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Women's Safety and Justice Taskforce (WSJT)  
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**Submission responding to Discussion paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders**

Dear Taskforce members,

Thank you for considering our joint submission to this process.

Sex workers<sup>1</sup>, experience unique cross-cutting systemic issues increasing the likelihood of contact with police and the criminal justice system as accused persons/offenders and creating barriers for us as victims of crime/sexual assault.

There are two key factors that intersect to make sex workers uniquely vulnerable to these systemic problems. Firstly, the current criminalisation of sex workers means that more than 80% of us are targeted for entrapment by police posing as clients. Entrapment makes sex workers fear and actively avoid contact with police whom are not trusted as protectors. Sex worker safety is compromised by laws that criminalise our standard safety strategies making us more vulnerable to crime including sexual assault.

Secondly, a long history of misuse of police powers over sex workers and excessively high levels of stigma inform police attitudes about consent in sex work resulting in sex workers' reports of crime including sexual violence not being treated seriously. Sex workers who report are often subject to further surveillance by police without obtaining support for the sexual assault. In this way police target sex workers for minor charges, yet repeatedly fail to act on the more serious crime/sexual assault against us.

It is the unique and systemic nature of these barriers to criminal justice for women who work as sex workers that must be understood and addressed. These issues have persisted for decades but to date have been ignored, this process is the opportunity to change this cycle.

We note that Queensland's *Framework to Address Sexual Violence* identifies sex workers as a priority group and the Framework priorities commit the Queensland government 'to review and evaluate justice processes and relevant laws in Queensland to ensure that victims of sexual violence are supported and perpetrators are held accountable'.

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<sup>1</sup> Our preferred terminology is 'sex work' or 'sex worker'; the term 'prostitution' is used only where it is directly quoted from legislation.

Sex work laws in Queensland in the Criminal Code, Prostitution Act, and Police Powers and Responsibilities Act including the power to entrap play a significant role in the current lack of access to justice for sex workers.

While there is a process to review sex work laws underway in Queensland, the outcome of that process is unknown. Challenges to stigma and improving access to justice will need to continue well after that legislative change. We are very concerned that there have been suggestions in our engagement with the WJST that there may not be recommendations made by the Taskforce report to Government in relation to sex workers access to justice while an adjacent review is underway. This approach risks women who are sex workers being left behind without recommendations for change in the area of safety and justice that are critical and decades overdue. We would like to strongly recommend against this approach, ask that the WJST end the erasure of sex worker needs in this area, and that recommendations relating to sex workers are made in the Taskforce report to Government.

This submission brings together front-line experience, input directly from sex workers via a targeted consultation and a recent DecrimQLD survey of 204 sex workers and the considered reflections of Respect Inc and DecrimQLD as a whole, to demonstrate unique, systemic, long-standing, documented issues.

Regards,



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## About us

**Respect Inc** is the state-wide sex worker organisation in Queensland. Our organisation provides comprehensive community development, health promotion, peer education, advocacy and skill sharing for sex workers state-wide. The Respect Inc Management Committee, members, staff and volunteers are all current or past sex workers.

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

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## Statement relating to this submission

*Nothing in this submission should be read to imply that sex work per se is dangerous beyond the dangers inherent in other occupations except that the laws in Queensland undermine sex workers' ability to implement basic safety strategies and criminalise sex workers. This increases the likelihood that we will experience police interactions or charges and perpetuates the culture within QPS that results in reports of sexual violence and other crimes being ignored or not progressed to charge, resulting in lack of access to criminal justice for sex workers.*

## Executive Summary

Sex workers in Queensland experience extensive barriers to accessing justice as victims of crime and when accused or charged with crimes. It is impossible to separate sex workers' lack of justice from the laws in Queensland which criminalise sex workers' workplaces and basic safety strategies and provide police with extraordinary powers over sex workers, including entrapment. The legacy of a long history of police misuse of power over sex workers, well documented by the Fitzgerald Inquiry, continues to result in poor outcomes for sex workers across each layer of the justice system. It also means that sex workers are highly unlikely to report crime for fear of arrest, further surveillance or being known to police as a sex worker. In cases where sex workers do report crime, the report is often not treated seriously or treatment by police means the report is dropped. Sex workers have become a class of people within the Queensland community who are denied justice and are specifically and relentlessly targeted by police.

### 1. Criminalisation and licensing is a cross cutting issue for women sex workers

The criminalisation of sex worker safety strategies in the Criminal Code 1899 (Qld) is a cross-cutting issue and creates a 'catch 22' situation. When working within the law we are more susceptible to crime because we cannot implement basic safety protocols. The Criminal Code 1899 Chapter 22A makes it illegal for independent sex workers to:

- do bookings together, share a workspace or work in the same building
- message another sex worker about their current location
- check-in and check-out with another sex worker when a client arrives and leaves, a safety strategy traditionally used by sex workers
- employ a receptionist or someone to screen your bookings
- drive each other to outcall bookings, or use a driver (unless that driver only drives that one sex worker – making it cost prohibitive), or
- provide even limited or coded descriptions in advertising of the services provided.

Effectively, sex workers in Queensland are forced to choose between working safely or legally.

As a result, sex workers face significant barriers to reporting crime, harassment or intimidation and instead avoid becoming known to police. When we implement basic safety strategies we are less likely to report perpetrators to police due to the very real risk of prosecution.

The criminalisation of sex work workplaces, sex worker safety strategies and extraordinary police powers (including entrapment) make sex workers more likely to come into contact with police and

the criminal justice system. Sex workers who have intersecting disadvantage including Aboriginal and Torres Strait Islander, drug users, Asian or migrant, transwomen and LGBTIQ+

Twenty years after the introduction of the licensing system in Queensland there are only 20 licensed brothels, leaving more than 80% of sex workers outside the legal system and subject to criminalised workplaces or laws that criminalise the implementation of safety strategies. Police including a specialised unit called PETF (Prostitution Enforcement Taskforce) are responsible for targeting sex workers.

## **2. Sex workers are a community with unique barriers to criminal justice.**

Laws that criminalise sex workers create unique barriers to reporting sexual offences. Several other states and territories have either already progressed decriminalisation of sex work or intend to do so. Research shows that full decriminalisation of sex work increases sex workers' access to justice. Until a moratorium on prosecutions and entrapment of sex workers is in place, and/or full decriminalisation implemented, the sex worker community should be considered a high priority population by the Taskforce. After the laws have changed there will be a period of transition for sex workers, which should also be taken into account by the Taskforce. Work to re-educate magistrates, police, Legal Aid staff and all relevant services will need to occur for the full benefit of decriminalisation to be realised.

## **3. Attitudinal change to sexual violence and other crimes in a sex work setting.**

There are prevailing community attitudes that sex work is not work, sex workers cannot be raped, and that sex workers bring crimes upon ourselves. Queensland laws perpetuate these attitudes, and unfortunately the attitudes are prevalent within the Queensland Police Service.

Discrimination, prejudice, ignorance and the systemic lack of action by police means that many gender-based crimes are not investigated. Sex workers are prevented from reporting crimes due to fear of arrest. When these same perpetrators are brought before the justice system for other gender-based crimes, their history of abuse, violence, assault and coercive control over sex working women, including trans and gender diverse women, is not being taken into account. Attitudinal change to sexual violence and other crimes against sex workers is part of solving the broader issue of gender-based crimes being committed against all women and girls in Queensland.

## **4. The laws, and police attitudes enabled by the laws, are barriers to women who work as sex workers reporting crimes against them.**

Sex workers are campaigning to repeal the Prostitution Act 2000, sections of the Police Powers and Responsibilities Act 2001, and chapter 22A of the Criminal Code that criminalise sex workers' safety strategies.

Sex workers in Queensland are vulnerable to certain types of gender-based crime, in part because perpetrators know that the sex worker community is not taken seriously within mainstream society or by police. There is a systemic problem in that police fail to progress sexual assault charges to excessive levels. Police take sex workers even less seriously when we attempt to report. The laws enable police attitudes of disregard for the human rights of sex workers. The police have power over

sex workers, and the power to charge sex workers for implementing basic safety strategies. This power imbalance, embedded in the law, causes major barriers to access to justice for sex workers.

Police powers over sex workers create barriers to justice, and prevent reporting and prosecutions from occurring. Police powers in Queensland include entrapment. QPS officers can seek approval to legally pose as fake clients for the purpose of pressuring sex workers into committing crimes, then prosecuting the targeted sex worker. The negative impacts of these powers cannot be overstated. One outcome is that sex workers do not trust police, and fear that by reporting crimes against them that they will become targets for police harassment. Another outcome is that sex workers in Queensland have been fined or charged for activities they may not have undertaken if not for police entrapment exercises.

#### **5. Police as first responders and role in taking a report or progressing a charge.**

It is common for police to tell sex workers who are trying to report crimes that 'there is no crime here,' and 'the courts will not believe you, there is no point making a report'. Even when accompanied by a support person, including staff from Respect Inc, police have been observed creating reasons for the report not to be taken. This is a major barrier to addressing sexual offences against sex workers in Queensland.

# Recommendations

## 1. Resourcing of Aboriginal and Torres Strait Islander community groups

The Taskforce report recommend the Queensland Government work with and resource Aboriginal & Torres Strait Islander led community groups to improve access to justice and take action against systemic police targeting.

## 2. Decriminalisation

Full decriminalisation of sex work in Queensland. Governments, policymakers and advocates must actively pursue the full decriminalisation of sex work, including sex workers, clients and third parties.

Criminalisation of sex work and sex workers in Queensland is a determinant of our contact with the criminal justice system as accused persons and our access to reporting and seeking justice when victims of crime. Key areas include:

- a. Criminalisation of sex worker safety strategies which gives sex workers no option but to choose whether to work safely or legally.
- b. Fear and mistrust of police by sex workers erodes relationships between the sex worker community and police and creates barriers to reporting of crimes committed against sex workers
- c. Police attitudes towards sex workers that are informed by stigma and misinformation about sex work and sex workers makes them resistant to proceed charges.

Having considered sex workers' lack of access to justice in Queensland the Taskforce report should recommend the need to the urgent full decriminalisation of sex work as a necessary step toward enabling equitable access to justice.

## 3. Police accountability

Police must be held accountable for their failure to act on reports of crime including sexual violence against sex workers and for the way that their policing and treatment of sex workers has caused sex workers to fear and avoid them.

## 4. Police powers including entrapment

The Taskforce report must recognise how women sex workers are specifically targeted by police in Queensland and how the unnecessary targeting and use of police powers in relation to sex workers increases the likelihood of our engagement with police. The Taskforce should support sex workers' call for an amnesty on charges against individual sex workers in Queensland.

The Taskforce report should acknowledge how the use of entrapment, by police posing as clients of sex workers, is an excessive and unnecessary use of police powers that further creates a level of distrust and reduces sex workers' ability and willingness to report sexual violence or other crimes. The Taskforce report should recommend an end to police entrapment of sex workers in Queensland.

## **5. Policing culture and sensitivity training**

Policing culture of sex workers must change through implementation of:

Explicit policies and transparent accountability measures to address discrimination against sex workers by police.

Mandatory sensitivity training (delivered by sex worker organisations)

Sex worker police liaison officers

Investment in education and sensitivity training for law enforcement officers, judges and others working in the legal system. Reducing bias and discrimination is necessary to secure sex workers' access to justice

Taskforce support for the ongoing resourcing of Respect Inc to provide training to

Queensland police officers, including cadets, on sex worker awareness and sensitivity.

## **6. Sex workers experience unique intersecting issues**

A recognition by the Taskforce that sex workers are a community with unique intersecting barriers to justice and that this must be reflected in the Taskforce report.

## **7. Stigma**

The Taskforce recognise the impact of stigma on community and police attitudes to sex workers who experience sexual violence and understanding consent. The Taskforce recognise the impact of stigma on community and police attitudes to sex workers who experience sexual violence and understanding consent.

The Taskforce recommendations must include policy, legislative and education actions to decrease discrimination, vilification, prejudice and stigma experienced by sex workers.

## **8. Resource legal clinic by sex workers for sex workers**

The Taskforce report should support the resourcing of a sex worker legal clinic at Respect Inc to provide legal advice to sex workers who experience crime, are accused, charged or experience police harassment.

## **9. Amnesty for sex workers reporting crimes**

The Taskforce must acknowledge how sex workers' attempts to report crime including sexual violence to police are often used to increase police surveillance by creation of a 'known to police' record against the sex workers' name. There should be a recommendation in the Taskforce report for an amnesty stopping sex worker arrests for sex work offences when reporting crime as a potential strategy to improve access to justice.



# "ONCE YOU MENTION YOUR JOB THEY NO LONGER CARE ABOUT WHAT'S HAPPENED TO YOU."

## SYNOPSIS 2: SEX WORKERS' LACK OF ACCESS TO JUSTICE IN QLD

Sex workers in Queensland experience significant barriers to accessing justice. More than 80% of the industry is criminalised, including essential sex worker safety strategies and most workplaces. Police have extraordinary powers, including the use of entrapment. The current laws, combined with a problematic culture of policing sex work in Queensland, have resulted in sex workers targeted for fines and arrest and the majority of crimes against sex workers going unreported. When sex workers attempt to report crime it is often not taken seriously. This synopsis summarises the outcome of **consultation and a recent survey of 204 sex workers who work in Queensland** on experiences of policing when accused or charged, experiences as victims of crime, barriers to reporting crime and solutions. The findings demonstrate the failure of the current laws and practices in Queensland to provide access to justice for sex workers.

"I tried to report a crime and I was treated like I was the criminal because I do sex work. I would never do it again."



### 76.5% OF SEX WORKERS SAID THEY WOULD NOT MAKE A POLICE REPORT UNDER THE CURRENT LAWS

When asked why they would not make a police report, respondents highlighted:

- fears that they would be charged with a crime themselves, or that they would be subject to increased police surveillance and future entrapment.
- that some of their work practices were criminalised, or they were not sure whether they were working lawfully.
- police attitudes towards sex workers, including experiencing unfavourable treatment, stigma and discrimination, being dismissed, and crimes not being taken seriously because of sex worker status.
- that it was unlikely they would achieve a positive outcome through the criminal justice system, and they would be subject to poor treatment and potentially further violence and trauma through interacting with police.

## BARRIERS TO REPORTING CRIME

Sex workers specifically spoke about the fear of becoming known to police by reporting crime and how the current practices of covert policing and entrapment prevented them from making a report, because they believed they would be targeted, or because they questioned whether the police would act in their best interest if they reported.

"Fear of being on their radar and would be constantly watched or under surveillance."

"It's not safe. Lets police know I'm a sex worker and sets me up for entrapment."

"...The police force is NOT trained nor sensitive to the needs of women, of victims, and most especially not of sex workers."

"I feel like I would not be taken seriously, I would be victim blamed and would even be charged myself."

"... I don't see the Queensland police as being on my side. They are not my protectors, they are actively hunting us down and trying to catch us. I don't want to get in legal trouble..."



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# CURRENT LAWS: BARRIER TO REPORTING CRIME

Sex workers explicitly stated that they would not report a crime to police because they knew that some of their working practices were illegal, as illustrated in the following quote:

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

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

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

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

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

**ONLY 23.5% OF SEX WORKERS SAID THEY WOULD MAKE A POLICE REPORT UNDER THE CURRENT LAWS**



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

Sex workers highlighted that the potential consequences of receiving a criminal charge outweighed the perceived benefits of reporting crimes they experienced to police, so much so that sex workers said they would only report if it were a life or death situation. Respondents spoke about the repercussions they feared if they made a police report, including compromising their privacy and confidentiality, potentially losing non-sex work employment, restrictions on their ability to travel, and for non-citizens, the risk of facing deportation. As one respondent told us:

"If I worked illegally I could end up with a criminal record, which as a non citizen could lead me to being deported".

Respondents told us that police attitudes towards sex workers were characterised by stigma and discrimination; that their experiences of violence were often dismissed and that police generally had an unfavourable attitude towards sex workers, resulting in unfair treatment and outcomes. In the words of sex workers:

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

"I don't feel like I would be treated with respect and dignity by police. They seem to have something against us."



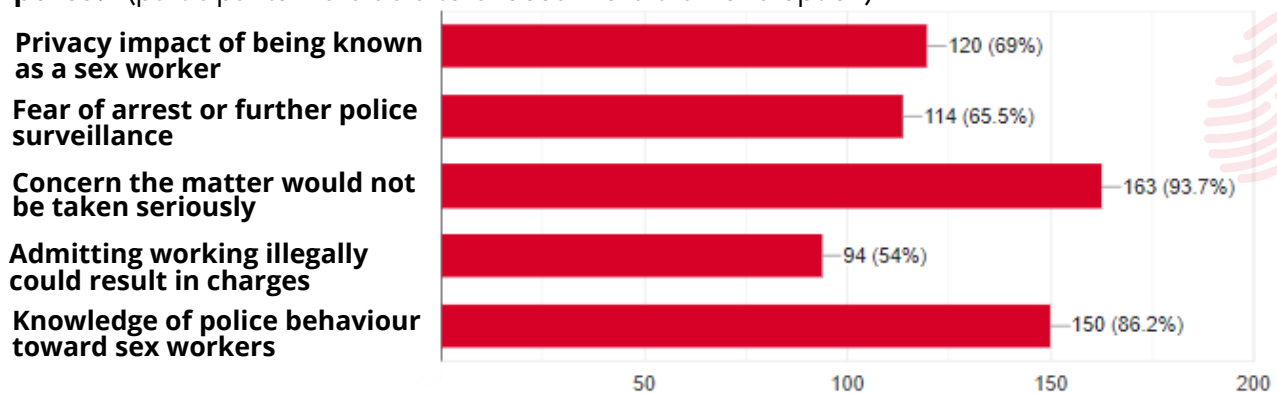
# SEX WORKER VICTIMS OF CRIME

We asked the sex worker participants in our survey who had been a victim of crime what the barriers to accessing justice were. We also held a small group consultation with women sex workers who have been victims of sexual violence. The findings demonstrate major barriers to sex workers accessing justice in Queensland.

Sex workers were hyper-aware of many cases where co-workers had attempted to report crime and the report was not taken seriously. Some were told 'there is no crime' because of a failure by police to understand how consent applies to sex work. Others were treated so badly they decided not to continue with the report. This has led to a strong understanding that these matters will not be taken seriously, as is shown in the table below.

Participants identified the irony that they were being targeted by police for victimless crimes related to working as a sex worker and yet police did not act on reports of serious crime perpetrated against them. In the few cases where sex workers stated that after persistence, their report was taken and the case proceeded, the charge was reduced to a lesser charge.

**If you have been a victim of crime, what are the barriers for you accessing justice or going to police?** (participants were able to choose more than one option)



**"When i was robbed and bashed...police turned up an hour later and spoke to me like i was a piece of shit and told me i should change jobs..."**

**"Fears over lack of confidentiality, not being believed, being disrespected, re-living trauma, male police officers, whorephobia."**

**"Police work hard to target sex workers, they are very clearly not interested in our safety or wellbeing. In fact some people making reports have been laughed at or turned away."**

**"I don't feel confident in police and their understanding of sex work law or ability for compassion."**

## SAFETY CRIMINALISED

Many participants described how the current laws undermine safety and create risk by criminalising sex worker safety strategies, e.g.:

- working together, or from the same hotel,
- letting another sex worker know the booking address and checking-in at end of booking,
- hiring someone to take and screen your calls,
- sharing a driver or driving each other.

When asked about the impact, participants described how the laws undermine workplace health and safety protections, isolate and prevent sex workers from building community and socialising, as well as impact on mental health and community connectedness.



## SEX WORKERS CHARGED

49% of survey respondents (100/204) said they had either personally been charged or fined by the police, or had a friend or (sex working) co-worker who had been charged or fined. Most indicated they had experienced multiple charges or fines.

The most common reasons these participants were charged or fined were:

- advertising 43%
- working in pairs 40%
- working from the same hotel as another sex worker 29%
- providing illegal services 23%
- having a receptionist, driver or other support staff 21%
- providing sexual services at a massage parlour 18%
- tainted property 16% (phone and earnings are seized as the proceeds of an unlawful act)

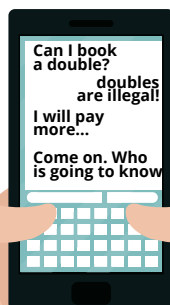
A further 57 respondents experienced police entrapment but had not been charged.

17 respondents had been charged or fined for something else including helping another sex worker with their advertisement, working with a third party or working in a hotel/motel room booked by someone else.

"I had been touching and flirting with my new client and always kiss the client when they arrive. He was asking odd questions but I thought oh well he is new to this. I was rubbing my breasts on him and then he told me he was a cop there undercover. It felt dirty. I hadn't consented to being touched or touching or kissing a cop. I couldn't do sex work for four months afterwards..."

"I am always anxious at the start of a booking when I'm interacting with the client, which makes the environment feel edgy and unsafe."

"It is absolutely terrifying and violating."



## ENTRAPMENT

The main policing strategy used against sex workers in Queensland is entrapment with police posing as the client of a sex worker and deceptively making a booking via text, phone or email. This usually includes a request for an illegal service like a 'double' where two sex workers provide a service to one client. Police have these extraordinary powers under the Police Powers & Responsibilities Act.

Two strong themes emerged from survey participants about how police posing as clients impacted on them. The first theme is **fear and mistrust of police** (and others) due to the covert nature of police interactions. The second theme is **disgust and outrage**, due to policing activities that are seen as a violation and an abuse of power.

This policing approach contributes to sex workers not feeling able to report crimes because of their distrust of police and concern that being known to police will result in heightened surveillance. Participants also raised fear of sexual assault by police. Respondents noted impacts on WHS because they could not be clear during screening of potential clients.

"It feels like rape. And leaves me terrified of the police."

"I have...been harassed and hounded by police in an attempt to get me to offer illegal services. This was to the point I thought the man was going to try and rape me as he was so aggressive and persistent. Until he told me he was a cop. I couldn't even report the verbal abuse and harassment as he was a police officer."

"...if police are tricking and pressuring to entrap us, how can i feel like i trust them? I dont..."



**96.7% OF SEX WORKERS DID NOT SUPPORT POLICE BEING ALLOWED TO POSE AS CLIENTS**





# SOLUTIONS

There was near consensus among survey respondents of the changes necessary for sex workers to access justice.

The three key changes sex workers stated were:

- full decriminalisation of sex work,
- removal of police powers, changes to the policing culture and ending entrapment,
- decreased discrimination, prejudice and stigma experienced by sex workers – achieved through a combination of education and protection under anti-discrimination and vilification legislation.

**Sex workers almost unanimously stated that the full decriminalisation of sex work was imperative for accessing justice.**

Full decriminalisation included removing police powers to entrap and target sex workers, immunity from arrest for those who are reporting crimes and expunging previous sex work charges. As sex workers wrote:

“Full decriminalisation of sex work...”

“Full decrim...”

“To start with. Expunge current laws...”

“...no unreasonable laws that I must break in order to work.”

“Decriminalisation and law reform...”

“Remove all criminal penalties.”

“Need to have no laws at all that specifically mention sex work or sex workers for criminal offences...”

“Decriminalise sex work.”

“FULL Decriminalisation of sex work...”

“Full decriminalisation of sex work (including for street based workers).”

“Full decriminalisation. More specifically: the risk of charges being brought against a worker committing a crime would need to be removed...”

“Total decriminalisation of all sex work, including street based sex work, and migrant sex work...”

“... law reform to increase safety protection for SWs (non payment & stealthing are rape), better corruption measures to stop being further victimised when seeking help.”



#DecrimQLD

## RECOMMENDATIONS:

**FULL DECRIMINALISATION OF SEX WORK**

**REMOVE POLICE POWERS  
CHANGE THE POLICING  
CULTURE AND  
END ENTRAPMENT**

**DECREASE DISCRIMINATION  
PREJUDICE AND STIGMA  
EXPERIENCED BY SEX  
WORKERS**

**RESOURCE A SEX WORKER  
LEGAL CLINIC AT RESPECT  
PROVIDING LEGAL ADVICE TO  
SEX WORKERS WHO  
EXPERIENCE CRIME. ARE  
ACCUSED, CHARGED  
OR EXPERIENCE  
POLICE HARASSMENT**

A number of respondents also raised the need to end deportation and visa policing as a result of reporting crimes.

“...Immigration status not being legally allowed to be impacted when police report is made...”

In its Sex Workers' Lack of Access to Justice paper, Network of Sex Work Projects (NSWP) recommends full decriminalisation and:

- community-based provision of legal aid and training in legal literacy, (noting that sex workers and sex worker-led organisations are best positioned to promote and disseminate knowledge of their rights, legal systems and services, a key part in increasing sex workers access to justice) and
- the urgent need to increase funding for NGOs that offer legal services, education and information to sex workers.

<https://www.nswp.org/resource/nswp-briefing-papers/briefing-paper-sex-workers-lack-access-justice>



Respect  
Inc

## First Nations women and girls' overrepresentation as victims of sexual violence and as accused/offenders

We acknowledge the extreme overrepresentation of First Nations women and children accused, charged and incarcerated and First Nations women who are victims of sexual violence and the significant barriers that prevent reporting of crimes to police.

Respect Inc supports the Taskforce specific focus on the experiences of First Nations women and girls. This should be informed and led by Aboriginal and Torres Strait Islander organisations who are frontline and advocate within the criminal justice system, are peer based and can represent Aboriginal and Torres Strait Islander community experience of the system.

The barriers to accessing justice for Aboriginal and Torres Strait Islander women happens in the shadow of colonisation as explained by an Aboriginal woman and sex worker community member:

“The impact from the start of colonisation to now includes how Aboriginal people have been treated as second class, add to that deaths in custody, heightened by how many Aboriginal and Torres Strait Islander children are taken away. Historically it was the Stolen Generation but now it is systematic injustices as Aboriginal and Torres Strait Islander women have children taken away at rates exceeding Stolen Generation levels. It affects us all as generational trauma and it impacts on our experience giving us from a young age a fear of authority and the police.

“Imagine the police have been involved in a bad way in your entire life, taking you away from your mother when you were young, as a teenager you can't walk down the street without attracting police attention and in your adulthood you have probably had a run in with police and you possibly have police charges and you experience sexual violence. You are not going to go to a police station to report it. As an Aboriginal person with previous police charges and lifetime of negative harassment with police, the general consensus is ‘What's the point?’ If you are sex worker on top of that you have extra stigma. You are not going to report something that happens in sex work to police, you would probably be charged.”

*“Police have a scary high rate of domestic violence against their own partners. I wouldn't trust ...them. Throw racism and whorephobia into the mix...and you've landed in hell.”*

*“They make me have to work alone, they make me not safe on my own land.”*

“If the police enter or come to our homes to entrap us there is a fear of being shot, beaten or even raped. It has and does happen. Also the fear of being charged with something else, and even more fear for being reported to child protection services. Having our kids taken away even if we are not charged is real. Sex workers are not seen as good mums, even though you are doing the job to make money to support your family. Once you have your children taken away it is very hard to get them back. Your children are in care and you might have been in care as a child yourself.”

*“The cycle begins again and your children have fear of authority and police.”*

*“When police come to your house you are outed to your neighbours and your community - that can mean you are disconnected from your kinship.”*

*“The current sex work laws are just another way that police can criminalise Aboriginal women.”*

*“It gives police the power to be in our business when there is no reason for them to be in our business. The answer is to fully decriminalise sex work and get police out of our business.”*

*“In the justice system you feel criminalised for just being an Aboriginal woman.”*

*“It would be so much better I could work with friend and my sister girl and we could look after each other.”*

*“There is a high amount of fear for Aboriginal people of going into a watch house, because we know people that haven’t come out.”*

## **Intersecting, cross-cutting issue of criminalisation**

The criminalisation of sex workers as a unique cross-cutting issue calls for the recognition of sex workers as a community experiencing specific, often complex, intersecting disadvantage. This must be reflected in the final WSJT report and recommendations. Women sex workers experience many intersectional issues (age, gender, sexuality, race/ethnicity, disability etc) which disadvantage us when we engage with the criminal justice system, both as victims of crime and as accused persons/offenders. Overlaying all of this is the criminalisation of sex workers which is both the product of and driver of ‘whore stigma’<sup>2</sup>. The illegality of standard safety strategies brings sex workers into regular contact with police as accused persons. Criminal laws reduce sex worker ability to safeguard from crime including sexual assault. Police targeting reduces the likelihood sex workers will report sexual assault to police. Criminalisation and stigma blur the issue of sexual consent and reduce the likelihood that police will progress reports of sexual assault against sex workers. Stardust et al note that “sex workers occupy what Sibley called ‘the liminal space between offender and victim’ (2021:2).” Along with Aboriginal and Torres Strait Islander women, sex workers are considered to be a “vulnerable population” at risk of sexual assault<sup>3</sup> but as long as police are the regulators of the sex industry, and our work or our workplaces are criminalised, access to redress for sexual violence will be limited because sex workers will not report these crimes to police due to fear of being targeted for police surveillance or being arrested.

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<sup>2</sup> Stardust Z, Treloar C, Cama E and Kim J (2021) ‘I wouldn’t call the cops if I was being bashed to death’: Sex work, whore stigma and the criminal legal system. International Journal for Crime, Justice and Social Democracy. Advance online publication. <https://doi.org/10.5204/ijcjsd.1894>

<sup>3</sup> [Prevent. Support. Believe: Queensland’s Framework to address Sexual Violence. Department of Child Safety, Youth and Women, October 2019](#)

*'Our basic safety strategies are illegal. So sex workers choose between working legally or safely. Police pose as clients to identify if we are implementing these same safety strategies. Sex workers are charged and our money, phones and laptops, our so called 'tainted property' is seized. Consequently, police are viewed as unhelpful when experiencing crime. And so many crimes go unreported or if they are reported sex workers do not feel we are taken seriously.'* Kayla Rose, Queensland Parliament House Symposium, 14 November, 2018.

It has also been found that sex work stigma, influencing community and police attitudes, intersects with criminalisation to further reinforce disadvantage for sex workers.

*"The few occasions where sex workers reported positive experiences with police were isolated to individual officers or particular stations with a history of liaison and training with sex worker organisations; however, even these came with cautionary caveats. Our participants' experiences confirm that 'regimes of stigmatisation and criminalisation [continue] to undermine sex workers citizenship rights to police protection and legal recourse and perpetuate[d] labour conditions that render sex workers at increased risk for violence and poor health' (Krüsi et al. 2016: 1137)."*<sup>4</sup>

While we recognise there are systemic barriers to all women reporting sexual violence we are not aware of any other community of women which is subject to this unique intersectionality. While other barriers to reporting are experienced by many women, this is unique to sex workers.

*'Criminalisation results in incarceration, fines and debt cycles, deportation and prevents sex workers from reporting crime and seeking justice. Sex workers in Queensland are unnecessarily placed at risk of violence by the criminalisation of our safety strategies.'* Candi Forrest, International Day to End Violence Against Sex Workers Rally, 17 Dec, 2018.<sup>5</sup>

Further, criminalisation intersects with broadly held stigma about sex workers and feeds into community and police attitudes about what constitutes sexual consent with a sex worker and whether it is possible to sexually assault a sex worker. Intersecting community and police attitudes incorrectly posit that 'it is not possible to rape a sex worker' and that situations involving non-payment and stealthing<sup>6</sup> do not constitute sexual assault. As a consequence police are often resistant to take reports and progress criminal charges, including sexual assault against sex workers, arguing that there has been no crime. Sex workers attempting to report are then turned away by police and are sometimes threatened with arrest or have had 'sex worker' added to their QP record, thereafter referred to as a 'known sex worker'. In this way, sex workers are subject to even more police surveillance and the intersection of criminalisation and stigma comes full circle.

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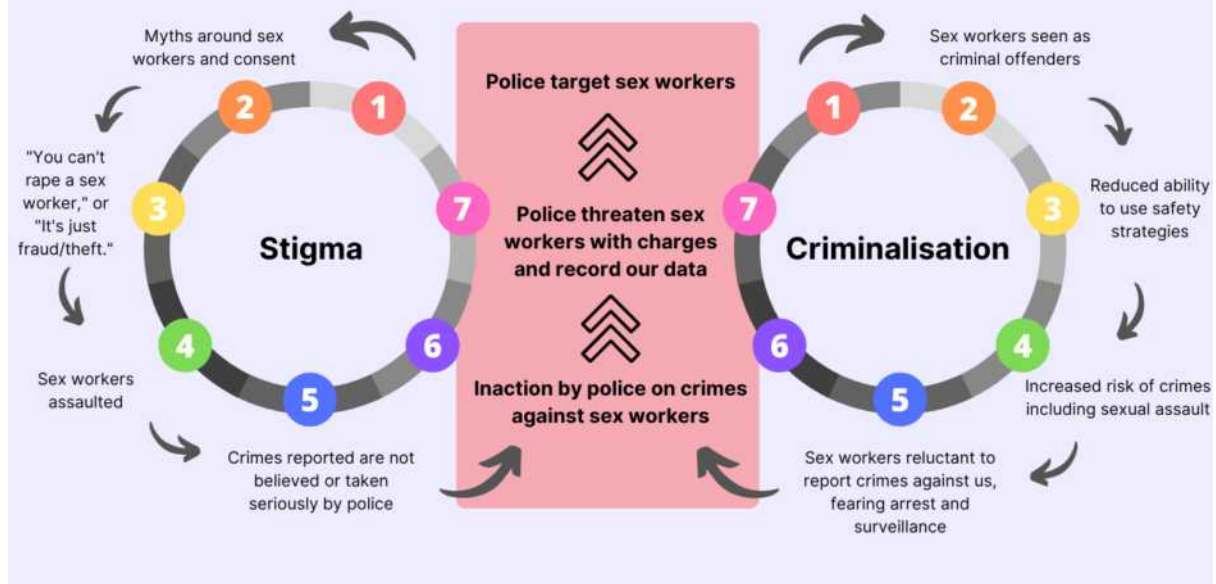
<sup>4</sup>Krusi Andrea, Kerr Thomas, Rhodes Tim (2016) ['They won't change it back in their heads that we're trash': the intersection of sex work-related stigma and evolving policing strategies](#) April 2016, Sociology of Health & Illness 38(7) [10.1111/1467-9566.12436](#)

<sup>5</sup> ["Stop criminalisation of sex worker safety in Queensland"](#) Q News, 19 December 2019

<sup>6</sup>Stealthing is a term to describe a client covertly removing or destroying (with a sharp object such as a fingernail) a condom during the booking



**Lack of Access to Justice** - this figure demonstrates the interaction between the impacts of sex work stigma and the criminalisation of sex worker workplaces, safety strategies, and advertising.



In order to be effective, recommendations to remove barriers to reporting sexual violence must include the removal of current criminal and licensing laws as an essential component of decriminalising sex work as well as policies to reduce community and police stigma and discrimination against sex workers.

## Criminalisation puts sex workers at high risk of contact with the criminal justice system as accused persons/offenders

Criminalisation refers to the current criminal and licensing laws and extensive police powers which 'regulate' sex work in Queensland. The outcome of the current structure is a two-tiered industry whereby the majority of sex workers (more than 80%) have little choice but to operate outside of the legal sector, consequently placing them under police surveillance.

To address the intersectionality of criminalisation with sex workers' safety and justice, the laws must change. The long history and culture of police misuse of powers in relation to the sex industry in Queensland alongside current laws that criminalise many aspects of sex work (that in other industries are considered basic administration tasks or necessary safety strategies) contributes to sex workers being a population highly likely to experience contact with the criminal justice system. To ensure women who work as sex workers no longer risk high levels of contact with the justice system as accused persons/offenders, are able to confidently report sexual violence and have access to justice, there is a urgent need to repeal the following laws:

- section 22A of the Criminal Code which includes the laws that criminalise sex worker safety strategies,
- the Prostitution Act 2000 which creates the licensing framework and criminalises all sex industry business models other than the 21 legal brothels (including co-operatives, sex workers working in pairs, erotic massage parlours, and escort agencies), and

- the sections of the Police Powers and Responsibilities Act which give police the power to entrap sex workers for low level crimes and to provide police immunity to undertake illegal activities in order to entrap sex workers.

Section 22A of the Criminal Code includes many of the laws that prohibit sex workers working together and criminalises most sex worker safety strategies. The Prostitution Act 1999 criminalises all sex worker workplaces (other than the 21 currently operating licensed brothels) for example co-operatives, erotic massage parlours, escort agencies, street and bar-based sex work. Police also have additional powers under the Police Powers and Responsibilities Act that define some sex work offences as 'relevant offences' for police to undertake 'controlled activities', this most commonly taking the form of entrapment, with police posing as clients.

*'One of the women told the ABC, on the condition of anonymity, that she was arrested by an undercover police officer posing as a client. The 27-year-old said she had only been working for the agency for a few weeks and had been assured the business was legal.'*<sup>7</sup>

In addition, other sex workers, or sex workers' families and friends can be charged, held or searched without a warrant if found to have consorted, or to be likely to consort with a sex worker charged for offences outlined below in section 229H of the Criminal Code. A person (a sex worker, family member or friend) who is found to be on a premises suspected to be used by two sex workers (even though this is a well known safety strategy) can be charged under section 229I, maximum penalty three years imprisonment.



<sup>7</sup> [Sex Workers Say Their "Safety Strategies" Are Criminalised, And It's Putting Them In Danger](#) Buzzfeed, 6 November 2019 and [Sex workers charged after Gold Coast raid but workers say they thought escort agency was legal](#) ABC, 30 October 2019

# Sex workers experiences as accused or charged (offenders)

## Indigenous, Asian and migrant sex workers carry the burden of criminalisation

Sex workers from Asian language backgrounds, and who are migrants, appear to be disproportionately targeted by police for sex work-related offences. Young sex workers, women in street-based settings, trans women and Aboriginal and Torres Strait Islander sex workers are at higher risk of police attention and therefore charges. This leads to an overrepresentation of these groups in the criminal justice system as defendants.

### Criminalisation: targeting is relentless and excessive

Despite findings in the 1989 Fitzgerald Inquiry that there were high levels of police control, misuse of powers and corruption in relation to the sex industry, sex workers in Queensland in 2022 are still heavily policed, with significant negative impacts on our health, safety, legal and human rights. The powers held by police in relation to sex work in Queensland are far greater today than at any time before the Fitzgerald Inquiry. During the Fitzgerald Inquiry, police called for a greater level of powers to gain convictions in relation to sex work.

The Fitzgerald Report did not support greater powers for police and noted that ‘police perception of supposed difficulties in such areas is largely unjustified’.<sup>8</sup> Fitzgerald also recommended against the use of a specific police unit targeting sex workers but despite this a specialised unit, the the Prostitution Enforcement Taskforce (PETF), was formed in 1999 and is still in existence in 2022. Police powers in relation to sex work have increased multiple times since 1989 with significant increases proposed (however unsuccessful) in 2019.

QPS statistics in 2016-17 note that it is mainly women over the age of 30 who are charged with ‘prostitution-related offences.’<sup>9</sup>

The police use of entrapment and the type of crimes prosecuted as a result of entrapment operations warrants mention in the WSJT final report and recommendations. Under, the Police Powers and Responsibilities Act police can undertake entrapment of sex workers. This Act includes immunity for police when posing as clients to encourage sex workers to agree, verbally or in writing, to illegal activity in order to obtain evidence and then charge the person.

Respect Inc and DecrimQLD recently undertook a survey of 204 sex workers working in Queensland. In this survey participants discussed their fear of police entrapment and potential charges, describing it as “constant” and “alienating”.

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<sup>8</sup> 5.3.4 Illegitimate Calls for Power, [Fitzgerald Report](#) 1989

<sup>9</sup> Public QPS statistical reports changed format at this point and no longer provide comparable data.

*“Constant worry (when using hotels etc) that there may be another worker in the same building, leading to fear of arrest & charges. It feels unsafe to not be able to tell other workers where I am and who I am with.”*

*“It is so unsafe and isolating. Everyone else in every other industry in the world can work together, why not us. We are already working in an environment that the government has made so unsafe, why can't we have drivers or friends to work with to help give us a little but more protection and people to help us out if we need it.”*

Queensland police regularly pose as clients of sex workers, attempting to get sex workers to agree to illegal services, for example working in pairs or providing a doubles service, which is illegal in Queensland.

*“He kept saying, “Get your friend in here”. I said, “No, I don't have a friend here, if you're happy with me, then you pay me”. I felt a little uncomfortable. I said, “OK, if you're not happy with me then you can go — then he pulled out his police tag.”<sup>10</sup>*

*‘Sitting on her couch in lingerie, five police officers entered Joy's living room — confiscating her phone, ID, passports and house keys — while more officers waited downstairs.’*

The use of entrapment in relation to sex worker advertising and work practices is an excessive abuse of power that does not match the seriousness of the crime or community expectations. Sex workers have also raised questions about consent when having agreed to a service with a person they believe to be a paying client turns out to be a police officer with whom they would not have engaged in the same way had they not been deceived.

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

*“I am uncomfortable seeing an undercover police officer who will write up our appointment in a report. It feels rapey and gross.”*

Criminology academics have also raised questions in relation to this practice.

*Janet Ransley, director of Griffith University's Criminology Institute, said entrapment strategies rely on deception and therefore raise important ethical issues around the fairness of police conduct. She said police were not required to report whether they use entrapment as a technique in covert operations, making it difficult to tell how widespread it was being*

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<sup>10</sup> [Queensland sex workers forced underground by 'draconian' laws amid 'predatory' police targeting, advocates say. Phoebe Hosier, ABC News Sat 27 Feb 2021](#)



used. "A lot of people in the community would have the view that this is overreach", Professor Ransley said.<sup>11</sup>

Additionally, the financial penalty for sex work-related offences is very high in Queensland and does not match community expectations about the seriousness of the crime. For example, utilising safety strategies by working in pairs or with a receptionist can attract thousands of dollars in penalties. In addition the courts can and do require sex workers to forfeit their earning to the State. Sex workers are experiencing heavy offences, forfeiture of earnings, confiscation of phones/devices as 'tainted goods'. The problem with this system is even more clear when you consider the work sex workers will need to do to earn the funds to pay back the fine and make up for their lost earnings is sex work, which means they may be charged again. It is not unusual, especially for Asian sex workers once they are 'known to police', to be targeted multiple times in a row by police. The following excerpt from a fine issued to a Queensland sex worker demonstrates the high amounts some sex workers are fined.

[Cc] 229h(1) Knowingly Participate In The Provision Of Prostitution	Imprisonment for 6 months concurrent. To be suspended for 5 years.
[Cpca] 252(1) Possess Tainted Property	Convicted. Fined \$5,000.
[Cc] 229h(1) Knowingly Participate In The Provision Of Prostitution	On all charges: Convicted. Fined \$6,000.
[Cpca] 252(1) Possess Tainted Property	

### **Criminalisation of safety strategies (creates risk)**

Standard sex worker safety strategies are illegal, forcing sex workers to choose between operating safely or legally. Sex workers articulate that it is not sex work per se that is unsafe it is the laws and policing practices that undermine sex workers ability to implement best practice Workplace, Health and Safety Practices.

*"Sex work is perceived by the community and government to be a risky profession. As sex workers we know that it's really the laws and how cops behave toward us that makes us at risk of crimes and violence and unable to do anything about it. It is like they want us to remain in this place is society, like they are all conspiring together to keep us locked out of the same rights others in the community have. Otherwise those police powers would never have been allowed. I say to friends who talk to me about sex work as risky 'fix up the laws and get the police out of our bedrooms and then lets talk about it. Until that happens your interest in my safety is theoretical and based on whorephobia and perceptions. We don't need more moralistic or paternalistic 'help'.' That always ends up in us losing rights, we need full decriminalisation."*

The Criminal Code section 229H 'Knowingly participating in provision of prostitution (1) A person who knowingly participates, directly or indirectly, in the provision of prostitution by another person

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<sup>11</sup> [Queensland sex workers forced underground by 'draconian' laws amid 'predatory' police targeting, advocates say. Phoebe Hosier, ABC News Sat 27 Feb 2021](#)

commits a crime” is the most common charge relating to sex work used in Queensland. The section is broad and makes the following standard safety strategies illegal:

- two sex workers working together,
- two sex workers working from the same hotel,
- a sex worker hiring a receptionist,
- a sex worker driving another sex worker to an outcall,
- checking-in with another sex worker at the start and/or end of a booking.

*‘I have to work illegally in order to stay safe’, she said.*

*‘I know workers who have been arrested just for texting each other and being charged with knowingly participating in the provision of prostitution.’<sup>12</sup>*

*All of Stephanie's safety strategies are criminalised: ‘Messaging other workers when my clients leave or arrive, booking into hotels that other workers are booked into so I know there is someone close by, using drivers that other workers use.’<sup>13</sup>*



A large number of recent survey participants confirmed that these laws were, in effect, stopping them from implementing most of the basic occupational health and safety strategies that independent sex workers rely on.

*‘Being unable to legally share safety information - like when and where I am, or who I am with - puts sex workers in danger. Being forced to work alone to the point where I can't even legally share information to keep myself safe is unconscionable.’*

*‘I have no ability to have someone check in on me or make sure I'm safe, no one can call me when my booking is meant to be over to check up on me.’*

*I feel entirely alone in not only safety perspectives but also business perspectives. I would never run any other business alone like I've been forced to run my escorting alone. It's vulnerable, lonely, alienating, and unsafe. It shouldn't be illegal to do the above. I should be safe to communicate and navigate around work bookings like anyone else.’*

*‘Not being allowed to communicate with other workers about bookings is frankly insane. It prevents us from taking the most basic of safety precautions.’*

<sup>12</sup> [Sex Workers Say Their "Safety Strategies" Are Criminalised, And It's Putting Them In Danger](#) Buzzfeed, 6 November 2019

<sup>13</sup> Ibid

*'The impact was that even the most basic act, of letting another worker know of my movements to help ensure my safety, meant I was breaking the law and so was at risk of being charged with an offence / penalized with an infringement notice.'*

Being unable to implement these standard safety strategies because of the laws meant that *safety* was identified as a prominent theme by most of the recent survey participants. Of 174 respondents to an open-ended question about the criminal laws prohibiting sex workers working together, 100 specifically mentioned or implied that their physical and sexual safety was markedly diminished by these laws.

*'Safety is always an issue'  
'it sucks because there is no safety there at all.'  
'It makes it really unsafe'  
'Completely removes safety'  
'its dangerous as fuck'  
'Means workers aren't safe'  
'I don't feel safe working alone.'  
'I am forced to work in a way that is more dangerous to me'  
'Makes me feel much less safe.'  
'Compromises safety... It's fucking ridiculous.'*

*'I have been raped, abused, isolated and harassed as I have to work so alone and isolated from anyone. It's beyond dangerous. '*

*'The laws undermine my safety practices and isolate me from other sex workers. These laws make no sense yet they heavily impact on every part of my work.'*

*'These impact my safety greatly. It is important to have a check in, to be able to communicate about booking times, and to share a workspace. I am in severe danger without this ability.'*

*'Isolation, makes me an easy target to be raped or robbed as I'm alone'*

*'working in pairs/trios makes me feel safer. if one of us screams for help there's a better chance we can escape the situation together. once again, i am forced to take "illegal" measures for my own safety which puts me further at risk if i get caught.'*

## **What works? What needs to be improved?**

Decriminalisation and repeal of these laws has been identified by sex workers as a positive move that would improve sex workers' safety and mental health.

*'A change in these laws would have a huge impact. It would mean workers are able to feel safer and ...Sharing a work space provides positive mental health in many ways.'*

## Contact with police as offenders

Respect Inc and DecrimQLD feel strongly that the impact on sex workers as accused persons from initial contact with police, throughout the experience of being charged and appearing in court, should be reflected in the WSJT final report and recommendations. Key issues for sex workers are:

- forced disclosure of sex worker identity to police which is impossible to remove and comes up in unrelated interactions with police, in parole proceedings and custody cases,
- public outing as a sex worker during the court process due to media reporting,
- release of legal name and home street address in local papers and media, resulting in risk of danger and harassment (this is particularly prevalent for trans and migrant background sex workers),
- loss of property, money and personal effects, due to being classed as 'tainted goods'.

In our recent survey sex workers talked about the fear and mistrust generated by aggressive police when targeting sex workers as accused persons.

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

*“they force you to do things you don't want to and will record, making out your doing something your not, loudly, to be heard”*

Respect Inc peer educators conducting legal support with sex workers have also been told about the aggressive nature of the police. In the following example, the woman was subject to a deceptive booking wherein the police officer and colleagues aggressively attempted to coerce her into making admissions about illegal activities. Unable to find anything to charge her with, they left.

A police officer made a booking, pretending to be a client, but then arrived at the worker's location and said they were there to question her. The police had asked her what the acronym in her advertising meant. They checked the unit to make sure she was alone. She reported that they were quite aggressive, trying to get admissions about other people on the premises and her services offered, but they let it go in the end. They made a phone call back to someone in charge and then left without charging or fining her. *Respect Inc Legal Brief April 2021.*

In this example, a sex worker who feels that they have been unjustly fined for breaching Covid-19 restrictions is too afraid of the police, due to their aggressive manner, to contest the fine.

A sex worker has contacted Respect Inc for advice regarding the use of police entrapment regarding a fine for breaching a public health order. There were restrictions on sex work at the time due to Covid-19. The police officer acted as a client to make a booking with the sex worker, then arrived at the worker's workplace in a marked police car and in uniform. The worker did not receive a warning before the fine was issued. The sex worker is concerned about more police harassment if they decide to contest the fine due to the intimidating behaviour of police involved in the issuing of the fine. The sex worker felt the fine was unjust, but chose to pay it in order to avoid further involvement with police. *Respect Inc Legal Brief May 2020.*



## **Incarceration of sex workers**

Women and girls are increasingly incarcerated in Queensland. We note that police deliberately target sex workers using the laws that criminalise sex worker safety, and use entrapment to pursue charges. This leads to the increased likelihood that women sex workers in Queensland will have 'stacked' or historic charges that lead the courts to determine that a custodial sentence is appropriate. Recent survey participants touched on this:

*"There would be something they would find to get me on."*

*'i get anxious working alone but also with my criminal history im afraid to work in pairs as i dont want extra charges. i feel courts would weigh heavier on me with my criminal record and also am trying to rebuild my life - fighting for my blue card. i can't afford extra charges so i dont work as much as i need to out of fear of this. im struggling financially and when i do work im too anxious to be in the moment. i dont have many friends who aren't sex workers who know what i do, and the ones that do know and arent sex workers are asleep when im working late at night.'*

Without the sex work charges, many of which in Queensland are the result of entrapment, the person would be less likely to be jailed.

Police also are well known to target drug users. A personal story from one of our community members highlights why this is problematic:

*'The criminalisation of drugs is a massive factor in the overpopulation of women's correctional centres. Also the criminalisation of sex workers plays a massive part. As a person who was a drug user and experienced chemical dependency, and a sex worker, and having been to jail myself, I have lived experience of the issue. In my experience, being sent to prison after years of substance use did not help in any way with my use of drugs. Yes I detoxed in jail and did not use any substance while incarcerated, however I relapsed shortly after leaving jail and this was far worse than before I went in. Of all my experiences with addiction, my relapse after jail was by far the most shameful point of my life and by far the worst of my experiences. I believe this was due to being forced to detox and not having the appropriate support for my recovery. I feel rehabilitation would have been a far better option and I saw this among many of my fellow inmates. My drug use was simply put on hold, and the build up of the desire to use over those 3 months was a recipe for disaster. Many of the women and girls I was in jail with were far worse off within months if not days of being released. This is dangerous, and cruel.*

*My charges were never related to sex work however I chose not to break the laws surrounding sex work in order to keep myself safe. In hindsight this was a mistake, though it did protect me from police harassment while working.'* Young woman sex worker involved in Respect Inc, statement July 2021

## **Aboriginal and Torres Strait Islander sex workers as accused persons/offenders**

Aboriginal and Torres Strait Islander sex workers are more significantly disadvantaged by the laws that criminalise aspects of sex work and are even more likely to experience targeting by police. The criminalisation of sex work gives police an excuse to harass and assault Aboriginal and Torres Strait Islander women, without any recourse to justice. Below is an example from our observations at Respect Inc:

*'During peer education a sistergirl peer was talking to me about being harassed by police, arrested, assaulted and incarcerated. She was known by police as a sex worker, but was not working at the time of the harassment and subsequent incarceration. She had asked a man for a smoke and was given one. As she walked away, police pulled up, got out of the police car and proceeded to accuse her and her friend of soliciting for sex work. Even after telling the male police officer that she was not soliciting, but had just asked for a smoke, which was confirmed immediately by the man who gave her the smoke, the police still told her to get into the police car. She was told she was under arrest as they didn't believe her story. She refused to get in so was grabbed by the officer and slammed on the ground (along with her friend), violently handcuffed and put in the back of the van. She was charged with resisting arrest, assaulting police and soliciting. She spent two days in police cells after which the charges were dropped because the Aboriginal Legal Service became involved in the case. Upon release she had a black eye and cuts and bruises all over body. These were caused by police handling. No apology was given and she was told not to "make a fuss" or it would not be good for her.' Hope Sweet, the Aboriginal and Torres Strait Islander Project Leader at Respect Inc.*

## **Asian and migrant sex workers as accused persons/offenders**

In the experience of Respect Inc and DecrimQLD, hearing both the lived experiences of Asian and migrant background sex workers, and reviewing court records, this part of our community is heavily targeted and disproportionately charged by police with crimes relating to working in massage parlours, in pairs, working from the same hotel, hiring a receptionist, driving another sex worker to a booking, and assisting each other with advertising. These safety strategies are important to any workforce, providing a safety net and community connection, especially important for people who speak English as a second language.

Migrant sex workers are entrapped by police who receive massage services while posing as clients, as described in the following case from 2019 reported in the media:

The court also heard from an undercover police officer. He first went to (*premises name removed*) in November 2015 and received a massage from a South Korean woman named Clara....

He returned a month later, this time being led by Lee into a room where Sharon, from Thailand, was waiting. He paid \$70 for a massage.<sup>14</sup>

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<sup>14</sup>[Cloud 9 massage parlour owner ran illegal brothel June 12, 2019 Courier Mail](#)

In October 2018, Respect Inc and DecrimQLd saw yet another case of standard police targeting of sex working Asian women in Queensland country towns, that resulted in public outing, loss of money, and yet no recorded convictions. A lot of police attention, and harm caused, for very little 'justice'.

A Chinese speaking sex worker was noticed by local police because of an advertising breach. The words she was using in her advertising did not match the relevant regulations.

Instead of contacting her and advising her what the correct wording would be, the police gained authorisation to make a fake booking, and called up pretending to be clients. When doing so they observed that she was using a receptionist who referred the clients to her. In Queensland this basic safety strategy - having clients vetted through a receptionist prior to confirming the booking - is illegal.



The police raided the sex worker's workplace and her property was seized. The police took her mobile phone and \$150 in cash. They went through her notebook and phone and found that money was being put into a Chinese bank account. She was charged with several charges, fined \$500 and no conviction was recorded.

This was a traumatic experience for her and an expensive exercise for the police.

There is evidence that the greater targeting of migrant sex workers is racially motivated so that police can say they are 'cracking down' on Asian sex workers. Respect Inc and DecrimQLd are concerned about the involvement and participation of Border Force in cases being investigated and prosecuted by Queensland Police. There is no data on the number of deportations, or the number of migrant sex workers in detention in Queensland as a result of sex work laws but we know from many media reports that immigration authorities often accompany police on raids in massage parlours and where the sex workers are of Asian origin. The subheading of one such report read "POLICE and immigration authorities are scrambling to keep up with an explosion in the number of massage parlours, mostly staffed by Asian students, on the Gold Coast."<sup>15</sup>

Police have regularly re-framed Asian sex workers experiences of working in pairs or from the same hotel, employing a receptionist to screen calls hiring a driver or helping each other with any aspect of their work as 'organised crime', 'illegal brothel rings' and their friends,

family, co-workers or employees as exploiters. This is strongly denied by Asian sex workers.

<sup>15</sup> [Police scrambling to keep up with explosion of massage parlours. Lexie Cartwright May 28, 2016 Gold Coast Bulletin](#)

*"It is mainly Asian sex workers who are being charged. This is not because Asian sex workers are breaking the laws more often or do not want to work legally. The charges are for activities that any sex worker might do without realising it is illegal. The advertising laws are very complicated and confusing for all sex workers. Especially if English is your second language. It is almost impossible to work within the rules.*

*Often [the police] don't understand sex work and make out that our communicating with sex worker friends is more than that and that we are some kind of organised gang. The police don't believe that we have the ability to work independently. They believe we are being controlled and try to get us to admit that someone put in our advertising, or helped us write it, or that someone is answering our phones. They try to get us to tell them who this is. Even when there is no-one." Vickki, Parliament House Symposium, 14 Nov 2018<sup>16</sup>*

## **Criminalisation drives and maintains stigma**

Some of our recent survey participants talked about the way that the criminal laws created and reinforced a criminal stigma which permeated everything that they did as sex workers.

*Survey participant 7: 'The impact is that I feel like the Queensland government thinks it is ok to make sex workers less safe and that we are less valuable than other members of the community.'*

*Survey participant 2: 'the stigma that comes from being seen as a criminal'*

*Survey participant 14: 'They re-enforce stigma that sex work is organised crime and put workers safety at risk...Sex workers are not criminals'*

The following media report of a 2020 court case illustrates how criminalisation reinforces community stigma to re-frame standard safety and business activities conducted by sex workers as 'strange' and 'bizarre'. Media agencies play a role in perpetuating stigma against sex workers. In this case where a receptionist took calls and bookings for a sex worker, managing her schedule, a role that is standard for many service industries the journalist applies a different set of standards to the work of this sex worker.

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<sup>16</sup> Respect Inc, DecrimQLD. 'Sex work laws and workplace health and safety symposium report' 2018 <https://respectqld.org.au/wp-content/uploads/Decrim/Sex-work-laws-and-workplace-health-and-safety-symposium-Report.pdf>

## Sex worker's strange agreement to funnel clients, manage prostitution fees

A sex worker illegally paid a receptionist to act as a go-between for her prostitution work, helping negotiate costs and services and manage her schedule.

**Blake Antrobus** August 19, 2020 - 2:57PM **Quest Newspapers**

A sex worker illegally paid a receptionist to act as a go-between for her prostitution work, helping negotiate costs and services and manage her schedule.

Details of XXXXXXXX's bizarre work agreement were heard in Richlands Magistrates Court on Wednesday after the mature woman was arrested in a sting operation in May.

Aided by an interpreter, she pleaded guilty to knowingly participating in the provision of prostitution via another and possessing tainted property.

The court was told the 58-year-old paid another person to act as a receptionist during her work as a prostitute between April and May.

The unknown person would negotiate costs and services and manage a schedule of clients for a fee.

Queensland's prostitution laws prevent anyone from soliciting sex work unless at a licensed brothel or working as a private sole operator.

Undercover detectives in a specialist task force posed as clients and booked an appointment with XXXXXX on May 21 at a hotel in Darra.

XXXXXX told police she had the receptionist placing ads and directing clients to her over the past few months.

A mobile phone used for her work and a sum of cash was also located.

In this case, media publicly outed the sex worker after she was targeted for an undercover 'sting' by police, for having a receptionist. As already mentioned, this is a standard safety strategy, yet is illegal in Queensland and is reported as a 'strange agreement' and a 'bizarre work agreement'. For women who would otherwise be working alone, having a receptionist makes a lot of sense, yet police in Queensland specifically target women who are using these strategies. It is also another case of an Asian sex worker targeted and entrapped by undercover police. This is an example of how criminalisation and stigma intersect and reinforce unsafe conditions for sex workers who are accused persons/offenders.

## Community, police and health services attitudes to rape experienced by sex workers

### "Where's the crime?"

"Where's the crime? What is it you want from us?" the police officer asked.... "I said, there has to be a crime, it's sexual assault. It doesn't matter that I was getting paid, because even



though you're getting paid, you still have the right to say no." Despite this, the officer wouldn't take her statement.' (Wolf, 2019) - Anna, Independent Escort, Brisbane.<sup>17</sup>

**In a sex work setting consent can be altered, withdrawn or expanded at any time, at the discretion of the sex worker.**

There is an incorrect notion within the community that 'sex workers cannot be raped'. The assertion demonstrates a lack of understanding of consent, implying that sex workers are always available for, and consent to sex. This inaccurate stereotype ignores the many ways that sex workers set boundaries and negotiate what is, or not, included in their service. What is offered by sex workers naturally varies from person to person and is negotiated ahead of a booking.

This notion is perpetuated by mainstream media and is reflected back to the community constantly.

*...sex workers' decisions to pursue redress in cases of violence are influenced by news reporting about sex worker victims of crime, where sex workers continue to be treated as either less worthy victims, less rapeable or a media spectacle.<sup>18</sup>*

Police also perpetuate this thinking when responding to descriptions of sexual assault with statements like 'where's the crime', as the quote from Anna at the beginning of this section demonstrates. These attitudes impact on sex workers ability to report crimes and result in perpetrators of violence against sex workers acting with impunity, aware that sex workers are unlikely to report crime and that police are unlikely to act if it is reported.

*"The stigma and assumptions of guilt by police. They say 'that's part of your job'.*

Sex workers who attempt to report crime are regularly told that it is 'to be expected' in their work, that 'there is no crime' or treated so badly they do not continue with a report. Experiences like this are shared amongst the sex worker community, the only place some sex workers who experience violence have to debrief or express their trauma. Sex workers are then reluctant to report based on a very real expectation that their experiences will be diminished by police.

*'I don't trust that the police won't victim-blame me or dismiss it as being "a part of the job".'*

Even though this matter has been raised consistently by sex workers and voluntary training is offered to police in relation to handling reports of sexual violence, it is a regular feature of what sex workers describe of their experience attempting to report crimes.

It is clear that there would need to be a significant change in police attitudes to address reporting of sexual assault for all victims and that there are specific and unique problems with police attitudes to sex workers.

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<sup>17</sup> [The Case for Decriminalisation: Sex Work and the Law in Queensland](#) Queensland University of Technology, June 2019

<sup>18</sup> Stardust Z, Treloar C, Cama E and Kim J (2021) 'I wouldn't call the cops if I was being bashed to death': Sex work, whore stigma and the criminal legal system. International Journal for Crime, Justice and Social Democracy. Advance online publication. <https://doi.org/10.5204/ijcjsd.1894>

## Stigma

*“Training with police, judiciary or lawyers will not ‘fix’ stigma because stigma is not simply a result of naivety or a lack of empathy. Stigma exists where power is exercised (Link and Phelan 2001). Stigma (and its role in maintaining social hierarchies) is pivotal to the over-policing of Aboriginal and Torres Strait Islander, trans, street-based, drug-using, HIV-positive and migrant sex workers. It is also central to the criminalisation of drug use, rough sleeping, solicitation and loitering.”<sup>19</sup>*

Stigma both informs community attitudes and is informed by them. Decision making by police, health services and others is informed by stigma and a sense that it is acceptable to treat sex workers unfavourably even when sex workers are victims of serious crime. This is underpinned by a long history of misuse of police powers and a problematic culture of policing sex workers in Queensland. The criminal laws in Queensland further stigmatise sex workers and enable police and other services to continue to treat sex workers unfairly as this research paper outlines:

*“Criminalisation and licensing of sex work are both drivers and symptoms of whore stigma. They are drivers in the sense that the presence of criminal and licensing laws facilitate (and provide justification for) increased police contact. Additionally, they are symptoms in the sense that legal systems governing sex work have developed through stigmatised narratives of disgust, protection and risk. However, stigma bleeds out beyond blackletter law. Although decriminalisation is an essential and necessary first step, simply repealing criminal and licensing laws will not destigmatise sex work.”<sup>20</sup>*

Sex workers also experience extreme prejudice when seeking support after sexual violence in health settings. A recent survey of sex workers in Queensland found that 57.8% of sex workers did not feel comfortable disclosing to health care providers that they were a sex worker.<sup>21</sup> Research in 2015 by the Centre for Social Research in Health, in partnership with Scarlet Alliance confirms these experiences. 31% of health workers self-reported they would behave negatively toward sex workers because of their sex work. Among the general public, 64% self-reported they would behave negatively toward sex workers because of their sex work.<sup>22</sup>

*A sex worker who disclosed a recent assault to her GP was told ‘If you didn’t put yourself in that situation you wouldn’t have been hurt’. Excerpt from Respect Inc legal brief July 2020.*

Blaming survivors for sexual assault is unacceptable, however this type of community attitude is very familiar to sex workers in Queensland.

*In July 2021 Respect Inc supported a sex worker after they tried to report a recent rape at the*

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<sup>19</sup> Stardust Z, Treloar C, Cama E and Kim J (2021) ‘I wouldn’t call the cops if I was being bashed to death’: Sex work, whore stigma and the criminal legal system. International Journal for Crime, Justice and Social Democracy. Advance online publication. <https://doi.org/10.5204/ijcisd.1894>

<sup>20</sup> Ibid

<sup>21</sup> Respect Inc & DecrimQLD (2022) Submission to the Human Rights Commission on the Queensland Anti-Discrimination Act Review, p.5. <https://respectqld.org.au/wp-content/uploads/Documents/ADA0322.pdf>

<sup>22</sup> Scarlet Alliance, Australian Sex Workers Association (2022) Briefing Paper: Anti-discrimination & Vilification Protections for Sex Workers in Australia. [https://scarletalliance.org.au/library/Anti\\_Discrim2022](https://scarletalliance.org.au/library/Anti_Discrim2022)

*local police station and were turned away. They were told 'there is not enough evidence'. The worker was not referred to the hospital for samples or for a rape kit to be taken, even though the assault had happened less than 12 hours earlier. Respect Inc Legal Brief July 2021.*

To understand the discrimination and stigma attached to survivors of sexual violence, attitudes towards sexual assault of sex workers must be taken into account. Victims are blamed by society. Sex workers are thought of as 'bringing it upon themselves' and face prejudice when we try to access justice.

Improved rights for sex workers would have an impact on current social attitudes about women in general. Cultural change can come from legislative change that is positive. Examples of legislative reform leading to cultural change include the Sex Discrimination Act 1984 (Cwlth) and the Anti-Discrimination Act 1991 (Qld).

## **Porn as an influencer of community understandings of sexual consent and sexual violence**

Discussion paper three asks: 'How do pornography, sexting, dating apps or other emerging uses of technology influence community understanding of consent.' In response we suggest that the question could be asked in the opposite way; 'How do community understandings of consent influence the types of pornography, sexting behaviour and use of emerging technology.'

Western society for thousands of years has accepted the invisibility of women, women as chattels, women as non-political extensions of male husbands and heteronormativity. Behaviour outside these norms is slut-shamed. Misogynistic attitudes are replicated in parliament,<sup>23</sup> popular entertainment, communication on dating apps and some pornography. There is a lot of different types of pornography available via smartphones. The discussion paper notes the importance of education about pornography for young people. Respect Inc and DecrimQLD agree. We would go further and suggest sex education for all young people including consent is essential.

Milena Popova (2020) has suggested that prohibition of pornography in an attempt to prevent sexual violence against women and girls may have counterproductive impacts on the more marginalised. She says, "It is perhaps ironic, then, that the kind of legislation that anti-pornography feminists campaign for, and that bans "extreme pornography," most severely impacts small and independent producers — the kind more likely to produce queer, feminist, ethical, and consent-focused pornography. The legislation focuses on specific acts: acts that go off the default sexual script, that are more prevalent in queer (and to an extent in feminist) pornography. It casts them as intrinsically deviant and undesirable, regardless of the context of either production or representation.... This and other similar legislation does not necessarily stop young people — or anyone else — from picking up default sexual scripts from mainstream pornography, and it does nothing to improve education about or understanding of consent."<sup>24</sup>

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<sup>23</sup> [Julia Gillard's misogyny speech voted 'most unforgettable' moment in Australian TV history](#) The Guardian

<sup>24</sup> [Popova, Milena \(2020\) Using Pornography to Rewrite the Script for Consent, The MIT Reader \(online\)](#)



Respect Inc and DecrimQLD believe that policy considerations of pornography as a genre of entertainment must be led by those who work in pornography, not by campaigners who are opposed to all forms of pornography.

Community attitudes and the prevalence of sexual violence have not changed with the emergence of dating apps. Social interaction using communication technology proceeds along the same lines as social interaction that historically occurred without communication technology. The difference is that sexual interactions in a digital format can be more quickly disseminated and text and imagery are more permanent now. This provides an avenue for police to obtain evidence of sexual assault as much as it allows sexual interaction.

Sex workers make use of digital technologies to advertise our services and screen our clients and we have found that knee-jerk and misguided restrictions to digital communication has serious implications for us, including undermining important networking and community building spaces and spaces where safety information is shared.

### **Consent (how it's understood and impacts)**

The cultural belief that 'sex workers can not be raped' demonstrates a lack of understanding about consent, implying that sex workers are always available for, and consent to sex. There is no recognition that consent is dependent upon payment of the agreed amount, and that the payment is for an agreed upon set of sexual acts (services). Sex workers set boundaries and negotiate what is, or not, included in their service with each client, and services and prices vary between sex workers. In a sex work setting, as in any other settings where sex occurs, consent can change or be withdrawn at any time, at the discretion of the sex worker. As much as consent relies upon payment in a sex work setting, payment does not mean that consent can not be fluid. Furthermore, payment does not equal complete access to a sex worker's body, outside of the agreed upon set of acts. Further information regarding consent in sex work settings can be found in the [Respect Inc Submission on Criminal Code \(Consent and Mistake of Fact\) and Other Legislation Amendment Bill 2020](#).

Respect Inc and DecrimQLD are concerned that sex worker issues were not fully taken into account recently when Queensland laws relating to consent and mistake of fact were amended. Dr Elena Jeffreys from Respect Inc explained this to the [Legal and Community Safety Committee 21 Jan 2021](#) (paraphrased):

*'Section 348(2) (e) of the Criminal Code states that consent is not 'freely and voluntarily given' if it is obtained 'by false and fraudulent representations' about the 'the nature or purpose of the act'. While this section could and should cover the situation where consent to sex with a sex worker is fraudulently obtained, particularly in the case of payment being withdrawn, currently in practice it does not. Even sex workers who surmount the significant barriers to reporting rape or sexual assault are being told by police, 'I don't see the crime', or 'It is a civil, not a criminal matter'. This happens regularly, and our organisation has progressed formal complaints about this behaviour, as well as brought it to the attention of the Minister for Police and the Police Commissioner. In other cases, a charge is prosecuted under section 408C of the Criminal Code, which relates not to consent but primarily to property fraud and has resulted in fines of only \$300 to \$750. The QLRC report acknowledges that this outcome does not recognise the total criminality of the offending. Respect Inc*

*believes that it is far from ideal that cases end up tried under this clause because the victim is a sex worker.'*

## Rape not fraud

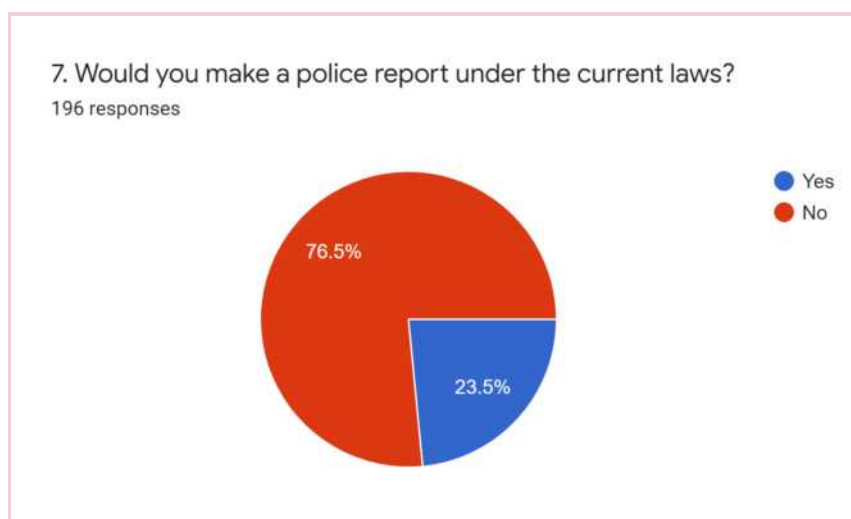
Many police in Queensland consider that situations involving non-payment and stealthing of sex workers are a type of fraud, not rape. Cases of non-payment by clients in the Australian Capital Territory have been prosecuted as sexual assault and a clear precedent has been set in that jurisdiction. There is support within the sex worker community in Queensland that non-payment should be considered sexual assault, and not fraud. It is common in Queensland for police to prosecute non-payment as fraud, if at all. For example in a case referenced by the [QLRC report](#) on the consent laws:

*'Originally I did feel like he should have been charged for rape and I was pushing for that. In my mind, payment equals consent and if you take away the payment I wouldn't be consenting to having sex with him', Gabrielle said.<sup>25</sup>*

In the case being described by Gabrielle above, the perpetrator was charged with fraud, not assault.

## Barriers to sex workers reporting crime

*"It's not even barriers, its more like mountains for an Aboriginal woman who is a sex worker." Hope Sweet, the Aboriginal and Torres Strait Islander Project Leader at Respect Inc.*



In the recent survey of Queensland sex workers 76.5% of participants indicated that they would not make a police report under the current laws (150/196), while less than a quarter of sex workers (23.5%) indicated that they would make a police report under the current laws (46/196). Of the sex workers that would report a crime to police most indicated they would do this only in 'life or death' situations.

When weighing up the consequences and potential benefits of making a police report, sex workers told us that they would only report for very serious violent crimes, as one respondent wrote: "If it

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<sup>25</sup> ['It absolutely should be seen as rape': when sex workers are conned](#) The Guardian, 13 October 2018

was extremely serious, like life or death". For most sex workers, this was the threshold at which making a report was the less dangerous option.

*"You have to identify your self and give them [police] your real name"*

*"I do not want any attention from the police."*

*"No trust [in the police]"*

We would like to see reflected in the WSJT final report and recommendations an understanding that discrimination and stigma attached to sex workers who are survivors of sexual violence comes from attitudes towards sexual assault in a sex work setting. Victims are blamed by society. Sex workers are thought of as 'bringing it upon themselves' and face prejudice when we try to access justice.

*'They're not going to believe me because I'm a sex worker.' This is what Nikki Cox — a pseudonym she works under — thought to herself when she drove to a police station after she was sexually assaulted by a client, who booked with the name Alex, in February last year.*

<sup>26</sup>

We would like to see reflected in the WSJT final report and recommendations, that it is necessary to implement policies for social, cultural and attitudinal change for the purpose of improving women's and girls' experiences of the criminal justice system as survivors of sexual offences.

Respect Inc and DecrimQLD highlight the intersecting issues that create prejudice against survivors. For example:

- the racist nature of policing, and how this results in barriers to Aboriginal and Torres Strait Islander peoples having access to culturally appropriate solutions/resolutions after incidents of sexual violence, domestic violence, partner intimidation and child custody cases.
- transphobia, and how this makes trans women more vulnerable to sexualised and partner violence.

## **Barriers to Reporting (police culture)**

*"sex workers able to trust that their reports to police will be taken seriously, treated confidentially and addressed equitably and timely"*

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

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

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<sup>26</sup> [This Sex Worker Who Was Sexually Assaulted Didn't Think She Would Be Believed. Now Her Client Is Going To Jail](#) BuzzFeed, 30 Nov 2019

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

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

When sex workers try to report crimes we are turned away by police and told that there is no crime, ridiculed or threatened with arrest.

*'The officer taking details said "is that it?" He sort of looked at me like it was a bit comedic that I had come in to report it.' Stephanie.<sup>27</sup>*

When asked to provide more information about whether they would make a police report under the current laws, the majority of sex workers participating in the recent survey indicated that they would not report because of fears that they would be charged with a crime themselves, or that they would be subject to increased police surveillance and future entrapment. Further, respondents said they would not report because they knew that some of their work practices were criminalised, or they were not sure whether they were working lawfully.

Respect Inc has supported sex workers to report crime and have witnessed first hand the attitudes and behaviour of police toward sex workers. Respect Inc have received multiple reports from sex workers who have been turned away or discriminated against by police at the initial stages of reporting sexual offences. These arise from a historic culture of policing sex workers which does not recognise sex workers as valued members of the community and deserving of rights. Police do not understand or know about the laws around sex work within Queensland, make inaccurate statements to sex workers who have experienced assault. Alongside this is outright discrimination by police based on a sex workers employment choice.

Recent survey respondents also indicated that they would not report because of police attitudes towards sex workers, including experiencing unfavorable treatment, stigma and discrimination, being dismissed, and crimes not being taken seriously because of sex worker status.

Police use their powers over sex workers as a gateway to reporting, which has the end result of convincing sex workers not to go ahead with their report.

*In 2019 Respect Inc supported a sex worker after she was raped and robbed. The worker had called local police to their hotel room immediately. Police arrived and told the worker that they could do nothing as sex work was 'illegal in Queensland'. This statement is incorrect and was recorded by police body cameras. Respect Inc Legal Brief Rape & Robbery 2019.*

Sex workers have been turned away, refused help and often leave scared or unwilling to turn to police again about any future incidents of the same nature. Sex workers are often incorrectly told by police that the exchange of money negates the rape or sexual assault they have experienced, or that

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<sup>27</sup> [Sex workers accuse police in Queensland of 'entrapment'](#) News.com, 22 November 2019

the matter is a civil case. Sex workers have been, and are still currently, told that their choice of employment would stop them from being believed by the court system and therefore the case is not worth taking on by police. These are all examples of gatekeeping by a police officer; however, it leads to sex workers individually, and friends of sex workers who hear these stories, choosing not to report if/when experiencing crimes later.

Many sex workers who participated in the recent survey and had been victims of crime chose not to report because they felt that it was unlikely they would achieve a positive outcome through the criminal justice system, and moreover, that they would be subject to poor treatment and potentially further violence and trauma through interacting with police.

*In November 2020, Respect Inc was contacted by a sex worker who was raped by a client and then physically assaulted when she refused to give him money back. The worker then went to Logan police station to report the incident, where they were told 'it is a civil matter and they can't do anything'. Respect Inc Legal Brief November 2020.*

In another case during that same time period, another sex worker faced the precise same gatekeeping, this time via PoliceLink:

*In December 2020, Respect Inc was contacted by a sex worker who had had the payment for a booking stolen back from her by the perpetrator immediately after the booking. The worker had called PoliceLink to report the crime, and was told 'this is not a criminal issue, you will have to go through QCAT'. Respect Inc Legal Brief December 2020.*

As well as the practical impact of negative gatekeeping by police, there is also a psychological impact on the individual sex worker who has been turned away. This is exacerbated in particularly violent cases, when the perpetrator goes on to harm other women:

*In April 2021, Respect Inc supported a sex worker who had reported a violent rape by two men to police. The sex worker had met one of the perpetrators online and arranged a date - not a sex work booking. The rape was filmed and the footage was accidentally sent to the victim, which she told police she had a copy of. The police did not take the report seriously, and the following day one of the perpetrators attempted to rape another woman. The second woman tried to defend herself and was stabbed several times by this same man. When the second attack happened, the police contacted the sex worker back and asked her to come in and make a report, even though they had turned her away initially. The sex worker has been experiencing guilt and shame on top of the trauma of the incident; because she had been unable to convince the police of the seriousness of her experience, she blames herself for the second attack. Respect Inc Legal Brief Rape April 2021.*

Sex workers attempting to report crimes are also subject to extremely voyeuristic and unnecessary questioning by police regarding their employment, rather than police focusing on the crime that has been committed. The above examples describe experiences that are unfortunately common and routine for sex worker community members when attempting to access justice of any kind.

Aboriginal and Torres Strait Islander sex workers responding to our recent survey have spoken about lack of police support for violent crime against them.

*"Cop don't care don't do nothing for me , tried once they , they said no you got paid didn't you."*

*"The police are corrupt and they have let me down several times in the past, implying it's my fault i was raped etc."*

Respect Inc and DecrimQLd has observed the particular lack of support for migrant sex workers for whom English is a second language, when attempting to report a crime and moving through the court process. For example, if a migrant sex worker is robbed, it is unlikely that the worker would go to police. Perpetrators know that the worker will be too scared to make a report and that it is less likely that any charges will be brought against them. There are risks for migrant workers in that they may be deported as information about their case is brought to court. The intersection between gender and race is apparent in these cases.

*"Information came up in a court case where a worker had been the victim of 'stealthling'<sup>28</sup>, and unknown to the sex worker the Immigration Department became involved. In court, Immigration presented evidence claiming to show that the sex worker's work hours were more than she was permitted to work under her visa conditions. The sex worker claims this is incorrect and wonders how they could have come up with the hours they did. The sex worker is now concerned that she may be deported prior to the court case. Respect Inc Legal Brief October 2019.*

Migrant workers coming forward to report crime against them risk Border Force getting involved and trying to find a breach of visa, and using it in court to challenge the honesty of the survivor - as in this case by fabricating a person's work hours. These risks are very real and become barriers to reporting, and there is no apparent attempt by Queensland prosecutors to protect sex workers or prepare sex workers for this type of aspersion of character.

## **Police attitudes towards the decision to charge in relation to sexual offending**

Respect Inc and DecrimQLd have identified a significant problem with police attitudes in the decision to charge when the sexual offending is against sex workers. Sex workers report to Respect Inc that police refuse to acknowledge a crime has been committed when the victim is a sex worker, refuse to take the report when sex workers attempt to report the crime, regularly decide not to progress the report or charge the offender; or charge the perpetrator with fraud instead of rape.

*'They [police] said how horrible the experience would be if I wanted to continue. So it was very much trying to get me straight back out of the door. I left there feeling distraught and never tried to report it again.'<sup>29</sup>*

Decisions by police not to go ahead with investigating sexual offences has a long term impact on the number of reports they will receive. When sex workers are turned away, trust in the system is lost for the long term.

*'I think my experience with the police that day was actually worse than being assaulted.... There was no compassion, no recognition that I'd obviously gone through trauma.... I didn't*

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<sup>28</sup>Stealthling is a term to describe a client covertly removing or destroying (with a sharp object such as a fingernail) a condom during the booking

<sup>29</sup> [Sex workers accuse police in Queensland of 'entrapment'](#) News.com, 22 November 2019

want to go anywhere near the police system again'. (Sophie quoted in Wolf, 2019). - Sophie, Independent Escort, Brisbane.<sup>30</sup>

*Stephanie said fear of arrest discourages sex workers from reporting violence or robbery to the police. 'It is really isolating to know that people who are meant to keep you safe are the ones who are watching you work and trawling through your ads', she said.<sup>31</sup> Aggravated sexual assault case QLD.*

*'I was able to give the police information [about the perpetrator]. People, times, places, etc. But they keep thinking I am only talking because of the reward [for information]. Asking me if I take drugs, are you still a sex worker... I mean how is that relevant? Such stupid questions. They said "What if you get the reward? You will have to give us your name then", I said 'I don't want the money.' Respect Inc Legal Brief Cold Case.*

*In July 2020, a sex worker made contact with Respect Inc after reporting a drink spiking and rape to police, as she was concerned by their attitudes that they were not taking the report seriously. A Respect Inc Peer Educator attending the formal statement appointment in support with the sex worker noted that the officer used the term 'prostitute', and made several statements about STIs and drug use, such as- 'You aren't like other workers, drug users', as well as statements about condoms not being the norm in sex work. He also admitted he did not know the laws on sex work and that he had thought the worker was lying about the advertising platform initially. Respect Inc Legal Brief July 2020.*

*Respondent 17 'I was attacked (not work related) and when the police officer involved asked for my name i told him and he put his note pad down and looked at me and asked "what do you do for work" he knew and the incident wasn't taken seriously'*

The examples above are devastating. In each case the decision to charge, believe, or be prepared to take a report in an effective and non-judgmental manner is left up to individual police in isolation. The arbitrary nature of police decisions in relation to whether charges are pursued should be unacceptable to the Taskforce. Respect Inc and DecrimQld note that there are too many opportunities for police to turn victims of sexual violence away, and police enthusiastically take advantage of this in order to avoid making charges.

Respect Inc and DecrimQld observes that legislative reform to increase penalties for sexual offences may not have the desired effect, because there is a current culture of inattention and blatant discrimination by police to the issue of sexual offences generally. If the police are unable to implement the laws as they stand, the sex worker community is not confident that bringing increased penalties for sexual offences will make any difference.

### **Being known to police (name on record)**

Sex workers also face the possibility of being arrested or charged when reporting sexual violence or other crimes or by making themselves 'known to police' they will experience additional surveillance.

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<sup>30</sup> [No justice for sexual assault victims: Sex workers 'less than citizens'](#) Archer, 17 January 2019

<sup>31</sup> [Sex Workers Say Their "Safety Strategies" Are Criminalised, And It's Putting Them In Danger](#) Buzzfeed, 6 November 2019



According to our survey results, one of the most common reasons sex workers would not make a police report under the current laws was a fear of the repercussions of making themselves known to police as a sex worker. Respondents said that they feared being treated as a criminal instead of a victim and feared being charged with a crime themselves as a result of reporting:

*"I tried to report a crime and I was treated like I was the criminal because I do sex work. I would never do it again."*

*"I would be afraid of being charged with other offences"*

*"I would but would find it pretty scary as I'd worry I'd be arrested if I said the wrong thing"*

*"I am afraid of being persecuted for my work"*

*"I don't trust the police, and I don't want to be prosecuted and I don't want a criminal record."*

*"There are too many things that I could be charged for."*

Sex workers highlighted that the potential consequences of receiving a criminal charge outweighed the perceived benefits of reporting crimes they experienced to police. Respondents spoke about the repercussions they feared if they made a police report, including compromising their privacy and confidentiality, potentially losing non-sex work employment, restrictions to their ability to travel, and for non-citizens, the risk of facing deportation - as one respondent told us:

*"If I worked illegally I could end up with a criminal record, which as a non citizen could lead me to being deported."*

When making the decision not to take reports and/or pursue charges against perpetrators, Respect Inc has also repeatedly observed front-line police using the situation as an opportunity to gather intelligence on the sex worker or other people instead. When sex workers have attempted to report sexual offences, instead of following up the offence, front-line police tell the worker that they will not be believed, and there is no point making a report. Later, the worker finds out that their QP record was updated during that interaction, with occupation 'sex worker' or 'escort' or 'prostitute'. This has led to discrimination by police and courts that follow the sex worker throughout their life.

Respect Inc, DecrimQLD and the sex worker community are incredibly disappointed by this behaviour by the Queensland police. The fact that police misuse attempts by sex workers to report sexual offences as intelligence gathering exercises **against the victim**, rather than taking the report, demonstrates the deprioritisation of apprehending sexual predators. This tells us that Queensland police would prefer to prosecute, rather than protect, sex workers.

*In December 2018 Respect Inc supported a sex worker who had gone to the local police station after midnight and waited until the early hours of the morning to see an officer and report an assault that had happened at their home just a few hours earlier. The police officer told the worker she could be arrested herself, and 'you better just get out of here'. In March 2019 the same worker was in court on an unrelated matter, and the Magistrate read out her occupation as 'sex worker'. Respect Inc Legal Brief March 2019.*

In evidence to the Legal Affairs and Community Safety Committee of Queensland Parliament, Scarlet Alliance expanded:



'In short, we support recommendations by Respect for legislation to protect sex workers when reporting crime—for example, the legislation in California SB 233 Immunity from arrest 2019-2020 has passed into law. This legislation ensures that, if a sex worker has engaged in the act of sex work at or around the time they were a victim or a witness to a crime, this is inadmissible in a separate prosecution of that victim or witness to prove criminal liability for that act of sex work.'<sup>32</sup>

## **Victims of crime (court processes etc)**

Respect Inc peer educators support sex workers in court cases against perpetrators of sexualised and gender-based offences, domestic violence and cases of non-payment. Sex workers are not offered enough information, support or consultation during pre-trial activities. Many important decisions are made behind closed doors by the Queensland Department of Prosecutions and lawyers representing offenders, which have short-term and long-term impacts on sex workers who have come forward as victims of an offence. For example:

*'During a call with relevant police, Respect Inc staff were informed 'The accused has provided details of a debilitating illness, which has put the court date on hold for the near future'. The officer who charged the accused in October 2019 was surprised that the sex worker survivor and Respect Inc as the supporting organisation had not yet been informed of the situation. The August 2021 court date we were preparing for has been postponed, maybe cancelled, and the sex worker at the centre of the case is not aware of this and now the peer educator has the job of letting the sex worker know.' Excerpt from Respect Inc legal brief, 2019 - 2021.*

The role of the ODPP and their engagement with sex workers who are survivors of sexually violent offences should be reflected in the WSJT final report and recommendations. The prosecution processes are complicated and long. Respect Inc observes that there are often long gaps between communications from the ODPP and survivors. This means the survivor is unsure what is happening with the case, may have put their life on hold (i.e. by not moving interstate) without knowing if or when the trial will occur. It can lead to the survivor becoming despondent, clinically depressed and anxious, confused and feeling that no one really cares about the incident or violence against women generally. The survivor is concerned that the perpetrator is out in the general community and re-offending, and even though the victim is following the 'correct' legal pathway, the perpetrator is still a risk to other women and other sex workers.

*"I've also reported a rape by fraud... years of harassment, then booking under a different name and number and gloating afterwards, and telling me I got what I deserved when I called him a rapist piece of shit. I went through the entire process with police, forensics, hospital, etc. And when the forensics finally came in after 11mths my detective told me "they rather sharply contradicted the suspect's version of events", and that with the other evidence he was requesting the ODPP file charges. 3-4mths later the ODPP decided not to move forward as they weren't confident they'd get a conviction. So my justice wasn't economically viable in other words. I was also denied restorative justice."*

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<sup>32</sup> [Scarlet Alliance transcript of evidence to Legal Affairs and Community Safety Commission, Criminal Code Consent and Mistake of Fact Inquiry 21 Jan 2021](#)

The WSJT final report and recommendations should identify the way trials proceed and the impact that court processes have on survivors. Many sex workers comment that the trial process was as terrible as the assault. The length, complications, risks and unnecessary emotional work required by victims during the trial process should all be considered.

Sex workers have felt that the sentencing does not adequately match the impact of the incident, and/or that perpetrators who have access to resources are more likely to get off, or win appeals.

Additionally, the risks involved for sex workers becoming a witness for the state are great, and yet rarely explained by the ODPP, and survivors are not eligible for free legal advice about concerns they might have that are specific to sex work laws:

*Respect Inc was contacted by a sex worker who had taken a booking that was meant to involve being paid for performing a striptease. The person came to the worker's apartment for the booking. During the interaction she became uncomfortable and put her clothes back on. The perpetrator then raped the worker and left without paying. The worker made a report to police and the case has gone to court. However the court wanted access to the worker's phone to download and make a copy of data. She is understandably afraid of what the court might do with the personal and business information on the phone, as it may reveal her safety strategies which are illegal in Queensland, and implicate her colleagues and support people. The sex worker obtained free legal advice about her rights and was told she is not eligible for free advice about these risks because she is the 'victim' and not being charged. Respect Inc Legal Brief Rape and Non Payment.*

## **Specialist courts for sex workers**

Respect Inc and DecrimQLD does not support specialist court models relating to sex work offences. Specialist court models of this nature in other jurisdictions have not improved access to justice. Instead they have increased the burden of activity on sex workers, forced sex workers to stop sex work even when it is the person's chosen profession, and increased the risk of their sex worker status becoming public, outside of the person's control. Additionally, the specialist court model does not appear to shorten the length of cases. It has been observed to increase and drag out sex workers' forced engagement with the legal and justice systems.

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Forrest was a sex worker in the 1980s and remembers police officers coming in and "charging girls on a rotational basis". "It was my turn so the police officer just said 'this is the routine, girly,'" the now 57-year-old told BuzzFeed News. "They would come in full of swagger and never had to pay for their bookings." Forrest was charged and fined about \$150. "We were earning a couple of thousand dollars a week and we weren't paying any tax so they just said 'think of it like it is your tax' and I was quite intimidated," she said. Even though this kind of corruption ran rampant in the 1980s, Forrest believes sex workers may be less safe now.

[Sex Workers Say Their "Safety Strategies" Are Criminalised, And It's Putting Them In Danger](#) Buzzfeed, 6 November 2019

"Sex work may be the exchange of payment for companionship, intimate and sexual services but payment does not negate consent".... "My time and services were paid for by this client for an upfront agreed upon service, my body was not bought to do with whatever he wanted nor to violate as he wished." Quate from Nikki who attempted to report a sexual assault to police at the Mt Gravatt station but the plain clothes police officer said "Where is the crime?"

[This Sex Worker Who Was Sexually Assaulted Didn't Think She Would Be Believed. Now Her Client Is Going To Jail](#) Buzzfeed, 30 Nov 2019