

Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024

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SWOP NSW writes this submission in support of the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024*, and would like to thank the committee for this opportunity to share our considerable experience and resultant perspective.

Background

As an independent peer-led and peer-only organisation, the Sex Workers Outreach Project (SWOP) has been working for over 35 years to provide NSW sex workers with the same access 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. This effective holistic approach to health (benefiting both sex workers and the general public) is heavily reliant on the decriminalised framework within which we operate.

NSW has been widely recognised and applauded as a world leader following the almost complete decriminalisation of the NSW sex industry during the 1990s. Extensive evidence demonstrates that decriminalisation is the optimal model of sex industry regulation, providing the highest levels of health and safety for sex workers, with concordant benefits for the general population. However, it is important to note that both the remaining criminal offences pertaining to sex work, and the - lack of anti-discrimination protections for sex workers has routinely undermined the positive intentions of decriminalisation, creating barriers to employment, education, housing, financial services, health services, and negating access to safety and justice.

We commend the commitment of the Queensland Government to decriminalise sex work, and appreciate this opportunity to share New South Wales' unique and illustrative experience. By providing examples of both the beneficial outcomes of decriminalisation in this state, as well as the ways in which small legislative deficits in NSW continue to negatively impact health and safety of NSW sex workers, we hope to assist the Committee to make the most well-informed, evidence-based decisions possible.

Executive Summary

SWOP NSW supports the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024* as essential legislative reform for health, safety, and justice for sex workers, and, by extension, the general public.

We applaud the action being taken by the Queensland Government to ensure sex industry regulation meets contemporary best practice standards, aligning Queensland with other Australian jurisdictions that have recently modernised their own sex industry related legislation.

In order to avoid any further harms related to Queensland's outgoing model of sex industry regulation, we feel it is imperative that the commencement date for the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* is no later than 1 July 2024.

We appreciate the recognition of the ways in which previous legislation has failed Queensland sex workers and the community more generally. We hope the Committee will also recognise the ways in which the shortfalls of the current NSW regulatory model have failed the population here and learn from these oversights and errors. We will provide further detail of these shortfalls with reference to the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024* below, along with other recommendations based on several decades of experience.

SWOP NSW strongly recommends 1 July 2024 as the latest possible date for commencement of the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024*

We note that a commencement date for the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* has not yet been confirmed. As per the advice of QLD sex workers, we strongly recommend a commencement date of no later than 1 July 2024.

We understand that any further delays to the commencement of this Act leaves Queensland sex workers subject to either violence or criminalisation, whilst they are forced to continue choosing between operating lawfully and operating safely. As per the findings of the Queensland Law Reform Commission, the outdated legislation currently in place in QLD creates barriers to sex worker safety by criminalising common work practices. Furthermore, in other jurisdictions we have witnessed increased police focus on the sex industry ahead of

law reform such as that currently being progressed in QLD. Allowing for targeted raids and further criminal charges for sex workers in the interim before decriminalisation erodes the positive intentions of planned reforms and places QLD sex workers in significant danger.

Delays must also be avoided in the interest of mitigating disorder associated with staged implementation of law reform for both community members and regulatory authorities. The two-stage implementation approach to Victorian sex industry decriminalisation created confusion and therefore difficulty for both compliance and enforcement. In NSW, where the process of decriminalisation is still incomplete, the inconsistencies in legislation also create uncertainty, and place some sex workers in danger, and have necessitated an arduous and lengthy process of law reform, which is still ongoing today.

**SWOP NSW supports amendment of the *Anti-Discrimination Act 1991* – clause 4;
Replacing attribute 7(l) ‘lawful sexual activity’ with a new attribute ‘sex work activity’**

In NSW, almost 30 years after the partial decriminalisation of sex work, we still suffer under a lack of anti-discrimination protections for sex workers. Currently it is still lawful to deny sex workers housing, education, accommodation, banking, healthcare, adoption, goods and services, employment, and more - on the basis that they are or have been a sex worker. This inhibits the health and safety outcomes of decriminalisation, and promotes stigma towards sex workers that often leads to violence.

We support the proposed changes of the protected attribute from ‘lawful sexual activity’ to ‘sex work activity’ to reflect a functional outcome. The current protected attribute of ‘lawful sex worker’ holds a limited value as it covers only being a sex worker rather than doing sex work. It is vital that sex workers are also covered by anti-discrimination protections during the course of performing sex work.

We emphasise the importance of providing anti-discrimination protections for sex workers that are both comprehensive and effective. We have seen profoundly positive outcomes in the Northern Territory and Victoria where decriminalisation has been strengthened by such protections. In addition to immediate practical implications, ie. access to essential services and basic human rights, when systematic discrimination against sex workers is prohibited, it significantly improves public perception, reducing stigma and subsequent violence.

**SWOP NSW supports amendment of the *Anti-Discrimination Act 1991* – clause 6;
Adding to sch 1 (Dictionary) a definition of the new attribute ‘sex work activity’ ,
removing the word ‘adult’**

SWOP NSW recommends the removal of ‘adult’ when describing anti-discrimination protections for ‘sex work activity’. The inclusion of ‘adult’ when defining the new protected attribute winds back current protections. Those doing sex work under the age of 18 should be protected from discrimination and have the same access to health, safety, and justice as all other workers. To specify this protection as something that applies to adults only prevents

those under the age of 18 from reporting and seeking redress for discrimination, and potentially therefore encourages perpetrators to target this section of the population.

SWOP NSW supports supports amendment of the *Anti-Discrimination Act 1991* – clause 5; Omission of section 106C – repealing the lawful discrimination exemption 106C Accommodation

SWOP NSW supports repealing the current exemption that allows for accommodation providers to discriminate against sex workers if they know or believe that accommodation will be used in connection to sex work. This loophole is highly likely to undermine the intended benefits of anti-discrimination measures, in ways that are unjust and severely disadvantage and endanger sex workers. In NSW, in the absence of anti-discrimination provisions, sex workers are routinely overcharged, and denied or removed from accommodation. When sex workers are removed from accommodation in regional areas, after hours, or at a financial cost to them, this often makes finding alternative accommodation unfeasible, placing them in immediate and substantial physical danger. This frequently occurs on the basis that sex worker status has simply been deduced or presumed, whether or not accommodation is being utilised for professional or personal purposes. Without the repeal of the exemption allowing for accommodation providers to discriminate, QLD sex workers will be subject to the same treatment. The current exemption is entirely unnecessary given that discretion is a key component of standard sex industry practice, for the privacy and safety of both sex workers and clients, resulting in exceptionally low levels of amenity impact.

SWOP NSW supports supports amendment of the *City of Brisbane Act 2010* – clause 8; Insertion of new s 40A, and the *Local Government Act 2009* – clause 28; Insertion of new s 37A. Local councils must not be allowed to regulate brothels and massage parlours in discriminatory ways.

Arbitrary and inconsistent approaches to sex services premises regulation by local councils in NSW have severely undermined the positive intentions of decriminalisation for several decades. Whilst we are currently working in collaboration with the NSW Ministry of Health to address the significant barriers to safety and justice resulting from this legislative failure, we urge the committee to ensure that these harms are not replicated in QLD.

Local councils must not be permitted to impose discriminatory sex industry-specific rules. Local councils must treat brothels, massage parlours, and other public sex work establishments in the way that they do other businesses. In NSW, where local councils frequently base sex industry related planning decisions on moralistic whims rather than any actual evidence, consequences include but are not limited to; risks to the safety of sex workers and clients when sex industry businesses are inappropriately forced into industrial zones, inaccessibility for sex workers and clients including those with a disability, and propagation of stigma with a multitude of injurious outcomes. Furthermore, under this ill considered system, authorities frequently abuse their power, causing distrust amongst sex industry staff, discouraging sex workers from reporting violence or rights violations, negating

some of decriminalisation's most critical objectives. In severe, but unfortunately not uncommon cases, authorities have adopted inhumane tactics under the guise of compliance checking, using private investigators in entrapment operations, a practice now recognised by NSW legislation as sexual assault.

SWOP NSW supports supports amendment of the *City of Brisbane Act 2010* – clause 8; Insertion of new s 40A, and the *Local Government Act 2009* – clause 28; Insertion of new s 37A. Home based sex workers must be able to operate both compliantly and safely.

In NSW, the failure to provide local councils with appropriate directions regarding sex industry regulation when decriminalisation was first implemented has caused significant barriers to compliance for independent sex workers especially. Whilst sex workers are still subject to dangerous levels of stigma, and are targeted by violent perpetrators, the requirement to submit a development application to operate is not reasonable or practicable, and is rarely adhered to. We have anecdotal evidence that in the one council area of NSW where home-based sex work is considered an exempt and complying development, this results in increased confidence and willingness for sex workers to implement safety strategies – and this provision must include sex workers who operate in small collectives - and to seek assistance from authorities if this is ever required.

We implore the committee to institute reforms that allow the best possible chance for sex workers to comply with new regulations, without having to choose between operating lawfully and safely, as has been the case for many sex workers in both NSW and QLD to date.

SWOP NSW supports supports amendment of the *Criminal Code* – clause 15; Omission of ch 22A (Prostitution)

This is an essential component of QLD sex industry decriminalisation. The criminal offences contained by this criminalise sex worker safety strategies. Without the repeal of these offences, sex workers cannot simultaneously operate lawfully and safely. The safety strategies sex workers commonly use that are prohibited by this legislation cause absolutely no harm to the community. Sex workers must be able to protect the safety of themselves and their colleagues by sharing work locations and other booking details, providing transport, and hiring administrative support staff. When sex workers are not legally allowed to employ these practices, they are left isolated and vulnerable, and/or are unable to report violence and seek justice. It should be noted that enabling sex workers to report violence also benefits the general public – perpetrators who target marginalised community members without fear of punishment frequently later also offend against other community members. Omitting this chapter is imperative to ensure that decriminalisation of the QLD sex industry does improve safety outcomes for the entire population.

**SWOP NSW supports amendment of the *Criminal Code* – clause 14;
Amendment of section 218 (procuring sexual acts by coercion)**

While existing offences within the *Criminal Code* protect sex workers from coercion, we support strengthening these offences, so long as this does not create a new sex work-specific chapter of this code.

SWOP NSW recommends amendment of the *Liquor Act 1992*; Remove police from a regulatory role, and review of the *Liquor Act 1992 inc. s 103N (Adult entertainment code)*; strippers must also be considered and included in the process of sex industry decriminalisation

The harmful consequences of allowing police to retain any responsibility for sex industry regulation are very apparent in NSW. The failure to complete the process of NSW sex industry decriminalisation has resulted in a persistent and unnecessary police presence in sex industry workplaces. In practice, this has enabled a continuation of abuse of police power, despite this having been identified as the primary reason for initially adopting decriminalisation. Strip clubs are one particularly pertinent example of this legislative oversight – when police retain responsibility for checking compliance of these businesses, the regularity with which they attend these premises is excessive, unjustified and disruptive. The resultant damage to relationships between police and sex industry staff undermines the positive intentions of decriminalisation, with especially harmful consequences for the most vulnerable sex workers who experience intersectional marginalisation. The consequences of an environment in which sex workers learn to fear police is severe under-reporting of crime. Once again, it should be noted that enabling sex workers to report violence also benefits the general public – perpetrators who target marginalised community members without fear of punishment frequently later also offend against other community members.

We strongly advocate for the removal of any police power in relation to the regulation of any sex industry workplace, including strip clubs.

**SWOP NSW supports amendment the *Work Health and Safety Act 2011* – clause 23;
Review of *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024*, in consultation with Respect QLD and Scarlet Alliance**

As QLD's peer sex worker organisation, with a high level of direct contact and meaningful engagement with sex workers in this state, Respect QLD is the expert on the QLD sex industry and must be recognised as such. As the Australian national peak body for sex workers, Scarlet Alliance has extensive and invaluable experience with sex work policy decision making in a range of jurisdictions. It is imperative the the QLD government works closely with both of these parties during legislative reviews, and heeds their advice, to ensure efficient and effective implementation of any reforms.

SWOP NSW supports the repeal of the *Prostitution Act 1999, No. 73 – clause 35*

This is an essential component of QLD sex industry decriminalisation. As a matter of urgency, the entire brothel licensing system, and the Prostitution Licensing Authority must be dismantled. This expensive and ineffective regulatory model presents unacceptable costs to public health and safety, and must be abolished immediately.

We understand that the current licensing system only allowed for 18 brothels at the time of writing the act, and has remained unamended. This has resulted in a two-tiered industry, with only a small percentage of the industry capable of complying and all other business models criminalised. This approach to regulation leads to arbitrary and discriminatory restrictions on sex industry businesses. Whilst this system remains in place, police retain power over 90% of the industry -the sector currently forced to choose between safe and lawful operation – with devastating consequences for safety and justice. As has already been discussed, the safety strategies sex workers commonly employ with minimal public amenity impact must be permitted, including working collectively, providing peer support to each other, and hiring administrative support staff.

Repealing this act renders the Prostitution Licensing Authority (PLA) redundant. This organisation has no representation or input from sex work organisations, and costs the QLD Government over \$700,000 per year to regulate the only 10% of the QLD sex industry that is currently able to operate compliantly. Based on our own experience in NSW, we strongly recommend a rapid transition to a model that utilises the same workplace health and safety authorities that are responsible for all other businesses, such as FairWork and SafeWork. We also urge the QLD government to recognise the value of peer-led sex worker organisations and to fund Respect QLD accordingly. SWOP NSW is proud to report that as a result of our efforts, NSW sex workers have better rates of sexual health than the general population. We also provide extensive education and assistance for NSW sex workers, including legal information and referrals, alcohol and drug safety resources, and mental health support.

Supporting peer-led health promotion approaches, and providing unfettered free and anonymous access to public health and safety services, is the best way to ensure that QLD sex industry decriminalisation achieves optimal outcomes for the entire community.

SWOP NSW supports repealing ‘social escort’ from the *Child Employment Act 2006*

‘Social Escort’ has been repealed from other QLD legislation and the *Child Employment Act 2006* should be amended for consistency.

SWOP NSW recommends that Respect Inc be resourced to undertake a public education program to promote understanding of sex industry decriminalisation, and to address sex work stigma

Despite several decades of NSW sex industry decriminalisation, the lack of public awareness and understanding of this globally recognised best practice model consistently hinders full

attainment of the health, safety and justice outcomes decriminalisation can and should enable. Peer-led sex worker organisations are best placed to offer this education, and to address the persistent stigma that also causes considerable harm to sex work communities. We hope that the QLD government will recognise the value of partnering with Respect QLD, as a well-established and well-respected organisation, to provide the QLD public with this important information.

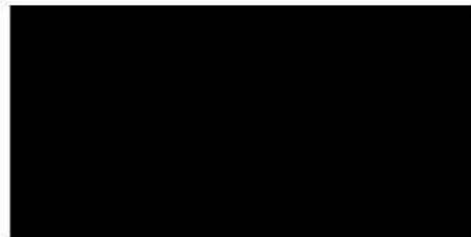
Summary

Again, we congratulate the QLD Government on their decision to decriminalise sex work. With decades of first hand experience, we know that a model that allows ALL sex workers (local, migrant, street based, independent, brothel based, massage parlour based, strip club based, independent, online and others) to work safely and lawfully is paramount to the health and wellbeing of both sex workers all other members of QLD community. We commend the transition to a regulatory system in which sex work and sex work businesses are treated fairly and respectfully as valued members of the workforce and society in Australia.

Yours Sincerely,



Joanna Megan
SWOP NSW CEO



Darcy Deviant
SWOP NSW Policy Officer