimination law is an example of such a broad definition and defines sex work as the “provision by a person of either of the following services in return for payment or reward: (a) services that involve the person participating in sexual activity with another person; (b) services that involve the use or display of the person’s body for the sexual arousal or gratification of others.”³²⁰ Such an expansive definition could also be accompanied by a specific list of examples of sex work, covering a wide breadth of sex work activities, and noting that the examples are meant to be illustrative not limiting. Protective categories should also be clear about covering full-time, part-time, and occasional sex work. The Northern Territory law attempts to address this by referring to both “employment” and “engagement” in sex work.³²¹ Frameworks should also include descriptions of the type of discrimination

³¹⁵ 775 ILL. COMP. STAT. ANN. 5/2-102(A) (West 2025).

³¹⁶ See Noreen Farrell & Genevieve Guertin, *Old Problem, New Tactic: Making the Case for Legislation to Combat Employment Discrimination Based on Family Caregiver Status*, 59 HASTINGS L.J. 1463, 1472 (2008).

³¹⁷ *Id.*

³¹⁸ See Cheles-McLean, *supra* note 14, at 305–08.

³¹⁹ See *id.* at 307.

³²⁰ *Anti-Discrimination Act 1992* (NT) pt 1 s 4 (definition of ‘sex work’) (Austl.).

³²¹ *Anti-Discrimination Act 1992* (NT) pt 3 div 1 s 19(1)(ec) (Austl.).

covered. A proposed bill to add anti-discrimination protections for sex workers in New South Wales is thorough in its list of the types of discrimination at issue, including discrimination in employment, government services, education, goods and services, accommodation, and other areas.³²² Precise, holistic, and flexible definitions and descriptions will ensure that complainants can scale any problems of proof that the law applies to them.

In discussing protected attributes in novel sex work anti-discrimination frameworks, Stardust et al. raise the concerning issue of algorithmic profiling.³²³ They note that, specifically in terms of financial discrimination against sex workers, discrimination is often the result of “an algorithmically-produced prediction of risk,” which anti-discrimination law as it stands does not account for.³²⁴ To illustrate how this phenomenon may manifest, the authors use the example of a financial institution deplatforming an individual “(who may or may not be a sex worker)...because of a combination of factors such as: they cannot verify their legal name, they use an explicit keyword in their transactions, [or] their social network includes sex educators, sex workers, or queer businesses[.]”³²⁵ To combat such outcomes, the authors and other scholars underscore the urgency of modifying anti-discrimination law so as to capture “algorithmic profiling and use of proxies.”³²⁶ This is a novice field of law.³²⁷ Sex workers’ rights advocates will need to closely track its development to see how discrimination against sex workers indirectly targeted by algorithmic profiling and proxies can be captured in definitions of protected attributes in anti-discrimination law.

2. Implementation, Enforcement, and Tracking Effectiveness

Novel sex work anti-discrimination protections will be futile if they are not implemented and enforced, and if scholars and advocates do not track their effectiveness. Our case studies demonstrate that public education and awareness-raising with the advent of these novel laws is a vital part of implementation and enforcement strategies. Scholars have recommended the development of a national media campaign to educate the public about source of income anti-discrimination protections, arguing that “protections do not help people if they are unaware of their rights.”³²⁸ In nationwide surveys, advocates for the unhoused have stressed that it is critical that homeless individuals and advocates, as well as government actors, are made aware of the protections included within homeless bills

³²² See *Anti-Discrimination Amendment (Sex Workers) Bill 2020* (NSW) sch 1 divs 2–3 (Austl.).

³²³ Stardust et al., *supra* note 3, at 131.

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.* at 131–32.

³²⁷ For more on the profiling of “algorithmic groups,” see generally, Sandra Wachter, *The Theory of Artificial Immutability: Protecting Algorithmic Groups Under Anti-Discrimination Law*, 97 TUL. L. REV. 149 (2022).

³²⁸ E.g., Langowski et al., *supra* note 286, at 67.

of rights.³²⁹ This has been part of Rhode Island's implementation and enforcement of their homeless bill of rights: Advocacy organizations are working to make sure that homeless individuals know their rights under the law and are connecting them to legal services organizations.³³⁰ In conjunction with laws enshrining domestic violence survivor-victims as a protected class and providing other workplace assistance, scholars have argued for the centrality of education and awareness-raising to support survivors.³³¹ They maintain that education can contribute to community-building in work environments by dismantling stereotypes and stigma associated with domestic and intimate partner violence and fostering empathy among co-workers.³³²

Advocates in our comparative case studies also rightly stress that novel anti-discrimination protections must be enforced when there are violations. Advocates for homeless bills of rights emphasize that enforcement requires "resource investment, community organization, public education, and the governmental will to fulfill the aim of the legislation."³³³ They also acknowledge the challenges involved in enforcement. For example, even when unhoused individuals know their rights, they may not have the financial resources or support to seek legal representation.³³⁴ Due to these hurdles, advocates have suggested administrative enforcement mechanisms as viable additions to court enforcement.³³⁵ For example, in Washington D.C., those experiencing discrimination because they are unhoused, in addition to enforcing their rights in court, can lodge a complaint with the D.C. Office of Human Rights.³³⁶

Tracking the effectiveness of novel protections is a crucial addition to implementation and enforcement. Some research has shown promising results for the effectiveness of source of income anti-discrimination laws increasing the likelihood of voucher recipients finding housing and moving to neighborhoods with more economic opportunities.³³⁷ A study involving 2,600 voucher households found that in jurisdictions where source of income anti-discrimination laws were in effect, voucher holders had a twelve percent higher chance of being able to successfully use their vouchers to secure housing in a desired neighborhood.³³⁸ Another study documented similar results, with successful voucher user rates increasing from five to twelve percent in jurisdictions with source of income anti-discrimination protections.³³⁹ Other studies have shown that, even in

³²⁹ NAT'L. L. CTR. ON HOMELESSNESS & POVERTY, *supra* note 235, at 17.

³³⁰ *See id.*

³³¹ *See* DelPo Kulow & Granik, *supra* note 231, at 6–21.

³³² *See id.* at 20–21.

³³³ NAT'L. L. CTR. ON HOMELESSNESS & POVERTY, *supra* note 235, at 17.

³³⁴ *Id.* at 16.

³³⁵ *Id.* at 16–17.

³³⁶ Stanley-Becker, *supra* note 241.

³³⁷ *See* Tighe, Hatch & Mead, *supra* note 245, at 8.

³³⁸ *Id.*

³³⁹ *Id.*

jurisdictions with laws prohibiting source of income discrimination, lack of enforcement can negatively impact their effectiveness.³⁴⁰ Nonprofits have documented continued discrimination against voucher holders in both Washington D.C. and Chicago, where there are local source of income anti-discrimination laws.³⁴¹ Scholars insist that more studies on the effects of source of income anti-discrimination laws are necessary.³⁴²

Application to the Sex Work Context

Regarding awareness-raising related to implementation and enforcement, sex workers' rights advocates have proved skilled at developing resources to raise awareness among the sex worker community and public at large when positive sex workers' rights legislation is passed. For example, in Queensland, Australia, sex workers' rights advocates developed fact sheets, campaign videos, and webinars to raise awareness about the jurisdiction's sex work decriminalization laws.³⁴³ Advocates could pursue similar measures when anti-discrimination protections are passed. Regarding the challenges of enforcement, sex workers often lack access to legal aid representation.³⁴⁴ The creation of legal aid resources for sex workers with discrimination claims who want to engage the court system, as well as the development of administrative resources that can be responsive to sex worker complaints, help educate them about their rights against discrimination, and link them to resources, will be essential for the implementation and enforcement of novel sex work anti-discrimination protections.

Sophisticated studies tracking the effectiveness of decriminalization in New Zealand and New South Wales were essential in advocates understanding that formal anti-discrimination protections for sex workers are needed in the face of stubborn discrimination post-decriminalization.³⁴⁵ Similar in-depth studies on the effectiveness of novel sex work anti-discrimination protections will be needed and could focus on topics including the extent to which sex workers and the public are aware of these laws, if sex workers in jurisdictions with anti-discrimination protections report

³⁴⁰ *Id.* at 8–9.

³⁴¹ *Id.* at 9 (“For example, the Chicago Lawyers’ Committee for Civil Rights Under Law, Inc. (2014), performed fifty matched pair tests in suburban Cook County, Illinois, where there is an SOI antidiscrimination law. In 32 percent of the cases, landlords refused to rent to HCV participants.”). SOI discrimination was also the second most frequently cited form of discrimination in complaints raised to the New York City Commission on Human Rights in 2024. N.Y.C. COMM’N ON HUM. RTS., FISCAL YEAR 2024 ANNUAL REPORT 35 (2024) <https://www.nyc.gov/assets/cchr/downloads/pdf/publications/AnnualReport2024.pdf> (on file with VJSPL).

³⁴² Tighe, Hatch & Mead, *supra* note 245, at 9.

³⁴³ See *DecrimQLD Resources*, RESPECT INC., <https://respectqld.org.au/decriminalise-sex-work/resources/> (on file with VJSPL) (last visited Aug. 7, 2025).

³⁴⁴ GLOB. NETWORK OF SEX WORK PROJECTS, *supra* note 64, at 7.

³⁴⁵ See *supra* Part II.

reduced incidences of discrimination, and if sex workers perceive a general reduction in stigma related to sex work from society-at-large.

3. Complementing Novel Protections with Positive Legal and Social Interventions

Olatunde Johnson has argued that enlarging the traditional anti-discrimination framework also means “deploy[ing] the antidiscrimination enforcement apparatus, with all of its limitations.”³⁴⁶ She observes that anti-discrimination statutes generally put the onus on private individuals to bring claims, instead of litigation brought by administrative agencies, and notes that victims of discrimination are often disincentivized from pursuing claims.³⁴⁷ Indeed, because of these limitations, it is important to acknowledge that anti-discrimination protections are important but not sufficient to address the abuses they target.³⁴⁸ This claim is reflected in our comparative case studies, which reveal that additional positive interventions—including other complementary laws, policies, and social interventions—should accompany the promulgation of novel anti-discrimination protections to effect change.

Advocates for homeless bills of rights champion additional safeguards to supplement anti-discrimination protections for the unhoused, including ending the enforcement of laws that criminalize the homeless, fully investing in government-subsidized affordable housing, developing “social housing” initiatives, and disallowing the use of government funding earmarked for housing for carceral responses to homelessness.³⁴⁹ In the context of anti-discrimination protections for domestic violence survivor-victims, scholars argue that adequate leave laws, which would enshrine employees’ rights to take leave from work under certain circumstances, must accompany anti-discrimination laws because the latter would be hard to enforce without the former since employers could use unapproved absences from work as legitimate reasons to terminate survivor-victims.³⁵⁰ Scholars reach the same conclusion vis-à-vis the reinforcing relationship between anti-discrimination protections and reasonable accommodations for domestic violence survivor-victims.³⁵¹ They note that in states that have legally enshrined anti-discrimination protections but have not yet passed reasonable accommodations laws, survivor-victims may not be able to adequately perform their jobs if accommodations are not in place

³⁴⁶ Johnson, *supra* note 15, at 124.

³⁴⁷ *Id.* at 125.

³⁴⁸ Scholars such as Sandra Fredman emphasize the need for comprehensive, wide-ranging equality strategies that incorporate both negative obligations and positive ones. *See* SANDRA FREDMAN, *DISCRIMINATION LAW* 8, 26–33, 433 (2022).

³⁴⁹ *See* ACLU OF S. CAL., *supra* note 238, at 62.

³⁵⁰ *See* DelPo Kulow & Granik, *supra* note 231, at 34.

³⁵¹ *See id.* at 14–15.

to allow them to do so,³⁵² potentially undercutting any of the shielding effects of antidiscrimination safeguards. Similarly, scholars and advocates contend that reasonable accommodations laws for caregivers are necessary to enhance any anti-discrimination protections in place: “[i]n circumstances where workers need additional or different treatment to participate fully in the workplace...anti-discrimination mandates alone have not been sufficient to bring about meaningful change.”³⁵³

Application to the Sex Work Context

Additional positive interventions to accompany sex work anti-discrimination protections will also be necessary. For example, in 2023 and 2024, New York City Council Member Tiffany Cabán and her legislative co-sponsors put forth a proposal before the New York City Council to amend the city’s administrative code to include “current or former employment in sex work” as a protected class against housing discrimination.³⁵⁴ Although it has yet to pass, one notable aspect of the bill is that, in addition to its anti-discrimination mandate, it includes proposals for the creation of “a sex worker opportunity program in the Mayor’s Office for Equity to provide grants to community organizations working directly with people who engage in sex work” and a “dedicated review and enforcement board in the Department of Consumer and Worker Protection to highlight the unique unfair work practices affecting people who engage in sex work and provide them with information related to their rights,” among other positive interventions.³⁵⁵

Stardust et al. underscore how tackling the discrimination sex workers face necessitates a diversity of interventions, which starts but does not end with decriminalization and anti-discrimination protections.³⁵⁶ For example, they argue for policies that are in line with abolitionist frameworks regarding police and prisons and that provide social services to migrant sex workers.³⁵⁷ Other additional interventions that could complement decriminalization and novel anti-discrimination protections could include: support for sex workers’ rights organizations that play a crucial role in

³⁵² See *id.* at 34. Accommodations may “include a variety of safety measures, such as...transferring the victim to a different office location, and allowing the employee to modify their schedule or to work flexible hours.” *Id.* at 15.

³⁵³ Gyory, *supra* note 209, at 227; see also STATE INNOVATION EXCH. & CTR. FOR WORKLIFE L., *supra* note 209, at 3.

³⁵⁴ See Int. 1068-2023, N.Y.C. COUNCIL (2023) <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=6252752&GUID=D36869D1-7A71-49FC-B525-C0E954EEF3A8> (on file with VJSPL); Int. 0149-2024, N.Y.C. COUNCIL (2024) <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=6557435&GUID=975B28C0-94B0-4E99-97B1-E9CE32531C88&Options=&Search=> (on file with VJSPL). When the proposal was introduced in 2024, it had fourteen sponsors, as compared to the eight sponsors in 2023.

³⁵⁵ See *id.*

³⁵⁶ See Stardust et al., *supra* note 3, at 135.

³⁵⁷ *Id.*

helping sex workers access health and social services; a focus on “housing justice” that would involve developing pathways to accessible and secure housing for sex workers; the innovative use of urban planning to create safe, integrated, and welcoming urban spheres for sex work; and collaboration with the media to help expose, challenge, and reduce stigmatizing messaging regarding sex work.³⁵⁸

CONCLUSION

This article employed an original comparative analysis of different novel anti-discrimination categories to reveal why sex work anti-discrimination protections are needed and to highlight and address substantive and procedural concerns when crafting and implementing these laws. We began by framing the pervasive discrimination sex workers face globally through the lens of “whore stigma” and “whorephobia,” elucidating how legal regimes that fully or partially criminalize or regulate sex work further entrench and reinforce damaging biases that prevent sex workers from exercising their rights. We catalogued the manifold harms of stigma and discrimination against sex workers including, but not limited to, discrimination in accessing healthcare, housing, and financial services, and in their interactions with police and family courts. We centered sex workers with intersecting marginalized identities who have a heightened vulnerability to stigma and discrimination and spotlighted sex worker-led resistance to discrimination.

We then reflected on how sex work decriminalization in New Zealand and the Australian state of New South Wales, despite its many positive effects, did not significantly lessen stigma and discrimination against sex workers in those jurisdictions, illuminating the limitations of decriminalization when not implemented in conjunction with further legal and policy interventions like anti-discrimination protections. We noted how this reality helped inspire the establishment of groundbreaking novel anti-discrimination protections for sex workers in the Australian jurisdictions of the Northern Territory, Queensland, and Victoria.

In the last section, we examined the novel protected classes of caregiver, caste, domestic violence survivor-victim, homelessness, and source of income in U.S. anti-discrimination law for applicable lessons for the sex work context. What concrete insights might sex workers’ rights campaigners draw from our comparative analysis? We anticipate they will embrace our arguments that current umbrella categories in anti-discrimination law are not applicable to or broad enough for the sex work context and that the codification of an explicit protected class for sex workers is critical because these legal reforms can contribute to awareness-raising, destigmatization, and the broader goals of decriminalization while additionally confronting intersectional discrimination.

³⁵⁸ See Benoit & Mellor, *supra* note 299, at 3–4.

We also foresee that they will keep the substantive and procedural concerns that we raised and addressed based on our comparative case studies at the fore when developing and implementing novel sex work anti-discrimination protections. These include confronting definitional challenges in constructing protected classes by focusing on the crafting of specific, flexible, and expansive categories; crafting innovative public education campaigns and developing legal resources and pursuing mechanisms to ensure implementation and enforcement; initiating studies to track the laws' efficacy; and championing complementary laws and policies to buttress and enhance novel sex work anti-discrimination protections. Finally, we hope that this article will constitute a constructive contribution to their unflagging courageous efforts to confront and address injurious stigma and discrimination against sex workers worldwide.
