

**Submission
No 33**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: Sex Workers Outreach Project NSW
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**NSW Legislative Assembly:
Committee on Community Services
Parliament House
Macquarie Street
Sydney NSW 2000**
Via: communityservices@parliament.nsw.gov.au

14 April 2024

SWOP NSW writes this submission in support of the sex work related provisions contained within the *Equality Legislation Amendment (LGBTIQA+) Bill 2023*, and would like to thank the committee for this opportunity to share our expert opinion.

Background

As an independent peer-led and peer-only organisation, the Sex Workers Outreach Project (SWOP NSW) has been working for over 35 years to provide NSW sex workers with the same access to health, safety, human rights, and workplace protections as all other Australian workers. We provide direct support and peer education to sex workers across the state by outreaching regularly to a broad range of sex industry workplaces (including street based, home based, brothels and massage parlours), as well as providing services at our office and via phone, email and a variety of online platforms. We collaborate extensively with community members, researchers and clinicians, and government and non-government organisations from a range of disciplines to ensure that NSW sex workers receive the services and support vital to sustaining low rates of STIs and virtual elimination of HIV.

SWOP NSW strongly supports the sex work related provisions contained within the *Equality Legislation Amendment (LGBTIQA+) Bill* as essential legislative reform required to improve sex worker access to health, safety and justice, with concordant benefits for the general public.

Support for full repeal of Part 3 of the *Summary Offences Act 1988* No 25

To complete the process of sex industry decriminalisation in NSW, honouring the positive intentions of earlier legislative reforms, and allowing for full realisation of the benefits of this globally-recognised best practice approach to sex industry regulation, it is imperative that Part 3 of the *Summary Offences Act 1988* is repealed in full- without delay.

Following the finding of a “clear nexus between police corruption and the operation of brothels”¹ during a 1995 Royal Commission into the NSW Police Service, the NSW sex industry was partially decriminalised. Regulation of brothels and independent sex work was, for the most part, thereafter carried out by the same range of authorities responsible for overseeing other NSW businesses. Currently, local councils provide planning approval for sex services premises, and conduct regular checks to ensure compliance with development application conditions, including various workplace health and safety measures. SafeWork NSW publishes sex industry specific workplace health and safety guidelines and can act to address any violations². NSW sex industry staff who feel they have been treated unfairly can access assistance from FairWork. Additionally, sex work workplaces are routinely visited by SWOP NSW, often in partnership with other agencies such as publicly funded sexual health clinics. This model of regulation has facilitated the best health and safety outcomes in the world³, and, inspired by this success, sex work has since been decriminalised in New Zealand, the Northern Territory, Victoria and Queensland⁴. Sex workers in other states and territories of Australia, and internationally, continue to advocate for full decriminalisation, with the support of global organisations including, but not limited to, the World Health Organisation⁵, the United Nations⁶, and Amnesty International⁷.

Whilst NSW has received extensive praise⁸ for being the first jurisdiction in the world to decriminalise sex work, the process of decriminalisation is not yet complete, and the impacts of this are devastating. Whilst Part 3 of the *Summary Offences Act 1988* remains in place, police retain powers that contradict the fundamental principles of decriminalisation, creating confusion for all involved, and obstacles to functional relationships between sex workers and authorities that facilitate sex workers to report violence levelled against them. Some of the most vulnerable members of the sex work community are still criminalised, and subject to police harassment and abuse. Certain clauses make it impossible to lawfully operate otherwise entirely legitimate businesses. The family members of sex workers are unduly penalised. These laws are wholly detrimental and completely unnecessary, in many cases superseded by far more appropriate and effective legislation that applies to the whole population. At its heart, decriminalisation recognises that sex industry specific legislation of this nature both constitutes and cultivates stigma and discrimination, resulting in a range of direct and indirect harms for sex workers and the broader public. We urge the Committee to

¹ <https://www.opengov.nsw.gov.au/publications/17126>

² [Health and safety guidelines for sex services premises in NSW | SafeWork NSW](#)

³ [NSWSexIndustryReportV4.pdf \(nswp.org\)](#)

⁴ [Sex work laws in Australia | Scarlet Alliance](#)

⁵ [Global HIV, Hepatitis and STIs Programmes \(who.int\)](#)

⁶ <https://www.ohchr.org/sites/default/files/2024-03/2024-march-sex-work-guide-un-report-short.pdf>

⁷ [Experts back decriminalization as the best means to enhance sex workers' rights \(amnesty.org\)](#)

⁸ [Decriminalisation of sex work: the evidence is in - Health Equity Matters](#)

finally complete the process of sex industry decriminalisation that commenced in NSW nearly three decades ago, thereby legitimately maintaining our reputation as a global leader in this area.

Summary Offences Act 1988 No 25 Part 3 Prostitution:

15 Living on earnings of prostitution & 15A Causing or inducing prostitution

These clauses are a particularly disturbing example of the ways in which sex industry specific legislation causes harm to those it purports to protect, including by criminalising their family members.

Sex work is by definition consensual⁹, and under the *Crimes Act 1900* No 40¹⁰, “there is no consent” when “the person participates in the sexual activity because of force, fear of force or fear of serious harm... coercion, blackmail or intimidation... the person or another person is unlawfully detained... the person is overborne by the abuse of a relationship of authority, trust or dependence”. In effect, as it stands, the *Summary Offences Act* conflates sex work with sexual assault, a dangerous association. Causing sexual servitude of any kind is explicitly prohibited by the *Crimes Act*¹¹, and carries a far greater maximum penalty (15 years) than the *Summary Offences Act* offence of causing or inducing prostitution (12 months). This legislative discrepancy positions the abuse of people within a sex industry context as a substantially lesser crime, which is dehumanising at best, and at worst creates an underclass of victim that renders sex workers vulnerable. Similarly, there is a concerning difference between penalties for the *Summary Offences Act* offence of living on earnings of prostitution (12 months) and robbery more generally within the *Crimes Act*¹² (14 years). In short, repealing these sex work-specific *Summary Offences Act* clauses, and deferring instead to more generally applied NSW legislation is a far more effective and less stigmatising way to protect sex workers from exploitation.

Decriminalisation is the most effective way to deter ‘pimping’, a sex industry-specific term for financial abuse. By removing any impetus for sex work to be concealed or disguised, it allows a level of transparency which inhibits exploitative management practices and enables sex workers to seek assistance if required. In NSW, as a result of partial sex industry decriminalisation, allowing most sex workers access to the non sex industry-specific *Crimes Act* protections outlined above (that protect all members of NSW society from sexual coercion and financial abuse)pimping is virtually non-existent. In reality, these *Summary Offences Act* clauses only serve to criminalise the adult family members of sex workers who receive any financial support. This could include adult children living at home whilst completing tertiary education, parents who are incapacitated due to age or disability, and partners who perform domestic labour and childcare rather than paid work. It is unfathomable that any other lawfully employed member of NSW society would have such restrictions imposed upon how their income is utilised, and how they conduct their personal relationships¹³.

⁹ [Why Sex Work Should Be Decriminalized | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2014/02/11/sex-work-decriminalized)

¹⁰ <https://legislation.nsw.gov.au/view/whole/pdf/inforce/2024-03-23/act-1900-040>

¹¹ <https://legislation.nsw.gov.au/view/whole/pdf/inforce/2024-03-23/act-1900-040>

¹² <https://legislation.nsw.gov.au/view/whole/pdf/inforce/2024-03-13/act-1900-040>

¹³ [NSWSexIndustryReportV4.pdf \(nswp.org\)](https://www.nsw.gov.au/sex-industry-report)

**Summary Offences Act 1988 No 25 Part 3 Prostitution:
18 Advertising premises used for prostitution & 18A Advertising for prostitutes**

Advertising and recruiting are standard business practices. These sex industry-specific restrictions are overt examples of systemic discrimination, and unmanageable in practice. In the interests of the privacy and comfort of their staff and clients, it is standard for sex industry businesses to operate with a high level of discretion. As this already occurs on a voluntary basis, in a context where these laws are currently not enforced, there is no reason to expect that removing these laws will induce any negative change.

However, it is important to note that repealing Part 3 of the *Summary Offences Act* will not, by any measure, result in an unregulated environment. The same regulations that apply to all other advertising already apply to the sex industry. This includes oversight by local councils¹⁴, the Australian Association of National Advertisers¹⁵, and the Australian Media and Communications Authority¹⁶. Allowing for these established authorities to supervise sex industry advertising in the same way they do any other business in NSW is essential for the realisation of genuine decriminalisation.

**Summary Offences Act 1988 No 25 Part 3 Prostitution:
16 Prostitution or soliciting in massage parlours etc.
17 Allowing premises to be used for prostitution &
21 Search warrant**

These clauses provide police with powers that clearly contravene the 1995 edict that brothel regulation is the responsibility of local councils, constitute ongoing criminalisation, and create significant barriers to safety and justice for sex workers in NSW.

As per the *Environmental Planning and Assessment Act 1979* No. 203¹⁷, the provision of sexual services without appropriate development consent amounts to non-compliance, a civil matter, not a criminal offence warranting police involvement. In such cases, appropriate action may include local council investigating, issuing a fine and/or a brothel closure order.

Decriminalisation is specifically designed to exclude the type of police intervention these *Summary Offences Act* clauses still permit. Given that police misconduct was the catalyst for the transfer of regulatory authority to local councils in 1995, the retention of these laws at that time was both illogical and counterproductive. In 2024, when there is plentiful evidence demonstrating the widespread harms associated with the criminalisation of sex work, action must be taken to correct this historic failure, and achieve legislative integrity. Examples of this evidence include:

Criminalization exposes sex workers to abuse and exploitation by law enforcement officials, such as police officers. Human Rights Watch has documented that, in criminalized

¹⁴ [State Environmental Planning Policy \(Industry and Employment\) 2021 - NSW Legislation](#)

¹⁵ [The AANA Code of Ethics sets the standard for advertising in any medium.](#)

¹⁶ [Rules for what you see or hear on TV or radio | ACMA](#)

¹⁷ [Environmental Planning and Assessment Act 1979 No 203 - NSW Legislation](#)

*environments, police officers harass sex workers, extort bribes, and physically and verbally abuse sex workers, or even rape or coerce sex from them.*¹⁸

*Criminalisation of sex work and repressive police practices affect all aspects of health for sex workers. The 2014 [Lancet Series](#) on HIV and sex workers projected that decriminalisation of consensual sex work could avert 33–46% new HIV infections in sex workers and clients during a decade. Criminalisation has been found to increase odds of condomless sex, STIs, and sexual or physical violence by clients.*¹⁹

*Intersecting forms of structural and societal stigma and discrimination, including punitive laws, policies and practices, create significant inequalities and prevent sex workers from being able to protect their health, safety and well-being.... Critical actions include ending the criminalization of all aspects of sex work, including the purchase, sale and management of sex work; extending labour protections; protecting sex workers against state and private actor violence; and ending stigma and discrimination.*²⁰

Whilst these *Summary Offences Act* clauses are rarely employed, SWOP NSW still routinely witnesses the damage caused by unjustified police presence in sex industry workplaces. Large numbers of police sometimes, for example, accompany council inspectors or ambulance officers to sex services premises despite there being absolutely no danger associated with these visits. In addition to causing confusion for all involved, and presenting barriers to regulatory adherence, this creates an atmosphere of fear and distrust, discouraging sex workers from seeking police, medical or other assistance when this is required²¹. When sex workers fear and distrust the police, in addition to directly harming sex workers, this creates consequences for the general public. This includes allowing perpetrators to continue to operate undetected, often until they commit acts of violence against non-sex working members of the community^{22 23}.

***Summary Offences Act 1988 No 25 Part 3 Prostitution:
19 Soliciting clients by prostitutes, 19A Soliciting prostitutes by clients &
20 Public acts of prostitution***

These unnecessary laws specifically target street-based sex workers, some of the most vulnerable members of the community, forcing them into unsafe situations, subjecting them to ongoing abuse by police, and also by perpetrators who act with impunity in this environment. These laws also impede access to this population for health and other service providers, especially concerning given that street-based sex workers are disproportionately members of marginalised populations; Aboriginal and Torres Strait Islanders, trans and

¹⁸ [Why Sex Work Should Be Decriminalized | Human Rights Watch \(hrw.org\)](#)

¹⁹ [Sex workers health: time to act - The Lancet Public Health](#)

²⁰ [HIV and sex work — Human rights fact sheet series 2021 \(unaids.org\)](#)

²¹ [View of 'I Wouldn't Call the Cops if I was Being Bashed to Death': Sex Work, Whore Stigma and the Criminal Legal System \(crimejusticejournal.com\)](#)

²² [Jailed surgeon Suresh Nair may be deported after release \(smh.com.au\)](#)

²³ <https://www.abc.net.au/news/2013-06-19/tom-meagher-says-justice-system-failed-his-wife/4766620>

gender diverse people, injecting drug users, and/or people suffering from mental health issues which prevent them from holding down employment in other workplaces.

Whilst Part 3 of the *Summary Offences Act* remains in place, street-based sex work is still regulated by the police, in both theory and practice. Despite operating primarily in legal areas, often isolated industrial zones where perpetrators have unfettered access, street-based sex workers are still routinely harassed by police who abuse the regulatory authority they retain. SWOP NSW outreach workers frequently observe police in street-based sex working areas, acting to deter clients, and interacting with sex workers in disrespectful and distressing ways. In some areas, we consistently struggle to distribute safer sex supplies to street-based sex workers, who have experienced these items being unlawfully used as evidence against them. This aligns with findings that:

In jurisdictions which criminalize sex workers, violations of their rights are numerous, and range from arbitrary arrests (for simply standing on the street or for having condoms), lack of respect for the rights of defense, police abuses (extortion of money or sexual services, discrimination, and degrading treatment), failure to protect sex workers from violence by private individuals and lack of access by sex workers to adequate healthcare.²⁴

Full decriminalisation means no specific laws that prohibit or control street-based sex workers. Evidence shows that criminalising sex work in certain places creates increased risk and barriers to sex workers using safety strategies like working in a familiar location, networking with peers, screening clients, carrying prophylactics and negotiating services before a booking.²⁵

Studies have shown that New Zealand's 2003 decriminalisation of sex work, including street based sex work, did not increase the numbers of sex workers operating in this way²⁶. It is even more unlikely that decriminalisation of street-based sex work in NSW in 2024 will result in an expansion of the industry, in an era where numbers have already dwindled due to the advent of free internet advertising sites and mobile phones. Instead, the changes that were observed in New Zealand that we can reasonably expect will be mirrored here, are as follows:

A study conducted with street-based sex workers indicated a significant positive change in relationships between police and sex workers after the law changed. It showed how decriminalisation supports sex worker's safety strategies, enabling street workers to take their time in initial conversations with clients, without risking their clients being arrested and losing income as a result. It also means that clients can provide information to police when sex workers are assaulted.²⁷

²⁴ <https://www.ohchr.org/sites/default/files/2024-03/2024-march-sex-work-guide-un-report-short.pdf>

²⁵ [Rights, not rescue: why sex workers call for decriminalisation - Overland literary journal](#)

²⁶ [The Impact of Decriminalisation on the Number of Sex Workers in New Zealand | Journal of Social Policy | Cambridge Core](#)

²⁷ [Decriminalising sex work is the only way to protect women – and New Zealand has proved that it works | The Independent | The Independent](#)

Like other NSW sex workers, the negligible number of street-based sex workers currently operating already do so with discretion, out of regard for their own safety, and also the preservation of their business as privacy is a significant concern for their clients. The generally applicable offensive behaviour laws already in place in NSW are more than adequate as a further safeguard against any unwanted consequences resulting from the repeal of Part 3 of the *Summary Offences Act*. Once again, in order to achieve full decriminalisation, and resultant health and human rights outcomes, sex industry-specific legislation should be removed, and generally applicable legislation applied to this workforce instead.

Support for comprehensive anti-discrimination and anti-vilification protections for all sex workers in NSW

The current lack of anti-discrimination and anti-vilification protections for NSW sex workers severely undermines the intentions of decriminalisation on a daily basis, in ways which often constitute human rights violations, and are compounded for community members who experience intersectional marginalisation. The sex work-related provisions included within the Equality Legislation Amendment (LGBTIQA+) Bill were developed in close consultation with sex workers and the peer-based organisations representing this community, based on extensive experience in various Australian states and territories. SWOP NSW strongly supports the rapid implementation of the full suite of anti-discrimination and anti-vilification measures for sex workers included within the bill.

Former UN secretary-general Ban Ki-moon says discrimination against sex workers “must change”. And former Australian High Court judge Michael Kirby says human rights for sex workers are a matter of “public morality”. The UN Program on HIV/AIDS and the UN Population Fund insist upon universal rights and access to justice for sex workers.

Eliminating the negative impact of stigma and discrimination against sex workers remains an objective of Australia’s national strategies tackling HIV, viral hepatitis, and sexually transmitted infections. Protecting sex workers from discrimination falls within Australia’s international human rights obligations.²⁸

Sex Work and Sex Worker must be included as protected attributes- with required updates to the current definition within the Equality Legislation Amendment (LGBTIQA+) Bill

The definition used must incorporate all forms of sex work, including the full range of in person services, as well as non-contact, online and other emerging formats, and the provision of sexual services in return for non-monetary compensation. The updated definition we propose is:

²⁸ [The stigma of sex work comes with a high cost \(unsw.edu.au\)](http://unsw.edu.au)

Sex worker means a person who performs sex work. Sex work means the provision by a person of services that involve participating in sexual activity, including erotic entertainment, in return for payment or reward.

This is one situation in which sex work-specific legislation is required. Attempts in other jurisdictions to protect sex workers from discrimination and vilification by employing generic measures relating to lawful sexual activity or occupation have been ineffective. The lack of anti discrimination protections currently available to sex workers, and the many harmful implications associated with this deficit, are so well understood by the general public that perpetrators frequently use disclosure of sex worker status as a threat or actual form of violence.

Sex Workers must be comprehensively protected from discrimination, including in the course of doing sex work.

A new attribute of 'sex work and sex worker' should include protection from discrimination in all the same areas available to other protected attributes. That is, employment, education, accommodation, registered clubs, and in the provision of goods and services, etc. As well as including presumed to be, previously been, currently 'doing', having characteristics appertaining generally or imputed to sex workers, as well as our relatives or associates.

SWOP NSW regularly supports sex workers experiencing the following forms of discrimination based on their current or prior sex worker status:

- Denial or termination of non-sex industry employment
- Barriers to entering or completing tertiary education
- Rejection from housing and accommodation
- Refusal of banking and financial services, including those necessary to conduct legitimate businesses
- Mistreatment by health and other essential service providers
- Intimidation and harassment by authorities employed to protect all community members, including sex workers
- Lawfully sanctioned social exclusion in a variety of formats, with detrimental impacts on sex worker wellbeing and ability to make positive contributions to their communities

In 2022, Scarlet Alliance, the Australian Sex Worker's Association, reported the following:

Anti-discrimination and vilification protections The lack of available anti-discrimination and vilification protections for sex workers remains a key barrier to equitable access to the full suite of human rights available to other members of the community. Experiences of discrimination and stigma were shared throughout National Forum, and particular focus was given to experiences of financial discrimination and digital marginalisation. Other experiences of housing and healthcare discrimination continue to impact sex workers across Australia...

De-banking and other forms of discrimination from the financial services sector require urgent attention. As sex workers, we find ourselves unable to secure essential business infrastructure. We are stigmatised and unfairly classified as 'high risk' businesses when attempting to procure merchant services, loans, and other financial services. This, coupled with a move for restrictions on cash transactions, including through the Currency (Restrictions on the Use of Cash) Bill 2019, continue to narrow our options for trading, putting our livelihoods at risk and failing to acknowledge that sex work is work.²⁹

Further details of the discrimination NSW sex workers are routinely subjected to can be found in the Lived Experiences information attached.

No exceptions relating to sport, superannuation, insurance, or public health should apply to sex workers, or for religious, private educational or charitable bodies. Exceptions to anti discrimination protections currently possible under the Section 54 'Statutory Authority' should be limited, and application of discrimination law should be expanded to incorporate government bodies and authorities, including the police.

SWOP NSW receives alarmingly frequent reports about negative interactions between sex workers and police, immigration officials, council representatives and others. In many cases, experiences of discriminatory treatment by authorities discourages sex workers from seeking assistance when required. In other cases, assistance is sought but denied. In extreme but not uncommon cases, sex worker victims seeking assistance are unjustly punished instead of receiving help – this particularly affects sex workers who are subject to intersectional marginalisation eg. Aboriginal & Torres Strait Islander, culturally and linguistically diverse, and trans and gender diverse sex workers.

Particularly concerning is the human rights situation of sex workers who belong to groups facing multiple and intersecting forms of discrimination, including migrants, persons facing racial discrimination, transgender (trans) people or persons with disabilities or long-term illnesses. The way their identities or status are perceived place them in a situation of even more acute isolation and helplessness. Persons belonging to these groups are often already marginalised in society and have difficulties in accessing the regular labour market.³⁰

Sex workers must be able to protect their personal identity throughout the complaint process under the Act.

This is a very necessary safety measure for sex workers who do not routinely share their legal names with clients or sex industry owners/operators. The failure to protect the privacy of sex workers creates significant barriers to reporting crimes, including violent assaults. This creates an environment where sex workers are targeted by predators, many of whom later also offend against non sex workers, with devastating outcomes for a broad cross section of the community.

²⁹ [2022-Key-Issues-Paper.pdf \(scarletalliance.org.au\)](https://scarletalliance.org.au/2022-Key-Issues-Paper.pdf)

³⁰ [Protecting the human rights of sex workers - Commissioner for Human Rights \(coe.int\)](https://coe.int/protecting-the-human-rights-of-sex-workers)

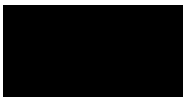
Sex work and sex workers must be protected from vilification.

The way that sex workers are routinely described or portrayed by anti sex work individuals, organisations and the media increases the risk of violence against us, and contributes to the pervasive and harmful stigma we contend with on a daily basis.

The sheer weight and incessancy of stigma associated with sex work had a significant impact on mental health. Sex workers feared anticipated stigma and negative judgements from most people if they disclosed their work. Sex workers told us that they had to lie, re-frame or omit details of their lives to avoid disclosure of sex work. This meant that sex workers were undertaking constant risk mitigation, selective disclosure and maintaining hypervigilance about their privacy in order to keep safe and/or avoid stigma. Sex workers told us that their mental health would significantly improve if they were able to tell others about their sex work without fears of experiencing stigma and discrimination. This would also reduce the emotional and educated labour involved in unpacking and deflecting stigma. However sex workers often felt that governments were reluctant to see sex workers as ‘worthy’ of protection.³¹

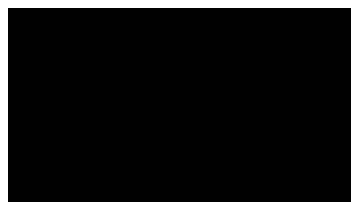
Sex workers suffer from the persistent stigma of sex work as shameful and dishonourable. The ensuing high level of socially accepted disrespect, intimidation and discrimination on the basis of their perceived failure to conform to social and gender-based norms of sexual behaviour is obstructive to their efforts to lead self-determined lives. Stigmatisation often leads to sex workers hiding their involvement in sex work and living under constant fear of being outed and exposed to public shaming for themselves and their families. It also prevents them from obtaining adequate health services and can influence their access to housing, education, or childcare.³²

Yours Sincerely,



Joanna Megan

SWOP NSW CEO



Darcy Deviant

SWOP NSW Policy Officer

³¹ <https://www.unsw.edu.au/content/dam/pdfs/unsw-adobe-websites/arts-design-architecture/ada-faculty/csrh/2021-06-Mental%20Health%20Paper%20Summary%20v1.pdf>

³² [Protecting the human rights of sex workers - Commissioner for Human Rights \(coe.int\)](#)