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Committee Secretary
Legal Affairs and Safety Committee
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Submission on Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020

Respect Inc is the state-wide sex worker organisation in Queensland. Our organisation provides a comprehensive health promotion and peer education program for sex workers. Respect Inc has offices and sex worker drop-in spaces in Cairns, Brisbane, Townsville and the Gold Coast and provides regional outreach in other locations.

Consent and removal of Consent due to Non-Payment for Sexual Services

Consent must apply to sex workers as it does other Queenslanders. In a sex work setting consent can be altered, withdrawn or expanded at any time, at the discretion of the sex worker.

In sex work, a key aspect of consent for sexual services is payment for the services negotiated. If payment is not made or withdrawn, whether or not the sex worker is yet aware, consent is also withdrawn. When the payment and therefore consent is breached access to a person's body and sexual labour is sexual violence. This Bill must recognise that consent is not freely or willingly given by a sex worker when payment for sexual services is withdrawn or not given. Whilst an amendment to section 348 'Meaning of consent' is included in this Bill, it does not encompass this protection for sex workers which recent cases have demonstrated is essential to provide clear direction to police and the justice system. A minor amendment would align Queensland with the ACT legislation that has seen a number of successful charges where consent was fraudulently obtained in relation to non-payment or withdrawal of payment for sex work services. The Queensland Criminal Code section 348(2)(e) states that consent is not "freely and voluntarily given" if it is obtained "by false and fraudulent representations". However, unlike the ACT legislation this subsection is limited to "the nature or purpose of the act", making it unlikely to apply to this matter without amendment.

Reccomendation: Section 348(2)(e) ‘by false and fraudulent representations about the nature or purpose of the act;’ be amended to include ‘or the withdrawal of payment or non-payment of a sex worker’.

The criminalisation of sex worker safety strategies via section 229H of the Criminal Code increases the risk of sex workers in Queensland experiencing sexual violence

Queensland's Framework to Address Sexual Violence identifies sex workers as a population group at a higher risk of experiencing sexual violence. 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’.

Sex work laws in Queensland including those in the Criminal Code being amended in this Bill create significant risk by criminalising the safety strategies sex workers use to reduce risk of sexual violence. Sex workers are criminalised for working in pairs, hiring a receptionist, advising another sex worker where they are and checking in when their booking is finished, driving each other to bookings etc. Sex workers in Queensland are forced to chose between working safely or legally.

Recommendation: The Legal Affairs and Safety Committee consider recommending the repeal of section 229H of the Criminal Code

Barriers for sex workers reporting sexual crimes

The outcome of the current policy, legislative and policing environment in Queensland is that sex workers rarely report crimes. For those few that do, crimes (particularly sexual assault) are regularly not taken seriously by police. Entrapment is legal and police regularly request illegal sexual services that are in fact sex workers implementing basic safety strategies. Sex workers fear reporting crime as making yourself known to police may result in further surveillance or targetted policing. Until sex work is decriminalised in Queensland, there will remain significant barriers for sex workers reporting or accessing justice for crimes against them.

The criminal process and procedures to address sexual assault in Queensland are deeply flawed. Individuals rely on the good will of front-desk police, who in our experience are rarely equipped to deal with sexual crimes. The sex worker community feed back to us that there is a culture of police finding a reason to discourage reporting of sexual crimes, including confusion surrounding whether any crime has taken place. Many sex workers who have been victims of sexual assault have been told by police that there has been no crime, and have been refused the opportunity to provide a statement.

The overall criminalisation of sex workers in Queensland - with at least 80% of sex workers at risk of arrest for using safety strategies - means that as a community we are vulnerable to inappropriate policing. Wording of these amendments must take into account and mitigate against any potential use by police for gathering intelligence in order to prosecute sex workers.

Recommendation: Respect Inc recommends an amnesty clause for sex workers coming forward to report crime, such as has been introduced in California recently.

Sex workers in Queensland experience significant barriers to reporting rape and sexual assault. Sex workers making reports in Queensland are met with additional blocks at the point of reporting from Police. Respect Inc has received countless reports, leading us to believe it is common practice, that police refuse to take reports from sex workers and advise sex workers that there is no point in progressing their report.

Sex workers must not be left behind

Sex workers have repeatedly and consistently reported to the Queensland government the way in which the current policy and legislative environment and policing practices in Queensland increase sex workers vulnerability to crime including those covered by this Bill, and create barriers to reporting or lack of action by police when crime is reported.

In October 2019, the Minister for Police wrote to the Legal Affairs and Community Safety committee advising that the matter of sex work legislation was to be referred to the Queensland Law Reform Committee (QLRC). The QLRC Consent and Mistake of Fact report notes that the issue of consent raises broader policy questions about the regulation and protection of sex workers, and their experiences within the criminal justice system, that were outside the scope of the Commission's review. The Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence advised stakeholders in July 2020 that 'as a result, the Queensland Government will add this to the Terms of Reference for another QLRC review into the regulations and laws governing sex work in Queensland in 2021'.

At the time of writing this submission this referral has not occurred. Should the decriminalisation of sex work not occur in 2021 the Queensland government risks leaving sex workers with less access to justice in relation to sexual violence than the rest of the Queensland community.

Recommendation: The Legal Affairs and Safety Committee recommend the decriminalisation of sex work is urgently referred to the Queensland Law Reform Commission.

Thank you for considering our submission. Representatives from Respect Inc would appreciate the opportunity to address the matters further and answer the Committee's questions at the hearing.

Yours sincerely,

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