

REPEAL THE ENTIRETY OF PART 3, SS 14 TO 21 OF THE SUMMARY OFFENCES ACT 1988 (NSW)



Background

SWOP NSW is a peer-based non-government organisation that exists to promote the same sex access to health, safety, human rights and workplace protections for sex workers as is available to other Australian workers. For over 35 years SWOP NSW has provided peer education and support to sex workers, and maintains the highest level of direct contact with sex workers, and sex industry workplaces in NSW.

As key stakeholders and representatives of the population most significantly affected by these laws, we are the experts on this topic. We have recently observed some misinformation circulating, and have interpreted this to mean that parties less familiar with the NSW sex industry may not always adequately understand the true impact of specific laws applicable to sex workers. We hope you will carefully consider this clear and accurate explanation of the required updates that we are providing.

NSW has been widely recognised and applauded as a world leader following 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. In truth, the process of NSW sex industry decriminalisation has yet to be completed.

It is imperative that *Part 3, ss 14 to 21 of the Summary Offences Act 1988 (NSW)* is repealed, and we are seeking your support as we advocate for this essential change to NSW legislation. The offences contained within this section contradict other more recent legislation, and have dangerous implications. Whilst this collection of offences remain in place, some of the most vulnerable sex workers in NSW are still subject to criminalisation, as are the adult family members of sex workers, and laws regarding recruitment and advertising make it effectively impossible to lawfully operate an otherwise entirely legitimate business.

The clauses included within this section are:

- **15A Causing or inducing prostitution**

Once again, this law is superfluous. There are a range of far more effective and appropriate laws, including current NSW consent legislation, that prohibit coercion in relation to sex work.

- **16 Prostitution or soliciting in massage parlours etc**
- **17 Allowing premises to be used for prostitution**
- **21 Search warrant**

These clauses are at odds with NSW sex industry decriminalisation, which assigns responsibility for sex industry business zoning, approval and compliance checking to local councils, and should be removed for the purposes of clarity and consistency within NSW legislation. Granting expanded powers to police is especially concerning given past instances of police abuse. Unjustified police involvement in sex industry workplaces creates fear, hindering reporting of violence and access to justice for sex workers.

- **18 Advertising premises used for prostitution**
- **18A Advertising for prostitutes**

These clauses amount to a legally sanctioned form of discrimination against legitimate workers and business owners/operators. We are not aware of any other NSW industry that is prevented from standard business practices such as advertising and recruitment.

Other more broadly applicable laws and standards relating to advertising are more than sufficient. NSW sex workers and sex industry owners/operators already voluntarily operate discretely, and do not need to be legally obliged to continue to do so. Discretion is widely understood as appealing to sex industry clients, and as a valuable safety mechanism for sex industry staff.

Clauses cont.

- **19 Soliciting clients by prostitutes**
- **19A Soliciting prostitutes by clients**
- **20 Public acts of prostitution**

These laws apply primarily to street based sex workers, some of the most vulnerable members of our population, who are often subject to intersectional marginalisation e.g. as trans and gender diverse, and/or Aboriginal and Torres Strait Islander people.

Following the advent of internet advertising and mobile phones, the NSW street based sex working population has dramatically decreased. The few remaining street based sex workers operate in established street based sex working areas, typically in industrial or non-residential commercial zones. These sex workers are already frequently subject to harassment and mistreatment by police. It has been apparent during our own interactions with police in relation to street based sex work, that many members of the NSW police force do not have an adequate understanding of the law, and the limits of their powers, and will frequently abuse their authority. The result of this situation is that street based sex workers are unlikely to approach police for assistance when required, and work to avoid detection even when operating lawfully, making it harder for essential health services such as SWOP NSW to make contact and provide support.

Context

- The NSW Government is reviewing Part 3 of the Summary Offences Act 1988 (SOA 1988). These provisions prescribe criminal offences related to providing and participating in sex work services in certain settings. The purpose of the review is to understand whether the offences in Part 3 of the SOA 1988 remain relevant and appropriate, or whether they should be amended or repealed.
- The Department of Communities and Justice (DCJ) is undertaking this review on behalf of the NSW Government, and is conducting consultation with targeted stakeholders who represent interested and affected groups.

For the sake of brevity, these clauses have been summarised to headings only. We urge you to research them in their entirety by finding *Part 3, ss 14 to 21 of the Summary Offences Act 1988 (NSW)* on the NSW Government website.

Next Steps

We would appreciate the opportunity to meet with you to further discuss these matters, and the action you can take to ensure health, safety and human rights are accessible to all members of the NSW community.

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