

# YWCA Australia Supports the Repeal of Sex Work Offences Bill - SA

**SEX WORK**

**IS**

**REAL WORK**



YWCA Australia writes this submission to affirm our support for the Repeal of Sex Work Offences Bill, introduced by Tammy Franks MLC in 2020.

## Who we are

YWCA are contacting you as a local and national support provider of over 140 years. YWCA is a national not-for-profit specialist women's organisation working towards a future where all women are safe and respected with equal access to power, opportunity and resources. YWCA undertakes advocacy and delivers programs and services that develop the leadership and collective power of women, young women and girls; support individuals, their families and communities at critical times; and promotes gender equality to strengthen communities across Australia's diverse social and geographic landscape.

As gender equality specialists committed to amplifying young women and people of marginalised genders, we urge you to support the Repeal of Sex Work Offences Bill currently before Parliament. We support the voices of sex workers to speak their truth, share their lived experiences and support the committed advocacy of SIDAC, SIN, the Scarlet Alliance and allies who continue to tirelessly support decriminalisation and the rights of sex workers across Australia.

## Summary

We wish to take the opportunity **to highlight the issues workers face under criminalisation, the clear evidence and positive impact of decriminalisation and why we do not support the Nordic criminal model.**

The proposed Bill to fully decriminalise adult consensual sex work in South Australia should work towards:

- safeguarding the human rights of sex workers;
- protecting them from exploitation and abuse;
- promoting their health and safety and;
- creating an environment conducive to public health and decent workplace rights

## Context

YWCA supports the overwhelming evidence, as well as the many health and human rights experts, advocates, and those with lived experience, in support of the full decriminalisation of adult consensual sex work as the most effective way to safeguard the health, safety, human rights and workplace rights of sex workers, the majority of whom are women.

The criminalised nature of sex work in the South Australia is a major barrier for sex workers in reporting abuse, discrimination and other forms of illegal activity. Decriminalisation would encourage those within the industry to cooperate with authorities and build positive working relationships with police. We note

that in 2016 the NSW Government affirmed their continued support for full decriminalisation as the best way of protecting sex workers and maintaining a more transparent sex work industry.

Both the New Zealand and NSW experience demonstrates that rates of sex work have *not* increased, but that decriminalisation did improve sex workers' human rights; removed police corruption; resulted in savings in the criminal justice system; and enhanced the surveillance, health promotion, and safety of the sex industry.<sup>i</sup>

We also express concern that amendments to criminalise certain aspects of sex work, such as street work, will only result in the most marginalised groups being forced into dangerous and isolated environments, unable to report abuse or exploitation. Criminalising any aspects of sex work presents more barriers to women and people of marginalised genders exiting the industry and gaining other employment, due to discrimination, stigma, and lack of workplace recognition and protections.

It is clear that sex work decriminalisation is a human rights, public health and safety issue. We support urgent sex work law reform, sex work treated as real work and safety and well-being considerations centralised. Criminalisation does not allow for this. If women and people of marginalised genders are to be equal, how can we conscientiously uphold laws, policies and practices that harm sex workers and their loved ones?

#### **YWCA Advocates for:**

Initiatives and policies that take an intersectional and gender-responsive approach and support all women, young women and girls and people of marginalised genders. The decriminalisation of sex work is a key component of an equal future for all women.

YWCA **does not support the 'Nordic model'** (criminalising the purchasing of sex but not the selling of sex). There is strong evidence suggesting that these laws discourage women to report violence and abuse; result in human rights violations for sex workers; and do little to address the stigma and risk associated with criminalised sex work.<sup>ii</sup> It is imperative that sex work is fully decriminalised to ensure the safety of all sex workers, and to ensure the transparency of the industry.

Furthermore, YWCA **does not support adopting a using a 'licensing' model**, which has shown to create a two-tiered industry that leaves the most disadvantaged more vulnerable. It is clear this system does not work, with the majority of sex workers being forced to operate outside the legal system, facing barriers such as not being able to work with other sex workers or not being able to hire support staff such as security.

Both the Queensland and Victorian licensing models demonstrate the unworkability of such models, with extremely high levels of non-compliance and barriers to sex worker safety, and access to health and justice services. In Queensland, for example, after 18 years of licensing, there are only 20 legal brothels operating, with an estimated 80% of the sex industry being unable to legally operate. Reports of police corruption are still rife within the industry in Queensland, despite the Fitzgerald Inquiry which uncovered excessive levels of police corruption.

Under a full decriminalisation model, sex industry businesses will be regulated in the same way as other businesses, subject to existing regulatory mechanisms such as local council planning and zoning regulations, WorkCover and the Australian Taxation Office. Furthermore, police will still have extensive

powers to investigate suspected criminal activity, including search powers to enter premises where it there is reasonable suspicion of criminal activity, such as trafficking and exploitation.

### **An intersectional approach**

As experts in gender equality, YWCA understands that gender inequality is not experienced the same way by all women and people of marginalised genders. We therefore must consider other forms of discrimination and disadvantage. Integrating intersectional thinking should consider such things as Aboriginality, culture, race, ethnicity, faith, socio-economic status, ability, sexuality, gender identity, education, age, geographic location and migration status. Some groups of women face increased barriers to safety, sex workers as a cohort under a criminalised model of sex work have their safety undermined by laws that are not fit for purpose.

### **Safeguarding human rights**

Sex workers are at risk of violence, threat, and intimidation: The World Health Organisation (WHO) reports that under criminalisation, sex workers are at three times the risk of experiencing violence. WHO, UN bodies<sup>iii</sup> (such as UN AIDS, ILO and UNFPA), and human rights organisations recommend the decriminalisation of sex work as a matter of public health, public policy and the protection of human rights.

In recognising the high rates of human rights abuses experienced by sex workers, Amnesty International developed a policy supporting the full decriminalisation of consensual adult sex work. This policy is based on extensive research and consultation in various regions, including in Australia, and having engaged with all sides of the debate.<sup>iv</sup> Amnesty's policy reflects a contemporary and considered approach to improving the health, safety and rights of sex workers, while distinguishing adult consensual sex work from sex trafficking.

We would also like to reaffirm the danger in conflating sex work with sex trafficking or sexual slavery. Decriminalisation does not result in legalising or enabling sex trafficking. In fact, it can create a more transparent industry where exploitation, abuse and other illegal activities are more easily distinguished.

### **Protecting sex workers from exploitation and abuse**

Under a criminalised model, sex workers work in underground and unregulated workplaces, without industrial or Workplace Health and Safety protections. In some jurisdictions, condoms and safe sex equipment, even health promotion material distributed by health workers, can be seized and used as evidence against suspected sex workers. Consequently, sex workers fear the police, and have little recourse when crimes are committed against them.<sup>v</sup>

A University of NSW report showed that decriminalisation did *not* increase the incidence of commercial sex in NSW, but did improve sex workers' human rights; removed police corruption; resulted in savings in the criminal justice system; and enhanced the surveillance, health promotion, and safety of the NSW sex industry.<sup>vi</sup>

### **Promoting their health and safety**

Criminalisation of sex work creates an environment of stigma, discrimination, and systematic exclusion that prevents sex workers from accessing health and support services and increases their risk of violence and abuse. A recent major review exploring the literature on sex work found that sex workers are at disproportionate risk of violence and sexual and emotional ill health that has a direct link to the

criminalisation of sex work.<sup>vii</sup> Furthermore, criminalisation has also shown to specifically undermine HIV prevention efforts. The Lancet medical journal's series on HIV and Sex Workers reported that, 'decriminalisation of sex work would have the greatest effect on the course of HIV epidemics across all settings.'<sup>viii</sup>

### **Creating an environment conducive to public health and decent workplace rights**

In NSW, decriminalisation of sex work has been successfully in place since 1995, and research has demonstrated that this has resulted in high rates of safer sex practice, low rates of sexually transmitted diseases and improved sexual health, improved Workplace Health and Safety, little to no amenity impacts, and no evidence of organised crime.<sup>10</sup>

A university survey of brothel operators and community agencies in New Zealand showed various positive attitudes towards their model of decriminalisation.<sup>ix</sup>

These included that sex workers:

- were no longer being considered criminals;
- had the same rights as those working in other industries, and;
- could negotiate safe-sex practices more easily

A New Zealand parliamentary report also concluded: 'On the whole, [decriminalisation] has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under [decriminalisation] than they were previously.'<sup>x</sup>

There is also no evidence to suggest that decriminalising sex work results in an increase in rates of sex work, as demonstrated by studies in both NSW and New Zealand.<sup>xi</sup> A 2008 Christchurch School of Medicine report found the number of sex workers in five locations in New Zealand had actually reduced, concluding that the popular assumption that decriminalisation would increase the numbers of people involved in sex work was flawed.<sup>xii</sup>

### **Street work**

Firstly, we note that the street-based sex worker numbers tend to be low, with the level of impact on the community often being overstated and with no evidence from other jurisdictions of street work increasing under a decriminalised model. Criminalising sex work has not shown to effectively deal with the harms associated with street-based sex workers and in fact leaves them more vulnerable to exploitation and abuse. The New Zealand Ministry of Justice Review found that a criminalised approach would "not have the effect people want", and "may increase the dangers faced by street-based sex workers".<sup>xiii</sup> The Review also noted that "decriminalisation has not solved all the problems associated with street-based sex work, nor can it be expected to."<sup>xiv</sup> SWOP currently provides support, resources and information to street-based sex workers, and decriminalisation would allow for them and other services to provide further support.

### **Housing Insecurity**

Documentation, stigma on leases from landlords and neighbours as well as discriminatory social and affordable housing providers policy can also work against safe sex working conditions, for example access hours or no guests.<sup>xv</sup> Even at the best scenarios sex worker access and support to a safe

home is precarious. Sex workers who work from home have been losing workplaces while terminating housing leases during the pandemic. <sup>xvi</sup>

**We urge you to support the repeal of the sex work offences Bill in support of the safety and security of sex workers and their loved ones in South Australia.**

Thank you for your support in this critical area of law reform. Please do not hesitate to contact Bobbie Trower – Senior Manager - Advocacy, with any questions on

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<sup>i</sup> The Sex Industry in New South Wales: a Report to the NSW Ministry of Health. Sydney: Kirby Institute, University of New South Wales (2012)  
<https://kirby.unsw.edu.au/sites/default/files/hiv/attachment/NSWSexIndustryReportV4.pdf>

<sup>ii</sup> Amnesty International 2016, 'The human cost of 'crushing' the market: criminalization of sex work in Norway', [https://www.amnestyusa.org/wp-content/uploads/2017/04/norway\\_report\\_-\\_sex\\_workers\\_rights\\_-\\_embargoed\\_-\\_final.pdf](https://www.amnestyusa.org/wp-content/uploads/2017/04/norway_report_-_sex_workers_rights_-_embargoed_-_final.pdf)

<sup>iii</sup> 3 For example, UNAIDS, UN Population Fund (UNFPA) and UN Development Program (UNDP).

<sup>iv</sup> 'Amnesty International Policy on state obligations to protect and fulfil the human rights of sex workers', 2016 <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

<sup>v</sup> Sex Industry Network Submission, 2015 'Inquiry into the regulation of brothels',

<sup>vi</sup> The Sex Industry in New South Wales 2012, Report to the NSW Ministry of Health. Sydney: Kirby Institute, University of New South Wales

<sup>vii</sup> Platt L, Grenfell P, Meiksin R, Elmes J, Sherman SG, Sanders T, et al. (2018) Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies. PLoS Med 15(12): e1002680.

<sup>viii</sup> Shannon, Strathdee, Goldenberg, Duff, Mwangi, Rusakova, M., et al., 'Global epidemiology of HIV among female sex workers: influence of structural determinants', *The Lancet*, 385 (9962), (2015)  
[http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(14\)60931-4.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(14)60931-4.pdf)

<sup>ix</sup> <http://www.parliament.nz/en-nz/parl-support/research-papers/00PLSocRP12051/prostitution-law-reform-in-new-zealand>

<sup>x</sup> Ibid

<sup>xi</sup> 'The Sex Industry in NSW: a Report to the NSW Ministry of Health,' Kirby Institute, University of New South Wales (2012)

<sup>xii</sup> Op cit (8)

<sup>xiii</sup> Ministry of Justice (NZ) 2008, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*

<sup>xiv</sup> Ibid

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<sup>xv</sup> Risky health environments:women sex workers' struggles to find safe, secure and non-exploitative housing in canada's poorest postal code

<sup>xvi</sup> COVID-19 and Sex Work in Australia Scarlett Alliance et al