

BRIEFING PAPER

FULL DECRIMINALISATION OF SEX WORK IN AUSTRALIA

What is FULL decriminalisation of sex work?

The FULL decriminalisation of sex work removes **sex work-specific criminal and licensing laws** AND **police powers** for ALL sex workers, including sex workers from marginalised groups.

The decriminalisation of sex work gives sex workers access to existing civil laws.

Full decriminalisation of sex work is the removal of all sex work-specific criminal and licensing laws that apply only to sex workers, our workplaces, clients, and third parties. Criminal laws that apply to everyone are still enforced by police.

Civil laws are implemented by government agencies and regulators, not the police. Civil laws protect people's health, safety, privacy, autonomy, human and industrial rights, and are meant to apply to everyone. Full decriminalisation gives sex workers access to workplace health and safety protections and civil law.

Full decriminalisation is NOT deregulation.

Planning, taxation, and industrial laws would still apply. Full decriminalisation is a whole-of-government approach to sex work.

Criminalisation, targeting, detention, deportation, and surveillance of marginalised groups of sex workers is not compatible with decriminalisation.

Migrant sex workers, street-based sex workers, Aboriginal and Torres Strait Islander sex workers, sex workers living with HIV, and private (independent) sex workers must also be decriminalised. Full decriminalisation of sex work means removing sex work-specific criminal penalties for all sex workers.

WHAT DOES FULL DECRIMINALISATION **NOT** INCLUDE?

Licensing laws & special police powers

Licensing creates a two-tiered sex industry. The majority of sex workers and businesses are excluded or unable to comply with licensing laws. These workers and businesses are forced to work outside the law where they are criminalised and targeted by police.

Sex work licensing laws are enforced by police and government agencies with special powers. This means police also target sex workers and sex industry workplaces that are attempting to obey licensing laws. Police use surveillance, covert policing, and entrapment such as posing as clients. Police enforcement is central to licensing.

Licensing laws and rules are excessive, unnecessary and very expensive to administer. Criminal penalties apply to routine and essential sex work business activities. They are difficult and expensive to comply with. Compliance can mean legal disadvantage and discrimination, loss of privacy, safety and income, and police targeting.

Licensing does not support sex worker rights, privacy, or workplace health and safety. It is not decriminalisation. Licensing is sometimes incorrectly referred to as 'legalisation'.

Registration of sex workers

Registration creates permanent records linking sex workers' personal information and legal identities to sex work. Forcing sex workers to register with government agencies or police is a threat to privacy, safety and wellbeing. Sex workers must choose between non-compliance for privacy protection, or registration and risk lifelong stigma and discrimination. A decision not to register means the person is working illegally.

Isolation of sex workers and sex industry businesses into specific locations

Laws, licensing or zoning that force sex work into industrial areas is bad for sex worker's safety. Sex workers who have experienced this say problems include limited or no public transport, poor lighting, no amenities, and isolation. These problems are worse for sex workers who work at night.

There is no evidence to support separating sex industry businesses or sex workers to '18+ precinct areas'. Sex workers deliberately choose work locations based on privacy, access to essential services, public facilities including public transport, access to clients, visibility, lighting and safety. Using police, licensing or zoning to force sex workers into specific locations is not full decriminalisation.

Mandatory testing and criminalisation of STI & BBV

Laws that criminalise sexually transmissible infections (STI) or blood borne viruses (BBV) for sex workers require mandatory prophylactic use or compulsory sexual health testing are incompatible with the full decriminalisation of sex work. These laws perpetuate stigma and are based on outdated information about safer sex options. They assume sex workers will not engage in safer sex practices or voluntary testing unless forced by law to do so. This is incorrect. Such policies are counterproductive to public health outcomes. Voluntary safer sex practices and sexual health screening is best practice. [Evidence](#) shows that criminalisation creates multiple barriers to health for sex workers.

Criminalisation of migrant sex workers

Decriminalisation means there are no specific laws that prohibit migrants and temporary visa holders from working in the sex industry. Migrant sex workers should have access to the full range of rights and protections available to local workers. Targeting and extra surveillance of migrant sex workers for undertaking sex work is not the full decriminalisation of sex work.

Criminalisation of marginalised sex workers

New Zealand (NZ) and NSW have not yet fully decriminalised sex work. Some sex workers have benefited immensely, while crucial groups are excluded and still criminalised. Full decriminalisation means the removal of sex work-specific criminal penalties against migrant sex workers and street-based sex workers. It is imperative the sex work laws in NZ and NSW are viewed as incomplete and in need of further reform.

Criminalisation of street based sex workers

Prohibition or laws seeking to 'control' street based sex workers are ineffective and create increased risks and barriers. Street based sex workers, like all sex workers, use safety strategies including:

- working in a familiar location
- networking with peers
- screening clients
- negotiating the service prior to a booking

When criminalised, avoiding arrest is prioritised. Sex workers' safety is placed at risk. Criminalisation and police enforcement disrupts peer networks and displaces sex workers from usual places of work, making it difficult for outreach services to find people and hindering sex workers ability to organise. It creates significant barriers for street based sex workers to report crime to the police. Sex workers fear that reporting crime will result in arrest.

Discriminatory restrictions on private (or independent) sex workers

Private sex workers should not be restricted from working with other workers for safety, to share costs, to reduce isolation and for peer support. Private sex workers who are not in management or employment relationships to each other are permitted to work together in Tasmania, the Northern Territory (with additional support staff) and in many parts of New South Wales (NSW). [Evidence](#) shows this occurs without negative amenity impact. Sex workers report greater flexibility, improved workplace health and safety, reduced overheads and a greater sense of security. Where sex workers must work alone or illegally, there is frequent police entrapment, harassment and arrest.

Discriminatory restrictions on advertising

Sex workers should not face sex work-specific criminal regulation on advertising. In Australia, there is already a national standard that applies to all commercial advertising. Sex workers, like any workers, must be able to advertise services clearly and negotiate directly with clients in advance of a booking, without fear of fines or police entrapment, and without higher advertising premiums. Sex work businesses must be able to advertise employment opportunities with transparency and clarity.



What do sex workers want from sex work law reform?

There are different sex work laws in each state and territory, and federal laws that impact sex workers including migrant sex workers. Full decriminalisation means every state and territory must **repeal sex work-specific criminal and licensing laws and regulations**. Decriminalisation is the essential first step in achieving sex worker rights including human and labour rights.

Full decriminalisation of sex work must be accompanied by the repeal of sex work-specific migration restrictions and the introduction of **anti-discrimination and vilification protections** so sex workers can access the benefits of decriminalisation and live free and self-determined lives, protected by law from stigma and discrimination. It must also include **spent convictions, expungement of criminal records and the permanent destruction of all sex work-specific registration records** containing sex workers' personal and identity details.

There must be meaningful change to laws that restrict the rights of migrant workers, Aboriginal and Torres Strait Islander people, people who use drugs, and LGBTIQ+ people in order for the benefits of decriminalisation to be fully realised by those most impacted by criminalisation, stigma and discrimination.

Sex worker organising and leadership are essential to law reform. Better laws and policies are attained when sex workers are integrally involved in all steps of law reform. This was **demonstrated** recently in the Northern Territory. For further reading on what full decriminalisation entails and why it is best practice sex work legislation, please visit scarletalliance.org.au.

Scarlet Alliance and our members will continue to advise governments as key stakeholders in law reform in every state and territory until the full decriminalisation of sex work is achieved and effectively implemented. We will continue to advocate for sex worker rights and protect the gains we have won towards the full decriminalisation of sex work.

SEX WORK IS WORK!

Scarlet Alliance, Australian Sex Workers Association is the peak national sex worker organisation in Australia. Formed in 1989, the organisation represents a membership of individual sex workers and sex worker organisations, projects, networks and collectives throughout Australia. Through our work and that of our membership, we have consistently maintained high levels of access to sex workers and sex industry workplaces in the major cities and many regional areas of Australia. Scarlet Alliance continues to play a critical role in informing policy through work with governments and the health sector, both in Australia and internationally, on issues affecting sex workers in the Australian sex industry.