



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exploitation laws, police powers (including entrapment), anti-discrimination exemptions and other laws will be repealed.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 responsibilities 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.

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 of 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 Prostitution 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 responsibilities 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 be 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 framework. 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'.