Info sheet on 'A framework for a decriminalised sex work industry in Queensland' Consultation Paper WP 80

Sex work laws in Queensland are being reviewed with the aim to decriminalise sex work. This is our opportunity as sex workers, sex worker organisations and supporters to provide feedback on the Consultation Paper and inform the process to make sure the outcome is a best-practice decriminalisation BIll that focuses on workplace health and safety (WHS) and rights for sex workers. Queensland must move away from the current failed licensing approach. This Bill should not include new laws that place an unnecessary burden on sex workers, the industry or government.

To achieve this, the stigma that drives poor sex work policy and laws must be recognised, and guarded against.[1]

Background

Sex workers and sex worker organisations have consistently raised the impact of Queensland laws. In August 2021, Attorney-General Shannon Fentiman referred the decriminalisation of sex work to the independent Queensland Law Reform Commission (QLRC) asking them to develop draft legislation to decriminalise sex work in Queensland.[2]

On 11 April 2022, the QLRC released a consultation paper and called for submissions to determine what decriminalisation might look like in Queensland. Submissions close **on 3 June, 2022**. Their media release gives some insight into the direction of the review:

> *The Queensland Government has committed to decriminalising the sex work industry. This means regulating sex work as work, not as a crime.*
> *The QLRC has been asked to recommend what the framework for a decriminalised sex work industry should be.*[3]

This review is an historically important opportunity to have your voice heard to make sure the model of decriminalisation that Queensland adopts delivers the benefits of decriminalisation to all sex workers.

All submissions, long or short, will make a difference. The Info Kit you are now reading will guide you to make a meaningful short three-paragraph submission, or a lengthy thirty-page submission. Or anything in between.

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[1] Stardust, Z., Treloar, C., Cama, E., & Kim, J. (2021) 'I wouldn't call the cops if I was being bashed to death': Sex work, whore stigma and the criminal legal system, *International Journal for Crime, Justice and Social Democracy*, *10*(3), pp. 142-157. https://doi.org/10.5204/ijcjsd.1894

[2] Queensland Law Reform Commission (2022) 'Terms of Reference, Queensland laws relating to the regulatory framework for the sex work industry'. https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0007/692026/tor-sex-work-industry.pdf

[3] Queensland Law Reform Commission Newsroom (2022). https://www.qlrc.qld.gov.au/newsroom

This Info Kit aims to provide enough information on the key issues for sex workers, sex worker organisations and supporters to prepare submissions. The full Consultation Paper is 250 pages long and includes more than 50 questions.

For each of the 12 chapters in the Consultation Paper we provide background or current law information followed by a boxed policy position. For sex workers, there are also prompts on some questions for how you can respond by including your own experiences in sex work.

Submission closing date: 3 June 2022.

How to lodge a submission

A submission does not need to be long—it can just be an email or a letter.
You do not have to follow a set format or answer all of the questions, but the QLRC has stated it will help if submissions address the specific issues in the review.

- Email your submission to: LawReform.Commission@justice.qld.gov.au or
- Post your submission to:

  The Secretary
  Queensland Law Reform Commission
  PO Box 13312 George Street Post Shop
  BRISBANE QLD 4003

Privacy and publication

The submissions for this review will not be listed publicly on the QLRC website, but select quotes may be taken for their report.

Sex workers: you can lodge a submission using your name, your work name/pseudonym or no name by stating 'name withheld'. Please state clearly on your submission if:

- You **do not** want the QLRC to refer to your submission or part of it in their report.
- You **do not** want the QLRC to include **your name** in their report.

Link to the full QLRC Consultation Paper: https://www.qlrc.qld.gov.au/current-reviews

Submission checklist

- ☐ Read this full Information Sheet
- ☐ Contact Respect Inc if you need help to create a submission
- ☐ Decide if using your legal name, work name, pseudonym or 'name withheld'
- ☐ State if you do not give permission for your submission to be referred to in the QLRC final report
- ☐ If possible, make it clear which questions you are responding to
- ☐ Lodge your submission by email or mail on or before 3 June 2022

Contents

Decriminalisation

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.

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 peoples' 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 protections and remedies.

A decriminalisation Bill is a repeal bill that removes sex work specific-laws and makes amendments to other pieces of legislation where essential. It is a concern that the QLRC Consultation Paper frames it as a mix of new and old laws.

Please see our note on p.11 about how the Consultation Paper refers to some locations as having decriminalisation, including licensing.

Read more about decriminalisation in this briefing paper by Scarlet Alliance:
https://scarletalliance.org.au/library/briefing_paper_full_decrim

Current Laws In Queensland

Sex work and the sex industry in Queensland are regulated by laws in:

- the Prostitution Act (Qld) 1999 (and its regulations);
- the Criminal Code 1899, Section 22A; and
- sections of the Police Powers and Responsibilities Act 2000.

The Prostitution Act 1999 came into effect in July 2000 and introduced a brothel licensing system, established the Prostitution Licensing Authority (PLA) and allowed for the development of Regulations. The laws permit licensing of boutique brothels if approved by council and criminalise all other sex industry business models (escort agencies, erotic massage parlours, co-ops and sex workers working in pairs or from the same premises as another worker). Prohibition on licensed brothels is permitted under certain circumstances, resulting in 200 Queensland towns banning them.[4] After more than two decades of licensing, up to 90% of the industry is still criminalised.

While the PLA is responsible for the regulation of the very small number of licensed brothels, twenty as of time of print, it is the police who pursue complaints referred by the PLA and enforce laws for the rest of the industry.This is essentially the case with all licensing frameworks. The police regulate those that cannot meet the licensing requirements. The role of the police is maintained as one of the regulators whenever licensing of the sex industry is in place.

The PLA is responsible for advertising guidelines that result in fines for sex workers and are used by police as a springboard for entrapment to pursue other charges against sex workers. The guidelines are unworkable and make it illegal for sex workers to describe services in any advertisement, even using acronyms or coded industry references, or to refer to providing a massage.

Sex work is still handled as a crime in Queensland and many charges are still in the Criminal Code. Chapter 22A makes many sex worker safety strategies illegal; letting another sex worker know where you are on a booking, checking-in with another sex worker at the end of a booking, driving another sex worker to a outcall, hiring a receptionist to screen bookings, working in pairs or assisting each other with advertising. While it is not illegal to be a private sex worker in Queensland many aspects of our work are criminalised.

Police in Queensland have extraordinary powers in relation to sex workers. Under the Police Powers and Responsibilities Act 2000 police can undertake entrapment where they make a booking with a sex worker while posing as a client, deceiving the sex worker as to their intent, and they have immunity to request (and undertake) illegal activities. In many cases sex workers' phones and earnings are seized as 'tainted goods'.

Further information about the laws and their impact:
https://respectqld.org.au/wp-content/uploads/Documents/Sex-Work-and-the-Laws-in-Queensland.pdf

[4] Prostitution Licensing Authority (2012) *Annual Report 2011-12,* p.24.
https://www.pla.qld.gov.au/__data/assets/pdf_file/0008/674720/pla-annual-report-2011-2012.pdf

CH 7: What Might A Decriminalised Sex Work Industry Look Like?

There are four questions to address in your response to Chapter 7: Questions 1-4.

Q1 What should be the **main purposes** of the recommended framework for a decriminalised sex work industry in Queensland, and why?

Definition of decriminalisation:
A decriminalised framework for sex work recognises that sex work is work. It will have no criminal laws that specifically refer to sex work and there should be no police involvement or licensing in sex work. In its place will be general laws that govern all workplaces so that sex workers can access workplace rights like any other worker does.

In the process of law reform it is normal to create a list of the main purposes for changing the laws and these become the guiding principles of the new laws. Previous law reform in Queensland has focused on sex work as organised crime, and the primary purposes were to reduce police corruption and uphold the rights of the wider community to be protected from sex work. Sex workers weren't even mentioned in the Prostitution Bill 1999. There was very little attention paid to the recognition of sex work as work or the rights, health and safety of sex workers. We believe these should be the primary purposes of this framework, not the negligible impacts on public health, community amenity or the deterrence of illegality and exploitation, all of which are adequately covered under other existing laws, policies and practices.

We believe that the main purposes of the new framework should be:

1. To fully decriminalise sex work in Queensland to:
(a) recognise sex work as work
(b) enhance the human rights and workplace health and safety of sex workers
(c) reduce stigma and provide for discrimination protections for sex workers
(d) allow sex workers to work together and in collectives, and employ support staff
(e) protect sex workers and businesses to enable them to operate in accordance with the laws of the State and the Commonwealth as they apply to all individuals and businesses generally, including laws governing employment, workplace health and safety guidelines, workers compensation and rehabilitation, planning and discrimination.

2. To achieve full decriminalisation by repealing all current laws that refer specifically to sex work in Queensland so that existing general laws can be utilised.

The rights, health and safety of sex workers should be the primary purpose of the new framework.

When you answer Q1-2 try to explain how important rights, health and safety as the main purposes of decriminalisation are to you. You could describe how criminal laws and police entrapment affect your ability to operate like a normal business, be safe, healthy and live without stigma.

Q1 Policy Position: The main purposes of the decriminalisation Bill should be:
1. To fully decriminalise sex work in Queensland to:
    (a) recognise sex work as work
    (b) enhance the human rights and workplace health and safety of sex workers
    (c) reduce stigma and provide for discrimination protections for sex workers
    (d) allow sex workers to work together and in collectives, and employ support staff
    (e) protect sex workers and businesses to enable them to operate in accordance with the laws of the State and the Commonwealth as they apply to all individuals and businesses generally, including laws governing employment, workplace health and safety guidelines, workers compensation and rehabilitation, planning and discrimination.

2. To achieve full decriminalisation by repealing all current laws that refer specifically to sex work in Queensland so that existing general laws can be utilised.

Q2 Overall, what might the new framework look like?

The new framework will not have any licensing, criminal laws or police powers that specifically refer to sex work or commercial sexual activity. For planning purposes, private/co-op sex work in residential areas would be permitted as 'Material Change of Use'. Massage parlours and brothels in Centre and Mixed Zones would be permitted under 'Declared Use'. All would have to be compliant with mandatory amenity impact, Fair Trading, building alteration and other regulations; the same as everyone else in that zone.

You could answer question 2 by talking about how your working (and personal) life would be different without fear of arrest and being able to work in the ways that best suit your business. You could describe the type of work you do, and how it fits at your current location.

Q2 Policy Position: The new framework will allow sex workers and sex work businesses to operate without specific licensing, criminal laws or exceptional police powers to interfere with them. They will be able to work under standard planning laws that regulate all other businesses in similar zones.

Q3 What changes would need to be made to the current framework, and why?

To create a decriminalised framework it will be necessary to remove all the current laws that refer specifically to sex work, in particular the Prostitution Act and Regulations, Criminal Code Ch22A and sections of the Police Powers and Responsibilities Act. These laws force more than 80% of sex workers to choose between working safely or legally. The laws allow the police to search, entrap, charge and move-on sex workers and their friends/associates, as well as enforce a criminal approach to sex workers' sexual health. They also give power to the PLA to govern the (only) 20 existing brothels and decide how we can advertise. It will also be necessary to dissolve the PLA and the Prostitution Enforcement Task Force of the Queensland Police Service (PETF).

For question 3, talk about the things that bug you about the current licensing laws and policing and how they need to change.

Q3 Policy Position: To create a decriminalised framework it will be necessary to remove all the current laws and police powers that refer specifically to sex work and dissolve the PLA and PETF.

Q4 Who should the new framework apply to, and why?

The new framework should apply to ALL sex workers and sex work business types.

Definition of sex work:
The current definition of sex work including "any other activity that 'involves the use of one person by another' for their sexual satisfaction 'involving physical contact'" is outdated. An important component of modernising sex work laws in Queensland through decriminalisation is a change to the definition of sex work. This includes removing stigmatising and outdated terms like 'prostitution', but it is also essential that the definition be reflective of what sex work is in 2022 in Queensland and that it is not in and of itself stigmatising.

Sex workers do not offer ourselves or our bodies for the 'use' of another person.
By reflecting outdated attitudes to sex work, as if a client pays for the use of a sex worker's body, the current definition undermines critical understandings of consent in a sex work setting. Sex workers provide a wide variety of services, which are better captured by the definition used in the NT Sex Industry Act 2019:

> *Sex work is the provision by a person of services that involve the person or persons participating in sexual activity with another person in return for payment or reward.*
> *Sex worker means a person who performs sex work.*

Sex workers are diverse and so are sex work businesses. The definition of sex work should include sex workers who do contact and non-contact sex work: erotic dance/stripping, erotic massage, full service sex work, bdsm, sex for favours, online and in person services. It should also include sex workers who work independently, co-operatively, do incall/outcall, street/bar-based work or work in massage parlours, with escort agencies, in brothels and online.

You could talk about the types of sex work you've done and the business types you have worked in, focusing on diversity and how rigid laws make it more difficult.

Q4 Policy Position: Decriminisation should cover all sex workers and sex work business types.
Modernising sex work laws in Queensland through decriminalisation must include updating the definition of sex work. New Sex Work Definition:

> *Sex work is the provision by a person of services that involve the person or persons participating in sexual activity with another person in return for payment or reward.*
> *Sex worker means a person who performs sex work.*

CH 8: Offences To Protect Against Commercial Sexual Exploitation

Questions 5, 5a-c

Background and discussion

The Global Alliance Against Traffic in Women (GAATW) recommends decriminalisation of sex work as it '*would lead to fewer opportunities for exploitative working conditions, including human trafficking'*.

Currently, exploitation in the Queensland sex industry is not treated as labour exploitation. Historic regulation of sex work has focused heavily on misguided measures to protect women, children and other 'vulnerable' people from exploitation. One of the purposes of the Prostitution Bill 1999 was to "address social factors which contribute to involvement in the sex industry"[5] and many other sex work laws have focused on trying to prevent the exploitation of women sex workers by making it illegal to 'entice' someone into sex work or by 'living off the earnings' of a sex worker. In the same vein, sex work laws have focused on protecting young people (children) and people with mental impairment from exposure to, or participation in, sex work. Many of the laws that were meant to protect sex workers have been used against us, our partners, our family members and friends if police are seeking to target us.

Decriminalisation will be undermined if the process gets bogged down with misguided attitudes to sex work as potentially criminal, and we know that the criminalisation of vulnerable people does not help. Exploitation can occur in every industry, yet there are no other special laws specific to each industry. Creating new sex-work-specific exploitation laws will only serve to maintain harmful stereotypes, stigma and discrimination. Rather, decriminalisation should bring sex workers under the universal protection provided by hundreds of existing laws in the Criminal Code, Workplace Health and Safety Act and Fair Work Act: all sufficient to protect people from being exploited in any job, including sex work. There are significant federal laws that provide police and other agencies with extensive powers to investigate and prosecute criminal exploitation in the workplace. Additional state offences would be an unnecessary duplication.[6] We know that creating more, harsher and specific laws about sex work has the opposite-of-intended effect and drives sex work underground so that sex workers are less safe and more likely to be exploited.

Special laws: all the laws listed in Q5a should be repealed and not reformulated elsewhere.

- **s77 Prostitution Act — forcing a person to do sex work:** This law says "it is an offence to use threats, intimidation, harassment, false representation or fraud to make another person continue to provide prostitution" but these are offences in any type of work. We do not need a special law for sex work.
- **229G Criminal Code — advertising for, or asking someone to do, sex work:** This law is not about workplace exploitation, it is about asking someone to do sex work at all. If sex work is to be treated like other businesses then there must be a way that sex workers and business operators can advertise for workers. *You could talk about how it would help you to be able to advertise for others to work with you or for you to*

[5] Prostitution Bill 1999 explanatory notes. https://www.legislation.qld.gov.au/view/html/bill.first.exp/bill-1999-608#
[6] Division 270 of the Commonwealth Criminal Code 'Slavery-like Offences'. https://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/cca1995115/sch1.html

be able to access advertised offers to work. If you are not a sex worker, you could share your personal opinion about special restrictions on sex worker advertising.

- **s229FA Criminal Code — employing or transacting with someone who is not an adult (under 18) to do sex work:** Criminalising sex workers under 18 is harmful because it forces them to be isolated and without the benefit of peer education. *If you, or someone you know, started sex work at a young age you could talk about how criminalisation affected your, or their, ability to be safe and healthy.*
- **s229L Criminal Code — allowing someone who is not an adult or has impairment of the mind to be on premises of a sex work business:** This law has impacts for sex workers who have children and for those who live with mental impairment and want to do sex work or hire a sex worker.

Children and young people

A blanket offence for children being on premises used by more than one sex worker will cause considerable hardship for sex workers who have children and work from home and/or share workspace in a cooperative with other sex workers. It is stigmatising to suggest that parents engaging in sex work will harm their children if their children remain on premises while sex work is occurring. Other businesses that restrict children will often provide a separate child-care/play room for employees.

When you answer, explain how a rigid exclusion of children from your workplace impacts on you or sex workers who are parents.

It will undermine decriminalisation to include specific reference to sex work or social escorts in the Child Employment Act 2006. There are adequate safeguards in the Act to prevent persons under 18 being employed in any type of work requiring nudity, exposure of genitalia or erotic dress (s8A) and which prevent an employer from allowing a child to work in "a role or situation that is inappropriate for the child, having regard to the child's age, emotional and psychological development, maturity and sensitivity" (s8C).[7] The age of sexual consent is 16 and we know that 16-18 year olds do sex work. Criminalisation of young sex workers, or their clients, increases their isolation and decreases their safety if they cannot access peer education by working with other sex workers or hire support staff.

Impairment of mind

Under the current laws a person with 'impairment of the mind' cannot work at a licensed brothel or be on any other sex work premises, with very harsh penalties imposed on anyone who works with them. The Public Advocate Qld and disability organisations oppose the current overly broad definition of 'impairment of mind' and its use in laws about sexual activity, including sex work, "which has been interpreted to have such a broad application in the Criminal Code that it includes not only people who have impaired decision-making ability, but those with disabilities that have no impact on decision-making ability".[8] They call for a new definition that refers to a permanent impairment that affects decision-making capacity to understand and consent to sexual activity. The current definition of 'impairment' is very broad and includes many circumstances and issues that sex workers who are capable of

[7] Child Employment Act (2006) https://www.legislation.qld.gov.au/view/pdf/inforce/2010-10-14/act-2006-002

[8] The Public Advocate Qld (Jan 2022) A discussion of section 216 of the Queensland Criminal Code: A call to review the criminalisation of sexual relationships involving people with 'an impairment of the mind'. https://www.justice.qld.gov.au/__data/assets/pdf_file/0006/703770/202201-section-216-report-final-22.pdf

negotiating consent may experience: '*a person with a disability attributable to an intellectual, psychiatric, cognitive or neurological impairment or any combination of these where the disability substantially reduces the person's capacity for communicating, interacting socially or learning, and results in the person needing support*'.[9] We are aware that the inclusion of s229L initially caused an amendment to medical confidentiality law that allowed health professionals to breach confidentiality and inform police if they had a patient that they considered to be 'impaired' who was engaged in sex work.

In your submission you could discuss whether you or other sex workers you know experience any mental health issues that are covered under the definition of 'impairment' and how it might have legally prevented you or them from doing sex work, or mean you could not count on confidentiality from your doctor.

Trafficking

Australia has extensive federal trafficking laws that already exist and will continue to apply after decriminalisation in Queensland. There is no need for additional state-based laws.

Evidence from sex worker organisations, evidence-based research and government statistics consistently support that trafficking and exploitation is not the experience for the vast majority of migrant sex workers in Australia.[10] [11] The Joint Standing Committee on Foreign Affairs Defence and Trade Human Rights Sub-Committee inquiry report, Trading lives: Modern day human trafficking found that most trafficking and slavery matters in Australia involve small networks based on overseas family or business connections rather than large organised crime groups. It goes on to state: 'The research overall suggests that exposure to vulnerabilities is not the norm in the sex industry but that what you can find is that there are a very small number of sex workers who are potentially connected with a niche.'[12]

What we do know is that enforcement practices discourage actual reporting and capture sex workers who are not trafficked. Criminal justice approaches to trafficking have increased the stigma and marginalisation of migrant sex workers, led to the criminalisation of our workplaces and undermined efforts to address labour exploitation. International human rights organisations increasingly report that the greatest threat to the health, safety and human rights of migrant sex workers is government anti-trafficking policy and enforcement.[13] [14]

In your submission you could share your opinion on the problems that would be created if state police were given duplicated or new powers over trafficking cases that are currently covered by federal law.

Organised crime

[9] Criminal Code Act 1899 Schedule 1, p. 42. https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1899-009

[10] Australian Government (2016) *Trafficking in persons: The Australian Government Response*, Canberra: The Parliament of the Commonwealth of Australia: Commonwealth of Australia, p. 4.

[11] Renshaw, L., Kim, J., Fawkes, J., & Jeffreys, E. (2015) *Migrant sex workers in Australia*, Australian Institute of Criminology Reports, Research and Public Policy Series 131.

[12] Joint Standing Committee on Foreign Affairs, Defence and Trade Human Rights Sub-Committee (2013) *Trading lives: Modern day human trafficking*. Canberra: Parliament of the Commonwealth of Australia, p. 22.

[13] Pearson, E. (2007). 'Australia', collateral damage: The impact of anti-trafficking measures on human rights around the world, Global Alliance Against Traffic in Women, October 2007, p. 52.

[14] Busza, J., Castle, S., & Diarra, A. (2004). 'Trafficking and health', *British Medical Journal* 328: 1269-1371 at 3.

Large-scale organised crime and 'pimping' is not a characteristic of the sex industry in Australia.[15] The Australian Crime Commission produces biennial reports that present the current picture of serious and organised crime and outline the existing and emerging organised crime threats impacting the Australian community and national interests. The sex industry has consistently not been identified as an area of current or emerging organised crime environment or threat in any of those reports.

When answering the topics in Chapter 8 "Preventing Exploitation" you could talk about how new police powers in Queensland risk excluding certain sex worker communities from the benefits of decriminalisation. What do you think about some sex workers being decriminalised and others being subject to restrictions or human rights limitations?

Q5, 5a-c Policy Position: No offences in the Prostitution Act or the Criminal Code that refer to sex work should be maintained or reformulated in other parts of the Criminal Code or another law.
The exploitation laws in other decriminalised places are not helpful and are stigmatising. This undermines decriminalisation. Existing state and federal laws that protect all workplaces from exploitation, trafficking and crime will apply. Additional state laws would be an unnecessary duplication.

CH 9: Licensing Of Sex Work Business Operators

Questions 6-15

Note about how the Consultation Paper refers to some locations as having decriminalisation including licensing.

When decriminalisation is undermined
Sex workers in many locations have worked tirelessly in an attempt to achieve full decriminalisation. Unfortunately, decriminalisation has been undermined even where there is general acceptance and agreement that it is the model that delivers the best workplace health and safety outcomes for sex workers. This has regularly happened in the review, parliamentary or implementation process.

When laws specific to the sex industry are added it usually results in parts of the sex work community being criminalised (for example, street-based sex workers in Victoria and migrant sex workers in New Zealand) and not receiving the benefits of decriminalisation. Equally, there are examples of processes like specialised certification being added that result in the unnecessary burden and cost for government and the sex industry (New Zealand and Northern Territory).

We want something better for Queensland sex workers
We want the licensing framework in all its parts repealed and full decriminalisation of sex work in Queensland instead. Rather than accepting the flawed bits from other jurisdictions that are largely decriminalised we want Queensland to end up with a model of decriminalisation that does not criminalise some sectors of the sex work community and

[15] Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., & Fairley, C.K. (2012) The sex industry in New South Wales: a Report to the NSW Ministry of Health. Sydney: Kirby Institute, University of New South Wales, p. 22.

does not apply unnecessary adminstrative burdens and costs on government or the sex industry.

Background and current laws

Licensing is not decriminalisation.

Queensland has almost twenty-five years of experience with a licensing framework. The current system is expensive and places an unnecessary burden on the industry and government. Licensing has resulted in a two-tiered industry with the majority of sex industry workplaces criminalised, except for 20 licensed brothels. The system maintains a major role for police in relation to approximately 90% of the industry that is not able to meet the licensing requirements. Our experience in Queensland demonstrates that those workplaces and sex workers who work here are forced outside of the legal system, placing them at risk of police charges.

We want something better for Queensland. We want a framework that promotes compliance, and provides an incentive to be part of the legitimate industry. To do this policy makers must also shift their approach to the sex industry away from perceptions to facts. Stigma should not underpin decisions on what is needed to effectively regulate the sex industry in Queensland.

While the Consultation Paper recognises that the Queensland Government has asked this review to consider a decriminalised framework, it still asks whether Queensland needs to continue a licensing system. It asks how this would work and describes licensing that may be a 'lighter touch' or 'more onerous'.

It is critical to this review that the QLRC consider how a model of decriminalisation could work for Queensland and in doing so remove exceptional legislation including licensing or certification and not replicate systems that are both unnecessary and apply additional resource and administrative burdens on businesses and on governments.

The Consultation Paper refers to the certification of brothel owners as one aspect of licensing that could continue. Queensland currently has a system where brothel owners apply for a licence and managers apply for a certificate. The process includes suitability or probity checks, criminal history checks, financial viability checks, etc. While sex workers understand all too well that there are people better, and others less-suited, to run and manage brothels, being a good or bad business owner or boss is not determined by 'suitability certificates', 'criminal history checks', 'probity checks', or whether the person has been bankrupt. Queensland has had probity checks and criminal history checks for brothel owners and managers for more than two decades and there is no evidence from our experiences in Queensland or in other jurisdictions with licensing (Victoria) or certification that they result in better outcomes for the community or for sex workers. The Consultation Paper seems to imply this is the case but provides no evidence to support this assertion.

Our colleagues in New Zealand advise us that the certification process is unnecessary, has had no positive impact for sex workers or the community, and that it has resulted in the same

two-tier outcome that licensing has historically created. Sex worker organisations in both the Northern Territory and New Zealand did not historically, nor currently, support certification being added on top of decriminalisation. Our Northern Territory colleagues state that any certification process has effectively damaged the intended implementation of decriminalisation and the outcomes of transparency in the sex Industry as the conditions parallel a licensing system.

Victoria considered this issue when recently repealing its licensing system. The Victorian Government did not introduce certification as they believed it would only serve to maintain the current licensing system and that certification was fundamentally at odds with what the decriminalisation Bill sought to do. New South Wales has also considered licensing including certification but did not introduce it as it would be high cost and risk creating similar adverse outcomes to re-criminalisation.

Q6-15 Policy Position: Licensing is not decriminalisation, and we do not support the continuation of any form of licensing or certification as they are unnecessary, create a resource and administrative burden on the industry and government and have no benefit for sex workers. Licensing has created a two-tiered industry in Queensland where the majority of the sex industry and sex workers are locked out of the legitimate system with no rights and at risk of police prosecution and charges. There will be no role for a licensing authority in Queensland, as has been the case in NSW (for almost three decades), and will be the case in Victoria as it implements the Sex Work Decriminalisation Act 2022.

Q16 Apart from a licensing system, what is the best way to deter illegal activity and to protect sex workers from being exploited under the new regulatory framework?

The Global Alliance Against Traffic in Women (GAATW) recommends decriminalisation of sex work as it '*would lead to fewer opportunities for exploitative working conditions, including human trafficking*'.

The best way to deter illegal activity is to decriminalise sex work. This means not adding new laws or keeping the existing laws in the Criminal Code—or those that create barriers to participation in the decriminalised sector.

Best-practice decriminalisation is low cost and promotes high compliance; however, where barriers to implementation and application of the law exist, including leaving some sex workers criminalised, decriminalisation is undermined and compliance is limited.

The best way to protect sex workers from exploitation is to remove barriers to reporting (particularly criminalisation and licensing) and allow the application of existing laws and regulations to sex work workplaces, including WHS and increasing sex workers' ability to access rights and anti-discrimination protections.

Solutions include: improved access to peer education, legal support, sex work liaison officers, sensitivity training for police and government, etc.

Federal trafficking laws are extensive and additional laws are unnecessary duplication. Australian organisations and government agencies have recognised that enforcement practices discourage actual reporting and instead result in the criminalisation of sex workers who are not trafficked. A human rights-based, not criminal approach, is recommended.

Q16 Policy Position: Decriminalisation, when not hindered by additional laws that undermine its effectiveness, will deter illegal activity by making the industry more transparent. Decriminalisation provides sex workers with workplace rights, and removing criminalisation means sex workers are able to report problems in a workplace to the appropriate regulator. We do not support the need for additional laws and warn against the mistakes of other jurisdictions in this regard.

CH10: Workplace Laws

Questions 18-22

Background and current situation

Evidence and experience in other jurisdictions demonstrates that Queensland WHS Guidelines for the decriminalised industry, encompassing advice about universal workplace laws, would be best developed by Respect Inc in partnership with WorkSafe QLD, relevant unions, the Local Government Association of Queensland (LGAQ) and the Office of Industrial Relations Queensland.

Work, Health and Safety (WHS) is currently practised in Queensland sex industry workplaces without a special regulatory framework of enforcement. These practices are a result of peer education (such as private and co-op workers screening clients prior to making a booking), and are tailored to scale depending on the needs in particular workplaces (such as live CCTV streams in a staff room for workers to screen clients prior to 'intro').

Formal WHS guidelines and protections for sex workers exist in some Australian jurisdictions and New Zealand, each based on the Scarlet Alliance, *A Guide to Best Practice OHS in the Australian Sex Industry."*[16]

Decriminalisation in Queensland would mean that sex workers would be protected by existing workplace laws. Workplace laws to address unique sex work situations, such as recognising sex worker/clients agreements as civil (not criminal) activities, and the right to refuse clients, may already be covered by existing workplace laws once sex work is decriminalised.

An example of topics in the new WHS Guidelines would include: workers injury, density ratios, reporting of incidents and accidents, personal protective equipment (not mandatory), repetitive strain injury, security and safety, drugs and alcohol, smoking, first aid, fire, cleanliness, linen/laundry, body fluid spill protocols, waste disposal, number and location of toilets, spas and pool management, food storage and shared kitchen facilities for workers, staff, heating and cooling, lighting inside the building, at entrances and exits, method of complaints about WHS implementation in the workplace and workplace documentation of WHS.

[16] Scarlet Alliance (1999) A guide to best practice OHS in the Australian sex industry. https://scarletalliance.org.au/library/bestpractise

Q18-22 Policy Position: Evidence and experience in other jurisdictions demonstrates that Queensland WHS guidelines for the decriminalised industry, encompassing advice about universal workplace laws, would be best developed by Respect Inc in partnership with WorkSafe QLD, relevant unions, the Local Government Association of Queensland (LGAQ) and the Office of Industrial Relations Queensland.
Queensland production and implementation of realistic, accurate and viable sex industry WHS guidelines, including explanation of workplace laws, will need to be funded adequately and in at least four languages. Health promotion of this nature requires multiple methods: short explanatory videos, pictorial diagrams, on-site support, workshops, one-on-one peer education advice, extensive documentation and possibly economic support. An evaluation of implementation and compliance should be conducted, in four languages, to determine required alterations and future resourcing after five years.

CH 11: Public Health And The Health Of Sex Workers

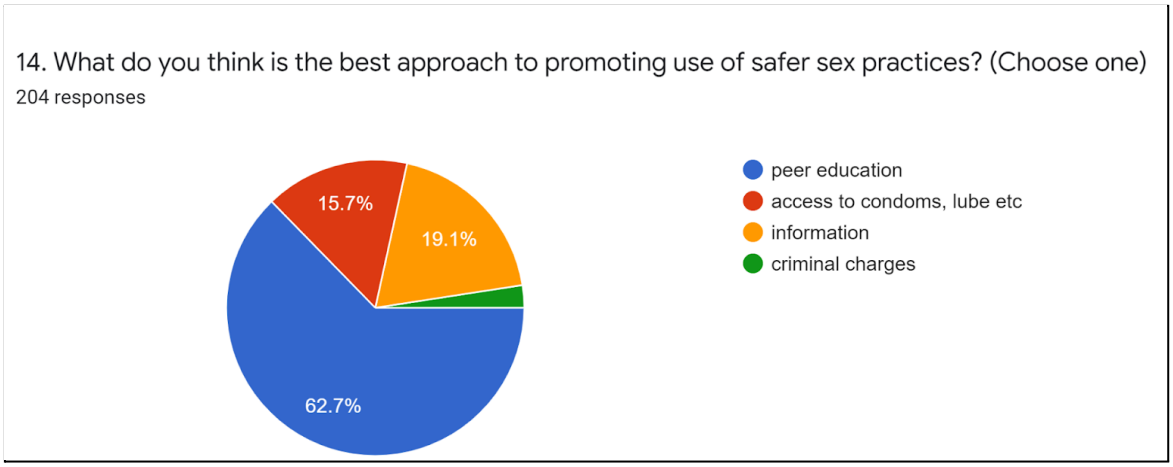
Questions 23-24

Public health outcomes are best achieved by education not criminalisation.
Sex workers are often incorrectly presumed to be a public health risk and 'vectors of disease'. This is a stigma-based misconception that is not supported by evidence. Evidence indicates that sex workers have low rates of blood-borne viruses (BBVs) and sexually transmitted infections (STIs) that are equal to, or lower than, the general population. Australia's National STI management guidelines state: 'there is no evidence that sex workers in Australia have higher rates of sexually transmitted infections (STIs) than the general population'.[17]

In Queensland, criminal laws and charges attached to use of prophylactics (condoms, dams,etc.), mandatory testing and working with an STI or HIV are in place and sex workers are targeted by police posing as clients who request services without protection. Attaching a criminal penalty to these health measures means police become the 'safe sex police'. This is a job they are not qualified for and do not do well. Queensland's laws are outdated and steeped in these stigmatising stereotypes that ignore the evidence.

We support sex workers' uptake of safe working practices and regular testing, but this is best achieved through peer education, WHS guidelines and access to free, voluntary and anonymous testing NOT criminal charges. This was revealed in our recent survey where 62.7% referred to peer education as the best approach to promoting safer sex practices with information (19.1%) and access to condoms, lube, etc. (15.7%) also prominent. Only 2.5% chose criminal charges as helpful in promoting safer sex practices.

[17] Australian Government, Health Department (2018) *Fourth national sexually transmissible infections strategy*. https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/STI-Fourth-Nat-Strategy-2018-22.pdf



Victoria's Sex Work Decriminalisation Act 2022 repeals public health offences similar to those in Queensland on the basis that the policies created barriers for sex workers and were stigmatising. The decriminalisation of sex work in Queensland should also result in the repeal of these laws and instead provide more resourcing for peer support of sex workers—especially new sex workers and CALD sex workers—and the provision of translated materials, outreach and support for sexual health services to provide free, anonymous, voluntary testing for all sex workers.

Mandatory testing

Australia's National HIV Strategy and the National Sexually Transmissible Infections Strategy[18] recognises **voluntary testing** NOT mandatory testing as best practice and explicitly identified mandatory testing of sex workers as a key barrier to evidence-based prevention, access to testing and healthcare services.[19] This is partly because mandatory testing 'endorses a false sense of security in the form of a "certificate", which, due to window periods, doesn't actually confirm a sex worker's sexual health status, but instead just indicates that the sex worker has participated with the states' mandatory testing regime.

An Australian study of the cost benefit of mandatory testing in Australia recommended that testing should not be 'locked by legislation'.[20] The cost of over-testing is high—screening sex workers for HIV every 12 weeks costs $4mil for every one HIV infection averted.[21] Mandatory testing places an unnecessary burden on sexual health clinics, which are already beyond capacity. Access to sexual health clinics for sex workers is often impacted by excessive wait times and sex workers who are experiencing symptoms of an STI, who are in need of quick access, are regularly asked to wait.

Mandatory testing of sex workers is incompatible with the Queensland Human Rights Act by impacting the right not to be subject to medical treatment without full, free and informed consent. Laws can limit human rights but only when it is 'necessary, justifiable and

[18] Australian Government, Health Department (2018) *Eighth national HIV strategy*. https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf

[19] Ibid. p.22 HIV Strategy, Ibid, p.22 STI Strategy.

[20] Wilson, D. P., Heymer, K. J., Anderson, J., O'Connor, J., Harcourt, C., & Donovan, B. (2010) 'Sex workers can be screened too often: A cost-effectiveness analysis in Victoria, Australia', *Sexually Transmitted Infections*. *86*(2).

[21] Ibid.

proportionate', which is not the case here. Mandatory testing of sex workers is considered a rights violation by a number of international human rights organisations, such as the United Nations Human Rights Office of the High Commission for Human Rights and UNAIDS.

Criminalisation of sex workers working with an STI

Criminalisation of sex workers is not an effective public health strategy. Education and peer support has demonstrated better and longer lasting results. Criminalisation of sex workers based on their 'health status' denies an individual equality before the law, undermines public health outcomes and perpetuates stigma. The Fourth National STI Strategy and the Eighth National HIV Strategy recognise that criminalisation of BBVs, STIs and sex work create barriers to accessing health services. The strategies recognise that criminalisation can impede access to evidence-based prevention, testing, treatment and support services and may result in increased risks of STI and BBV, loss of livelihood and risk to the personal and physical safety for sex workers.[22] [23]

'Criminal law and popular understandings have not kept up with the scientific consensus regarding HIV transmission and clinical advances. Criminal laws perpetuate stigma, discrimination, and mis-education around HIV'.[24] Given the advancement of biomedical intervention and current epidemiology of HIV in Australia, including that people living with HIV on now widely available treatment do not risk transmission of HIV, these provisions are no longer justified.

There is already a comprehensive process in Queensland to manage the very small number of cases where a person living with HIV places another person at risk.[25] The Public Health Act 2005 allows for the management of HIV-related risks, such as when a person living with HIV places others at risk, for example through unprotected sex. The process outlines a staged approach for the management and supervision of counselling, education and support for those persons living with HIV who place others at risk and have not responded to initial interventions at the local level, or are unwilling or unable to change their risk behaviours. Each Australian state and territory has implemented management processes that align with the National Guidelines for the Management of People with HIV Who Place Others at Risk.

The responsibility and powers provided to the Chief Health Officer and the Department of Health contained within the Public Health Act 2005 to manage people living with HIV who put others at risk should, and do, apply to everyone irrespective of the setting where the sexual activity occurs. Additional laws are not necessary.

Mandatory condom use laws

Mandatory condom use is based on the assumption that without legal intervention, safer sex practices will not be implemented. Research demonstrates that there are high rates of condom use amongst sex workers—including migrant sex workers—in jurisdictions that do not legally mandate sex workers to use condoms. For example, the sex industry in NSW: A

[22] Australian Government Department of Health (2018-2022) Fourth National Sexually Transmissible Infections Strategy. Pg 22

[23] Australian Government Department of Health (2018- 2022) Eight National HIV Strategy. Pg 22

[24] Queensland Positive People (2020) Issues and options paper: Sexual conduct involving HIV and the criminal law in Queensland Exposure Draft.

[25] Queensland Department of Health (2014) Guideline for the management of people living with HIV who place others at risk of HIV. https://www.health.qld.gov.au/__data/assets/pdf_file/0022/147640/qh-gdl-367.pdf

Report to the Ministry of Health study found that sex workers were approaching 100% condom use in Sydney brothels with no differences for migrant sex workers.[26] However, as mandatory condom use laws are difficult and costly to enforce, they often lead to the entrapment of sex workers by police and create barriers to sex workers accessing health and justice services.

The implementation of sex worker peer education programs has been central in maintaining low rates of STIs and BBVs amongst sex workers. Peer educator programs in Australia were instrumental in persuading brothel managers and workers to adopt safer sex practices. Condom use in brothels rose from under 11% of sexual encounters to over 90% between 1985 and 1989 and high rates of condom use have been consistently maintained by sex workers since, with the health of sex workers improving commensurately.[27]

Q23-24 Policy Position: There should be no criminal laws to mandate sexual health testing, use of condoms or working with an STI. This is because it is against sex workers human rights, is exceptional law to which no other profession is subject, sex workers have low rates of STIs, high rates of condom use, high rates of sexual health testing, and peer education and health promotion is a more effective way to ensure all of this instead of criminal laws.[28] Currently the police engage in entrapment, posing as clients to try to get sex workers to agree to providing services without condoms.The cost of this policing and excessive testing are exorbitant compared with the cost of peer education.
A better system is for criminal laws to be removed and the focus shifted to peer education, improving access to testing and enabling sex workers to make informed decisions about best-practice safe work practices and testing.

CH 12: Planning Laws And Sex Work

Questions 25-37

Under decriminalisation, planning matters would be regulated in the same way as they are for other businesses. However, there is irrefutable evidence of councils failing to consider sex industry development applications on planning grounds and instead attempting to ban the sex industry completely or refusing valid applications[29], which in other jurisdictions have ended up in costly Land and Environment Court processes, only for the council decision to be then overturned. When Queensland's licensing laws were introduced many councils took up the option of applying to prohibit the sex industry. As a result, brothels are banned in more than 200 Queensland towns and only 12 of 77 councils have ever approved a brothel.[30] If permitted, councils will use their discretionary powers to

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[26] Donovan, B., et al. (2012). The sex industry in New South Wales:A Report to the NSW Ministry of Health. Retrieved on 25/03/20 from https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_NSW-Sex-Industry-Report-2012.pdf. Pg vi.
[27] Ibid. p. 11.
[28] Jeffreys, E., Fawkes, J. & Stardust, Z. (2012) 'Mandatory testing for HIV and STIs amongst sex workers in Australia: A barrier to protection', *World Journal of AIDs*, (2), pp. 203-211. https://www.afao.org.au/wp-content/uploads/2017/06/Mandatory_Testing_for_HIV_and_STIs_among_Sex_Workers_-A-_Barrier-to_-Prevention.pdf
[29] Crofts, P. (2006) Visual contamination: Disgust and the regulation of brothels. Available at SSRN: https://ssrn.com/abstract=2826908 or http://dx.doi.org/10.2139/ssrn.2826908
[30] Prostitution Licensing Authority (2012) *Annual Report 2011-2012*, p. 24. https://www.pla.qld.gov.au/__data/assets/pdf_file/0008/674720/pla-annual-report-2011-2012.pdf

undermine decriminalisation. Discretionary powers would significantly exclude thousands of sex workers in residential, centre and mixed zones from the benefits of decriminalisation.

The Victorian Sex Work Decriminalisation Act 2022 states "Local laws [are] not to be inconsistent with or undermine the purposes of this Act. A local law made under the Local Government Act 2020 must not inconsistent with the purposes of this Act or undermine the purposes of this Act to decriminalise sex work and provide for the reduction of discrimination against, and harm to, sex workers."

Background

Sex workers are currently operating in residential, centre and mixed zones throughout Queensland in ways that comply with planning laws and regulations. Thousands of sex workers who live, work and contribute to each council area in Queensland are criminalised for using safety strategies or sharing overheads, while simultaneously appropriately scaled in residential, central and mixed zones, not subject to sex-work-specific Development Application (DA) approval, and compliant with mandatory amenity impact regulations such as:

Minor 'Building Works' regulations and limitations in all zones
Strata and residential visitor rules and noise regulations in residential zones
Environmental protection (noise) policy in centre and mixed zones
Strata and residential zone rules about disturbance
Fair Trading legislation rules for commercial opening hours
Smoke alarm regulation relevant to zone/strata/land-use-type/density
Mandatory maintenance of car park spaces.

All businesses in centre and mixed zones must welcome industrial inspectors. Industrial inspectors cannot compel a person to answer questions or request entry into a residential dwelling.

The NSW industry was in the same situation in 1996 but after decriminalisation, councils used their discretion to create new prohibition policies. Special but unnecessary sex industry-specific discretionary rules required an impossible number of off-site car-parks, proximity limits, unreasonably short opening hours, front doors to be off street level, private workers to 'live' at their work address and the banning of 'co-ops'. Then in 2009 councils were granted closure orders for non-compliance. The impact on private and co-op workers in residential areas, with councils requiring them to have a DA approval prior to being 'permitted' and then hiring private investigators to uncover them, is unethical and a breach of public trust. Councils in NSW are now a new version of police control, using planning instruments, location regulations and land use definitions instead of laws. Some NSW councils default to simply ignoring DAs then either exercising closure orders or seeing the applicants in court. These DAs end up in civil court proceedings to force council consideration.[31]

Moving the sex industry from criminalised/marginalised to decriminalised will likely not be embraced by councils. Granting councils discretion over sex industry planning rules in Qld

[31] Crofts, P. 'Not in my neighbourhood: Home businesses (sexual services) and council responses'. https://opus.lib.uts.edu.au/bitstream/10453/939/3/2003001859.pdf

will repeat the mistakes made in NSW. Councils would embark on arbitrary DA decisions, politicisation of anti-sex work rules, an eagerness to over-regulate, and media-covered popularity contests about which council candidate promises to be the 'most strict' on sex industry workplaces.

In NSW the State Planning Instruments, Statutory Instruments and Local Planning instruments are used by councils to exclude some sex workers from the benefits of decriminalisation. If permitted, Queensland councils will be the new site of marginalisation and targeted social exclusion of the sex industry. Granting councils unnecessary arbitrary decision-making powers is the exact approach currently failing for the police and PLA. Subjecting sex industry workplaces that are already compliant with relevant zoning regulations to a DA process is unfair.

Private and co-op sex work in residential areas

Private and co-op sex workers in residential zones must be protected from being forced by councils to live on premises. Floor-space usage ratios are not practical and would likely contradict WHS guidelines. Irreconcilable breaches of privacy, safety and confidentiality arise if councils require private sex workers to be assessed for development applications. Empowering site inspectors to enter residential zones for compliance checking of private and co-op sex workers is an unacceptable corruption risk.

When writing your answer to Chapter 12, you could comment on what you think would happen to decriminalisation if councils were given discretionary powers. Explain your opinions about right of entry into sex industry workplaces. What impact would regulations empowering inspectors to enter private and co-op workplaces have?

Q25-37 Policy Position: Once decriminalised, private and co-op sex work in residential areas should be permitted as 'Material Change of Use', massage parlours and brothels in Centre and Mixed Zones should be permitted under 'Declared Use', all covered by existing mandatory amenity impact rules. Councils must be prohibited from categorising sex work locations as 'assessable', and as such should not be able to prohibit or make arbitrary rules designed to exclude some sex workers from decriminalisation.
Currently, private and co-op workplaces in Residential Zones make up 60% of the sex industry in Queensland, and massage parlour workplaces in Centre and Mixed Zones represent about 10%. They fit inconspicuously into their zones. Police should have no rights to enter, question or arrest people on the basis of sex work-specific laws and powers. 'Material Change of Use' regulations that currently cover the privacy of DV shelters should provide added confidentiality protection for sex workers in private and co-op workplaces in residential areas.

CH 13: Advertising Sex Work

Questions 38-41

Current laws

The Prostitution Act 1999 (Subdivision 2 and 3) and Prostitution Regulation 2014 set out extensive restrictions for advertising of sex work in Queensland and give the PLA discretion

to decide the approved form. Sex workers in Queensland are not allowed to describe services, use certain images, advertise through television or radio, or use specific words. In particular, the word 'massage' is prohibited in sex work advertising.

In the early years of licensing, sex workers were required to submit advertisements to the PLA for approval but, due to the ridiculous amount of administrative work that was required, this process was stopped following a review of the legislation.[32]

The PLA publishes advertising guidelines that include approved and prohibited words, and both the PLA and police have powers to issue infringements for non-compliant advertising. The guidelines are very confusing and almost impossible to comply with. Of importance to this review is how the advertising guidelines act as a trigger for police attention, entrapment and overreach, and often result in other charges as part of the entrapment or raid.

Sex workers should not face sex work-specific criminal or other regulation on advertising. For sex workers, advertising is an essential component of our workplace health and safety strategies. Restrictions on advertising are not based on evidence, nor do they have any demonstrable positive impacts on sex worker occupational health and safety. Advertising restrictions in Queensland cause sex workers difficulty in negotiating with clients and performing their work. In our recent survey of 204 sex workers many described the need to accurately describe their services so that the client would know what to expect in the booking. Being able to clearly describe services in the advertising was said to be important to negotiate consent '*so the client knows'*, '*so clients clearly understand*', and therefore it would save time during the booking process and improve safety in bookings.

Unnecessary administrative burden is also caused when sex workers must engage with many enquiries that are seeking services they do not provide, as a result of not being able to describe services in advertising. Sex workers who do erotic massage need to be able to also properly describe their services, and any attempt to restrict the use of the word massage will leave them open to police entrapment. Sex workers whose first language isn't English are particularly vulnerable to violating these laws by accident.

Australia already has national standards for commercial advertising. The system of self-regulation is managed independently by 'Ad Standards' and an Ad Standards Community Panel[33] and has been operating since 1998. Exceptional restrictions on sex work advertising in Queensland would be in contradiction to the existing national system. Decriminalisation should result in sex work advertising being covered only by the same regulations to which other commercial advertising is subject.

Sex industry business recruitment advertising is currently prohibited in Queensland. If sex work is to be treated like other businesses there must be a fair and practical way for business operators to advertise for workers or auxiliary staff, for sex workers to find work, and for independent sex workers or co-ops to advertise for co-workers.

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[32] Crime and Misconduct Commission (2006) *Regulating outcall prostitution: Should legal outcall prostitution services be extended to licensed brothels and independent escort agencies?* p. 52.

[33] Ad Standards (Accessed 3 May 2022). https://adstandards.com.au/about/ad-standards

Rules about advertising signage already exist.[34] Sex work workplaces in Queensland are already required to be compliant with these rules. Decriminalisation should allow sex industry businesses to continue to have parity with signage rules for other similar scale businesses in the same zone. There is no need for sex industry-specific legislation on signage.

When you address this question, you could share your experience of how the current advertising restrictions impact on you and the way you work. Would it be better to be able to advertise for others to work with you and to be able to access advertised offers of work?

Q38-41 Policy Position: Sex industry businesses and sex workers do not require additional rules or criminal punishments for advertising our services. We need to be able to describe our services, including using the term 'massage'. Existing advertising codes already regulate sexualised content in marketing to children.[35] Decriminalisation does not include special advertising restrictions just for sex workers that don't apply to other businesses. The Australian framework of advertising self-regulation should be the only restrictions to which sex work businesses are subject.

CH 14: Public Solicitation

Questions 42 - 46

The Consultation Paper is factually incorrect in relation to street-based sex workers.
The data on offences in the report was from 2011, excluding the most recent 11 years.
Since 2008 the most common 'prostitution-related charge' has been 229H of the Criminal Code 'knowingly participating in provision of prostitution'. This is a charge used against anyone who participates, directly or indirectly, in the provision of prostitution and is used to charge sex workers working together, working from the same hotel, hiring a receptionist, driving each other to bookings, etc.
The offences related to soliciting have been very low—six offences in the last five years, which is unlikely to result in marked public amenity or nuisance.

The benefits of decriminalisation should apply to all sex workers including the very small street-based sector in Queensland, which constitutes less than 2% of sex workers. Continuing criminalisation, or specific controls, will undermine this.

QPS Statistic Data' Public Soliciting offences	
2016-17	3
2017-18	0
2018-19	1
2019-20	0
2020-21	2
Last 5 years total	**6**

In recent years offences for public soliciting have been negligible, in 2020-21 there were 2 offences, in 2019-2020 there were 0 offences, in 2018-2019 there was 1 offence, in 2017-18 there were no offences, and in 2016-17 there were

[34] Links to practical explanations of Signage regulations:
https://brandhero.com.au/guide-to-brisbane-city-council-signage-regulations/
https://www.lgtoolbox.qld.gov.au/brisbanecitycouncil/topics/other-business/advertising-signs#do-i-need-an-approval
[35] Australian Association of National Advertisers (2017) 'Code for advertising and marketing communications to children'. http://aana.com.au/content/uploads/2018/03/180316-Code-for-Advertising-and-Marketing-Communications-to-Children.pdf

3 offences.[36] It is reasonable to assume that this equates to negligible community public amenity or nuisance impact and there is no need in Queensland for the current laws or alternative laws or regulation. The very small number of 'illegal prostitution complaints' reported to the PLA also supports our assertion that street-based sex work in Queensland has very low or no impact.

Maintaining a criminal law against public soliciting is harmful to sex workers because it criminalises, maintains stigma and stereotypes a small part of the sex work community that remains at risk of police interactions or charges. When asked what would be one of the benefits of decriminalisation to you, one participant in our recent survey said *"street based sex workers being free to work where they feel safest, and to be supported and protected by law enforcement instead of victimised"* [Participant 52]. All criminal laws specific to sex work must be repealed to remove police from regulation of sex work and to fight stigma. Other approaches to full or partial prohibition or criminalisation are ineffective and create increased risks and barriers for sex workers. Sex workers' safety is placed at risk when evasion of authorities has to be prioritised over safety strategies. These approaches limit the ability for sex workers to safely screen clients and negotiate their services.

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. They create significant barriers for street-based sex workers to report crime to the police for fear that reporting will result in charges being laid against them. In a recent survey of 204 Queensland sex workers, 76.5% of sex workers indicated that they would not make a police report under the current laws. The reasons were: because of the fear of becoming known to police by reporting crime; how the current practices of covert policing and entrapment prevented them from making a report; because they believed they would be targeted; or because they questioned whether the police would act in their best interest if they reported.

Move-on notices, based on a police officer suspecting that, because of a person's behavour, they are soliciting for sex work, is used against trans and gender-diverse people, people who use drugs and Aboriginal and Torres Strait Islander women. These powers are concerning because of the vague nature of the law, which leads to discretionary application by police but also because the law would seem to be incompatible with the right to freedom of movement enshrined in the Human Rights Act. Our organisation is also aware of incidents where sex workers who work and live in the same areas have suffered from the abuse of power by police who have issued move-on orders that effectively stop sex workers from walking down their own streets and going to the shops.

> *I have been threatened with outing, experienced public harassment and abuse, been profiled on the street and demanded to show Id many times in my own neighbourhood by police and had neighbours complain about me due to their stigmatising views [Participant 203].*

[36] Queensland Police Service (2022) Maps and statistics, Queensland reported offences number. https://www.police.qld.gov.au/maps-and-statistics

Criminal laws against public solicitation and move-on notices are unlikely to be compatible with the Queensland Human Rights Act by limiting freedom of movement (s 19), and while the Act allows for rights to be reduced when limited, this is only after careful consideration and only in a way that is necessary, justifiable and proportionate. A very small number of people who in the last five years have created so little an impact that there have only been six offences does not imply necessary, justifiable and proportionate.

When you address this question, you could share your thoughts on no sex worker being left behind and how you have experienced criminal laws disadvantage you or other sex workers.

Q42-46 Policy Position: Decriminalisation benefits should apply to street-based sex workers by repealing the sections of the laws that criminalise public soliciting and loitering charges, as well as police powers of entrapment and move-on notices.
There is a low-to-no public amenity/nuisance impact, with only six public soliciting offences in the last five years.
The scale in Queensland is not comparable to New South Wales, Victoria or New Zealand, and move-on laws are not warranted where there is no evidence of a significant problem with street-based sex work of less than 2%
Public soliciting charges and move-on notices based on a police officer's suspicions that, because of a person's behaviour, the person is soliciting for sex work, criminalise the most vulnerable sex workers.
A decriminalisation Bill should protect against local government regulations being developed that override the intention of decriminalisation.
Freedom of movement restrictions breach human rights laws.

CH 15: Review Of The New Regulatory Framework

Questions 47-48

The burden of research is carried by the community who are the subjects. It is unethical to conduct a research project on an industry in transition. It will not create an accurate baseline and is likely to replicate similar research efforts at the beginning of licensing. It can paint a picture of the moment of transition and all the anomalies that occur during change, but is not useful.

Q47-48 Policy Position: There is a need to review the new framework no sooner than five years after implementation. The focus of the review should be the success or challenges of WHS health promotion. Respect Inc should be funded to design the review in partnership with WorkSafe, sex workers should collect the data and the analysis should be led by a partnership of agencies with prominent sex worker membership.

CH 16: Discrimination Against Sex Workers

Question 49

Background & current laws

Sex workers in Queensland experience extremely high levels of discrimination and significant barriers to reporting discrimination. In our recent survey of 204 sex workers[37], 72.5% of participants had experienced discrimination and a further 14.2% were unsure if what they had experienced would be considered discrimination. Ninety-one percent of sex workers who had experienced discrimination did not report it, noting a wide range of barriers.

This scale of discrimination outlined points to widespread and normalised unfavourable treatment of sex workers across many areas of life. Survey participants provided detailed examples in the areas of goods and services provision, health care settings, accommodation, banking, superannuation and insurance, education, work, policing and administration of state laws as well as sexual harassment and vilification.

Our consultation with sex workers, including sex workers who have lodged complaints with the Commission, demonstrates the significant limitations of the attribute 'lawful sexual activity', specifically:

- Protection is limited to one's 'status' as a sex worker and does not cover discrimination on the basis of the practice of performing sex work;
- Many aspects of sex work are not 'lawful' in Queensland, including practising basic safety strategies, and the licensing laws criminalise the majority of workplaces, leaving many sex workers not protected under 'lawful sexual activity';
- The attribute fails to provide clear direction to the Tribunal or courts, demonstrated by the lengthy legal debates over the attribute in the case of Dovedeen Pty Ltd v GK (2013);
- The attribute obscures the fact that sex workers are protected from discrimination, limiting its impact on reducing discrimination by providers of goods and services and conveying the opportunity to sex workers to report discrimination.

Q49 Policy Position: Our position is informed by consultations, workshops and online discussions held by organisations and a survey by DecrimQLD of 204 sex workers on experiences of discrimination and barriers to reporting, as well as legal opinion sought in the process.

Decriminalisation is an important first step to achieving improved workplace health, safety and rights for sex workers. It must be twinned with anti-discrimination protection if sex workers are to be protected and have an avenue to address discrimination and for the necessary culture change that underpins discrimination and stigma to shift. The Anti-Discrimination Act needs to be amended by:

- replacing the 'lawful sexual activity' attribute with the new attributes of 'sex work' and 'sex worker';
- repealing exceptions to the Act that make accommodation and working with children discrimination against sex workers lawful;

[37] *Unprotected and under-reported* (2022) Synopsis 1: Sex workers' experiences of discrimination anti-discrimination protections in Queensland. https://respectqld.org.au/wp-content/uploads/Synopsis-1-ADA.pdf

- making changes to the complaints process to address significant barriers to reporting discrimination for sex workers;
- incorporating a change to enable a representative organisation like Respect Inc to make a complaint on behalf of a sex worker; and
- including ‘sex work’ and ‘sex worker’ as a recognised 'ground' for unlawful and criminal vilification under sections 124A and 131A.

Support resources:
Unprotected and under-reported. Synopsis 1: Sex workers’ experiences of discrimination & anti-discrimination protections in Queensland:
https://respectqld.org.au/wp-content/uploads/Synopsis-1-ADA.pdf

CH 17: Other Matters

Questions 50-52

Decriminalisation is the first step, but sex workers must be supported to contribute to law and policy development that impacts on our work. The success of decriminalisation relies not only on legislative change but also on effective implementation and communication. Queensland’s sex worker organisation, Respect Inc, will play a key role in both engaging sex workers with the process of legislative change and implementation. As part of this phase, resourcing will be needed to ensure sex workers and a wide range of sex industry businesses are aware of their changing rights and responsibilities. This includes WHS rights for sex workers and responsibilities for businesses. Communication is essential for the government and police to understand the impact of the laws.

Q50-52 Policy Position: There will be a need for funding to be provided to Respect Inc to produce to produce or lead the following :
(a) education and training, including:
- i. public education and awareness programs to address stigma and educate the community about sex workers;
- ii. peer education, information and training for sex workers and sex work business operators on their rights and obligations; and
- iii. sensitivity education and training programs for officials and organisations who deal with sex workers.

(b) steps to build positive relationships between sex workers, police and other authorities;
(c) continuing peer support and outreach services by Respect Inc for sex workers on health and other matters.

All of these programs and resources should be translated to allow equitable and effective access by all sex workers.

It is also essential that Respect Inc is resourced to develop a communication strategy to support effective implementation of decriminalisation, ensuring sex workers and a wide range of sex industry businesses are aware of their changing rights and responsibilities.

CH 18: Fraudulent Promise To Pay A Sex Worker For A Sexual Act

Questions 53-55

Background

In sex work, one aspect of consent for sexual services is payment for the services negotiated. If payment is not made or is withdrawn, consent has been obtained fraudulently. In the ACT, courts have found that when a person refuses or evades the agreed payment for sex the act constitutes rape, because consent for the sexual act was obtained fraudulently.

The Queensland Criminal Code section 348(2)(e) states that consent is not "freely and voluntarily given" if it is obtained "by false and fraudulent representations". However, unlike the ACT legislation, this subsection is limited to "the nature or purpose of the act", and while this should include non-payment in a sex work setting police seem to believe it does not and have been reluctant to take action in these cases.

It is the experience of sex workers who have attempted to report cases of this type that unless this is clarified in the legislation police are unlikely to shift their understanding or approach and cases of rape will continue to go unaddressed, including by serial offenders.

The ACT has introduced stealthing laws and several other jurisdictions are considering it. Stealthing is the non-consensual removal of a condom during sex, or failure to use a condom if it was agreed to. When this occurs consent is negated. and sex without consent is sexual assault. As stealthing is not unique to sex work it should not be in the sex work legislation but in the Criminal Code and applied to all settings.

Q53-55 Policy Position: Queensland's criminal laws are **not** adequate to deal with stealthing or circumstances where there is a fraudulent promise by a person to pay money to a sex worker in exchange for a sexual act. Section 348(2)(e) 'by false and fraudulent representations about the nature or purpose of the act;' should be amended to include 'or the withdrawal of payment or non-payment of a sex worker'.
In our January 2021 submission to the Legal Affairs and Safety Committee and our April 2022 submission to the Women's Justice and Safety Taskforce we argued that non-payment or stealthing (covert removal of a condom) should be considered rape not fraud.

Reading list of key with reliable research links:

https://respectqld.org.au/wp-content/uploads/Decrim/Decrim-Review-links.pdf