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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

To the Senate Legal and Constitutional Affairs Legislation Committee

Re: Criminal Code Amendment (Hate Crimes) Bill 2024

Thank you for the opportunity to make a submission on the Criminal Code Amendment (Hate Crimes) Bill 2024.

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 sex workers. We achieve our 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 workers in Australia's sex industry. Through our work and the work 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 also represents sex workers on a number of government and non-government committees and advisory mechanisms.

Scarlet Alliance welcomes the Criminal Code Amendment (Hate Crimes) Bill 2024, but remains concerned that these provisions do not sufficiently address gaps in anti-discrimination and anti-vilification protections in state/territory legislation.

Sex workers in uncaded Australia experience:

- **stigma** - negative perceptions/beliefs on the basis of an attribute,
- **discrimination** - negative treatment on the basis of an attribute, and
- **vilification** - incitement of hatred, serious contempt or severe ridicule on the basis of an attribute.

We experience stigma, discrimination and vilification as individuals and as a group who share the **attribute of being (or perceived as being) sex workers.**

Sex workers in uncaded Australia are also demographically diverse. Our community includes LGBTQI+ sex workers, sex workers from diverse ethnic, cultural and religious backgrounds, migrant sex workers, and sex workers with disability.

Sex workers who experience multiple axes of marginalisation face **intersectional discrimination**, e.g. as both LGBTQI+ people *and* as sex workers, leading to disparities in areas such as employment, access to safe, competent and affordable healthcare and community services, and accommodation/housing. Sex workers who experience multiple axes of marginalisation are also likely targets for **vilification**, for example Asian migrant sex workers, who are regularly targeted by mainstream Australian media.¹

The Criminal Code Amendment (Hate Crimes) Bill 2024 provides some extension to Commonwealth criminal vilification laws, which are intended to target the most serious hate crime offending. However, this does not address gaps in Commonwealth or state/territory civil anti-discrimination and anti-vilification law. Without these protections, both federally and in every state and territory, sex workers will continue to be targets for stigma, discrimination and vilification.

Yours faithfully,

Mish Pony
Chief Executive Officer

¹ See e.g. Respect Inc, [‘Sex Workers Respond to ‘Exploitation’ Allegations by Major Organised Crime Squad and Sensationalist Media’](#) (Media Release, 31 October 2022).

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Introduction

Criminalisation, stigma and discrimination

Sex work in unceded Australia is regulated by the states and territories using a variety of legal frameworks. While sex work has been decriminalised in New South Wales, the Northern Territory, Victoria and Queensland, sex workers nationwide continue to experience discrimination and vilification.

Legacies and ongoing practices of criminalisation and over-regulation are the genesis for sex workers' experiences of discrimination and vilification. Laws, policies and enforcement practices based in stigma rather than evidence lead to sex workers experiencing discrimination in areas such as:

- healthcare,²
- interactions with law enforcement and access to justice,³
- Family Court matters,⁴
- accommodation,⁵
- employment,⁶
- access to financial institutions and financial products and services.⁷

² In a study of 1,993 Australian healthcare workers, 47% *self-reported* that they treat others negatively because of their sex work: Timothy Broady et al, [Stigma Snapshot: Health care workers 2022](#) (Report, Centre for Social Research in Health, UNSW Sydney, 2022) 2. As part of the same study, 88% of sex workers reported negative treatment by healthcare professionals during the same period: Broady et al, [Stigma Snapshot: Sex workers 2022](#) (Report, Centre for Social Research in Health, UNSW Sydney, 3 January 2023) 2.

³ 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, 148.

⁴ See e.g. [Maloney & Maloney \[2012\] FamCAFC 16](#) (9 February 2012).

⁵ See e.g. Eden Gillespie, ["Forced to move home": discrimination of Queensland sex workers needs to end, say advocates](#) *The Guardian* (online, 20 April 2022); SWOP NSW, [Preliminary Submission 77 to the NSW Law Reform Commission on the Anti-Discrimination Act Review](#) (October 2023).

⁶ See e.g. Rachel Clayton, ["Former sex industry worker challenges employer over claims she was fired due to her past"](#) *ABC News* (online, 27 March 2024).

⁷ See e.g. Amber Schultz, ["It's sex discrimination: banks strip brothels and escort agencies of their rights"](#) *Crikey* (online, 20 May 2020) and Emilia Terzon, ["Sex worker takes on financial sector 'debanking', with outcome hailed as transformative for adult industry"](#) *ABC News* (online, 30 May 2024).

Vilification

Stigma is exacerbated by vilification of sex workers in television, media, films, newspapers, and by anti-sex work organisations who perpetually portray sex work as dangerous, and sex workers as dead or degraded victims without agency, families, or support.⁸

Sex workers experience vilification from members of the general public, the media, organisations, law enforcement and government actors and agencies...Entrenched stigma and discrimination, historic criminalisation and a lack of consistent and comprehensive anti-discrimination and anti-vilification protections for sex workers has meant that sex workers are treated as an 'easy target' for vilification as individuals and as a collective.⁹

The interaction between stigma, discrimination and vilification is a self-perpetuating cycle.

Sex workers frequently report incidences of vilification, particularly in online spaces. During the joint submission to the Queensland *Inquiry into Serious Vilification and Hate Crimes*, Respect Inc and Scarlet Alliance conducted consultation with Queensland sex workers, collecting the following reports about experiences of online vilification:

- A sex worker who also worked as a teacher's aide was threatened by an ex-partner that if she did not leave the town where they both lived, he would 'make sure she got what she deserved' by putting a post online telling parents at the school about her sex work career.¹⁰
- The new girlfriend of a sex worker's ex-husband circulated on an online blog with a link to the advertisement of a sex worker with her personal phone number and home address.¹¹
- A neighbourhood social media group post listed an address and accused the resident of being a sex worker.¹²
- A sex worker was accused of living with HIV and their photo and address were made public online.¹³
- Posts made in a suburban social media group about a local massage parlour, accompanied by the distribution of physical flyers, describing the location as a 'threat to children'.¹⁴

Recent international media coverage has also highlighted the links between anti-sex work rhetoric and far-right, anti-LGBTQI+ online extremism.¹⁵

⁸ Scarlet Alliance, [Anti-Discrimination Protections for Sex Workers](#) (Briefing Paper, February 2022).

⁹ Respect Inc and Scarlet Alliance, [Joint Submission to the Queensland Legal Affairs and Safety Committee, Inquiry into Serious Vilification and Hate Crimes](#) (25 August 2021) 3.

¹⁰ Ibid 7.

¹¹ Ibid.

¹² Respect Inc. and Scarlet Alliance, [Joint Submission to the Queensland Legal Affairs and Safety Committee on the Criminal Code \(Serious Vilification and Hate Crimes\) and Other Legislation Amendment Bill 2023](#) (12 May 2023) 3.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ See, e.g. Samantha Cole, ['The Crusade Against Pornhub Is Going to Get Someone Killed'](#), Vice (online, 13 April 2021).

It is clear that sex workers require specific anti-vilification protections in order to provide a level of protection and avenue for recourse when we experience online and real world hate speech and malicious exposure of personal information. In order to address the often complex jurisdictional issues arising out of online conduct, these protections must exist in both Commonwealth and state/territory legislation.

Existing anti-discrimination and anti-vilification protections

There are no Commonwealth anti-discrimination and anti-vilification protections for sex workers, and a lack of consistency between state and territory protections. This generates confusion for sex workers experiencing discrimination and vilification. The following table outlines available protections for sex workers in each state/territory:

Jurisdiction	Protected attribute	Anti-discrimination protections	Anti-vilification protections
Victoria	‘Profession, trade or occupation.’ ¹⁶	Yes.	No civil protections. Criminal offence may apply only if vilification amounts to ‘grossly offensive public conduct’ (online conduct is excluded). ¹⁷
ACT	‘Profession, trade, occupation or calling.’	In some circumstances. ¹⁸	No.
NSW	N/a.	No. ¹⁹	No. ²⁰
Queensland	‘Sex work activity.’	Yes.	No.
Northern Territory	‘Employment in sex	Yes.	Civil protection

¹⁶ The Victorian Government has explicitly stated that this attribute protects sex workers from discrimination: See Victorian Equal Opportunity and Human Rights Commission, [Profession, Trade or Occupation](#) (Web Page, June 2023).

¹⁷ Victoria is currently reviewing its anti-vilification laws, and proposes to extend both criminal offences and civil protections to ‘race, religious belief or activity, disability, gender identity, sex, sex characteristics, sexual orientation, and personal association...with a person who is identified by reference to any of the above attributes.’ There is no proposal to prohibit vilification on the basis of ‘profession, trade or occupation’: Department of Justice and Community Safety, [Overview of Proposed Anti-Vilification Protections for All Victorians](#) (Overview Paper, 20 September 2024) 7.

¹⁸ Only sex workers working within the narrow frameworks of the ACT’s licensing system are likely to be covered by the protected attribute.

¹⁹ The [Equality Legislation Amendment \(LGBTIQA+\) Bill 2023](#) remains before NSW parliament, and would create civil anti-discrimination protections for sex workers (cls 50AB-AN).

²⁰ The Equality Legislation Amendment (LGBTIQA+) Bill 2023 would also introduce anti-vilification protections for sex workers (cls 50AA and 50AO).

	work or engaging in sex work, including past employment in sex work or engagement in sex work ’.		against 'offensive behaviour because of an attribute.'
Western Australia	N/a.	No.	No.
South Australia	N/a.	No.	No.
Tasmania	‘lawful sexual activity’ .	In some circumstances. ²¹	In some circumstances, civil protections against ‘conduct which offends, humiliates, intimidates, insults or ridicules another person’ and ‘inciting hatred’ .

Criminal Code Amendment (Hate Crimes) Bill 2024 - recommendations and ways forward

The Criminal Code Amendment (Hate Crimes) Bill 2024 proposes to expand the most serious hate crimes offences. These are outlined in Commonwealth Criminal Code under ‘Division 80 – Treason, urging or threatening violence, advocating terrorism or genocide, and prohibited symbols and Nazi salute.’ The Bill proposes to:

1. Expand the ‘urging violence against groups’ (s 80.2A) and ‘urging violence against members of groups’ (s 80.2B) to make the offences to be easier to prove,²² and cover ‘sex, sexual orientation, gender identity, intersex status, disability, race, religion, nationality, national or ethnic origin or political opinion,’
2. Create new offences of ‘threatening force or violence against target groups’ and ‘threatening force or violence against members of groups’ on the basis of ‘sex, sexual orientation, gender identity, intersex status, disability, race, religion, nationality, national or ethnic origin or political opinion,’
3. Expand the ‘Public display of prohibited Nazi symbols’ (s 80.2H), ‘Public display of prohibited terrorist organisation symbols’ (s 80.2HA) and ‘Directions to cease display of prohibited symbols in public’ (s 80.2K) offences to to prohibit the display of symbols that incite hatred towards a target group ‘distinguished by race, colour, sex, sexual orientation, gender identity, intersex status, language, religion, political or other opinion or national or social origin’.

²¹ This attribute protects sex workers working in compliance with Tasmania’s narrow framework of partial-decriminalisation: Office of the Anti-Discrimination Commissioner, [Lawful Sexual Activity Discrimination](#) (Web Page, 2015).

²² The current law requires that the inciter to intend that other people will commit violence due to their vilification. This is extremely difficult to prove. The proposed change is that the inciter only needs to be ‘reckless’ (i.e. not care if) the vilification will lead to violence.

Scarlet Alliance believes that these are positive measures, especially in light of recent and highly-publicised alliances between anti-trans activists (sometimes referred to as trans-exclusionary radical feminists, or TERFs) and far-right and neo-nazi organisations.²³

These amendments only address the most serious forms of criminal vilification. It is reasonable that Commonwealth offences with high penalties are narrow in scope, and only target the most serious conduct. However, the Bill continues to leave a wide scope of criminal vilification offending unaddressed at the Commonwealth level, and does not address the ongoing disparities in criminal vilification and civil anti-discrimination/anti-vilification protections available in each state and territory.

Further, we note that the expanded list of target groups for sections 80.2H(7)(b), 80.2HA(7)(b) and 80.2K(6)(b) does not include 'disability'. Considering the links between far-right movements and eugenicist thought, we believe this is a major oversight, and carries an implication that people with disability cannot be offended in the same way as 'reasonable people'.

Finally, it is our understanding that the preferred term for 'intersex status' is 'variation of sex characteristics'.

In order to address this, Scarlet Alliance **recommends:**

Recommendation 1:

A) That the following offences in the Criminal Code Amendment (Hate Crimes) Bill 2024: -

- Urging violence against groups (s 80.2A)
- Urging violence against members of groups (s 80.2B)
- Threatening force or violence against groups (s 80.2BA)
- Threatening force or violence against members of groups (s 80.2BB) -

be amended so that 'targeted groups' in these offences include 'race, religion, sex, sexual orientation, gender identity, variation of sex characteristics, **sex work activity**, disability, nationality, national or ethnic origin or political opinion' - and

B) that the following definition of *sex work activity* be inserted into s 80.1A:

"sex work activity" —

(a) means the provision by an adult person of the following services for payment or reward—

(i) services that involve the person participating in a sexual activity with another person;

²³ Scarlet Alliance, [Submission to the Australian Human Rights Commission on Current and Emerging Threats to the Human Rights of Trans and Gender Diverse People](#) (3 May 2024) 4-5, and Scarlet Alliance, '[Scarlet Alliance notes the rise of violent fascist tactics against trans & queer community, reaffirms the need to curb anti-trans and anti-sex work criminalisation](#)' (Media Release, 28 March 2023).

- (ii) services that involve the use or display of the person's body for the sexual arousal or gratification of another person; and
- (b) includes being or having been a person who provides services mentioned in paragraph (a).²⁴

Recommendation 2: That the the offences in ss 80.2H, s 80.2HA, and 80.2K of the Criminal Code Amendment (Hate Crimes) Bill 2024 be amended by:

- including 'disability' in the expanded list of targeted groups
- replacing 'intersex status' with 'variation of sex characteristics'.

Recommendation 3: That the Australian Government review existing federal and state/territory legislation with the aim of creating a single and comprehensive Commonwealth Anti-Discrimination Act;

- that this legislation contains both civil anti-discrimination and anti-vilification protections,
- that this legislation creates minimum protections, addressing gaps in state/territory legislation and jurisdictional challenges such as online vilification, and
- that this legislation contain a protected attribute of 'sex work activity' with the same definition used in the *Anti-Discrimination Act 1991* (Qld).

²⁴ The protected attribute 'sex work activity' and this associated definition was adopted by the *Anti-Discrimination Act 1991* (Qld) as part of the decriminalisation of sex work and the review of anti-discrimination law in Queensland.