

A framework for a decriminalised sex work industry in Queensland

Consultation Paper WP 80

April 2022

Chapter 13

Published by:
Queensland Law Reform Commission

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(Queensland Law Reform Commission) 2022

ISBN: 978-0-6451809-2-3

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Advertising sex work

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Introduction

- 13.1 Our terms of reference ask us to consider the extent to which existing legislation should be repealed, economic safeguards for sex workers, and safeguards to maintain public amenity. We are also asked to consider limiting the administrative and resource burden on the government and industry.⁵⁰⁴
- 13.2 Advertising for sex work is regulated by the Prostitution Act. The advertising provisions were included in that Act to limit the community's exposure to sex work advertising, preserve public amenity, and reflect community attitudes and expectations.
- 13.3 However, some sex worker organisations and brothel licensees say that the advertising requirements are too restrictive and complicated and are an unnecessary burden on businesses. They say the requirements are out of step with modern online advertising practices.
- 13.4 Some sex worker organisations consider that, under a decriminalisation framework, there is no need for sex work-specific advertising laws. They note there are already general laws and standards that apply to all advertising, including sex work advertising. They also say that sex work-specific advertising laws have the effect of unnecessary criminalisation, discrimination and stigmatisation of sex workers.
- 13.5 In this chapter, we look at:
- specific laws that apply to advertising sex work under the Prostitution Act; and
 - general laws and standards that apply to advertising.
- 13.6 We also look at what other industries have specific advertising laws.
- 13.7 We focus on whether additional laws might be needed to regulate sex work advertising.

Specific laws that regulate advertising for sex work

- 13.8 Sex work advertising is regulated by the Prostitution Act, the Prostitution Regulation and Guidelines issued by the PLA under section 139A of the Prostitution Act.
- 13.9 All advertisements published in Queensland must comply with these laws and guidelines, even if the advertisement is placed from outside Queensland or is published on a website located outside Queensland.⁵⁰⁵
- 13.10 Outdoor signage for licensed brothels is also regulated under the Prostitution Act and Prostitution Regulation.

Advertising offences

- 13.11 The Prostitution Act includes specific offences for advertising sex work: see table 1.

504 See terms of reference para 1(b), (d), (f), (l).

505 *Prostitution Act 1999* (Qld) s 92 (definition of 'publish'). See also PLA, 'Advertising guidelines' <<https://www.pla.qld.gov.au/advertising-guidelines/advertising-guidelines>>.

Table 1: Advertising offences under the Prostitution Act

Section	Offence	Maximum penalty
s 93(1)	A person must not publish an advertisement for prostitution that describes the services offered	If the cost of establishing the website (for an advertisement on an internet website) or the cost of publishing the advertisement is: <ul style="list-style-type: none"> \$1000 or less—70 penalty units (\$9649.50); or more than \$1000—an amount that is 10 times the commercial cost of establishing the website or of publishing the ad
s 93(2)	A person must not publish an advertisement for prostitution that is not in the approved form	
s 93(3)	A person must not publish any advertisement for prostitution through radio or television or by film or video recording	
s 94	A person must not publish a statement intended or likely to induce a person to seek employment as a prostitute	100 penalty units (\$13 785)
s 95	A person providing prostitution must not hold out or publish advertisements that the business supplying the service provides or is connected with massage services	40 penalty units (\$5514)

Advertising sex work

13.12 When the Prostitution Act was introduced and brothels were legalised, specific advertising requirements were considered necessary to limit the community's exposure to sex work advertising. The government stated that:⁵⁰⁶

the operation of brothels should not be an intrusion into the day to day lives of members of the community who do not want to be exposed to the nuisance of ... advertising.

13.13 During the parliamentary debates, it was noted that the advertising requirements would ensure advertising for sex work is discreet and not explicit or offensive. It was stated that this reflects community expectations and addresses community concerns.⁵⁰⁷

13.14 The Prostitution Act prohibits advertising sex work through radio or television or by film or video recording.⁵⁰⁸

13.15 All other advertising for sex work (including in print publications, on websites and social media, or on merchandise such as posters, cups or stubby holders) must:⁵⁰⁹

- not directly describe the sexual services offered; and
- be in the 'approved form'.

13.16 An advertisement is in the approved form if it complies with the requirements set out in section 15 of the Prostitution Regulation and the Guidelines issued by the PLA.⁵¹⁰ This includes restrictions on the advertising mediums, the size of advertisements and the wording and

⁵⁰⁶ Explanatory Notes, Prostitution Bill 1999 (Qld) 1.

⁵⁰⁷ See, eg, 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 CJC Prostitution Report (1991) 218, 231.

⁵⁰⁸ *Prostitution Act 1999* (Qld) s 93(3); PLA, *Guidelines about the Approved Form for Advertisements for Prostitution* (18 August 2021) [3.1].

⁵⁰⁹ *Prostitution Act 1999* (Qld) s 93(1)–(2). See generally PLA, 'Advertising guidelines' <<https://www.pla.qld.gov.au/advertising-guidelines/advertising-guidelines>>.

⁵¹⁰ *Prostitution Act 1999* (Qld) s 92 (definition of 'approved form').

images that may be used. There are also specific requirements for different types of sex work (licensed brothels or private sex workers) and advertising on the internet: see table 2.⁵¹¹

Table 2: Requirements for advertising sex work in the approved form

Prohibited mediums	<p>Must not publish an advertisement for prostitution:</p> <ul style="list-style-type: none"> • through radio or television • by film or video recording • by sticker
Permitted size	<p>Other than for an advertisement on the internet or an advertisement inside premises used for prostitution that cannot be viewed by a person outside the premises, the total surface area is not to be larger than 54 cm², except:</p> <ul style="list-style-type: none"> • an advertisement in the yellow pages is not to be larger than 253 mm in length and 215 mm in width; and • a business card is not to be larger than 90 mm in length and 55 mm in width
Prohibited advertising	<p>Must not:</p> <ul style="list-style-type: none"> • directly describe the sexual services offered; • state or imply that unsafe sex (that is, sexual intercourse or oral sex without a prophylactic) will be provided; • state or imply that sex workers are under the age of 18 or are virgins; • state, directly or indirectly, that the person's business provides or is connected with massage services; • advertise another business or event, without the written consent of the person conducting the business or event; • refer to a game of chance or trade promotion offering sexual services (for example, a draw which includes the provision of prostitution as a prize); or • be associated with sponsorship of an event or organisation
Prohibited images	<p>Must not contain a photograph or image of:</p> <ul style="list-style-type: none"> • the sexual organs or anus of a person; • a sexual act or a simulated sexual act; • a child or of an adult intended to be given the appearance of a child; or • an animal
Specific requirements for licensed brothels	<p>Must not:</p> <ul style="list-style-type: none"> • contain a telephone number that has not been notified to the PLA; • state or imply that the brothel is associated with escort services; • state or imply that more sex workers are available than permitted; or • contain a discount unless it explicitly states the discount is in respect of room hire only <p>Must state the business name of the licensed brothel, as appears on the brothel licence</p>

Specific requirements for 'sole operator' sex workers (private sex workers working alone)	<p>Must not state or imply that more than one sex worker may be available</p> <p>May advertise that they are working at a specific licensed brothel but if the advertisement includes a telephone number it must only be the telephone number for the licensed brothel</p>
Specific requirements for advertisements on the internet	<p>Must not link, or otherwise provide access, to a website:</p> <ul style="list-style-type: none"> • other than the website of the PLA, the Queensland Adult Business Association, Respect Inc or the yellow pages; or • that is also an advertisement for prostitution that is not in the approved form <p>Must indicate that it is restricted to persons who are 18 years of age or over</p>

Criticisms of the requirements for advertising sex work

13.17 There are various criticisms of the current requirements for advertising sex work, including that they are:

- not needed;
- overly complicated and burdensome;
- a barrier to sex worker safety; and
- out of step with modern online advertising practices.

Sex work-specific advertising laws are not needed

13.18 Some sex worker organisations say that, under a decriminalisation framework, there should be no sex work-specific advertising offences or requirements. They say sex work should be regulated the same as any other industry and that there are already national standards that apply to all advertising. They also say that sex work-specific advertising offences have the effect of criminalising, discriminating against, and stigmatising sex workers unnecessarily.⁵¹²

Advertising restrictions are overly complicated and burdensome

13.19 Some sex worker organisations tell us that the advertising requirements are overly complicated, restrictive and burdensome. They say the requirements place sex workers at risk of fines, even while actively attempting to comply.

13.20 In 2021, the PLA revised and simplified the advertising guidelines, so that they are easier to understand.⁵¹³

Advertising restrictions are a barrier to sex worker safety

13.21 Some sex worker organisations say that the prohibition on directly describing services is a barrier to clear negotiation of services with prospective clients.

⁵¹² Scarlet Alliance, *Full Decriminalisation of Sex Work in Australia*, Briefing Paper <<https://scarletalliance.org.au/library/briefing-paper-full-decrim>>; 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).

⁵¹³ PLA, *Annual Report 2020–2021* (2021) 6.

13.22 The PLA has explained that the prohibition applies only to advertising. It does not prevent a sex worker from discussing the services they do and do not offer with potential clients in response to an enquiry. It also noted that negotiation of services is central to sex work.⁵¹⁴

Advertising restrictions are out of step with modern online advertising practices

13.23 Some sex worker organisations and brothel licensees say that the current advertising requirements (in particular, the prohibition on directly describing services and on advertising sex work by film or video recording) are outdated and do not reflect modern online advertising practices. They note that advertising has changed substantially since the Prostitution Act was introduced.⁵¹⁵

13.24 The PLA observed that there ‘has been a clear trend away from traditional media advertising to web-based advertising’.⁵¹⁶ This includes advertising on specific websites (such as online directories for sex work, or on the individual websites of licensed brothels or private sex workers). Also, sex workers and brothels often have their own social media accounts that they use for advertising.

13.25 The PLA also tells us that the nature of the internet makes regulating online advertising and enforcing compliance difficult.

13.26 Some sex worker organisations say that online advertising does not have the same public amenity considerations as traditional advertising. This is because people usually will not see this kind of advertising online unless they seek it out. The PLA has also observed that the ‘adult nature of host websites limits the exposure of the community to this type of advertising’.⁵¹⁷

13.27 In its 2020–21 Annual Report, the PLA reported that it put to the Attorney-General some proposed enhancements to the current regulatory framework, including to:⁵¹⁸

Change the regulation of prostitution advertising on the internet to allow for the description of services offered and advertisements by film or video recording.

13.28 That proposal was supported by the Queensland Adult Business Association Inc (QABA Inc), a representative group for brothel licensees to advocate for the viable development of the Queensland legal brothel system. QABA Inc considered that the current advertising requirements ‘place an unreasonable restriction on the ability of licensed brothels to market to clients’. It explained:⁵¹⁹

In the age of digital marketing, users actively search for adult content online using specific keywords to describe what they’re looking for. Due to the advertising restrictions, they will not find licensed brothels using these terms.

13.29 QABA Inc considered that updating the advertising guidelines to allow licensed brothels to describe the services offered in advertisements and to allow the use of video on brothel websites would:⁵²⁰

514 PLA, *In Touch Newsletter* (Issue No 108) May 2016.

515 Queensland Adult Business Association Inc, *Submission in Response to the Queensland PLA’s Proposed Changes to the Prostitution Act 1999* (March 2021) 15.

516 PLA, *Annual Report 2018–2019* (2019) 35.

517 Ibid.

518 PLA, *Annual Report 2020–2021* (2021) 19.

519 Queensland Adult Business Association Inc, *Submission in Response to the Queensland PLA’s Proposed Changes to the Prostitution Act 1999* (March 2021) 15.

520 Ibid.

- enable clients looking for specific services to identify licensed brothels
- support clients to engage with sex workers in a safer and more secure environment
- allow licensed brothels to compete more effectively with illegal operators.

13.30 QABA Inc also proposed a number of other amendments, including to:⁵²¹

- allow brothels to use billboard advertising;
- allow private sex workers to advertise they are working at a licensed brothel;
- permit the advertising of mobile phone numbers connected to the brothel for client communication;
- increase the permitted size of print media advertisements; and
- allow brothels to sponsor an event or organisation.

Statements inducing persons to become sex workers

- 13.31 Section 94 of the Prostitution Act prohibits publishing a statement intended or likely to induce a person to seek employment as a sex worker.
- 13.32 A similar prohibition was introduced by the *Prostitution Laws Amendment Act 1992*, which prohibited all advertising for sex work (regardless of whether it was lawful or unlawful).⁵²² The aim of that Act included minimising the harm of organised prostitution. It was also noted that broad advertising offences would ‘help to reduce prostitution’.⁵²³
- 13.33 When the Prostitution Act was introduced, advertising for lawful sex work was permitted, subject to strict controls to limit community exposure and ensure it is discreet: see [13.12] to [13.13] above. This included the prohibition on publishing statements intended to induce a person to seek employment as a sex worker. It was also noted during the parliamentary debates that this prohibition should address any concerns that people, particularly minors or vulnerable people, would be induced to seek employment as a sex worker.⁵²⁴
- 13.34 Some sex worker organisations and brothel licensees say this prohibition should be removed. They say sex work businesses should be able to advertise transparently for employees like any other legal business.⁵²⁵

Advertising sex work as massage services

- 13.35 Section 95 of the Prostitution Act prohibits advertising sex work as massage services. This was intended ‘to stop prostitution providers from advertising as “massage parlours” and to stop legitimate massage businesses receiving inquiries for prostitution’.⁵²⁶

⁵²¹ Ibid 19.

⁵²² See *Prostitution Laws Amendment Act 1992* (Qld) s 24, inserting new section 18B(2)(d) in the *Vagrants, Gaming and Other Offences Act 1931* (Qld) (repealed).

⁵²³ Queensland, *Parliamentary Debates*, 13 November 1992, 684–86 (PJ Braddy, Minister for Police and Emergency Services).

⁵²⁴ See, eg, Queensland, *Parliamentary Debates*, 1 December 1999, 5706–07 (Lavarch).

⁵²⁵ Scarlet Alliance, *Full Decriminalisation of Sex Work in Australia*, Briefing Paper <<https://scarletalliance.org.au/library/briefing-paper-full-decrim>>; Queensland Adult Business Association Inc, *Submission in Response to the Queensland PLA’s Proposed Changes to the Prostitution Act 1999* (March 2021) 15.

⁵²⁶ Explanatory Notes, Prostitution Bill 1999 (Qld) 23.

How are these laws monitored and enforced?

- 13.36 The person who is advertising (such as brothel licensees or private sex workers) and publishers are responsible for ensuring advertisements comply with the Prostitution Act, the Prostitution Regulation and the guidelines. The PLA manages compliance for licensed prostitution. It also provides general advice to assist in the interpretation and application of the guidelines.⁵²⁷
- 13.37 If an advertisement does not meet the requirements, the PLA may issue a penalty infringement notice or refer the advertisement to the Queensland Police Service for enforcement. The police are responsible for investigating alleged unlawful sex work, including advertisements that do not meet the requirements.⁵²⁸
- 13.38 In its 2018–2019 Annual Report, the PLA stated that it manages most advertising breaches by way of complaint:⁵²⁹
- In most cases, non-compliance is dealt with by contacting the publisher, informing them of the breach and educating them about the provisions of the guidelines. PLA advertising surveillance focuses on two high risk areas: non-classified general print publications, such as relevant newspapers and magazines; and the websites and social media of licensed brothels.
- 13.39 Of the 36 complaints received by the PLA in 2020–21, ten were about sex work advertising.⁵³⁰ In 2019–20, only one of the 31 complaints received by the PLA was about sex work advertising.⁵³¹
- 13.40 Crime data shows there were four reported offences for advertising sex work in 2020–21. There were also four in 2019–20.⁵³²

Other jurisdictions

- 13.41 In New South Wales, the Northern Territory and New Zealand, where sex work is decriminalised, some sex work-specific advertising laws have been maintained.
- 13.42 In New South Wales, section 18 of the *Summary Offences Act 1988* (NSW) prohibits advertising or signs indicating that any premises are used or are available for use, or that a person is available, for the purposes of sex work.⁵³³
- 13.43 In the Northern Territory, the *Sex Industry Act 2019* (NT) prohibits a person from placing an advertisement for sex work in a newspaper or on television or radio, other than in accordance with the regulations.⁵³⁴ The regulations provide that an advertisement for sex work placed in a newspaper:⁵³⁵
- (a) must be no larger than 3.5 cm x 4.5 cm; and

527 PLA, 'Advertising prostitution in Queensland' <<https://www.pla.qld.gov.au/advertising-guidelines>>.

528 Ibid.

529 PLA, *Annual Report 2018–2019* (2019) 35.

530 PLA, *Annual Report 2020–2021* (2021) 8.

531 PLA, *Annual Report 2019–2020* (2020) 7.

532 Queensland Police Service, 'Maps and statistics' (11 January 2022) <<https://www.police.qld.gov.au/maps-and-statistics>> table 'QLD reported offences number'.

533 *Summary Offences Act 1988* (NSW) s 18.

534 *Sex Industry Act 2019* (NT) s 15(1).

535 *Sex Industry Regulations 2020* (NT) s 3.

- (b) must appear in the 'classifieds' section under the heading 'Adult Services' or a similar heading; and
- (c) must not:
 - (i) contain photographic or other pictorial representation of a person, whether real or symbolic, unless the representation is restricted to the head and shoulders of the person; or
 - (ii) refer to the race, colour or ethnic origin of the person offering to perform sex work or refer to any of those matters in the name of a sex services business; or
 - (iii) refer to the age of the person offering to perform sex work; or
 - (iv) refer to the physical attributes of the person offering to perform sex work or refer to personal physical attributes in the name of a sex services business; or
 - (v) refer to 'massage' or 'masseur' or other parts of speech or grammatical forms of those words unless preceded by the word 'erotic'.

- 13.44 During the parliamentary debates, it was noted that the industry generally was not in favour of these provisions, and there are already national advertising standards that apply. However, the government considered that these advertising controls should be maintained as they reflect community standards.⁵³⁶
- 13.45 Legislation in New South Wales and the Northern Territory also prohibits advertising to recruit or employ a person as a sex worker.⁵³⁷ The prohibition applies only to advertisements for employment as a sex worker. For example, in the Northern Territory, a person commits an offence if they publish an advertisement that is likely to induce a person to seek employment as a sex worker. However, the legislation makes it clear that a sex services business may advertise for staff if the advertisement clearly indicates that the work to which it relates does not involve sex work.⁵³⁸ (Sex work laws in some other jurisdictions also include similar prohibitions.)⁵³⁹
- 13.46 In New Zealand, section 11 of the *Prostitution Reform Act 2003* (NZ) prohibits advertising for commercial sexual services on radio or television, screened at a public cinema, or in a newspaper or periodical except in the classified advertisements section.
- 13.47 Victoria has sex work-specific advertising laws that are similar to Queensland.⁵⁴⁰ This will change when Victoria's sex work industry is fully decriminalised. The *Sex Work Decriminalisation Act 2022* (Vic) repeals the specific advertising offences in the *Sex Work Act 1994* (Vic). It amends the *Summary Offences Act 1966* (Vic) to provide for the regulation of sex work advertising. Under section 38F of that Act, it will be an offence for a person to publish or

⁵³⁶ Northern Territory, *Parliamentary Debates*, Legislative Assembly, 26 November 2019, 7545 (Fyles, Attorney-General and Minister for Justice). See also Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, *Inquiry into the Sex Industry Bill 2019* (Report, November 2019) [3.19]–[3.27].

⁵³⁷ *Summary Offences Act 1988* (NSW) s 18A; *Sex Industry Act 2019* (NT) s 15(2).

⁵³⁸ *Sex Industry Act 2019* (NT) s 15(4).

⁵³⁹ See *Summary Offences Act 1953* (SA) s 25A(2)(b); *Prostitution Act 2000* (WA) s 9. See also *Sex Work Act 1994* (Vic) s 17(3), which will be repealed by the *Sex Work Decriminalisation Act 2022* (Vic). It is not yet known if advertising controls in Victoria after decriminalisation will prohibit statements inducing others to become a sex worker: see [13.47] below.

⁵⁴⁰ *Sex Work Act 1994* (Vic) ss 17–18; *Sex Work Regulations 1996* (Vic) s 11.

cause to be published an advertisement for commercial sexual services that contravenes any regulations made by the Governor in Council. The regulations may be about:⁵⁴¹

- the size, form and content of advertisements for commercial sexual services; and
- prohibiting the advertising of commercial sexual services in a specified publication or in a specified manner; and
- generally regulating the publication of advertisements for commercial sexual services; and
- any other matter or thing required or permitted by section 38F to be prescribed or necessary to be prescribed to give effect to section 38F.

13.48 It was explained that the ‘purpose of this amendment is to remove complex, industry-specific advertising controls and related offences’.⁵⁴²

13.49 It was also considered that this will make regulation of advertising by sex work businesses consistent with the regulation of live sexually explicit entertainment.⁵⁴³

Signage for brothels

13.50 The Prostitution Regulation sets out the assessment benchmarks against which a local government must assess a development application for, or change application relating to, assessable development that is a material change of use of premises for a brothel.⁵⁴⁴ This includes requirements to ensure signage for a brothel is compatible with the amenity of the locality.

13.51 Brothel signage must comply with each of the following requirements:⁵⁴⁵

- (a) only 1 sign is displayed for the brothel;
- (b) the surface area of the sign is not more than 1m²;
- (c) the sign displays only the name of the licensee and the registered business name of the brothel;
- (d) the sign does not display words or images that are sexually explicit, lewd or otherwise offensive;
- (e) the sign is affixed to the brothel.

13.52 The assessment manager for development applications for brothels is responsible for assessing development against these assessment benchmarks. This is usually the relevant local government: see chapter 12.

13.53 Local governments can also introduce assessment benchmarks to regulate the signage of new development in their planning schemes. For example, Gold Coast City Council states that signage for adult entertainment premises must not be ‘sexually suggestive or potentially offensive in graphical or written expression’.⁵⁴⁶

⁵⁴¹ *Sex Work Decriminalisation Act 2022* (Vic) ss 37, 49–50. This is part of stage two of decriminalisation in Victoria. These provisions are due to commence on 1 December 2023 (unless proclaimed earlier): s 2(1)–(2).

⁵⁴² Explanatory Memorandum, *Sex Work Decriminalisation Bill 2021* (Vic) 3.

⁵⁴³ *Ibid* 16.

⁵⁴⁴ *Prostitution Act 1999* (Qld) s 140(2)(f); *Prostitution Regulation 2014* (Qld) s 25, sch 3.

⁵⁴⁵ *Prostitution Regulation 2014* (Qld) sch 3, item 5.

⁵⁴⁶ Gold Coast City Council, *Gold Coast Planning Scheme 2003* (v 1.2, amended November 2011) pt 7 div 2, ch 1, AS1.1.

- 13.54 Under the *Local Government Act 2009*, local governments can also introduce local laws that are necessary for the local government area. This can include local laws about advertising and signage. For example, outdoor advertising in Brisbane is regulated by the *Advertising Devices Local Law 2021*. The aim of the local law is to ensure ‘advertising devices and associated structures are constructed and maintained to essential standards of public safety and complement desirable characteristics of the natural and built environment in which they are exhibited’. It sets out permitted types of advertising and technical standards relating to issues such as size and illumination. It also establishes an assessment process for new advertising. It does not regulate the content of advertising.⁵⁴⁷

Other jurisdictions

- 13.55 In New South Wales and the Northern Territory, which have decriminalised sex work, outdoor signage for sex work businesses is regulated by planning controls and general advertising laws and standards, like any other business. In New South Wales, for example, sex industry premises must have, and comply with, development consent. This includes complying with development controls about any externally visible signage to reduce any adverse impact on the character and appearance of the streetscape and on the amenity of neighbouring properties.⁵⁴⁸
- 13.56 This is also the approach being implemented in Victoria. The Victorian Government explained that:⁵⁴⁹
- Upon repeal of the [*Sex Work Act 1994* (Vic)] and its associated regulations, government will ensure controls about the content and placement of signage for sex work businesses are appropriate.
- Inappropriate advertising signage has the potential to impact public amenity and the character and image of local government areas. There is also the risk of inadvertently exposing children to sex work via signage and other promotion.
- 13.57 It considered that:⁵⁵⁰
- Existing planning controls which apply to signs for businesses operating a home-based business or operating in certain zones will apply equally to sex work businesses. For example, restrictions on size, location and lighting. These requirements do not relate to content.
- Local governments will continue to be able to make and enforce their own local laws regarding general community amenity.
- 13.58 In New Zealand, which has decriminalised sex work, section 12 of the *Prostitution Reform Act 2003* (NZ) provides for by-laws to control signage advertising commercial sexual services, if necessary, to prevent the public display of signage that:
- (a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or
 - (b) is incompatible with the existing character or use of that area.
- 13.59 By-laws may prohibit or regulate signage in any terms, including (without limitation) by imposing restrictions on the content, form, or amount of signage on display.

⁵⁴⁷ Brisbane City Council, *Advertising Devices Local Law 2021* (30 June 2021).

⁵⁴⁸ See, eg, City of Sydney, *Adult Entertainment and Sex Industry Premises Development Control Plan* (2006) [3.2].

⁵⁴⁹ Department of Justice and Community Safety (Vic), *Decriminalising Sex Work* (Discussion Paper, 2021) 7.

⁵⁵⁰ *Ibid* 8.

- 13.60 This provision was included to address concerns about the implications for advertising and signage following decriminalisation and enable local authorities to regulate or prohibit offensive signage advertising commercial sexual services.⁵⁵¹
- 13.61 Some sex worker organisations point to research showing that sex work businesses have had minimal amenity impacts in decriminalised jurisdictions. They note that sex work businesses tend to operate discreetly. One study found that home occupation (sex services) premises have little to no amenity impact and neighbours are unlikely to be aware of a nearby premises unless they are told.⁵⁵²

Other industries with specific advertising laws

- 13.62 The sex work industry is not the only industry that has specific advertising laws. For example, there are also specific advertising laws in Queensland for:
- social escort services; and
 - adult entertainment.
- 13.63 These laws are outside the scope of this review. However, they are discussed here as examples of restricted advertising for other industries. In particular, advertising for adult entertainment raises similar issues to advertising for sex work.

Advertising social escort services

- 13.64 The Prostitution Act regulates advertising for social escort services, which are not permitted to provide sex work.⁵⁵³
- 13.65 Advertising for social escort services must be in the approved form and comply with Guidelines issued by the PLA.⁵⁵⁴ In particular, advertising for social escort services must unequivocally state that services are 'non-sexual' or that 'sexual services are not provided'.⁵⁵⁵ 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.⁵⁵⁶
- 13.66 These provisions were inserted in 2010 to bring advertising for social escort services into line with sex work providers working lawfully and to address the illegal industry.⁵⁵⁷
- 13.67 Escort agencies that provide sex work are currently illegal in Queensland.
- 13.68 Under a decriminalisation framework, if escort agencies are allowed to provide sex work, they would be subject to any advertising requirements for sex work under the new model.

⁵⁵¹ Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 13–14.

⁵⁵² Better Regulation Office (NSW), *Regulation of Brothels in NSW* (Issues Paper, 2012) 29 [5.1] ff, referring to J Prior & P Crofts, 'Effects of sex premises on neighbourhoods: residents, local planning and the geographies of a controversial land use' (2012) 68 *New Zealand Geographer* 134. See also Select Committee on the Regulation of Brothels, Legislative Assembly of New South Wales, *Inquiry into the Regulation of Brothels* (Report, November 2015) 28–30; P Hubbard et al, 'Noxious neighbours? Interrogating the impacts of sex premises in residential areas' (2013) 45(1) *Environment and Planning A* 126; 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 and Society* 125.

⁵⁵³ *Prostitution Act 1999* (Qld) s 5, sch 4 (definitions of 'social escort' and 'social escort provider').

⁵⁵⁴ *Prostitution Act 1999* (Qld) s 96A(2); PLA, *Guidelines for the Advertisement of Social Escort Services* (v 2, 28 June 2017).

⁵⁵⁵ *Prostitution Act 1999* (Qld) s 96A(1).

⁵⁵⁶ *Prostitution Act 1999* (Qld) s 96B.

⁵⁵⁷ *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 CMC Prostitution Report (2006) 46.

Advertising adult entertainment

- 13.69 Advertising for adult entertainment is regulated by the *Liquor Act 1992*. Under that Act, an adult entertainment permit is required to conduct ‘adult entertainment’ on licensed premises: see box 1.⁵⁵⁸
- 13.70 When the Prostitution Act was passed, it amended the *Liquor Act 1992* to introduce controls on advertising for adult entertainment, which raises similar issues to advertising for sex work. During the parliamentary debates, it was explained that these measures will ‘control the public face’ of adult entertainment.⁵⁵⁹
- 13.71 Section 168A of the *Liquor Act 1992* provides that a person must not publish an advertisement for adult entertainment:
- that describes the sexually explicit nature of the acts performed in the entertainment;
 - that is not in the form approved by the Commissioner for Liquor and Gaming either generally or for a particular advertisement; or
 - through radio or television or by film or video recording.

13.72 The maximum penalty for breach of these offences is a fine of 40 penalty units (\$5514).

13.73 Section 34 of the *Liquor Regulation 2002* prohibits publishing an advertisement in relation to adult entertainment if it contains graphics or a photograph. It also provides that an advertisement in the print media must not be more than 8 cm x 5 cm in size.

Other examples of specific advertising laws

- 13.74 There are numerous other specific advertising laws in Queensland. For example, there are specific restrictions about advertising for the gambling industry. Advertising about a casino must:⁵⁶⁰
- not be indecent or offensive;
 - not be false, deceptive or misleading in a material particular; and
 - be based on fact.
- 13.75 If the chief executive reasonably believes an advertisement about a casino does not comply with those requirements, they may direct the person who appears to be responsible for authorising the advertisement to take the appropriate steps to stop using the advertisement or to change the advertisement. The direction must be in writing, state the grounds for the direction, and state how the advertisement is to be changed. A person to whom a direction is

Box 1: What is ‘adult entertainment’?

- ‘Adult entertainment’ is sexually explicit live entertainment
- It includes stripping, exotic nude dancing, nude wait staffing and when the anus, vulva, vagina, penis or scrotum of any performer or staff member is visible, either deliberately or by accident
- It does not include the performance of sexual intercourse, masturbation or oral sex

⁵⁵⁸ *Liquor Act 1992* (Qld) pt 4A div 6. See generally Queensland Government, ‘Adult entertainment permits’ (1 July 2021) <<https://www.business.qld.gov.au/industries/hospitality-tourism-sport/liquor-gaming/liquor/licensing/applications/adult-entertainment>>.

⁵⁵⁹ Queensland, *Parliamentary Debates*, 3 December 1999, 5891 (P Beattie, Premier).

⁵⁶⁰ *Casino Control Act 1982* (Qld) s 72A.

given must comply with the direction unless the person has a reasonable excuse. The maximum penalty for failure to comply is 200 penalty units (\$27 570).⁵⁶¹

- 13.76 Similar advertising restrictions apply for other forms of gaming, betting and wagering (such as gaming machines and keno).⁵⁶²
- 13.77 Specific requirements also apply to advertising for particular types of businesses and industries (such as advertising for regulated health services or advertising by legal practitioners).⁵⁶³

General laws and other standards that regulate advertising

- 13.78 There are laws and standards that advertising in Australia must comply with, including sex work advertising. For example, under Australian Consumer Law, it is illegal to publish a false or misleading advertisement.
- 13.79 There is also a system of advertising self-regulation in Australia, which sets out rules that advertising must adhere to.
- 13.80 Some sex worker organisations say that sex work-specific advertising requirements are unnecessary, as there are already general laws and other standards that regulate advertising.⁵⁶⁴

Australian consumer law

- 13.81 Advertising by businesses must comply with the Australian Consumer Law, which is set out in the *Competition and Consumer Act 2010* (Cth). This covers misleading or deceptive conduct, false or misleading representations, unconscionable conduct, representations about country of origin, and information standards.⁵⁶⁵
- 13.82 The regulatory agencies are the Australian Competition and Consumer Commission and the consumer protection agency in each state and territory (in Queensland, the Office of Fair Trading).

Advertising self-regulation

- 13.83 The advertising and marketing communications industry in Australia is self-regulated. This has been achieved by establishing a set of rules and principles of best practice to which the industry voluntarily agrees to be bound.⁵⁶⁶ The rules are set out in a number of Codes and Initiatives.⁵⁶⁷
- 13.84 All advertising is expected to adhere to the Code of Ethics set out by the Australian Association of National Advertisers.

⁵⁶¹ *Casino Control Act 1982* (Qld) s 72B.

⁵⁶² See, eg, *Gaming Machine Act 1991* (Qld) ss 229–230; *Interactive Gambling (Player Protection) Act 1998* (Qld) ss 165, 166; *Keno Act 1996* (Qld) s 149; *Lotteries Act 1997* (Qld) ss 135–136; *Wagering Act 1998* (Qld) ss 210–211.

⁵⁶³ See, eg, Health Practitioner Regulation National Law (Queensland) s 133; *Legal Profession Act 2007* (Qld) ss 25, 115, 126, 155, 172; *Personal Injuries Proceedings Act 2002* (Qld) s 66.

⁵⁶⁴ Scarlet Alliance, *Full Decriminalisation of Sex Work in Australia*, Briefing Paper <<https://scarletalliance.org.au/library/briefing-paper-full-decrim>>.

⁵⁶⁵ Queensland Government, 'Advertising regulations' (27 May 2020) <<https://www.business.qld.gov.au/running-business/marketing-sales/marketing-promotion/advertising/regulations>>.

⁵⁶⁶ See generally Ad Standards, 'Advertising self-regulation' <<https://adstandards.com.au/about/self-regulation>>; Australian Association of National Advertisers, 'Self-regulation' <<https://aana.com.au/self-regulation>>.

⁵⁶⁷ See generally Ad Standards, 'Advertising codes' <<https://adstandards.com.au/codes-and-cases/Codes>>.

- 13.85 Other Codes and Initiatives may also apply, such as the Code of Advertising and Marketing to Children.
- 13.86 Television and radio broadcasters have their own rules, standards and codes of practice that they must comply with.⁵⁶⁸ For example, content on commercial free-to-air television is regulated by the Commercial Television Industry Code of Practice. This includes a requirement to ensure advertising complies with the Australian Association of National Advertisers Codes.⁵⁶⁹
- 13.87 Publishers will also self-regulate. For example, a newspaper will avoid offending reasonable members of their audience. They would not publish an advertisement with graphic descriptions of services or images containing nudity.
- 13.88 The advertising self-regulation system is underpinned by a complaints resolution process, which is managed by Ad Standards (previously known as the Advertising Standards Bureau). Complaints by members of the community are heard by the Ad Standards Community Panel, which is comprised of independent members of the community.⁵⁷⁰

Australian Association of National Advertisers Code of Ethics

- 13.89 The Australian Association of National Advertisers Code of Ethics applies to advertising on ‘any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies’. It does not apply to labels and packaging.⁵⁷¹
- 13.90 The Australian Association of National Advertisers Code of Ethics states that advertising must:⁵⁷²
- not employ sexual appeal:
 - where images of minors, or people who appear to be minors, are used; or
 - in a manner which is exploitative or degrading of any individual or group of people (Section 2.2);
 - treat sex, sexuality and nudity with sensitivity to the relevant audience (Section 2.4);
 - only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided (Section 2.5).
- 13.91 The Code of Ethics is accompanied by a Practice Note, which provides guidance about the Code.
- 13.92 It explains that section 2.2 prohibits advertising that portrays minors, or people who appear to be minors, in a manner that treats them as objects of sexual appeal.⁵⁷³
- 13.93 Section 2.4 prohibits the harmful use of sex, sexuality or nudity in advertising and requires that such content must be appropriate for the relevant audience. Images that are considered harmful

⁵⁶⁸ See generally Australian Communications and Media Authority, ‘TV and radio broadcasters’ <<https://www.acma.gov.au/tv-and-radio-broadcasters>>. The *Broadcasting Services Act 1992* (Cth) establishes the co-regulatory scheme for broadcast services. Industry codes of practice are registered with the Australian Communications and Media Authority.

⁵⁶⁹ Free TV (Australia), *Commercial Television Industry Code of Practice* <<https://www.freetv.com.au/resources/code-of-practice/>> [5.7.1].

⁵⁷⁰ Ad Standards, ‘Community panel’ <<https://adstandards.com.au/about/community-panel>>.

⁵⁷¹ Australian Association of National Advertisers, *Code of Ethics* (February 2021) <<https://aana.com.au/self-regulation/codes-guidelines/code-of-ethics>>.

⁵⁷² Ibid.

⁵⁷³ Ibid Section 2.2: Practice Note.

and which are not permitted are those which are overtly sexual and inappropriate having regard to the relevant audience. It was explained that:⁵⁷⁴

Overtly sexual depictions where the depiction is not relevant to the product or service being advertised are likely to offend Prevailing Community Standards and be unacceptable.

Full frontal nudity and explicit pornographic language are not permitted. Images of genitalia are not acceptable. Images of nipples may be acceptable in advertisements for plastic surgery or art exhibits for example.

Overtly sexual images are not appropriate in outdoor advertising or shop front windows.

- 13.94 The Practice Note also explains that the '[d]iscreet portrayal of nudity and sexuality in an appropriate context is generally permitted' if it is appropriate having regard to the relevant audience. It notes that '[m]ore care should be taken in outdoor media than magazines, for example'.⁵⁷⁵
- 13.95 The Australian Association of National Advertisers has also published a guideline for the advertising industry about what is meant by 'overtly sexual imagery'.⁵⁷⁶
- 13.96 When considering complaints under section 2.4, the Ad Standards Community Panel will take into account the:⁵⁷⁷
- nature of the product or service advertised;
 - context of the advertisement and its location;
 - medium in which the advertisement appears, including its size; and
 - audience and the likely response of that audience.

The advertising complaints process

- 13.97 When Ad Standards receives a consumer complaint it decides if the complaint is eligible for consideration by the Ad Standards Community Panel. If the complaint is eligible, Ad Standards notifies the advertiser and requests a response from them. The Community Panel then decides the complaint.
- 13.98 Ad Standards tells the advertiser and the complainant of the Community Panel's decision and publishes a case report. If the complaint is upheld, Ad Standards notifies the advertiser of the decision and gives them five days to respond and confirm that the advertisement has been, or is being, removed. The Community Panel's decision and final case report incorporates the advertiser's response.
- 13.99 If the advertiser does not modify or discontinue an advertisement within the allowed time frame, Ad Standards will:⁵⁷⁸
- include the advertisers failure to respond in the case report;

574 Ibid Section 2.4: Practice Note.

575 Ibid.

576 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>.

577 Ibid 1.

578 Ad Standards, 'The advertising complaints process' <<https://adstandards.com.au/about/advertising-complaints-process>>.

- forward the case report to media proprietors (if relevant);
- post the case report on Ad Standards' website, and
- if appropriate, refer the case report to a relevant government agency or industry body.

Research about community attitudes to advertising

13.100 There have been three surveys of community attitudes to sex work in Queensland, although none are recent.

13.101 In 1991, 56.2% of Queenslanders surveyed agreed that a business should not be allowed to publish advertisements for sex work.⁵⁷⁹ In 1997, 87.6% were in favour of restricting the type of advertising allowed for brothels.⁵⁸⁰ In the 2003 survey, the majority of respondents agreed with the statement that a company should not be allowed to publish advertisements for prostitution, although it was also noted that 'one-third of respondents do not share this view'.⁵⁸¹ It was observed that community attitudes:⁵⁸²

towards advertising of sex work also indicate that the community is concerned about the public visibility of any form of promotion of sexual services.

13.102 Ad Standards has commissioned regular research to assess community perceptions of advertising generally. In its report highlighting key issues from 2007–17, it stated that it has consistently found that 'community perceptions of unacceptable advertising most commonly related to sex, sexuality or nudity'. It also noted that '[r]ecent qualitative research suggests that community concern about this issue has been growing over the last 10 years'.⁵⁸³

13.103 Ad Standards stated that:⁵⁸⁴

It is clear from the research conducted since 2007 that advertising which shows overt nudity and/or are suggestive of sexual acts do not meet community standards.

13.104 It noted concerns about '[c]hildren being exposed and sent the wrong messages about sexuality', as well as the '[r]einforcement of women as sexualised "objects"'.⁵⁸⁵

13.105 Ad Standards stated that, even where nudity and sexual imagery is relevant (for example, in lingerie advertising) the community perception is that 'being too sexually explicit is not felt to be appropriate'.⁵⁸⁶

13.106 It also noted that '[t]he communication channel can either heighten or moderate community concern'. For example, it noted that there is heightened concern if minors can realistically be exposed (such as through shop fronts, billboards, or even online through Instagram and Facebook). It noted that 'significant concerns have been raised about minors' online exposure, particularly to sexual material'. It also observed generally that television 'can better accommodate the sensitivity clause' due to broadcast restrictions.⁵⁸⁷

579 CJC Prostitution Report (1991) 66, app V, Table 11.

580 Queensland Government, *Review of Prostitution Laws in Queensland* (Discussion Paper, November 1998) 68, app B, Table 17e.

581 C Woodward et al, *Selling Sex in Queensland 2003: A Study of Prostitution in Queensland* (PLA, June 2004) 98.

582 Ibid 110.

583 Advertising Standards Bureau, *Community Perceptions 2007–2017* (Research Report, December 2017) 9.

584 Ibid. See also Advertising Standards Bureau, *Community Perceptions of Sex, Sexuality and Nudity in Advertising* (Research Report, June 2010).

585 Advertising Standards Bureau, *Community Perceptions 2007–2017* (Research Report, December 2017) 9.

586 Ibid.

587 Ibid.

CONSULTATION QUESTIONS

- Q38** Should there be specific restrictions on the advertising of sex work and sex work businesses? Why or why not?
- Q39** If yes to Q38, what should those restrictions be? In particular, should there be specific requirements about:
- (a) advertising mediums (for example, should advertising sex work through radio or television or by film or video recording continue to be prohibited?);
 - (b) advertising on the internet;
 - (c) advertising employment opportunities for sex workers (for example, should publishing a statement intended or likely to induce a person to seek employment as a sex worker continue to be prohibited?);
 - (d) advertising sex work as massage services;
 - (e) size of advertising;
 - (f) images that may be used;
 - (g) wording that may be used;
 - (h) requirements for particular sex work service businesses; or
 - (i) any other requirements?
- Q40** If there are specific advertising restrictions:
- (j) how should a breach of a restriction be dealt with?
 - (k) who should be responsible for monitoring compliance and enforcing the restrictions?
- Q41** Should there be specific requirements for signage for sex work businesses? If so, how should they be regulated?

