

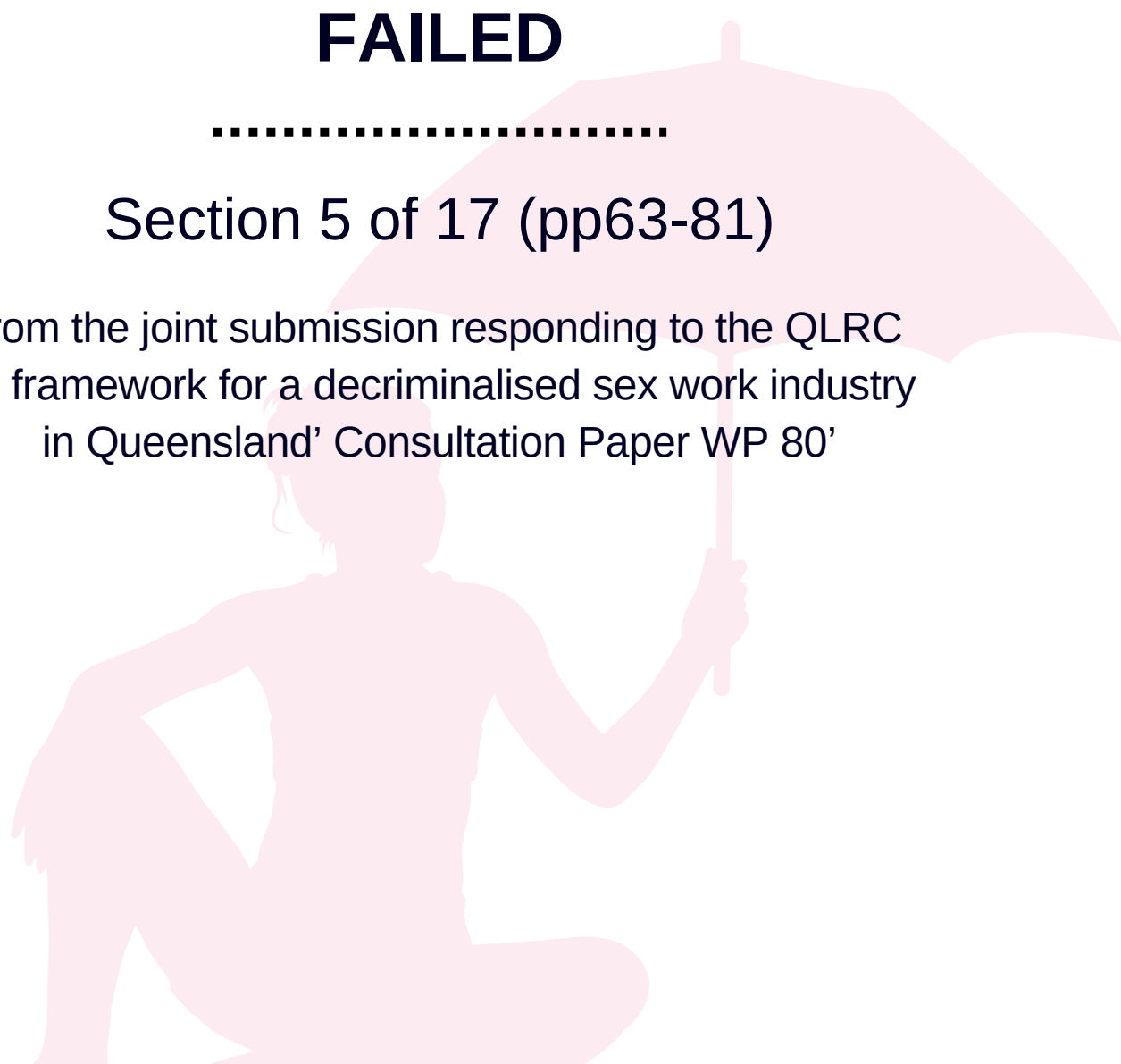


# LICENSING HAS FAILED



## 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 administrative 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.<sup>40</sup>

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

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<sup>40</sup> 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.<sup>41</sup> 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."<sup>42</sup>

### **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'.<sup>43</sup>

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<sup>41</sup> [https://www.johaylen.com/regulation\\_of\\_sex\\_work](https://www.johaylen.com/regulation_of_sex_work)

<sup>42</sup> *ibid.*

<sup>43</sup> 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.

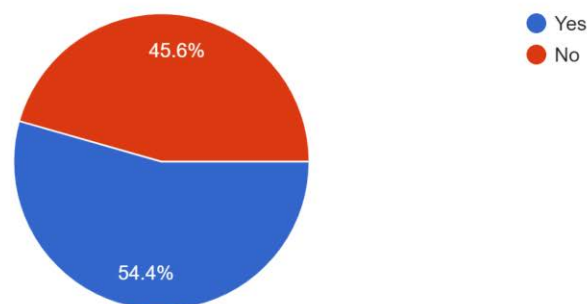
While the Consultation Paper recognises that the Queensland Government has asked this review to consider a decriminalised framework, the Paper still asks whether Queensland needs to continue a licensing system. It is critical to this review that the QLRC consider how a model of decriminalisation could 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.

30. If you have worked in a licensed brothel in QLD, have you received information from the management or owners about Respect Inc (local sex worker organisation)?

68 responses



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."<sup>44</sup>

### **"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." "<sup>45</sup>

### **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

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<sup>44</sup> <http://www.couriermail.com.au/news/queensland/crime-and-justice/southeast-queensland-massage-parlours-probed-for-sex-service/news-story/52c98a952c53b29375853217d8f31f04?login=1>

<sup>45</sup> <https://www.news.com.au/finance/business/why-running-a-brothel-is-similar-to-running-any-business/news-story/2424fb5b0c556041eb536ee2b7785af8>

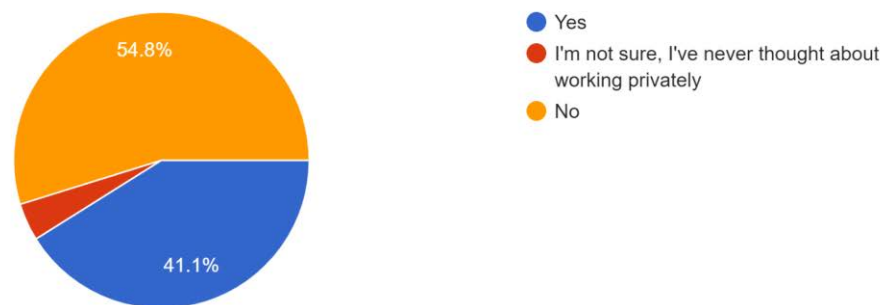
such as not using condoms, which some brothel owners and managers claim undermines the income of the licensed brothel workers and ‘infects’ the client pool with STIs. Such information is an epidemiological fallacy and has a damaging impact on health promotion and trust in the workplace:

*“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:

27. Does the brothel allow you to do private work (sole operator) on the side?

73 responses



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.<sup>46</sup>

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.

<sup>46</sup> 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. Brothel 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'.<sup>47</sup>

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.

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<sup>47</sup> Global Alliance Against Traffic in Women (GAATW). (2018), p. 40.

<https://www.gaattw.org/publications/SWorganising/SWorganising-complete-web.pdf>

The current laws in Queensland are a perfect example in that escort agencies, 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 accommodation; 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 double 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 accommodation 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 difficulty 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 language 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 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.