

**Submission  
No 24**

## **EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023**

**Organisation:** Coalition Against Trafficking in Women Australia (CATWA)

**Date Received:** 12 April 2024

# **Inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023**

**Coalition Against Trafficking in Women Australia**  
[www.catwa.org.au](http://www.catwa.org.au)



**12 April 2024**

## CATWA: Who we are

The Coalition Against Trafficking in Women Australia (CATWA) is the Australian branch of CATW International, a Non-Governmental Organisation that has Category II consultative status with the United Nations Economic and Social Council. It works locally and internationally to end all forms of sexual exploitation of women, especially in relation to issues of prostitution and trafficking in women. CATWA has been operational in Australia for 30 years, offering expert insights into the diverse models of prostitution legislation across states and territories, and internationally. CATWA has cultivated a comprehensive understanding through decades of observation of the prostitution system, in order to monitor the impacts of prostitution legislation in Australia.

We appreciate the invitation from the Committee to make this submission to the Inquiry on the Equality Legislation Amendment (LGBTIQA+) Bill 2023, and we would be happy to provide evidence in person at hearings of the committee.

## About this submission

In this submission, we address only the provisions of the bill set out in Schedule 18, that is, removal of Part 3 of the NSW Summary Offences Bill, which concerns offences associated with the prostitution system. This limitation aligns with our expertise and experience. Although we will comment on the specific provisions marked for removal, our main line of argument is that it is not appropriate, on such a crucial issue in human rights and sex equality, to make piecemeal reforms via an ‘umbrella bill’ like this. Rather, our argument is that a full-scale inquiry is necessary, with due consideration of alternative means of addressing the prostitution industry and trafficking in a holistic way. In particular, we argue that serious consideration of the Nordic or equality model is crucial, especially given its endorsement on its human rights merits by resolutions of the European Parliament and the Parliamentary Assembly of the Council of Europe, and by other states globally.

In Australia, both a legalisation approach (in the ACT since 1992, Queensland since 1999, and Victoria from 1994-2021) and decriminalisation (such as in NSW since 1995, NT since 2019, and Victoria since 2021) have failed to achieve many of their *own* objectives. Indeed, both these legislative approaches have resulted in *increasing* harm to women in the sex industry, and have had broader repercussions on Australian society (Sullivan 2007). Australia’s sex industry exhibits alarming and deeply troubling problems, including charges of sex and drug trafficking, child exploitation, violence, money laundering and connections to organised crime including hardcore pornography (McKenzie et al. 2019; McPhee 2019; Rep 2018; Thompson 2018). The sex industry broadly is based on the exploitation and objectification of women, is characterised by the financial desperation and insecurity of those who are bought and sold, and is the main site of sex trafficking of women from Asian nations to Australia (Tyler et al. 2017). The industry presents paint a stark picture of exploitation and violence, which persist in Australia under all

existing models of legislation. In this context, we make the following key proposals in regard to reform of the law on prostitution, as part of a more holistic approach than set out in the bill.

## **Submission recommendations**

- 1. The Equality Legislation Amendment (LGBTIQA+) Bill 2023 Schedule 18 should be rejected, given the failure of decriminalisation and legalisation approaches**
- 2. Any changes to legislation relating to prostitution should be fully and comprehensively reviewed by an appropriate body such as an expert committee with a focus on human rights and gender equality**
- 3. The Nordic/Equality Model be seriously considered for implementation in New South Wales**
- 4. Survivors of prostitution should be consulted regarding *any* changes to legislation that relates to prostitution**

### **1. The Equality Legislation Amendment (LGBTIQA+) Bill 2023 Schedule 18 should be rejected, given the failure of decriminalisation and legalisation approaches**

Removing the Summary Offences Act Part 3 provisions will not achieve greater equality and safety for prostituted persons, which is the ostensible intention of Schedule 18 of the bill. The decriminalisation or legalisation of prostitution elsewhere in the world has been shown to grow the industry overall, leading to greater exploitation and increased trafficking inflows (Cho et al. 2013). Repealing sex industry-specific provisions for prostitution and treating it as ‘sex work’ has not made it safe in any of the jurisdictions where it has been implemented (NSW, NT, Victoria and New Zealand). Records of serious crime (murder and assault) testify to this increase, as does criminal and survey evidence of criminal incidents such as choking, slapping and failing to recognise non-consent by sex buyers (Graham 2019).

Government inquiries into the regulation of brothels in New South Wales have highlighted the failures of decriminalisation. In 2015, the Australian Federal Police (AFP) and the NSW police both sent representatives to the NSW Inquiry to testify to the abuses occurring in the sex industry there. The then NSW Deputy Police Commissioner Nick Kaldas stated that the existence of ‘next to no regulation’ in NSW allowed criminal activity in the industry, including sexual servitude and forced drug-taking (Raper 2015). At the same time, the AFP’s Commander Glen McEwan noted that trafficking, in particular of Asian women into Sydney brothels, was a continuing problem of which the police had only been able to track a ‘fraction’ (Duff 2015).

The decriminalisation of the sex industry has also caused problems in New Zealand. Despite some sex industry supporters suggesting that the NZ model should be emulated, the reality is that street prostitution dramatically increased, especially in Auckland, following decriminalisation (Berg 2014). The NZ government's own report (NZMoJ 2008) showed that the reformed legislation has been mostly ineffective, and detrimental to those who are bought and sold in the industry. The report indicates that the majority of prostituted persons 'felt that the law could do little about violence that occurred' (2008:46), and that decriminalisation made no difference in terms of the continuous threat of violence perpetrated in the main by sex buyers (2008:57). The report also notes that very few prostituted persons report any incidents of violence against them to authorities (2008:122).

## **2. Any changes to legislation relating to prostitution should be fully and comprehensively reviewed by an appropriate body such as an expert committee with a focus on human rights and gender equality**

Any changes to legislation relating to prostitution should be fully reviewed by an appropriate body such as an expert committee with a focus on human rights and gender equality. The proposed changes to the NSW model of decriminalisation outlined in the bill under consideration has the effect of full deregulation of the prostitution industry without any full and proper consultation process being followed on that impact. The proposed changes in the current NSW bill effectively implement an extreme model of prostitution regulation, while bypassing due process.

CATWA opposes the provisions of the current bill because the removal of the Part 3 Prostitution provisions in the Summary Offences Act 1988 effectively fully deregulates the prostitution industry. If the bill passes, it will no longer be an offence to:

- Live on the earnings of prostitution of another person (this does not include brothel owners/mangers/employees who are already exempt from this provision) (s15, Summary Offences Act).
- Use coercive conduct or undue influence to induce or cause a person to engage in prostitution or to surrender any proceeds from prostitution (s15A, Summary Offences Act).
- Engage in prostitution or solicit for prostitution (or as an owner/occupier/manager allow this to happen) in premises represented as available for specific purposes, such as massage, sauna baths, steam baths, facilities for physical exercise, photography, or related services (ss 16 and 17, Summary Offences Act).
- Advertise for prostitution i.e. advertise that employment for a prostitute is available (s18A, Summary Offences Act).
- Buy or sell sex (solicit another person for the purpose of prostitution as a prostitute or a client) near or in schools, churches, and hospitals (ss 19 and 19A, Summary Offences Act).

The proposed change confirms our concern that blanket deregulation in the interest of sex industry business has taken precedence over considerations for women's health and wellbeing, safety – and sex equality. Indeed, despite Mr Greenwich's stated aim of providing greater autonomy to women who work in the sex industry, the bill in effect removes protections for women while amplifying the power and profit of sex business owners and operators. The proposed changes strengthen the influence of business owners in the industry, increasing opportunities for exploitation and fostering a lack of serious accountability. The potential impact of Schedule 18 of the bill has not been properly or systematically considered. Changes of this magnitude require comprehensive process and review.

### 3. The Nordic/Equality Model be seriously considered for implementation in New South Wales

The Nordic/Equality Model offers an alternative to full decriminalisation. It is an innovative approach to prostitution policy where those providing sexual services for payment are decriminalised, while the buying of sex is penalised. The fundamental innovation of the Nordic/Equality Model is that it targets the *demand for sexual services*. This focus on demand is an important departure from much existing policy and research focused on the 'supply side' of the sex industry. There is now an 'emerging consensus' that policies addressing only the supply side of the industry are 'insufficient and ultimately ineffective' (Yen 2008: 655), and there has been growing international interest in ensuring that sex buyers do not escape accountability. CATWA finds unacceptable the Queensland Law Reform Commission's recent exclusion of the Nordic/Equality Model from its Consultation Paper (QLRC 2022), especially in the context of successful implementation of this Model in many states of Europe especially the Nordic states, Asia and Canada, among others.

The concept of decriminalising prostituted persons, alongside criminalising sex buying and pimping, originated in Sweden. This was formalised in 1998 with the introduction of the Law that Prohibits the Purchase of Sexual Services, which was part of a raft of other measures and legislative provisions (the Kvinnofrid, or Women's Sanctuary) to 'counteract violence against women' (SMoL 2013: n.p.). This legislation came into effect in Sweden on 1 January 1999 and included a range of measures to assist women still in prostitution such as comprehensive exit programs and access to NGOs providing assistance in terms of health, housing, job seeking and re-training (SMoIGE 2009). There are also preventative measures in place to help identify and assist those at risk of entering prostitution (Ekberg & Wahlberg 2011). Moreover, official review of the law have led to the adoption of measures that allow those who are used in prostitution to receive compensation through the Crime Victim Compensation and Support Authority (Ekberg & Wahlberg 2011).

In terms of **outcomes**, it has now been more than 20 years since Sweden introduced the Law that Prohibits the Purchase of Sexual Services. A wide range of evidence, including government reviews, police reports and surveys of sex buyers, suggests the law has been very effective in

reducing the markets for prostitution and sex trafficking. According to a variety of Swedish NGOs and government agencies, street prostitution ‘virtually disappeared’ in major cities after the introduction of the ban on the purchase of ‘sexual services’ (Waltman 2011: 459). Other forms of prostitution have also declined. In the mid-1990s, for example, a Swedish Prostitution Inquiry estimated that there were around 2500-3000 women in prostitution in Sweden. A study undertaken by researchers at the Nordic/Equality Institute for Women’s Studies and Gender (NIKK) suggests that this number had fallen to around 650 people by 2008 (Swedish Institute 2010; Waltman 2011).

Evidence that the law has reduced the market for prostitution is strengthened by research carried out in neighbouring Nordic countries. For instance, the number of people in prostitution in Sweden in 2008 was estimated at around 650, while in neighbouring Denmark, where prostitution is legalised, the number was put at around 5500 (Holmström & Skilbrei, cited in Waltman 2011). This means that the prostitution population is approximately 15 times larger, per capita, in Denmark than in Sweden. Further, when prostitution was still legal in nearby Norway, it had a prostitution population about eight times greater, per capita, than that in Sweden (Waltman, 2011).

The success of the laws introduced in Sweden has resulted in a number of neighbouring countries—Norway, Iceland and Finland—creating policy and legislation along similar lines (Tyler et al. 2017), leading to the original Swedish legislation being referred to as the Nordic Model. More recently, as the law is increasingly being adopted internationally, it has come to be known as the Equality Model, due to its focus on tackling social inequality and violence against women. The Model has since been adopted in various countries around the world, including Norway, Israel, Canada, Iceland, Northern Ireland, Ireland and France (Murphy 2014; Tyler et al. 2017), as well as variations of the law in Northern Ireland and South Korea. The Nordic/Equality Model is recognised by international and multilateral bodies, such as the European Parliament, as the best way forward for prostitution policy (European Parliament, 2014 and 2023).

Given the well-documented failures of legalisation and full decriminalisation elsewhere, it is time for Australian states and territories to consider the benefits of the Nordic/Equality Model as an alternative to outdated policy approaches. The Nordic/Equality Model is the only approach that helps to limit the size of the sex industry and reduce exploitation while protecting the human rights of prostituted persons and addressing issues of gender equality and violence against women.

#### **4. Survivors of prostitution should be consulted regarding any changes to legislation that relates to prostitution**

Survivors of prostitution are increasingly speaking out against decriminalisation (SPACE International 2022). Survivor voices should be prioritised in this discussion because survivors

have unique lived experience of systems of prostitution and the aftermath. The following testimony of a survivor of prostitution who worked in New Zealand where full decriminalisation was implemented in 2003 is representative:

*I read some literature produced by the NZPC, that's the New Zealand Prostitutes' Collective, who are supposedly our "workers union." The first impression they gave me was that if we could convince the men that we were professionals providing a service like any other job, they would treat us better, there would no longer be 'stigma' and stigma is what caused the harms we experienced. This does not work. Being polite, professional, and getting the job done efficiently, means the men complain that you are 'clinical' and want their money back. 'Clinical' is apparently unacceptable because this is not a clinic, I was not a health professional, and these people were not looking to buy a service like any other job.*

*They were looking to sexually harass, rape, abuse, violate, and degrade attractive young women, and they paid to get away with it. Even that they often did begrudgingly. I was to be dominated by men and they were going to do whatever they wanted to me, while I struggled to uphold a modicum of health and safety, protect myself from injury, and hold onto my dignity. During this constant battle, I was to humour and lie to these men that were there to use us that they were somehow interesting, and that we weren't completely disgusted by them. Especially when they would say things purposely to upset us. I just had to not let them see that it got to me even if it did.*

*They are on some power trip, that's what they come in for. And with all these "complaints" I was still the No. 1 rated lady on Femme Fatale's website for many years. On a busy shift I might have seven or eight bookings, making my genitals red, raw, and swollen. No-one was earning \$2,000 a shift. And even at the end of the shift when we are paid out, there was no guarantee they'd hand over our money. They might write on an envelope that they owe us X amount of dollars, so we have to come in and work another shift to get it. Sometimes it built up for a long time and I worried if I'd be paid at all.*

*Ugly, smelly, fat, drug-addled men pounded away on top of me, dripping cold sweat onto my skin and in my eyes. I got ear infections because I would turn my head so they couldn't try and kiss me, and they would pant moisture into my eardrum instead. All you can do is continue to firmly state your boundaries, while trying not to make them angry.*

*In New Zealand brothels, under decriminalization, women are told they are independent contractors and responsible for paying their own tax. But they won't be given any independent contractor freedoms, you don't get to choose the rate charged for you, you don't get to choose when or where you will work or who you will see. If you are thought to be working on your own without the brothel taking a cut, they will fire you or steal money from your pay. When I was at another brothel called One33, the management deducted hundreds of dollars from my pay for smoking a cigarette in a car in the carpark. Even though the car belonged to another girl from the club and she and I were just sitting in it because it was raining.*



*These businesses lie. They lure you in; they trick you; and trap you. Women in brothels will be treated like employees – except they won't get any employee rights, no ACC – that's our accident and injury compensation scheme – no reliable wage, no sick leave. Nothing.*

*In New Zealand brothels, under decriminalization, police can't help anyone. The men can do absolutely anything short of killing someone and nothing will be done. The boss's apparent No.1 rule is "no police ever". The mark of any truly legitimate businessman if a woman retracts consent for a sex act, right?*

Testimony of Chelsea Geddes, prostitution survivor from New Zealand.<sup>1</sup>

Survivors consistently speak about their experience of legalisation and decriminalisation as making their situation worse. Decriminalisation empowers sex buyers, pimps and brothel owners/managers, but not the 'worker', that is in reality, those who are bought and sold. An example of this can be found in the 2019 Northern Territory decriminalisation legislation that allows sex buyers to sue for 'breach of contract' if a prostituted woman refuses to do what a buyer has 'paid for' (Stevens 2019). Decriminalisation leaves women more exposed to a laissez-faire or neo-liberal prostitution market that does not protect the 'worker' and entails that women can be prosecuted for refusing sex acts. This forces women in the industry to choose between running the risk of being sued, or 'consenting' (ie. submitting) to unwanted sex, which is thereby, in effect, rape. This example indicates that prostitution is not 'sex work', not a 'job like any other'. In modern Australia where we are striving towards gender inequality and the abolition of sexual violence, a fully decriminalised sex industry has no place.

This nightmare vision of a fully decriminalised prostitution system, and of the sex industry more broadly, is what is envisaged in the provisions of Schedule 18 of the proposed Equality Legislation Amendment (LGBTIQ+) Bill 2023. The specific provisions of the bill under consideration should be rejected as incompatible with a human rights approach to the problem of prostitution, in particular incompatible with gender equality.

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<sup>1</sup> <https://wahinetoarising.nz/survivor-stories/new-zealands-reality/>

## REFERENCES

- Australian Human Rights Commission (2020) 'Sexual harassment'. Australian Human Rights Commission, <https://humanrights.gov.au/quick-guide/12096>.
- Berg, S. (2014) 'From Norway to New Zealand, pro-prostitution research is its own worst enemy'. Feminist Current, 24th November. Available from: <http://www.feministcurrent.com/2014/11/24/from-norway-to-new-zealand-prostitution-research-is-its-own-worst-enemy/>
- Cho, S., Dreher, A. and Neumayer, E. (2013) 'Does legalized prostitution increase human trafficking?' *World Development*, v41(1): 67–82. Available from: <http://www.lse.ac.uk/geographyAndEnvironment/whosWho/profiles/neumayer/pdf/Article-for-World-Development-prostitution-anonymous-REVISED.pdf>
- Committee on the Elimination of Discrimination Against Women (2018) 'Concluding observations on the eighth periodic report of Australia'. United Nations. Available from: <https://digitallibrary.un.org/record/1641944?ln=en#record-files-collapse-header>
- Duff, E. (2015) 'AFP reveals sex trafficking based in Sydney brothels'. The Sydney Morning Herald, 13th September. Available from: <http://www.smh.com.au/nsw/afp-reveals-sex-trafficking-based-in-sydney-brothels-20150912-gjkzwt.html>
- Ekberg, G. and Wahlberg, K. (2011) 'The Swedish approach: A European country fights sex trafficking'. *Solutions Journal*, v2(2): n.p. Available from: <http://www.thesolutionsjournal.com/node/895>
- European Parliament News (2014) 'Punish the client, not the prostitute'. European Parliament News, 26th February. Available from: <http://www.europarl.europa.eu/news/en/news-room/content/20140221IPR36644/html/Punish-the-client-not-the-prostitute>
- Graham, B. (2019). "Murder is part of our job": Sex worker calls for protections after Sydney stabbing'. News.com, 15<sup>th</sup> August. Available at: <https://www.news.com.au/lifestyle/real-life/news-life/murder-is-part-of-our-job-sex-worker-calls-for-protections-after-sydney-stabbing/news-story/8ccb05130f6a84c20ab04543068ba3b9>
- Murphy, M. (2014) 'Northern Ireland bans buying sex'. Feminist Current, 21st October. Available from: <http://www.feministcurrent.com/2014/10/21/northern-ireland-bans-buying-sex/>
- New Zealand Ministry of Justice – NZMoJ (2008) 'Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act 2003'. Wellington, NZ: Ministry of Justice.
- QLRC (2022) 'A framework for a decriminalised sex work industry in Queensland'. Queensland Law Reform Commission: Brisbane. Available from: [https://www.qlrc.qld.gov.au/\\_data/assets/pdf\\_file/0006/714390/QLRC-WP80.pdf](https://www.qlrc.qld.gov.au/_data/assets/pdf_file/0006/714390/QLRC-WP80.pdf)
- Raper, A. (2015) 'Sexual slavery, forced drug-taking in NSW brothels on the rise: police'. ABC News, 1st September. Available from: <http://www.abc.net.au/news/2015-09-01/sexual-slavery-on-the-rise-in-nsw-brothels/6741012>
- SPACE International (2022) 'Testimonials'. SPACE International. Available from: <https://www.spaceintl.org/about/testimonials/>

- Stevens, K. 2019. 'How you will soon be able to sue prostitutes for poor performance and why brothels could be built in "every suburb" under dramatic changes to sex laws'. Daily Mail, 27 November. Available from: <https://www.dailymail.co.uk/news/article-7729203/Prostitutes-sex-workers-soon-sued-poor-performance-clients-NT.htm>
- Sullivan, M. (2007) *Making Sex Work: The failed experiment of legalised prostitution in Australia*. Melbourne: Spinifex.
- Swedish Institute (2010) 'The ban against the purchase of sexual services: An evaluation 1999-2008'. Selected English extracts version. Swedish Institute: Stockholm. Available from: [http://www.government.se/download/0e51eb7f.pdf?major=1&minor=151488&cn=attachmentDuplicat or\\_1\\_attachment](http://www.government.se/download/0e51eb7f.pdf?major=1&minor=151488&cn=attachmentDuplicat or_1_attachment)
- Swedish Ministry of Integration and Gender Equality – SMOIGE (2009) 'Against prostitution and human trafficking for sexual purposes'. Government Offices of Sweden: Stockholm. Available from: <http://www.government.se/sb/d/11503/a/133671>
- Swedish Ministry of Labour – SMoL (1999) 'Fact sheet on violence against women'. Government Offices of Sweden: Stockholm. English translation available from: <http://www.innovations.harvard.edu/showdoc.html?id=131021>
- Tyler, M., et al. (2017) 'Demand change: Understanding the Nordic approach to prostitution'. Melbourne, Australia: The Coalition Against Trafficking in Women Australia. Available from: <https://www.catwa.org.au/wp-content/uploads/2017/03/NORDIC-MODEL-2017-booklet-FINAL-single-page.pdf>
- Waltman, M. (2011) 'Sweden's prohibition of purchase of sex: The law's reasons, impact, and potential'. *Women's Studies International Forum*, v34(5): 449–474.
- Yen, I. (2008) 'Of vice and men: A new approach to eradicating sex trafficking by reducing male demand through educational programs and abolitionist legislation'. *Journal of Criminal Law and Criminology*, v98(2): 653–686.