# AUSTRALIAN government RESPONSE

## Call for input to the Report of the special rapporteur on violence against women and girls to the human rights council on Prostitution and violence against women and girls

Australia thanks the Special Rapporteur on Violence against Women and Girls for the invitation to provide a submission to inform the Report to the Human Rights Council on prostitution and violence against women and girls.

The Australian Government recognises that everyone is entitled to respect, dignity and the opportunity to participate equally in society, regardless of their sex, gender identity or occupation. Those who work in the sex industry (sex workers), like any other workers, deserve respect and safe work environments.

Every Australian deserves to live free from violence and ensuring the safety of all Australians is a priority of the Australian Government. The Australian Government and state and territory governments are committed to ending all forms of gender-based violence through the National Plan to End Violence against Women and Children 2022-2032. Our commitment to ending violence complements Australia’ commitment to upholding the rights and safety of sex workers and legitimising sex work as a profession.

***Legislative approaches to sex work in Australia***

Under Australia’s federal system of government, the Australian Government and state and territory Governments have different areas of responsibility.[[1]](#footnote-2) Each state and territory manages their own criminal law and related systems and the decriminalisation of sex work falls under state and territory responsibility.

Across Australian jurisdictions there are currently three legislative approaches to sex work - legalisation, decriminalisation and criminalisation. Aspects of sex work have been legalised in Queensland and the Australian Capital Territory through licencing models. South Australia, Western Australia and Tasmania have fully or partially criminalised this form of work. New South Wales decriminalised sex work in 1995, and the Northern Territory and Victoria decriminalised sex work in 2019 and 2022 respectively.

Decriminalisation models recognise sex work as a legitimate profession that is regulated through standard business law, rather than via licencing and criminalisation. The Victorian model also contains explicit provisions preventing the discrimination of sex workers on the basis of their “profession, trade or occupation”.[[2]](#footnote-3) In 2023, the Queensland Government also announced its commitment to decriminalising sex work in Queensland.[[3]](#footnote-4)

***Sex work and gender-based violence***

Australia recognises that sex workers can be disproportionately exposed to gender-based violence, as well as violence in their work setting. This includes violence perpetrated by clients, client procurers and managers or owners of establishments and online platforms.[[4]](#footnote-5) All forms of gender-based violence, regardless of who uses it and who experiences it, is unacceptable.

Sex workers also experience widespread discrimination and stigma through laws and institutions – such as the justice and health systems, as well as individual acts of discrimination.[[5]](#footnote-6) A 2022 survey led by the University of New South Wales’ Centre for Social Research in Health and in collaboration with the Australian Sex Workers Association, the Scarlet Alliance, found that 97 per cent of the 689 survey participants reported experiencing stigma or discrimination related to their sex work within the last 12 months.[[6]](#footnote-7)

Stigma and discrimination increases sex workers’ vulnerability to violence and exploitation which is further exacerbated by legal barriers to basic rights and labour laws. This creates barriers to accessing health, safety and legal protections.[[7]](#footnote-8) Research has found that where sex work is positioned as inherently risky, and criminalisation is normalised, sex workers become responsible for their own safety through individualised decision-making.[[8]](#footnote-9) Sex workers are also less likely to report crimes committed against them to the police, including family, domestic and sexual violence, due to concerns they may be arrested, not believed or blamed for the violence perpetrated against them.[[9]](#footnote-10) In Australia, these barriers to reporting are magnified for sex workers of colour, migrant and First Nations sex workers, sex workers with disability and LGBTI (lesbian, gay, bisexual, transgender and intersex) sex workers.

The Australian Government is committed to providing the national leadership and investment to end family, domestic and sexual violence and all forms of gender-based violence. We recognise that everyone has the right to safety—in their homes, communities, online, where they study, and in their workplaces. Those who work in the sex industry, like any other workers, deserve respect and safe work environments.

The *National Plan to End Violence against Women and Children 2022-2032* (National Plan) commits to 10 years of sustained action, effort and partnership across all sectors and levels of government towards ending violence against women and children in one generation. It outlines what needs to happen to achieve this vision to deliver holistic, coordinated and integrated person-centred responses. The Australian Government recognises that to achieve this, we must listen to and be guided by victim-survivors and people with lived experience, including sex workers.

The Australian Government has demonstrated its commitment to ensuring respect and safety in the workplace via our commitment to implement all recommendations contained within the Australian Human Rights Commission’s *Respect@Work: Sexual Harassment Inquiry Report.* The report made 55 recommendations directed at all levels of government and the private sector for policy and legislative reforms to prevent and address workplace sexual harassment. In December 2022, the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth)* introduced a positive duty on employers to eliminate workplace sexual harassment, sex discrimination and sex-based harassment.

***Modern slavery***

The Australian Government is committed to ending modern slavery. We recognise that modern slavery constitutes an egregious form of human rights abuse and deprives victims of their dignity, fundamental rights and freedoms. The *National Action Plan to Combat Modern Slavery 2020-2025* (National Action Plan) sets the whole-of-government strategic framework for Australia’s efforts to combat modern slavery.[[10]](#footnote-11) At the federal level, the *Criminal Code Act 1995* (Cth) (‘Criminal Code’) comprehensively criminalises human trafficking, slavery and slavery-like practices in all industries, including within the sex industry. Within this framework, sex work involving freely and fully consenting adults is distinct from modern slavery. Examples of elements that could indicate a modern slavery offence in the sex industry or any other industry, domestic setting or intimate relationship include coercion, threat or deception, significant deprivation of personal freedom, and / or not being free to cease providing labour or services or leave the place of work.

In Australia, modern slavery refers to a range of serious exploitative practices including human trafficking, slavery, slavery-like practices (such as servitude, forced labour, deceptive recruiting for labour or services, forced marriage and debt bondage), and the worst forms of child labour. While each of these practices is distinct, they all involve the manipulation of complex relationships between an offender and a victim, and undermine a victim’s personal freedom and ability to make choices for themselves.

The Government is committed to tackling modern slavery at home and abroad. Key aspects of our response include:

* implementation of the National Action Plan, which comprises 46 action items under five strategic priorities: Prevent; Disrupt, Investigate and Prosecute; Support and Protect; Partner; and Research.
* strong criminal offences and specialist investigation teams in the Australian Federal Police, which also delivers its ‘Look A Little Deeper’ training program for frontline officials in all states and territories in Australia;
* a dedicated visa framework, a Government support program for victims and survivors, and new funding to establish a specialist support program for people experiencing, or at risk of, forced marriage;
* partnerships across government and with international partners, civil society, business, unions and academia, including through a grants program and forums such as the National Roundtable on Human Trafficking and Slavery;
* the *Modern Slavery Act 2018* (Cth), which provides a transparency framework that aims to drive business and government action to address modern slavery risks in global supply chains and operations; and
* the Government’s commitment to establishing a federal Anti-Slavery Commissioner.

1. Australia is a federation of six states (New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia) and two self-governing territories (Australian Capital Territory, Northern Territory). The Australian Constitution gives certain powers to the federal government, some powers are shared with the states and territories, while other powers remain with the states. [↑](#footnote-ref-2)
2. Victorian Government, *Decriminalising sex work in Victoria* (Web Page) < [Decriminalising sex work in Victoria | vic.gov.au (www.vic.gov.au)](https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work)>; *Sex Work Decriminalisation Act 2022* (Vic) s 34. [↑](#footnote-ref-3)
3. The Honourable Shannon Fentiman (Queensland Government), ‘*Government to decriminalise sex work’* (Media release, 24 April 2023) < [Government to decriminalise sex work - Ministerial Media Statements](https://statements.qld.gov.au/statements/97621)>. [↑](#footnote-ref-4)
4. Australian Government, *National Plan to End Violence against Women and Children 2022 – 2032* (2022) 47. [↑](#footnote-ref-5)
5. 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) *International Journal for Crime, Justice and Social Democracy* 10(3) 143; Cecily Benoit et al, ‘Prostitution Stigma and its Effect on the Working Conditions, Personal Lives and Health of Sex Workers’ (2018) *The Journal of Sex Research* 55(4-5) 460. [↑](#footnote-ref-6)
6. Timothy Broady et al, *Stigma snapshot: Sex workers 2022* (Centre for Social Research in Health, UNSW Sydney, 2023) <<http://doi.org/10.26190/fw6j-0m39>>. [↑](#footnote-ref-7)
7. Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland*, Report No 80 (2023) 3. [↑](#footnote-ref-8)
8. 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) *International Journal for Crime, Justice and Social Democracy* 10(3) 143. [↑](#footnote-ref-9)
9. Kahlia McCausland et at, ‘It is stigma that makes my work dangerous: experiences and consequences of disclosure, stigma and discrimination among sex workers in Western Australia’ (2022) *Culture, Health and Sexuality* 24(2) 185; Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland*, Report No 80 (2023) 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) *International Journal for Crime, Justice and Social Democracy* 10(3) 144. [↑](#footnote-ref-10)
10. Australian Government, *National Action Plan to Combat Modern Slavery 2020-2025* (2020). [↑](#footnote-ref-11)