Complete Document (182 pages)

June 2022

JOINT SUBMISSION

Respect Inc & #DecrimQLD responding to the QLRC ‘A framework for a decriminalised sex work industry in Queensland’ Consultation Paper WP 80’

Our Story

The following document contains our joint submission; responding to the QLRC 'A Framework for a decriminalised sex work industry in Queensland Consultation Paper WP 80'.

Our submission was respectfully informed by the lived experiences of sex workers in Queensland, as well as academic research, recent survey results, and community consultations.

This reform has the potential to be the most significant policy change for sex workers, our partners, friends, families and children to ever happen in Queensland whilst simultaneously resulting in very little change for most other community members. That sex workers in Queensland and our workplaces would no longer be criminalised but instead afforded the same workplace, health and safety rights as other workers is significant.

Equally, decriminalisation can deliver a low-cost and high-compliance model of regulation that provides benefits for the broader community and government. The model has the ability to free up police resources and end the significant administration and resource burden of licensing on the industry and on government. Sex workers are an integral part of the Queensland community who urgently require legislative change in the form of full decriminalisation paired with human rights and protection from discrimination and vilification.

Respect Inc is the state-wide sex worker organisation in Queensland that provides a comprehensive health promotion and peer education program for sex workers. Respect Inc has offices and sex worker drop-in spaces in Cairns, Brisbane and the Gold Coast and provides regional outreach in other locations.

DecrimQLD is a committee of sex workers who have joined with Respect Inc to progress the removal of harmful and discriminatory sex work laws and achieve decriminalisation in Queensland.

We confirm this submission may be quoted from, and referred to, in the QLRC report and we are available to discuss any of these matters further.

DecrimQld and Respect Inc also endorse the submission made by Scarlet Alliance, Australian Sex Workers Association.

EXECUTIVE SUMMARY

Section 1 of 17 (pp1-4)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

Executive Summary

Queensland has a unique opportunity to achieve a best-practice model of decriminalisation during this term of government. Other jurisdictions at the point of decriminalisation have had incompatible and stigmatising laws—such as licensing or criminalisation—added at the very last stages of reform by Cabinet, opposition parties or individual MPs as a result of the political cycle. The QLRC is an independent body with the scope to recommend practical and wide-ranging legislation, without the political pressures of perceived electoral vulnerabilities. Respect Inc, DecrimQLD and sex workers across Queensland have lobbied for decriminalisation of sex work to be referred to the QLRC for this reason.

Decriminalisation is the repeal of sex industry and sex work-specific laws, allowing sex industry businesses to be regulated by existing laws and regulations that apply similarly to other businesses. Decriminalisation is a low-cost, high-compliance model of sex industry regulation that has demonstrated improved access to justice for sex workers.

A licensing model inherently divides the industry in two and disincentivises compliance. A decriminalised model encourages compliance and is not hindered by additional layers of laws or regulation.

In order for Queensland to regulate sex work 'not as a crime' but 'as work' and make the historic shift to decriminalisation, it is necessary for policy makers to accept, as academia has, that criminalisation and licensing 'have developed through stigmatised narratives of disgust, protection and risk'[1] over many centuries. It is Queensland sex workers who carry the burden of this jurisdiction's harmful licensing laws, criminalisation of safety strategies and deceptive policing practices. This is the starting point and impetus for repealing and avoiding replication of the failings of the current laws.

For this reason we respectfully refute the Consultation Paper assertion that maintaining licensing (including certification) works as a safeguard to deter illegal activity and the exploitation of sex workers (9.67). Licensing systems split the industry into the compliant (legal) and non-compliant (illegal) sectors. Licensing creates an underclass of sex workers with diminished rights because their workplaces are not eligible to be licensed. This is the very opposite of providing protection:

> Criminalisation and licensing of sex work are both drivers and symptoms of whore stigma. They are drivers in the sense that the presence of criminal and licensing laws facilitate (and provide justification for) increased police contact. Additionally, they are symptoms in the sense that legal systems governing sex work have developed through stigmatised narratives of disgust, protection and risk. However, stigma bleeds out beyond blackletter law.[2]

For example, paternalistic 'protection' approaches that define *commercial sexual exploitation* differently from sexual exploitation, or differently from exploitation in the workplace for any person, reinforce the notion that exploitation in sex work is less deserving of the universal

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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* Vol 10 No 3. https://www.crimejusticejournal.com/article/view/1894

[2] Stardust et al. (2021) Ibid

protections applied to all others, but at the same time requires alternative (and often more heavily penalised) solutions.

Another example of paternalism is the sentiment that '*no-one should have to rely on sex work to survive'*. People rely on sex work for an income and to survive, to pay rent, achieve ambitions and send their children to school, as happens in any industry. Paternalistic ideas deprioritise our safety and retain police as prosecutors in the daily lives of our community, even while intending to protect us. Ultimately the 'protection' approach guided the 1999 legislation favouring licensed brothels and penalising all other workplaces including sex workers working in groups. Stigmatising narratives were evident in political debate when the Prostitution Act was introduced and are also threads woven throughout the Consultation Paper.

These flaws and tensions in the development of sex work legislation are unfortunately not uncommon:

> In the end, what matters most is evidence-based research of the effects on the ground; the way a policy is implemented can be more important than the policy itself, and it will be our responsibility, in the sex worker movement, to continually monitor the impact of these policy projects (Katie Zen in Chateauvert 2015 p. 171).[3]

The task before us is to ensure the new framework does not replicate these stigmas, and instead create consistencies between sex workers' material needs and the Anti-Discrimination Act, workplace health and safety protections and the Human Rights Act. Listening, hearing and responding to sex workers in this review is the important counterbalance to end long-standing, stigma-driven policy approaches that undermine the rights of sex workers and negatively impact access to workplace health and safety (WHS). We appreciate the QLRC is working towards an understanding of sex work as work and the development of draft legislation that will reflect that sentiment into law.

The current framework of laws and regulations was in place prior to the introduction of the Queensland Human Rights Act 2019 (Qld) (HRA). As the Consultation Paper recognises, and our submission outlines, the current laws are likely to be incompatible with the HRA. To be compatible with the HRA, all new Queensland legislation must not limit human rights, or must only limit rights to a reasonable and demonstrably justifiable extent in a free and democratic society based on human dignity, equality and freedom.[4] The HRA lists relevant factors that may be considered when deciding compatibility. The Consultation Paper also asks for feedback on retaining or creating new approaches that, after consultation and expert advice, we submit are also inconsistent with the HRA and the Anti-Discrimination Act 1991 (Qld) (ADA).[5]

For example, workplace health and safety (WHS) regulation applies to all workers in Queensland, including the provision of and training on the use and storage of protective personal equipment (PPE). Laws that single out sex workers for prophylactic use in work settings are unnecessary and potentially discriminatory. WHS guidelines developed as a result of a consultation process will identify common hazards and risks specific to the sex industry

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[3] Chateauvert. M. (2015). *Sex workers unite*, Beacon Press, 2015.

[4] *Human Rights Act 2019* (Qld) s. 13(1).

[5] Ibid, s. 13(2).

and ways they should be managed. A specialised Code is not required, and, if legislated, risks reformulating stigmas and barriers to compliance similar to the licensing approach. Workplace Health and Safety Queensland has existing powers to ensure WHS requirements are being met. Existing codes, laws and responsibilities ensure people conducting a business or undertaking (PCBU) implement WHS.

After decriminalisation these should apply to the sex industry. There is no need for additional statutory requirements. After decriminalisation, sex workers will be able to report WHS matters to the regulator in the same way as any other worker in Queensland. Long-lasting active participation in WHS compliance is only possible if the framework is useful, practical and designed for purpose.

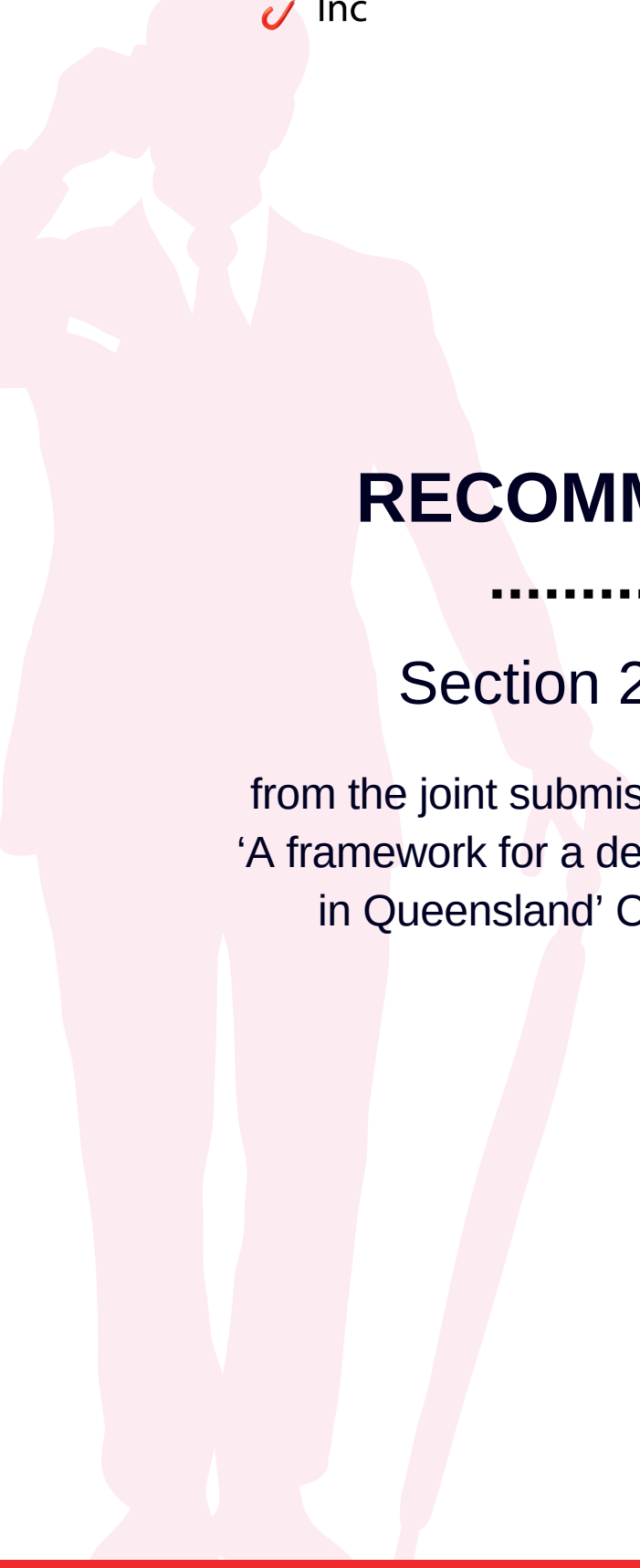
Similarly for decriminalisation to be a success, the framework for private sex workers needs to be practical and workable. Private sex work in residential zones makes up 55% of the Queensland industry, with almost a quarter working in collectives. Touring, working from motels and short-term accommodation, escort work and NDIS services are all part of private sex work. Even considering these other locations, there is no practical alternative to allowing private sex work in residential zones. Appropriate legislative solutions exist. Policies that seek to prohibit, expose, identify, locate, ban or track private sex work in residential zones fail because compliance contraverts the business model.

Finally, we submit that this consultation has sought feedback on the key concepts of a licensing framework and impacts of the current model. To date there is no indication that the QLRC intends to consult with sex worker organisations on the technicalities of the new framework. Sex worker organisations can be of most use during the next stage of drafting, particularly in identifying unintended impacts on sex workers and making visible any retained stigmatising policies and laws that otherwise risk being replicated.

Thank you for considering our submission.

This submission is informed by consultations, workshops and online discussions about the Queensland sex work laws held by Respect Inc and DecrimQld with other sex workers over the last 5 years, several partnered research projects as well as our experiences in sex worker community building, peer education and advocacy over at least 15 years.

Additionally, a quantitative and qualitative survey, comprising 35 questions, was conducted through December 2021-February 2022. Responses were received from 204 sex worker participants with working experience in Queensland.



RECOMMENDATIONS

Section 2 of 17 (pp5-17)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

RECOMMENDATIONS:

Chapter 7 recommendations

Recommendation 1 (Q1): The main purposes of the Queensland sex work 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.

Recommendation 2 (Q2):

The decriminalised framework should accommodate existing and new sex work workplaces to be protected under all current, applicable Queensland Codes of Practice, operate in compliance with local amenity, be able to work in suitable locations without undue council interference and safeguarded from discrimination within the ADA (Qld).

Exceptional criminal penalties, licensing, planning requirements, exploitation laws, police powers (including entrapment), anti-discrimination exemptions and other laws will be repealed.

Evidence from other jurisdictions shows the size, scale and types of sex work will not change substantially after decriminalisation. For most Queenslanders there will be no impact whatsoever.

Recommendation 3 (Q3):

Decriminalisation is primarily a process of repeal. Changes to the current framework would include:

- repeal all of Chapter 22A of the Criminal Code
- repeal all of the Prostitution Act and Prostitution Regulation
- amend other Acts to remove 'exemptions' or 'disqualifications' based on Criminal Code and Prostitution Act offences
- remove the police from any role in sex work regulation, repeal sections of the Police Powers and Responsibilities Act 2000 that refer to sex work including ‘controlled activities’, ‘move on notices, powers in relation to consorting
- amend Planning Regulations (2017) to repeal Schedule 10, Part 2, Brothels, "Prohibited Development—material change of use for a brothel", add brothels, massage parlours, escort agencies and private sex work including collectives to Schedule 6
- amend Consent in the Criminal Code 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' and add a provision 'by an intentional misrepresentation by another person about the use of a condom'

- amend anti-discrimination protections to cover sex work and sex worker against discrimination and vilification and repeal exemptions that allow lawful discrimination against sex workers
- amend the definition of sex work
- expunge sex work-related offences
- non-legislative approaches to ensure WHS responsiblities and rights are applied to all sex indutry workplaces through the development of WHS guidelines
- amend Liquor Act (1992) and Liquor (Approval of Adult Entertainment Code) Regulations 2002 to decriminalise strippers,
- no new laws specific to sex work.

The entire current licensing framework of the PLA, PETF, criminalisation, exceptional police powers, entrapment, anti-discrimination exemptions, council discretion and targeted police enforcement must be repealed. A decriminalised framework has no role for atypical treatment of sex work except where civil protections (WHS, accepted development, relevant anti-discrimination attributes) are required.

Recommendation 4 (Q4):
All sex work, regardless of the sector, should be decriminalised as part of this review.
All sex industry businesses should be included in the new framework.
All sex work in Queensland will be covered by universal human rights and generic industrial safeguards after decriminalisation, except where civil protections are required (WHS guidelines, accepted development, relevant anti-discrimination attributes).
No sector or sex worker will be left behind.

Recommendation 5 (Q4):
The definition of sex work must be replaced and modernised. We recommend the new definition as:
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.

Chapter 8 recommendations

Summary Q5 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.

Recommendation 6 (Q5a)
The offences in section 77 or the Prostitution Act and sections 229G, 229FA and 229L of the Criminal Code should not be kept or reformulated in another law because they are dated and duplicate adequate existing laws in the Criminal Code and elsewhere.

Recommendation 7 (Q5)
No offences or other provisions using the term 'commercial sexual exploitation' should be included, and creating new sex work-specific laws to deal with sexual exploitation will undermine decriminalisation and create unintended consequences for vulnerable sex workers and others who will have these laws and concomitant stigma used against them.

Recommendation 8 (Q5)
The full removal of state police as prosecutors of sex workers in Queensland is an essential and non-negotiable plank of decriminalisation.

Recommendation 9 (Q5b)
Current existing state and federal laws should be acknowledged as adequate to safeguard sex workers, people with 'impairment of mind', children and people impacted by trafficking under decriminalisation.

Recommendation 10 (Q5)
There should be no blanket law to prevent children from being on premises where sex workers work.

Recommendation 11 (Q5c)
The Child Employment Act should not be amended to include offences specific to sex work but should be amended to remove section 8B **'**prohibition on work as social escort'.

Recommendation 12 (Q5b)
The definition of 'impairment of mind' in the Criminal Code must be replaced with a definition that refers to one's capacity to consent to sexual activity.

Recommendation 13 (Q5b)
We support the call for a review of the definition of 'impairment of the mind' and abolition of section 216 of the Criminal Code, which criminalises sexual activity involving a person with an 'impairment of the mind', even when that person has capacity to consent to the sexual activity.

Chapter 9 recommendations

Summary Q6-17
Licensing is not decriminalisation.

It is evident that the licensing system has created a two-tiered system, is a resource and administration burden with no good public outcomes, is divisive and creates a facade of discourse within the industry that results in the dispersion of misleading information, is a barrier to health promotion, unduly results in a two-tiered industry with up to 90% of the industry being criminalised for working safely outside of the licensed system. Certification of brothel owners is part of this failed system.

The concept of 'decriminalisation with licensing' is a contradiction in terms and has no place within considerations of a decriminalised framework in Queensland.
There will also 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.

We refute any suggestion that there is a benefit to sex workers or the Queensland community from maintaining any part of the licensing system.
New South Wales and Victoria have considered and then decided not to introduce certification or licensing of brothel owners as the risk of perpetuating the negative outcomes of licensing was too high. Queensland, having recognised the negative impacts of licensing should not maintain this approach.

Recommendation 14:
The licensing framework should be abolished by repealing the Prostititution Act and Prostitution Regulation entirely and disbanding the Prostitution Licensing Authority.

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.

Recommendation 15: Within the framework illegal activity will be deterred through the implementation of full decriminalisation which is low cost, promotes high levels of compliance, makes the industry more transparent, allows a broader reach for peer education and information sharing and removes barriers to reporting crime to police or WHS issues to the regulator.

Recommendation 16: The QLRC consider how the framework it develops will support or undermine compliance, so as to remove two-tier divisions in the industry, and address any barriers to compliance within its proposed framework.

Chapter 10 recommendations

Recommendation 17 (Q18): To support the sex industry to meet WHS responsibilities, WHS guidelines should be developed through a process led by Respect Inc, these guidelines should be supported by a communication plan supported by multiple mediums and should be translated into multiple languages.

Recommendation 18 (Q18-20): No additional statutory obligations or compliance requirements should be developed for the sex industry in Queensland. WHS laws and legal requirements for all PCBUs to implement WHS will apply to the sex industry in Queensland once decriminalised. Compliance will be regulated by the existing powers of the regulator, the WHSQ, as it is for all businesses. A process is available to workers to report WHS non-compliance. The WHS regulator has powers to address non compliance across all industries.

Recommendation 19 (Q18-20): The existing PLA Operational Standards Manual should be abolished and a fresh start to WHS guidelines undertaken (as above).

Recommendation 20 (Q19): Workplace Health and Safety Guidelines (not a code) should be developed by Respect Inc in partnership with WorkSafe QLD, relevant unions and the Office of Industrial Relations Queensland. The Guidelines will incorporate rights and responsiblities enshrined in the Work Health and Safety Act 2011 and Regulations, Codes of Practice that cover all industries and address WHS issues specific to the range of sex industry workplaces in Queensland. Evidence shows good sex worker WHS must be framed by a community development sex worker-led model of consultation, collaboration, peer-based implementation and evaluation. Health promotion of this nature requires multiple communication methods: short explanatory videos, pictorial diagrams, on-site support, workshops, one-on-one peer education advice, extensive documentation and possibly economic support.

Recommendation 21 (Q20): An evaluation of implementation and compliance of WHS guidelines should be conducted in four languages to determine required adjustments and future resourcing needs, five years after implementation.

Recommendation 22 (Q20): Adequate funding should be provided to Respect Inc to develop comprehensive WHS guidelines in at least four languages and in multiple formats.

Recommendation 23 (Q21): If sex work is decriminalised public policy must reflect this major shift and there should not be a requirement for legislation to ensure recognition in the courts and in other ways that a contract for sex work is not illegal or void on public policy or similar grounds.

Recommendation 24 (Q22): The WHS guidelines should reinforce that a sex worker may refuse to perform or continue to perform sex work in line with the WHS Act. If sex work is decriminalised there is no need for a special law.

Chapter 11 recommendations

Recommendation 25 (Q23): Decriminalisation of sex work must include repeal of sex industry-specific public health laws as part of the repeal of the Prostitution Act and Regulations.

Recommendation 26 (Q23): Queensland's decriminalisation framework should not include laws relating to the use of prophylactics, sexual health testing or sex workers with an STI.

Recommendation 27 (Q23): The risk of sexually transmissible infections is mitigated by existing laws and regulations:

- WHS Act requirements on provision and use of PPE and training on use and storage.
- peer education that supports sex worker uptake of safer sex practices
- access to free, anonymous and voluntary testing (regardless of Medicare card)
- Queensland's system of managing people who put others at risk.

Recommendation 28 (Q23): The implementation of decriminalisation should include a re-focus on improved access to peer education and community development for sex workers and free, anonymous and voluntary testing.

Recommendation 29 (Q23): Sex Industry WHS guidelines should incorporate references to existing requirements under the WHS Act on provision and use of PPE and training on use and storage.

Recommendation 30 (Q23): Review of section 317 of the Criminal Code (Qld) 1899 to remove reference to 'transmit serious disease' to reflect current science and negligible transmission risk.

Recommendation 31 (Q23): Mandatory testing is likely to be incompatible with human rights protections under sections 15 (recognition and equality under the law), 17 (protection from torture and cruel, inhumane or degrading treatment), 25 (privacy and reputation) and 37 (right to health services) of the HRA and breach the ADA under the attribute of 'lawful sexual activity'.

Recommendation 32 (Q23): Criminal restrictions on sex workers living with STIs is likely to be incompatible with human rights protections under sections 17 (protection from torture and cruel, inhumane or degrading treatment) and 25 (privacy and reputation) and is incompatible with AD Act under the attribute of 'disability'.

Recommendation 33 (Q23): Prophylactic laws for sex workers are likely to incompatible with sections 15 (recognition and equality under the law), 17 (protection from torture and cruel, inhumane or degrading treatment) and 25 (privacy and reputation) of the HRA and is incompatible with the AD Act under the attribute of 'lawful sexual activity'.

Chapter 12 recommendations

Recommendation 34 (Q25-37): As all brothels are already compliant with amenity regulation and are scaled appropriately to centre zones they should be added to Planning Regulations Schedule 6 to avoid compliance barriers being created at a local government level.
Massage parlours could also be added to Schedule 6, or continue as health services.
Escort agencies in centre zones should be considered the same as other offices that do not have front-facing public access. In residential zones, escort agencies should be covered by 'Material Change of Use'.
Private sex workers, in collectives or not, should be covered as 'Material Change of Use' without specifications on number of workers or floor-space rules. Home-based business is not the appropriate definition.

These legislative solutions mean lengthy court battles will be avoided and high compliance can be expected. Amenity rules and all mandatory council regulations that impact all businesses in the relevant zone should be explained in the WHS guidelines and implementation supported by Respect Inc in partnership with relevant authorities.

The Qld Decriminalisation Act will include a consistency clause for new local laws (like the Victorian Act): '*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.'*

Chapter 13 recommendations

Summary Q38-41: 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'. 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 restriction to which sex work businesses are subject.

Recommendation 35 (Q38, Q39d):
It is essential for sex workers' ability to negotiate consent, ensure safety and financial viability to be able to describe our services, including using the term 'massage', in our advertising.

Recommendation 36 (Q39c): Sex industry businesses must be able advertise positions vacant for staff and sex workers be able to advertise for co-workers.

Recommendation 37 (Q38-40): A decriminalisation framework should not include advertising restrictions just for sex workers that don't apply to other businesses. The national Australian framework of advertising and broadcasting self-regulation is adequate to ensure appropriate advertising in sex work and this should be the only restriction to which sex work businesses are subject.

Recommendation 38 (Q38): Advertising restrictions for sex workers and sex work businesses are likely to breach human rights protections under section 15 (recognition and equality before the law) section 21 (freedom of expression) of the HRA.

Chapter 14 recommendations

Summary Q42-46: 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 of street-based sex work in Queensland is not comparable to New South Wales, Victoria or New Zealand, and move-on laws are not warranted—particularly where there is no evidence of a significant impact from 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/impact on the most vulnerable sex workers and members of the general community.

Recommendation 39 (Q42):
Public solicitation should not be criminalised or restricted in Queensland as these approaches create significant harms and limit access to services. The small size of the street-based sex work sector and small number of offences does not justify limiting the human rights of these members of the Queensland community.

Recommendation 40 (Q45-46):
There should be no state or council laws that limit the benefits of decriminalisation or limit the human rights of street-based sex workers. There should be no state or council law to prohibit any person (client or sex worker) from public solicitation and no police officer or council authority should have the power to 'move-on' a person for soliciting for sex work.

Recommendation 41 (Q42-46):
A decriminalisation Bill should protect against local laws being developed that override the intention of decriminalisation.

Recommendation 42 (Q45):
Repeal loitering and 'move on' notice laws and police powers as part of decriminalising sex work in Queensland.

Recommendation 43 (Q42):
Public soliciting restrictions are likely to breach human rights protections under sections 15 (recognition and equality before the law), 19 (freedom of movement) and 22 (peaceful assembly and freedom of association) of the HRA.

Chapter 15 recommendations

Summary Q47-48: Once the QLRC has considered submissions and its consultations and has developed a draft decriminalisation model it is hoped that there will be a phase of review with sex worker organisations to prevent unintended consequences of the approach.

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.

Recommendation 44 (Q47-48):
Best-practice policy development includes consultation and engagement with the key stakeholders, sex workers. The discussion paper has sought critical feedback on aspects of the current framework and concepts to inform the direction of further work. We recommend the QLRC also consult with sex worker organisations in the development of a draft framework and when a draft Bill is developed.

Recommendation 45 (Q47-48):
It would be appropriate to review the decriminalised framework no sooner than five years following implementation as long as Respect Inc is adequately funded to design and implement the review in partnership with WorkSafe and other relevant agencies.

Chapter 16 recommendations

Summary Q49:
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 needed to shift discrimination and stigma.

Recommendation 46 (Q49): Amend the AD Act to ensure robust anti-discrimination protections for sex workers are established as part of the frarmework. There is broad sector-wide consensus that the appropriate amendments to the AD Act should be:

- replace the ‘lawful sexual activity’ attribute with the new attributes of ’sex work’ and ‘sex worker’; and
- repeal current exemptions to the Act to remove lawful discrimination against sex workers in relation to accommodation (s.106c) and working with children (s.28).
- change the complaints process to address significant barriers to reporting discrimination for sex workers;
- incorporate a change to enable Respect Inc as a representative organisation to make a complaint on behalf of a sex worker; and
- include ‘sex work’ and ‘sex worker’ as a recognised 'ground' for unlawful and serious vilification under sections 124A and 131A.

Chapter 17 recommendations

Summary Q50-52: There will be a need for funding to be provided to Respect Inc 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.

Recommendation 47 (Q50): See recommendation number 44, (Chapter 15 review)
Recommendation 48 (Q51): That adequate funding be allocated for Respect Inc to undertake public education and awareness programs and sensitivity education and training programs for officials and organisations who deal with sex workers. These stigma-reducing endeavours must be created in partnership with Respect Inc. In addition Respect Inc should be funded to produce or lead production of WHS guidelines and new peer education resources, translated into at least four languages and in a variety of formats, and conduct workshops and outreach for sex workers in a range of workplaces and in remote areas. It is also essential that Respect Inc is resourced to develop a communication strategy to support effective implementation of decriminalisation, so that sex workers and a wide range of sex industry businesses are aware of their changing rights and responsibilities.

Recommendation 49 (Q52-1): Strippers should not be excluded from this review and the benefits of decriminalisation
Recommendation 50 (Q52-2): Decriminalisation will alleviate many of the factors that contribute to licensed brothels' inability to obtain staff and other perceived impacts.
Recommendation 51 (Q52-3): Alcohol licensing should be available to sex work businesses under the same methods, rules and approvals as any other business
Recommendation 52 (Q52-4): Implementation of the decriminalisation Bill should be conducted at the time legislation is passed, not as a staged or delayed process
Recommendation 53 (Q52-5): Sex work charges should be expunged.

Other matters (HRA)
Recommendation 54 (Q52-6): The new decriminalisation framework must not maintain or develop new laws that limit the human rights of sex workers in Queensland. The new decriminalisation framework should be compatible with the HRA (Qld) to ensure sex workers in Queensland have access to human rights.

Chapter 18 recommendations

Summary Q53: 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.

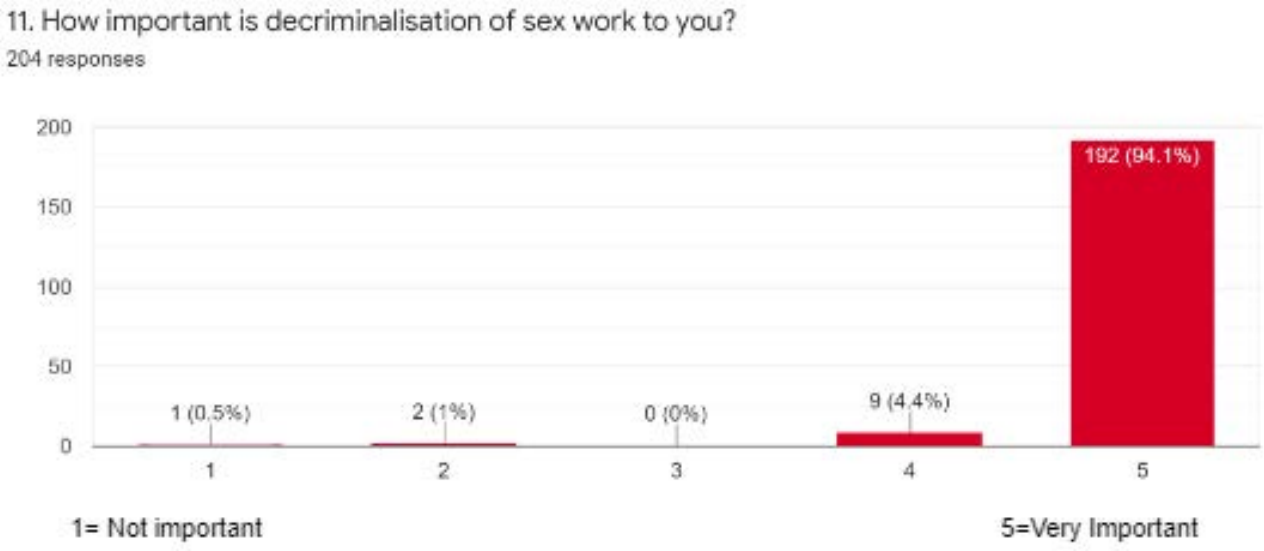
Recommendation 55 (Q54): Consent laws in the Criminal Code (Qld) 1899 Section 348(2)(e) 'by false and fraudulent representations about the nature or purpose of the act' should be amended to include 'or the withdrawal of payment or non-payment of a sex worker'.

Recommendation 56 (Q54): Consent laws in the Criminal Code (Qld) 1899 Section 348(2) should be amended to include the provision 'by an intentional misrepresentation by another person about the use of a condom'.

SEX WORK UNDER DECRIMINALISATION

Section 3 of 17 (pp18-45)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'



Above: Table from a recent survey of Queensland sex workers on the importance of decriminalisation.

CHAPTER 7: WHAT MIGHT A DECRIMINALISED SEX WORK INDUSTRY LOOK LIKE?

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

Q2 Overall, what might the new framework look like?

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

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

Q1 Main purposes of the decriminalised framework

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.

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 their place will be the general laws and protections that govern all workplaces so that sex workers can access workplace rights like any other worker. In the Consultation Paper the QLRC presents a definition of decriminalisation that is not what sex workers have advocated for and does not reflect the evidence of what is best for sex workers and the broader community. For example, decriminalisation does not include '*criminal offences for exploiting or trafficking people'* (Figure 1: Basic regulatory models and policies, page 31). While sex workers would agree with the points laid out in Box 1: Common features of decriminalised frameworks (page 47), the phrase 'replaces sex work licensing laws' should read 'removes sex work licensing laws'. A review into the models of decriminalisation for which sex work organisations advocate would already be confident of the answers to questions such as:

- whether sex work business operators need a licence to operate;
- whether sex work businesses need development approval under planning laws; and
- whether some types of sex work are restricted, such as street-based sex work or sex work at massage parlours (pp. 31-32).

Licensing, development applications and restriction of street-based work or massage parlours are not part of a framework of decriminalisation. Years of evidence and first-hand experience lead sex workers to advise the QLRC that the above policies would fail to achieve high levels of compliance, would retain police entrapment in the working lives of sex workers, would retain the two-tier system that creates illegal working environments and divisions between sex workers, would act as a barrier to health promotion and would maintain a level of stigma against sex work that is incompatible with the goals of decriminalisation.

The main purposes of a decriminalised framework
In the process of law reform it is usual 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 discussions in Queensland framed sex work as organised crime and included purposes such as to reduce police corruption and uphold the rights of the wider community to be protected from sex work. The Explanatory Notes of the Prostitution Bill 1999 are clear about these sentiments:

> The Government believes that the operation of brothels should not be an intrusion into the day to day lives of members of the community who do not want to be exposed to the nuisance of brothel activity or advertising... Strong government leadership is characterised by constant vigilance against corruption and organised crime.[6]

[6] Prostitution Bill 1999 Explanatory Notes pp. 1-2. https://www.legislation.qld.gov.au/view/html/bill.first.exp/bill-1999-608

The purpose and underlying principles of the Prostitution Bill 1999 did not mention sex workers or their needs:

> The purpose of this Bill is to regulate and control prostitution and related activities in Queensland. The underlying principles of this Bill are to: ensure quality of life for local communities; safeguard against corruption and organised crime; address social factors which contribute to involvement in the sex industry; ensure a healthy society; and promote safety.

In the consideration of a decriminalised framework for Queensland it is essential to separate actual impacts that can be substantiated by evidence rather than hearsay or perception of impact or risk. There was very little attention paid to the recognition of sex work as work or the rights, health and safety of sex workers in the 1999 Bill. Recognising the negligible impacts of sex work on public health, low amenity, low rates of exploitation and trafficking (adequately covered under other existing laws, policies and practices) is central to considerations of the decriminalised framework.

Improving the rights, health and safety of sex workers should be the primary purposes of the decriminalised framework.

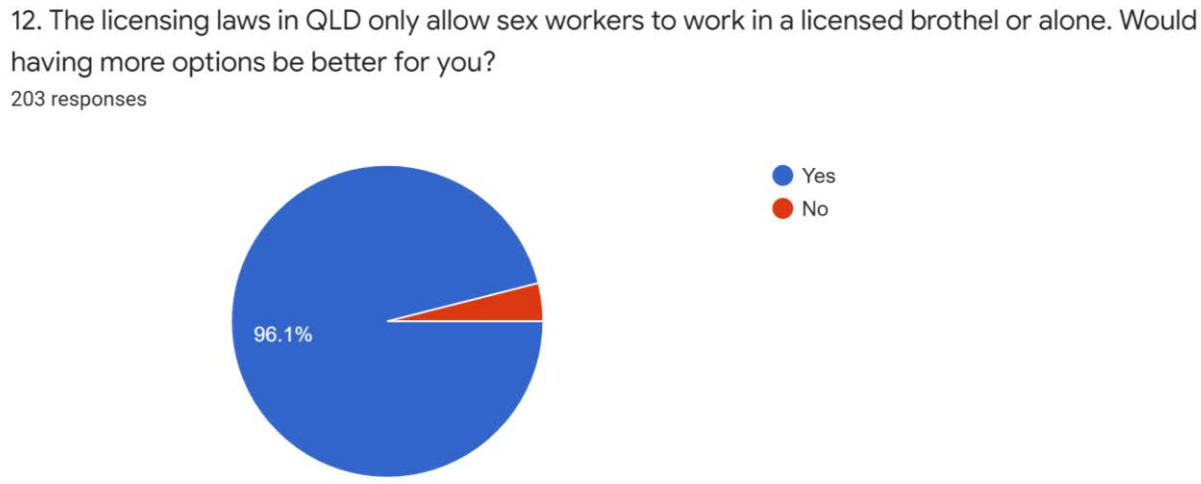
Recommendation 1 (Q1): The main purposes of the Queensland sex work decriminalisation Bill should be:

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 What does a decriminalised framework look like?

In relation to what a decriminalised sex work industry framework would look like, the Consultation Paper provides at 7.19 the QLRC's interpretation of what this would mean in Queensland. This differs from what sex workers and sex worker organisations see as decriminalisation of sex work in Queensland. **Appendix one** is a table we have created to illustrate differences and provide a short comparison between the QLRC's interpretation and what DecrimQLD and Respect Inc and our membership see decriminalisation in Queensland being, having consideration of the local context and the sex industry in Queensland. The comparison table shows the points of difference and provides a short description to assist understanding.

What does decriminalisation look like to sex workers and what will the impact be:



Sex workers expressed that the decriminalised framework will support sex workers to make choices about sex work without fear of criminality or discrimination. These themes are apparent from our recent survey:

> *"Being able to choose how to work - when to work - where to work - with whom to work - options - it will give sex workers options." [Survey participant 40]*

> *"The more options sex workers can make by themselves, the better. We are adults, we can make our own choices." [Survey participant 37]*

Sex worker participants in the survey were unanimous in their call for the full decriminalisation of sex work in Queensland. For sex workers a picture of what decriminalisation will look like is largely one where all of the problematic laws and police powers under which they currently live and work have been erased. Essentially describing a repeal bill, for survey participants decriminalisation meant the removal of all legislation and criminal code laws that relate to sex work, including the repeal of the licensing system and expunging of previous sex work charges:

"Full decriminalisation of sex work, repeal of the licensing laws, removal of the police powers and remove sex work from the criminal code." [Survey participant 6]

"Full decriminalisation, no specific laws or regulations about advertising or working in QLD." [Survey participant 38]

"Please decriminalise sex work so that we can work safely and be treated like any other workers and humans." [Survey participant 57]

"Sex work is not a crime and must be removed IMMEDIATELY from police jurisdiction. All historical cases of illegal sex work should be removed from workers records." [Survey participant 161]

"The laws are discriminatory and I believe that having more freedom in Queensland will benefit the industry and the people quite a lot. Other states of Australia have decriminalised SW, so Queensland should to!!! I think the laws should provide more SAFETY and respect to the individuals who identify as SWers!!" [Survey participant 177]

For sex workers, decriminalisation meant bringing the sex industry in line with other industries under existing labour laws. Sex workers explained that they want access to workplace health and safety protections and workplace rights, which are standard in other industries. As participants told us:

"I want the same rules as any other Sole Trader Business. To not have them now is true discrimination." [Survey participant 10]

"Remove all restrictions that don't apply to other businesses…" [Survey participant 31]

"Full decriminalization and full protection under the anti discrimination laws. Police no longer primary regulators of our industry; compliance is not a bunch of special conditions but regular health and safety regulations etc…" [Survey participant 28]

"I would love to see full decriminalisation of the sex industry with the same rights as other workers in any other industry." [Survey participant 34]

For the general public, the decriminalised framework will look much as it does now. For sex workers, the change will be momentous because it will not have any licensing, criminal laws or police powers that specifically refer to sex work or commercial sexual activity. For planning purposes private sex workers in residential areas, in collectives, conducting escort work or offering NDIS services would be permitted under 'Material Change of Use' provisions. In Centre and Mixed zones, massage parlours would continue as 'Health Services', and brothels would be added to Schedule 6 of the Planning Regulations or become 'Accepted Development'. All would have to remain compliant with mandatory amenity rules, Fair Trading, building alterations, noise restrictions and strata regulations; the same as everyone else in that zone. Liquor licences would apply like any other venue seeking to serve alcohol.

Most Queenslanders will experience no impact at all. Evidence from other jurisdictions shows that the overall size of the sex industry will not change. Existing sex work businesses will continue as before with the following benefits: work locations that are currently illegal (many brothels, escort agencies and massage parlours) will have comprehensive, applicable WHS guidelines available to them, will be able to adopt them without fear of the practices being used as evidence of criminal activity and will be able to obtain workplace support from relevant authorities without fear of exposure. The guidelines will also apply to the current licensed brothel sector, which already has sound infrastructure, and they will be able to offer outcall bookings, which will assist their financial viability. Private sex workers will be able to work and draw support from people that they trust, without putting loved ones and colleagues at risk of criminal prosecution.

Decriminalisation will greatly improve mental health

In our recent survey sex workers told us that under decriminalisation the ability to use safety strategies such as check-in calls and working with other sex workers, as well as an end to police powers to entrap workers would significantly improve their mental wellbeing:

> *"I would feel so much less afraid and stressed all the time. Of cops, ugly mugs, discrimination when accessing services, I could make more money, feel safer at work and at home and just in myself, knowing that by doing my job and staying safe I'm not breaking the law and no police can come in and take all my money." [Survey participant 86]*

> *"These laws horribly negatively impact on me. My work life will improve 1,000 times better if these laws are eliminated." [Survey participant 180]*

The repeal of police powers to entrap sex workers is particularly relevant for improving sex worker safety. Having to avoid police detection compromises the ability to use safety strategies and effectively look after one's wellbeing. As one respondent commented:

> *"…The possibility of undercover police is something that takes up a lot of my thoughts and energy. Energy I should be using to stay safe and make money.' [Survey participant 57]*

Sex workers also spoke about the stress of potentially having police enter their workplaces at any time, and the direct harms some sex workers are subjected to by police who abuse their power:

> *"...The potential to be entrapped by a police officer is stressful and doesn't help me feel safe at work at all. When I worked in brothels, the threat of having the PLA come in unannounced, rifle through my bag, and basically deny me basic rights is very stressful…" [Survey participant 90]*

> *"Laws and avoiding police is my first priority. And police should be safety but they are not. I have been bribed and coerced by police officers on duty. I'm sure they wouldn't have done that if I was a regular citizen." [Survey participant 142]*

Sex workers told us that decriminalisation would significantly reduce the stress they currently face when making decisions about how to look after their mental, social and economic wellbeing while simultaneously avoiding arrest. One respondent had this to say about decriminalisation:

> *"Not having to factor evading police into my day to day work would immensely reduce the stress I experience and mean I could better prioritise my wellbeing and safety.' [Survey participant 7]*

As highlighted in the stories shared by survey participants, the current laws not only affect physical safety and wellbeing but also impact upon sex workers' mental wellbeing and self-esteem. Countless participants described their experience of working under the current legal framework as 'stressful' and 'anxious'. Sex workers told us that the fear of arrest; stigma and discrimination; isolation; fear for personal safety; and financial stress eroded their mental wellbeing. Moreover, sex workers described the compounding effects on their mental health arising as a result of the knock-on effects and not being able to mitigate the stressors they faced:

> *"They make me very uncomfortable whilst working privately. The safety factor is a huge problem, being legally only allowed to work solo, obviously is unsafe, which then does affect my mental health, due to stress about safety, which affects my income, due to being very very picky about which clients to take on, which again, affects my mental health over the stress of being able to afford to make ends meet. It's a continuous cycle." [Survey participant 84]*

> *"I'm lonely and depressed working by myself. I feel isolated and the stress of working around my non SW housemates needs has made me very anxious and I'm not getting enough work to support myself." [Survey participant 59]*

> *"The current laws in Queensland cause personal stress around compliance and entrapment. The anxiety I experience during accommodation booking, client screening, from when I announce a tour over the border until my return to Sydney impacts my mental health and contributed to a panic attack on my last trip." [Survey participant 67]*

Speaking on decriminalisation, sex workers spoke about the benefits to their mental health that would be gained through the ability to work with others, such as alleviating isolation and building community; reducing the anxiety associated with police entrapment, facing criminal charges, PLA visits and having money confiscated; the ability to access support from other sex workers, friends, family and third parties, as well as decreased stigma and discrimination and broader changes in public opinion of sex work:

> *"It would mean feeling like my life is worth something. The way the current laws are written it's very clear that society would rather see us dead then working safely…" [Survey participant 56]*

> *"Decrimin[a]lisation will relie[ve] my mental-health and feel safe with work." [Survey participant 93]*

"It would greatly benefit me, as I woul[d] feel more secure reporting to police in case of inciden[ts]. It would be beneficial to my mental health to not have to constantly worry about [e]ntrapment, or breaking laws that seem arbitrary and not indic[a]tive of real world situations." [Survey participant 75]

"Decriminalisation would mean I could work how I would like to (in a co-op [collective]) that makes me feel safer and also reduces costs and is less lonely and a more supportive environment for my mental health and wellbeing." [Survey participant 7]

Decriminalisation means sex workers could work together, improve financial stability and reduce isolation

As seen in the above quotes, the most cited positive aspects of decriminalisation were how it could affect sex workers' safety, mental wellbeing, income and business through their ability to legally work with another sex worker outside of a licenced brothel. Countless survey participants told us that they would prefer to work with another sex worker or in a collective situation because it provided peer support, safety options and because it reduced the stress and isolation of working alone and supported their mental wellbeing:

"It would be so much better I could work with friend and my sister girl and we could look after each other." [Survey participant 159]

Sex workers told us that it is more economically viable to share overheads on hotels, and/or live with another sex worker at home to support economic and housing security; doubles services are requested by clients and are a good source of income; it is necessary for workplace health and safety to be able to share information about clients, refer each other and learn from one another. One survey respondent gave an in-depth account of the ways in which not being able to work alongside peers affects them:

"...The laws around not being able to work in pairs also negatively impacts on our health, well being and safety. Every worker in any other occupation is allowed to work with others in their same field. This is a victimless crime that only serves to punish and criminalise sex workers who are just trying to offer clients what they want (a double), or teaching each other additional skills, or one sex worker trying to do a proper hand over to another sex worker who will see the client in future (ie with a client with disability - learning where the entrance to their home is, where their communication board is, how their bed operates, where their specific things are located in their room/ house, showing them specific things about how to touch the client that works best for them). It's ludicrous that the law says that I can't keep myself safe by being able to call another person - who is also a sex worker - to tell them that I arrived safely at the client's home/ hotel and to set up my safety protocols in the unfortunate incident where they are threatening my life and safety. No other type of worker is actively discriminated again[st] by the Government to be actively isolated and made more vulnerable in order to legally work." [Survey participant 63]

The possibility that it might one day be legal to work with another sex worker was positively embraced by several survey participants:

"I would love to be able to legally share a work space with another worker for support and share booking information for safety." [Survey participant 34]

"Having a co worker for peer support and financial bill sharing would be so helpful." [Survey participant 200]

"Safety! It's good to have fellow workers who can help you and vice versa." [Survey participant 185]

"A change in these laws would have a huge impact. It would mean workers are able to feel safer and…Sharing a work space provides positive mental health in many ways." [Survey participant 129]

"Having other sex workers around Is a good thing. We share knowledge, skills, information. Why are there laws that get in the way of us working together, sharing costs, making sure we are ok. It's good for our mental health." [Survey participant 98]

"I will always choose to work in pairs and share overheads, have backup in case something goes wrong. It is counterintuitive to workplace safety...every other industry encourages working in pairs for safety." [Survey participant 7]

Survey participants talked about how they would like to be able to share costs such as advertising, work spaces/accommodation and security costs and increase income through offering doubles:

"Less money since I can't share accommodation or the bills associated with my business, and can't make the money I would doing doubles." [Survey participant 113]

"It is so expensive to work alone. My accountant can't believe we can't share costs like she can, she couldn't make a profit if accountants had the same rules forced on them. It is unreasonable." [Survey participant 100]

"These laws …put my friends in POVERTY because they are unable to procure bookings and I am legally unable to aid them in acquiring bookings." [Survey participant 173]

"I am not legally allowed to see a client with another worker. This is a commonly requested service that has a high price point attached and denies us valuable income…sharing a workspace is by far the most convenient and financially viable option for working independently." [Survey participant 196]

Sex work income is currently curtailed because of sex workers not being able to legally hire third parties to more effectively run their business, for example hiring a receptionist to answer calls and arrange appointments while already in a booking. As one respondent wrote:

"...Not being able to have a receptionist also impacts my safety, mental health and income because sometimes I'm too busy getting ready for a booking to be able to

screen properly, sometimes I can't deal with all the enquires/time wasters so I turn my phone off and miss out on bookings…" [Survey participant 3]

Decriminalisation reduces stigma

Many participants believed a major benefit of decriminalisation would be a broad reduction in stigma and discrimination with increased public perception of sex work and sex workers, which would in turn promote better treament from police, clients, hoteliers and society. In the words of sex workers:

"It would make it safer for all, decrease victimisation and violence against us." [Survey participant 30]

"...I also believe that the current legal framework and stigma that creates increases the likelihood of poor behavio[u]r from clients, as they know workers will be reluctant to deal with police if they want to report it." [Survey participant 34]

"...I believe it sends an important normalising message to society as well which helps in various aspects of our lives…" [Survey participant 65]

"The result of this absurd law is that some hotels will exclude me, and to work, I have to conceal my sex work from the hotel instead of openly working. It perpetuates shame, stigma, discrimination and harm." [Survey participant 40]

"Decriminalisation reduces stigma, it requires p[o]lice to take our concerns and any assaults or harassment seriously, means clients and the public can be p[ro]secuted for harassment and assault of workers..." [Survey participant 168]

Recommendation 2 (Q2):

The decriminalised framework should accommodate existing and new sex work workplaces to be protected under all current, applicable Queensland Codes of Practice, operate in compliance with local amenity, be able to work in suitable locations without undue council interference and safeguarded from discrimination within the ADA (Qld).

Exceptional criminal penalties, licensing, planning requirements, exploitation laws, police powers (including entrapment), anti-discrimination exemptions and other laws will be repealed.

Evidence from other jurisdictions shows the size, scale and types of sex work will not change substantially after decriminalisation. For most Queenslanders there will be no impact whatsoever.

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 and police powers that refer specifically to sex work and to dissolve the PLA and PETF.

Decriminalisation is primarily a process of repeal. Changes to the current framework would include:

- repeal all of Chapter 22A of the Criminal Code
- repeal all of the Prostitution Act and Prostitution Regulation
- amend other Acts to remove 'exemptions' or 'disqualifications' based on Criminal Code and Prostitution Act offences
- remove the police from any role in sex work regulation, repeal sections of the Police Powers and Responsibilities Act 2000 that refer to sex work including ‘controlled activities’, ‘move on notices, powers in relation to consorting
- amend Planning Regulations (2017) to repeal Schedule 10, Part 2, Brothels, ‘Prohibited Development—material change of use for a brothel’, add brothels, massage parlours, escort agencies and private sex work including collectives to Schedule 6
- amend Consent in the Criminal Code 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’ and add a provision ‘by an intentional misrepresentation by another person about the use of a condom’
- amend anti-discrimination protections to cover sex work and sex workers against discrimination and vilification and repeal exemptions that allow lawful discriminaltion against sex workers
- amend the definition of sex work
- expunge sex work-related charges
- non-legislative approaches to ensure WHS responsiblities and rights are applied to all sex indutry workplaces through the development of WHS guidelines
- no new laws specific to sex work.

The entire current licensing framework of the PLA, PETF, criminalisation, exceptional police powers, entrapment, anti-discrimination exemptions, council discretion and targeted police enforcement must be repealed. A decriminalised framework has no role for atypical treatment of sex work except where civil protections (WHS, accepted development, relevant anti-discrimination attributes) are required.

It is these laws that force approximately 90% of sex workers to choose between working safely or legally and 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 Prostitution Licensing Authority 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).

Exceptional laws, such as those that currently apply to sex work but not other types of work, are based on discriminatory and inaccurate understandings of sex work. The stigma that drives the creation of paternalistic and unjust laws in turn maintains ongoing stigma and

discrimination so that sex workers remain locked in perpetual cycles of criminalisation and stigmatisation, constantly assessing the risk of arrest and police abuse of power as part of everyday WHS strategies.

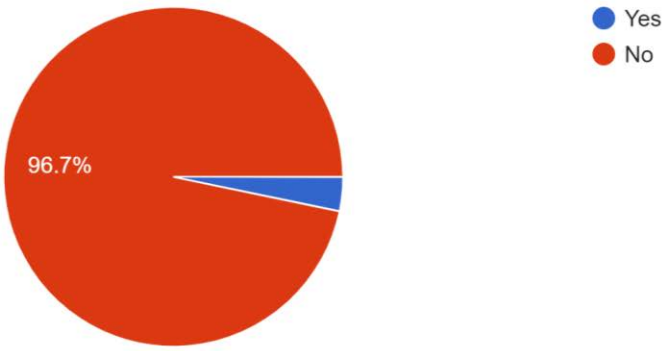
> 'Whore stigma' can be seen as a driving force behind many policies and regulatory frameworks that govern sex work, including criminalisation, licensing and end-demand policies. These are all 'infused with moralistic presumptions, draw on the rhetoric of risk, and are premised on (virtually identical) stigmatic assumptions' that view sex workers as victims of exploitation, their labour as delegitimate and sex work as risky (Bruckert and Hannem 2013: 61). Gail Pheterson referred to whore stigma as 'a social and legal branding' reinforced by 'police, judges, doctors, law-makers and researchers' who participate in 'direct or indirect collusion with the persecution of prostitutes' (1990: 397–398).... Consequently, sex workers occupy what Sibley called 'the liminal space between offender and victim' (2015: 1).[7]

Police entrapment

There must be a full repeal of all of the current criminal laws and police powers, including 'move-on' powers and 'controlled activities', which target sex workers, to remove forever the most problematic aspect of sex work policing, that is, entrapment with police officers posing as clients. These laws impact negatively on sex workers' working environments, their ability to engage in WHS strategies, mental health and wellbeing and the ability of sex workers to access justice and report crime to police. In our recent survey participants expressed strong views about police entrapment.

23. Under the current laws police can pose as a client and request illegal services from sex workers. Do you think police should be allowed to pose as clients?

184 responses



Two strong themes emerged from survey participants' responses to a follow-up question about how police posing as clients impacted on them. The first theme is fear and mistrust of police because of the covert nature of police interactions, and the second is disgust and outrage due to policing activities that are considered a violation and abuse of power, often targeting the most marginalised sex workers. Sex workers spoke in very emotional terms about the impacts of police entrapment. A strong feeling of fear and mistrust, both of police and others, was

[7] Stardust et al. (2021). Ibid.

mentioned by many of the survey participants (108/172) as a consequence of police posing as clients. Most of these participants expressed a distinct fear and mistrust of police themselves.

> *"It makes me terrified… It feels like Rape. And it leaves me terrified of the police." [Survey participant 56]*

> *"It makes me feel unsafe, distrustful and scared. It makes me not ever want to turn to the police if I were in danger. It also scares me a lot to have to think about the police all the time." [Survey participant 57]*

The possibility of police entrapment creates a perpetual fear that permeates the work environment:

> *"I am scared and walk on eggshells." [Survey participant 77]*

> *"Even if I declined illegal services, I would be concerned that my words/actions could be misconstrued to press charges." [Survey participant 75]*

> *"I am always anxious at the start of a booking when I'm interacting with the client, which makes the environment feel edgy and unsafe." [Survey participant 94]*

Quite a few responses reveal extreme fear and mistrust of police, indicating that police who pose as clients are considered to be a potential source of harm far beyond legal charges or arrest.

> *"I'm afraid of being raped by police." [Survey participant 83]*

> *"It is absolutely terrifying and violating." [Survey participant 115]*

> *"This means they could obtain sexual services and then arrest you and take back cash. as you only consented to sexual services under the premise of being paid, this is rape. I don't want to be raped by police." [Survey participant 101]*

> *"...fear of sexual assault from police who might push it and no one would know." [Survey participant 160]*

> *"It makes me scared. When I have someone acting funny, asking silly questions I am worried if I am rude it will be police who will then pick me out." [Survey participant 98]*

Strong expressions of disgust and outrage were evident in participants' responses about police posing as clients to entrap sex workers for advertising breaches, working with others or sexual health matters. It was felt to be an inappropriate form of policing (*unethical, violating, breach of consent, disgusting, rapey and gross, unsafe and betrayed*) and an abuse of power (*unethical, power trip, gotcha moment with the boyz, get their jollies*), which tended to target (*prey on, manipulate*) the most vulnerable sex workers: those who were in poverty or without English as a first language.

"I also fear being duped into providing a service to a cop by deception, which violates my consent. I need to know exactly who is presenting to me in order to consent to anything!" [Survey participant 94]

"I am afraid of being naked and vulnerable, thinking I am engaging with a client, and the idea that all of a sudden this might be an undercover officer with additional officers waiting outside - it feels like a HUGE breach of my consent. It is traumatic, it is harmful - and any police officer who is undercover and engages in SEX is a rapist. That is not consent. That is abuse." [Survey participant 161]

"I am uncomfortable seeing an undercover police officer who will write up our appointment in a report. It feels rapey and gross." [Survey participant 200]

"I try to build up trust with a client even before meeting and I'm terrified that someone I am allowing into my space might be an undercover cop, that would make me feel so unsafe and betrayed." [Survey participant 57]

"...this currently gives far too much power to potentially vindictive cops. If one of us sex workers have said 'no' to a cop then they can quite easily go down the path of trying to entrap us… this law leaves the door wide open for potential corruption and leaves sex workers vulnerable to be exploited by the very people who most of society thinks is there to protect us." [Survey participant 63]

"It's unsettling and an abuse of power. Also, they can manipulate survival sex workers or uneducated providers." [Survey participant 9]

"They prey on survival sex workers and can be pushy even when a worker says no they do everything to make her agree anyway, offering large sums of money. It's completely entrapment and is disgusting and unfair." [Survey participant 11]

"Even working in strip clubs it was a regular occurrence and it just became offensive and draining that someone was being paid an obscene hourly rate, as well as government benefits, to act like a vulture and waste a professionals time." [Survey participant 78]

Some participants suggested that the abuse of power that occurred during police entrapment was based on deceit and dishonest policing that relied heavily on technicalities and semantics in advertising or phone communications.

"It's their word against yours and it's about interpretations of what was said over the phone. The idea that one word could be incorrect on your website from months ago and you could still get a knock on the door and be charged is horrific and frightening." [Survey participant 63]

"...they force you to do things you don't want to and will record, making out your doing something your not, loudly, to be heard." [Survey participant 29]

"I have to wonder whether each client is a police officer trying to set me up or trick me with a word game. I want to communicate honestly, have safe, legal and good interactions with all my clients -- not always worry about whether my words can be misconstrued by someone trying to trap me into saying something illegal." [Survey participant 40]

Sex workers who had experienced police entrapment described the fear and abuse of power they felt.

"It has happened to me. Very scared after that to accept clients." [Survey participant 2]

"I am worried that everyone I speak to is a cop and that they will know about how I operate my business and charge me… I was rubbing my breasts on him and then he told me he was a cop there undercover. It felt dirty. I hadn't consented to being touched or touching or kissing a cop. I couldn't do sex work for four months afterwards." [Survey participant 6]

"It makes me super paranoid and I have been entrapped, it was a horrible experience." [Survey participant 18]

"They are horrible. I have never ever offered illegal services but have been harassed and hounded by police in an attempt to get me to offer illegal services. This was to the point I thought the man was going to try and rape me as he was so aggressive and persistent. Until he told me he was a cop. I couldn't even report the verbal abuse and harassment as he was a police officer, no one would listen." [Survey participant 198]

Police entrapment interferes with sex workers' WHS strategies

Survey participants described situations where the screening process became tricky and stressful because they wanted to use standard WHS strategies that would get them arrested if the 'client' turned out to be a police officer. For example, sex workers might want real clients to believe that they are not alone but if they communicate that to an undercover police officer they will be charged.

> *"...makes me afraid and anxious about what i say to clients over the phone ie i want to try and make clients feel like i'm not alone even if i am - but i know that could get me in trouble." [Survey participant 35]*

> *"I can't tell the client that another sex worker already knows about the booking and location - as a way to deter them from violence or other ideas." [Survey participant 179]*

> *"It causes me to second-guess all actions across harm minimisation strategies and worst case scenarios." [Survey participant 91]*

> *"An example is I tell clients that I am ringing another worker to let them know when the booking will end - so the clients don't think I am just alone. This would be enough for police to target me." [Survey participant 6]*

> *"It didn't change how I operated but I was well aware of the risk that I could be fined simply for trying to be clear about my services. I chose to take that risk to increase my personal safety." [Survey participant 155]*

Some survey participants explained how the fear of police entrapment made them reluctant to describe in detail the services that they provided leading to potential misunderstandings with clients that could turn dangerous. This and other safety issues were described:

> *"Instead of being able to speak openly about what I do and don't do in a booking, I have to assume someone is a police officer and therefore speak in code and not give a potential client a clear indication of whether I will offer what they are asking. This is potentially dangerous if a client thinks they are getting something they aren't and are angry as they feel misled." [Survey participant 7]*

> *"...not only is there a threat from dangerous clients there is also a threat from the so called protectors of society." [Survey participant 173]*

Stigma and the mental health impacts of police entrapment

Some participants spoke about the stigma of criminalisation that they felt when having to deal with police posing as clients.

> *"...further marginalises workers from feeling confident, comfortable and at ease for doing their work. Also it completely disrespects workers in our profession because it encourages the idea that this work is 'wrong'." [Survey participant 148]*

> *"It's extremely stressful... always feeling like a criminal." [Survey participant 80]*

> *"Do they do that to other types of workers ? No… so why us ? Why are we singled out and treated so low." [Survey participant 105]*

Whilst describing the fear and mistrust caused by police entrapment most survey participants regularly used terms like *anxious, paranoid, hyper-vigilant*, but some specifically touched on the mental health impacts.

> *"...makes me very anxious, i'm overly paranoid when responding to bookings." [Survey participant 16]*

> *"...keeps me in fear, makes me very anxious organising bookings." [Survey participant 12]*

> *"Every contact becomes a potential anxiety attack." [Survey participant 154]*

> *"It…impacts my mental health negatively." [Survey participant 38]*

> *"It strikes fear into the heart of my already delicate mental state." [Survey participant 173]*

> *"Police entrapment only adds on the mental negativity for us as independent workers who already work in isolation." [Survey participant 189]*

> *"...make fear scare, not have much ability to cope with work." [Survey participant 190]*

> *"The possibility of undercover police is something that takes up a lot of my thoughts and energy. Energy I should be using to stay safe and make money." [Survey participant 57]*

> *"It induces fear which is unhealthy for me." [Survey participant 82]*

> *"It makes me very fearful… It has a huge impact on my anxiety and mental illness." [Survey participant 202]*

> *"It makes me stressed just thinking about it… it's very distressing for us." [Survey participant 204]*

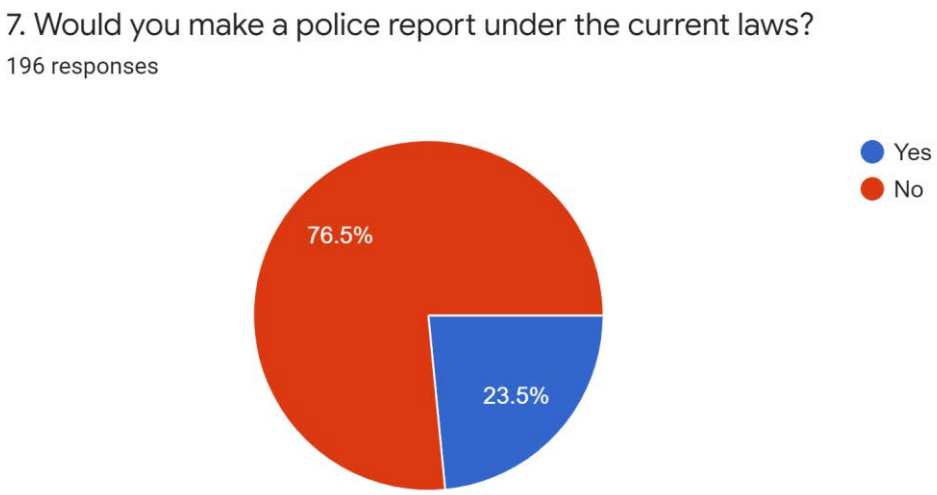
Mental health impacts, to the extent of being unable to continue to do sex work, were described by some participants as caused directly by police posing as clients.

> *"It felt dirty. I hadn't consented to being touched or touching or kissing a cop. I couldn't do sex work for four months afterwards." [Survey participant 6]*

> *"I currently don't take bookings for fear of it." [Survey participant 103]*

Inability to access justice and reluctance to report crime to police

All of the current criminal laws and police powers must be repealed to begin to repair the fractured relationship that sex workers have with police. In our recent survey 76.5% of sex workers indicated that they would not make a police report under the current laws (150/196).



When asked for reasons the majority of sex workers indicated that they would not report because of fear that they would be charged with a crime themselves, or that they would be subject to increased police surveillance and future entrapment. Other participants said they would not report because they knew that some of their work practices were illegal or they were not sure whether they were working lawfully. Survey participants also indicated that they would not report because of police attitudes towards sex workers, including experiencing unfavorable treatment, stigma and discrimination, being dismissed and crimes not being taken seriously because of sex work status.

Many sex workers chose not to report because they felt that it was unlikely they would achieve a positive outcome through the criminal justice system, and moreover, that they would be subject to poor treatment and—potentially—to further violence and trauma through interacting with police. Many sex workers indicated that they would only report very serious violent crimes. Of those sex workers who said that they would make a police report, the majority said they would do so to hold perpetrators accountable and to stand up for their rights.

Reporting crime could lead to being charged or put under surveillance

One of the most common reasons sex workers told us that they would not make a police report under the current laws was a fear of the repercussions of making themselves known to police as a sex worker. Participants said that they feared being treated as a criminal instead of a victim and feared being charged with a crime themselves as a result of reporting:

> *"I tried to report a crime and I was treated like I was the criminal because I do sex work. I would never do it again." [Survey participant 204]*

> *"I would be afraid of being charged with other offences." [Survey participant 35]*

> *"I would but would find it pretty scary as I'd worry I'd be arrested if I said the wrong thing." [Survey participant 64]*

> *"I am afraid of being persecuted for my work." [Survey participant 72]*

> *"I don't trust the police, and I don't want to be prosecuted and I don't want a criminal record." [Survey participant 82]*

> *"There are too many things that I could be charged for." [Survey participant 96]*

Several sex workers explicitly stated that they would not report because they knew that some of their working practices were illegal, as illustrated in the following quote:

> *"I know I'm breaking the laws as my check in person is also a sex worker, and I wouldn't trust the cops to have any interest in why I'm making a report, they're just going to want to nab me instead." [Survey participant 37]*

Others were unsure about the law, which was a barrier to reporting, as one respondent explained:

> *"Because the laws are so convoluted, outdated and problematic, I wouldn't even know whether I was working 100% within the law. The risk of unwittingly incriminating myself feels too high…" [Survey participant 94]*

Some sex workers explained that their decision to report would depend on whether they were working legally. Several participants said that they would report in other states where sex work is decriminalised, but not in Queensland:

> *"Working in a jurisdiction where parts of sex work are criminalised means I would be extremely unlikely, if ever, to go to the police. I would be worried that I have outed myself to them, that I wouldn't be taken seriously, that I would be blamed for the way I am working. I would be more likely to make a report in NSW or the NT." [Survey participant 90]*

Licensed brothel workers are reluctant to report crime to police

It is not just sex workers in criminalised work sectors who are reluctant to report crime to police. We found that sex workers who work in licensed brothels were also reluctant to report crime to police, and they are less likely to do so now then they were five years ago. In our recent 2022 survey of Queensland sex workers more participants who worked in licensed brothels said that they would not report a crime to police, 73.5% compared with 50% of the licensed brothel workers who responded to the 2017 *Regulating Bodies* survey. In the most recent survey only 26.5% said they would report to police, compared with 46% in the 2017 survey. This suggests that sex workers in licensed brothels have become less confident about reporting assaults in the workplace to the police in the last five years.

The reasons for licensed brothel workers not reporting violence to police are the same now as they were in 2017, where 45 (66%) identified stigma and a concern that their privacy would be compromised if they provided police with their personal details, and 26 (38%) said they mistrusted police, their competence, the legal system and/or anticipated discrimination.[8]

Fear of ongoing surveillance

As well as the fear of being charged, many participants stated that they feared making themselves known to police as a sex worker as it would put them in danger of future police surveillance and targeting for entrapment:

> *"Sex workers aren't safe in these laws. They'd expose me or my community to further police scrutiny, fines or charges." [Survey participant 32]*
>
> *"Fear of being on their radar and would be constantly watched or under surveillance." [Survey participant 45]*
>
> *"It's not safe. Let's police know I'm a sex worker and sets me up for entrapment." [Survey participant 36]*
>
> *"I made a report years ago when I was receiving death threats over voicemail. Not only did the police do NOTHING but I have reason to believe my details were catalogued and led to later attempts at police entrapment." [Survey participant 108]*
>
> *"... I don't see the Queensland police as being on my side. They are not my protectors, they are actively hunting us down and trying to catch us. I don't want to get in legal trouble…" [Survey participant 57]*

[8] Respect Inc. (2017). *Regulating bodies: An in-depth assessment of the needs of sex workers [sexual service providers] in Queensland's licensed brothels*, p. 21. https://respectqld.org.au/wp-content/uploads/Documents/Regulating-Bodies-BWNA-2017.pdf

Active targeting of sex workers by police made it difficult for sex workers to trust that police would effectively support them as victims of crime. Participants mistrust police as they feel they do not have the training or empathy to effectively work with sex workers who are victims, while actively entrapping sex workers at the same time:

> *"...The police force is NOT trained nor sensitive to the needs of women, of victims, and most especially not of sex workers." [Survey participant 40]*

> *"...Plus if police are tricking and pressuring to entrap us, how can i feel like i trust them? I dont." [Survey participant 77]*

Reporting crime would not be taken seriously

The fear of not being believed or taken seriously, or having crimes against them dismissed because of being a sex worker was another major barrier to reporting. Sex workers spoke about experiences of being blamed and shamed for the violence they experienced and having their sex work 'used against them', as participants put it:

> *"...Police and law enforcement are no help. I have been told before that I 'put myself in the position for bad things to happen like that' when I have tried to ask for help". [Survey participant 105]*

> *"When i was robbed and bashed kanngroopoint i rang the police 2 union police turned up an hour later and spoke to me like i was a piece of shit and told me i should change jobs…" [Survey participant 157]*

> *"I've heard from multiple co-workers their reports were not taken seriously because of our job." [Survey participant 106]*

Police attitudes toward sex workers make reporting crime unlikely

Participants told us that police attitutes towards sex workers were characterised by stigma and discrimination; that their experiences of violence were often dismissed and that police generally had an unfavourable attitute towards sex workers, resulting in less favourable treatment and outcomes. In the words of sex workers:

> *"I have seen and heard of police laughing at reports of rape/stalking/abuse. It's clear to me that police don't think of sex workers as human. I also don't see any examples where the police were helpful toward a sex worker." [Survey participant 59]*

> *"I don't feel like I would be treated with respect and dignity by police. They seem to have something against us." [Survey participant 146]*

> *"There would be something they would find to get me on. They wouldn't take me seriously. I've heard the way cops talk about sex workers, even the ones who think they're friendly still hate the workers who aren't highly educated or use drugs. There's always some stigma." [Survey participant 86]*

Potential sexual violence by police makes reporting crime unlikely

As a result of negative experiences, many sex workers choose not to make a report in order to avoid police interactions. Disturbingly, several sex workers said that they would not report for fear of experiencing sexual coercian or violence from the police themselves:

> *"I would not expect police to believe that a sex worker could be sexually assaulted in the first place let alone take the complaint seriously. I would be worried that I might have done something illegal and be arrested instead. If I were arrested I would be worried that the police would sexually assault or coerce me in order to avoid being charged." [Survey participant 83]*

> *"I was committing a crime and only let go by a male police officer on duty for the promise of sex." [Survey participant 142]*

To allow sex workers to move out of *'the liminal space between offender and victim'* and be recognised as legitimate workers who can access justice and report crimes to police it is necessary that there be no exceptional criminal laws or police powers remaining after decriminalisation.

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.

Recommendation 3 (Q3):
Decriminalisation is primarily a process of repeal. Changes to the current framework would include:

- repeal all of Chapter 22A of the Criminal Code
- repeal all of the Prostitution Act and Prostitution Regulation
- amend other Acts to remove 'exemptions' or 'disqualifications' based on Criminal Code and Prostitution Act offences
- remove the police from any role in sex work regulation, repeal sections of the Police Powers and Responsibilities Act 2000 that refer to sex work including 'controlled activities', 'move on notices, powers in relation to consorting
- amend Planning Regulation (2017) to repeal Schedule 10, Part 2, Brothels, "Prohibited Development—material change of use for a brothel", add brothels, massage parlours, escort agencies and private sex work including collectives to Schedule 6
- amend Consent in the Criminal Code 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' and add a provision 'by an intentional misrepresentation by another person about the use of a condom′
- amend anti-discrimination protections to cover sex work and sex workers against discrimination and vilification and repeal exemptions that allow lawful discrimination against sex workers
- amend the definition of sex work
- expunge sex work-related offences
- non-legislative approaches to ensure WHS responsiblities and rights are applied to all sex industry workplaces through the development of WHS guidelines
- amend Liquor Act (1992) and Liquor (Approval of Adult Entertainment Code) Regulations 2002 to decriminalise strippers
- no new laws specific to sex work.

The entire current licensing framework of the PLA, PETF, criminalisation, exceptional police powers, entrapment, anti-discrimination exemptions, council discretion and targeted police enforcement must be repealed. A decriminalised framework has no role for atypical treatment of sex work except where civil protections (WHS, accepted development, relevant anti-discrimination attributes) are required.

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

Sex workers and sex work business types

Decriminalisation would mean all existing sex industry businesses and sex workers would be brought into the decriminalised sector. The decriminalised framework would apply to ALL sex workers and sex work business types. 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, collaboratively, do incall/outcall, street/bar-based work or work in massage parlours, with escort agencies, in brothels and online.

If all types of sex work business are included it will mean that no sex workers will be denied the benefits of decriminalisation. There will be no need to construct rigid and confusing rules that separate, define and describe what types of sex work are allowed and what are not.

In our recent survey sex workers were asked the following question about their preferred styles of working:

2022 DecrimQld Survey Q13. If sex work laws in Queensland supported a range of workplace options, how would you choose to work? (choose ONLY your top four preferences). Available choices: private, brothel, massage parlour, co-operative/group, escort agency, strip club, street based, online content creator, sex for favours.

The answers revealed that a wide range of workplace types are necessary and desirable, with some more popular than others. Most sex workers chose either private work or working privately with other sex workers in collectives (sharing overheads and providing support for each other) as their first choice. Quite a few selected online content creation as their preferred work style with escort agency, massage parlour, brothel, strip club and sex for favours clearly desirable but less popular as a first choice. Very few participants chose street-based work as their first choice, which we suggest is due to the prevalence of that sector (small) and not an indication that the sector is less in need of reform. When considering second choice work options, collectives were the highest selection followed by brothels as a high second choice. Online content creation, private, escort agency and massage parlour were moderately presented in the second choice category but with strip clubs, sex for favours and street-based work less popular. What came through strongly in these answers is that there is a need for a diverse range of workplace types to provide enough options for sex workers to work in the ways that suit them without limiting safety and wellbeing:

> *"There are so many ways to work. When I haven't had money for advertising I have wanted to do street work. When I've been sick and didn't want to do full service, I've wanted to do massage work. Different types of work suit different people at different times and we shouldn't be forced by the government to do only these certain types of work if we don't want to." [Survey participant 86]*

> *"My preferred way to work would be with friends in shared accommodation. This would increase my safety and also decrease my overheads and feelings of isolation. If I had the choice I would also like to work in a massage parlour where I have the option to*

not do full service, to set my own prices and have flexibility to offer what I feel like depending on the client." [Survey participant 7]

"I would not be able to work in a licensed brothel because I am too old and there are not enough of them so the roster shifts go to younger sex workers. I would not want to work from my own residence because it's important to me to keep boundaries so I would prefer to do escort work with an agency or with another sex worker." [Survey participant 22]

"I like to have choices. Sometimes I feel like working with a friend, sometimes I feel fine to work alone. I like to work in a brothel during periods in my life when I don't have the energy to advertise and I feel more like a 9-5 lifestyle. I know many sex workers, especially those who are parents feel that working in a brothel is more discreet and easier to combine with school hours." [Survey participant 57]

"I am a dominatrix and need a specific space. I would feel safer working with or sharing a space with another worker." [Survey participant 66]

"I usually find clients at work at a strip club which doesn't have the licence." [Survey participant 170]

"A workspace that could be shared by multiple workers would be a much more affordable option." [Survey participant 196]

"To let us work freely from our homes, rent is super expensive and it's not getting any cheaper if we keep booking motels and hotels." [Survey participant 203]

"I would like the choice to adapt my work to suit my health, mobility and capacity when it changes." [Survey participant 204]

Massage parlours

Massage parlour work is an important traditional style of sex work that has many benefits. Survey participants who worked in massage parlours were asked about their reasons for choosing that business type. The answers convey a range of reasons why working in a massage parlour is better for them than working in another sector of sex work. The most common reason for working in a massage parlour is that full service is not required and/or it is easier to handle negotiations with clients in massage parlour workplaces:

"I like the option of not having to provide full services in every booking." [Survey participant 100]

"The clients are often happy with a handjob and I just take my top off so it's easy." [Survey participant 204]

Some participants talked about how the massage parlour was an introduction to sex work, being able to learn about erotic labour and see how they went before starting work privately and therefore by themselves, or in a brothel, which usually includes full service sex work.

"It was a starting point. A place to start with sex work and learn." [Survey participant 20]

"I also wanted to learn what I was doing before I went out on my own, about safety and sexual health etc." [Survey participant 181]

Others said that erotic massage is just what they do. This is their skill area, they enjoy it and they are good at it.

"*It makes people happy and I am very good at it." [Survey participant 98]*

"I enjoy massage, it's physical and sensual." [Survey participant 204]

Other reasons for choosing massage parlour work included flexibility, that is, shorter or more flexible shifts than brothels, and better money, more work or a better cut with management.

"It meant I could alter my hours to meet childcare needs and I received a higher cut from each booking." [Survey participant 6]

"clients more rate compensation for services." [Survey participant 162]

"There is much more money to be made. This is how I worked in Sydney." [Survey participant 102]

One participant noted that for migrant sex workers massage parlour work is just easier to get into because of systemic and language barriers that make it difficult for them to work alone or in a licensed brothel.

"Language barrier prevented migrant workers from working privately and applying job in brothels. Front desk staff [at massage parlours] can handle booking for the workers." [Survey participant 189]

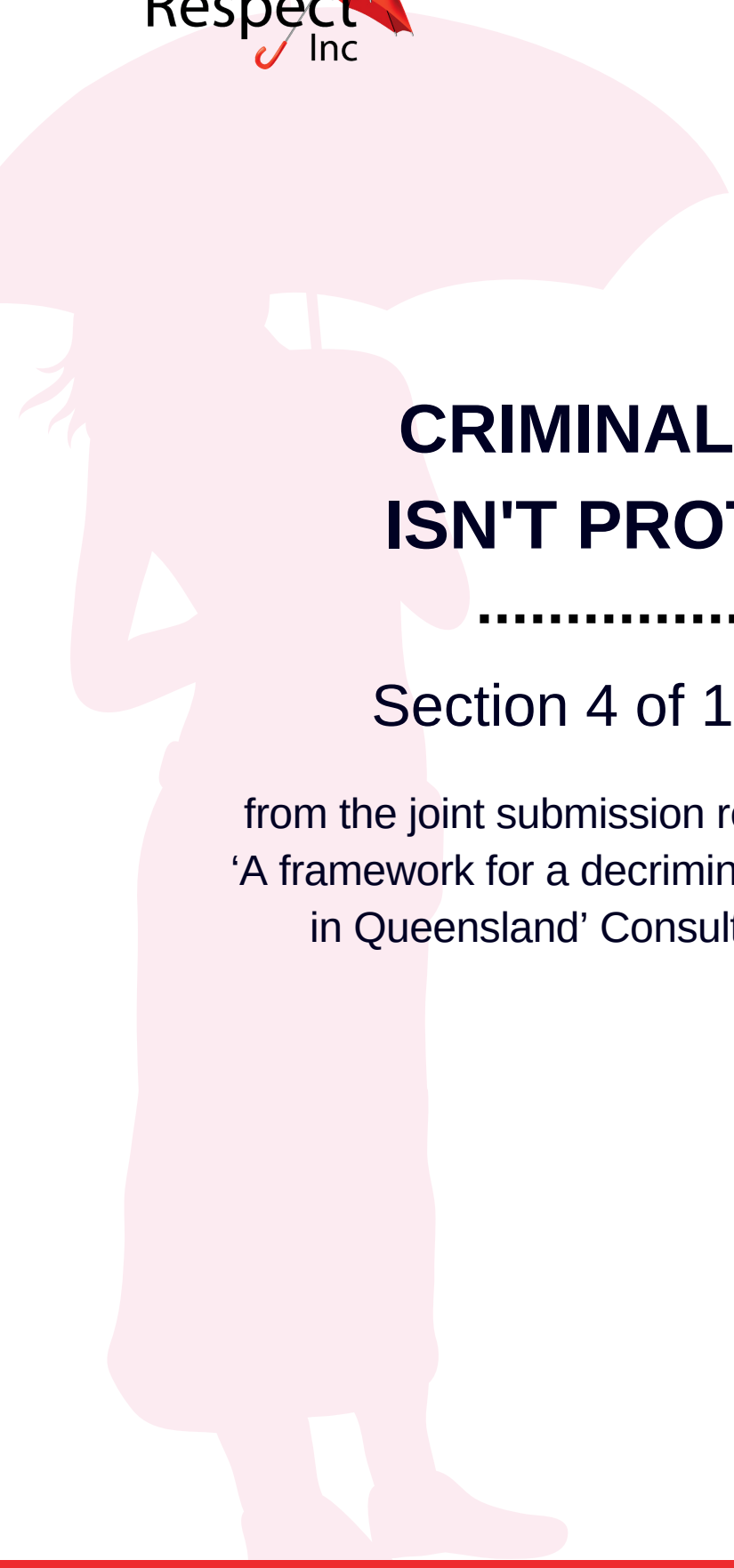
Definition of sex work must be modernised:
There is broad consensus that the current definition of sex work including "any other activity that 'involves the use of one person by another' for their sexual satisfaction 'involving physical contact'" is outdated. An important component of modernising sex 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 what it is not. The definition in and of itself should not be stigmatising of sex work.

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. The definition does not recognise sex work as work and that 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.*

Recommendation 4 (Q4):
All sex work, regardless of the sector, should be decriminalised as part of this review.
All sex industry businesses should be included in the new framework.
All sex work in Queensland will be covered by universal human rights and generic industrial safeguards after decriminalisation, except where civil protections are required (WHS guidelines, accepted development, relevant anti-discrimination attributes).
No sector or sex worker will be left behind.

Recommendation 5 (Q4):
The definition of sex work must be replaced and modernised. We recommend the new definition as:
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.



CRIMINALISATION ISN'T PROTECTION

Section 4 of 17 (pp46-62)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

CHAPTER 8: OFFENCES TO PROTECT AGAINST COMMERCIAL SEXUAL EXPLOITATION

Q5 What offences or other provisions should be included to protect people from being exploited in commercial sexual activity? For example:

(a) Should the offences in section 77 of the Prostitution Act and sections 229G, 229FA and 229L of the Criminal Code be reformulated in another part of the Criminal Code or in another law?

(b) Should any other offences be included in the Criminal Code or another law (like the exploitation offences in other decriminalised places)?

(c) Should the *Child Employment Act 2006* be amended to prohibit a person from requiring or allowing a child to work as a sex worker or in a sex work business?

No, offences in section 77 of the Prostitution Act and sections 229G, 229FA and 229L of the Criminal Code should not be reformulated in another part of the Criminal Code or in another law. It is an unnecessary duplication of laws to include these or new laws in relation to exploitation. The focus should instead be that sex work is completely decriminalised to enable sex workers to report crime and access WHS protections. The Child Employment Act should not be amended and should not include offences specific to sex work. We explain our reasons for this position in the following sections.

Sex workers would not agree that it is reasonable to maintain criminal laws or create new criminal laws to 'protect against commercial sexual exploitation'. On the contrary, because Queensland already has such robust criminal laws to protect people from unwanted sexual activity, there are already existing protections for sex workers to access after decriminalisation. Using the expression 'commercial sexual exploitation' as something that is distinct from 'sex work' is problematic. Enacting yet another set of distinct criminal laws as a safeguard from exploitation, but only to be applied to sex work, is extremely unhelpful and will only serve to maintain sex work stigma under another name.

Exploitation in sex work should be treated as labour exploitation

> If prostitution were decriminalized or legalized, there would still be a risk that violence, intimidation and coercion would continue to occur. However, serious criminal misconduct can and does occur in hotels, restaurants, public sport facilities and at other public meeting places and is dealt with by the normal laws….The concern about exploitation of women might best be met by laws which prohibit coercion, but not by laws which assume that all men who get money from prostitution are at fault. Care is also needed in deciding what constitutes exploitation. Prostitutes may benefit from relationships with men who protect them from violent clients. They should have the same rights to enter into voluntary relationships as do other citizens.[9]

While the quote above from Fitzgerald is in many ways outdated—speaking about sex workers as women who may need men to protect them from violent clients—in its essence it conveys what sex workers have been advocating for; that sex work should be treated as work, not exploitation. Unfortunately, this sentiment did not survive much past Fitzgerald's report.

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'[10] 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. The unintended consequences is that many of the laws that were meant to protect sex workers have been used against us, our partners, our family members and friends, especially when police are seeking to target us.

Sex workers have called for the removal of 'living off the earnings' laws because of the offensive way that they frame us as exploited victims and target our families. In Queensland these laws were not framed as 'living off the earnings' but similar consequences were produced by police use of the 'knowingly participating in the provision of prostitution' offence (s229h), which had unintended consequences for many sex workers and their families. One small example is set out in the news story below:

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[9] Fitzgerald, A. 1989. *Report of a Commission of Inquiry Pursuant to Orders in Council: Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, p. 191. https://www.ccc.qld.gov.au/about-us/our-history/fitzgerald-inquiry

[10] Prostitution Bill 1999 explanatory notes. https://www.legislation.qld.gov.au/view/html/bill.first.exp/bill-1999-608#

My client is not a pimp
Melanie Petrinec, The Cairns Post, Friday, December 10, 2010

AN Edge Hill sex worker and her husband have fallen foul of Queensland's prostitution laws because the woman was too busy to do her own advertising.
Instead, Marika Matula asked de facto husband Ronald Pacheco to put her ad in the paper, landing the pair in Cairns Magistrates' Court yesterday under legislation aimed to "protect prostitutes from pimps".

The Global Alliance Against Traffic in Women (GAATW) recommends the 'complete' decriminalisation of sex work:

> Complete decriminalisation of sex work is not a panacea, but it is the first step to better protect sex workers' rights. The decriminalisation argument is based on an understanding that sex work is work, and is a precondition for establishing safer, healthier workplaces in an industry in which sex workers' rights are protected by labour laws, and in which sex workers are afforded the same labour protections which other workers enjoy. As in other sectors, this would lead to fewer opportunities for exploitative working conditions, including human trafficking.[11]

Decriminalisation will be undermined if the process gets bogged down by misguided attitudes to sex work as potentially criminal or inherently exploitative, and we know that the criminalisation of vulnerable people does not help them. Exploitation can occur in every industry, yet there are no other special exploitation laws specific to each industry. Creating new sex work-specific exploitation laws will only serve to maintain harmful stereotypes, stigma and discrimination. Specific laws are created out of discriminatory attitudes and, in turn, research shows that these laws drive and maintain stigma.[12] This very recent research on the role that legislation plays in reinforcing stigma and discrimination against sex workers also reveals misguided laws framed as 'protection' for sex workers are a 'major barrier to accessing health care and protective services and impacted negatively on their mental health and wellbeing'.[13] We must break this legal cycle to give sex workers a chance to emerge out of their current stigmatised existance into one that affords them the same rights as other workers in other occupations. Decriminalisation should bring sex workers under the universal protection provided by many existing laws in the Criminal Code (Qld) 1899, Criminal Code Act (Cth) 1995, Fair Work Act (Qld) 2009, Workplace Health and Safety Act (Qld) 1995: all sufficient to protect people from being exploited in any job, including sex work. Additional state

[11] Global Alliance Against Traffic in Women (GAATW). (2018). *Sex workers organising for change: Self-representation, community mobilisation, and working conditions*. p. 40. https://www.gaatw.org/publications/SWorganising/SWorganising-complete-web.pdf

[12] Stardust, Z. et al. 2021. Ibid.

[13] McCausland, K., Lobo, R., Lazarou, M., Hallett, J., Bates, J., Donovan, B. & Selvey, L.A. (2022). '"It is stigma that makes my work dangerous': Experiences and consequences of disclosure, stigma and discrimination among sex workers in Western Australia', *Culture, Health & Sexuality*, vol 24 no 2, pp. 180-195, DOI: 10.1080/13691058.2020.1825813https://www.tandfonline.com/doi/full/10.1080/13691058.2020.1825813?src=recsys

offences would be an unnecessary duplication.[14] 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.

Q5a Should the offences in section 77 of the Prostitution Act and sections 229G, 229FA and 229L of the Criminal Code be reformulated in another part of the Criminal Code or in another law?

No. All of the laws listed in Q5a are dated and many are duplications of other laws adequate for the purposes. Section 77 of the Prostitution Act, when enacted, was a duplication of s218 of the Criminal Code, which had been considered adequate to cover coercion in sex work under the Prostitution Laws Amendment Act 1992.

> 218.(1) A person who—
> (a) by threats or intimidation of any kind, procures a person to engage in a sexual act, either in Queensland or elsewhere; or
> (b) by a false pretence, procures a person to engage in a sexual act, either in Queensland or elsewhere; or
> (c) administers to a person, or causes a person to take, a drug or other thing with intent to stupefy or overpower the person to enable a sexual act to be engaged in with the person;
> commits a crime.
> Maximum penalty—imprisonment for 7 years.
> (2) If the victim of an offence against this section is a child under the age of 16 or an intellectually impaired person, the maximum penalty to which the offender is liable is imprisonment for 14 years.
> (3) A person may be convicted of an offence against this section on the uncorroborated testimony of 1 witness, but the Judge must warn the jury of the danger of acting on the testimony unless they find that it is corroborated in some material particular by other evidence implicating the person.

Section 77 was brought in to add additional 'safeguards' for brothels under the licensing framework but it was also a duplication of section 229G of the Criminal Code, which was introduced as part of Chapter 22A in 1992. Sections 229G and 229L remain virtually unchanged since they were enacted under the 1992 law reform. They should be repealed and not reformulated elsewhere, for the reasons discussed below:

Section 77 Prostitution Act — forcing a person to do sex work
Section 77 is an unnecessary duplication of additional Queensland and Commonwealth legislation, which already operates to provide adequate protections against exploitation and coercion in a workplace situation without specifically targeting sex workers.

It is already covered by:

- Sections 343, 345 Fair Work Act 2009 (Cth) (Fair Work Act). Section 343 (Coercion) Section 345 (Misrepresentations)

[14] 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

- Section 218, Criminal Code 1899 (Qld): Section 218 (Procuring sexual acts by coercion). It is also worth noting that section 218(3) expressly provides that the definition of 'engaging in a sexual act' is not limited to 'sexual intercourse or acts involving physical contact', which gives additional breadth to the scope of the provision.
- Section 271.2(2)-(2C), Criminal Code Act 1995 (Cth) (Commonwealth Criminal Code) Chapter 8, Section 271.2(2) - (2C) Contains offences for trafficking persons, including children, for the purpose of sexual exploitation.

Sex workers also have existing civil protections under the Fair Work Act that are comparable to workers in other industries or occupations that operate in Queensland. The creation of criminal penalties specific to sex workers under section 77 operates on a discriminatory basis to criminalise sex work. This is inconsistent with the overall goal of decriminalising sex work.

The laws that are currently in place for sex workers are unnecessary as they overlap with existing Commonwealth and Queensland legislation, including the Criminal Code (Qld), Commonwealth Criminal Code and the Fair Work Act. For the reasons that follow, sections within these additional statutes provide sufficient protection to people from being exploited in any industry, which includes sex work:

(a) Workplace protections exist under section 343 and 345 of the Fair Work Act to protect individuals from coercion against exercising their workplace rights and being subject to misrepresentation about their work.

(b) Coercion in the context of sexual acts is captured by section 218 of the Criminal Code (Qld), which creates it as an offence to procure sexual acts by coercion (with sexual acts not being limited to sexual intercourse or physical contact). Note: This carries a maximum penalty of 14 years imprisonment, and captures a broader array of conduct than section 77. It creates a significant and more than adequate criminal penalty for such conduct.

(c) Section 270.1A of the Commonwealth Criminal Code captures duress involving trafficking and exploitation situations, noting it has defined words such as 'coercion' and 'duress'. It is a specific and adequate deterrent applying existing criminal law.

The duplication of Commonwealth laws is neither necessary nor an effective means to prevent exploitation and trafficking in sex work. The Federal laws are supported by the federal police and other agencies that have extensive powers to investigate and prosecute criminal exploitation in sex workers' workplaces. These federal agencies and departments are equipped to effectively assist in preventing exploitation. The removal of section 77 will assist in legitimising sex work in which employee rights and protections are regulated in the same way as other industries.

Section 229G Criminal Code — advertising for, or asking someone to do, sex work:
Section 229G of the Criminal Code (Qld) should be removed.This law is not about workplace exploitation, it is about asking someone to do sex work at all. Section 229G uses the term 'procure' in such a way (inclusively instead of definitively) that it covers both procurement for exploitation and procurement for legal work. It is so broad that it could criminalise the acts of clients who book sex workers for bookings that involve the sex worker leaving their place of

residence. This is not surprising because it was drafted at a time when the parliament did not recognise sex work as work and did not want there to be any mechanism by which sex work business operators could be part of someone engaging in sex work. If sex work is to be treated like a legitimate business there must be a way that sex workers and business operators can advertise for workers. If we are to treat sex work as work it should be legitimate for someone to ask another person to engage in sex work. How else can a private sex worker 'procure' another sex worker for a double booking or enter into a collective with other sex workers? In terms of advertising for employment, sex workers will be able to be thoroughly informed about employment opportunities at other businesses, understand the requirements and the particulars of a job and have more options to move into areas where the working conditions are better. It should be noted that this charge has historically been used by police to entrap sex workers and if retained, police are likely to revert to its use.[15]

Section 229FA Criminal Code — employing or transacting with someone who is not an adult (under 18) to do sex work:

The offence in section 229FA is well covered by other, non-sex work provisions, offences under both the Queensland and Commonwealth Criminal Codes. The Child Protection Act 1999 (Qld) is also of widespread application to protect children from harm. In particular, for children under 16, the provisions relating to rape and indecent treatment/carnal knowledge of children exist in the Queensland Criminal Code. The Criminal Code contains a range of offences that cover sexual exploitation of a person under 16, including sections that would cover any sex work situation. They make it an offence to:

- engage in child sexual exploitation (s210, s215, s229b)
- conspire in making a child available for sexual exploitation (s221)
- provide premises for child exploitation (s213)
- take a child for child exploitation s219
- procure a child for child exploitation (s216, s217)
- procure using the internet (s218a)
- groom a child for sexual exploitation (s218b).

There is also a law that covers distribution of images of child exploitation (s223).

The Commonwealth Criminal Code offers protection where, for example, a carrier service is used. There are also sections of the Criminal Code that deal with rape and sexual assault (s349-352) with section 349 noting that children under 12 years of age are unable to give consent.

Both Commonwealth and Queensland laws deem the legal age of consent for sexual intercourse to be sixteen. People aged 16 years or older are considered to have the requisite autonomy to legally be able to engage in sexual activity. There should not be a law contained in the Criminal Code (Qld) that interferes with this freedom of choice. We are of the belief that the age of consent issue must be considered in these laws. Where a young person between 16 and 18 years of age is employed to be a sex worker, this would currently be covered by the Child Employment Act 2006 (Qld) and Child Employment Regulation 2016 (Qld), which protects young people under 18 years from being required to perform work that may be harmful to their health, safety or that compromises their mental, moral or social development.

[15] *Sirens are coming*. (2022). ABC Podcast bonus. https://www.abc.net.au/radio/programs/dig/siren-are-coming-bonus/13917046

This provision would well be able to be applied to prevent children being employed to engage in sex work and therefore a sex work-specific offence is not required. Any criminal aspect could also be prosecuted under the Criminal Code (for example where there was procurement for sexual exploitation).

Criminalising sex workers under 18 is harmful because it forces them to be isolated and without the benefit of peer education. It may actively discourage underage sex workers from safely receiving help and assistance when they require it. It puts underage sex workers at higher risk of harm as they may have a fear of being charged themselves for the crimes associated with their work if they report anything to the police. The current wording of section 229FA could result in underage sex workers being prosecuted and convicted. It does not adequately protect underage people, it merely marginalises them and results in them having frequent encounters with law enforcement.

In conclusion, the offence in section 229FA is well covered by other, non-sex-work, offences under both the Queensland and Commonwealth Criminal Codes, both of which are well equipped to provide protection to a person who is not an adult.

Section 229L Criminal Code — allowing someone who is not an adult or has 'impairment of the mind' to be on premises of a sex work business:

It is our position firstly, that section 229L of the Queensland Criminal Code is a duplication of already existing Queensland and Commonwealth legislation, well equipped to provide protection to a person who is not an adult as discussed for s229FA. Secondly, section 229L is ambiguous and too broad to protect an individual's right to sexual autonomy and sexual choice. The section has harmful impacts for sex workers who are parents or carers, sex workers who have children or other family members who live with impairment, young people who do sex work and sex workers and clients who live with impairment. We discuss these issues in turn.

Child or young person on premises used for sex work

If there is any fear of child exploitation because of a child being on the premises, offenders can be prosecuted under the identified provisions in Chapter 22, especially section 213 of the Queensland Criminal Code. Prosecuting offences under Chapter 22 of the Queensland Criminal Code places the focus on actual identified harms or exploitation of the child not simply because of them being on premises used for sex work. This prevents unnecessary targeting of sex workers who themselves are parents or caregivers to children and hence live with them.

Furthermore, if the child is at risk of harm because of being on premises used for sex work (but not sufficient to be criminally prosecuted for the abovementioned offences), the Child Protection Act applies to allow investigation by the Department of Children, Youth Justice and Multicultural Affairs. 'Harm' in this Act is defined broadly and includes 'any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing'.
Harm can be caused by:

(a) physical, psychological or emotional abuse or neglect; or
(b) sexual abuse or exploitation.

These laws operate to protect children who are identified to be at actual risk of harm or exploitation as a result of exposure to sex work and would avoid the unnecessary consequence of criminalising a parent's lawful choice to engage in sex work.

A blanket offence for children being on premises used by more than one sex worker would cause considerable hardship for sex workers who have children and work from home and/or share workspace in a collective with other sex workers. In circumstances where there are two or more sex workers on the premises with their children, it is often the case that they are working together for safety and to share costs. It decreases their reliance on third parties, and they may share childcare duties. However, section 229L creates criminal liability on any sex workers if a child is on site at any time. The sex worker is then subject to a significant risk of arrest, police harassment and/or abuse. In a decriminalised system there will always be an option for marginalised sex workers to work together; this would support positive relationships with police and other service organisations, making it easier for sex workers to seek help if they need to.

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. Many people working from home keep their children on premises while they are working, including those in businesses where they receive clients and deliver services to those clients in a separate room. People performing therapeutic or psychological services, which may include activities or conversations that are not suitable for children still conduct these services from home and maintain a separation of their children from the work at hand. Other larger businesses such as alcohol and gambling venues that restrict children will sometimes provide a separate child-care/play room for employees and clients. For example, there are casino guidelines for providing separate 'play' areas: 'Where child play areas are provided, best efforts should be made to minimise exposure to areas where gambling activities are conducted'.[16]

There are online WorkSafe Queensland guidelines for advising about safety of children at workplaces.[17] Sex work WHS guidelines would include similar instructions about children on premises of sex work businesses.

Child sexual exploitation

As discussed above for s229FA there are more than adequate laws under the Queensland Criminal Code and the Child Protection Act 1999 (Qld) to safeguard against and cover sexual exploitation of children under 16 years old in sex work, or under any other circumstances. Section 213 of the Criminal Code in particular provides safeguards against organised exploitation including providing premises. Additional laws are not necessary and they will continue to legalise stigmatisation of sex workers and create barriers for sex workers who are parents/caregivers. Decriminalisation will mean existing child exploitation protections will apply to sex work workplaces, just like any other workplace in Queensland.

[16] Department of Justice & Attorney General Queensland. (2020). Responsible gambling resource manual: Casinos 2020 4.5 p. 27. https://www.publications.qld.gov.au/dataset/responsible-gambling-code-of-practice-and-resource-manuals/resource/adc08e35-2e49-4053-af06-de5d439dab68?inner_span=True

[17] WorkSafe Queensland Children in workplaces online guidelines. https://www.worksafe.qld.gov.au/safety-and-prevention/hazards/hazards-index/children-in-workplaces

Young people involved in sex work

The age of sexual consent is 16 and we know that people aged between 16 and18 years old 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.

Under the UN Convention on the Rights of the Child children are defined to be under 18 unless under their local laws the 'age of majority' is earlier.[18] For the purposes of discussing child sexual exploitation the age of majority in Queensland could be considered to be 16 years, which is the age of consent for sexual activity under the Criminal Code. McClure et al (2014:9), when discussing young sex workers' need for access to information and health services argue that 'The evolving capacities of adolescents should be taken into account to determine the most appropriate interventions to support them. The needs of 10-13 year olds, for example, might be quite different from those of 14-17 year olds, many of whom could have been surviving outside a family setting for years, managing their day-to-day lives as de facto adults.[19]

No reference to sex work in the Child Employment Act

It will undermine decriminalisation to include specific reference to sex work or social escorts in the Child Employment Act 2006. There should be no amendment to the Child Employment Act 2006 to prohibit a person from requiring or allowing a child to work as a sex worker or in a sex work business. We argue for the repeal of this section: '8B Prohibition on work as social escort (1) An employer must not require or permit a child to work as a social escort. Maximum penalty—100 penalty units. (2) In this section—social escort see the Prostitution Act 1999, schedule 4.' This refers to the Prostitution Act for a definition of 'social escort' and is an example of another exceptional law, as the only two occupations specifically mentioned in the Child Employment Act 2006 and Regulation 2016 are entertainment and social escort.

The amendment to include social escort (s8B) was made after 2009 when a number of changes were made to the sex work laws under the Prostitution and Other Amendments Act 2010 following the Crime and Misconduct Commission 2006 review of the laws to determine if licensed brothels should be allowed to do outcalls. Changes to the laws to include the concept of the 'social escort' came about because brothel licensees argued that illegal escorts were undermining the financial viability of their businesses. At the public hearing the idea was presented that escort agencies might try to get around the law by posing as social escort services that do not provide sexual services. Recommendations were made by the CMC to restrict advertising further as a way to '...close off the loophole that allows illegal prostitution providers to advertise as ''social'' escorts', even though the CMC acknowledged at the time that:

> The recommendations in this section are not made because we believe there are a large number of true social escorts who need to be regulated. On the contrary, our research suggests that the small number of legitimate social escorts are already

[18] United Nations Article 1, Convention on the Rights of the Child. Adopted 1989 In force 1990. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

[19] McClure, C., Chandler, C. & Bissell, S. (2014). 'Responses to HIV in sexually exploited children or adolescents who sell sex', *The Lancet* HIV and sex workers, July 2014, pp. 8-10.

> complying with the requirements recommended. The reason for the recommendations is to target illegal prostitution providers. If there is a set of regulations defining the advertising and other activities of ‘‘social escorts’’, illegal prostitution providers will no longer be able to masquerade as ‘‘social’’ escorts and thereby obtain a competitive advantage over the legal prostitution industry.[20]

There has never been any suggestion that there were children working as social escorts but as a part of this process the addition of s8B in the Child Employment Act was automatically made to include a ban on a child being employed as a 'social escort'. We note that the term ‘social escort’ is not used in any of the child employment codes or guides; it only exists in the Child Employment Act and should be removed from the Act as part of establishing the new decriminalised framework in Queensland so that the extensive and existing safeguards for all child employment apply.

As discussed above, the Child Employment Act itself contains adequate safeguards, which would protect persons under 18 being employed in any type of work requiring nudity, exposure of genitalia or erotic dress (8A) and an employer must not require or permit 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 (8C).[21] Including sex work or social escort is overkill and stigmatising.

‘Impairment of mind’

Under the current law a person with ‘impairment of the mind’ cannot work at a licensed brothel or be on any other sex work premises, with very harsh prison penalties imposed on anyone who works with them in any way. This impacts on both sex workers and clients because under section 229L if someone with ‘impairment of mind’ was to attend a brothel as a client they put the sex worker and possibly a carer at risk of criminal conviction. Removal of Section 229L would improve the rights of persons with an ‘impairment of the mind’, including the right to gain access in a safe and dignified manner befitting the individual's level of ability to the range and types of sex work services available without discrimination or systemic barriers. Currently section 229L does not allow for persons with an ‘impairment of mind’ who have the capacity to make decisions relating to consent to participate in sex work or engage with sex workers to do so. This section prevents the sex industry from organising sex workers who are trained and skilled to work with people with intellectual disabilities.

We are also aware that under Section 134A of the Prostitution Act 1999 (Qld) an exemption is provided to health professionals for essentially breaching patient confidentiality to inform a police officer if they reasonably believe that a sex worker at a licenced brothel is a person with an ‘impairment of mind’. The provision allows the health professional (i.e. a doctor or a registered nurse—see s 134A[6] to provide a police officer with information about the sex worker and the sex worker’s disability. This exemption would presumably apply for the client of a sex worker as well. This has created unintended barriers to health care and support seeking behaviour of sex workers with various cognitive, psychiatric or neurodivergent

[20] Crime and Misconduct Commission. (CMC). (2006). *Regulating outcall prostitution*, p. 47. https://www.ccc.qld.gov.au/sites/default/files/Docs/Public-Hearings/Escort-agency-hearings/Regulating-outcall-prostitution-Report-2006.pdf

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

conditions who did not want their doctors to inform the police that they were working as sex workers.

The current definition of 'impairment' is very broad: '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'.[22] This definition captures many circumstances and issues that sex workers and clients who are capable of negotiating consent may experience. For many sex workers with disability sex work provides them with a stable income, capacity to pay for and attend therapy and the flexibility to schedule work around their disability. Decriminalisation of the offence created by this section would allow sex workers living with impairment to access all the same benefits; access to occupational health and safety and reduced surveillance. Further marginalisation through over-regulation of normal human activity results in poor access and a denial of the human rights of individuals.

The problem of this broad definition was specifically addressed in R v Mrzljak[23], a case under section 216 where all three judges of the Court of Appeal made it clear that 'the existence of an intellectual impairment did not mean that a person is incapable of giving or withholding consent'. It is imperative that section 229L be removed and the definition of impairment in section 216 be amended to reflect a more appropriate and conclusive definition of what constitutes an inability to consent to sexual activity.

The Public Advocate Qld and disability organisations such as Queensland Advocacy Inclusion (QAI) also oppose the current overly broad definition of 'impairment of mind' and its use in laws about sexual activity under s216 of the Criminal Code, including sex work, 'which has been interpreted to have such a broad application that it includes not only people who have impaired decision-making ability, but those with disabilities that have no impact on decision-making ability'.[24] They call for a new definition that refers to a permanent impairment that affects decision-making capacity to understand and consent to sexual activity. In Queensland there is already a legislated process for supported decision making with people who have capacity issues. Decision-making ability, consent and capacity are dealt with in the Public Guardian Act 2014, Guardianship and Administration Act 2000 and Powers of Attorney Act 1998, which can used along with the Queensland Capacity Assessment Guidelines (QCAG) by people who are concerned about a person's capacity to decide on matters of sexual consent. The Queensland Capacity Assessment Guidelines (QCAG), updated last year, sets out a process for assessing whether a person passes a 'general test for capacity':

> The legal test to apply: Under the general test for capacity under Queensland's guardianship legislation, the adult must be capable of: (a) understanding the nature and effect of decisions about the matter (b) freely and voluntarily making decisions about the matter (c) communicating the decision in some way. There are three parts

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

[23] R v Mrzljak[2004] QCA 420 https://www.queenslandjudgments.com.au/caselaw/qca/2004/420

[24] 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

that make up this test. The criteria in all three needs to be met for an adult to have capacity to make the decision.[25]

The capacity assessment guidelines support people to assist a person living with impairment to make a decision and there is an emphasis on 'supported decision making' using the 'least restrictive options' and assuming at the outset that the person has capacity. This emphasis is to ensure that the process upholds the human rights of the individuals who are being assessed. It says, 'It is important that at the time you conduct the assessment you identify the decision(s) to be made by the adult. This is because capacity is specific to the decision to be made. The test of capacity may also be different depending on the decision to be made.'[26]

Specific and restrictive legislation would create negative unintended consequences for already marginalised people. The existing Queensland consent laws reflect both the UN Convention on the Rights of Persons Living with Disability and the Queensland HRA (Qld) that people should be assumed to have decision-making capacity unless assessed otherwise and that they should be subject to the 'least restrictive' options to uphold their privacy and equality before the law. We envision that a legal contradiction could arise for employers, carers and sex workers who cannot legally discriminate on the basis of disability if there was a new law framed that would make it impossible for them not to discriminate on the basis of 'impairment of mind' with respect to providing sexual services and being on premises. In recent years the NDIS has provided people who have a range of disabilities, including 'impairment of mind' with access to sexual services.[27] They have a right to reasonable and necessary support but a carer in Queensland who is concerned about a potential prison term is going to be reluctant to provide that support for a client who has impairment that is encapsulated under the definition of 'impairment of mind'. Another unintended consequence of laws like this is that they can be used to limit the rights of a person with disability to engage in activity to which they have the capacity to consent by carers and people with POA who may disagree on moral grounds to sex work, or sexual activity in general, and who will use the law to argue against it.

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.[28] [29] 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

[25] Queensland Capacity Assessment Guidelines, p. 16. https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/23e5bde1-40d7-4115-a15d-c15165422020/qld-capacity-assessment-guidelines-version-2-to-upload-28-04-21.pdf?ETag=8be7451b7432cea4533983685981f72b

[26] Queensland Capacity Assessment Guidelines p. 22.

[27] Touching Base Inc. NDIS and sex work, https://www.touchingbase.org/ndis-and-sex-work/

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

[29] 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.

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'.[30]

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.[31] [32]

Organised crime

Large-scale organised crime and 'pimping' is not a characteristic of the sex industry in Australia.[33] 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.

While police in Queensland regularly refer to organised crime, in real terms they are describing us, sex workers. Under the current law many day-to-day aspects of sex work are considered a crime—as are the ways we share information and keep each other safe. In reality most police media statements and references in meetings describing organised crime have actually been sex workers working together, hiring a receptionist, sharing receptionists, or working in massage parlours or other currently criminalised sex work workplaces. The current legal context has to be taken into account on this issue.

Historically, organised crime has not been a characteristic of the Queensland sex work industry either, and sex workers reject the assertion that 'Historically, Queensland's sex work industry was closely linked with organised crime', which has been reduced due to the licensing framework (QLRC p.74). The Fitzgerald Inquiry was not an investigation of prostitution, it was an investigation of government and police corruption. Evidence was heard to understand the political and bureaucratic structures of the time that allowed corruption to flourish in the policing of a range of areas but in particular 'vice' industries, such as gaming (sp bookmaking and gaming machines), unlicensed alcohol venues, drug distribution and prostitution. It also looked at rorting of informant payment systems and the widespread acceptance of police and politician corruption and payoffs under the Bjelke-Petersen government. The report comprises 388 pages, including a huge raft of recommendations to overhaul the government and police service. Of this, only about five pages of discussion are about prostitution and that is limited to the persons and establishments from which police in the Licensing Branch were taking

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[30] 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.

[31] 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.

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

[33] 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.

bribes.[34] It is likely that the smaller, more diverse, less centralised sex workers and sex work businesses in Queensland that did not operate in the Brisbane inner city areas were not required to pay off the Licensing Branch and therefore did not come to the attention of the Inquiry, since the corrupt engagement of the Licensing Branch with sex work businesses was focused primarily in Brisbane.[35] Fitzgerald only refers to one couple, Hector Hapeta and Mary-Ann Tilley, who owned several brothels and one escort agency in the inner city. His description of their circumstances and those in which they came to pay off the police indicates that they were ordinary sex work business operators who had been charged with prostitution offences and then approached by police to become a part of their protection racket. They were not part of what is commonly understood to be 'organised crime':

> Next, in mid-1981, the first steps were taken to organize payments in relation to prostitution. Hector Brandon Hapeta and his defacto wife Ann Marie Tilley owned a number of brothels and at least one escort agency, and Tilley worked both as a prostitute and a receptionist. As such, she was occasionally breached for lesser offences, leading, in April, 1981, to a short sentence of imprisonment" (p.64-65)...first Hapeta and Tilley and then others began paying large sums regularly for the protection of their brothels and other prostitution activities (p. 65).

Fitzgerald came to the conclusion that:

> Prostitution, other voluntary sexual behaviour, s.p. bookmaking, illegal gambling and the illicit sale of alcohol and drugs are presently criminal offences, but the laws concerning them are not effectively enforced. From a resources point of view, there are arguments for decriminalization and regulation of some of these types of conduct. However, not enough is known about the involvement of organized crime in these areas, and the likely affect of decriminalization on such involvement. Without this knowledge, and in spite of considerable research, this Commission cannot make recommendations on these matters, in spite of the expectation that it will do so.[36]

Fitzgerald questioned how 'organised' the crime of prostitution was in Queensland, noting that a definition could be derived by examining where the money went: 'If they stay with and are used on "legitimate" expenses by the people directly engaged in misconduct, then the crime is usually local. If a "cut" goes to others, remote from the misconduct, then the crime is clearly "organised"'.[37] On that basis, we would argue that it was organised crime only so far as a 'cut' was being paid to corrupt police, with the only option being to pay up or be charged. If those

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[34] Fitzgerald, A. (1989). Report of a Commission of Inquiry Pursuant to Orders in Council:Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, pp. 52,53,59,64-65,66,69,69,192-193. https://www.ccc.qld.gov.au/about-us/our-history/fitzgerald-inquiry

[35] Fitzgerald, A. (1989). Report of a Commission of Inquiry Pursuant to Orders in Council:Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, p. 60. https://www.ccc.qld.gov.au/about-us/our-history/fitzgerald-inquiry

[36] Fitzgerald, A. (1989) Report of a Commission of Inquiry Pursuant to Orders in Council:Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, p. 362. https://www.ccc.qld.gov.au/about-us/our-history/fitzgerald-inquiry

[37] Fitzgerald, A. (1989) Report of a Commission of Inquiry Pursuant to Orders in Council:Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, p. 162. https://www.ccc.qld.gov.au/about-us/our-history/fitzgerald-inquiry

sex workers and sex work businesses had become part of the investigation the focus on organised crime may have been reduced.

The Criminal Justice Commission, which was created by the Fitzgerald Inquiry and conducted the first review of the sex work legislation two years later, said that:

> Although the Commission of Inquiry had examined in some detail prostitution-related activities it did not know the extent and nature of the involvement of organised crime….The paucity of information that Commissioner Fitzgerald alluded to has not changed substantially since the time of the Commission of Inquiry.[38]

The first CMC review of the licensing framework reported that 'The measures for preventing corruption that were imposed on the Queensland public sector, including the police service, following the Fitzgerald Inquiry appeared to be effective in ensuring accountability and transparency among those dealing with the industry'[39], but since then it has been assumed that it was the licensing framework itself that had dealt with police corruption and organised crime.

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.

Recommendation 6 (Q5):
The offences in section 77 or the Prostitution Act and sections 229G, 229FA and 229L of the Criminal Code should not be kept or reformulated in another law because they are dated and duplicate adequate existing laws in the Criminal Code and elsewhere.

Recommendation 7 (Q5)
No offences or other provisions using the term 'commercial sexual exploitation' should be included, and creating new sex work-specific laws to deal with sexual exploitation will undermine decriminalisation and create unintended consequences for vulnerable sex workers and others who will have these laws and concomitant stigma used against them.

Recommendation 8 (Q5):
The full removal of state police as prosecutors of sex workers in Queensland is an essential and non-negotiable plank of decriminalisation.

[38] Criminal Justice Commission (CJC). (1991). *Regulating morality?: An inquiry into prostitution in Queensland*, p. 2 https://www.ccc.qld.gov.au/publications/regulating-morality-inquiry-prostitution-queensland

[39] Crime and Misconduct Commission (CMC). (2004). *Regulating prostitution: An evaluation of the Prostitution Act (Qld) 1999*, p. 46. https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CMC/Regulating-prostitution-An-Evaluation-of-the-Prostitution-Act-1999-%28QLD%29-Report-2004.pdf

Recommendation 9 (Q5):
Current existing state and federal laws should be acknowledged as adequate to safeguard sex workers, people with intellectual disability, children and people impacted by trafficking under decriminalisation.

Recommendation 10:
There should be no blanket law to prevent children from being on premises where sex workers work.

Recommendation 11:
The Child Employment Act should not be amended to include offences specific to sex work but should be amended to remove section 8B **'**prohibition on work as social escort'.

Recommendation 12:
The definition of 'impairment of mind' in the Criminal Code must be replaced with a definition that refers to one's capacity to consent to sexual activity.

Recommendation 13:
We support the call for a review of the definition of 'impairment of the mind' and abolition of section 216 of the Criminal Code, which criminalises sexual activity involving a person with an 'impairment of the mind', even when that person has capacity to consent to the sexual activity.

LICENSING HAS FAILED

Section 5 of 17 (pp63-81)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

CHAPTER 9: LICENSING OF SEX WORK BUSINESS OPERATORS

Whether a licensing system is needed

Q6 Should sex work business operators be required to have some form of licence to operate a sex work business in Queensland? Why or why not?

Features of a licensing system

Q7 If a licence were to be required what should the system look like?

Q8 Should the requirement to hold a licence apply to:

(a) all sex work businesses; or

(b) only those who employ a certain number of sex workers?

Q9 What should a suitability check involve? For example, should it:

(a) be limited to checking whether the person has convictions for serious disqualifying offences (like New Zealand)?

(b) include checking whether the person has been bankrupt, had another licence for operating a sex work business revoked, or been an executive officer of a body corporate that was found guilty of a serious offence against workplace laws (like the Northern Territory)?

(c) require the decision-maker to form an opinion that the person is 'suitable', based on any relevant matter (like the Prostitution Act or the Northern Territory)

Q10 Should the fee for a licence be set at a nominal amount (like the Northern Territory and New Zealand) or a higher amount (like the Prostitution Act)?

Q11 For how long should a licence be valid?

Q12 What should happen if an operator:

(a) does not hold a valid licence? For example, should there be a criminal penalty, civil penalty, or both?

(b) does not follow any requirements or conditions imposed by the licence? For example, should there be a civil penalty, suspension or cancellation of the licence, or both?

Q13 Who should be responsible for carrying out suitability checks and issuing licences? For example, should this be:

(a) an existing body that deals with other industries, like the Office of Fair Trading; or

(b) an existing or newly created body with a role specific to the sex work industry, like the PLA?

Q14 Should decisions to refuse an application for a licence or to suspend or cancel a licence be reviewable by QCAT?

Other considerations or options

Q15 What is the best way for a licensing system (if any) to balance:

(a) the need to protect against illegal activity; and

(b) the need to limit the administrative and resource burden on government and the sex work industry?

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?

Q17 What other factors should we consider (if any) in recommending a licensing system

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 on top of a decriminalised framework, 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 on top of a decriminalised framework that result in 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 a best-practice model of decriminalisation of sex work in Queensland instead. Rather than accepting the flawed parts from other jurisdictions that are largely decriminalised we want Queensland to implement a model of decriminalisation that does not criminalise some sectors of the sex work community and does not apply unnecessary adminstrative burdens and costs on government or the sex industry.

Licensing is not decriminalisation

Maintaining any aspect of licensing is not in line with the intention of this review and will parallel the documented negative impacts of the licensing system in Queensland, Victoria and New Zealand. As such, we do not support maintaining any form of licensing including certification of brothel operators in Queensland. Licensing is not a usual part of decriminalisation, and as the Consultation Paper notes it 'adds to the standard rules and requirements that apply to any business operating in Queensland' (9.20).

Our organisation and membership of sex workers strongly refute the assertion that maintaining licensing (including certification) works as a safeguard to deter illegal activity and the exploitation of sex workers (9.67). In real terms licensing systems split the industry into two distinct sectors, the compliant (legal) and the non-compliant (illegal) sector. In this way, licensing creates an underclass of sex workers who work in the illegal sector with diminished rights and access to industrial rights:

> Licensing systems are expensive and difficult to administer, and they always generate an unlicensed underclass. That underclass is wary of and avoids surveillance systems and public health services: the current systems in Queensland and Victoria confirm this fact. Thus, licensing is a threat to public health. [40]

There is no evidence to indicate that suitability certification for sex industry business operators would mean that 'they are more likely to meet their regulatory obligations, respect the agency and autonomy of sex workers, and operate the business lawfully and safely' (9.72). Queensland's existing licensing framework includes screening of business operators and managers including suitability or probity checks, criminal history checks, financial viability checks and has resulted in creating the complete opposite effect; most operators in Queensland operate unlawfully and are disincentivised against meeting regulatory obligations.

Equally, maintaining licensing does not 'safeguard against the involvement of criminal and corrupt elements and limit the potential harms associated with sex work'. Sex workers understand, all too well, that there are people who are better suited, and others less-suited, to run and manage sex industry businesses. However, 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.

Evidence from Queensland, as well as other jurisdictions with licensing (Victoria) or certification (New Zealand), demonstrates that licensing has not resulted in better outcomes for the community or for sex workers. NZPC advises us that the certification process is unnecessary, has had no positive impact on sex workers or the community and that it has resulted in the same two-tier outcome that licensing has historically created. NZPC also advises that it was existing brothel owners who campaigned for a certification process, aiming to keep as many other operators out of the industry as possible. The QLRC (pp. 88-89) advises that the review of NZ legislation found certification did not seem to have created a two-tier system but at the same time they stated that 'some operators thought it 'was ''too easy to get a certificate''. We would argue that this sentiment from sex work business operators is a classic manifestation of two-tier division. Sex worker organisations in both the Northern

[40] Donovan, B. et al (2012). Ibid.

Territory and New Zealand did not historically, nor currently, support certification. SWOP NT states 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. The committee considering the issue could not reach agreement and a number of the committee members refused to agree to the recommendation for licensing, making public statements to that effect following the release of the report.[41] NSW ultimately did not introduce it as it was recognised that it would be high cost and 'risk creating similar adverse outcomes to re-criminalisation'.

> The three MPs who gave dissenting views on the report of the Select Committee on the Regulation of Brothels welcomed the announcement that the Government is walking away from contentious proposals to further regulate sex workers.
>
> The Government's response to the report of the Select Committee – released yesterday - notes the "NSW Government will not be introducing the licensing model described by the final report of the Select Committee because introducing such significant regulatory burdens and police involvement risks creating similar outcomes to recriminalising sex work.[42]

Stigma renders licensing inappropriate

While the sex industry is comparable to many other industries, what sets it apart is the extremely high level of stigma and discrimination attached to the industry and being a sex worker. It is precisely these impacts of stigma and discrimination on sex work that means many of the regulatory systems that are effective for other industries are not appropriate for implementation in the sex industry where they will create two-tier divisions and maintain a role for police in regulation.

Current licensing laws in Queensland

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. Research commissioned by the PLA in 2009 found that licensing created a two-tiered industry with the majority of sex industry workplaces criminalised, that licensing created no measurable health benefits for sex workers and concluded that 'sex workers may be in a more precarious position now than they were when the legislation was first passed'.[43]

[41] https://www.johaylen.com/regulation_of_sex_work

[42] ibid.

[43] Edwards. A. (2009). *Selling sex : regulating prostitution in Queensland: A report to the Prostitution Licensing Authority.*

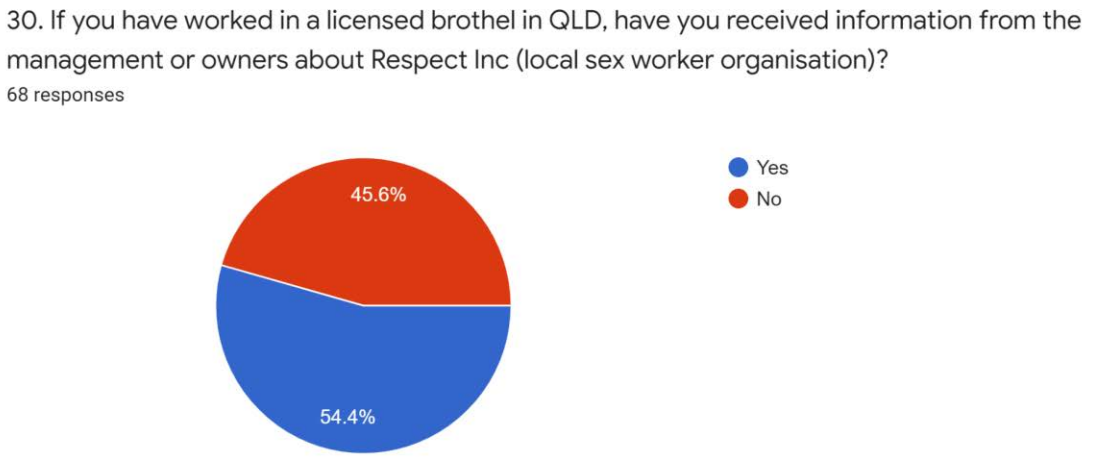
Currently there are only 20 licensed brothels in Queensland. The system maintains a major role for police in relation to approximately 90% of the industry that is not able to meet the licensing requirements. Our experience in Queensland demonstrates that illegal workplaces and sex workers who work there are being forced outside of the legal system due to the licensing framework, placing them at risk of police charges for simply doing their job safely.

We submit that our organisations and members 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, the Paper still asks whether Queensland needs to continue a licensing system. 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 governments.

Unintended consequences of licensing—two-tier outcomes

One of the problems with any type of licensing of sex work, regardless of whether it is the Queensland framework with a PLA, or the (now repealed) Victorian approach under the BLA or the New Zealand system of certification, is that some sex work business owners who are eligible to obtain a licence blame their unrelated business issues on competition from 'unlicensed' or 'illegal' businesses. This results in propaganda campaigns and work practices that are hostile toward other sex workers who are not a part of the licensed industry. This unjustified and illogical 'blame game' has serious consequences for sex worker community building, peer education and health promotion as indicated by responses to Q30 of our recent survey where 54.4% of licensed brothel workers say they did not receive any information about Respect Inc.



Propaganda and misinformation by licensed sex-work business owners, often played out in the media, contributes to the continued stigmatisation of sex work because they repeat discriminatory myths and stereotypes about 'illegal' sex workers. News stories, like those below, are regularly published in all jurisdictions where two-tiered divisions exist.

"**Southeast Queensland massage parlours probed for sex service**
Chris Clarke, The Courier-Mail, December 18, 2017
Massage therapist blasts 'happy ending' customers
SEVERAL massage parlours are being investigated in Logan and Underwood amid claims that some are offering sexual favours and that used condoms are being left in nearby toilets. Police and Logan City Council have launched inquiries into the claims, but business owners at the centre of the scandal feel they're being wrongly stereotyped.
The allegations have seen tensions boil over at one business after a woman sent her partner into a massage parlour as "bait" and he was allegedly propositioned. The claim was taken to the council this year.The parlour owner, who didn't want to be named, denied the allegations and said he was the victim of a witch hunt."[44]

"**Why running a brothel is similar to running any business**
Winnie Salamon, News.com.au, October 28, 2017
GETTING into the brothel business isn't all hot girls and easy money. Melbourne brothel owner Milan Stamenkovic believes his is a legitimate business, and should be run as such.
There are an estimated 500 illegal brothels in Victoria alone. When you consider there are only 91 legitimate establishments, that's quite a discrepancy. And it's a fact that drives Milan Stamenkovic crazy…. "I'm all for competition, but the illegals are encroaching. They'll open up anywhere, near schools for instance and that's wrong," he said. "They don't necessarily follow safe sex practices; the conditions for workers can be poor. I think clients go there because it's cheaper." "[45]

Rhetoric matters
Relentless misinformation about 'illegal' sex workers repeating inaccurate stereotypes about exploitation, unsafe sex, lower prices and disregard about where they operate also contributes to whorearchy, where sex workers express discriminatory class and racially-based attitudes about other sex workers on the basis of the style of work that they do. These attitudes can be internalised, they are psychologically harmful and are exacerbated by frameworks that exclude some sex workers or businesses from legal protections.

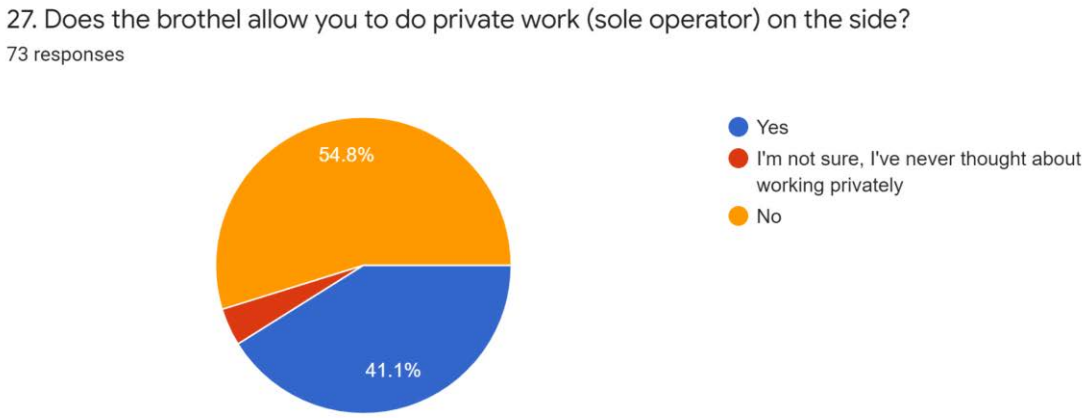
This is one of the reasons why it is so important for the decriminalised framework in Queensland to have no licensing system and install legislated planning protections for sex work businesses, so that the harmful two-tier system does not endure. Sex workers have observed that some owners and managers of licensed brothels in Queensland promote misunderstandings about other sex work business models in an attempt to keep sex workers on their brothel roster with incorrect assertions about the 'dangers' of working anywhere else. One of the popular myths in this rhetoric is that private sex workers engage in 'illegal' activities

[44] http://www.couriermail.com.au/news/queensland/crime-and-justice/southeast-queensland-massage-parlours-probed-for-sex-service/news-story/52c98a952c53b29375853217d8f31f04?login=1
[45] https://www.news.com.au/finance/business/why-running-a-brothel-is-similar-to-running-any-business/news-story/2424fb5b0c556041eb536ee2b7785af8

such as not using condoms, which some brothel owners and managers claim undermines the income of the licensed brothel workers and 'infects' the client pool with STIs. Such information is an epidemiological fallacy and has a damaging impact on health promotion and trust in the workplace:

> *"i havent really ever been open about side private work but in the past managers were always going on about private workers being dirty and taking all our clients cause they dont do health checks or use condoms." [Survey participant 16]*

The tendency by some brothel licensees in Queensland to engage in inaccurate rhetoric may partly explain why 54.8% of licensed brothel participants told us that they believed they were not allowed to do private work while also being on the roster of a licensed brothel:



In our recent 2022 survey more participants (54.8%) said that they had been told that they could not do private work while working at a licensed brothel compared with only 31% in the 2017 *Regulating Bodies* survey.[46]

The confusion surrounding workplace rights in licensed brothels is an outcome of the two-tiered division created by specialised laws and regulations for sex work.

Unintended consequences of licensing: Systemic harms to health promotion

Respect Inc and DecrimQLD believe that it is not the licensed brothels themselves or specific managers and licensees that create a landscape of confusion, rather they are a product of a licensing system overseen by a sex work-specific government agency that has systematically interpreted public policy incorrectly and thus played a long-term role in promoting misinformation about sex work practices outside of the licensing system in Queensland. The outcomes are harmful. Rhetoric, implementation and enforcement by the PLA of incorrect policy is an expensive exercise, misleading to licensees, sex workers and the general public and therefore inverts the entire point of investment in health promotion.

[46] Respect Inc. (2017). Ibid, p. 29.

Case study one: PLA-imposed use of latex gloves when not actually required
The PLA misinterpreted the Prostitution Act 1999 and at some point advised licensees to enforce the use of latex gloves for all hand-genital contact in bookings or risk non-compliance penalties. This created division among different sectors of the industry, with the PLA promoting the idea that sex workers not using latex gloves were breaking the law. After extensive Respect Inc advocacy, Queensland Health made a ruling on 15 September 2016 and the issue was finally settled in favour of Respect Inc.

Case study two: PLA-enforced COVID regulations on brothels when actually incorrect
A meeting of the Deputy Chief Health Officer, brothel licensees, a sex shop owner, QC, Respect Inc and the COVID-19 Response Division of Queensland Health 30 March 2021 uncovered incorrect COVID enforcement activities by the PLA:

1) The PLA admitted that in 2021 they told licensees the Queensland check-in app was mandatory and other versions of contact tracing record collection were not permitted. Brothels licensees and the sex shop owner present explained they had been refusing clients for not having the Queensland app and had spent time assisting customers to download the Queensland app. The process created delays and lost income, and they had believed (based on PLA instruction) they would risk penalties for non-compliance if they offered alternative methods for check-in. The Deputy Chief Health Officer and COVID-19 Response Division of Queensland Health apologised, the CHO said 'compliance was never intended to be onerous', and Queensland Health explained that 'yes paper and other collection of contact-tracing data is permitted' as long as it was collected and stored for the required time.

2) The PLA admitted that in 2021 they 'thought limited versions of the vaccination proof was worth enforcing' but could not explain to the meeting from where they had sourced their information. Queensland Health confirmed that the PLA limited interpretation was incorrect. The brothel licensees and sex shop owner present expressed extreme frustration at the loss of income they had suffered due to turning clients away. The Deputy CHO apologised, saying 'vaccination checking was never meant to be this hard'.

Case study three: PLA lack of understanding about PPE usage
On or around 8 December 2021 the PLA conducted COVID-19 compliance checks at more than one licensed brothel. One check that we know of led to the threat of a fine because dams on back-order had not arrived at the brothel. Dams are not part of COVID-19 prevention, and other latex products can be used for the same purpose as dams (i.e. gloves, condoms) without posing a health risk. Compliance activities that are out of step with actual transmission risk do little to promote WHS and instead nurture feelings of resentment towards the PLA.

Other considerations or options

Q15 What is the best way for a licensing system (if any) to balance:

(a) the need to protect against illegal activity; and

(b) the need to limit the administrative and resource burden on government and the sex work industry?

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?

Q17 What other factors should we consider (if any) in recommending a licensing system.

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'.[47]

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 or some laws in the Criminal Code, 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 increase 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 would be an 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.

Compliance

An important consideration for sex work regulation is how the new framework can promote compliance. It is the counter approach to 'protecting against illegal activity' as it considers how to bring as high a percentage as possible of the industry into the decriminalisation model.

Models of sex work regulation can promote compliance or create significant barriers and disincentives to compliance. There is a direct intersection with stigma and discrimination because regulatory models built on discriminatory misunderstandings of sex work will not promote compliance and will fail. A model of regulation that ignores stigma and discrimination is likely to perpetuate it and result in low compliance.

[47] Global Alliance Against Traffic in Women (GAATW). (2018), p. 40. https://www.gaatw.org/publications/SWorganising/SWorganising-complete-web.pdf

The current laws in Queensland are a perfect example in that escort agences, small collectives and erotic massage parlours were in operation prior to the Prostitution Act being introduced, but as the model did not allow for these sectors of the sex industry to be part of the legal sector it was assumed they would re-format and comply by becoming licensed brothels. This was an idea that was never going to be realised. They have continued to operate outside of the legal framework and whenever a sector is excluded from the legal framework the sex workers within it cannot report other, more serious, illegal activity to the proper authorities. If excluded from the new framework they will continue to operate but without the benefits of decriminalisation.

Equally, Queensland laws in relation to boutique brothels include requirements that many found they could not comply with. Private sex workers have also found aspects of the laws impossible to comply with. Laws that criminalise basic safety strategies meant sex workers were asked to give up their workplace health and safety and decided the risk of compliance was too high. Another example of this is in New South Wales, where many councils block the sex industry in their area either by refusing all development applications or introducing requirements that can not be met.

A number of the Consultation Paper questions overlap with feedback from sex workers about laws that create barriers to compliance, which we would like to bring to the attention of the Commission.

In our recent survey we asked sex workers if they have found it difficult to comply with the current sex work laws in Queensland. The responses demonstrate how the model of regulation can impede compliance to such a degree that even people compelled to work within the laws cannot comply.

The major areas of concern that made it difficult for sex workers to comply with current laws in Queensland were (in no particular order):

- restrictive and arbitrary advertising laws
- the inability to legally work with another sex worker for safety, economic and social reasons
- the inability to legally communicate with other sex workers, friends, family and third parties for safety, mental and social wellbeing and workplace health and safety
- not being able to hire third parties or enlist friends or family to help with business operation
- not understanding complex and confusing laws
- use of entrapment by police
- restrictive sexual health protocols
- discrimination by accomodation providers and others, and
- difficulty complying with COVID19 mandates.

Safety

Safety was the most commonly stated reason that sex workers found it difficult to comply with the current sex work laws in Queensland. Many sex workers explicitly stated that they choose to work illegally in order to protect their safety. For sex workers, safety took priority over complying with sex work laws, which they felt were arbitrary at best, and at worst purposefully harm and punish sex workers. In the words of survey respondents:

> *"If I value my safety, it is impossible to comply with the current sex work laws. I reckon they made them so unsafe to scare us and stop us working. Or just kill us off." [Survey participant 100]*

> *"I don't comply or I would risk my safety. If I don't come home who will look after my family." [Survey participant 98]*

> *"I regularly breach the laws. It is just impossible to be safe AND follow the laws. I follow the laws where possible, business laws, tax law, unfair business law. However, when it comes to safety calls, checking in with other workers, sharing resources, allowing more than one worker to work from the same property venue, etc, there are times where I choose my safety over the law…" [Survey participant 161]*

Advertising

The restrictive advertising regulations are a major reason sex workers find it difficult to comply with the laws in Queensland. Sex workers told us that the advertising laws are outdated, unnecessarily restrictive and arbitrary. Advertising regulations made it difficult for sex workers to effectively run a business, negatively impacted their income and compromised their safety.

Some sex workers told us that they choose to ignore the advertising guidelines because the inability to accurately describe what services they provide in their advertising is so prohibitive. For these sex workers, the administration burden of having to field inquiries from potential clients, the loss of income from not being able to advertise specialty services and create a point of difference and the potential safety concerns were a greater threat than breaking the law.

In particular, several sex workers wrote about how the advertising laws negatively affect their safety because of the inability to clearly communicate service inclusions to clients. As one participant wrote:

> *"Yes, I hate not being able to advertise my actual service. A few times people have been really angry when they turned up and found out I wasn't offering the services they wanted - it was really scary and i had to decide if I was going to do the service or try and get an angry person out of where i was staying// Being able to clearly list the service you offer is a huge part of being able to have safe intera[c]tions with clients." [Survey participant 35]*

For other sex workers, the advertising regulations were so strict that they had found themselves inadvertently breaking the law without intending to. This was particularly the case for sex workers who worked across states and had to negotiate several different legal frameworks. As survey respondents wrote:

"The list of words forbidden in advertising is truly insane, and it is difficult to ensure all of my ads are in compliance. I have lived and worked in other states, and sometimes third party websites steal my ads to post on their sites without my consent; this means old ads may be visible that we're compliant in the states I posted them in, but aren't in QLD and law enforcement may attempt to charge me for non compliance." [Survey participant 28]

"The other difficulty is the laws around advertising. I've been in sexwork for four years and I STILL do not know what is and is not legal. It is unclear and there is no one to ask for guidance or clarification. I use a 'password' on my website so I can articulate my services in a way that I HOPE isn't considered advertising but that's unclear." [Survey participant 161]

The inability to advertise a sexual service using the word "massage" was a point of contention for many sex workers who have no other way to accurately describe the service they provide. Sex workers who offer massage services had to make choices between accurately describing their service and risking police attention, complying with the law and losing potential clients who are looking specifically for an erotic massage service, or being exposed to clients who expected a full service booking. As explained by one sex worker:

"Also, absolutely RIDICULOUS that while there are laws in place stipulating that businesses cannot participate in false advertising, that sex workers who offer sexual massages are not allowed to use the word 'massage'. Sexual massage, erotic massage, rub'n'tug services. These terms are synonymous with the sex industry, just like 'swedish massage', 'therapeutic massage' ' lomi lomi massage' are all known as non-sexual services. The best way to keep workers safe in both sexual and non-sexual massage sectors is to allow everyone to advertise clearly and honestly so the clients know which place to go to and contact..." [Survey participant 63]

As sex workers explained, advertising restrictions are counterproductive to workplace health and safety. Instead of protecting community safety and non-sex work industries, not being able to state clearly what is offered creates more confusion and harm.

Working together

Another critical reason sex workers found it difficult to comply with laws in Queensland was the inability to work together with another sex worker: at the same hotel; to share accomodation; live together; drive each other to work (bookings) or provide any other practical support for another sex worker. Safety, again, was the number one reason survey respondents stated that they would prefer to work alongside another sex worker—even when that meant breaking the law. In the words of sex workers:

"Yes. The nobody, specifically other sex workers, in the house law is ridiculous and makes the job dangerous…i try to avoid working alone when i can. i don't like putting my life or health at risk for arbitrary laws." [Survey participant 44]

"Yes. Not letting women work together/ from the same location is terribly unsafe. We have no one there to call on in the case of emergency. If we need someone to help us

out or give us a hand in the scenario that we are in danger we have no one…" [Survey participant 105]

"Yes - they do not support working in a team therefore safety." [Survey participant 39]

For some sex workers, the choice to work together and/or share resources had an economic imperative. These sex workers chose to work illegally some or all of the time because they could not afford to cover overheads alone; to subsidise their rent or mortgage; because hiring a security guard for safety was prohibitively expensive; or because they could not afford to lose the additional income from doubles bookings, as illustrated in the following quotes:

"Yes. It is too expensive to work alone, without sharing premises with other independent sex workers, and working alone is not the safest way to work. Working alone is also lonely…" [Survey participant 187]

"...I am not able to work in compliance with the laws around incall spaces. The cost of an incall space that complies with the law is prohibitive and less safe than a shared space, or a space in my home where I rent with others." [Survey participant 196]

"It is impossible to work safely and make a decent living wage whilst complying with all the laws." [Survey participant 109]

Another reason sex workers chose, or wanted to have the option, to work with others was to support their mental wellbeing. The legal requirement to work alone is socially isolating, and not standard in any other industry. Some sex workers found it difficult to comply with the laws in Queensland because they are counterproductive to mental wellbeing, as survey respondents told us:

"...When I tour I often share accomodation with a peer - for the sake of keeping costs low, for my safety and sense of security, and because this is a job that can be incredibly lonely and stressful and it's really helpful to have someone around who understands. I cannot do this in Queensland." [Survey participant 25]

"i also work with my friend for safety, which is best for us but illegal. I've also dropped off friends to bookings for moral support and safety. Us sex workers have to stick together, for our own safety and well-being but the laws make that a criminal offence." [Survey participant 170]

"Yes can't share workplace or work with another fellow worker to reduce safety risks and maintain my mental health." [Survey participant 189]

The need for peer support is particularly true in a stigmatised profession, where sex workers may not be able to share details of their work with non-sex work peers to support their social and mental health.

As some sex workers who chose to work with others highlighted, the law put them in a precarious situation by both empowering perpetrators to act with impunity and making it more

difficult to access justice in cases where sex workers were the victims of crime. As survey respondents wrote:

> *"Yes. I simply share an incall space with three others and don't tell anyone. No one lives there full time. This means it would be difficult for me to talk to police if anything happened to me in that apartment. I am scared of clients reporting me to the police, but I can't work from home and I can't afford double rent by myself." [Survey participant 28]*

> *"...disgruntled clients know that they have the power to report you to the the police, which makes it harder to refuse service to difficult or dangerous clients for fear of retaliation." [Survey participant 67]*

Even for sex workers who did work alone in order to stay within the law, several survey respondents highlighted that it is almost impossible to work legally, given the stipulation that no two sex workers should work from the same premise, including a hotel:

> *"...It is also impossible to ensure if working from hotels that no other workers are working from the same premises." [Survey participant 34]*

> *"...sharing resources, allowing more than one worker to work from the same property venue, etc, there are times where I choose my safety over the law. There are also countless times where it is not possible for me to follow the law, for example when I work in a hotel I do not know what is in that building. It is possible for me to breach the law regarding more than one worker working from a single premises without even knowing the other person existed." [Survey participant 161]*

Communication

As well as the legal requirement for sex workers to work completely alone in Queensland, the prohibition on communication between sex workers was another major reason survey respondents found it difficult to comply with the law. Specifically, the inability to use 'check-in' calls or let another sex worker know the details of a booking for safety. In the words of one sex worker:

> *"Yes. I live in fear of one day being raped or murdered by a client because I can't text another worker to check in before and after bookings." [Survey participant 59]*

As several survey respondents highlighted, peers are often the main support network for sex workers because they have the practical knowledge to keep one another safe, and sometimes because sex workers are not 'out' to their friends and family. As one sex worker wrote:

> *"There's absolutely no way I'm going to work there without sharing the details of my sessions with a safety person, and most of my friends are sex workers. I'm aware that this would put me in breach of the law." [Survey participant 38]*

Other survey respondents highlighted the hypocrisy of sex work laws in Queensland, which make basic conversations between friends a criminal matter. As illustrated in the following quote:

> *"Yes. it is impossible to not tell people where i am, i communicate with my friends about my day like anyone in any other industry who travels for work would. I casually tell my friends I have checked into X hotel in X city, which is currently illegal and I face prosecution for having basic conversations with my friends." [Survey participant 74]*

Other issues identified by survey respondents included difficulty in understanding the confusing and complex laws; the use of entrapment by police; difficulty complying with sexual health protocols; not being able to hire third parties or enlist friends or family to help with business operations; discrimination by accomodation providers and others and difficultly complying with COVID19 mandates.

Several sex workers stated that they did not currently understand the law; that they did not know whether or not they were working legally; or that they now better understood the law and had previously broken it without knowing. The lack of clear information available to sex workers about the law, combined with the threat of entrapment, created an atmosphere of fear. As one sex worker wrote:

> *"...It is incredibly difficult even as a person with English as a first language and a tertiary education to understand and interpret the laws. There is no easily accessible and clear explanation of what the laws are. I feel that law enforcement will choose to apply vague laws as they want to." [Survey participant 7]*

It was especially difficult for sex workers who worked across several states, and for sex workers with English as a second langage to comply with Queensland laws even if they intended to. As one survey respondent wrote:

> *"YES, The QLD it very difficult for me to work in the same level frame work, especially language barriers, cultural background, state law different we may innocence to know all." [Survey participant 162]*

The threat of police entrapment compounded fear and misunderstanding about the laws and affected sex workers' ability to employ safety strategies and negotiate consent, as one sex worker articulated:

> *"The laws around unprotected sex are also problematic. Fear of police entrapment in this context makes it more difficult to clearly and effectively negotiate consent around condom use." [Survey participant 196]*

In the case where a client is pushing for an uncovered service, a sex worker has to make an assessment about whether they are an undercover police officer who intends to arrest them, or whether they are a client who would potentially become dangerous in a context where sex workers are forced to work alone. Neither scenario creates a safe environment in which sex workers can communicate and negotiate consent around sexual health and other boundaries.

Other sex workers highlighted how the sexual health mandates are often impractical and out of touch with the reality of sex work, and sex in general:

> *"The barrier laws are impractical and do not line up with up to date sexual health guidelines. It is impossible and impractical to use gloves, for example, for sexual activities at work." [Survey participant 187]*

Many sex workers told us that the inability to hire third parties to help them run their businesses, or to enlist friends or family to help out or keep them safe was impractical and untenable. This was particularly the case in terms of staying safe and being driven to bookings by people without the specified qualifications. As one sex worker wrote:

> *"I often disregarded laws that said I couldn't use my partner as a driver or let someone know when and where I was working." [Survey participant 166]*

Some sex workers chose to break the law and engage third parties because they prioritised their safety or income:

> *"...I would never work by myself again as I have been robbed and bashed". [Survey participant 157]*

Several survey respondents wrote about how they feared that their partners, housemates or family members would be criminalised because they helped them out with work, or simply because they shared accommodation:

> *"I was alone in QLD, out of fear my partner being around could be seen as illegal." [Survey participant 115]*

> *"I currently work alone but because of safety concerns my son lives with me and keeps well out of the way of clients." [Survey participant 188]*

> *"Yes. My husband helps me with my admin and is my security/check-in person but that is illegal under QLD law." [Survey participant 25]*

Several sex workers spoke about their experiences of discrimination—most commonly in the provision of accommodation—which made it difficult for them to do their job under a legal system that allows hoteliers to evict them without refund. In the words of this survey participant:

> *"It is near impossible getting consent from accommodation providers to work, so I can only do this covertly, try to keep low profile and not attracting their attention so to avoid the possibility of eviction (and no refund from the rent)." [Survey participant 45]*

Avoiding police as a WHS strategy

While many standard WHS strategies can't be used without breaking the law, participants discussed how dealing with police entrapment has produced a number of WHS strategies that are designed to avoid police attention or otherwise circumvent situations that could lead to being charged. These could include strategies such as making sure the 'client' is naked before discussing services, obtaining a deposit or photo ID, or asking the 'client' if they are a police officer.

> "*It makes things extremely tense throughout correspondence and the start of the booking. We've had to learn to strategise our way through that part and get them to the naked part before you can relax because we're afraid they're police." [Survey participant 51]*

> "*I just have to be careful of what I say until I can get them naked. If they are persistent I ask if they are working in the police force or AFP as I know they have to answer that." [Survey participant 156]*

> *"I am in a position where I do not offer natural services at all, but I also always ensure I receive photo Id for screening. This means I often lose clients who prefer to screen in other ways, but it's the only way I feel safe." [Survey participant 73]*

> *"I don't see clients without a deposit and ID, the latter of which I don't require in nsw." [Survey participant 71]*

> *"I have to discontinue contact with clients if their communication during an enquiry seems in any way suspect with regard to them being a police officer because nothing is worth the risk of being entrapped and raided/detained." [Survey participant 196]*

A small number of survey respondents reported that it was not difficult to comply with the laws (approximately 11%). Many of these respondents identified themselves as non-full service sex workers and highlighted that they would likely find it difficult to comply with the laws if they entered full service sex work.

Licensing is not decriminalisation.

It is evident that the licensing system has created a two-tiered system, is a resource and administration burden with no good public outcomes, is divisive and creates a facade of discourse within the industry that results in the dispersion of misleading information, is a barrier to health promotion, unduly results in a two-tiered industry with up to 90% of the industry being criminalised for working safely outside of the licensed system. Certification of brothel owners is part of this failed system.

The concept of 'decriminalisation with licensing' is a contradiction in terms and has no place within considerations of a decriminalised framework in Queensland.
There will also 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.

We refute any suggestion that there is a benefit to sex workers or the Queensland community from maintaining any part of the licensing system.
New South Wales and Victoria have considered and then decided not to introduce certification or licensing of brothel owners as the risk of perpetuating the negative outcomes of licensing was too high. Queensland, having recognised the negative impacts of licensing should not maintain this approach.

Recommendation 14:
The licensing framework should be abolished by repealing the Prostititution Act and Prostitution Regulation entirely and disbanding the Prostitution Licensing Authority.

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.

Recommendation 15: Within the framework illegal activity will be deterred through the implementation of full decriminalisation which is low cost, promotes high levels of compliance, makes the industry more transparent, allows a broader reach for peer education and information sharing and removes barriers to reporting crime to police or WHS issues to the regulator.

Recommendation 16: The QLRC consider how the framework it develops will support or undermine compliance, so as to remove two-tier divisions in the industry, and address any barriers to compliance within its proposed framework.

WORK HEALTH & SAFETY FOR SEX WORKERS

Section 6 of 17 (pp82-91)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

CHAPTER 10: WORKPLACE LAWS

Q18 What is the best way to make sure people in the sex work industry meet their work health and safety standards?

Q19 Should there be a guide for the sex work industry on how to meet work health and safety obligations (for example, a code of practice made under the *Work Health and Safety Act 2011* or guidelines)?

Q20 Are there any other work health and safety matters we should consider in developing a framework for a decriminalised sex work industry?

Q21 Under a decriminalised framework for the sex work industry, should legislation state that a contract for or to arrange sex work is not illegal or void on public policy or similar grounds?

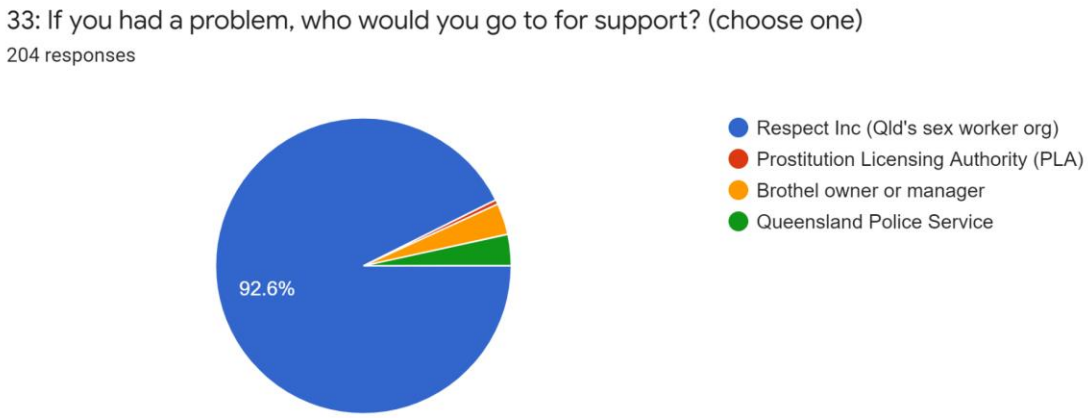
Q22 Should there be a new law stating that a person may, at any time, refuse to perform or continue to perform sex work?

Q18 The best way to make sure people in the sex work industry meet their WHS standards is to make sure accurate and comprehensive sex work WHS guidelines (not a code), developed by Respect Inc in consultation with sex workers and WorkSafe Qld, are readily available online and in formats that provide easy access to the most marginalised sex workers.

Fresh start for WHS following decriminalisation

The Prostitution Licensing Authority developed an *Operational Standards Manual*[48]*,* which includes reference to some WHS matters for the 20 licensed brothels. It should be noted that the manual was not developed in consultation with workers and is not suited to expansion for a much broader and decriminalised sex industry, which will include a range of scales of sex industry businesses providing a range of services. WHS strategies are currently practised in Queensland sex industry workplaces, even in those locations currently operating outside of the licensing framework, without a special regulatory framework of enforcement. These practices are a result of peer education and are tailored to scale depending on the needs of particular workplaces. Sex workers in Queensland trust Respect Inc to provide them with accurate and timely WHS information, resources and workshops and Respect Inc is their first choice for support when needed.

[48] Prostitution Licensing Authority *Operational Strandards Manual for Licensed Brothels* https://www.pla.qld.gov.au/__data/assets/pdf_file/0004/691321/Operational-Standards-Manual-Final.pdf



Our recommendations in this chapter are based on starting afresh on the development of WHS guidelines to suit the sex industry in Queensland.

Workplace health and safety model for the sex industry in Queensland

When sex work is decriminalised in Queensland, WHS rights and responsibilities will apply to all sex industry businesses. It will not be necessary to develop new laws or regulations specific to the sex industry but it will be important for Respect Inc, in collaboration with unions and regulators, to develop a set of sex industry WHS guidelines.

There is a comprehensive system of existing laws and codes that will apply alongside the new sex work guidelines so the system will include:

1. The Work Health and Safety Act 2011 (Qld) **(**WHS Act**)** is compatible with the Work Health and Safety Act 2011 (Cth) that applies uniformly across Australia, providing each state with a framework 'model' to harmonise health and safety laws across Australia.

2. The Work Health and Safety Regulation 2011 (Qld) **(**WHS Regulation**)** explains specific procedural and administrative requirements that are set out in the WHS Act. The regulation includes the Hierarchy of Control Measures (s36) that outline the identification of hazards or risks, and steps in elimination or minimisation of health and safety risks. It also provides a determination of what is high-risk work that makes it clear sex work should not be categorised as high risk as this category does not include work comparable to sex work. WorkCover Queensland classifies brothel keeping and sex work as a low-to-moderate risk industry.[49]

3. Codes of practice that apply to all industries, for example:
    a. First Aid in the Workplace Code of Practice 2021
    b. How to Manage Work Health and Safety Risks Code of Practice 2021 (Physical & Psychological Risks)
    c. Work Health and Safety Consultation, Co-operation and Co-ordination Code

[49] WorkCover Queensland Gazette Notice 1, 2021. https://wcq-search.squiz.cloud/s/redirect?collection=wcq-meta&url=https%3A%2F%2Fwww.worksafe.qld.gov.au%2F__data%2Fassets%2Fpdf_file%2F0032%2F77369%2Fqueensland-government-gazette.pdf&auth=uTBZS%2BMX6bGkw5iHNueDsg&profile=_default&rank=3&query=prostitution

of Practice 2021

d. Managing the Work Environment and Facilities Code of Practice 2021
e. Psychosocial Code of Practice expected by 2023 replacing existing guides covering bullying/coercion, stress, fatigue and violence risks.[50]

4. WHS guidelines developed to suit the range of types and scales of sex industry businesses, maintaining the flexibility to be updated as needed.

In Queensland, the safety regulator is Workplace Health and Safety Queensland (WHSQ).

PCBUs

WHS provides a definition of a *person conducting a business or undertaking* (PCBU)[51] that encompasses the range of employment relationships in the sex industry in Queensland. Safe Work Australia states that a 'PCBU is a broad concept that extends beyond the traditional employer/employee relationship to include all types of modern working arrangements' and applies legal responsibilities to all PCBUs.

We note that in Queensland a PCBU is required to comply with Codes of Practice, including those listed above that apply to all businesses, and the regulator has powers to ensure this, unlike in other jurisdictions where a Code of Practice is advisory only.

WHS compliance

There is sufficient legal requirement for all PCBUs to comply with WHS requirements and the regulator has existing powers to address non-compliance.

In line with the intention of decriminalisation of the Queensland sex industry there should not be sex industry-specific powers or additional laws or regulation in relation to compliance.
We note again that continuation of a licensing framework or other laws layered on top of a decriminalisation model that leave some sex workers criminalised or create a two-tiered industry will undermine compliance and we warn against this approach for this reason.

Particularly in the initial or implementation phases, compliance should be promoted through education supported by a communication strategy that incorporates translated and multi-format resources and training for sex industry operators and sex workers. Respect Inc, along with the regulator, will play an essential role in ensuring both sex industry operators and sex workers are aware of their rights and responsibilities.

[50] Worksafe Qld, Psychosocial hazards and factors. Online resource. https://www.worksafe.qld.gov.au/safety-and-prevention/mental-health/Psychosocial-hazards-and-factors

[51] Safe Work Australia, The meaning of 'person conducting a business or undertaking. Online resource. https://www.safeworkaustralia.gov.au/sites/default/files/2021-01/What%20is%20a%20person%20conducting%20a%20business%20or%20undertaking.pdf

Under the Act and Regulations PCBUs are required by law to eliminate risks to health and safety.[52]

> As a PCBU, you have a duty to ensure the health and safety of workers' and other persons in the workplace. A PCBU must seek to eliminate risks to health and safety so far as reasonably practicable. If a PCBU cannot eliminate a risk, they must minimise the risks so far as is reasonably practicable. You must identify, assess, and control hazards and risks.
>
> The model WHS Regulations sets out specific requirements that PCBUs must comply with when managing risks that arise from certain hazards or hazardous work.
>
> For certain risks, the model WHS Regulations provide that where it is not reasonably practicable to eliminate risks to health and safety the PCBU must apply the hierarchy of control measures in minimising risks to health and safety.

WHS Section 18 of the WHS Act defines the standard that is to be met and describes the process for determining 'reasonably practicable'.[53]

PPE—prophylactics including condoms

As prophylactic use is regularly misunderstood as the only or predominant WHS issue for sex workers we are noting here that Queensland's Work Health and Safety Regulation 2011[54] requires use of and provision of PPE. PCBUs who operate sex work businesses are required to provide PPE, ensure as far as is practicable that the PPE is worn by sex workers and clients, and must provide information, training and instruction on the proper use and wearing of PPE as well as its storage and maintenance, replacing the need for additional condom use laws specific to the sex industry or a specific code. These responsibilities would be detailed in the sex work WHS guidelines.

WHS regulator

The workplace health and safety regulator in Queensland, WHSQ, has significant powers to inspect workplaces, advise on and enforce laws, including to: provide advice about rights, duties and responsibilities, and complying with local laws; assist PCBUs, workers and others to resolve WHS issues; ensure compliance by issuing notices. They may also issue sanctions, including: giving infringement notices, accepting enforceable undertakings; and commencing prosecutions.

Reporting to regulator

All sex industry workplaces in Queensland will have injury (physical or psychological), illness or dangerous incident reporting requirements to the regulator, and sex workers will be able to report an issue at their workplace to WHSQ.

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[52] Safe Work Australia. (2022). https://www.safeworkaustralia.gov.au/law-and-regulation/duties-under-whs-laws/duties-pcbu

[53] Reasonably practicable is defined in the Cth resources. https://www.safeworkaustralia.gov.au/system/files/documents/2002/guide_reasonably_practicable.pdf

[54] Queensland Work Health and Safety Regulation 2011 Chapter 3 Division 5 Section 44, 45, 46, 47.

Guidelines not a code

WHS guidelines and protections for sex workers exist in some Australian jurisdictions and New Zealand, each of these was based on the Scarlet Alliance, *A Guide to Best Practice OHS in the Australian Sex Industry* template and updated to accomodate local variations and laws.[55]

Experience in these locations demonstrates that WHS guidelines will be effective for the decriminalised Queensland sex industry. The guidelines will identify the WHS rights and responsibilities of owners, operators, employees and sub-contractors in sex industry businesses.

Guidelines that sit alongside universal workplace laws and codes that apply to all workplaces would be best developed by Respect Inc in partnership with WorkSafe QLD, relevant unions, and the Office of Industrial Relations Queensland. It is sex workers who are best placed to identify hazards within the current practices in the range of sex industry businesss, to identify resulting risks and to problem solve, in line with the Hierarchy of Control Measures how the risks can be eliminated, minimised or where PPE is required. Respect Inc is best placed to bring together a variety of sex workers familar with the range of workplaces to inform the development, including in regional and rural settings, with support from relevant unions, and to facilitate the engagement of business owners that will be far broader than the current licensed brothels, as it did during COVID discusssions.

The following is an example of what the new WHS guidelines could include :

- common hazards and risks specific to the sex industry and ways in which they should be managed
- common types of worker injury including repetitive strain injury
- reporting of incidents and accidents
- addressing public health and workplace health and safety risks such as body fluid spill protocols, waste disposal, personal protective equipment provision, use and information
- drug and alcohol, smoking
- cleaning protocols, linen/laundry
- spas and pool management
- consultation arrangements with workers and their representatives
- method of complaints about WHS implementation in the workplace and workplace documentation of WHS matters.

References to matters covered in Codes of Practice for all industries would also be made including security and safety, first aid, fire, lighting inside the building and at entrances and exits, food storage and shared kitchen facilities for workers, heating and cooling, etc.

Q.21 Under a decriminalised framework for the sex work industry, should legislation state that a contract for or to arrange sex work is not illegal or void on public policy or similar grounds?

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

If sex work is in fact decriminalised in Queensland, public policy should reflect this shift and there should not be a requirement for legislation to ensure recognition in the courts and in other ways that a contract for sex work is not illegal or void on public policy or similar grounds. We refer to the submission from the Queensland Council of Unions in this regard. However, we note that discrimination often results in rights available to others being diminished and sex workers and the sex industry experience high levels of discrimination.
If there is any legal or policy reason that a contract for, or to arrange, sex work would be voided as the result of the direction the QLRC takes in the development of draft legislation this should be addressed in the new Bill.

Sex worker community leadership and implementation of WHS guidelines are an extension of the community development approach, which recognises 'sex work as a legitimate occupational choice', and it is one of the ways sex worker organisations in other juristictions 'directly challenge the long-institutionalized notion that sex workers are irresponsible regarding their own health and that of the larger community'.[56]

Q.22 Should there be a new law stating that a person may, at any time, refuse to perform or continue to perform sex work?
There are commonwealth and state laws that provide protections for all workers. As outlined below, the WHS Act and the Fair Work Act provide protections in this regard and the Criminal Code includes protections relating to consent. The new WHS guidelines will state that a person may, at any time, refuse to perform or continue to perform sex work in line with the WHS Act.
For this reason we do not see a requirement to create a new law.

Fair Work Act 2009 (Cth)

Section 343 (Coercion) (1) A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce the other person, or a third person, to (a) exercise or not exercise, or propose to exercise or not exercise, a workplace right; or (b) exercise, or propose to exercise, a workplace right in a particular way.

Section 345 (Misrepresentations) (1) A person must not knowingly or recklessly make a false or misleading representation about: (a) the workplace rights of another person; or (b) the exercise, or the effect of the exercise, of a workplace right by another person.

Work Health and Safety Act 2011 (Qld)

Division 6 of part 5 of the WHS Act—*Section 84 Right of worker to cease unsafe work*
Section 84 allows a person to cease work if there is a serious risk to the worker's health or safety.

> A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

[56] Majic, S. (2014). *Sex work politics, from protest to service provision*, University of Pennsylvania Press, Philadelphia. p. 43.

In this way, the existing WHS laws provide that a sex worker can refuse a booking if it would cause them harm.

Section 86 of the same law requires the worker to notify the person conducting the business or undertaking and remain available to carry out alternative work, which in a sex work setting could be other sex work bookings.

Other workplace law matters

Workcover

According to WorkCover Queensland, brothel keeping and sex work is a low-to-moderate risk industry. Every workplace accident insurance policy has a WorkCover Industry Classification (WIC) code, which is used to calculate the WorkCover premium. In 2021 the category 'Brothel Keeping and Prostitution Services' had a risk rating of 1.046 as compared to some of the more highly rated occupations such as Correctional Services 5.875 or Police 2.789 and lower-rated occupations such as Office Admin 0.531.[57]

We note that Safe Work NSW in the Health and Safety Guidelines for the sex industry states:[58]

> ...according to previous legal cases involving NSW workers compensation matters, sex workers are 'deemed workers' of the SSP at which they are performing work (see part 16 for information).The Workplace Injury Management and Workers Compensation Act 1998 defines a worker as a person who has entered into, or works under a contract of service or training with an employer (whether by way of manual labour, clerical work or otherwise, whether the contract is expressed or implied, and whether the contract is oral or in writing).
>
> You must take out a workers compensation policy to cover all workers (including 'deemed workers'). Penalties apply for employers who do not hold a workers compensation policy or who under declare wages paid to workers.

And that:

> Proprietors cannot rely on the taxation status of sex workers for workers compensation purposes.
>
> Even though sex workers may be considered to be operating an independent business for tax purposes, for workers compensation purposes sex workers can be deemed to be an employee of the person or business who operates the premises.

[57] WorkCover Queensland Gazette Notice 1, 2021. https://wcq-search.squiz.cloud/s/redirect?collection=wcq-meta&url=https%3A%2F%2Fwww.worksafe.qld.gov.au%2F__data%2Fassets%2Fpdf_file%2F0032%2F77369%2Fqueensland-government-gazette.pdf&auth=uTBZS%2BMX6bGkw5iHNueDsg&profile=_default&rank=3&query=prostitution

[58] Safe Work NSW. Sex workers are deemed workers. Accessed 24 May, 2022 https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw?result_397396_result_page=2

A number of court cases have found sex workers to be eligible for workers compensation benefits even though:

- the proprietor and the sex worker had entered into a written contract
- the proprietor claimed the payment arrangement for the sex workers consisted of splitting fees
- the payments made allegedly represented charges for room hire or short-term rental paid for by either the sex worker and/or their client/s[59]
- the proprietor stated they had no operational control over the sex worker regarding scheduling attendance at the premises, scheduling appointments or outcalls, or the nature of the services offered by sex workers.

These decisions require proprietors to pay workers compensation premiums for sex workers and allow sex workers to claim entitlements to workers compensation benefits if other criteria applicable to all workers are met. If a sex worker is injured in a work-related incident and a policy is not in place, the sex worker will still be entitled to benefits and the proprietor may be personally liable for any costs associated with a claim and other penalties.

[59] https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw?result_397396_result_page=16

Recommendation 17 (Q18): To support the sex industry to meet WHS responsibilities, WHS guidelines should be developed through a process led by Respect Inc, these guidelines should be supported by a communication plan supported by multiple mediums and should be translated into multiple languages.

Recommendation 18 (Q18-20): No additional statutory obligations or compliance requirements should be developed for the sex industry in Queensland. WHS laws and legal requirements for all PCBUs to implement WHS will apply to the sex industry in Queensland once decriminalised. Compliance will be regulated by the existing powers of the regulator, the WHSQ, as it is for all businesses. A process is available to workers to report WHS non-compliance. The WHS regulator has powers to address non compliance across all industries.

Recommendation 19 (Q18-20): The existing PLA Operational Standards Manual should be abolished and a fresh start to WHS guidelines undertaken (as above).

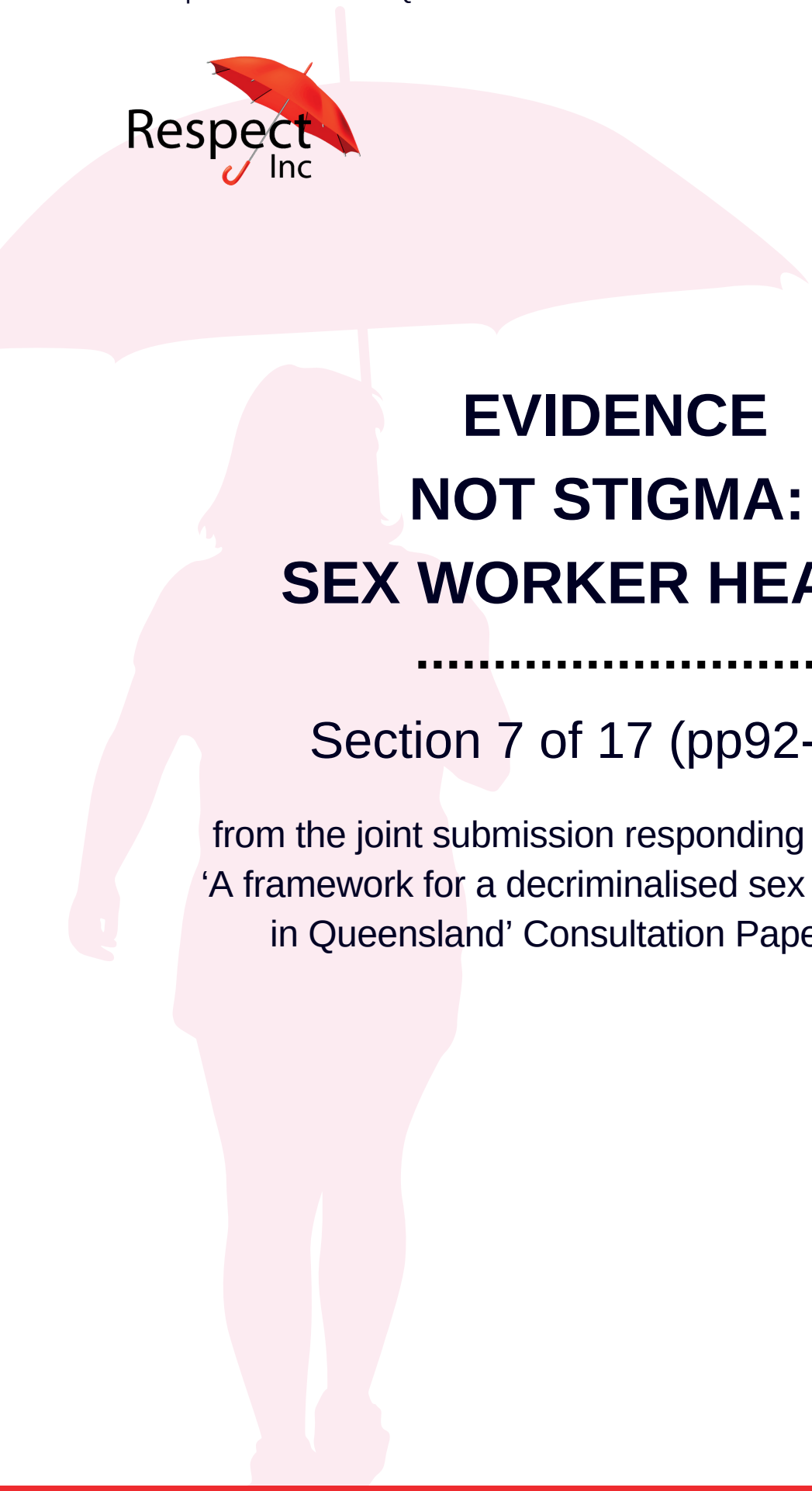
Recommendation 20 (Q19): Workplace Health and Safety Guidelines (not a code) should be developed by Respect Inc in partnership with WorkSafe QLD, relevant unions and the Office of Industrial Relations Queensland. The Guidelines will incorporate rights and responsiblities enshrined in the Work Health and Safety Act 2011 and Regulations, Codes of Practice that cover all industries and address WHS issues specific to the range of sex industry workplaces in Queensland. Evidence shows good sex worker WHS must be framed by a community development sex worker-led model of consultation, collaboration, peer-based implementation and evaluation. Health promotion of this nature requires multiple communication methods: short explanatory videos, pictorial diagrams, on-site support, workshops, one-on-one peer education advice, extensive documentation and possibly economic support.

Recommendation 21 (Q20): An evaluation of implementation and compliance of WHS guidelines should be conducted in four languages to determine required adjustments and future resourcing needs, five years after implementation.

Recommendation 22: Adequate funding should be provided to Respect Inc to develop comprehensive WHS guidelines in at least four languages and in multiple formats.

Recommendation 23 (Q21): If sex work is decriminalised public policy must reflect this major shift and there should not be a requirement for legislation to ensure recognition in the courts and in other ways that a contract for sex work is not illegal or void on public policy or similar grounds.

Recommendation 24 (Q22): The WHS guidelines should reinforce that a sex worker may refuse to perform or continue to perform sex work in line with the WHS Act. If sex work is decriminalised there is no need for a special law.



EVIDENCE NOT STIGMA: SEX WORKER HEALTH

Section 7 of 17 (pp92-106)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

CHAPTER 11: PUBLIC HEALTH AND THE HEALTH OF SEX WORKERS

Q23 Should laws or other measures be taken to promote public health and protect the health of sex workers and their clients about:

(a) the use of prophylactics;

(b) managing the risk of sexually transmitted infections;

(c) sexual health testing; or

(d) another matter?

Q24 If yes to Q23, what should those measures be and why?

Q. 23 Should there be laws to promote public health and protect the health of sex workers and clients?

No. The new decriminalisation framework should include the repeal of all current sex work-specific laws, including those relating to public health, and promote the globally recognised successful community development peer education approach to STI and HIV prevention instead.

Peer educator programs have been instrumental since the beginning of the HIV pandemic[60] 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.[61] This major contribution to HIV and STI prevention by sex workers and sex worker community organisations is now recognised as an essential plank of HIV and STI prevention in Australia:

> Continued health promotion and prevention efforts of peer-based sex worker organisations have sustained the low prevalence of HIV among sex workers.[62]
>
> Strong and sustained health promotion programs among sex workers have led to rates of STI in this priority population among the lowest in the world.[63]

Respect Inc and DecrimQLD support sex workers' uptake of safe working practices and regular testing, which is best achieved through the community development approach of peer education, WHS guidelines and access to free, voluntary and anonymous testing. This was supported in our recent survey where 62.7% of sex worker participants selected peer education as the best approach to promoting the use of safer sex practices, 19.1% selected

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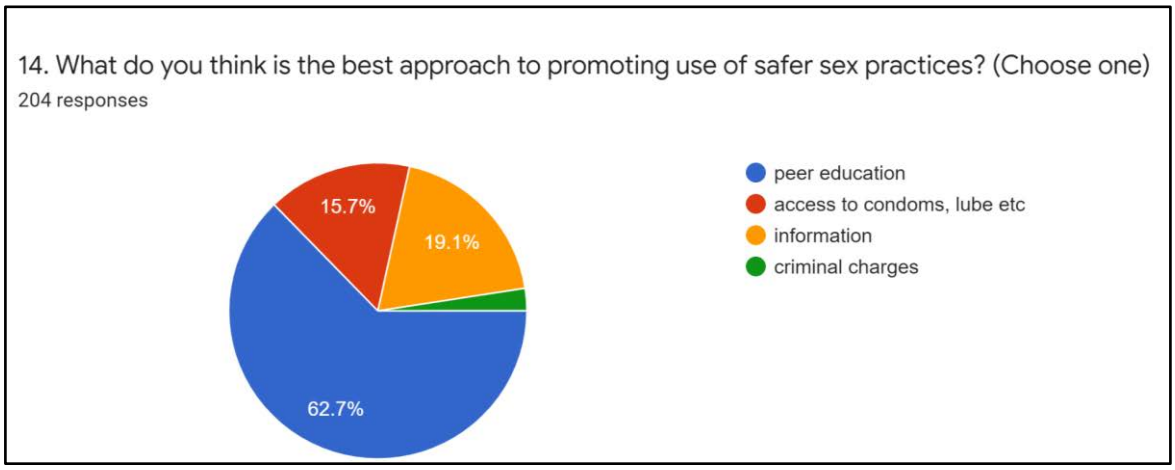
[60] Australian Broadcasting Corporation (ABC). (2007). *Rampant: How a city stopped a plague* (part 5). https://www.youtube.com/watch?v=-gqrcHFI0Rk&list=PLZ9KDADG-2mhngQci4JqJnSqbWWwPmqOw&index=5

[61] Donovan, B., et al. (2012). p. 11.

[62] Australian Government Department of Health Eighth National HIV Strategy 2018-2022 p. 14. https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf

[63] Australian Government, Health Department (2018) *Fourth national sexually transmissible infections strategy*, p. 14. https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/STI-Fourth-Nat-Strategy-2018-22.pdf

information, 15.7% selected access to condoms, lube, etc. Only 2.5% chose criminal charges as helpful in promoting safer sex practices, as shown in the graph below:



Laws criminalising condom use, sex workers living with STIs and sexual health testing are harmful to public health and do not achieved positive health outcomes:

> The public health evidence clearly shows the harms associated with all forms of sex work criminalisation, including regulatory systems, which effectively leave the most marginalised, and typically the majority of, sex workers outside of the law. These legislative models deprioritise sex workers' safety, health, and rights and hinder access to due process of law.[64]

The idea that criminal laws and police enforcement are needed to protect the wider community and maintain good sexual health of sex workers reinforces harmful stigma.[65] It is also counterproductive to the desired health outcomes[66] and is recognised in state and national policy as creating barriers to accessing health services. For example:

National HIV Strategy 2018-2022

> Sex workers experience barriers to accessing health services including stigma and discrimination. They also face a range of regulatory and legal issues including criminalisation, licensing, registration and mandatory testing in some jurisdictions. These barriers create a complex system of impediments to evidence-based prevention, access to testing and healthcare services. They can result in increased risk of BBVs and STIs, loss of livelihood, and risk to personal and physical safety. Evidence that has emerged since the previous strategy definitively shows that decriminalisation of sex work is linked to the reduction of HIV risk and rates.[67]

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[64] Platt, L., Grenfell, P., Meiksin, R., Elmes, J., G. Sherman, S., Sanders, T., Mwangi, P., Crago, A-L. 2018 Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies | PLOS Medicine

[65] Stardust, Z. et al 2021.

[66] Jeffreys, E., Fawkes, J. & Stardust, Z. (2012). Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia, *World Journal of AIDS*, vol 2, pp. 203-211.

[67] Australian Government Department of Health *Eighth National HIV Strategy 2018-2022*, p. 22. https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf

National Sexually Transmissible Infections Strategy 2018-2022

> Sex workers experience specific barriers to accessing health services, including stigma and discrimination and regulatory and legal issues—criminalisation, licensing, registration and mandatory testing in some jurisdictions. These can impede access to evidence-based prevention, testing, treatment and support services and can result in increased risk of STI, loss of livelihood, and risk to personal and physical safety.[68]

Queensland HIV Action Plan 2019–2022

> …address the legal, regulatory, system and policy barriers which affect priority populations and influence their health-seeking behaviour and access to testing and healthcare services and calls to 'address barriers to evidence-based prevention, treatment and care' and 'support improved awareness of HIV and associated legal issues'… [69]

Queensland Sexually Transmissible Infections (STI) Action Plan 2019–2022

> Monitor and address the legislative, regulatory and policy environment which impact on access to testing, treatment and management.[70]

Queensland Sexual Health Framework objectives:

> Ongoing activity to address stigma and discrimination and promote culturally responsive practice, with policy support for priority populations.
>
> Cross-agency acknowledgement of social determinants of sexual health and including these in system responses.[71]

Research demonstrates that criminal frameworks and licensing of sex work (such as we have in Queensland) produce worse health outcomes than decriminalisation.[72] Platt et al argue that:

> ...criminalisation and repressive public health approaches to sex work (e.g., mandatory registration and HIV/sexually transmitted infection [STI] testing) have been shown to hinder the prevention of HIV. Conversely, mathematical modelling has estimated that decriminalisation of sex work could halve the incidence of HIV among sex workers and their clients over a 10-year period, and evidence from New Zealand indicates that sex workers in decriminalised settings report improved workplace safety, health and social care access, and emotional health.[73]

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[68] Australian Government Department of Health *Fourth National Sexually Transmissible Infections Strategy 2018-2022*, p. 22. https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/STI-Fourth-Nat-Strategy-2018-22.pdf

[69] Queensland HIV Action Plan 2019-2022 4.5, 4.6

[70] Queensland Sexually Transmissible Infections (STI) Action Plan 2019-2022 4.4

[71] Queensland Sexual Health Framework

[72] Harcourt et al. (2010). The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers

[73] Platt, L., et al (2018).

Repeal of criminal laws and charges attached to use of prophylactics (condoms, dams), mandatory testing and working while infective with an STI or HIV will retire QPS from their current role as 'safe sex police', a job for which they were never qualified.

Sex workers in Australia have better sexual health than the general community

The research consistently shows that Australian sex workers have good sexual health with low rates of blood-borne viruses (BBVs) and sexually transmitted infections (STIs) that are equal to, or lower than, the general population. Sex workers have high rates of sexual health testing and high rates of prophylactic use compared with 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'.[74] The Lancet (2014) found the decriminalisation of sex work was associated with lower HIV transmission.[75]

Q. 23 (a) Mandatory condom use laws

Queensland's Work Health and Safety Regulation 2011[76] already requires provision of and use of PPE by the worker and the client as well as requiring information and training on use and correct storage:

> 44 (2)The person conducting a business or undertaking who directs the carrying out of work must provide the personal protective equipment to workers at the workplace, unless the personal protective equipment has been provided by another person conducting a business or undertaking.
>
> 44 (3)The person conducting the business or undertaking who directs the carrying out of work must ensure that personal protective equipment provided under subsection (2) is—...ensuring that the equipment is…(c)used or worn by the worker, so far as is reasonably practicable.
>
> 44 (4)The person conducting a business or undertaking who directs the carrying out of work must provide the worker with information, training and instruction in the—
> (a)proper use and wearing of personal protective equipment; and
> (b)the storage and maintenance of personal protective equipment.
>
> 45 The person conducting a business or undertaking who directs the carrying out of work must ensure, so far as is reasonably practicable, that—
> (a) personal protective equipment to be used or worn by any person other than a worker at the workplace is capable of minimising risk to the person's health and safety; and (b) the person uses or wears the equipment.

[74] 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

[75] The Lancet HIV and sex workers series, July 23, 2014. HIV and sex workers; Platt, L., et al. (2018).

[76] Queensland Work Health and Safety Regulation 2011 Chapter 3 Part 5 Section 44, 45, 46, 47.

These WHS regulations are appropriate and ample to ensure PPE usage in sex industry workplaces within a decriminalisation framework. Maintaining Prostitution Act s.77A or replacing it with another sex industry-specific law is an unnecessary duplication of what are universal WHS requirements and laws. As sex workers actually have higher rates of prophylactic use than the general public, s. 77 acts to discriminate on the basis of 'lawful sexual activity' and as such would likely be found incompatible with the ADA (Qld). Additionally, any inclusion within the new framework of provisions for not using prophylactics, similar to the current offence in s77A, would likely conflict with sections 17 and 25 of the HRA, which provides for protection from torture and cruel, inhuman or degrading treatment and the right to privacy. Police entrapment of sex workers would not stand up to the HRA, creates barriers to sex workers accessing health and justice services and has no basis in public health discourse. To be explicit: prophylactic laws in Queensland are enforced by police posing as clients who pressure, harass and offer inducement in order to arrest sex workers who agree to provide services without condoms.

There is no evidence to suggest that the criminalisation of condom or prophylactic use has a public health benefit. 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. *The sex industry in NSW: A report to the Ministry of Health* (2012) study found that sex workers were approaching 100% condom use in Sydney brothels with no differences for migrant sex workers.[77]

There is little evidence that prophylactic laws support sex workers having autonomy around safer sex. Peer education on sex work methods to assume control of the booking and talk to clients about condom use are lifelong skills then shared among co-workers[78], and do not expose sex workers to discriminatory policies or harmful police entrapment. Sex workers have been at the forefront of safer sex mobilisation since the 1980s and perform an often unacknowledged role in educating their clients about sexual health issues.

Any new law specific to the sex industry that makes the use of prophylactics mandatory will ensure the continuation of police entrapment and all of the harmful consequences that this entails. It is likely that if such laws were included in the new framework it would result in *more* police entrapment because, we assume, police would have fewer other bases on which to pursue criminal charges against sex workers.

Respect Inc and DecrimQLD would also like to point out that the cost of this type of policing is exorbitant compared with the cost of peer education. If the human rights and public health arguments are not enough to convince Queensland policy makers that entrapment of sex workers via verbal enticement about condom use should discontinue, we hope that the economic argument might. Sex workers in Queensland have yet to hear a single logical argument in favour of these police powers.

[77] Donovan, B., et al. (2012).

[78] Donovan B. & Harcourt, C. (1996). 'The female sex industry in Australia: A health promotion model', *Venereology*, vol 9, no 1, pp. 63-67.

Q. 23 (b) Criminalisation of sex workers working with an STI

As with mandatory prophylactic laws, criminalisation is not an effective public health strategy for sex workers with STIs. Community development and peer education demonstrates better and longer-lasting results. We argue that criminalisation of sex workers based on their 'health status' denies an individual equality before the law, undermines public health outcomes and perpetuates stigma. National policy in Australia recognises that criminalisation may 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 of sex workers.[79]

A 2008 case in the Australian Capital Territory where a sex worker living with HIV was jailed is a stark example of how criminalisation of sex workers with STI can seriously impact health seeking behaviour. Despite no evidence of transmission of HIV or unsafe sex practice, the person was prosecuted for providing a sexual service whilst knowingly HIV-positive, and they were outed in the media across Australia, New Zealand, Germany, Vietnam, Belgium and Hong Kong.[80] As a result of this case, 'many sex workers became fearful of testing for HIV', leading to a dramatic drop in sex worker attendance at outreach medical services. They report: 'In the four-week period following the court case, the numbers attending the service dropped from an average of 40 per night to three'.[81]

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, provisions that criminalise sex workers living with HIV are no longer justified. Queensland Positive People explains:

> 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.[82]

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.[83] 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*.

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[79] Australian Government Department of Health (2018- 2022) *Eight National HIV Strategy*, p. 22.

[80] Daniel, A. (2010). The sexual health of sex workers: No bad whores, just bad laws, *Social Research Briefs*, NSW Health, no 19, p. 1.

[81] Jeffreys, E., Matthews, K. & Thomas, A. (2010) 'HIV criminalisation and sex work in Australia', *Reproductive Health Matters*, vol 18, no 35, pp. 129-136.

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

[83] 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

The Public Health Act (s143) also contains penalties for people who 'recklessly spread controlled notifiable conditions'.

The responsibilities 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. Given these offences are already provided for within current legislation, it would be a duplication to include other provisions on working with an STI. Duplication for sex worker-only penalties or regulation would likely conflict with sections 17 and 25 of the HRA, which provide for protection from torture and cruel, inhuman or degrading treatment and right to privacy. Any ongoing criminalision or discrimination against sex workers on the basis of health status would be arguably incompatible with the ADA (Qld).

Q. 23 (c) Mandatory testing

> Hansard 1 October, **1886** REPEAL OF THE CONTAGIOUS DISEASES ACT.
> Mr. JORDAN, in moving- "That this House disapproves of the compulsory examination of women under the Contagious Diseases Act." [84]

It should be concerning to public health policy makers that more than 100 years following the repeal of the Contagious Diseases Act 1886, Queensland politicians re-enacted another mandatory sexual health testing regime for sex workers. Queensland's sex industry laws, s89 and s90 of the Prostitution Act 1999 and s 14 and s 26 of the Prostitution Regulation, combine to result in what is commonly called 'mandatory testing' of sex workers who work in licensed brothels. It is a defence for a sex worker (s89) and for a brothel owner (s90) to avoid a charge if a 'certificate of attendance' is obtained by the sex worker at the time of undertaking a sexual health screening for sexually transmissible infections (s26) and at least 3 monthly (s14). The Prostitution Licensing Authority requires the certificates to be collected and kept for a period of time and licensed brothels prevent sex workers from beginning work or continuing to work (after 3 months) unless a certificate proving that a screening has been undertaken is provided. The overall impact of this set of laws is a system of mandatory testing.

Within the sexual health sector it is widely recognised that the system is a farce and has no value to public health and in fact creates barriers to accessing services and is a waste of sexual health resources. This is because, unlike the stated intention in the law that the sex worker 'had been medically examined or tested at intervals prescribed under a regulation to ascertain whether the prostitute was infective with a sexually transmissible disease' (s90,3,a), the certificate only indicates that the person attended the clinic and had screenings by participating in the mandatory testing regime: it does not indicate whether the person has a STI or is 'infective'. Regular voluntary testing is considered best practice, as is the implementation of safer sex practices. Mandatory testing systems are not effective and are discriminatory.

Australia's National HIV Strategy and the National Sexually Transmissible Infections

[84] Hansard 1 October, 1886. accessed 26 May, 2022. https://documents.parliament.qld.gov.au/events/han/1886/1886_10_01_A.pdf

Strategy[85] recognise **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.[86] 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 complied with the state's mandatory testing regime.

Australian research on the cost benefit of mandatory testing in Australia found that testing should not be 'locked by legislation'.[87] The cost of over-testing is high—screening sex workers for HIV every 12 weeks costs $4mil for every one HIV infection averted.[88] 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 acts as a barrier to sex workers' realisation of good sexual health.[89]

Mandatory testing of sex workers is also incompatible with the HRA by impacting the right not to be subject to medical treatment without full, free and informed consent. Mandatory testing would likely conflict with aspects of sections 15, 17, 25 and 37 of the HRA, which provides for equality before the law, protection from torture and cruel, inhuman or degrading treatment, right to privacy as well as the right to health services. Laws can limit human rights but only when it is 'necessary, justifiable and proportionate', which is not the case here. Mandatory testing of sex workers is considered a 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.

Mandatory testing framework under the Queensland Health Communicable Diseases Unit

The Queensland Health Communicable Diseases Unit does not consider that sex workers are a high priority public health risk as evidenced by the declining focus on sex workers in their clinical guidelines. Following the implementation of mandatory testing and up until 2012, Queensland Health maintained a bulky clinical guidelines document for sexual health testing that included a five-page section specifically about sex workers. This document, the *Queensland Sexual Health Clinical Management Guidelines 2010* along with the *Sexual Health Certificate of Attendance* covered the legal sexual health requirements for sex workers from a medicolegal perspective. The guidelines also contained detailed rules about the exclusion periods for various STIs (i.e. the time periods for treatment, determining whether, and for how long, the previously issued sexual health certificate of attendance was invalidated).

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[85] 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

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

[87] 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*, vol 86, no 2.

[88] Ibid.

[89] Jeffreys, E. et al (2012).

Sometime after 2012 the guidelines were edited and the sections that referred to specific populations such as sex workers were removed. This document was ultimately replaced by a link to the ASHRA and AHSM *Australian STI Management Guidelines (ASMG)*[90], which is an online resource for primary care health professionals to support the prevention, testing, diagnosis, management and treatment of STIs in adults and adolescents.

The ASMG includes small separate sections for priority populations, which set out best-practice testing and advice. The overview for sex workers states:

> Currently, there is no evidence that sex workers in Australia have higher rates of sexually transmitted infections (STIs) than the general population. Sustaining low STI rates remains a priority.[91]

In the section on *Clinical Indicators for Testing* it is noted that some sex workers in some jurisdictions require periodic mandatory testing and these jurisdictions are Victoria and Queensland. Now that mandatory testing has ben repealed in Victoria, this will leave Queensland as the only jurisdiction requiring mandatory testing for sex workers.

The *Follow Up* section includes a link to the online Scarlet Alliance *Red Book*[92], which is a sexual health resource by sex workers for sex workers. The *Red Book* is available in Chinese, Korean, Thai and English and includes comprehensive and detailed information on sexual health in a sex work context that is understood by, and available to, sex workers within our own networks.

Now, and for the last 10 years apart from a Queensland Health infosheet[93] with a brief section on sex work and a link to the Certificate of Attendance[94], references to sex work and sex workers are almost invisible as a priority population for sexual health on the Queensland Health website. This evidences the low priority, as a wider public health concern, that is placed on the mandatory testing of sex workers and sex worker sexual health by the communicable diseases experts at Queensland Health. There is no appetite for mandatory testing of sex workers among the sexual health sector in Queensland; advocates of this archaic practice are outliers and out of touch with the evidence.

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[90] Australasian Sexual and Reproductive Health Alliance (ASHRA) and Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM). *Australian STI management guidelines for use in primary care*. Online resource. https://sti.guidelines.org.au/

[91] Australasian Sexual and Reproductive Health Alliance (ASHRA) and Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM) Australian STI Management Guidelines for use in Primary Care. Online resource. https://sti.guidelines.org.au/populations-and-situations/sex-workers/

[92] Scarlet Alliance Red Book: STI & BBV resources for sex workers by sex workers. Online resource. https://redbook.scarletalliance.org.au/

[93] Queensland Government and ASHM. STI/BBV testing tool for asymptomatic people. Online resource. https://www.health.qld.gov.au/__data/assets/pdf_file/0025/726523/sti-bbv-testing-tool.pdf

[94] Queensland Health. Sexual health certificate of attendance. https://www.health.qld.gov.au/__data/assets/pdf_file/0021/444351/sexual-health-check-certificate.pdf

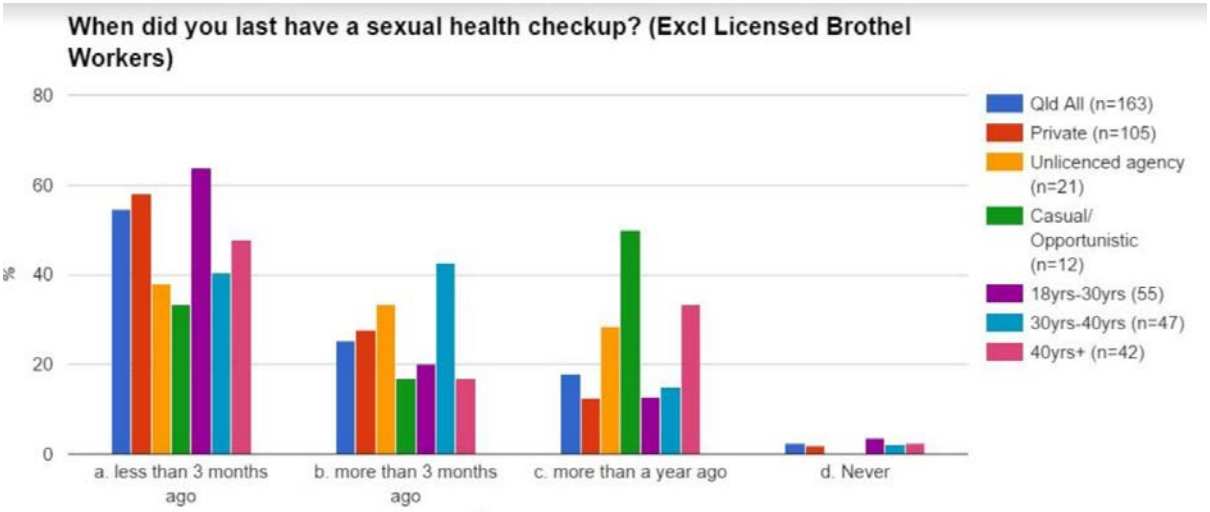
Sex workers in Queensland have high rates of voluntary sexual health testing.[95]

Male sex workers, transgender women sex workers

In a 2018 study of male and transgender sex workers in Queensland (TaMS study) it was found that the majority had attended for sexual health checks either at a sexual health clinic (66.7%) or GP (32.8%) less than three months earlier, despite not being required to test or provide attendance certificates to work.[96] Similar results were found for male sex workers in the 2015 *Hook-up* study[97] wherein despite many participants indicating that they did sex work sporadically, almost two-thirds of the participants tested every three months. Most of the participants of the TaMS study knew about PrEP (pre-exposure prophylaxis for HIV) and several were using it (as part of the contemporaneous QPrEPD trial); however, they had some concerns. These were: potential side effects, that it did not give them protection for other STIs and that it could become mandatory under future legislation.[98]

Sex workers outside of the licensed brothel sector

Enhanced data collection by Respect Inc 1 August 2015-April 2016 for Queensland Health asked 208 sex workers who did not work in licensed brothels about the time period since their last STI checkup:



Respect Inc reported the above results to Queensland Health 1 June 2016:

> The results indicate that more than approximately half of sex workers have regular sexual health check ups of three month intervals or less, by their own choice without mandatory testing. Those who test at longer intervals are still having regular checkups with very low numbers reporting that they have never had a sexual health check. Also indicated are that younger sex workers tend to test more frequently than mature sex

[95] It should be noted that the data presented here provides an indication of high levels of regular testing in the context of a largely criminalised workforce where barriers to accessing testing are recognised and there is no legal requirement for this demographic to undergo testing.

[96] Jones, J., Dean, J., Brookfield, S., Forrest, C., Fitzgerald, L. (2018). Factors influencing transgender and male sex worker access to sexual health care, HIV testing and support study (TaMS) report, p. 21.

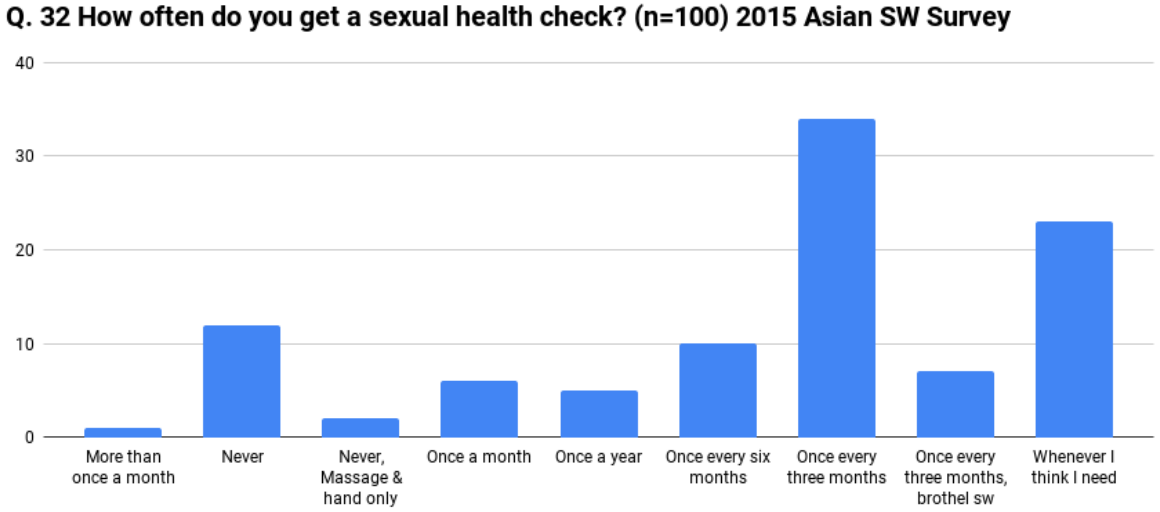
[97] Prestage, G., Bradley, J., Hammoud, M., Cox, C., Tattersal, K. & Kolstee, J. (2014). *Hook-up: A study of male sex work in NSW and Queensland*, The Kirby Institute, The University of New South Wales, Sydney Australia., p. 19.

[98] Jones, J., et al. (2018), p. 44-47.

workers. Unlicensed agency workers appear from these results to test less frequently than the average, however, included in this subset are massage workers who offer hand relief only without oral or insertive sex, so they may feel there is less need for sexual health checks.

Migrant sex workers of Asian-language background

A Respect Inc 2015 needs assessment of 100 migrant sex workers of Asian-language background found almost half were obtaining a sexual health check every three months or more often, even those not working in licensed brothels. Another 23% said that they would get a check whenever they thought they needed one. It was also reported that since massage parlour-based sex workers tend to only do hand relief they choose less frequency with their sexual health checks.[99]

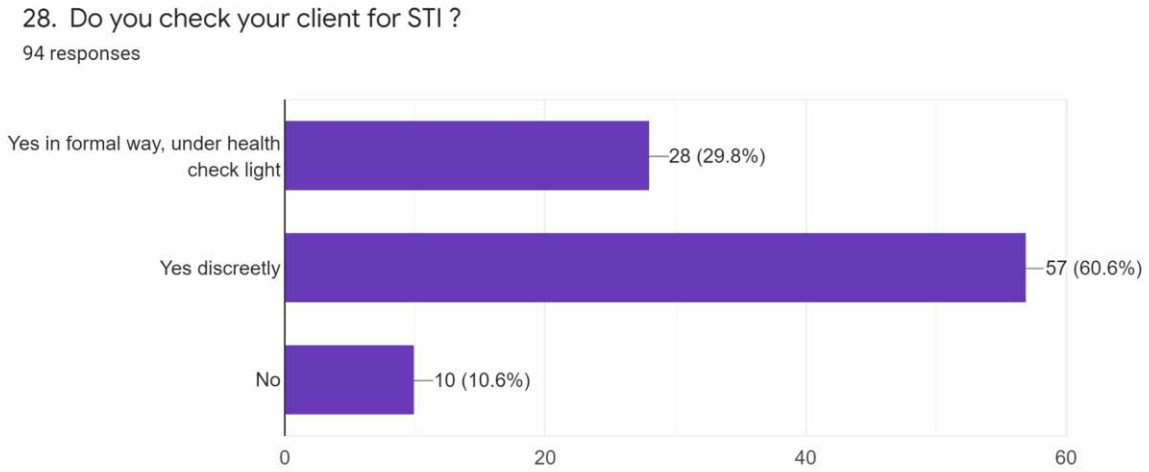


Sexual health checking of clients

Visual checking of clients by sex workers to ascertain whether they may have visible evidence of an STI is a long-standing traditional practice of sex workers who do full service sex work, which has been incorporated into standard WHS strategies for sex work.[100] In the Queensland licensed brothel guidelines the practice is described in a very clinical manner using a lamp, which suits some sex workers, but many sex workers prefer more informal methods of checking and these are shared and explained through peer education. Sex workers are informed through peer education and WHS that STIs can have no symptoms and that an absence of visible symptoms does not necessarily indicate an absence of STIs.

The 2015 Respect Inc survey of Asian-language background sex workers found most did an STI visual check on clients prior to the booking (n=94):

[99] Respect Inc. (2015). *Needs assessment for Asian sex workers in Queensland: March 2015-September 2015*, p. 11.
[100] Scarlet Alliance Red Book—How to check for visible signs of STIs. Online resource. https://redbook.scarletalliance.org.au/checking-clients/



Victoria repealed public health offences—Queensland should follow

Victoria's Sex Work Decriminalisation Act 2022 repealed public health offences[101] similar to those in Queensland on the basis that the policies created barriers for sex workers and were stigmatising. An explanation of the public health reasoning can be found on the Victorian Department of Health website.[102] 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.

In summary, there should be no laws to mandate prophylactic use, working while infective or sexual health testing. All of these sexual health issues will be well covered and better served by comprehensive sex work WHS guidelines and peer education. Instead of criminal laws there should instead be a renewed focus on peer education, improved access to free and anonymous testing and the implementation of sex worker-led WHS guidelines to enable sex workers (and sex work business operators) to make informed decisions about best-practice safer work practices and testing.

Q.23 (d) Other matters

We defer to QPP, HALC & NAPWHA regarding their advice on Section 317 (b) of the Criminal Code (Qld) 1899: '*Any person who, with intent to do some grievous bodily harm or transmit a serious disease to any person; is guilty of a crime, and is liable to imprisonment for life'.* And we support their call for an urgent review of section 317 of the Criminal Code to remove the reference to 'transmit serious disease'. This provision was created before the significant advances in treatment, which have resulted in undetectable equalling untransmittable in relation to risk of transmission of HIV. The 'serious disease' provisions of Section 317 are no longer justified. Stigma makes leaving a law like this in the Criminal Code dangerous. It is the most marginalised people living with HIV (sex workers who are trans, migrant and/or people of colour) that are likely to be impacted by this law.

[101] VIXEN 2022. Decrim Info Hub. https://vixen.org.au/vixen-victoria/info-workers/#sexual-health

[102] Victoria Department of Health. Key issues—Stage one health reforms. https://www.health.vic.gov.au/preventive-health/key-issues-stage-one-health-reforms

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.[103] 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.

Recommendation 25: Decriminalisation of sex work must include repeal of sex industry-specific public health laws as part of the repeal of the Prostitution Act and Regulations.

Recommendation 26: Queensland's decriminalisation framework should not include laws relating to the use of prophylactics, sexual health testing or sex workers with an STI.

Recommendation 27: The risk of sexually transmissible infections is mitigated by existing laws and regulations:

- WHS Act requirements on provision and use of PPE and training on use and storage.
- peer education that supports sex worker uptake of safer sex practices
- access to free, anonymous and voluntary testing (regardless of Medicare card)
- Queensland's system of managing people who put others at risk.

Recommendation 28: The implementation of decriminalisation should include a re-focus on improved access to peer education and community development for sex workers and free, anonymous and voluntary testing.

Recommendation 29: Sex Industry WHS guidelines should incorporate references to existing requirements under the WHS Act on provision and use of PPE and training on use and storage.

Recommendation 30: Review of section 317 of the Criminal Code (Qld) 1899 to remove reference to 'transmit serious disease' to reflect current science and negligible transmission risk.

Recommendation 31: Mandatory testing is likely to be incompatible with human rights protections under sections 15 (recognition and equality under the law), 17 (protection from torture and cruel, inhumane or degrading treatment), 25 (privacy and reputation) and 37 (right to health services) of the HRA and breach the ADA under the attribute of 'lawful sexual activity'.

Recommendation 32: Criminal restrictions on sex workers living with STIs is likely to be incompatible with human rights protections under sections 17 (protection from torture and

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cruel, inhumane or degrading treatment) and 25 (privacy and reputation) and is incompatible with AD Act under the attribute of 'disability'.

Recommendation 33: Prophylactic laws for sex workers are likely to incompatible with sections 15 (recognition and equality under the law), 17 (protection from torture and cruel, inhumane or degrading treatment) and 25 (privacy and reputation) of the HRA and is incompatible with the AD Act under the attribute of 'lawful sexual activity'.

PLANNING: SEX INDUSTRY LOCATIONS IN QLD

Section 8 of 17 (pp107-128)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

CHAPTER 12: PLANNING LAWS AND SEX WORK

Local government discretion to prohibit commercial sex work businesses in their entire local government area

Q25 Should local governments have discretion to prohibit the development of commercial sex work businesses in their entire local government area? If yes, should this apply to all local governments or only to local governments in areas with smaller populations?

Assessment of development applications for commercial sex work businesses

Q26 Should commercial sex work businesses have specific planning requirements, different to other commercial businesses?

Q27 Should the State set the categories of assessment for commercial sex work businesses, or should local governments have discretion to set the categories of assessment in their local government area?

Q28 Should local governments have discretion to limit commercial sex work businesses to certain zones (for example, mixed use or industrial zones)? Why or why not?

Q29 Should there be size limits on commercial sex work businesses, such as gross floor area, number of rooms or number of sex workers?

Q30 If yes to Q29, should there be different requirements for sex work businesses in different zones?

Review of decisions about development applications for commercial sex work businesses

Q31 Should an alternative review mechanism of development applications for commercial sex work businesses (as currently applies for brothels) be kept?

Should separation distances apply to commercial sex work businesses?

Q32 Should separation distances apply to commercial sex work businesses? Why or why not?

Q33 If yes to Q32:

(a) What land uses (for example, schools, childcare centres, places of worship) should require a separation distance?

(b) Should local governments have discretion to decide what separation distances (if any) apply in their local government area?

Home-based sex work businesses

Q34 Should there be consistent planning codes across Queensland for home-based sex work businesses, or should local governments have discretion to set the categories of assessment in their local government area?

Q35 Should home-based sex work businesses have the same planning requirements as other home-based businesses (and therefore be able to operate without a development approval if the requirements for accepted development are met)?

Q36 Should separation distances apply to home-based sex work businesses? If yes, what land uses should require a separation distance (for example, schools, childcare centres, places of worship)?

Q37 Is there a need to limit the number of sex workers, rooms or floor area used for sex work in a home-based business? If yes, is there an appropriate number of workers in a home-based sex work business (who live in the dwelling or otherwise)?

No. The decriminalised framework in Queensland requires a specific statewide planning approach legislated as amendments to the Planning Regulations (2017) and an additional clause about local laws consistency with the purposes of the framework (see Victorian Decriminalisation Act 2022 Part 2, General, 3). Local council discretion will be repealed and not replaced. Local governments have demonstrated an inability to apply their discretion fairly, and are not competent to handle zoning, DA or related decisions. Without a legislated plandning approach decriminalisation of sex work in Queensland will fail. We provide arguments, reasons and specific recommendations for a legislated approach below:

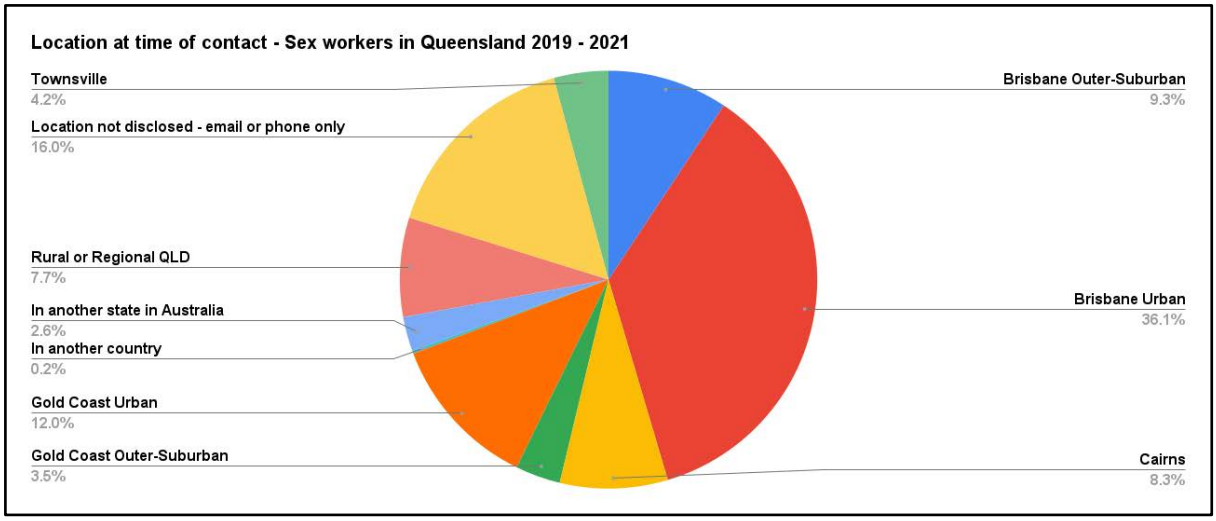
Planning summary

State legislation is required to standardise a planning approach within the new decriminalised framework

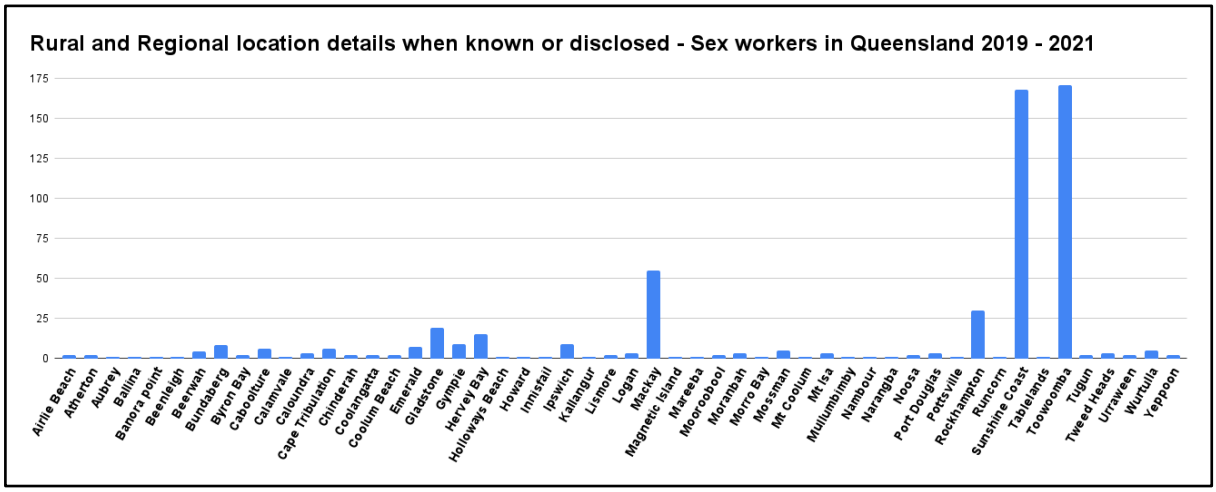
The legislated planning approach should deliberately encompass and permit the current scale, size and land-use types of the sex industry in Queensland, without local government interruption or discretion. To do so a state-legislated approach is necessary, similar to the Queensland legislative approaches to DV shelters in residential zones and community accommodation in centre zones. We also note that the sex industry in Queensland already meets local amenity rules, albeit with more than 80% of those locations operating outside the licensing system. We argue below that in order to retain current amenity compliance and avoid creating new barriers to compliance, council is not the correct jurisdiction and should not have a role in approvals or assessments. 'Declared use' was a legislated solution during the pandemic. While 'Declared use' is not a completely neat fit with decriminalisation, it demonstrates to many within the sex worker community and supporters of reform that legislative solutions can be found by government when necessary to ensure policy aims are appropriately achieved.

Evidence of locations, styles of work

Respect Inc 2019-2021 data-set demonstrates current locations and styles of sex work in Queensland. In the below graph N = 7588 (1 Jan 2019-16 Nov 2021).



The Rural and Regional table below is a subset of Rural or Regional QLD (above, 7.7%), with 6 entries excluded due to location not being known or disclosed. N=578.



The contact data below was collected by Respect Inc from January 2019 to 3 Nov 2021. The raw data comprised 7497 entries. When cleaned up for analysis, N=7480. There was an 8 out of ten rate of self-disclosure of sex work sector:

- Private work only 42.6% (includes private escort work).
- Sector not disclosed 20.5% (we estimate this includes unlicensed brothels, escort agencies and non-disclosed massage parlour work)
- Private work, collective (co-op) 15.5%
- Licensed brothel work 6.1%
- Private work and licensed brothel work 4.5%.
- New worker, no sector 2.4%.
- Massage parlour and private work 2.2%.
- Massage parlour 2.1%.
- Street-based or sex-for-favours 1.9%
- Adult entertainment 1.1%.
- Private work, street-based or sex-for-favours 0.5%
- Adult entertainment and private work 0.2%.

- Private work, licensed brothel work, massage parlour 0.2%
- Private work, licensed brothel work, adult entertainment 0.1%
- Massage parlour and licensed brothel 3 people
- Massage parlour and street-based or sex-for-favours 2 people
- Licensed brothels and street-based or sex-for-favours 1 person

Recommendations for definitions

Private sex work in residential areas to be treated as a Material Change of Use matching Planning Regulations (2017) Schedule 6, Part 2, Section 2 (1)
Private sex workers represent roughly 60% of sex workers and work mostly in residential zones, in a collective or otherwise, meeting all applicable amenity rules. Private workers also tour and work from motels and short-term accommodation, obtain bookings through NDIS and organised by carers, and some do escort bookings at a client's location in residential zones, motels, short-term accommodation and other zones.

Collectives are when private workers agree for single occasions or longer-term arrangements to share overheads, reception for each other, refer clients to each other, do doubles bookings or similar, commonly in residential zones and meeting all amenity regulations. This style of work is known within the industry as co-op but notably does not meet the Commonwealth definition of cooperative. The data above suggests 15% of the sex work in Queensland occurs in collectives and consists of groups of private workers who may also work alone, tour and offer private escort services. The new framework will not define residential locations occupied by private sex workers who work in a collective any differently from private sex work generally. Amenity rules apply regardless of the number of private workers using the premises. SOOB and home-based business is not a neat fit with private sex workers alone or in collectives. The term 'managed sex worker' is also not a productive term. Regardless of the intention, the term 'managed' would accidentally apply to private sex workers organising bookings through carers, family members of clients living with disability and NDIS arrangements.

It would be counter-productive for the purposes of planning to define private escort work differently to other non-escort private work. The data above does not differentiate between different methods of private sex work and Respect Inc cannot speculate on the size of private escort work. The 'Material Change of Use' clause could allow private sex work to occur in residential areas and does not remove the mandatory amenity rules that apply to that zone.

It would be counter-productive to define the number of private workers that can work from a single residential location or as part of a collective. To do so would exclude collectives of very part-time private workers, and would immediately exclude them from being eligible for inclusion in the new framework, which is contrary to the aims of decriminalisation. Location and amenity rules themselves are self-limiting.

Massage parlours should continue to be defined as health services, or redefined in Schedule 6 similar to the 2017 Community Residence amendments to the Planning Act.
Respect Inc estimates, based on our engagement with sex workers in massage parlours and the illegality of the sector, that massage parlour work represents double that which was disclosed, making up approximately 10% of the sex industry in Queensland (adjusted to include a component of ‘sector not disclosed’). Massage parlours do not offer sexual services

at the front desk. The standard service is a massage with a clothed masseuse, without any sexual gratification. Not all workers at massage parlours are sex workers. Individual sex workers in those parlours then negotiate sexual services for extra payment, without the business taking a cut, and a massage is included. Massage parlours are currently compliant as 'health services' and for the purposes of planning should remain so.

If massage parlours are redefined within Schedule 6 of the Planning Regulations they would be able to operate without written permission from councils provided they carried out a self-assessment against the relevant amenity rules for the zone to ensure compliance. This self-assessment tool should be contained within the WHS guidelines, and Respect Inc should be the lead non-government agency to support renovations and amendments to business practices for workplaces to become compliant. WorkSafe and PCBU regulations would still apply.

Escort agencies already fit into the planning definition 'offices' (in centre zones) or should be covered as 'Material Change of Use' (in residential zones). Escort agencies operate without front-facing public access and sex work bookings do not take place on premises. For planning purposes they are like any other business that operates virtually. A note on the data above: the illegality of escort agencies means it is likely represented in 'sector not disclosed', Respect Inc cannot speculate about the size of this sector.

Brothels should be defined within Planning Regulations (2017) Schedule 6, similar to 2017 amendments to the Planning Act for Community Residences.
A successful approach to planning will list brothels within Schedule 6, a development that the local categorising instrument is prohibited from declaring assessable. The new planning approach will not have a definition for unlicensed or illegal brothels. In the data-set above, the current illegality of unlicensed brothels means they are likely represented within the grouping 'sector not disclosed', and need to be accounted for in the new framework. Respect Inc cannot speculate about the size of the unlicensed brothel sector. Brothels generally offer sexual services as part of the standard booking and as such are very different from massage parlours. Currently, licensed brothel sex work makes up between 10 and 20% of the industry in Queensland.
Schedule 6 of the Planning Regulations would allow brothels to operate in centre zones without written permission from council provided they carried out a self-assessment against the relevant amenity rules for the zone to ensure compliance. This self-assessment tool should be contained within the WHS guidelines with flexibility to meet the various scales and sizes of brothels in Queensland. Respect Inc and Decrim QLD recommend against specific zone rules apart from the more general 'centre zone', there should not be size limits (gross floor area, room numbers or staff numbers), and no separation distances (from schools, childcare and places of worship) or opening hours, because to do so would exclude businesses that currently meet amenity impact rules to scale, and immediately make them ineligible for inclusion in the framework. All amenity rules relevant to the zone still apply. To set limitations within legislation would be against the spirit of decriminalisation.

If a brothel wishes to apply for a liquor licence, they will be subject to the same application methods, rules and approvals as any other location that is applying for an alcohol licence.

SOOB is not a productive fit with the Qld planning approach. The evidence above shows that Queensland already has a number of common types of workplaces that are compliant with amenity rules in their zone. Adding a new definition would create unnecessary arbitrary styles of work based on size and scale, exclude existing workplaces from the decriminalised framework, create potentially insurmountable barriers to compliance with planning laws and lead to gaps and failures in the new framework.

Street soliciting does not require a definition within the new framework. Repeal of the criminal laws relating to street-based sex work would be sufficient.

Background, criminalised yet planning-compliant in Queensland

Sex worker workplaces are currently operating in residential, centre and mixed zones throughout Queensland and are behaving in ways that are compliant with amenity impact regulations. This is despite these workplaces being in contravention of the Prostitution Act 2000, various sections of the Criminal Code and the Planning Act itself. Thousands of sex workers who live, work and contribute to each council area in Queensland are criminalised for working in massage parlours, doing escort bookings via illegal agencies and using safety strategies including sharing workspace overheads. Simultaneously these locations are appropriately scaled in residential, central and mixed zones, currently not subject to sex work-specific Development Application (DA) approval (except for massage parlours as health services) and meet all mandatory amenity impact regulations:

- Minor 'Building Works' regulations and limitations in all zones
- Strata and residential visitor rules and noise regulations in residential zones
- Strata and residential zone rules about disturbance
- Consumer protection regulations *Fair Trading Act (1989)*
- Commercial opening hours regulations *Trading (Allowable Hours) Act 1990*
- Smoke alarm regulation relevant to zone/strata/land-use-type/density
- Acoustic quality objectives *Environmental Protection (Noise) Policy 2019*.
- Mandatory maintenance of car park spaces.

Sex work workplaces are not impacting on amenity

Many sex workers in our recent survey explained that they already live and work without impacting amenity. They expressed concern that if permitted, arbitrary decisions by councils to zone sex workers out of inner-city and suburban locations would be a decision based in stigma and not actual impact on public amenity. As participants highlighted, sex workers already live and work in a range of zones and go unnoticed:

> *"I currently work in XXX - it's wonderful. On my street are a lot of little home businesses, it is very idyllic. All my clients have always been well behaved and quiet..." [Survey participant 115]*

> *"...Civs only care now because it's been brought to their attention but we've been working all around them for years." [Survey participant 140]*

Sex workers explained that the activities that happen in their workplaces are the same activities already happening in homes, and that commercial sex is not that different in character from sex in general. In the words of sex workers:

> *"People fuck in their own homes so people doing the same thing via negotiated payment should have the right to privately access services in ALL areas of council." [Survey participant 63]*
>
> *"People have sex in residential areas too, we just charge for it but seriously, it isn't that different." [Survey participant 100]*

Moreover as several sex workers highlighted, workers and their clients already have an imperative to maintain discretion, which would remain the case after decriminalisation. Some survey participants further emphasised that sex work businesses can also have positive impacts when they are allowed to operate alongside other industries, both in the reduction of stigma towards sex work businesses and the flow-on economic benefits. As one survey respondent wrote:

> *"Sex workers and our clients are incredibly discrete and have an investment in our privacy. We don't need to be stored away on the edges of town in order to be discrete. We also bring other commerce to a place - workers and clients may bring business to the area beyond just the sex industry business." [Survey participant 94]*

In Queensland, 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. Respect Inc and DecrimQLD are aware of council inspectors currently checking on centre zone locations and private sex workers in residential areas. In all the known cases it was found that the location was compliant with local amenity regulations.

Zoning into industrial areas

Arguments to force brothels into industrial zones are unreasonable. The *7:30 Report* (ABC) in 2011 covered the issue:

> LISA MILLAR: Jeff McLaren was a lobbyist for the sex industry for more than four years. A lawyer, he's watched potential new brothel owners struggle. One of the most contentious issues in the legislation is the move to force brothels into industrial estates.
> JEFF McLAREN: It's totally inappropriate. This is not the place where people come for love.
> LISA MILLAR: For potential licensees who accept the location demands, councils have hardly been welcoming.
> JEFF McLAREN: They said there wasn't enough parking [in centre zones] but obviously there is. They said water consumption -- they said that the brothel would consume too much water and it would go into the sewerage. I really don't understand what that argument was. And location -- they said that it was too close to urban and educational areas, which is ridiculous.

Respect Inc and DecrimQLD surveyed sex workers asking about the impact of sex industry workplaces being zoned into industrial areas. Sex worker participants expressed concern about negative consequences for safety, mental and emotional wellbeing and financial stability due to lack of transportation and suitable work accommodation, fewer clients and feeling like they were being outcast by society. Some said that if councils were allowed to zone sex

workers into industrial areas it would constitute a form of backdoor criminalisation, as the many sex workers who currently work from home in the surburbs, or in inner city hotels or massage parlours would be unwilling or unable to relocate to industrial zones.

> *"I can only imag[in]e the number of workers this would suddenly make criminals." [Survey participant 161].*

Some survey participants felt that they would rather move states or cease touring to Queensland if they were required to work in industrial zones.

> *"...I would not stop the way I work and I don't want to work illegally. I would most likely move to NSW permanently." [Survey Participant 131].*

A lack of good regular public transport, rideshare drivers refusing lifts, and the lack of night time car and foot traffic in industrial zones was another major theme, particularly for sex workers who rely on the flexibility of sex work and/or the option to work from home—for example those with disabilities or caring obligations. In the words of sex workers:

> *"As a disabled lady, I find it hard to find a job working for someone else because my pain and limited mobility gets in the way. I enjoy working for myself in a safe environment that gives me the ability to make money to support my needs." [Survey participant 177]*

> *"1. literally EVERYONE has sex without location based restriction otherwise none of us would exist and 2. It is completely unfair to expect us to work out in the sticks because of stigma. Many of us have families and other commitments that make this type of travel completely untenable." [Survey participant 104]*

> *"... it was strange bus route schedules and scary to walk home from work. Having a car as a brothel worker is easier, but not for every client considered visiting that far out at strange hours for that zone." [Survey participant 142]*

> *"What if you don't drive. How do you get there? How do clients get there and what does it say if we can only work from difficult locations?" [Survey participant 71]*

> *"Industrial zones are dark, away from people and public transit and other amenities, and often are located in places that are expensive to travel to if you don't have a car…" [Survey participant 94]*

Safety issues—such as the increased risk of stalking when sex workers are forced to work in limited locations—were a concern. The physical characteristics of industrial zones—being isolated from amenities, safety and support mechanisms, poorly lit and with low foot traffic—make them precarious areas in which to work, especially at night. Many sex workers would choose to operate where they do now, outside of the industrial zones, and would therefore be non-compliant. Safety would be chosen over compliance, just as now safety is chosen over legality.

> *"It would make me feel less safe. I'd have to start removing my license plates as soon*

as I arrive so I'm not stalked again." [Survey participant 51]

"It's horrible. I've worked in a brothel in an industrial area and it's dark and feels dangerous. Dodgy people hanging around diving dumpsters for things to sell like metal or other recyclables. They may be harmless but they don't feel it lurking around in the dark!" [Survey participant 20]

"Also we'd be like sitting ducks - far away from the rest of society, through traffic and support." [Survey participant 63].

"I do not drive, this makes me a target walking through these areas, know the only reason i would be there is for sex work." [Survey participant 35]

"By othering sex workers and exiling them to specific zones, you identify and isolate them from safety mechanisms like frequent taxis, access to third party public transport, accessible/unidentifiable parking stations…" [Survey participant 67]

"Those zones are less safe. Poor lighting, no passive surveillance like foot traffic, no amenities like take away food or grocery stores, and any rideshare drivers picking you up from that zone when your shift is over, no matter if you (unsafely, in the dark) walk two blocks away, know your job and your home address." [Survey participant 28]

"I wouldn't be able to work where I am now, and as my clientele is CBD-inner city workers, my business would basically be over." [Survey participant 90]

"My safety is gravely impacted. Also, many self-respecting gentlemen don't want to go to industrial zones, for concerns of their own safety." [Survey participant 180]

"Clients would put additional pressure on us to work around the laws, increasing our personal risks, because they would not want to travel to industrial zones because they don't want to be surveilled as 'clients'..." [Survey participant 67]

"It means it may be difficult to travel to work and for clients to access sex workers. This would affect earnings. Earning a livable amount is the best protective factor for sex workers so this would increase risk and harm." [Survey participant 101]

"...sometimes working for escorts or brothels I might not even make any money on a shift so then I have to spend money on a cab to take me out of the way and back home again without even breaking even." [Survey participant 22].

Limiting sex work to industrial zones would likely have a negative impact on the mental wellbeing of sex workers due to forcing sex workers into futher isolation and increased social stigma and discrimination, which often follows stigmatising laws. Being pushed out from areas where it is logical for sex worker workplaces to be located sends a message that society needs to be protected from sex work, which has consequences for the mental health, self-esteem and wellbeing of sex workers. In the words of survey participants:

"I would hate that. I would feel just as MARGINALIZED and just as unwanted and made to feel disgusting by society." [Survey participant 173]

"It would again make me feel devalued, my safety not prioritized, and like I am being pushed into the industrial area with the factories - that my body and work are dirty, unfit for the public eye. I want to work where I live - in the suburbs and city with everyone else." [Survey participant 82]

"Facilities in industrial zones are not appropriate for sex work. We need beds and showers and prefer nice places to provide services. We're not brick factories or truck yards ya know." [Survey participant 11]

"This would impact me greatly. This would be a nightmare for me working as a private worker. Do I hire a freaking mechanic workshop and lay a bed down in the middle?" [Survey participant 76]

"...as there is a stigma in being restricted to areas where you'll be 'out of sight' and away from the 'normal people'." [Survey participant 166]

Council consistency with purpose untried CASE STUDY, Victoria

The Victorian Sex Work Decriminalisation Act 2022 includes a clause intending to prevent new local laws from inconsistency with the Act. It is a clear statement from government that local councils in Victoria should not be looking for ways around decriminalisation. However, the clause does not prevent councils from using technical and administrative methods to block the intentions of the Act. Deliberately allowing sex industry DAs to lapse is a common practice by NSW councils, who then mount a defence at rate payers' expense. Victorian councils can use the same method. VCAT can decide each case individually, but VCAT does not have the power to find a local law invalid.

The Victorian approach is useful in that it promotes a cultural change at a local council level, but it is deficient in direction because it is not accompanied by a coherent legislated solution. The Act 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 be 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.

Problems arising are:

- Inconsistent local laws are already in place in Victoria. VCAT can rule against the use of an existing local law and in favour of parties submitting DAs, case by case, council by council. In order to be compliant then, sex industry businesses should expect to have to mount a VCAT case. This process will likely create a chilling effect, resulting in fewer and fewer DAs being submitted to council over time.
- There is already reticence from (currently illegal) sex industry businesses to make themselves known to council, or at all among the local community. They are operating discreetly and meeting amenity rules. Planning lawyers will reasonably advise those businesses that a DA will likely require a VCAT ruling. This creates a disincentive for

sex industry businesses to participate in decriminalisation.

- It is not known how existing local laws will be brought up to date by council. Will there be voluntary or mandated audits within council, and then will each council willingly undertake required amendments? The new framework will be a patchwork of existing and new local laws, confusion around compliance, delays and VCAT cases.
- Some Victorian councils have a history of funding unethical practices to identify amenity-compliant sex work workplaces in breach of zoning regulations.[104] There is no guidance in the Act about what type of council enforcement is acceptable or what would be considered inconsistent with the act. VCAT may be the only option for arbitration, with the onus on individual sex workers and sex work businesses to bring inconsistent enforcement cases against council.
- Anti-sex work lobbying against the intentions of the Act began prior to the Act being passed. For example in 2021 one resident claimed 'I have never felt unsafe… Children play in the street… Enabling sex work to occur in any house in any street in the city of Boroondara changes everything.'[105] How will councils manage vocal advocates who lobby their council to find ways around the Act?
- Answers to these questions will not be settled in Victoria until at least December 2023, and it is only after that that the new approach to planning in Victoria will begin. In the meantime, councils are still encouraging locals to report 'illegal' brothels to the police.[106]

In summary, the rhetorical clause in the Victorian Act is welcomed by sex workers but does not resolve how and where the planning approach will be actually decided and implemented.

Council Discretion CASE STUDY, NSW approaches to brothels and massage parlours

In December 1995 after the decriminalisation of sex work was passed in NSW, the Department of Urban Affairs and Planning (DUAP) advised local councils that:

- brothels were now a legitimate land use subject to local council development approval
- blanket prohibitions of brothels would contradict the intention of reforms and
- brothels were most suitable in commercial and industrial zones.[107]

After enactment in July 1996, the then-minister announced that councils were permitted to limit brothels to industrial areas.[108] This council discretion immediately resulted in the creation of new prohibition policies and tacit implementation of discriminatory planning approaches, including industrial zoning rules and separation distances. Each council approach was different, with some creating planning policies that were sex work-specific. For example:

- an increase in the number of off-site car-parks at already built commercial locations. The implication was that client use of street parking would be a problem for amenity, even though the number of car parks was sufficient for previous land uses of the same

[104] The Australian. (2007). 'Some Vic councils paying for brothel sex', 25 Jan 2007. https://www.smh.com.au/national/some-vic-councils-paying-for-brothel-sex-20070125-gdpbol.html

[105] City of Boroondara. (2021). Council Meeting 27 September 2021. https://youtu.be/uD_5KuwZkiQ?t=4149

[106] City of Stonnington. (2022). https://www.stonnington.vic.gov.au/Planning-and-building/Planning/Planning-permits/Enforcing-permits#section-2

[107] NSW Department of Urban Affairs and Planning. (1995). Communication to General Managers of Local Councils, 29 December 1995.

[108] NSW Department of Urban Affairs and Planning. (1996). Communication to General Managers of Local Councils, 16 July 1996.

building. In these cases compliance was impossible because urban commercial built-up areas do not have room to create new car parks,
- locations limited to industrial zones,
- distance, proximity and separation limits from other brothels, bus stops and schools, sometimes measured 'as the crow flies', sometimes by foot traffic distance,
- unreasonably short opening hours,
- front doors to be off street level, which made compliance impossible for locations that were only one level. Advocates also argued this was against existing accessibility policies.

Then in 2009 after extensive lobbying, councils were granted special sex industry closure orders for planning regulation non-compliance. This history has created a new version of police control using planning instruments, location regulations, closure orders and land use definitions instead of criminal laws and has seriously undermined decriminalisation in NSW.

Some NSW councils use 'default' measures to trigger lengthy court cases by ignoring DAs and exercising closure orders, or waiting for the applicant to exercise their right to a court hearing after a certain time period of non-response by council. Many of these DAs end up in civil court proceedings to force council consideration[109], giving councils time to create barriers to compliance that did not exist at the time of application. SWOPNSW and ACON research into these practices offer analysis of a 1998 case of a brothel that applied for a DA after decriminalisation but had operated for a period of time prior to decriminalisation. Fairfield City Council v Taouk & Ors NSW LEC 132 (24 June 1998):

> The capacity to restrict brothels to industrial areas has also been used by local councils in a disingenuous fashion. For example, the Fairfield Council received a development application (DA) from a brothel that had been operating in a business area for seven years. The Council failed to consider the application for fifteen months, while waiting for their LEP, restricting brothels to industrial zones, to be approved. Once the LEP was approved, the Council refused the DA and made an application to the Court to close the premises down. The Land and Environment Court found that there was no evidence of any environmental or other harm or disturbance caused by the brothel and the location in the business district was not near any schools or churches. But the zoning changes amounted to a technical breach of the Environmental Planning and Assessment Act. The Judge made it clear that he considered this a harsh result, but that the Court could not sanction a breach of planning laws. He postponed the closure of the brothel for eighteen months to enable the brothel operator sufficient time to relocate.[110]

Decades of research and evidence shows that almost all NSW councils have taken advantage of discretionary powers and DA processes to behave in an unreasonably hostile way towards brothels, massage parlours and sex workers broadly, even against the advice of their own

[109] 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

[110] SWOPNSW, ACON. (2002). Unfinished business, achieving effective regulation of the NSW sex industry. https://scarletalliance.org.au/library/swop-acon02

planning staff and lawyers. This is despite the fact that sex work is located across every suburb and city area in NSW.

> Planners often find themselves caught between community disputes and internal political machinations when development proposals for these activities are submitted for approval.[111]

Council discretion and decision making over DAs in NSW has caused harm. Academics and sex workers argue this is because when given the opportunity, councils actively exclude sex industry workplaces from civil participation. Evidence shows this has led to decades of unreasonable closure orders, unwanted media attention and lengthy court cases. In particular, requiring sex industry workplaces to apply for development approval draws attention and vilification to local scale-appropriate workplaces that research shows would otherwise operate without neighbours even being aware they were there.[112]

Private sex work CASE STUDY, NSW council approaches to private sex work

The impact of NSW council discretion over private workers in residential areas has included:

- some councils requiring private workers to apply for DAs, even though similar scale work in residential zones does not require DA approval,
- hiring private investigators to organise bookings with private workers to uncover them, arguably unethical and a breach of public trust.

[111] Papadopoulos, C. & Steinmetz, C. (2011). 'Why is sex so complex? An examination of commercial sex premises in the New South Wales planning system'. Paper presented at the *World Planning Schools Congress*, Perth, 4-7 July 2011. https://apo.org.au/sites/default/files/resource-files/2011-12/apo-nid60050.pdf

[112] Prior, J., Crofts, P. & Hubbard, P. (2013), 'Hiding immorality in plain view', *Geographical Research*, vol 51, pp. 354-363. https://doi.org/10.1111/1745-5871.12033

Academic Penny Croft explains further:

> …imposition of notification requirements and locational restrictions upon home businesses (sexual services) is tantamount to ensuring that these businesses will not be able to operate legally, sustaining the possibility of corruption and undermining occupational health and safety. This conflicts with the Legislature's intention in passing the Disorderly Houses Amendment Act 1995 (NSW)... [My research] concludes by arguing that only state policy and legislative reforms will be sufficiently broad to ensure home businesses (sexual services) are responded to as legitimate commercial premises.[113]

Conclusion, NSW cases studies

History from NSW indicates that the jurisdiction is still struggling with unworkable conflicts between the state and councils due to the issue of planning being unresolved in the 1995 decriminalisation Bill. The sex industry is caught in the middle. Early after decriminalisation, councils received confusing ministerial and departmental instructions about industrial zoning. Immediately, a haphazard situation of unchecked council discretion being exercised, costly DA disputes in court and unreasonably combative policies against private sex workers began. Academics suggest the solution lies with NSW state legislation, albeit almost three decades after the initial reforms. In the meantime the NSW sex industry operates in an environment of planning uncertainty, with an unknown portion of the industry non-compliant.

Bans in residential areas not legislated CASE STUDY, Western Australia

The 2010 the WA Liberal Government announced its intention to criminalise all sex work operating in residential areas.[114] Then Attorney General Christian Porter justified the approach, explaining 'a responsible government should always recognise that prostitution is a generally undesirable activity' (pg 3).[115] The proposed legislation (which eventually failed due to a lack of support in parliament) created uninformed public debate and front-page panic. Local councillors were inspired to create their own media-worthy statements on sex work in residential areas, albeit with no authority or ability to enact them:

> That Council: Recommends that the definition of residential area be amended to ensure that a prostitution business is not permitted in a zone of precinct where the predominant use is Residential, notwithstanding that residential uses may require planning approval under the applicable Local Planning Scheme. [116]

Did the council in this example intend to invite private sex workers in residential areas to apply for planning approval? Would a local sex worker consider doing so in such a combative climate? Christian Porter surely created a chilling effect by giving airtime to intense and misguided anti-sex work sentiment. WA still has not resolved this issue.

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[113] 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

[114] Australian Broadcasting Corporation. (ABC) (2010). 'Prostitution ban in residential areas', 25 November 2010. https://www.abc.net.au/news/2010-11-25/prostitution-ban-in-residential-areas/2351210

[115] Porter, C. C. (2010). Prostitution legislation reforms, Statement by [WA] Attorney General to Legislative Assembly, 25 November 2010.

[116] City of Stirling. (2011). Ordinary Meeting of Council, 2 August, 2011.

Council Discretion CASE STUDY, Queensland

When the Prostitution Act was passed in December 1999 small towns with populations below 25 000 were able to apply for ministerial exemptions to allow them to deny council approval for all licensed brothel DAs. In May 2001 the Leader of the Opposition, Mr Mike Horan MP, introduced a Private Member's Bill into Parliament to give all local government authorities the right to veto brothel applications but this was not passed. By June 2001, 102 towns in Queensland had sought and obtained approval from the Minister for Police to automatically refuse development approval for brothels in their towns. Bill Carter, the Chair of the Prostitution Licensing Authority, accused local authorities of being 'needlessly obstructionist' toward brothel applications:

> The major concern in relation to the operation of the legislation has really been the attitude of local authorities. The approach of [councils] has been extremely negative. It has been said that local authorities have sought to hijack the legislation and they've made it extremely difficult for applicants to get approval in respect of development applications made for premises.[117]

Media reporting claimed that 'The State Government will appoint a lawyer to override local councils which unreasonably refuse to grant brothel licences'.[118] By 2006-7 there were 204 small towns in Queensland that had applied for and received exemption from the laws to approve applications for brothels.[119] As a result, brothels were banned in more than 200 Queensland towns and only 12 of 77 councils have ever approved a brothel.[120]

As *7:30 Report* found in 2011:

> LISA MILLAR: Across Queensland, councils have faced outrage that the [licensing] laws exist at all.
>
> MAN AT MEETING: I would suggest our Council to speak on our behalf and to therefore reject the application because that's the will of the people of this community.

Queensland councils have discretionary power and they use it to undermine the intention of the current legislation. When investigated by council however, sex industry workplaces in Queensland are found to be compliant with mandatory amenity regulations because they operate at a scale that fits into the local neighbourhood. The history of problems with council discretion in Queensland are a strong argument against retaining or extending these prohibition/discretionary powers and for avoiding a council decision-making role in DAs.

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[117] Easton, R. & Fear, J. (2001). Queensland Parliamentary Library Research brief: 2001/29 The Prostitution Amendment Bill 2001 (Qld), p. 23.
https://documents.parliament.qld.gov.au/explore/ResearchPublications/ResearchBriefs/2001/2001029.pdf

[118] Easton, R. & Fear, J. (2001). Queensland Parliamentary Library Research brief: 2001/29 The Prostitution Amendment Bill 2001 (Qld), p. 27.
https://documents.parliament.qld.gov.au/explore/ResearchPublications/ResearchBriefs/2001/2001029.pdf

[119] Prostitution Licensing Authority (PLA). (2007). *Annual Report 2006-2007*, p.73.
https://www.pla.qld.gov.au/__data/assets/pdf_file/0003/674706/322120-pla-text-web.pdf

[120] Prostitution Licensing Authority (PLA). (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

Councillor harrassment of sex workers CASE STUDY, Gold Coast City Council

The systemic failures in Queensland to hold councillors to account for breaches of their own rules of conduct was unfortunately experienced firsthand by the Respect Inc Southport office between 2019 and 2020. Respect Inc believes the councillor in question was motivated by an illogical dislike of sex workers. For further details see pages 75-97 of the Gold Coast City Council Meeting Minutes dated 18 Feb 2020.[121]

The problem: Council discretion

- Sex work in QLD is not embraced by councils, with some councillors stepping outside of standard expectations of conduct to harass and intimidate with impunity.
- Sex work in NSW is not embraced by councils, with some taking extra measures to restrict or deliberately avoid implementing appropriate local planning approaches.
- Sex work in Victoria is not embraced by councils, even when amenity compliant, some have hired private investigators to help council 'find' sex work workplaces. The success or failure of the Victorian approach to planning in their new decriminalisation framework will not be known for many years, but relies on council goodwill because VCAT cannot strike down a local law.
- Sex work in Western Australia is not embraced by councils, with some passing vapid (if ineffectual) motions for the sake of signalling anti-sex work attitudes to voters.

Granting councils discretion over decriminalised sex industry workplaces in Qld will be a repeat of almost three decades of expensive and complex mistakes already made in NSW. Croft and Prior argue in their extensive 2012 research:

> Most notions about sex services premises presented to [NSW] councils and the LEC are predictive, estimating potential impacts of these types of businesses, rather than evaluating actual impacts by businesses.[122]

In Queensland, regardless of legislative intent, council discretion would allow arbitrary zoning and DA decisions based on myth instead of material evidence, politicisation of anti-sex work rules, an eagerness to over-regulate and 'identify' regardless of amenity, 'default' to having DAs heard in court and damaging ill-informed media in which council candidates are combative towards sex industry workplaces for perceived electoral gain.

Evidence to date demonstrates QLD councils and councillors already have the capacity and willingness to take a highly moral stance against sex work. If given discretion, they will be able to ignore their own planning staff tacitly or actively in order to pursue anti-sex work policies, with or without authority to do so, resulting in expensive and drawn-out court cases. Many workplaces could not afford to mount a court challenge. Hundreds of sex industry workplaces already amenity compliant and scaled appropriately will face barriers trying to obtain Qld council development approval if discretionary powers are legislated.

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[121] Gold Coast City Council. (2020). Council Meeting Minutes. 18 February 2020. https://www.goldcoast.qld.gov.au/files/sharedassets/public/pdfs/minutes-amp-agendas/council-20200218-minutes.pdf

[122] Crofts, P. && Prior, J. (2012). 'Intersections of planning and morality in the regulation and regard of brothels in New South Wales', *Flinders Law Journal*, vol 14, pp. 329-357.

It is irrefutable that in NSW the state planning instruments, statutory instruments and local planning instruments are used in a range of ways by different councils to exclude sex workers from some of the benefits of decriminalisation. If granted discretion, or allowed to decide size, number of rooms, number of workers or other arbitrary rules, Queensland councils will become the new site of marginalisation and targeted social exclusion of the sex industry.

Maintaining, extending or allowing councils discretionary power and decision-making roles over approvals in Queensland has the potential to replicate the failed current QPS and PLA framework, where ill-fitting laws and regulations are exercised simply because they exist. Council discretion after decriminalisation would allow the same, but based on location instead. Taking a chance on Queensland councils to 'do the right thing' is not a tenable solution given the weight of evidence against them.

Racism in planning

This problem becomes particularly pronounced when considering the planning needs of massage parlours. We know that the primary demographic working in the massage parlour sector is Asian and migrant women who speak English as a second language. Historically these sites are subject to regular raids by police.[123] Comparative research in Europe found council weaponisation of planning regulations to enforce specific and locally 'popular' racist misconceptions against migrant women:

> …in all instances [of the two European cities studied for this research], they [local council policies] have had similar exclusionary effects on sex workers – and especially on the migrant women among them… . local practices – including the ones that are seemingly different – ultimately converge in their ethos: they reinforce the socially constructed status of migrant sex workers as either law-breakers or trafficked victims to be subject to control and, in the latter case, also protection.[124]

The problem: Home-based business is not a neat fit with private sex workers

Isolation

Currently, evidence in Queensland shows that sex workers are not happy with having to work alone when working privately. As our 2022 survey shows, working in collectives is the preference of many. The Criminal Code 'Participating in the provision of prostitution' charge criminalises sex workers working together. Being forced to work alone is a safety concern for the sex worker community, as such forcing sex workers to have to choose every day between working legally or safely. Yet this is not a new issue for Queensland. Anne Edwards wrote in 2009:

> The regulatory framework currently in place is successful to the extent that it regulates licensed brothels. In a number of other ways, the framework is not working. Sex workers may be in a more precarious position now than they were when the legislation was first passed. Sex workers face particular occupational health and safety hazards. In Queensland, they cannot work in small groups to provide safety backup for one

[123] Murray. D. (2021), 'Seven arrested and $17k cash seized following police raids on Ipswich massage parlours', *NCA Newswire*, 30 Nov 2021. Garcia. J. (2020). 'Four massage parlours hit with unlawful prostitution charges', *News.com*, 16 Dec 2020.

[124] Ronco, A. (2020). 'Law in action: Local-level prostitution policies and practices and their effects on sex workers', *European Journal of Criminology*. 147737082094140. 10.1177/1477370820941406.

another unless they seek to register as a brothel.[125]

Lisa Millar interviewed a private worker in Brisbane for the *7:30 Report* in 2011:

> LISA MILLAR: Susan is a sex worker operating from a house in suburban Brisbane and living in fear.
> SUSAN, SEX WORKER: It would be nice to know that one could go to work and not be breaking the law. But under the current legislation, there is no way you can work and not break the law.
> LISA MILLAR: Susan shares the daily roster with other women, but that's illegal. Under the current laws, she should work on her own.
> SUSAN: On your own, if you have the wrong kind of person come in, what do you do? And how do you know from one phone call of giving out an address then, in fact, that person's going to be a normal person?[126]

The problem: 'Home-based business' is not the solution

If home-based business was adopted as a solution in the new decriminalisation framework, private and collective sex workers in residential zones would be forced to live on the premises in order to be compliant. There are many reasons why, for many sex workers, living on premises is not a viable option. For those who do live on premises, we have serious concerns about meeting the home-based business definition:

- Floor-space usage ratios might contradict the new WHS guidelines, depending on the type of location.
- Site inspectors compliance checking of private sex workers is a possible corruption risk, councils might use discretion powers to ramp up this kind of problematic oversight.
- In a collective of private workers it is not really feasible for the resident within the collective to always be on the premises, which raises compliance issues when the non-resident is taking bookings at the location.

The problem: Forcing sex workers to live on premises

There is strong justification for private sex workers to not be forced to live on premises:

- Desire to have a lifestyle that does not revolve around work 24/7,
- For confidentiality reasons some private sex workers prefer to be on site at their residential workplace when working, and off-site when not,
- Private sex workers with families may choose not to work at the family home,
- Socialising at a location separate from work is an important part of work/life balance for some private sex workers.

[125] Edwards. A. (2009).

[126] 7:30 Report. (2011). Australian Broadcasting Corporation, 2 April 2011.

There are many negative outcomes for private sex workers in residential areas if required to apply for DA approval for not living on premises:

- Confidentiality issues.
- Safety fears if known by neighbours to be a sex worker.
- Sex workers may avoid DA application for the above reasons, potentially missing out on the benefits of decriminalisation as a result because of non-compliance with council planning regulation and/or discretionary rules.

Solutions for brothels, massage parlours and other sex industry workplaces in centre zones

Brothels and massage parlours should be defined within Planning Regulations (2017) Schedule 6, similar to 2017 amendments to the Planning Act for Community Residence. Another option for massage parlours could be for them to remain defined as a health service.

For both of these options all the mandatory amenity regulations would still apply. The new sex work WHS guidelines would assist in the transition. Self-assessment should be supported by Respect Inc and relevant authorities. As with community residences, local governments have an enforcement role if the low-amenity profile of the activity changes. Room and staff number limitations are not required while amenity is maintained. Universal powers to protect against the negative impacts *of any business* on neighbours and community are retained by council. Respect Inc and relevant government agencies could be a touch-stone to support businesses to make improvements to return to amenity compliance, and liaise with council as required. WorkSafe rules and PCBU regulations would still apply, including existing powers of entry the same as for *any business*.

The term 'managed sex worker' is not a productive term for brothel/escort agency/massage parlour or private workers, regardless of the intention. It would accidentally apply to private sex workers organising bookings through carers, family members of clients living with disability and NDIS arrangements. It may also misrepresent and be a barrier to flexible sub-contractor arrangements in brothel workplaces.

If a brothel wishes to apply for a liquor licence, they will be subject to the same application methods, rules and approvals as any other location that is applying for an alcohol licence.

Solutions for escort work

Escort agencies already fit into the planning definition 'offices' (in centre zones) or 'home based business' (in residential zones). Sex work bookings do not take place on premises. Escort work by private sex workers should be covered by Schedule 6 'Material Change of Use', including when it is private workers supporting each other in a collective. All mandatory amenity regulations would still apply in the relevant zone, as would WHS guidelines and PCBU regulations.

Solutions for private sex workers

Private sex work in residential areas should be treated as a Material Change of Use matching Planning Regulations (2017) Schedule 6, Part 2, Section 2 (1). After extensive research, consultation and technical support from expert planning consultants, Respect Inc and DecrimQLD conclude that this is the only fair and workable solution for private workers in

Queensland. Mandatory amenity regulations would still apply, as would WHS guidelines and PCBU rules.

Currently, Material Change of Use allows for domestic violence support/accommodation services to operate without making themselves known to council, and without limits on floor-space usage, number of people on site or number of support staff as long as they comply with all amenity regulations. Legislated industrial codes apply as with any workplace, meaning disputes over WHS issues have opportunity for recourse to justice and civil arbitration. Importantly however, if the location does not contravene amenity rules, local governments do not have a regulatory role. If the usual low-amenity profile of DV shelters change, council can enforce regulation in the same way as with any other undertaking in a residential location. The same will apply to private sex work under the new framework.
Academic Penny Croft argued in 2012:

> ...sex workers and service providers, and council records of complaint [prove] that... home occupations (sex services) [in residential locations] can operate lawfully with minimal amenity impacts, and that this type of business can provide a positive work environment.[127]

Ongoing research by Penny Croft on NSW private sex work in 2015 reinforced her earlier findings regarding low amenity impact:

> ...working from home [residential zones] provides sex workers with opportunities for autonomy and wellbeing that are not available in other sex service environments, with minimal amenity impacts to the community.[128]

As mentioned above, the term 'managed sex worker' is not a productive term, regardless of the intention. It would accidentally apply to private sex workers organising bookings through carers, family members of clients living with disability and NDIS arrangements and could inadvertently exclude sex worker collectives from the benefits of decriminalisation.

Recommendation 34 (Q25-37): As all brothels are already compliant with amenity regulation and are scaled appropriately to centre zones they should be added to Planning Regulations Schedule 6 to avoid compliance barriers being created at a local government level.
Massage parlours could also be added to Schedule 6, or continue as health services.
Escort agencies in centre zones should be considered the same as other offices that do not have front-facing public access. In residential zones, escort agencies should be covered by 'Material Change of Use'.
Private sex workers, in collectives or not, should be covered as 'Material Change of Use' without specifications on number of workers or floor-space rules. Home-based business is not the appropriate definition.

[127] Croft, P. & Prior, J. (2012). 'Home occupation or brothel? Selling sex from home in New South Wales', *Urban and Policy Research Institute*, vol 30, no 2. https://doi.org/10.1080/08111146.2012.679923

[128] Prior, J., & Crofts, P. (2015). 'Is your house a brothel? Prostitution policy, provision of sex services from home, and the maintenance of respectable domesticity', *Social Policy and Society,* vol 14, no 1, pp. 125-134. doi:10.1017/S1474746414000335

These legislative solutions mean lengthy court battles will be avoided and high compliance can be expected. Amenity rules and all mandatory council regulations that impact all businesses in the relevant zone should be explained in the WHS guidelines and implementation supported by Respect Inc in partnership with relevant authorities.

The Qld Decriminalisation Act will include a consistency clause for new local laws (like the Victorian Act): '*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.'*

ADVERTISING & SEX WORK

Section 9 of 17 (pp129-136)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

CHAPTER 13: ADVERTISING SEX WORK

Q38 Should there be specific restrictions on the advertising of sex work and sex work businesses? Why or why not?

Q39 If yes to Q38, what should those restrictions be? In particular, should there be specific requirements about:

(a) advertising mediums (for example, should advertising sex work through radio or television or by film or video recording continue to be prohibited?);

(b) advertising on the internet;

(c) advertising employment opportunities for sex workers (for example, should publishing a statement intended or likely to induce a person to seek employment as a sex worker continue to be prohibited?);

(d) advertising sex work as massage services;

(e) size of advertising;

(f) images that may be used;

(g) wording that may be used;

(h) requirements for particular sex work service businesses; or

(i) any other requirements?

Q40 If there are specific advertising restrictions:

(a) how should a breach of a restriction be dealt with?

(b) who should be responsible for monitoring compliance and enforcing the restrictions?

Q41 Should there be specific requirements for signage for sex work businesses? If so, how should they be regulated?

No. There should be no specific restrictions on the advertising of sex work and sex work businesses. It is important that sex workers are able to describe their services and use the term 'massage' in advertising so as to be clear about consent, save time in the booking process and stay safe. There are adequate other laws and guidelines to cover advertising in a range of media, including television and signage, to protect community amenity as discussed below.

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 excessive amount of administrative work that was required, this process was stopped following a 2006 review of the legislation by the Crime and Misconduct

Commission.[129] Unfortunately, while the CMC relieved the PLA of their advertising approval burden, at the same time they increased the complexity of the advertising laws for sex workers by making eight recommendations for new requirements and offences about advertising using the term 'social escorts' and another seven recommendations for new offences about advertising generally.

Currently, the PLA publishes advertising guidelines that include approved and prohibited words, and both the PLA and police have powers to issue Penalty Infringement Notices (PINs), including a fine 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. Any form of advertising restriction maintained under the decriminalised framework will result in the same cycle of police targeting, entrapment and charges.

Charges have been laid against a sex worker in Queensland for advertising on her website services for a clearly marked tour (work trip) to be undertaken in New South Wales with services that are legal in New South Wales. Multiple sex workers have received PINs in Queensland for what is described to them as an advertising breach; however, as the infringement notice states a general offence and not what is incorrect on the advertisement it is almost impossible for someone to avoid re-offending.

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 participants were asked how their work lives would improve if they could use the term 'massage' and accurately describe their services in their advertising. Participants focused strongly on the positive impacts that this would have, using terms like *immensely, massively, amazing, critical, greatly impact, so much better, a lot, hugely* and *excellent* when referring to how their work lives and safety would be impacted if they could accurately describe their services and use the term 'massage' in their advertising. The strongest themes to emerge are: (i) the need to clarify the services provided, to
(ii) avoid time-wasting in the booking process, and (iii) ensure that the client understands upfront what services are provided, to (iv) obtain consent and avoid boundary pushing and potentially dangerous encounters based on misunderstandings by clients about what services are on offer.

This was repeated again and again in responses, which stressed the importance of clarity in negotiating consent in order to save time and avoid misunderstandings that could lead to boundary pushing, breach consent and decrease safety.

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

"*It just makes it really hard to convey what type of service you do and don't offer when I can't describe the service. A lot of time gets wasted explaining to the client over the phone or face to face and clients can become angry and violent if they arrive and you say you don't do a particular service." [Survey participant 22]*

"*Being able to be clear on boundaries and services with a client is very important so you aren't expected to do things you're not comfortable with. It would save so much time if the information was there on your profile and minimise irrelevant enquiries." [Survey participant 48]*

"Most of all it would simplify my life so much. Explaining all my services to each client takes A LOT of time and energy, time and energy I would rather use for work or for my free time, friends, family and hobbies. Not being able to clearly communicate services can also lead to misunderstandings which are, at best, annoying and a waste of time for me and the client, and at worse, could lead to aggression and violence." [Survey participant 57]

"I would be able to discuss services in advance to make sure the client and I are on the same page. This reduces risks of violence or aggressive clients, if they know what they're getting in advance. Accurate advertising means more happy customers and less aggression. It also allows communication to be straightforward which saves time and energy." [Survey participant 83]

"Clients actually knowing what to expect before they call would be a dream come true. It'd both save time and energy in explaining individually, as well as reduce the chances of a client becoming upset/angry due to differing expectations." [Survey participant 154]

Survey participants expressed their need to clarify services in advertising using phrases like: *accurately describe what I will and will not do, describe in detail, use explicit language, specifically what I do, honestly and thoroughly.* It was stressed that clear and explicit description is essential to *set boundaries* and obtain *consent.*

"Clear consent can only be established when services are advertised. It is a good way to see if someone respects your boundaries." [Survey participant 115]

"I think I would benefit from being able to state what I am really good at and more so what services I'm not providing." [Survey participant 23]

"Boundaries would be so much clearer! This means I can accurately describe what is available so there are no misunderstandings." [Survey participant 28]

"I am better able to set boundaries and establish what I will and will not do." [Survey participant 32]

"It would be nice to be able to accurately describe my services so clients clearly understand what is provided." [Survey participant 34]

"I would simply like to be able to state what services I provide so my clients know." [Survey participant 36]

"Using the correct terms eliminates any room for clients to demand more services, it eliminates confusion, and it allows us to stand firm on what we do and do not accept … because the advertisement is explicit in terms." [Survey participant 49]

"Accurate descriptions allow for transparency. Less room for misconception and issues." [Survey participant 198]

"Clarity of advertising helps to ensure your clients understand what they are getting, which means your clients are happy and less likely to be difficult." [Survey participant 200]

A very common complaint from survey participants was that not being able to adequately describe services in their advertising meant that clients did not have a clear understanding about what services were and were not being offered prior to contact, leading to frustrating and abusive encounters on the phone/text and potentially violent encounters in person.

"Being able to be clear about the services I'm offering is best practice, and lowers my risk of sexual assault as I'm able to be clear about what I do and don't offer." [Survey participant 38]

"It means the likelihood of a client raping or assaulting me for not offering a service they want is reduced as they'd know beforehand if it was available." [Survey participant 37]

"It would cut down the chance of conflict. Clients would know what I provide and would go elsewhere if they are looking for something different. I would also feel safer knowing there was a clear understanding communicated to the client before they contacted me." [Survey participant 6]

"...reduce the verbal abuse from clients who are shitty you don't do what they want. Or they booked you without checking and now you're there and they're potentially volatile." [Survey participant 51]

"This means that they may turn up to the booking to find that they aren't getting what they are expecting, which puts me in a position where I have to decide whether to provide a service I don't want to provide so that I don't lose income and / or anger the client, or not provide the service and risk retaliation from the client, whether in person or in the form of negative reviews, harassment over the phone or online, or other forms." [Survey participant 94]

"Being unable to describe my services accurately has created situations where I've had to negotiate in person with a disappointed client who may try to push my boundaries if they made assumptions that I would do a certain thing that I do not. Specific, accurate advertising enables us to state our boundaries and rates etc from

the start, ensuring we can avoid many conflicts and boundary pushing from the get go." [Survey participant 202]

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. Survey participants bemoaned the time wasted having to explain their services to every client and the inability to accurately market their services.

"It would cut out a lot of time wasting and confusion for clients. This is what I offer; this is why you are reaching out/interested in my service. Any other business advertises their services for the same reason." [Survey participant 148]

"I could clearly communicate my services and rates so that both myself and the client are in clear agreement." [Survey participant 183]

"I say i offer company and "sleepovers". that is extremely vague and leaves far too much ambiguity... i wouldn't try and sell a loaf of bread just describing it as "baked good". baked goods could mean a lot of different things!" [Survey participant 81]

"Having a detailed description of our services on the websites would make it easier for clients to know what they would be getting with the appointment, reduce frustration, and result in a more satisfactory experience for both client and provider." [Survey participant 87]

"It just makes it really hard to convey what type of service you do and don't offer when I can't describe the service. A lot of time gets wasted explaining to the client over the phone or face to face." [Survey participant 22]

"It is onerous and counterproductive to waste my and my client's time having to clarify services with every client. If every restaurant had to remove all menus, and waiters had to each day explain the menu verbally with every diner, then it would be considered absurd (and the cost would put many out of business, or needlessly limit their menu). Why put that absurdity on sex workers?" [Survey participant 40]

Survey participants who provide niche services (such as gfe, submissive, kink, bdsm) argued that it was particularly important for them to be clear and unambiguous in their advertising.

"I also engage in kink services as a submissive. That is incredibly vulnerable. Kink is a very broad term with so many different things people can do - and i guarantee i only do a small selection. It is really important that my advertising can clearly state my services to ensure there is no confusion and misunderstanding." [Survey participant 160]

"Because I provide BDSM and fetish services and not sexual services, it's so important for me to be able to describe my services so that the client understands the services they are getting, and so that they are not arriving expecting me to provide sexual services." [Survey participant 94]

A few survey participants mentioned that the advertising laws were even more problematic for diverse sex workers. Transgender sex workers need to clearly describe their services and migrant sex workers who have English as a second language may get caught up in semantics.

> *"It is also important for trans sex workers I am friends with. Their safety is undermined by the current advertising laws." [Survey participant 6]*

> *"...would be a big advantage for people who speak English as a second language etc." [Survey participant 55]*

> *"I feel sorry for people moving to qld or don't speak English well, it is really easy to get caught for a stupid law. I need to be able to boundary set with my clients with safety as the priority not worrying about if I am saying something as benign as the word massage." [Survey participant 100]*

Using the term 'massage' in advertising

Sex workers who do erotic massage need to be able to 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.

> *"What I do is mainly sensual erotic massages with happy ending and other extras." [Survey participant 2]*

> *"I do erotic therapeutic massage which would fall under the laws. It means I cannot accurately advertise my services. It would make a huge difference to be able to advertise what I do instead of having to use code words." [Survey participant 13]*

> *"Why shouldn't we be able to include massage in our services. Sex workers in every state and territory do." [Survey participant 204]*

Many erotic massage providers do not include full service sex work and they felt that not being able to use the term 'massage' at all in their advertisements meant they were confused with full service sex workers, and that it could even result in them being pushed into providing full service by a demanding client.

> *"I mainly offer erotic massage, preventing me to use it in my advertising is definitely a problem for me. Basically it means Im constantly screening full service clients on the phone, which puts a large drain on my work day. All avoidable if I could give a more accurate description of the massage I offer in my advertising." [Survey participant 18]*

> *"Describing massage services clearly would protect workers who want to make very clear that they do not offer other services. This has put them in positions of danger with clients who 'expect' sex since massage can't be said explicitly." [Survey participant 31]*

Maintaining advertising restrictions will leave sex workers open to police entrapment, something that survey participants did not want.

"I believe that sex workers should be able to advertise all of their services provided without fear of being on the wrong side of the law." [Survey participant 188]

"It would be nice to be able to accurately describe my services so clients clearly understand what is provided. It would also be nice to not fear police charges for accidental making a mistake in my advertising." [Survey participant 34]

"I would simply like to be able to state what services I provide so my clients know. It would... reduce the risk of being entrapped by police." [Survey participant 36]

National standards for advertising

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[130] and has been operating since 1998. A code has been adopted by the Australian Association of National Advertisers (AANA) to ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing to children in Australia. Existing advertising codes already regulate sexualised content in marketing to children.[131]

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. Laws that place prohibitions on the advertising of sex workers undermine the viability of their businesses. By contrast, New Zealand has removed all prohibitions relating to advertising with the inclusion of adverts being left to the editorial policy of individual publications.[132]

We further submit that restriction of sex workers' advertising is a contravention of section 15 of the HRA, which protects the right to recognition and equality before the law and the preservation of a person's enjoyment of other human rights without discrimination. It also interferes with sex workers' right to freedom of expression under section 21 of the HRA by significantly restricting the kind of advertisements we are able to publish.

As Australia already has a national standard that applies to all commercial advertising, the restrictions under the Prostitution Act amount to a sex work-specific restriction of advertising and there is therefore a potential for discrimination under the ADA.

Signage

Rules about advertising signage already exist.[133] Sex work workplaces in Queensland are already required to be compliant with these rules. Decriminalisation should allow sex industry

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

[131] 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

[132] New Zealand Government May 2008 Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act 2003, p. 39. https://prostitutescollective.net/wp-content/uploads/2016/10/report-of-the-nz-prostitution-law-committee-2008.pdf

[133] 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

FREEDOM & SAFETY FOR SEX WORKERS IN PUBLIC SPACES

Section 10 of 17 (pp137-150)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

CHAPTER 14: PUBLIC SOLICITATION

Q42 Should a person be prohibited from publicly soliciting for sex work? Why or why not?

Q43 If yes to Q42:

(a) Should public solicitation always be prohibited?

(b) Alternatively, should public solicitation be prohibited in particular circumstances only (like New South Wales and Victoria) and, if so, what should those circumstances be?

Q44 If public solicitation is prohibited, how should this be regulated? For example, by:

(a) laws that are about sex work;

(b) local laws;

(c) some other form of regulation?

Q45 Should a police officer be able to direct a person suspected of soliciting to 'move on'? If yes, in what circumstances should an officer be able to give this direction?

Q46 If publicly soliciting for sex work is prohibited or regulated, then should loitering in public for the purpose of soliciting be treated the same way?

The Consultation Paper references data on offences from a report from 2011, excluding the most recent 11 years and indicates that public soliciting is one of the most common charges.

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 QPS data show clearly that public soliciting offences have been very low—six offences in the last five years, which is unlikely to result in marked public amenity or nuisance.

Question 42:

No. The offence of public solicitation currently contained in the Prostitution Act 1999 (Qld) section 73 should be abolished. Prohibition is unnecessary and incompatible with the HRA (Qld).

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 decriminalisation.

Negligible public soliciting offences

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 3 offences.[135] 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 to be maintained or alternative laws or regulation created.
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.

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**

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."* [Survey participant 51].

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 the evasion of authorities has to be prioritised over safety strategies. These approaches limit the ability of 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 our 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

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

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.

When asked about preferred working options, there were few participants who chose street-based work as their first or second choice, but it was prominent as a fourth choice, indicating that some sex workers see it as a backup for times when they do not have access to other work options and/or cannot afford the setup costs to work privately.

> *"When I haven't had money for advertising I have wanted to do street work." [Survey participant 86]*

> *"I am a old lady can't really make much money in parlour I want to work at my house or my van as a captain [client] comes along." [Survey participant 159]*

> *"Yes I can't work how I want I can't work outside I get cops charge me." [Survey participant 159]*

Human Rights Act (HRA) incompatibility

Criminal laws against public solicitation, loitering and move-on notices are unlikely to be compatible with the HRA as they limit recognition and equality before the law (s 15), freedom of movement (s 19) as well as peaceful assembly and freedom of association (s 22) provisions. 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 meet 'necessary, justifiable and proportionate' criteria.

Question 43:
While we answered No to any continued criminalisation or restriction of public soliciting we are addressing question 43 primarily to explain the available evidence that supports our assertion that Queensland should not adopt the models of Victoria or New South Wales.

No. The offence of public solicitation should be entirely abolished, not partially abolished.

Should the position in New South Wales be adopted?

No. Currently in New South Wales, soliciting another person for the purpose of prostitution is permitted but expressly prohibited:

- in a road or road related area near or within view of a dwelling (a building intended for occupation as residence or capable of being so occupied, a building in a retirement village or any land occupied or used in connection with this type of building), a school, church or hospital; or,
- in a school, church or hospital; or,
- in a manner that distresses or harasses the person being solicited near, in, or within view of a dwelling, school, church or hospital. [136]

This has been the case since the *Summary Offences Act 1988* (NSW) was enacted in July 1988.[137] It is effectively the present-day equivalent of an offence inserted into the *Vagrancy Act 1902* (NSW).[138] The precursor to the offence in the *Summary Offences Act 1988* (NSW) s 19 was contained in the *Prostitution Act 1979* (NSW) from 1983. The impetus for the amendment was complaints from residents of Darlinghurst about increased activity by sex workers. In commending the amendment during the second reading speech in the Legislative Assembly, Minister Walker explained:

> The aim of this legislation is to ensure that persons who reside in basically residential areas are not subjected to the flagrant and unseemly aspects of prostitution, which causes severe inconvenience… the effect… will be to redirect what is essentially a commercial activity back into commercial and industrial areas.[139]

As noted by Edwards in her article in *Alternative Law Journal*, during the second reading speech for this amendment in the Legislative Council the Attorney General refers to the amendments being aimed at ensuring that soliciting for prostitution is confined to predominantly commercial and industrial areas.[140] It is to address 'inconvenience' of residents and 'every citizen is entitled to expect that what is essentially a commercial activity is not conducted in front of his or her house'.[141]

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[136] *Summary Offences Act 1988* (NSW) s 19, 3 (definitions).

[137] *Summary Offences Act 1988* (NSW) (Act No. 25 as made).

[138] See [19] per O'Keefe J in *Coleman v DPP* [2000] NSWSC 275.

[139] Second Reading Speech, NSW Legislative Assembly, Hansard: 29 March 1983 at 5244.

[140] Edwards, K. 'Soliciting: What's the go?' (1999) 24(2) *Alternative Law Journal* 76 citing NSW Parliamentary Hansard, Legislative Council, 30 March 1983, at 5446.

[141] Edwards, K. 'Soliciting: What's the go?' (1999) 24(2) *Alternative Law Journal* 76 citing NSW Parliamentary Hansard, Legislative Council, 30 March 1983, at 5446.

Critically, as New South Wales does not have human rights legislation equivalent to the Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic) or the HRA (Qld) (and did not at the time), these offences in the Summary Offences Act 1988 (NSW) were not required to be scrutinised for human rights compatibility before being legislated.

As a result, the human rights of sex workers were not appropriately considered.

Should the position in Victoria be adopted?

No. Although Victoria did recently remove some of the criminal laws pertaining to street-based sex work via the Sex Work Decriminalisation Act 2022 (Vic), it arguably did not go far enough and has effectively maintained and added to most aspects of the criminalisation of street-based sex work.

The Sex Work Decriminalisation Act 2022 (Vic) inserted new offences into the Summary Offences Act 1966 (Vic) at section 38B. These are offences for intentionally soliciting or inviting a person to engage in sex work in a public place that is at or near: school, education, care service or children's services premises, or children's services premises, or a place of worship between 6.00am to 7.00pm.[142]

There is an additional prohibition related to offences at or near places of worship at any time on a day prescribed by regulation (i.e. prescribed relevant dates of religious significance to the place of worship).[143] Intentionally loitering' for the purposes of soliciting or inviting a person to engage in sex work are offences at the same locations at these prescribed times/days.[144]

This approach to retain certain location-specific restrictions in Victoria (albeit limited by time period) was contested during the Victorian consultation period in the lead up to decriminalisation. Most stakeholders who were supportive of decriminalisation did not support the proposed restrictions continuing on street-based sex work occurring at or near schools and places of worship—the opposition to restrictions was based on arguments about worker safety and the need to address stigma.[145]

These arguments remain valid for street-based sex workers in Queensland.

Legislative history for Victorian position

The origins of the restrictions that continue in Victoria demonstrates that they originated in a period where different community standards prevailed and where a higher level of stigma towards sex work existed: both of which resulted in a lack of recognition for sex work as a legitimate form of work.

Prior to its repeal by the Sex Work Decriminalisation Act 2022 (Vic), the offence of street-based sex work was contained in the Sex Work Act 1994 (Vic) at section 13. It prohibited all street-based sex work and prescribed higher penalties (double penalty units) for street-based sex work occurring in or near specific locations: a place of worship, hospital, educational facility for children or public place regularly frequented by children in which children were present at the time of the offence.

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[142] Summary Offences Act 1966 (Vic) s 38B(1), 38B(3).

[143] Summary Offences Act 1966 (Vic) s 38B(3)(b).

[144] Summary Offences Act 1966 (Vic) s 38B(2), 38B(4).

[145] 'Consultation summary – sex work decriminalisation act 2022' available from: https://engage.vic.gov.au/sex-work-decriminalisation (accessed: 25 May 2022).

In all material respects, the offence in section 13 of the Sex Work Act 1994 (Vic) was identical to the offence originally contained in section 13 of the Prostitution Control Act 1994 (Vic) as assented to in December 1994.[146]

In the second reading speech for the Prostitution Control Bill 1994 (Vic), Attorney-General Mrs Wade made the following commentary:

> The fact that the government is introducing legislation to control prostitution does not imply government support for prostitution. **On the contrary, this government is opposed to prostitution in all its forms**.[147] (emphasis ours)

In this way, the restrictions on street-based sex work in Victoria—including the parts of the limitations that have been retained in the current offences in the Summary Offences Act 1966 (Vic) at section 38B—have their genesis in a time whn sex work was not viewed as legitimate work but rather as conduct that was inherently morally problematic. Retaining restrictions that are disproportionate and have been historically underpinned by these stigmatising and out-dated community attitudes is inappropriate in 2022.

The human rights analysis for the current Victorian position

Victoria has human rights legislation in the form of the Charter of Human Rights and Responsibilities Act 2006 (Vic) ('the Charter'). The Charter requires that all Bills introduced into a parliament in Victoria be accompanied by a statement of compatibility outlining whether, in the introducing Member's view, the Bill is or is not compatible with human rights and, if so, how.[148]

The statements of compatibility for the Sex Work Decriminalisation Bill 2021 (Vic) conclude that the Bill is compatible with the Charter and promotes the protection of human rights. It assesses that 'where rights are limited by the Bill, **the limitations already exist in the current legislative framework** and those limitations are reasonable and demonstrably justified having regard to the factors in section 7(2) of the Charter'.[149] (emphasis ours)

In relation to the provisions of the Bill for street-based sex work offences, the following human rights were identified as relevant and being promoted:

- Privacy and reputation;
- Recognition and equality before the law;
- Freedom of movement (promoted in some circumstances);
- Freedom of thought, conscience, religion and belief (potentially promoted);

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[146] The *Consumer Affairs Legislation Amendment Act 2010* (Vic) s 42, schedule 1 amended the then-*Prostitution Control Act 1994* (Vic) (later the *Sex Work Act 1994* (Vic)) to replace references to prostitution/prostitutes with references to sex work/sex workers. A clarifying amendment was made to section 13 by *Sex Work and Other Acts Amendment Act 2011* (Vic) s 4(2). A purpose of this amending Act was to '*continue the ban on street prostitution'*: Second Reading Speech, Prostitution Control Bill 1994 (Vic), Hansard: Legislative Assembly 21 October 1994 at 1454, available from: https://www.parliament.vic.gov.au/images/stories/volume-hansard/smaller/Hansard%2052%20LA%20V420%20Oct-Nov1994/VicHansard_19941021_19941109.pdf (accessed: 25 May 2022). A consequential amendment was made to the section by the *Children's Services Amendment Act 2011* (Vic) s 79, schedule.

[147] Second Reading Speech, Prostitution Control Bill 1994 (Vic), Hansard: Legislative Assembly 21 October 1994 at 1454, available from: https://www.parliament.vic.gov.au/images/stories/volume-hansard/smaller/Hansard%2052%20LA%20V420%20Oct-Nov1994/VicHansard_19941021_19941109.pdf (accessed: 25 May 2022).

[148] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 28.

[149] Sex Work Decriminalisation Bill 2021 (Vic) Statement of Compatibility, Legislative Council, Hansard 28 October 2021.

- Protection of families and children (potentially promoted).

In relation to the provisions of the Bill for street-based sex work offences, the following human rights were identified as relevant and potentially limited:

- Freedom of movement.

The justification provided for the limitation is as follows:

> While the retention of an offence in relation to street-based sex work at or near places of worship and certain places where children frequent may limit the ability of sex workers to conduct employment activities in areas of their choosing, thereby potentially limiting their right to freedom of movement **… this limitation would be considered proportionate, reasonable and necessary to promote the protection of children … and the right to practice religion**. Retaining the offence will ensure that community standards in relation to the protection of children and preservation of religious spaces is met. By including prescribed hours and days to the offence, the right is limited in the least restrictive way to promote the protection of children and right to practice religion. Further, any potential limitation on freedom of movement in this way is not one which restricts the rights of sex workers to access educational, health or social services, or to exercise cultural rights.[150] (emphasis ours)

Should the Victorian human rights analysis also be adopted in Queensland?
No. Queensland's HRA contains an equivalent provision at section 38 in relation to statements of compatibility for proposed legislation, and the following rights relevantly exist in the HRA(Qld) in similar or identical terms to those in the Charter:

- Privacy and reputation—section 25 of the HRA (Qld);
- Recognition and equality before the law—section 15 of the HRA (Qld);
- Freedom of movement—section 19 of the HRA (Qld);
- Freedom of thought, conscience, religion and belief—section 20 of the HRA (Qld);
- Protection of families and children—section 26 of the HRA (Qld).

However, it is respectfully submitted that this human rights analysis should not be adopted in Queensland. The Victorian analysis placed too much weight on a perceived risk to children (and the subsequent need to protect children from this perceived risk) and the rights of those wishing to practice religious beliefs, while not placing enough weight on the impact upon the human rights of sex workers.

What are the human rights impacts of only partially decriminalising the offence of public solicitation in Queensland (as in Victoria or New South Wales)?
In Queensland, the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.[151]

[150] Sex Work Decriminalisation Bill 2021 (Vic) Statement of Compatibility, Legislative Council, Hansard 28 October 2021.
[151] *Human Rights Act 2019* (Qld) s 13(1).

An act or statutory provision will be 'compatible with human rights' if it either does not limit a human right, or, only limits a human right to the extent that is reasonably and demonstrably justifiable in accordance with section 13 of the HRA (Qld).[152]

A non-exhaustive list of factors that may be relevant in deciding whether a limit on a human right is 'reasonable' and 'justifiable' is contained in the HRA (Qld) s 13(2). These factors are:

- The nature of the human right;
- The nature of the purpose of the limitation on the human right, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;
- The relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
- Whether there are any less restrictive and reasonably available ways to achieve the purpose;
- The importance of the purpose of the limitation;
- The importance of preserving the human right, taking into account the nature and extent of the limitation on the human right; and,
- The balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right.

Only partially decriminalising the offence of public solicitation in Queensland to mirror the position in New South Wales or Victoria limits the following human rights of sex workers in Queensland:

- Privacy and reputation—section 25 of the HRA (Qld);
- Recognition and equality before the law—section 15 of the HRA (Qld);
- Freedom of movement—section 19 of the HRA (Qld).

Privacy and reputation

The right to privacy and reputation is the sex worker's right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with, and not to have their reputation unlawfully attacked.[153] The scope of the right to privacy is very broad, and the Queensland Human Rights Commission considers that it may be relevant to laws that involve the surveillance of people.[154] In Victoria, Bell J in *Kracke v Mental Health Review Board (General)* [2009] VCAT 645 [619]-[620] interpreted the equivalent section of the Charter, with the scope of the right to privacy as equivalent to the interpretation of 'private life' in article 8 of the European Convention on Human Rights.[155]

Bell J explained in this Victorian case:

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[152] *Human Rights Act 2019* (Qld) s 8.

[153] Human Rights Act 2019 (Qld) s 25.

[154] Queensland Human Rights Commission. *Right to Privacy and Reputation factsheet,* available from: https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-privacy-and-reputation#:~:text=This%20right%20protects%20the%20privacy,is%20limited%20to%20unlawful%20attacks (accessed: 25 May 2022).

[155] Judicial College of Victoria, *Charter of Human Rights Bench Book*, 6.7.2 at [3]-[4] available from: https://www.judicialcollege.vic.edu.au/resources/charter-human-rights-bench-book (accessed: 25 May 2022).

> The purpose of the right to privacy is to protect people from unjustified interference with their personal and social individuality and identity. It protects the individual's interest in the freedom of their personal and social sphere in the broadest sense. This encompasses their right to individual identity (including sexual identity) and personal development, to establish and develop meaningful social relations and to psychical and psychological integrity, including personal security and mental stability. The fundamental values which the right to privacy expresses are the physical and psychological integrity, the individual and social identity and the autonomy and inherent dignity of the person.[156]

A sex worker's right to privacy may be impacted by the partial decriminalisation of street-based sex work. For example, if a person is a 'known' sex worker to police, then it may be the case that any interactions that the person has with others near a school or place of worship may viewed with scepticism as to whether or not they are committing an offence of public solicitation at that time.

Recognition and equality before the law

The right to recognition and equality before the law is the sex worker's right to: recognition as a person before the law; to enjoy their human rights without discrimination; to be equal before the law and entitlement to the equal protection of the law without discrimination; and, to equal and effective protection against discrimination.[157]

A street-based sex worker's right to recognition and equality before the law may be impacted if sex work is decriminalised in a manner that disproportionately affects street-based sex workers. For example, if a person who is a sex worker is attending a place of worship to exercise their religious beliefs or attending at a school for a non-work related purpose then this person's mere presence near these locations may result in unfounded community complaints or attention by police. Such complaints or attention may arguably arise out of discrimination underpinned by stigma rather than a genuine intention to ensure compliance with the public solicitation laws.

A street-based sex worker's right to equal protection of the law may also be impacted by partial decriminalisation due to a continued reluctance or fear to seek assistance from police if required due to the ongoing illegal status of the work that they undertake.

Freedom of movement

The right to freedom of movement includes a sex worker's right to move freely within Queensland, enter and leave Queensland, and to choose where to live.[158] The Queensland Human Rights Commission considers that this right may be relevant to laws that regulate the ability of people to be in public places.[159]

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[156] Bell J in *Kracke v Mental Health Review Board (General)* [2009] VCAT 645 at [619]-[620] as cited in Judicial College of Victoria, *Charter of Human Rights Bench Book*, 6.7.2 at [3]-[4] available from: https://www.judicialcollege.vic.edu.au/resources/charter-human-rights-bench-book (accessed: 25 May 2022).

[157] *Human Rights Act 2019* (Qld) s 15.

[158] *Human Rights Act 2019* (Qld) s 19.

[159] Queensland Human Rights Commission, *Freedom of movement factsheet,* available from: https://www.qhrc.qld.gov.au/your-rights/human-rights-law/freedom-of-movement#:~:text=Section%2019%20of%20the%20Human,to%20choose%20where%20to%20live (accessed: 25 May 2022).

A sex worker's freedom of movement would be impacted by the partial decriminalisation of street-based sex work in that by restricting their ability to engage in street-based work at some locations, the proposed legislation would have the consequential effect of preventing the street-based sex worker from entering those locations at all whilst they are working and/or travelling to/from their usual work locations. This limit on the locations in which they can work may also place practical limitations on the locations in which they choose to live.

The proposed partial decriminalisation may also have other unintended consequences upon a street-based sex worker's freedom of movement. For example, if a person is a sex worker who is 'known' to police, then they may be hesitant to travel to locations near a school or place of worship even for non-work related purposes out of fear of being stopped or questioned by police when doing so.

Are these limits on sex worker's human rights reasonable and demonstrably justifiable?

The question then becomes whether limits on these identified human rights for sex workers are reasonable and demonstrably justifiable, which is in essence a balancing exercise.

The purported need for criminal sanctions to ensure children are protected from street-based sex work and similarly the need for religious spaces to be insulated from street-based sex work reflect concerns that are significantly disproportionate to any risk. Inflated community concerns about these matters may be based in, and further perpetuate, stigma towards and about sex work.

Street-based sex workers make up less than 2% of sex workers in Queensland. Respect Inc's analysis of Queensland Police Service data for the last five years illustrates that there have only been six public solicitation offences committed in Queensland in this period under the existing scheme (which applies to all public places). As such, the number of solicitation offences is arguably minimal.

It is not accepted that complete decriminalisation of public solicitation, including near places of worship, would limit a person's right to freedom of thought, conscience, religion and belief, including the freedom to have or adopt a religion or belief of their choice; and the freedom to demonstrate the person's religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.[160] Individuals and religious communities will continue to be able to hold their varied views in relation to sex work.

However sex work, including street-based sex work, as a legal form of employment in secular Australian society should not be curtailed by any religious views about the appropriateness or otherwise of this work. The HRA (Qld) at s 20 provides a right to protection of religious belief and practices; however, it does not require the additional step to be taken to prevent those holding religious beliefs from encountering other individuals in society who are acting lawfully in a manner that runs counter to their religious belief or perspective.

Further, there are other ways in which the desired purposes can be achieved. For example, schools in Queensland are not public places and generally have other powers to exclude individuals from their grounds under various circumstances.[161]

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[160] *Human Rights Act 2019* (Qld) s 20(1).

[161] For example, see *Education (General Provisions) Act 2006* (Qld) s 334 'trespass'.

Q 44 Public soliciting cannot be policed by council

Making local councils responsible for policing street-based sex work will only transfer issues that currently exist between sex workers and police over to local councillors who are no better equipped to deal with sex work discrimination arising from stigma than the police.

We note that in New Zealand councils introduced by-laws to ban street-based sex work, most of which have now been reversed, but it was an attempt to introduce policy that clearly undermined the intention of decriminalisation.

Q 45 Move-on notices

The Queensland Police Service, under s 46 and s 48 of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA), are empowered to issue a 'move on' order if an officer reasonably suspects that, because of a person's behaviour, the person is soliciting for sex work in a public place or prescribed place (including a shop, school, child care centre, train station or licenced premises, other than a licenced brothel). The effect of this order is that the person directed must leave the public or prescribed place and not return for 24 hours.

Move-on notices are disproportionately 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 and low threshold, which lead to discretionary application by police.

The laws prohibiting public soliciting and empowering police to issue move-on orders to persons suspected of engaging in street-based sex work contravenes sex workers' rights to freedom of movement, imposing pressure on sex workers to relocate to industrial areas or other unsafe locations or face arrest.

Prohibition or laws seeking to control public solicitation and street-based sex workers are ineffective, create increased risks and barriers and can, in practice, force sex workers to conduct their work 'underground', in a manner that may compromise their safety.Our organisation is also aware of incidents where sex workers who work and live in the same area 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." [Survey participant 202].*

Any legislative instrument that places restrictions on street-based sex workers contravenes the rights of sex workers to recognition and equality before the law. Under this right all people, including those engaged in sex work, are entitled to be free from discrimination and all people have the same rights and deserve to be treated with the same level of respect.

In accordance with the right to equality before the law police powers, such as move-on powers, should not be discriminatory or applied in a discriminatory way, which they often are under the current legislative regime. This regime sets a very low threshold for what amounts to a 'reasonable suspicion' that a person is soliciting. This discrimination results in a general

acceptance of social stigma against sex workers, which impacts upon their access to other protected human rights.

Q 46 Loitering

Loitering offences should be repealed along with the public soliciting offences. Section 73 of the Prostitution Act 1999 (Qld), which criminalises soliciting also criminalises loitering in or near a public place, or in a place that can be viewed from a public place. Police move-on orders and loitering laws fail to recognise that sex workers are members of the community and there may be a multitude of legitimate reasons, aside from work, for sex workers to be in an area, such as medical, social or residential.

Police move-on orders directed at persons suspected of public soliciting may also have an indirect impact on a sex worker's freedom of association. They may wish to attend a public place with other workers as a safety strategy or to network with their peers. Denying sex workers the right to freedom of association can have obvious impacts on the safety of sex workers and access to mentoring, support networks and opportunities for advocacy and unionising.

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 of street-based sex work in Queensland is not comparable to New South Wales, Victoria or New Zealand, and move-on laws are not warranted—particularly where there is no evidence of a significant impact from 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/impact on the most vulnerable sex workers and members of the general community.

Recommendation 39:

Public solicitation should not be criminalised or restricted in Queensland as these approaches create significant harms and limit access to services. The small size of the street-based sex work sector and small number of offences does not justify limiting the human rights of these members of the Queensland community.

Recommendation 40:

There should be no state or council laws that limit the benefits of decriminalisation or limit the human rights of street-based sex workers. There should be no state or council law to prohibit any person (client or sex worker) from public solicitation and no police officer or council authority should have the power to 'move-on' a person for soliciting for sex work.

Recommendation 41:
A decriminalisation Bill should protect against local laws being developed that override the intention of decriminalisation.

Recommendation 42:
Repeal loitering and 'move on' notice laws and police powers as part of decriminalising sex work in Queensland.

Recommendation 43:
Public soliciting restrictions are likely to breach human rights protections under sections 15 (recognition and equality before the law), 19 (freedom of movement) and 22 (peaceful assembly and freedom of association) of the HRA.

EVALUATION OF NEW LAWS

Section 11 of 17 (pp151-153)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

CHAPTER 15: REVIEW OF THE NEW REGULATORY FRAMEWORK

Q47 Should there be a requirement in legislation to review the new regulatory framework for the sex work industry within a set period of time after decriminalisation? If so:

(a) who should conduct the review (for example, should it be carried out by a relevant government department or should a review committee be established and, if so, what should its membership be);

(b) when should the review begin; and

(c) what matters should the review consider?

Q48 If yes to Q47, should there also be a requirement to collect baseline data as soon as possible after decriminalisation commences? If so, who should collect that data and what data should they be required to collect (for example, data about the number of sex workers in Queensland and the nature of the environment in which they work)?

Review of the draft framework prior to release of QLRC report

Law reform of this level of importance and detail requires the QLRC to plan and resource sex worker organisations for technical expert input and consultation during the report drafting stage. Finally putting an end to the anti-sex work mentality that is so unfortunatley entrenched in Queensland law needs humility on behalf of the QLRC to fully value the knowledge held within sex worker organisations. *The Lancet* series on HIV explains, after reviewing 800 articles on the topic:

> Community empowerment is threatened by criminalisation and abusive practices that prevent sex workers from gathering and organising safely. At a minimum, governments should allow sex work organisations to exist and thrive without interference. They should engage with sex worker organisations to develop, implement, and assess policy…. Evidence-based, rights-based policy reform should be synergised with sex worker input to respond to, protect, and promote their rights. Sustained human rights surveillance is essential.[162]

At our consultation meeting it was indicated that there have been no decisions made at this stage on the framework and we appreciate that this phase of the process is to gather information in order to inform a framework. At the point when a draft framework is developed a review by sex workers and sex worker organisations would identify unintended consequences. For sex workers to be fully 'engaged about the issues that affect them' (QLRC 5.3, p.30) we suggest that we should have the opportunity to consult on the law reform proposals that come out of the review prior to them being published in the final report.

Post-implementation review

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.

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[162] Decker, M.R., Crago, A-L., Chu, S. K.H., Sherman, S. G., Seshu, M.S., Buthelezi, K., Dhaliwal, M. & Beyrer, C. (2015). 'Human rights violations against sex workers: Burden and effect on HIV, *The Lancet*, vol 385, no 9963, 2015, pp. 186-199, ISSN 0140-6736. https://doi.org/10.1016/S0140-6736(14)60800-X.

Baseline data for pre-decriminalisation was already tabled with the QLRC in November 2021 by Respect Inc. If Queensland was to follow other jurisdictions, it is expected the size of the various sectors of the industry will not undergo significant change. Respect Inc reports the raw data six monthly to Queensland Health. It is worth noting that Respect Inc does not have a funded policy position and without special resourcing the raw data remains without detailed analysis.

The legislation in Queensland will have to be followed by communication campaigns, health promotion, consultation, drafting and implementation of a WHS guideline, and training for relevant government agencies. If Queensland is able to avoid the staged approach adopted by Victoria, it would be reasonable to conduct a review five years after implementation. Passing the act through parliament should not be the date from which the five-year time span is measured.

Once the QLRC has considered submissions and its consultations and has developed a draft decriminalisation model it is hoped that there will be a phase of review with sex worker organisations to prevent unintended consequences of the approach.

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.

Recommendation 44:
Best-practice policy development includes consultation and engagement with the key stakeholders, sex workers.The discussion paper has sought critical feedback on aspects of the current framework and concepts to inform the direction of further work. We recommend the QLRC also consult with sex worker organisations in the development of a draft framework and when a draft Bill is developed.

Recommendation 45:
It would be appropriate to review the decriminalised framework no sooner than five years following implementation as long as Respect Inc is adequately funded to design and implement the review in partnership with WorkSafe and other relevant agencies.

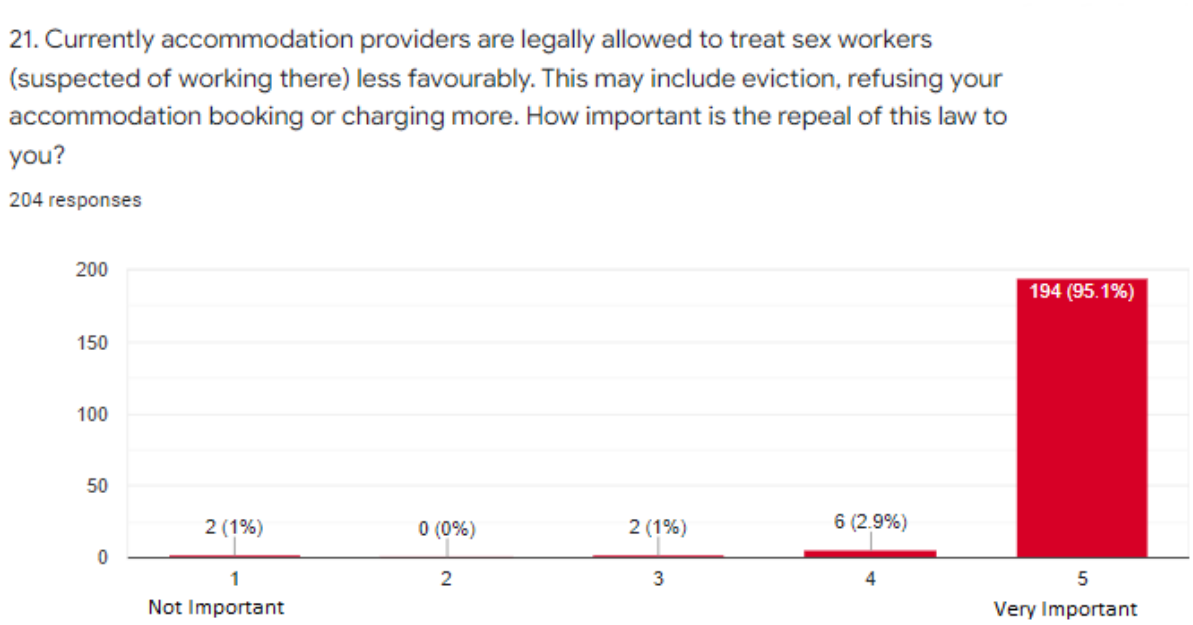
DISCRIMINATORY BARRIERS FOR SEX WORKERS

Section 12 of 17 (pp154-156)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

CHAPTER 16: DISCRIMINATION AGAINST SEX WORKERS

Q49 Is there anything you would like to tell us about how the *Anti-Discrimination Act 1991* could best protect sex workers against unlawful discrimination in light of the decriminalisation of the sex work industry?



Sex workers in Queensland experience extremely high levels of discrimination and significant barriers to reporting it. In our recent survey of 204 sex workers[163], 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. Appendix 3 illustrates the widespread nature of discrimination experienced by sex workers in Queensland.

Our submission to the Human Rights Commission review of the ADA provides extensive feedback on changes necessary to ensure sex workers in Queensland have adequate protection from discrimination and vilification as well as the importance of changes to the reporting process. The submission can be accessed from https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0018/38610/Sub.130-Respect-Inc-and-DecrimQLD_Redacted.pdf

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:

[163] Respect Inc. (2022). *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

- 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 to sex workers that they may be protected and can report discrimination.

Our position on this chapter is informed by consultations, workshops and online discussions 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 needed to shift discrimination and stigma.

Recommendation 46: Amend the AD Act to ensure robust anti-discrimination protections for sex workers are established as part of the frarmework. There is broad sector-wide consensus that the appropriate amendments to the AD Act should be:

- replace the 'lawful sexual activity' attribute with the new attributes of 'sex work' and 'sex worker'; and
- repeal current exemptions to the Act to remove lawful discrimination against sex workers in relation to accommodation (s.106c) and working with children (s.28).

Additional changes recommended by Respect Inc and DecrimQLD:

- change the complaints process to address significant barriers to reporting discrimination for sex workers;
- incorporate a change to enable Respect Inc as a representative organisation to make a complaint on behalf of a sex worker; and
- include 'sex work' and 'sex worker' as a recognised 'ground' for unlawful and serious vilification under sections 124A and 131A.

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

Scarlet Alliance Briefing Paper: Anti-Discrimination and Vilification Protections for Sex Workers (February, 2022) https://scarletalliance.org.au/library/Anti_Discrim2022

RELATED MATTERS

Section 13 of 17 (pp157-163)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

CHAPTER 17: OTHER MATTERS

Q 50 What are the potential impacts of a new framework for the sex work industry?

Q 51 What other supporting measures are needed as part of the decriminalisation framework? For example:

(a) education and training, such as:

i. public education and awareness programs to address stigma and educate the community about sex workers;

ii. information, education and training for sex workers and sex work business operators on their rights and obligations;

iii. 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) peer support and outreach services for sex workers on health and other matters.

Q 52 Is there anything else you would like to tell us about these or any other matters raised by the terms of reference to ensure the legislative framework for decriminalisation is appropriate and effective?

Q 50 Potential impacts of the framework. We only see positive impacts of decriminalisation as long as it is not undermined by local government, continuing licensing, criminal code laws or new penalties specific to sex work. However, it is difficult to respond to a question about the potential impact of the new framework without a clear draft framework. It is imperative that sex worker organisations are consulted on the new framework, separate to this early conceptual consultation phase. *See above (Q 47) 'Review of the draft framework prior to release of QLRC report'.*

Q 51 Supporting measures

Decriminalisation is the legislative step. Successful implementation of decriminalisation will also include funding to ensure:

- consultation with sex workers in partnerships with WorkSafe, for the development of WHS Guidelines
- appropriate translation of WHS guidelines into at least four languages
- creation of WHS promotional material in a range of media
- WHS guideline workshops for sex workers in at least four languages
- training for relevant government agencies
- communication strategies to educate the industry on the decriminalised framework
- ongoing peer education for sex worker understanding of the decriminalised framework.

Respect Inc will play a key role conducting training with public servants, engaging sex workers with the WHS drafting and guidelines and informing a wide range of sex industry businesses about their changing rights and responsibilities. Resourcing this work will be an investment in strong state-wide compliance.

Public education

It is important to consider that the discrimination and stigma that surrounds sex work will not reduce unless government authorities are prepared to conduct education campaigns to inform the wider community about the legal and human rights of sex workers. To this end it is not helpful to argue that 'decriminalisation does not mean sex work is actively encouraged' (QLRC p2). While we do not anticipate that the government will be actively involved in recruitment sponsorship campaigns with sex work businesses, it is important for the ongoing health, safety and wellbeing of sex workers that the government does not shy away from announcing that sex work is legitimate work and that sex workers have extensive rights under the law.

Q 52 Other matters you would like to raise

(1) Strippers should not be excluded from the review

Decriminalisation of sex work in Queensland should not exclude strippers who do sex work. Stripping including sex work occurs in many different locations including but not limited to adult entertainment venues. Excluding one sector of the sex work community from this review will likely result in a displacement of police focus from private sex workers to stippers,who are currently criminalised for offering or providing sexual services. The Terms of Reference for the review state:

> 5. For the purposes of this review, 'sex work' includes all forms of legal and illegal sex work, including but not limited to sex work in brothels and escort agencies, sexual services provided in massage parlours and other venues, sex work by sole operators and street-based sex work, but does not include an activity authorised under an adult entertainment permit issued pursuant to the Liquor Act 1992.[164]

Sexual services are specifically excluded from the adult entertainment permits in Queensland and are therefore not an activity authorised under an adult entertainment permit.[165] We therefore see no reason for the review to exclude decriminalisation of strippers who offer sexual services.

The Consultation Paper states:

> What falls outside our review?
> Our review does not include activities authorised by an adult entertainment permit under the Liquor Act 1992 (such as stripping, exotic nude dancing and nude wait staffing). These activities fall outside the definition of 'prostitution' and are regulated by a separate framework under liquor licensing laws. (1.19)

[164] Queensland Law Reform Commission (QLRC). (2021), Terms of reference:Queensland's laws relating to the regulatory framework for the sex work industry, pp. 3-4 https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0007/692026/tor-sex-work-industry.pdf

[165] https://www.business.qld.gov.au/industries/hospitality-tourism-sport/liquor-gaming/liquor/licensing/applications/adult-entertainment

This statement seems to imply that stripping only takes place in adult entertainment venues; however, we have provided advice to the QLRC previously that this is not the case. In addition, there is some confusion over where, post-decriminalisation, the law would stand regarding sexual services provided by strippers in adult entertainment venues if they do not, as considered by the QLRC, fit under the definition of 'prostitution'.

(2) Licensed brothel owners' ability to obtain and keep staff

Our recent survey participants who have experience working in licensed brothels were asked about what could be done to improve brothel workplaces and make it more likely that brothels could get and keep sex working staff. The following options were selected (in order of prominence):

Respect Inc and DecrimQld 2022 survey	
Q32 Brothels have said it is hard to keep sex workers working for them. What factors would significantly improve brothel workplaces? **74 responses**	**N (%)**
Increased rates or increased cut of fee	58 (78.4%)
Increased shift flexibility (shorter shifts)	54 (73%)
Better training for new sex workers when starting on shift	53 (71.6%)
Improved management (more supportive, less coercive, better trained)	51 (68.9%)
Improved facilities (larger, better supplied staff areas, better ventilation, light, WI-FI)	42 (56.8%)
Better or less restricted advertising (due to the law)	41 (55.4%)
Increased interaction with Respect Inc	41 (55.4%)
Increased privacy (particularly parking facilities)	40 (54.1%)
Better access to stigma-free health testing	38 (51.4%)
Increased security	37 (50%)
More rooms/More workers on shift	35 (47.3%)
Alcohol licensing	33 (44.6%)
More and better cameras	28 (37.8%)
Improved cleanliness, sanitation, quantity/quality of supplies (e.g. linens and towels)	28 (37.8%)

Survey participants were also invited to suggest other ideas that would encourage them as sex workers to work at a licensed brothel:

- ‘‘...if we are really subcontractors we should be treated as sub contractors.’’
- ‘‘...being able to advertise yourself that you’re working in the brothel would assist in bringing in clients specifically to see the advertised person only. You can’t currently say in your ad which brothel you work in. Having better options for swing shifts instead of set hours works better for some.’’
- ‘‘…regular/guaranteed shifts, superannuation payments, annual leave/sick leave benefits.’’
- ‘‘...managers who have done sex work - those who haven't are often disrespectful to us - and we are paying their wages.’’
- ‘‘...generally treating workers with respect.’’
- ‘‘...pay out credit card payments immediately not next week
- more money. They just don't have the clients coming in because of the laws being so restricting.’’
- ‘‘...managers should not be doing second checks.’’
- ‘‘...not having them only located in industrial areas which are poorly serviced by public transport, food options, often dark & deserted at night & basically reduce the chance of foot traffic/impulse purchasing.’’
- ‘‘...ability to bring clients in and out - more fluidly with clients, renting of rooms for periods of time, ability to use alcohol.’’

(3) Alcohol licensing and alcohol on premises at sex work businesses

Alcohol licensing is permitted in brothels in other states, but prohibited in Queensland. In fact it is an offence to have alcohol on the premises at all (The Act, s83), an extreme restriction which does not acknowledge the low-moderate risk that exists in brothels and in sex work generally. Just under half of the licensed brothel sex workers in our recent survey selected the option for brothels to have alcohol licensing (33/44.6%). This has increased considerably from the 5% of survey participants who noted it as a factor that would significantly improve the workplace and 10% who wanted it as a legislative change in the Respect Inc 2017 survey of licensed brothels.[166] As mentioned previously, if a brothel wishes to apply for a liquor licence, they should be subject to the same application methods, rules and approvals as any other business that is applying for an alcohol licence.

(4) Implementation of decriminalisation should not be split like Victoria

Unintended consequences have emerged from the decision in Victoria to implement decriminalisation in stages. The staged process is outlined on a Victorian Government information website indicating that the first stage commenced in 10 May 2022 and the second by December 2023.[167] Online resources to assist people, including sex workers and sex work business operators, to understand the changes to sexual health laws for sex work have been released. It is evident that the two-stage implementation has created a confusing legislative landscape. An example is that while all of the sexual health and prophylactic mandates for sex

[166] Respect Inc. (2017). *Regulating bodies: An in-depth assessment of the needs of sex workers [sexual service providers] in Queensland’s licensed brothels*, pp.16 & 20.

[167] Victoria Government Decriminalising sex work in Victoria online resource https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work

workers have been repealed the Department of Health is required to inform that 'Specific brothel and escort agency provisions in the Public Health and Wellbeing Act 2008 will not be repealed until the second stage of reforms on 1 December 2023. Brothels and escort agencies (including exempt small owner-operators) are expected to comply with these provisions until then.'[168] Individual sex workers will still be impacted by the definition of 'exempt brothel'.

(5) Expungement

Expungement for sex workers who have been entrapped and/or charged should be part of the shift from criminalisation to decriminalisation. People who have criminal records relating to sex work should not be discriminated against. Some sex workers live with sex work charges issued by corrupt police during the pre-Fitzgerald era, and many others with charges issued by police including through entrapment since then. Sex workers and their colleagues or family members can currently be charged with consorting offences under the Police Powers and Responsibilities Act 2000 (Qld) 53BAC, 53BAD, 53BAE and the potential for this must not continue after decriminalisation.

Some sex work charges are also 'disqualifying offences' under the Disability Services Act 2006 (Qld), Introduction Agents Act 2001 (Qld), Liquor Act 1992 (Qld) for an Adult Entertainment licence,Transport Operations (Passenger Transport) Act 1994 (Qld), and the Working with Children (Risk Management and Screening) Act 2000 (Qld). Under these laws they have been denied approval for taxi drivers' licences, Blue Cards, etc.

To further protect against unjust discrimination on the basis of historic charges an attribute may be framed as an 'irrelevant criminal record' in the ADA. This would provide protection from discrimination on the basis of a criminal record, where the sex work criminal record is not of relevance. In interactions with police, sex workers are interrogated on their sex work criminal history in circumstances where it is irrelevant, such as routine traffic stops.

(6) Other matters: Compatibility with the Human Rights Act 2019 (Qld)

Current sex industry laws pre-date the HRA 2019 (Qld). The Consultation Paper recognises, and our submission outlines, that many of these laws are likely to be incompatible with the HRA. Sex workers are part of Queensland community and should have the right to the same human rights protections as any other member of our community. Repeal of these laws as part of the decriminalisation of sex work is essential to enable sex workers in Queensland to access human rights.

Laws that are potentially equally inconsistent with the HRA as well as the ADA (Qld), and may result in the actual benefits of decriminalisation being undermined as well as actively limiting the human rights of sex workers, are considered in the Consultation Paper. The HRA lists relevant factors that may be considered when deciding compatibility. To be compatible with the HRA, new legislation must not limit human rights, or must only limit rights to a reasonable and demonstrably justifiable extent in a free and democratic society based on human dignity, equality and freedom.[169] After consultation and expert advice, we submit that a number of the proposals in the discussion paper do not meet this measure and we have discussed these in the relevant chapters.[170]

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[168] Victoria Department of Health Key issues - stage one health reforms https://www.health.vic.gov.au/preventive-health/key-issues-stage-one-health-reforms

[169] *Human Rights Act 2019* (Qld) s. 13(1).

[170] Ibid, s. 13(2).

Recommendation 47: See recommendation number 44, (Chapter 15 review)

There will be a need for funding to be provided to Respect Inc 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.

Recommendation 48: That adequate funding be allocated for Respect Inc to undertake public education and awareness programs and sensitivity education and training programs for officials and organisations who deal with sex workers. These stigma-reducing endeavours must be created in partnership with Respect Inc. In addition Respect Inc should be funded to produce or lead production of WHS guidelines and new peer education resources, translated into at least four languages and in a variety of formats, and conduct workshops and outreach for sex workers in a range of workplaces and in remote areas. It is also essential that Respect Inc is resourced to develop a communication strategy to support effective implementation of decriminalisation, so that sex workers and a wide range of sex industry businesses are aware of their changing rights and responsibilities.

Other matters 1-6
Recommendation 49: Strippers should not be excluded from this review and the benefits of decriminalisation
Recommendation 50: Decriminalisation will alleviate many of the factors that contribute to licensed brothels' inability to obtain staff and other perceived impacts.
Recommendation 51: Alcohol licensing should be available to sex work businesses under the same methods, rules and approvals as any other business
Recommendation 52: Implementation of the decriminalisation Bill should be conducted at the time legislation is passed, not as a staged or delayed process
Recommendation 53: Sex work charges should be expunged.
Recommendation 54: The new decriminalisation framework must not maintain or develop new laws that limit the human rights of sex workers in Queensland. The new decriminalisation framework should be compatible with the HRA (Qld) to ensure sex workers in Queensland have access to human rights.

CONSENT, POWER, AND THE LAW

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Section 14 of 17 (pp164-167)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

CHAPTER 18: FRAUDULENT PROMISE TO PAY A SEX WORKER FOR A SEXUAL ACT

Q53 In a decriminalised sex work industry, are Queensland's criminal laws adequate to deal with circumstances where there is a fraudulent promise by a person to pay money to a sex worker in exchange for a sexual act? Why or why not?

Q54 If no to Q53, what changes (if any) should be made to the Criminal Code to address this issue? For example, should the Criminal Code be changed:

(a) to widen the list of circumstances in section 348(2) that negate consent (and if so, in what way); or

(b) in some other way?

Q55 What other factors should we consider (if any) in recommending changes to the criminal law on this issue?

No, Queensland's criminal laws, specifically consent laws in section 348 (2), are not adequate to deal with circumstances where there is a fraudulent promise by a person to pay money to a sex worker in exchange for a sexual act. They are also not adequate to deal with the non-consensual removal or tampering with a condom during sex.

Consent

In sex work, one of the factors upon which consent is based is agreed payment for negotiated services. In the ACT, courts have found that when a person refuses or withdraws the agreed payment for sex the act constitutes rape, because consent for the sexual act was obtained fraudulently.[171] Equally, if a condom is non-consensually removed or tampered with consent is negated in any sexual interaction including sex work. The ACT has also introduced a provision related to the non-consensual intentional removal or tampering with a condom.

Fraudulent promise to pay Criminal Code 348(2)(e)

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. 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'.

[171] Elizabeth Byrne 6th February 2015 Man jailed for raping sex worker by pretending to pay with envelope stuffed with paper ABC News https://www.abc.net.au/news/2015-02-06/man-jailed-for-rape-after-tricking-sex-worker/6075496; Funnell, N. (2014). 25 November 2014 She agreed to have sex with him. But this man is guilty of rape. Mamamia https://www.mamamia.com.au/sex-worker-rights/

Stealthing

A number of organisations and indiviuduals in Queensland including Respect Inc have raised the issue of non-consensual tampering with, or removal of, condoms during sex. 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. Rather it requires an amendment to Chapter 32 of the Criminal Code (Qld) 1899 and should apply to any person.

In the QLRC *Consent and Excuse of Mistake of Fact Report* the Commission's view states:

> 6.142 The Commission acknowledges and shares the view expressed in the submissions that the sabotage or removal of a condom without the other party's consent is a concerning practice. It is aware of at least one instance where such an act has been prosecuted as rape in Queensland.
>
> 6.143 There may well be merit in considering whether this practice should be specifically dealt with as an offence in its own right. The Commission does not recommend an amendment to section 348(2) of the Criminal Code to include specific circumstances where the defendant sabotages or removes a condom without consent.[172]

However, since that inquiry there are a number of changes that we believe justify a reconsideration of this decision.

In October 2021 the ACT Parliament changed the Crimes Act to include a provision under the consent definition[173]: '67 (1) (j) participates in the act because of an intentional misrepresentation by another person about the use of a condom'.

In November 2021 the Victorian Law Reform Commission (VLRC) released its report *Improving the Response of the Justice System to Sexual Offences*, which recommends a change to Victoria's consent provisions to also make stealthing unlawful:

> The VLRC has also recommend that section 36(2) of the Crimes Act be amended to include a new circumstance in which consent is not given by a person where, having consented to sexual activity with a device to prevent sexually transmitted infections or contraceptive device, the other person does not use, disrupts or removes the device without the person's consent. The effect of this amendment would be to make explicit that such action, colloquially known as "stealthing", is a crime.'[174]

Stealthing is the non-consensual removal or damage of a condom during sex, or failure to use a condom if it was agreed to. As with the rest of the decriminalisation framework stealthing should be addressed within legislation applying to all Queenslanders and would not require sex work-specific laws.

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[172] QLRC Review of consent laws and excuse of mistake of fact Report (2020) https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0010/654958/qlrc-report-78-final-web.pdf

[173] Crimes Act (ACT) https://www.legislation.act.gov.au/View/a/1900-40/current/html/1900-40.html

[174] https://www.moores.com.au/news/government-affirms-proposed-consent-laws-what-this-means-for-your-school-or-organisation/

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.

Recommendation 55: Consent laws in the Criminal Code (Qld) 1899 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'.

Recommendation 56: Consent laws in the Criminal Code (Qld) 1899 Section 348(2) should be amended to include the provision 'by an intentional misrepresentation by another person about the use of a condom'.

APPENDIX 1
COMPARISON TABLE

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Section 15 of 17 (pp168-173)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

Appendix 1 Comparison Table

Comparison table—based on 7.19 from Consultation Paper

QLRC model of decriminalisation	DecrimQLD & Respect Inc model of decriminalisation	Comments
What might this look like in Queensland? 7.19 In Queensland, this would mean:	In Queensland, decriminalisation would mean:	Must repeal ALL sex-work specific legislation to improve health, rights and safety of sex workers, provide diverse work options and reduce opportunities for stigma-driven policy. Adopt a state-wide legislated solution to planning, fund the development of WHS guidelines and plan for a communication campaign.
	Modernise the definition of sex work to be: *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.*	Essential to modernise the definition and reflect the shift to recognising sex work as work, remove stigmatising and outdated terms like 'prostitution' and reflect what sex work is in 2022 in Queensland and what it is not. Sex workers do not offer ourselves or our bodies for the 'use' of another person. Current definition undermines critical understandings of consent in a sex work setting. The definition does not recognise sex work as work and that sex workers provide a wide variety of services, which are better captured by the definition used in the NT Sex Industry Act 2019.
• repealing the sex work offences in chapter 22A of	- repealing **all** offences in chapter 22A of the Criminal	A decriminalised framework extends current workplace,

the Criminal Code that are not needed;	Code;	human rights and universal protections to sex workers, importantly replacing all specialised crimes and exceptional police powers currently attached to sex work.
• repealing all or parts of the Prostitution Act and Prostitution Regulation;	- repealing **all** of the Prostitution Act and Prostitution Regulation; amend other Acts to remove 'exemptions' or 'disqualifications' based on Criminal Code and Prostitution Act offences - this will include public health laws so that there are no criminal laws mandating sexual health testing, use of condoms or criminalising working with an STI - WHS laws will cover provision, use and training on PPE (including condoms).	A successful decriminalised framework is stronger without licensing or certification requirements that divide the industry. The model should be designed to maximise compliance. Barriers to participation should not be included in the new framework.
• keeping the offences in chapter 22A of the Criminal Code or the Prostitution Act that may still be needed, with necessary changes, to protect against commercial sexual exploitation;	- again, repeal **all** of chapter 22A of the Criminal Code and the Prostitution Act. - no addition to Child Employment Act, repeal of s8B (Social escort).	Sufficient laws, not specific to sex work or the sex industry, exist to address these matters for persons who do not have the capacity to consent. Criminal laws specific to sex work would maintain a role for police in the homes and workplaces of sex workers and as such are incompatible with promoting compliance. For example, S229G 'procurement' was previously used to entrap sex workers and will be used again if maintained. Existing protections against sexual abuse, sexual

		assault, and exploitation in the workplace will be extended to sex workers in the new framework.
• considering the role of police and changing sections of the Police Powers and Responsibilities Act 2000 that are not needed;	- repeal **all** police powers in relation to sex work including move-on powers s46, powers related to consorting for offences 229H,229HC 229I, 229K - police maintain the same powers they have over all people in the community - existing laws which apply to everyone remain in place.	There should be no role for police in regulating sex work workplaces or sex workers. The only role police should have is as protectors of sex workers.
• making any consequential changes to general laws that apply to workers and businesses, such as the Work Health and Safety Act 2011, Public Health Act 2005 and Planning Act 2016, so they apply in a suitable way to sex work; and	Amend other Acts to remove 'exemptions' or 'disqualifications' based on Criminal Code and Prostitution Act offences. WHS Act 2011 and Regulations do not need legislative change. PCBUs include sex work businesses and operators are covered as PCBUs PCBUs required to: - ensure provision, use and training on use and storage of PPEs (including condoms). - Allow for sex workers to refuse a client where the work would cause psychological or other harm. However reference to Operations Standards Manual removed - Planning Act reference to brothels repealed - State implemented planning protections needed	There will be no need to make changes to the Work Health and Safety Act and Regulations.

	to replace (and not replicate) current discretionary powers of local councils. Amend the ADA (Qld) 'lawful sexual activity' attribute to be 'sex work' and 'sex worker'. Repeal exemptions s.28 and s.106C of AD Act. Vilifications grounds amended to incorporate 'sex worker' and 'sex work' under sections 124A and 131A. Amendment to Criminal Consent laws in the Criminal Code (Qld) 1899 Section 348(2) should be amended to include the provision 'by an intentional misrepresentation by another person about the use of a condom'. 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'.	The ADA (Qld) does not currently provide discrimination or vilification protection for Queensland sex workers: - when the person is a sex worker without the status of a 'lawfully employed' sex worker; and / or, - the alleged discrimination is based on the activity of engaging in sex work, as opposed to their status as a sex worker. Exemptions to the Act allow law discrimination against sex workers in relation to accomodation and employment and should be repealed. 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.
• including any new laws or other measures that might be needed to address particular issues and make	Expungement of all historic sex work offences.	Expungement of historic sex work charges are necessary for sex workers to avoid ongoing repercussions that

sure rules and protections apply in the best way.	Amendments to other Acts that describe exemptions and disqualifications for sex workers under the "prevent consorting offences" (Police Powers and Responsibilities Act 2000 (Qld) 53BAC, 53BAD, 53BAE) and Prostitution Act: - Public Health Act 2005 (Qld) Section 88 (3), a - Disability Services Act 2006 (Qld) Sch 2, 4 - Introduction Agents Act 2001 (Qld) s21 Sch 1 - Liquor Act 1992 (Qld) 107E, Adult entertainment licence, Liquor (Approval of Adult Entertainment Code) Regulations 2002 (Qld) - Working with Children (Risk Management and Screening) Act 2000 (Qld) Sch 2,4,6 - Transport Operations (Passenger Transport) Act 1994 (Qld) Sch 1A (1,2).	impact their lives. Amendment of relevant Acts that mention sex work offences (including consorting laws) as exemptions from rights to privacy, or as disqualifying offences preventing eligibility to hold licences and permits in Disability employment, Introduction Agencies, Adult Entertainment, Transport and Child care (Blue card) industries.
	Decriminalisation Bill aligns with the HRA (Qld).	Sex workers should have access to Human Rights equivalent to other Queenslanders. The decriminalisation Bill should not include provisions or sections that limit the Human Rights of sex workers.

APPENDIX 2
LITERATURE REVIEW

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Section 16 of 17 (pp174-178)

from the joint submission responding to the QLRC
'A framework for a decriminalised sex work industry
in Queensland' Consultation Paper WP 80'

Appendix 2 Peer Education Literature Review

Findings:
Peer education within a community development model is an evidence-based approach creating reliable sexual health outcomes for sex workers, clients and the wider community in Australia and other countries. The implementation of sex worker peer education programs within a community development model has a causal relationship to the maintenance of low rates of STIs and BBVs amongst sex workers in Australia and other countries. The decriminalisation of sex work in NSW increased the reach of health promotion messages.

Harcourt and Donovan
The earliest body of research relevant to above findings is that of Christine Harcourt, Basil Donovan and their colleagues in New South Wales who studied sex worker HIV and STI prevention behaviour and corresponding epidemiology, and the relationship to peer education programs and decriminalisation.

The initial focus was on community development approaches of sex worker organisations and subsequent impact on law reform and public health.[175] Among other factors, they studied the relationship between the 'formation and funding of community organisations, peer education and support' and the 'remarkable improvements in the urban female sex industry' between 1979 and 1995. They drew this conclusion by examining data on condom use and sexually transmissible infection (STI) rates alongside a timeline of peer education activity by sex worker organisations.

In 1999, Harcourt described the community development approach as a 'mature and effective response of sex worker organisations… to the threat of HIV/AIDS'[176] (p. 36). In 2000 Harcourt published an international survey of the services available to sex workers in sexual health clinics around the world and epidemiology data analysis from the sex worker clinic at Kings Cross' Kirketon Road Centre.[177] The success and extremely low rates of HIV among sex workers in New South Wales was explained in relationship to the sophisticated community development health promotion peer education work of SWOPNSW (funded by NSW Health).

The following year a major study in Sydney asked about the impact of decriminalisation on the health of Asian-language background migrant women sex workers. The research team had access to Sydney Sexual Health Centre migrant sex worker data from 1993 and 2003, looking at pre and post-decrim work conditions, demographics and sexual health epidemiology. Their conclusions were:

[175] Donovan, B. & Harcourt, C. (1996). 'The female sex industry in Australia: A health promotion model', *Venereology*; 9 (1): 63-67.
[176] Harcourt, C. (1999). 'Whose morality? Brothel planning policy in South Sydney', *Social Alternatives,* vol. 18, no. 3, pp. 32–36.
[177] Harcourt, C. (2000). 'The sex industry and public health policy in New South Wales, 1979 to 1996: A case study in health promotion', PhD thesis, University of New South Wales, Sydney.

> Positive changes have occurred in the conditions of Asian female sex workers surveyed over 10 years in Sydney. Maintaining current levels of health service delivery will ensure continued improvements in health and workplace conditions and address inequalities between language groups.[178]

This was followed by a 2010 research project by a group of credible and respected public health academics (including Christine Harcourt), which concluded that 'decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers'[179] The work found strong relationships between low HIV and STI rates among sex workers and sex worker peer education health promotion work within the context of decriminalisation. When funded sex worker organisations in this literature prioritised sex worker specific needs, Donovan and Harcourt describe the implementation of this approach as 'peer education in a work-site and culture-specific way.' Concurrent examination of public health policy demonstrated that public servants in NSW still faced challenges when trying to understand the value sex worker organisations placed upon this community development approach. It remained difficult for bureaucrats to argue for sex worker organisation funding through government channels, even armed with dozens of peer-reviewed articles of local evidence.

Donovan and Harcourt note that:

> Community organisations should and do set their own agendas: it sometimes takes vision on the part of health authorities to see the value of this process, and talent to sell it to their political supervisors.

Cornish and Campbell

A 15-year examination of community development health promotion work by sex worker organisations in India and South Africa found that sex worker leadership and peer education to be the main factors in the production of strong, measurable health outcomes for sex workers. A community-controlled peer education progam (Sonagachi, run by sex worker organisation Durbar in Kolkata, India), produced 'sustainable' results for sex worker health compared to a project not run by sex workers and without a community development approach (Summertown, South Africa), which had been 'disappointing'.[180] To benchmark these conclusions the same research team utilised the Sonagachi data as a comparison to a second South African project, this time for volunteer HIV carers in Entabeni. Once again they found the Entabeni project work (not controlled by the community and without a community development approach) was unsuccessful in their efforts to create improved health outcomes compared with Sonagachi. The 'enabling environments for transformative communication' by Sonagachi were a key factor in the viability of health outcomes, and sex worker leadership

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[178] Pell, C., Dabbhadatta, J., Harcourt, C., Tribe, K. & O'Connor, C. (2006). 'Demographic, migration status, and work-related changes in Asian female sex workers surveyed in Sydney, 1993 and 2003', *Australian and New Zealand Journal of Public Health*, 30: 157-162. https://doi.org/10.1111/j.1467-842X.2006.tb00110.x

[179] Harcourt, C., O'Connor, J., Egger, S., Fairley, C. K., Wand, H., Chen, Marcus, Y., Marshall, Lewis, Kaldor, John, M. & Donovan, B. 2010. "The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers", *Australian and New Zealand Journal of Public Health,* vol. 34, no. 5, pp. 482–486. doi:10.1111/j.1753-6405.2010.00594.x.

[180] Cornish, F. & Campbell, C. (2009). 'The social conditions for successful peer education: A comparison of two HIV prevention programs run by sex workers in India and South Africa', *American Journal of Community Psychology,* no. 44, pp. 123–135. doi:10.1007/s10464-009-9254-8.

within the Sonagachi project deployed sex worker knowledge in ways that other projects, without proper consultation or leadership from the community, were unable to achieve.[181] Fearing that there may be cultural differences between Indian and South African HIV and STI health promotion campaigns that they could not account for, the research team then gathered data during six months of fieldwork on outreach with two sex worker health projects in India, one in west India, the other in east India, concluding once again that sex worker organisations run 'intelligent responses' that' resonated with participants' identities and goals'."[182]

The Lancet

The most rigorous academic work significant to this discourse is the widely accepted findings from a systemic review of research on sex worker health organising and HIV rates, published by *The Lancet* in 2015.[183] The paper compares HIV and STI-related statistics emerging from projects that had implemented a community-led approach with those that had not, analysing data from 22 published articles on eight research projects conducted in India, Brazil and the Dominican Republic between 2003 and 2013, using indicators formed by case studies of sex worker organisations in Kenya, Burma, India and Brazil. Further detail was provided by examining over 80 practice-based documents, seeking to answer the question 'Is community empowerment effective?'.

The authors found:

> A community empowerment-based response to HIV is a process by which sex workers take collective ownership of programmes to achieve the most effective HIV outcomes and address social and structural barriers to their overall health and human rights.

and:

> Community empowerment approaches in sex workers have had important successes tackling social and structural constraints to protective sexual behaviours and, as a result, reducing behavioural susceptibility to HIV in the context of sex work.

From *The Lancet* paper:

> Despite the promise of community empowerment approaches to address HIV in sex workers, formidable structural barriers to implementation and scale-up exist at various levels. These barriers include regressive international discourses and funding constraints; national laws criminalising sex work; intersecting stigmas; and

[181] Campbell, C. & Cornish, F. (2011). 'How can community health programmes build enabling environments for transformative communication? Experiences from India and South Africa', *AIDS and Behavior,* vol. 16, no. 4, pp. 847–857. doi:10.1007/s10461-011-9966-2.

[182] Cornish F., Campbell C, Shukla, A. & Banerji, R. (2012). 'From brothel to boardroom: Prospects for community leadership of HIV interventions in the context of global funding practices', *Health Place.* May;18(3):468-74. Doi: 10.1016/j.healthplace.2011.08.018. PMID: 22469531.

[183] Kerrigan, D., Kennedy, C. E., Morgan-Thomas, .R., Reza-Paul, S., Mwangi, P. , Win, Kay Thi, McFall, Allison, Fonner, Virginia, A. & Butler, J. (2015). 'A community empowerment approach to the HIV response among sex workers: Effectiveness, challenges, and considerations for implementation and scale-up', *Lancet,* vol. 385, no. 9963, pp. 172–85. doi:10.1016/S0140-6736(14)60973-9.

> discrimination and violence such as that linked to occupation, gender, socioeconomic status, and HIV.
>
> Together, this literature suggests community empowerment process should be envisioned, shaped, and led by sex workers themselves if it is to be effective and sustainable in reducing sex workers' risk for HIV and promoting and protecting their health and human rights.
>
> Despite these barriers, sex-worker organisations have developed innovative and effective strategies to address the multi-level challenges they face in the implementation of community empowerment initiatives to promote their health and human rights. These efforts need increased financial and political support if they are to advance... Our findings emphasise the deep-rooted paradigmatic challenges associated with expansion of community empowerment-based responses to HIV in sex workers. Increased support is needed from donors, governments, partner organisations, and other allies to enable sex-worker groups to effectively and sustainably overcome barriers to implementation and scale-up of a community empowerment approach.

The Lancet *HIV and Sex Workers* series of July 2014, which was published to co-incide with the 20th International AIDS Conference (AIDS 2014) in Melbourne, was a call to action acknowledging:

> …legal environments, policies, police practices, absence of funding for research and HIV programmes, human rights violations, and stigma and discrimination continue to challenge sex workers' abilities to protect themselves, their families, and their sexual partners from HIV.[184]

This call to action has been heard in Victoria with the repeal of all criminal laws covering the sexual health of sex workers and the historic funding of a sex worker community-based peer education program in that state for the first time in two decades.

[184] Beyrer, C., Crago, A-L., Bekker, L-G., Butler, J., Shannon, K., Kerrigan, D., Decker, M.R., Baral, S.D., Poteat, T., Wirtz, A.L., Weir, B.W., Barre-Sinoussi, F., Kazatchkine, M., Sidibe, M., Dehne, K-L., Boily, M-C., Strathdee, S.A. 2014 An action agenda for HIV and sex workers pp. 101-114.

APPENDIX 3
ANTI-DISCRIMINATION EXAMPLES

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Section 17 of 17 (pp179-181)

from the joint submission responding to the QLRC
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Appendix 3 Anti-discrimination examples

Sex workers are commonly discriminated against in the areas of provision of goods and services, especially housing/accommodation, health care, financial services and online platforms, police services, advertising and education.

These are a sample of the areas of discrimination reported to Respect Inc

Finance	Banking facilities such as Eftpos and loans being refused.
	Accounts being closed or refused without notice or cause.
	Insurance companies refusing coverage for life insurance or income protection. As Workcover QLD still does not provide coverage to sex workers within brothels, these sex workers continue to be recognised as independent contractors.
Education	Schools refusing children of sex workers to be enrolled.
	Training providers refusing to acknowledge the skills and knowledge gained as a sex worker or refusing enrolment by 'out' sex workers.
Community groups	Churches and clubs refusing enrolment or membership.
Welfare programs	Community services refusing to provide assistance: ● Forms of aid such as Emergency Relief Funding ● Children/family support programs ● Homeless outreach charities ● Domestic violence support services
	Homelessness support services where evictions upon discovery of sex worker status or discovery of sex work activities outside of the housing provided occur regularly.
	Children's community services disadvantaging families where one family member has identified as a sex worker.
	Centrelink threatening to cut off payments due to sex work.
	Centrelink-associated job providers not acknowledging that sex work is a valid form of empoyment.
Media	Advertising media charging more for sex work ads and refusing to charge on account, insisting on pre-paid accounts and refusing to allow the option of opting out of addtional, expensive online advertising.
	Vilifying media articles.
Policing	Refusal to take reports across a variety of criminal actions towards

	sex workers, using stigma and discrimination to drive unbeliveablity of the sex worker making the report.
	Accusing sex workers of conducting illegal activity due to lack of knowlege on sex work laws.
Employment	Where a person is dismissed or harassed until they resign due to knowledge of their past or current sex worker status.
	Refusal to grant Blue Cards to allow employment in sectors that work with minors if a person discloses their sex work.
Accommodation	Eviction.
	Refusing an accommodation booking.
	Charging more per night, additional fees.
	Inability to rent a premises or house due to stigma and discrimination around sex workers being bad tenants or attracting more traffic to the location.
	Adding sex workers to a banned list.
	Supplying untrue or derogatory references to other housing or accommodation providers.
Health	When sex worker status is discovered refusal to continue with diagnostics unless an STI test is performed.
	Obsessive focus around sexual health, STI's and BBV's.
	Mental health professionals blaming sex work for a broad range of health conditions, regardless of the sex worker's experiences.
	Recommendations to stop work as the remedy for all difficulties or diseases.