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Civil and Regulatory Law Branch, Legislation, Policy and Programs
Justice and Community Safety Directorate, ACT Government
GPO Box 158
Canberra ACT 2601

Submitted via <https://yoursayconversations.act.gov.au/fairer-and-safer-sex-work-regulation>

To the Justice and Community Safety Directorate,

Thank you for the opportunity to consult on *Fairer and Safer Sex Work Regulation in the ACT*.

Formed in 1989, Scarlet Alliance is the peak body representing sex workers and sex worker organisations in Australia. Our work includes policy analysis, advice to all levels of government, and proactive advocacy for decriminalisation across all jurisdictions.

We have a sophisticated understanding of how regulatory frameworks impact sex workers' daily lives. This is informed by our member organisations, outreach trends, direct engagement with individual sex workers and groups including DecrimACT, decades of research collaboration, and our own lived experiences. We draw upon all of this expertise in our submission below.

The ACT has a strong commitment to human rights. It was the first Australian jurisdiction to introduce a human rights act, and recently became the first to recognise housing as a human right. As recognised by the World Health Organisation,¹ the UN Human Rights Council Working Group on Discrimination Against Women and Girls,² Amnesty International³ and Human Rights Watch,⁴ **sex work decriminalisation is also a human rights issue**. This consultation provides the ACT Government with an opportunity to act on this commitment.

While decriminalisation involves some technical legal changes, ACT sex workers' key asks are straightforward:

- Repeal the *Sex Work Act 1992* in full, along with the *Work Health and Safety (Sex Work Code of Practice) Approval 2023* and other associated regulations
- Allow sex work businesses to operate under the same planning, business and WHS laws as other ACT businesses
- Amend the *Discrimination Act 1991* to clearly protect sex workers from discrimination
- Enable people with historical sex work convictions to apply to have them extinguished, and destroy old registers
- Resource a sex worker-led support and peer education organisation to ensure the effective implementation of the reforms and meet the ongoing needs of sex workers.

¹ World Health Organisation, *Violence Against Sex Workers: What Does the Evidence Say and What Are the International Human Rights Standards That Inform WHO Normative Standards* (2024). <https://www.ohchr.org/sites/default/files/documents/issues/women/sr/call56hrc/subm-sr-violence-against-un-enti-world-health-organization.pdf>.

² United Nations Human Rights Council Working Group on Discrimination Against Women and Girls, *Eliminating Discrimination Against Sex Workers and Securing Their Human Rights*, UN Doc A/HRC/WG.11/39/1 (2023). <https://docs.un.org/en/A/HRC/WG.11/39/1>.

³ Amnesty International, *Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (Policy Document POL 30/4062/2016, 2016). <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>.

⁴ Human Rights Watch, *Sex Work* (9 December 2024) <https://www.hrw.org/topic/womens-rights/sex-work>.

Submission on Fairer and Safer Sex Work Regulation in the ACT

Background

Consultation question (consultation paper p 31):

Considering the existence of other laws of general application that apply to businesses and individuals, do you support the removal of all industry specific offences and regulations through the full repeal of the Sex Work Act? Why or why not?

Sex work is the exchange of sexual services, labour, products or performance for payment, trade or reward.

It takes place in many forms: in-person full service sex work, erotic massage, BDSM, kink and fetish, stripping and erotic dance, topless waitressing, online work, porn and content creation.

The ACT currently has a framework of laws and regulations focused on in-person sex work. *Some* forms of sex work are allowed — ‘commercial’ businesses that comply with a special registration system and ‘sole operator’ sex workers who work alone. **Sex work that falls outside of these categories is punishable by criminal penalties.** Given the tiny number of registered businesses it could be said the system has failed. Scarlet Alliance attributes this failure to the registration framework. It is narrow, outdated, and not fit for purpose.

What is decriminalisation?

Decriminalisation means removing all laws that treat sex work differently from other jobs. This means getting rid of: criminal laws, special licensing systems, police powers and any other rules and regulations that treat sex workers, support staff, workplaces or clients differently from other workers and businesses.

Decriminalisation does NOT mean sex work becomes unregulated. Instead, sex workers are covered by the same workplace, planning, tax, health and criminal laws as everyone else.

Why do ACT sex workers want decriminalisation?

ACT sex workers want decriminalisation because the current system does not work. It doesn't make us healthier, it doesn't make us safer, and it doesn't give us access to the same workers' rights and work health and safety (WHS) protections as other workers in the ACT.

Criminal penalties and special licensing/registration⁵ systems create barriers to sex workers:

- accessing healthcare,⁶
- enforcing WHS protections,

⁵ While the *Sex Work Act 1992* uses the term ‘registration,’ Scarlet Alliance recognises this system as a licensing regime, because it is almost identical to similar regimes now repealed in Victoria, the Northern Territory and Queensland.

⁶ Elena Jeffreys, Janelle Fawkes and Zahra Stardust, 'Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention' (2012) 2(3) *World Journal of AIDS* 203 <https://doi.org/10.4236/wja.2012.23026>; Linda Selvey et al, *Western Australian Law and Sex Worker Health (LASH) Study Final Report* (Curtin University, May 2017) <https://espace.curtin.edu.au/handle/20.500.11937/88796>; Lucy Platt et al, 'Associations between Sex Work Laws and Sex Workers' Health: A Systematic Review and Meta-Analysis of Quantitative and Qualitative Studies' (2018) 15(12) *PLOS Medicine* e1002680 <https://doi.org/10.1371/journal.pmed.1002680>; Kahlia McCausland et al, "'It is Stigma that Makes My Work Dangerous': Experiences and Consequences of Disclosure, Stigma and Discrimination among Sex Workers in Western Australia" (2022) 24(2) *Culture, Health & Sexuality* 180 <https://doi.org/10.1080/13691058.2020.1825813>.



- pursuing justice and accessing criminal and civil legal systems,⁷
- fully participating in our communities, free from stigma and discrimination.

Decriminalisation will bring the ACT into line with reforms already undertaken in New South Wales (1995), New Zealand (2003), the Northern Territory (2020), Victoria (2022) and Queensland (2024). It would build on the successes in those places and support relevant government agencies to treat sex work like any other kind of work.

Will decriminalisation harm the wider community?

We know that during this consultation, some people will raise concerns about industry expansion, 'mega brothels' and widespread public indecency.

These concerns are based on moral opinion, not evidence. Thirty years of evidence from New South Wales and New Zealand has shown no change to the size or nature of the sex industry after decades of decriminalisation.⁸ Decriminalisation will change very little for most people in the ACT, but it will make a real, positive difference for sex workers and their rights.

Recommendation 1: Decriminalise sex work by repealing the *Sex Work Act 1992*, *Sex Work Regulation 2018* and *Work Health and Safety (Sex Work Code of Practice) Approval 2023*, and allow sex workers and sex work businesses to be regulated by the same planning, business and work health and safety laws as other workers and businesses in the ACT.

Industry-specific regulation - registration and planning law

Consultation questions (consultation paper p 27):

Register of brothels and escort agencies

Noting that...the proposed removal of additional registration requirements in the ACT would make sex work businesses subject to the same laws and obligations that apply to other businesses:

Do you support removing registration requirements for brothels and escort agencies? Why or why not?

If ACT maintained a register of sex work businesses, should the register of brothels and escort agencies be publicly available? What would be the purpose of having the register publicly available?

Planning

Noting sex work businesses would be subject to the same existing planning laws as other businesses, including laws around the operation of home businesses:

Do you support the removal of the restriction on brothels and escort agencies only operating in the suburbs of

⁷ Kathleen Deering et al, 'A Systematic Review of the Correlates of Violence against Sex Workers' (2014) 104(5) *American Journal of Public Health* e42 <https://doi.org/10.2105/AJPH.2014.301909>;
World Health Organisation, *Violence against Sex Workers: What Does the Evidence Say and What Are the International Human Rights Standards That Inform WHO Normative Standards* (WHO, February 2024)
<https://www.ohchr.org/sites/default/files/documents/issues/women/sr/call56hrc/subm-sr-violence-against-un-enti-world-health-organization.pdf>;

Zahra Stardust et al, '"I Wouldn't Call the Cops if I was Being Bashed to Death": Sex Work, Whore Stigma and the Criminal Legal System' (2021) 10(3) *International Journal for Crime, Justice and Social Democracy* 142 <https://doi.org/10.5204/ijcjsd.1894>.

⁸ Gillian Abel, Lisa Fitzgerald and Cheryl Brunton, 'The Impact of Decriminalisation on the Number of Sex Workers in New Zealand' (2009) 38(3) *Journal of Social Policy* 515 <https://doi.org/10.1017/S0047279409003080>;

Basil Donovan et al, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (Kirby Institute, University of New South Wales, 2012) <https://www.acon.org.au/wp-content/uploads/2015/04/NSW-Sex-Industry-Report-CSRH-2012.pdf>.



Fyshwick and Mitchell? Why or why not?

If the ACT were to remove the restriction on brothels and escort agencies only operating in the suburbs of Fishwick and Mitchell, do you think any other changes to planning laws would be needed? If yes, what changes would you recommend and why?

Offences relating to non-compliance with registration requirements

Do you support repealing offences related to non-compliance with the registration system for commercial brothels and escort agencies? If you don't support repealing the offence, should non-compliance with registration for a commercial brothel or escort agency be subject to civil penalties or other sanctions?

The ACT's registration framework

The *Sex Work Act 1992* defines sex work businesses with 2 or more workers as either 'commercial brothels' or 'commercial escort agencies.' These businesses must register with Access Canberra (on a publicly accessible register) and pay annual fees. 'Commercial brothels' may only operate in the suburbs of Fishwick or Mitchell.

This system provides no real benefit. It does not encourage business owners to comply with WHS obligations. By requiring all businesses with 2 or more workers to register, it forces sex workers to choose between working for someone else or working completely alone.

The registration system must be abolished as part of decriminalisation. Here's why:

1. It forces workplaces into isolated industrial areas, compromising workers' safety

'Commercial brothels' are only permitted in the suburbs of Fishwick and Mitchell.⁹ As the consultation paper notes, these are industrial suburbs that 'are not adequately serviced by public transport, do not have much late-night foot traffic and are often poorly lit.' This creates safety issues when travelling to and from work,¹⁰ and barriers to accessing essential services.

2. It excludes the majority of workers

There are currently only five registered businesses in Canberra. All are registered as both 'commercial brothels' and 'commercial escort agencies.' In practice, this means that there is only one *type* of sex work business compliant with the registration.

This lack of diversity limits sex workers' choices in who we choose to work for and the services that we offer. In our experience, these venues expect workers to offer 'full service' (i.e. intercourse), and to see clients both at the venue (incalls) and visit clients' homes/hotel rooms (outcalls). These venues are also likely to hire workers who fit within perceived stereotypes of 'desirability.' This leaves many workers excluded — including those who prefer only to offer incalls (or outcalls), those who offer massage or non-penetrative services, and older, plus-size or non-white workers. These workers are left with three options: work in criminalised settings with no WHS protections, work with a friend and risk criminal prosecution for non-compliance with the *Sex Work Act 1992*, or work completely alone.

3. Criminalisation means no workplace protections

Sex work that takes place outside of the framework set up by the *Sex Work Act 1992* is treated as criminal activity and falls outside of the *Work Health and Safety Act 2011* and the *Work Health and Safety (Sex Work Code of Practice) Approval 2023*. This means that sex workers working for unregistered businesses or in any other non-recognised arrangements have no access to rights and responsibilities intended for their workplaces (the

⁹ *Sex Work Regulation 2018* (ACT) s 2.

¹⁰ Penny Crofts, 'Ambiguities in Approaches to Brothels: Disorderly Houses or Commercial Premises?' (2003) 20(6) *Environmental and Planning Law Journal* 14 <http://hdl.handle.net/10453/4881>.



Work Health and Safety (Sex Work Code of Practice) Approval 2023), and are also excluded from universal rights and responsibilities outlined in the ACT's WHS, industrial or work cover laws.

4. Registration has already been scrapped for private workers

The ACT has already acknowledged that the registration system fails in practice. In 2018, the ACT Government repealed registration requirements for private workers ('sole operators'), recognising that the requirements created privacy and safety risks and compliance burdens that outweighed any regulatory benefit.¹¹

While privacy and compliance-burden concerns are higher for individual workers than for larger businesses, the same logic applies—the compliance rate is negligible; the burden is real.

Planning requirements for sex work businesses under a decriminalised framework

It is vital that sex work businesses are incorporated into the Territory Plan so that all sex workers can access the benefits of decriminalisation.

Planning lessons from New South Wales and New Zealand

After New South Wales decriminalised sex work, the state government gave no clear guidance to local councils about how to treat sex work businesses. Many councils used this gap to effectively ban sex work businesses from their areas through 'tough' planning rules.¹² Some tried to ban sex work businesses entirely (including home-based businesses), while others set development requirements that were impossible to meet — effectively undermining decriminalisation at the local level. Before consent law reforms, some NSW local governments even employed private investigators to book sessions with sex workers to gather evidence against them,¹³ an act that would be understood as a crime today.

New Zealand's *Prostitution Reform Act 2003* was similarly unclear about local government powers. As a result, some councils took on an unnecessary prohibition role, leading to a wave of restrictive bylaws that were mostly struck down after costly and lengthy legal proceedings.¹⁴

Planning lessons from Victoria and Queensland

Conversely, Victoria and Queensland offer useful models for the ACT to incorporate decriminalised sex work businesses into planning law. In both jurisdictions, sex work businesses are protected from discrimination in planning law,¹⁵ and sex work businesses are permitted to operate anywhere that a 'shop' can operate under the relevant planning scheme.¹⁶

This approach avoids the problems seen in New South Wales and New Zealand by setting clear, non-discriminatory planning guidance from the start. Planning ACT should adopt a similar approach, by stating in the Territory Plan that sex work businesses are to be treated like any other business of a similar

¹¹ See Standing Committee on Justice and Community Safety, *Inquiry into the Prostitution Act 1992* (Report No. 9, February 2012) 132-47. <https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/Standing-Committees-Seventh-Assembly/Standing-Committee-on-Justice-and-Community-Safety/09-Inquiry-into-the-Prostitution-Act-1992>.

¹² Penny Crofts, 'Not in my neighbourhood: Home businesses (sexual services) and council responses' (2003) 9(10) *Local Government Law Journal* 13 <https://opus.lib.uts.edu.au/bitstream/10453/939/3/2003001859.pdf>.

¹³ SWOP NSW, *Obtaining Sex Under a False Pretence for the Purpose of Investigation or Obtaining Information is Rape* (Position Paper, 26 February 2019) <https://swop.org.au/news-media/briefing-papers?download=509:obtaining-sex-under-false-pretences>.

¹⁴ See, e.g. *Willowford Family Trust v Christchurch City Council* HC Christchurch CIV-2004-409-002299, 29 July 2005 <https://newnzpc.org.nz/wp-content/uploads/2025/08/Willowford-Family-Trust-and-Brown-v-CCC.pdf>.

¹⁵ See *City of Brisbane Act 2010* (Qld) s 40A; *Local Government Act 2009* (Qld) s 37A; *Sex Work Decriminalisation Act 2022* (Vic) s 3.

¹⁶ Victorian Department of Environment, Land, Water and Planning, *Advisory Note 79: Amendment VC217 - Decriminalising sex work* (2022) <https://www.planning.vic.gov.au/guides-and-resources/guides/all-guides/decriminalisation-of-sex-work-in-victoria>; Queensland Department of State Development, Infrastructure and Planning, *Decriminalisation of the sex work industry and the Queensland planning framework* (August 2024) <https://www.planning.qld.gov.au/planning-issues-and-interests/decriminalisation-of-the-sex-work-industry-and-the-queensland-planning-framework>.



size. This would allow sex workers and operators to choose their location based on the same practical factors as any other business owner (e.g. proximity to clients, public transport and safety, disability access or opportunity to renovate for accessibility), without facing discriminatory planning barriers.

Home-based businesses

Decriminalisation must allow sex workers to run home-based businesses with a friend, colleague or support person present for their safety. As the consultation paper notes, sole operator sex workers can already run home-based businesses without development approval, as long as they meet the requirements for exempt home-based businesses.

Evidence supports that home-based business frameworks that encourage compliance are most effective in supporting a decriminalised framework.¹⁷ While outside of the scope of this consultation, the government may need to consider reforming the rules around exempt home-based businesses, for example, by allowing a worker who doesn't live at the premises to work there. This would deliver safety for independent sex workers, and also a sensible response to changed post-COVID working patterns more broadly.

Recommendation 2: Repeal ss 11-14 and s 18 of the *Sex Work Act 1992* and associated regulations, abolishing the ACT's registration system.

Recommendation 3: Allow sex work businesses to be incorporated into ACT's planning framework by

- creating non-discriminatory planning provisions allowing sex work businesses to be integrated into the community, subject to the same requirements as other businesses (e.g. shops or cafes)
- enabling independent sex workers to operate home-based businesses with a colleague or support person, without the need for development approval.

Other industry-specific criminal offences

The offence of 'soliciting in a public place' (s 19)

Consultation question (consultation paper p 28):

The offence of soliciting in a public place

Noting that...the ACT has existing public order offences relating to offensive behaviour and indecent exposure:

Do you support repealing offences in the Sex Work Act in relation to soliciting sex work in a public place? Why or why not?

If you do not support the repeal of offences relating to soliciting in their entirety, would you support amending the offence so that it only applies if a person is soliciting near a particular place or at certain times of day (as is the case in Victoria)? Why or why not?

The *Sex Work Act 1992* s 19 should be repealed. Retaining this section is unnecessary, exceptionalist, and contrary to natural justice.

Section 19 criminalises accosting any person, soliciting or loitering 'for the purpose of offering or procuring commercial sexual services' in a public place. As the consultation paper notes:

- The vast majority of sex work, sex work advertising and arranging of sex work services occurs in indoor settings or via tech platforms (mobile phones, web advertising).

¹⁷ See, e.g. Penny Crofts, 'Not in My Neighbourhood: Home Businesses (Sexual Services) and Council Responses' (2003) 9 *Local Government Law Journal* 10. <https://opus.lib.uts.edu.au/bitstream/10453/939/3/2003001859.pdf>.



- There is no available data to show that this offence has ever been enforced.
- The ACT has general criminal laws that apply to all people that prohibit indecent exposure and offensive behaviour.¹⁸

Victoria's approach

The consultation paper asks whether the ACT should consider introducing a soliciting offence similar to Victoria's, which criminalises soliciting during certain times and places. Scarlet Alliance does not support this approach.

Victorian legislation criminalises soliciting or loitering for the purposes of sex work 'at or near' a school premises, education or care services premises, or children's services premises during the hours of 6:00 am and 7:00 pm.¹⁹ It also criminalises soliciting or loitering for the purposes of sex work 'at or near' a 'place of worship' during the hours of 6:00 am and 7:00 pm and also at any time on 'prescribed days' set out in regulation.²⁰

This is confusing, unwieldy and ineffective. There is no agreed definition of what constitutes 'near' for the purposes of the offence. It also requires both sex workers and law enforcement officials to be familiar with the calendars of three different religions. Reports from our member organisation Vixen, as well as Southside Justice's Sex Worker Legal Program indicate that this offence is also not enforced.

Recommendation 4: Repeal s 19 of the *Sex Work Act 1992*. There is no evidence of public impacts arising from street-based sex work in the ACT, and existing public order offences are adequate.

Criminal offences relating to prophylactics and references to medical testing (ss 26-27)

Consultation questions (consultation paper p 28):

Offences relating to prophylactics and references to medical testing

Do you support repealing offences requiring sex workers to use prophylactics? Why or why not?

Do you support repealing offences for commercial operators for failing to provide sex workers with prophylactics or discouraging the use of prophylactics? Why or why not?

Noting that current WHS regulations require commercial operators provide and encourage prophylactic use: Do you support repealing offences for sex work businesses and sex workers relating to using a medical test to imply that a sex worker does not have an STI? Why or why not?

Sexual health is everybody's responsibility.

Sex workers in Australia have rates of STI and BBV comparable to or lower than the general population.²¹ Research from Australia and overseas shows that sex work-specific legislative frameworks, such as criminalisation and licensing, function as barriers to sex workers accessing healthcare, including sexual health

¹⁸ *Crimes Act 1900* (ACT) ss 392, 393.

¹⁹ *Summary Offences Act 1966* (Vic) s 38B(1)-(2).

²⁰ *Summary Offences Act 1966* (Vic) s 38B(3); *Summary Offences Regulations 2022* (Vic) r 5.

²¹ See Kirby Institute, *Annual Surveillance Reports*. <https://www.kirby.unsw.edu.au/report-type/annual-surveillance-reports>.



prevention, testing and treatment.²² Conversely, sex work decriminalisation provides the most enabling environment for sex workers to engage with healthcare, including regular STI testing and treatment.²³

The *Sex Work Act 1992* contains 3 criminal offences relating to 'prophylactics' (condoms and other safer sex PPE) and sexual health testing. **All three of these provisions must be repealed as part of sex work decriminalisation.**

Section 26

The ACT government has already acknowledged that provisions criminalising STI and BBV in sex workers are discriminatory, repealing most of these provisions in 2018. Section 26 remains as an archaic provision that was overlooked during these reforms.

Section 26 criminalises using STI testing to 'induce someone else to believe that the sex worker is not infected with a sexually transmissible infection.' The underlying premise of this section is that sex workers and/or sex work business owners use sexual health test results to 'trick' clients into booking services. There is no evidence (either historical or current) to support this occurring in the ACT. The section perpetuates a highly stigmatising myth that sex workers are vectors of disease, attempting to deceive clients into contracting an STI or BBV.

Section 26A

Section 26A creates a criminal offence for commercial operators failing to provide prophylactics and/or taking reasonable steps to ensure workers use. This is a duplication of commercial operators' existing WHS responsibilities, which are already enforced by WorkSafe ACT. These responsibilities would continue under a decriminalised framework.²⁴ Like every other industry, enforcement of PPE provision should be dealt with by WorkSafe ACT rather than the criminal law. This means repealing *Work Health and Safety (Sex Work Code of Practice) Approval 2023* and allowing current PPE provisions that cover all businesses in the ACT to prevail in sex work workplaces also (see section on the Sex Work Code of Practice below).

Section 27

Section 27(1)-(2) criminalises commercial operators failing to take reasonable steps to ensure no services occur without prophylactics, or discouraging prophylactic use. These criminal offences are also essentially repeats of existing WHS responsibilities.

Section 27(3) creates a criminal offence for a person to provide or receive commercial sexual services without the use of a prophylactic. This is also known as mandatory condom use. The section is ambiguous as to whether this applies to all sex workers or just to sex workers within the licensed brothel sector. The section also fails to account for the range of safer sex strategies sex workers actually use, appropriate to the services being provided (e.g. biomedical prevention strategies).

Under decriminalisation, sex workers (like all workers) will continue to have responsibilities to take care of their own health and safety, not do anything that could hurt others, and follow workplace WHS instructions, policies and procedures.²⁵ Further, all adults in the ACT (including sex workers and their clients) will continue

²² See, e.g. Elena Jeffreys, Janelle Fawkes and Zahra Stardust (n 6); Linda Selvey et al, *Western Australian Law and Sex Worker Health (LASH) Study Final Report* (Report, Curtin University, May 2017) <https://espace.curtin.edu.au/handle/20.500.11937/88796>;

Lucy Platt et al (n 6);
Kahlia McCausland et al (n 6).

²³ Ibid.

²⁴ See WorkSafe ACT, 'Personal Protective Equipment' [https://www.worksafe.act.gov.au/health-and-safety-portal/managing-safety/personal-protective-equipment;Work Health and Safety Regulation 2011](https://www.worksafe.act.gov.au/health-and-safety-portal/managing-safety/personal-protective-equipment;Work%20Health%20and%20Safety%20Regulation%202011) (ACT) div 3.2.5.

²⁵ *Work Health and Safety Act 2011* (ACT) [s 28](#).



to have responsibilities under the *Public Health Regulation 2000* to take 'reasonable precautions' to avoid transmitting STI and BBV.²⁶

Finally, s27(4) conflates the serious issue of 'stealthing' (non-consensual condom tampering or removal) with PPE use. Where use of a condom is a contingency factor in providing consent to sex, tampering or removal of the condom voids that consent. The *Crimes Act 1900* recognises that 'stealthing' is sexual assault - stating that a person does not consent to sexual activity if they '[participate] in the act because of an intentional misrepresentation by another person about the use of a condom.'²⁷ In 2025, a Canberra man was convicted of 'stealthing' a sex worker under this provision.²⁸

Retaining 27(4), which carries a maximum penalty of a 50 penalty unit fine, undermines the recognition of 'stealthing' as serious sexual assault and implies that sex workers' consent matters less than others.

Recommendation 5: Repeal ss 26, 26A and 27 of the *Sex Work Act 1992*. Sexual health is everybody's responsibility and is already governed by WHS law. These provisions are duplicative, stigmatising, and in the case of s 27(4), actively harmful to sex workers' access to justice.

The offence of permitting a child to be present at a sex work premises (s 23)

Consultation questions (consultation paper pp 28-9):

Offences relating to permitting a child to be present at a sex work premises

The ACT currently has an offence in relation to an operator of a brothel or escort agency permitting a child to be on the premises without a reasonable excuse...

Noting the existing offence of grooming or depraving a young person, should the ACT have an offence around a child being present on sex work premises?

If there was an exception for a child to be present at a sex worker premises (such as an independent sex worker, working from home where their child may be present), should the offence not permit a child to be present at sex work businesses with more than one sex worker? Why or why not?

Would you support creating an exemption in relation to home-based businesses (so sex workers can work together at a home-based business)? Why or why not?

Section 23 contains an offence prohibiting young people from being on the premises of a brothel or escort agency. This offence should be repealed, and not retained or extended.

As noted in the consultation paper, there are already robust provisions that protect children from harm in all settings. The *Crimes Act 1900* criminalises sexual offences against young people, exposing them to sexual activity, and failing to report offending, with all adults in the ACT required to report child sexual abuse.²⁹ The *Children and Young People Act 2008* also provides a framework for voluntary and mandatory reporting of serious harm towards children.³⁰

A child on *any* premises who is not privy to or aware of sexual activity taking place in another space is not being harmed. The definition of what could be considered a 'sex work premises' is complex - it could be a private residence, a large mansion, or even a call centre, making it inherently difficult to apply consistently or

²⁶ [Public Health Regulation 2000](#) (ACT) s 21.

²⁷ *Crimes Act 1900* (ACT) s 67(1)(j).

²⁸ Elizabeth Byrne, 'Man Found Guilty of Stealthing Sex Worker at Canberra Brothel' *ABC News* (21 February 2025). <https://www.abc.net.au/news/2025-02-21/man-jury-verdict-stealthing-covert-condom-removal-canberra-court/104959410>.

²⁹ *Crimes Act 1900* (ACT) ss 55, 61, 66, 66AA, 66A.

³⁰ [Children and Young People Act 2008](#) (ACT) ch 11.



fairly. The relevant question is not what kind of building the child is in, or how many sex workers are present. The relevant question is whether the child is exposed to sexual activity.

For this reason, it is not appropriate to create or retain location-specific offences. Creating a specific sex work-related offence, treating sex workers who are parents differently from other work-from-home workers is discriminatory and unnecessary. Criminal law and child protection frameworks should be utilised to capture harmful conduct in this regard.

Recommendation 6: Repeal s 23 of the *Sex Work Act 1992*. Children should never be exposed to sexualised conduct in any space, and this offending is already captured within criminal and child protection frameworks.

Other offences relating to children (ss 20-22)

Consultation questions (consultation paper p 29):

If the Sex Work Act was retained, should the existing sexual exploitation offences relating to children in the Sex Work Act be amended? If yes, what changes would you suggest?

If the Sex Work Act was repealed, should the existing sexual exploitation offences relating to children in the Sex Work Act be moved to other legislation (such as the Crimes Act 1900)? If yes, should any additional changes be made to the existing provisions? If no, why not?

As noted in the consultation paper, sexual exploitation of children is not sex work. It is serious criminal conduct, and it is already comprehensively addressed by existing law.

Sections 20–22 address offences that are already captured by the *Crimes Act 1900*, including s 79 on sexual servitude, and by Commonwealth criminal law. Creating parallel or duplicate provisions is not consistent with decriminalisation, and provides no additional protection.

Recommendation 7: Repeal ss 20-22 of the *Sex Work Act 1992*. This is serious criminal conduct, and adequately covered by existing criminal laws

Offence relating to duress (s 17)

Consultation questions (Consultation Paper p 29-30):

If the Sex Work Act was retained, should the existing sexual exploitation offences relating to duress in the Sex Work Act be amended to strengthen protections? If yes, what changes would be needed to strengthen protections for vulnerable persons at risk of duress, coercion or other sexual exploitation?

If the Sex Work Act was repealed, should the existing sexual exploitation offences relating to duress in the Sex Work Act be moved to other legislation (such as the Crimes Act 1900)? If yes, should any additional changes be made to strengthen protections for vulnerable persons at risk of duress, coercion or other sexual exploitation? If no, why not?

As noted in the consultation paper, sexual offending, coercion and duress are not sex work. Like the child exploitation offences, this conduct is already prohibited by the criminal law. Creating sex worker-specific



duress provisions in other legislation is not consistent with decriminalisation. It risks perpetuating the stigmatising and incorrect conflation of sex work with exploitation, undermining the purpose of reform.

All people in the ACT are already protected from duress, coercion and sexual exploitation under existing criminal laws.³¹ Section 17 does not need to be relocated to the *Crimes Act 1900* or any other legislation; the protections are already there.

Recommendation 8: Repeal s 17 of the *Sex Work Act 1992*. This conduct is adequately covered by existing provisions in the *Crimes Act 1900* and the Commonwealth Criminal Code.

Criminal offences more generally

Consultation questions (consultation paper p 30):

Are there criminal offences in other jurisdictions regarding operating a sex work business that the ACT should consider adopting for the protection of sex workers or other community members? If yes, what offences would you recommend and why?

Noting that sex workers often experience unfair discrimination and vilification, should the ACT consider adopting offences to prevent sex workers experiencing this type of behaviour?

Scarlet Alliance does not support retaining or creating criminal offences related to the operation of sex work businesses. Sex workers and sex work business operators *are* members of ACT's communities, and should be subject to the same laws and responsibilities as other community members. This is what decriminalisation means.

While sex workers do experience high levels of discrimination and vilification, this is better dealt with by civil anti-discrimination law (i.e. through amendments to the *Discrimination Act 1991*). Criminal offences are not the right tool to address discrimination and vilification because:

- These offences would require sex workers to make complaints to police. As police currently enforce discriminatory sex work laws in the ACT, there is likely insufficient community trust that police can appropriately handle discrimination complaints.³²
- The focus of criminal offences is to punish the offender, rather than provide resolution to complaints.
- The high attrition rates for criminal prosecutions and burden of proof requirements, combined with the complex nature of most discrimination cases, will make it unlikely that criminal offences would result in justice outcomes for sex workers who have experienced discrimination.

Recommendation 9A: Do not introduce new criminal offences in relation to sex work or the operation of sex workers as part of decriminalisation. This undermines the core intent of decriminalisation: that sex workers and sex work businesses are part of the community, subject to the same laws as everyone else.

Recommendation 9B: Do not introduce criminal offences targeting discrimination and vilification towards sex workers. Discrimination and vilification should be dealt with by the introduction of civil anti-discrimination and anti-vilification protections (see **recommendation 12** below).

³¹ *Crimes Act 1900* (ACT) [s50B, s67\(1\)\(b\)-\(g\)](#); [Crimes Act 1900 \(ACT\)](#) pt 5; [Criminal Code Act 1995 \(Cth\)](#) divs 270-271.

³² Zahra Stardust et al (n 7).



Police entry powers (s 28)

Consultation question (consultation paper p 30):

Do you support repealing the specific power for police to enter a brothel or escort agency? Why or why not?

Scarlet Alliance does not support retaining any powers that position police as regulators of sex work businesses. As covered in the consultation paper, retention of s 28 is particularly unnecessary, as it only grants entry if police believe an offence against children has been, is being or will be committed. Entry in these circumstances would continue to be covered by ACT's general powers to enter premises to prevent offending.³³

Recommendation 10: Repeal s 28 of the *Sex Work Act 1992*. Police already have powers to enter any ACT premises to prevent offending, and no sex work-specific provision is needed.

Powers to make advertising regulations

Consultation questions (consultation paper p 30-1):

Noting that the ACT has not utilised the existing power in the Sex Work Act to make regulations in relation to the advertisement of sex work services...Do you support repealing the provision which allows the ACT Government to set advertising standards for the sex work industry by way of regulation? Why or why not?

Given that the Sex Work Act does not currently prescribe specific advertising, and sex work is already subject to the same laws that regulate advertising generally: Should sex work advertising and signage requirements in the Territory Plan be clarified? If yes, how can they be clarified to ensure that sex workers and establishments are not unfairly discriminated against?

The *Sex Work Act* contains a provision granting power to make regulations about the 'size, form and content of advertisements relating to brothels and escort agencies'.³⁴ No regulations have been made under this provision. This provision should be repealed, and there is no need for new sex work-specific advertising rules:

- Most advertising for individual sex workers and sex work businesses takes place online, in spaces dedicated to sex work advertising. It is only likely to be viewed by its intended audiences.
- Sex work businesses (both registered and unregistered) and individual sex workers are already operating throughout the ACT without specific regulation, with discreet advertising and signage to direct customers that does not offend the wider community.
- All Australian advertising (including outdoor advertising) is already subject to Australian Consumer Law and the Australian Association of National Advertisers (AANA) Code of Ethics. Online advertising is also subject to Australia's eSafety framework.

Signage requirements in the Territory Plan should be the same for sex work businesses as for any other comparable business.

Recommendation 11: Repeal s 32 of the *Sex Work Act 1992*, and do not introduce special advertising

³³ [Crimes Act 1900 \(ACT\)](#) ss 188-90.

³⁴ *Sex Work Act 1992 (ACT)* [s32\(2\)\(j\)](#).



regulations for sex workers and sex work businesses. Sex workers and sex work businesses already advertise throughout the Territory, subject to Australian Consumer Law, the Australian Association of National Advertisers (AANA) Code of Ethics and Australia's eSafety framework.

Implementation

Consultation questions (consultation paper p 31):

If reforms were to be progressed, should the reforms be commenced in stages? If yes, which reforms should be introduced first and why? If other reforms are introduced at a later date, why should this occur?

If reforms were progressed, what timeframe do you think should be allowed to prepare for the changes (i.e. how long after a Bill is passed should the reforms commence)?

Should the ACT review the implementation of the reforms within a set timeframe to evaluate the effectiveness of sex work reforms? If so, when should a review occur (for example, within five years from commencement)?

Decriminalisation requires a clear plan for commencement and implementation.

Staged implementation

In our experience, staged implementation does not deliver any benefits. In Victoria, decriminalisation reforms were implemented in two stages, with some commencing mid-2022 and others commencing in 2023. While this was intended to allow a transitional period from a licensing to a decriminalisation framework, it generated significant confusion for sex workers, business owners/operators and even within government agencies responsible for regulation.

What does successful implementation require?

Decriminalisation is not just a legislative change. It requires investment in the systems and relationships that make reform work in practice:

- Funding for an autonomous peer-led sex worker organisation to develop community education, information and support on decriminalisation changes
- Co-creation of appropriate regulatory guidance and information (e.g. WHS guidelines) with sex worker organisations
- Peer-led training for police, WorkSafe ACT and other ACT government agencies on decriminalisation and working with sex workers
- Co-creation of practice guidelines and public education materials with ACT Human Rights Organisations to ensure sex workers are included within anti-discrimination frameworks
- Resourcing for community legal centres to ensure that sex workers can access legal advice and support.

Evaluation

Scarlet Alliance supports including a provision for statutory review within legislative reforms. In Victoria, a review is to be conducted within 3-5 years of commencement,³⁵ and in Queensland within 4-5 years of commencement.³⁶

Recommendation 12A: Implement decriminalisation reforms without staged commencement. All reforms should take effect simultaneously on a clearly defined commencement date as soon as practicable after legislation is passed.

³⁵ Sex Work Decriminalisation Act 2022 (Vic) [s 4](#).

³⁶ Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (Qld) s 33.



Recommendation 12B: Include a provision for statutory review of the implementation and effectiveness of decriminalisation within five years of commencement. This review should be conducted in collaboration with peer-led sex worker organisations.

Anti-discrimination, spent convictions and liquor licensing

Anti-discrimination

Consultation questions (consultation paper p 31-2):

Should the Discrimination Act 1991 be amended to include a specific protected attribute protecting sex workers from discrimination? If yes, can you provide concrete examples of discrimination (complaints) in which section 7 (1) (p) provided insufficient protection?

As an alternative, should the Discrimination Act 1991 be amended to provide 'sex work' as an example of a profession, trade or calling, noting that this would help highlight that sex work falls within the scope of this broader protected attribute?

Are there other amendments to discrimination laws that you would recommend?

ACT sex workers currently have limited protection from discrimination. While the *Discrimination Act 1991* includes a protected attribute of 'profession, trade, occupation or calling',³⁷ this has not reliably protected sex workers. This failure in large part stems from the broad exception in s 57N, which permits discrimination based on profession, trade, occupation or calling where it is 'reasonable in the circumstances' and 'relevant to [the] transaction.' For sex workers, this exception is broad enough to swallow the protection entirely.

A concrete example can be found on the ACT Human Rights Commission website, which states:

Example of profession, trade, occupation or calling discrimination

Martin wanted to apply for a new credit card. The credit card application asked Martin's occupation. Martin wrote down that he is a sex worker. The bank rejected Martin's application despite no evidence of a bad credit rating or unstable or low income.

Are there any exceptions?

It is not unlawful to discriminate against a person on the ground of the profession, trade, occupation or calling of the person in relation to any transaction where profession, trade, occupation or calling is relevant to that transaction and the discrimination is reasonable in those circumstances.³⁸

The website does not specify whether or not denying Martin a credit card because he is a sex worker would be considered 'reasonable' or 'relevant to that transaction.' Reports from our member organisation SWOP ACT and from ACT sex workers indicate that sex workers routinely experience discrimination when accessing financial products and services, including credit services.

Introducing a new protected attribute

In our experience, the best way to protect sex workers from discrimination is through the introduction of a **specific protected attribute in anti-discrimination legislation**. Examples include the protected attribute of 'employment in sex work or engaging in sex work, including past employment in sex work or engagement in

³⁷ *Discrimination Act 1991* (ACT) [s 7\(1\)\(p\)](#).

³⁸ ACT Human Rights Commission, 'Profession, Trade, Occupation or Calling' <https://www.hrc.act.gov.au/discrimination/profession-trade-occupation-or-calling>.



sex work' in the Northern Territory,³⁹ or 'sex work activity' in Queensland.⁴⁰ Introducing this attribute would protect our friends and associates,⁴¹ as well as former sex workers and people assumed to be sex workers.⁴²

Clarifying the existing attribute of 'profession, trade, occupation or calling'

Scarlet Alliance does not consider adding definitional guidance to the existing 'profession, trade, occupation or calling' attribute to be sufficient, given the ongoing risk that s 57N's broad exception would continue to swallow the protection in practice. If this approach is nonetheless taken, the ACT Government must resource community messaging to communicate that sex work falls within the attribute, and also repeal s 57N.

While outside the scope of this consultation, we note that true inclusion for sex workers within anti-discrimination law would require amendment of the *Discrimination Act 1991* to allow for:

- **Representative complaints:** complaints made by organisations on behalf of individuals or groups of individuals with their consent assist complainants and/or preserve privacy. For example, a sex worker peer organisation could make a complaint about sex work discrimination on a sex worker's behalf.⁴³
- **Pseudonymous complaints:** this would allow sex workers to make complaints without their real name and details being passed on to the person who discriminated against them.
- **Civil anti-vilification protections:** all attributes protected by the *Discrimination Act 1991* should be protected from both vilification and discrimination.

Recommendation 13: Amend the *Discrimination Act 1991* to include a specific attribute protecting sex workers from discrimination, without exceptions.

Spent convictions

Consultation question (consultation paper p 32):

If the Sex Work Act is repealed, should people convicted of historical sex work offences be able to apply for their conviction to be extinguished?

Repeal of the *Sex Work Act 1992* should include provisions to allow people who have been convicted of sex work-specific offences under the Act to apply to have previous convictions extinguished. This is consistent with approaches to other legislative reforms where it has been recognised that criminalisation has impinged upon human rights, for example decriminalisation of LGBTQ+ people and sexuality.

Recommendation 14: Include provisions allowing people to apply to have convictions for *Sex Work Act 1992* offences extinguished as part of sex work decriminalisation.

³⁹ *Anti-Discrimination Act 1992* (NT) [s 19\(1\)\(ec\)](#).

⁴⁰ *Anti-Discrimination Act 1991* (Qld) [s 7\(l\)](#).

⁴¹ This would be covered by the *Discrimination Act 1991* (ACT) [s 7\(1\)\(c\)](#), which includes 'association (whether as a relative or otherwise) with a person who is identified by reference to another protected attribute' as a separate attribute.

⁴² This would be covered by the *Discrimination Act 1991* (ACT) [s 7\(2\)](#), which protects people who have had an attribute in the past, and people presumed to have an attribute.

⁴³ For example, the Northern Territory permits the Anti-Discrimination Commissioner to authorise a person to act on behalf of a complainant: *Anti-Discrimination Act 1992* (NT) [s 62](#). Organisations may also make representative complaints about 'systemic discrimination' on behalf of groups that share a protected attribute: [s 60](#), [s 62A](#).



Liquor Licensing

Consultation questions (consultation paper p 32):

Noting...that existing sex work businesses located in Fyshwick and Mitchell can already sell / supply alcohol subject to a liquor licence:

If the Sex Work Act is repealed, should the Liquor Act be amended to allow the service of alcohol at all venues where sex work is occurring where the venue holds a liquor licence? Why or why not?

If yes, what criteria, if any, should be included for deciding the appropriateness of this? If no, should the existing location-based limits in the Liquor Act remain? Why or why not?

The *Liquor Act 2010* contains an offence prohibiting sex work occurring in licensed premises outside of Fyshwick and Mitchell.⁴⁴ This offence should be repealed as part of decriminalisation.

There is no need to treat sex work businesses as a separate category within the ACT's liquor licensing framework. As noted in the consultation paper, registered sex work businesses already hold liquor licenses without incident. Risks generated by the sale and supply of alcohol occur in any business where alcohol may be served - whether this occurs at a fine-dining restaurant, country pub or sex work business. These are risks appropriately managed through general liquor licensing frameworks, which specify hours of service, whether purchased alcohol may be taken of premises, responsible service of liquor training and guidelines and venue capacity.

The *Liquor Act 2010* should be amended to remove all references to sex work businesses or 'sexually explicit entertainment' as a distinct category. Sex work businesses that hold a liquor licence should be permitted to serve alcohol under the same conditions as any other licensed venue, without location-based restrictions linked to the former registration system.

Recommendation 15: Repeal s 140 of the *Liquor Act 2010*. Sex work businesses that hold a liquor licence should be permitted to serve alcohol under the same conditions as any other licensed venue, without location-based restrictions linked to the former registration system.

Other matters

Consultation questions (consultation paper p 32):

Do you think there are other issues in relation to sex work or the sex industry that the ACT Government should consider as part of these reforms?

Sex work decriminalisation will also require:

- repeal of the *Work Health and Safety (Sex Work Code of Practice) Approval 2023* (the Sex Work Code)
- destruction of all registers relating to the former registration system.

⁴⁴ Liquor Act 2010 (ACT) [s 140](#).



Repeal of the Sex Work Code

Sex work occurring within the registration system is currently subject to the Sex Work Code. Repeal of the Sex Work Code will be an essential step in creating a decriminalisation framework that delivers comprehensive, equal and non-discriminatory WHS protections for all sex workers in the ACT.

Problems with the Sex Work Code

- 5. The Sex Work Code only applies to sex work businesses operating within the licensing framework.** While the Code purports to apply to all sex work in the ACT, unlicensed sex work businesses are subject to criminal offences, and as such are *not* treated as PCBUs. As noted in the consultation paper, 'WorkSafe ACT relies on the public register and information from its internal case management system to inform and prioritise its regulatory activities.' This means that regulatory activities (including enforcement of the legislation and Code) only occur within the licensed sector.
- 6. The Sex Work Code does not address sex workers' actual WHS concerns.** The Sex Work Code currently purports to apply to a diverse industry comprising diverse work activities, work arrangements, risks and hazards. This can be contrasted with other ACT codes of practice, which focus on specific activities (e.g. the Work Health and Safety (Abrasive Blasting Code of Practice) 2022) or managing hazards that may occur in many, or all workplaces (e.g. the Work Health and Safety (Managing the Work Environment and Facilities Code of Practice) 2025).

Despite purporting to give sex workers equitable access to WHS rights and responsibilities, the Code has a myopic focus on prophylactic use, STI and BBV prevention and workplace violence. Like other workers and workplaces, particularly those that engage with members of the public, the majority of WHS concerns include fatigue, manual handling, and exposure to work-related violence. The undue focus on violence in the Code perpetuates the unevidenced narrative that workplace violence within the sex industry is exceptional; rather than a risk faced by multiple industries.

While STI and BBV prevention are important aspects of WHS for sex workers, the Code fails to mention or reference other important aspects of WHS (e.g. sexual and gender-based harassment, facilities management, fatigue and burnout, psychosocial hazards), potentially undermining sex workers' access to these protections.

- 7. The Sex Work Code does not account for the diverse work contexts and arrangements undertaken by ACT sex workers, and is not effectively scalable.** The Code describes PCBUs as including 'Operators of a commercial brothel and/or escort agency, sole operators, and sole operator brothels or sole operator escort agencies.'⁴⁵ Sex workers often work in a variety of different work arrangements, including as independent contractors (for commercial businesses), sole operators and in small co-operatives. In reality, the current Code is only relevant to the operators of commercial businesses. WHS guidance for sex workers must be applicable to diverse work arrangements, and provide scalable guidance for workers and businesses of different sizes providing different services.

Recommendation 16: Repeal the *Work Health and Safety (Sex Work Code of Practice) Approval 2023*. All sex work and sex workers should be covered by the *Work Health and Safety Act 2011* (ACT), and WorkSafe ACT should collaborate with sex worker peer organisations to develop effective, appropriate and scalable WHS guidance material.

⁴⁵ *Work Health and Safety (Sex Work Code of Practice) Approval 2023*, 7 <https://www.legislation.act.gov.au/ni/2023-631/>.



Destruction of registers

Scarlet Alliance has received reports from ACT sex workers as to what occurred to the former register of sole operator sex workers after registration requirements for sole operators were repealed in 2018.

Decriminalisation must include a clear plan for the destruction of all registers of sex workers and sex work businesses in the ACT. The ACT Government should consult with sex worker peer organisations to ensure that all registers are destroyed, and all current and former ACT sex workers receive assurances that their information is no longer held or accessible.

Recommendation 17: Destroy all current and former registers relating to sex workers and sex work businesses in the ACT, and collaborate with sex worker peer organisations to ensure that current and former ACT sex workers understand that registers have been destroyed.

