PLANNING: SEX INDUSTRY LOCATIONS IN QLD

Section 8 of 17 (pp107-128)

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

CHAPTER 12: PLANNING LAWS AND SEX WORK

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

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

Assessment of development applications for commercial sex work businesses

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

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

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

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

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

Review of decisions about development applications for commercial sex work businesses

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

Should separation distances apply to commercial sex work businesses?

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

Q33 If yes to Q32:

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

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

Home-based sex work businesses

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

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

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

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

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

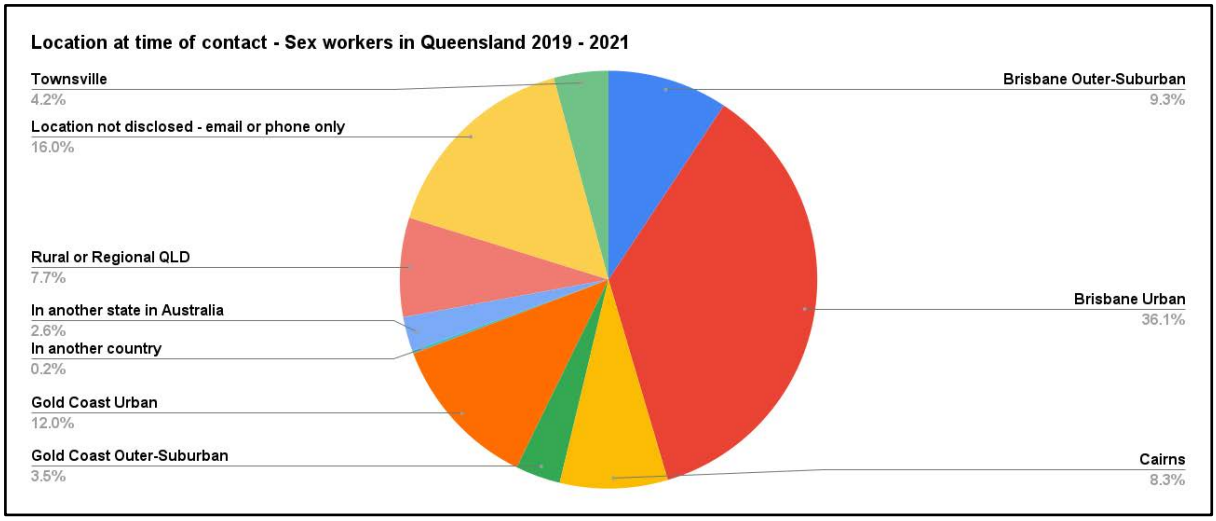
Planning summary

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

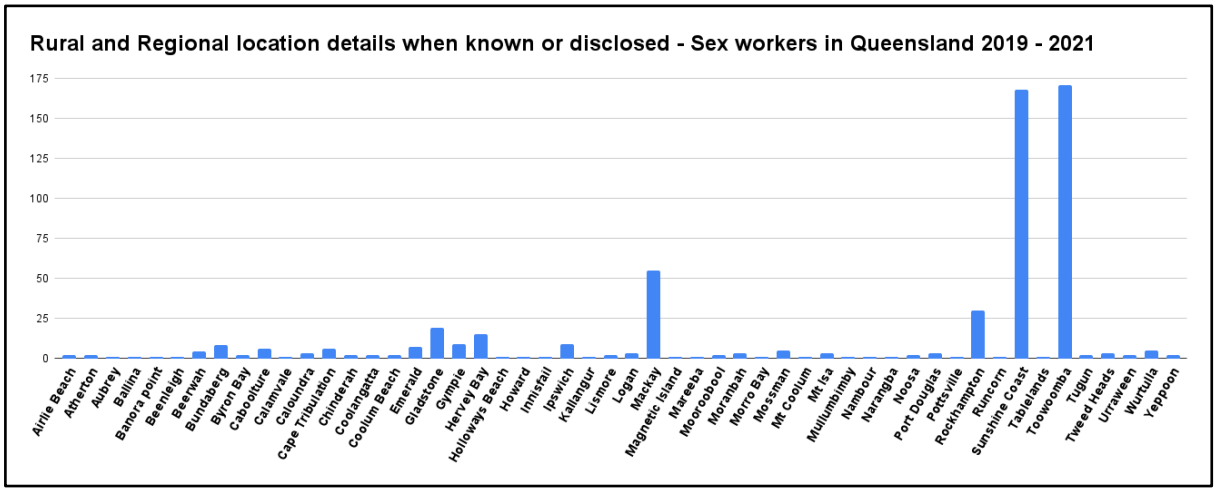
The legislated planning approach should deliberately encompass and permit the current scale, size and land-use types of the sex industry in Queensland, without local government interruption or discretion. To do so a state-legislated approach is necessary, similar to the Queensland legislative approaches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

Evidence of locations, styles of work

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



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



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

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

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

Recommendations for definitions

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

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

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

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

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

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

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

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

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

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

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

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

Background, criminalised yet planning-compliant in Queensland

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

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

Sex work workplaces are not impacting on amenity

Many sex workers in our recent survey explained that they already live and work without impacting amenity. They expressed concern that if permitted, arbitrary decisions by councils to zone sex workers out of inner-city and suburban locations would be a decision based in stigma and not actual impact on public amenity. As participants highlighted, sex workers already live and work in a range of zones and go unnoticed:

> *"I currently work in XXX - it's wonderful. On my street are a lot of little home businesses, it is very idyllic. All my clients have always been well behaved and quiet..." [Survey participant 115]*

> *"...Civs only care now because it's been brought to their attention but we've been working all around them for years." [Survey participant 140]*

Sex workers explained that the activities that happen in their workplaces are the same activities already happening in homes, and that commercial sex is not that different in character from sex in general. In the words of sex workers:

> *"People fuck in their own homes so people doing the same thing via negotiated payment should have the right to privately access services in ALL areas of council." [Survey participant 63]*

> *"People have sex in residential areas too, we just charge for it but seriously, it isn't that different." [Survey participant 100]*

Moreover as several sex workers highlighted, workers and their clients already have an imperative to maintain discretion, which would remain the case after decriminalisation. Some survey participants further emphasised that sex work businesses can also have positive impacts when they are allowed to operate alongside other industries, both in the reduction of stigma towards sex work businesses and the flow-on economic benefits. As one survey respondent wrote:

> *"Sex workers and our clients are incredibly discrete and have an investment in our privacy. We don't need to be stored away on the edges of town in order to be discrete. We also bring other commerce to a place - workers and clients may bring business to the area beyond just the sex industry business." [Survey participant 94]*

In Queensland, businesses in centre and mixed zones must welcome industrial inspectors. Industrial inspectors cannot compel a person to answer questions or request entry into a residential dwelling. Respect Inc and DecrimQLD are aware of council inspectors currently checking on centre zone locations and private sex workers in residential areas. In all the known cases it was found that the location was compliant with local amenity regulations.

Zoning into industrial areas

Arguments to force brothels into industrial zones are unreasonable. The *7:30 Report* (ABC) in 2011 covered the issue:

> LISA MILLAR: Jeff McLaren was a lobbyist for the sex industry for more than four years. A lawyer, he's watched potential new brothel owners struggle. One of the most contentious issues in the legislation is the move to force brothels into industrial estates.
> JEFF McLAREN: It's totally inappropriate. This is not the place where people come for love.
> LISA MILLAR: For potential licensees who accept the location demands, councils have hardly been welcoming.
> JEFF McLAREN: They said there wasn't enough parking [in centre zones] but obviously there is. They said water consumption -- they said that the brothel would consume too much water and it would go into the sewerage. I really don't understand what that argument was. And location -- they said that it was too close to urban and educational areas, which is ridiculous.

Respect Inc and DecrimQLD surveyed sex workers asking about the impact of sex industry workplaces being zoned into industrial areas. Sex worker participants expressed concern about negative consequences for safety, mental and emotional wellbeing and financial stability due to lack of transportation and suitable work accommodation, fewer clients and feeling like they were being outcast by society. Some said that if councils were allowed to zone sex

workers into industrial areas it would constitute a form of backdoor criminalisation, as the many sex workers who currently work from home in the surburbs, or in inner city hotels or massage parlours would be unwilling or unable to relocate to industrial zones.

> *"I can only imag[in]e the number of workers this would suddenly make criminals." [Survey participant 161].*

Some survey participants felt that they would rather move states or cease touring to Queensland if they were required to work in industrial zones.

> *"...I would not stop the way I work and I don't want to work illegally. I would most likely move to NSW permanently." [Survey Participant 131].*

A lack of good regular public transport, rideshare drivers refusing lifts, and the lack of night time car and foot traffic in industrial zones was another major theme, particularly for sex workers who rely on the flexibility of sex work and/or the option to work from home—for example those with disabilities or caring obligations. In the words of sex workers:

> *"As a disabled lady, I find it hard to find a job working for someone else because my pain and limited mobility gets in the way. I enjoy working for myself in a safe environment that gives me the ability to make money to support my needs." [Survey participant 177]*

> *"1. literally EVERYONE has sex without location based restriction otherwise none of us would exist and 2. It is completely unfair to expect us to work out in the sticks because of stigma. Many of us have families and other commitments that make this type of travel completely untenable." [Survey participant 104]*

> *"... it was strange bus route schedules and scary to walk home from work. Having a car as a brothel worker is easier, but not for every client considered visiting that far out at strange hours for that zone." [Survey participant 142]*

> *"What if you don't drive. How do you get there? How do clients get there and what does it say if we can only work from difficult locations?" [Survey participant 71]*

> *"Industrial zones are dark, away from people and public transit and other amenities, and often are located in places that are expensive to travel to if you don't have a car…" [Survey participant 94]*

Safety issues—such as the increased risk of stalking when sex workers are forced to work in limited locations—were a concern. The physical characteristics of industrial zones—being isolated from amenities, safety and support mechanisms, poorly lit and with low foot traffic—make them precarious areas in which to work, especially at night. Many sex workers would choose to operate where they do now, outside of the industrial zones, and would therefore be non-compliant. Safety would be chosen over compliance, just as now safety is chosen over legality.

> *"It would make me feel less safe. I'd have to start removing my license plates as soon*

as I arrive so I'm not stalked again." [Survey participant 51]

"It's horrible. I've worked in a brothel in an industrial area and it's dark and feels dangerous. Dodgy people hanging around diving dumpsters for things to sell like metal or other recyclables. They may be harmless but they don't feel it lurking around in the dark!" [Survey participant 20]

"Also we'd be like sitting ducks - far away from the rest of society, through traffic and support." [Survey participant 63].

"I do not drive, this makes me a target walking through these areas, know the only reason i would be there is for sex work." [Survey participant 35]

"By othering sex workers and exiling them to specific zones, you identify and isolate them from safety mechanisms like frequent taxis, access to third party public transport, accessible/unidentifiable parking stations…" [Survey participant 67]

"Those zones are less safe. Poor lighting, no passive surveillance like foot traffic, no amenities like take away food or grocery stores, and any rideshare drivers picking you up from that zone when your shift is over, no matter if you (unsafely, in the dark) walk two blocks away, know your job and your home address." [Survey participant 28]

"I wouldn't be able to work where I am now, and as my clientele is CBD-inner city workers, my business would basically be over." [Survey participant 90]

"My safety is gravely impacted. Also, many self-respecting gentlemen don't want to go to industrial zones, for concerns of their own safety." [Survey participant 180]

"Clients would put additional pressure on us to work around the laws, increasing our personal risks, because they would not want to travel to industrial zones because they don't want to be surveilled as 'clients'..." [Survey participant 67]

"It means it may be difficult to travel to work and for clients to access sex workers. This would affect earnings. Earning a livable amount is the best protective factor for sex workers so this would increase risk and harm." [Survey participant 101]

"...sometimes working for escorts or brothels I might not even make any money on a shift so then I have to spend money on a cab to take me out of the way and back home again without even breaking even." [Survey participant 22].

Limiting sex work to industrial zones would likely have a negative impact on the mental wellbeing of sex workers due to forcing sex workers into futher isolation and increased social stigma and discrimination, which often follows stigmatising laws. Being pushed out from areas where it is logical for sex worker workplaces to be located sends a message that society needs to be protected from sex work, which has consequences for the mental health, self-esteem and wellbeing of sex workers. In the words of survey participants:

"I would hate that. I would feel just as MARGINALIZED and just as unwanted and made to feel disgusting by society." [Survey participant 173]

"It would again make me feel devalued, my safety not prioritized, and like I am being pushed into the industrial area with the factories - that my body and work are dirty, unfit for the public eye. I want to work where I live - in the suburbs and city with everyone else." [Survey participant 82]

"Facilities in industrial zones are not appropriate for sex work. We need beds and showers and prefer nice places to provide services. We're not brick factories or truck yards ya know." [Survey participant 11]

"This would impact me greatly. This would be a nightmare for me working as a private worker. Do I hire a freaking mechanic workshop and lay a bed down in the middle?" [Survey participant 76]

"...as there is a stigma in being restricted to areas where you'll be 'out of sight' and away from the 'normal people'." [Survey participant 166]

Council consistency with purpose untried CASE STUDY, Victoria

The Victorian Sex Work Decriminalisation Act 2022 includes a clause intending to prevent new local laws from inconsistency with the Act. It is a clear statement from government that local councils in Victoria should not be looking for ways around decriminalisation. However, the clause does not prevent councils from using technical and administrative methods to block the intentions of the Act. Deliberately allowing sex industry DAs to lapse is a common practice by NSW councils, who then mount a defence at rate payers' expense. Victorian councils can use the same method. VCAT can decide each case individually, but VCAT does not have the power to find a local law invalid.

The Victorian approach is useful in that it promotes a cultural change at a local council level, but it is deficient in direction because it is not accompanied by a coherent legislated solution. The Act states:

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

Problems arising are:

- Inconsistent local laws are already in place in Victoria. VCAT can rule against the use of an existing local law and in favour of parties submitting DAs, case by case, council by council. In order to be compliant then, sex industry businesses should expect to have to mount a VCAT case. This process will likely create a chilling effect, resulting in fewer and fewer DAs being submitted to council over time.
- There is already reticence from (currently illegal) sex industry businesses to make themselves known to council, or at all among the local community. They are operating discreetly and meeting amenity rules. Planning lawyers will reasonably advise those businesses that a DA will likely require a VCAT ruling. This creates a disincentive for

sex industry businesses to participate in decriminalisation.

- It is not known how existing local laws will be brought up to date by council. Will there be voluntary or mandated audits within council, and then will each council willingly undertake required amendments? The new framework will be a patchwork of existing and new local laws, confusion around compliance, delays and VCAT cases.
- Some Victorian councils have a history of funding unethical practices to identify amenity-compliant sex work workplaces in breach of zoning regulations.[104] There is no guidance in the Act about what type of council enforcement is acceptable or what would be considered inconsistent with the act. VCAT may be the only option for arbitration, with the onus on individual sex workers and sex work businesses to bring inconsistent enforcement cases against council.
- Anti-sex work lobbying against the intentions of the Act began prior to the Act being passed. For example in 2021 one resident claimed 'I have never felt unsafe… Children play in the street… Enabling sex work to occur in any house in any street in the city of Boroondara changes everything.'[105] How will councils manage vocal advocates who lobby their council to find ways around the Act?
- Answers to these questions will not be settled in Victoria until at least December 2023, and it is only after that that the new approach to planning in Victoria will begin. In the meantime, councils are still encouraging locals to report 'illegal' brothels to the police.[106]

In summary, the rhetorical clause in the Victorian Act is welcomed by sex workers but does not resolve how and where the planning approach will be actually decided and implemented.

Council Discretion CASE STUDY, NSW approaches to brothels and massage parlours

In December 1995 after the decriminalisation of sex work was passed in NSW, the Department of Urban Affairs and Planning (DUAP) advised local councils that:

- brothels were now a legitimate land use subject to local council development approval
- blanket prohibitions of brothels would contradict the intention of reforms and
- brothels were most suitable in commercial and industrial zones.[107]

After enactment in July 1996, the then-minister announced that councils were permitted to limit brothels to industrial areas.[108] This council discretion immediately resulted in the creation of new prohibition policies and tacit implementation of discriminatory planning approaches, including industrial zoning rules and separation distances. Each council approach was different, with some creating planning policies that were sex work-specific. For example:

- an increase in the number of off-site car-parks at already built commercial locations. The implication was that client use of street parking would be a problem for amenity, even though the number of car parks was sufficient for previous land uses of the same

[104] The Australian. (2007). 'Some Vic councils paying for brothel sex', 25 Jan 2007. https://www.smh.com.au/national/some-vic-councils-paying-for-brothel-sex-20070125-gdpbol.html

[105] City of Boroondara. (2021). Council Meeting 27 September 2021. https://youtu.be/uD_5KuwZkiQ?t=4149

[106] City of Stonnington. (2022). https://www.stonnington.vic.gov.au/Planning-and-building/Planning/Planning-permits/Enforcing-permits#section-2

[107] NSW Department of Urban Affairs and Planning. (1995). Communication to General Managers of Local Councils, 29 December 1995.

[108] NSW Department of Urban Affairs and Planning. (1996). Communication to General Managers of Local Councils, 16 July 1996.

building. In these cases compliance was impossible because urban commercial built-up areas do not have room to create new car parks,
- locations limited to industrial zones,
- distance, proximity and separation limits from other brothels, bus stops and schools, sometimes measured 'as the crow flies', sometimes by foot traffic distance,
- unreasonably short opening hours,
- front doors to be off street level, which made compliance impossible for locations that were only one level. Advocates also argued this was against existing accessibility policies.

Then in 2009 after extensive lobbying, councils were granted special sex industry closure orders for planning regulation non-compliance. This history has created a new version of police control using planning instruments, location regulations, closure orders and land use definitions instead of criminal laws and has seriously undermined decriminalisation in NSW.

Some NSW councils use 'default' measures to trigger lengthy court cases by ignoring DAs and exercising closure orders, or waiting for the applicant to exercise their right to a court hearing after a certain time period of non-response by council. Many of these DAs end up in civil court proceedings to force council consideration[109], giving councils time to create barriers to compliance that did not exist at the time of application. SWOPNSW and ACON research into these practices offer analysis of a 1998 case of a brothel that applied for a DA after decriminalisation but had operated for a period of time prior to decriminalisation. Fairfield City Council v Taouk & Ors NSW LEC 132 (24 June 1998):

> The capacity to restrict brothels to industrial areas has also been used by local councils in a disingenuous fashion. For example, the Fairfield Council received a development application (DA) from a brothel that had been operating in a business area for seven years. The Council failed to consider the application for fifteen months, while waiting for their LEP, restricting brothels to industrial zones, to be approved. Once the LEP was approved, the Council refused the DA and made an application to the Court to close the premises down. The Land and Environment Court found that there was no evidence of any environmental or other harm or disturbance caused by the brothel and the location in the business district was not near any schools or churches. But the zoning changes amounted to a technical breach of the Environmental Planning and Assessment Act. The Judge made it clear that he considered this a harsh result, but that the Court could not sanction a breach of planning laws. He postponed the closure of the brothel for eighteen months to enable the brothel operator sufficient time to relocate.[110]

Decades of research and evidence shows that almost all NSW councils have taken advantage of discretionary powers and DA processes to behave in an unreasonably hostile way towards brothels, massage parlours and sex workers broadly, even against the advice of their own

[109] Crofts, P. (2006) Visual contamination: Disgust and the regulation of brothels. Available at SSRN: https://ssrn.com/abstract=2826908 or http://dx.doi.org/10.2139/ssrn.2826908

[110] SWOPNSW, ACON. (2002). Unfinished business, achieving effective regulation of the NSW sex industry. https://scarletalliance.org.au/library/swop-acon02

planning staff and lawyers. This is despite the fact that sex work is located across every suburb and city area in NSW.

> Planners often find themselves caught between community disputes and internal political machinations when development proposals for these activities are submitted for approval.[111]

Council discretion and decision making over DAs in NSW has caused harm. Academics and sex workers argue this is because when given the opportunity, councils actively exclude sex industry workplaces from civil participation. Evidence shows this has led to decades of unreasonable closure orders, unwanted media attention and lengthy court cases. In particular, requiring sex industry workplaces to apply for development approval draws attention and vilification to local scale-appropriate workplaces that research shows would otherwise operate without neighbours even being aware they were there.[112]

Private sex work CASE STUDY, NSW council approaches to private sex work

The impact of NSW council discretion over private workers in residential areas has included:

- some councils requiring private workers to apply for DAs, even though similar scale work in residential zones does not require DA approval,
- hiring private investigators to organise bookings with private workers to uncover them, arguably unethical and a breach of public trust.

[111] Papadopoulos, C. & Steinmetz, C. (2011). 'Why is sex so complex? An examination of commercial sex premises in the New South Wales planning system'. Paper presented at the *World Planning Schools Congress*, Perth, 4-7 July 2011. https://apo.org.au/sites/default/files/resource-files/2011-12/apo-nid60050.pdf

[112] Prior, J., Crofts, P. & Hubbard, P. (2013), 'Hiding immorality in plain view', *Geographical Research*, vol 51, pp. 354-363. https://doi.org/10.1111/1745-5871.12033

Academic Penny Croft explains further:

> …imposition of notification requirements and locational restrictions upon home businesses (sexual services) is tantamount to ensuring that these businesses will not be able to operate legally, sustaining the possibility of corruption and undermining occupational health and safety. This conflicts with the Legislature's intention in passing the Disorderly Houses Amendment Act 1995 (NSW)... [My research] concludes by arguing that only state policy and legislative reforms will be sufficiently broad to ensure home businesses (sexual services) are responded to as legitimate commercial premises.[113]

Conclusion, NSW cases studies

History from NSW indicates that the jurisdiction is still struggling with unworkable conflicts between the state and councils due to the issue of planning being unresolved in the 1995 decriminalisation Bill. The sex industry is caught in the middle. Early after decriminalisation, councils received confusing ministerial and departmental instructions about industrial zoning. Immediately, a haphazard situation of unchecked council discretion being exercised, costly DA disputes in court and unreasonably combative policies against private sex workers began. Academics suggest the solution lies with NSW state legislation, albeit almost three decades after the initial reforms. In the meantime the NSW sex industry operates in an environment of planning uncertainty, with an unknown portion of the industry non-compliant.

Bans in residential areas not legislated CASE STUDY, Western Australia

The 2010 the WA Liberal Government announced its intention to criminalise all sex work operating in residential areas.[114] Then Attorney General Christian Porter justified the approach, explaining 'a responsible government should always recognise that prostitution is a generally undesirable activity' (pg 3).[115] The proposed legislation (which eventually failed due to a lack of support in parliament) created uninformed public debate and front-page panic. Local councillors were inspired to create their own media-worthy statements on sex work in residential areas, albeit with no authority or ability to enact them:

> That Council: Recommends that the definition of residential area be amended to ensure that a prostitution business is not permitted in a zone of precinct where the predominant use is Residential, notwithstanding that residential uses may require planning approval under the applicable Local Planning Scheme. [116]

Did the council in this example intend to invite private sex workers in residential areas to apply for planning approval? Would a local sex worker consider doing so in such a combative climate? Christian Porter surely created a chilling effect by giving airtime to intense and misguided anti-sex work sentiment. WA still has not resolved this issue.

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

[114] Australian Broadcasting Corporation. (ABC) (2010). 'Prostitution ban in residential areas', 25 November 2010. https://www.abc.net.au/news/2010-11-25/prostitution-ban-in-residential-areas/2351210

[115] Porter, C. C. (2010). Prostitution legislation reforms, Statement by [WA] Attorney General to Legislative Assembly, 25 November 2010.

[116] City of Stirling. (2011). Ordinary Meeting of Council, 2 August, 2011.

Council Discretion CASE STUDY, Queensland

When the Prostitution Act was passed in December 1999 small towns with populations below 25 000 were able to apply for ministerial exemptions to allow them to deny council approval for all licensed brothel DAs. In May 2001 the Leader of the Opposition, Mr Mike Horan MP, introduced a Private Member's Bill into Parliament to give all local government authorities the right to veto brothel applications but this was not passed. By June 2001, 102 towns in Queensland had sought and obtained approval from the Minister for Police to automatically refuse development approval for brothels in their towns. Bill Carter, the Chair of the Prostitution Licensing Authority, accused local authorities of being 'needlessly obstructionist' toward brothel applications:

> The major concern in relation to the operation of the legislation has really been the attitude of local authorities. The approach of [councils] has been extremely negative. It has been said that local authorities have sought to hijack the legislation and they've made it extremely difficult for applicants to get approval in respect of development applications made for premises.[117]

Media reporting claimed that 'The State Government will appoint a lawyer to override local councils which unreasonably refuse to grant brothel licences'.[118] By 2006-7 there were 204 small towns in Queensland that had applied for and received exemption from the laws to approve applications for brothels.[119] As a result, brothels were banned in more than 200 Queensland towns and only 12 of 77 councils have ever approved a brothel.[120]

As *7:30 Report* found in 2011:

> LISA MILLAR: Across Queensland, councils have faced outrage that the [licensing] laws exist at all.
>
> MAN AT MEETING: I would suggest our Council to speak on our behalf and to therefore reject the application because that's the will of the people of this community.

Queensland councils have discretionary power and they use it to undermine the intention of the current legislation. When investigated by council however, sex industry workplaces in Queensland are found to be compliant with mandatory amenity regulations because they operate at a scale that fits into the local neighbourhood. The history of problems with council discretion in Queensland are a strong argument against retaining or extending these prohibition/discretionary powers and for avoiding a council decision-making role in DAs.

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[117] Easton, R. & Fear, J. (2001). Queensland Parliamentary Library Research brief: 2001/29 The Prostitution Amendment Bill 2001 (Qld), p. 23.
https://documents.parliament.qld.gov.au/explore/ResearchPublications/ResearchBriefs/2001/2001029.pdf

[118] Easton, R. & Fear, J. (2001). Queensland Parliamentary Library Research brief: 2001/29 The Prostitution Amendment Bill 2001 (Qld), p. 27.
https://documents.parliament.qld.gov.au/explore/ResearchPublications/ResearchBriefs/2001/2001029.pdf

[119] Prostitution Licensing Authority (PLA). (2007). *Annual Report 2006-2007*, p.73.
https://www.pla.qld.gov.au/__data/assets/pdf_file/0003/674706/322120-pla-text-web.pdf

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

Councillor harrassment of sex workers CASE STUDY, Gold Coast City Council

The systemic failures in Queensland to hold councillors to account for breaches of their own rules of conduct was unfortunately experienced firsthand by the Respect Inc Southport office between 2019 and 2020. Respect Inc believes the councillor in question was motivated by an illogical dislike of sex workers. For further details see pages 75-97 of the Gold Coast City Council Meeting Minutes dated 18 Feb 2020.[121]

The problem: Council discretion

- Sex work in QLD is not embraced by councils, with some councillors stepping outside of standard expectations of conduct to harass and intimidate with impunity.
- Sex work in NSW is not embraced by councils, with some taking extra measures to restrict or deliberately avoid implementing appropriate local planning approaches.
- Sex work in Victoria is not embraced by councils, even when amenity compliant, some have hired private investigators to help council 'find' sex work workplaces. The success or failure of the Victorian approach to planning in their new decriminalisation framework will not be known for many years, but relies on council goodwill because VCAT cannot strike down a local law.
- Sex work in Western Australia is not embraced by councils, with some passing vapid (if ineffectual) motions for the sake of signalling anti-sex work attitudes to voters.

Granting councils discretion over decriminalised sex industry workplaces in Qld will be a repeat of almost three decades of expensive and complex mistakes already made in NSW. Croft and Prior argue in their extensive 2012 research:

> Most notions about sex services premises presented to [NSW] councils and the LEC are predictive, estimating potential impacts of these types of businesses, rather than evaluating actual impacts by businesses.[122]

In Queensland, regardless of legislative intent, council discretion would allow arbitrary zoning and DA decisions based on myth instead of material evidence, politicisation of anti-sex work rules, an eagerness to over-regulate and 'identify' regardless of amenity, 'default' to having DAs heard in court and damaging ill-informed media in which council candidates are combative towards sex industry workplaces for perceived electoral gain.

Evidence to date demonstrates QLD councils and councillors already have the capacity and willingness to take a highly moral stance against sex work. If given discretion, they will be able to ignore their own planning staff tacitly or actively in order to pursue anti-sex work policies, with or without authority to do so, resulting in expensive and drawn-out court cases. Many workplaces could not afford to mount a court challenge. Hundreds of sex industry workplaces already amenity compliant and scaled appropriately will face barriers trying to obtain Qld council development approval if discretionary powers are legislated.

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[121] Gold Coast City Council. (2020). Council Meeting Minutes. 18 February 2020. https://www.goldcoast.qld.gov.au/files/sharedassets/public/pdfs/minutes-amp-agendas/council-20200218-minutes.pdf

[122] Crofts, P. && Prior, J. (2012). 'Intersections of planning and morality in the regulation and regard of brothels in New South Wales', *Flinders Law Journal*, vol 14, pp. 329-357.

It is irrefutable that in NSW the state planning instruments, statutory instruments and local planning instruments are used in a range of ways by different councils to exclude sex workers from some of the benefits of decriminalisation. If granted discretion, or allowed to decide size, number of rooms, number of workers or other arbitrary rules, Queensland councils will become the new site of marginalisation and targeted social exclusion of the sex industry.

Maintaining, extending or allowing councils discretionary power and decision-making roles over approvals in Queensland has the potential to replicate the failed current QPS and PLA framework, where ill-fitting laws and regulations are exercised simply because they exist. Council discretion after decriminalisation would allow the same, but based on location instead. Taking a chance on Queensland councils to 'do the right thing' is not a tenable solution given the weight of evidence against them.

Racism in planning

This problem becomes particularly pronounced when considering the planning needs of massage parlours. We know that the primary demographic working in the massage parlour sector is Asian and migrant women who speak English as a second language. Historically these sites are subject to regular raids by police.[123] Comparative research in Europe found council weaponisation of planning regulations to enforce specific and locally 'popular' racist misconceptions against migrant women:

> …in all instances [of the two European cities studied for this research], they [local council policies] have had similar exclusionary effects on sex workers – and especially on the migrant women among them… . local practices – including the ones that are seemingly different – ultimately converge in their ethos: they reinforce the socially constructed status of migrant sex workers as either law-breakers or trafficked victims to be subject to control and, in the latter case, also protection.[124]

The problem: Home-based business is not a neat fit with private sex workers

Isolation

Currently, evidence in Queensland shows that sex workers are not happy with having to work alone when working privately. As our 2022 survey shows, working in collectives is the preference of many. The Criminal Code 'Participating in the provision of prostitution' charge criminalises sex workers working together. Being forced to work alone is a safety concern for the sex worker community, as such forcing sex workers to have to choose every day between working legally or safely. Yet this is not a new issue for Queensland. Anne Edwards wrote in 2009:

> The regulatory framework currently in place is successful to the extent that it regulates licensed brothels. In a number of other ways, the framework is not working. Sex workers may be in a more precarious position now than they were when the legislation was first passed. Sex workers face particular occupational health and safety hazards. In Queensland, they cannot work in small groups to provide safety backup for one

[123] Murray. D. (2021), 'Seven arrested and $17k cash seized following police raids on Ipswich massage parlours', *NCA Newswire*, 30 Nov 2021. Garcia. J. (2020). 'Four massage parlours hit with unlawful prostitution charges', *News.com*, 16 Dec 2020.

[124] Ronco, A. (2020). 'Law in action: Local-level prostitution policies and practices and their effects on sex workers', *European Journal of Criminology*. 147737082094140. 10.1177/1477370820941406.

another unless they seek to register as a brothel.[125]

Lisa Millar interviewed a private worker in Brisbane for the *7:30 Report* in 2011:

> LISA MILLAR: Susan is a sex worker operating from a house in suburban Brisbane and living in fear.
> SUSAN, SEX WORKER: It would be nice to know that one could go to work and not be breaking the law. But under the current legislation, there is no way you can work and not break the law.
> LISA MILLAR: Susan shares the daily roster with other women, but that's illegal. Under the current laws, she should work on her own.
> SUSAN: On your own, if you have the wrong kind of person come in, what do you do? And how do you know from one phone call of giving out an address then, in fact, that person's going to be a normal person?[126]

The problem: 'Home-based business' is not the solution

If home-based business was adopted as a solution in the new decriminalisation framework, private and collective sex workers in residential zones would be forced to live on the premises in order to be compliant. There are many reasons why, for many sex workers, living on premises is not a viable option. For those who do live on premises, we have serious concerns about meeting the home-based business definition:

- Floor-space usage ratios might contradict the new WHS guidelines, depending on the type of location.
- Site inspectors compliance checking of private sex workers is a possible corruption risk, councils might use discretion powers to ramp up this kind of problematic oversight.
- In a collective of private workers it is not really feasible for the resident within the collective to always be on the premises, which raises compliance issues when the non-resident is taking bookings at the location.

The problem: Forcing sex workers to live on premises

There is strong justification for private sex workers to not be forced to live on premises:

- Desire to have a lifestyle that does not revolve around work 24/7,
- For confidentiality reasons some private sex workers prefer to be on site at their residential workplace when working, and off-site when not,
- Private sex workers with families may choose not to work at the family home,
- Socialising at a location separate from work is an important part of work/life balance for some private sex workers.

[125] Edwards. A. (2009).

[126] 7:30 Report. (2011). Australian Broadcasting Corporation, 2 April 2011.

There are many negative outcomes for private sex workers in residential areas if required to apply for DA approval for not living on premises:

- Confidentiality issues.
- Safety fears if known by neighbours to be a sex worker.
- Sex workers may avoid DA application for the above reasons, potentially missing out on the benefits of decriminalisation as a result because of non-compliance with council planning regulation and/or discretionary rules.

Solutions for brothels, massage parlours and other sex industry workplaces in centre zones

Brothels and massage parlours should be defined within Planning Regulations (2017) Schedule 6, similar to 2017 amendments to the Planning Act for Community Residence. Another option for massage parlours could be for them to remain defined as a health service.

For both of these options all the mandatory amenity regulations would still apply. The new sex work WHS guidelines would assist in the transition. Self-assessment should be supported by Respect Inc and relevant authorities. As with community residences, local governments have an enforcement role if the low-amenity profile of the activity changes. Room and staff number limitations are not required while amenity is maintained. Universal powers to protect against the negative impacts *of any business* on neighbours and community are retained by council. Respect Inc and relevant government agencies could be a touch-stone to support businesses to make improvements to return to amenity compliance, and liaise with council as required. WorkSafe rules and PCBU regulations would still apply, including existing powers of entry the same as for *any business*.

The term 'managed sex worker' is not a productive term for brothel/escort agency/massage parlour or private workers, regardless of the intention. It would accidentally apply to private sex workers organising bookings through carers, family members of clients living with disability and NDIS arrangements. It may also misrepresent and be a barrier to flexible sub-contractor arrangements in brothel workplaces.

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

Solutions for escort work

Escort agencies already fit into the planning definition 'offices' (in centre zones) or 'home based business' (in residential zones). Sex work bookings do not take place on premises. Escort work by private sex workers should be covered by Schedule 6 'Material Change of Use', including when it is private workers supporting each other in a collective. All mandatory amenity regulations would still apply in the relevant zone, as would WHS guidelines and PCBU regulations.

Solutions for private sex workers

Private sex work in residential areas should be treated as a Material Change of Use matching Planning Regulations (2017) Schedule 6, Part 2, Section 2 (1). After extensive research, consultation and technical support from expert planning consultants, Respect Inc and DecrimQLD conclude that this is the only fair and workable solution for private workers in

Queensland. Mandatory amenity regulations would still apply, as would WHS guidelines and PCBU rules.

Currently, Material Change of Use allows for domestic violence support/accommodation services to operate without making themselves known to council, and without limits on floor-space usage, number of people on site or number of support staff as long as they comply with all amenity regulations. Legislated industrial codes apply as with any workplace, meaning disputes over WHS issues have opportunity for recourse to justice and civil arbitration. Importantly however, if the location does not contravene amenity rules, local governments do not have a regulatory role. If the usual low-amenity profile of DV shelters change, council can enforce regulation in the same way as with any other undertaking in a residential location. The same will apply to private sex work under the new framework.
Academic Penny Croft argued in 2012:

> ...sex workers and service providers, and council records of complaint [prove] that... home occupations (sex services) [in residential locations] can operate lawfully with minimal amenity impacts, and that this type of business can provide a positive work environment.[127]

Ongoing research by Penny Croft on NSW private sex work in 2015 reinforced her earlier findings regarding low amenity impact:

> ...working from home [residential zones] provides sex workers with opportunities for autonomy and wellbeing that are not available in other sex service environments, with minimal amenity impacts to the community.[128]

As mentioned above, the term 'managed sex worker' is not a productive term, regardless of the intention. It would accidentally apply to private sex workers organising bookings through carers, family members of clients living with disability and NDIS arrangements and could inadvertently exclude sex worker collectives from the benefits of decriminalisation.

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

[127] Croft, P. & Prior, J. (2012). 'Home occupation or brothel? Selling sex from home in New South Wales', *Urban and Policy Research Institute*, vol 30, no 2. https://doi.org/10.1080/08111146.2012.679923
[128] Prior, J., & Crofts, P. (2015). 'Is your house a brothel? Prostitution policy, provision of sex services from home, and the maintenance of respectable domesticity', *Social Policy and Society,* vol 14, no 1, pp. 125-134. doi:10.1017/S1474746414000335

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

The Qld Decriminalisation Act will include a consistency clause for new local laws (like the Victorian Act): '*Local laws [are] not to be inconsistent with or undermine the purposes of this Act. A local law made under the Local Government Act 2020 must not inconsistent with the purposes of this Act or undermine the purposes of this Act to decriminalise sex work and provide for the reduction of discrimination against, and harm to, sex workers.'*