



**Submission to the
Banking Code of Practice
Independent Review
2021**

Queensland Adult Business Association (QABA)

August 2021

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1. Executive summary

For at least 20 years, Australian banks and financial institutions have held an ethical objection to providing financial services to the adult industry. This objection is on the basis that such businesses are linked to organised criminals, money laundering, human trafficking and sexual slavery, and the supply of illicit drugs.

These policies unfairly discriminate against the Queensland Adult Business Association Inc (QABA) members - licensed brothel owners operating healthy, safe, lawful and tightly regulated businesses.

The outcomes of this financial discrimination are in direct conflict with the intention of ethical objection policies and at odds with the guiding principles of the Banking Code of Practice.

Rather than protecting the community, the denial of loans and other financial services to licensed brothel operators may increase the risk of harm by:

- contributing to the proliferation of unlawful prostitution venues and services - increasing opportunities for organised crime to flourish, exposing sex workers to exploitation and modern slavery practices, and risking client and community safety
- reducing the regulated, healthy and safe sites that can compete with the illegal sector
- disadvantaging vulnerable and marginalised members of the community
- perpetuating myth, stigma and prejudice in Australian society regarding sex work and brothels.

QABA members are committed to the health, safety and wellbeing of the community, sex workers and clients - we welcome collaboration with the financial sector in reducing the harms of illegal sex work operations.

QABA seeks the support of the Australian Banking Association in endorsing an exemption for licensed brothel owners to the finance industry's broad ethical objection to the adult services sector.

This submission has the support of the Queensland Prostitution Licensing Authority (PLA).

We appreciate the opportunity to contribute to the 2021 Banking Code of Practice Independent Review. We will continue to advocate for a professional, safe, and effectively regulated sex industry in Queensland.

1.1 About the Queensland Adult Business Association (QABA¹)

Mission Statement: To advocate for the viable development of the Queensland legal brothel system. For the safety and security of workers, clients and the community at large.

Executive positions at time of submission:

- **Neil Gilmore - President**

Licensee of Pentagon Grand on the Gold Coast

- **Grant Bromley - Vice President**

General Manager of Yimi 476 in Brisbane

- **Joan Leeds - Secretary/Treasurer**

Licensee of The Viper Room in Brisbane

¹ <https://qaba.org.au/>

2. Background

2.1. The Australian banking industry's ethical objection to the sex industry: a history

A national survey in 1999 examining discrimination against sex workers produced the report, *Unjust and Counter-Productive The Failure of Governments to Protect Sex Workers from Discrimination*².

Banking and insurance services were identified as actively engaging in discriminatory practices, including denying credit and loans without explanation in instances where applicants could demonstrate a healthy credit rating and provide evidence of stable income.

It was also noted that "banks often require sex workers to provide business records covering a longer period than they require of other businesses, as proof of stable income."³ Sex workers also reported finding it difficult to "secure home and contents insurance" and "been refused health insurance due to an assumption that they are at a greater STI risk".⁴

Unexplained charges for 'over-servicing' were also common.

The report notes the significant impact of discrimination on the personal and professional lives of sex workers.

2.1.1 Two decades of recorded discrimination

Fifteen years later, the Scarlett Alliance noted that little had changed concerning public and private discrimination against sex workers in Australia⁵.

There has since been a growing awareness of financial discrimination against the licensed sex industry. The 2017 Eros Association report *Financial Discrimination Against Adults-Only Business* noted pervasive discriminatory practices within the finance sector, particularly among the big four banks. It found that:

² Banach, Linda (1999) *Unjust and Counter-Productive The Failure of Governments to Protect Sex Workers from Discrimination*, Scarlet Alliance and the Australian Federation of AIDS Organisations, <https://scarletalliance.org.au/library/unjust-counterproductive> (accessed 2 August 2021)

³ Ibid, p.19

⁴ Ibid, p.20

⁵ Stardust, Zahra (2014) *Protecting sex worker human rights in Australia*, in Human Rights Law Working Group Newsletter, Public and Professional Interest Division of the International Bar Association, September (accessed on 2 August, 2021)

“...financial service providers are treating adults-only businesses unfavourably on the basis of broad internal policies against the ‘adult industry’ rather than tailored assessments of financial risk.”⁶

Then Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, added her voice to calls for change in 2018. She questioned the right of banks to refuse loans based on what they deem 'moral' or not, and expressed concern that the denial of financial services to legitimate businesses could lead to "more cash-only transactions in the black economy".⁷ The following year, Ms Carnell noted that it remained "...an ongoing issue and we have expressed our concerns to the Australian Banking Association and individual banks involved."⁸

Advocates for the adult business industry around Australia continue to lobby for change. Sex Work Law Reform Victoria publishes information about financial discrimination along with a detailed list of banks that are known to discriminate against the adult industry, as well as those that do not. The website also sets out each bank's policy, where one exists, under which services are denied.⁹

2.1.2 Inconsistent reasons for ethical objection

Surveys and reports on this issue note a range of justifications for denying financial services to people working in the sex industry, including brothel owners. However, none of the justifications relate to the financial capacity or qualification of an individual or business.

Some banks offer “reasons relating to risk, reputation, human trafficking, money laundering or organised crime”, and others do not offer a reason at all.”¹⁰

⁶ Bartle, J (2017) Financial Discrimination against Adults-Only Business, the Eros Association, p.4 (accessed on 2 August 2021)

⁷ Chau, D & Emlin, L (2018) Sex industry faces ‘financial discrimination’ from banks, ombudsman says, Australian Broadcasting Corporation, <https://www.abc.net.au/news/2018-01-04/sex-industry-businesses-face-financial-discrimination/9303376> (accessed on 2 August 2021)

⁸ Banks assume the role of moral compass for legitimate businesses, Australian Small Business and Family Enterprise Ombudsman website, September 2019. <https://www.asbfeo.gov.au/news/news-articles/banks-assume-role-moral-compass-legitimate-businesses> (accessed 3 August 2021)

⁹ Financial Institutions – Which Ones Discriminate? Sex Work Law Reform Victoria, <https://sexworklawreformvictoria.org.au/financial-institutions-which-ones-discriminate/> updated 18 July 2021 (accessed 2 August 2021)

¹⁰ *ibid*

In May 2020, the Australian Financial Complaints Authority determined that NAB was entitled to close the bank accounts of the owner of a legal escort service, based on its assessment of risk.

“The bank told the complainant it intended on closing the accounts because:

- it regularly reviews the industries, sectors and activities it provides banking services for
- it put in place a policy excluding escort services and brothels due to the higher risk of money laundering and human trafficking
- the complainant’s business is outside its risk parameters.”¹¹

The inconsistent and unreasonable approach of banks to delivering financial services to sex workers and licensed operators demonstrates a lack of understanding of the aims of licensing and regulation of the sector and unfairly discriminates against legitimate business owners.

2.2. Licensed prostitution in Queensland: highly regulated

Queensland’s licensed brothel sector is governed by the *Prostitution Act 1999*. The Act was established 10 years after the findings of Queensland’s Fitzgerald Inquiry¹², the two-year investigation into political corruption and abuse of power had revealed extensive and systemic police corruption and misconduct in the sex industry.¹³

The *Prostitution Act* (the Act) established the Prostitution Licensing Authority (PLA) and a regulatory framework that aimed to:

- eliminate organised crime in the sector
- shield the community from unwanted exposure to the sex industry
- protect the health and wellbeing of sex workers and clients.

¹¹ Determination 687872, Australian Financial Complaints Authority, May 2020, <https://service02.afca.org.au/CaseFiles/FOSSIC/687972.pdf> (accessed on 3 August 2021)

¹² TBC - *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*

¹³ [2] GE Fitzgerald (1989) *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, p. 193

In 2011, a report into the licensed brothel sector in Queensland published by the Crime and Misconduct Commission (CMC) report¹⁴ found that:

...the regulation of the licensed brothel sector continues to be successful. We have seen that licensed brothels:

- a) have minimal impact on community amenity*
- b) show no evidence of corruption and organised crime*
- c) have access to exit and retraining programs for sex workers who may wish to leave the industry*
- d) provide a healthy environment in which prostitution takes place*
- e) provide a safe workplace.*

Continued regulation of the licensed sector has ensured the ongoing high standard of operation.

2.2.1. The struggle to compete with unlawful operators

The strict conditions that must be met to obtain and maintain a license mean only 21 licensed brothels operate across Queensland. It is widely accepted that approximately 80%¹⁵ of the sex industry in Queensland continues to operate illegally, flourishing in escort agencies, massage parlours and similar venues. These venues are entirely unregulated, open to the influence of organised crime, and a risk to the health and safety of sex workers and the community.

a) Regulatory and financial barriers to entering and operating in the licensed sector

The process for obtaining and maintaining a licence to operate a brothel in Queensland is gruelling, invasive, and expensive. The people who own and manage the State's licensed brothels can do so only because they have satisfied the PLA that they are professional business operators committed to the health, safety and wellbeing of sex workers, clients, and the community. Brothel licensees undergo thorough probity checks by Queensland Police, including their families and all known associates, before a licence is granted. Licences are reviewed at least every three years.

¹⁴ Crime and Misconduct Commission Queensland (2011) *Regulating Prostitution: a follow-up review of the Prostitution Act 1999*, p. 46

¹⁵ [Respect Qld report - https://respectqld.org.au/wp-content/uploads/Decrim/Sex-work-laws-and-workplace-health-and-safety-symposium-Report.pdf](https://respectqld.org.au/wp-content/uploads/Decrim/Sex-work-laws-and-workplace-health-and-safety-symposium-Report.pdf) (accessed 2 August 2021)

Even after strict vetting processes, under current legislation, licensees are only permitted to own and operate one brothel with a maximum of five rooms. Limits also apply to how many workers are allowed on site, strict rules prevent outcalls, and advertising is governed by a strict code. These aspects of the brothel and approved manager licensing and compliance act as a significant deterrent to many people considering entering the licensed sector. Licensees accept these conditions as part of operating a professional business safely and ethically.

Many licensees then face the challenge of discrimination from financial institutions and insurers who refuse business loans and other services based on an ethical objection to the industry¹⁶. These decisions appear largely driven by outdated attitudes towards sex work, a lack of understanding that licensed brothels are legal in Queensland, and unfounded concerns about organised crime operating licensed brothels.

Financial discrimination is an unreasonable hurdle licensees must overcome to operate their business successfully. It is also a barrier to the licensed sector's growth and ability to compete with unlawful operators.

b) Licensed sector barriers lead to increased illegal activity

The Queensland Prostitution Licensing Authority (PLA) recognises the impact of some aspects of the regulatory framework on the growth and effectiveness of the licensed sector, particularly concerning its ability to compete with unlawful operators. Accordingly, the PLA has sought input from QABA on proposed changes to the *Prostitution Act 1999*, particularly those relating to advertising, the number of rooms, and outcalls.

The PLA put these proposals to the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, for her consideration. The Attorney-General is likely to refer the development of an appropriate regulatory framework for the sex industry to the Queensland Law Reform Commission (QLRC) to “provide an opportunity for all voices to be heard”.

2.2.2. QABA requests an exemption from ethical objection policies

To address the additional barrier of financial discrimination, QABA is seeking an exemption to such policies for the licensed brothel sector.

¹⁶ Chau, D & Evlin, L (2018) *Sex industry faces 'financial discrimination' from banks, ombudsman says*, Australian Broadcasting Corporation, <https://www.abc.net.au/news/2018-01-04/sex-industry-businesses-face-financial-discrimination/9303376> (accessed on 10 February 2021)

By refusing services to licensed brothel operators, banks, and other financial services are contributing to the proliferation of unlawful operations that threaten the safety and wellbeing of Queensland communities. They are also undermining the intent and guiding principles of the Australian Banking Association's Banking Code of Practice.

The denial of loans and other financial services to licensed operators potentially increases the risk of harm to the community by:

- restricting the licensed sector's ability to attract new entrants and increase competition against the illegal sector
- encouraging the proliferation of unlawful prostitution venues and services and increasing opportunities for organised crime to flourish, increasing the risk of sex worker exploitation and modern slavery practices
- restricting the number of actively regulated, healthy and safe environments available to sex workers and clients
- disadvantaging vulnerable and marginalised members of the community who otherwise are not able to experience touch and intimacy in a safe and supportive environment
- perpetuating myth, stigma and prejudice in Australian society around sex work and brothels.

2.3. Financial discrimination and the Banking Code of Practice

The ongoing ethical objection of banks to providing financial services and support to the licensed sector of the sex industry works against the principles of the Banking Code of Practice.

Principle 1 - trust and confidence

- *We are committed to making promises and keeping them to deliver good customer and community outcomes.*
- *We recognise our role in society and our impact on the wider community.*

The banking sector's ethical objection to the licensed sector fails to deliver "good customer and community outcomes". It does not reflect a genuine ability to "recognise our role in society and our impact on the wider community".

a) Unlawful operators

By imposing a barrier to growth in the licensed sector, banks and other financial services institutions are contributing to the success of the illegal sector. Unlawful operators that often operate as massage parlours are unrestricted in terms of the services they offer, where and how they operate, how they treat their workers, and what they pay. Without a licensed business in the sex work industry, they are not subject to ethical objection.

Workers are subject to greater risk of exploitation and threats to health and safety, including violence from employers and clients. The trafficking and exploitation of Culturally and Linguistically Diverse (CALD) sex workers is an ongoing issue of concern. These venues are not compelled to comply with health and safety regulations and often operate on a cash economy.

Licensees are subject to strict rules and regulations in every aspect of their business. They must take reasonable steps to ensure that only safe sex occurs and keep detailed records of brothel operations. They continue to successfully operate under the *COVID Safe Industry Plan: Queensland Sex Industry*¹⁷; and there are no recorded cases of Covid transmission via a licensed brothel. Illegal operators are not subject to the same industry plan, increasing the risk of transmission and creating unacceptable barriers to contact tracing.

QABA argues that the banking and financial services industry has an ethical obligation to the community to support the licensed sector to compete more effectively with illegal operators and provide healthy, safe, and professional environments for sex workers and clients.

b) Restricting services to vulnerable clients

The licensed brothel sector caters to a range of vulnerable and marginalised members of the community. For example, a significant number of clients who visit licensed brothels are people with disability, the elderly, and others for whom physical closeness and intimacy is otherwise unavailable.

c) Perpetuating myth, stigma and prejudice

By exercising an ethical objection to the licensed sector, financial institutions reinforce outdated social beliefs and attitudes about sex work, the people who engage in it, and the people who use the services.

¹⁷ Covid Safe Industry Plan - https://www.covid19.qld.gov.au/_data/assets/pdf_file/0029/134876/covid-safe-industry-plan-sex-industry.pdf?nocache-v3

Principle 2 - Integrity

- *We will be fair and responsible in our dealings with you.*

QABA argues that financial discrimination against the licensed brothel sector leads to community harm and is patently unfair and irresponsible for the reasons outlined above.

Principle 3 - Service

- *We will ensure banking services are accessible, inclusive and provided to you in a fair and ethical manner.*
- *We will take a responsible approach to lending.*

QABA argues that the ethical objection to providing financial services to people working in the licensed sector is exclusive, unfair and unethical, and unreasonably restricts their ability to live and work.

For the reasons outlined above, we argue that ethical objections are irresponsible and harmful to the community.

Principle 4 - Transparency and accountability

- *We will be accountable in our dealings with you.*
- *We will be transparent in our communications with you.*

The history of financial discrimination against the sex industry's licensed sector clearly demonstrates the banking and financial industry's reluctance to be transparent in its dealings and communication with sex workers and operators of licensed brothels. The absence and/or unavailability of specific policies, the inconsistent approach across the industry, and the blanket refusal of some institutions to make a distinction between demonstrably licensed and financially qualified customers and those that aren't is evidence of an unwillingness to make fair decisions.

3. Conclusion

The licensed brothel sector provides a legitimate and necessary service to the community and contributes to Australia's legal economy.

For decades, the banking and financial services industry has unfairly discriminated against licensed brothel owners in Queensland (and around Australia). Grounded in prejudice and outdated perceptions of sex work, this practice significantly impacts existing operators and is a deterrent to qualified persons of good character who may want to enter the licensed sector.

Restrictions on licensed brothels, which are tightly regulated and free of the influence of organised crime, contribute to the proliferation of unregulated unlawful operations, often financed by criminal activities as part of the black economy, and pose a significant to sex workers, clients, and the community.

QABA appreciates that the ethical objection to providing financial services to businesses in the adult industry is intended to protect the community from harm. However, we assert that the discrimination against the licensed sector works directly against that aim.

The Banking Code of Practice states that:

“Australia’s banks play an important role in contributing to the prosperity of the nation’s economy, for the benefit of all Australians.”

The licensed brothel sector, operated by professional business owners for the benefit of sex workers, clients and the community, are committed to the same outcomes.