

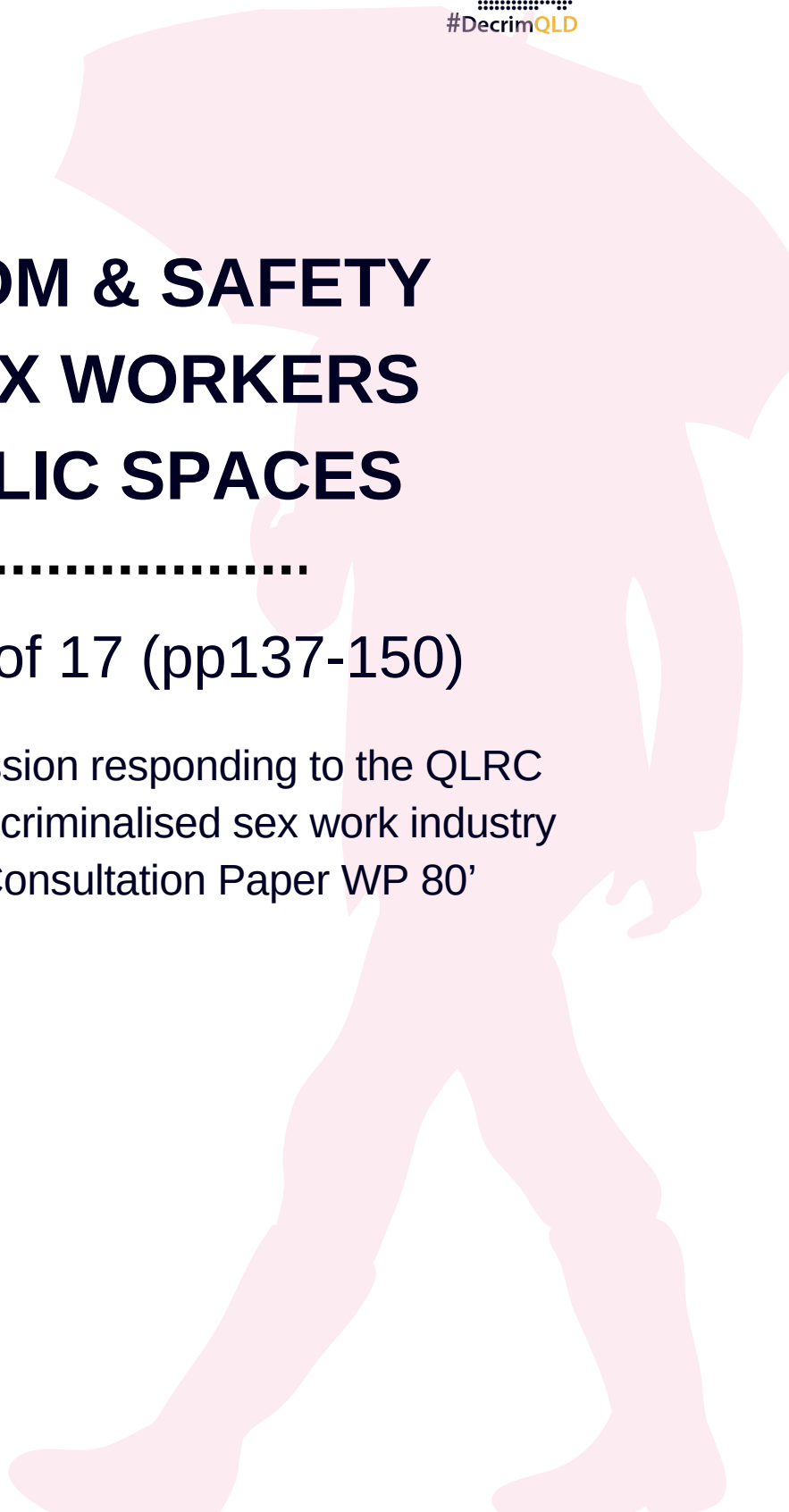


# **FREEDOM & SAFETY FOR SEX WORKERS IN PUBLIC SPACES**



**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.<sup>135</sup> 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
<b>Last 5 years total</b>	<b>6</b>

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

<sup>135</sup> 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.<sup>136</sup>

This has been the case since the *Summary Offences Act 1988* (NSW) was enacted in July 1988.<sup>137</sup> It is effectively the present-day equivalent of an offence inserted into the *Vagrancy Act 1902* (NSW).<sup>138</sup> 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.<sup>139</sup>

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.<sup>140</sup> 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'.<sup>141</sup>

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<sup>136</sup> *Summary Offences Act 1988* (NSW) s 19, 3 (definitions).

<sup>137</sup> *Summary Offences Act 1988* (NSW) (Act No. 25 as made).

<sup>138</sup> See [19] per O'Keefe J in *Coleman v DPP* [2000] NSWSC 275.

<sup>139</sup> Second Reading Speech, NSW Legislative Assembly, Hansard: 29 March 1983 at 5244.

<sup>140</sup> 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.

<sup>141</sup> 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.<sup>142</sup>

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).<sup>143</sup> 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.<sup>144</sup>

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.<sup>145</sup>

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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<sup>142</sup> Summary Offences Act 1966 (Vic) s 38B(1), 38B(3).

<sup>143</sup> Summary Offences Act 1966 (Vic) s 38B(3)(b).

<sup>144</sup> Summary Offences Act 1966 (Vic) s 38B(2), 38B(4).

<sup>145</sup> '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.<sup>146</sup>

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.**<sup>147</sup> (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 when 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 outdated 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.<sup>148</sup>

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'.<sup>149</sup> (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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<sup>146</sup> 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](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.

<sup>147</sup> 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](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).

<sup>148</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 28.

<sup>149</sup> 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.<sup>150</sup> (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.<sup>151</sup>

<sup>150</sup> Sex Work Decriminalisation Bill 2021 (Vic) Statement of Compatibility, Legislative Council, Hansard 28 October 2021.

<sup>151</sup> *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).<sup>152</sup>

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.<sup>153</sup> 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.<sup>154</sup> 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.<sup>155</sup>

Bell J explained in this Victorian case:

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<sup>152</sup> *Human Rights Act 2019* (Qld) s 8.

<sup>153</sup> *Human Rights Act 2019* (Qld) s 25.

<sup>154</sup> 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).

<sup>155</sup> 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.<sup>156</sup>

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 be 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.<sup>157</sup>

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.<sup>158</sup> 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.<sup>159</sup>

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<sup>156</sup> 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).

<sup>157</sup> *Human Rights Act 2019* (Qld) s 15.

<sup>158</sup> *Human Rights Act 2019* (Qld) s 19.

<sup>159</sup> 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.<sup>160</sup> 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.<sup>161</sup>

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<sup>160</sup> *Human Rights Act 2019* (Qld) s 20(1).

<sup>161</sup> 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.