

24 February 2025

NSW Department of Communities and Justice
Locked Bag 5000
Parramatta NSW 2124

By email: policy@dcj.nsw.gov.au

To the NSW Department of Communities and Justice

Re: Review of offences in Part 3 of the *Summary Offences Act 1988*

Thank you for the opportunity to provide a submission on the Review of Offences in Part 3 of the *Summary Offences Act 1988*.

Scarlet Alliance, Australian Sex Workers Association, is the national peak sex worker organisation. Formed in 1989, our membership includes state and territory-based and national sex worker organisations and individual sex workers across unceded Australia.

Scarlet Alliance uses a multifaceted approach to strive for equality, justice and the highest level of health for past and present workers in the sex industry. We achieve our goals and objectives by using best practices including peer education, community development, community engagement and advocacy.

Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of sex workers in Australia. Through our work and that of our member organisations and projects, we have the highest level of contact with sex workers and access to sex industry workplaces throughout Australia. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms.

Scarlet Alliance and the Sex Workers Outreach Project (SWOP) NSW have long campaigned for repeal of the sex work offences in the *Summary Offences Act 1988*. This repeal is essential to achieving the aims of decriminalisation, and will have tangible benefits for NSW's most marginalised sex workers. This submission is intended to be read in conjunction with Scarlet Alliance's and SWOP NSW's previous submissions on the Equality Bill.¹

Yours sincerely,

¹ Scarlet Alliance, [Submission No 31 to the Legislative Assembly Committee on Community Services, Inquiry into the Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) (14 April 2024); SWOP NSW, [Submission No 33 to the Legislative Assembly Committee on Community Services, Inquiry into the Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) (14 April 2024).

Mish Pony
Chief Executive Officer
Scarlet Alliance, Australian
Sex Workers Association

Soss
Policy Officer
Sex Workers Outreach
Project

Vikas Parwani
Principal Solicitor
HIV/ AIDS Legal Centre

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In this submission, we refer to texts that use the terms ‘prostitute’, ‘prostitution’ and ‘soliciting’. Many of these have used the same language since the late 1800s. To avoid confusion, this submission uses the same language as the texts referenced. Scarlet Alliance acknowledges the harm generated by stigmatising and outdated language. Our preferred terms are ‘sex worker’, ‘sex work’ and ‘street-based sex work’.

Unfinished decriminalisation in NSW

New South Wales was a world leader in the decriminalisation of sex work. In 1979, the government abolished the offences of ‘soliciting another person in or near a public place’ and ‘being a reputed prostitute on premises habitually used for prostitution.’² This allowed sex workers to organise for workplace rights, health and safety, and to provide vital leadership and peer education during the emergence of HIV/AIDS.³

However, conservative backlash was immediate:

Almost immediately after this law reform, residents of Darlinghurst organised into lobby groups and argued that prostitution would run riot. Many of these residents had recently moved into the inner city despite its reputation for street and other forms of prostitution. Yet so confident were they of favouritism under the law that they felt they could easily manipulate the government into reversing its decision.⁴

Efforts by these small but confident lobby groups were successful. In 1983, the government reintroduced a public soliciting offence, which remains in force today.⁵ Further reform would not occur until 1995, after the Wood Royal Commission received overwhelming evidence of ‘a clear nexus between police corruption and the operation of brothels.’⁶ In response, the

² [Summary Offences Act 1970](#) ss 28-29, as amended by [Summary Offences \(Repeal\) Act 1979](#) s 3.

³ Eurydice Aroney and Penny Crofts, [‘How Sex Worker Activism Influenced the Decriminalisation of Sex Work in NSW, Australia’](#) (2019) 8(2) *International Journal for Crime, Justice and Social Democracy* 50, 56-7.

⁴ Roberta Perkins, [‘Street Prostitution and its Manipulation by Law in NSW’](#) (Conference Paper, Australian Institute of Criminology Women and the Law Conference, 1991) 104.

⁵ Eurydice Aroney and Penny Crofts (n 3) 54.

⁶ *Royal Commission into the NSW Police Service* (Final Report, May 1997) vol 1, 13.

government removed police discretion to shut down brothels and abolished the criminal offences related to brothel ownership and operation.⁷ However, little guidance was provided on how sex work businesses should be integrated into the community, generating confusion for local governments, sex work workplaces and individual sex workers.⁸

Most recently, the Equality Legislation Amendment (LGBTIQ+) Bill 2024 (the Equality Bill) failed to deliver health, safety or justice for NSW sex workers. The Bill's first printing proposed to:

- prohibit discrimination and vilification on the grounds that a person 'is or has been a sex worker',⁹
- criminalise threatening or inciting violence on the basis that a person is, or has been a sex worker,¹⁰
- prohibit threatening to 'out' a sex worker,¹¹
- repeal all remaining sex work criminal offences in the *Summary Offences Act 1988*.¹²

However, the Bill as passed only:

- widened the definition of 'harassment' to include threatening to 'out' a sex worker,¹³
- repealed the offence of 'living off the earnings of prostitution'.¹⁴

It is not acceptable that the moral opinions of vocal minority groups continue to impact the health and safety of sex workers in NSW. Evidence has demonstrated that decriminalisation has:

*improved human rights; removed police corruption; netted savings for the criminal justice system; and enhanced the surveillance, health promotion, and safety of the NSW sex industry.*¹⁵

Decriminalisation is endorsed as the best-practice model for sex work regulation by international organisations and policymakers, including:

- UNAIDS¹⁶
- the World Health Organization (WHO)¹⁷

⁷ [Disorderly Houses Amendment Act 1995](#).

⁸ See Penny Crofts, '[Brothels: outlaws or citizens?](#)' (2010) 6(2) *International Journal of Law in Context* 151, 154-7; and

Penny Crofts and Jason Prior, '[InterSections of Planning and Morality in the Regulation and Regard of Brothels in New South Wales](#)' (2012) 14(2) *Flinders Law Journal* 329, 330-1.

⁹ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) (first print) sch 1 cl 39.

¹⁰ *Ibid* sch 6 cl 3.

¹¹ *Ibid* sch 8.

¹² *Ibid* sch 18.

¹³ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2024](#) sch 3 cl 1.

¹⁴ *Ibid* sch 7.

¹⁵ Basil Donovan et al, [The Sex Industry in New South Wales: A Report to the NSW Ministry of Health](#) (Report, Kirby Institute, University of New South Wales, 2012) 7.

¹⁶ Joint United Nations Programme on HIV/AIDS (UNAIDS), [Guidance Note on HIV and Sex Work](#), UNAIDS/09.09E, JC1696E (March 2009).

¹⁷ World Health Organisation (WHO), [Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations](#) (Consolidated Guidelines, 2016).

- the United Nations Population Fund (UNFPA) and the United Nations Development Programme (UNDP)¹⁸
- Amnesty International¹⁹
- the International Labour Office (ILO)²⁰
- *The Lancet* medical journal,²¹ and
- the Global Alliance Against Traffic in Women (GAATW).²²

Part 3 of the *Summary Offences Act 1988* undermines the aims of decriminalisation - to promote health, safety and access to justice. While seldom enforced, the provisions criminalise NSW's most vulnerable sex workers. It is vital to repeal these offences to ensure that all sex workers in NSW can access the benefits of decriminalisation.

Section 15A – causing or inducing sex work or the surrender of proceeds of sex work

Section 15A prohibits using 'coercive conduct or undue influence' to:

- 'cause or induce another person to commit an act of prostitution' (s 15A(1)) or
- 'cause or induce another person to surrender any proceeds of an act of prostitution' (s 15A(2)).

The maximum penalty is 50 penalty units (\$5,500 fine), 12 months' imprisonment, or both. As noted in the Discussion Paper, there have been no prosecutions under this section in the past five years.

While 'pimping' and coercion are extremely rare within NSW's sex industry,²³ this conduct is serious criminal offending. Scarlet Alliance believes that s 15A communicates that this kind of offending is *less* serious when perpetrated against sex workers.

There are several existing offences applicable to coercive conduct and undue influence in sex work. All of these carry higher penalties than s 15A:

- Common assault (*Crimes Act 1900* s 61 - maximum penalty 7 years' imprisonment)
- Procuring a person who is not a sex worker to do sex work (*Crimes Act 1900* s 91A - maximum penalty 7 years' imprisonment)

¹⁸ UNDP, UNFPA, UNAIDS, [Sex Work and the Law in Asia and the Pacific](#) (Report, October 2012).

¹⁹ Amnesty International, [Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers](#) (Policy No 30/4062/2016, 26 May 2016).

²⁰ International Labour Office (ILO), [Recommendation Concerning HIV and AIDS in the World of Work](#) (Report No 200, June 2010).

²¹ The Lancet, [HIV and Sex Workers](#) (Report Series, 23 July 2014).

²² Global Alliance Against Traffic in Women (GAATW), [Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions](#) (Report, 2018) 40.

²³ Basil Donovan et al, *The Sex Industry in NSW* (n 15) 21, 22.

- Using fraud, violence, threat, abuse of authority, or any drug or intoxicating liquor to procure a person for sex work (*Crimes Act 1900* s 91B - maximum penalty 10 years' imprisonment)
- Causing sexual servitude (*Crimes Act 1900* s 80D - maximum penalty 20 years' imprisonment)
- Conducting a business involving sexual servitude (*Crimes Act 1900* s 80E - maximum penalty 19 years' imprisonment)
- Sexual offences against adults (*Crimes Act 1900* div 10, sub-divs 2-4 - maximum penalties 18 months to 20 years imprisonment). Circumstances where a person does not consent to sexual activity include where participation is due to:
 - force, fear of force or fear of serious harm of any kind (s 61HJ(1)(e)),
 - coercion, blackmail or intimidation (s 61HJ(1)(f)),
 - unlawful detention (s 61HJ(1)(g)),
 - abuse of a relationship of authority, trust or dependence' (s 61HJ(1)(h)),
 - fraudulent inducement (s 61HJ(1)(k))
- Stalking or intimidation with intent to cause fear of physical or mental harm (which can now include threatening to 'out' a person as a sex worker) (*Crimes (Domestic and Personal Violence) Act 2007* s 13 - maximum penalty 5 years' imprisonment and fine of 50 penalty units).

There are also existing offences applicable to forcing a person to surrender proceeds from sex work:

- Robbery or stealing from the person (*Crimes Act 1900* s 94 - maximum penalty 14 years' imprisonment)
- Demanding property with intent to steal (*Crimes Act 1900* s 99 - maximum penalty 14 years' imprisonment)
- Fraud (*Crimes Act 1900* s 192E - maximum penalty 10 years' imprisonment)
- Blackmail (*Crimes Act 1900* s 249K - maximum penalty 10 years' imprisonment).

Scarlet Alliance believes these offences are appropriate to the seriousness of this offending. The lack of prosecutions under s 15A is a strong indicator that the offence does not capture conduct in situations where other offences cannot be proven beyond reasonable doubt.

We also do not accept the characterisation that other jurisdictions have 'similar' offences. The comparable offences from other jurisdictions listed in the Discussion Paper are more analogous to the procuring (ss 91A-B) and sexual servitude (ss 80D-E) offences in the *Crimes Act 1900*. These offenses target coercive conduct specific to sex work, and carry appropriate penalties.

Recommendation 1: That s 15A of the *Summary Offences Act 1988* be repealed.

Sections 16-17 - sex work premises

Section 16 criminalises soliciting or conducting sex work in places 'held out as being available' for 'massage, sauna baths, steam baths or facilities for physical exercise' or photography studios. Section 17 criminalises business owners/operators for knowingly allowing soliciting or sex work to take place within these kinds of premises.

As noted in the Discussion Paper:

- these offences were enacted when sex work was criminalised, and sex work operated using 'front businesses'
- no prosecutions have been made under these sections within the last 5 years.

Even if not enforced, ss 16 and 17 generate confusion by retaining a regulatory role for police in matters that are properly dealt with by local councils. Sex work occurring in premises where this is not a permitted land use is a civil matter for local councils. Land and Environment Court orders can prevent non-compliant businesses from operating. If a sex work business receives complaints from neighbours, local councils may also apply for a closure order under the *Restricted Premises Act 1943*, even if the business has development consent.

In the 2021 case of *Blacktown City Council v Kellyville Ridge Health Centre*,²⁴ the council received a single complaint that erotic massage services were provided at a massage premises, in breach of zoning requirements.²⁵ In response, the Council hired a private investigator, who attended the premises on two separate occasions and reported receiving sexual services in exchange for payment.²⁶

Concerningly, the judge noted that in addition to the available civil remedies, ss 16 and 17 could be used as enforcement tools in cases where massage businesses were non-compliant with zoning requirements.²⁷ It is clear that ss 16 and 17 were drafted long before the government envisioned sex work workplaces operating openly within communities, and were not intended to be a response to zoning technicalities.²⁸

The use of archaic legislation to impose criminal sanctions against the operators of massage businesses who are non-compliant with zoning requirements is contrary to natural justice. No other non-compliant businesses would be subject to similar penalties. The use of criminal sanctions against *workers* in non-compliant massage businesses (who are likely to be unaware of their workplace's zoning requirements) is reprehensible.

²⁴ *Blacktown City Council v Kellyville Ridge Health Centre Pty Ltd* [2021] NSWLEC 65.

²⁵ Blacktown City Council is one of many NSW councils that effectively prohibits 'home occupation (sex services)' and permits 'sex services premises' only in areas zoned as general industrial: [Blacktown Local Environmental Plan 2015](#) (NSW) - Land Use Table.

²⁶ *Blacktown City Council v Kellyville Ridge Health Centre* (n 24) [21] and [24]. We note that the practice of local councils hiring private investigators to receive sexual services now amounts to **sexual offending under NSW consent laws**.

²⁷ *Ibid* [67].

²⁸ See Select Committee of the Legislative Assembly upon Prostitution, Parliament of New South Wales, [Prostitution](#) (Report, 17 April 1986) 251-254.

Section 16 also criminalises opportunistic sex work occurring in saunas/bathhouses that are dedicated sex on premises venues. This form of sex work is often practiced by male sex workers who have sex with men (MSM sex workers), and the offence may discourage these workers from engaging with sex worker organisations and/or accessing sexual health testing and treatment.²⁹

Recommendation 2: That ss 16-17 (and the associated search warrant provision in s 21) of the *Summary Offences Act 1988* be repealed.

Sections 18-18A - advertising sex work

Sections 18 and 18A criminalise:

- advertisements and signs for both sex work premises and individual sex workers (s 18)
- advertisements recruiting sex workers (s 18A).

As noted in the Discussion Paper, there have been no prosecutions under s 18 and one withdrawn prosecution under s 18A within the last five years. While not enforced, ss 18 and 18A create an unreasonable blanket ban on **all** advertising relating to sex work in NSW.

Sections 18 and 18A undermine decriminalisation. In NSW, sex work is lawful and legitimate work and sex work businesses are part of the community. The offences contradict local planning instruments, which set out civilly enforceable requirements for signage in sex services premises.³⁰

In addition to planning regulation, sex work advertising in NSW is subject to:

- Section 578C of the *Crimes Act*, which prohibits indecent publications (including advertising)
- Australian Consumer Law (ACL) and the Australian Association of National Advertisers Code of Ethics, which applies to all advertising in Australia
- Deceptive recruitment provisions in the ACL and the Commonwealth Criminal Code.

Sections 18 and 18A also generate stigma and discrimination towards NSW sex workers from online and print media advertising services. Scarlet Alliance and SWOP NSW receive frequent reports from NSW sex workers of being overcharged or receiving sub-par services from advertising providers, and attribute this to the existence of ss 18 and 18A.

²⁹ Both sex workers *and* MSM are recognised as priority populations in the National HIV and STI strategies. Removing healthcare barriers for MSM is an essential step for Australia meeting its international targets for the virtual elimination of HIV. See Australian Government, [Ninth National HIV Strategy 2024-2030](#) (Report, 10 December 2024) 36, 37 and Australian Government, [Fifth National Sexually Transmissible Infections Strategy 2024–2030](#) (Report, 22 November 2024) 25, 26.

³⁰ See, e.g. [Auburn Development Control Plan 2010](#), 'sex services premises'; [North Sydney Development Control Plan 2013](#), B6-3-4.

The argument that repealing ss 18 and 18A will expose the community to explicit and offensive material does not withstand scrutiny. NSW's sex industry has operated openly for several decades. Individual providers and larger businesses advertise without issue. Like any business, sex work advertising aims to be visible to its target audience (adults seeking lawful sexual services) and not to offend the wider community. Clients of sex work businesses usually hold high expectations of discretion, meaning that market forces also drive unobtrusive advertising and signage.

Recommendation 3: That ss 18 and 18A of the *Summary Offences Act 1988* be repealed.

Sections 19-19A - soliciting

*They act like we have no morals or no ethics. We do have morals and ethics. Morals are what 98% street workers [would say] their personal ethics are. Not one would say 'I would find it appropriate to solicit out the front of a school or church.'*³¹

Sections 19 and 19A result in the most vulnerable members of our community being at risk of violence and harassment, and facing barriers to accessing basic social services.

Through the 1970s to the early 1990s, street-based sex workers were targeted by police under a variety of laws as the most vulnerable and visible scapegoats in the conflicts generated by rapid gentrification.³²

While looming large in the public imagination, the actual numbers of street-based sex workers in NSW tell a different story. In 1991, street-based sex work was estimated to comprise only 10% of NSW's sex industry.³³ By 2012, this had decreased to 5% (no more than 120 workers on any one night across the entire state).³⁴ Today, the vast majority of non brothel-based sex workers advertise online and communicate using mobile phones. This makes the number of sex workers using public spaces for in-person advertising vanishingly small.

While it is difficult to capture the exact demographics of the remaining workforce, it is fair to say that street-based workers represent the most marginalised sex workers in NSW. Studies indicate that:

- 15-20% of NSW street-based sex workers identify as Aboriginal or Torres Strait Islander³⁵

³¹ Interview with R, a street-based sex worker (Darcy Deviant, SWOP NSW, 7 February 2025).

³² Roberta Perkins, (n 4) 104-106.

³³ Ibid, 99.

³⁴ Basil Donovan et al, *The Sex Industry in NSW* (n 15) 16, 20.

³⁵ Jason Prior, *Street-based Sex Worker Research Project and the Identifying Safety Issues for Transgender Street-based Sex Workers Research Project* (Report, 5 June 2009) 5; Christine Harcourt et al, 'The health and welfare needs of female and transgender street sex workers in New South Wales' (2001) 25(1) *Australian and New Zealand Journal of Public Health* 84, 86.

- almost half identify as transgender³⁶
- over a third do not currently have housing³⁷
- 70% have done street-based work for over ten years³⁸
- almost all work in lawful and established street-based sex working areas in industrial or non-residential commercial zones.³⁹

Street-based sex workers are vulnerable to harassment by police and members of the public, despite working lawfully. This leads to a climate of mistrust where these sex workers are unlikely to approach police for assistance when required. Harassment has also forced these workers to develop practices of discretion and evasion, which creates access barriers to contact with sex worker and harm reduction outreach services.

Retaining the offence criminalising the clients of street-based sex workers (s 19A) is not a viable option. Criminalising the clients of any sex workers means that these clients are less likely to engage with sexual health testing and treatment,⁴⁰ which is a negative public health outcome. The criminalisation of clients is not supported by evidence as an effective regulatory option.⁴¹

As noted in the Discussion Paper, existing provisions in the *Law Enforcement (Powers and Responsibilities) Act 2002* (pt 14) and the *Summary Offences Act 1988* (pt 2 div 1) apply to offensive conduct occurring in relation to street-based sex work.

Repeal of ss 19 and 19A is a small but vital step in addressing the barriers experienced by street-based sex workers, and to ensuring that the most marginalised sex workers in our community are able to access the benefits of decriminalisation. As part of this amendment, Scarlet Alliance also recommends that NSW Police receive training to clarify their powers and responsibilities when interacting with street-based sex workers.

Recommendation 4: That ss 19 and 19A of the *Summary Offences Act 1988* be repealed.

Recommendation 5: That NSW Police receive training on their powers and responsibilities when dealing with street-based sex workers.

Section 20 - public acts of sex work

Section 20 criminalises:

³⁶ Jason Prior (n 35) 5.

³⁷ Ibid.

³⁸ Ibid.

³⁹ In February 2025, SWOP NSW conducted surveys/interviews with eight street-based sex workers. All respondents reported working in lawful areas that were established as street-based sex work areas, and/or industrial areas.

⁴⁰ Basil Donovan et al, *The Sex Industry in NSW* (n 15) 12-13.

⁴¹ Ann Jordan, '[The Swedish Law to Criminalise Clients: a Failed Experiment in Social Engineering](#)' (Issue Paper 4, Center for Human Rights & Humanitarian Law, American University Washington College of Law, April 2012). See also *The Sex Industry in NSW* (n 15) 10.

- 'acts of prostitution' occurring 'in, or within view from, a school, church, hospital or public place, or within view from a dwelling' (s 20(1))
- 'acts of prostitution' in those places while inside a vehicle, regardless of whether anything can be seen from outside the vehicle (s 20(2)).

These laws subject NSW street-based sex workers to extraordinary levels of criminalisation above every other person in the state. **Visible public sexual activity is a criminal offence for all people in NSW** (*Summary Offences Act 1988* ss 4 and 5). Retaining these offences targeted solely towards sex workers is a clear example of overcriminalisation. This is particularly dangerous for marginalised communities such as street-based sex workers, and furthers the legacy of discrimination and mistrust.

A person who may witness public sexual activity has no way of knowing whether money was exchanged prior. If money was exchanged, this does not increase the act's offensiveness. Section 20 targets street-based sex workers even when they are working in a discreet manner. It criminalises behaviour that would not be unlawful nor 'offensive' if engaged in by two adults who were not a sex worker and client. Repeal of section 20 is a small step in preventing harassment of lawful street-based sex workers by police and members of the public.

Recommendation 6: That s 20 of the *Summary Offences Act 1988* be repealed.