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A decriminalised sex-work industry for Queensland

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To: The Honourable Shannon Fentiman MP
Attorney-General and Minister for Justice
Minister for Women and Minister for the Prevention of
Domestic and Family Violence

In accordance with section 15 of the *Law Reform Commission Act 1968*, the Commission is pleased to present its Report, *A decriminalised sex-work industry for Queensland*.

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Preface

Our task in this review has been to recommend an appropriate legislative framework to implement the Queensland Government's commitment to decriminalise the sex-work industry.

Our terms of reference were received in August 2021. Recognising the complexity and size of our task, they were amended in November 2022 to extend our reporting date to 31 March 2023. The Attorney-General also asked us to provide drafting instructions or information to support the drafting of legislation based on our recommendations. Our detailed instructions form volume 2 of this report, and will support the government to prepare legislation quickly and with the benefit of its own further consultations.

The review is based on a simple idea: regulating sex work as work, not as a crime. But working out the legislative details for this was a complex task. It has required us to identify:

- what should happen to each provision of the Prostitution Act, Prostitution Regulation and chapter 22A of the Criminal Code
- what consequential amendments to numerous other Acts flow from these decisions
- how planning, work health and safety, public health, advertising and other general laws in Queensland apply to the industry, and
- what other supporting measures might be needed, such as guidelines and education.

Our work has been informed by research and evidence, and guided by the key principles of **safety, health and fairness**.

Sex workers should not have to choose between working lawfully and working safely. Our review has found that regulating sex work as far as possible under the same general laws as other work is a better way to enhance safety, promote health and protect the human rights of people working in the industry. We found that the aim of the current licensing system to ensure workers' health and safety is better met by work health and safety laws, than by licensing laws that create a two-tiered industry.

We also concluded that there should be strong criminal penalties for coercion or involving children in commercial sexual services.

After some early consultation and preliminary research to identify issues, we released a comprehensive public consultation paper in April 2022. In it we posed questions on a range of topics to help with our consultation.

We received 160 submissions, and held several consultation roundtables with key people and organisations. Many submissions were from individual sex workers across different sectors of the industry, but we also heard from various government agencies, non-government and community organisations and other interested individuals. Most supported decriminalisation and an end to licensing, but some others held equally strong views for retaining some sex-work-specific regulations. Many people made submissions anonymously. Some included research or data, and many shared personal stories and experiences. We thank all those people and organisations who made submissions or consulted with us. We considered all views in developing our recommendations.

I acknowledge and thank the members of the Commission, who all serve in a part-time capacity, for their demanding work and careful deliberation. They join me in thanking all the officers of the Commission's Secretariat who have worked tirelessly. We were greatly assisted by officers with special expertise in the regulation of sex work, planning law, health law and work law who were seconded to the Secretariat to work on

the review. Special thanks are due to Cathy Green, Acting Director, and Paula Rogers, Acting Assistant Director, for their leadership, prodigious work ethic, insightful analysis and the consistent quality of their advice.

The decriminalised model of regulation for the sex-work industry that we propose is informed by evidence. It reflects reality, rather than myths and stereotypes about sex workers and their work.

Our independent conclusions will not please everyone and do not reflect the agenda of any single interest group.

Our report recognises the rights and the responsibilities of sex workers and sex-work businesses. It seeks to ensure that sex work is regulated by general laws that protect the public interest. It also seeks to protect the vulnerable from exploitation.

The Hon Justice Peter Applegarth AM
Chair

March 2023

Legislation

Legislation commonly referred to in abbreviated form throughout this report is listed below in its short title and in full.

As a guide, Commonwealth legislation governing all Australian states and territories has (Cth) at the end of its title. Legislation from other states has the appropriate abbreviation, such as (Vic).

All other legislation listed below applies to Queensland alone.

Short title	Full title
Anti-Discrimination Act	*Anti-Discrimination Act 1991*
Child Employment Act	*Child Employment Act 2006*
Child Protection Act	*Child Protection Act 1999*
City of Brisbane Act	*City of Brisbane Act 2010*
Criminal Code	Queensland Criminal Code
Criminal Code (Cth)	Commonwealth Criminal Code
Fair Work Act (Cth)	*Fair Work Act 2009* (Cth)
Human Rights Act	*Human Rights Act 2019*
Liquor Act	*Liquor Act 1992*
Local Government Act	*Local Government Act 2009*
Penalties and Sentences Act	*Penalties and Sentences Act 1992*
Planning Act	*Planning Act 2016*
Planning Regulation	*Planning Regulation 2017*
Police Powers Act	*Police Powers and Responsibilities Act 2000*
Prostitution Act	*Prostitution Act 1999*
Prostitution Regulation	*Prostitution Regulation 2014*
Public Health Act	*Public Health Act 2005*
Rehabilitation of Offenders Act	*Criminal Law (Rehabilitation of Offenders) Act 1986*
Sex Industry Act (NT)	*Sex Industry Act 2019* (NT)
Sex Work Decriminalisation Act (Vic)	*Sex Work Decriminalisation Act 2022* (Vic)
Sex Work Decriminalisation Bill (Vic)	Sex Work Decriminalisation Bill 2021 (Vic)
Work Health and Safety Act	*Work Health and Safety Act 2011*
Work Health and Safety Regulation	*Work Health and Safety Regulation 2011*

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Introduction and summary

What our review is about

1.1 The Queensland Government has committed to decriminalising the sex-work industry in Queensland.

1.2 The Commission's task is to recommend the legal framework for a decriminalised sex-work industry.

Our terms of reference

1.3 Our review is carried out under terms of reference given to us on 27 August 2021 and amended on 3 November 2022, by the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence. Our terms of reference are set out in full in Appendix C. They define our scope and the focus of our review.

1.4 We are asked to include drafting instructions or information to support the drafting of legislation based on our recommendations. This will support the government to prepare legislation, with the benefit of its own further consultations. Our detailed drafting instructions form volume 2 of this report.

1.5 Our report is due to the Attorney-General by 31 March 2023. The Attorney-General must table the report in Parliament within 14 sitting days after receiving it. We will then publish it on our website. It is a matter for the Queensland Government to consider our recommendations and decide its response.

1.6 In developing a decriminalised framework, we are guided by the key principles of **safety, health and fairness**.

Our approach

1.7 We recognise the knowledge and lived experience of people working in the sex-work industry, as well as the interests and views of other individuals and the wider community. This includes sex workers, brothel licensees and other sex-work business operators, sex-worker organisations, organisations who advocate against the sexual exploitation of women, sex-work clients, industry regulators, local governments, police and others involved in the criminal justice system, and members of the community.

1.8 Our recommendations are based on extensive consultation, academic research, analysis of the evidence and careful deliberation. Our independent conclusions will not please everyone and do not reflect the agenda of any single interest group.

1.9 We released our public consultation paper in April 2022.[1] We received 160 submissions and held 25 consultation roundtables with organisations and individuals (see Appendix B). We thank all of the individuals and organisations who consulted with us and made submissions to our review.

The industry and our terminology

1.10 Our terms of reference are focused on the regulation of, and criminal laws against, 'prostitution'. This has a particular meaning under the Criminal Code and limits the scope of our review.

1.11 We use the terms 'sex work' and 'sex worker' instead of 'prostitution' and 'prostitute'. We sometimes use different terms if we are quoting from someone else or discussing laws that use particular words.

1.12 We recognise the diversity of the sex-work industry – and related industries that involve sexually explicit performance or activities. Sex workers come from many backgrounds, work in a variety of locations, may move in and out of the industry, and do not always self-identify as sex workers. Many submissions to our review said the decriminalisation of sex work should be all-inclusive, taking a wide view of the activities and people who work in the industry.

1.13 We do not know how many sex workers there are in Queensland, and the discreet and often transient nature of sex work makes it difficult to assess. Complete, accurate and up-to-date figures are hard to ascertain. We obtained data and information from a variety of sources and submissions, including data collected by Respect Inc,[2] #DecrimQLD and the Queensland Adult Business Association (QABA).

1.14 For our review:

- 'Sex work' refers to an adult providing consensual sexual services to another adult in return for payment or reward. 'Sexual services' refers to participating in sexual activities that involve physical contact. This includes sexual intercourse, masturbation, oral sex or other activities involving physical contact for the other person's sexual satisfaction.
- A 'sex worker' is someone who provides sex work within this meaning.
- A 'sex-work business' is a business that provides, or arranges for the provision of, sex work.
- A 'sex-work business operator' is someone who, alone or with others, owns, operates, controls or manages the business.

1.15 Sex work includes all forms of currently legal and illegal sex work. This includes but is not limited to:

- sexual services provided in brothels, massage parlours and other venues
- sex work arranged by escort agencies
- sex work by private sex workers
- street-based sex work, and
- sex work performed by strippers or other adult entertainers.

1.16 Strippers performing 'extras' that may amount to sex work will have the benefits of decriminalisation, since sex work will not be a criminal offence. However, adult entertainment in the liquor industry is regulated under separate laws in the Liquor Act, which may limit the activities that can be performed at licensed premises. The regulation of adult entertainment has not been the focus of our review. Later we explain that policy issues about the activities allowed on licensed premises are a matter for development by the regulator of the liquor industry, in consultation with stakeholders in that industry, including venue operators, employers, workers, unions and other workplace regulators.[3]

1.17 A list of commonly used legislation names is included at the front of our report.

Changes to the current system are needed to protect human rights and safety

1.18 Sex work ('prostitution') is regulated by the Prostitution Act, the Prostitution Regulation, chapter 22A of the Criminal Code and sections of the Police Powers Act.

1.19 Presently, 2 forms of sex work are lawful:

- sex work in a licensed brothel, and
- sex work by a private sex worker working alone.

1.20 All other forms of sex work are illegal. This includes street-based sex work, sex work in an unlicensed brothel or massage parlour, sex work by escort agencies, outcalls from a licensed brothel, and sex worker collectives, where 2 or more private sex workers share costs or resources. Presently, except in a licensed brothel, 2 or more sex workers cannot work together to ensure their safety. Sex workers must choose between working safely or working lawfully.

1.21 Sex workers told us they experience significant barriers to exercising their rights and that the current framework jeopardises their health and safety. Changes to the current system are needed to help protect human rights and safety. Relevant rights include:

- recognition, equality and non-discrimination
- freedom from forced work
- freedom from medical treatment without full, free and informed consent
- privacy (including bodily autonomy)
- liberty and security of person
- access to health services without discrimination.[4]

1.22 Sex workers and others should also be protected from exploitation.[5]

1.23 Current sex work laws are highly restrictive and difficult to comply with, undermining sex workers' autonomy and privacy. The current framework creates incentives to avoid the attention of authorities and isolates sex workers, increasing their vulnerability to exploitation and violence. It creates a two-tiered industry where most sex work is criminalised or occurs outside the licensing system. The framework contributes to stigma and discrimination, and creates barriers to accessing health, safety and legal protections.

1.24 The current licensing system for brothels has had some benefits for those working within it. Some submissions said they prefer strong sex work regulations to continue. However, licensing has been taken up by only a small part of the industry. There are 20 licensed brothels in Queensland, estimated to be 10% of the industry. Most sex work occurs outside the licensed sector.

1.25 Sex-worker organisations say the full decriminalisation of the sex-work industry is the best way to improve sex workers' health and safety, and to safeguard their rights. Decriminalisation treats sex work as work, rather than as a crime. It aims to facilitate safe work practices, support health and wellbeing, and improve access to protections under general laws and regulatory frameworks that apply to everyone, including work health and safety laws. Decriminalisation is supported by a growing body of research showing it has positive effects on sex workers' health, safety and access to justice, and can help address stigma and discrimination.[6]

Our recommended framework

No sex-work offences against consensual adult activity

Can work alone or with others and use safety strategies

Serious penalties for coercion or involving children

General work laws and rights apply, with industry work health and safety guidelines

General public health laws apply

Stronger anti-discrimination protections for all sex workers

General advertising laws, codes and standards apply

Planning laws treat sex work like other businesses

No sex-work-specific local laws or prohibitions

General public nuisance and amenity rules apply

Licensing removed

No sex-work licensing and Prostitution Licensing Authority abolished

Education and review

Changes implemented with education and training, and reviewed after 4–5 years

Decriminalisation recognises sex work as work

1.26 If the government implements its policy, Queensland will not be the first jurisdiction to decriminalise its sex-work industry. Sex work is decriminalised in New South Wales, New Zealand and the Northern Territory. Victoria is decriminalising sex work under a two-stage process with some reforms in place since 10 May 2022 and others due to start in December 2023.

1.27 Each of these jurisdictions takes a slightly different approach. The common aim of decriminalisation is to recognise and regulate sex work as legitimate work, rather than as a crime. This means:

- removing sex-work-specific laws that are not needed
- aiming to reduce stigma and discrimination
- safeguarding sex workers' human rights
- removing barriers to sex workers' safety, health and access to justice
- treating sex work like other work (as far as possible)
- not singling out sex work for special laws without justification.

Decriminalisation does not mean no regulation

1.28 As submissions to our review generally acknowledged, decriminalisation does not mean no regulation at all. Sex work is treated like other forms of work. The same general laws that apply to other workers, employers and businesses apply to sex work. This includes work health and safety, anti-discrimination, advertising and planning laws. The general criminal law also continues to apply, including sexual assault laws. Decriminalising sex work aims to reduce the barriers sex workers face in accessing standard rights and protections.

Decriminalisation does not actively encourage sex work

1.29 All Queenslanders have human rights and should feel safe and have access to justice. Decriminalisation aims to protect the rights of people working in the industry. Recognising sex work as work helps ensure access to protections under general laws, including work health and safety laws. It does not mean sex work is actively encouraged.

1.30 Research shows that decriminalising sex work results in better outcomes for sex workers, without expanding the size of the industry. Available evidence suggests that legal settings have little impact on the size of the industry and that decriminalisation is unlikely to increase the number of sex workers. For people who choose to engage in sex work, the main reasons are financial.[7]

1.31 Various factors may influence people to enter or leave sex work. No-one should be coerced or forced into commercial sexual activity against their will.

Sex work is distinguished from sexual exploitation

1.32 Sex work is between consenting adults. It is not the same as sexual exploitation, which is coercive or involves children. Decriminalising sex work does not require the removal of laws against sexual exploitation. Criminal laws against coercion and the involvement of children in commercial sexual services are still needed.

Safety	**Health**	**Fairness**
Reducing harm	**Promoting health and wellbeing**	**Supporting human rights and equal treatment**
All Queenslanders should feel safe, have access to justice, and have the right to be safe and healthy at work. Sex workers should have improved access to standard work health and safety protections. Sex workers should be able to work together and not be forced into unsafe areas or ways of working to avoid detection by police. Sex workers should have improved access to justice by removing barriers to reporting crimes to police. Criminal laws against coercion and the involvement of children in commercial sexual services are still needed.	All Queenslanders have a right to access health services and have a shared responsibility to protect public health. Decriminalisation should aim to create supportive environments to improve the health of sex workers and public health outcomes. Sex workers should not be singled out for sex-work-specific health offences that are not needed. The framework should aim to support health rights and best practice in public health, which promotes informed and voluntary sexual health measures.	All Queenslanders have human rights, including the right to equal recognition and protection from discrimination. Sex workers should not be singled out by sex-work-specific laws that are not needed. The framework should aim to help reduce the stigma and marginalisation of sex workers. Sex workers should have appropriate protection under anti-discrimination laws. Sex-work businesses should be treated like other businesses, neither specially privileged nor disadvantaged by planning and other laws. Public amenity should be maintained under general laws and standards.

1.33 We highlight the features of our recommended framework and key recommendations below. A full list of our recommendations is in Appendix A.

Safety

Working safely and lawfully

1.34 The current laws jeopardise sex worker safety. Sex workers told us they must choose between working safely or working lawfully. Under current laws, unless working in a licensed brothel, sex workers are isolated by being forced to work on their own. They are prevented from implementing basic safety strategies like working with another sex worker or group of sex workers, or employing a receptionist to screen clients. This increases the risk of violence and exploitation. Sex workers say they do not trust police. They worry about being 'entrapped' and arrested, or not being taken seriously if they report a crime. They are reluctant to report crimes committed against them to police because they may incriminate themselves if they are working in a way that is unlawful. The concerns and perceptions of sex workers are genuine and may adversely affect sex workers' sense of wellbeing.

Enhancing sex workers' safety

1.35 The decriminalised framework aims to enhance sex workers' safety so they do not have to choose between working safely or working lawfully. Removing sex-work-specific criminal laws and police powers will reduce barriers to working together and using other safety strategies, remove police as regulators of the industry, and improve the ability for sex workers to go to police if they are victims of crime. To enhance sex workers' safety, we recommend:[8]

- repeal of the sex-work-specific criminal offences in chapter 22A of the Criminal Code
- repeal of the sex-work-specific public soliciting and nuisance offences in the Prostitution Act
- removal of the sex-work-specific covert powers given to police under the Police Powers Act.

1.36 Along with the removal of the brothel licensing system, this means people who operate or work at presently unlicensed sex-work businesses – like erotic massage parlours and escort agencies – will no longer need to avoid detection by police and can act with greater confidence in seeking the aid of police to protect their safety.

1.37 We discuss this in chapters 2 and 3.

Improving access to work rights, health and safety

1.38 Decriminalisation means sex work is recognised as legitimate work. The same work laws that apply to other workers and businesses apply to the sex-work industry. Submissions told us decriminalisation will enhance sex workers' ability to assert their autonomy, exercise their work rights and access protections under work laws. This includes work health and safety laws, which apply to all workplaces in Queensland. To help with this, we recommend work health and safety guidelines be developed for and in consultation with the sex-work industry.[9]

1.39 We discuss workers' rights, health and safety in chapter 4.

Reducing stigma and discrimination

1.40 Sex-work-specific offences single out sex workers and their associates and are stigmatising and discriminatory. We heard from submissions that stigma adversely affects the health and wellbeing of

sex workers and creates barriers to accessing health, accommodation and other essential services. Recognising sex work as lawful work instead of a crime may help reduce stigma and discrimination and make it easier for sex workers to access services. To strengthen the protection of all sex workers from unfair discrimination, we recommend changes to the Anti-Discrimination Act to:[10]

- make it clear that being a sex worker or engaging in sex work is protected under the Act, and
- remove the current sex-work-specific exemptions that allow accommodation providers and employers to unfairly discriminate against sex workers in certain circumstances.

1.41 We discuss discrimination protections in chapter 4.

Safeguards against sexual exploitation

1.42 Sex work, which is between consenting adults, is not the same as sexual exploitation. Commercial sexual services that are coerced or involve children do not fall within the meaning of sex work, and should remain covered by criminal laws. This is needed to help Australia meet its international human rights obligations.

1.43 In recommending a framework for a decriminalised sex-work industry, we considered a range of views, including the concerns of those who argue for different models of regulation. The concern to protect children and vulnerable people from exploitation is shared across different regulatory models, including decriminalisation.[11]

1.44 To clearly distinguish between sex work and exploitation, we recommend the current 'prostitution' exploitation offences be repealed, and offences with serious penalties for those who coerce individuals or involve children in commercial sexual services be included in a new chapter of the Criminal Code.[12]

1.45 We discuss coercion and the exploitation of children in chapter 6.

Health

Enhancing health and wellbeing

1.46 Research and submissions pointed to decriminalisation as an important step in creating supportive environments to enhance the health and wellbeing of sex workers, and reducing stigma and discrimination.

1.47 The current sex-work-specific laws do not align with evidence-based best practice in public health, and are counterproductive to achieving optimal sex worker and public health outcomes. Laws that criminalise and stigmatise sex workers can cause people to hide from authorities and operate underground, creating barriers to accessing health information, services and support. This can undermine public health and lead to poorer health outcomes for sex workers.

Supporting sex worker health and recognising health rights

1.48 Current sex-work-specific health offences impose mandatory sexual health measures, including requiring sex workers and clients to use prophylactics, and requiring sex workers who work in licensed brothels to have regular sexual health tests. Submissions told us these offences are outdated, are not evidence-based, contribute to stigma and discrimination, and undermine education and health rights. Research

shows sex workers take care of their sexual health, have high levels of voluntary uptake of safer sex practices, share their knowledge with clients and peers, and do not have rates of sexually transmissible infections (STIs) that are higher than the general population.[13]

1.49 We recommend the removal of sex-work-specific health offences.[14] This is needed to recognise sex workers' health rights and align with evidence-based best practice in public health, which promotes informed and voluntary sexual health measures. Mandatory requirements are not needed. Safeguards are already included in public health laws. Safer sex practices in sex work settings are addressed by work health and safety laws, which will be supported by guidelines.

1.50 We discuss this in chapter 4.

Public health laws safeguard public health

1.51 Sex-work-specific laws that single out sex workers are not needed to address concerns about safeguarding the health of sex workers. Public health laws apply equally to sex workers. These laws protect and promote public health and include safeguards to prevent or minimise the transmission of STIs. They do this in a way that recognises individual rights and aligns with evidence-based best practice in public health. This promotes shared responsibilities for public health, informed decision-making, voluntary testing and treatment, and access to information, health care and peer support.

Accessing work health and safety laws

1.52 Work health and safety laws apply to ensure the work health and safety of sex workers and clients, including the adoption of safer sex practices to address sexual health risks. We recommend the development of work health and safety guidelines to help sex workers and sex-work business operators understand their legal rights and duties under work health and safety laws, and give practical guidance about how to meet them.[15]

1.53 We discuss work health and safety laws in chapter 4.

Accessing peer education and support

1.54 Decriminalisation aims to improve sex workers' access to rights and protections under general laws, and create an environment that supports sex worker and public health. Peer education and support for sex workers has been critical in sustaining knowledge of sexual health and safer sex practices, consistent use of prophylactics as the norm, high rates of voluntary testing, and low rates of STIs and blood-borne viruses (BBVs). We recommend funding to support peer education and support services as part of the implementation of decriminalisation.[16]

1.55 We discuss this in chapters 4 and 7.

Fairness

Treating sex work like other work

1.56 One of the main aims of decriminalisation is to treat sex-work businesses like other businesses, neither specially privileged nor disadvantaged over other businesses. This is consistent with treating sex work as work and not singling out sex work for special laws without justification. Laws of general application apply to all work and people, including sex work and sex workers. The decriminalised framework will not include a sex-work-specific regulator for the industry. General laws are overseen by relevant regulatory agencies, including Workplace Health and Safety Queensland (WHSQ) for work health and safety laws, Queensland Health for public health and health promotion, the Queensland Government and local governments for land use planning, and the Queensland Police Service for criminal laws.

Removing licensing laws

1.57 We heard from submissions that current licensing laws have created a two-tiered sex-work industry, and that any new licensing system under decriminalisation is likely to have the same result. Most sex workers work outside the licensed sector, whether privately or at unlicensed businesses, undermining the exercise of their rights and access to health, safety and justice.

1.58 Any criminal elements in the sex-work industry should be targeted by police enforcing criminal laws, not a licensing system that is ill-equipped for that task.

1.59 Health and safety in the sex-work industry is better addressed by work health and safety laws that apply to all workplaces, supported by health and safety guidelines for the sex-work industry. We recommend the removal of the current licensing system and that there be no new system of licensing or certification for sex-work business operators under a decriminalised framework. The Prostitution Licensing Authority and its associated Office of the Prostitution Licensing Authority should be abolished.[17]

1.60 We discuss removing licensing laws in chapter 3.

Applying planning laws

1.61 Under decriminalisation, planning and local laws should treat sex-work businesses like other businesses.

1.62 Currently, licensed brothels are accommodated by planning laws, but are subject to strict restrictions and guided towards operating in industrial areas. Other types of sex-work businesses, such as erotic massage parlours and sex worker collectives, are not specifically addressed in the planning framework because they are currently illegal.

1.63 Changes are needed to integrate decriminalised sex work into Queensland's planning framework. We recommend changes to the Planning Act and Planning Regulation to:[18]

- remove sex-work-specific prohibitions
- apply planning rules to 'sex work services', not 'brothels', to better reflect the variety of sex-work businesses, and
- treat sex-work businesses like other businesses, with similar size and location requirements and no sex-work-specific separation distances.

1.64 Planning rules should provide reasonable opportunities for sex work services to locate in centre (commercial) and mixed use zones, not just in industrial zones. Amenity impacts of these businesses can

be addressed by planning requirements and development conditions, which we recommend require that all activities relating to sex work be contained wholly within a building and not be visible from windows, doors or outside the premises.[19]

1.65 To encourage currently operating businesses to become compliant with planning laws, we recommend information in development applications for sex work services and home-based sex work should not be used as evidence of a development offence if the application is made within 12 months of the start of decriminalisation.[20]

1.66 The State will need time to prepare new planning requirements for sex work services. We recommend the new state provisions apply unless or until local governments make their own requirements in compliance with state parameters and consistent with the principles of decriminalisation.[21]

1.67 A sex worker can conduct a home-based business under the current planning system, and this should continue under decriminalisation. Home-based sex work should not be treated differently from any other form of home-based business land use.[22]

1.68 Submissions expressed concern that local government could override the aims of decriminalisation through local laws. We recommend that local laws must not re-establish a sex-work licensing system or re-establish offences that are removed under decriminalisation (such as publicly soliciting for sex work). Local laws can be of general application but must not specifically target sex workers or sex-work businesses.[23]

1.69 We discuss applying planning and local laws in chapter 5.

Maintaining public amenity

1.70 Concerns about the potential effect of sex work on public amenity do not require sex-work-specific laws. Sex workers and sex-worker organisations told us that sex workers value their privacy and usually operate discreetly. Amenity impacts can be addressed by laws of general application, including public nuisance laws, general police move-on powers, local laws and planning laws. As well as removal of the sex-work-specific public soliciting and nuisance offences in the Prostitution Act, we recommend removal of the sex-work-specific move-on power in the Police Powers Act.[24]

1.71 We discuss these issues in chapters 2 and 5.

Removing sex-work-specific advertising offences

1.72 The Prostitution Act includes several sex-work-specific advertising offences and imposes many strict requirements on sex-work advertising. We heard from submissions that these laws are confusing, difficult to comply with and negatively affect sex workers and sex-work business operators. Sex workers and sex-worker organisations told us these restrictions affect sex workers' safety and how they negotiate services. They said they need to be able to describe their services, including massage, in their advertising to negotiate boundaries effectively, manage client expectations, and avoid misunderstandings or conflicts. Some submissions also told us sex workers and sex-work businesses need to be able to recruit transparently for job vacancies.

1.73 We recommend removal of the advertising offences in the Prostitution Act.[25] This is consistent with the aim of treating sex work like other work and regulating sex work, as far as possible, under general regulatory frameworks. The same general laws, standards and codes that apply to all advertising in Australia apply to sex-work advertising.

1.74 We discuss the approach to regulating advertising in chapter 2.

Protecting human rights

1.75 The decriminalisation framework should aim to reduce the stigma and marginalisation experienced by sex workers, and protect human rights. Treating sex work as work rather than as a crime is an important first step. The reforms will promote human rights, particularly by:

- recognising the agency, autonomy and bodily integrity of sex workers
- helping reduce violence and exploitation by removing barriers to safe work
- allowing sex workers to work alone or with others without committing a crime
- improving sex workers' access to work laws and protections
- enhancing sex workers' access to justice by removing barriers to reporting crimes to police
- creating a supportive environment for sex workers' health by removing sex-work-specific health offences that impose mandatory sexual health measures
- strengthening protections for sex workers from unfair discrimination
- helping protect against sexual exploitation by maintaining appropriate offences against coercion and the involvement of children in commercial sexual services.

Implementing the framework

Supporting the transition

1.76 Decriminalising the sex-work industry is a significant change to how the industry is regulated in Queensland. The state government, local governments, industry and community will need time and support to prepare for and adjust to the new regulatory framework.

1.77 A coordinated approach will be needed. We recommend the Queensland Government lead and establish a temporary, multi-disciplinary working group to help with transition to and implementation of the decriminalisation reforms. To support a smooth transition, we also recommend legislative reforms take effect at the same time.[26] Many submissions told us that a staged approach to commencement of the reforms could cause confusion and should be avoided.

1.78 We discuss these matters in chapter 7.

Educating the community

1.79 We heard from submissions that sex workers experience pervasive stigma, perpetuated by myths and stereotypes. It will take time for stigma to diminish. Decriminalisation is a necessary first step but needs to be supported with other measures. We recommend government public education and awareness programs to address sex-work stigma and educate the community about the sex-work industry and the aims of decriminalisation.[27]

1.80 We discuss this in chapter 7.

Helping brothel licensees adjust

1.81 Decriminalising the sex-work industry and removing the licensing system will have advantages and disadvantages for current brothel licensees. Licensing fees will be removed and red tape will be reduced.

Sex-work businesses will be able to operate in centre (commercial) and mixed use zones, subject to local government planning schemes, allowing current brothel operators to compete more fairly with other sex-work businesses. However, current brothel licensees may face some initial practical barriers to relocating their businesses from industrial areas. We recommend the Queensland Government consider an interim compensatory mechanism for brothel licensees and approved managers, such as fee relief, during the transition period.[28]

1.82 We discuss this in chapter 7.

Educating and supporting the industry and regulators

1.83 Changes to the law will need to be accompanied by broader measures to support transition to, and implementation of, decriminalisation, and help achieve the aims of decriminalisation. We recommend the Queensland Government coordinate and ensure funding for measures including:[29]

- information, education and training for sex workers and sex-work business operators on changes to the law and their legal rights and obligations
- education and training programs for officials and organisations about the new framework and how to respond sensitively and appropriately to issues facing sex workers and others in the industry
- steps to build positive relationships between sex workers and police
- peer support and outreach services for sex workers on health, safety and other matters.

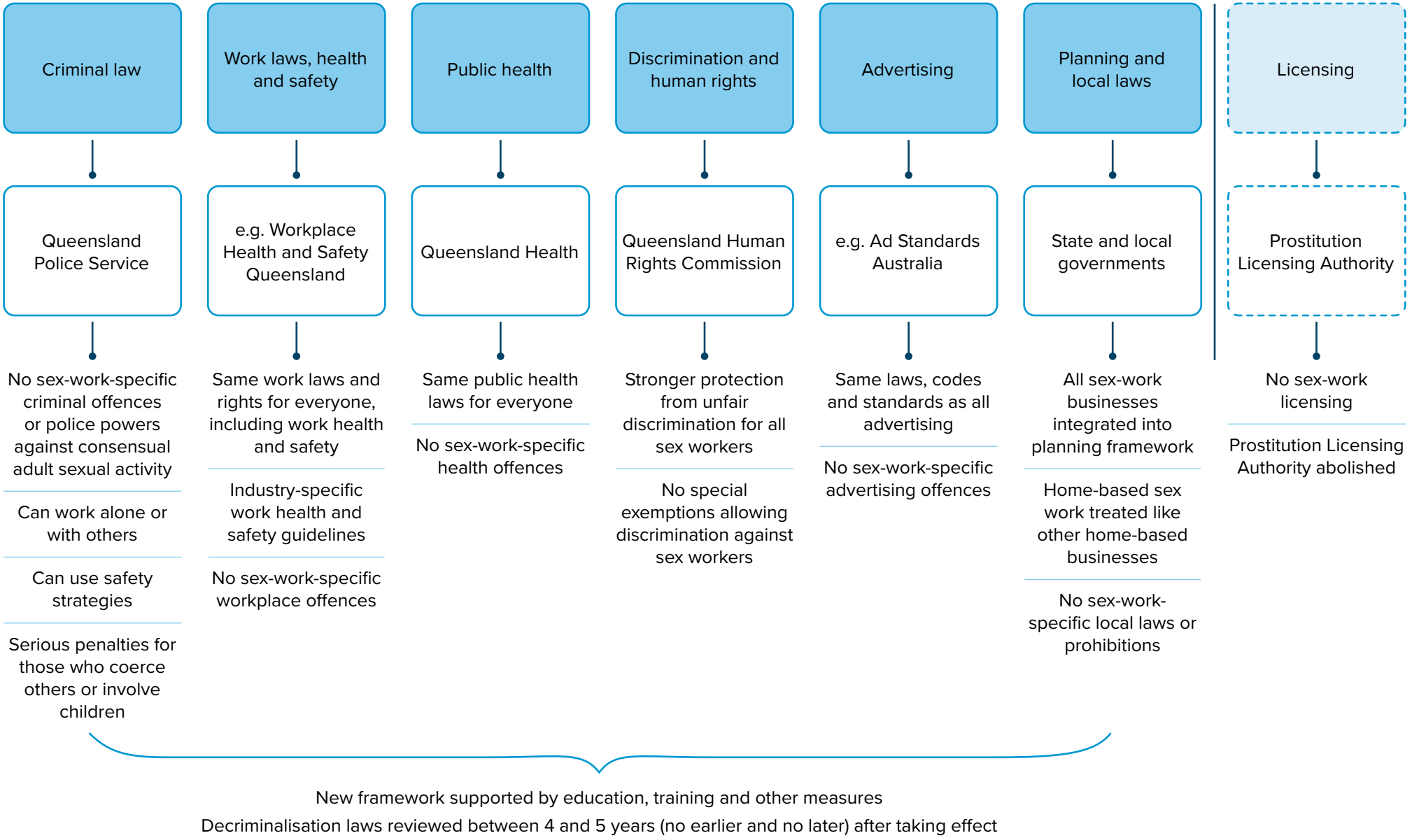
1.84 We discuss these measures in chapter 7.

Reviewing the reforms

1.85 To assess the operation of the new regulatory framework and if it is achieving the aims of decriminalisation, we recommend a legislative requirement for review of the framework after it has been operating for 4 to 5 years. This will allow for consideration of the actual impact of the decriminalisation reforms and if any legislative changes are needed to better meet the aims of decriminalisation.[30]

1.86 We discuss the review requirement in chapter 7.

Legal framework for a decriminalised sex-work industry based on safety, health and fairness



1 See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) available on our website at <https://www.qlrc.qld.gov.au/publications#2>.
2 See generally ibid ch 3.
3 See chapter 8.
4 See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) ch 6; *Human Rights Act 2019* (Qld) ss 15, 17, 18, 25, 29(1), 37.
5 See e.g. *Human Rights Act 2019* (Qld) ss 17, 18, 26(2); and the international human rights instruments mentioned in chapter 6.
6 See e.g. J McCann, G Crawford & J Hallett, 'Sex worker health outcomes in high-income countries of varied regulatory environments: a systematic review' (2021) 18 *International Journal of Environmental Research and Public Health* 3956. See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [5.13].
7 See C Rissel et al, 'Decriminalization of sex work is not associated with more men paying for sex: results from the second Australian study of health and relationships' (2017) 14(1) *Sexuality Research and Social Policy* 81–6; B Donovan et al, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (Kirby Institute, University of New South Wales, 2012) vi, 16–17; Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 13, 15, 16, 39, 40–41. See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [5.15]–[5.16].
8 See chapter 2, R1, R2, R5.
9 See chapter 4, R8.
10 See chapter 4, R12–R14.
11 See generally QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [5.8] fig 1, [5.10] fig 2, [8.8]–[8.20]. See also the reference to the Nordic model of regulation in chapter 6.
12 See chapter 6, R25–R31 (and see R32).
13 See e.g. B Donovan et al, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (Kirby Institute, University of New South Wales, 2012) 23; D Callander, B Donovan & R Guy, *The Australian Collaboration for Coordinated Enhanced Sentinel Surveillance of Sexually Transmissible Infections and Blood Borne Viruses: NSW STI Report 2007–2014* (2015) 10; D Callander et al, *Sex Worker Health Surveillance: A Report to the New South Wales Ministry of Health* (2016) 13; D Callander et al, 'A cross-sectional study of HIV and STIs among male sex workers attending Australian sexual health clinics' (2016) 93(4) *Sexually Transmitted Infections* 299; E Jeffreys, J Fawkes & Z Stardust, 'Mandatory testing for HIV and sexually transmissible infections among sex workers in Australia: a barrier to HIV and STI prevention' (2012) 2 *World Journal of AIDS* 203, 203–04.
14 See chapter 4, R11.
15 See chapter 4, R8.
16 See chapter 7, R42, R44.
17 See chapter 3, R6.
18 See chapter 5, R15, R17, R18.
19 See chapter 5, R19.
20 See chapter 5, R21.
21 See chapter 5, R19(c), (f).
22 See chapter 5, R18(c).
23 See chapter 5, R23.
24 See chapter 2, R1, R2.
25 See chapter 2, R3 (and see R4).
26 See chapter 7, R33, R43.
27 See chapter 7, R38.
28 See chapter 7, R34.
29 See chapter 7, R39–R42, R44.
30 See chapter 7, R35–R37.

2 Decriminalisation

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Working alone or with others

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Working alone or with others

‘Each time I work I have to decide if it’s worth possible criminal charges … to have someone working with me for security in order to be safe, or if it’s best to risk an assault, robbery or rape just to make sure I don’t face any criminal charges and ensure stability in my life.’

—Sex worker submission

‘Isolation is a huge issue that sex workers face due to the current laws and stigma around sex work. If sex workers could easily find each other and safely and legally work together, this massive risk to our mental health and wellbeing could be overcome.’

—Sex worker submission

Summary

2.1 The offences in chapter 22A of the Criminal Code create barriers to sex worker safety and access to justice. They make all sex work a crime, except in licensed brothels or by private sex workers working alone. The offences isolate sex workers, forcing them to choose between working safely or working lawfully. The offences are broad, unworkable and stigmatising.

2.2 Research from decriminalised jurisdictions shows that removing sex work offences results in better outcomes for sex workers without expanding the size of the industry.

2.3 Decriminalising sex work means recognising and regulating sex work as work, rather than as a crime. In our view, sections 229G to 229K of the Criminal Code are inconsistent with decriminalisation and should be repealed, along with related provisions in sections 229C to 229F and 229M to 229O. Repeal is needed to remove barriers to safe work practices, remove disincentives for sex workers to report crimes to police, and protect the human rights of sex workers and others.

2.4 The related nuisance offence in section 76 of the Prostitution Act is inconsistent with decriminalisation and should also be repealed. Public nuisances are covered by existing general laws.

Recommendation

R1 The offences that criminalise sex work other than in licensed brothels or that require sex workers to work on their own should be removed. Sections 229G to 229K of the Criminal Code should be repealed, as well as related provisions in sections 229C to 229F and 229M to 229O of the Criminal Code. The related nuisance offence in section 76 of the Prostitution Act should be repealed.

What this recommendation means

Sex work will not be a crime.

Subject to compliance with laws of general application, like planning laws and public nuisance laws:

- it will be lawful for sex workers to work alone or for 2 or more sex workers to work together
- it will be lawful to operate sex-work businesses, for sex workers to work at them and for clients to obtain services from them.

Removing sex work as a crime

2.6 Chapter 22A of the Criminal Code contains offences that make most sex-work businesses and ways of working a crime. The offences in sections 229G to 229K:

- criminalise sex-work businesses other than licensed brothels, including massage parlours and escort agencies that provide sex work
- require private sex workers outside licensed brothels to work alone
- apply to the actions of sex workers, sex-work business operators, clients, co-workers and other associates.

2.7 The offences, outlined in chapter 2 of our consultation paper, include:

- procuring someone to engage in prostitution
- knowingly participating in the provision of prostitution by another person
- carrying on a business of providing prostitution by 2 or more prostitutes
- engaging in or obtaining prostitution from a suspected unlawful prostitution business.

2.8 The offences in chapter 22A are supported by related provisions in sections 229C to 229F, 229J, and 229M to 229O that:

- define words and terms used in the offences
- allow the court to discharge a person from an offence in certain circumstances
- say what can and cannot be used as evidence that a business of prostitution is being carried on or that a place is being used for prostitution
- allow a health services provider to refuse to disclose information for the investigation or prosecution of an offence.

2.9 The offences restrict the activities of sex workers, clients, co-workers, associates and others in different ways. For example, section 229I makes it a crime to be found in or leaving a place reasonably suspected of being used for sex work by 2 or more sex workers. A cleaner, family member or passer-by could be caught by this offence if they do not have a 'reasonable excuse'.

2.10 Sex workers have told us more than 80% of Queensland's sex work industry is criminalised by the current laws.[1] Submissions overwhelmingly supported the removal of these sex-work-specific criminal offences and related provisions. Many sex workers told us sex work should be removed from the Criminal Code to keep police out of their homes and workplaces.

2.11 In our view, decriminalisation is not possible without the repeal of these offences and related provisions. Repeal of the offences will recognise and regulate sex work as work rather than as a crime.

Removing barriers to working safely

2.12 The current offences create barriers to sex worker safety, particularly for the majority of workers – those who work outside the licensed brothel sector.[2]

2.13 One of the most commonly used offences in chapter 22A is knowingly participating in the provision of prostitution by another person (in section 229H). Police crime statistics show section 229H accounts for many more reported offences than other sections of chapter 22A. In total, 535 offences under section 229H were reported from 2012 to 2022, with 16 in 2022, 50 in 2021 and 61 in 2020.[3]

2.14 The offence in section 229H can be broadly interpreted to apply to anyone directly or indirectly involved in helping a sex worker with their work. Section 229HA gives limited exceptions. A bodyguard or driver must have a relevant security provider licence and not work for more than one sex worker. A message-taker must take messages only about a sex worker's location or activities, must not be a sex worker and must not help any other sex worker.

2.15 Section 229H and other offences in chapter 22A criminalise many common work practices and safety strategies:

- Private sex workers must not work with any other sex worker. They cannot work in pairs or offer 'doubles' services to clients. They may not share a workspace to give each other support or share costs. Sex worker collectives, where independent sex workers share costs or resources,[4] are unlawful.
- Private sex workers may not have anyone help them in their work, except in the limited ways allowed under section 229HA. They may not have another person take calls, make bookings, screen clients, be nearby when the service is being provided or help place ads.

2.16 Many sex workers would prefer to work with others rather than be limited to working alone or in licensed brothels. In a 2022 #DecrimQLD survey of sex workers, 96% of respondents said having more options would be better for them than working in a licensed brothel or working alone.[5] In its submission, the Queensland Adult Business Association (QABA) told us most respondents to their survey of sex workers at licensed brothels said they would continue to prefer working in a licensed brothel (83%) or as a sole operator (41%) in a decriminalised framework. But many said they would prefer to work in a group with other sex workers (35%) or with an escort agency (32%).

2.17 The offences in chapter 22A are impractical and unreasonably restrictive. Some sex workers may be unclear about when they are acting unlawfully.[6] Sex workers say they must often choose between working safely or working lawfully.[7] The offences isolate sex workers and drive them underground in efforts to avoid the attention of authorities. This can be detrimental to their safety, and it increases the risks of violence and exploitation. It also undermines wellbeing. Living with the fear of arrest and avoiding detection by police or other authorities creates constant stress,[8] and acts as a barrier to accessing health

and other support services.[9] Many barriers and challenges are more severe for sex workers, including migrant workers, who are already marginalised or may need extra support.[10]

2.18 Research suggests that decriminalising sex work will have positive effects on health, safety, and access to justice.[11] At the same time, available evidence suggests that legal settings have little impact on the size of the sex work industry, and that decriminalisation is unlikely to increase the number of sex workers. Evidence suggests the main reasons for engaging in sex work are financial.[12]

2.19 In our view, the current offences are unworkable and undermine health and safety. Repeal of the offences will remove barriers to safe work practices. Sex workers in a decriminalised framework should be able to work with others, including other sex workers, without fear of criminal sanctions. They should be able to choose safe ways of working, within standard laws and rules that apply to other workers.

Improving access to justice

2.20 The current offences are a barrier to sex workers' access to justice. Sex workers are reluctant to report crimes committed against them to police. Many told us they do not trust police, and see them as their prosecutors rather than their protectors. Sex workers can fear criminal charges and the possibility of being disbelieved or blamed when they are victims of crime. They might not believe police will help them, or do not want to be 'outed' as sex workers.[13]

2.21 Research in other jurisdictions shows that removing sex work offences can, over time, improve relationships between sex workers and police, and help sex workers feel safer.[14]

2.22 In our view, the offences impede access to justice. Repeal of the offences will remove disincentives to reporting crimes to police, and help rebuild trust. If sex workers experience crime, they should be able to go to police for help like any other person. More positive experiences with police and the justice system will improve the day-to-day work lives of sex workers. Over time, it may also help reduce risks of exploitation and violence in the industry and the wider community. In chapter 7, we also recommend police and sex-worker organisations work together on ways to build positive relationships between sex workers and police.[15]

Protecting human rights

2.23 In our view, repeal of the offences is also needed to protect human rights. The offences in chapter 22A are broad in scope and unreasonably restrict the activities of sex workers, their clients, associates and others. The offences disproportionately affect women because of the gendered nature of sex work. Many of the rights protected in the Human Rights Act are potentially affected by the current offences, including:[16]

- recognition, equality and non-discrimination
- freedom of movement, peaceful assembly and freedom of association
- property rights
- privacy (including bodily autonomy)
- liberty and security of person
- access to health care.

Overcoming stigma and discrimination

2.24 The offences are stigmatising and discriminatory. They single out sex work for criminal laws that apply only to sex workers and their associates. They contribute to ongoing stigma. As we outline in our discussion of public health laws in chapter 4, stigma can adversely affect health and wellbeing.

2.25 The offences are based on outdated ideas about sex work. They date from when prostitution was seen as a problem. Law makers believed organised prostitution was often linked with exploitation, organised criminal activity and health risks. The offences aimed to overcome these perceived problems and reduce prostitution.[17]

2.26 The stigma attached to sex work can create barriers for access to health, accommodation and other basic services. Recognising sex work as lawful work instead of a crime may help reduce stigma and discrimination and make it easier for sex workers to access services.[18]

2.27 In our view, repeal of the offences is a necessary first step to overcome the harmful effects of stigma attached to sex work, and to reduce discrimination faced by sex workers and their clients.

Nuisances covered by general laws

2.28 Section 76 of the Prostitution Act includes a specific criminal offence for nuisances connected with prostitution. In our view, this offence is inconsistent with the aims of decriminalisation, and is not needed. Public nuisances are addressed by general laws. For example:

- Section 6 of the *Summary Offences Act 2005* includes a public nuisance offence that applies to anyone behaving in a disorderly, offensive, threatening or violent way if their behaviour interferes, or is likely to interfere, with another person passing through or enjoying a public place.
- Littering is an offence under section 103 of the *Waste Reduction and Recycling Act 2011.*
- Local governments can make local laws to deal with noise or other nuisances.[19]

Current offences in Queensland

Offence	Example	Section in Criminal Code
Procuring someone to engage in prostitution	Asking someone to work as a sex worker at a sex-work business	s 229G
Knowingly participating in the provision of prostitution by someone else (other than at a licensed brothel)	Taking phone calls, making bookings, screening clients or placing advertisements for a sex worker; or driving or providing security for more than one sex worker	ss 229H, 229HA
Carrying on a business providing unlawful prostitution (with 2 or more prostitutes)	Operating a massage parlour or escort agency that provides sex work with 2 or more sex workers	s 229HB
Engaging in or obtaining prostitution through a business reasonably suspected of providing unlawful prostitution	Hiring sex workers from an escort agency for a 'doubles' booking	s 229HC
Being found in or leaving a place reasonably suspected of being used for prostitution by 2 or more prostitutes	Visiting or leaving a hotel or other premises where 2 or more sex workers are working	s 229I
Having an interest in premises (e.g. own, lease, rent) used for prostitution by 2 or more prostitutes	Hotel owner knowingly allowing 2 or more sex workers at the hotel to use their rooms for sex work	s 229K
Causing a nuisance to another person by conduct connected with prostitution	Clients of a sex-work business causing a disturbance in the street	s 76 Prostitution Act

1 See e.g. #DecrimQLD, 'Synopsis 2: sex workers' lack of access to justice in Qld' (June 2002) <https://respectqld.org.au/wp-content/uploads/Decrim/Access-to-Justice-Survey-Synopsis-2-sex-workers-in-QLD-1.pdf>; Community Legal Centres Queensland (#DecrimQLD and Respect Inc), 'Sex work law review: Shifting to decriminalisation' (YouTube, 25 May 2022) 00:04:16–00:05:14 <https://www.youtube.com/watch?v=cd-8iQEJkrs>.

2 See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [3.14]–[3.16] on the size and composition of the sex work industry in Queensland.

3 See QPS, 'Reported crime trend data' (Maps and statistics) table 'QLD reported offences number' <https://www.police.qld.gov.au/maps-and-statistics>.

4 See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [7.53].

5 Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 22, 26 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>. See generally #DecrimQLD, 'Evidence: 2022 survey of sex workers working in Qld & outcomes', Respect Inc <https://respectqld.org.au/decriminalise-sex-work/the-evidence/>.

6 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 36, 37 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>; #DecrimQLD, 'Synopsis 2: sex workers' lack of access to justice in Qld' (June 2002) <https://respectqld.org.au/wp-content/uploads/Decrim/Access-to-Justice-Survey-Synopsis-2-sex-workers-in-QLD-1.pdf>.

7 See e.g. Respect Inc, 'Sex worker safety should be sexy NOT criminal' (YouTube, 12 February 2021) <https://www.youtube.com/watch?v=kO1Xjk4RC0k>; E Jeffreys, E O'Brien & J Fawkes, *The Case for Decriminalisation: Sex Work and the Law in Queensland*, Crime and Justice Briefing Paper (QUT, 2019); 'Sex workers "have to choose between working legally, or working safely"', Brisbane Times (online, 23 November 2018) <https://www.brisbanetimes.com.au/politics/queensland/sex-workers-have-to-choose-between-working-legally-or-working-safely-20181120-p50h42.html>.

8 #DecrimQLD, 'Synopsis 2: sex workers' lack of access to justice in Qld' (June 2002) <https://respectqld.org.au/wp-content/uploads/Decrim/Access-to-Justice-Survey-Synopsis-2-sex-workers-in-QLD-1.pdf>; Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 24–5 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.

9 See e.g. A Krüsi, K D'Adamo & A Sernick, 'Criminalised interactions with law enforcement and impacts on health and safety in the context of different legislative frameworks governing sex work globally' in SM Goldenberg et al, *Sex Work, Health, and Human Rights* (Springer, 2021) 121, 123.

10 See e.g. ibid 121, 124–6; Jeffreys, O'Brien & Fawkes, above n 7.

11 See e.g. J McCann, G Crawford & J Hallett, 'Sex worker health outcomes in high income countries of varied regulatory environments: a systematic review' (2021) 18 *International Journal of Environmental Research and Public Health* 3956. See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) (2022) [5.13].

12 See C Rissel et al, 'Decriminalization of sex work is not associated with more men paying for sex: results from the second Australian study of health and relationships' (2017) 14(1) *Sexuality Research and Social Policy* 81–6; B Donovan et al, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (Kirby Institute, University of New South Wales, 2012) vi, 16–17; Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 13, 15, 16, 39, 40–41. See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [5.15]–[5.16].

13 See e.g. #DecrimQLD, 'Synopsis 2: sex workers' lack of access to justice in Qld' (June 2002) <https://respectqld.org.au/wp-content/uploads/Decrim/Access-to-Justice-Survey-Synopsis-2-sex-workers-in-QLD-1.pdf>; Z Stardust et al, '"I wouldn't call the cops if I was being bashed to death": sex work, whore stigma and the criminal legal system' (2021) 10(3) *International Journal for Crime, Justice and Social Democracy* 142, 147. See also QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [4.10], [17.18].

14 See e.g. L Armstrong, 'From law enforcement to protection? Interactions between sex workers and police in a decriminalized street-based sex industry' (2017) 57(3) *British Journal of Criminology* 570; Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 58.

15 See also chapter 8, R45.

16 Human Rights Act 2009 (Qld) ss 15, 19, 22, 24, 25, 29, 37. See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) ch 6 table 1.

17 See Queensland, *Parliamentary Debates*, 13 November 1992, 684–6 (PJ Braddy, Minister for Police and Emergency Services). As we outline in our discussions of licensing, public health, and sexual exploitation in chapters 3, 4 and 6, many of these assumptions are challenged or unsupported by available research.

18 See e.g. C Bruckert & S Hannem, 'Rethinking the prostitution debates: transcending structural stigma in systemic responses to sex work' (2013) 28(1) Canadian Journal of Law and Society 43, 61; McCann, Crawford & Hallett, above n 11, 3956, 9; C Benoit et al, '"The prostitution problem": claims, evidence, and policy outcomes' (2019) 48 *Archives of Sexual Behavior* 1905, 1916.

19 See *Local Government Act 2009* (Qld) s 28(1); *City of Brisbane Act 2010* (Qld) s 29(1); *Environmental Protection Act 1994* (Qld) s 440O; *Transport Operations (Road Use Management) Act 1995* (Qld) s 66. See e.g. Council of the City of Gold Coast, *Local Law No 8 (Public Health, Safety and Amenity) 2008* ss 5–6.

Public soliciting

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Public soliciting

‘Street-based sex workers deserve the same protections and benefits of decriminalisation as all other workers … The very small number of street-based sex workers … are likely the most vulnerable of us, and are the most in need of these protections.’

—Sex worker submission

‘My street-based peers won’t have to fear every car that drives past them will arrest them. … They will feel safe accessing support and resources, and safe reporting crimes committed against them.’

—Sex worker submission

‘Stigma against street-based sex workers is rooted in moral panic rather than empirical evidence. Historical and contemporary public representations of street-based sex workers fuel the misconception that street-based sex workers are deviant and a threat to communities and children; these representations express a deep misunderstanding as to why we may choose to conduct street-based sex work.’

—Scarlet Alliance submission

Summary

2.28 Street-based sex work is a very small part of Queensland’s sex-work industry. It has become less common and there are no longer any specific locations in the state that are known for this form of work. Soliciting for sex work has shifted from the street to online.

2.29 In our view, sex workers should not be singled out for special laws about public soliciting. These laws are not compatible with decriminalising sex work and treating it as legitimate work. The specific public soliciting offence and related provisions in sections 73–75 of the Prostitution Act should be removed.

2.30 General laws about commercial soliciting and touting in public places apply to sex workers, like anyone else. Local governments should not make local laws specifically regulating public soliciting for sex work.

2.31 Submissions were overwhelmingly opposed to any continued criminal law specifically against public soliciting for sex work.

2.32 Research and submissions tell us people engaging in street-based sex work are more likely to be socio-economically marginalised and vulnerable. Continued criminal offences for public soliciting when other forms of sex work are decriminalised would further marginalise these workers.

2.33 Street-based sex workers are more likely to experience violence and abuse. Risks to their health and safety are made worse by public solicitation offences. When these offences are removed, relationships between sex workers and the police may improve, allowing police to be seen as protectors of these workers rather than their prosecutors. Removing the offence may also reduce barriers to street-based sex workers accessing support services.

2.34 Removing the public soliciting offence is consistent with human rights, especially in promoting sex workers’ freedom of movement. In our view, there is insufficient justification for restricting public soliciting

in certain areas or at certain times. In submissions and consultations, we did not hear of any evidence that street-based sex work is prevalent or an issue of concern around schools, places of worship or hospitals.

2.35 The specific move-on power for police if they suspect a person is soliciting for sex work, in section 46(5) of the Police Powers Act, should be removed. No other form of work is singled out in this way. It would be inconsistent to remove public soliciting offences and keep a specific move-on power. If police continued to have a sex-work-specific move-on power, sex workers might prioritise avoiding police over their own health and safety.

2.36 Without a public soliciting offence and a specific police move-on power, there will still be several options to address any public amenity impacts of street-based sex work, including the public nuisance offence, general police move-on powers and non-regulatory solutions. Importantly, these options arise under existing general laws that apply to everyone. This is consistent with the aims of decriminalisation.

Recommendation

R.2 The specific public soliciting offence for sex work should be removed and sections 73–75 of the Prostitution Act should be repealed, so that there are no sex-work-specific public soliciting laws. There should be no specific move-on power for police if they suspect a person is soliciting for sex work and section 46(5) of the Police Powers Act should be repealed.

What this recommendation means

The same general public nuisance laws and police move-on powers apply to everyone, including sex workers.

Sex workers will not be singled out by special laws against public soliciting or street-based sex work.

Removing the public soliciting offence

Overwhelming support

2.37 Under section 73 of the Prostitution Act, it is an offence for a person to 'publicly solicit' for sex work. This includes sex workers and their clients or persons acting for them. The offence prohibits a person from offering or accepting an offer for sex work in a public place, or at a place within the view or hearing of another person who is in a public place. It also prohibits loitering in or near a public place for that purpose.

2.38 Submissions overwhelmingly opposed any continued public soliciting offence for sex work. This included submissions from sex workers and sex-worker organisations, health and support services and health professional organisations, legal and advocacy services and legal professional bodies, academics, and members of the public. A few submissions supported retaining a public soliciting offence.

2.39 Keeping the public soliciting offence is incompatible with decriminalising sex work, treating sex work as legitimate work and removing sex-work-specific offences.

The offence most affects a vulnerable group

2.40 The public soliciting offence for sex work is most likely to affect street-based sex workers and their clients.

2.41 Research and submissions tell us that street-based sex workers are diverse. Some people may do street-based sex work because it best suits how they want to work, including low costs and a back-up when other work options are not available.

2.42 Street-based sex workers are more likely to be people who are socio-economically marginalised and vulnerable. Many submissions told us these workers are often homeless, transgender, Aboriginal and Torres Strait Islander, drug dependent, or experiencing mental health issues or trauma. They may not self-identify as sex workers but use sex work to meet their immediate needs. For example, a sex worker told us that '[p]eople who are homeless may do street-based sex work; [it's] their survival, it means they can afford a hot meal'.

2.43 A May 2008 report assessing the needs of Queensland sex workers said that most street-based workers 'appear to have complex issues and related service needs that make them high priority for HAHCSH [HIV/AIDS, Hepatitis C and sexual health] preventive healthcare, but also many other services'.[20]

2.44 Continued criminal laws against public soliciting for sex work would further marginalise and stigmatise an already vulnerable group. It would not be fair to deprive them of the benefits of decriminalisation, such as removing barriers to accessing justice and improving health and safety. Sex workers and sex-worker organisations emphasised that all sex workers should benefit from decriminalisation, and that no group should be left behind.

2.45 A member of the public told us:

> Continuing to criminalise this aspect of sex work sends a very clear message to the community that these people and their work are not respected, and the harmful stigma placed on these sex workers will be able to thrive.

2.46 Consistent with a harm minimisation approach, street-based sex workers may benefit from help to address the underlying factors contributing to their involvement in this form of work. Barriers to accessing support services may be reduced if the public soliciting offence is removed.

Street-based sex work is uncommon

2.47 Street-based sex work is a very small part of the sex-work industry in Queensland. Respect Inc and #DecrimQLD estimate it is less than 2% of the industry.[21] When street-based sex work does happen in Queensland, it is mostly infrequent, opportunistic and characterised as survival sex work. In our view, there is no need to keep a specific criminal offence.

2.48 The nature of street-based sex work has changed. It no longer tends to occur in the stereotypical and formal sense of workers hanging around inner city street corners trying to attract clients. In Brisbane, there were locations in Fortitude Valley, New Farm, Spring Hill and Kangaroo Point that were known for street-based sex work.[22] That is no longer the case. In submissions and consultations, we did not hear of any known locations in Queensland where this form of work occurs.

2.49 Sex workers and clients prefer to be anonymous and discreet, so street-based sex work is not typically a preferred option of work. #DecrimQLD found in its 2022 survey of sex workers that street-based work was not a preferred working option but was 'prominent as a fourth choice'.[23]

2.50 Street-based sex work has been declining from what was already a small base. In December 2004, street-based workers were estimated to be about 2% of all sex workers in the state.[24] Submissions told us that changes in technology, in the form of the internet and mobile (smart) phones, have shifted soliciting from the street to online. An academic with lived experience of sex work said street-based sex work is 'mainly opportunistic and, in these days of internet-based advertising and bookings and mobile phones, almost all sex workers are not visible on public streets'.

2.51 Repealing the public soliciting offence is unlikely to cause an increase in street-based sex work. This can be seen from what has happened in other jurisdictions.

2.52 Some people claimed that street-based sex work in New Zealand increased after decriminalisation. However, research by the University of Otago's Christchurch School of Medicine showed these claims were unfounded. In May 2008, the Prostitution Law Review Committee endorsed the research findings that street-based worker numbers had been stable. It said perceptions of an increase in street-based sex worker numbers might be because they could now work more visibly.[25]

2.53 The Aotearoa New Zealand Sex Workers' Collective (NZPC) told us:

> outreach workers have noticed a decrease in the number of street-based sex workers since decriminalisation occurred, with less than 10 street-based sex workers working in Wellington, when there were over 50 prior to decriminalisation in 2003.

2.54 It also said street-based workers have not moved from areas traditionally associated with this form of work. They 'have continued to work in the areas they always have done'.

2.55 Some research found that there were more street-based sex workers in Melbourne (where public soliciting was, until recently, completely criminalised) than in Sydney (where there were more limited restrictions on public soliciting).[26]

2.56 Regardless of the legal status of the work, the social and economic drivers for participation remain the same. According to some academics:[27]

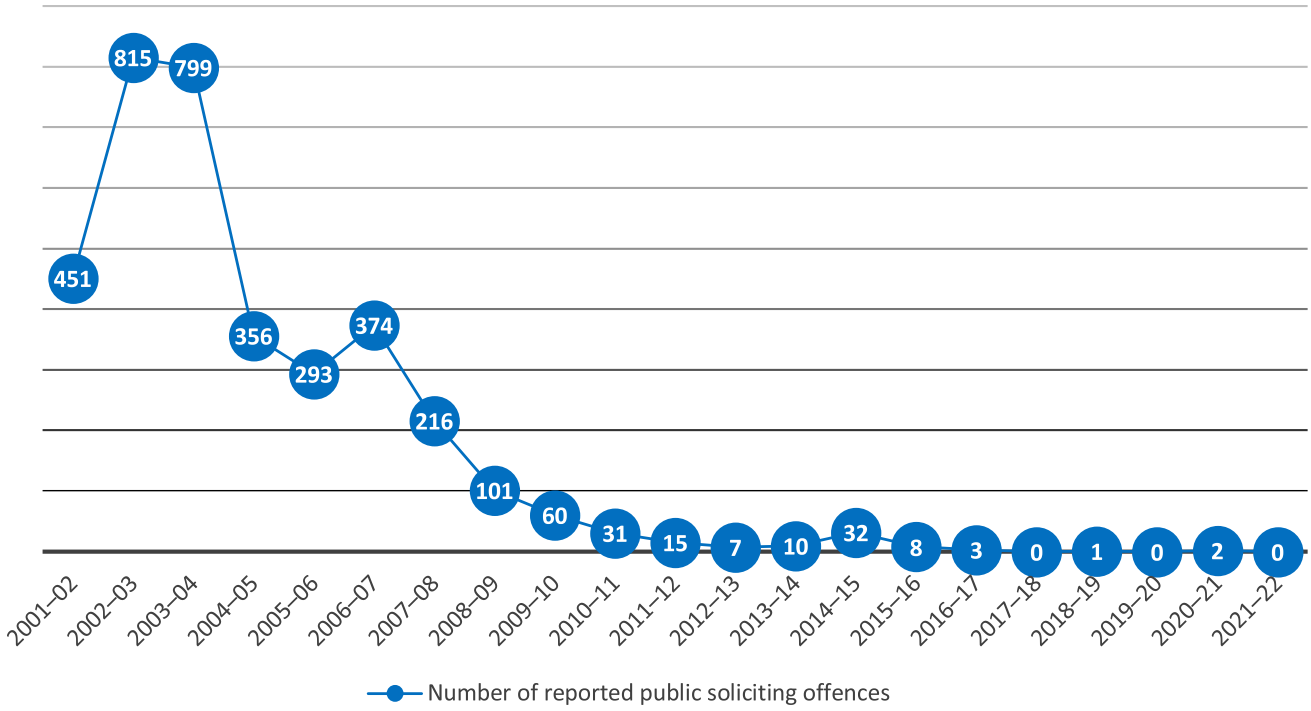
> research done in many countries with different legislative systems regulating sex work indicates that people enter the sex industry primarily for economic reasons … In any country, structural and personal factors such as health, family, housing, welfare and labour policies play a more important role in the decision individuals make to enter sex work than its legal status. (notes omitted)

The offences are now rarely used

2.57 Police enforcement does not appear to focus on low-level crime involving sex workers, but on offences with an organised element or involving exploitation.

2.58 Reported public soliciting offences were as high as 815 in 2002–03 but there has been a long-term fall since 2007–08 when there were 216 offences (figure 1). In 2009–10, reported offences fell into the double digits and have remained in the single digits since 2015–16, when there were 8 offences. In recent years, reported offences have either been zero or close to zero. There were no reported offences in 2021–22.[28]

Figure 1: Public soliciting offences by year



2.59 As an alternative to a public soliciting charge, the police may direct a person to leave or 'move on' from a public or prescribed place, and not return for up to 24 hours. An officer can use this power when a person's behaviour causes the officer to reasonably suspect the person is soliciting for sex work.[29] In 2016–17, police gave a total of 19 move-on directions using this power.[30]

2.60 Police may also deal with the matter from a social welfare perspective. If an officer considers a person is vulnerable to harm and may need support, the officer may make a 'police referral'. This involves referring the person to support services for help with issues such as homelessness, drug and alcohol misuse, domestic violence, mental health, or family and youth support.[31]

Criminalisation harms health and safety

2.61 Research tells us street-based sex workers are more likely to experience abuse and violence than those working indoors.[32] They are:[33]

> more likely to experience repeat victimisation, aggravated or particularly brutal sexual assaults, kidnapping and unlawful imprisonment, and multiple forms of interpersonal violence while at work including verbal abuse, physical assault, robbery and non-payment.

2.62 These workers are at risk of 'extreme violence'.[34] Historically, there have been murders of street-based sex workers in Fortitude Valley.[35]

2.63 Laws that criminalise street-based sex work increase the risks to worker health and safety. Respect Inc and #DecrimQLD jointly submitted that sex workers may give greater priority to avoiding detection by the police than to safety strategies.[36] Many submissions said sex workers might work in more isolated and less safe areas. Their peer networks may be disrupted, and they may be unable to access support services. They also said that criminal laws against public soliciting contribute to distrust and are a barrier to street-based sex workers reporting crimes that have been committed against them to police. This makes these workers even more vulnerable to violent crime because clients and others know that the workers are reluctant to report crimes.

2.64 The Sex Industry Network (SIN), a South Australian sex-worker organisation, told us that '[s]treet-based sex workers must feel empowered under the law to seek redress for exploitative and criminal behaviour enacted by others'.

2.65 The public soliciting offence could continue the stigma of sex work and focus police attention on the small number of people who work in this way. This may contribute to negative interactions between the police and street-based sex workers and leave those workers vulnerable to potential mistreatment.

2.66 If street-based sex workers no longer need to avoid detection by police, they can operate more openly and in less isolated areas. Many submissions highlighted that this would make it easier for peer and outreach services to access and support these sex workers. This may help with harm minimisation practices, like the distribution of condoms. It may also help connect street-based sex workers with support services to address any underlying issues or unmet needs – for example, housing, drug and alcohol counselling, and health care. This may improve the overall health and welfare of people working on the street, with positive flow-on effects for the community.

2.67 Research shows that repealing the public solicitation offence in New Zealand has improved the lives of street-based workers and made their work safer.[37] Decriminalising street-based sex work means there is no need to rush client screening because of fear of arrest. Workers can take their time negotiating with clients, assessing their behaviour for signs the client might be dangerous and agreeing on the nature of the service. Decriminalisation supports consensual encounters.[38]

2.68 When street-based sex work is no longer a crime or seen as a problem, relations between police and workers can improve. In New Zealand, street-based sex workers reported feeling more respected by police and that police genuinely cared about their safety and were looking out for them. Workers felt empowered in their relationship with police, reducing the potential for harassment. Police made efforts to build trust with street-based sex workers and saw their role as preventing violence and supporting workers. It was easier for workers to report violence to police and get help if there was a dispute with a client.[39]

2.69 The NZPC told us relations between street-based sex workers and the police have improved since decriminalisation:

> street-based sex workers feel happy to call upon the police to ensure their safety. So much so that a police officer in Christchurch who extorted free sex from a street-based sex worker was convicted and sentenced to two years' imprisonment for his corrupt activities, while police in Auckland have assisted street-based sex workers in getting money from clients who have refused to pay.

2.70 Improved relationships between the sex-work industry and police are critical to the success of decriminalisation. It will require a shift in thinking and approach from each, so police are seen as the protectors of sex workers and not their prosecutors. In chapter 7, we also recommend police and sex-worker organisations work together on ways to build positive relationships between sex workers and police.

Removal is consistent with human rights

2.71 Removal of the public soliciting offence supports a rights-based approach (see Table 1). Public soliciting laws may particularly limit sex workers' freedom of movement, especially if they include an offence of loitering. There is a risk a person known or suspected to be a sex worker could be accused of loitering even if they are only passing through the area and have no intention of engaging in sex work. People may be profiled as sex workers because of their appearance, ethnicity or gender identity.

2.72 It is difficult to justify a public soliciting offence that may limit individual rights in significant ways because:[40]

- public soliciting laws affect the most marginalised and vulnerable members of the community
- street-based sex work is uncommon
- public soliciting laws can affect the health and safety of street-based sex workers.

2.73 One of the purposes of the public soliciting offence in the Prostitution Act was to improve the amenity of local communities by discouraging street-based sex work.[41] Since this work is so uncommon, this purpose would seem to carry less weight, and any public amenity impacts can be managed in less restrictive ways under existing general laws. The other stated purpose of the offence was to improve sex workers' safety by encouraging street-based sex workers to work indoors.[42] This purpose is better met by decriminalising sex work.

Table 1: The human rights in the Human Rights Act and public soliciting

Human Rights Act section	Context or issues
Recognition and equality before the law (s 15)	Street-based sex workers are more likely to be women and LGBTIQ+ people. Street-based sex workers experience higher levels of violence and abuse compared with other sex workers. Public soliciting laws inhibit access to justice and health and safety.
Right to life (s 16)	Street-based sex workers experience higher levels of violence and abuse compared with other sex workers. Street-based sex workers may be more vulnerable to homicide. Public soliciting laws create barriers to accessing health, peer and support services.
Protection from torture and cruel, inhuman or degrading treatment (s 17)	Street-based sex workers experience higher levels of violence and abuse compared with other sex workers.
Freedom from forced work (s 18)	Restricting where or how sex work can take place inhibits safety strategies and exposes workers to unsafe working conditions.
Freedom of movement (s 19)	Public soliciting laws and a specific police move-on power if police suspect a person is soliciting for sex work affect the freedom of movement of street-based sex workers.
Property rights (s 24)	Street-based sex workers may be vulnerable to search and seizure of property. Restricting where or how sex work can take place may affect the enjoyment of property rights.
Privacy and reputation (s 25)	Street-based sex workers may be vulnerable to surveillance and search. Some people may have concerns about the effect of public soliciting on community amenity and quiet enjoyment of their homes.

Human Rights Act section	Context or issues
Right to liberty and security of person (s 29)	Street-based sex workers experience higher levels of violence and abuse compared with other sex workers. Restricting where or how sex work can take place inhibits safety strategies and exposes workers to unsafe working conditions. Public soliciting laws mean street-based sex workers can be reluctant to report violence or other crimes to the police.
Right to health services (s 37)	Street-based sex workers experience high levels of physical and sexual violence, and the risk is intensified by public soliciting laws. Public soliciting laws may inhibit access to health and support services. Working together and having peer support can reduce the impact of stigma and promote the mental health of sex workers.

Limited restrictions undermine decriminalisation

2.74 Public soliciting has not been an offence in New Zealand or the Northern Territory since these jurisdictions decriminalised their sex-work industries. New South Wales and Victoria have taken a different approach by putting limited restrictions on public solicitation for sex work. In these 2 jurisdictions, public soliciting is prohibited only in or near some places, such as schools, places of worship and hospitals. In Victoria, the offence is limited to solicitation happening at particular times of the day, or any time at a place of worship if it is a 'prescribed day' (holy day or a day of religious significance). The Victorian offence also applies to loitering.[43]

2.75 In our view, this approach to decriminalisation should not be taken in Queensland. Although an improvement, it would leave street-based sex workers exposed to the harms of criminalisation and undermine the principles of decriminalisation.

2.76 In submissions and consultations, we did not hear any evidence that street-based sex work is prevalent or an issue of concern around particular places like schools, places of worship or hospitals in Queensland.

2.77 The Prostitution Licensing Authority (PLA) supported a complete ban on public soliciting. In contrast, the Queensland Council for Civil Liberties (QCCL) supported a more limited offence. It stated:[44]

> we oppose the prohibition [on] publicly soliciting for sex work except in specific circumstances such as those set out in the Victorian law. We believe it [is] legitimate to prohibit solicitation outside places such as schools, churches, hospitals and the like.

2.78 Sex workers are concerned the limited offences in Victoria will mean they still need to avoid the police, putting their health and safety at risk.[45] Some sex workers told us in submissions that it is unreasonable to expect sex workers to be aware of the location of schools, places of worship and hospitals, and when it is a 'prescribed day'. Scarlet Alliance said street-based workers do not 'actively seek' to carry out their work in sensitive locations, but 'aim to perform our work in locations which are most familiar to us, safe and accessible to clients and peers, and discreet'.

2.79 Other sex-worker organisations described the limited offences in Victoria as being a relic from a time when sex work was more highly stigmatised, not considered legitimate work, and seen as 'inherently morally problematic'.[46]

2.80 The Victorian Government said the laws limit the right to freedom of movement in a way that is proportionate, reasonable and necessary to promote the protection of children and the right to practice religion.[47] Respect Inc and #DecrimQLD said in their joint submission that too much weight was given to:[48]

a perceived risk to children (and the subsequent need to protect children from this perceived risk) and the rights of those wishing to practice religious beliefs, while not placing enough weight on the impact upon the human rights of sex workers.

2.81 During debate on the Sex Work Decriminalisation Bill (Vic), there was an unsuccessful attempt to amend the Bill to completely remove the public soliciting offence.[49] In supporting the amendment, Ms Fiona Patten MP, who conducted a review to decriminalise Victoria's sex-work industry, said limited restrictions on public soliciting were not needed:[50]

> It seems like it is a solution looking for a problem. I do not think we have got any experience of people being concerned about people soliciting or working outside religious institutions, churches or childcare centres. I am not aware of a single complaint about this, and so again I think this clause is a solution looking for a problem.

2.82 The responsible minister said the Victorian Government was seeking to provide a balance:[51]

> Our role in government is to try to find a balance and reassure society. Getting to Ms Patten's comment, maybe it is not something to be concerned about at all, because it is not going to happen, but in this Bill we are just giving some people some sort of comfort that it is here anyway.

2.83 We consider that in Queensland there should be no public soliciting offence in certain areas or at certain times. Such restrictions are most likely based on responding to community concern that may be motivated by moral considerations and fear of potential impacts, rather than being informed by research and evidence.

Addressing public amenity concerns

Amenity impacts

2.84 Although decriminalising sex work means removing sex-work-specific criminal offences and treating sex work as work, it needs to be balanced against the interests of the community.

2.85 The visibility of street-based sex work occurring in public spaces means it is one of the most likely forms of sex work to come to the attention of community members and be a source of concern about its effect on public amenity. Concerns may focus on perceived nuisances associated with the work, such as noise, litter (like prophylactics or syringes), antisocial behaviour, being propositioned for sex and kerb-crawling.

2.86 Street-based sex work is highly stigmatised and there may be concerns about the type of people it attracts to an area, associated crime and effects on property values. Concerns may also be moralistic, with some people objecting to the public existence of sex work and its effect on impressionable people such as children.

2.87 Scarlet Alliance submitted that pervasive stigma and being targeted by the public and police means that people engaging in street-based sex work are discreet and 'want to work in the safest and least intrusive way possible'.

2.88 We received very few submissions advocating for continued criminal laws against public soliciting for sex work. The impact on the community caused by any remaining street-based sex work appears to be minimal. Even in 2011, the Crime and Misconduct Commission (CMC) said it had received 'little' concern 'about the impact of street-based sex work'.[52]

2.89 As one academic states, '[r]epressive laws do not inhibit street-based sex work, nor resolve tensions that exist between sex workers and others in their communities'.[53]

2.90 Under decriminalisation, there will be several options to address any public amenity impacts of street-based sex work.

Public nuisance laws

2.91 Many submissions from sex workers and others suggested the amenity impacts of public soliciting could be dealt with by public nuisance laws.

2.92 In Queensland, the law prohibits 'public nuisance'. A person commits a public nuisance offence if they behave in a disorderly, offensive, threatening or violent way and their behaviour interferes, or is likely to interfere, with another person peacefully passing through or enjoying a public place.[54]

2.93 Examples of behaviour that might be a public nuisance include:[55]

- using offensive, obscene or indecent language
- calling a person offensive names
- engaging in sexual acts that others can see in a public place
- behaving in a way that makes other people leave a public place.

2.94 It is also an offence for a person to litter.[56]

2.95 Any criminal behaviour can be dealt with under relevant laws. These are laws that apply to everyone and do not single out sex workers for special treatment.

General police move-on powers

2.96 Police have move-on powers that apply generally and do not single out sex workers. These powers focus on a person's behaviour or the impact of their presence and may be used to address amenity impacts of public soliciting.

2.97 A police officer can direct a person in a public place or a prescribed place to move on if:[57]

- a person's behaviour is or has been disorderly, offensive, indecent or threatening to someone entering, at, or leaving, a place or
- a person's presence or behaviour is or has been:
  - causing reasonable anxiety to a person entering, at, or leaving, a place
  - interfering with trade or business by impeding people who are entering, at, or leaving, the place or
  - disrupting the peaceable and orderly conduct of an event, entertainment or gathering at a place.

Non-regulatory solutions

2.98 Consistent with a harm minimisation approach, decriminalisation allows for non-regulatory solutions to address any public nuisance associated with soliciting for sex work in public. This approach has been taken in New Zealand. It recognises street-based sex workers as members of the community who are entitled to be in public spaces and to be consulted on laws and policies that affect them. It brings together those workers, sex-worker organisations, residents' groups, local government, the police and other organisations to find mutually beneficial solutions for any nuisance or antisocial behaviour associated with public solicitation.

2.99 The NZPC told us:[58]

> in areas where there have been concerns about sex workers in public spaces leading to complaints to councils, NZPC has worked collaboratively with local bodies and residents' groups in order to seek solutions. This collaborative governance programme has seen local bodies provide funding to NZPC to provide extra paid outreach workers to assist with issues if they arise. This has been very successful and there has been a significant decrease in the amount of complaints made.

2.100 For example, Auckland City Council worked with the NZPC to develop non-regulatory responses to complaints from residents and business owners about the public nuisance impact of street-based sex work in an area of South Auckland. Peer outreach workers 'encourage[d] street-based sex workers to keep noise levels down and pick up their litter'. A working group was formed to develop ways to improve relations between sex workers and the community. An informal curfew was agreed so street-based sex workers would not work during the day, and the curfew was monitored by the NZPC and police. Residents were able to contact the NZPC about any concerns. There has been 'an acceptance of street-based sex workers in these spaces' and a recognition from residents and business owners that the presence of the sex workers at night 'helped to keep the community safe' from criminal activity.[59]

No specific police move-on power needed

2.101 As an alternative to a public soliciting charge, police currently have a specific move-on power if they suspect a person is publicly soliciting for sex work.[60] This is additional to the general move-on powers police have.[61]

2.102 In its December 2010 review of police move-on powers, the CMC referred to the views of sex-worker organisations that the specific move-on power singles out street-based sex workers and is discriminatory. The CMC noted stakeholder concerns that this move-on power may:[62]

- force street-based sex workers to unsafe areas
- affect the movement of people known to be sex workers but who are in the community going about their lawful and everyday activities
- increase contact with the police and contribute to distrust.

2.103 There was almost no support for a specific police move-on power in the submissions we received. Submissions said such a power can unduly restrict the freedom of movement of the most vulnerable of sex workers and breach their human rights based only on a suspicion they are soliciting for sex work. Some submissions queried the discretionary and arbitrary nature of this police power. They said it can involve profiling people based on characteristics such as gender and ethnicity, and can especially affect trans, gender-diverse and people-of-colour sex workers; people who use drugs; Aboriginal and Torres Strait Islander peoples; and people experiencing homelessness.

2.104 In our view, there should be no specific police move-on power if police suspect a person is soliciting for sex work. A specific move-on power that singles out sex workers is inconsistent with the aim of decriminalisation to treat sex work as work, not as a crime. It is discriminatory and stigmatising. No other form of work is singled out in this way. Keeping this power would undermine the benefits of removing the public soliciting offence and would likely be a barrier to improved relations between the police and sex workers.

2.105 The focus should not be on a person soliciting for sex work but on any genuine public nuisance caused by a person's behaviour. This balances the right of a person to engage in sex work with its impact on public amenity.

No power to make local laws

2.106 In Queensland, each local government may make and enforce their own local laws.[63] As public soliciting is currently an offence, local governments have not made local laws to regulate public soliciting for sex work.

2.107 Local governments in Queensland that made submissions did not express interest in making local laws to regulate public soliciting. The Central Highlands Regional Council told us:

> Utilising local laws to regulate public solicitation is not appropriate given the level of authority that local law compliance officers have and their ability to work out of normal business hours.

2.108 Sex-worker organisations told us in submissions that:

> Making local councils responsible for policing street-based sex work will only transfer issues that currently exist between sex workers and police over to local councillors who are no better equipped to deal with sex work discrimination arising from stigma than the police.

2.109 We recommend the public soliciting offence should be removed. Retaining the offence would not be compatible with the aims of decriminalisation to treat sex work as legitimate work and to remove sex-work-specific criminal offences. Local laws about public soliciting for sex work would undermine these aims. There are 77 local governments in Queensland. Local laws would result in an inconsistent approach across the state, which may be confusing for sex workers, clients and the community.

2.110 Local governments may make general local laws regulating touting or commercial soliciting in public areas.[64] These general laws apply to everyone, including sex workers. But soliciting for sex work should not itself be singled out for a specific local law.

2.111 Under decriminalisation in Victoria, a local government law must not be inconsistent with the purposes of the Sex Work Decriminalisation Act (Vic) or undermine the purposes of 'decriminalis[ing] sex work' and reducing 'discrimination against, and harm to, sex workers'.[65]

2.112 Respect Inc and #DecrimQLD and some others submitted that the decriminalisation legislation in Queensland should protect against local laws that would override the intent of decriminalisation. The QCCL, Queensland Law Society and Eros Association said there should be a provision similar to the one in Victoria.

2.113 In chapter 5, we recommend local laws must not re-establish sex work offences that are the same or substantially similar to those removed from State law under the decriminalisation reforms. This will prevent local governments from making local laws specifically about public soliciting for sex work.

20 R Berg & J Bates, *Queensland Sex Workers: Assessment of Needs,* Final Report (BB Professional Services, May 2008) 66.
21 Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 139 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
22 Crime and Misconduct Commission, *Regulating Prostitution: An Evaluation of the Prostitution Act 1999 (Qld)* (Report, December 2004) xiii.
23 See Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 140 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>. See generally #DecrimQLD, 'Evidence: 2022 survey of sex workers working in Qld & outcomes', *Respect Inc* <https://respectqld.org.au/decriminalise-sex-work/the-evidence/>.
24 Crime and Misconduct Commission, *Regulating Prostitution: An Evaluation of the Prostitution Act 1999 (Qld)* (Report, December 2004) xiii.
25 Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 119, referring to various research, including G Abel, C Brunton & L Fitzgerald, *The Impact of the Prostitution Law Reform on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee* (November 2007).
26 B Donovan et al, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (Kirby Institute, University of New South Wales, 2012) 20.
27 G Abel, L Fitzgerald & C Brunton, 'The impact of decriminalisation on the number of sex workers in New Zealand' (2009) 38(3) *Journal of Social Policy* 515, 528–9.
28 See QPS, 'Reported crime trend data' (Maps and statistics) table 'QLD reported offences number' <https://www.police.qld.gov.au/maps-and-statistics>.
29 *Police Powers and Responsibilities Act 2000* s 46(5).
30 Queensland Police Service, *Annual Statistical Review 2016–17* (2017) 40.
31 Queensland Police Service, *Operational Procedures Manual: Chapter 6 Persons who are Vulnerable, Disabled or have Cultural Needs* (17 February 2023) [6.3.14]; Queensland Police Service, 'Police referrals' (14 October 2021) <https://www.police.qld.gov.au/police-and-the-community/police-referrals>.
32 See e.g. B Donovan et al, *The Sex Industry in Western Australia: A Report to the Western Australian Government* (National Centre in HIV Epidemiology and Clinical Research, University of New South Wales, 2010) 5.
33 Better Regulation Office (NSW), *Regulation of Brothels in NSW* (Issues Paper, 2012) 36.
34 Donovan et al, above n 32, 5.
35 D Murray, 'Francis John Fahey made his living as a paramedic before he was convicted of the murder of two Brisbane sex workers', *The Courier Mail* (online, 26 November 2014); C Sutton, 'Bizarre new clue in prostitute's branding iron torture murder', *The Courier Mail* (online, 24 March 2018).
36 See Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 139 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
37 L Armstrong, 'Screening clients in a decriminalised street-based sex industry: Insights into the experiences of New Zealand sex workers' (2014) 47(2) *Australian and New Zealand Journal of Criminology* 207; L Armstrong, 'From law enforcement to protection? Interactions between sex workers and police in a decriminalized street-based sex industry' (2017) 57(3) *British Journal of Criminology* 570.
38 L Armstrong, 'Screening clients in a decriminalised street-based sex industry: Insights into the experiences of New Zealand sex workers' (2014) 47(2) *Australian and New Zealand Journal of Criminology* 207, 210–15, 217, 219.
39 L Armstrong, 'From law enforcement to protection? Interactions between sex workers and police in a decriminalized street-based sex industry' (2017) 57(3) *British Journal of Criminology* 570, 577–79, 581.
40 See generally *Human Rights Act 2019* (Qld) ss 8, 13(1) for when human rights may be limited.
41 See Explanatory Notes, Prostitution Bill 1999 (Qld) 1.
42 See Explanatory Notes, Prostitution Bill 1999 (Qld) 3.
43 *Sex Work Decriminalisation Act 2022* (Vic) ss 6, 28, repealing *Sex Work Act 1994* (Vic) ss 12–14 and inserting div 3A in the *Summary Offences Act 1966* (Vic). The new Victorian offence commenced on 10 May 2022: *Sex Work Decriminalisation Act 2022* (Vic) s 2(1)–(2).
44 Queensland Council for Civil Liberties, Submission to QLRC, *Decriminalisation of sex work* (7 June 2022) [8] <https://www.qccl.org.au/newsblog/decriminalisation-of-sex-work>.
45 See e.g. R Tuffield, 'Sex workers slam new laws making it illegal to work near schools and churches as "unsafe"', *News.com.au* (online, 28 October 2021).
46 See Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 142–3 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
47 Victoria, *Parliamentary Debates,* Legislative Assembly, 13 October 2021, 3876 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating).
48 See Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 144 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
49 Victoria, *Parliamentary Debates,* Legislative Council, 10 February 2022, 197–8, 258–9 (Meddick, Animal Justice Party).
50 Victoria, *Parliamentary Debates,* Legislative Council, 10 February 2022, 259 (Patten, Reason Party).
51 Victoria, *Parliamentary Debates,* Legislative Council, 10 February 2022, 259 (Leane, Minister for Local Government, Minister for Suburban Development, Minister for Veterans).
52 Crime and Misconduct Commission, *Regulating Prostitution: A Followup Review of the Prostitution Act 1999* (Report, June 2011) 14.
53 L Armstrong, 'Hassling and shaming prostitutes no solutions to community's concerns' (Victoria University of Wellington, online, 25 May 2017).
54 *Summary Offences Act 2005* (Qld) s 6, sch 2 (definition of 'public place').
55 Explanatory Notes, Summary Offences Bill 2004 (Qld) 3–4.
56 *Waste Reduction and Recycling Act 2011* (Qld) s 103.
57 *Police Powers and Responsibilities Act 2000* (Qld) ch 2 pt 5, sch 6 (definitions of 'prescribed place' and 'public place').
58 See further G Abel, 'Contested space: street-based sex workers and community engagement' in L Armstrong & G Abel (eds), *Sex Work and the New Zealand Model: Decriminalisation and Social Change* (Bristol University Press, 2020) 199, 199–221.
59 Ibid 203–207.
60 *Police Powers and Responsibilities Act 2000* (Qld) s 46(5).
61 *Police Powers and Responsibilities Act 2000* (Qld) ch 2 pt 5.
62 Crime and Misconduct Commission, *Police move-on powers: A CMC review of their use* (Report, December 2010) 38.
63 *Local Government Act 2009* (Qld) ch 3 pt 1.
64 See e.g. Cairns Regional Council, 'Touting' (5 October 2021) <https://www.cairns.qld.gov.au/property-and-business/business/regulations-permits/touting>.
65 *Sex Work Decriminalisation Act 2022* (Vic) s 3, due to commence on 1 December 2023 (unless proclaimed earlier): s 2(1), (2), (3). The purposes of the Act are in s 1. See also *Local Government Act 2020* (Vic) s 72.

Sex-work advertising

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Sex-work advertising

‘There should be no restrictions on advertising specific to sex work. Sexual content is already regulated and controlled, and sex work would fall under pre-existing regulations on this type of content. Not being able to describe my services, what I offer and what I don’t offer, is a risk to my personal safety. Many clients assume that all sex workers offer the same things without asking any questions. When they assume that I offer something I don’t, a confrontation can ensue. If I were able to clearly advertise my services, including the word massage, these situations could be avoided.’

—Sex worker submission

‘The view of the industry is that current advertising requirements are too restrictive, not reflective of contemporary societal attitudes or modern advertising practices, and detrimentally impact sex-work businesses.’

—Prostitution Licensing Authority (PLA) submission

Summary

2.114 The Prostitution Act includes several sex-work-specific advertising offences. As explained in chapter 13 of our consultation paper, the legislation imposes many strict requirements on what ads can contain, where they can be published, what size they can be, and the wording or images that can be used. Many of these requirements are included in section 15 of the Prostitution Regulation and in the guidelines issued by the Prostitution Licensing Authority (PLA) under section 139A of the Prostitution Act.[66]

2.115 We heard these laws negatively affect sex workers and business operators. They are difficult to comply with, create barriers to negotiating with clients effectively and safely, and put people at risk of being fined and having a criminal record.

2.116 In our view, the sex-work-specific advertising offences are not needed and should be removed. No new offences should be made. Singling out sex work for special advertising offences is inconsistent with the aims of decriminalisation, including the recognition of sex work as legitimate work.

2.117 The Prostitution Regulation currently includes assessment benchmarks for brothel signage. In our view, these benchmarks should be removed. Signs for sex-work businesses should be regulated by any relevant planning requirements and local laws, like signs for other businesses.

2.118 The same general laws, standards and codes that apply to all advertising in Australia apply to sex-work advertising. Removing sex-work-specific offences does not mean sex-work advertising or signage will be unregulated, or that the community will be exposed to explicit and offensive material. Community expectations and concerns can be met by general advertising laws, standards and codes.

Recommendations

R3 The sex-work advertising offences should be removed and sections 93–96 of the Prostitution Act and section 15 of the Prostitution Regulation should be repealed. The guidelines about the approved form for sex-work advertisements issued by the Prostitution Licensing Authority (PLA) under section 139A of the Prostitution Act should also be removed. No new sex-work-specific advertising offences should be enacted.

R4 The assessment benchmarks about brothel signage should be removed by repealing item 5 of the table in schedule 3 of the Prostitution Regulation.

What these recommendations mean

The same general laws, standards and codes that regulate all advertising apply to sex-work advertising.

Sex work will not be singled out by special advertising offences.

It will be lawful for sex workers to describe their services (including massage), and for sex-work businesses to advertise job vacancies.

Sex-work advertising will no longer be required to be in an approved form, and will not be prohibited on tv or radio.

Like signs for other businesses, signs for sex-work businesses can be regulated by planning requirements and local laws.

Removing the advertising offences

Most submissions support removal

2.119 Most submissions – including from sex workers, sex-worker organisations and members of the public – supported removing sex-work-specific advertising restrictions. Submissions said general advertising laws, standards and codes are enough, and that sex workers and sex-work businesses should not be singled out for extra restrictions that criminalise them.

2.120 A few submissions supported removing the current laws but considered it would be appropriate to keep some more liberal and modern sex-work-specific advertising controls to reflect community standards and expectations. The Queensland Adult Business Association (QABA) said it would be appropriate to continue to restrict sex-work advertising online to 18+ websites. The PLA supported a requirement for sex-work advertising to be in an 'approved form', which would link to the Australian Association of National Advertisers Code of Ethics to make it more directly enforceable.

Offences are complicated and outdated

2.121 Submissions said the current sex-work-specific advertising restrictions are complicated and hard to understand and comply with, especially for sex workers for whom English is an additional language. Many said the laws are outdated and that most sex-work advertising takes place online on specific adult websites and directories. People must be seeking the information to find it.

2.122 The PLA said, 'it is almost impossible to control advertising' on the internet and 'much of the advertising is non-compliant'.

2.123 QABA said these laws disadvantage licensed brothels and make it difficult for clients to find services in the licensed sector. It supported the removal of strict requirements to allow fairer competition within the sex-work industry.

Offences criminalise sex workers

2.124 In our view, special advertising offences that criminalise sex workers are not needed. Removing these laws is consistent with the aim of regulating sex work, as far as possible, under general regulatory frameworks.

2.125 Presently, the maximum penalty for failing to comply with these offences ranges from $5,750 (40 penalty units) to an amount that is 10 times the commercial cost of establishing the website or of publishing the ad (if the cost of establishing the website or publishing the ad is more than $1,000).[67] There have been few reported offences for sex-work advertising breaches in recent years. There was only one reported offence in 2021–22 and 4 reported offences in 2020–21.[68]

2.126 The PLA manages compliance for licensed brothels and gives general advice about the guidelines. It manages most advertising breaches as complaints by contacting the publisher, informing them of the breach and educating them about the guidelines, instead of issuing a penalty infringement notice or referring the matter to the Queensland Police Service (QPS) for enforcement.[69] Of the 72 complaints received by the PLA in 2021–22, 17 were about sex-work advertising.[70] In 2020–21, 10 out of 36 complaints were about sex-work advertising.[71]

2.127 Although complaints and reported offences about sex-work advertising are low, the offences mean sex workers and sex-work businesses are at risk of being criminalised if their advertising fails to comply with the requirements. Many submissions said sex workers live with ongoing concerns about the risk of police surveillance, fines or criminal charges because of these offences. Some submissions also said these laws stigmatise sex work and sex workers.

Offences affect sex worker safety

2.128 Section 93(1) of the Prostitution Act makes it an offence for a person to publish a sex-work ad that describes the services offered. Section 95 makes it an offence to advertise sex work as massage services.

2.129 Sex workers and sex-worker organisations overwhelmingly told us these restrictions affect sex workers' safety and how they negotiate services. They said they need to be able to describe their services, including massage, in their advertising to negotiate boundaries effectively, manage client expectations, and avoid misunderstandings or conflicts.

2.130 Some sex workers also noted that the inability to state what they do and do not offer in advertising causes an unnecessary administrative burden to respond to inquiries and makes it more difficult for clients to find services that suit their needs.

2.131 In our view, removing these offences is consistent with decriminalisation, including the aim of increasing sex worker safety.

2.132 We considered there may be a community expectation that erotic massage is clearly distinguished in advertising, so that therapeutic massage providers are not confused with sexwork service providers. In the Northern Territory, legislation provides that sex-work advertising in the newspaper must not refer to 'massage' or 'masseur' unless preceded by the word 'erotic'.[72] There is no similar requirement in other decriminalised jurisdictions.

2.133 In our view, special advertising offences requiring sex-work ads to distinguish between erotic massage and therapeutic massage are not needed and are inconsistent with decriminalisation.

General advertising laws can meet community expectations

2.134 When the Prostitution Act was introduced, the advertising offences were included to reflect community expectations and address community concerns.[73] Some people may consider that sex-work-specific advertising laws are needed to reflect community expectations. They may have concerns that removing these offences will expose the community to explicit and offensive material.

2.135 In our view, it is appropriate to deal with community expectations and concerns under the general laws, standards and codes that apply to all advertising, including the Australian Association of National Advertisers Code of Ethics. That Code prohibits the harmful use of sex, sexuality or nudity in advertising and requires content of this kind to be appropriate for the relevant audience. There are also rules about the use of explicit language and overtly sexual imagery.[74] A member of the community who believes an ad does not meet the standards can make a complaint to Ad Standards.[75]

2.136 Some other lawful industries have specific advertising offences, including restrictions on tobacco or alcohol advertising, which have a strong public health justification. However, sex-work advertising does not raise the same policy considerations.

2.137 Advertising for adult entertainment in licensed venues is regulated separately under the Liquor Act, which has different policy considerations and is outside the scope of this review.[76]

Advertising on television or radio

2.138 Section 93(3) of the Prostitution Act makes it an offence to publish sex-work advertising on television or radio. Most submissions supported removing this offence.

2.139 Different approaches have been taken in other decriminalised jurisdictions. In New Zealand, advertising sex work on television and radio is an offence and in the Northern Territory it may be an offence in certain circumstances.[77] There are no sex-work-specific offences prohibiting television or radio advertising in New South Wales or Victoria (although legislation in New South Wales generally prohibits advertising indicating that any premises are used or are available for use, or that a person is available, for the purposes of sex work).[78]

2.140 We considered that there may be a community expectation that sex-work advertising does not appear on television or radio. However, television and radio broadcasters already have their own rules, standards and codes of practice they must follow to meet community standards, including about advertising content. For example, the Commercial Television Industry Code of Practice restricts commercials for a sex service to times between 11 pm and 5 am.[79] There are also standards about advertising during children's programs.[80] In our view, specific offences to restrict sex-work advertising on television or radio are not needed.

Advertising to recruit for job vacancies

2.141 Section 94 of the Prostitution Act makes it an offence to publish a 'statement intended or likely to induce a person to seek employment as a sex worker'. This was intended to 'help reduce' sex work and address concerns that people, particularly minors or vulnerable people, would be induced into sex work.[81]

2.142 Different approaches have been taken in decriminalised jurisdictions. Advertising to recruit or employ a person as a sex worker is an offence in New South Wales and the Northern Territory, but not in Victoria or New Zealand.[82]

2.143 Most submissions, including from sex workers and sex-work businesses, stated they should be able to recruit transparently for job vacancies. Some said they wanted to advertise in specific online adult directories and on their own websites. One person who has been a manager of sex-work businesses in Queensland and other states said this will give sex workers a 'safe line of inquiry' and enable them to make well-informed decisions.

2.144 A few submissions said there should be some specific parameters. The PLA said that advertising to recruit for vacancies should not be able to include statements of enticement and should state that only persons 18 years of age or older can apply for the job. QABA said it is appropriate to restrict such advertising to 18+ platforms.

2.145 In our view, allowing sex-work businesses to recruit for job vacancies is consistent with decriminalisation, including recognising sex work as legitimate work.

2.146 It has been noted that being able to advertise for job vacancies transparently is the best way to protect sex worker safety and make sure that applicants are aware of the nature of the work being advertised.[83] Research from New Zealand shows that decriminalisation did not lead to an increase in the number of sex workers.[84]

2.147 Sex work is between consenting adults. A person who is not an adult (under 18 years) should not be recruited or hired to provide commercial sexual services. In chapter 6, we recommend separate offences in the Criminal Code that address this.

2.148 Recruitment advertising will be subject to other general laws, codes and standards. The Australian Consumer Law makes it illegal for a business to engage in misleading or deceptive conduct, including in advertising and recruitment. The Commonwealth Criminal Code also makes deceptive recruiting for labour or services an offence. This offence covers deceptive recruitment to engage someone to provide sexual services and has a higher maximum penalty if the person deceived is under 18.[85]

Laws, standards, codes and systems governing Australian advertising

Advertising self-regulation system	The advertising and marketing communications industry in Australia is self-regulated. The industry voluntarily agrees to be bound by a set of rules and principles of best practice. In particular, all advertising is expected to follow the Code of Ethics of the Australian Association of National Advertisers. Ad Standards manages a complaints resolution process.
Broadcasting Services Act 1992 (Cth)	The Act establishes a co-regulatory scheme for broadcast services, including television and radio. Standards are made under the Act and codes of practice are developed by the industry, which include rules about advertising content. The Australian Communications and Media Authority regulates communications and media services in Australia.
Australian Consumer Law	Advertising by businesses must comply with the Australian Consumer Law in the *Competition and Consumer Act 2010* (Cth). The law covers matters such as misleading or deceptive conduct, false or misleading representations, and unconscionable conduct. Compliance with the law is enforced by the Australian Competition and Consumer Commission and the consumer protection agency in each state and territory. In Queensland, this is the Office of Fair Trading.
National Classification Scheme	The National Classification Scheme is a cooperative arrangement between the Australian Government (the Commonwealth) and state and territory governments. Films, computer games and certain publications must be classified before they can be legally made available to the Australian public. The scheme includes rules about advertising, showing and selling classified and unclassified content.
Online Safety Act 2021 (Cth)	The Act regulates illegal and restricted online content, including 'Class 2 material' that is, or would likely be, classified as inappropriate for children and young people under the age of 18 years. It requires online service providers to be proactive in how they protect people from harmful content. Industry codes are being developed. The eSafety Commissioner is the independent regulator for online safety and works with online service providers to ensure access to Class 2 material is restricted.

Regulating signage under general laws

2.149 The Prostitution Act and Prostitution Regulation regulate externally visible signs on premises for licensed brothels. Local governments must assess planning applications for licensed brothels against the assessment benchmarks in the Prostitution Regulation. These benchmarks require the sign for the brothel to be 'compatible with the amenity of the locality'.[86] This can be met:

- by following specific requirements in schedule 3 of the regulation (which limit the number, size and content of signs in particular ways) or
- in another way approved by the local government, as long as it is compatible with the amenity of the locality.

2.150 The specific requirements in the regulation are:[87]

- one sign only, which must be affixed to the brothel
- the surface area of the sign is not more than 1m^2
- the sign displays only the name of the licensee and registered brothel name
- the sign does not display words or images that are sexually explicit, lewd or otherwise offensive.

2.151 Many submissions said there should be no specific signage requirements for sex-work businesses under the decriminalisation framework. Instead, sex-work businesses should have the same signage rules and regulations as other businesses of a similar scale in the same zone. Sex-worker organisations also said sex workers and sex-work businesses prefer discreet signage because sex workers and their customers do not want to draw attention to themselves.

2.152 Some local governments submitted that planning requirements for signage for sex-work businesses should continue to be regulated by the State. They considered this would give consistency and certainty. The PLA also said that assessment benchmarks set by the State about matters such as discreet signage for sex-work businesses 'may be prudent', noting the 'potential for community sensitivities'.

2.153 Brisbane City Council said that, if signage is no longer regulated by state laws, local governments would need time to update their local laws. They noted their local laws tend to deal only with the physical characteristics of signs (such as size and location), not their content.

2.154 In our view, special state laws are not needed for sex-work business signage. Subject to the recommendations in chapter 5, the Queensland Government and local governments can control signage for sex-work businesses through planning requirements or local laws. Advertising content on signs can also be addressed by the same general advertising laws, standards and codes that apply to other outdoor or externally visible advertising. Accordingly, item 5 of schedule 3 of the Prostitution Regulation should be removed.

2.155 Other decriminalised jurisdictions, including New South Wales and Victoria, take a similar approach to regulating signage for sex-work businesses.[88]

2.156 Local governments may need time to update their planning requirements and local laws as part of implementation.

Social escort advertising

2.157 The Prostitution Act and Prostitution Regulation also regulate advertising for social escort services, which presently are not permitted to provide sex work.[89]

2.158 Social escort advertising must be in the approved form and comply with guidelines issued by the PLA.[90] It must unequivocally state that services are 'non-sexual' or that 'sexual services are not provided'.[91] Social escorts and employees of social escort providers must also clearly inform clients that sex work is not provided when arranging or before providing a social escort service.[92]

2.159 These requirements were inserted in the Prostitution Act in 2010 to bring advertising for social escort services into line with sex-work providers working lawfully and to address the illegal industry. The requirements were intended to make sure sex-work escort agencies were not masquerading as social escort agencies and falsely advertising as such.[93]

2.160 The social escort advertising provisions are not about sex work and are therefore outside the scope of this review. However, following decriminalisation, escort agencies that provide sex work will no longer be illegal in Queensland. The Queensland Government will need to consider if specific advertising laws for social escort services are still needed. The government may consider it appropriate to repeal these provisions because the reasons for introducing them will no longer apply.

66 *Prostitution Act 1999* (Qld) ss 93–95. For a detailed summary of the current laws, see QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) ch 13.
67 *Prostitution Act 1999* (Qld) ss 93–95.
68 Queensland Police Service, 'Maps and Statistics' (11 January 2022) table 'QLD reported offences number' <https://www.police.qld.gov.au/maps-and-statistics>.
69 PLA, *Annual Report 2018–2019* (2019) 35.
70 PLA, *Annual Report 2021–2022* (2022) 10.
71 PLA, *Annual Report 2020–2021* (2021) 8.
72 *Sex Industry Act 2019* (NT) s 15(1); *Sex Industry Regulations 2020* (NT) s 3(c)(v).
73 Explanatory Notes, Prostitution Bill 1999 (Qld) 1; Queensland, *Parliamentary Debates*, 10 November 1999, 4826 (TA Barton, Minister for Police and Corrective Services); 1 December 1999, 5717 (Cooper), 5725 (Pitt); 5729 (Reeves); 2 December 1999, 5834, 5848, 5852 (TA Barton, Minister for Police and Corrective Services). See also Criminal Justice Commission, *Regulating Morality? An Inquiry into Prostitution in Queensland* (Report, September 1991) 218, 231.
74 See further QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [13.89] ff; Australian Association of National Advertisers, *Code of Ethics* (February 2021) [2.2]–[2.5] <https://aana.com.au/self-regulation/codes-guidelines/code-of-ethics>; Australian Association of National Advertisers, Code of Ethics: Practice Note (February 2021) <https://f.hubspotusercontent00.net/hubfs/5093205/AANA_Code_of_Ethics_PracticeNote_Effective_February_2021.pdf>; Australian Association of National Advertisers, *Guide to Overtly Sexual Imagery in Advertising* <https://f.hubspotusercontent00.net/hubfs/5093205/AANA_Guide_to_overtly_sexual_imagery_in_Advertising_February_2021.pdf?utm_campaign=Self-Reg-Codes&utm_source=AANA&utm_medium=web&utm_term=self-reg&utm_content=ethics-guide>.
75 Ad Standards, 'The advertising complaints process' <https://adstandards.com.au/about/advertising-complaints-process>. See also QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [13.97] ff.
76 *Liquor Act 1992* (Qld) s 168A; *Liquor Regulation 2002* (Qld) s 34.
77 *Prostitution Reform Act 2003* (NZ) s 11; *Sex Industry Act 2019* (NT) s 15(1).
78 *Summary Offences Act 1988* (NSW) s 18.
79 Australian Communications and Media Authority, 'Commercial television industry code of practice 2015' [6.3.2] <https://www.acma.gov.au/publications/2019-10/rules/commercial-television-industry-code-practice-2015>.
80 See e.g. *Broadcasting Services (Australian Content and Children's Television) Standards 2020* (Cth) s 32, which provides that only advertising classified G and which also complies with certain requirements may be broadcast during a program for children.
81 QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [13.32]–[13.33], referring to Queensland, *Parliamentary Debates*, 13 November 1992, 684–86 (PJ Braddy, Minister for Police and Emergency Services); Queensland, *Parliamentary Debates*, 1 December 1999, 5706–07 (Lavarch).
82 *Summary Offences Act 1988* (NSW) s 18A; *Sex Industry Act 2019* (NT) s 15(2). See further QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [13.45].
83 Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, *Inquiry into the Sex Industry Bill 2019* (Report, November 2019) [3.23].
84 See e.g. G Abel, L Fitzgerald & C Brunton, *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee* (November 2007).
85 Criminal Code (Cth) s 270.7.
86 *Prostitution Act 1999* (Qld) s 140(2)(f); *Prostitution Regulation 2014* (Qld) s 25, sch 3 s 3.
87 *Prostitution Regulation 2014* (Qld) sch 3 s 3, table item 5.
88 See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [13.55] ff.
89 *Prostitution Act 1999* (Qld) s 5, sch 4 (definitions of 'social escort' and 'social escort provider').
90 *Prostitution Act 1999* (Qld) s 96A(2); PLA, *Guidelines for the Advertisement of Social Escort Services* (v 2, 28 June 2017).
91 *Prostitution Act 1999* (Qld) s 96A(1).
92 *Prostitution Act 1999* (Qld) s 96B.
93 *Prostitution and Other Acts Amendment Act 2010* (Qld); Queensland, *Parliamentary Debates*, 18 August 2009, 1625 (N Roberts, Minister for Police, Corrective Services and Emergency Services). See also Crime and Misconduct Commission, *Regulating Outcall Prostitution* (Report, October 2006) 46.

Police powers

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Police powers

'It is hard enough to deal with clients who may try to harm us because the laws make it unsafe working alone. Then on top of that we have to deal with police entrapment which affects our daily life and mental health [and] creates discord in our lives. When they target us, they are not kind, they are abusive.'

—Migrant sex worker submission

'I live in constant fear of police entrapment, which is totally unfair and ludicrous. It's also [a] waste of police time and money.'

—Sex worker submission

'[F]rom my lived experience, police have entered my premises with an intent to entrap me. This is intimidation, predatory and feels unjust.'

—Sex worker submission

Summary

2.161 Sex-work-specific covert powers given to police under the Police Powers Act create a strong sense of fear and mistrust, and contribute to barriers to sex workers' safety and their access to justice and human rights.

2.162 In our view, these police powers will no longer be needed if the sex-work-specific offences in chapter 22A of the Criminal Code and in the Prostitution Act are repealed, as we recommend in this chapter and in chapter 3.

Recommendation

R5 Sex-work-specific covert powers given to police should be removed. References in schedule 2 of the Police Powers Act to sections 229H, 229I and 229K of the Criminal Code and to sections 78(1), 79(1), 81(1) and 82 of the Prostitution Act should be removed. The reference in schedule 5 of the Police Powers Act to section 73 of the Prostitution Act should also be removed.

What this recommendation means

Police will not have extra powers, like posing as clients, to gather evidence of sex-work-specific offences, which will be removed.

Removing extra police powers

2.163 Police have powers to enforce laws and investigate offences under the Police Powers Act. These powers include giving move-on directions, making inquiries, carrying out searches, and requiring a person's name and address.[94]

2.164 When authorised, police can also use covert powers to gather evidence of serious crimes. Some of these extra powers are outlined in chapter 2 of our consultation paper. They include powers in chapters 10, 11 and 13 of the Police Powers Act to:

- carry out controlled activities
- carry out controlled operations and
- use surveillance devices.

2.165 These powers allow police to operate undercover and participate in criminal activity, and to install audio or video recorders in a person's home or business without the person's knowledge. They are highly intrusive and protect undercover officers from criminal responsibility. Use of these powers requires special authorisation and oversight.[95]

2.166 The powers in chapters 10, 11 and 13 apply to indictable offences that carry a maximum penalty of at least 7 years' imprisonment. This covers many of the offences in chapter 22A of the Criminal Code.[96] The police powers also apply to specified offences, including the following sex-work-specific offences listed in schedules 2 and 5 of the Police Powers Act:[97]

- an offence against section 229H, 229I or 229K of the Criminal Code (if, in the circumstances, the maximum penalty for the offence is less than 7 years' imprisonment)
- an offence against section 78(1), 79(1), 81(1) or 82 of the Prostitution Act, relating to the operation of licensed brothels and
- for controlled activities, an offence of public soliciting for the purposes of prostitution, under section 73 of the Prostitution Act.

2.167 Under these laws, police can pose as clients and make bookings with individual sex workers, requesting or asking about activities or services that are unlawful. This could be a request for a 'doubles' booking with 2 sex workers or asking if they work with other people. Sex workers can be charged with offences related to advertising, working with other sex workers, providing sexual services at a massage parlour, or offering other illegal services.[98] They can also be charged with consorting offences or have their mobile phones, cash or other property seized.[99]

2.168 Submissions strongly supported the removal of sex-work-specific police powers. In #DecrimQLD's 2022 survey of sex workers, 96.7% of respondents said they did not support police being allowed to pose as clients.[100] Many sex workers said it was 'creepy' for police to keep them under surveillance, pose as clients and read through their advertising for banned words. Many submissions said the Queensland Police Service Prostitution Enforcement Task Force should be dissolved.

2.169 In our view, the extra powers given to police for sex work offences under schedules 2 and 5 of the Police Powers Act are no longer needed and should be removed. If the sex work offences in chapter 22A of the Criminal Code and in the Prostitution Act are repealed, as we recommend in this chapter and in chapter 3, these extra police powers should also be removed.

Extra powers create fear and barriers

2.170 The extra powers create a strong sense of fear and mistrust of police. Sex workers may fear being 'entrapped' or 'duped' by undercover police. They may worry that, even if they refuse to provide illegal services, their words or actions could be misconstrued, leading to criminal charges. Knowing that undercover police can pose as clients can make sex workers feel anxious, unsafe or vulnerable in their work. Some submissions said marginalised workers, including migrant sex workers or those with English as a second or subsequent language, were targeted.[101]

2.171 Many sex workers view the use of police powers to impersonate clients as a violation of privacy and bodily integrity or an abuse of power. For some sex workers, this can be traumatic, feeling like a serious breach of consent and trust.[102] Private sex workers must work alone under current laws, which means undercover policing strategies could create potential risks of corruption or exploitation.

2.172 Policing sex work under current laws contributes to barriers to sex workers' safety and their access to justice and human rights. Fear of undercover policing and distrust of police affects sex workers' ability to negotiate with clients, undermines their use of safety strategies, and is a major reason for their reluctance to report crimes to police. In #DecrimQLD's survey of sex workers, 76.5% of respondents said they would not make a police report under current laws.[103]

2.173 Removing the extra powers will help protect sex workers' human rights and build more positive relationships with police.

94 See *Police Powers and Responsibilities Act 2000* (Qld) ch 2. See also the reference to move-on powers in our discussion of public soliciting elsewhere in this chapter.
95 See e.g. *Police Powers and Responsibilities Act 2000* (Qld) ss 224, 243–244, 267–269, 330, 357–358.
96 See Criminal Code (Qld) ss 229FA(1), 229G(1) and 229HB(1) (maximum penalty of imprisonment for 7 years); 229H(1), 229HC, 229I(1) and 229K(2) (maximum penalty of imprisonment for 3 years for a first offence, 5 years for a second offence, and 7 years for a third or subsequent offence); 229L(1) (maximum penalty of imprisonment for 14 years).
97 See *Police Powers and Responsibilities Act 2000* (Qld) ss 221(2), 229 (definition of 'relevant offence'), 323, schs 2, 5. See also *Prostitution Act 1999* (Qld) s 75.
98 See e.g. Respect Inc, 'Sex worker safety should be sexy NOT criminal' (YouTube, 12 February 2021) <https://www.youtube.com/watch?v=kO1Xjk4RC0k>; Z Stardust et al, '"I wouldn't call the cops if I was being bashed to death": sex work, whore stigma and the criminal legal system' (2021) 10(3) *International Journal for Crime, Justice and Social Democracy* 142, 149; #DecrimQLD, 'Synopsis 2: sex workers' lack of access to justice in Qld' (June 2022) 4 <https://respectqld.org.au/wp-content/uploads/Decrim/Access-to-Justice-Survey-Synopsis-2-sex-workers-in-QLD-1.pdf>; B Brook, 'Sex workers in Queensland accuse police of entrapping them into breaking the law', *News.com.au* (online, 22 November 2019) <https://www.news.com.au/finance/work/careers/sex-workers-in-queensland-accuse-police-of-entrapping-them-into-breaking-the-law/news-story/f03b44ffe3c39d3d52a7abb12b497bb2>; M Manwaring, 'Illegal sex and brothel raids: inside the darkside of Ipswich's prostitution trade', *The Courier Mail* (online, 15 December 2021); P Hosier, 'Queensland sex workers forced underground by "draconian" laws amid "predatory" police targeting, advocates say', *ABC News* (online, 27 February 2021) <https://www.abc.net.au/news/2021-02-27/queensland-police-entrapment-sex-workers-prostitution-laws/13188118>.
99 See Criminal Code (Qld) ss 77 (definitions of 'recognised offender' and 'relevant offence' paras (a), (b)(i)), 77B; ch 41; *Police Powers and Responsibilities Act 2000* (Qld) pt 6A; *Criminal Proceeds Confiscation Act 2002* (Qld).
100 See Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 30 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>. See generally #DecrimQLD, 'Evidence: 2022 survey of sex workers working in Qld & outcomes', *Respect Inc* <https://respectqld.org.au/decriminalise-sex-work/the-evidence/>.
101 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 30–33 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>; #DecrimQLD, 'Synopsis 2: sex workers' lack of access to justice in Qld' (June 2022) <https://respectqld.org.au/wp-content/uploads/Decrim/Access-to-Justice-Survey-Synopsis-2-sex-workers-in-QLD-1.pdf>.
102 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 30–33 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>; #DecrimQLD, 'Synopsis 2: sex workers' lack of access to justice in Qld' (June 2022) 4 <https://respectqld.org.au/wp-content/uploads/Decrim/Access-to-Justice-Survey-Synopsis-2-sex-workers-in-QLD-1.pdf>.
103 See Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 36 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>; #DecrimQLD, 'Synopsis 2: sex workers' lack of access to justice in Qld' (June 2022) 1, 4 <https://respectqld.org.au/wp-content/uploads/Decrim/Access-to-Justice-Survey-Synopsis-2-sex-workers-in-QLD-1.pdf>. See generally #DecrimQLD, 'Evidence: 2022 survey of sex workers working in Qld & outcomes', *Respect Inc* <https://respectqld.org.au/decriminalise-sex-work/the-evidence/>.

3 Licensing

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Licensing

'For my entire time in Queensland there has been a licensing system including screening of brothel owners. … Licensing has created a dual industry in Queensland leaving most of us with no rights. There is no logic behind the idea that licensing deters illegal activity. In Queensland, licensing takes the industry and divides us into legal and illegal.'

—Sex worker submission

'Licensing of any kind adds extra red tape and is expensive for the sex industry and for government … Workplace Health and Safety guidelines, training and information should replace licensing.'

—Sex worker submission

'Licensing (including certification) of sex workers, owners and businesses is not of benefit to workers, the regulatory bodies, or to the public interest.'

—Sex worker submission

Summary

3.1 Queensland's current licensing system applies to the operators and managers of brothels. A person who operates a sex-work business with 2 or more sex workers must hold a licence and follow licensing rules and conditions. Sex work other than in a licensed brothel or by a private sex worker working alone is criminalised.

3.2 With some exceptions, submissions were overwhelmingly opposed to a licensing system for sex-work business operators. In our view, the current licensing system should be removed, and no new licensing system should be introduced. We also consider that a licensing or registration system for individual sex workers is not needed and should not be introduced. The Prostitution Licensing Authority (PLA), and its associated Office of the Prostitution Licensing Authority, will no longer be needed and should be abolished.

3.3 Licensing can be a useful regulatory approach, but it does not suit all industries. The current licensing system has had some benefits for those working within it, but licensing has been taken up by only a very small part of the industry.

3.4 Licensing creates a two-tiered industry of licensed and unlicensed operators. There are 20 licensed brothels in Queensland, estimated to be 10% of the industry. Most sex workers work outside the licensed sector, whether privately or at unlicensed businesses. In combination with the sex-work offences in the Criminal Code, this undermines sex workers' rights, health and safety, and access to justice. Relatively simple and inexpensive suitability certificate schemes, such as those in New Zealand and the Northern Territory, can also create a two-tiered industry.

3.5 The unlawful sector has continued despite the licensing system. Sex-work licensing does not necessarily ensure the health and safety of workers (most of whom work outside the licensed sector), does not mean that a person will be a good business operator, and is not well suited to keeping criminal elements out of the industry. Any criminal elements in the industry are a matter for the enforcement of criminal laws by law enforcement agencies, not licensing.

3.6 In our view, sex-work-specific licensing is not effective and not needed. Work health and safety benefits can be achieved under laws that regulate sex work in the same way as any other work or business. Decriminalising sex work will remove barriers to sex workers' access to work rights and protections. In chapter 4, we recommend public-health-informed work health and safety guidelines be developed for and in consultation with the sex-work industry.

3.7 Removing the current licensing system will reduce costs for the industry and government, and give sex-work business operators a more level playing field.

Recommendation

R6 The current licensing system should be removed and no new system of licensing or certification for sex-work business operators should be introduced. The Prostitution Licensing Authority and its associated Office of the Prostitution Licensing Authority should be abolished. Parts 3, 5, 7, 7A, 7B, part 6 divisions 2 and 5, and schedules 1–3 of the Prostitution Act should be repealed. Related provisions in part 2, parts 8–9, and schedule 4 of the Prostitution Act, and parts 2–3, 5–6, and schedules 1–2 and 4 of the Prostitution Regulation should also be repealed, as identified in our table of drafting instructions in volume 2 of our report.

What this recommendation means

There will be no sex-work licensing or certification.

The Prostitution Licensing Authority will be abolished and there will be no sex-work-specific industry regulator.

Some support, but most oppose sex-work business licensing

3.8 Submissions were overwhelmingly opposed to current and any future licensing. This included submissions from sex workers and sex-worker organisations, non-government organisations, health organisations and health professionals, community legal centres, academics, the Queensland Council of Unions and members of the public.

3.9 Sex-worker organisations and most sex workers said licensing:

- is incompatible with decriminalisation
- results in non-compliance and the development of a two-tiered industry
- is unnecessary and a failure
- has no benefit to sex workers and is harmful to their health and safety
- is an administrative and cost burden for the government and industry.

3.10 The Eros Association (Australia's adult industry association) noted that 'the cost and complexity' of licensing 'also incentivises illegal operators'.

3.11 Some submissions – including from the PLA, some sex workers, brothel licensees and the Queensland Adult Business Association (QABA) – supported a simpler and less expensive licensing system for sex-work business operators.

3.12 The PLA supported a licensing system like that in New Zealand and the Northern Territory, based on criminal history and other checks. They said:

> Given the nature and history of the sex industry in Queensland, certification of operators would provide a barrier to the involvement of criminal elements and the exploitation of sex workers.

3.13 QABA is an industry organisation representing the interests of most of Queensland's licensed brothel owners. It said a licensing system 'legitimises the industry and allows brothels to function transparently and safely' and is a barrier to the involvement of criminal elements. QABA submitted that licensing should continue so current brothel licensees are not 'discriminated against' or 'disadvantaged' – but that it should be simpler and less expensive than the current system. They said existing brothels have 'invested significant money in licensing fees and purchasing or renting properties in accordance with the current regulatory system'.

3.14 Licence holders may favour licensing because it restricts entry to an industry and can limit competition. But a high bar to entry can force people away from the licensing system.

3.15 The *Prostitution Reform Act 2003* (NZ) decriminalised sex work in New Zealand and introduced a form of licensing that requires all sex-work business operators to have an operator certificate.[1] The Act repealed the *Massage Parlours Act 1978* (NZ), which required massage parlour operators to be licensed.[2] The Aotearoa New Zealand Sex Workers' Collective (NZPC) told us massage parlour operators in Auckland pushed for a licensing system under decriminalisation because 'these operators wanted to protect their place within the sex industry and believed that only a few operators – them – would be awarded these operators' certificates'.

3.16 The NZPC told us there is 'little value in operators' certificates other than to provide operators with a way of saying that they are an "appropriate person" to run a "legitimate" business'.

3.17 In our view, the path to legitimacy under decriminalisation is not by licensing. It is by removing criminal laws against sex work, allowing people to operate sex-work businesses transparently and be subject to regulation and scrutiny under the same general laws that apply to other businesses. The risk of creating a two-tiered industry means licensing hinders, rather than supports, this process.

3.18 There are currently 20 licensed brothels in Queensland, with 23 licensees (3 brothels have 2 licensees each). Brothel numbers peaked at 27 during 2014–15 but have stabilised at 20 since 2017–18.[3] Respect Inc estimates that 90% of sex work occurs outside licensed brothels.[4] In December 2004, the Crime and Misconduct Commission (CMC) estimated Queensland's then 14 licensed brothels accounted for about 10% of the sex-work industry.[5]

3.19 The number of erotic massage parlours in Queensland is unknown. Respect Inc estimates they make up about 10% of the sex-work industry.[6] This is disputed by QABA, which estimates erotic massage parlours comprise 40–50% of the industry.

3.20 The number of sex-work escort agencies operating in Queensland is also unknown, and Respect Inc was unable to give an estimate of escort agencies' share of the industry. The illegality of this form of work means it is likely included in the 20.5% of Respect Inc's sex-worker contacts who did not disclose their sector of work.[7] In 2004, the CMC referred to estimates that outcall or escort services made up 75% of sex work in Queensland, with most of these services provided by escort agencies.[8]

3.21 Decriminalising sex work will remove criminal laws against operating an erotic massage parlour or escort agency. However, the operators would still be affected by any licensing system that applies. These operators are used to operating without a licence. They may be unlikely to apply for a licence if they cannot see a purpose or benefit to licensing. The Sex Workers Outreach Program Northern Territory (SWOP NT) and the Sex Worker Reference Group (SWRG) told us compliance with the certification scheme for sex-work business operators in the Northern Territory is 'very low'.

Individual sex workers

3.22 In our consultation paper, we asked about licensing of sex-work business operators (people who manage or have control over sex workers). We did not ask about licensing or registration of individual sex workers, which is not a feature of the current system.

3.23 To be clear, our view is that there should be no licensing or registration system for individual sex workers. The sex-work industry should not be singled out for legal requirements that are not needed. Occupational licensing or registration may protect the public from a risk of harm by ensuring that workers in some sectors are appropriately qualified or skilled. But, unlike some jobs, no formal educational requirements or accredited training is required to become a sex worker.

3.24 A licensing or registration system for sex workers would be a backward step. It is not an element of Queensland's current licensing system, and the PLA has previously stated its opposition to the registration of sex workers.[9]

3.25 The Australian Capital Territory, Northern Territory and Victoria each had registration systems for individual sex workers, but these have been removed. Registration was previously required for private sex workers in the Australian Capital Territory, sex workers at escort agencies in the Northern Territory, and small owner-operator sex-work service providers in Victoria. Registration raises issues with compliance, privacy concerns, barriers to accessing services and stigmatisation of sex workers.

3.26 Licensing or registration systems for sex workers are not effective and are harmful. Sex workers value their privacy and anonymity, and avoid registration. It is stigmatising, reinforces the 'otherness' of sex workers and may label a person as a sex worker for life. It may drive sex workers underground, undermining the health and safety benefits of decriminalisation.

Licensing creates a two-tiered industry

3.27 The current licensing system in Queensland is complex, costly and onerous, creating significant barriers to compliance. It results in a two-tiered industry of licensed and unlicensed operators. Licensed brothels and private sex workers working alone are the only lawful forms of sex work. After more than 2 decades of licensing, there are only 20 brothels. Most of the industry is outside the licensing system. Operating a brothel without a licence is a criminal offence. Unlicensed business operators, along with sex workers and clients, are criminalised, resulting in poor health and safety outcomes and barriers to sex workers asserting their rights and accessing justice.

3.28 A sex worker told us:

> Licensing has already been tried in Queensland and it created a two-tiered industry … where the majority of the sex industry and sex workers are locked out of the legitimate system with no rights and at risk of police prosecution and charges.

3.29 Victoria currently has a licensing system. According to the Victorian Government:[10]

> This system is complex, costly, and onerous. This has led to poor compliance and the growth of a large, unlicensed sex-work industry … which neither criminalisation nor licensing has been able to eliminate. This has created a complex, dangerous two-tiered industry, where workers have access to different rights and protections under the law purely based on how, where and with whom they work.

3.30 Victoria's licensing system is being removed in the second stage of decriminalisation. Sex-work businesses will be treated like other businesses and 'regulated through standard planning, occupational health and safety and other business laws and regulations' by 'mainstream regulators'.[11]

3.31 Decriminalisation of the New South Wales sex-work industry has not included a licensing system. The New South Wales Government has rejected licensing, stating:[12]

> This model would be high cost and risks creating incentives for non-compliance. It also risks creating similar adverse outcomes as recriminalisation, such as reduced sexual health screening and protection for sex workers.

3.32 On one hand, a licensing system needs to be comprehensive to be effective. On the other hand, the more comprehensive the system, the higher the cost and the greater the risk of non-compliance.

3.33 The PLA told us:

> certification might provide an incentive for operators of sex industry businesses to operate outside the system. The more costly, complex and onerous the certification system, the greater the danger that the current two-tier system … will be replicated.

3.34 QABA told us features of the licensing system, such as limits on room numbers and the inability to provide outcalls, are a disincentive to becoming licensed. It said the average cost of a brothel licence over 3 years is $114,055, which it described as 'exorbitant', discouraging 'illegal operators from legitimising their establishment'. QABA called for a reduction in the 'administrative and resource burden on the industry'.

3.35 In general, submissions advocating a licensing system under decriminalisation did not favour the current system, noting these and other barriers to compliance. They preferred the relatively simple and inexpensive suitability certificate schemes in place under decriminalisation in New Zealand and the Northern Territory (outlined in chapter 9 of our consultation paper).

3.36 In supporting a certificate scheme like that in New Zealand, the Queensland Council for Civil Liberties (QCCL) also told us:[13]

> The approach [taken] in New Zealand and that we advocate can be described as a 'pure licensing system', which can be contrasted with Queensland's current emphasis on a 'social control' model. We believe a strict or invasive licensing system benefits neither the industry, community [nor] the government. A licensing system that effectually replicates a criminalised approach only increases the risk of harm to the community.

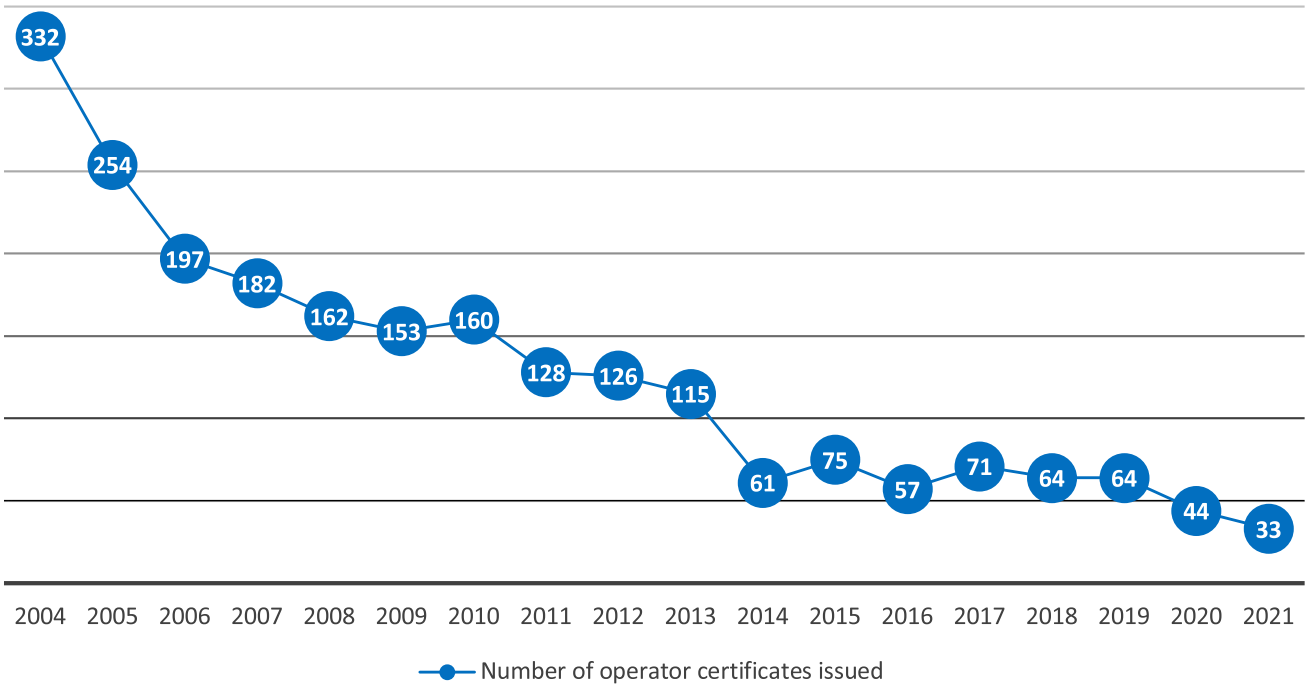
3.37 A 'light touch' licensing system may be simpler and less expensive, but the experience in the Northern Territory shows that many operators avoid using it. The easier it is to obtain a licence or certificate, the greater the risk that the system is seen as an ineffective 'paper tiger'.

3.38 Licensing Northern Territory told us that so far only 4 certificates have been issued to the operators of 2 sex-work businesses in that jurisdiction.[14] This indicates a low level of compliance with the scheme.

3.39 SWOP NT and the SWRG told us they did not support the certification scheme in the Northern Territory. Operators are 'confused' about why they are singled out for licensing, which is considered incompatible with decriminalisation. They told us sex-work business operators are 'stressed by the questions and the process' and 'the forms are very similar to the previous licencing registration process'.

3.40 The May 2008 review of New Zealand's decriminalisation laws found a two-tiered industry did 'not seem to have developed' in New Zealand, but the number of operator certificates had 'decreased each year' since the certification scheme started.[15] Data from the New Zealand Ministry of Justice show a long-term fall in certificate numbers, with 33 issued in 2021 (Figure 1).[16] If it were assumed that each sex-work business had a single owner and a manager, it would mean there are just 16 sex-work businesses in New Zealand. In our view, this suggests substantial non-compliance.

Figure 1: Number of operator certificates issued annually in New Zealand



3.41 The NZPC told us the certification scheme is unnecessary and 'causes a two-tier system'. It said that 'if most operators were asked about the certification process, it is our impression that it is unlikely many would be in favour'.

3.42 When the Prostitution Reform Bill 2000 (NZ) was introduced into the New Zealand Parliament, it did not include a licensing system for operators. The New Zealand Justice and Electoral Committee could not agree on whether the Bill should include a certification requirement, and the Bill was amended during parliamentary debate to include the operator certificate scheme.[17] The Bill passed by a one-vote majority.

3.43 The legislation in the Northern Territory was modelled on that in New Zealand, with necessary changes.[18] Certification of sex-work business operators was included to ensure a level of oversight for commercial operators.[19]

Suitability to operate a sex-work business

3.44 An objective of a licensing system would be to exclude unsuitable people from operating sex-work businesses. A licence could indicate that a person has passed government scrutiny. But just holding a licence does not necessarily make a person a good sex-work business operator, compliant with laws and respectful of their workforce. As was said during debate on the Sex Work Decriminalisation Bill 2021 (Vic), 'for practical reasons a certification process is not able to consider what makes a person a good brothel owner'.[20] In their joint submission, Respect Inc and #DecrimQLD told us that 'being a good or bad business owner or boss is not determined by suitability certificates, criminal history checks, probity checks or whether the person has been bankrupt'.[21]

3.45 A QABA survey of sex workers at Queensland licensed brothels found that 'almost 32% of workers had felt pressured at a brothel to offer services to a client'. An approved manager of a licensed brothel submitted that sex workers from other brothels told her 'over and over and over again [about] being pressured [into] seeing men they don't want to have sex with because the brothel needs to make money. The [sex workers] then in turn see the clients they don't want to see because they don't want to lose their jobs.'

3.46 The NZPC told us some holders of operator certificates in New Zealand had tried to stop police being called in response to assaults of sex workers. It said a sexual harassment complaint about the holder of a certificate had been made to the Human Rights Commission.

Licensing would not be effective

3.47 Sex-worker organisations said licensing is incompatible with decriminalisation because it adds an unnecessary overlay of regulation and does not treat sex-work businesses like any other business covered by general business laws and regulations.

3.48 Some other industries have licensing systems, although they do not necessarily experience the same degree of stigma as the sex-work industry. The QCCL said 'many decriminalised pursuits or activities are regulated by a licensing system'.[22]

3.49 In our view, licensing is not necessarily incompatible with decriminalisation of the sex-work industry. To be justified, licensing must have a legitimate purpose and be effective in meeting that purpose. The licensing of industries regulated by the Office of Fair Trading predominantly focuses on consumer protection or fair trading.

3.50 Submissions supporting licensing generally said it would enhance sex workers' health and safety, protect sex workers from exploitation, and be a barrier to the involvement of criminal elements. We consider that a licensing system for sex-work business operators would not be effective in achieving the identified purpose. As we outline below, it would undermine sex workers' health and safety and would not prevent the involvement of bad actors in the industry.

Licensing would be harmful to sex workers

3.51 Licensing systems may be justified for high-risk industries and can help improve employment conditions and worker protections. But a licensing system is not the only way to achieve health and safety aims and protect people from exploitation. Work health and safety legislation already requires the management of work health and safety risks, and criminal laws address other serious harms.

3.52 Sex-worker organisations dispute that the industry is high risk and say that the health and safety risks are no different to any other industry.[23] The Office of Industrial Relations told us key risks in the sex-work industry are 'work-related violence, aggression and harassment (primarily from clients), and sexual health'. It said that, apart from sexual health, these are 'pressing issue[s] across many industries and workplaces'.

3.53 Many submissions told us decriminalisation of the sex-work industry – rather than a licensing system – would protect sex workers, giving them better access to the same rights and protections as other workers. Respect Inc and #DecrimQLD described decriminalisation as a 'low-cost, high-compliance model of sex industry regulation that … is not hindered by additional layers of laws or regulation'.[24]

3.54 Under decriminalisation of the sex-work industry, work health and safety laws apply and will be supported by industry guidelines (see chapter 4).

3.55 Sex workers will be better able to assert their rights and seek redress from authorities. They will be in a better position to seek safer working conditions and to report crimes against them to police without fear of incriminating themselves. Decriminalisation will mean currently unlawful businesses, such as erotic massage parlours and escort agencies, will no longer be criminalised. This should result in more lawful working opportunities for sex workers and enhance their ability to change workplaces for better working conditions.

3.56 Many submissions said a licensing system under decriminalisation would compromise the health and safety benefits of decriminalisation. Unlicensed businesses would 'go underground' to avoid detection by authorities, concealing their true nature and failing to comply with work health and safety standards. This could:

- impede sex workers' access to peer-delivered outreach, health promotion and education programs
- create barriers to sex workers' access to rights and protections
- make sex workers and others more vulnerable to exploitation.

3.57 People working at unlicensed businesses could be more reluctant to report abuse and exploitation to authorities because it would draw attention to the business. Making a report could jeopardise the employment or treatment of not only that worker but other workers of the business. Business operators could discourage workers from making complaints out of concern they would be penalised for being unlicensed. This not only affects sex workers, but may also affect clients and other people working at these businesses, such as receptionists or managers.

3.58 Respect Inc and #DecrimQLD told us licensing creates 'an underclass of sex workers who work in the illegal sector with diminished rights and access to industrial rights'.[25] Scarlet Alliance told us unlicensed businesses 'are actively discouraged from investing in long term plans of maintaining WHS standards … which could be used against businesses as evidence of their "illegal" operation'.

3.59 Most sex workers work outside the licensed sector. In our view, licensing undermines their protection and access to work rights. Work health and safety benefits – for sex workers, clients and other workers in the industry – can be achieved under laws that regulate sex work in the same way as any other work or business. Work health and safety guidelines developed for and in consultation with the sex-work industry will help sex workers and sex-work business operators understand their rights and responsibilities.

Criminal elements

3.60 As noted in chapters 5 and 9 of our consultation paper, the involvement of organised crime in the sex-work industry is contested. The discreet nature of the industry makes it difficult to assess claims about the involvement of criminal elements. Organised crime can affect a variety of industries and businesses.[26] Organised crime associated with the sex-work industry in Australia could include money laundering, corruption, illicit drug supply, and crimes involving sexual exploitation, such as human trafficking, forced labour and debt bondage.[27] In advocating for a licensing system in Queensland, a brothel licensee referred to a sex worker at a New South Wales brothel who became fearful when she found out the brothel tolerated the use of drugs and was connected with an outlaw motorcycle gang.

3.61 Sex-worker organisations told us large-scale organised crime and 'pimping' is not a characteristic of the sex-work industry in Australia. They said perceptions that the industry is vulnerable to organised crime are based on stereotypes and misrepresentations that do not reflect current evidence or the experiences of sex workers in decriminalised jurisdictions.

3.62 Some submissions to our review, and law enforcement authorities in some other states, support licensing as a barrier to the involvement of criminal elements.[28] However, it is not apparent how effective a licensing system would be for excluding organised crime from certain sex-work businesses or bringing unlicensed sex-work businesses into the licensed sector.

3.63 In our view, serious crime is a matter for the enforcement of criminal laws by law enforcement agencies, not a matter for licensing. A licensing system is unlikely to be effective against sophisticated organised criminal groups who would conceal their involvement behind 'cleanskin' operators and managers, and is not suited to tackling organised-crime involvement in the sex-work industry. Organised crime can affect a variety of industries and is not specific to the sex-work industry. These are matters for existing laws that address serious criminal activity, including money laundering, human trafficking and sexual exploitation. In chapter 6, we recommend criminal offences with serious penalties for coercion or involving children in commercial sexual services.

3.64 Licensing systems based on disqualifying offences can show that a person has not been convicted of an offence, but that does not necessarily mean they are not involved in crime. Front people or 'cleanskins' without a criminal history can be used to circumvent licensing requirements, fronting the business on behalf of organised crime groups. Any need for licensing systems to check on associates adds complexity, cost and time to the application process, possibly discouraging compliance. It also relies on a person's association with organised crime being discovered through criminal history or other background checks, as it is unlikely they would self-disclose such connections.

3.65 A licensing system cannot guarantee that a person granted a licence will not later become involved in criminal activity. For example, a brothel licensee in Queensland pleaded guilty to running an illegal escort agency.[29] In Victoria, the licensees of 4 Melbourne brothels handed control to a syndicate that exploited migrant sex workers. One of those licensees also held a Queensland brothel licence.[30] And an approved manager of a licensed brothel in Victoria was convicted in 2022 after engaging an under-aged person to provide sexual services to brothel clients.[31]

3.66 Being unlicensed is not necessarily a practical barrier to operating a sex-work business, even for a person found unsuitable to hold a licence. This was demonstrated in 2021 in Queensland. The PLA had refused to renew a person's approved manager's certificate, and had made it a condition of the brothel licence that the person not be involved in managing the business. Despite this, the person continued to be involved in managing the brothel.[32]

3.67 It could be argued that the absence of a licensing system would mean anyone could operate a sex-work business, but this is already the case under Queensland's current licensing system, with many businesses operating outside the system. Criminalisation has not prevented the operation of unlicensed erotic massage parlours and escort agencies.

3.68 Many submissions said decriminalisation, when not hindered by additional laws that undermine its effectiveness, would deter illegal activity by making the industry more transparent. Some submissions noted that a licensing system could push unlicensed operators underground, hindering efforts to operate more openly and increasing their vulnerability to illegal activity and exploitation. A sex worker told us that a system free of licensing requirements could facilitate and support reporting of issues, including illegal activities and work health and safety concerns. Businesses not forced underground by a licensing system would be in a better position to resist organised crime standover tactics and seek police protection. In New South Wales, a brothel operator reported outlaw motorcycle gang standover tactics to the police.[33]

Enforcement challenges

3.69 A significant barrier to enforcing compliance with a sex-work industry licensing system is the ability of operators to pose as another form of business. This is seen in the way erotic massage parlours and escort agencies currently operate. Erotic massage parlours present as providing massage services only, but provide sexual services. Escort agencies present as private sex workers working alone and advertise on that basis.[34] Although the CMC said in 2011 that there was 'no consensus on the size and nature of the illegal industry' except to say that 'it is likely to be larger than the legal prostitution industry',[35] QABA told us it is understood that a significant portion of the Queensland sex-work industry continues to 'operate illegally, flourishing in escort agencies, massage parlours and similar venues'.

3.70 The difficulty of identifying unlawful activity carried out by apparently legitimate business operators is not necessarily unique to the sex-work industry. However, some features of the industry make this enforcement challenge more pronounced. In particular, services may be negotiated online and occur in private or without witnesses. It might be more difficult for businesses in other licensed industries to conceal the genuine nature of their business. For example, it is likely to be more obvious if a person is operating a hotel, motor dealership, real estate agency, pawnbroker business or tattoo studio.

3.71 The apparently high number of unlicensed sex-work business operators under the current system shows that licensing is difficult to enforce. Investigations may be lengthy and resource-intensive, require covert activities and have uncertain outcomes, with successful prosecutions resulting in relatively low penalties.

3.72 Licence holders have an expectation that action is taken against unlicensed businesses. Under Queensland's current licensing system, brothel licensees identify unlicensed businesses as unfair competitors, and periodically call for more police action against the illegal sector, particularly erotic massage parlours. QABA told us that a simplified licensing system under decriminalisation would continue to necessitate policing of illegal operations.

3.73 We heard from Respect Inc and #DecrimQLD that the two-tiered industry created by a licensing system means some licensees blame unlicensed operators for issues facing their business and engage in stigmatising 'misinformation' campaigns that repeat 'discriminatory myths and stereotypes about "illegal" sex workers'.[36]

3.74 Imposing penalties for not holding a licence may contribute to ongoing stigma, create incentives to avoid detection, and continue sex workers' mistrust of police – undermining the aims of decriminalisation.

3.75 In our view, monitoring of unlicensed operators and enforcement of licensing could be at the expense of focusing on any genuine harm occurring within the industry. The focus should not be on people operating without a licence, but on people doing harm. This is consistent with the aim of decriminalisation to improve health and safety outcomes for sex workers.

Benefits of not having a licensing system

3.76 We recommend that there should be no licensing system under a decriminalised framework. Removing the current licensing system and not replacing it will help avoid the harm of a two-tiered system. Unlicensed business operators and sex workers will no longer be liable to criminal charges for not complying with the licensing system. The removal of barriers to the lawful operation of sex-work businesses will improve workers' health and safety and access to justice, and give them more lawful working options.

3.77 Any licensing system has an administrative and cost burden for the industry. Removing licensing will reduce costs and red tape for current licensees. There will be no requirement for licence applications or annual returns or high fees to the PLA; and no additional layer of specific regulatory and compliance requirements, such as brothel licence conditions and disciplinary proceedings. Sex-work business operators will be able to provide outcalls and own more than one sex-work business; and restrictions on room, sex worker and staff numbers will be removed.

3.78 The removal of licensing will create a more level playing field for all sex-work business operators. Current licensees will have the opportunity to compete with currently unlicensed operators in commercial areas, subject to planning laws and the practicalities of relocating. Decriminalisation will transform unlawful sex-work activity into lawful work, subject to standard workplace relations laws, work health and safety, and other laws.

3.79 Removing licensing will also reduce the administrative and cost burden for the Queensland Government. The Queensland Police Service will no longer need to direct resources to investigating and prosecuting unlicensed sex-work business operators and sex workers at those businesses and can focus on any serious criminal activity occurring within the industry.

3.80 The Prostitution Act establishes the PLA to regulate and oversee the licensed sector of Queensland's sex-work industry.[37] Removal of licensing means there will be no need for the PLA or its associated Office of the PLA. The PLA has never been self-funded. The fees it collects do not meet the total cost of its operations, and it has relied on annual government grants since it was created in 2000. In 2021–22, the PLA collected $917,774 in fees and received a government grant of $748,000.[38] Cost savings from removing the licensing system and abolishing the PLA could be redirected to help fund other measures needed to support the transition to and implementation of the decriminalisation framework, such as training for work health and safety regulators.

3.81 Improvements to health and safety by workplace regulators – who enforce general laws and implement guidelines developed for the sex-work industry – are likely to achieve one of the aims of a licensing system without its many disadvantages. This will help extend work health and safety compliance across the sex-work industry, something the licensing system has not done and a certification scheme would not do.

Repeal of licensing laws

3.82 Removal of the licensing system requires repeal of the following parts of the Prostitution Act:

- part 3 – establishing the licensing system
- part 5 – containing provisions to declare premises a prohibited brothel in circumstances where a person is operating a brothel at the premises without a licence or in contravention of the Planning Act (see further chapter 5)
- part 6 divisions 2 and 5 – containing offences relating to the operation of licensed brothels and for making false or misleading statements or providing false or misleading documents to the PLA
- part 7 – establishing the PLA, its membership and functions
- part 7A – establishing the Office of the PLA, its composition and function
- part 7B – establishing a licence and certificate register and the PLA Fund
- schedule 1 – disqualifying offences under the Criminal Code
- schedule 2 – disqualifying offences under the *Migration Act 1958* (Cth)
- schedule 3 – restrictions on numbers of sex workers at licensed brothels.

3.83 As we identify in our table of drafting instructions in volume 2 of our report, related provisions of the Prostitution Act should also be repealed in:

- part 2 – containing definitions related to the licensing system
- part 8 – containing general provisions about miscellaneous matters
- part 9 – containing transitional provisions
- schedule 4 – dictionary.

3.84 The following parts of the Prostitution Regulation contain provisions that support the licensing system and should also be repealed:

- part 2 – containing provisions about the licensing system, relating to sections of the Prostitution Act, which we recommend be repealed
- part 3 – containing a requirement about prohibited brothels, relating to section 67 in Part 5 of the Prostitution Act, which we recommend be repealed
- part 5 – requiring the PLA to consult with licensees and liaise with specified agencies
- part 6 – containing provisions about miscellaneous matters such as fees, records and documents
- schedule 1 – agencies with which the PLA is to liaise
- schedule 2 – fees
- schedule 4 – dictionary.

1 *Prostitution Reform Act 2003* (NZ) s 34. See further QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [9.38] table 1, [9.40]–[9.45].
2 *Prostitution Reform Act 2003* (NZ) s 49(1).
3 PLA, *Annual Report 2021–2022* (2022) 10; PLA, *Annual Report 2020–2021* (2021) 8; PLA, *Annual Report 2019–2020* (2020) 7; PLA, *Annual Report 2018–2019* (2019) 17; PLA, *Annual Report 2017–2018* (2018) 15; PLA, *Annual Report 2016–2017* (2017) 15; PLA, *Annual Report 2015–2016* (2016) 15; PLA, *Annual Report 2014–2015* (2015) 4.
4 Correspondence from Respect Inc, 8 November 2021. See further QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) ch 3.
5 Crime and Misconduct Commission, *Regulating Prostitution: An Evaluation of the Prostitution Act 1999 (Qld)* (Report, December 2004) xii.
6 Correspondence from Respect Inc, 8 November 2021; and see further QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) ch 3.
7 Ibid.
8 Crime and Misconduct Commission, *Regulating Prostitution: An Evaluation of the Prostitution Act 1999 (Qld)* (Report, December 2004) xiii.
9 Prostitution Licensing Authority, Submission to the Crime and Misconduct Commission, *Review of the Prostitution Act 1999* (30 November 2010) 14; Prostitution Licensing Authority, *In Touch Newsletter* (Issue No 56, April 2011) 1.
10 Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3881 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating).
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13 Queensland Council for Civil Liberties, Submission to QLRC, *Decriminalisation of sex work* (7 June 2022) [2] <https://www.qccl.org.au/newsblog/decriminalisation-of-sex-work>.
14 Correspondence from Licensing Northern Territory, 20 March 2023.
15 Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 91, 93.
16 Correspondence from New Zealand Ministry of Justice, 11 August 2022.
17 Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 28; P Bellamy, 'Prostitution law reform in New Zealand (New Zealand Parliamentary Library Research Paper 2012/05, July 2012) 4.
18 Northern Territory, *Parliamentary Debates,* Legislative Assembly, 26 November 2019, 7540 (Fyles, Attorney-General and Minister for Justice).
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20 Victoria, *Parliamentary Debates,* Legislative Council, 10 February 2022, 235 (Leane, Minister for Local Government, Minister for Suburban Development, Minister for Veterans).
21 Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 66 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
22 Queensland Council for Civil Liberties, Submission to QLRC, *Decriminalisation of sex work* (7 June 2022) [3.1]. <https://www.qccl.org.au/newsblog/decriminalisation-of-sex-work>.
23 See Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 89 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
24 See ibid 2.
25 Ibid 66.
26 See e.g. Victorian Law Reform Commission, *Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries*, Report No 33 (2016) vi, [3.2]–[3.4], [3.13].
27 See e.g. N McKenzie, A Ballinger & J Tozer, 'Women shunted "like cattle" in sex trafficking ring', *The Age* (Melbourne) 31 October 2022, 1; N McKenzie & M Beck, 'Visa agents involved in sex trade', *The Age* (Melbourne) 31 March 2011; Australian Transaction Reports and Analysis Centre, *Detecting and stopping forced sexual servitude in Australia* (Financial Crime Guide, February 2022) 6, 7, 8, 12, 17; South Australia Police, Submission 95 to Legislative Council Select Committee, South Australia Parliament, *Statutes Amendment (Repeal of Sex Work Offences) Bill 2020* (17 June 2021) 1; Evidence to Select Committee on the Regulation of Brothels, Legislative Assembly of New South Wales, Sydney, 1 September 2015, 13–15 (N Kaldas, Deputy Commissioner, NSW Police).
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35 Ibid xiii.
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37 *Prostitution Act 1999* (Qld) ss 100–101.
38 Prostitution Licensing Authority, *Annual Report 2021–2022* (2022) 46.

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Work laws, health and safety

‘Sex work should be subject to the industrial and occupational regulatory frameworks that apply to all other forms of legitimate employment in Queensland.’

—Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM) submission

‘Positioning sex work as “work” – in law and policy – brings a range of industrial and occupational health and safety protections to sex workers.’

—Scarlet Alliance submission

‘There is longstanding evidence that decriminalisation is the best model to protect the rights, health and safety of sex workers.’

—Academic and sex worker submission

Summary

4.1 Decriminalising the sex-work industry and recognising sex work as lawful work will remove barriers and enhance access to entitlements and protections under existing work laws.

4.2 Queensland’s work health and safety laws aim to ensure the health and safety of workers while at work, and others who may be affected by the work. These laws apply to all workers, including sex workers, and Workplace Health and Safety Queensland (WHSQ) is the regulator responsible for making sure these laws are followed.

4.3 To further support improved access to work health and safety protections, we recommend that WHSQ develop work health and safety guidelines for the sex-work industry. The guidelines should be developed in consultation with the sex-work industry, including sex-worker organisations and other relevant people and agencies. Guidelines will help sex-work business operators and sex workers understand their rights and duties under work health and safety laws, and give practical guidance about how to meet them.

4.4 In a decriminalised context, sex work is legitimate work, not a crime. In our view, special laws like those in some other jurisdictions are not needed to state that:

- a contract for sex work is not illegal or unenforceable on public policy grounds
- a sex worker may, at any time, refuse to perform sex work
- a contract for sex work does not constitute consent for the purposes of criminal law.

These matters will be recognised and addressed by the application of existing laws to sex work as lawful work, including laws dealing with contracts, work health and safety laws, and sexual consent laws.

Recommendations

R7 Specific obligations on brothel licensees about alarms, lighting and signs should be removed. Section 23 of the Prostitution Regulation should be repealed as part of the removal of the licensing system, and no similar sex-work-specific laws should be enacted.

R8 Workplace Health and Safety Queensland should develop work health and safety guidelines for and in consultation with the sex-work industry, including sex-worker organisations and other relevant people and agencies.

R9 A legislative provision stating that a contract for sex work is not illegal or unenforceable on public policy or similar grounds is not needed.

R10 A legislative provision stating that a sex worker may, at any time, refuse to perform or continue to perform sex work and that a contract for sex work does not constitute consent for the purposes of criminal law is not needed.

What these recommendations mean

Sex work will be recognised as lawful work.

The same general work laws that apply to other workers and businesses apply to the sex-work industry, including work health and safety laws.

Workplace Health and Safety Queensland is the regulator responsible for making sure work health and safety laws are followed.

Guidelines will help the sex-work industry understand and implement their work health and safety rights and duties.

Queensland's work health and safety laws

Queensland's work health and safety legal framework aims to ensure the health and safety of all workers while at work, and others who may be affected by the work, including by:[1]

- requiring the elimination or minimisation of work health and safety risks
- ensuring consultation and cooperation to address health and safety issues in the workplace
- promoting information, education and training on health and safety
- providing effective compliance and enforcement measures.

The Work Health and Safety Act places general legal duties on people conducting a business or undertaking (PCBUs), workers, and other people at a workplace to ensure work health and safety.

Key legal duties under Work Health and Safety Act		
Primary duty	A PCBU has the 'primary duty of care' to ensure the health and safety of workers and other persons at risk from work carried out as part of the business, so far as is reasonably practicable. A self-employed person must ensure their own health and safety while at work, and the health and safety of others who may be put at risk, so far as is reasonably practicable.	Section 19(1)–(2), (5)
Worker duties	While at work, workers are required to take reasonable care for their own health and safety and that of others who may be affected by their actions or omissions, and cooperate with reasonable instruction, policy or procedure by the PCBU.	Section 28
Duties of others	Any 'other persons' at a workplace, including customers and visitors, must take reasonable care of their own health and safety and that of others who may be affected, and cooperate with PCBU actions to comply with work health and safety laws.	Section 29
Duty to consult	All duty holders have a duty to consult, cooperate and coordinate activities with other duty holders.	Section 46

The Work Health and Safety Act currently has a wide application, as it defines 'person conducting a business or undertaking', 'worker' and 'workplace' broadly.

The primary legal duty is on PCBUs to ensure work health and safety by doing what is reasonable to eliminate or minimise risks.

Chapter 3 of the Work Health and Safety Regulation presents a general method for eliminating or minimising risks through a 'hierarchy of control measures'.[2] The ways of controlling risks range from the highest (eliminating the risk) to the lowest (using personal protective equipment). Particular types of high-risk, hazardous or technical forms of work attract specific regulatory requirements under chapters 4–9A of the Work Health and Safety Regulation. This includes high-risk construction work, diving work, and work with hazardous chemicals or asbestos.

The Work Health and Safety Act and Work Health and Safety Regulation are supported by codes of practice, which give information on specific issues to help duty holders meet their legal standards. This includes general codes about: managing work health and safety risks; managing the work environment and facilities; first aid; and work health and safety consultation, cooperation and

coordination.[3] A code of practice on managing the risk of psychosocial hazards at work is scheduled to take effect on 1 April 2023, replacing existing guides about bullying and coercion, stress, fatigue and violence risks at work.[4] The Work Health and Safety Regulation will be updated at the same time to include psychosocial hazards.[5]

WHSQ – which is part of the Office of Industrial Relations – is the regulator responsible for making sure work health and safety laws are followed. It has several functions to achieve this, including providing guidance, information, education and training, and monitoring and enforcement measures.

Key definitions in the Work Health and Safety Act		
Person conducting a business or undertaking (PCBU)	A person conducts a business or undertaking whether the person conducts it alone or with others, and whether or not it is conducted for profit or gain. They can be a sole trader (for example a self-employed person), a partnership, company, unincorporated association, government department or public authority (including a local government).	Section 5
Worker	'Workers' include employees, contractors, subcontractors, outworkers, apprentices and trainees, work experience students, and volunteers. An individual employer or business owner who performs work for the business or undertaking is also a worker.	Section 7
Workplace	A 'workplace' means 'a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work'.	Section 8

Work health and safety laws

> 'The existing WHS [work health and safety] legislative framework … covers all existing businesses, including those operating in the sex-work industry. It is important to note all elements of the current sex work industry are covered by this framework. However, decriminalisation is an important step forward to shine a light on the industry to ensure all sex workers are treated equally and [can exercise their] rights as … workers to a healthy and safe environment and safe work practices.'
>
> **—Queensland Council of Unions submission**

Removing barriers to safety

4.5 One of the key aims of decriminalisation is to improve the safety of sex workers. Currently, sex work is lawful only in licensed brothels or by private sex workers working alone. However, most sex work occurs outside the licensed sector.

4.6 As discussed in chapter 2, decriminalisation will improve safety by removing offences in chapter 22A of the Criminal Code which are a barrier to sex workers working safely and accessing justice. As discussed in chapter 3, removing the licensing system will also remove barriers to accessing work health and safety laws, especially for sex workers now working unlawfully outside the licensed sector.

4.7 Many submissions said that decriminalisation will increase access to work health and safety laws for all sex workers, including by improving their ability to seek information and advice from, and report work health and safety issues to, the appropriate regulator. The Office of Industrial Relations said in its submission this would represent a 'landmark shift'.

General work health and safety laws apply

4.8 Queensland's work health and safety laws, which apply to all workers while at work and others who may be affected by the work, apply to:

- sex workers – as workers
- sex-work business operators, including brothel licensees and self-employed private sex workers – as a 'person conducting a business or undertaking' (PCBU)
- clients – as people who are at a workplace.

4.9 These laws ensure the health and safety of people at work, including by requiring the elimination or minimisation of risks. Under the decriminalised framework, they will continue to apply in the sex-work industry as they do in other industries.

4.10 Most submissions said that, under a decriminalised framework, work health and safety laws should apply to sex-work businesses in the same way they apply to all businesses. A few submissions said there should be additional laws to protect sex-worker health and safety, with one stating that a 'new framework' should be developed 'over and above' work health and safety standards that sets out 'clear obligations and standards'.

4.11 In our view, work health and safety risks in the sex-work industry can be appropriately managed by general work health and safety laws, with WHSQ as the regulator. This includes the legal duties and risk-

management control measures under the Work Health and Safety Act and chapter 3 of the Work Health and Safety Regulation.

4.12 Currently, brothel licensees are subject to additional oversight from the Prostitution Licensing Authority (PLA) and must follow specific health and safety requirements in the Prostitution Act, the Prostitution Regulation, and brothel licence conditions.[6] In chapter 3, we recommend the licensing system be removed and part 6 of the Prostitution Regulation, along with other provisions of the prostitution laws, be repealed. This includes section 23 in part 6 of the Prostitution Regulation, which requires brothel licensees to provide alarms and sufficient lighting to check for visible signs of sexually transmissible infection, and to display signs stating only safe sex is practised on premises. In our view, section 23 is not needed and no similar sex-work-specific law should be enacted. The obligation to minimise risks is covered under work health and safety laws, and specific types of safe practices that are encouraged for different sex-work businesses can be addressed in guidelines.

Work health and safety guidelines

> '[T]he best method to ensure individuals in the sex-work industry meet their work health and safety standards is to develop guidelines that appropriately include sex workers and sex-work businesses [under] existing workplace laws.'
>
> **—One Woman Project submission**
>
> 'Once these WHS [work health and safety] guidelines have been produced, all sex workers need to be supported and informed about them.'
>
> **—Sex worker submission**

Guidelines should be developed

4.13 WHSQ has many functions as the work health and safety regulator. This includes promoting awareness and providing information and guidance about how duty holders can meet their work health and safety obligations.

4.14 There is neither a work health and safety guideline nor a code of practice for the sex-work industry in Queensland. However, the PLA gives brothel licensees an Operational Standards Manual with practical guidance about how to meet work health and safety laws and manage risks specific to sex work.

4.15 Submissions overwhelmingly supported some form of guidance on work health and safety rights and obligations for the sex-work industry. The Office of Industrial Relations (which includes WHSQ) submitted that guidelines 'would be an appropriate education and compliance tool for the industry and sex workers', especially as the duties under work health and safety laws 'would be newly applied to many business operators and sex workers in a decriminalised industry'.

4.16 In our view, work health and safety guidelines should be developed for the sex-work industry. This will improve understanding of work health and safety laws for all sex-work businesses and sex workers. Guidelines will also help raise awareness about work health and safety rights, protections and obligations, recognising that decriminalisation and the removal of the brothel licensing system are significant changes to the regulatory framework.

4.17 Guidelines will give practical guidance to help sex-work business operators meet their work health and safety obligations in the different contexts in which they operate. Practical guidance will help with the risk management process by clearly setting out standards to manage hazards and risks particular to sex work.

4.18 Developing guidelines is consistent with the approach in other decriminalised jurisdictions, including New South Wales and New Zealand.[7]

Guidelines, not a code of practice

4.19 A work health and safety code of practice for the sex-work industry is an alternative approach to guidelines. The Australian Capital Territory, which is not a decriminalised jurisdiction, has a code of practice for the lawful sex-work industry.[8]

4.20 Unlike guidelines, codes of practice are made by the Minister under the Work Health and Safety Act and have legal status as evidence of whether or not a duty has been met.[9] Uniquely in Queensland, a person conducting a business or undertaking also has a duty to comply with the code or manage the relevant risks to achieve an equal or higher standard of work health and safety than the standard in the code.[10]

4.21 Most submissions supported the development of guidelines, although a few supported a code of practice. The Office of Industrial Relations said in its submission that codes of practice are introduced following an established process. They are developed if there is evidence that duty holders are not meeting their obligations to a standard the regulator would deem acceptable. They said WHSQ 'does not consider that the necessary evidence to justify introducing a new code of practice [for the sex-work industry] has been met to date'.

4.22 In our view, sex work does not require additional specific regulation or higher levels of control, which apply to some particularly high-risk, hazardous or technical work.[11] Codes of practice are more suitable for those kinds of work, such as work with asbestos, hazardous chemicals or steel construction.[12] Detailed risk management methods of the kind found in codes of practice are not needed for the sex-work industry. Developing codes of practice is a lengthy, formal process. Guidelines are preferable because they are more flexible and can be developed and adapted relatively quickly. As with other industries, the regulator could consider moving to a code of practice if serious issues were to arise over time, indicating that guidelines were insufficient.

Developing guidelines

4.23 As the work health and safety regulator, WHSQ should develop guidelines in consultation with the sex-work industry, including sex-worker organisations that have the industry knowledge to identify key risks and hazards. WHSQ can also consult with other relevant people and agencies, including with Queensland Health about public health matters.

4.24 Most submissions on this issue said that sex-worker organisations and sex workers should be involved in the development of guidelines with WHSQ. Many of these submissions supported the involvement of other relevant government agencies.

4.25 WHSQ is experienced in developing guidance material for particular industries in close consultation with those industries. The Office of Industrial Relations said in its submission that consultation with the sex-work industry and sex-worker representatives would be critical and:

> WHSQ would seek to work with all relevant parties to ensure that the guidance document correctly identifies and explains the relevant WHS [work health and safety] legislative duties and requirements, including in relation to any key risks and hazards they have identified.

4.26 We also heard in submissions that sex-worker organisations such as Respect Inc and Scarlet Alliance want to be involved in the development of work health and safety guidelines, as they have been in other jurisdictions, and that sex workers supported this approach.

Content of guidelines

4.27 The specific content of the guidelines should be determined by WHSQ during the development and consultation process. The guidelines should cover general hazards and risks particular to the sex-work industry and give information on specific, detailed risk-mitigation strategies. They should also include general information to help business operators and sex workers understand their rights and obligations, and mechanisms they can use to exercise their rights. This could include clarifying reporting processes for work health and safety matters to encourage the reporting of relevant concerns.

4.28 Submissions addressing this issue supported this type of information being in the guidelines. In a joint submission, Respect Inc and #DecrimQLD said the guidelines could cover a range of topics, including:

- common hazards and risks specific to the sex-work industry and ways in which they should be managed
- common types of worker injury, including repetitive strain injury
- reporting of incidents and accidents
- addressing public health and work health and safety risks such as body fluid spill protocols, waste disposal, and information about personal protective equipment and its provision and use
- drugs, alcohol and smoking
- cleaning and laundry protocols
- spa and pool management
- consultation arrangements with workers and their representatives
- making and documenting issues and complaints about work health and safety.

4.29 WHSQ could consider the information included in guidelines in other jurisdictions when developing the guidelines for Queensland.[13]

4.30 The Office of Industrial Relations said in its submission that 'a guidance document would need to outline the legal duties and requirements' under the work health and safety laws and 'identify the relevant approved codes of practice'. It also said that if business operators and sex workers want additional information regarding best practice to be included, the guidelines would need to clearly identify what is and is not a legal requirement.

Delivery of guidelines and training

4.31 Guidelines are an important way to raise awareness, improve understanding and make sure work health and safety laws are followed. They should be delivered in a way that maximises reach, including through publishing written material online, using different types of media, providing translations in relevant languages, and providing easy-to-access training.

4.32 WHSQ has experience in delivering guidance material in different formats and arranging translations into relevant languages. Delivery should also involve sex-worker organisations such as Respect Inc and Scarlet Alliance, to maximise reach and sex-worker engagement. Several submissions said education, training and engagement is important to achieve work health and safety objectives, and that sex-worker organisations should be involved in their delivery. The Office of Industrial Relations said 'additional awareness-raising activities' should be considered as 'a key feature of ensuring compliance', with any strategies developed in consultation with the sex-work industry and worker representatives. Many submissions noted that guidelines and information should be available in languages other than English.

4.33 Education and other measures to support the implementation of decriminalisation are outlined in chapter 7. We recommend existing regulators provide information, education and training for sex workers and sex-work business operators on changes to the law. This should include education, information and training by WHSQ about work health and safety laws and guidelines. We recommend sex-worker organisations, such as Respect Inc, should provide peer-support and outreach services for sex workers on health, safety and other matters.

Other work laws

4.34 Work health and safety laws regulate health and safety in the workplace. Other aspects of work are also regulated by laws of general application that operate across all industries. This includes workers' compensation laws and Commonwealth workplace relations laws. Submissions we received said decriminalisation will remove barriers to accessing work rights, and enhance opportunities for union representation, collective bargaining, and peer education and support to help sex workers understand and exercise their work rights.

4.35 Like any other worker in Queensland, a sex worker's protections and entitlements under workplace relations laws depend on the nature of their work arrangements and how they are engaged. Whether a person is covered by the Fair Work Act (Cth) or the *Independent Contractors Act 2006* (Cth) depends on whether they are an 'employee' or an 'independent contractor' for the purposes of those Acts.[14]

4.36 Similarly, whether an employer is required to take out workers' compensation insurance for a person under the *Workers' Compensation and Rehabilitation Act 2003* depends on whether the person is a 'worker' for the purposes of that Act. Independent contractors, sole operators and self-employed people operating in a partnership are not considered to be 'workers' under that Act but can take out their own insurance. This is the same for all industries in Queensland.[15]

No need for special provisions

'Under a decriminalised framework, criminal offences that are no longer needed or appropriate will be removed and sex work will be recognised as legitimate and legal work. This should remove barriers to contracts for services being enforced by a court on public policy grounds or for illegality.'

—Queensland Law Society submission

'[B]oth the Criminal Code and the WHS [Work Health and Safety] Act provide an existing legal framework to protect sex workers from not agreeing to enter into a sexual activity with another person, or to freely withdraw their consent at any stage, extending to situations to cease work in an employment relationship where the worker believes they would be exposed to a serious risk to their health and safety …'

—Queensland Council of Unions submission

Sex-work contracts

4.37 Recognising sex work as lawful work, not a crime, means there is no need for a special provision about sex-work contracts.

4.38 As discussed in chapter 10 of our consultation paper, under the current framework where sex work is criminalised, it is possible a court could find that a sex-work contract is unenforceable because it involves conduct that is criminal or prohibited by legislation, or that is contrary to public policy.[16] However, courts have also held that this does not prevent sex workers, or others who work in brothels, from accessing benefits under employment legislation.[17]

4.39 In New Zealand and the Northern Territory, decriminalisation laws include a provision stating that a contract for sex work is not illegal or unenforceable on public policy or similar grounds.[18] In the Northern Territory, this provision was included to make it clear that a contract for sex work is not illegal or void on those grounds 'purely because the subject matter of the contract relates to sex work'.[19] In New Zealand, this provision was included as part of the overall framework that aims to treat sex work the same as other businesses.[20] There is no similar provision in other Australian states and territories, including New South Wales and Victoria, which have also decriminalised sex work.

4.40 A small number of submissions supported the inclusion of a legislative provision such as those in New Zealand or the Northern Territory. However, most submissions we received about this issue, including from the Queensland Law Society and sex-worker organisations, said there is no need for these provisions in a decriminalised framework, which removes all sex-work-specific criminal offences and signifies a substantial shift in the public policy approaches to sex work.

4.41 In our view, there is no need for a legislative provision stating that a contract for sex work is not illegal or unenforceable on public policy or similar grounds. Under the decriminalisation framework, sex work is lawful work (not a crime), and it will be clear that sex-work contracts are not unenforceable because of public policy or similar grounds only because the subject matter of the contract is about sex work.

Refusal to perform a contract for sex work

4.42 Sex workers have sexual autonomy and bodily integrity and can choose what sexual activities they do and do not participate in.

4.43 Decriminalisation laws in New Zealand and the Northern Territory include a positive statement to make it clear that:[21]

- despite anything in a contract for sex work, a sex worker may, at any time, refuse to perform or continue to perform sex work
- the fact a person has entered into a contract for sex work does not itself constitute consent for the purposes of criminal law
- this does not affect any right to rescind or cancel, or to recover damages for, a contract for sex work that is not performed.

4.44 A provision in these terms was included first in New Zealand. It was intended to empower sex workers to make choices about their bodily integrity, to recognise their right to choose and to equalise the power imbalance between sex workers and their clients and management.[22]

4.45 Similar provision was included in the Northern Territory. It was explained that it balances 'the competing interests between worker safety and the general application of contract law'. It makes it clear that a sex worker can stop a booking and withdraw services, for example if they fear for their safety or wellbeing, and that entering a contract for sex work does not constitute consent for the purposes of criminal law. It also reinforces the common law position that applies to all contracts, that the other party may have a right to reimbursement or remedies other than specific performance of the contract if the sex worker exercises

their right to refuse. However, as discussed in chapter 10 of our consultation paper, this does not mean that sex workers will be required to pay compensation on every occasion a contract is terminated as any entitlement to damages for breach of contract will depend on the circumstances of the breach.[23]

4.46 There is no similar provision in other Australian states and territories, including New South Wales and Victoria, which have also decriminalised sex work. However, the work health and safety guidelines for the sex-work industry in New South Wales and the code of practice in the Australian Capital Territory make it clear that sex workers have the right to refuse particular clients or to provide particular kinds of work if they believe their health and safety is at risk.[24]

4.47 A small number of submissions supported the introduction of a new legislative provision as a safeguard for sex workers. The Queensland Law Society said it 'could be a valuable tool for sex workers who feel threatened or unsafe'. However, most submissions on this issue said there is no need for a new legislative provision as existing general laws address these matters. The Queensland Council of Unions said existing laws give workers strong protections. Many also said that a sex worker's right to refuse should be included in work health and safety guidelines.

4.48 In our view, a legislative provision, like those in New Zealand or the Northern Territory, is not needed. These matters are addressed by existing general laws, including work health and safety laws and sexual consent laws.

4.49 Under the Work Health and Safety Act in Queensland, a sex worker, like any other worker, has a general right to stop or refuse to carry out unsafe work.[25] Sex workers have the right to refuse to see a client or engage in a particular sexual activity if they believe their health and safety is at risk. This could occur, for example, because of the client's abusive or threatening behaviour, or because the sex worker believes there is a risk of contracting a sexually transmissible infection (such as where the client refuses to wear a condom). A WHSQ Inspector may be asked to attend the workplace.[26] The work health and safety guidelines we recommend will help sex workers understand and exercise their rights, including the right to refuse to perform sex work.

4.50 The general criminal law also applies to protect people from sexual and other violence. The Criminal Code contains offences, such as rape and sexual assault, for engaging in sexual activity without the other person's consent. These laws apply equally to sex workers. Entering into a contract for sex work, which is a commercial arrangement, does not itself constitute consent for this purpose. 'Consent' is defined in section 348 of the Criminal Code. A person's consent must be free and voluntary, and not, for example, obtained by force, threat, intimidation, fear of bodily harm, or exercise of authority.[27] Section 348(4) also makes it clear that consent may be withdrawn. Whether a person has consented or withdrawn their consent are questions of fact which depend on the circumstances of the case. Sex workers can give, refuse or withdraw consent under sexual consent laws, despite anything in a contract for sex work.

4.51 It will be an offence to coerce any person to provide commercial sexual services under the new provisions we recommend in chapter 6.

4.52 Other measures, including education and training, will be important to help sex-work business operators understand their responsibilities and empower sex workers to understand and exercise their legal rights. We make recommendations about these matters in chapter 7.

1 See further QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [10.19] ff; Workplace Health and Safety Queensland, *Guide to the Work Health and Safety Act 2011* (2022).
2 *Work Health and Safety Regulation 2011* (Qld) ch 3, pt 3.1. See especially s 36.
3 Workplace Health and Safety Queensland, *How to manage work health and safety risks*, Code of Practice (2021); Workplace Health and Safety Queensland, *Work health and safety consultation, cooperation and coordination*, Code of Practice (2021); Workplace Health and Safety Queensland, *Managing the work environment and facilities*, Code of Practice (2021); Workplace Health and Safety Queensland, *First aid in the workplace*, Code of Practice (2021).
4 Workplace Health and Safety Queensland, *Managing the risk of psychosocial hazards at work*, Code of Practice (2022).
5 WorkSafe.qld.gov.au, 'Managing the risk of psychosocial hazards at work Code of Practice 2022' (27 January 2023) <https://www.worksafe.qld.gov.au/laws-and-compliance/codes-of-practice/managing-the-risk-of-psychosocial-hazards-at-work-code-of-practice-2022>.
6 See further QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [10.46] ff.
7 SafeWork NSW, 'Health and safety guidelines for sex services premises in NSW' <https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw>; Occupational Safety & Health Service (NZ), *A Guide to Occupational Health and Safety in the New Zealand Sex Industry* (2004).
8 Work Health and Safety (Sexual Services Industry) Code of Practice 2011 (ACT).
9 *Work Health and Safety Act 2011* (Qld) s 274–275.
10 *Work Health and Safety Act 2011* (Qld) s 26A.
11 See further *Work Health and Safety Regulation 2011* (Qld) chs 4–9A.
12 WorkSafe.qld.gov.au, 'Codes of practice' (2022) <https://www.worksafe.qld.gov.au/laws-and-compliance/codes-of-practice>.
13 See further QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [10.80].
14 See further ibid [10.13]–[10.18].
15 Ibid [10.87]–[10.94].
16 Ibid [10.95]–[10.97], referring to *Ashton v Pratt (No 2)* [2012] NSWSC 3.
17 See e.g. *Phillipa v Carmel* [1996] IRCA 451; *Barac v Farnell* (1994) 53 FCR 193.
18 *Sex Industry Act 2019* (NT) s 7; *Prostitution Reform Act 2003* (NZ) s 7.
19 Explanatory Statement, Sex Industry Bill 2019 (NT) 2.
20 Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 10.
21 *Sex Industry Act 2019* (NT) s 9; *Prostitution Reform Act 2003* (NZ) s 17. See further QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [10.105] ff.
22 QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [10.113], referring to Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 17.
23 Ibid [10.107] ff, referring to Explanatory Statement, Sex Industry Bill 2019 (NT) 3.
24 SafeWork NSW, 'Health and safety guidelines for sex services premises in NSW' <https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw> [6], [9]; Work Health and Safety (Sexual Services Industry) Code of Practice 2011 (ACT) app 4 (prevention of workplace violence).
25 *Work Health and Safety Act 2011* (Qld) s 84.
26 *Work Health and Safety Act 2011* (Qld) s 89.
27 See Criminal Code (Qld) s 348(1)–(2). See also Women's Safety and Justice Taskforce, *Hear Her Voice – Report Two Women and Girls' Experience of the Criminal Justice System* (2022) vol 1, 214–16, Rec 43; Department of Justice and Attorney-General (Queensland), *Queensland Government Response to the Report of the Queensland Women's Safety and Justice Taskforce, Hear Her Voice – Report Two Women and Girls' Experience Across the Criminal Justice System* (2022) 6, 19, tabled in Parliament on 1 December 2022.

Public health and sex workers

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Public health and sex workers

'Sex work could be regulated like other businesses using workplace health and safety frameworks supported by existing public health legislation and infection control guidance without the need for additional regulation…'

—Queensland Health submission

'Existing laws regulating sex work contribute to poor public health outcomes by promoting stigma and discrimination towards sex workers, which in turn can lead to increased rates of HIV and other STIs.'

—Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM) submission

'It is a myth that sex workers pose a public health risk and are "vectors of disease". Sex workers have low rates of blood-borne viruses (BBVs) and sexually transmitted infections (STIs) that are equal to, or lower than, the general population. … Queensland's laws are outdated and steeped in stigmatising stereotypes that ignore the evidence.'

—Sex worker submission

'Criminalisation of sex workers working with an STI is outdated and hasn't kept up with science.'

—Member of the public submission

Summary

4.53 In our view, sections 77A, 89 and 90 of the Prostitution Act, which require the use of prophylactics by all sex workers and their clients and prohibit sex workers at licensed brothels from working with a sexually transmissible infection (STI), are not needed and should be removed. No similar sex-work-specific offences should be enacted.

4.54 Sex-work-specific health offences criminalise and stigmatise sex workers and are not consistent with the aims of decriminalisation. They are a barrier to good health outcomes and do not align with evidence-based best practice in public health, which promotes informed and voluntary adoption of safer sex practices for the successful prevention of STIs and blood-borne viruses (BBVs).

4.55 Public health laws and sexual health policies create a supportive environment to promote the optimal sexual health of sex workers and clients, while providing the necessary safeguards to protect public health. The Public Health Act supports a best-practice framework to manage 'notifiable conditions', including several STIs of particular significance to public health. As discussed in this chapter, work health and safety in the sex-work industry, including safer sex practices, is addressed by general work health and safety laws and will be the subject of specific guidance in the guidelines we recommend be developed for the sex-work industry.

4.56 Health promotion, peer education, and access to health and other support services are important factors in the successful prevention of STIs, and we have made recommendations about this in chapter 7.

Recommendation

R11 Sex-work-specific health offences should be removed. The offences in sections 77A, 89 and 90 of the Prostitution Act, the definition of 'sexually transmissible disease' in the Act, and the related provisions in sections 14 and 26 of the Prostitution Regulation should be repealed. No new sex-work-specific health offences should be enacted.

What this recommendation means

Public health laws and policy approaches apply to protect public health and promote the health of all Queenslanders, including sex workers and clients.

Work health and safety laws that apply to everyone at work ensure the work health and safety of sex workers and clients, including by the adoption of safer sex practices.

Sex workers will not be singled out by special criminal laws. Informed and voluntary safer sex practices and sexual health testing will be supported.

Queensland's public health laws

Queensland's public health laws aim to protect and promote the health of the Queensland public.

The Public Health Act sets out the basic safeguards that are needed to protect public health through cooperation between the Queensland Government, local governments, health care providers and the community.

One of the ways public health laws protect public health is by providing for the identification of, and response to, 'notifiable conditions', to prevent or minimise their transmission. This includes several STIs of particular significance to public health.

Notifiable conditions

Chapter 3 of the Public Health Act sets out a process for managing 'notifiable conditions'. The conditions are listed in schedule 1 of the *Public Health Regulation 2018* and include several that can be sexually transmitted:

- chancroid
- chlamydia
- gonorrhoea
- donovanosis
- hepatitis B and C
- HIV
- syphilis.

Some notifiable conditions are further identified as 'controlled notifiable conditions' where:

- the condition may have a substantial impact on public health
- a person's ordinary conduct is likely to result in transmission to another person and
- transmission will, or would be likely to, have long-term or serious consequences for the other person's health.

Hepatitis C, HIV and syphilis are controlled notifiable conditions that can be sexually transmitted.

The Public Health Act aims to protect people from notifiable conditions, including by preventing or minimising their spread, in ways that balance protecting public health and individual rights to liberty and privacy. This includes protecting a person's right to make informed decisions about their medical treatment.

The Public Health Act promotes shared responsibilities for public health. Section 66 states that at-risk individuals should take all reasonable precautions to avoid acquiring or transmitting a notifiable condition. A person who thinks they may have a notifiable condition should find out if they have the condition and what precautions they should take to prevent transmission to others. Reasonable precautions will depend on a person's individual circumstances, but can include educating themselves about STI risks and safer sex practices, consistent use of prophylactics, regular testing, accessing treatment and following a health professional's advice.

Information about people who have, or may have, a notifiable condition must be reported to Queensland Health, and is held on a confidential register. This allows for:

- monitoring and analysing incidences of notifiable conditions, studying the efficacy of treatment, and increasing public awareness
- identifying outbreaks so steps can be taken to minimise public health risks
- identifying people who have, or may have, a notifiable condition so actions can be taken to prevent or minimise transmission, or so people can be medically examined and undergo treatment and
- the planning of services and strategies to prevent or minimise the transmission of notifiable conditions.

Queensland Health uses a 'staged process' for managing a person who is living with a controlled notifiable condition and who may be displaying behaviours that put others at risk. For example, the *Guideline for the Management of People Living with HIV Who Place Others at Risk of HIV* articulates a five-stage escalating intervention approach to case-managing individuals demonstrating risk behaviours that place others at risk of HIV. This process is managed by a team of specialist HIV nurses and supported by an expert advisory panel. Case management is person-centred and fosters the cooperation of the person living with HIV to minimise transmission risks through behaviour change, with preference given to strategies that are least restrictive (including education, counselling and support, and voluntary testing and treatment), as these will generally be the most sustainable and effective in the long term. The case management may escalate or de-escalate depending on the effectiveness of interventions and the assessment and management of risks.

Where supportive interventions have not been successful and there is an immediate risk to public health, a court order may be made under chapter 3 of the Public Health Act. The order can require a person living with a controlled notifiable condition to be detained for diagnosis or treatment, have counselling, avoid doing some things or visiting some places, or agree to supervision and monitoring. Such orders may be made, for example, if a person is unwilling or unable to change their behaviour, which may be placing others at risk of HIV, or where the person refuses to engage in interventions.

Under section 143 of the Public Health Act, it is an offence for a person to recklessly transmit or recklessly put another person at risk of contracting a controlled notifiable condition, unless the other person knew about the condition and 'voluntarily accepted' the risk. This offence (or other criminal offences) may be used in exceptional circumstances. A person does not commit this offence by refusing or failing to be vaccinated against a condition.

Most submissions support removal

4.57 Most submissions – including from sex workers, sex-worker organisations, health services and health professional organisations, and government agencies – supported the removal of sex-work-specific health laws. Many submissions said:[28]

- such laws are not evidence-based and do not align with best practice in public health or recognise sex workers' human rights
- work health and safety laws apply to ensure the health and safety of sex workers and clients
- public health approaches, including education and voluntary testing, are better suited to effectively support the sexual health of sex workers and clients.

In a joint submission, Respect Inc and #DecrimQLD said decriminalisation should shift the focus 'to peer education, improving access to testing and enabling sex workers to make informed decisions about best-practice safe work practices and testing'.

4.58 However, several submissions – including from the Prostitution Licensing Authority (PLA), a Queensland brothel licensee, some sex workers, and members of the public – supported sex-work-specific health laws to manage the risks of STIs and make sure safer sex practices are adopted. The PLA said the use of prophylactics by sex workers and clients should continue to be required; sex workers with an STI should be prohibited from working at a sex-work business; and sex-work business operators should not permit a sex worker with an STI to work at the business. The Queensland Council for Civil Liberties (QCCL) supported laws that place responsibility on sex-work business operators to take reasonable steps to ensure safer sex practices are adopted and adhered to, like New Zealand.[29]

Offences are inconsistent with decriminalisation

4.59 In our view, the offences in sections 77A, 89 and 90 of the Prostitution Act should be repealed and no new sex-work-specific health offences should be enacted.

4.60 Decriminalisation aims to improve public health and human rights outcomes for sex workers while reducing barriers sex workers face in accessing health services. Offences that single out sex workers are inconsistent with the aims of decriminalisation, as they criminalise sex workers, perpetuate stigma, and create barriers to accessing health and other support services.

4.61 Sex-work-specific health offences are not needed as existing public health laws and work health and safety laws apply and can effectively address sexual health risks in the sex-work industry. The same general laws should apply to sex workers and clients as to everyone else.

4.62 Removing sex-work-specific health offences in the Prostitution Act is needed to support a human rights-based approach. The offences single out an already marginalised population (sex workers) and disproportionately affect women. Many of the rights protected in the Human Rights Act are potentially affected by the offences, including:[30]

- recognition, equality and non-discrimination
- right to life
- protection from torture and cruel, inhuman or degrading treatment (including protection from being subjected to medical treatment without full, free and informed consent)
- access to health care.

4.63 As explained in chapter 11 of our consultation paper, other Australian jurisdictions take different approaches to sex-work-specific health laws, and public health laws vary. However, removing sex-work-

specific health offences in sections 77A, 89 and 90 of the Prostitution Act is generally consistent with approaches in other Australian decriminalised jurisdictions. Victoria had similar offences to Queensland, requiring the use of prophylactics and sexual health testing, and prohibiting sex workers from working with an STI, but these were repealed in 2022 by decriminalisation legislation.[31] There are no offences of this kind in New South Wales. In the Northern Territory, there is a single offence about the use of information for medical testing, which existed before decriminalisation, but no other sex-work-specific health offences.[32]

4.64 In contrast, New Zealand decriminalised sex work but continues to have sex-work-specific laws to ensure safer sex practices are adopted and adhered to, including requirements to use prophylactics, and to minimise the risk of STIs. Sex-work business operators are also required to give health information to sex workers and clients.[33]

Offences are a barrier to good health

4.65 Sex-work-specific health offences can be counter-productive. They contribute to stigma and marginalisation, which can negatively influence health-seeking behaviours and create barriers to accessing health care and support services, leading to poorer health outcomes.

4.66 Many submissions, including from sex workers and sex-worker organisations, said fear of criminalisation or being shamed or discriminated against in certain health care or other support settings is a barrier to accessing education and health care. A lack of suitably skilled, responsive, confidential and accessible health services was also identified as a practical barrier. Submissions said removing sex-work-specific offences and recognising sex work as legitimate work will help decrease stigma and marginalisation and improve access to health care, information, peer education and support.

4.67 Research shows that fear of criminalisation can interfere with personal health and safety strategies and cause people to avoid contact with authorities, including with health and support systems. Criminalisation can undermine public health efforts, and lead to higher infection risks and poorer health outcomes for sex workers.[34]

Sex workers take care of their sexual health

4.68 Sex workers take care of their sexual health without the need for sex-work-specific offences that compel them to do so.

4.69 Many submissions said sex-work-specific health offences are based on outdated and stigmatising stereotypes of sex workers as ‘vectors of disease’, and are not supported by evidence. Submissions said sex workers are highly motivated to take care of their health and consistently follow safer sex practices, both for their own personal wellbeing and so they can continue working.

4.70 Research shows that Australian sex workers have high rates of voluntary sexual health testing and high levels of knowledge and use of safer sex practices (including condom use) and that they share this knowledge with their peers and clients.[35] Research from 2007–14 in New South Wales – which does not have offences requiring the use of prophylactics and sexual health testing, or prohibiting sex workers from working with an STI – shows that sex workers have a high uptake of sexual health screening, high rates of consistent condom use with clients, and low rates of STIs (particularly among female workers).[36]

4.71 There is no evidence that sex workers in Australia have BBV and STI rates that are any higher than the general population.[37] STI rates in Australian sex workers are ‘among the lowest in the world

compared with sex workers in other countries'.[38] HIV has also been virtually eliminated among Australian sex workers.[39]

Removing offences aligns with best practice

4.72 Removing sex-work-specific health offences aligns with evidence-based best practice in public health and STI prevention, which recognises that punitive approaches are a barrier to good health outcomes. Stigma generally associated with sex and sexual health can compound these issues. Sexual health risks are most effectively managed by:[40]

- access to good-quality health information and support, including health promotion and peer education
- safer sex practices that are informed, consistent and voluntary
- shared responsibilities for public health and a supportive environment that enables people to take care of their health
- reliable access to person-centred, evidence-based, inclusive health care and other services.

4.73 Existing general public health laws provide the necessary safeguards to prevent or minimise the spread of STIs in the sex-work industry in a way that aligns with best practice in public health and balances protecting public health with individual rights.[41] The laws are supported by the Queensland Sexual Health Framework and five BBV and STI action plans, which align with national BBV and STI strategies.[42] This provides a holistic, whole-of-government public health approach to promote the sexual health of all Queenslanders and reduce the transmission of STIs.

4.74 One of the key priority actions under the Queensland Sexual Health Framework is improving community awareness and information for all Queenslanders about sexual and reproductive health, including addressing stigma and discrimination around sexual health. It also recognises the need to support access for sex workers to information and health services that are affordable and non-discriminatory, and address stigma and discrimination experienced by sex workers.[43]

4.75 The Sexual Health Ministerial Advisory Committee provides advice to the Minister for Health and Ambulance Services on sexual and reproductive health matters. The Queensland Sexual Health Clinical Network gives expertise, advice and recommendations to Hospital and Health Services and the Department of Health to support quality, evidence-based, safe, effective, patient-focused, equitable public sexual health services.[44] Funding is provided to the community sector to augment sexual health services in primary care settings and sexual health clinics.

4.76 Many submissions emphasised the importance of peer education and voluntary testing and treatment in the successful prevention of BBVs and STIs. Some submissions – including from the Sexual Health Society of Queensland, a community sexual health service for people who identify as LGBTI, and a sex-worker organisation – noted that peer education and support has been instrumental in maintaining low rates of BBVs and STIs, high uptake of condom use, regular testing and safer sex practices among sex workers.

4.77 Sex workers in Australia have 'played a longstanding and pivotal role in health promotion by establishing partnerships in community health initiatives and acting as pioneers in peer education programs'.[45] Health promotion, peer education and access to health and other support services are important to improve health literacy and health outcomes, promote consistent and effective safer sex practices, and successfully prevent the transmission of BBVs and STIs. We make recommendations about this in chapter 7.

Use of prophylactics

Current offences under section 77A of the Prostitution Act

Where sex work involves sexual intercourse or oral sex, it is an offence for:

- a sex worker to offer or provide sex work without a prophylactic
- a person to ask for, accept an offer of, or obtain sex work without a prophylactic
- a person obtaining sex work to interfere with the effectiveness of a prophylactic, including by misusing or damaging it
- a person obtaining sex work to use or keep using a prophylactic that the person knows, or could reasonably be expected to know, is damaged.

A brothel licensee or approved manager must take reasonable steps to ensure prophylactics are used and must not discourage the use of prophylactics at a brothel.

4.78 Section 77A of the Prostitution Act sets out offences that require the use of prophylactics by all sex workers and clients in Queensland for sex work involving sexual intercourse or oral sex.[46] 'Prophylactic' is defined for the purpose of those offences to mean 'a condom or other device that is adequate to prevent the transmission of a sexually transmissible disease', which could include a male condom, female condom or dental dam.[47] Generally, a prophylactic is a medicine or measure that protects from disease.[48]

4.79 Submissions overwhelmingly supported the use of safer sex practices, including condom use, for sex work within a decriminalised framework. However, submissions had differing views about how this could best be achieved. Some submissions said the use of prophylactics should continue to be required by sex-work-specific laws. A few said this could help sex workers refuse clients who pressure them to perform services without a condom. However, many submissions said that sex-work-specific offences requiring the use of prophylactics are difficult to enforce and criminalise sex workers.

4.80 Barrier protection remains one of the best ways to prevent or minimise the spread of STIs. However, the use of prophylactics in the sex-work industry can be addressed by public health laws, sexual health policies, and work health and safety laws and guidance, without the need to single out sex workers with punitive criminal laws. As discussed above, removing sex-work-specific offences requiring the use of prophylactics aligns with evidence-based best practice in public health and recognises that sex workers have high rates of voluntary condom use and adoption of safer sex practices.

4.81 Under public health laws, everyone, including sex workers and their clients, has a responsibility to take reasonable precautions to avoid acquiring an STI, and to prevent transmission to others.[49] Reasonable preventive action includes the adoption of safer sex practices, such as consistent condom use. As we discuss elsewhere in this chapter, work health and safety laws also place legal duties on sex-work business operators, sex workers and clients to ensure the health and safety of workers and others who may be affected by the work. For sex work, this includes the provision and use of prophylactics and information to prevent or minimise the risk of STIs, which we recommend be addressed in specific guidance for the sex-work industry. Sex workers also have rights and protections under work health and safety laws, including the right to refuse to see a client or engage in a particular sexual activity if they believe their health and safety is at risk.[50]

4.82 General criminal laws may also apply, for example, in circumstances where a client removes a condom without the sex worker's consent (see the discussion of stealthing in chapter 8).

Working with an STI

Current offences and requirements under sections 89 and 90 of the Prostitution Act

It is an offence for:

- a brothel licensee or an approved manager to allow a sex worker to work at the brothel knowing that the sex worker 'is infective with a sexually transmissible disease'
- a sex worker to work at a licensed brothel knowing they 'are infective with a sexually transmissible disease'.

Sexual health testing is required at three-monthly intervals for any sex worker who works in a brothel.

It is an offence for a sex worker at a licensed brothel to use the fact that they had a sexual health test, or the results of any examination or test, to induce a client to believe the sex worker 'is not infective with a sexually transmissible disease', and a brothel licensee or an approved manager must take reasonable steps to prevent those facts or results from being used in that way.

4.83 Under the Prostitution Act, offences prohibit sex workers with a 'sexually transmissible disease' from working at a licensed brothel, and a brothel licensee or approved manager must not allow a sex worker with a sexually transmissible disease to work.[51] 'Sexually transmissible disease' is defined to mean any disease or condition listed in that Act or prescribed under a regulation. The list includes serious and less serious STIs.[52]

4.84 Knowledge that the sex worker is working with an STI is presumed unless it can be proved the sex worker had been medically examined or tested at three-monthly intervals.[53] As a result, sexual health testing is mandatory for any sex worker who works in a licensed brothel. Standard brothel licence conditions require a licensee or an approved manager to have proof from a health practitioner that a sex worker has been medically examined or tested for STIs.[54] This has the effect of singling out and imposing additional health measures on sex workers in Queensland working in licensed brothels (estimated to be only about 10% of the industry).[55] There are also offences about using the fact of testing or the results to induce clients to believe the sex worker is not working with an STI.[56]

4.85 Some submissions said there should continue to be specific laws prohibiting a sex worker from working with an STI. A few said this would protect sex workers and clients.

4.86 However, many submissions said that sex-work-specific STI offences and mandatory sexual health examinations:

- undermine education and health rights by limiting sex workers' health care choices, requiring invasive medical procedures, and limiting sex workers' privacy about their sexual health care
- create a requirement for sexual health certificates that may not accurately reflect an individual's health status (because a person might acquire an STI in the time between two sexual health tests, or because a negative test result does not guarantee that a person does not have a STI, for example because of the incubation period)
- do not reflect that sex workers with an STI may perform some services that have a low risk of STI transmission
- can increase demands on sexual health services, delaying or preventing access by other members of the community who may have acute needs

- do not reflect medical advances in HIV prevention, treatment and management, which have transformed a once-fatal infection into a manageable chronic health condition.

4.87 While there is still no cure for some STIs, including HIV, modern medical advances mean all STIs are treatable and manageable, and most are curable when detected promptly and treated effectively.[57]

4.88 The offences in sections 89 and 90 of the Prostitution Act were considered necessary to protect public health when they were introduced in the late 1990s, during the second decade of the HIV/AIDS epidemic. There have since been significant advances in HIV treatment and prevention, and there is now a wealth of medical and scientific research proving the efficacy of combination antiretroviral therapy. A person living with HIV who takes modern antiretroviral therapy as directed can effectively reduce the amount of virus in their body to a level that is so low the virus can no longer be passed on to others.[58]

4.89 Removing the offences in sections 89 and 90 of the Prostitution Act aligns with evidence-based best practice in public health. National and state sexual health policies and action plans support informed decision-making, voluntary testing and treatment, access to information and health care, and community-led health promotion programs for the successful prevention of BBVs and STIs.

4.90 Research and submissions show that sex workers take care of their sexual health without the need for offences that single them out, and that rates of STIs among sex workers are as low as or lower than that of the general population. A 2015–16 survey by Respect Inc of sex workers outside the licensed brothel sector in Queensland, who are not subject to the requirements in sections 89 and 90 of the Prostitution Act, found that:[59]

> more than approximately half of sex workers have regular sexual health check-ups of three month intervals or less, by their own choice without mandatory testing. Those who test at longer intervals are still having regular check-ups with very low numbers reporting that they have never had a sexual health check.

4.91 Sex-work-specific health offences to ensure the adoption of safer sex practices are not needed and, as discussed above, are a barrier to good health outcomes. General laws apply to prevent or minimise the risk of STIs in the sex-work industry, including public health laws and work health and safety laws.

4.92 The Public Health Act provides a framework to support the best-practice management of 'notifiable conditions', which includes STIs of particular significance to public health. Some conditions that pose a more substantial risk to public health are further identified as 'controlled notifiable conditions'. These include HIV, hepatitis C and syphilis. Under the Public Health Act, all at-risk individuals have a responsibility to take reasonable precautions to avoid acquiring an STI, and to prevent transmitting to others.[60] This can include understanding sexual health risks, regular testing, and treatment. The Public Health Act creates a supportive environment for people to access services and get the information, treatment and support they need to manage these conditions and to prevent or minimise their transmission. Court orders can be made under chapter 3 of the Public Health Act if needed. In practice, this occurs only in exceptional cases where other supportive measures have been unsuccessful.[61] Under section 143 of the Public Health Act, it is an offence for a person to recklessly transmit or recklessly put another person at risk of contracting a controlled notifiable condition.

4.93 Work health and safety laws also apply to ensure the work health and safety of sex workers and clients, including the adoption of safer sex practices to prevent or minimise the risk of STIs. In addition to general legal duties to ensure work health and safety, the Work Health and Safety Act includes an obligation to notify the regulator (Workplace Health and Safety Queensland) of any serious injury or illness, including any infection that is attributable to carrying out work that involves contact with human blood or body substances.[62]

4.94 Depending on the circumstances, the general criminal law may also apply. Section 317 of the Criminal Code makes it a crime to intentionally transmit 'a serious disease' to another person. This is defined as a disease that would, if not treated, endanger someone's life, cause permanent injury to their health, or cause loss of a body part or organ or serious disfigurement (or a disease that would be likely to do any of

those things).[63] Similar offences operate in most jurisdictions.[64] We note that some submissions said that section 317 should be reviewed or removed because of its potential negative impact on people living with HIV. Section 317 is a law of general application and is not specific to the sex-work industry. It falls outside the scope of our review and we make no recommendations about it.

28 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
29 Queensland Council for Civil Liberties, Submission to QLRC, *Decriminalisation of sex work* (7 June 2022) <https://www.qccl.org.au/newsblog/decriminalisation-of-sex-work>.
30 *Human Rights Act 2019* (Qld) ss 15, 16, 17, 37. See also QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) ch 6 table 1.
31 QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [11.9]–[11.10], referring to *Sex Work Decriminalisation Act 2022* (Vic) ss 8–10, repealing *Sex Work Act 1994* (Vic) ss 18A, 19–20, 20A, which took effect on 10 May 2022. See also Department of Health (Vic) (16 August 2022) 'Sex worker health' <https://www.health.vic.gov.au/preventive-health/sex-worker-health>.
32 *Sex Industry Act 2019* (NT) s 16.
33 *Prostitution Reform Act 2003* (NZ) ss 8, 9.
34 L Platt et al, 'Associations between sex work laws and sex workers' health: a systematic review and meta-analysis of quantitative and qualitative studies' (2018) 15(12) *PLoS Medicine* (online); C Harcourt et al, 'The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers' (2010) 34(5) *Australian and New Zealand Journal of Public Health* 482. See also K Shannon et al, 'Global epidemiology of HIV among female sex workers: influence of structural determinants' (2015) 385 *The Lancet* 55; J Stuber, I Meyer and B Link, 'Stigma, prejudice, discrimination and health' (2008) 67(3) *Social Science and Medicine* (online); UNAIDS, *Confronting Inequalities: Lessons for pandemic responses from 40 years of AIDS* (Global Aids Update, 2021) 23; UNAIDS, 'HIV and sex work—human rights fact sheet series 2021' (2021) <https://www.unaids.org/en/resources/documents/2021/05-hiv-human-rights-factsheet-sex-work>; Department of Health (Australia), *Fourth National Sexually Transmissible Infections Strategy 2018–2022* (2018) 22; Department of Health (Australia), *Eighth National HIV Strategy 2018–2022* (2018) 22.
35 B Donovan et al, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (Kirby Institute, University of New South Wales, 2012) 23; D Callander, B Donovan & R Guy, *The Australian Collaboration for Coordinated Enhanced Sentinel Surveillance of Sexually Transmissible Infections and Blood Borne Viruses: NSW STI Report 2007–2014* (2015) 10; D Callander et al, *Sex Worker Health Surveillance: A Report to the New South Wales Ministry of Health* (2016) 13; E Jeffreys, J Fawkes & Z Stardust, 'Mandatory testing for HIV and sexually transmissible infections among sex workers in Australia: a barrier to HIV and STI prevention' (2012) 2 *World Journal of AIDS* 203, 203–04.
36 See e.g. D Callander, B Donovan & R Guy, *The Australian Collaboration for Coordinated Enhanced Sentinel Surveillance of Sexually Transmissible Infections and Blood Borne Viruses: NSW STI Report 2007–2014* (2015) 10; D Callander et al, *Sex Worker Health Surveillance: A Report to the New South Wales Ministry of Health* (2016) 13.
37 See e.g. D Callander et al, *Sex Worker Health Surveillance: A Report to the New South Wales Ministry of Health* (2016) 13; D Callander et al, 'A cross-sectional study of HIV and STIs among male sex workers attending Australian sexual health clinics' (2016) 93(4) *Sexually Transmitted Infections* 299. See also L Selvey et al, *Law and Sex Worker Health (LASH) Study: A Summary Report to the Western Australian Department of Health* (2017) 52; B Donovan et al, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (Kirby Institute, University of New South Wales, 2012) 23; E Jeffreys, J Fawkes & Z Stardust, 'Mandatory testing for HIV and sexually transmissible infections among sex workers in Australia: a barrier to HIV and STI prevention' (2012) 2 *World Journal of AIDS* 203, 203–4.
38 Department of Health (Australia), *Fourth National Sexually Transmissible Infections Strategy 2018–2022* (2018) 5, 14.
39 Department of Health (Australia), *Eighth National HIV Strategy 2018–2022* (2018) 15. See also P Keen, S Nigro & A Grulich, *HIV Notifications in heterosexuals, Aboriginal and Torres Strait Islanders, people who inject drugs, and female sex workers in NSW, 2015–2019* (Kirby Institute, University of New South Wales, 2020) 4.
40 See e.g. Queensland Government, 'Safe Sex' (28 June 2022) <https://www.qld.gov.au/health/staying-healthy/sexual-health/safe-sex>. See also Queensland Government, 'Sexual Health Checks' (15 June 2022) <https://www.qld.gov.au/youth/relationships-safety-sexuality/sexual-health/sexual-health-checks>; Queensland Government, 'Sexual Health Promotion Resources' (6 October 2021) <https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/sex-health/resources>; World Health Organisation, *Global health sector strategies on, respectively, HIV, viral hepatitis and sexually transmitted infections for the period 2022–2030* (2022) 5; J Ong et al, 'Australian sexually transmitted infection (STI) management guidelines for use in primary care 2022 update' (2023) *Sexual Health* (online); C Benoit et al, 'Sex workers as peer health advocates: community empowerment and transformative learning through a Canadian pilot program' (2017) *International Journal for Equity in Health* (online); J He et al, 'Peer education for HIV prevention among high-risk groups: a systematic review and meta-analysis' (2020) *BMC Infectious Diseases* (online).
41 *Public Health Act 2005* (Qld) ss 65, 66(2).
42 See Queensland Health, 'Queensland Sexual Health Framework' (12 April 2022) <https://www.health.qld.gov.au/public-health/topics/sexual-health/strategy>, referring to: Queensland Health, *Queensland Sexual Health Framework* (2022); Queensland Health, *Queensland HIV Action Plan 2019–2022* (2019); Queensland Health, *Queensland Hepatitis B Action Plan 2019*–2022 (2019); Queensland Health, *Queensland Hepatitis C Action Plan 2019*–2022 (2019); Queensland Health, *Queensland Sexually Transmissible Infections (STI) Action Plan 2019–2022* (2019); Queensland Health, *Queensland Aboriginal and Torres Strait Islander BBV/STI Action Plan 2019–2022* (2019). See also Department of Health (Australia), 'National strategies for bloodborne viruses and sexually transmissible infections' (12 July 2022) <https://www.health.gov.au/resources/collections/national-strategies-for-bloodborne-viruses-and-sexually-transmissible-infections?utm_source=health.gov.au&utm_medium=callout-auto-custom&utm_campaign=digital_transformation>.
43 Queensland Health, *Queensland Sexual Health Framework* (1 January 2022) [1.1]–[1.5], [3.4].
44 Queensland Health, 'Queensland Sexual Health Framework' (12 April 2022) <https://www.health.qld.gov.au/public-health/topics/sexual-health/strategy>.
45 Department of Health (Australia), *Fourth National Sexually Transmissible Infections Strategy 2018–2022* (2018) 26.
46 *Prostitution Act 1999* (Qld) s 77A(1)–(3).
47 *Prostitution Act 1999* (Qld) s 77A(7) (definition of 'prophylactic').
48 *Macquarie Dictionary* (online at 5 November 2021) 'prophylactic'.
49 *Public Health Act 2005* (Qld) s 66(1). See also s 143.
50 See the discussion of work health and safety laws and refusal to perform a contract for sex work in this chapter.
51 *Prostitution Act 1999* (Qld) ss 89(1)–(2), 90(1)–(2).
52 See further QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [11.31], referring to *Prostitution Act 1999* (Qld) sch 4 (definition of 'sexually transmissible disease'); *Prostitution Regulation 2014* (Qld) s 26.
53 *Prostitution Act 1999* (Qld) ss 89(3), 90(3); *Prostitution Regulation 2014* (Qld) s 14.
54 PLA, *Brothel Licence Conditions* (v 14, 13 May 2019) [4.4]–[4.5].
55 QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [3.16].
56 *Prostitution Act 1999* (Qld) ss 89(4)–(5), 90(4)–(5).

57 Queensland Government, 'Sexually transmissible infections' (28 June 2022) <https://www.qld.gov.au/health/staying-healthy/sexual-health/sti>.
58 See e.g. F Barré-Sinoussi et al, 'Expert consensus statement on the science of HIV in the context of criminal law' (2018) 21(7) *Journal of the International AIDS Society* (online) 4; M Boyd et al, 'Sexual transmission of HIV and the law: an Australian medical consensus statement' (2016) 205(9) *The Medical Journal of Australia* 409.
59 Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 22, 26 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
60 *Public Health Act 2005* (Qld) ss 66(1)(b)–(c), 143.
61 See e.g. Queensland Health, *Guideline for the Management of People Living with HIV who Place Others at Risk of HIV* (No QH-GDL-367:2022, 6 June 2022).
62 *Work Health and Safety Regulation 2011* (Qld) s 699.
63 Criminal Code (Qld) s 1 (definition of 'serious disease').
64 See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [11.48].

Discrimination protections

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Discrimination protections

'As sex workers, we are a marginalised group that faces stigma and discrimination in virtually every aspect of our lives, from housing, to banking, to employment opportunities … There must be antidiscrimination protections offered to sex workers to decrease stigma, which so burdens our community.'

—Sex worker submission

'Decriminalisation will only work if we are also protected from discrimination.'

—Sex worker submission

Summary

4.95 Sex workers experience significant stigma, discrimination, and barriers to exercising their rights. Decriminalising sex work will remove some of these barriers and is a necessary first step to addressing stigma and discrimination. Protections under the Anti-Discrimination Act need to be strengthened as part of the decriminalisation framework. This is consistent with the aim of reducing stigma and safeguarding sex workers' human rights, including the right to equal and effective protection against discrimination.

4.96 In our view, the protected attribute of 'lawful sexual activity' in the Anti-Discrimination Act should be retained and its scope clarified and strengthened. The current definition, which limits the attribute to lawful sex workers, should be removed. Instead, 'lawful sexual activity' should be defined in the Act to include being a sex worker or engaging in sex work. For this purpose, 'sex work' should be defined to mean 'an adult providing consensual sexual services, involving physical contact, to another adult in return for payment or reward'. These definitions make it clear that the protection applies to sex workers and includes engaging in sex work within the meaning of this review. However, the 'lawful sexual activity' attribute is defined inclusively and will not be limited to sex work.

4.97 Exemptions in the Anti-Discrimination Act that presently allow discrimination specifically against a person because they are a sex worker are not needed, are inconsistent with decriminalisation, and should be removed. We recommend changes to:

- repeal the 'accommodation exemption' that allows accommodation providers to discriminate against sex workers
- repeal the 'work with children' exemption as it applies to sex workers, which allows employers at jobs that involve the care or instruction of children, like schools or childcare centres, to discriminate against a job applicant because the applicant is also a sex worker.

4.98 The legislative changes we recommend in this chapter should be accompanied by adequately resourced education and awareness to help address stigma and discrimination, and to support sex workers to understand and exercise their rights.

4.99 In developing our recommendations, we considered the Queensland Human Rights Commission's (QHRC) 2022 review of the Anti-Discrimination Act.[65] Our recommendations are limited to current provisions in the Act that are specifically about sex workers.

Recommendations

R12 The protected attribute of 'lawful sexual activity' in section 7(l) of the Anti-Discrimination Act should be retained. However, the definition of 'lawful sexual activity' in the schedule to the Act should be repealed and replaced with a new definition. 'Lawful sexual activity' should be defined to include being a sex worker or engaging in sex work. For this purpose, 'sex work' should be defined to mean an adult providing consensual sexual services, involving physical contact, to another adult in return for payment or reward.

R13 The accommodation exemption in section 106C of the Anti-Discrimination Act should be repealed.

R14 The work with children exemption as it applies to sex workers in section 28(1) of the Anti-Discrimination Act should be repealed.

What these recommendations mean

A person who is a sex worker or engages in sex work is protected from unlawful discrimination under the Anti-Discrimination Act.

The protection applies to 'lawful sexual activity', including but not limited to sex workers or sex work.

Accommodation providers and employers will not have specific exemptions allowing them to discriminate, in particular circumstances, against people because they are sex workers.

Protection from discrimination

4.100 As discussed in chapter 16 of our consultation paper, the Anti-Discrimination Act currently protects lawful sex workers against unlawful discrimination. One of the protected attributes in the Act is 'lawful sexual activity'. This is defined to mean 'a person's status as a lawfully employed sex worker, whether or not selfemployed'.[66]

4.101 It is also unlawful to discriminate against a person because of their association with or relation to a person identified on the basis of their lawful sexual activity, such as a friend, family member or co-worker.[67]

Sex workers need protection

4.102 In our view, decriminalising the sex-work industry should be accompanied by changes to strengthen anti-discrimination protections, to address stigma and discrimination against sex workers and to help sex workers exercise their rights.

4.103 Submissions said sex workers experience high levels of stigma and discrimination and barriers to reporting it. Research by #DecrimQLD, including a 2022 survey of sex workers, shows discrimination against sex workers is underreported, and sex workers experience significant levels of stigma and discrimination in a range of areas including work, accommodation and housing, health services, banking, insurance, and financial services.[68]

Current protection needs strengthening

4.104 Most submissions said the current 'lawful sexual activity' attribute does not adequately protect all sex workers from discrimination because:

- the attribute protects 'lawfully employed' sex workers only – which, under current laws, means those working in a licensed brothel and private sex workers working alone – and should apply to all sex workers
- the attribute is limited to a person's status as a sex worker and should include engaging in sex work
- the term 'lawful sexual activity' is unclear and confusing, obscuring the fact that sex workers are protected from discrimination.

4.105 Most submissions supported a 'sex worker' attribute that includes engaging in sex work. Submissions said this would ensure all sex workers are protected, remove any uncertainty about who is protected, and help sex workers exercise their rights.

4.106 Some submissions supported having a 'lawful sexual activity' attribute but amending its definition to widen the scope of the protection, including to protect people who do not engage in sex work involving physical contact, such as porn performers.

4.107 A few submissions supported introducing a protected attribute of 'profession, trade or occupation' that could address discrimination against sex workers and others who work in the industry who do not engage in sex work, such as brothel managers, administrative staff or drivers. Other submissions, including sex-worker organisations, did not support this.

Strengthening the 'lawful sexual activity' attribute

4.108 In our view, 'lawful sexual activity' should be retained as the attribute. However, we recommend changes to strengthen the protection and make it clearer. The current definition should be repealed. Instead, 'lawful sexual activity' should be defined to include 'being a sex worker or engaging in sex work'. 'Sex work' should be defined to mean 'an adult providing consensual sexual services, involving physical contact, to another adult in return for payment or reward'.

4.109 The effect of these changes is that the 'lawful sexual activity' attribute will protect sex workers against discrimination, and the protection will be expanded to include engaging in sex work. However, the attribute will no longer be limited to sex workers and sex work.

4.110 Having a 'lawful sexual activity' attribute and defining it inclusively gives flexibility in how the attribute can be interpreted and avoids unintentionally narrowing the protection. Depending on the circumstances, the protection could apply to porn performers or strippers who are not engaging in sex work. It will also protect people against discrimination on the basis of other forms of lawful sexual activity, where no payment is involved.

4.111 The approach we recommend reflects the aims of decriminalisation to reduce stigma and treat sex workers like others. Because of the historical criminalisation of sex work and the significant stigma and discrimination experienced by sex workers, the definitions need to make it clear that the protection applies to sex workers and sex work within the meaning of this review. However, the aims of decriminalisation mean laws should avoid singling out sex work for special provision as much as possible. Having a protected attribute for lawful sexual activity that applies to any person is consistent with this and supports the idea that, as stigma is reduced over time, being a sex worker or engaging in sex work is like any other lawful sexual activity, and is not a basis for discrimination.

4.112 Decriminalisation, and legislative changes to the Anti-Discrimination Act, should be accompanied by education and information to help remove stigma and discrimination and support sex workers to understand and exercise their rights. The QHRC is responsible for promoting understanding of the Anti-Discrimination Act, including communicating changes to the Act, and the Queensland Government will need to ensure it is appropriately resourced to do so. We recommend information, education and training to support the new framework in chapter 7, including education by the QHRC for sex workers and sex-work business operators about changes to discrimination laws.

4.113 We recognise submissions to our review raised concerns about limiting the protection to what is 'lawful'. However, decriminalising the sex-work industry means sex work will be lawful. We recommend the licensing system be removed and there be no sex-work-specific criminal offences. Although sex workers and sex-work business operators must follow general regulatory frameworks (such as planning and work health and safety laws), engaging in sex work will not itself be unlawful.

4.114 Limiting the protection to lawful sexual activity means there is no risk the protection could inadvertently apply to someone engaging in an unlawful sexual act that is not intended to be captured (such as an unlawful sexual act with a child, or sexual slavery). It is appropriate for Parliament to determine what is lawful and for this to define the limits of the protection.

4.115 Anti-discrimination laws in Victoria and Tasmania similarly contain a broad 'lawful sexual activity' attribute that is not limited to sex workers. In Victoria, 'lawful sexual activity' is defined to mean 'engaging in, not engaging in or refusing to engage in a lawful sexual activity'.[69] In Tasmania, 'sexual activity' includes 'not engaging in, or refusing to engage in, sexual activity'.[70]

4.116 In the Northern Territory, anti-discrimination laws are being amended to include a new protected attribute for employment in sexual services or engaging in sexual services.[71] The term 'sexual services' is used because the attribute applies not only to sex workers but also to people who work in the adult entertainment industry.[72] 'Sexual services' is defined to mean:

- sex work as defined in section 4 of the Sex Industry Act (NT) to mean 'the provision by a person of services that involve the person participating in sexual activity with another person in return for payment or reward' or
- provision by a person of services that involve the use or display of the person's body for the sexual arousal or gratification of others in return for payment or reward.

4.117 The amendments are scheduled to take effect on 1 October 2024.[73]

Exemptions

4.118 The Anti-Discrimination Act includes exemptions that allow discrimination in certain circumstances.

4.119 There are general exemptions under the Act that apply to all protected attributes.

4.120 There are also two exemptions – the 'accommodation exemption' and the 'work with children exemption' – that specifically allow discrimination against a person because they are a sex worker.

Accommodation exemption

4.121 Section 106C of the Anti-Discrimination Act allows accommodation providers to discriminate against someone if they reasonably believe the person is using, or intends to use, the accommodation for sex work. An accommodation provider can:

- refuse to supply accommodation
- evict a person from accommodation or
- treat a person unfavourably in connection with accommodation (for example, by charging a higher rate for cleaning).

4.122 'Accommodation' is defined widely. It includes business premises, a house or flat, a hotel or motel, a boarding house or hostel, a caravan or caravan site, a manufactured home, a camping site, and a building or construction site.[74]

4.123 The accommodation exemption was introduced in 2012 in response to a decision of the appeal tribunal in *GK v Dovedeen Pty Ltd*. The exemption was intended to 'give accommodation providers certainty and control in the use that is made of their premises'.[75]

In *GK v Dovedeen Pty Ltd* [2012] QCATA 128, the appeal tribunal held that a motel operator contravened the Anti-Discrimination Act and unlawfully discriminated against a sex worker by refusing to provide her with accommodation in the future because she was performing sex work at the motel.

The appeal tribunal's decision was later overturned by the Court of Appeal. In *Dovedeen Pty Ltd v GK* [2013] QCA 116 it was held that the motel operator did not contravene the Act, which only prohibits discrimination because the person is a lawful sex worker. It does not prohibit discrimination because a person intends to perform work as a sex worker at a motel.

4.124 The exemption is criticised because it is broad and allows accommodation providers to discriminate against sex workers if they 'reasonably believe' a sex worker 'intends to use' the accommodation 'in connection with' sex work.[76]

4.125 Most submissions we received supported removing the exemption. Submissions said that sex workers experience high levels of discrimination in accommodation, and that the exemption increases stigma and discrimination, and negatively affects sex worker safety and housing security. Some sex workers told us about their personal experiences of discrimination by accommodation providers.

4.126 In our view, the accommodation exemption should be repealed. There should not be special laws that allow accommodation providers to single out sex workers for discrimination by refusing them accommodation, evicting them or charging them more because the accommodation provider believes a person is using, or intends to use, the accommodation for sex work. Removing the exemption is consistent with decriminalisation, including the aims of reducing stigma and discrimination, and safeguarding sex workers' human rights. It is also consistent with the QHRC's recommendations.

4.127 Accommodation providers will still be able to control the use of their premises in the same way they can for any other person, including to comply with land use and planning laws. For example, a motel operator can have policies about the use of their rooms to carry on certain kinds of commercial activity that attracts clients, since the purpose of a motel is to provide short-term accommodation to travellers or tourists. This would apply to any person using their motel room to conduct such a business, such as a hairdresser or physiotherapist. The issue would be that the person was using the room to conduct a business that attracts clients to the room, not that they were a sex worker or were engaging in sex work. This is consistent with the principle that sex work should be treated the same as any other business.

Work with children exemption

4.128 Section 28(1) of the Anti-Discrimination Act allows discrimination against a person on the basis of lawful sexual activity (that is, if a person is a sex worker) in work and work-related areas if:

- the work involves the care or instruction of minors and
- the discrimination is reasonably necessary to protect the physical, psychological or emotional wellbeing of minors, having regard to all the relevant circumstances of the case, including the person's actions.

4.129 The exemption relates to a person's status as a sex worker. It allows an employer who is seeking someone to care for or instruct children to discriminate against a job applicant who is qualified for the job, on the basis that the applicant is a sex worker. It could, for example, prevent a person from obtaining a job as a teacher because they are a sex worker.

4.130 The exemption is criticised because it perpetuates stigmatising stereotypes that a person who is a sex worker poses an inherent risk to children and is therefore unsuitable to care for or instruct children.[77]

4.131 Queensland's working with children risk management and screening system, known as the 'blue card system', is designed to help create safe environments for children participating in activities or receiving services, including childcare, education, sport, cultural activities and foster care. The blue card system has several parts. It screens and monitors people who work with minors, and requires organisations, business operators and self-employed operators to implement child and youth risk management strategies.[78]

4.132 In our view, the exemption as it applies to sex workers should be removed. The assumption that a person's status as a sex worker may disqualify them from working in the care or instruction of minors is wrong in principle, and is not needed to protect children. No other Australian state or territory allows discrimination against sex workers in this way.

4.133 All submissions we received about this exemption supported its removal for similar reasons. The Queensland Council for Civil Liberties said, 'decisions about the suitability of a person to work

with children should be made on a case-by-case basis by reference to each individual's personal characteristics and behaviour'.[79]

4.134 The exemption also allows discrimination on the basis of gender identity (that is, if a person is transgender or intersex). The QHRC recommends repealing the work with children exemption entirely.[80]

4.135 General exemptions under the Anti-Discrimination Act apply, in the same way they apply to other attributes.[81] An employer may, for example, impose 'genuine occupational requirements' for a position.[82]

Other matters

4.136 Some submissions to our review suggested other broad changes to the Anti-Discrimination Act, including allowing organisations and representatives to make complaints, and introducing new protected attributes on the basis of 'irrelevant criminal record' or 'profession, trade or occupation'. The QHRC considers these matters, and makes recommendations to allow organisation complaints and include a new attribute of irrelevant criminal record. It does not recommend an attribute of 'profession, trade or occupation'.[83]

4.137 Many submissions also suggested changes to the vilification provisions in the Act. These provisions were separately reviewed by a Parliamentary Inquiry that reported in January 2022.[84]

4.138 We have limited our recommendations about the Anti-Discrimination Act to the current provisions in the Act that are specifically about sex workers.

Queensland Human Rights Commission review

On 4 May 2021, the Attorney-General asked the QHRC to undertake a review of the Anti-Discrimination Act, including all the protected attributes and exemptions in the Act. The QHRC gave its final report to the Attorney-General on 29 July 2022. The Government is currently considering the findings and recommendations of the report.[85] Several of the QHRC's recommendations are about sex workers.

Sex worker

The QHRC recommends including 'sex worker' as an attribute and defining the attribute to mean 'being a sex worker or engaging in sex work'.[86] This would replace the current 'lawful sexual activity' attribute. The QHRC said:[87]

- The current 'lawful sexual activity' creates a gap in protection because the current attribute only protects lawful sex workers, but people who work outside of the regulated and licensed sector are still experiencing discrimination.
- The attribute and its definition should not be limited to its status as a sex worker, and should also include the activity of engaging in sex work to create certainty in the law, and to avoid an ongoing gap in protection.

The QHRC also recommends that, following the outcome of our review, the Queensland Government should include a definition of sex work in the Act to align with any reforms to the sex-work industry.[88]

Lawful sexual activity

The QHRC does not recommend reintroducing a broad 'lawful sexual activity' attribute which could protect sex workers and other forms of lawful sexual activity.

The QHRC noted the attribute was undefined when it was first included in the Anti-Discrimination Act and could be broadly interpreted. Separate protection for sexuality was not included at that time. The current definition, limiting the application of the attribute to lawful sex workers, was included in 2002 when the separate protected attributes of 'sexuality' and 'gender identity' were included in the Act.[89] The attribute has been limited to lawful sex workers since then.

The QHRC said it did not, on the basis of material provided to its review, 'identify a gap in protection for people based on their sexual activity which is not already protected by sex, sexuality or relationship status attributes'.[90] It also recommends changes to the sexuality attribute to modernise and widen it, including by renaming it to 'sexual orientation' and defining it to mean a person's emotional, affectional, or sexual attraction to, or intimate or sexual relations with: persons of a different gender, or persons of the same gender, or persons of more than one gender.[91]

Profession, trade or occupation

The QHRC does not recommend introducing a broad attribute of 'profession, trade or occupation' that could address discrimination against sex workers and other persons in the sex-work industry who do not engage in sex work. It said:[92]

> As the attribute of profession, trade or occupation could cover almost any worker in any industry, of which most are not marginalised or socially disadvantaged groups, this would be a broad attribute and does not meet our criteria for inclusion of new attributes, and is therefore not preferred.

Accommodation exemption

The QHRC recommends the repeal of the accommodation exemption in section 106C of the Anti-Discrimination Act following the outcome of our review. It said the threshold for the exception is too low, and that it may not be compatible with human rights because it unreasonably limits the right to equality and the right to privacy of sex workers. However, the QHRC also said that '[i]t is not the intention … to create rights for sex work businesses over and above the rights of any other business owners'. It said that acts done in direct compliance with laws regulating the sex-work industry should not amount to discrimination under Queensland anti-discrimination legislation, and that the Queensland Government should consider if an exception needs to be introduced to cover these situations.[93] Under the decriminalisation framework we recommend, sex work is regulated under existing general regulatory frameworks, including planning laws.

Work with children exemption

The QHRC recommends repealing the work with children exemption in section 28 of the Anti-Discrimination Act, which allows discrimination on the basis of lawful sexual activity or gender identity, because it is redundant, offensive and stigmatising, and may not be compatible with the Human Rights Act.[94]

65 Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*, Report (July 2022) 286–95, 395–398, Recs 24, 43.
66 *Anti-Discrimination Act 1991* (Qld) s 7(l), sch 1 (definition of 'lawful sexual activity').
67 *Anti-Discrimination Act 1991* (Qld) s 7(p); Queensland Human Rights Commission, 'Discrimination on the basis of lawful sexual activity' (Fact Sheet, July 2019) <https://www.qhrc.qld.gov.au/your-rights/discrimination-law/lawful-sexual-activity>.
68 #DecrimQLD 'Synopsis 1: sex workers' experiences of discrimination & anti-discrimination protections in Queensland' (March 2022) <https://respectqld.org.au/wp-content/uploads/Synopsis-1-ADA.pdf>. See also #DecrimQLD, 'Evidence: 2022 survey of sex workers working in Qld & outcomes', *Respect Inc* <https://respectqld.org.au/decriminalise-sex-work/the-evidence/>. See also Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 155 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
69 *Equal Opportunity Act 2010* (Vic) s 4(1) (definition of 'lawful sexual activity').
70 *Anti-Discrimination Act 1998* (Tas) s 3 (definition of 'sexual activity'). 'Lawful sexual activity' is not defined.
71 *Anti-Discrimination Amendment Act 2022* (NT) s 10(3), inserting new section 19(1)(ec) in the *Anti-Discrimination Act 1992* (NT).
72 Explanatory Statement, Anti-Discrimination Amendment Bill 2022 (NT) 4.
73 *Anti-Discrimination Amendment Act 2022* (NT) s 2.
74 *Anti-Discrimination Act 1991* (Qld) sch 1 (definition of 'accommodation').
75 See Explanatory Notes, Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012 (Qld) 5.
76 See e.g. H Hobbs & A Trotter, 'How far have we really come? Civil and political rights in Queensland' (2013) 25(2) *Bond Law Review* 166, 205–6.
77 Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act* (Discussion Paper, 2021) 119.
78 See generally Queensland Government, 'Blue cards for working with children' <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/regulated-industries-and-licensing/blue-card>.
79 Queensland Council for Civil Liberties, Submission to QLRC, *Decriminalisation of sex work* (7 June 2022) [9] <https://www.qccl.org.au/newsblog/decriminalisation-of-sex-work>.
80 Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*, Report (July 2022) 395–98, Rec 43.
81 *Anti-Discrimination Act 1991* (Qld) ch 2 pt 4, div 2 subdiv 2. See further Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*, Report (July 2022) 383–4, Rec 39.
82 Queensland Human Rights Commission, 'Discrimination in employment' (Fact Sheet, July 2019) <https://www.qhrc.qld.gov.au/your-rights/discrimination-law/discrimination-in-employment>.
83 Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*, Report (July 2022) 173–9, 290, 315–23, Recs 10, 29.
84 Legal Affairs and Safety Committee, Parliament of Queensland, *Inquiry into Serious Vilification and Hate Crimes*, Report No 22 (January 2022).
85 Queensland Government, *Interim Queensland Government Response to the Queensland Human Rights Commission's Report, Building Belonging—Review of Queensland's Anti-Discrimination Act 1991* (2022), tabled in Parliament on 1 September 2022.
86 Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 199*1, Report (July 2022) 286–90, Rec 24.3.
87 Ibid 290.
88 Ibid 286–90, Rec 24.1.
89 See *Discrimination Law Amendment Act 2002* (Qld) ss 12(1), 14(3).
90 Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*, Report (July 2022) 284–5.
91 Ibid 285, Rec 23.
92 Ibid 290 (and at 309).
93 Ibid 295, Rec 24.1–24.2.
94 Ibid 395–98, Rec 43.

5 Planning and local laws

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Planning and local laws

'[S]ex workers live, work and are vital members of the community in every council area throughout Queensland.'

—Member of the public submission

'People might not know because we are discreet but we are already here!'

—Sex worker submission

'[S]ex work businesses should, as far as possible, be regulated the same way as other businesses.'

—Queensland Law Society submission

Summary

5.1 Changes are needed to integrate decriminalised sex work into Queensland's planning framework and make sure local planning instruments and local laws support the intent of decriminalisation.

5.2 Currently:

- some types of sex-work businesses, such as erotic massage parlours and sex-work collectives, are illegal and not specifically addressed in the planning framework
- licensed brothels are subject to onerous restrictions and guided towards industrial areas
- a sex worker can conduct a home-based business, but other laws limit them to working alone.

5.3 We heard from sex workers, local governments and their representative organisations about challenging issues, including sex worker concerns about privacy and discrimination, and local government concerns about meeting community expectations and undertaking enforcement.

5.4 Matters we considered included:

- balancing the privacy needs and discrimination concerns of sex workers against the principles of transparency and community input that are features of Queensland's planning system
- the roles of state and local governments in setting planning requirements for sex-work businesses
- the extent to which sex-work businesses should be able to operate in residential areas
- providing viable avenues for existing sex-work businesses to become compliant with planning laws
- sex worker and local government concerns about compliance and enforcement.

5.5 We recommend changes to the Planning Act, Planning Regulation, Prostitution Act, Prostitution Regulation and some other legislation. Our recommendations aim to create a balanced approach to dealing with the issues above by treating sex-work businesses like other businesses, while also providing protections so the benefits of decriminalisation filter down to local government areas.

Recommendations

R15 The land-use term 'brothel' and its definition should be removed from schedule 3 of the Planning Regulation under the Planning Act. It should be replaced with the new land-use term 'sex work services', defined as the use of premises for sex work, with or without an ancillary outcall service. The new land use should not include:

(a) sex-work businesses that fall within the land-use definition of home-based business

(b) escort agency offices if no sex work occurs at the office or

(c) adult entertainment or non-sex-work sex-on-premises venues (e.g. swinger clubs).

R16 To help interpret the new land-use term and its definition, the following new administrative terms and definitions should be inserted in schedule 4 of the Planning Regulation:

(a) 'sex work' means an adult providing consensual sexual services to another adult for payment or reward

(b) 'sexual services' means participating in sexual activities that involve physical contact, including sexual intercourse, masturbation, oral sex or other activities involving physical contact for the other person's sexual gratification.

R17 All prohibited development provisions relating to brothels in schedule 10, part 2 of the Planning Regulation should be repealed so there are no sex-work-specific prohibitions. Any existing sex-work prohibitions applying in local government areas should cease to have effect.

R18 Sex-work businesses should be treated similarly to other businesses. This means:

(a) there should be no requirements for separation distances from other land uses or other sex-work businesses

(b) planning provisions should guide sex-work business sizes to the same extent as other commercial and home-based businesses

(c) home-based sex-work businesses should be treated like any other 'home-based business' land use

(d) 'sex work services' land uses should be guided towards centre (commercial) zones, mixed use zones and, in recognition of existing arrangements, industrial zones and strategic port land.

R19 The Queensland Government should lead integration of decriminalised sex work into the planning framework, while giving local governments some discretion, by:

(a) repealing section 25 and schedule 3 of the Prostitution Regulation under the Prostitution Act, which set out assessment benchmarks for brothels

(b) setting new planning requirements, including updated assessment benchmarks, in the Planning Regulation

(c) making the new planning requirements and assessment benchmarks the default provisions applying to sex work services when decriminalisation starts

(d) ensuring the planning requirements and assessment benchmarks for sex work services reflect recommendations in this report and include a requirement that all activities relating to sex work be contained wholly within a building and not be visible from windows, doors or outside the premises

(e) setting, or guiding, categories of assessment and ensuring the planning requirements do not prevent sex work services from being categorised as accepted development in suitable circumstances

(f) giving local governments the opportunity to set their own alternative planning requirements and assessment benchmarks, subject to State-imposed requirements designed to make sure:

i. principles outlined in this chapter are implemented and

ii. reasonable opportunities are available for sex-work businesses to establish or become compliant with planning laws.

R20 To help address sex-worker privacy concerns (which may be a barrier to seeking planning approval), the Queensland Government should prepare guidance material to help sex-work business development applicants to request – and local governments to apply – existing privacy mechanisms available under the Planning Act.

R21 To support existing sex-work businesses to become compliant with planning laws, a new provision should be inserted in the Planning Act that prevents information in development applications for sex work services and home-based sex work being used as evidence of a development offence (or as a springboard to obtain evidence), providing the application is properly made within 12 months after decriminalisation starts. The protected information should not trigger limitation periods in the Planning Act.

R22 The dispute-resolution avenues to the Queensland Civil and Administrative Tribunal should be removed by repealing sections 64A to 64E, and related definitions in part 4, of the Prostitution Act so that all planning appeals and declaratory proceedings about sex-work businesses are directed to the Planning and Environment Court. The requirement to notify the Prostitution Licensing Authority of development applications for brothels, in part 4 of the Prostitution Act, should also be removed.

R23 New provisions should be inserted in the Local Government Act and City of Brisbane Act to require that:

(a) local laws must not re-establish a sex-work licensing system, or sex-work offences that are the same or substantially similar to those removed from State law under decriminalisation

(b) local laws must not prohibit sex work

(c) local laws must not apply exclusively to sex work, sex workers or sex-work businesses.

R24 When implementing the changes in R15 to R23, the Queensland Government should:

(a) include transitional provisions to replace any remaining references to 'brothel' with the new land-use term 'sex work services' in relevant documents under the Planning Act and related legislation, including in existing development approvals

(b) make the other amendments to the Planning Act and related legislation identified in our table of drafting instructions in volume 2 of our report

(c) provide information and guidance about the new arrangements to the sex-work industry and local government to help them understand their roles and responsibilities

(d) consider making corresponding changes to other planning laws and frameworks so that sex-work businesses have similar opportunities to establish in areas affected by different planning frameworks, including (but not limited to) priority development areas under the *Economic Development Act 2012*.

What these recommendations mean

For workers and businesses:

- Planning frameworks will apply to 'sex work services' not 'brothels', better reflecting the variety of sex-work businesses.
- Sex-work-specific prohibitions will be removed.
- Sex-work businesses are to be treated like other businesses, with similar size and location requirements and no sex-work-specific separation distances.
- Planning rules should allow sex work services to operate in centre (commercial) and mixed-use zones, not just in industrial zones.
- Home-based sex-work businesses are to be treated like any other home-based business.
- Sex-work businesses that apply for development approval within the first 12 months after decriminalisation starts will be protected from having information in their application used as evidence of a development offence.

For the community:

- Sex-work businesses are already operating in Queensland.
- Amenity impacts can be addressed through planning requirements and development conditions in the same way as for other businesses. For sex work services, we recommend requiring that all activities relating to sex work be contained wholly within a building and not be visible from windows, doors or outside the premises.

For local governments:

- Local governments must not use local laws to single out sex-work businesses or re-establish sex-work licensing or offences.
- State planning requirements for sex-work businesses will apply unless or until a local government makes its own requirements consistent with the principles of decriminalisation.

Planning terms and concepts

Development is not just building or subdividing. It can include changing the use of land or increasing the scale or intensity of a land use.

This type of development is called a **material change of use**.

Development is categorised as prohibited, accepted or assessable.

A **land use** is the activity or purpose for which land (or a building on land) is used. Land-use terms are defined by the State and included in local government planning schemes.

A **development approval** attaches to the land. It binds the current and future owners and occupiers of the land.

There are 2 types of development approval but only one type – a development permit – authorises development to occur. The other type is a preliminary approval.

Prohibited development is never allowed. A development application cannot be made for prohibited development.

Accepted development can occur without a development approval (but certain requirements must be met for this category to apply).

Assessable development requires a development approval. There are 2 assessment categories – code assessment and impact assessment.

Code assessment involves assessment against stated matters, referred to as **assessment benchmarks** or codes. If the development fully complies, it must be approved.

Impact assessment involves assessment against assessment benchmarks and any other relevant matter. It also involves notifying the community about the development application, with submissions by community members considered during assessment. Submitters can appeal the decision.

The Planning Act establishes **development offences** that apply when development does not comply with planning laws. Penalties can include fines up to 4500 penalty units and enforcement orders to rectify the offence. Offences include:

- carrying out prohibited development
- carrying out assessable development without all necessary development permits
- not complying with a development approval (for example, by breaching one or more conditions)
- unlawful use of premises
- failure to comply with an enforcement notice.

Applying the planning framework

5.6 Sex-worker organisations and sex workers submitted that sex-work businesses should be included in the list of land uses not assessable by local government. Although the State can make land uses in this list assessable, the proposal was that development applications would not be required. They submitted that sex-work businesses had a low amenity impact[1] and said this approach would protect sex workers' privacy, protect them from discrimination by local governments, and be a high-compliance model.

5.7 The list in schedule 6 of the Planning Regulation prevents local governments from making certain development assessable. Unless the State makes the development assessable, it becomes accepted development across Queensland. The list includes (but is not limited to) the following material change of use developments:[2]

- residential dwelling houses in particular circumstances
- support services and temporary accommodation for people escaping domestic violence
- certain emergency accommodation during natural disasters and similar events
- community residences (a land-use term which means residential accommodation of no more than 6 children as part of a program or service under the *Youth Justice Act 1992*, or 6 people requiring assistance or support with daily living needs and no more than one support worker) if certain requirements are met
- public housing if a particular process is followed (which, if inconsistent with the planning scheme, includes public notification)
- detention centres on specific land.

5.8 Many of the land uses listed in schedule 6 relate to housing and other specialised accommodation. Their treatment under the planning framework is an exception to the usual approach. Sex-worker organisations and sex workers drew parallels between the needs of domestic violence shelters and the privacy concerns of sex workers and sex-work businesses. However, including sex-work businesses in this list would give sex-work businesses a significant advantage over other businesses. It would also mean amenity impacts could not be managed in the same way as other businesses. In our view, the starting point should be that the planning framework applies to sex-work businesses in the same way as to any other business.

5.9 Some sex workers and sex-worker organisations referred to time-limited planning provisions that were inserted into planning legislation in response to the COVID-19 pandemic.[3] They proposed a similar approach for sex-work businesses, but on an ongoing basis and without any local government discretion. For the reasons stated above, we do not support ongoing, broad exemptions excluding sex-work businesses from the usual planning framework.

Sex work land uses

5.10 The existing land-use term 'brothel', in the Planning Regulation, is defined as 'premises made available for prostitution by 2 or more prostitutes at the premises'. This is linked to the definitions of brothel and prostitution in the Prostitution Act and related terms in chapter 22A of the Criminal Code. Although the definition of brothel is broad, it is closely linked to the licensed brothel sector. The definition's reference to 2 or more sex workers is also linked to current prostitution laws, as the only legal form of sex work, outside of licensed brothels, involves working alone. This will change under decriminalisation.

5.11 Sex-work business types referred to in submissions included:[4]

- brothels – full-service sex-work businesses involving managed sex workers
- erotic massage parlours – sex-work businesses involving managed sex workers offering massage and some sexual services (not necessarily full service)
- sex-work collectives or co-operatives – multiple private sex workers working from the same premises where no sex worker manages another
- working alone or in pairs, from home or another location
- escort agencies (outcalls).

Home-based business

> 'Currently, private sex work workplaces in Class 1 [houses] and Class 2 [apartment] buildings in Residential Zones represent up to 60% of the sex industry in Queensland.'
>
> **—Scarlet Alliance submission**

Current home-based business arrangements

5.12 Currently, nothing prevents a sex-work business from operating as a home-based business, if:

- it involves a single sex worker working alone from their own home and
- it meets accepted development requirements or has development approval from the local government.

5.13 Home-based business is a defined land-use term in the Planning Regulation that means 'the use of a dwelling or domestic outbuilding on premises for a business activity that is subordinate to the residential use of the premises'.[5] This means the main use of the premises is that the person lives there, and a secondary use of the premises is for a business activity.

5.14 Although the land-use term and its definition are set by the State, local governments set the planning requirements for this land use. This usually results in the use being made accepted development if it meets certain requirements – for example, requirements about the size and scale of the business, the hours of operation and the number of non-resident workers. If a business meets the home-based business land-use definition but does not comply with all accepted development requirements, it becomes assessable development requiring a development approval.

5.15 Prohibited development provisions and location guidance applying to brothels do not apply to home-based businesses.

Home-based or residential-based

5.16 Some sex workers told us they worked from home but others told us they preferred to work from a separate residential property used solely or primarily for sex work. In their view, such properties retain a residential character and should be treated like a home-based business, with opportunities to establish without development approval. They said this would allow sex workers to work close to home and services without disclosing their home address to clients, which some considered a privacy and safety risk. Many described the home-based requirement of a home-based business as 'forcing' sex workers to work from home.

5.17 In response to these submissions, we considered if residential-based sex-work businesses that are not home-based should be treated like home-based businesses.

5.18 As stated in a local government submission, Queensland's planning framework does not provide for a land use similar to a home-based business if the business activity is the primary or only purpose. This is because, without the primary residential use, a business premises is a commercial land use and is subject to commercial premises planning requirements. This is the situation regardless of business type. For example, a small-scale hair salon operating from the hairdresser's home would be a home-based business that could operate without development approval if it met accepted development requirements. If that hairdresser relocated the business to a nearby residential property rented for the business, the hair salon would become a commercial use and would need to meet the planning requirements for the relevant land use (in this case, a 'shop' in a residential zone). This would apply even if the hair salon was small and had a low impact.

5.19 In our view, sex work should be treated the same as other businesses, which means it is a commercial land use if it is not home-based.

Same or separate land use

5.20 We also considered if a home-based sex-work business should be a separate land use from other home-based businesses, as is the case in some (but not all) decriminalised jurisdictions.

5.21 In our view, creating a separate home-based sex-work land use would be inconsistent with the usual approach in Queensland, where a large variety of home-based businesses fall under the same land-use term. A different approach is not warranted.

Sex work services

> 'Commercial sex work businesses should have specific planning requirements. However, this is not considered to be different or discriminatory compared to other businesses. For example, it is common practice for planning schemes to:
>
> a) develop specific use codes for different types of uses (i.e. extractive industry code, home-based business code, non-resident workforce accommodation code, service station code)
>
> b) trigger different levels of assessment based on zoning, size of development, and expectations regarding the type and scale of off-site impacts of the proposed use.'
>
> **—A local government submission**

Current commercial-premises sex work

5.22 The land-use term currently applying to sex work involving 2 or more sex workers is 'brothel', defined as 'premises made available for prostitution by 2 or more prostitutes at the premises'. The Planning Regulation makes brothels:[6]

- prohibited development in certain circumstances and locations
- code assessable in industrial areas and strategic port land
- impact assessable in all other locations (unless a local government makes it code assessable)
- assessable against assessment benchmarks set by the State in the Prostitution Regulation.

Same or separate land use

5.23 We considered if the current approach of a stand-alone land-use term for commercial-premises sex-work businesses should continue under decriminalisation.

5.24 Given our aim to treat sex work like other businesses, we considered if the activity could be appropriately covered by an alternative existing land-use term such as 'shop' or 'adult store'. Queensland's planning framework covers a wide variety of home-based business activities under the land-use term 'home-based business'. However, the framework generally applies more specific groupings to commercial-premises businesses. For example:

- a home-based hairdresser, home-based solicitor's office and home-based childcare, if subordinate to the residential use of the homes, would all fall within the land-use definition 'home-based business'
- if these businesses were not conducted from home, or not subordinate to the residential use of the home, they would fall under the separate land-use terms of 'shop', 'office' and 'childcare centre', respectively.

5.25 In our view, a sex-work business that is not a home-based business should continue to be regulated in a similar way, with its own specific land-use term and definition.

5.26 This approach was supported by local government submissions, which stated that having land-use-specific planning requirements was not unique to sex work and was necessary for effectively regulating land-use impacts.

5.27 However, the continuation of a separate land-use definition for non-home-based sex-work businesses is not intended to result in sex-work businesses being singled out for unreasonable or discriminatory requirements. This is discussed later in this chapter.

New land use 'sex work services'

5.28 Although the scope of a land-use term is determined by its definition, not its name, we recommend that the land-use term 'brothel' be replaced with the new term 'sex work services'. Brothel is associated with the current licensed brothel system and a new name is needed to signal change and acknowledge the variety of sex-work businesses.

5.29 The new land use should have a new definition to cover sex work on premises, with or without ancillary outcall services. It should not refer to any specific number of sex workers and should use modern language (for example, sex work instead of prostitution). The definition should not include home-based sex-work businesses, adult entertainment or non-sex-work sex-on-premises venues, such as swinger clubs. Although the excluded activities were mentioned in submissions, they are not proposed to be part of the sex work services land use.

5.30 A range of business types and sizes will fall within the new land-use term and definition. This is to be expected and occurs in many land uses. For example, the land-use term 'shop' covers a range of businesses varying from a convenience store to a department store. Planning requirements for the new land use should acknowledge the differing size, scale and impacts of different businesses.

5.31 To provide consistent interpretation across Queensland, the new land-use definition should be supported by the following administrative terms and definitions to be included as part of the regulated requirements for planning schemes:

- 'sex work' means an adult providing consensual sexual services to another adult in return for payment or reward
- 'sexual services' means participating in sexual activities that involve physical contact, including sexual intercourse, masturbation, oral sex or other activities involving physical contact for the other person's sexual satisfaction.

Escort agency offices

5.32 Respect Inc and #DecrimQLD, and Scarlet Alliance, submitted that escort agencies fitted the existing land-use definition of 'office', as sex work does not take place on premises.

5.33 In our view, if no sex work occurs on premises, it is not a sex-work land use and should instead be treated as an 'office' land use. However, if an escort agency frequently uses a particular location for outcalls, that outcall location might need development approval for a 'sex work services' land use.

Removing prohibitions

> 'I lived in a small rural town. I spoke to one of the councillors … he told me there was no sex work there and spoke proudly about being part of having it banned. He assumed I would want that. I think that says a lot about stigma. He couldn't even imagine anything other than the stereotypes he had seen on tele.'
>
> **—Sex worker submission**

5.34 In our view, all prohibited development provisions for brothels in the Planning Regulation should be repealed, so there are no sex-work-specific restrictions.

5.35 This means removing:[7]

- the option for local governments to prohibit brothels in entire towns (which currently applies if the town has fewer than 25,000 people and the Planning Minister agrees to the prohibition), and ending the effect of any town prohibitions currently in place
- the restriction on brothels having more than 5 rooms for providing sexual services and
- the restriction on brothels locating near private residences, residential areas, hospitals, kindergartens, places of worship, schools and other places regularly frequented by children.

5.36 Most submissions opposed prohibitions, with some saying prohibitions were contrary to decriminalisation.

5.37 After decriminalisation, sex-work businesses should be treated like other businesses, which means they should not be singled out for prohibited development provisions. This will not prevent prohibitions that apply more broadly from applying to sex-work businesses (for example, any prohibited development provisions relating to development outside South East Queensland's urban footprint).

5.38 There are no existing sex-work-specific prohibited development provisions relating to home-based businesses, and none should be introduced.

Treating sex work like other land uses

No separation distances from other land uses

> 'Separation distances may conform to community expectations, but we also note that regard should be had to the objective of the full decriminalisation of sex work.'
>
> **—Queensland Council for Civil Liberties submission**
>
> 'Since sex work is already conducted privately in Queensland within residential premises, with no need for separation distances, introducing such restrictions would be a backward step, with no benefit to anyone.'
>
> **—Former sex worker submission**

5.39 Currently in Queensland:

- no separation distances apply to home-based businesses involving sex work
- strict separation distances apply to commercial-premises sex-work businesses, as brothels are prohibited within 200m of a residential area, residential building, hospital, kindergarten, place of worship, school, or another place regularly frequented by children for recreational or cultural activities.[8]

5.40 Most other commercial land uses do not have separation distances. Some separation distances apply to adult stores, but these are outside the scope of our review.

5.41 Submissions from sex workers and sex-worker organisations generally opposed separation distances. Submissions noted, for example, that sex work already occurred in residential areas, sometimes near schools, without attracting attention, and that imposing separation distances on home-based sex work would be a backwards step. The submissions also stated that separation distances were based on myths about sex work.

5.42 In contrast, all local government submissions supported separation distances for sex work services and most supported them for home-based sex work. One local government acknowledged that home-based sex work without separation distances was the status quo and had not caused any problems. Submissions said separation distances:

- met community expectations
- limited children's exposure to the sex-work industry
- limited the potential of sex-work businesses to cause offence or loss of trade, or affect nearby property values
- recognised that sensitive neighbouring uses were a relevant planning consideration for managing amenity impacts and land-use conflicts
- could allow for lower levels of assessment in some circumstances
- were a necessary first step in transitioning to greater community acceptance of the sex-work industry.

5.43 In our view, sex-work businesses should be treated the same as most other businesses and do not need separation distances. Separation distances:

- are unnecessary if businesses operate without obscene advertising and with all sex work occurring behind closed doors
- could block pathways to legitimacy for a variety of existing sex-work businesses, including erotic massage parlours
- perpetuate stigma and discrimination against the sex-work industry.

5.44 Town planning has an important role in giving effect to community aspirations for local areas. However, this does not justify separation distances that would continue to entrench stigma and stereotypes.

5.45 Amenity impacts and land-use conflicts are relevant planning considerations. However, this does not require separation distances to be imposed, because:

- amenity impacts are a common consideration in town planning and are usually addressed without requiring separation distances (for example, through screening, soundproofing and limits on the hours of operation)
- sex work generally occurs behind closed doors, and planning parameters and development conditions can require this to mitigate any sex-work-specific impacts on neighbouring properties.

5.46 Amenity protections will also limit children's exposure to the sex-work industry. Regardless, requiring separation distances between sex-work businesses and schools would not prevent children from passing sex-work businesses on the way to school. As for home-based sex-work businesses, as one sex worker told us, 'the things sex workers do, i.e. have sex and do laundry, are the same activities happening in other houses'.

5.47 We considered local government arguments that separation distances could provide opportunities for lower levels of assessment in some circumstances. However, for the reasons explained above, we do not consider this a determinative factor in setting the category of development or assessment. Any benefit gained in maintaining separation distances for this purpose would not outweigh the opposing arguments.

No separation distances between sex-work businesses

5.48 The Prostitution Licensing Authority (PLA) and a brothel licensee raised concerns about the potential creation of red-light districts. The Queensland Adult Business Association (QABA) supported planning arrangements like those in Wollongong, New South Wales, which prevent sex-work businesses from establishing within a 150m radius of any other sex-work business (among other separation requirements).[9] One local government referred to 'cumulative impacts of multiple similar land uses establishing together'.

5.49 A sex worker noted that other uses, such as nightclubs and hairdressers, were able to locate near each other, and submitted that sex-work businesses should not be treated differently.

5.50 In our view, separation distances between sex-work businesses are not required to prevent red-light districts. Potential amenity impacts from clusters of sex-work businesses can be mitigated through assessment benchmarks and development conditions. For example, these could require all activities relating to sex work services be contained wholly within the building and not be visible from the windows, doors or outside the premises. We note that, currently in Queensland:

- The Planning Regulation's separation distances for brothels do not require separation from other sex-work businesses (although the PLA considers this in granting licences)[10] and there are no separation requirements for home-based sex work.
- Planning laws already require code and impact assessment for a material change of use be carried out having regard to 'any development approval for, and any lawful use of, the premises or adjacent

premises' where relevant, and impact assessment may be carried out against, or having regard to, 'any other relevant matter, other than a person's personal circumstances, financial or otherwise'.[11]

- Some licensed brothels are in close proximity at Bowen Hills, Woolloongabba and the Gold Coast, and it is possible that some home-based sex-work businesses and erotic massage parlours are located in close proximity to each other. No submissions demonstrated problems regarding the location of these businesses.

No special size limits

> 'There is no need to endorse specific size limits on sex-work businesses that would not apply to other businesses in the same area. Most businesses will need to operate discreetly to maintain their customer base, and if a business does want to expand and incorporate multiple floors and rooms, an application should not be rejected on the basis that it has been advanced by a sex-work business.'
>
> **—Sex-worker organisation submission**

5.51 Currently in Queensland:

- Prohibited development provisions in the Planning Regulation limit brothels to a maximum of 5 sex-work rooms.[12]
- The Prostitution Act limits brothel staff and sex worker numbers to a maximum of 13 staff on premises at any one time, with the number of sex workers among those 13 further restricted by the number of sex-work rooms.[13]
- Home-based sex-work businesses are subject to the same planning provisions about size and employee numbers as any other home-based business in the local government area (although criminal laws require private sex workers to work alone).
- It is not uncommon for local governments to apply different planning requirements to commercial businesses based on the gross floor area of the use. For example, different categories of assessment may apply to different-sized developments for the same land use.

5.52 Some submissions said there should be sex-work-specific size limits. Others said sex-work businesses should be treated equally with other land uses. Some described negative effects of the current restrictions, such as limited opportunities for business growth and impacts on employment opportunities and workload for sex workers.

5.53 In our view, planning provisions about size and employee numbers should apply to sex-work businesses only to the extent they apply to other commercial land uses and home-based businesses. This approach will recognise sex work as a legitimate land use, without advantaging or disadvantaging it over other businesses.

No special location requirements

> 'Sex-work businesses should not be forced into industrial zones or excluded from other areas [where] similar businesses are able to operate.'
>
> **—Sex worker submission**

> 'Contrary to some belief, sex-work businesses do not outwardly impact the neighbourhoods they exist in. Opposition to sex-work businesses locating in safer areas usually occurs from either a stigma against sex-work businesses in general, or from misunderstandings related to sex-work businesses' outward appearance in a community.'
>
> **—Sex-worker organisation in Western Australia submission**

5.54 Currently in Queensland:[14]

- Brothels are not allowed to locate within 200m of a residential area, residential building, hospital, kindergarten, place of worship, school, or another place regularly frequented by children for recreational or cultural activities.
- Brothels are guided towards industrial areas and strategic port land by the Planning Regulation, which mandates code assessment in these areas, as opposed to the more onerous impact assessment that applies in other areas (unless a local government makes the land use code assessable).
- Local governments generally make home-based businesses accepted development if certain requirements are met, and assessable development if they are not (usually this is code assessable but sometimes it is impact assessable).

5.55 In our view, sex-work businesses should have similar location requirements to other land uses. This means they should not be limited to industrial zones and strategic port land, but should not be given special encouragement to locate in residential zones (unless they are home-based businesses). However, removing the existing prohibited development provisions will mean sex work services will be able to make development applications to operate in residential areas. These applications might be impact assessable, as is often the case for commercial uses in residential zones.

5.56 As many sex worker submissions raised concerns about the safety of industrial areas, we considered if sex-work businesses should be discouraged from these zones. However, given the existing licensed brothel sector is largely based in industrial zones and brothel licensees remain supportive of the suitability of these zones, we instead consider that additional areas should be opened to sex work so that businesses and their staff have options.

5.57 Accordingly, we recommend that sex work services be given reasonable opportunities to establish in multiple zones, including industrial, centre (commercial) and mixed use zones, and strategic port land, but not necessarily in residential zones. This approach is intended to:

- give sex-work businesses more opportunities to establish in a range of locations, but not give them special advantages not available to other businesses
- help give existing erotic massage parlours, which may be operating in commercial areas, avenues to seek (and obtain) planning approval
- acknowledge that 3 of Queensland's licensed brothels are in mixed use zones (2 in Woolloongabba, Brisbane, and one in Bundall, Gold Coast).

No special home-based business requirements

> '[H]aving the same planning requirements as other home-based businesses which are able to operate without a development approval (where accepted requirements are met) would help the decriminalised framework be fair and safe for sex workers.'
>
> **—A local government submission**

> 'When I'm working from home, I am very discreet and conscious of my surroundings and neighbours. I have set business hours, I ask my clients to park in my driveway in order not to impact others. I don't have a red light on my letter box (people do not know what happens in my house). I do not have a line-up of clients down the street. An average week I would see 5–7 clients. My neighbour gets more visitors than me. Home hairdressers, beauty salons etc. have more traffic. My impact on my neighbours is non-existent. It's stigma and prejudice that is the only thing that creates issues.'
>
> **—Sex worker submission**

5.58 Home-based sex-work businesses are currently subject to the same planning requirements as any standard home-based business in the relevant local government area. In our view, the planning framework should continue to treat home-based sex-work businesses the same as any other home-based business, with no different or additional planning requirements. This means home-based sex-work businesses will not be advantaged or disadvantaged over any other standard home-based business.

5.59 One local government told us they would like to see home-based business requirements for sex-work businesses strengthened to include:

- separation distances from places of worship, childcare, and primary and secondary schools
- restrictions on children being at the premises during operational hours
- notification to neighbouring properties, with neighbour submissions considered in the assessment process
- appropriate car parking provisions to make sure customer parking does not cause nuisance, as well as potentially altered hours of operation, size, and worker numbers based on the expectations of the zone.

5.60 Some of these suggested additions were supported in other local government submissions, with many referring to 'the nature of the operations', 'community sensitivities' and the 'potential for 'out-of-hours activity'. Sex workers and sex-worker organisations raised competing arguments (some supported by research), including that:

- separation distances do not currently apply to home-based sex-work businesses
- home-based sex workers are deliberately discreet and usually not noticed[15]
- restrictions on children being in the home would disadvantage sex workers who are parents[16]
- they would feel embarrassed or fearful if neighbours had an opportunity to comment on their sex-work business, with some saying they would choose to operate in non-compliance with planning laws if notification were required[17]
- some home-based sex workers ask customers to park in their driveway, and some clients decline to park on premises because of privacy concerns.

5.61 Existing local government requirements for home-based businesses differ. In many cases there will be opportunities for home-based sex-work businesses to establish as accepted development if they meet requirements about hours of operation and other matters. However, general limitations may apply and a development application may be needed in some local government areas. Currently for example:

- Brisbane City Council's accepted development requirements do not allow home-based businesses operating from apartments to have employees who do not live at the apartment, but a development application can be made.[18]
- Noosa Shire Council's accepted development provisions do not allow clients to visit home-based businesses in medium or high-density residential zones, but a development application can be made.[19]

5.62 Some local governments use their planning schemes to impose different requirements for some types of home-based business. For example:

- The Central Highlands Regional Council Planning Scheme 2016 adopts its own administrative term 'high impact home-based business activity' and uses it to impose additional requirements on home-based businesses involving vehicle repairs, panel beating, spray painting, woodwork and metal work.[20]
- Brisbane City Council's home-based business code's purpose statement says (among other things) the purpose will be achieved by ensuring home-based businesses do not involve repairing or maintaining motor vehicles or boats or the storage of dangerous goods.[21]
- Some planning schemes (including in Brisbane and Central Highlands) alter requirements for particular home-based businesses, such as bed-and-breakfast businesses.[22]

5.63 In our view, different or altered requirements for home-based businesses should not apply on the basis that the business involves sex work.

Implementing the changes

State and local government

'We believe it is imperative to have strong leadership at a state level in order to reduce the potential for local governments to undermine the intentions of decriminalisation by the introduction of overly restrictive planning controls by regulation.'

—New South Wales disability and sex-worker organisation submission

'The needs, interests and expectations of local communities differ state-wide and a one-size-fits-all approach to planning and development outcomes in Queensland is not appropriate. Local governments are best placed to plan for local areas in consultation with their local communities'.

—Local Government Association of Queensland (LGAQ) submission

5.64 We considered if planning requirements for sex-work businesses should be set by the State or by local governments. Currently the State sets the planning requirements for the 'brothel' land use. However, the planning requirements for most material change of use development (including home-based businesses) are set by local governments through their planning schemes, which are prepared and amended through a process involving public consultation and state interest review.

5.65 Sex workers and sex-worker organisations supported the State setting all planning requirements because of a desire for consistency across the State and because of concerns that local governments might seek to exclude them.

5.66 Some local governments also supported State planning requirements. Other local governments and the Local Government Association of Queensland (LGAQ) submitted that the planning requirements should be set by local governments because:

- it meets the objective of treating sex-work businesses like any other business
- local governments should be recognised as responsible for land-use planning and development assessment
- a one-size-fits-all approach is not appropriate in Queensland
- local governments are best placed to determine these issues based on local knowledge and community expectations.

5.67 The LGAQ also noted the costs and resources involved in amending planning schemes.

5.68 In our view, the appropriate balance of responsibilities for setting the planning requirements for sex-work businesses involves:

- the State imposing parameters that will apply to local governments seeking to make or amend local planning instruments
- the State preparing default planning provisions, including assessment benchmarks, that will apply to the new 'sex work services' land use, unless or until a local government amends its planning scheme to address decriminalised sex work in accordance with the State parameters
- local governments continuing to regulate the 'home-based business' land use but with a State requirement that home-based sex-work businesses not be subject to additional requirements.

5.69 This approach is designed to:

- recognise the State's role in leading the way in decriminalising sex work
- make sure the aims and benefits of decriminalisation filter down to all Queensland local government areas
- recognise the usual role of local governments in setting planning requirements in their local areas
- help local governments to transition to new arrangements
- leave the decision about amending planning schemes or relying on State provisions to individual local governments, recognising that making and amending planning schemes can be resource-intensive and some local governments might prefer to rely on State provisions.

Planning provisions and parameters

State-imposed parameters

5.70 In our view, State-imposed planning parameters should guide any local government planning provisions relating to sex-work businesses. They should be based on the recommendations in this chapter.

5.71 For the 'home-based business' land use, the planning parameters should require that home-based sex-work businesses be treated like any other standard home-based business in the area. They should

not be subject to a different category of development or higher level of assessment, or any additional requirements such as separation distances.

5.72 For the 'sex work services' land use, the planning parameters should:

- not allow any planning provisions about separation distances from other land uses or other sex-work businesses
- limit any planning provisions relating to the size of sex-work businesses (gross floor area, number of rooms or number of workers) to those that apply to other commercial land uses in the area
- allow sex work services to be categorised as accepted development in suitable circumstances
- provide guidance or requirements relating to the categories of development or assessment to ensure reasonable opportunities for sex work services to establish in a range of zones, including centre (commercial) and mixed use zones.

5.73 Although accepted development is currently not permitted for brothels,[23] we see no reason the option should not be available. It is not our intention to require the State or local governments to make 'sex work services' accepted development, however it might be appropriate in some cases – for example, in areas where other commercial land uses are categorised as accepted development. Many submissions from sex workers and sex-worker organisations wanted sex-work land uses to be accepted development. Many submissions also called for sex work to be treated like any other business.

5.74 As the Commission is not a planning authority, we have not made specific recommendations about the categories of development or assessment that should apply for sex work services. In preparing the default planning provisions and State planning parameters, the State should set or guide these categories. Relevant considerations include:

- treating sex work services in a similar way to other commercial land uses
- the privacy impacts, and risks of potentially discriminatory public submissions, if sex work services are made impact assessable
- the differing size, scale and impacts of different sex-work businesses
- the aims and benefits of decriminalising sex work (including health, safety and fairness), which could be undermined if local government planning schemes make it difficult for sex work services to establish in centre and mixed use zones (for example, by making all sex work services development impact assessable or treating it as an inconsistent use).

5.75 As a broad proposition, the State could consider continuing to prevent impact assessment in industrial areas and strategic port land (in recognition of the status quo) while also guiding sex-work businesses to centre (commercial) and mixed use zones. Options include:

- requiring some accepted development or code assessable development options in centre and mixed use zones. This would prevent more onerous impact assessment processes applying in all zones other than industrial zones and strategic port land, which is the status quo and not recommended
- requiring only accepted development or code assessable development options in centre and mixed use zones, except in limited circumstances (for example, if the business is of a size and scale that would make any commercial land use impact assessable in that zone)
- requiring that the category of development or assessment applying to a comparable use in the relevant local planning scheme apply to sex work services. Although not for this purpose, a range of potentially comparable uses were suggested through submissions and consultation, including hairdressing salons (a 'shop' land use), physiotherapists or 24-hour medical centres ('health care service' land uses) or a 24-hour gym (an 'indoor sport and recreation' land use).

Default planning provisions

5.76 In addition to setting planning parameters, the State should prepare default provisions regulating the 'sex work services' land use. These provisions will replace those currently in schedule 10, part 2 of the

Planning Regulation and schedule 3 of the Prostitution Regulation. They will apply unless or until a local government prepares its own alternative planning provisions in compliance with the recommended planning parameters.

5.77 The State provisions should:

- align with the recommended planning parameters applying to local governments
- include new assessment benchmarks that reflect a variety of sizes and types of sex-work businesses
- include an assessment benchmark that requires all activities relating to sex work to be contained wholly within a building and not be visible from windows, doors or outside the premises.[24]

5.78 Development of the assessment benchmarks should be guided by our recommendations and by relevant expertise such as traffic engineering (noting that parking requirements may differ from other commercial land uses, given the reported privacy concerns of clients).

Enforcement and barriers to compliance

> 'Many of the women I spoke with prided themselves on their 'work legality' but any requirement for disclosure or planning permission would push them into the shadows of illegality or non-compliance, and potentially deter them from accessing police, health or other services as needed.'
>
> **—Former sex worker submission**
>
> '[I]f the Queensland Government decides to adopt planning regulations that are convoluted and impossible to comply with, or unreasonably restrictive, people will simply continue to operate outside of the law.'
>
> **—Sex worker submission**

Enforcement

5.79 Local governments are the enforcement authority for most development offences in their local government areas, including most development offences relating to brothels and home-based businesses.[25] However, due to the layers of legislation currently regulating sex work in Queensland, police and the PLA are also involved in regulating sex-work businesses.

5.80 Removal of criminal offences and licensing laws as part of decriminalisation will mean the PLA will be abolished and police will be involved only where crime (not sex work) is occurring. Some local government submissions described this as shifting enforcement responsibilities to local governments, however local governments are already the enforcement authority under the Planning Act for most development offences. This will not change.

5.81 Some local government sector submissions also expressed concerns about:

- gathering evidence when police have broader powers than local governments, including being able to take possession of evidence
- resourcing and funding for enforcement when local governments will no longer be able to refer complaints about sex-work businesses to police or the PLA.

5.82 Sex workers and sex-worker organisations expressed concerns about:

- the potential for corruption and abuse of power by local government compliance officers
- sex workers not wanting to allow local government employees access to their work premises due to the intimate nature of their work
- condoms being used as evidence and the impacts this could have on safer sex practices.

5.83 Currently in Queensland, local governments have a range of investigative powers under the Local Government Act and City of Brisbane Act, including powers to enter property:[26]

- with permission or
- without permission in certain circumstances, including:
  - if the property is a public place that is open
  - if there is a warrant
  - under an application, permit or notice (for example, to inspect a property in order to process a development application or to see if conditions of development approval have been complied with) during the day or, in limited circumstances, at night, although they may only enter a home on the property if the occupier accompanies them or
  - under an approved inspection program made by a local government under a resolution, although this does not authorise access to a home on the property.

5.84 Unless the property is a public place that is open, usually the authorised officer must inform the occupier of the reason for entering the property.[27] Powers after entry include powers to search, inspect, test, photograph, film, copy a document and take samples.[28] They do not include powers to take possession of documents or other property, unless permitted under a local law (although this power is available to the State planning department under the Planning Act).[29] Enforcement action can be taken in the Magistrates Court or the Planning and Environment Court.[30]

5.85 We considered if local government enforcement powers should be expanded or reduced for sex work. In our view, the standard inspection and enforcement powers should apply. This is because enforcement powers should treat sex work the same as any other business.

5.86 We understand that enforcement can be challenging for local governments, and seizure powers (which the State planning department and police have) may assist. In considering whether to extend these powers to local governments, the Queensland Government should consider the broader implications of them being available for all local government enforcement activities. Our review is limited to the sex-work industry and, as sex work should not be singled out for additional enforcement powers, the appropriateness of giving local governments broad seizure powers, similar to those in the Planning Act,[31] needs to be carefully considered.

Prohibited brothel declarations

5.87 Part 5 of the Prostitution Act provides for particular court orders and related offences for brothels operating without a licence or in non-compliance with the Planning Act. These provisions allow a police officer, the PLA or a local government to apply to a Magistrates Court for a declaration, or temporary declaration, that the premises is a 'prohibited brothel'.[32]

5.88 If the court makes the declaration, the requester must:[33]

- publish a notice in a newspaper (twice)
- give notice to the occupier, owner and any registered mortgagee
- display a copy of the declaration near the entrance of the prohibited brothel.

5.89 This part of the Prostitution Act establishes related offences for:[34]

- covering, removing, defacing or destroying the declaration displayed at the prohibited brothel

- being found in, or entering or leaving, a prohibited brothel
- using the prohibited brothel as a brothel.

5.90 As the licensing system will be abolished, and offence provisions already exist under the Planning Act,[35] it is our view that these provisions will not be required under decriminalisation. In chapter 3 we recommend that part 5 of the Prostitution Act be repealed.

Addressing barriers

5.91 Submissions from sex workers and sex-worker organisations pointed to potential barriers to compliance with planning laws, with particular emphasis on sex-worker privacy and concerns about excessive planning requirements.

5.92 State and local government planning controls that provide reasonable pathways for sex-work businesses to establish lawfully, and which recognise and reduce barriers to compliance, can help promote a planning-law-compliant sex-work industry.

5.93 Compliance brings many benefits to businesses, local governments and the community, including:

- not needing to conceal the true nature of the business, making it easier to comply with best-practice work health and safety and advise clients of services offered
- removing any incentive for corrupt conduct, as the business will have nothing to hide[36]
- removing the risk of business operations being affected by enforcement and compliance activities
- removing the risk of court proceedings and fines for development offences
- reducing enforcement burdens for local governments
- improving community outcomes by ensuring the ability to properly assess and mitigate any amenity impacts (such as noise, lighting or traffic) through the development application process and reasonable and relevant development conditions.

Privacy concerns

5.94 Queensland's planning system is based on principles including transparency and community input.[37] However, many sex-work businesses – particularly those run by independent sex workers individually or in collectives – value privacy highly.

5.95 We heard from sex workers and sex-worker organisations about privacy concerns including:

- being identified as a sex worker, with associated real or perceived stigma and discrimination
- potential safety risks through clients using development application information to identify and approach sex workers outside work
- not wanting to deter clients who do not wish to be identified as accessing a sex-work business
- fear of potential negative public response if impact assessment (and therefore public notification) is required – a process one sex worker described as a 'public ritual of condemnation'.

5.96 Currently in Queensland, a person making a development application for a material change of use must give the 'assessment manager' (usually the local government):[38]

- the applicant's name and contact details (although a company name or, sometimes, consultancy details can be used)
- location details of the development site and a brief description of the proposal and
- written consent of the landowner.

5.97 The local government must then publish the development application material and any decision notice on its website, except to the extent it reasonably considers certain material contains:[39]

- 'information of a purely private nature about an individual (the individual's residential or email address or phone number, for example)' or
- 'sensitive security information (the location of a safe, for example)'.

5.98 In addition, if the development is impact assessable, it must be publicly notified. This involves:[40]

- a sign on the land
- notices given to all adjoining landowners
- notice published in a newspaper (or, in some cases, a website)
- submissions from the public, which the assessment manager must consider when deciding the application. Submitters can appeal the decision in the Planning and Environment Court.[41]

5.99 Sex workers and sex-worker organisations suggested privacy concerns could be addressed by removing all development assessment requirements. This is not considered appropriate for reasons outlined earlier in this chapter.

5.100 The LGAQ pointed to existing options and approaches used by some applicants to minimise privacy concerns, including use of a third-party consultant to lodge the development application, use of a business name or PO box details, or requesting that personal information be removed before material is published on the local government's website (with requests considered on a case-by-case basis).

5.101 We considered a range of options, including removal of public access to all sex-work development application material, however it is our view that existing privacy options should be identified and guidelines prepared. This will help sex workers understand the privacy options available to them and help local governments in deciding whether to remove details from application material.

5.102 Although it depends on local government planning schemes, home-based businesses that meet stated requirements are usually accepted development. In those circumstances, no development application is needed.

Planning processes

5.103 Sex workers and sex-worker organisations expressed concerns about unreasonable planning processes and adverse planning decisions due to local government or community opposition to, and misconceptions about, sex work. We have recommended State-imposed planning parameters to address this.

5.104 We did not hear directly from any erotic massage parlours (which currently operate without the necessary brothel licence or development permit) but we considered issues they and existing sex-work collectives might face in seeking to become compliant with planning laws after decriminalisation. For example, some might wish to demonstrate the suitability of their location based on evidence that the use is already operating without complaints or adverse amenity impacts. They would not be able to do this without admitting to the development offence of undertaking assessable development without a development permit.

5.105 In our view, there should be a 12-month period to support existing sex-work businesses to become compliant with planning laws. This would begin when decriminalisation starts, and would mean admissions (about using premises for a sex-work business without all necessary development permits) in development applications for sex work services and home-based sex work could not be used as evidence of a development offence, or as a springboard for seeking evidence of an offence. The protection would only be available for applications lodged in compliance with the Planning Act (referred to as 'properly made applications')[42] within the 12-month period, but protection against using the admissions would be ongoing.

5.106 Admissions in the development application material would also need to be excluded from triggering limitation periods for enforcement proceedings during this period.[43]

5.107 This approach would:

- protect admissions in development applications for sex work services and assessable home-based businesses involving sex work, but
- not prevent other enforcement action using independent evidence, such as in the instance of significant noise or other amenity impacts at the location.

Dispute resolution

> ‘[T]he same review mechanism of development applications for commercial businesses should apply to commercial sex businesses, namely review by the Planning and Environment Court.’
>
> **—Eros Association submission**
>
> ‘I do not currently see an argument which would favour retention of the review mechanism to QCAT.’
>
> **—President of the Queensland Civil and Administrative Tribunal (QCAT) submission**

5.108 The Planning and Environment Court is the usual dispute-resolution forum for planning and development matters. Currently, sections 64A and 64B of the Prostitution Act provide an alternative dispute-resolution avenue to the Queensland Civil and Administrative Tribunal (QCAT) for:

- disputes about whether code assessment or impact assessment applies to a brothel development application[44]
- disputes about decisions made about code assessable brothel development applications or decisions about certain changes to brothel development approvals.[45]

5.109 These provisions do not appear to be used. This was confirmed in QCAT’s submission, which stated that its searches had not found any record of reviews under these provisions.

5.110 Alternative dispute-resolution avenues are already available in the Planning and Environment Court.[46]

5.111 No submissions specifically sought to retain the QCAT option. Most submissions on this issue, including submissions from QCAT and the PLA, supported the Planning and Environment Court as the appropriate forum. No submissions sought involvement of the Development Tribunal, a tribunal established under the Planning Act that usually hears building disputes (with land-use matters generally limited to houses and sheds).

5.112 In our view, the QCAT option should be removed and the existing Planning and Environment Court dispute-resolution processes relied upon. Removing the QCAT provisions will not result in an absence of dispute-resolution avenues for sex-work development applications. Rather, it will provide consistency with the dispute-resolution avenues available for most planning and development disputes.

5.113 The current requirement under part 4 of the Prostitution Act for the PLA to be notified of development applications for brothels should also be removed. This requirement is no longer needed, with the removal of the brothel licensing system and abolition of the PLA.

Local laws

> 'I agree with what they did in Victoria by putting in a law that says "Local laws [are] not to be inconsistent with or undermine the purposes of this Act. A local law made under the *Local Government Act 2020* [Vic] must not [be] inconsistent with the purposes of this Act or undermine the purposes of this Act to decriminalise sex work and provide for the reduction of discrimination against, and harm to, sex workers".'
>
> **—Sex worker submission**
>
> 'We recommend the introduction of a similar law [to the Victorian law about local laws] in any legislative framework for sex work in Queensland.'
>
> **—Queensland Law Society submission**

5.114 Some sex-worker organisations and sex workers, as well as the Queensland Law Society, submitted that local governments should not be permitted to make local laws that are inconsistent with the aims and benefits of decriminalisation.

5.115 Local laws are made and enforced by local governments for their local areas. They cover matters that local governments consider necessary or convenient for governing their local areas.[47] For example, many Queensland local governments have local laws about:[48]

- licensing business operations (for example, relocatable home parks)
- regulating activities on local government land, facilities and roads
- advertising signs
- vehicle parking
- public health and safety.

5.116 In most cases, local governments must consult with the Queensland Government before making local laws.[49] Local governments are also restricted from making local laws that set a penalty of more than 850 penalty units or that are about certain matters prohibited by legislation.[50]

5.117 In our view, local laws about sex work should be restricted to make sure the aims and benefits of decriminalisation filter down to local government areas throughout Queensland. This can be achieved by inserting new provisions in the Local Government Act and City of Brisbane Act to the effect that local laws must not:

- re-establish a licensing system, or offences the same or substantially similar to those removed from State law under decriminalisation
- prohibit sex work
- apply exclusively to sex work, sex workers or sex-work businesses.

5.118 Local laws that apply to every person or every business will apply to sex work, sex workers and sex-work businesses. However, the provisions we recommend will make sure sex work is not singled out for additional restrictions or requirements.

Transition

> 'One suggestion is that councils be properly educated and reassured about any regulatory changes and given resources and ongoing training in implementing changes and dealing with any unreasonable and unjustified complaints that arise initially. Unfortunately, this did not happen in NSW and so some councils have not embraced the intent of the law.'
>
> **—Former sex worker from New South Wales submission**

5.119 In considering planning matters, we also considered if any additional measures are required to transition to the new planning arrangements. This is in addition to the general transition matters discussed in chapter 7.

Approved brothels

5.120 In recognition of the existing approved and licensed brothel sector, we recommend that transitional provisions be inserted in the Planning Act to replace references to 'brothel' with 'sex work services' in existing development approvals. This will mean approved brothels automatically transition to approved sex work services, although existing brothel owners will need to check their development conditions and any other planning requirements to see if they can provide escort services without seeking changes to their development approval.

5.121 Transitional provisions included in planning and local government legislation could apply to other local government documents, such as fees and charges resolutions, so any fees applicable to brothels apply to sex work services until new resolutions are made.

Information and guidance

5.122 We recommend the Queensland Government provide information and guidance about the new planning arrangements to the sex-work industry and local governments to help them understand roles and responsibilities under the new framework. This is particularly important as:

- some sex worker submissions demonstrated confusion about Queensland's planning system
- some local government submissions expressed concerns about effectively regulating sex-work businesses through planning schemes.

Other planning frameworks

5.123 Our review of planning matters has focused on the Planning Act, the Planning Regulation and related local planning instruments. However, we are aware there are areas of Queensland that are subject to different planning frameworks.

5.124 We recommend the State consider making corresponding changes to other planning laws and frameworks so that sex-work businesses have similar opportunities to establish in areas affected by

different planning frameworks. This includes (but is not necessarily limited to) priority development areas under the *Economic Development Act 2012*.

5.125 Other planning laws and frameworks that could be considered include:

- any areas affected by other specific planning legislation (for example, the *Integrated Resort Development Act 1987*, *Mixed Use Development Act 1993* or *Sanctuary Cove Resort Act 1985*)
- any local government planning schemes made under the repealed *Integrated Planning Act 1997* that remain in force at the start of decriminalisation and, where relevant, any areas affected by development control plans.

1 See e.g. P Crofts & J Prior, 'Intersections of Planning and Morality in the Regulation and Regard of Brothels in New South Wales' (2012) 14(2) *Flinders Law Journal* 329, 333.
2 *Planning Regulation 2017* (Qld) s 16, sch 6 pts 2, 5.
3 See e.g. *Planning Act 2016* (Qld) s 275O; *Planning Regulation 2017* (Qld) sch 6 ss 7A, 7B.
4 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 6, 41, 110–112, 124–127 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
5 *Planning Regulation 2017* (Qld) s 7, sch 3, sch 24 (definition of 'home-based business').
6 *Planning Regulation 2017* (Qld) sch 10 pt 2.
7 *Planning Regulation 2017* (Qld) sch 10 s 2.
8 *Planning Regulation 2017* (Qld) sch 10 s 2.
9 Wollongong City Council, *Wollongong Development Control Plan 2009* (updated 22 August 2022) ch 16 s 6.1.
10 See *Prostitution Act 1999* (Qld) ss 15(3)(c), 16(2).
11 *Planning Act 2016* (Qld) s 45(3)–(5); *Planning Regulation 2017* (Qld) ss 27(1)(f), (2)(a), 31(1)(f), (2)(a).
12 *Planning Regulation 2017* (Qld) sch 10 s 2(1)(a).
13 *Prostitution Act 1999* (Qld) s 78(1)(b), (2), sch 3.
14 *Planning Regulation 2017* (Qld) sch 10 pt 2.
15 See P Crofts & J Prior, 'Home Occupation or Brothel? Selling Sex from Home in New South Wales' (2012) 30(2) *Urban Policy and Research* 127, 137; J Prior & P Crofts, 'Is Your House a Brothel? Prostitution Policy, Provision of Sex Services from Home, and the Maintenance of Respectable Domesticity' (2015) 14(1) *Social Policy & Society* 125, 130–131.
16 See J Prior & P Crofts, 'Is Your House a Brothel? Prostitution Policy, Provision of Sex Services from Home, and the Maintenance of Respectable Domesticity' (2015) 14(1) *Social Policy & Society* 125, 130.
17 See P Crofts, 'Not in my neighbourhood: Home businesses (sexual services) and council responses' (2003) 1(9) *Local Government Law Journal* 10, 5–6.
18 Brisbane City Council, *Brisbane City Plan 2014* (v 25, 2 December 2022) ss 5.5, 9.3.10.3 AO 1.4(b).
19 Noosa Shire Council, *Noosa Plan 2020* (amended at 25 September 2020) s 5.5.
20 Central Highlands Regional Council, *Central Highlands Regional Council Planning Scheme 2016* (Amendment No 6, 25 January 2023) s 8.3.7.3, sch 1.2 (definition of 'high impact home based business activity').
21 Brisbane City Council, *Brisbane City Plan 2014* (v 25, 2 December 2022) s 9.3.10.2(2)(c).
22 See e.g. Brisbane City Council, *Brisbane City Plan 2014* (v 25, 2 December 2022) s 9.3.10.3; Central Highlands Regional Council, *Central Highlands Regional Council Planning Scheme 2016* (Amendment No 6, 25 January 2023) s 8.3.7.3.
23 *Planning Regulation 2017* (Qld) sch 10 s 3.
24 See e.g. Wollongong City Council, *Wollongong Development Control Plan 2009* (updated 22 August 2022) ch 16 s 6.2(4).
25 *Planning Act 2016* (Qld) s 48(1), sch 2 (definitions of 'enforcement authority', 'prescribed assessment manager'); *Planning Regulation 2017* (Qld) s 21(4), sch 8 table 2.
26 *Local Government Act 2009* (Qld) ss 128–134; *City of Brisbane Act 2010* (Qld) ss 117–123.
27 *Local Government Act 2009* (Qld) ss 128, 129(2), 130(9), 132(5)(a), 133(5)(a); *City of Brisbane Act 2010* (Qld) ss 117, 118(2), 119(9), 121(5)(a), 122(5)(a).
28 *Local Government Act 2009* (Qld) s 135; *City of Brisbane Act 2010* (Qld) s 124.
29 See *Local Government Act 2009* (Qld) s 38A; *City of Brisbane Act 2010* (Qld) s 42A; *Planning Act 2016* (Qld) s 182, ch 5 pt 8 div 2.
30 *Planning Act 2016* (Qld) ch 5 pts 4, 5.
31 *Planning Act 2016* (Qld) ch 5 pt 8 div 2.
32 *Prostitution Act 1999* (Qld) s 65.
33 *Prostitution Act 1999* (Qld) s 67.
34 *Prostitution Act 1999* (Qld) ss 68–70.
35 See e.g. *Planning Act 2016* (Qld) ss 162–165, 168(5), (7).
36 See P Crofts & J Prior, 'Home Occupation or Brothel? Selling Sex from Home in New South Wales' (2012) 30(2) *Urban Policy and Research* 127, 134–135.
37 See e.g. *Planning Act 2016* (Qld) ss 3(1), 5(2)(b).
38 *Planning Act 2016* (Qld) ss 51, 282; DA Form 1 – Development application details (v 1.3, 28 September 2020).
39 *Planning Act 2016* (Qld) s 264(1), (6); *Planning Regulation 2017* (Qld) s 70, sch 22 ss 5, 7, 14.
40 *Planning Act 2016* (Qld) ss 53, 68; Development Assessment Rules (v 1.3, 2 September 2020) s 17.1.
41 *Planning Act 2016* (Qld) s 229, sch 1 table 2 items 2, 3.
42 See *Planning Act 2016* (Qld) s 51(5).
43 See *Planning Act 2016* (Qld) s 173A.
44 *Prostitution Act 1999* (Qld) ss 64A(2)(a), 64B(2).
45 *Prostitution Act 1999* (Qld) s 64A(2)(b), (c).
46 See *Planning Act 2016* (Qld) s 229, sch 1; *Planning and Environment Court Act 2016* (Qld) s 11.
47 *Local Government Act 2009* (Qld) s 28(1); *City of Brisbane Act 2010* (Qld) s 29(1).
48 See e.g. Brisbane City Council, 'Council's Local Law Database' (2 February 2022) <https://www.brisbane.qld.gov.au/laws-and-permits/local-laws/councils-local-laws-database>; Logan City Council, 'Local law register and fact sheets' (2023) <https://www.logan.qld.gov.au/local-law-register-factsheets>.
49 *Local Government Act 2009* (Qld) s 29A; *City of Brisbane Act 2010* (Qld) s 31.
50 *Local Government Act 2009* (Qld) s 28(2); *City of Brisbane Act 2010* (Qld) s 29(2).

6

Coercion and the exploitation of children

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Coercion and the exploitation of children

'We still need strong regulations – sex workers are not regular workers; we are much more capable of being exploited in our work.'

—Sex worker submission

'Across Australia, concerns remain about serious crimes within the sex industry... Such crimes have nothing to do with consensual adult sex work. The crimes referred to above instead relate to minors, or non-consensual sex work where an adult does not make an informed decision to willingly work in the sex industry. ... Sections of the [Criminal Code] which relate to children or mentally impaired people should be retained ...'

—Sex Work Law Reform Victoria Inc. submission

'No person should be able to force or coerce another person into providing sexual services.'

—NZPC: Aotearoa New Zealand Sex Workers' Collective (NZPC) submission

'I have major concerns about the age limit being lowered to 16 for the sex industry and allowing children on premises as sex work is carried out.'

—Sex worker submission

'[S]ex workers are best position[ed] to spot exploitation or trafficking in the workplace, and enabling them to mobilise and address this issue is one of the benefits of decriminalisation.'

—Sex worker and founder of Red Files Inc. submission

Summary

6.1 Queensland's current prostitution laws do not clearly distinguish between sex work and exploitation. The exploitation offences in sections 229FA and 229L of the Criminal Code, and section 77 of the Prostitution Act, should be repealed. Offences dealing with coercion and the involvement of children in commercial sexual services should be included in a new chapter in part 5 of the Criminal Code.

6.2 Decriminalising sex work will help reduce sex workers' vulnerability to exploitation. But protection is also needed for children and people who do not identify as sex workers. Decriminalising sex work does not require the removal of criminal laws against exploitation.

6.3 Criminal laws against coercion and the involvement of children are needed to protect human rights and support Australia in meeting its international human rights obligations. Such laws are justified to set a clear policy position and avoid any gaps in protection.

6.4 The criminal justice system should not be the primary focal point for responding to children and vulnerable adults involved in commercial sexual services. Non-legislative measures are needed, including information and education for sex workers and police.

Recommendations

R25 Sections 229FA and 229L of the Criminal Code, and section 77 of the Prostitution Act, should be repealed to help distinguish between sex work and exploitation.

R26 A new chapter should be inserted in part 5 of the Criminal Code for offences addressing coercion and the exploitation of children in commercial sexual services. It should define 'commercial sexual services' as services that involve the person engaging in a sexual act with another person in return for payment or reward under an arrangement of a commercial character (whether the payment or reward is given to the person providing the services or another person). The definition should state that 'sexual act' is limited to acts involving physical contact, and includes sexual intercourse, oral sex and masturbation.

R27 The new chapter in part 5 of the Criminal Code should make it a crime for a person, by coercion, to intentionally induce another person to: provide or continue to provide commercial sexual services; or provide or continue to provide payment derived directly or indirectly from commercial sexual services. For this offence:

(a) 'coercion' should be defined to include:

i. intimidation or threats of any kind

ii. improper use of a position of trust or influence

iii. taking advantage of a person's vulnerability

iv. assault of any person

v. damage to the property of any person

vi. false representation, false pretence or other fraud or

vii. supplying or offering to supply a dangerous drug to a person (where 'dangerous drug' has the meaning given in section 4 of the *Drugs Misuse Act 1986*)

(b) the maximum penalty should be imprisonment for 10 years.

R28 The new chapter in part 5 of the Criminal Code should make it a crime for a person to obtain commercial sexual services from a person under 18. The maximum penalty for this offence should be imprisonment for 10 years or, if the child is under 16, imprisonment for 14 years.

R29 The new chapter in part 5 of the Criminal Code should make it a crime for a person to:

(a) cause or induce a person under 18 to provide commercial sexual services

(b) enter or offer to enter into an agreement for a person under 18 to provide commercial sexual services or

(c) receive a payment that the person knows, or ought reasonably to know, is derived directly or indirectly from commercial sexual services provided by a person under 18.

The maximum penalty for these offences should be imprisonment for 14 years.

R30 The new chapter in part 5 of the Criminal Code should make it a crime for an owner, occupier or person in control of premises to allow a person under 18 to be at the premises for the purpose of taking part in commercial sexual services. The maximum penalty for the offence should be imprisonment for 14 years.

R31 The circumstance of aggravation for serious organised crime in section 161Q of the Penalties and Sentences Act should, if retained, apply to the offences we recommend in R27 to R30 above.

R32 The criminal justice system should not be the primary focal point for responding to the exploitation of children or vulnerable adults in commercial sexual services. To support the aims of decriminalisation and ensure an effective and compassionate response to exploitation:

(a) sex workers, police and other authorities should work together to help identify, prevent and respond to the exploitation of children and vulnerable adults in commercial sexual services – including recognising sex workers' roles in providing peer support and education

(b) the Queensland Government should arrange and ensure adequate funding for sex workers, sex-work business operators and the wider community to receive information and education about the offences we recommend in R27 to R30 above, and where people can go for help or support

(c) the Queensland Government should arrange and ensure adequate funding for police and other relevant state and local government officials to receive information, education and training on issues affecting children and vulnerable people (including those aged 16 or 17 and migrant workers) who may be involved in commercial sexual services and responses to exploitation (including harm-minimisation approaches).

What these recommendations mean

Sex work, which is between consenting adults, is distinguished from sexual exploitation.

Newly defined criminal offences will ensure there are serious penalties for those who coerce individuals or involve children in commercial sexual services.

Sex work is not the same as sexual exploitation

6.5 The decriminalisation framework should clearly distinguish between:

- sex work, which is between consenting adults[1] and
- sexual exploitation, which is coercive.[2]

6.6 Commercial sexual services that are coerced or involve children do not fall within the meaning of sex work.

6.7 The concern to protect children and vulnerable people from exploitation is shared across different regulatory models, including decriminalisation.[3] Some submissions we received opposed decriminalisation of the sex-work industry and supported the Nordic model of regulation.[4] The Queensland Government has already committed to decriminalisation. We have approached the issue of sexual exploitation by recognising that:

- decriminalisation of sex work does not mean there should be no laws to protect the vulnerable, and
- criminal laws against coercion and the involvement of children in commercial sexual services are still needed.

Some people who are concerned about the sexual exploitation of women favour the 'Nordic model' of regulation. This model 'targets the demand for prostitution by criminalising the actions of pimps and buyers, rather than the actions of prostituted persons'.[5] It also includes education programs for clients, and support to help people leave the industry. This model recognises the gendered nature of sex work, and regards sex work as a form of violence against women.

6.8 Some submissions said sex work is 'not like any other job' but is an inherently exploitative and dehumanising industry.[6] However, others say the exercise of agency is central to the definition of sex work. Exploitation involving coercion or deceit results in a loss of agency.[7]

6.9 Like workers in any industry, sex workers may have good and bad workplace experiences and can be exposed to poor labour conditions. Sex workers may have various attitudes to doing sex work and can have a range of reasons, mostly financial, for entering sex work.[8]

6.10 Sex-worker organisations observe that sex workers can be harmed when the distinction between sex work and sexual exploitation is not accurately recognised.[9] Measures to prevent or address exploitation may overreach into consensual adult activity. For example, enforcement agencies may mistakenly assume migrant sex workers are victims of trafficking, and may target legitimate sex-work businesses for surveillance or raids. This can lead migrant or other sex workers to work underground, making it harder for peer or other support services to engage with them.[10]

6.11 Queensland's current prostitution laws do not clearly distinguish between sex work and exploitation, but deal with both matters. Many of the offences in chapter 22A of the Criminal Code carry a higher maximum penalty if the person involved in the prostitution is a child or a person with an impairment of the mind.[11] Chapter 22A and the Prostitution Act also include the following exploitation offences:

- section 229FA of the Criminal Code – obtaining prostitution from a person who is not an adult and who the person knows, or ought reasonably to know, is not an adult
- section 229L of the Criminal Code – knowingly causing or permitting a person who is not an adult or is a person with an impairment of the mind to be at a place used for the purposes of prostitution by 2 or more prostitutes

- section 77 of the Prostitution Act – making another person continue to provide prostitution by using threats, intimidation, harassment, false representation or fraud.

6.12 To help distinguish between sex work and exploitation, sections 229FA and 229L of the Criminal Code and section 77 of the Prostitution Act should be repealed.

6.13 The exploitation offences we recommend in this chapter should be self-contained and included in a new chapter in part 5 of the Criminal Code, with other offences against the person. This better reflects the nature of the offences.

Sex workers can be exploited

6.14 As noted in our consultation paper, sex workers can experience high levels of exploitation and violence. Contributing factors include stigma, intersecting discrimination (such as discrimination based on gender, sexuality or migrant status), socio-economic issues and the impact of current criminal laws against sex work.

6.15 The Queensland Adult Business Association (QABA) told us that many respondents to their 2021 survey of sex workers at licensed brothels in Queensland said they had felt pressured to provide a service to a client when working at a licensed brothel (32%) or when working outside a licensed brothel (29%). In a 2017 Respect Inc survey of licensed brothel workers in Queensland:[12]

- 29% of respondents said licensed brothel management did not always allow them to refuse clients
- 49% of respondents said they had been or might have been pressured by management to see a client with whom they were not comfortable.

6.16 Research in New Zealand in 2022 suggests coercion and exploitation remain a concern in brothels in that jurisdiction because of power dynamics and management practices.[13]

6.17 The surveys and research above are limited to sex workers in brothels. They do not focus on sex workers in other sectors or, importantly, people who may not identify as sex workers.

6.18 Sex work is often popularly associated with concerns about trafficking for sexual exploitation, and organised crime.[14] Sex-worker organisations say media reporting linking sex work by Asian migrant workers with trafficking and organised crime is sensationalised and inaccurate.[15] Many submissions said trafficking and exploitation are not the experience for the vast majority of migrant sex workers in Australia.[16]

6.19 As outlined in chapter 5 of our consultation paper, the extent of human trafficking in Australia and organised crime in the sex-work industry is contested.[17] Because of their hidden nature and practical barriers to reporting, these activities can be difficult to detect, investigate and prosecute.[18] Human trafficking and organised crime are not specific to sexual exploitation. Trafficking falls under Commonwealth laws that apply to the trafficking of people for various purposes, not only for sexual exploitation. Organised crime is also opportunistic and can infiltrate a variety of industries or businesses.[19]

Decriminalisation will help

6.20 Decriminalising sex work will remove some of the barriers to sex workers' access to workplace rights, health, safety and justice, and is a first step in reducing the stigma attached to sex work (see chapter 2). Decriminalisation will therefore help reduce sex workers' vulnerability to exploitation and violence, including coercion.

6.21 Many submissions argued that decriminalisation and support, rather than criminal laws, are the best way to protect against exploitation by making the sex-work industry more transparent and removing barriers to reporting crimes and other workplace issues to authorities. Submissions said exploitation in the sex-work industry should be dealt with as 'labour exploitation' under general laws that apply to other workers.

6.22 Most submissions argued that existing general laws are enough to deal with exploitation, and are preferred to sex-work-specific exploitation offences. Submissions referred to sexual assault, child employment, work health and safety, workplace relations, human trafficking and forced work laws.

6.23 Existing general laws include:

- laws against unlawful sexual activity – where a sexual act is non-consensual or is with a child or a person who has an 'impairment of the mind'
- laws against employment of children in inappropriate roles or situations – such as the performance of sexually explicit acts
- child protection laws – including provisions for notifying or reporting concerns about children who need protection from harm
- Commonwealth laws against slavery, slavery-like conditions (such as forced labour) and human trafficking.

6.24 General laws against unlawful sexual activity cover many circumstances of non-consensual activity or acts with children. But they do not always target a third person who arranges or profits from the activity, and they do not include the additional aspect of exchange under a commercial arrangement.

Other safeguards are still important

Human rights obligations apply

6.25 Australia has international human rights obligations to address sexual exploitation.[20] This includes specific obligations to prevent the exploitation of women in prostitution, prohibit the use of children in prostitution, and prevent exploitation of, violence against and abuse of people with disabilities. These obligations are given effect by Commonwealth and state laws.

6.26 The decriminalisation framework must be compatible with the Human Rights Act. As noted in chapter 6 of our consultation paper, the Act recognises the rights to: equal recognition before the law and non-discrimination; protection from cruel, inhuman or degrading treatment; liberty and security of person; privacy; freedom from forced work; and protection of children.

Exploitation laws are justified

6.27 Other criminal laws give protection in many cases. However, in our view it remains appropriate for the criminal law to address exploitation in commercial sexual services directly. This will avoid gaps in protection.[21]

6.28 Although there is an overlap, sexual exploitation is distinguished from other types of sexual abuse. The main distinction is the underlying notion of exchange that is present in sexual exploitation. Sexual abuse 'requires no element of exchange, and can occur for the mere purpose of the sexual gratification of the person committing the act'. In contrast, sexual exploitation involves the 'idea of extracting or incurring a benefit, advantage, or gain from the sexual act'. If the focus is specifically on monetary benefit, it can be called commercial sexual exploitation. This includes 'organised criminality where the primary driver is economic gain'.[22]

6.29 Decriminalising sex work involves removing sex-work-specific criminal laws. But it does not mean no regulation or protection at all. Decriminalising sex work does not require the removal of laws against violence or coercion.[23] Amnesty International's policy on respecting the human rights of sex workers highlights that '[w]here consent is absent for reasons including threat or use of force, deception, fraud, and abuse of power or involvement of a child, such activity would constitute a human rights abuse which must be treated as a criminal offence'. Restrictions can legitimately be imposed on the sale of sexual services if the restrictions comply with human rights.[24]

6.30 Most submissions we received said sex-work-specific exploitation laws are not needed and are harmful. They argued that any reference to sex work in the criminal law would continue to stigmatise sex work and be a barrier to sex workers' rights. Many submissions said sex-work-specific criminal laws drive sex work underground and isolate sex workers and young people from support. Sex workers told us criminal laws that are meant to protect them are 'used against' them, and that exploitation offences would 'create new avenues for unnecessary police intervention in sex-work businesses'.[25]

6.31 However, other submissions supported exploitation offences. An interstate sex-worker-led group said offences about sexual services by children or unwilling adults are not about 'consensual adult sex work' and should be maintained. The Bar Association of Queensland said that although decriminalisation requires repeal or amendment of offences in chapter 22A of the Criminal Code, the express protection given to children and vulnerable adults in some of those offences should be maintained.

6.32 Offences to address exploitation in commercial sexual services apply in every Australian state and territory, including where sex work is decriminalised. New Zealand has similar offences. Although the wording differs between jurisdictions, the offences generally apply to coercing or forcing a person to provide commercial sexual services, or involving a child in providing commercial sexual services (see chapter 8 of our consultation paper).

6.33 UNAIDS (the Joint United Nations Programme on HIV/AIDS) commends the Northern Territory's decriminalisation laws, noting the legislation 'explicitly prohibits the exploitation of sex workers, supports their access to justice and outlaws any involvement of children'.[26]

6.34 In our view, the criminal law in Queensland should include offences dealing directly with commercial sexual services that are coerced or involve children. Offences are needed to protect human rights and support Australia in meeting its international human rights obligations. The offences reflect the distinction between sex work and exploitation, and their inclusion is consistent with other decriminalised jurisdictions.

6.35 This approach reflects the policy position and community view that exploitation in commercial sexual services is objectionable and should not occur. It will allow police in Queensland to receive and investigate complaints about these matters, without needing to rely on Commonwealth offences or powers. It may also help police and other authorities investigating organised criminal activity.

6.36 The offences we recommend will give added protection to people in the sex-work industry who may experience coercion. Importantly this protection will extend beyond the sex-work industry, as a person could be coerced into providing commercial sexual services whether or not they identify as a sex worker. Children, migrants, people from culturally and linguistically diverse (CALD) backgrounds, and people who are transgender, have disabilities, or are experiencing poverty or homelessness may be especially vulnerable to exploitation. They may or may not consider themselves as sex workers.

6.37 The offences we recommend will operate alongside other general laws. The choice of charge or charges will be based on the circumstances, including the availability of evidence and the nature, extent and seriousness of the offending. This is not unusual in criminal law, where different charges may be open depending on the facts. These are matters for police and prosecutor discretion.[27]

6.38 The offences should be defined clearly and limited to activity that involves children or is coercive, consistent with respect for the agency and autonomy of adults engaged in consensual sexual activity.[28]

Defining commercial sexual services

6.39 The offences we recommend in this chapter should apply to commercial sexual services.

6.40 In our view, this should be defined as services that involve a person engaging in a sexual act with another person in return for payment or reward under an arrangement of a commercial character (whether the payment or reward is given to the person providing the services or another person). The definition should further state that the term 'sexual act' is limited to acts involving physical contact, and includes sexual intercourse, oral sex and masturbation. Sexual intercourse, oral sex and masturbation take their ordinary meaning, and do not need to be defined.

6.41 This definition adopts core elements of the current definition of prostitution in section 229E of the Criminal Code. However, it is simplified and updated, and removes stigmatising language (including the reference to 'use' of a person by another). The definition shares features with the relevant definitions in other jurisdictions, including New Zealand and the Northern Territory.[29] To maintain consistency within the Criminal Code, the definition adopts some wording from other offences such as section 218. It also uses gender-neutral language.

6.42 The definition limits commercial sexual services to:

- services under a commercial arrangement – this qualifies the reference to payment or reward (which could be interpreted broadly) and ensures genuine domestic relationships are not inadvertently captured
- sexual acts involving physical contact – this reflects the scope of current prostitution laws, and is consistent with the approach in New Zealand.

6.43 Consistent with our general approach in this review, a separate policy matter for the government to consider is if exploitation offences are needed in the context of adult entertainment (see further chapter 8).

Coercion offence

6.44 In our view, the Criminal Code should include a coercion offence, like those that apply in New South Wales, the Northern Territory and Victoria. The Criminal Code should make it a crime for a person, by coercion, to intentionally induce another person to:

- provide or continue to provide commercial sexual services or
- provide or continue to provide payment derived, directly or indirectly, from commercial sexual services.

6.45 The offence should be made as certain as possible by defining coercion. But it should apply to an inclusive list of conduct to allow flexibility to cover novel situations as appropriate. Coercion should be defined to include:

- intimidation or threats of any kind
- improper use of a position of trust or influence
- taking advantage of a person's vulnerability
- assault of any person
- damage to the property of any person
- false representation, false pretence or other fraud
- supplying or offering to supply a dangerous drug to a person.

6.46 The reference to threats of any kind is consistent with section 218 of the Criminal Code. It is wider than section 77 of the Prostitution Act and the offences in other jurisdictions, which are limited to threats of assault or property damage. This wider approach will cover other coercive threats, such as threatening to remove the person's passport or visa, or threatening to disclose actual or alleged misconduct.[30]

6.47 The reference to taking advantage of a person's vulnerability is adopted from the definition of coercion that applies to Commonwealth servitude and forced labour offences.[31] Together with the reference to improper use of a position of trust or influence, which captures the idea of undue influence, this reflects an important aspect of coercive behaviour.[32]

6.48 Consistent with the offence in the Northern Territory and Victoria, coercion should include inducing a person by supplying or offering to supply a dangerous drug. This form of inducement preys on the vulnerability of a drug-dependent person, or person who may be offered or supplied a dangerous drug in circumstances like drink-spiking. This inclusion should not be viewed as a suggestion that there is a common link between sex work and illicit drug use or addiction. For this offence, 'dangerous drug' should have the meaning given in section 4 of the *Drugs Misuse Act 1986*.

6.49 Importantly, the coercion offence we recommend does not criminalise the coerced person. The offence applies generally and will protect sex workers as well as any other person who is coerced in this way.

6.50 The maximum penalty for the offence should be imprisonment for 10 years, consistent with Victoria. This is proportionate to the seriousness of the offence and appropriately reflects the range of behaviour covered by the offence. It takes into account the maximum penalties for the offence in section 77 of the Prostitution Act, the offences in other decriminalised jurisdictions and offences against the person in the Criminal Code.[33]

6.51 We consider that the circumstance of aggravation for serious organised crime in section 161Q of the Penalties and Sentences Act, if retained, should apply to the coercion offence.[34] This applies to many offences in the Criminal Code, including some in chapter 22A. Section 161Q is the subject of a separate review of serious and organised crime legislation.[35]

People without capacity to consent

6.52 Some of the offences in chapter 22A apply specifically to a person with 'an impairment of the mind'. This term is also used elsewhere in the Criminal Code, including in section 216.

6.53 Submissions strongly criticised the application of offences to a person with an impairment of the mind.[36] Many submissions said the offences create problems for people living with mental impairment who are able to negotiate consent as a sex worker, or who want to hire a sex worker. Queensland Advocacy for Inclusion (QAI) said the current approach is unnecessarily paternalistic, does not reflect the contextual nature of decision-making capacity, is inconsistent with contemporary understandings of supported decision-making, and could infringe the right to privacy.

6.54 People with impaired decision-making capacity are vulnerable to exploitation and should be protected. However, the term 'impairment of the mind' is outdated, discriminatory and stigmatising. The definition is broad, which can unfairly disadvantage some people.[37]

6.55 In our view, a separate offence to protect people with an 'impairment of the mind' in commercial sexual services is not needed. The coercion offence we recommend will give appropriate protection. This offence is not specific to particular vulnerable groups but will protect any coerced person – including someone whose capacity to consent is diminished or impaired.

6.56 This is a more nuanced approach, where cognitive impairment may be a relevant consideration but will not be determinative. The coercion offence will not prevent a person who has a cognitive impairment from making their own decisions when they have capacity to do so. This better protects human rights, by not singling out people on the basis of disability.

Offences to protect children

6.57 In our view, the Criminal Code should include offences against commercial sexual services involving children, similar to those in Victoria and other decriminalised jurisdictions. The Criminal Code should make it a crime for a person to:

- obtain commercial sexual services from a person under 18
- cause or induce a person under 18 to provide commercial sexual services
- enter or offer to enter into an agreement for a person under 18 to provide commercial sexual services, or
- receive a payment that the person knows, or ought reasonably to know, is derived directly or indirectly from commercial sexual services provided by a person under 18.

6.58 The words used in this offence can take their ordinary meaning (apart from commercial sexual services, which is defined above). The offence will cover a person who receives commercial sexual services from a child. It will also cover a person who causes, induces, arranges or profits from the use of a child in commercial sexual services. The words cause or induce are preferred over the outdated term 'procure'.

6.59 The Criminal Code should also make it a crime for an owner, occupier or person in control of premises to allow a person under 18 to be at the premises for the purpose of taking part in commercial sexual services. The standard definition of 'premises' in section 1 of the Criminal Code will apply.

6.60 This offence will not apply if a child is simply present at premises where commercial sexual services may take place. It will apply only if the child's presence is 'for the purpose of taking part' in commercial sexual services. This limitation is not included in the current offence in section 229L. Many submissions said section 229L unfairly affects sex workers who have children – particularly those who work from home – and perpetuates harmful stereotypes that sex workers who are parents put their children in danger.[38] The offence we recommend does not prevent a child from being at premises where they live or where

commercial sexual services are carried out, unless the purpose is for the child to take part in commercial sexual services.

6.61 As with the coercion offence, the offences we recommend do not criminalise the child. The focus is on the criminal responsibility of a person who obtains, causes, induces, arranges or profits from the child's involvement in commercial sexual services. The general excuse of mistake of fact in section 24 of the Criminal Code will be available if a person acts under an honest and reasonable, but mistaken, belief that the other person was 18 or older.

6.62 The maximum penalties for the offences should be:

- for obtaining commercial sexual services from a person under 18 – imprisonment for 10 years, or for 14 years if the child is under 16, and
- for all other offences – imprisonment for 14 years.

6.63 In our view, these maximum penalties are proportionate to the seriousness and scope of each offence. They take account of the maximum penalties for the offences under chapter 22A of the Criminal Code, other offences in the Criminal Code[39] and offences in other decriminalised jurisdictions. To reflect the particular vulnerability of children, the maximum penalties should generally be higher than for the coercion offence. However, a maximum penalty of 10 years is more appropriate for obtaining commercial sexual services from a child who is 16 or older, and is consistent with the coercion offence.

6.64 The circumstance of aggravation for serious organised crime in section 161Q of the Penalties and Sentences Act, if retained, should apply to these offences.

Children who are 16 or 17

6.65 In our view, the offences against commercial sexual services involving children should apply to all children under 18. This is consistent with the definition of a child under human rights instruments and the position in other decriminalised jurisdictions. It is also consistent with the scope of the Child Protection Act. As the Global Network of Sex Work Projects recognises, 'persons under 18 cannot be defined as sex workers and are understood in law as victims of sexual exploitation'.[40]

6.66 The age of consent for sexual activity is 16.[41] Some submissions said that people aged 16 or 17 are able to consent to sexual activity, may already 'do sex work' and should not have their freedom of choice restricted by criminal laws.[42] Other submissions supported criminal laws to protect against the involvement of children under 18, noting that someone who is 16 is still very young and that age limits on people under 18 apply in other industries.

6.67 The exchange of sexual acts for payment or reward under a commercial arrangement 'raises real concerns of exploitation, including potential power imbalances' between young people and older clients or people who arrange or profit from the exchange. People aged 16 or 17 are 'still emotionally vulnerable and should, as a matter of policy, be protected from the risk of potential harm'.[43] As well as age, other circumstances can increase the vulnerability of young people to exploitation and undermine their freedom of choice.[44]

6.68 We do not know how many children are involved in commercial sexual services. Overseas research suggests that some sex workers begin selling sex when they are younger than 18.[45] Some people aged 16 or 17 may use commercial sexual services as a way to meet their basic needs.[46] Data collected by Respect Inc between January 2019 and November 2021 showed only a small percentage (1.2%) of 'sex workers' who contacted them were aged under 20. The percentage of sex workers under 20 varied marginally between cultural groups:[47]

- 1.5% of Aboriginal and Torres Strait Islander sex workers
- 1.4% of sex workers from CALD backgrounds
- 1% of Caucasian and English-as-a-first-language sex workers.

6.69 Respect Inc does not require sex workers who contact them to give their age. Age is documented by peer educators after each contact, 'based on information the sex worker has disclosed and attributes such as appearance'.[48]

6.70 QABA told us sex workers at licensed brothels who responded to its 2021 survey were 18 or older, which is consistent with requirements of the current law.

6.71 As we outline below, having a clear policy position in the criminal law should not prevent responses that give priority to harm minimisation and recognise the evolving capacities of people aged 16 or 17.

Child Employment Act

6.72 The Child Employment Act protects children from being made to work in certain situations. For example, an employer must not require or allow a child to:

- work while the child is naked (section 8A)
- work as a social escort (section 8B)
- work in a role or situation that is inappropriate for the child (section 8C(1)) or
- perform an act of an explicit sexual nature (section 8C(2)(c)).

6.73 Some submissions said the Child Employment Act should be amended to prohibit an employer from requiring or allowing a child to work as a sex worker or in a sex-work business. Others said including sex work in this Act would be 'overkill' and stigmatising. Some also suggested that the Act should be amended to remove the reference to work as a social escort.

6.74 In our view, it is unnecessary to amend the Child Employment Act to refer to sex work. Sections 8A and 8C give adequate protection, along with the offences we recommend for the Criminal Code. Adding a sex-work-specific provision in this Act would be inconsistent with the aims of decriminalisation.

6.75 Section 8B of the Child Employment Act is not a sex-work offence and falls outside our review. As we note in the discussion of advertising in chapter 2, a separate policy issue for the Queensland Government to consider is the extent to which the social escort services industry should continue to be regulated by specific laws. 'Social escort' is currently defined by referring to the Prostitution Act. If section 8B of the Child Employment Act is retained, the definition of social escort should be amended.[49]

Criminal laws are a last resort

6.76 The offences we recommend in this chapter are justified to set clear boundaries and bring perpetrators to account. However, in our view the criminal justice system should not be the primary focal point for responding to children and vulnerable adults involved in commercial sexual services.[50]

6.77 Harm-minimisation approaches based on human rights should be prioritised. Responses should recognise the right of children and adults to participate in decisions affecting them, and consider the evolving capacities and needs of children, including those aged 16 or 17.[51] A holistic approach, focused on improving access to information and support services, should be taken for people aged 16 or 17.[52]

6.78 Other measures, along with the offences we recommend, are needed to support the aims of decriminalisation – to reduce stigma and remove barriers to work rights, safety and justice – and to ensure an effective and compassionate response to children and others who may be vulnerable to exploitation. This is consistent with human rights instruments. It also recognises the wider need (beyond the scope of our review) to address underlying factors that contribute to exploitation, such as homelessness and poverty.

6.79 The role of sex workers in helping address exploitation should be recognised and enabled. Submissions highlighted that sex workers and sex-worker organisations can be 'agents of change' and 'strong allies for anti-exploitation efforts' in the decriminalised framework, as they are in the best position to see what is happening.

6.80 In addition to the education and other measures we recommend in chapter 7, we recommend that:

- sex workers, police and other authorities work together to help identify, prevent and respond to the exploitation of children and vulnerable adults in commercial sexual services – including recognising sex workers' roles in providing peer support and education
- the Queensland Government arranges and ensures adequate funding for sex workers, sex-work business operators and the wider community to receive information and education about the offences recommended in this chapter, and where people can go for help or support
- the Queensland Government arranges and ensures adequate funding for police and other relevant state and local government officials to receive information, education and training on:
  - — issues affecting children and vulnerable people (including those aged 16 or 17 and migrant workers) who may be involved in commercial sexual services, and
  - — responses to exploitation (including harm minimisation approaches).

6.81 Where appropriate, information and education could be delivered as part of existing initiatives aimed at increasing people's understanding of their rights at work.[53]

Existing general laws

Types of offences or laws	Examples or descriptions	Section in legislation
Child sexual offences	Indecent treatment or carnal knowledge of a child under 16 Procuring a person under 18 to engage in carnal knowledge Taking, enticing away or detaining a child under 16 for the purpose of indecent treatment or carnal knowledge of the child An owner, occupier, manager or controller of premises inducing or permitting a child under 16 to be on the premises for the purpose of indecent treatment or carnal knowledge of the child Failing to report to police a reasonable belief that a child sexual offence is being or has been committed against a child under 16	Criminal Code ch 22 ss 210, 213, 215, 217, 219, 229BC
Sexual offences against person with impaired capacity	Indecent treatment or carnal knowledge of a person with an impairment of the mind, or procuring such a person for those acts	Criminal Code ch 22 ss 216, 217
Sexual assault	Procuring sexual acts by coercion Rape Sexual assault	Criminal Code chs 22, 32 ss 218, 349, 352
Note that the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 proposes to change references in the Criminal Code to 'carnal knowledge' to 'penile intercourse'		
Unlawful child employment	Requiring or permitting a child to work while the child is nude or dressed in a way that their sexual organs or anus are visible Requiring or permitting a child to work in a role or situation inappropriate for the child, having regard to the child's age, emotional and psychological development, maturity and sensitivity, including: performing an act of an explicit sexual nature or being present in an area while another person performs an act of an explicit sexual nature	Child Employment Act ss 8A, 8C

Types of offences or laws	Examples or descriptions	Section in legislation
Child protection laws	Any person may inform the chief executive if they reasonably suspect a child needs protection A relevant person (including a doctor, registered nurse, or authorised police officer) must report to the chief executive if they reasonably suspect a child has suffered, is suffering or is at an unacceptable risk of suffering significant harm caused by physical or sexual abuse The safety, wellbeing and best interests of the child are paramount 'Harm' includes harm caused by sexual abuse or exploitation Defines 'child' as an individual under 18 years	Child Protection Act s 5A, ch 1 pt 3, ch 2 pt 1AA
Slavery and slavery-like offences	Slavery Servitude Forced labour Deceptive recruiting for labour or services (including deception about the fact that the engagement will involve providing sexual services or about the nature of the sexual services to be provided) Debt bondage	Criminal Code (Cth) ch 8 div 270
Human trafficking	Trafficking persons into or out of Australia: where coercion, threat or deception is used (for purposes including the provision of sexual services) or where the person is under 18 (and will provide sexual services or otherwise be exploited) Trafficking within Australia (including for sexual services)	Criminal Code (Cth) ch 8 div 271

Types of offences or laws	Examples or descriptions	Section in legislation
Workplace laws	Minimum wages and employment standards about working hours, leave and termination Obligations to remove or reduce health and safety risks in workplaces (including psychosocial hazards such as bullying, aggression, sexual harassment, exposure to traumatic events and low job control)	Fair Work Act (Cth) Work Health and Safety Act Managing the risk of psychosocial hazards at work Code of Practice 2022

International human rights obligations

Instrument	Obligation	Article
United Nations (UN) Convention on the Worst Forms of Child Labour	Take effective measures to prohibit the worst forms of child labour, including 'the use, procuring or offering of a child for prostitution' Take all necessary measures – including penal sanctions, and education – to eliminate and prevent the engagement of children in such labour Defines 'child' as a person under 18	1, 2, 3(b), 6(1), 7
UN Convention on the Rights of the Child	Protect children from 'all forms of sexual exploitation' including taking all appropriate measures to prevent 'the exploitative use of children in prostitution' Defines 'child' as person under 18 unless majority is attained earlier under national legislation	1, 34(b)
UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	Prohibit child prostitution (defined as the use of a child in sexual activities for remuneration or any other form of consideration) – as a minimum, ensure that 'offering, obtaining, procuring or providing a child for child prostitution' is fully covered under criminal or penal law Adopt administrative measures, social policies and programmes to prevent such offences *Note that nothing in the Protocol affects provisions in the national laws of state parties that may be more conducive to the realisation of the rights of the child*	1, 2(b), 3(1)(b), 9, 11
UN Convention on the Elimination of All Forms of Discrimination against Women	Take all appropriate measures, including legislation, to 'suppress … exploitation of prostitution of women'	6
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	Legislate against trafficking in persons, including for 'the exploitation of the prostitution of others' Establish policies, programs and other measures to prevent, and protect victims of, trafficking in persons *Note that measures in the Protocol are to be interpreted and applied consistently with the principles of non-discrimination*	3, 5, 9, 14(2)

Instrument	Obligation	Article
UN Convention on the Rights of Persons with Disabilities	Take legislative, administrative, social, educational and other measures to protect people with disabilities 'from all forms of exploitation, violence and abuse' Recognise that persons with disabilities enjoy legal capacity on an equal basis with others Safeguard and promote the realisation of the right to work (including 'the right to the opportunity to gain a living by work freely chosen or accepted'), and ensure persons with disabilities are protected on an equal basis with others from forced labour	4, 12, 16, 27

1 See e.g. ICRSE, *From Vulnerability to Resilience: Sex Workers Organising to End Exploitation* (May 2021) 6; Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016, 26 May 2016) 3–4, 15; UNAIDS, *Terminology Guidelines* (2015) 5; UNAIDS, *Guidance Note on HIV and Sex Work* (2012) Annex 3.
2 See e.g. ICRSE, *From Vulnerability to Resilience: Sex Workers Organising to End Exploitation* (May 2021) 8; NSWP Global Network of Sex Work Projects, *Sex work is not sexual exploitation*, Briefing Note (2019); UNAIDS, *Guidance Note on HIV and Sex Work* (2012) Annex 3; Global Commission on HIV and the Law, *Risks, Rights and Health* (Final Report, July 2012) 39.
3 See generally QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [5.8] fig 1, [5.10] fig 2, [8.8]–[8.20].
4 See e.g. Women's Forum Australia, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) <https://assets.nationbuilder.com/wfa/pages/68/attachments/original/1655868336/WFA_Submission_on_QLRC_Consultation_Paper_-_A_framework_for_a_decriminalised_sex_work_industry_in_Queensland.pdf?1655868336>.
5 Coalition Against Trafficking in Women Australia, 'Understanding the Nordic Model' <https://www.catwa.org.au/the-nordic-model/>. See also Women's Forum Australia, 'Prostitution and trafficking' (2022) <https://www.womensforumaustralia.org/prostitution_and_trafficking>. See generally Select Committee on the Regulation of Brothels, Legislative Assembly of New South Wales, *Inquiry into the Regulation of Brothels* (Report, November 2015) [2.76]–[2.77], [6.24]–[6.28]; H Bonache et al, 'Prostitution policies and attitudes towards prostitutes' (2021) 50 *Archives of Sexual Behavior 1991*, 1992.
6 See e.g. Women's Forum Australia, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) <https://assets.nationbuilder.com/wfa/pages/68/attachments/original/1655868336/WFA_Submission_on_QLRC_Consultation_Paper_-_A_framework_for_a_decriminalised_sex_work_industry_in_Queensland.pdf?1655868336>. See generally Women's Forum Australia, 'Prostitution and trafficking' (2022) <https://www.womensforumaustralia.org/prostitution_and_trafficking>; Coalition Against Trafficking in Women Australia, 'About CATWA' <https://www.catwa.org.au/>.
7 See e.g. UNAIDS, *Guidance Note on HIV and Sex Work* (2012) Annex 3.
8 See generally Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 13; Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 15.
9 See e.g. NSWP Global Network of Sex Work Projects, *Sex work is not sexual exploitation*, Briefing Note (2019); Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 14–16, 21, 95 ff.
10 See generally ICRSE, *From Vulnerability to Resilience: Sex Workers Organising to End Exploitation* (May 2021) 8; NSWP Global Network of Sex Work Projects, *The Impact of Anti-trafficking Legislation and Initiatives on Sex Workers*, Policy Brief (2019); ICRSE, *Exploitation: Unfair Labour Arrangements and Precarious Working Conditions in the Sex Industry*, Community Report (May 2016); Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 21, 97; UNAIDS, *Guidance Note on HIV and Sex Work* (2012) Annex 3, 14.
11 Criminal Code (Qld) ss 229G(2), 229H(2), 229HB(2), 229I(2), 229K(3), (3B).
12 Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 27.
13 C Weinhold, G Abel & L Thompson, '"They wouldn't get away with it at McDonald's": Decriminalization, work, and disciplinary power in New Zealand brothels' (2022) *Gender, Work & Organization* (online); E Taunton, 'Coercion, exploitation: The problems of running brothels as businesses', *Stuff* (online, 11 September 2022) <https://www.stuff.co.nz/business/129737763/coercion-exploitation-the-problems-of-running-brothels-as-businesses>.
14 See e.g. N McKenzie, A Ballinger & J Tozer, 'Women shunted "like cattle" in sex trafficking ring', *The Age* (Melbourne) 31 October 2022, 1.
15 See e.g. Respect Inc, 'Sex workers respond to "exploitation" allegations by Major Organised Crime Squad and sensationalist media' (31 October 2022) <https://respectqld.org.au/301022-2/>.
16 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 58 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>. See also chapter 2; and QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [5.22].
17 See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [5.18]–[5.24] Box 2 and [9.30], [9.33]–[9.36]. See also chapter 3.
18 See e.g. S Lyneham, 'Attrition of human trafficking and slavery cases through the Australian criminal justice system' (Trends & Issues in Crime and Criminal Justice No 640, AIC, November 2021).
19 See e.g. Victorian Law Reform Commission, *Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries*, Report No 33 (2016) vi, [3.2]–[3.4], [3.13].
20 See generally QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [5.18] Box 2, [8.16]; Australian Government Attorney-General's Department, 'Protection from exploitation, violence and abuse: Public sector guidance sheet' <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/protection-exploitation-violence-and-abuse>.
21 See generally S Greijer & J Doek, *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse* (Interagency Working Group on Sexual Exploitation of Children, June 2016) 16.
22 See ibid 16, 19, 24–7. See generally International Labor Organization, 'Commercial sexual exploitation of children' <https://www.ilo.org/ipec/areas/CSEC/lang--en/index.htm>.
23 See e.g. ICRSE, *From Vulnerability to Resilience: Sex Workers Organising to End Exploitation* (May 2021) 6.
24 Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016, 26 May 2016) 4, 14.
25 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 47, 50, 53, 59 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>. See also Community Legal Centres Queensland (#DecrimQLD and Respect Inc), 'Sex work law review: shifting to decriminalisation' (YouTube, 25 May 2022) 00:13:04–00:13:40 <https://www.youtube.com/watch?v=cd-8iQEJkrs>.
26 UNAIDS, 'UNAIDS welcomes the decision by the Northern Territory of Australia to decriminalize sex work' (Press Statement, 2 December 2019) <UNAIDS welcomes the decision by the Northern Territory of Australia to decriminalize sex work | UNAIDS>.
27 See generally Queensland Police Service, *Operational Procedures Manual: Chapter 3 Prosecution Process* (17 February 2023) [3.4]; Department of Justice and Attorney-General (Qld), *Director's Guidelines* (30 June 2016) [4], [7].
28 See e.g. Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016, 26 May 2016) 15; Global Commission on HIV and the Law, *Risks, Rights and Health* (Final Report, July 2012) 39.
29 *Prostitution Reform Act 2003* (NZ) s 4(1) (definition of 'commercial sexual services'); *Sex Industry Act 2019* (NT) s 4 (definition of 'sex work'). See also *Crimes Act 1958* (Vic) s 35(1), (1A) (definition of 'commercial sexual services') (not yet in force).
30 Cf *Prostitution Reform Act 2003* (NZ) s 16(2)(c).
31 Criminal Code (Cth) s 270.1A (definition of 'coercion' para (f)).

32 Cf *Voluntary Assisted Dying Act 2021* (Qld) s 6 sch 1 Dictionary (definition of 'coercion') (not yet in force); Criminal Code (Cth) s 270.1A (definition of 'coercion' para (e).
33 See e.g. Criminal Code (Qld) ss 216, 339, 352, 354.
34 See *Penalties and Sentences Act 1992* (Qld) pt 9D, ss 161Q, 161R, 161V.
35 Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, 'Former District Court judge to head serious and organised crime legislation review' (Ministerial Media Statement, 7 September 2022); Department of Justice and Attorney-General (Queensland), 'Serious and organised crime legislation review' (29 September 2022) <https://www.justice.qld.gov.au/community-engagement/community-consultation/past/serious-organised-crime-legislation-review>.
36 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 56–8 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
37 Criminal Code (Qld) s 1 (definition of 'person with an impairment of the mind'). See generally, in a related context, The Public Advocate, *A Discussion of Section 216 of the Queensland Criminal Code: A Call to Review the Criminalisation of Sexual Relationships Involving People With 'An Impairment of the Mind'* (Discussion Paper, January 2022).
38 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 53–4 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
39 See e.g. Criminal Code (Qld) ss 210, 213, 215, 217, 219.
40 NSWP Global Network of Sex Work Projects, *Young Sex Workers: Policy Brief* (2016) 2.
41 See Criminal Code (Qld) ss 210, 215.
42 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 52–3, 55 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
43 Explanatory Notes for Amendments during consideration in detail, Prostitution and Other Acts Amendment Bill 2009 (Qld) 2.
44 See C McClure, C Chandler & S Bissell, 'Responses to HIV in sexually exploited children or adolescents who sell sex' (2015) 385 *The Lancet* 97; Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 20.
45 See McClure, Chandler & Bissell, above n 44.
46 See e.g. NSWP Global Network of Sex Work Projects, *Young Sex Workers: Policy Brief* (2016) 4.
47 Correspondence from Respect Inc, 22 November 2021 and 31 March 2022.
48 Correspondence from Respect Inc, 22 November 2021.
49 See *Child Employment Act 2006* (Qld) s 8B(2); *Prostitution Act 1999* (Qld) sch 4 Dictionary (definition of 'social escort').
50 See Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016, 26 May 2016) 3; McClure, Chandler & Bissell, above n 44, 98.
51 See e.g. McClure, Chandler & Bissell, above n 44, 98.
52 NSWP Global Network of Sex Work Projects, *Young Sex Workers: Policy Brief* (2016) 2.
53 See e.g. Department of Children, Youth Justice and Multicultural Affairs (Queensland), 'Workers rights education and support services program' (16 December 2022) <https://www.cyjma.qld.gov.au/multicultural-affairs/programs-initiatives/workers-rights-education-support-services-program>.

7 Implementation

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Timing of commencement

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Timing of commencement

'It will take some time for the industry to transition and adapt.'

—Sex worker submission

'In Victoria, the changes introduced by the Sex Work Decriminalisation Act 2022 come into effect in two stages … This approach is already causing fear and confusion and uncertainty for sex workers and businesses …'

—Anonymous submission

Summary

7.1 If the Queensland Parliament passes legislation to decriminalise the sex-work industry, a period of time will be needed to transition to the decriminalisation framework before it commences. This will give the sex-work industry and the Queensland Government time to prepare for the new model of regulation. The timing is a matter for the government to consider and we make no recommendation on how long the transition period should be.

7.2 The commencement of decriminalisation reforms in Victoria in 2 stages has caused confusion and uncertainty, resulting in lengthy delays to the start of beneficial reforms. A staged approach is not optimal and should not be followed in Queensland. We recommend all legislative reforms should commence simultaneously.

Recommendation

R33 If the Queensland Parliament passes legislation to decriminalise the sex-work industry, all legislative reforms should take effect at the same time, rather than taking a staged approach to commencement.

What this recommendation means

All laws needed for decriminalisation will start at the same time to avoid uncertainty.

Timing of commencement

7.3 If the Queensland Parliament passes legislation to decriminalise the sex-work industry, a period of time will be needed to transition to the decriminalisation framework before it commences. The sex-work industry and the Queensland Government will need time to prepare for the new model of regulation. Many of the legal and policy changes needed for the recommended decriminalisation reforms will take time to put in place. We recommend health and safety guidelines be developed for and in consultation with the sex-work industry. State planning requirements will need to be set, local government planning schemes may need to be changed, and information about the new framework will need to be communicated to the sex-work industry, relevant organisations and the community.

7.4 The Queensland Adult Business Association (QABA) told us there should be a minimum 2-year transition to the decriminalisation framework. It said this would allow the sex-work industry to adjust to a different model of regulation, minimise disadvantage to brothel licensees, and 'maintain the sustainability and financial viability' of brothel operations.

7.5 The Queensland Government has committed to decriminalising the sex-work industry, as reflected in our terms of reference of 27 August 2021. Brothel licensees and others in the industry have therefore been made aware that industry regulation will be changing.

7.6 Licensed brothels are a small part of the sex-work industry. The expectations and needs of people working in other parts of the industry should be considered. It is unlikely the rest of the industry would welcome a lengthy transition period before legislative reforms take effect, as sex workers would still have to choose between working safely or working lawfully and could continue to face police charges and prosecutions. Massage parlours and escort agencies that provide sex work would continue to be criminalised and forced to operate underground, to the detriment of sex workers' health and safety.

7.7 If the Queensland Parliament passes legislation to decriminalise the sex-work industry, we make no recommendation on how long the transition period to commencement of the law reforms should be. The timing is a matter for the Queensland Government to consider.

7.8 A transition period will give government agencies time to prepare for and implement the new regulatory framework. Some changes might be facilitated more quickly than others. In Victoria, it was decided the reforms should begin in 2 stages.[1] The Victorian Parliament passed the Sex Work Decriminalisation Bill (Vic) on 22 February 2022. The first stage of the Sex Work Decriminalisation Act (Vic) started on 10 May 2022. The second stage is scheduled to start on 1 December 2023.

7.9 We heard from sex-worker organisations that the staged approach was causing confusion and uncertainty. Parts of the *Sex Work Act 1994* (Vic) were removed at the first stage but the remainder of that Act will not be repealed until the second stage. Until this final stage begins, the licensing system will not be abolished and new planning controls for sex services businesses will not take effect. Some sex workers mistakenly think all the reforms have already been implemented, and so are operating unlawfully.

7.10 Sex-worker organisations said this staged approach should be avoided in Queensland, and all measures of the new decriminalisation framework should begin at the same time. This was the approach taken by the Northern Territory Parliament, which passed the Sex Industry Bill 2019 (NT) on 26 November 2019 to decriminalise the sex-work industry. The Sex Industry Act (NT) commenced on 12 June 2020.

7.11 In our view, a staged approach to starting the recommended new framework is not optimal. If the Queensland Parliament passes legislation to decriminalise the sex-work industry, all legislative reforms should take effect at the same time.

1 Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3882–3 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating).

Transition of licensed brothels

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Transition of licensed brothels

'Current brothels are already invested in [industrial areas] by either purchasing the freehold or, in the majority of cases, entering into above-market rental leases. If these restrictions are removed quickly, allowing new operators to locate wherever they please … [then] the current legal operators would be severely disadvantaged.'

—Queensland Adult Business Association (QABA) submission

'Consideration should be given to current licensees that may find themselves adversely affected by changes. Considerations should include fee relaxations or compensation.'

—Prostitution Licensing Authority (PLA) submission

Summary

7.12 Decriminalising the sex-work industry will have advantages and disadvantages for brothel licensees. We recommend removing the licensing system, which will mean reducing red tape and allowing brothel owners to better compete with other sex-work business owners. It may be difficult for them to move their businesses to commercial or mixed use areas in response to changes to planning requirements.

7.13 Consideration should be given to a compensatory mechanism, such as fee relief, during the transition period, to defray some of the costs of moving from the current licensing system to the recommended new framework.

Recommendation

R34 The Queensland Government should consider a compensatory mechanism, such as fee relief, for brothel licensees and approved managers, as an interim measure during the transition period before the new decriminalisation framework commences.

Transition of licensed brothels

7.14 The Prostitution Licensing Authority (PLA) and the Queensland Adult Business Association (QABA) submitted that decriminalising the sex-work industry and removing the licensing system could adversely affect brothel licensees. Licensees may have long leases or own the freehold of brothel premises in industrial areas, meaning they might not be able to readily move their businesses to more favourable locations in response to changes to planning requirements. This could put them at a competitive disadvantage to other sex-work businesses operating in commercial or mixed use areas. The value of the businesses and the ability to sell them could also be affected.

7.15 Decriminalisation will also have advantages for brothel licensees. Those able to relocate could move their businesses to other areas, subject to planning restrictions. We recommend the current licensing system should be removed and no new system of licensing or certification should be introduced. As we note in chapter 3, dismantling the licensing system will include:

- removing the restriction on providing outcalls from brothels
- removing restrictions on room, sex worker and staff numbers at brothels
- removing the requirement that a person may not have an interest in more than one brothel
- reducing red tape, with the removal of the PLA and brothel licence applications, fees, conditions and other compliance obligations under the Prostitution Act
- allowing brothel owners to better compete with other sex-work business operators under general planning, industrial, work health and safety, and other business laws and regulations.

7.16 In addition to brothel licences, the PLA grants certificates to approved managers of licensed brothels, subject to payment of fees. Removing the licensing system means there will no longer be approved managers. However, decriminalising the sex-work industry may broaden lawful working opportunities for managers of sex-work businesses.

7.17 The PLA told us consideration should be given to compensating brothel licensees adversely affected by changes to the regulatory framework, including by relaxing licensing fees. QABA suggested claims for compensation by licensees could be avoided if there was a long transition time before the new decriminalisation framework commenced.

7.18 Victoria's licensing system is to be removed at the second stage of decriminalisation. Licensees in Victoria will not receive monetary compensation for any adverse impact of decriminalisation. However, licensing fees have been progressively waived or reduced. Annual and most other licence fees were waived from 1 July 2022. Licence application fees and brothel manager approval application fees were reduced by 50% from 1 July 2022 and will be reduced by a further 25% from 1 July 2023.[2]

7.19 We recommend the Queensland Government considers a compensatory mechanism, such as fee relief, for Queensland brothel licensees and approved managers. This would be an interim measure during the transition period before the new decriminalisation framework commences. Compensation options include waiving fees that become payable during the transition period or refunding the unused portion of fees paid during the transition period. Another option would be to refund, on a pro rata basis, any fees during the transition period and any fees in excess of the transition period, and to waive any licence or certificate fees payable during the transition period.

7.20 In 2021–22, the PLA had cash reserves of $1,141,970.[3] Consideration could be given to funding fee relief from these cash reserves.

2 Consumer Affairs Victoria, 'Maintain or change your sex work service provider's licence' (1 July 2022) <https://www.consumer.vic.gov.au/licensing-and-registration/sex-work-service-providers/licensing/maintain-or-change-your-licence>.
3 PLA, *Annual Report 2021–2022* (2022) 47.

Review of legislative changes

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Review of legislative changes

'There will be a need to review the new framework should decriminalisation take effect; however, it should not be conducted any sooner than 5 years after implementation. Decriminalisation will mark a huge shift in the lives and work of sex workers throughout the state and it will be a massive transition.'

—Member of the public submission

'A review of the new regulatory framework should be conducted at least 5 years after implementation. The review should be funded by the State, and led by sex-work peer organisations and researchers.'

—Sex worker submission

'I think that it would be good to review in 5 years to see if sex workers are happier, safer and better off under the new laws.'

—Migrant sex worker submission

Summary

7.21 Decriminalising the sex-work industry will be a significant change to the current regulatory approach. In our view, there should be a legislative requirement for the responsible Minister to ensure that the operation of the legislation giving effect to this change is reviewed by a committee no sooner than 4 years and no later than 5 years after decriminalisation is implemented. The review should focus on the effectiveness of the new regulatory framework. The review might consider, but should not be compelled by law, to assess the number of sex workers, or to collect baseline data since accurate data may be hard for it to obtain.

Recommendations

R35 If the Queensland Parliament passes legislation to decriminalise the sex-work industry, the legislation should require the responsible Minister to ensure that the operation of the legislation is reviewed no sooner than 4 years and no later than 5 years after the new regulatory framework is implemented.

R36 The legislation should require:

(a) the Minister to establish a committee to carry out the review

(b) the review committee to:

i. review the operation of the legislation

ii. consider if any amendments to the legislation or any other laws are necessary or desirable in relation to sex workers or sex work

iii. consider if any further review or assessment of the matters in paragraphs (i) and (ii) is necessary or desirable and

iv. give a written report to the Minister and

(c) the Minister to table a copy of the report about the outcome of the review in the Legislative Assembly as soon as practicable.

R37 The legislation should not require the review committee to assess the impact of the legislation on the number of sex workers in Queensland, or collect baseline data, including about the number of sex workers.

What these recommendations mean

The decriminalisation laws should be reviewed and evaluated after 4–5 years.

Representatives of relevant non-government agencies, including sex-worker organisations, should be involved in the review process.

Review requirement

Decriminalisation is a significant change

7.22 Decriminalising the sex-work industry, and removing the licensing system established by the Prostitution Act and managed by the Prostitution Licensing Authority, will be significant changes to the regulatory approach in Queensland.

7.23 In our view, there should be a legislative requirement to review the new framework within a set timeframe. This will give a mechanism for the Queensland Government to monitor and assess the operation of the new regulatory approach and determine if the aims of decriminalisation are being met.

7.24 As noted in chapter 15 of our consultation paper, other decriminalised jurisdictions (New Zealand, the Northern Territory and Victoria) have included legislative review requirements. A review requirement was also included when the Prostitution Act was introduced.[4]

7.25 Many of the submissions we received supported a review of the new regulatory framework to monitor its effects and determine if it is meeting its objectives. Some submissions said a review would need to be adequately funded and appropriately designed, and should not itself perpetuate stigma and discrimination.

7.26 A few submissions did not support a review. A sex-worker organisation in New Zealand said that a review can 'contribute to stigma and discrimination' as it does 'not allow the law to settle down and embed'.

Review committee

7.27 In our view, the legislation should provide that the responsible Minister must establish a review committee to carry out the review. This approach gives representatives of relevant non-government agencies, including sex-worker organisations, the opportunity to be involved.

7.28 Appointing a committee for the review will also give representatives of relevant government agencies the opportunity to participate. The decriminalised framework does not include a sex-work-specific regulator for the industry. General regulatory frameworks that apply to other workers and industries apply to sex work, and are overseen by relevant regulatory agencies. Workplace Health and Safety Queensland is responsible for work health and safety, Queensland Health is responsible for public health and health promotion, the Queensland Government and local governments are responsible for land use planning, and the Queensland Police Service is responsible for investigating crime.

7.29 New Zealand and the Northern Territory take a similar approach. The legislation in those jurisdictions requires a review committee to be established to carry out the review.[5] We do not consider it necessary for the Queensland legislation to prescribe how many people should be on the review committee and who they should be. Our approach gives flexibility to the Minister to appoint people with the relevant expertise and experience. The Minister should ensure the review committee is appropriately representative. In practice, the legislation in the Northern Territory could be a good starting point. It states that the review committee must consist of:[6]

- one person who represents the interests of the community
- 2 people who represent the interests of the sex-work industry
- one person with expertise and experience in public health
- one person with expertise and experience in work health and safety.

7.30 The review committee should be able to consult with relevant stakeholders.

7.31 Many submissions said it would be important for sex workers, sex-worker organisations and sex-work researchers to be involved in the review, especially in any data collection and analysis. In a joint submission, Respect Inc and #DecrimQLD said Respect Inc should be funded to design the review in partnership with Workplace Health and Safety Queensland. Many submissions supported this view. Some submissions said people with appropriate qualifications, expertise or experience should conduct the review. A few submissions said the review should be independent of the government and the sex-work industry, but should consult with sex workers, relevant agencies and industry bodies.

Timeframe

7.32 Submissions suggested various timeframes for starting the review, ranging from 12 months to 10 years, with most suggesting 5 years would be appropriate. Respect Inc and #DecrimQLD jointly submitted that the review should occur 'no sooner than 5 years' after implementation, which was supported by many others. Submissions said time would be needed for the industry to move to the new regulatory framework before a review. Some said that, if the review started too soon after implementation, its focus might be limited to transitory issues.

7.33 In our view, the review should begin no sooner than 4 years and no later than 5 years after the new regulatory framework is implemented. This allows time for changes to begin settling in and the effects of decriminalisation to start becoming apparent, without unduly delaying the review.

7.34 New Zealand, the Northern Territory and Victoria have similar timeframes for their reviews.[7]

Review of the new framework's operation

7.35 In our view, the legislation should require the review committee to:

- review the operation of the new regulatory framework
- consider if any amendments to the legislation implementing decriminalisation or any other laws are necessary or desirable for sex workers or sex work and
- consider if any further review or assessment of these matters is necessary or desirable.

7.36 New Zealand, the Northern Territory and Victoria take similar approaches.[8] In New Zealand and the Northern Territory, the review committee is also required to assess the impact of decriminalisation on the number of sex workers.[9] In New Zealand, this requirement was included because of concerns that decriminalisation could lead to an increase in the number of sex workers. As noted in chapter 2, the research in New Zealand showed this was not the case.[10]

7.37 Several submissions said the review should focus on the effectiveness of the new regulatory framework and whether it is meeting its objectives. Many submissions said the primary focus should be on the 'success or challenges' of work health and safety and health promotion. Some submissions said the review should also consider if stigma and discrimination against sex workers have reduced.

7.38 Decriminalisation recognises sex work as legitimate work. It aims to increase sex workers' health and safety and reduce stigma and discrimination against sex workers. In our view, the focus of the review should be on the operation of the new regulatory framework, and whether it is achieving the aims of decriminalisation.

No requirement for baseline data collection

7.39 The legislation in New Zealand and the Northern Territory requires the review committee to collect baseline data about the number of sex workers (and, in the Northern Territory, the nature of the

environment in which they work) as soon as possible after the legislation commences. This is to help assess the impact of decriminalisation on the number of sex workers. There are no similar requirements in Victoria.[11]

7.40 Submissions overwhelmingly said there should not be a legislative requirement to collect baseline data as soon as possible after decriminalisation commences. Many submissions said this would be too soon to collect data and pointed to the difficulties of researching the industry while it is in transition, particularly as much of the industry has been operating unlawfully. Some submissions said data collected at this stage was unlikely to create an accurate baseline, and would be likely to replicate existing data.[12] They also said the burden of data collection is carried by the community about whom data is collected. Others said existing data should be compiled and used, including data collected by Respect Inc and Queensland Health. Many submissions said any data collection and analysis should be done in partnership with or led by peer organisations and researchers, and would need to be adequately funded and appropriately designed.

7.41 As explained above, in our view, the review should focus on the effectiveness of the new regulatory framework, and should not include a requirement to assess the impact of decriminalisation on the number of sex workers. A legislative requirement to collect baseline data about the number of sex workers is therefore unnecessary, and raises issues about the availability of such data. However, this will not prevent the review committee from compiling and analysing relevant available data in its review.

4 See *Prostitution Reform Act 2003* (NZ) ss 42–43; *Sex Industry Act 2019* (NT) ss 25–26; *Sex Work Decriminalisation Act 2022* (Vic) s 4; *Prostitution Act 1999* (Qld) s 141 (as passed).
5 *Prostitution Reform Act 2003* (NZ) ss 42–43; *Sex Industry Act 2019* (NT) ss 25–26. See also QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [15.23]–[15.26].
6 *Sex Industry Act 2019* (NT) s 25(2).
7 *Prostitution Reform Act 2003* (NZ) s 42(1)(b); *Sex Industry Act 2019* (NT) s 26(2); *Sex Work Decriminalisation Act 2022* (Vic) s 4(2). See also QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [15.28]–[15.32].
8 *Prostitution Reform Act 2003* (NZ) s 42(1)(b)(i), (iv)–(vi); *Sex Industry Act 2019* (NT) s 26(2)(a), (c)–(d); *Sex Work Decriminalisation Act 2022* (Vic) s 4(3). See also QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [15.33]–[15.38].
9 *Prostitution Reform Act 2003* (NZ) s 42(1)(b)(ii); *Sex Industry Act 2019* (NT) s 26(2)(b).
10 See Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 6; Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 13, 16, 40–41.
11 See QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) [15.39]–[15.42].
12 See e.g. ibid ch 3, referring to various existing data.

Education and other measures

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Education and other measures

‘In changing [the] laws, there need to be public education campaigns, peer education, and sensitivity training for organisations [who] deal with sex workers. There should also be steps taken to build positive relationship[s] between sex workers, police and other authorities, and continuation of peer support and outreach services by sex-worker organisations.’

—Member of the public submission

‘I support adequate funding for Respect Inc to deliver public education to address stigma; peer education, information and training; sensitivity training for external organisations; education and training to build relationships with police; and a communication strategy for the decriminalisation process.’

—Sex worker submission

‘I am told by a lot of outsiders that they appreciate me speaking to them about sex work and sex workers because they have never met a sex worker. I point out that we are everywhere and come in all sorts of shapes, sizes, ages, colour, backgrounds and education levels. They would have met sex workers but they didn’t set up an environment where the sex workers have felt it was safe to disclose.’

—Sex worker submission

‘Decriminalisation also needs a lot of follow-up education for councils and police, to increase their knowledge and understanding of the sex industry AND what the new regulatory framework means. Police sex worker liaison officers are a fantastic way to increase the capacity of the police force and create meaningful connections with them and the sex industry.’

—Sex worker submission

Summary

7.42 Decriminalisation of the sex-work industry will be a significant change to how the industry is regulated in Queensland. Changes to the law will need to be accompanied by broader measures to support transition to, and implementation of, the decriminalised framework, and to help achieve the aims of decriminalisation. The Queensland Government should take the lead role in coordinating, and ensuring adequate funding, for a range of measures we recommend.

7.43 Information, awareness programs, education and training will be needed to promote health and safety in the industry, address stigma, and change attitudes to sex work and sex workers. Policies and practices will need to be developed to support the recognition of sex work as work, rather than as a crime.

7.44 Sex-worker organisations have lived experience and knowledge of sex work and should be involved in shaping and, in some cases, delivering the measures we recommend. Adequately funded health, safety, and other peer-support and outreach services should be provided for sex workers.

7.45 Improved relationships between the sex-work industry and police are vital to the success of decriminalisation. Steps should be taken to build positive relationships between sex workers, police and other law enforcement authorities.

7.46 A temporary working group should be established to help implement the decriminalisation reforms. It should consist of regulators and other relevant government agencies, sex-worker organisations and other non-government organisations with industry knowledge.

7.47 The measures we recommend are likely to be particularly important in the first few years after the sex-work industry is decriminalised, as sex workers, the sex-work industry, police, government agencies, non-government organisations and the community adjust to the new regulatory model. The need for tailored information about general laws and regulations may diminish over time as the sex-work industry is integrated into mainstream regulatory frameworks.

7.48 As well as our recommendations in this chapter, we note or recommend some related matters in other chapters of our report (see chapters 4, 5, 6 and 8).

Recommendations

R38 The Queensland Government should develop and implement public education and awareness programs to address sex-work stigma and educate the community about the sex-work industry and the aims of decriminalisation. This could be integrated into existing and future education campaigns and activities of relevant regulators and government agencies.

R39 Regulators and other government agencies with areas of responsibility that affect the sex-work industry – including those involved in land-use planning, work health and safety, public health, anti-discrimination, law enforcement and justice services – should provide information, education and training for sex workers and sex-work business operators on changes to the law and their legal rights and obligations under the new framework. They should develop this in consultation with sex-worker organisations and sex-work business operators.

R40 The Queensland Government should develop and implement education and training programs about the new framework and how to respond sensitively and appropriately to issues facing sex workers and others in the industry, for officials and organisations who deal with sex workers or are affected by changes to the law under the new framework, including:

(a) state and local government agencies involved in land-use planning, work health and safety, public health or justice services

(b) police and other law enforcement officers

(c) legal, health and social service providers

(d) members and staff of Queensland courts and tribunals.

R41 Steps should be taken to build positive relationships between sex workers, police and other law enforcement authorities. This is a shared responsibility. The Queensland Police Service and sex-worker organisations should work collaboratively to develop measures and strategies to achieve this outcome.

R42 Sex-worker organisations in Queensland, such as Respect Inc, should provide peer-support and outreach services for sex workers, on health, safety and other matters. The Queensland Government should consider the range of services to be delivered by sex-worker organisations under decriminalisation, and the associated staff and resource implications.

R43 The Queensland Government should lead and establish a temporary working group to help implement the decriminalisation reforms. It should consist of regulators and other government agencies with areas of responsibility that affect the sex-work industry, sex-worker organisations and other non-government organisations with industry knowledge. The working group should be established before legislation introducing the reforms takes effect.

R44 The Queensland Government should coordinate, and ensure adequate funding for, the measures we recommend in R38 to R43 above.

What these recommendations mean

The Queensland Government should ensure the industry, the community, and government agencies are informed about the changes to the law and aims of decriminalisation.

The Queensland Government should ensure sex workers continue to have access to peer-support services.

A temporary working group will help implement the decriminalisation reforms.

Public education

7.49 Sex work is subject to pervasive stigma perpetuated by myths and stereotypes. Stigma is harmful to the health, wellbeing and rights of sex workers and leads to discrimination and mistreatment.[13] In a 2020 survey of sex workers in Australia, 96% of respondents had recently experienced stigma or discrimination because of their sex work, with 34% indicating this 'often' or 'always' occurred.[14]

7.50 Decriminalising the sex-work industry will not change community attitudes by itself. Sex workers, sex-worker organisations and others told us it would be important to have public education and awareness programs to address stigma and educate the community about sex work. In a joint submission, Respect Inc and #DecrimQLD said:[15]

> the discrimination and stigma that surrounds sex work will not reduce unless government authorities are prepared to conduct education campaigns to inform the wider community about the legal and human rights of sex workers.

7.51 We recommend government public education and awareness programs to address sex-work stigma and educate the community about the sex-work industry and the aims of decriminalisation. This could be integrated into existing and future education campaigns and activities of relevant regulators and government agencies. It would not be intended to encourage sex work but to emphasise that:

- sex work is lawful
- sex workers have a right to be safe and healthy at work, like other workers
- sex worker health and wellbeing should be supported
- sex workers should not be unfairly discriminated against.

7.52 It would be unrealistic to expect attitudes to sex work and sex workers to change immediately. In New Zealand, it was observed that cultural change following decriminalisation did not happen overnight, and stigma would take time to dissipate.[16] Addressing stigma and discrimination is a long process. Stigma is connected to personal moral views and beliefs developed over a lifetime and cannot always be educated away.

Educating the sex-work industry

7.53 Decriminalising the sex-work industry will involve significant changes to the regulation of sex work. Sex workers will no longer have to choose between working safely or working lawfully. Private sex workers will no longer need to work on their own. We recommend the removal of the sex-work licensing system and the abolition of the Prostitution Licensing Authority (PLA). Businesses such as massage parlours and escort agencies providing sexual services will be able to operate lawfully, subject to general planning, work health and safety, and other business laws and regulations.

7.54 The sex-work industry (and others directly affected by changes to the law) will need to be informed about the new model of regulation. We recommend regulators and other government agencies with areas of responsibility that affect the sex-work industry – including those involved in land-use planning, work health and safety, public health, anti-discrimination, law enforcement and justice services – should provide information, education and training for sex workers, sex-work business operators, and others who are directly affected by the decriminalisation reforms. The focus should be on changes to the law and their legal rights and obligations under the new framework. The information, education and training should be led by government and developed in consultation with sex-worker organisations and sex-work business operators.

7.55 Decriminalisation aims to remove barriers to accessing standard health, safety, work, human rights and other laws. Sex workers and sex-work businesses need to know these laws exist, what they are, how to comply with them, and who regulates different aspects of their business. It is particularly important for information, education and training to include:

- information about changes to the criminal law and the role of police under a decriminalised framework, emphasising that sex work is lawful work, operating a sex-work business is not a crime, and general planning, workplace, work health and safety, and other business laws and regulations apply
- education by the Queensland Human Rights Commission about changes to discrimination laws, including information for accommodation providers about the repeal of the 'accommodation exemption', and information for schools, childcare centres and other relevant employers about the repeal of the 'work with children exemption' (see also chapter 4)
- education by Workplace Health and Safety Queensland about work health and safety laws and guidelines (see also chapter 4)
- information from the State planning department and from local governments on the application of planning laws and local laws, including information for members of the community (see also chapter 5)
- information for sex workers and sex-work business operators about their rights and responsibilities at work and where they can go for information or advice, or to make complaints.

7.56 To overcome confusion about the differences between being an employee or independent contractor, the Queensland Government should work with relevant Australian Government agencies, such as the Fair Work Ombudsman, to provide information to the sex-work industry about work rights and obligations under Commonwealth workplace relations laws.

7.57 Education, information and training should be user-friendly, comprehensive, and tailored to the sex-work industry. The needs of people with first languages other than English should be considered, with multilingual education and training made available.

Education for officials and organisations

7.58 The new decriminalisation framework will mean sex workers and sex-work businesses will be able to operate transparently, subject to the same general laws and regulations as other workers and businesses. Decriminalisation, along with supporting measures, will remove barriers to sex workers and sex-work business operators accessing general laws and contacting government agencies for information and advice or to make complaints.

7.59 Some agencies and officials are more likely to be exposed to the sex-work industry and come into contact with sex workers. They may need information and training to understand the new framework and respond sensitively and appropriately to issues facing sex workers and others in the industry. This will support the aims of decriminalisation to recognise sex work as work and take a human rights-based approach.

7.60 We recommend the government should develop and implement education and training about these matters for officials and organisations who deal with sex workers or are affected by changes to the law under the new framework, including:

- state and local government agencies involved in land-use planning, work health and safety, public health or justice services
- police and other law enforcement officers
- legal, health and social service providers
- members and staff of Queensland courts and tribunals.

7.61 Submissions we received said health care workers did not always respond positively to people identifying as sex workers. In a 2020 survey of Australian sex workers, 91% said they had been treated negatively by health workers, with 24% indicating it 'often' or 'always' happened.[17] Negative interactions with health workers may discourage sex workers from accessing health care. If people do not disclose their sex work because they anticipate a negative reaction, it may mean they do not receive appropriate care. Queensland Health submitted that health care workers should be supported to undertake sensitivity education and training so they can provide services that do not stigmatise or discriminate against sex workers.

7.62 Respect Inc has provided cultural sensitivity training to build trust and understanding between organisations and sex workers. Under decriminalisation, it has identified a 'key role' for itself in 'conducting training with public servants'.[18] Queensland Health told us it currently funds Respect Inc to 'work with healthcare providers … to reduce stigma and discrimination against sex workers'. The Queensland Government should consider the extent to which Respect Inc should be involved in providing education and training to government officials and health care workers.

Building positive relationships with police and other authorities

7.63 A common thread in sex worker submissions is that criminalisation has resulted in a fractured and complicated relationship with police. Many sex workers mentioned being fearful or distrusting of police. Some sex workers who had reported crimes to the police said they were not taken seriously and were dismissed because they were sex workers. This is explored further in chapter 2.

7.64 Under the new framework, criminal laws specific to the sex-work industry will be repealed. This will help to reduce barriers to sex workers reporting crimes committed against them. Building trust and respect will take time and effort, particularly in the first few years of the new decriminalisation framework.

7.65 The review of New Zealand's decriminalisation laws noted that suspicion and unease were inevitable after years of criminalisation and that relationship-building was necessary.[19] The Aotearoa New Zealand Sex Workers' Collective (NZPC) has referred to the transformation of the relationship between police and sex workers:[20]

> I want to focus on the police relationship because it's changed extraordinarily. They are not policing sex workers … they are there to help if sex workers need to reach out and get support. The impediments are removed … When I've been at the police station supporting sex workers, the police have been really supportive, really helpful. It's interesting because you are getting a whole generation of police officers who cannot understand why the law was the way it was historically.

7.66 We recommend that sex-worker organisations, police and other law enforcement authorities take steps to build positive relationships. This is a shared responsibility. The Queensland Police Service (QPS) and sex-worker organisations should work collaboratively to develop measures and strategies to achieve this outcome. The sex-work industry, police and other authorities will need to work productively together to protect vulnerable people and respond appropriately to victims of crime. This will support the aims of decriminalisation to recognise sex work as work and take a human rights-based approach. Measures suggested in submissions included:

- sensitivity training for police and other authorities (which could be delivered by sex worker organisations such as Respect Inc) to educate them about the sex-work industry and emphasise that sex work is lawful work
- a co-responder program for police callouts to incidents involving sex workers[21]
- specific police sex-worker liaison officers, with knowledge and understanding of and sensitivity to sex-work issues, to liaise with the sex-work community and be a point of contact for sex workers.

7.67 QPS has several police liaison officer roles, including to support survivors of sexual violence; to build relationships with culturally specific communities; and to promote trust and understanding between the lesbian, gay, bisexual, transgender and intersex (LGBTI) community and police.[22] QPS currently has a State Sex Worker Liaison Officer role in the sexual assault area, as a key point of contact for sex workers.[23]

7.68 In New Zealand, the NZPC and New Zealand Police have collaborated on several initiatives.[24] Police officers from specialised sexual violence units were given training on sexual assault with NZPC to foster understanding and collaboration. The NZPC and New Zealand Police also jointly published a guide for sex workers who have been sexually assaulted. It says that 'NZPC has a great working relationship with Police', and among other matters, outlines ways the NZPC can assist sex workers through police and court processes.[25]

7.69 The QPS should consider updating its operational procedures manual to include information about changes to the law and the new regulatory framework, emphasising the lawfulness of sex work and sex-work businesses.

Peer support for sex workers

7.70 Respect Inc is a peer-based sex-worker organisation that:

- offers education, information and resources to support sex workers and increase their awareness of their rights and responsibilities
- carries out research
- advocates on policy changes.

7.71 Respect Inc is also funded by Queensland Health to provide peer education to reduce transmission of blood-borne viruses and sexually transmissible infections (BBV/STI). Queensland Health told us peer education has been key to the success of BBV/STI prevention and control strategies, and sex workers have low rates of BBV/STI and high levels of voluntary testing and prophylactic use.

7.72 Education and outreach are delivered by trained peer-based workers, so sex workers learn from other sex workers who have similar experiences and are supportive and non-judgmental. Outreach is critical to reaching marginalised and vulnerable sex workers. Decriminalisation will remove barriers to health promotion by sex-worker organisations. Education should recognise the diverse needs of people in the industry, including those who are:

- migrants
- culturally and linguistically diverse
- LGBTI
- male
- Aboriginal and Torres Strait Islander peoples.

7.73 Sex workers identified that Respect Inc would be well placed to provide education and information to sex workers and sex-work business operators. Respect Inc said it would engage with sex workers on work health and safety and with sex-work business operators 'about their changing rights and responsibilities'.[26]

7.74 We recommend that sex-worker organisations, like Respect Inc, provide peer-support and outreach services for sex workers on health, safety and other matters. This is strongly reflected in submissions we received, and supports the aims of decriminalisation to remove barriers to health and safety, take a human rights-based approach, and recognise the centrality of sex workers in promoting safe and healthy practices.

7.75 Respect Inc and #DecrimQLD jointly submitted that Respect Inc should have a central role, including in:[27]

- developing communication strategies to educate the industry on the decriminalised framework, including their rights and responsibilities
- delivering peer education, information and training for sex workers and sex-work businesses about the new regulatory framework for a decriminalised industry.

7.76 The government should consider the range of services to be delivered by sex-worker organisations under decriminalisation. An expanded role for sex-worker organisations, such as Respect Inc, may require increased staff and resources, and a diversity of funding sources. Queensland Health told us other government agencies with responsibility for areas affecting the sex-work industry may need to contribute funding to Respect Inc.

7.77 Respect Inc has established the Crimson Clinic in Brisbane. It is a small-scale pilot project without specific funding. It operates for two hours per fortnight and offers sexual health testing for sex workers. The clinic relies on volunteer doctors and nurses who have received sensitivity training from Respect Inc.[28] Under a decriminalised framework, access to health care services will continue to be important. The Queensland Government could consider its funding for community-based health services, outreach clinics and innovative models of care, particularly for sex workers and clients in rural, regional and remote areas of Queensland.

Working group to assist with implementation

7.78 We recommend the Queensland Government lead and establish a temporary working group to help with transition to and implementation of the decriminalisation reforms. It should consist of regulators and other government agencies with areas of responsibility that affect the sex-work industry, sex-worker organisations and other non-government organisations with industry knowledge. The working group should be established before legislation introducing the reforms takes effect.

7.79 As noted in chapter 3, we recommend removal of the sex-work-specific licensing system and the abolition of the PLA. After decriminalisation there will not be a specific regulator for the sexwork industry. Existing general regulatory frameworks apply to sex workers and sexwork business operators, and various agencies will have different responsibilities. A coordinated response will be needed to implement reforms and support non-legislative responses. Sex-worker organisations and other sex-work industry representatives and non-government organisations should be included in the working group to bring their knowledge and perspectives of sex-work issues and priorities.

7.80 The working group should include representatives from the following agencies and organisations:

- PLA, prior to its abolition and from the former PLA after its abolition
- Office of Industrial Relations, including Workplace Health and Safety Queensland
- Queensland Health
- Queensland Human Rights Commission
- Queensland Police Service
- Department of Justice and Attorney-General
- Department of State Development, Infrastructure, Local Government and Planning
- Local Government Association of Queensland
- Department of Children, Youth Justice and Multicultural Affairs
- Department of Communities, Housing and Digital Economy
- Respect Inc and Scarlet Alliance
- other non-government organisations with sex-work industry knowledge, such as health, legal or other support services.

13 See e.g. Z Stardust, 'The stigma of sex work comes with a high cost', *The Conversation* (10 August 2017) <https://theconversation.com/the-stigma-of-sex-work-comes-with-a-high-cost-79657>.
14 University of New South Wales, *Stigma Indicators Monitoring Project Summary: Sex Workers* (Centre for Social Research in Health and Scarlet Alliance, 2020) 1 <https://www.unsw.edu.au/content/dam/pdfs/unsw-adobe-websites/arts-design-architecture/ada-faculty/csrh/2022-01-stigma-indicators-summary-sw-2021.pdf>.
15 See Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 159 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
16 Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 58.
17 University of New South Wales, *Stigma Indicators Monitoring Project Summary: Sex Workers* (Centre for Social Research in Health and Scarlet Alliance, 2020) 2 <https://www.unsw.edu.au/content/dam/pdfs/unsw-adobe-websites/arts-design-architecture/ada-faculty/csrh/2022-01-stigma-indicators-summary-sw-2021.pdf>.
18 See Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 158 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
19 Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 58.
20 English Collective of Prostitutes, *Decriminalisation of Prostitution: the Evidence*, Report of parliamentary symposium, 3 November 2015, House of Commons (2016) 17 (C Healy, NZPC).
21 See, in a different context, myPolice Queensland Police News, 'Logan police launch co-response model with Centre for Women & Co' (9 June 2022) <https://mypolice.qld.gov.au/news/2022/06/09/logan-police-launch-co-response-model-with-centre-for-women-co/>.
22 See Queensland Police Service, *Operational Procedures Manual: Chapter 1 Operational Management* (9 December 2022) [1.4.10]–[1.4.11], [1.7.10]; Queensland Police Service, *Operational Procedures Manual: Chapter 2 Investigative Process* (9 December 2022) [2.6.3]; Queensland Police Service, *Operational Procedures Manual: Chapter 6 Persons who are Vulnerable, Disabled or have Cultural Needs* (9 December 2022) [6.4.3].
23 Queensland Police Service, Submission to the Women's Safety and Justice Taskforce, *Discussion Paper No 2: Women and Girls' Experience of the Criminal Justice System* (2021) 13.
24 G Abel & C Healy, 'Sex worker-led provision of services in New Zealand: optimising health and safety in a decriminalised context' in SM Goldenberg et al, *Sex Work, Health, and Human Rights* (Springer, 2021) 175, 178–9.
25 NZPC and New Zealand Police, *A Guide for sex workers who have experienced sexual assault* 23 <https://www.nzpc.org.nz/pdfs/What-to-do-NZPC-OCT-2022-update.pdf>.
26 See Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 158 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
27 See ibid 16, 158 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
28 Respect Inc, 'Crimson Clinic FAQ' <https://respectqld.org.au/crimsonfaq/>.

8

Other matters

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Other matters

'The criminalisation of sex work has led to a common belief amongst clients – that they can stealth or not pay sex workers without consequences.'

—Migrant sex worker submission

'[P]ervasive sex-work stigma can greatly impact how we are perceived as victims/ survivors of sexual assault.'

—Scarlet Alliance submission

'Consideration should be given to how the legislative framework for a decriminalised sex-work industry could enable a sex worker to have someone assisting with protection and recovery of money.'

—Queensland Law Society submission

'[I]f a brothel wishes to apply for a liquor licence, they should be subject to the same application methods, rules and approvals as any other business.'

—Respect Inc and #DecrimQLD submission

'In order to achieve full decriminalisation, it is important that it is all inclusive. This means, all sex workers, including strippers.'

—Sex worker and stripper submission

'I have a criminal record for trying to do sex work safely … which makes it so I cannot get another job, especially in child care, and it removes opportunities for the future that other people enjoy … If I want to travel to other countries like England or America, those criminal charges will make it so that I cannot get a visa.'

—Sex worker submission

Summary

8.1 We were asked to consider if the criminal law should be changed to address concerns about fraudulent promises to pay sex workers for agreed sexual services. Submissions to our review also raised issues about stealthing, supply of alcohol by sex-work businesses, sex work performed by strippers, and expunging sex-work charges and convictions from criminal records.

8.2 These are significant and complex issues that highlight important concerns about access to justice and safety for sex workers and others. However, most of these issues are secondary to the decriminalisation of sex work and we do not make recommendations about them for specific changes to the law.

8.3 Fraudulent promises to pay a sex worker for agreed sexual services are adequately covered by the current criminal law and our recommended framework for a decriminalised sex-work industry, including the coercion offence recommended in chapter 6. We recommend that guidance be given to police and

prosecutors to help them respond to sex-worker complainants, and that community legal services support sex workers to access their legal rights.

8.4 Stealthing, which involves the non-consensual removal of or failure to use a condom, is addressed by a Women's Safety and Justice Taskforce recommendation that the Queensland Government has committed to implementing.

8.5 The supply of alcohol by sex-work businesses should be regulated by standard liquor licensing laws, with policy developed by the Office of Liquor and Gaming Regulation (OLGR).

8.6 Strippers who perform sex work will benefit from decriminalisation, along with other sex workers. The regulation of adult entertainment under the Liquor Act is separate to the regulation of sex work and is not a focus of our review. Workplace exploitation at licensed adult entertainment premises is a matter for regulators under general laws, including for police in cases of serious violence. It is a policy matter for the Queensland Government to consider if changes to the regulation of adult entertainment should be made.

8.7 Expungement of sex-work convictions raises considerations outside the scope of our review. Some concerns raised in submissions about disclosure of criminal records for sex-work offences might be addressed by other laws. We note that the Queensland Human Rights Commission (QHRC) recommends that 'irrelevant criminal record' be made a protected attribute in the Anti-Discrimination Act.

8.8 In considering these and other issues, we identify consequential amendments to other legislation to reflect our recommendations about changes to the Prostitution Act and chapter 22A of the Criminal Code to decriminalise sex work and remove the brothel licensing system. The details of these amendments are set out in the table of drafting instructions which form volume 2 of our report.

Recommendations

R45 As part of the education and other measures we recommend in R39 to R41:

(a) the Queensland Police Service should give police officers guidance and support to help them respond appropriately to sex workers as victims of crime, including information about relevant offences that may apply in cases involving fraudulent promises to pay a sex worker for agreed sexual services, and taking a victim-centred approach

(b) the Director of Public Prosecutions should give prosecutors information and guidance about the approach to prosecuting offences involving sex-worker complainants

(c) community legal services should offer support for sex workers to help them access their legal rights, including in cases where clients do not pay for agreed services.

R46 The supply of alcohol by sex-work businesses should be regulated by the Liquor Act, with policy developed by the Office of Liquor and Gaming Regulation.

R47 The consequential amendments to other legislation that we identify in our table of drafting instructions in volume 2 of our report should be made. The provisions refer to offences, provisions and terms in the Prostitution Act or chapter 22A of the Criminal Code that need to be amended to reflect the recommended repeal of provisions to decriminalise sex work and remove the brothel licensing system.

Fraudulent promises to pay

8.9 In recommending a framework for a decriminalised sex-work industry, our terms of reference include considering if any changes to the law are needed to deal with situations where a person has promised to pay money to a sex worker for a sexual act but the payment is not made.[1] We take this to mean non-payment where a person fraudulently promises to pay a sex worker, not innocent circumstances like the malfunction of a credit card.[2]

8.10 Recent cases involving fraudulent promises to pay a sex worker are said to 'reflect problematic trends in client behaviour, including expectations of free sexual services, minimising of their own culpability, assumptions that sex workers are easy victims, and practices of timewasting. These practices of trickery, bargaining and calculation indicate a lack of respect for the role, labour and bodily integrity of sex workers'.[3]

8.11 Sex work is a commercial arrangement. But it also directly concerns the participants' bodily integrity and sexual autonomy. It engages civil and criminal law. A sex worker who is not paid as agreed could take civil action to recover the payment. Depending on the circumstances, crimes such as stealing, fraud, robbery, procuring sexual acts by coercion, sexual assault or rape could apply.

8.12 As outlined in chapter 18 of our consultation paper, rape and sexual assault require proof that the sexual act occurred without consent. Consent is defined in section 348 of the Criminal Code. Without limiting the definition, section 348(2) lists circumstances in which consent is vitiated (not effective). This includes section 348(2)(e), where consent is obtained by 'false and fraudulent representations about the nature or purpose of the act'. Case law on this is not settled, but a person's fraudulent promise to pay a sex worker for a sexual act is unlikely to fall within section 348(2)(e).[4]

8.13 Different approaches are taken or are open in other jurisdictions. Caution is needed when comparing jurisdictions, as the structure of criminal law varies between jurisdictions. Cases involving fraudulent promises to pay a sex worker have been prosecuted as:

- fraud – in Queensland and New Zealand[5]
- procuring a sexual act by fraud – in Victoria[6]
- rape – in the Australian Capital Territory and Victoria.[7]

8.14 New affirmative consent reforms in Victoria, scheduled to commence in July 2023, include changes to the list of circumstances in which a person does not consent. The list includes a new provision stating that a person does not consent if the sexual act 'occurs in the provision of commercial sexual services and the person engages in the act because of a false or misleading representation that the person will be paid'. This recognises that sex work 'is contingent on payment' and will make it clear that 'in some situations, this conduct could be rape or sexual assault'. It could cover providing false bank details, falsifying proof of payment, or reversing or withdrawing an electronic payment.[8]

8.15 Sex-worker organisations, sex workers and others submitted that current criminal laws in Queensland are not adequate to deal with this issue, with police responses being a major barrier.[9] Submissions said this is rape or sexual assault, not fraud. Consent to provide agreed sexual services is based on payment. But police are reluctant to treat this as rape under section 348(2)(e) of the Criminal Code. Police may see fraudulent non-payment as 'a purely civil matter' or pursue 'lesser charges' such as theft or fraud. Stigma and misunderstanding can influence police responses to sex workers who may be seen as potential offenders rather than complainants. Fear of being stigmatised and a lack of trust in police and the legal system are barriers to sex workers reporting their experiences.

8.16 Many submissions proposed a specific change to section 348(2)(e) of the Criminal Code to include 'the withdrawal of payment or non-payment of a sex worker' as a circumstance in which consent to a sexual act is vitiated.[10] Respect Inc and #DecrimQLD submitted that 'unless this is clarified in the legislation police are unlikely to shift their understanding or approach and cases of rape will continue to go unaddressed, including by serial offenders'.[11]

8.17 However, the Bar Association of Queensland, the Queensland Law Society and some others said changes to the criminal law are not needed. Fraudulent promises to pay a sex worker can appropriately be addressed under sections 218 or 408C of the Criminal Code or, in less serious cases, as a civil debt recovery matter. Adding the non-payment of a sex worker to section 348(2) could create a new category of rape relating to the recovery of money, which may be at odds with community understanding. Alternatively, widening section 348(2)(e) to refer to any fraudulent representation could be used to prosecute people who do not disclose their HIV status or gender identity, further marginalising people living with HIV or transgender people.

8.18 In our view, current criminal laws – combined with changes made by our recommended framework for a decriminalised sex-work industry – are adequate to deal with fraudulent promises to pay a sex worker for agreed sexual services. We do not recommend any further changes to the Criminal Code on this issue.

8.19 Decriminalising sex work will recognise sex work as legitimate work, help reduce stigma and remove significant existing barriers to sex workers' access to justice. It will be easier for sex workers to screen and negotiate with clients, adopt safety strategies and standard business practices, and access protections and rights under general laws.[12] Reliance on laws of general application, that do not single out sex workers, is consistent with the aims of decriminalisation.

8.20 Depending on the circumstances and the nature of a complaint, different offences in the Criminal Code are potentially relevant, including procuring sexual acts by coercion in section 218 and fraud in section 408C. This approach is consistent with New Zealand. The new coercion offence we recommend in chapter 6 will also give direct protection.[13] It applies to a person who intentionally induces someone by coercion – including by 'false representation, false pretence or other fraud' – to provide or continue to provide commercial sexual services, and has a recommended maximum penalty of 10 years' imprisonment.

8.21 It is also open for particular cases that involve fraudulent promises to pay a sex worker to be prosecuted as rape or sexual assault. The list of vitiating circumstances in section 348(2) of the Criminal Code is not exhaustive and does not limit the wide definition of consent in section 348(1). Depending on the facts of a case, a fraudulent promise to pay might be found to have vitiated the complainant's consent to the sexual act.

8.22 Making specific amendments to section 348(2) outside the context of a wider review of sexual offences and consent laws could have unintended consequences. We note that the Women's Safety and Justice Taskforce looked at consent laws in its second report on the experience of women in the criminal justice system, released in July 2022. That report recommends changes to section 348 to adopt an affirmative model of consent, including expanding the list of vitiating circumstances in section 348(2) to reflect those in the New South Wales legislation.[14]

8.23 The list of circumstances in New South Wales includes participation in a sexual act because of 'a fraudulent inducement'.[15] Unlike section 348(2)(e) of the Criminal Code, this is not limited to fraudulent representations 'about the nature or purpose of the act'. Under this approach, fraudulent promises to pay a sex worker could more readily be recognised as rape or sexual assault in appropriate cases.

8.24 The Queensland Government has said it supports the Women's Safety and Justice Taskforce recommendation and will consult with stakeholders to ensure the amendments operate fairly and are consistent with community values.[16]

8.25 Decriminalisation is a necessary first step to remove existing barriers to sex workers' access to these laws. It needs to be supported with other non-legislative measures. In chapter 7 we make recommendations about educating and building positive relationships with police and other authorities, and educating sex workers about their legal rights and obligations. In our view, those measures should also include the following:

- guidance and support for police to help them respond appropriately to sex workers as victims of crime, including information about offences that may apply and taking a victim-centred approach. The Queensland Police Service could consider incorporating this in existing or new initiatives, including as

part of ongoing sexual violence training, the State Sex Worker Liaison Officer role and the Operational Procedures Manual

- information and guidance for prosecutors about prosecuting offences involving sex-worker complainants. The Director of Public Prosecutions could consider including this in the Director's Guidelines
- support from community legal services to help sex workers access their legal rights, including in cases where clients do not pay for agreed services. Community legal services could consider specialist legal advice and case work services tailored to the needs of sex workers.[17]

Stealthing

8.26 Many submissions to our review, including from sex workers, raised the practice of 'stealthing', where a person participating in a sexual act with another person does not use a condom as agreed or removes or tampers with a condom without the other person's consent. Submissions said stealthing invalidates consent to the sexual act and should be recognised as rape or sexual assault. Submissions proposed that section 348(2) of the Criminal Code be changed to provide that consent is not free and voluntary if it is obtained 'by an intentional misrepresentation by another person about the use of a condom'.[18]

8.27 Stealthing is not unique to sex work and falls outside our terms of reference. We make no recommendations about it.

8.28 In its second report on the experience of women in the criminal justice system, in July 2022, the Women's Safety and Justice Taskforce recommended changes to section 348 of the Criminal Code to explicitly recognise stealthing. The Queensland Government has committed to implementing this recommendation.[19]

8.29 Stealthing laws have been introduced or are being considered in many other Australian jurisdictions[20] and have been raised for consideration nationally.[21]

Liquor licensing

8.30 The supply of alcohol on premises is governed by the Liquor Act, which creates a system of licences and permits, and states where and when alcohol can be served. The Liquor Act includes offences against the sale of liquor by unlicensed people or on unlicensed premises and includes requirements about responsible service of alcohol. Different licences are required depending on the type of business or organisation. The system is regulated by OLGR.[22]

8.31 Presently, licensed brothels are excluded from having a liquor licence and supplying alcohol:

- under the Liquor Act, a person who holds a brothel licence or has an interest in a brothel may not apply for or hold a liquor licence or permit[23]
- under the Prostitution Act, a brothel licensee or an approved manager of a brothel must not hold a liquor licence or permit, and alcohol is not permitted at a licensed brothel.[24]

8.32 Some submissions to our review said sex-work business operators in a decriminalised framework should be able to apply for a liquor licence in the same way as any other business, or that sex-work businesses should be allowed to serve alcohol.[25] Other submissions, including from sex workers, did not support the supply of alcohol at sex-work business premises, noting difficulties with the safe service of alcohol and risks of harm from intoxicated clients. A sex worker said: 'Keeping alcohol off our premises keeps all parties safe and coherent enough to continue to follow the rest of the laws'.

8.33 In #DecrimQLD's 2022 survey of sex workers, 44.6% of respondents selected 'alcohol licensing' as one of many factors that would improve brothel workplaces. Other factors included improved pay, training, management, facilities, privacy and security.[26] The Queensland Adult Business Association (QABA) told us 'safe sex, coercing, bullying, drugs and alcohol' were among topics of concern identified by respondents to its survey of sex workers in licensed brothels.

8.34 We do not make any recommendations about specific provisions dealing with the supply or consumption of alcohol on sex-work business premises. In our view, the supply of alcohol at sex-work business premises raises complex issues that should be left to standard liquor licensing laws and OLGR as the relevant regulator. This is consistent with the decriminalised framework approach of regulating the sex-work industry under existing general laws.

8.35 It is a matter for the Queensland Government to decide, after appropriate consultation with the industry and other stakeholders, if any specific restrictions or provisions should apply to sex-work businesses under the Liquor Act. Policy should be developed by OLGR. The aims of not singling out sex work for special laws without justification and of safeguarding safety and health should be considered. One of the purposes of the Liquor Act is to 'regulate the sale and supply of liquor in particular areas to minimise harm caused by alcohol abuse and misuse and associated violence'.[27]

8.36 We note that the second stage of decriminalisation reforms in Victoria will remove the brothel licensing system, including the current restriction on the sale, supply and consumption of alcohol at brothels.[28] It is intended that sex-work businesses in Victoria will be regulated under standard laws with 'the establishment of appropriate liquor controls for the sex work industry'.[29]

8.37 Presently, section 106(3) of the Liquor Act, and related definitions in section 4, refer to brothel licensees and provisions of the Prostitution Act.[30] As we identify in our table of drafting instructions, consequential amendment or repeal of those sections is needed to reflect the removal of the brothel licensing system and repeal of provisions in the Prostitution Act, which we recommend in chapter 3 (see volume 2 of our report).

Adult entertainment

8.38 Under the Liquor Act, adult entertainment is 'live entertainment that may be performed for an audience, by a person performing an act of an explicit sexual nature'.[31] This includes stripping, exotic nude dancing and nude wait staffing.[32] Under the Act, adult entertainment may be provided at licensed premises only if it is authorised under an adult entertainment permit issued by OLGR.[33] Only a person holding a liquor licence is eligible to apply for or be granted an adult entertainment permit.[34] An applicant must also have consent of the relevant local government.[35]

8.39 An adult entertainment permit authorises specific types of activities. Under the Liquor Act, adult entertainment at licensed premises does not include the performance of masturbation, oral sex or sexual intercourse.[36] It is further limited by an approved Adult Entertainment Code which, among other matters, prohibits an adult entertainer from soliciting for sex work.[37] The intention is that adult entertainment should be distinguishable from sex work, so they are regulated separately.[38]

8.40 These provisions are supported by offences for non-compliance with the Act or the conditions of a permit. The offences (and possible disciplinary action) apply to licensees, holders of adult entertainment permits, and adult entertainment controllers.[39]

8.41 Stripping or similar forms of adult entertainment may also occur at premises that are not licensed under the Liquor Act, such as when a stripper is hired to perform at a private event. In these circumstances, an adult entertainment permit is not required, so permit restrictions do not apply.

8.42 Sex workers and sex-worker organisations told us strippers providing 'extras' to clients at licensed adult entertainment premises should not be excluded from decriminalisation of the sex-work industry. We take

'extras' to mean activities excluded from adult entertainment and that may, depending on circumstances, be considered sex work. Many submissions to our review said 'no sex workers should be left behind' and decriminalisation should apply to all sex workers in all settings, including strippers and exotic dancers.[40]

8.43 Multiple laws, including work laws and planning laws, apply to any industry or form of work. Strippers providing extras while working at licensed adult entertainment premises fall under 2 different systems of regulation for 2 different industries – the regulation of sex work for the sex-work industry and the regulation of adult entertainment for the liquor industry. What is permitted under one system of regulation may not be permissible under another, based on policy considerations about activities that are appropriate at licensed premises.

8.44 Strippers providing extras that may amount to sex work will be included in the benefits of decriminalisation, along with any other person who engages in sex work. The offences under the Liquor Act for unauthorised adult entertainment apply to licensees, permit holders and controllers who supervise the provision of adult entertainment, not to individuals employed as adult entertainers. Currently, strippers providing extras that may be considered sex work could commit a sex-work offence under the Criminal Code or the Prostitution Act, even if they are not working at licensed premises. This will not be the case under the recommended decriminalisation framework, as we recommend the removal of those offences. This includes the sex-work-specific offences in chapter 22A of the Criminal Code and the offence against public soliciting for sex work in section 73 of the Prostitution Act.

8.45 Some concerns have been raised about the exploitation of workers at licensed adult entertainment premises.[41] These are serious matters concerning the rights, health and safety of workers. In our view, they are matters for consideration by those who regulate the liquor industry and enforce the Liquor Act, and those who enforce other laws of general application, such as workplace relations laws and work health and safety laws. Exploitation involving violence, sexual or otherwise, is a serious criminal offence and a matter for investigation by police. Decriminalisation of sex work will help remove existing barriers for strippers providing sex work extras to access protections and make complaints to police and other authorities.

8.46 The regulation of adult entertainment under the Liquor Act involves a different industry. It is separate to the regulation of sex work, and has not been the focus of our review. It is ultimately a matter for the Queensland Government to consider if a different approach to the regulation of adult entertainment in the liquor industry should be taken. This raises complex policy issues about activities allowed on licensed premises and authorised or excluded by adult entertainment permits, and would require consultation with stakeholders in that industry, including venue operators, employers, workers, unions and regulators.

8.47 As we identify in our table of drafting instructions in volume 2, the sex-work decriminalisation reforms we recommend will necessitate consequential amendments to provisions of the Liquor Act dealing with adult entertainment, mostly because in chapter 3 we recommend removing the brothel licensing system and abolishing the Prostitution Licensing Authority.[42] We also identify consequential amendments to the Adult Entertainment Code, which is an attachment to the *Liquor (Approval of Adult Entertainment Code) Regulation 2002*, to remove references to the Prostitution Act and Prostitution Regulation and to refer to 'sex work' instead of 'prostitution'.

Expungement of convictions

8.48 Some submissions to our review said previous sex-work charges and convictions should be removed (expunged) from a person's criminal record.[43] Respect Inc and #DecrimQLD said expungement should be part of the shift to a decriminalised sex-work industry, particularly for sex workers who have been 'entrapped' by police. They also noted that some sex workers have criminal charges that were issued 'during the pre-Fitzgerald era'.

8.49 A person's criminal record can affect their ability to work in certain jobs or roles, or obtain an entry visa to another country.[44] Having a criminal record can also be stigmatising. Some submissions said people with criminal records relating to sex work should be protected from discrimination, including discrimination by potential employers.[45] An academic and sex worker said removing criminal records is 'vital precisely because such records are used to discriminate against sex workers' in employment, accommodation and finance.

8.50 Some of these concerns might be addressed by other general laws, including spent convictions and discrimination laws:

- Many criminal convictions are covered by the spent convictions framework in the Rehabilitation of Offenders Act. The framework applies to a conviction where either no term of imprisonment, or a term of imprisonment of no more than 30 months, was imposed. After a certain period has passed without any further convictions, the conviction does not have to be disclosed and is disregarded. The period is usually 10 years for indictable offences and 5 years for other offences. However, there are exceptions in the Rehabilitation of Offenders Act for certain professions and occupations where a conviction may still need to be disclosed and can be considered. Disclosure may be expressly required by another law.[46]
- Under the *Australian Human Rights Commission Act 1986* (Cth), a person can make a complaint to the Australian Human Rights Commission (AHRC) about discrimination in employment or occupation – including being refused a job – based on an irrelevant criminal record.[47] The AHRC can investigate the complaint and try to resolve it in discussion between the parties.
- Discrimination based on an irrelevant criminal record is prohibited in some states and territories.[48] As we note in chapter 4, the QHRC recommends that 'irrelevant criminal record' also becomes a protected attribute in the Anti-Discrimination Act. This would include a conviction where 'the circumstances of the offence are not directly relevant to the situation in which discrimination arises'. The 'recency and severity' of the person's criminal history would be a relevant consideration. The QHRC said: 'Submissions highlighted the impacts of criminal record discrimination on employment opportunities, and in particular the disadvantage to women, young people, Aboriginal and Torres Strait Islander communities, and sex workers, including people who experience discrimination on the basis of combined attributes'.[49] The Queensland Government is currently considering the QHRC's recommendations.[50]
- State and Commonwealth privacy laws offer some protection about the use and disclosure of personal information held by government agencies, health agencies and some private organisations.[51]

8.51 We make no recommendations about the expungement of charges or convictions for sex-work offences from a person's criminal record. Expungement is a secondary issue to the decriminalisation of the sex-work industry. It raises complex considerations outside the scope of our review, including identifying which historical charges or convictions may be appropriate to be expunged and how an expungement process could operate. Expungement of previous convictions is not a feature of the decriminalisation laws in New Zealand, the Northern Territory or Victoria.[52]

8.52 We note that, under section 9A of the Rehabilitation of Offenders Act, a person who applies for a licence or an approved manager's certificate under the Prostitution Act must, if requested or required for their application, disclose their criminal history and any spent convictions. Consequential amendment to section 9A(1) is needed to reflect the removal of the brothel licensing system, which we recommend in chapter 3 (see our table of drafting instructions in volume 2).[53]

8.53 In our table of drafting instructions we also identify the following Acts that may require consequential amendment to reflect the repeal of sex-work-specific offences, which we recommend in chapters 2 and 4. Under these Acts, convictions for sex-work-specific offences can disqualify or prevent a person from holding a licence, permit, authorisation or other clearance required for particular work:

- *Disability Services Act 2006* (screening requirements for disability workers) – referring to convictions for offences against sections 229FA, 229G(2), 229H(2), 229HB(2), 229I(2) or 229L in chapter 22A of the Criminal Code[54]
- *Introduction Agents Act 2001* (suitability requirements for holding an introduction agent licence) – referring to convictions for an offence against the Prostitution Act or an offence against a provision in chapter 22A of the Criminal Code[55]
- Liquor Act (suitability requirements for holding an adult entertainment permit or approval as an adult entertainment controller) – referring to convictions for an offence against the Prostitution Act[56]
- *Transport Operations (Passenger Transport) Act 1994* (requirements for holding a driver authorisation) – referring to convictions for an offence against sections 229G, 229H(2), 229I(2) and 229L of the Criminal Code[57]
- *Working with Children (Risk Management and Screening) Act 2000* (screening requirements for working with children and young people) – referring to convictions for offences against sections 229G(2), 229H(2), 229I(2) and 229L of the Criminal Code.[58]

8.54 It is a policy matter for the Queensland Government to decide if any repealed offences should remain disqualifying offences or relevant considerations under the Acts listed above. It is also a policy matter for the government to decide if the screening or suitability requirements in those Acts should refer to the new offences we recommend in chapter 6. These policy matters are best considered by the departments and agencies with responsibility for administering the Acts, considering the particular legislative purposes and context.

Consequential amendments to other legislation

8.55 Throughout our report we recommend changes to the current legal framework regulating prostitution to give effect to the decriminalisation of sex work and to remove the brothel licensing system. The recommended changes include the repeal of sex-work-specific offences and other provisions in the Prostitution Act and chapter 22A of the Criminal Code.

8.56 The Queensland statute book contains other legislation that refer to provisions about sex work, which will be repealed under the recommended decriminalisation framework. If the sex work provisions are repealed as we recommend, the references in those other Acts and Regulations will need to be removed. We highlight some examples of this in other parts of our report, including in this chapter.

8.57 The consequential amendments to other legislation we identify are detailed in the table of drafting instructions that forms volume 2 of our report. They include amendments to remove references to provisions, definitions and terms in the Prostitution Act, offences and related provisions in chapter 22A of the Criminal Code, and statutory entities such as brothel licensees and the Prostitution Licensing Authority.

8.58 Some consequential amendments raise policy issues about other changes that could be considered. For example, a provision of an Act that refers to a premises where prostitution occurs could be either repealed or replaced to refer to a premises where sex work occurs.[59] Similarly, a reference to an offence against a child under chapter 22A of the Criminal Code could in some cases either be removed or replaced with a reference to the new offences we recommend in chapter 6 about the involvement of children in commercial sexual services.[60] These are policy matters for the Queensland Government to consider, taking into account the legislative contexts, purposes and policy aims of each relevant Act. We identify these matters in our table of drafting instructions.

1 Terms of reference para 2.
2 See generally QLRC, *A Framework for a Decriminalised Sex Work Industry in Queensland*, Consultation Paper WP No 80 (April 2022) ch 18.
3 Z Stardust & H Caldwell, 'Archetypal sluts: payment of sex workers as a condition of consent' in K Gleeson & Y Russell (eds), *New Directions in Sexual Violence Scholarship* (Routledge, 1st ed, 2023 forthcoming).
4 See e.g. *R v Winchester* [2014] 1 Qd R 44, 65 [75] (Muir JA). See also *Papadimitropoulos v The Queen* (1957) 98 CLR 249; *R v Pryor* (2001) 124 A Crim R 22; *R v BAS* [2005] QCA 97.
5 See e.g. Criminal Code (Qld) s 408C; *Crimes Act 1961* (NZ) ss 240, 241; J Lill, 'Man taken to court after defrauding Brisbane sex workers', *The Courier Mail* (online, 12 October 2018); Respect Inc, 'Sex workers win in court despite bad laws, Queensland' (media release, 15 October 2018) <https://respectqld.org.au/media-release-oct-2018-sex-workers-win-in-court-despite-bad-laws-queensland/>; D Clarkson, 'Fraudster's $18,000 crime spree hits brothels, sex worker, hotels, Facebook', *NZ Herald* (online, 22 April 2022) <https://www.nzherald.co.nz/nz/fraudsters-18000-crime-spree-hit-brothels-sex-worker-hotels-facebook/LXAAP67K44FRPOIUZQ3QVBP7AI/>.
6 See *Crimes Act 1958* (Vic) s 45; *R v Rajakaruna* (2004) 8 VR 340; *Onnis v The Queen* [2013] VSCA 271.
7 See *Crimes Act 1900* (ACT) s 67(1)(i); *Crimes Act 1958* (Vic) s 38; *R v Livas* [2015] ACTSC 50; *Livas v The Queen* [2015] ACTCA 54; *R v Mynott (No 2)* [2020] ACTSC 232; *R v Rajakaruna* (2004) 8 VR 340.
8 See *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic) ss 2(3), 5, inserting *Crimes Act 1958* (Vic) s 36AA(1)(m), (2); Victoria, *Parliamentary Debates*, Legislative Assembly, 4 August 2022, 2903 (Kilkenny, Minister for Corrections, Minister for Youth Justice, Minister for Victim Support, Minister for Fishing and Boating).
9 See also Z Stardust et al, '"I wouldn't call the cops if I was being bashed to death": sex work, whore stigma and the criminal legal system' (2021) 10(3) *International Journal for Crime, Justice and Social Democracy* 142, 152; M McGowan & C Knaus, '"It absolutely should be seen as rape": when sex workers are conned', *The Guardian* (online, 13 October 2018) <https://www.theguardian.com/australia-news/2018/oct/13/it-absolutely-should-be-seen-as-when-sex-workers-are-conned>.
10 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 165 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
11 Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 165 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
12 See e.g. L Armstrong, 'From law enforcement to protection? Interactions between sex workers and police in a decriminalized street-based sex industry' (2017) 57(3) *British Journal of Criminology* 570, 580–82.
13 See also New Zealand Prostitutes Collective (NZPC), 'Decriminalisation of sex work in New Zealand' (2013) 5 <https://www.nzpc.org.nz/pdfs/Video-Booklet-Decriminalisation_of_Sex_Work_in_New_Zealand.pdf>.
14 Women's Safety and Justice Taskforce, *Hear Her Voice – Report Two Women and Girls' Experience of the Criminal Justice System* (2022) vol 1, ch 2.7, Rec 43(b).
15 See *Crimes Act 1900* (NSW) s 61HJ(1)(k).
16 Department of Justice and Attorney-General (Queensland), *Queensland Government Response to the Report of the Queensland Women's Safety and Justice Taskforce, Hear Her Voice – Report Two Women and Girls' Experience Across the Criminal Justice System* (2022) 19, tabled in parliament on 1 December 2022.
17 See e.g. Inner City Legal Centre (NSW), *ICLC Annual Report 2021–2022* (2022) 23.
18 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 166–7 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
19 See Women's Safety and Justice Taskforce, *Hear Her Voice – Report Two Women and Girls' Experience of the Criminal Justice System* (2022) vol 1, 218–19, Rec 44; Department of Justice and Attorney-General (Queensland), *Queensland Government Response to the Report of the Queensland Women's Safety and Justice Taskforce, Hear Her Voice – Report Two Women and Girls' Experience Across the Criminal Justice System* (2022) 6, 19, tabled in parliament on 1 December 2022.
20 See *Crimes Act 1900* (ACT) s 67(1)(j); *Crimes Act 1900* (NSW) s 61HI(5), example; Criminal Code (Tas) s 2A(2A); *Crimes Act 1958* (Vic) ss 36(2)(ka), 36AA(1)(o) to be inserted by *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic) ss 3(1), 5 (not yet in force); *Criminal Law Consolidation Act 1935* (SA) s 46(3)(ga) to be inserted by the *Statutes Amendment (Stealthing and Consent) Act 2022* (SA) s 3 (not yet in force); Law Reform Commission of Western Australia, *Project 113 Sexual Offences – Discussion Paper Volume 1: Objectives, Consent and Mistake of Fact* (December 2022) [4.147] ff, Q11(d)(iv).
21 See e.g. The Australia Institute, 'Roundtable to tackle national "stealthing" laws with sexual consent advocates', (Media Release, 7 July 2022) <https://australiainstitute.org.au/post/roundtable-to-tackle-national-stealthing-laws-with-sexual-consent-advocates/>; S Ison, 'Four in five Australians want stealthing criminalised', *The Australian* (online, 14 October 2022).
22 See generally *Liquor Act 1992* ss 3, 3A, pts 4, 4A, pt 6 divs 1AA, 3; Business Queensland, 'Liquor and wine licence and permit applications' (27 April 2021) <https://www.business.qld.gov.au/industries/hospitality-tourism-sport/liquor-gaming/liquor/licensing/applications> and the links available there.
23 See *Liquor Act 1992* (Qld) s 106(3). See also the related definitions of 'brothel licence' and 'interest in a brothel' in s 4.
24 See *Prostitution Act 1999* ss 8(d), 16(1)(c), 17(1)(k), 34(d), 83 (in pt 3 and pt 6 div 2).
25 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, A framework for a decriminalised sex work industry in Queensland (June 2022) 160–61 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
26 See ibid. See also #DecrimQLD, 'Evidence: 2022 survey of sex workers working in Qld & outcomes', *Respect Inc* <https://respectqld.org.au/decriminalise-sex-work/the-evidence/>.
27 *Liquor Act 1992* s 3(e).
28 See *Sex Work Act 1994* (Vic) s 21, to be repealed by *Sex Work Decriminalisation Act 2022* (Vic) s 37.
29 Victorian Government, 'Decriminalising sex work in Victoria' (13 July 2022) <https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>. See also Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3883 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating); Explanatory Memorandum, Sex Work Decriminalisation Bill 2021 (Vic) 10.
30 *Liquor Act 1992* (Qld) ss 4 (definitions of 'brothel licence', 'interest in a brothel'), 106(3).
31 *Liquor Act 1992* (Qld) s 103N(2).
32 See generally Business Queensland, 'Adult entertainment permits' (1 July 2022) <https://www.business.qld.gov.au/industries/hospitality-tourism-sport/liquor-gaming/liquor/licensing/applications/adult-entertainment>.
33 *Liquor Act 1992* (Qld) ss 100, 107D, 107E, 107F, 149A.
34 *Liquor Act 1992* (Qld) s 103O(1).
35 *Liquor Act 1992* (Qld) s 105B(1).
36 *Liquor Act 1992* (Qld) s 103N(3). See also Adult Entertainment Code (Qld) cll 2, 14.
37 The Adult Entertainment Code (Qld) is issued under s 103N of the *Liquor Act 1992* (Qld).

38 Queensland, *Parliamentary Debates,* Legislative Assembly, 10 November 1999, 4828-4829 (Barton, Minister for Police and Corrective Services).
39 See e.g. *Liquor Act 1992* (Qld) ss 149A (providing adult entertainment without adult entertainment permit), 149B (supervising adult entertainment).
40 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 159–60 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>
41 P Hosier, 'Queensland strippers make disturbing allegations of wage theft, exploitation and sexual assault in clubs', ABC News (online, 3 October 2022).
42 See e.g. *Liquor Act 1992* (Qld) ss 103N(7), 107D(1)(b), 107F(2)(c), 142ZK(3)(a), 142ZK(3)(b)(ii), 142ZO(3)(b), 142ZQ(1)(b)(ii).
43 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, A framework for a decriminalised sex work industry in Queensland (June 2022) 22–3, 29, 41, 162, 163 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
44 See e.g. *Immigration Act 2009* (NZ) s 15.
45 See e.g. Respect Inc and #DecrimQLD, Submission to QLRC, *A framework for a decriminalised sex work industry in Queensland* (June 2022) 162 <https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf>.
46 *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) ss 3(1) (definition of 'rehabilitation period'), (2), 6, 9, 9A, 11. See generally Queensland Government, 'Criminal records' (8 January 2019) <https://www.qld.gov.au/law/crime-and-police/criminal-records-and-history-checks/criminal-records>.
47 See *Australian Human Rights Commission Act 1986* (Cth) ss 3(1) (definition of 'discrimination'), 30–32; *Australian Human Rights Commission Regulations 2019* (Cth) reg 6(a)(iii). See generally Australian Human Rights Commission, 'Discrimination in employment on the basis of criminal record' (1 April 2013) <https://humanrights.gov.au/our-work/rights-and-freedoms/projects/discrimination-employment-basis-criminal-record>.
48 See *Discrimination Act 1991* (ACT) s 7(1)(k); *Anti-Discrimination Act 1992* (NT) s 19(1)(q); *Anti-Discrimination Act 1998* (Tas) s 16(q).
49 Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*, Report (July 2022) 315–23, Rec 29. See also *Discrimination Act 1991* (ACT) ss 2 Dictionary (definition of 'irrelevant criminal record'), 7(1)(k).
50 Queensland Government, *Interim Queensland Government Response to the Queensland Human Rights Commission's Report, Building Belonging—Review of Queensland's Anti-Discrimination Act 1991* (2022).
51 See *Information Privacy Act 2009* (Qld); *Privacy Act 1988* (Cth); *Public Records Act 2002* (Qld).
52 See e.g. K Harris, 'No work under way to expunge historic sex work convictions affecting more than 1000', *NZ Herald* (online, 14 July 2021). Cf Statutes Amendment (Decriminalisation of Sex Work) Bill 2018 (SA) pt 4 (not passed); and proposed Criminal Law (Sexual Offences and Related Matters) Amendment Bill 2022 (South Africa) cl 2, available at Parliamentary Monitoring Group <https://pmg.org.za/call-for-comment/1235/>.
53 See *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) s 9A(1) table items 11, 12.
54 See *Disability Services Act 2006* (Qld) pt 5, ss 50–51, 88, 90, 99, 138I, sch 4 item 4, sch 6 item 4, sch 8 (definitions of 'disqualified person', 'disqualifying offence', 'police information').
55 See *Introduction Agents Act 2001* (Qld) ss 21(c), 22(c), sch 1 pt 1 item 4, sch 2 (definition of 'disqualifying offence').
56 See *Liquor Act 1992* (Qld) ss 107D(1)(a), 107E(1)(b)(ii), (c)(ii), (d)(ii), 142ZK(1)–(2), (3)(b)(ii), 142ZQ(1)(b)(ii).
57 See *Transport Operations (Passenger Transport) Act 1994* (Qld) ss 28A, 28B, sch 1A pt 1 div 1 items 12–12D, sch 1A pt 2, sch 3 (definitions of 'category A driver disqualifying offence', 'category B driver disqualifying offence').
58 See *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 15–18, 176I–176J, 176K, 224, 295(a), 296, sch 2 item 4, sch 4 item 4.
59 See e.g. *Liquor Act 1992* (Qld) s 107D(1)(b).
60 See e.g. *Working with Children (Risk Management and Screening) Act 2000* (Qld) sch 2.

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List of recommendations

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Chapter 2: Decriminalisation

Working alone or with others

R1 The offences that criminalise sex work other than in licensed brothels or that require sex workers to work on their own should be removed. Sections 229G to 229K of the Criminal Code should be repealed, as well as related provisions in sections 229C to 229F and 229M to 229O of the Criminal Code. The related nuisance offence in section 76 of the Prostitution Act should be repealed.

Public soliciting

R2 The specific public soliciting offence for sex work should be removed and sections 73–75 of the Prostitution Act should be repealed, so that there are no sex-work-specific public soliciting laws. There should be no specific move-on power for police if they suspect a person is soliciting for sex work and section 46(5) of the Police Powers Act should be repealed.

Sex-work advertising

R3 The sex-work advertising offences should be removed and sections 93–96 of the Prostitution Act and section 15 of the Prostitution Regulation should be repealed. The guidelines about the approved form for sex-work advertisements issued by the Prostitution Licensing Authority (PLA) under section 139A of the Prostitution Act should also be removed. No new sex-work-specific advertising offences should be enacted.

R4 The assessment benchmarks about brothel signage should be removed by repealing item 5 of the table in schedule 3 of the Prostitution Regulation.

Police powers

R5 Sex-work-specific covert powers given to police should be removed. References in schedule 2 of the Police Powers Act to sections 229H, 229I and 229K of the Criminal Code and to sections

78(1), 79(1), 81(1) and 82 of the Prostitution Act should be removed. The reference in schedule 5 of the Police Powers Act to section 73 of the Prostitution Act should also be removed.

Chapter 3: Licensing

R6 The current licensing system should be removed and no new system of licensing or certification for sex-work business operators should be introduced. The Prostitution Licensing Authority and its associated Office of the Prostitution Licensing Authority should be abolished. Parts 3, 5, 7, 7A, 7B, part 6 divisions 2 and 5, and schedules 1–3 of the Prostitution Act should be repealed. Related provisions in part 2, parts 8–9, and schedule 4 of the Prostitution Act, and parts 2–3, 5–6, and schedules 1–2 and 4 of the Prostitution Regulation should also be repealed, as identified in our table of drafting instructions in volume 2 of our report.

Chapter 4: Health, safety and worker rights

Work laws, health and safety

R7 Specific obligations on brothel licensees about alarms, lighting and signs should be removed. Section 23 of the Prostitution Regulation should be repealed as part of the removal of the licensing system, and no similar sex-work-specific laws should be enacted.

R8 Workplace Health and Safety Queensland should develop work health and safety guidelines for and in consultation with the sex-work industry, including sex-worker organisations and other relevant people and agencies.

R9 A legislative provision stating that a contract for sex work is not illegal or unenforceable on public policy or similar grounds is not needed.

R10 A legislative provision stating that a sex worker may, at any time, refuse to perform or continue to perform sex work and that a contract for sex work does not constitute consent for the purposes of criminal law is not needed.

Public health and sex workers

R11 Sex-work-specific health offences should be removed. The offences in sections 77A, 89 and 90 of the Prostitution Act, the definition of 'sexually transmissible disease' in the Act, and the related provisions in sections 14 and 26 of the Prostitution Regulation should be repealed. No new sex-work-specific health offences should be enacted.

Discrimination protections

R12 The protected attribute of 'lawful sexual activity' in section 7(l) of the Anti-Discrimination Act should be retained. However, the definition of 'lawful sexual activity' in the schedule to the Act should be repealed and replaced with a new definition. 'Lawful sexual activity' should be defined to include being a sex worker or engaging in sex work. For this purpose, 'sex work' should be defined to mean an adult providing consensual sexual services, involving physical contact, to another adult in return for payment or reward.

R13 The accommodation exemption in section 106C of the Anti-Discrimination Act should be repealed.

R14 The work with children exemption as it applies to sex workers in section 28(1) of the Anti-Discrimination Act should be repealed.

Chapter 5: Planning and local laws

R15 The land-use term 'brothel' and its definition should be removed from schedule 3 of the Planning Regulation under the Planning Act. It should be replaced with the new land-use term 'sex work services', defined as the use of premises for sex work, with or without an ancillary outcall service. The new land use should not include:

(a) sex-work businesses that fall within the land-use definition of home-based business

(b) escort agency offices if no sex work occurs at the office or

(c) adult entertainment or non-sex-work sex-on-premises venues (e.g. swinger clubs).

R16 To help interpret the new land-use term and its definition, the following new administrative terms and definitions should be inserted in schedule 4 of the Planning Regulation:

(a) 'sex work' means an adult providing consensual sexual services to another adult for payment or reward

(b) 'sexual services' means participating in sexual activities that involve physical contact, including sexual intercourse, masturbation, oral sex or other activities involving physical contact for the other person's sexual gratification.

R17 All prohibited development provisions relating to brothels in schedule 10, part 2 of the Planning Regulation should be repealed so there are no sex-work-specific prohibitions. Any existing sex-work prohibitions applying in local government areas should cease to have effect.

R18 Sex-work businesses should be treated similarly to other businesses. This means:

(a) there should be no requirements for separation distances from other land uses or other sex-work businesses

(b) planning provisions should guide sex-work business sizes to the same extent as other commercial and home-based businesses

(c) home-based sex-work businesses should be treated like any other 'home-based business' land use

(d) 'sex work services' land uses should be guided towards centre (commercial) zones, mixed use zones and, in recognition of existing arrangements, industrial zones and strategic port land.

R19 The Queensland Government should lead integration of decriminalised sex work into the planning framework, while giving local governments some discretion, by:

(a) repealing section 25 and schedule 3 of the Prostitution Regulation under the Prostitution Act, which set out assessment benchmarks for brothels

(b) setting new planning requirements, including updated assessment benchmarks, in the Planning Regulation

(c) making the new planning requirements and assessment benchmarks the default provisions applying to sex work services when decriminalisation starts

(d) ensuring the planning requirements and assessment benchmarks for sex work services reflect recommendations in this report and include a requirement that all activities relating to sex work be contained wholly within a building and not be visible from windows, doors or outside the premises

(e) setting, or guiding, categories of assessment and ensuring the planning requirements do not prevent sex work services from being categorised as accepted development in suitable circumstances

(f) giving local governments the opportunity to set their own alternative planning requirements and assessment benchmarks, subject to State-imposed requirements designed to make sure:

i. principles outlined in this chapter are implemented and

ii. reasonable opportunities are available for sex-work businesses to establish or become compliant with planning laws.

R20 To help address sex-worker privacy concerns (which may be a barrier to seeking planning approval), the Queensland Government should prepare guidance material to help sex-work business development applicants to request – and local governments to apply – existing privacy mechanisms available under the Planning Act.

R21 To support existing sex-work businesses to become compliant with planning laws, a new provision should be inserted in the Planning Act that prevents information in development applications for sex work services and home-based sex work being used as evidence of a development offence (or as a springboard to obtain evidence), providing the application is properly made within 12 months after decriminalisation starts. The protected information should not trigger limitation periods in the Planning Act.

R22 The dispute-resolution avenues to the Queensland Civil and Administrative Tribunal should be removed by repealing sections 64A to 64E, and related definitions in part 4, of the Prostitution Act so that all planning appeals and declaratory proceedings about sex-work businesses are

directed to the Planning and Environment Court. The requirement to notify the Prostitution Licensing Authority of development applications for brothels, in part 4 of the Prostitution Act, should also be removed.

R23 New provisions should be inserted in the Local Government Act and City of Brisbane Act to require that:

(a) local laws must not re-establish a sex-work licensing system, or sex-work offences that are the same or substantially similar to those removed from State law under decriminalisation

(b) local laws must not prohibit sex work

(c) local laws must not apply exclusively to sex work, sex workers or sex-work businesses.

R24 When implementing the changes in R15 to R23, the Queensland Government should:

(a) include transitional provisions to replace any remaining references to 'brothel' with the new land-use term 'sex work services' in relevant documents under the Planning Act and related legislation, including in existing development approvals

(b) make the other amendments to the Planning Act and related legislation identified in our table of drafting instructions in volume 2 of our report

(c) provide information and guidance about the new arrangements to the sex-work industry and local government to help them understand their roles and responsibilities

(d) consider making corresponding changes to other planning laws and frameworks so that sex-work businesses have similar opportunities to establish in areas affected by different planning frameworks, including (but not limited to) priority development areas under the *Economic Development Act 2012*.

Chapter 6: Coercion and the exploitation of children

R25 Sections 229FA and 229L of the Criminal Code, and section 77 of the Prostitution Act, should be repealed to help distinguish between sex work and exploitation.

R26 A new chapter should be inserted in part 5 of the Criminal Code for offences addressing coercion and the exploitation of children in commercial sexual services. It should define 'commercial sexual services' as services that involve the person engaging in a sexual act with another person in return for payment or reward under an arrangement of a commercial character (whether the payment or reward is given to the person providing the services or another person). The definition should state that 'sexual act' is limited to acts involving physical contact, and includes sexual intercourse, oral sex and masturbation.

R27 The new chapter in part 5 of the Criminal Code should make it a crime for a person, by coercion, to intentionally induce another person to: provide or continue to provide commercial

sexual services; or provide or continue to provide payment derived directly or indirectly from commercial sexual services. For this offence:

(a) 'coercion' should be defined to include:

i. intimidation or threats of any kind

ii. improper use of a position of trust or influence

iii. taking advantage of a person's vulnerability

iv. assault of any person

v. damage to the property of any person

vi. false representation, false pretence or other fraud or

vii. supplying or offering to supply a dangerous drug to a person (where 'dangerous drug' has the meaning given in section 4 of the *Drugs Misuse Act 1986*)

(b) the maximum penalty should be imprisonment for 10 years.

R28 The new chapter in part 5 of the Criminal Code should make it a crime for a person to obtain commercial sexual services from a person under 18. The maximum penalty for this offence should be imprisonment for 10 years or, if the child is under 16, imprisonment for 14 years.

R29 The new chapter in part 5 of the Criminal Code should make it a crime for a person to:

(a) cause or induce a person under 18 to provide commercial sexual services

(b) enter or offer to enter into an agreement for a person under 18 to provide commercial sexual services or

(c) receive a payment that the person knows, or ought reasonably to know, is derived directly or indirectly from commercial sexual services provided by a person under 18.

The maximum penalty for these offences should be imprisonment for 14 years.

R30 The new chapter in part 5 of the Criminal Code should make it a crime for an owner, occupier or person in control of premises to allow a person under 18 to be at the premises for the purpose of taking part in commercial sexual services. The maximum penalty for the offence should be imprisonment for 14 years.

R31 The circumstance of aggravation for serious organised crime in section 161Q of the Penalties and Sentences Act should, if retained, apply to the offences we recommend in R27 to R30 above.

R32 The criminal justice system should not be the primary focal point for responding to the exploitation of children or vulnerable adults in commercial sexual services. To support the aims of decriminalisation and ensure an effective and compassionate response to exploitation:

(a) sex workers, police and other authorities should work together to help identify, prevent and respond to the exploitation of children and vulnerable adults in commercial

sexual services – including recognising sex workers' roles in providing peer support and education

(b) the Queensland Government should arrange and ensure adequate funding for sex workers, sex-work business operators and the wider community to receive information and education about the offences we recommend in R27 to R30 above, and where people can go for help or support

(c) the Queensland Government should arrange and ensure adequate funding for police and other relevant state and local government officials to receive information, education and training on issues affecting children and vulnerable people (including those aged 16 or 17 and migrant workers) who may be involved in commercial sexual services and responses to exploitation (including harm-minimisation approaches).

Chapter 7: Implementation

Timing of commencement

R33 If the Queensland Parliament passes legislation to decriminalise the sex-work industry, all legislative reforms should take effect at the same time, rather than taking a staged approach to commencement.

Transition of licensed brothels

R34 The Queensland Government should consider a compensatory mechanism, such as fee relief, for brothel licensees and approved managers, as an interim measure during the transition period before the new decriminalisation framework commences.

Review of legislative changes

R35 If the Queensland Parliament passes legislation to decriminalise the sex-work industry, the legislation should require the responsible Minister to ensure that the operation of the legislation is reviewed no sooner than 4 years and no later than 5 years after the new regulatory framework is implemented.

R36 The legislation should require:

(a) the Minister to establish a committee to carry out the review

(b) the review committee to:

i. review the operation of the legislation

ii. consider if any amendments to the legislation or any other laws are necessary or desirable in relation to sex workers or sex work

iii. consider if any further review or assessment of the matters in paragraphs (i) and (ii) is necessary or desirable and

iv. give a written report to the Minister and

(c) the Minister to table a copy of the report about the outcome of the review in the Legislative Assembly as soon as practicable.

R37 The legislation should not require the review committee to assess the impact of the legislation on the number of sex workers in Queensland, or collect baseline data, including about the number of sex workers.

Education and other measures

R38 The Queensland Government should develop and implement public education and awareness programs to address sex-work stigma and educate the community about the sex-work industry and the aims of decriminalisation. This could be integrated into existing and future education campaigns and activities of relevant regulators and government agencies.

R39 Regulators and other government agencies with areas of responsibility that affect the sex-work industry – including those involved in land-use planning, work health and safety, public health, anti-discrimination, law enforcement and justice services – should provide information, education and training for sex workers and sex-work business operators on changes to the law and their legal rights and obligations under the new framework. They should develop this in consultation with sex-worker organisations and sex-work business operators.

R40 The Queensland Government should develop and implement education and training programs about the new framework and how to respond sensitively and appropriately to issues facing sex workers and others in the industry, for officials and organisations who deal with sex workers or are affected by changes to the law under the new framework, including:

(a) state and local government agencies involved in land-use planning, work health and safety, public health or justice services

(b) police and other law enforcement officers

(c) legal, health and social service providers

(d) members and staff of Queensland courts and tribunals.

R41 Steps should be taken to build positive relationships between sex workers, police and other law enforcement authorities. This is a shared responsibility. The Queensland Police Service and sex-worker organisations should work collaboratively to develop measures and strategies to achieve this outcome.

R42 Sex-worker organisations in Queensland, such as Respect Inc, should provide peer-support and outreach services for sex workers, on health, safety and other matters. The Queensland Government should consider the range of services to be delivered by sex-worker organisations under decriminalisation, and the associated staff and resource implications.

R43 The Queensland Government should lead and establish a temporary working group to help implement the decriminalisation reforms. It should consist of regulators and other government agencies with areas of responsibility that affect the sex-work industry, sex-worker organisations and other non-government organisations with industry knowledge. The working group should be established before legislation introducing the reforms takes effect.

R44 The Queensland Government should coordinate, and ensure adequate funding for, the measures we recommend in R38 to R43 above.

Chapter 8: Other matters

R45 As part of the education and other measures we recommend in R39 to R41:

(a) the Queensland Police Service should give police officers guidance and support to help them respond appropriately to sex workers as victims of crime, including information about relevant offences that may apply in cases involving fraudulent promises to pay a sex worker for agreed sexual services, and taking a victim-centred approach

(b) the Director of Public Prosecutions should give prosecutors information and guidance about the approach to prosecuting offences involving sex-worker complainants

(c) community legal services should offer support for sex workers to help them access their legal rights, including in cases where clients do not pay for agreed services.

R46 The supply of alcohol by sex-work businesses should be regulated by the Liquor Act, with policy developed by the Office of Liquor and Gaming Regulation.

R47 The consequential amendments to other legislation that we identify in our table of drafting instructions in volume 2 of our report should be made. The provisions refer to offences, provisions and terms in the Prostitution Act or chapter 22A of the Criminal Code that need to be amended to reflect the recommended repeal of provisions to decriminalise sex work and remove the brothel licensing system.

B

List of submissions and consultations

List of submissions and consultations

Submissions

We received a total of 160 submissions, including from:

- Current and former sex workers (60), as well as some sex-worker clients and people involved in the management or ownership of sex-work businesses
- Sex-worker organisations, including:
  - Magenta
  - NZPC: Aotearoa New Zealand Sex Workers' Collective (NZPC)
  - Red Files Inc.
  - Respect Inc and #DecrimQLD
  - Scarlet Alliance
  - Sex Industry Network Inc. (SIN Inc.)
  - Sex Worker Outreach Program Northern Territory (SWOP NT) and Sex Worker Reference Group (SWRG)
- Members of the public (34)
- Academics, including:
  - Associate Professor Lisa Fitzgerald, Associate Professor Linda Selvey, Associate Professor Judith Dean and Rachael Brennan, The University of Queensland, School of Public Health
  - Professor John Scott, Head of School Justice, Faculty of Creative Industries, Education and Social Justice, Queensland University of Technology
- Hon Justice Kerri Mellifont, President, Queensland Civil and Administrative Tribunal
- Dr Amy MacMahon MP (Qld) and Michael Berkman MP (Qld)

We also received submissions from the following organisations:

- Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM)
- Australian Christian Lobby (ACL)
- Australian Federation of AIDS Organisations (AFAO)
- Bar Association of Queensland (BAQ)
- Brisbane City Council
- Caxton Legal Centre Inc

Central Highlands Regional Council

Children by Choice Association Incorporated

Coalition Against Trafficking in Women Australia (CATWA)

Community Legal Centres Queensland (CLCQ)

Department of State Development, Infrastructure, Local Government and Planning (DSDILGP)

Eros Association

GLYDE Health Pty Ltd

Gold Coast Centre Against Sexual Violence Inc.

Gympie Regional Council

Hepatitis Queensland

It's So Hard

Local Government Association of Queensland (LGAQ)

Logan City Council

Micah Projects Ltd

Office of Industrial Relations, Queensland

One Woman Project

Planning Institute of Australia (PIA), Queensland Division

Prostitution Licensing Authority (PLA)

Queensland Adult Business Association (QABA)

Queensland Advocacy for Inclusion (QAI)

Queensland Council for Civil Liberties (QCCL)

Queensland Council for LGBTI Health

Queensland Council of Unions (QCU)

Queensland Health

Queensland Law Society (QLS)

Queensland Positive People (QPP), HIV/AIDS Legal Centre Inc. (HALC), and The National Association of People with HIV Australia (NAPWHA)

Scenic Rim Regional Council

Sex Industry Decriminalisation Action Committee (SIDAC)

Sex Work Law Reform Victoria Inc. (SWLRV)

Sexual Health Society of Queensland Inc

Star Health

Stonewall Medical Centre

TASC National Limited

Touching Base Inc

Townsville Community Law Inc

Women's Forum Australia (WFA)

Women's Health and Equality Queensland Ltd (WHEQ)

Women's Legal Service Queensland (WLSQ)

Working Women Qld, Basic Rights Queensland Inc

We also received a joint submission from 42 health professionals, sexual health professionals and allied services and individuals, including:

Dr Darren Russell, Sexual Health Physician, and Adjunct Professor of Medicine, James Cook University

Dr Graham Neilsen, Sexual Health Physician, Dr Wendell J. Rosevear, Sexual Health Physician, and Dr Neil Simmons, Sexual Health Physician, Stonewall Medical Centre

Carla Gorton, Public Health Professional

Dr Judith Dean, Senior Research Fellow, School of Public Health, Faculty of Medicine, The University of Queensland

Dr Armin Ariana, Senior Lecturer in Medical Education, Griffith Health School of Medicine and Dentistry, Griffith University

Belinda Tessieri and Jade Mirabito, Headspace

Fiona Taylor, Sexual Health Clinician

Emma Knowland, Sexual Health Nurse

Elizabeth Scally, Clinical Nurse, Gold Coast Sexual Health Clinic

Shaye Austin, Clinical Nurse

Esther Cohen, Nurse Practitioner

Dr Samuel Brookfield

Daile Kelleher, Chief Executive Officer, on behalf of Children by Choice

Stephanie Anne, Manager, Zig Zag Young Women's Resource Centre Inc.

Jacqualine McLellan, Nurse Practitioner, Sexual health and HIV service, Queensland Health

Erin McBride, Clinical Nurse/Sexual Health Coordinator

Geoff Davey, Chief Executive Officer, on behalf of QuIHN Ltd, Better Access Medical Clinic

Associate Professor Lisa Fitzgerald, Faculty of Medicine, School of Public Health, The University of Queensland

Emma Kill, President, QuIVAA

William Anthony Rutkin OAM

Dr Helen Pedgrift, General Practitioner and Public Health Medical Officer

Miff Trevor, Mental Health Team Leader, Accredited Mental Health Social Worker, Queensland Council for LGBTI Health

Anthony Smith, LGBTIQ+ Mental health Officer, QCGP+ 4009, Queensland Council for LGBTI Health

Joanne Leamy, Clinical Nurse Consultant and Sexual Health Society member

Joseph Debattista, Sexual Health and Blood-Borne Virus Coordinator, Metro North Health

Clancy Barrett, Sexual Health Nurse, Cairns Sexual Health

Owen O'Neil, Registered Psychologist, Haven Psychology Centre

Associate Professor Linda Selvey, School of Public Health, Faculty of Medicine, The University of Queensland

Dr Nicole Sleeman

Julie Fresta, QCGP+ Clinic Coordinator, Queensland Council for LGBTI Health

Sally Cripps, Communities Resource Project Officer, Queensland Council for LGBTI Health

Professor Basil Donovan, Head of the Sexual Health Program, Kirby Institute, University of New South Wales

Darryl O'Donnell, Chief Executive Officer, Australian Federation of AIDS Organisations (AFAO)

Scientia Professor Carla Treloar, Director, Centre for Social Research in Health and the Social Policy Research Centre, University of New South Wales, and Adjunct Professor, Australian Research Centre in Sex Health and Society, La Trobe University

Carrie Fowlie, Chief Executive Officer, on behalf of Hepatitis Australia

Guianna Noble, RN

Rita Luisa Colella, Clinical Nurse Specialist, The Albion Centre

Anna Bennett, Sexual Health nurse

Consultations

Consultation meetings		Date
Queensland Police Service		09 December 2021
Queensland Adult Business Association (QABA)		10 May 2022
Sex-worker organisations	#DecrimQLD Respect Inc Scarlet Alliance	13 May 2022
Interstate and overseas sex-worker organisations	NZPC: Aotearoa New Zealand Sex Workers' Collective SIN Inc. SWOP NT SWOP NSW Vixen (#DecrimQLD and Scarlet Alliance – observers)	17 May 2022
Prostitution Licensing Authority (PLA)		18 May 2022
Australian Adult Entertainment Industry Inc		19 May 2022
Queensland Department of Education	Office of Industrial Relations	24 May 2022
Queensland Department of State Development, Infrastructure, Local Government and Planning	Local Government Planning	25 May 2022
Queensland local governments and representative association	Local Government Association of Queensland (LGAQ) Brisbane City Council Cairns Regional Council Central Highlands Regional Council City of Gold Coast Logan City Council Mackay Regional Council Toowoomba Regional Council	25 May 2022
Queensland Department of Justice and Attorney-General	Office of Fair Trading Office of Liquor and Gaming Regulation (OLGR)	30 May 2022
Queensland Department of Health	Communicable Diseases Branch Social Policy, Legislation and Statutory Agencies Branch Statewide Sexual Health Clinical Network	09 June 2022
Victorian Department of Justice and Community Safety		14 June 2022
Northern Territory Licensing NT		23 June 2022
Northern Territory Department of Infrastructure, Planning and Logistics		27 June 2022

Consultation meetings		Date
Northern Territory Department of Attorney-General and Justice Northern Territory Department of Health		28 June 2022
Queensland Police Service		30 June 2022
Victoria Police		06 July 2022
Queensland Law Reform Commission Member Briefing	Prostitution Licensing Authority (PLA) Queensland Adult Business Association (QABA) Sex-worker organisations (#DecrimQLD, Respect Inc and Scarlet Alliance)	07 July 2022
Queensland Law Reform Commission Member Briefing	Victorian Department of Justice and Community Safety Northern Territory Department of Attorney-General and Justice Queensland Office of Liquor and Gaming and Office of Fair Trading	08 July 2022
Queensland non-government organisations health and social sector	Australian Society of HIV, Viral Hepatitis and Sexual Health Medicine Ethnic Communities Council of Queensland Hepatitis Queensland Queensland Council for LGBTI Health Queenslanders with Disability Network Queensland Injectors Health Network Queensland Positive People True Relationships and Reproductive Health	20 July 2022
Respect Inc		20 July 2022
Queensland Human Rights Commission (QHRC)		21 July 2022
Academics and researchers	University of Otago Victoria University of Wellington Kirby Institute	02 August 2022
Queensland Department of State Development, Infrastructure, Local Government and Planning	Planning	14 December 2022
Urban Realists Planning and Health Consultants		16 December 2022

C

Terms of reference

Terms of reference

Queensland's laws relating to the regulatory framework for the sex work industry[1]

I, SHANNON MAREE FENTIMAN, Attorney-General and Minister for Justice and Minister for Women and Minister for the Prevention of Domestic and Family Violence, refer to the Queensland Law Reform Commission (the Commission) pursuant to section 10 of the *Law Reform Commission Act 1968* for review and investigation, the issue of regulating a decriminalised sex work industry in Queensland.

Scope

1. The Queensland Law Reform Commission is asked to recommend a framework for a decriminalised sex work industry in Queensland with particular regard to:

   (a) the development of an appropriate legislative framework required to give effect to a decriminalised sex work industry;

   (b) the extent to which existing legislation should be repealed to give effect to a decriminalised sex work industry, including the *Prostitution Act 1999*, *Prostitution Regulation 2014*, Chapter 22A of the Criminal Code and provisions of the *Police Powers and Responsibilities Act 2000*;

   (c) who the framework would apply to (i.e. brothel licensees, sole operators, escort agencies, massage parlours);

   (d) appropriate safeguards including, economic and, health and safety protections for sex workers and their clients;

   (e) appropriate safeguards to deter the involvement of illegal activity and the exploitation of vulnerable people in the sex work industry in Queensland;

   (f) appropriate safeguards to maintain public amenity including in respect of the location of sex work premises;

   (g) the compatibility of the framework with the *Human Rights Act 2019*;

   (h) whether there are any public health or public safety implications associated with the framework;

   (i) how the framework would be administered;

   (j) ways in which compliance with the framework can be monitored and enforced;

1 The full terms of reference are avaliable on the Commission's website <https://www.qlrc.qld.gov.au/>.

(k) the potential impacts of the framework for the sex work industry (including the current licensed brothel industry) and government associated with:

i. the adoption of the new framework; and

ii. the transition from the existing framework to the new framework; and

iii. any other matters the Commission considers relevant having regard to the issues relating to the referral; and

(l) limiting the administrative and resource burden on government and industry.

2. In recommending a framework for a decriminalised sex work industry in Queensland the Commission is asked to consider circumstances where there has been a promise by a person of payment of money in exchange for a sexual act performed by a sex worker where that payment is not forthcoming and recommend what, if any, legislative amendment is required to deal with these circumstances.

3. The Commission is asked to provide as part of its report any drafting instructions and/or information which supports its recommendations.

4. In making its recommendations the Commission should also have regard to:

(a) the existing regulatory framework of the sex work industry in Queensland including the operation of the illegal sex work industry;

(b) the Queensland Government's commitment to consider and modernise the law in relation to the sex work industry and associated practices;

(c) the experiences of members of the sex work industry under the current regulatory framework and/or under legislative arrangements in other jurisdictions;

(d) recent developments, legislative and regulatory arrangements and research in other Australian jurisdictions (including the Northern Territory) and New Zealand; and

(e) the views of the Queensland community.

5. For the purposes of this review, 'sex work' includes all forms of legal and illegal sex work, including but not limited to sex work in brothels and escort agencies, sexual services provided in massage parlours and other venues, sex work by sole operators and street-based sex work, but does not include an activity authorised under an adult entertainment permit issued pursuant to the Liquor Act 1992.

Consultation

The Commission shall consult with:

1. the community of sex workers, brothel licensees and relevant bodies that represent those workers and licensees (including but not limited to Respect Inc and the Scarlet Alliance, Australian Sex Workers Association); and
2. any group or individual, in or outside Queensland, the Commission considers relevant having regard to the issues relating to the referral, including but not limited to Government agencies such as the Queensland Police Service and the Queensland Prostitution Licensing Authority and non-government agencies.

Timeframe

The Commission is to provide its final report, including any drafting instructions and/or information which may be required to give effect to its recommendations, to the Attorney-General and Minister for Justice, by 31 March 2023.[2]

Dated the 27th day of August 2021

SHANNON FENTIMAN MP
Attorney-General and Minister for Justice
Minister for Women and Minister for the Prevention of Domestic and Family Violence

2 The terms of reference were amended by a letter from the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice and Minister for Women and Minister for the Prevention of Domestic and Family Violence to the Chair of the Commission dated 3 November 2022 to change the reporting date from 27 November 2022 to 31 March 2023, and replace the requirement to provide draft legislation with the requirement to provide drafting instructions and/or information to support the Commission's recommendations.