

A framework for a decriminalised sex work industry in Queensland

Consultation Paper WP 80

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Terms of reference

Queensland's laws relating to the regulatory framework for the sex work industry¹

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 - (b) the extent to which existing legislation should be repealed to give effect to a decriminalised sex work industry, including the *Prostitution Act 1999*, *Prostitution Regulation 2014*, Chapter 22A of the Criminal Code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;
 - (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.

¹

The full terms of reference are available on the Commission's website <<https://www qlrc.qld.gov.au/>>.

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 prepare any draft legislation required to give effect to 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 draft legislation required to give effect to its recommendations, to the Attorney-General and Minister for Justice, by 27 November 2022.

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

Consultation questions

CHAPTER 7: WHAT MIGHT A DECRIMINALISED SEX WORK INDUSTRY LOOK LIKE?

- Q1** What should be the main purposes of the recommended framework for a decriminalised sex work industry in Queensland, and why?
- Q2** Overall, what might the new framework look like?
- Q3** What changes would need to be made to the current framework, and why?
- Q4** Who should the new framework apply to, and why?

CHAPTER 8: OFFENCES TO PROTECT AGAINST COMMERCIAL SEXUAL EXPLOITATION

- Q5** What offences or other provisions should be included to protect people from being exploited in commercial sexual activity? For example:
 - (a) Should the offences in section 77 of the Prostitution Act and sections 229G, 229FA and 229L of the Criminal Code be reformulated in another part of the Criminal Code or in another law?
 - (b) Should any other offences be included in the Criminal Code or another law (like the exploitation offences in other decriminalised places)?
 - (c) Should the *Child Employment Act 2006* be amended to prohibit a person from requiring or allowing a child to work as a sex worker or in a sex work business?

CHAPTER 9: LICENSING OF SEX WORK BUSINESS OPERATORS

Whether a licensing system is needed

- Q6** Should sex work business operators be required to have some form of licence to operate a sex work business in Queensland? Why or why not?

Features of a licensing system

- Q7** If a licence were to be required what should the system look like?
- Q8** Should the requirement to hold a licence apply to:
 - (a) all sex work businesses; or
 - (b) only those who employ a certain number of sex workers?
- Q9** What should a suitability check involve? For example, should it:
 - (a) be limited to checking whether the person has convictions for serious disqualifying offences (like New Zealand)?
 - (b) include checking whether the person has been bankrupt, had another licence for operating a sex work business revoked, or been an executive officer of a body corporate that was found guilty of a serious offence against workplace laws (like the Northern Territory)?
 - (c) require the decision-maker to form an opinion that the person is 'suitable', based on any relevant matter (like the Prostitution Act or in the Northern Territory)?

- Q10** Should the fee for a licence be set at a nominal amount (like the Northern Territory and New Zealand) or a higher amount (like the Prostitution Act)?
- Q11** For how long should a licence be valid?
- Q12** What should happen if an operator:
- (a) does not hold a valid licence? For example, should there be a criminal penalty, civil penalty, or both?
 - (b) does not follow any requirements or conditions imposed by the licence? For example, should there be a civil penalty, suspension or cancellation of the licence, or both?
- Q13** Who should be responsible for carrying out suitability checks and issuing licences? For example, should this be:
- (a) an existing body that deals with other industries, like the Office of Fair Trading; or
 - (b) an existing or newly created body with a role specific to the sex work industry, like the PLA?
- Q14** Should decisions to refuse an application for a licence or to suspend or cancel a licence be reviewable by QCAT?

Other considerations or options

- Q15** What is the best way for a licensing system (if any) to balance:
- (a) the need to protect against illegal activity; and
 - (b) the need to limit the administrative and resource burden on government and the sex work industry?
- Q16** Apart from a licensing system, what is the best way to deter illegal activity and to protect sex workers from being exploited under the new regulatory framework?
- Q17** What other factors should we consider (if any) in recommending a licensing system?

CHAPTER 10: WORKPLACE LAWS

- Q18** What is the best way to make sure people in the sex work industry meet their work health and safety standards?
- Q19** Should there be a guide for the sex work industry on how to meet work health and safety obligations (for example, a code of practice made under the *Work Health and Safety Act 2011* or guidelines)?
- Q20** Are there any other work health and safety matters we should consider in developing a framework for a decriminalised sex work industry?
- Q21** Under a decriminalised framework for the sex work industry, should legislation state that a contract for or to arrange sex work is not illegal or void on public policy or similar grounds?
- Q22** Should there be a new law stating that a person may, at any time, refuse to perform or continue to perform sex work?

CHAPTER 11: PUBLIC HEALTH AND THE HEALTH OF SEX WORKERS

- Q23** Should laws or other measures be taken to promote public health and protect the health of sex workers and their clients about:
- (a) the use of prophylactics;
 - (b) managing the risk of sexually transmitted infections;

- (c) sexual health testing; or
- (d) another matter?

Q24 If yes to Q23, what should those measures be and why?

CHAPTER 12: PLANNING LAWS AND SEX WORK

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

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

Assessment of development applications for commercial sex work businesses

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

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

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

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

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

Review of decisions about development applications for commercial sex work businesses

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

Should separation distances apply to commercial sex work businesses?

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

Q33 If yes to Q32:

- (a) What land uses (for example, schools, childcare centres, places of worship) should require a separation distance?
- (b) Should local governments have discretion to decide what separation distances (if any) apply in their local government area?

Home-based sex work businesses

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

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

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

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

CHAPTER 13: ADVERTISING SEX WORK

- 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:

- (a) how should a breach of a restriction be dealt with?
- (b) 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?

CHAPTER 14: PUBLIC SOLICITATION

- Q42** Should a person be prohibited from publicly soliciting for sex work? Why or why not?

- Q43** If yes to Q42:

- (a) Should public solicitation always be prohibited?
- (b) Alternatively, should public solicitation be prohibited in particular circumstances only (like New South Wales and Victoria) and, if so, what should those circumstances be?

- Q44** If public solicitation is prohibited, how should this be regulated? For example, by:

- (a) laws that are about sex work;
- (b) local laws;
- (c) some other form of regulation?

- Q45** Should a police officer be able to direct a person suspected of soliciting to 'move on'? If yes, in what circumstances should an officer be able to give this direction?

- Q46** If publicly soliciting for sex work is prohibited or regulated, then should loitering in public for the purpose of soliciting be treated the same way?

CHAPTER 15: REVIEW OF THE NEW REGULATORY FRAMEWORK

- Q47** Should there be a requirement in legislation to review the new regulatory framework for the sex work industry within a set period of time after decriminalisation? If so:
- (a) who should conduct the review (for example, should it be carried out by a relevant government department or should a review committee be established and, if so, what should its membership be);
 - (b) when should the review begin; and
 - (c) what matters should the review consider?
- Q48** If yes to Q47, should there also be a requirement to collect baseline data as soon as possible after decriminalisation commences? If so, who should collect that data and what data should they be required to collect (for example, data about the number of sex workers in Queensland and the nature of the environment in which they work)?

CHAPTER 16: DISCRIMINATION AGAINST SEX WORKERS

- Q49** Is there anything you would like to tell us about how the *Anti-Discrimination Act 1991* could best protect sex workers against unlawful discrimination in light of the decriminalisation of the sex work industry?

CHAPTER 17: OTHER MATTERS

- Q50** What are the potential impacts of a new framework for the sex work industry?
- Q51** What other supporting measures are needed as part of the decriminalisation framework? For example:
- (a) education and training, such as:
 - i. public education and awareness programs to address stigma and educate the community about sex workers;
 - ii. information, education and training for sex workers and sex work business operators on their rights and obligations;
 - iii. education and training programs for officials and organisations who deal with sex workers;
 - (b) steps to build positive relationships between sex workers, police and other authorities;
 - (c) peer support and outreach services for sex workers on health and other matters.
- Q52** Is there anything else you would like to tell us about these or any other matters raised by the terms of reference to ensure the legislative framework for decriminalisation is appropriate and effective?

CHAPTER 18: FRAUDULENT PROMISE TO PAY A SEX WORKER FOR A SEXUAL ACT

- Q53** In a decriminalised sex work industry, are Queensland's criminal laws adequate to deal with circumstances where there is a fraudulent promise by a person to pay money to a sex worker in exchange for a sexual act? Why or why not?

- Q54** If no to Q53, what changes (if any) should be made to the Criminal Code to address this issue? For example, should the Criminal Code be changed:
- (a) to widen the list of circumstances in section 348(2) that negate consent (and if so, in what way); or
 - (b) in some other way?
- Q55** What other factors should we consider (if any) in recommending changes to the criminal law on this issue?

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What our review is about

- 1.1 The sex work industry in Queensland is diverse. It includes many activities and ways of working. 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.
- 1.2 Presently, two forms of sex work are lawful:
- sex work in a licensed brothel; and
 - private sex work performed alone.
- 1.3 All other forms of sex work are illegal. This includes street-based sex work, sex work in an unlicensed brothel or massage parlour, escort agencies, outcalls from a licensed brothel, and two or more private sex workers providing sex work under a co-operative arrangement.
- 1.4 This regulatory scheme creates a two-tiered industry where most sex work is criminalised. Sex worker organisations say this has, or contributes to, negative impacts on the rights, health and safety of some sex workers. They advocate for sex work to be decriminalised as the best way to improve sex workers' safety and safeguard their rights.

Box 1: What is our task?

- The Government has decided to decriminalise the sex work industry
- This means regulating sex work as work, not as a crime
- Decriminalisation does not mean no regulation at all
- The Commission's task is to consider what the legal framework for a decriminalised sex work industry should be
- We aim to develop a regulatory framework focused on **fairness, safety and health**

- 1.5 The Government has committed to decriminalising the sex work industry in Queensland. This means regulating sex work as work, not as a crime.
- 1.6 Sex work is decriminalised in New Zealand, New South Wales and the Northern Territory. Victoria is decriminalising sex work under a two-stage process commencing on 10 May 2022.
- 1.7 Decriminalisation does not mean no regulation at all. It is likely to combine new laws and some existing laws.
- 1.8 The aim of decriminalisation is to recognise sex work as legitimate work. This means sex work will be regulated, as far as possible, like any other business under existing laws (such as planning laws and workplace laws). Sex workers will have the same rights, protections and obligations as other workers. Some sex work-specific regulation might also be needed to address particular risks or harms.
- 1.9 Many sex worker organisations and others say decriminalisation is an important step in creating supportive environments for improving the health and safety of sex workers.
- 1.10 A growing body of research shows decriminalisation has positive effects on sex workers' health, safety, access to justice and workplace rights. It can also help to address stigma and discrimination. Decriminalisation does not mean sex work is actively encouraged. It does not appear to lead to an increase in the number of sex workers.

Our terms of reference

- 1.11 We have been asked to recommend a framework for a decriminalised sex work industry in Queensland.
- 1.12 Our review is carried out under terms of reference given to us on 27 August 2021 by the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence.
- 1.13 We are asked to prepare any draft legislation needed to give effect to our recommendations.

What our review focuses on

- 1.14 Our terms of reference ask us to consider:
 - the extent to which existing laws should be repealed to decriminalise the sex work industry;
 - who the framework would apply to;
 - appropriate safeguards:
 - including economic, health and safety protections for sex workers and their clients;
 - to deter the involvement of illegal activity and the exploitation of vulnerable people in the sex work industry; and
 - to maintain public amenity, including in relation to the location of sex work;
 - compatibility of the framework with the *Human Rights Act 2019*;
 - whether there are any public health or public safety implications associated with the framework;
 - how the framework would be administered;
 - ways to monitor and enforce compliance with the framework;
 - potential impacts for the sex work industry and government, including the current licensed brothel industry, in moving to the new framework; and
 - limiting the administrative and resource burden on government and industry.
- 1.15 Within the context of our recommended decriminalisation framework, our terms of reference also ask us to consider what, 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.

Our paper

- 1.16 In chapters 1 to 6, we describe the main features and impacts of the current legal framework, summarise what we know about the size and make-up of the industry, describe the main features and effects of decriminalisation and give an overview of relevant human rights.

1.17 In the rest of our paper, we focus on the following issues:

- what the new framework for a decriminalised sex work industry should look like, including what its main purposes should be, what legal changes would need to be made, and who the framework should apply to (chapter 7);
- the need for offences to protect adults and children from commercial sexual exploitation (chapter 8);
- whether licensing requirements for operators of sex work businesses are needed and, if so, what they should be (chapter 9);
- how workplace laws apply to the sex work industry and what other provisions or measures might be needed to support workplace health and safety and sex workers' autonomy (chapter 10);
- how public health laws apply to the sex work industry and what other provisions or measures might be needed to promote and support sex worker health (chapter 11);
- how planning laws might apply under the framework and what provisions might be appropriate to support public amenity, protect sex workers' rights, and give sex work businesses a viable pathway to operate lawfully (chapter 12);
- whether specific rules about advertising in the sex work industry are necessary or desirable (chapter 13);
- issues and concerns about public solicitation and street-based sex work and how this might be addressed (chapter 14);
- whether there should be a requirement in Queensland legislation to review the new regulatory framework following decriminalisation (chapter 15);
- possible changes to the law that might be needed to protect sex workers from unfair discrimination (chapter 16);
- impacts of the framework on the current sex work industry, and what other measures might be needed to implement and support the transition to the new framework (chapter 17); and
- whether any changes are needed to the law to deal with situations where a person has made a fraudulent promise to pay a sex worker for a sexual act (chapter 18).

1.18 To help us prepare our paper we consulted with people and organisations that have relevant experience and knowledge about the sex work industry and the current regulatory framework in Queensland. We thank them for their assistance.

What falls outside our review?

1.19 Our review does not include activities authorised by an adult entertainment permit under the *Liquor Act 1992* (such as stripping, exotic nude dancing and nude wait staffing).² These activities fall outside the definition of 'prostitution' and are regulated by a separate framework under liquor licensing laws.

- 1.20 Our review also does not include other activities that fall outside the definition of ‘prostitution’ such as pornography, phone sex or live online video performance, which typically do not involve direct bodily contact.

Our terminology

- 1.21 We use the terms ‘sex work’ and ‘sex worker’ instead of ‘prostitution’ and ‘prostitute’.³ We may use different terms if we are quoting from someone else or discussing laws that use particular words.
- 1.22 For our review, ‘sex work’ includes all forms of legal and illegal sex work. This includes, but is not limited to, sex work in brothels and escort agencies, sexual services provided in massage parlours and other venues, sex work by private sex workers and street-based sex work.⁴
- 1.23 In this paper:⁵
- ‘sex work’ refers to an adult providing consensual sexual services to another adult in return for payment or reward, and a ‘sex worker’ is someone who provides sex work within this meaning; and
 - a ‘sex work business’ is a business that provides for or arranges for the provision of sex work, and a ‘sex work business operator’ is someone who, alone or with others, owns, operates, controls or manages the business.
- 1.24 We also refer to the *Prostitution Act 1999* as the ‘Prostitution Act’ and the *Prostitution Regulation 2014* as the ‘Prostitution Regulation’.
- 1.25 References to the *Sex Work Decriminalisation Act 2022* (Vic) are to the Act as passed.

Our approach to reform

- 1.26 We take the terms of reference as our starting point.
- 1.27 We recognise the importance and knowledge of sex workers and sex worker organisations. But we also need to consider the interests and views of other individuals and the wider community:⁶
- Sex workers are absolutely central to the success or failure of any new regime, but it is also important that reforms take into account (but not be determined by) the interests and preferences of all relevant parties—local residents, owners of sex businesses, sex workers, and state officials responsible for public order, health, and safety.
- 1.28 We aim to develop a regulatory framework focused on **fairness, safety and health**. This is a framework that:⁷
- recognises sex work as work;
 - protects the health, workplace and human rights of sex workers;
 - safeguards public health and safety;

³ See ch 7.

⁴ Terms of reference para 5.

⁵ See ch 7.

⁶ R Weitzer, *Legalizing Prostitution: From Illicit Vice to Lawful Business* (NYU Press, 2012) 207.

⁷ See ch 7.

- maintains public amenity; and
- deters illegal activity and exploitation.

Giving us your views

Making a submission

- 1.29 You are invited to give us your views on the consultation questions in our paper. Your views on these key issues will help us develop and test our recommendations and any draft laws that go with them. The closing date for submissions is **3 June 2022**.
- 1.30 The consultation questions appear throughout the paper. They are also listed together in one place at pages xiii to xviii. The list can also be downloaded as a Word document from our website.
- 1.31 We ask that you give us your views and comments in writing and by the closing date. You do not have to follow a set format or answer all of the questions.
- 1.32 It will help us if submissions address the specific issues in the review. Our terms of reference are about the framework for a decriminalised sex work industry (not whether sex work should be decriminalised).

You can send us your written submission by:

1. Emailing us at LawReform.Commission@justice.qld.gov.au
2. Posting it to us at
The Secretary
Queensland Law Reform Commission
PO Box 13312 George Street Post Shop
BRISBANE QLD 4003

Privacy

- 1.33 We have a long standing policy of not publishing the submissions we receive. We refer to submissions in our reports and we list the names of submitters in an appendix at the back of the report. Our reports are tabled in parliament and then published on our website.

Please tell us clearly on your submission if:

- You do not want us to refer to your submission or part of it in our report
- You do not want us to include your name in our report

- 1.34 We collect personal information in your submission only for the purpose of conducting our review.

- 1.35 However, all submissions can potentially be disclosed under the *Right to Information Act 2009*. If a person applies to us to see a submission, we decide the application for access under that Act.

Other consultations

- 1.36 We intend to meet and speak with interested stakeholders, including sex worker organisations, the Prostitution Licensing Authority (PLA), licensed brothel operators, local and state government departments, industry regulators, police officers, and other interested people and organisations.

Our next steps

- 1.37 We will consider all the responses we receive during consultation, along with our own research.
- 1.38 We will prepare a final report to the Attorney-General and Minister for Justice with our recommendations and any draft legislation. This is due by **27 November 2022**.

The current regulatory framework in Queensland

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How is sex work in Queensland regulated now?

- 2.1 Queensland's sex work industry is currently regulated by the Prostitution Act, the Prostitution Regulation, Chapter 22A of the Criminal Code and sections of the *Police Powers and Responsibilities Act 2000*.
- 2.2 In Queensland, a person engages in 'prostitution' if they engage or offer to engage in providing any of the following activities to another person, under a commercial arrangement:⁸
- sexual intercourse;
 - oral sex;
 - masturbation; or
 - any other activity that involves the use of one person by another for his or her sexual satisfaction involving physical contact (except where the activity is authorised under an adult entertainment permit).⁹

Legal and illegal forms of sex work

- 2.3 There are two legal forms of sex work:
- sex work carried out in a licensed brothel, from which outcalls are prohibited; and
 - private sex work by a sex worker who is working alone at a premises, providing in-call or outcall services or both (when a private sex worker is working alone they are sometimes called a 'sole operator').
- 2.4 Any other form of sex work is illegal. This includes street-based sex work (publicly soliciting), escort agencies, sex work in unlicensed brothels or massage parlours used for sex work, outcalls from licensed brothels, and two or more private sex workers providing sex work under a co-operative arrangement.

Prostitution Act

- 2.5 The Prostitution Act came into effect on 1 July 2000. Its purpose is to 'regulate prostitution in Queensland'.¹⁰ It does this by:
- First, establishing a regulatory framework for the operation of licensed brothels. A 'brothel' means premises made available for prostitution by two or more prostitutes at the premises.¹¹
 - Second, creating the Prostitution Licensing Authority (PLA) as the main regulatory agency for functions in respect of licensed brothels.
 - Third, including offences and other provisions that apply to all sex workers, both within and outside the licensed brothel sector.

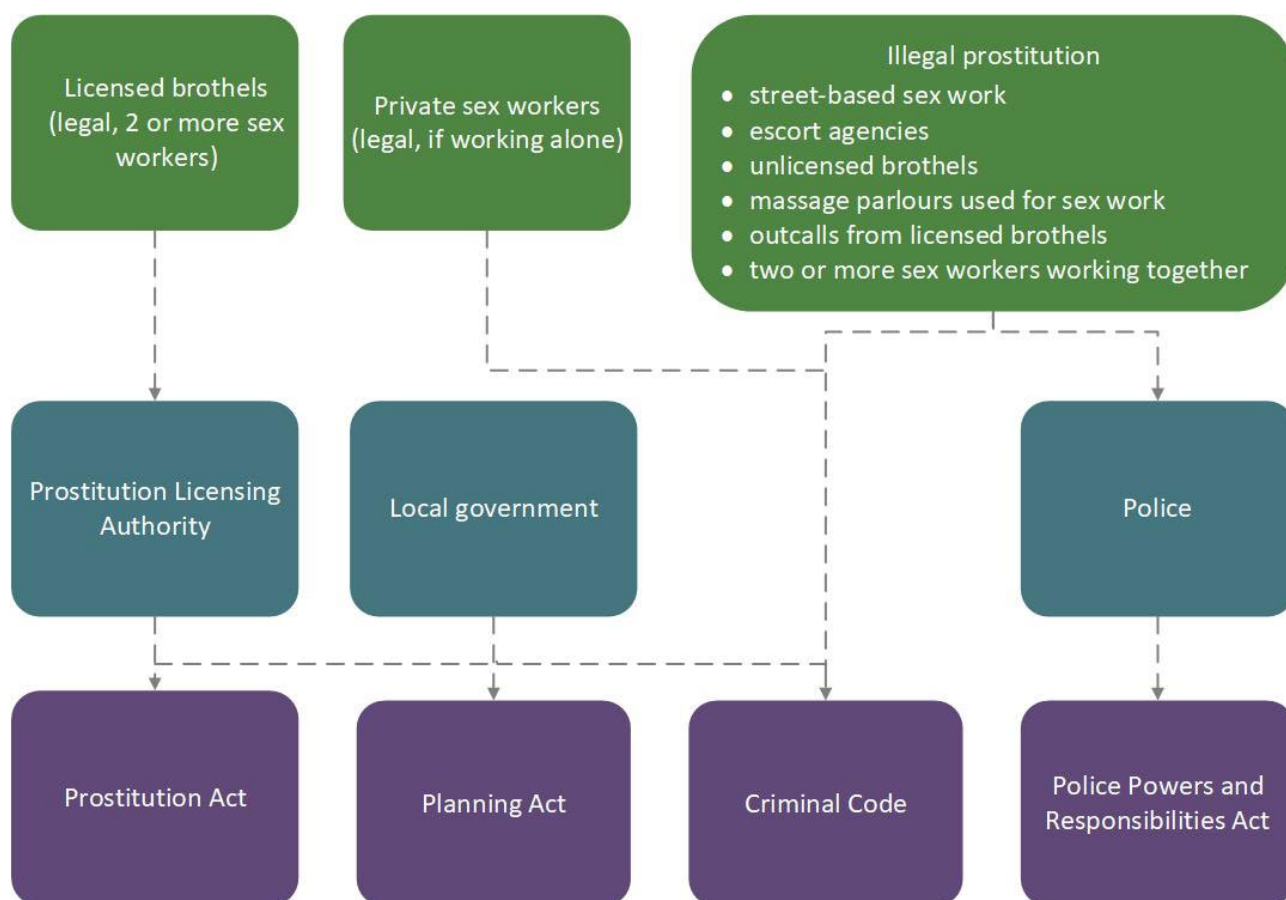
⁸ Criminal Code (Qld) s 229E(1).

⁹ Criminal Code (Qld) s 229E(2). The person providing adult entertainment must be an adult and must not be a person with an impairment of the mind.

¹⁰ *Prostitution Act 1999* (Qld) s 3.

¹¹ *Prostitution Act 1999* (Qld) sch 4 (definition of 'brothel').

Figure 1: The current regulatory framework for 'prostitution' in Queensland



Licensing requirements for brothels

2.6 Under the licensing system:¹²

- certain persons are not eligible to hold a licence;
- a person may hold only one brothel licence; and
- managers of brothels must be approved by the PLA under an approved manager's certificate.

2.7 Licensed brothels must follow the requirements of the Prostitution Act and meet the conditions of their licence. The PLA may suspend or cancel a brothel licence or an approved manager's certificate in certain circumstances.¹³

¹² See *Prostitution Act 1999* (Qld) ss 8, 9, pt 3 div 2.

¹³ See *Prostitution Act 1999* (Qld) pt 3 div 1 subdiv 2, pt 6 div 2.

Limits on the size and location of licensed brothels

- 2.8 A person must have development approval from the local government to use premises as a brothel.¹⁴
- 2.9 Under the *Planning Act 2016* and the *Planning Regulation 2017*, a brothel:¹⁵
- must have no more than five rooms used to provide prostitution; and
 - must not be within 200 metres of a residential area, residential building or public building, such as a hospital, kindergarten, place of worship or school.
- 2.10 A brothel is prohibited if it does not meet those requirements. Brothels can also be prohibited by the local government in a town with a population of less than 25 000 if the Minister agrees.¹⁶
- 2.11 The Prostitution Act limits the number of sex workers who may work at a licensed brothel at any one time. This depends on the number of rooms allowed in the brothel. For example, a licensed brothel that is allowed to have five rooms may have no more than eight sex workers at any one time. There can also be no more than 13 staff at the brothel at any one time.¹⁷

Closure of prohibited brothels

- 2.12 A Magistrates Court may declare premises to be a prohibited brothel if it is satisfied, on the balance of probabilities, that:
- a person is operating a brothel without a licence at the premises; or
 - the premises are being used for a brothel in contravention of the *Planning Act 2016*.
- 2.13 It is an offence to use a prohibited brothel after notice of the court's declaration is given and while the declaration is in force. It is also an offence for a person to be found in, entering, or leaving a prohibited brothel (other than the owner or occupier of the premises entering or leaving the premises for a lawful purpose).¹⁸

Public health offences

- 2.14 Brothel licensees, approved managers of licensed brothels, sex workers and clients have health obligations. Under the Prostitution Act:¹⁹
- prophylactics must be used during sex work, and brothel licensees and approved managers must take reasonable steps to ensure this; and
 - sex workers must not work, or be allowed to work, in a brothel while they are infectious with a sexually transmissible disease.
- 2.15 As a result of the restriction on working while infectious with a sexually transmissible disease, sex workers who are working in brothels must have regular sexual health tests.

¹⁴ *Planning Regulation 2017* (Qld) sch 10 pt 2 div 2.

¹⁵ *Planning Regulation 2017* (Qld) sch 10 pt 2 div 1.

¹⁶ *Planning Regulation 2017* (Qld) sch 10 pt 2 div 1, s 2(c).

¹⁷ See *Prostitution Act 1999* (Qld) s 78(1)(b), (2), sch 3.

¹⁸ *Prostitution Act 1999* (Qld) pt 5.

¹⁹ *Prostitution Act 1977* (Qld) ss 77A, 89, 90.

Other offences under the Prostitution Act

- 2.16 The Prostitution Act includes other prostitution offences. It is an offence to:
- publicly solicit for prostitution, as a client or sex worker (section 73);
 - cause a nuisance to another person by conduct connected with prostitution (section 76);
 - force a person by duress to continue to provide prostitution (section 77), including by:
 - causing or threatening injury to the person or anyone else;
 - causing or threatening wilful damage to property of the person or anyone else;
 - intimidating or harassing the person or anyone else; or
 - making a false representation or using any false pretence or fraudulent means.
- 2.17 Advertising for prostitution is also restricted. A person must not publish an advertisement for prostitution through radio or television or by film or video recording. All other advertising for prostitution must be in the approved form, and must not describe the services offered. It is also an offence to advertise prostitution as massage services.²⁰

Criminal Code offences

- 2.18 The Prostitution Act operates with Chapter 22A of the Criminal Code to make prostitution activities illegal.
- 2.19 Chapter 22A of the Criminal Code creates various offences.
- 2.20 It is a crime to carry on a business providing unlawful prostitution (section 229HB). ‘Unlawful prostitution’ means prostitution by two or more prostitutes, other than at a licensed brothel under the brothel licence.²¹ For example, to operate a massage parlour or escort agency with two or more sex workers.
- 2.21 It is a crime to knowingly participate in the provision of prostitution by another person, unless it is at a licensed brothel under the brothel licence and the other person is an adult and not a person with an impairment of the mind (sections 229H and 229HA(2)). For example, being a receptionist for a sex worker such as taking phone calls, making bookings, screening clients, and placing an advertisement on their behalf.
- 2.22 It is also a crime for a person to:
- engage in prostitution, or obtain prostitution, through a business suspected on reasonable grounds of providing unlawful prostitution (section 229HC);
 - without reasonable excuse, be found in, or leaving after having been in, a place suspected on reasonable grounds of being used for the purposes of prostitution by two or more prostitutes (that is not a licensed brothel) (section 229I);
 - obtain prostitution from a person who is not an adult (section 229FA);
 - procure another person to engage in prostitution (section 229G);

²⁰ *Prostitution Act 1999* (Qld) pt 6 div 4.

²¹ *Prostitution Act 1999* (Qld) s 229C.

- knowingly allow premises that the person has an interest in (for example, that the person owns, occupies, leases or rents) to be used for the purposes of prostitution by two or more prostitutes (not a licensed brothel) (section 229K); or
- permit a person who is not an adult, or a person with an impairment of the mind, to be at a place used for the purposes of prostitution by two or more prostitutes (section 229L).

Private sex workers

- 2.23 Private sex workers, who work for themselves and are not employed or engaged by a brothel or other sex work business, can operate lawfully. They are not subject to the brothel licensing system under the Prostitution Act or the regulatory role of the PLA. Private sex workers can work lawfully if they work alone. For this reason, they are sometimes called 'sole operator' sex workers. However, when private sex workers share premises or work in co-operative arrangements with other sex workers, they may cross over into the illegal prostitution sector.
- 2.24 Section 229H of the Criminal Code prohibits sex workers from working together under a co-operative arrangement, except at a licensed brothel. Private sex workers must operate alone. They cannot employ, or be assisted by, another person, except in the limited circumstances that they:²²
- employ the holder of a current licence issued under the *Security Providers Act 1993* for carrying out the functions of a bodyguard;
 - employ the holder of a current licence issued under the *Security Providers Act 1993* for carrying out the functions of a crowd controller to act as a driver; or
 - give another person (who does not engage in prostitution and does not participate in the provision of prostitution by anyone else) a message about their location or activities to ensure the safety of private sex worker.
- 2.25 Private sex workers must also follow the advertising requirements under the Prostitution Act.

Police Powers and Responsibilities Act 2000

- 2.26 The *Police Powers and Responsibilities Act 2000* gives police general powers to enter places to make inquiries, carry out investigations or search, or to require a person to state their name and address.²³ The Prostitution Act gives police powers to enter and search licensed brothels.²⁴
- 2.27 The *Police Powers and Responsibilities Act 2000* also gives authorised police officers additional powers to carry out investigations and obtain evidence for certain offences. This may include engaging in 'controlled activities' (such as communicating with a person while deliberately concealing the true purpose of the communication) or 'controlled operations' (undercover operations).²⁵ Police officers who are acting as authorised are protected from liability and can do things that would otherwise be crimes.²⁶

22 Criminal Code (Qld) ss 229HA(4)–(5).

23 See, eg, *Police Powers and Responsibilities Act 2000* (Qld) chs 2, 3, ss 40, 41(g); *Police Powers and Responsibilities Regulation 2012* (Qld) s 22, sch 3.

24 *Prostitution Act 1999* (Qld) pt 3, div 3.

25 *Police Powers and Responsibilities Act 2000* (Qld) chs 10, 11.

26 *Police Powers and Responsibilities Act 2000* (Qld) ss 225, 258.

- 2.28 Those additional powers can apply for some sex work-specific offences.²⁷ For example, authorised police officers have immunity from the offence of publicly soliciting for sex work under section 73(1) of the Prostitution Act, when engaging in controlled activities.²⁸ This means that they could pose as either a street-based sex worker (to target clients) or as a client (to target street-based sex workers).

²⁷ *Police Powers and Responsibilities Act 2000* (Qld) ss 221, 229, sch 2 item 5, sch 5 pt 2 item 9.

²⁸ *Police Powers and Responsibilities Act 2000* (Qld) s 221, sch 5 pt 2 item 9.

The size and composition of the sex work industry in Queensland

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What does Queensland's sex work industry look like?

- 3.1 The number of sex workers in Queensland is not known and is difficult to assess. Complete, accurate and up-to-date figures are hard to come by. The reasons for this include:²⁹
- the criminalisation of some forms of sex work;
 - the stigma and discrimination sex workers can experience;
 - the desire for privacy; and
 - the high mobility of many sex workers, with some moving in and out of the industry.
- 3.2 We also understand that not all people who engage in sex work self-identify as sex workers.³⁰
- 3.3 A 2008 assessment of Queensland sex worker needs estimated that there were about 20 000 sex workers in Australia, with about 5000 in Queensland.³¹
- 3.4 The most recent and best data we have about the numbers and demographics of sex workers in Queensland are data collected by Respect Inc about sex workers who come to them for information. They had contacts with 7588 sex workers between 1 January 2019 and 16 November 2021.
- 3.5 Using that data and other available information (including reports, research surveys and the knowledge sex worker organisations have from their experience in the industry), we know that:
- There is no one typical sex worker. Sex workers are a diverse population that come from a wide cross-section of the community.
 - Sex workers may work in one sector only, or they may work in more than one sector at the same time or at different times, or move between sectors.
 - Sex workers may work in the industry a short or long time. They may also move in and out of the industry.
 - Sex workers may work across locations and jurisdictions.
 - Sex work may be a person's sole, primary or secondary source of income.

The sex work industry by sector

- 3.6 As we have seen, there are two legal forms of sex work in Queensland; sex work in licensed brothels and private sex work by a sex worker working alone. All other forms of sex work are illegal.
- 3.7 The size of the licensed brothel sector has remained relatively small.
- 3.8 The size of the illegal sex work sector is unclear. The Crime and Misconduct Commission (CMC) has said that:³²
- the illegal sector is likely to be larger than the legal industry;

²⁹ See, eg, 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, 518; CMC Prostitution Report (2011) 13.

³⁰ Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 19. See also Respect Inc, *Needs Assessment for Asian Sex Workers in Queensland: March 2015–September 2015* (Report, 2015) 8; G Prestage et al, *Hook Up? A Study of Male Sex Work In NSW and Queensland 2014* (2014) 31.

³¹ R Berg & J Bates, *Queensland Sex Workers: Assessment of Needs*, Final Report (BB Professional Services, May 2008) 37; A Quadara, 'Sex workers and sexual assault in Australia: Prevalence, risk and safety' (Issues No 8, Australian Institute of Family Studies, March 2008).

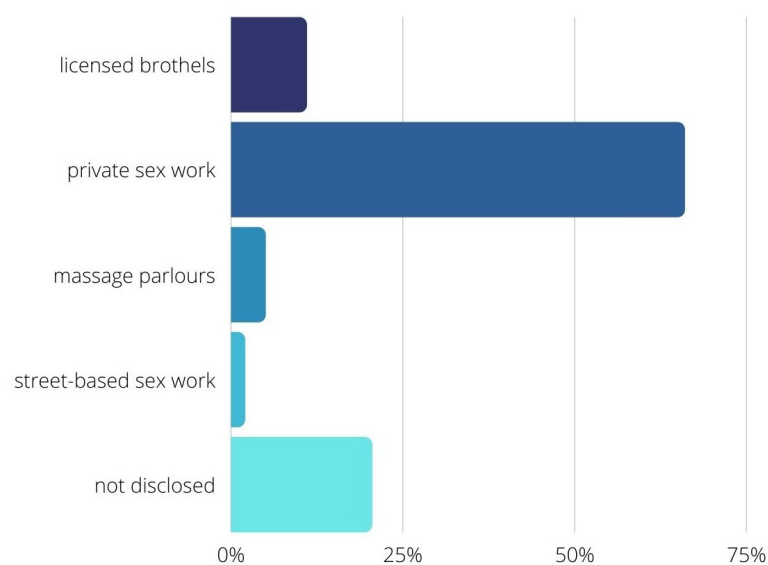
³² CMC Prostitution Report (2011) xiii. See also CMC Prostitution Report (2006) 15–16.

- illegal operations tend to be smaller in Queensland than other states;
- illegal operators often masquerade as private sex workers in their advertising; and
- there has been an increase in migrant sex workers and organisers in both the illegal sector and the licensed brothel sector (but no evidence such workers were the subject of sex trafficking or debt bondage).

3.9 Crime statistics compiled by the Queensland Government Statistician's Office show that 'prostitution offences' are a very small proportion of reported offences in Queensland. In 2019–20:³³

- 70 prostitution offences were reported (at a rate of 1.4 per 100 000 people);
- most offenders were female, and aged between 30 and 59 years old; and
- most (36) of the offences were reported in the Brisbane region.

Figure 1: Queensland's sex work industry by sector³⁴



For the data groups above:

- 'Private sex work' includes legal and illegal private sex work. It includes in-calls, outcalls and work in co-operative arrangements.
- 'Street-based sex work' includes sex for favours.
- 'Not disclosed' is likely to include illegal sectors such as escort agencies, unlicensed brothels and massage parlours.

3.10 The PLA's Annual Reports for the last five years show that it receives only a small number of complaints about illegal sex work activity (which it may refer to police). In 2020–21, 14 of 36 complaints received were about illegal sex work activity.³⁵ In 2019–20, only seven of the 31

³³ See Queensland Government Statistician's Office, *Crime Report, Queensland, 2019–20 Reported Crime Statistics* (2021) Tables 3, 6, 46, 49.

³⁴ From data provided in correspondence from Respect Inc, 8 November 2021.

³⁵ PLA, *Annual Report 2020–21* (2021) 8.

complaints received were about illegal sex work.³⁶ However, these figures do not give a clear picture of the size of the illegal sex work sector.

- 3.11 Of 7480 sex worker contacts with Respect Inc between 1 January 2019 and 3 November 2021, 20.5% of workers did not disclose their sector of work. Respect Inc considered that these workers probably worked in sectors that are currently illegal.

Licensed brothels

- 3.12 There are 20 licensed brothels in Queensland. Most are in Greater Brisbane (13), with the remainder in the Gold Coast (3), Sunshine Coast (1), Toowoomba (1), Townsville (1) and Mackay (1).³⁷
- 3.13 The highest number of licensed brothels on record in Queensland was 27, in 2014–15.³⁸ The numbers and distribution from the PLA's last five Annual Reports, as at the end of each financial year, are in table 1 (numbers may have fluctuated during those years):³⁹

Table 1: Number of licensed brothels in Queensland as at the end of each financial year

Licensed Brothels	2016–17	2017–18	2018–19	2019–20	2020–21
Greater Brisbane*	12	12	12	12	11
Gold Coast	5	5	5	5	4
Sunshine Coast	1	1	1	1	1
Toowoomba	1	1	1	1	1
Cairns	1	1	1	1	1
Townsville	1	—	—	—	2
Total	21	20	20	20	20

* Greater Brisbane includes Brisbane, Logan and Moreton Bay. The end of year figures shown above for Greater Brisbane in 2016–17, 2017–18 and 2018–19 include 10 brothels in Brisbane, 1 brothel in Logan, and 1 brothel in Moreton Bay. In Logan, 1 brothel was closed in March 2020; 1 was opened in July 2021; there were none open there at the end of the financial year in 2019–20 or 2020–21. In Moreton Bay, 1 brothel has operated continuously throughout the financial years 2016–17 to 2020–21.

- 3.14 Most sex work occurs outside the licensed brothel sector. Working at a licensed brothel is not an available option for many sex workers, especially those working regionally:
- the licensed brothel sector is relatively small;
 - licensed brothels are mostly located in metropolitan south east Queensland;
 - licensed brothels are limited in how many rooms they are allowed to have; and

³⁶ PLA, *Annual Report 2019–20* (2020) 7.

³⁷ PLA, 'Licensed brothels in Brisbane and Queensland' (2022) <<https://www.pla.qld.gov.au/licensing/brothels-queensland-list>>.

³⁸ See PLA, *Annual Report 2018–19* (2019) 17, fig 5.

³⁹ See generally the annual reports at PLA, 'Resources and reporting' <<https://www.pla.qld.gov.au/about-pla/resources>>, including PLA, *Annual Report 2019–20* (2020) 7, 16; PLA, *Annual Report 2020–21* (2021) 8, 18.

- licensed brothels are limited in how many sex workers they are allowed to have working at the premises at any one time.

- 3.15 Of 7480 sex worker contacts with Respect Inc between 1 January 2019 and 3 November 2021, 826 (11%) were working in licensed brothels.
- 3.16 Respect Inc has estimated that 90% of sex work occurs outside of the licensed brothel sector. In December 2004, when there were 14 licensed brothels in Queensland, the CMC estimated that the licensed sector was about 10% of the sex work industry.⁴⁰

Private sex workers

- 3.17 The number of private sex workers in Queensland is not known and is difficult to estimate.
- 3.18 Data collected by Respect Inc show that, of 7480 sex workers that they had contact with from 1 January 2019 to 3 November 2021, 42.6% (3185) did only private sex work, either on an in-call or outcall basis. A further 15.5% (1157) worked privately but under a co-operative arrangement with other sex workers.
- 3.19 Respect Inc says that its data suggest that private sex work makes up about 60% of Queensland's sex work industry. Of 7480 sex workers, 66% (4927) were working privately. Some of those sex workers also worked in licensed brothels, massage parlours or street-based sex work.

Massage parlours

- 3.20 The number and location of massage parlours offering sexual services in Queensland are unknown. Some anecdotal information suggests erotic massage parlours may be prevalent in Greater Brisbane and the Gold Coast.⁴¹
- 3.21 Of 7480 sex worker contacts with Respect Inc from 1 January 2019 to 3 November 2021, 2.1% (159) were working at a massage parlour only and 2.2% (168) were working both at a massage parlour and privately.
- 3.22 In total 5% (380) of Respect Inc's sex worker contacts in that period disclosed that they worked in massage parlours. But Respect Inc estimates the sector is double this, consisting of about 10% of Queensland's sex work industry.

Escort agencies

- 3.23 In the sex work industry, an escort agency is a business that provides sexual services, or arranges for sexual services to be provided, to a person at outside premises. They have a pool of available sex workers, and arrange to send sex workers to locations agreed with the client (such as the client's house or a hotel room) to provide commercial sexual services.
- 3.24 Private sex workers working alone may lawfully provide escort (outcall) services. But licensed brothels are prohibited from providing these services. Escort agencies that offer commercial sexual services are illegal in Queensland.
- 3.25 It is not known how many escort agencies may be operating in Queensland. Some may operate in Queensland, but have their call centres interstate.

⁴⁰ CMC Prostitution Report (2004) xii.

⁴¹ See, eg, A Utting, 'Massage parlours illegally selling sex have proliferated on the Coast, says report', *Gold Coast Bulletin* (online, 28 December 2020).

- 3.26 In 2004, the CMC referred to estimates that outcall or escort services make up some 75% of all sex work in Queensland. It said most of these services were provided by escort agencies.⁴²
- 3.27 Data from Respect Inc do not show how many of their sex worker contacts work in escort agencies. They consider the illegality of escort agency work means it is likely represented in the 20.5% of their contacts who did not disclose their sector.

Street-based sex work

- 3.28 Street-based sex work is a very small proportion of the overall sex work industry in Queensland. In December 2004, the CMC referred to estimates that street-based sex work was about 2% of sex work in Queensland.⁴³ In a June 2011 report, it said there had since been 'a considerable decrease in the number of workers on the streets'.⁴⁴
- 3.29 According to Respect Inc data, of the 7480 sex workers they had contact with between 1 January 2019 and 3 November 2021, 2.5% (185) were engaging in street-based work or sex for favours, with about a third of them also working in other sectors of the industry. They estimate about 2% of the sex work industry consists of street-based sex work and sex for favours. 'Sex for favours' involves a person providing some form of sex in return for a favour from another person, such as giving food, accommodation, or transport. Neither person may consider this sex work.

Sex worker demographics

- 3.30 Research studies show a wide range of cultural backgrounds, languages, ages, genders, and sexual orientations among Queensland sex workers.⁴⁵ Sex workers include migrants, Aboriginal and Torres Strait Islander people, people with disability and LGBTIQ people. Sex workers can be well educated, with many having higher education or university qualifications. They can be in intimate relationships and have families and children. They can have a range of previous occupations, personal circumstances, reasons for entering sex work and attitudes to doing sex work.⁴⁶
- 3.31 Data collected by Respect Inc from their contacts with sex workers between 1 January 2019 and 16 November 2021 show that:
- Just under half (47%) of sex workers were from culturally and linguistically diverse backgrounds, and a further 4% were Aboriginal or Torres Strait Islander.
 - Sex workers varied in age. Most were aged between 25 and 45. A very small percentage were younger than 20.
 - Most sex workers were women, but many identified as male, transgender or non-binary (meaning they do not fall into 'either or' definitions of male or female).

⁴² CMC Prostitution Report (2004) xiii.

⁴³ CMC Prostitution Report (2004) xiii

⁴⁴ CMC Prostitution Report (2011) 43.

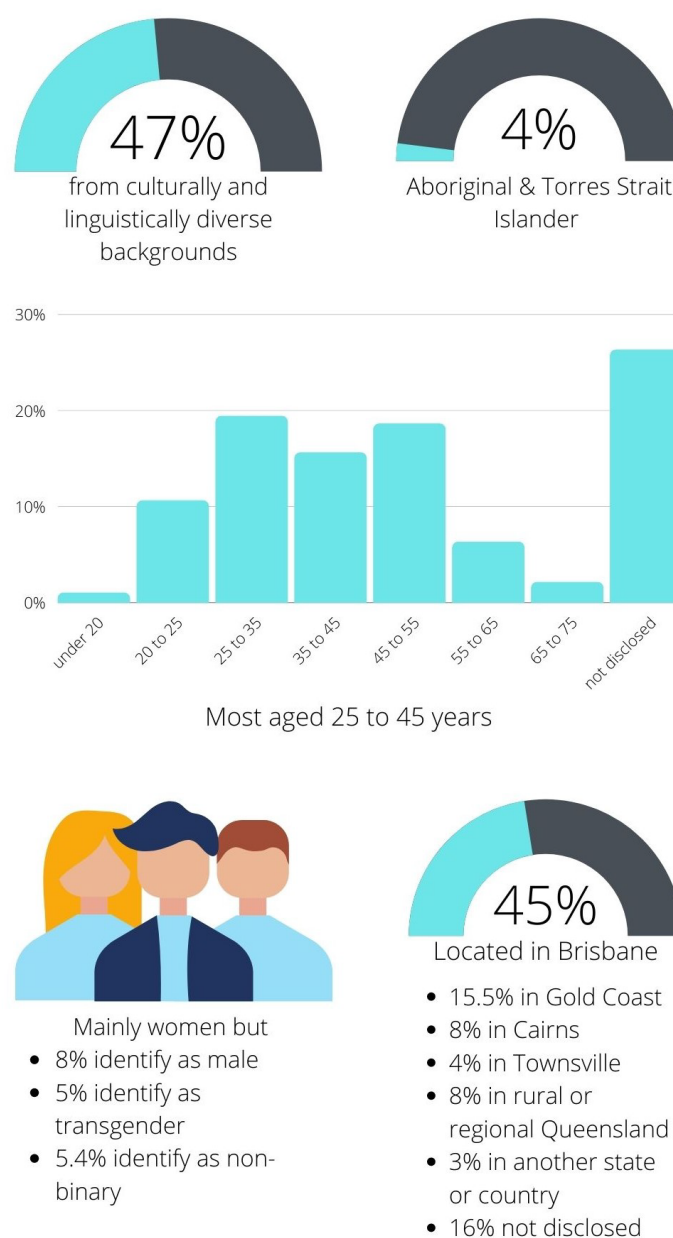
⁴⁵ Respect Inc (2015) above n 30, 2–4; Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 12; J Jones et al, *Factors Influencing Transgender and Male Sex Worker Access to Sexual Health Care, HIV Testing and Support Study (TaMS) Report* (Respect Inc, 2018) 18–19, 19–34.

⁴⁶ Correspondence from Respect Inc, 22 November 2021 and #DecrimQLD, 11 November 2021. See generally Berg & Bates, above n 31, 86; Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 13, 16–19, 21, 92–3; L Renshaw et al, *Migrant Sex Workers in Australia* (Research and Public Policy Series No 131, Australian Institute of Criminology, 2015) 8–10 and the sources cited there.

- Sex workers worked in different parts of the State. Most were in Brisbane (45%), with others working in the Gold Coast, Cairns and Townsville or in other regional areas and small towns. Sex workers may travel for work to different locations around the State.

3.32 Research suggests that sex worker demographic profiles (such as age, education and cultural background) may vary by sex work sector.⁴⁷

Figure 2: Queensland sex worker demographics⁴⁸



⁴⁷ Renshaw et al, above n 46, viii; C Woodward et al, *Selling Sex in Queensland 2003: A Study of Prostitution in Queensland* (PLA, June 2004) 25–27.

⁴⁸ From data provided in correspondence from Respect Inc, 22 November 2021.

Impact of the current regulatory framework

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How does the current legal framework affect sex workers?

- 4.1 Some sex worker organisations say the current regulatory scheme creates a two-tiered industry. They say only a minority of sex workers can comply with the current laws. Most sex workers are excluded or unable to comply and continue to be criminalised. They say this has, or contributes to, negative impacts on the rights, health and safety of sex workers.⁴⁹

Stigma and discrimination

- 4.2 Sex work has a stigma. Criminal laws against sex work can also contribute to stigma and discrimination against sex workers. Stigma can create barriers for sex workers when accessing services. This includes health, legal, financial, and housing or accommodation services. Sex workers who experience other forms of discrimination can be more disadvantaged, such as people living with HIV, migrants and Aboriginal and Torres Strait Islander people.⁵⁰
- 4.3 Stigma is often connected with barriers to accessing health services. For example, some sex workers may not disclose that they are a sex worker to their doctor, have difficulty accessing sexual health tests, or avoid disclosing that they have a sexually transmissible infection (STI). They may avoid accessing health services if they are engaging in illegal sex work because they fear criminal charges. As a result, sex workers might not get the health services they need.⁵¹
- 4.4 It is also said that laws about health matters contribute to stigma. This includes requirements about using prophylactics, not working as a sex worker while infectious with an STI and taking mandatory sexual health tests. These laws are described as creating barriers to health services and being counterproductive to public health outcomes.⁵²

Safety

- 4.5 The laws regulating sex work are said to operate in a way that affects the safety of some sex workers.
- 4.6 Some strategies that sex workers use to keep safe are not allowed under the current laws. For example, private sex workers cannot work together for safety or to share costs.⁵³ Private sex workers cannot:⁵⁴
- work in pairs or groups, or share a workspace;

49 See, eg, Scarlet Alliance, *Full Decriminalisation of Sex Work in Australia*, Briefing Paper <https://scarletalliance.org.au/library/briefing_paper_full_decrim>; J Fawkes, 'Sex work legislation stands in the way of Australia's commitments: decriminalisation for sex workers health, safety and rights' (2014) 12(2) *HIV Australia* <<https://www.afao.org.au/article/sex-work-legislation-stands-way-australias-commitments-decriminalisation-sex-workers-health-safety-rights>>; 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).

50 Jeffreys, O'Brien & Fawkes, above n 49.

51 Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 24.

52 Ibid 36–7.

53 A Edwards, *Selling Sex: Regulating Prostitution in Queensland* (PLA, 2009).

54 See also Jeffreys, O'Brien & Fawkes, above n 49.

- tell another sex worker of their appointments or location (but they can tell another person who is not a sex worker and does not take on this role for any other sex worker);
 - hire a bodyguard or driver, unless that person is licensed as a bodyguard or crowd controller and does not work for any other sex worker.
- 4.7 Some sex worker organisations say the current laws mean private sex workers ‘have to choose between working safely and working legally’.⁵⁵ They also say these laws reduce safety by increasing isolation.⁵⁶
- 4.8 The continued criminalisation of some forms of sex work is said to affect sex worker safety in several ways. Forms of sex work that are illegal under the current framework may be forced further underground, leading to increased risks of violence and exploitation. Sex workers working in the illegal sector are unlikely to be able to access existing work health and safety laws or other industrial protections. Sex workers are less likely to report crime to police. Criminalisation also reduces opportunities for peer education and support.⁵⁷
- 4.9 The current regulatory framework impacts sex worker safety in additional ways:⁵⁸
- Brothels are located in industrial areas that may be unsafe, isolated or lacking in amenities such as lighting and public transport.
 - Prohibiting public solicitation increases risks to safety, including because sex workers may work in unsafe locations or prioritise avoiding arrest over implementing safety strategies.

Policing and courts

- 4.10 Some sex worker organisations have criticised the dual roles of police as ‘prosecutor’ and ‘protector’.⁵⁹ Some sex workers do not want to report crimes committed against them to the police. This can be because they are concerned that they will have to admit to engaging in illegal sex work, do not believe the police will help them, or anticipate stigma or discrimination. They may also have concerns that their privacy may be compromised. Some people are ‘outed’ as sex workers as a result of going to court for a sex work-related offence, which can have significant consequences.⁶⁰

Sex worker rights

- 4.11 Some sex worker organisations say the current framework does not support sex worker rights, privacy or work health and safety. This is particularly the case for sex workers who are working outside of the licensed sex work industry.

55

Ibid.

56

Ibid.

57

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

58

Ibid.

59

See 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.

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Ibid. See also, eg, Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland’s Licensed Brothels* (2017) 21.

Criminal records and privacy

- 4.12 Privacy is highly valued by sex workers.⁶¹ Sex worker organisations tell us there can be serious and long lasting impacts for people who are ‘outed’ as a sex worker, including on employment opportunities. Sex workers may be reluctant to tell potential employers about their work history because of concerns about stigma and possible discrimination. Having a criminal record for sex work offences can make finding other employment especially challenging.
- 4.13 Sex workers may be more likely to have a criminal record because much of the sex work industry is criminalised. A person’s criminal record may affect their ability to work in certain jobs or professions, apply for things like a ‘blue card’ for working with children and young people, or obtain an entry visa to another country.
- 4.14 Some sex worker organisations and others suggest that, following decriminalisation, a person should be freed from the stigma of a criminal record by having their prior convictions for ‘prostitution’ offences cleared from their record.⁶²
- 4.15 Complaints about discrimination in employment because of a person’s criminal record can be made under federal anti-discrimination laws.⁶³ Spent convictions laws, privacy laws and public records laws also offer some protection.⁶⁴

⁶¹ See, eg, Scarlet Alliance, *Full Decriminalisation of Sex Work in Australia*, Briefing Paper <https://scarletalliance.org.au/library/briefing_paper_full_decrim>; Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 36, 48, 78.

⁶² See also R Weitzer, *Legalizing Prostitution: From Illicit Vice to Lawful Business* (NYU Press, 2012) 211.

⁶³ 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).

⁶⁴ See *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld); *Information Privacy Act 2009* (Qld); *Privacy Act 1988* (Cth); *Public Records Act 2002* (Qld).

Changing to a decriminalisation model

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What is decriminalisation?

5.1 Various approaches to decriminalising sex work can be taken.

Box 1: What is decriminalisation?

- Decriminalisation regulates sex work as work, not as a crime
- Decriminalisation does not mean no regulation at all
- It is likely to combine new laws and some existing laws, with sex workers having the same rights, protections and obligations as other workers
- There is not a one-size-fits-all approach: the framework should be tailored to Queensland's needs
- Laws still apply to protect people from being exploited
- Decriminalisation does not mean sex work is actively encouraged

5.2 The main feature of decriminalisation is to regulate sex work as work, not as a criminal activity. This means:

- sex work operates under laws applying to other businesses; and
- sex workers have the same rights, protections and obligations as other workers.

5.3 Laws and policies aim to reduce stigma and protect rights, health and safety. Sex workers are engaged about the issues affecting them.

Decriminalisation does not mean there is no regulation

5.4 A decriminalised framework is likely to combine new laws and some existing laws.

5.5 At a minimum, the same laws that apply to any other worker or employer apply. This includes work health and safety, planning, anti-discrimination, public health, commercial and industrial laws. The general criminal law also applies, including laws against assault and rape. Separate criminal offences protect people from being exploited in commercial sexual activity.

5.6 Some specific rules or other measures might also be adopted to address particular issues. Many industries, such as liquor, gaming, tattoo and personal service industries, are subject to special rules, codes of conduct or guidelines as well as general laws.⁶⁵ This recognises unique characteristics and risks of different activities.

Decriminalisation does not mean sex work is actively encouraged

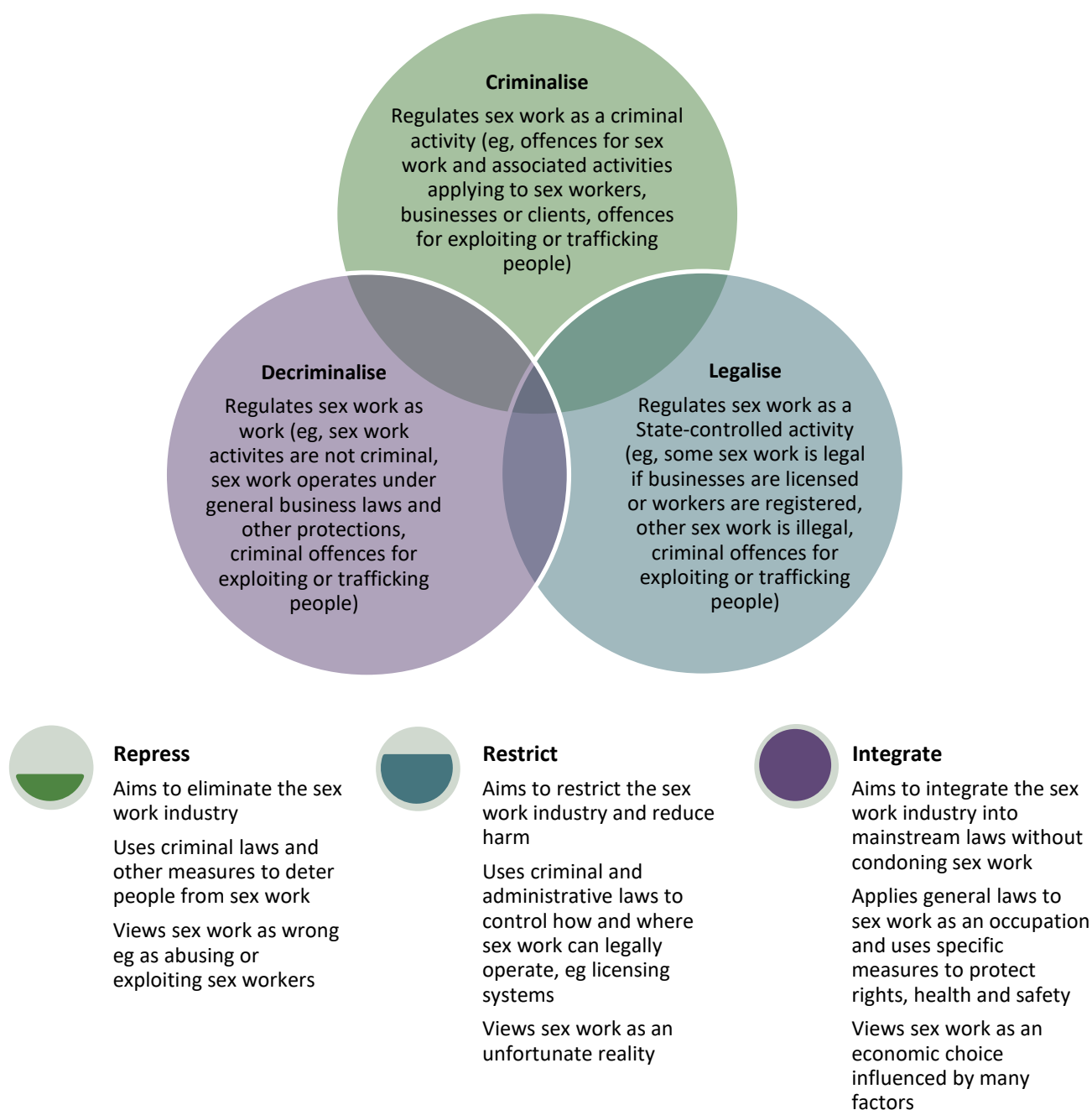
5.7 Decriminalisation aims to protect the rights of people working in the industry. Other steps might be taken to address factors that influence people to enter or leave sex work. No one should have to rely on sex work to survive or be forced into sex work against their will.

Decriminalisation is contrasted with other models of regulation

5.8 Three main regulatory models are commonly identified, but these are not rigid categories: see figure 1. Models can overlap and be combined in different ways.

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See generally Business Queensland, 'Industries' (22 February 2021) <<https://www.business.qld.gov.au/industries>>; Office of Fair Trading (Qld), 'Regulated industries, licensing and legislation' (2022) <<https://www.qld.gov.au/law/fair-trading>>.

Figure 1: Basic regulatory models and policies⁶⁶

Different places take their own approach

- 5.9 Sex work is decriminalised in New South Wales, the Northern Territory and New Zealand. It is also being decriminalised in Victoria. Each jurisdiction takes its own approach: see figure 2.

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See, eg, CMC Prostitution Report (2004) 27–41; MR Decker et al, 'Human rights violations against sex workers: burden and effect on HIV' (2015) 385 *The Lancet* 186, 191–3; P Ostergren, 'From zero-tolerance to full integration: rethinking prostitution policies' (Working Paper No 10, DemandAT, June 2017).

5.10 Key differences include the specific rules that apply, such as:

- whether sex work business operators need a licence to operate;
- whether sex work businesses need development approval under planning laws; and
- whether some types of sex work are restricted, such as street-based sex work or sex work at massage parlours.

Figure 2: Decriminalised approaches in Australia and New Zealand⁶⁷

NSW	NT	VIC	NZ
<ul style="list-style-type: none"> • Repeals criminal offences and applies planning laws to brothels • Applies to brothels (more than one sex worker) with no specific rules for private workers • Criminal laws restrict location of street-based sex work and prohibit sex work at massage parlours etc • Brothels need local council planning approval, but do not need to be certified or registered • Work health and safety and public health laws apply, including specific guidelines and rules for sex work 	<ul style="list-style-type: none"> • Sex work industry laws repeal criminal offences and give sex workers the same protections as other workers • Removes escort agency licensing system • Applies to sex work • Recognises sex work contracts as valid • Business operators with three or more sex workers need a suitability certificate • Planning laws allow sex work at residential premises (up to two sex workers) and commercial premises, subject to amenity rules • Businesses at commercial premises need development approval in non-industrial areas • Sex work is a declared public health activity • General business laws apply 	<ul style="list-style-type: none"> • Repeals specific criminal and public health offences • Removes sex work business licensing system • Applies to commercial sexual services • Anti-discrimination laws protect people from discrimination on the basis of their profession, trade or occupation • Criminal laws restrict street-based sex work in some places • Standard planning controls apply and local laws must not undermine the purposes of decriminalisation • Special health and safety guidelines apply • General business laws apply 	<ul style="list-style-type: none"> • Sex work industry laws repeal criminal offences and give sex workers the same protections as other workers • Removes massage parlour licensing system • Applies to commercial sex services • Recognises sex work contracts as valid • Business operators need an operator's certificate (does not apply to small owner-operator brothels of up to four sex workers) • Local government by-laws may regulate business locations and signage etc • Special health and safety rules and inspectors' powers apply • General business laws apply

5.11 The Victorian decriminalisation laws under the *Sex Work Decriminalisation Act 2022* (Vic) have two stages. First the laws will:

- remove sex work-specific offences in most circumstances;
- review and amend advertising controls;

⁶⁷

See generally *Restricted Premises Act 1943* (NSW) pt 3; *Summary Offences Act 1988* (NSW) pt 3; *Environmental Planning and Assessment Act 1979* (NSW); *Sex Industry Act 2019* (NT); *Sex Work Decriminalisation Act 2022* (Vic); *Prostitution Reform Act 2003* (NZ).

- repeal the register of small owner-operator sex workers who are exempt from licensing; and
- introduce anti-discrimination protections for sex workers.

5.12 Second, the laws will repeal the *Sex Work Act 1994* (Vic) and remove the licensing and registration system for sex work businesses. The first stage starts on 10 May 2022. The second stage is expected to start in December 2023. This will allow new rules and guidelines on planning, health and safety to be prepared.⁶⁸

Decriminalising sex work is linked with many benefits

- 5.13 A growing body of research shows positive effects on sex workers' health, safety, access to justice and workplace rights in places where sex work is decriminalised. By removing the threat of arrest and prosecution for 'prostitution' offences, it is easier for sex workers to report crimes or abuse against them to the authorities, negotiate with and refuse clients, and enforce their workplace rights. Recognising sex work as legitimate work rather than a criminal activity can also help reduce stigma and discrimination and make it easier for sex workers to access health and other services.⁶⁹
- 5.14 Decriminalising sex work may also reduce the financial burden on the criminal justice system,⁷⁰ and allow police to focus on other crimes.

Will decriminalisation lead to a bigger industry?

- 5.15 Some people have concerns that decriminalising sex work could lead to an increase in the size of the sex work industry. Research in New South Wales⁷¹ and New Zealand⁷² shows that the number of sex workers in those jurisdictions remained relatively static and did not increase after sex work was decriminalised.
- 5.16 A review of New Zealand's decriminalisation laws found that the laws 'had little impact on the numbers of people working in the industry' and decriminalisation had 'not become a significant factor in people's decisions to enter' the industry. The main reasons for entering the sex work industry remained financial.⁷³

What about the risks of coercion, trafficking, crime and corruption?

- 5.17 Some people consider sex work to be violent or abusive, and suggest that decriminalisation may lead to an increase in exploitation, trafficking and crime. Others say that decriminalising

⁶⁸ 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); Victorian Government, 'Decriminalising sex work in Victoria' (22 February 2022) <<https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>>.

⁶⁹ See generally 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; C Benoit et al, 'The prostitution problem': claims, evidence, and policy outcomes' (2019) 48 *Archives of Sexual Behavior* 1905; 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).

⁷⁰ See, eg, A Srsic, K Dubas-Jakóbczyk & E Kocot, 'The economic consequences of decriminalizing sex work in Washington, DC—a conceptual model' (2021) 11 *Societies* 112.

⁷¹ See, eg, 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).

⁷² See, eg, 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).

⁷³ Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 13, 15, 16, 39, 40–41.

sex work will support better outcomes, with sex workers and sex work businesses able to operate more transparently.

- 5.18 The amount of human trafficking in Australia is contested. Not all trafficking is for sexual exploitation: see box 2.⁷⁴ The prevalence of organised crime in the sex work industry is also contested. Because of their hidden nature and practical barriers to reporting, these activities can be difficult to detect.

Box 2: Human trafficking and sexual exploitation

- Human trafficking is a serious violation of human rights and a global concern. It is the physical movement of people across or within borders through coercion, threat or deception for the purpose of exploiting them when they reach their destination. If the person being trafficked is a child, coercion, threat or deception is not required to establish a trafficking offence.
- Australia has federal criminal laws against human trafficking, slavery and slavery-like practices.
- Human trafficking and slavery are complex and dynamic crimes that are difficult to detect because of their hidden nature and practical barriers to reporting.
- The amount of human trafficking in Australia is contested. The Australian Institute of Criminology has used a new statistical method to estimate that the number of human trafficking and slavery victims in Australia in 2015–16 to 2016–17 was between 1300 and 1900 people.
- Most trafficking and slavery matters in Australia involve small networks based on overseas family or business connections, rather than large organised crime groups.
- Not all human trafficking is for sexual exploitation. A significant proportion of trafficking relates to sexual exploitation, but this has been declining. Other forms of trafficking include forced marriage and forced labour. The most recent report of the Australian Interdepartmental Committee on Human Trafficking and Slavery found that only 15% of trafficking and slavery cases reported to the Australian Federal Police were about sexual exploitation.
- There have been some reported incidents of trafficking for sexual exploitation in other Australian states and territories, but this does not appear to be widely representative of the experience of migrant sex workers. The CMC reported that the number of Asian migrants in Queensland's sex work industry had grown but 'there is little evidence that these workers are victims of sex trafficking'. Academic research published in 2020 (Maciotti et al) indicates there has been a significant overall 'decrease in referrals, cases and prosecutions of trafficking, slavery and debt bondage in the Australian sex industry'. The findings suggest that 'a combination of decriminalisation of sex work and increased legal migration options are key to decreasing cases of trafficking, slavery, and migrant sex workers' general labour exploitation'.
- Australia is a party to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. This means Australia must address the '**exploitation of the prostitution of others or other forms of sexual exploitation**', not sex work itself.

- 5.19 It does not appear that 'forced prostitution', trafficking for sexual exploitation or the involvement of other serious crime is widespread in decriminalised jurisdictions.
- 5.20 The review of New Zealand's decriminalisation laws found that, '[d]espite the perception that most sex workers are coerced into entering the sex industry, only a very small number of sex

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See S Lyneham, C Dowling & S Bricknell, 'Estimating the dark figure of human trafficking and slavery victimisation in Australia' (Statistical Bulletin No 16, AIC, February 2019); Attorney-General's Department (Australia), Submission No 17 to Parliamentary Joint Committee on Law Enforcement, *Inquiry into Human Trafficking* (16 February 2016) 1–2, 8; Australian Government, *The Tenth Report of the Interdepartmental Committee on Human Trafficking and Slavery* (2021) 16–17; CMC Prostitution Report (2011) 16, 20; PG Maciotti et al, 'Framing the mother tac: the racialised, sexualised and gendered politics of modern slavery in Australia' (2020) 9(11) *Social Sciences* 192, 14, 15; Attorney-General's Department (Australia), *National Action Plan to Combat Human Trafficking and Slavery 2015–19* (2014) 11 (emphasis in original) (and generally at 4–7).

workers reported being made to work by someone else at the time of entry and after'. It also found no evidence supporting a link between sex work and human trafficking or crime.⁷⁵

- 5.21 Similar findings have been reported for New South Wales.⁷⁶ In that State, there have been some reported incidents of corruption by local government officials when dealing with brothels.⁷⁷ But there does not appear to be evidence of widespread misconduct or corruption by police or other officials.⁷⁸
- 5.22 In Queensland, the CMC had found little evidence in the sex work industry of sex trafficking or other crimes such as the sale and distribution of illicit drugs. It had also found little evidence of police or public sector corruption.⁷⁹
- 5.23 Some people argue that criminalising sex work pushes it underground. This can make it more attractive to corrupt or criminal elements. Sex workers and sex work business operators may have fewer avenues of protection and be more vulnerable to being exploited.
- 5.24 In a decriminalised setting, sex work businesses could operate more transparently and within mainstream business regulation. Opportunities for organised crime and corruption might be reduced. Despite this, it remains important in a decriminalised framework to protect sex workers from exploitation in their work and to guard against corruption and crime.

The process of changing to a decriminalisation model

- 5.25 Local differences mean we cannot assume what happens in one jurisdiction will also happen here. However, research from other places about what works well and what does not can help us design our framework. Much will depend on the features of the framework and how it is implemented.
- 5.26 To create a decriminalised framework for Queensland we will need to:
- identify which offences to repeal or change;
 - think about what is needed to recognise sex work as legitimate work and give existing sex work businesses a legitimate pathway to operate lawfully;
 - understand how general laws apply to sex work, including work health and safety, public health and planning laws; and
 - identify risks and harms in the industry (such as possible exploitation, sexually transmissible infections, illegal activity and impacts on public amenity) and whether specific laws or other measures are needed to address them.⁸⁰

⁷⁵ See Prostitution Law Review Committee, above n 73, 15, 163, 164, 167.

⁷⁶ See Donovan et al, above n 71, 11, 22, 29 and the references cited there.

⁷⁷ See, eg, Independent Commission Against Corruption (NSW), *Report on an Investigation into Corrupt Conduct Associated with the Regulation of Brothels in Parramatta* (August 2007).

⁷⁸ See Donovan et al, above n 71, 9, 10 (Table 1), 29, 43.

⁷⁹ See CMC Prostitution Report (2011) 16, 19–20.

⁸⁰ See, eg, New Zealand, *Parliamentary Debates*, House of Representatives, 19 February 2003, 3607–08 (T Barnett). See also Queensland Treasury, *The Queensland Government Guide to Better Regulation* (May 2019) [1.4] ('risk based approach to regulation').

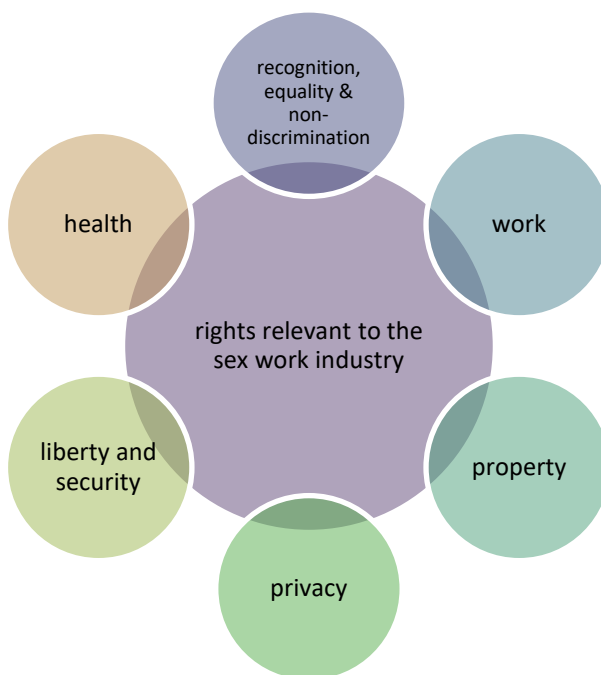
Compatibility with human rights

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Human rights and sex work

- 6.1 Any approach to decriminalisation must be compatible with the *Human Rights Act 2019* (HRA).⁸¹
- 6.2 The HRA protects and promotes human rights. All individuals in Queensland, including sex workers, their clients and other members of the community, have the human rights in the Act, as well as rights and freedoms under other laws.⁸²
- 6.3 Various rights are relevant to the sex work industry depending on the context: see figure 1 and table 1. They include the right to be recognised as a person and be equally protected by the law, the right to equal and effective protection against discrimination, freedom from forced work, the right to own property, freedom from unlawful or arbitrary interference with privacy, the right to liberty and security, and the right to access health services. International treaties protect other rights, including the right to work and the right to health.

Figure 1: Rights relevant to the sex work industry



- 6.4 The rights in the HRA are not absolute and may be limited.⁸³

⁸¹ See terms of reference para 1(g).

⁸² See *Human Rights Act 2019* (Qld) ss 3(a), 4(a), 7, 11–12.

⁸³ See *Human Rights Act 2019* (Qld) ss 13–14.

6.5 Laws are compatible with human rights under the Act if they:⁸⁴

- do not limit a human right; or
- limit a human right ‘only to the extent that is reasonable and demonstrably justifiable’.

6.6 A limit is reasonable and justifiable under the Act depending on several factors. These include the nature and importance of preserving the human right that is limited, the nature and importance of the limit’s purpose, and whether there are ‘less restrictive and reasonably available ways’ to achieve that purpose.⁸⁵

Table 1: The human rights in the HRA and the sex work industry⁸⁶

HRA section	International treaties	Context or issues
recognition and equality before the law (s 15)	ICCPR arts 16, 26* ICESCR art 2(2) CEDAW arts 2, 6 CRC arts 2, 34	<ul style="list-style-type: none"> • groups affected by discrimination are frequently represented in sex work, including women and LGBTIQ people • sex workers experience high levels of violence and human rights abuses, globally • sex workers should have equal access to justice and health and be protected from discrimination
right to life (s 16)	ICCPR art 6(1)*	<ul style="list-style-type: none"> • sex workers experience high levels of violence, globally (and can be vulnerable to homicide) • sex workers can experience discrimination or other barriers in accessing health services
protection from torture and cruel, inhuman or degrading treatment (s 17)	ICCPR art 7*	<ul style="list-style-type: none"> • sex workers experience high levels of physical and sexual violence, globally • mandatory STI or HIV testing of sex workers may infringe the right not to be subjected to medical treatment without full, free and informed consent • adults and children should be protected from being exploited in commercial sexual activity
freedom from forced work (s 18)	ICCPR art 8* ICESCR arts 6, 7 The right to work under the ICESCR is wider than the HRA. It protects the rights to freely choose or accept work, and to fair and safe working conditions.	<ul style="list-style-type: none"> • sex workers should be protected from forced labour and servitude • adults and children should be protected from being exploited in commercial sexual activity • when sex work is illegal, sex workers can lack access to ordinary labour rights and the ability to control or complain about their working conditions • restricting where or how sex work can take place may limit safety strategies and expose sex workers to unsafe working conditions

⁸⁴ *Human Rights Act 2019* (Qld) s 8.

⁸⁵ *Human Rights Act 2019* (Qld) s 13.

⁸⁶ See generally MR Decker et al, ‘Human rights violations against sex workers: burden and effect on HIV’ (2015) 385 *The Lancet* 186; SM Goldenberg et al, *Sex Work, Health, and Human Rights* (Springer, 2021); United Nations Development Programme, *Sex Work and the Law in Asia and the Pacific* (Report, 2012).

HRA section	International treaties	Context or issues
freedom of movement (s 19)	ICCPR art 12*	<ul style="list-style-type: none"> restricting where or how sex work can take place may affect sex workers' freedom of movement police move-on powers or surveillance of sex workers may also impact on this right
freedom of thought, conscience, religion and belief (s 20)	ICCPR art 18*	<ul style="list-style-type: none"> everyone has a right to think and believe what they choose, and people may have different views and attitudes about sex work some people may have concerns about the effect of sex work or sex work businesses on nearby places of worship
freedom of expression (s 21)	ICCPR art 19*	<ul style="list-style-type: none"> everyone has a right to hold and express an opinion and to seek out and receive the opinions of others restricting sex work advertising or access to information may impact on this right
peaceful assembly and freedom of association (s 22)	ICCPR arts 21, 22* ICESCR art 8	<ul style="list-style-type: none"> when sex work is illegal, sex workers can lack access to ordinary labour rights, including the right to form and join trade unions
taking part in public life (s 23)	ICCPR art 25*	<ul style="list-style-type: none"> sex workers should be able to participate in the conduct of public affairs, including on issues affecting them
property rights (s 24)	UDHR art 17*	<ul style="list-style-type: none"> when sex work is illegal, sex workers can be vulnerable to search and seizure of property sex workers should be able to enjoy the right to own property alone or with others restricting where or how sex work can take place may affect the enjoyment of property rights
privacy and reputation (s 25)	ICCPR art 17*	<ul style="list-style-type: none"> when sex work is illegal, sex workers can be vulnerable to surveillance and search mandatory STI or HIV testing of sex workers may infringe the right to bodily integrity some people enter sex work as a preference and should enjoy the right to decide what to do with their own bodies some people may have concerns about the effect of sex work or sex work businesses on local amenity and quiet enjoyment of their homes
protection of families and children (s 26)	ICCPR arts 23, 24* CRC arts 2, 3, 34	<ul style="list-style-type: none"> children should be protected from being exploited in commercial sexual activity
cultural rights, including cultural rights of Aboriginal persons and Torres Strait Islanders (ss 27–28)	ICCPR art 27* UNDRIP arts 8, 25, 29, 31	<ul style="list-style-type: none"> laws and policies should respect the culture and language of sex workers from other backgrounds

HRA section	International treaties	Context or issues
right to liberty and security of person (s 29)	ICCPR art 9*	<ul style="list-style-type: none"> sex workers experience high levels of physical and sexual violence, globally restricting where or how sex work can take place may limit safety strategies and expose sex workers to unsafe working conditions when sex work is illegal, sex workers can be reluctant to report violence or other crimes to police some people may have concerns about criminal elements attracted to sex work and effects on community safety in the past, sex work was linked with corrupt activity and organised crime
rights relevant to criminal charges and offences (ss 30–35)	ICCPR arts 10, 14, 15*	<ul style="list-style-type: none"> all people have a right to due process and fairness when arrested, detained or charged with a criminal offence
right to education (s 36)	ICESCR art 13*	<ul style="list-style-type: none"> sex workers should be protected from discrimination in education, and have access to sexual health information and education
right to health services (s 37)	ICESCR art 12* The right to health under the ICESCR is wider than the HRA. It protects the right to the highest attainable standard of physical and mental health. This includes a person's right to make free and responsible decisions and choices about their own body and sexual health.	<ul style="list-style-type: none"> sex workers experience high levels of physical and sexual violence and high exposure risk to STI and HIV, globally sex workers can experience discrimination and other barriers in accessing health services mandatory STI or HIV testing of sex workers may infringe the right to bodily integrity working together and having peer support can reduce the impact of stigma and in turn promote sex workers' mental health
ICCPR=International Covenant on Civil and Political Rights. ICESCR=International Covenant on Economic, Social and Cultural Rights. CEDAW=Convention on the Elimination of all Forms of Discrimination Against Women. CRC=Convention on the Rights of the Child. UDHR=Universal Declaration of Human Rights. UNDRIP=United Nations Declaration on the Rights of Indigenous Peoples. STI=sexually transmissible infection(s). *The rights in the HRA are drawn mainly from the ICCPR, with two from the ICESCR (right to education and right to health services) and one from the UDHR (property rights): see Explanatory Notes, Human Rights Bill 2018 (Qld) 3–5.		

- 6.7 Globally, sex workers are marginalised and can experience high levels of discrimination, exploitation and violence.⁸⁷ Many factors can contribute to this, including: the stigma of sex work; prejudice and inequality faced by women, LGBTIQ people, migrants and others; socio-economic issues; and the impact of laws and policies regulating sex work. Sex workers can:
- be exposed to dangerous or harmful working conditions;
 - be exploited by managers, clients or others;
 - be reluctant to report violence, abuse or other crimes to authorities; and
 - face barriers in accessing health services.
- 6.8 Many sex worker organisations and human rights groups advocate for sex work to be decriminalised so that the rights of sex workers are safeguarded and people can enter, remain in and leave sex work safely.⁸⁸

87 Ibid. 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.

88 See, eg, NSWPP, *Consensus Statement on Sex Work, Human Rights, and the Law* (2013); ICRSE, *From Vulnerability to Resilience: Sex Workers Organising to End Exploitation* (May 2021).

What might a decriminalised sex work industry look like?

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Introduction

- 7.1 In this chapter, we ask some general questions to get an overall picture of what the recommended new framework might look like. We ask about some more specific matters in later parts of the paper.

What should be the main purposes of the framework?

- 7.2 To develop a new regulatory framework, we need to know what it aims to achieve. The main purposes of the framework will guide us in identifying issues, balancing different interests and working out the features of the framework.
- 7.3 Our terms of reference state that a decriminalised sex work industry ‘will ensure better public health and human rights outcomes for sex workers while reducing barriers sex workers face in accessing health, safety and legal protections’. We can identify some of the purposes of the framework from the matters we are asked to consider, such as:⁸⁹
- protecting the health, safety and economic interests of sex workers and clients;
 - deterring illegal activity and exploitation;
 - maintaining public amenity;
 - ensuring compatibility with human rights; and
 - protecting public health and safety.
- 7.4 The frameworks in the Northern Territory and New Zealand, and the new framework in Victoria, aim to protect sex workers’ health, safety and human rights and to reduce discrimination: see figure 1. In New South Wales, the original focus was on non-discrimination, public health and safety.
- 7.5 Many sex worker organisations, human rights groups and other commentators say that protecting health, labour and other human rights are central purposes of decriminalisation.⁹⁰ Many point out that decriminalising sex work is part of a wider process of recognising and better protecting sex workers’ autonomy and rights. This includes better working conditions, access to justice and health services, and improved options for those entering or wishing to leave sex work.
- 7.6 The Global Network of Sex Work Projects (NSWP) describes decriminalisation in this way:⁹¹
- decriminalisation creates safer working environments for sex workers, affords them the protection of workers’ rights, improves their access to health services, reduces their vulnerability to [sexual health risks], violence, stigma and discrimination, and is key to tackling the exploitation that occurs within the sex industry.
- 7.7 Preliminary feedback we received from Queensland sex worker organisations and other consultees highlighted the same matters.

⁸⁹ Terms of reference para 1(d)–(h).

⁹⁰ See, eg, Stella, ‘The basics: decriminalization of sex work 101’ (Infosheet 1, April 2013) NSWP <<https://www.nswp.org/sites/default/files/StellaInfoSheetTheBasic.pdf>>; Human Rights Watch, ‘Why sex work should be decriminalized: questions and answers’ (7 April 2019) <<https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>>; 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>>.

⁹¹ NSWP Global Network of Sex Work Projects, *Decriminalisation: The Smart Sex Worker’s Guide* (2020) 3.

Figure 1: Main purposes of decriminalisation frameworks in Australia and New Zealand⁹²

NSW	NT	VIC	NZ
<ul style="list-style-type: none"> •remove offences that unfairly discriminate against sex workers as compared to clients •prevent and punish exploitation •reduce public health risks to sex workers and clients •protect the community, including public amenity 	<ul style="list-style-type: none"> •decriminalise sex work and make sex work contracts legal •enhance sex worker, client and public health and safety •prohibit exploitation of sex workers and enshrine sex workers' right to refuse to perform sex work •prohibit the use of children in sex work •enable the sex work industry to operate under laws applying to all individuals and businesses generally 	<ul style="list-style-type: none"> •decriminalise sex work and reduce discrimination against, and harm to, sex workers •maximise sex workers' safety, health and human rights •keep offences against exploitation and using children in commercial sexual services •abolish the sex work licensing system •regulate sex work businesses through mainstream regulators 	<ul style="list-style-type: none"> •decriminalise sex work (without endorsing or morally sanctioning it) •safeguard the human rights of sex workers and protect them from exploitation •promote the welfare and occupational health and safety of sex workers •contribute to public health •prohibit the use of children in sex work

- 7.8 Sex worker organisations and others tell us that decriminalising sex work allows sex work businesses to operate more transparently under general business laws. Instead of sex workers being driven underground into vulnerable working conditions by the fear of criminal sanctions, they can operate with greater safety and protection.
- 7.9 Sex worker organisations also tell us that sex workers value their privacy and usually operate discreetly. Researcher Ronald Weitzer suggests that keeping the industry as discreet as possible and minimising its 'encroachment on non-participants' is an important consideration.⁹³ This is particularly relevant to public amenity.
- 7.10 We take the terms of reference as our starting point. We also recognise the importance and knowledge of sex workers and sex worker organisations who will be affected most closely by the recommended framework.
- 7.11 We aim to develop a regulatory framework that:
- recognises sex work as work;
 - protects the health, workplace and human rights of sex workers;
 - safeguards public health and safety;
 - maintains public amenity; and

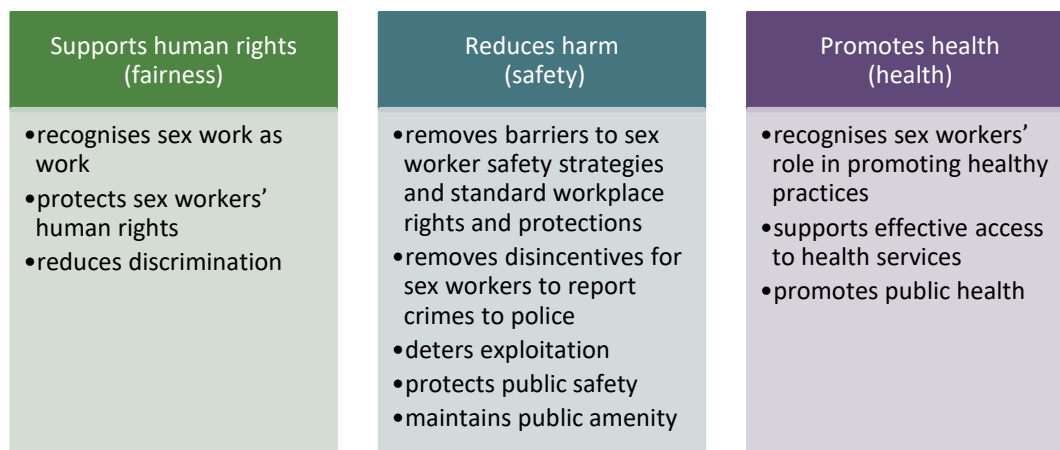
⁹² See New South Wales, *Parliamentary Debates*, Legislative Assembly, 23 April 1979, 4923 (Walker, Attorney-General and Minister for Justice) and 20 September 1995, 1189 (Wheelan, Minister for Police); *Sex Industry Act 2019* (NT) s 3; *Sex Work Decriminalisation Act 2022* (Vic) s 1; Explanatory Memorandum, Sex Work Decriminalisation Bill 2021 (Vic) 1–3; Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3882 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating); *Prostitution Reform Act 2003* (NZ) s 3.

⁹³ R Weitzer, *Legalizing Prostitution: From Illicit Vice to Lawful Business* (NYU Press, 2012) 208.

- deters illegal activity and exploitation.

7.12 This could be summed up as a framework focused on **fairness, safety and health**: see figure 2.

Figure 2: A regulatory framework focused on fairness, safety and health



CONSULTATION QUESTION

Q1 What should be the main purposes of the recommended framework for a decriminalised sex work industry in Queensland, and why?

What might the new framework look like and what changes would need to be made to the current framework?

- 7.13 Our terms of reference tell us that the Government intends that sex work will be lawful when it follows the recommended regulatory framework. Some of the matters we are asked to consider are the repeal of existing laws, appropriate safeguards and how the framework will be administered.⁹⁴
- 7.14 Decriminalising sex work is a shift away from anti-sex work criminal laws toward treating the sex work industry like other businesses.
- 7.15 Researcher Ronald Weitzer says the starting point for best practice is that 'consensual adult prostitution be officially recognized as work and that participants be accorded the rights and protections available to those involved in other occupations'.⁹⁵
- 7.16 Sex worker organisations also highlight that decriminalisation is a 'whole of government' approach to regulation.

⁹⁴ Terms of reference para 1(b), (d)–(f), (i).

⁹⁵ Weitzer, above n 93, 207.

What might this look like in Queensland?

7.17 The Queensland framework may differ in some details from those in other places. It will need to take local considerations and existing laws into account. For example, Queensland has a brothel licensing system that was not in place in New South Wales when it decriminalised sex work.

7.18 We can identify some common features from other jurisdictions and from what sex worker organisations, human rights groups and others describe: see box 1.⁹⁶ For example, Scarlet Alliance says:⁹⁷

A decriminalised framework removes police as regulators of the sex industry, repeals criminal laws specific to the sex industry, regulates sex industry businesses through standard business, planning and industrial codes, and does not single out sex workers for specific legislation.

7.19 In Queensland, this would mean:

- repealing the sex work offences in chapter 22A of the Criminal Code that are not needed;
- repealing all or parts of the Prostitution Act and Prostitution Regulation;
- keeping the offences in chapter 22A of the Criminal Code or the Prostitution Act that may still be needed, with necessary changes, to protect against commercial sexual exploitation;⁹⁸
- considering the role of police and changing sections of the *Police Powers and Responsibilities Act 2000* that are not needed;⁹⁹
- making any consequential changes to general laws that apply to workers and businesses, such as the *Work Health and Safety Act 2011*, *Public Health Act 2005* and *Planning Act 2016*, so they apply in a suitable way to sex work; and
- including any new laws or other measures that might be needed to address particular issues and make sure rules and protections apply in the best way.

Box 1: Common features of decriminalisation frameworks

- removes criminal laws (and police powers) specific to sex work
- replaces sex work licensing laws
- covers sex work under general laws and regulatory mechanisms that apply to other businesses and workers
- changes laws to address unfair discrimination against sex workers
- recognises that the general criminal law applies to everyone, including sex workers
- includes sex workers as key partners in law and policy reforms that affect them

⁹⁶ See, eg, Scarlet Alliance, *Full Decriminalisation of Sex Work in Australia*, Briefing Paper <https://scarletalliance.org.au/library/briefing_paper_full_decrim>; #DecrimQLD, 'What would decriminalisation mean for Queensland?' (Laws, Facts, Rights & Safety Infographic No 6, 2018) <<https://respectqld.org.au/wp-content/uploads/2021-No-6-infographics-Final-1-pdf.jpg>>; Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016, 26 May 2016) 11; The Equality Project, Australia, *Australian LGBTIQ+ Policy Guide* (2020) 35–6. See also figure 1 and [7.4] above.

⁹⁷ Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 30.

⁹⁸ See Criminal Code (Qld) ss 229FA, 229G, 229L; *Prostitution Act 1999* (Qld) s 77.

⁹⁹ See, eg, *Police Powers and Responsibilities Act 2000* (Qld) ss 46(5), 53BAC, sch 2 ss 4–5, sch 5 s 9.

CONSULTATION QUESTIONS

- Q2** Overall, what might the new framework look like?
- Q3** What changes would need to be made to the current framework, and why?

Who should the new framework apply to?

- 7.20 We need some working ideas about who and what the framework applies to—sex work, sex workers and sex work businesses.¹⁰⁰ This will help us set the scope of the framework. It will also be easier to talk about different parts of the framework if the same terms are used.
- 7.21 We recognise that people do not always agree on the best words to use. We also understand the language we use is important for engaging with sex workers and modernising the law.
- 7.22 The terms we use should:
- be up-to-date and avoid stigma and prejudice;
 - reflect that sex work is work (labour);
 - cover different kinds of sex work;
 - be gender-neutral and inclusive; and
 - be flexible enough to work across different laws and rules.

What's in and what's out of the framework?

- 7.23 Our terms of reference tell us that sex work for this review 'includes all forms of legal and illegal sex work, including but not limited to':¹⁰¹
- sex work in brothels and escort agencies;
 - sexual services in massage parlours and other venues;
 - private sex work (the terms of reference refer to 'sex work by sole operators'); and
 - street-based sex work.
- 7.24 Our review does not include activities authorised by an adult entertainment permit under the *Liquor Act 1992* (such as stripping, exotic nude dancing and nude wait staffing).¹⁰² These activities fall outside the definition of 'prostitution' and are regulated by a separate framework under liquor licensing laws.¹⁰³ An adult entertainment permit authorises 'acts of an explicit sexual nature' to be performed on licensed premises but does not allow touching of genitalia, placing a person's genitalia or anus close to another person's face, masturbation, oral sex, sexual intercourse or soliciting for 'prostitution'.¹⁰⁴

¹⁰⁰ See terms of reference para 1(c).

¹⁰¹ Terms of reference para 5.

¹⁰² Ibid.

¹⁰³ See generally Business Queensland, 'Adult entertainment permits' (1 July 2021) <<https://www.business.qld.gov.au/industries/hospitality-tourism-sport/liquor-gaming/liquor/licensing/applications/adult-entertainment>>.

¹⁰⁴ *Liquor Act 1992* (Qld) s 103N; Adult Entertainment Code (Qld) cl 14.

- 7.25 Our review also does not include other activities that fall outside the definition of 'prostitution'. We recognise that some people use 'sex work' to refer to a much wider range of activities.¹⁰⁵ At its broadest, the sex industry can include many paid services, which typically do not involve direct bodily contact, such as pornography, stripping, phone sex or live online video performance. We understand this is part of the context in which some sex workers operate and that people may move between different activities. However, our review is about the kinds of activities labelled and regulated by criminal laws as 'prostitution': see [7.35] below.¹⁰⁶

The sex work industry is diverse

- 7.26 Sex work includes many activities and ways of working. For example, one international study identified 'at least 25 types of sex work ... according to worksite, principal mode of soliciting clients, or sexual practices'. This included:¹⁰⁷
- soliciting in public;
 - sex work in brothels or massage parlours;
 - escorts working at hotels or other premises; and
 - private sex workers working from their own premises.
- 7.27 Scarlet Alliance highlights that sex work 'is an umbrella term that incorporates a wide, inclusive range of different practices'. The diversity of sex work in Australia includes 'working at a brothel, working privately from a residential space, commercial space, or on the street, doing escort work, or visiting the home or hotel of another person(s)'.¹⁰⁸
- 7.28 Sex work is often described by the nature of the activity, where it takes place or the sex worker's working arrangements: see figure 3. All these features can vary. They can also influence the laws and rules that apply. For example, the law presently allows a private sex worker to work from a dedicated location as well as to provide escort sex work. But a licensed brothel may provide sex work only at its premises and cannot arrange escort services.
- 7.29 Scarlet Alliance points out that the boundaries between different kinds of sex work are not fixed or clear cut. Sex work activities may overlap and many sex workers move frequently between different kinds of sex work or related activities. For example, we know that some Queensland sex workers who work privately also work in licensed brothels or in massage parlours: see chapter 3. 'Simplified understandings of sex work that only recognise a few ways of working result in poor policy decisions.'¹⁰⁹

¹⁰⁵ See, eg, Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 19. See generally C Benoit et al, 'Prostitution stigma and its effect on the working conditions, personal lives, and health of sex workers' (2018) 55(4–5) *Journal of Sex Research* 457, 458.

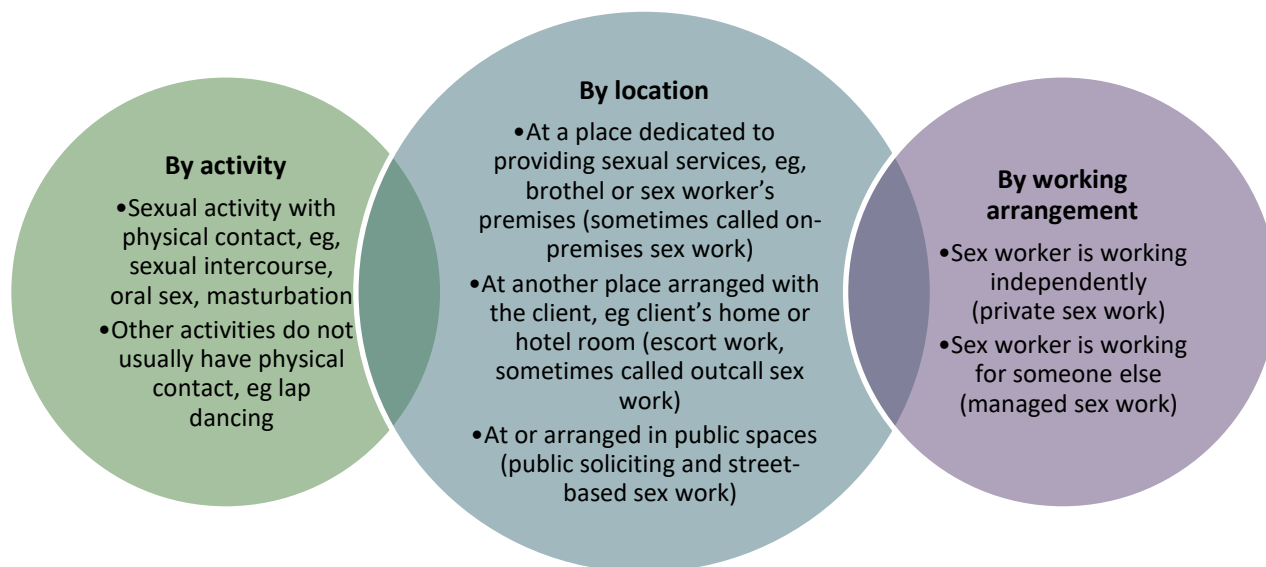
¹⁰⁶ Terms of reference p 1 (background).

¹⁰⁷ C Harcourt & B Donovan, 'The many faces of sex work' (2005) 81 *Sexually Transmitted Infections* 201.

¹⁰⁸ Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 19.

¹⁰⁹ Ibid.

Figure 3: Some common ways of describing different kinds of sex work



7.30 Sex workers' rights, health and safety are influenced by their working environments.¹¹⁰ Recognising the diversity of sex work will help us identify what may be needed for an effective framework.

What is sex work?

7.31 This paper uses 'sex work' to refer to an adult providing consensual sexual services to another adult in return for payment or reward. By sexual services we mean participating in sexual activities that involve physical contact. This would include sexual intercourse, masturbation, oral sex or other activities involving physical contact for the other person's sexual satisfaction.

Box 2: What is sex work?

• An **adult** providing **consensual** sexual services, involving **physical contact**, to another adult in return for **payment or reward**

7.32 We also understand that sex work can:

- include single or multiple occasions of providing sexual services;
- include people of diverse sexual orientation and gender identity, including men, women and transgender people;
- be an arrangement initiated by the sex worker personally or on their behalf by another person; and
- involve the payment or reward going to the sex worker or to another person.

¹¹⁰

See, eg, BS West et al, 'Reimagining sex work venues: occupational health, safety, and rights in indoor workplaces' in SM Goldenberg et al, *Sex Work, Health, and Human Rights* (Springer, 2021) 207. See also FE Gilmour, 'Work conditions and job mobility in the Australian indoor sex industry' (2016) 21(4) *Sociological Research Online* (online).

- 7.33 A 'sex worker' is someone who provides sex work within this meaning.
- 7.34 The current framework applies to 'prostitution'. That term is outdated. It carries a stigma and prejudice. Most sex workers prefer the term 'sex work'. This is more neutral language and highlights that sex work is 'work'.¹¹¹
- 7.35 However, consistent with our terms of reference we take the definition of 'prostitution' as the starting point for what is sex work. It refers to a commercial arrangement under which a person engages, or offers to engage, in providing sexual activities to another person. The definition applies to the following sexual activities that involve physical contact:¹¹²
- sexual intercourse;
 - masturbation;
 - oral sex; or
 - any other activity that 'involves the use of one person by another' for their sexual satisfaction 'involving physical contact'.
- 7.36 The law also defines sexual intercourse and oral sex: see box 3.¹¹³ Masturbation is not given a legal definition so has its ordinary meaning.
- 7.37 The definition of 'prostitution' applies equally to males and females.¹¹⁴ It also applies whether the arrangement is initiated by the sex worker or another person and whether the payment or reward is to be received by the sex worker or someone else.¹¹⁵
- 7.38 'Prostitution' does not include activities authorised under an adult entertainment permit.¹¹⁶ As noted earlier, sexually explicit adult entertainment is covered by a separate regulatory framework and is outside our review.
- 7.39 The laws in other decriminalised jurisdictions use various terms such as 'sex work' and 'commercial sexual services'. They each refer to activities of a sexual nature given to another person for payment: see figure 4.
- 7.40 The way those places define this activity varies. For example, the definition in Victoria includes the 'use or display' of a person's body for another person's sexual arousal or gratification. But the definition in New Zealand is limited to 'physical participation' in sexual acts with another person.

Box 3: What are sexual intercourse, masturbation and oral sex?

- Sexual intercourse is penetration of a person's vagina, vulva or anus by another person's body part or an object
- Masturbation commonly means stimulation of a person's genitals, usually by hand, to achieve or provide orgasm or for sexual pleasure
- Oral sex is bringing any part of a person's genitalia or anus in contact with any part of another person's mouth

¹¹¹ See, eg, Open Society Foundations, 'Understanding sex work in an open society' (April 2019) <<https://www.opensocietyfoundations.org/explainers/understanding-sex-work-open-society>>; K McMillan, H Worth & P Rawstorne, 'Usage of the terms prostitution, sex work, transactional sex, and survival sex: their utility in HIV prevention research' (2018) 47(5) *Archives of Sexual Behavior* 1517, 1518–19.

¹¹² Criminal Code (Qld) s 229E(1). See also *Prostitution Act 1999* (Qld) s 5 sch 4 which applies the same definition.

¹¹³ Criminal Code (Qld) ss 229D, 229E(5).

¹¹⁴ Criminal Code (Qld) s 229E(3).

¹¹⁵ Criminal Code (Qld) s 229(4).

¹¹⁶ Criminal Code (Qld) s 229E(2).

Figure 4: How the laws in other decriminalised jurisdictions define sex work¹¹⁷

NSW	NT	VIC	NZ
<ul style="list-style-type: none"> • prostitution includes sexual intercourse and masturbation by one person on another, for payment • includes prostitution between people of different sexes or of the same sex 	<ul style="list-style-type: none"> • sex work means the provision by a person of services that involve the person participating in sexual activity with another person in return for payment or reward 	<ul style="list-style-type: none"> • commercial sexual services means services involving the use or display of a person's body for the sexual arousal or sexual gratification of others for commercial benefit, payment or reward • applies whether the reward is given to the person providing the services or to someone else • a person may provide services on a single occasion or on multiple occasions 	<ul style="list-style-type: none"> • prostitution means the provision of commercial sexual services • commercial sexual services means sexual services involving physical participation by a person in sexual acts with, and for the gratification of, another person and provided for payment or other reward • applies whether the reward is given to the person providing the services or someone else

- 7.41 These are legal definitions used for particular purposes. The purposes and features of the legal framework vary between jurisdictions.
- 7.42 The definition in Victoria is intended to apply across all relevant laws. In particular, it would apply for offences that prohibit a person from forcing or coercing someone else into providing commercial sexual services. For this reason, the definition is intentionally wide so that it does not leave anyone out of this protection.¹¹⁸
- 7.43 In comparison, the New Zealand definition was narrowed so that it did not capture more people than intended. The definition applies both to offences that protect against exploitation and to the other parts the Act, including health and safety rules. It was explained that the definition would:¹¹⁹
- include activities like lap dancing or nude massage where they involve physically participating in sexual acts; but
 - exclude activities like stripping where they do not involve physical or intimate contact.

¹¹⁷ *Summary Offences Act 1988* (NSW) s 3(1); *Sex Industry Act 2019* (NT) s 4; *Sex Work Decriminalisation Act 2022* (Vic) s 39, inserting *Crimes Act 1958* (Vic) s 35(1) (definition of 'commercial sexual services'), (1A); *Prostitution Reform Act 2003* (NZ) s 4(1).

¹¹⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3874, 3883 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating).

¹¹⁹ Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 9.

- 7.44 Sex worker organisations, human rights groups and others typically describe sex work as the exchange of sexual services for money or other reward between consenting adults.¹²⁰ In describing sex work, people highlight various points:
- If consent is not given to providing sexual services for payment, this is abuse or assault, not sex work. Sex work is not the same as commercial sexual activity that is forced, coerced or involves children.¹²¹
 - Sex work is a contractual agreement negotiated and agreed between the sex worker and client.¹²²
 - Sex work is skilled work.¹²³
 - Sex work takes different forms and can vary in how formal or organised it is.¹²⁴
 - Sex work includes female, male and transgender sex workers and can be done regularly or occasionally.¹²⁵
- 7.45 When we talk about sex work, we are not referring to commercial sexual activity that is forced, coerced or involves children. The need to protect people from commercial sexual exploitation is an issue we consider in chapter 8.
- 7.46 Sex workers can also be unfairly treated or discriminated against in other ways by people they work for or seek services from. Like other workers, sex workers can have a range of workplace experiences, both positive and negative.¹²⁶
- 7.47 Sex workers can also be sexually assaulted or raped. It is a myth that sex workers cannot be victims of sexual violence or abuse.¹²⁷ Criminal laws against sexual assault and rape apply to everyone.

Who are sex workers?

- 7.48 As we have seen, 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: see chapter 3.
- 7.49 Like sex work (see figure 3 above), sex workers can be described in different ways depending on features like:
- what kind of sex work activity they are doing;
 - where they are working and how they engage their clients; and
 - what their working arrangements are.

¹²⁰ See, eg, Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 19; UNAIDS, *Terminology Guidelines* (2015) 5; 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.

¹²¹ See, eg, Stella, 'Language matters: talking about sex work' (Infosheet 4, April 2013) NSWP <<https://www.nswp.org/sites/nswp.org/files/StellaInfoSheetLanguageMatters.pdf>>.

¹²² See, eg, Global Commission on HIV and the Law, *Risks, Rights and Health* (Final Report, July 2012) 39.

¹²³ Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 13–14.

¹²⁴ 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.

¹²⁵ See, eg, UNAIDS, *Terminology Guidelines* (2015) 5.

¹²⁶ See generally C Benoit et al, 'Prostitution stigma and its effect on the working conditions, personal lives, and health of sex workers' (2018) 55(4–5) *Journal of Sex Research* 457, 458.

¹²⁷ See, eg, 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 and the references cited there.

- 7.50 Sex worker organisations tell us that sex workers often move between different workplaces and ways of working. For example, a sex worker might work some days at a brothel, massage parlour or escort agency and other days seeing private clients. This is supported by data collected by Respect Inc.
- 7.51 Dividing sex workers into different categories is not always useful. But sometimes we might need to talk about different working situations. This includes when sex workers are working privately and when they are working for someone else: see figure 5.

Figure 5: Private and managed sex workers

Private sex worker	Managed sex worker
<ul style="list-style-type: none"> • When a sex worker is working independently and is self-employed • The sex worker is working for themselves and is not hired or engaged by a third party to work for them • The sex worker is not being managed by someone else, like a brothel operator or massage parlour 	<ul style="list-style-type: none"> • When a sex worker is working for and being managed by someone else • The sex worker is hired or engaged by a third party to work for them • For example, when a sex worker is working for a brothel, a massage parlour or an escort agency • The legal relationship and degree of management or control can vary, eg the sex worker might be engaged as a contractor or an employee

- 7.52 Private sex workers work as independent, self-employed workers. They might work:

- on their own: see box 4;
- with others in small 'co-operative' arrangements;
- with or without engaging others to help with things like reception, security or advertising.

- 7.53 Scarlet Alliance tells us private sex workers may often work 'in collaboration with other workers in non-managerial relationships'. In co-operative arrangements, individual workers keep autonomy over their work but share costs and resources with each other. For example, two sex workers might each work independently from the same residential property, splitting rental and utility costs between them. Working together in this way might offer peer support and safety as well as reducing financial costs.

- 7.54 Managed sex workers work for someone else. They are hired or engaged by third parties to work for them, like brothels or massage parlours. Sex workers may be engaged as sub-contractors, employees or a mixture of both.¹²⁸ This creates a working relationship where the third party manages or controls parts of the work. The level of management or control can vary. The legal nature of the relationship can also vary and affects the rights and obligations that apply.

Box 4: Sole operators

- Our current laws require private sex workers to work alone
- This is why private sex workers are sometimes called 'sole operator' sex workers
- We use 'private sex worker' instead because it is more neutral and inclusive
- We use this in place of the longer phrase 'independent self-employed private sex worker'

- 7.55 Talking about private and managed sex workers will help us when we are working out how general laws apply in different situations and whether any special rules might be needed.
- 7.56 When we talk about a private or managed sex worker, we are describing their working arrangements in a given situation. We do not suggest that they always or only work in that way. It will depend on their working arrangements in each situation.
- 7.57 Also we do not assume that a private sex worker typically works alone. We recognise peer support and collaboration are important to sex workers. One of the benefits of decriminalised approaches is to give sex workers greater choice in their working arrangements.

What is a sex work business and who is a sex work business operator?

- 7.58 A 'sex work business' is a business that provides for or arranges for the provision of sex work: see box 5. They hire or employ sex workers to work for them. They might also engage other staff or contractors, like receptionists, cleaners, security providers and drivers.

Box 5: What is a sex work business?

- A business that **provides or arranges** sex work
- Such as a brothel, erotic massage parlour, escort agency, or home-based sex work business
- Includes a **commercial sex work business** that employs lots of people, and a **small owner-operator business**

- 7.59 The familiar example of this is a business operating as a brothel. Like 'prostitution', the term 'brothel' is outdated and may have negative overtones. It also does not recognise different types of sex work businesses.

- 7.60 Other sex work businesses include businesses run as:

- erotic massage parlours that provide sex work on their own premises;
- escort agencies that arrange for sex work to be provided at another place agreed with the client; and
- home-based businesses that provide sex work from a sex worker's residential premises.

- 7.61 A 'sex work business operator' is the person who, alone or with others, owns, operates, controls or manages the business.

- 7.62 The current framework applies to brothel licensees and others involved in 'the business of providing prostitution' or 'unlawful prostitution'.¹²⁹ Most decriminalised jurisdictions refer in some way to businesses that provide sex work and their operators. They use various terms: see figure 6 below. The laws in New South Wales focus on premises where sex work takes place.

- 7.63 Sex work businesses might usually be thought of as having several sex workers working for them. In Queensland, a licensed brothel can have up to 13 staff at any one time, including up to eight sex workers at a place with no more than five rooms.¹³⁰ Sex work businesses on a larger scale like this might be described as 'commercial sex work businesses'.

- 7.64 But it is also possible for a sex work business to engage only one or a small number of sex workers at any one time. A private sex worker who is self-employed and working only for

¹²⁹ See *Prostitution Act 1999* (Qld) sch 4 (definitions of 'licensed brothel' and 'operator'); *Criminal Code* (Qld) ss 229C (definition of 'control'), 229H, 229HB, 229HC, 229F.

¹³⁰ *Prostitution Act 1999* (Qld) s 78(1)(b), (2)–(3), sch 3.

themselves can also be considered as a sex work business. This might be described as a 'small owner-operated business'. If sex work is done on a small scale from a sex worker's home, it might also be described as a 'home-based' business.

Figure 6: How other decriminalised jurisdictions refer to sex work businesses¹³¹

NSW	NT	VIC	NZ
<ul style="list-style-type: none"> • brothel means premises used for the purpose of prostitution (by one or more prostitutes) • health and safety guidelines refer to 'commercial sex services premises' and to owners and managers of premises providing sexual services • planning rules refer to 'sex services premises' or similar 	<ul style="list-style-type: none"> • sex services business means a business that provides for or arranges sex work • operator of a sex services business means a person who owns or operates the business 	<ul style="list-style-type: none"> • framework refers in general terms to sex work business • planning rules refer to 'commercial sex work business' and 'home-based sex work business' • repeals legal definition of sex work service provider which meant a person carrying on the business of offering, providing or facilitating the offer or provision of sex work services • repeals definition in public health laws of brothel proprietor and escort agency proprietor which meant the proprietor or person in charge of the brothel or escort agency 	<ul style="list-style-type: none"> • business of prostitution means a business of providing, or arranging the provision of, commercial sexual services • operator of a business of prostitution means a person who owns, operates, controls, or manages the business • small owner-operator brothel means a brothel with no more than four sex workers who each keep control of their individual earnings

7.65 Sex work businesses usually mean someone is managing the work of other people. This raises particular issues, such as:

- the suitability of people to operate sex work businesses;
- responsibilities to the people they hire or employ;
- the impact of larger businesses on public amenity; and
- rules about advertising jobs at sex work businesses.

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Restricted Premises Act 1943 (NSW) s 2 (definition of 'brothel'); Safework NSW, 'Health and safety guidelines for sex premises in NSW' <<https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw>> [1]; City of Sydney, *Adult Entertainment and Sex Industry Premises Development Control Plan* (2006) 1, [2.2.1]–[2.2.2]; *Sex Industry Act 2019* (NT) s 4; Department of Justice and Community Safety (Vic), *Decriminalising Sex Work*, Discussion Paper (2021); *Sex Work Act 1994* (Vic) s 3(1) (definitions of 'brothel', 'escort agency' and 'sex work service provider'), to be repealed by *Sex Work Decriminalisation Act 2022* (Vic) s 37; *Public Health and Wellbeing Act 2008* (Vic) s 3(1) (definitions of 'brothel proprietor' and 'escort agency proprietor'), to be repealed by *Sex Work Decriminalisation Act 2022* (Vic) s 72; *Prostitution Reform Act 2003* (NZ) s 4(1).

- 7.66 Different features of a sex work business will influence the laws and rules that apply. Some obligations, like those under work health and safety laws, apply no matter how many people work for the business. But for some other laws, things like how many sex workers and other staff the business has, where the business is located, and its hours of operation might make a significant difference.
- 7.67 Planning and development rules differ depending on the type of premises being used for sex work. Sex work carried out from a place of residence (home-based sex work business) has different planning rules to sex work that is not home-based (commercial sex work business): see chapter 12.

Who else will the framework apply to?

- 7.68 Like other industries, the sex work industry potentially involves or affects many people and interests. Some relationships and impacts are more formal and direct than others.
- 7.69 Other people to consider in our framework include:
- staff or contractors engaged by sex workers and sex work businesses, such as receptionists, cleaners, security providers and drivers; and
 - clients of sex workers and sex work businesses.
- 7.70 We also need to consider:
- sex worker organisations that offer peer support services, including Respect Inc;¹³²
 - the role of local governments responsible for planning approvals;
 - other public entities that may have regulatory, compliance or dispute resolution functions under general laws or special rules applying to the industry; and
 - the interests of the wider community.

CONSULTATION QUESTION

Q4 Who should the new framework apply to, and why?

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See Respect Inc, 'Respect Inc—who are we?' (5 March 2021) <<https://respectqld.org.au/what-is-respect-inc/>>.

Offences to protect against commercial sexual exploitation

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Introduction

- 8.1 Our terms of reference ask us to consider which sections of the Prostitution Act and Chapter 22A of the Criminal Code should be repealed to give effect to a decriminalised sex work industry. They also ask us to consider appropriate safeguards to deter the exploitation of vulnerable people in the sex work industry.¹³³
- 8.2 The Prostitution Act and Chapter 22A of the Criminal Code contain several offences that make sex work unlawful in various circumstances. Removing these sex work-specific offences is central to decriminalising sex work: see chapter 7.
- 8.3 But the ‘prostitution’ laws also contain some other offences that may still be needed, with some changes, to help protect people from being exploited in commercial sexual activity. They prohibit people from obtaining ‘prostitution’ from a child, allowing a child to be at a place used for ‘prostitution’, procuring another person to ‘engage in prostitution’ for the purpose of sexual exploitation, or making another person continue to provide ‘prostitution’ under duress. These offences are distinguished from offences about sex work.
- 8.4 Exploitation in commercial sexual activity could take many forms and occur in various settings. For example, an employer might impose conditions on sex workers leading to excessive hours of work, inadequate pay, or an inability to refuse clients.¹³⁴ At the extreme, exploitation could involve human trafficking, forced labour, or organised crime. It is difficult, if not impossible, to know how often this occurs. The presence of organised crime and human trafficking in the sex work industry in Australia is contested: see chapter 5.
- 8.5 A combination of existing laws helps protect against commercial sexual exploitation. This includes:
- specific offences in Queensland’s existing ‘prostitution’ laws;
 - general criminal and workplace laws; and
 - Commonwealth laws against trafficking and forced labour.

Commercial sexual exploitation offences in Queensland’s existing prostitution laws

- 8.6 The ‘prostitution’ laws in Queensland include offences that prohibit a person from:
- procuring another person to ‘engage in prostitution’ for the purpose of sexual exploitation, or making another person ‘continue to provide prostitution’ under duress;
 - obtaining ‘prostitution’ from a child; or
 - permitting a child or person with an impairment of the mind to be at a place used for ‘prostitution’ by two or more sex workers.
- 8.7 These offences are in the Prostitution Act and chapter 22A of the Criminal Code: see figure 1.¹³⁵

¹³³ Terms of reference para 1(b), (e).

¹³⁴ See, eg, Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland’s Licensed Brothels* (2017) 27–8.

¹³⁵ See *Prostitution Act 1999* (Qld) s 77; *Criminal Code* (Qld) ss 229FA, 229G(1), 229L.

Figure 1: Existing Queensland offences about commercial sexual exploitation

s77 Prostitution Act	s229G Criminal Code	s229FA Criminal Code	s229L Criminal Code
<ul style="list-style-type: none"> • It is an offence to use threats, intimidation, harassment, false representation or fraud to make another person 'continue to provide prostitution' • Maximum penalty—(200 penalty units) or 7 years imprisonment 	<ul style="list-style-type: none"> • It is a crime to procure a person to engage in prostitution, or to leave or come to Queensland for the purpose of engaging in prostitution • 'Procure' includes knowingly entice or recruit for the purposes of sexual exploitation • Maximum penalty—imprisonment for 7 years (or if the person is a child or person with an impairment of the mind, imprisonment for 20 years) 	<ul style="list-style-type: none"> • It is a crime to obtain prostitution from a person who is not an adult if the person knows, or ought reasonably to know, the person is not an adult • Maximum penalty—imprisonment for 7 years (or if the person who provides the prostitution is under 16 years, imprisonment for 14 years) 	<ul style="list-style-type: none"> • It is a crime to knowingly cause or permit 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 purpose of prostitution by two or more prostitutes • Maximum penalty—imprisonment for 14 years

8.8 The offences are complemented by other parts of the legislation:

- The Criminal Code imposes a higher maximum penalty for offences in chapter 22A if the offender knew the other person was not an adult or was a person with an impairment of the mind.¹³⁶
- The Prostitution Act gives police the power to ask the age of a person at a licensed brothel if they reasonably believe the person is a minor, and the person must answer.¹³⁷

8.9 A child, or a person who is not an adult, means any person who is under 18 years.¹³⁸ A person with an impairment of the mind means a person with a disability that substantially reduces their capacity: see box 1.¹³⁹

¹³⁶ See Criminal Code (Qld) ss 229H(2), 229HA(2)(b), 229HB(2), 229I(2), (4), 229K(3), (3B).

¹³⁷ See *Prostitution Act 1999* (Qld) s 85. Maximum penalty 20 penalty units.

¹³⁸ See Criminal Code (Qld) s 1 (definition of 'adult'). See also *Acts Interpretation Act 1954* (Qld) sch 1 (definitions of 'child' and 'minor').

¹³⁹ See Criminal Code (Qld) s 1 (definition of 'person with an impairment of the mind'). See also *Disability Services Act 2006* (Qld) ss 18(1)–(2); *Guardianship and Administration Act 2000* (Qld) ss 7(a), 11B.

Box 1: person with an impairment of the mind

- Under the Criminal Code, a person with an impairment of the mind means:
 - a person with a disability attributable to an intellectual, psychiatric, cognitive or neurological impairment or any combination of these
 - where the disability substantially reduces the person's capacity for communicating, interacting socially or learning, and results in the person needing support
- People with disability have the same human rights as others, including autonomy and freedom from being exploited
- Under Queensland's adult guardianship laws, all adults are presumed to have capacity unless proved otherwise

Other protections

8.10 Other criminal laws in Queensland prohibit:¹⁴⁰

- engaging in or procuring sexual acts with a child;¹⁴¹
- procuring sexual acts by coercion: see box 2;¹⁴²
- engaging in or procuring sexual acts with a person with an impairment of the mind in circumstances that amount to sexual exploitation;¹⁴³
- kidnapping another person, unlawfully detaining them against their will or depriving them of their liberty;¹⁴⁴ and
- sexual assault and rape.¹⁴⁵

8.11 The *Child Employment Act 2006* protects a child from being made to work in certain situations. An 'employer' must not require or allow a child to work.¹⁴⁶

- while the child is nude or is dressed in a way that their sexual organs or anus are visible;

Box 2: procuring sexual acts by coercion

- The Criminal Code makes it a crime for someone to:
 - use threats, intimidation, or false pretence to procure another person to engage in a sexual act; or
 - drug another person to overpower them so that a sexual act can be engaged in with them
- Maximum penalty—imprisonment for 14 years
- For this offence (and offences of procuring sexual acts with children) 'procure' means 'knowingly entice or recruit for the purposes of sexual exploitation'

¹⁴⁰ The maximum penalty for these offences varies, but can be as high as 14 years or life imprisonment in some cases.

¹⁴¹ See Criminal Code (Qld) ss 215, 218A–219.

¹⁴² See Criminal Code (Qld) s 218.

¹⁴³ See Criminal Code (Qld) s 216. Concerns are raised about the potential unfair effect of s 216 on people with disability: see, eg, 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).

¹⁴⁴ See Criminal Code (Qld) ss 354, 355.

¹⁴⁵ Criminal Code (Qld) ch 32.

¹⁴⁶ See *Child Employment Act 2006* (Qld) ss 8A(1), 8B, 8C(1)–(2). Maximum penalty 100 penalty units.

- as a social escort, as defined in the Prostitution Act: see box 3;¹⁴⁷ or
- in an inappropriate role or situation—for example, the child may not:
 - perform an act of an explicit sexual nature, or be present in an area while another person performs an act of an explicit sexual nature; or
 - be present in an area while another person is nude or dressed in a way that the person's sexual organs or anus are visible.

Box 3: social escort

- A social escort is someone who is offered to the public for hire, under a commercial arrangement, to accompany a person to social affairs or places of entertainment or amusement, or to consort with a person in a public or private place
- A social escort does not include someone who provides those services as part of a health service, and does not include someone who provides 'prostitution'

- 8.12 Under that Act, an 'employer' is a person who engages or arranges for a child to perform work at the person's direction. It applies whether the child is paid or works on a voluntary basis.¹⁴⁸
- 8.13 Various Commonwealth laws are also relevant in some circumstances, including:
- criminal laws against forced labour and trafficking in persons; and
 - workplace laws that protect against unfair work practices.
- 8.14 The Criminal Code (Cth) contains offences against 'enforced prostitution', slavery and slavery-like practices. Slavery refers to the exercise of ownership powers over another person. Slavery-like practices include servitude, forced labour and deceptive recruiting. They can apply to the exploitation of a person's labour or services in any industry. They can also apply to exploitation within intimate or family relationships.¹⁴⁹
- 8.15 The Criminal Code (Cth) also contains offences against human trafficking, giving effect to Australia's obligations under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The offences include, but are not limited to, trafficking for sexual exploitation.¹⁵⁰
- 8.16 Australia also has obligations to prohibit child prostitution under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. This is mainly given effect by offences in the states and territories.
- 8.17 The *Fair Work Act 2009* (Cth) gives a safety net of minimum rights and protects against unfair work practices for employees covered by the national workplace relations system, including migrant workers. The Act includes protections against discrimination, 'sham contracting' and some forms of coercion or undue influence. For example, a person must not take action against another person with intent to coerce them to exercise, or not exercise, a workplace right.¹⁵¹

¹⁴⁷ See *Child Employment Act 2006* (Qld) s 8B(2); *Prostitution Act 1999* (Qld) s 5 sch 4 (definition of 'social escort').

¹⁴⁸ *Child Employment Act 2006* (Qld) s 3 sch (definition of 'employer').

¹⁴⁹ Criminal Code (Cth) ss 268.16, 268.61, 268.84 (enforced prostitution), ch 8 div 270 (slavery and slavery-like offences).

¹⁵⁰ Criminal Code (Cth) ch 8 div 271. See especially ss 271.2(2)–(2C), 271.5(2A)–(2B).

¹⁵¹ See *Fair Work Act 2009* (Cth) ss 343–344, 348, 351, 355, 357–359. See ch 10.

The approach in other decriminalised jurisdictions

- 8.18 Many other Australian states and territories have specific criminal offences about commercial sexual exploitation or forced prostitution.¹⁵² These offences complement Commonwealth laws and may be used alongside them. In practice, matters about human trafficking and slavery-like practices are usually referred to the Australian Federal Police.¹⁵³
- 8.19 Other places where sex work is decriminalised have also kept separate offences to protect people from being exploited in commercial sexual activities: see table 1. There are some differences in drafting and scope. But commonly, the offences prohibit a person from:
- using coercion (such as intimidation or threats) to induce another person to perform commercial sexual services or give payment from commercial sexual services;
 - causing or inducing a child to participate in commercial sexual services;
 - receiving commercial sexual services from a child;
 - arranging for a child to perform commercial sexual services; and
 - receiving payment from a child from commercial sexual services performed by the child.
- 8.20 These offences do not criminalise the child or young person who performs the commercial sexual services.

Table 1: Commercial sexual exploitation offences in decriminalised jurisdictions¹⁵⁴

	NSW	NT	VIC	NZ
Coerce commercial sexual services	Use coercive control or undue influence to cause or induce a person to provide prostitution or surrender proceeds of prostitution (Maximum penalty—50 penalty units or 12 months or both)	Induce a person—by intimidation, assault, threat, etc—to perform or continue performing sex work or to provide or continue providing payment from sex work (Maximum penalty—5 years)	Induce a person—by intimidation, assault, threat, etc—to engage or continue engaging in commercial sexual services or to provide or continue providing benefit, payment or reward from commercial sexual services (Maximum penalty—10 years)	Induce or compel a person—by threat or promise about certain matters—to provide or continue providing commercial sexual services or to provide or continue providing payment or reward from commercial sexual services (Maximum penalty—14 years)

¹⁵² See, eg, *Crimes Act 1900* (ACT) pt 5; *Criminal Law Consolidation Act 1935* (SA) pt 3 div 12; Criminal Code (WA) ss 331A–331D.

¹⁵³ See, eg, Australian Government, *The Tenth Report of the Interdepartmental Committee on Human Trafficking and Slavery* (2021) 30.

¹⁵⁴ See *Summary Offences Act 1988* (NSW) ss 15A, 21D; *Crimes Act 1900* (NSW) ss 91D–91F; *Sex Industry Act 2019* (NT) 10–14; *Sex Work Decriminalisation Act 2022* (Vic) s 42, inserting *Crimes Act 1958* (Vic) ss 53H–53J, 53L–53M; *Prostitution Reform Act 2003* (NZ) ss 16, 20–23. In each of those jurisdictions, a child is a person under 18 years.

	NSW	NT	VIC	NZ
Cause a child to take part in commercial sexual services	Cause or induce a child to participate in child prostitution (Maximum penalty—10 years, or 14 years if the child is under 14)	Cause or allow a child to perform sex work or work for or in a sex services business (Maximum penalty—7 years, or 14 years if the child is under 14)	Cause or induce a child to take part or continue taking part in commercial sexual services in any capacity (Maximum penalty—10 years)	Cause, assist, facilitate, or encourage a person under 18 to provide commercial sexual services (Maximum penalty—7 years)
Receive commercial sexual services from a child	Participate as a client with a child in child prostitution (Maximum penalty—10 years, or 14 years if the child is under 14)	—	—	Receive commercial sexual services from a person under 18 years (Maximum penalty—7 years)
Arrange commercial sexual services of a child	—	Offer or accept an offer to enter an agreement for a child to perform sex work or to work for or in a sex services business (Maximum penalty—7 years, or 14 years if the child is under 14)	Enter or offer to enter an agreement for a child to provide commercial sexual services (Maximum penalty—15 years)	Enter a contract or arrangement for a person under 18 to provide commercial sexual services (Maximum penalty—7 years)
Receive payment from commercial sexual services of a child	Knowingly receive money or other material benefit from child prostitution (Maximum penalty—10 years, or 14 years if the child is under 14)	Receive payment from a child from sex work performed by the child (Maximum penalty—7 years, or 14 years if the child is under 14)	Knowingly receive benefit, payment or reward from commercial sexual services of a child (Maximum penalty—15 years)	Knowingly or recklessly receive payment or reward from commercial sexual services provided by a person under 18 (Maximum penalty—7 years)

- 8.21 This approach supports human rights, freedom from forced work, freedom from inhuman or degrading treatment, and the right of children to the protection they need (including protection from economic and sexual exploitation).
- 8.22 The laws in New South Wales and Victoria also contain offences to prohibit a person from:¹⁵⁵
- allowing a child on the person's premises to participate (or for the purpose of participating) in commercial sexual services; and

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See *Summary Offences Act 1988* (NSW) ss 15, 21D; *Crimes Act 1900* (NSW) s 91; *Sex Work Decriminalisation Act 2022* (Vic) s 42, inserting *Crimes Act 1958* (Vic) ss 53K, 53N.

- knowingly living on the earnings of another person's commercial sexual services in certain circumstances (for example, in Victoria, if the services were performed in a way that constitutes one of the offences in table 1).

8.23 The decriminalisation laws in the Northern Territory and New Zealand also state the right of a person to refuse to perform or continue to perform sex work: see chapter 10.

Offences to protect against commercial sexual exploitation as part of Queensland's decriminalised framework

8.24 Many people and organisations who support decriminalisation of sex work point out that this does not mean removing criminal laws against trafficking, exploitation or other violence against sex workers.¹⁵⁶ Decriminalisation applies to sex work between consenting adults. Sex work is not the same as commercial sexual activity that is forced, coerced or involves children: see chapter 7.

8.25 The focus of decriminalisation is removing criminal sanctions for sexual activities between consenting adults. It is not intended to remove laws against 'child prostitution' or forcing or coercing a person to participate in commercial sexual activity.¹⁵⁷

8.26 Children should be protected from commercial sexual exploitation. A child is an individual under 18 years.¹⁵⁸ This includes young people of 16 or 17 years. Young people may be capable of giving consent to sexual activity. However, the commercial aspect of 'prostitution' raises other concerns:¹⁵⁹

While a young person aged 16 or 17 may legally be able to have consensual sex, the exchange of sex for money or some other form of financial or material consideration raises real concerns of exploitation, including potential power imbalances between the young person and their older client. Further, while an adult may well be considered as capable of making the decision to enter into a commercial sexual arrangement, a young person aged 16 or 17 is still emotionally vulnerable and should, as a matter of policy, be protected from the risk of potential harm.

8.27 Sex workers should also be protected from being coerced or forced into providing sex work.

8.28 We know Queensland's sex work industry includes migrant sex workers: see chapter 3. Scarlet Alliance tells us that trafficking and exploitation is not the experience of most migrant sex workers. But factors such as language barriers, isolation and immigration status may make some migrant sex workers more vulnerable to being exploited.¹⁶⁰

8.29 Factors such as isolation can affect some other sex workers as well. For example, some Aboriginal and Torres Strait Islander sex workers and LGBTIQ sex workers can be particularly marginalised.¹⁶¹

8.30 Decriminalising sex work should help improve the situation for many sex workers, especially those who may presently be working outside the lawful sector. It should help sex workers

¹⁵⁶ See, eg, Amnesty International, 'Q&A: policy to protect the human rights of sex workers' (26 May 2016) <<https://www.amnesty.org/en/ga-policy-to-protect-the-human-rights-of-sex-workers/>>.

¹⁵⁷ See, eg, R Weitzer, *Legalizing Prostitution: From Illicit Vice to Lawful Business* (NYU Press, 2012) 209, 211; Department of Justice and the Attorney General (NT), *Reforming Regulation of the Sex Industry in the Northern Territory* (Discussion Paper, March 2019) 1; Department of Justice and Community Safety (Vic), *Decriminalising Sex Work* (Discussion Paper, 2021) 3–4.

¹⁵⁸ See *Acts Interpretation Act 1954* (Qld) sch 1 (definitions of 'child' and 'minor'). See also Criminal Code (Qld) s 1 (definition of 'adult').

¹⁵⁹ Explanatory Notes for Amendments during consideration in detail, Prostitution and Other Acts Amendment Bill 2009 (Qld) 2.

¹⁶⁰ See, eg, CMC Report (2011) 21

¹⁶¹ Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 11, 18, 73, 82.

better access the rights and protections that apply under general criminal and workplace laws. Some sex worker organisations say that labour exploitation is more effectively addressed by workplace rights, prevention and support.¹⁶² In preliminary feedback, some suggested that criminal offences might be used to unfairly prosecute sex workers rather than to protect them.

- 8.31 Even in a decriminalised framework, it remains important to protect against commercial sexual exploitation.
- 8.32 Other laws apply against non-consensual sexual activity. But commercial sexual activity involves the added element of payment or reward. It is not only the ‘client’ or potential client who may be relevant. People who organise or benefit financially from a commercial sexual arrangement might seek to exploit children or other people who may be vulnerable because of their personal circumstances.
- 8.33 The commercial sexual exploitation offences in Queensland’s prostitution laws (see table 1) are a safeguard to deter exploitation. But they may need some changes. For example:
- These offences are presently located with other provisions about ‘prostitution’. They could be relocated and adapted to apply to commercial sexual activity in particular circumstances.
 - The scope of the offences could be changed. For example:
 - Section 229G of the Criminal Code prohibits a person from procuring someone else to ‘engage in prostitution’. It includes but is not limited to situations involving sexual exploitation or coercion, unlike the offences in other decriminalised places.
 - Section 77 of the Prostitution Act prohibits a person from coercing someone else to ‘continue to provide prostitution’. It is narrower than the offences in other decriminalised places, which prohibit the use of coercion to induce a person to perform, or continue performing, commercial sexual activity.
 - The offences would need to be clearly defined and use modern language. They should not criminalise voluntary sexual activity between consenting adults.
- 8.34 In preliminary feedback, the PLA suggested that decriminalisation laws should be ‘grounded in harm minimisation’ and could state that:
- people must not be coerced into performing sex work;
 - sex workers may not be compelled to perform commercial sexual services or to continue to perform those services;
 - people under 18 or without decision-making capacity may not be engaged at a sex work business; and
 - a person must not seek, accept or receive commercial sexual services from a person under 18 or without decision-making capacity.

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See, eg, *ibid* 15–16, 89, 105–07.

CONSULTATION QUESTIONS

- Q5** What offences or other provisions should be included to protect people from being exploited in commercial sexual activity? For example:
- (a) Should the offences in section 77 of the Prostitution Act and sections 229G, 229FA and 229L of the Criminal Code be reformulated in another part of the Criminal Code or in another law?
 - (b) Should any other offences be included in the Criminal Code or another law (like the exploitation offences in other decriminalised places)?
 - (c) Should the *Child Employment Act 2006* be amended to prohibit a person from requiring or allowing a child to work as a sex worker or in a sex work business?

Licensing of sex work business operators

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Introduction

- 9.1 Our terms of reference ask us to consider appropriate safeguards to deter the involvement of illegal activity and the exploitation of vulnerable people in the sex work industry. They also ask us to look at the administration of the framework and how to limit the administrative and resource burden on government and industry.¹⁶³
- 9.2 The existing framework for the sex work industry includes a licensing system for brothels. This system involves rigorous checking of the suitability of brothel operators. It is intended to safeguard against the involvement of criminal and corrupt elements and limit the potential harms associated with sex work. It adds to the standard rules and requirements that apply to any business operating in Queensland.
- 9.3 In this chapter, we ask whether sex work business operators should be required to have some form of licence and, if so, what the licensing system should look like. Our focus is on sex work business operators (that is, people who manage or have control over sex workers), not individual sex workers.

Licensing

- 9.4 Licensing is a contentious issue for the sex work industry. It raises issues about the language used, as well as more significant issues about whether a licensing system—whatever it might be called—is desirable.
- 9.5 The Macquarie Dictionary defines ‘licence’ to mean ‘formal permission from a constituted authority to do something, as to carry on some business or profession’ and ‘a certificate of such permission; an official permit’.¹⁶⁴
- 9.6 Licences, permits and registrations are a common feature of business regulation.¹⁶⁵ Licensing requirements vary in how strict and detailed they are. Some laws might require a business to register their details with an authority to operate within the law.¹⁶⁶ Some might require a criminal history check to make sure the person operating the business is suitable.¹⁶⁷ Others, like the licensing system under the Prostitution Act, might have more extensive requirements.¹⁶⁸ Licensing requirements may give the community a degree of comfort that business operators have met minimum standards for involvement in an industry, such as completing special qualifications or training.
- 9.7 For many people in the sex work industry, ‘licensing’ refers to the sort of system that operates now under the Prostitution Act. It requires business operators to pass a criminal history check and fitness of character test, to pay large licensing fees, and to submit to inspections and other ongoing checks. Sex worker organisations and others say that the present licensing system is too complex and costly, creates significant barriers to compliance, and has resulted in a

¹⁶³ Terms of reference para 1(e), (i), (l).

¹⁶⁴ *Macquarie Dictionary* (online at 17 February 2022) ‘licence’ paras 2–3.

¹⁶⁵ See generally Business Queensland, ‘Business licences and permits’ (28 May 2021) <<https://www.business.qld.gov.au/starting-business/licensing-obligations/licences-registrations/licenses-permits>>.

¹⁶⁶ See, eg, *Business Names Registration Act 2011* (Cth).

¹⁶⁷ See, eg, *Working with Children (Risk Management and Screening) Act 2000* (Qld); *Second-hand Dealers and Pawnbrokers Act 2003* (Qld).

¹⁶⁸ See, eg, *Tattoo Industry Act 2013* (Qld); *Liquor Act 1992* (Qld); *Security Providers Act 1993* (Qld).

two-tiered industry of licensed (lawful) and unlicensed (unlawful) operators.¹⁶⁹ This is just one type of licensing system.

- 9.8 Some decriminalised jurisdictions also have licensing systems. But these are quite different to the present system in Queensland. They could be described as a 'lighter touch' model of licensing, in contrast to Queensland's more onerous system. In this model, business operators are required to have a suitability certificate. This means the operator must pass a basic criminal history check to make sure they do not have convictions for certain serious, disqualifying offences. Depending on the jurisdiction, some other requirements may need to be met. These licensing systems do not impose high fees. They are commonly referred to as 'suitability certificate' schemes. They are another type of licensing system.
- 9.9 In this chapter, we use the word 'licensing' in its widest sense to cover a range of possible options. A licensing system under the new framework, if any, could take a variety of forms—from lighter touch to more onerous. We are interested in your views about whether to include a licensing system and what this might be.

Queensland's brothel licensing system

Brothel licence requirements

- 9.10 Under the Criminal Code and the Prostitution Act, a person must hold:¹⁷⁰
- a brothel licence to lawfully operate a brothel; and
 - an approved manager's certificate to lawfully manage a brothel.
- 9.11 Brothel licences and approved manager's certificates are granted by the PLA under the Prostitution Act.

Ineligibility for a licence

- 9.12 An individual over 18 years can apply for a brothel licence. A person is not eligible to apply for a brothel licence if they:¹⁷¹
- have been convicted of a disqualifying offence;
 - are an insolvent under administration;
 - have had a licence or other authority or certificate under the Prostitution Act (or under the same laws in another Australian state or territory) cancelled in the previous three years;
 - hold a licence or permit under the *Liquor Act 1992* (such as an adult entertainment permit); or
 - are subject to a disciplinary order by the PLA declaring that they are not eligible.

¹⁶⁹ See, eg, 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); Scarlet Alliance, *Full Decriminalisation of Sex Work in Australia*, Briefing Paper <https://scarletalliance.org.au/library/briefing_paper_full_decrim>.

¹⁷⁰ See Criminal Code (Qld) ss 229C (definition of 'unlawful prostitution'), 229F, 229H, 229HA(2), 229HB; *Prostitution Act 1999* (Qld) ss 9, 44, 66, 77.

¹⁷¹ *Prostitution Act 1999* (Qld) s 8.

9.13 Disqualifying offences include:¹⁷²

- certain serious crimes under the Criminal Code, such as official corruption, unlawful homicide, rape, and any offence against chapter 22A of the Criminal Code if it relates to a child or a person with an impairment of the mind; and
- certain serious offences under other laws, such as drug trafficking, money laundering, and some migration offences: see table 2 at [9.102] below.

9.14 In Queensland, certain older convictions need not be disclosed. However, when considering the suitability of a person for involvement in the sex work industry, disclosure is required.¹⁷³ (In contrast, under the *Tattoo Industry Act 2013*, a person is not suitable to hold an operator licence if they have been convicted of a disqualifying offence in the ten years before applying for the licence.¹⁷⁴)

9.15 The same eligibility rules apply for an approved manager's certificate.¹⁷⁵

Assessment of suitability

9.16 To be granted a licence, the PLA must be satisfied the person is 'a suitable person to operate a licensed brothel'. In assessing a person's suitability, the PLA must consider all relevant matters, including:¹⁷⁶

- the person's reputation, including their character, honesty, and integrity;
- criminal convictions;
- criminal charges for sexual offences (involving violence, intimidation, threats, or children);
- the person's associates;
- financial viability of the proposed brothel;
- transparency of the business structure; and
- arrangements for the safety of sex workers.

9.17 The PLA must not decide that the applicant is not suitable to operate a licensed brothel because the person has worked as a prostitute.

9.18 Similar rules apply for granting an approved manager's certificate.¹⁷⁷

Other factors in granting or refusing a licence

9.19 The PLA does not have to consider a person's application for a licence until development approval for the brothel premises has been given by local government.¹⁷⁸

¹⁷² See *Prostitution Act 1999* (Qld) schs 1, 2, 4 (definition of 'disqualifying offence').

¹⁷³ See *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) ss 6, 9A.

¹⁷⁴ See *Tattoo Industry Act 2013* (Qld) s 12(3)(a).

¹⁷⁵ See *Prostitution Act 1999* (Qld) s 34.

¹⁷⁶ See *Prostitution Act 1999* (Qld) ss 16(1)(a), 17.

¹⁷⁷ See *Prostitution Act 1999* (Qld) ss 41(a), 42.

¹⁷⁸ *Prostitution Act 1999* (Qld) s 15(2).

- 9.20 A licence application must be refused if the PLA considers that, if it were granted, the combined total of licensed brothels and adult entertainment premises in that area 'would substantially affect the character of the locality'.¹⁷⁹

Register

- 9.21 The PLA must keep a public register of licence and certificate holders.¹⁸⁰

Licence conditions and monitoring

- 9.22 The PLA may add conditions to a licence or certificate. In practice, it attaches a set of standard conditions to each licence or certificate that it issues.¹⁸¹
- 9.23 The PLA also has the function of monitoring 'the provision of prostitution' at licensed brothels. It does this by carrying out audits and inspections of brothels to make sure licensees are following the Prostitution Act and meeting their licence conditions. The PLA may also conduct disciplinary inquiries and take disciplinary action against brothel licensees and approved managers.¹⁸² For some offences under the Prostitution Act and the Prostitution Regulation, the PLA may issue penalty infringement notices.¹⁸³

Other licensing requirements

- 9.24 The licensing system imposes specific requirements on the conduct of the business or of the licensee. This includes requirements about:¹⁸⁴
- the display and production of brothel licences;
 - sexual health and safer sex practices;
 - measures to protect sex workers; and
 - limits on the size of brothels and sex worker and staffing numbers.
- 9.25 The Prostitution Act also includes specific rules that:¹⁸⁵
- a licensee may not own multiple brothels;
 - a brothel may not be operated in partnership with an unlicensed person;
 - escort services (outcalls) from brothels are not permitted;
 - brothels must be personally supervised when trading; and
 - liquor is not permitted at brothels.
- 9.26 Many of these matters are offences under the Act.

¹⁷⁹ *Prostitution Act 1999* (Qld) s 16(2).

¹⁸⁰ *Prostitution Act 1999* (Qld) s 111.

¹⁸¹ See *Prostitution Act 1999* (Qld) ss 18(1)(a), 19(5)(d)(iii), 21, 43(1)(a), 44(4)(d)(iii), 47; PLA, 'Brothel Licence Conditions' (v 14, 13 May 2019) <https://www.pla.qld.gov.au/_data/assets/pdf_file/0007/674836/pla-brothel-licence-conditions-v14.pdf>.

¹⁸² See generally *Prostitution Act 1999* (Qld) ss 26, 29, 52, 55, 101(c)–(e); PLA, 'Queensland Brothel Licence compliance' (2022) <https://www.pla.qld.gov.au/licensing/brothel-licence#comply_licence_conditions>.

¹⁸³ See *State Penalties Enforcement Regulation 2014* (Qld) ss 4–6 sch 1; PLA, *Operational Standards Manual* [9.2].

¹⁸⁴ See *Prostitution Act 1999* (Qld) ss 77, 77A(5)–(6), 78, 87–89; *Prostitution Regulation 2014* (Qld) s 23; 'Brothel licence conditions' (v 14, 13 May 2019) <https://www.pla.qld.gov.au/_data/assets/pdf_file/0007/674836/pla-brothel-licence-conditions-v14.pdf>.

¹⁸⁵ *Prostitution Act 1999* (Qld) ss 19(2), 78(1)(a), 79, 80–83.

Consequences of not holding a licence or not following a licence requirement

- 9.27 A person who operates a brothel without holding a licence may be guilty of an offence under Chapter 22A of the Criminal Code, such as:
- knowingly participating in providing prostitution (section 229H); or
 - carrying on the business of providing unlawful prostitution (section 229HB).
- 9.28 The Prostitution Act contains several offences. For example, it is an offence punishable by a maximum penalty of 200 penalty units (\$27 570) or five years imprisonment for a person to:¹⁸⁶
- provide prostitution at a place other than the brothel;
 - have more than 13 staff on premises;
 - not follow a licence condition;
 - operate a brothel while the licence is suspended; or
 - have more sex workers on premises than allowed for the number of rooms at the brothel.
- 9.29 The PLA may conduct a disciplinary inquiry and take disciplinary action if a person does not follow a condition of their licence or certificate.¹⁸⁷ The Prostitution Act gives the PLA several disciplinary powers, including giving a reprimand, issuing a monetary penalty, and suspending or cancelling the licence or certificate.¹⁸⁸

The aim of the brothel licensing system

- 9.30 Historically, Queensland's sex work industry was closely linked with organised crime and official corruption. The 1989 Fitzgerald Inquiry found that brothels were being operated by crime syndicates who were sometimes also involved in the drug trade, and that operators were paying protection money to corrupt police. When the Prostitution Bill 1999 was introduced into Parliament, the Minister for Police and Corrective Services said:¹⁸⁹
- We cannot ever forget the part prostitution has played in corruption and organised crime in this State during some dark years in Queensland's history. We must remain ever vigilant against corruption and organised crime, and the passage of this Bill will assist us in that task.
- 9.31 By legalising brothels and establishing a licensing system, the Prostitution Act was designed to break this connection. One of the five underlying principles of the Act is safeguarding against corruption and organised crime.¹⁹⁰ A strict licensing system was intended to 'ensure undesirable persons are not permitted to operate within the legal industry'.¹⁹¹
- 9.32 The Prostitution Act and the brothel licensing system was also intended to promote sex workers' safety, reduce health risks for sex workers and the community, and make sure that

¹⁸⁶ *Prostitution Act 1999* (Qld) s 78.

¹⁸⁷ *Prostitution Act 1999* (Qld) ss 26–27, 52–53.

¹⁸⁸ *Prostitution Act 1999* (Qld) ss 29(2), 55(2).

¹⁸⁹ Queensland, *Parliamentary Debates*, 10 November 1999, 4826 (TA Barton, Minister for Police and Corrective Services).

¹⁹⁰ Explanatory Notes, *Prostitution Bill 1999* (Qld) 1.

¹⁹¹ Queensland, *Parliamentary Debates*, 10 November 1999, 4826 (TA Barton, Minister for Police and Corrective Services) 4826.

the operation of brothels is not ‘an intrusion into the day-to-day lives of members of the community’.¹⁹²

Review findings about the effectiveness of the Prostitution Act

9.33 In 2004 and 2011, the CMC reviewed the effectiveness of the Prostitution Act. In each review, the CMC found that the Act had been an effective barrier to organised crime and corruption within the licensed sector.¹⁹³

9.34 It had also reported that the illegal sector did not appear to be affected by corruption or organised crime:¹⁹⁴

since the implementation of the Act, there was no evidence of corruption among police or other government agencies in either the legal or illegal prostitution industries in Queensland. ...

...

Although illegal prostitution, which by its very nature may be classified as organised crime, existed in Queensland, there was little evidence of further involvement of the industry in crimes such as the drug market, sex trafficking or child prostitution. (note omitted)

9.35 The CMC also found no evidence that migrant sex workers in Queensland were the subject of sex trafficking or debt bondage.¹⁹⁵

9.36 Nevertheless, the CMC noted that it is important to continue to monitor the industry and take steps to minimise the risks of corruption and organised crime.¹⁹⁶

Licensing in decriminalised jurisdictions

9.37 Other jurisdictions identify that the sex work industry can be vulnerable to the involvement of criminal elements and that sex workers can be vulnerable to being exploited.¹⁹⁷ It is argued that this is especially the case when sex work is criminalised and operates in a hidden way. But even in a decriminalised framework, the sex work industry might be exposed to these risks.

9.38 Some places where sex work is decriminalised include licensing systems as part of their frameworks: see table 1. The aim of these systems is to help protect sex workers’ health and safety by restricting who can operate a commercial sex work business. By filtering out operators who have criminal convictions for particular offences, the licensing systems aim to guard against exploitation and criminal elements, and to make sure operators are suitable for the role. This is the approach in New Zealand and the Northern Territory.

9.39 Other decriminalised places do not have a licensing system. This includes New South Wales and Victoria, although proposals have been made from time to time in New South Wales for some form of licensing.

¹⁹² Ibid. See also Explanatory Notes, Prostitution Bill 1999 (Qld) 1–3.

¹⁹³ CMC Prostitution Report (2004) 47–8, 51; CMC Prostitution Report (2011) 16, 19–20, 33.

¹⁹⁴ CMC Prostitution Report (2011) 16–19.

¹⁹⁵ Ibid xiii, 20.

¹⁹⁶ See ibid 18, 21.

¹⁹⁷ See, eg, Victorian Law Reform Commission, *Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries*, Report No 33 (2016) 28 (and at 58, 105, 111, 112, 116).

Table 1: Sex work business operator licensing requirements in the Northern Territory and New Zealand¹⁹⁸

	NT	NZ
Requirement to hold a certificate	<p>Each operator of a sex services business that engages three or more sex workers must hold a suitability certificate.</p> <p>If the operator of a sex services business is a body corporate, each executive officer and any nominee must also hold a suitability certificate.</p>	<p>Each operator of a business of prostitution must hold an operator certificate.</p> <p>Small owner-operated brothels are permitted, where there are no more than four sex workers and each keeps control over their own earnings. These brothels do not have an operator.</p>
When a certificate may be issued (suitability requirements)	<p>A certificate may be issued if the applicant and any other person required to hold a certificate are suitable persons to operate a sex services business.</p> <p>Also, in the 10 years before applying for a certificate, the applicant or person must not have:</p> <ul style="list-style-type: none"> • been found guilty of a relevant (disqualifying) offence; • been an executive officer of a body corporate when the body corporate was found guilty of an indictable offence against the <i>Fair Work Act 2009</i> (Cth) or against a work health and safety law; • been bankrupt, applied to take the benefit of a law for the relief of bankrupt or insolvent debtors or compounded with creditors or made an assignment of the applicant's or person's remuneration for their benefit; or • had a previous suitability certificate, or a similar certificate in another jurisdiction, revoked. 	<p>To be eligible for a certificate a person must:</p> <ul style="list-style-type: none"> • not have been convicted of a disqualifying offence; or • have been granted a waiver of disqualification.
Fee to obtain a certificate	\$124	\$250
How long a certificate lasts	Until no longer needed or revoked.	One year and may be renewed.
Cancelling a certificate	May be revoked if the holder ceases to be a suitable person.	Must be cancelled if the holder is convicted of a disqualifying offence or the waiver of disqualification is cancelled.

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See *Sex Industry Act 2019* (NT) pt 4; *Sex Industry Regulations 2020* (NT) regs 4–5; *Prostitution Reform Act 2003* (NZ) ss 4(1) (definition of 'small owner-operator brothel'), 5(2), pt 3; *Prostitution (Operator Certificate) Regulations 2003* (NZ) s 9, sch 2. See also Northern Territory Government, 'Operate a sex services business' (1 July 2021) <<https://nt.gov.au/industry/licences/operate-a-sex-services-business>>.

New Zealand

- 9.40 The *Prostitution Reform Act 2003* (NZ) decriminalised sex work and repealed the *Massage Parlours Act 1978* (NZ). It requires all sex work business operators to have a certificate.
- 9.41 When the Prostitution Reform Bill 2000 (NZ) was first introduced into the New Zealand Parliament, it did not include a licensing system for operators. In considering whether the new decriminalised framework should include a licensing system, the New Zealand Justice and Electoral Committee said:¹⁹⁹
- The key rationale given in support of a licensing regime is to restrict who may operate a business of prostitution. This is to ensure that those in control of workers are suitable for the role, and to help keep organised crime groups, criminal entrepreneurs and other criminals out of the commercial sex industry.
- 9.42 The committee's members did not agree whether the Bill should include a certification requirement, but set out the features of such a requirement for parliament to consider. Because of the negative tone that 'licensing' has for sex work, the committee referred to the requirements as 'certification' rather than 'licensing'.²⁰⁰
- 9.43 The Bill was later amended during parliamentary debate to include the operator certificate requirement now in the Act: see table 1. There is no provision for conditions to be attached to the certificate.
- 9.44 The review of New Zealand's decriminalisation laws noted that, 'as the rationale behind the law reform was to decriminalise the sex industry, continuing to vet people in the industry for criminal convictions is incongruous'. However, it found that the history of criminal involvement with the sex work industry in New Zealand and the potential for sex workers to be exploited by operators justified excluding unsuitable persons from having control of sex work businesses.²⁰¹
- 9.45 The review found that the certificate system in the Act based on disqualifying offences was 'sound'. However, there was no ongoing monitoring or enforcement of whether operators held or continued to hold a certificate or promoted the health and safety of sex workers. The review recommended that, when operators receive a certificate, they should also be given information about their rights and responsibilities as sex work business operators.²⁰²

Northern Territory

- 9.46 Before decriminalising sex work, the Northern Territory had a licensing system for escort agencies. The *Sex Industry Act 2019* (NT) removed that licensing system. It now requires sex work business operators that engage three or more sex workers to have a suitability certificate: see table 1.
- 9.47 The suitability requirements are intended to protect sex workers and clients from being exploited:²⁰³
- by ensuring that people operating commercial businesses are suitable to operate that business, in that they have not been found to have committed serious criminal

¹⁹⁹ Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 28.

²⁰⁰ Ibid.

²⁰¹ Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 86.

²⁰² Ibid 93–5, 97.

²⁰³ Northern Territory, *Parliamentary Debates*, Legislative Assembly, 18 September 2019, 7026 (McCarthy, on behalf of the Attorney-General and Minister for Justice).

offences previously, but have also not had serious business failings in the past, such as bankruptcy or non-compliance with occupational health and safety laws.

- 9.48 The requirements are also intended to be ‘a signpost to guide the industry on the expected standards as it strives toward that social licence that comes with decriminalisation’.²⁰⁴
- 9.49 In its Inquiry into the Sex Industry Bill 2019 (NT), the Northern Territory Economic Policy Scrutiny Committee referred to sex worker concerns about the proposed certificate system:²⁰⁵
- Key concerns related to: potential non-compliance due to onerous requirements; the view that sex work does not require special regulation and should be regulated through the same laws as other businesses; and the number of employees that would trigger a requirement for a certificate.
- 9.50 However, the committee found that:²⁰⁶
- the highly personal nature of sex work and the potential for criminal elements to enter the industry, justifies the provision of additional safeguards to reduce risk within the industry.

New South Wales

- 9.51 Decriminalisation of the sex work industry in New South Wales has never included a licensing system.
- 9.52 However, there have been occasional calls for a system of vetting brothel operators.
- 9.53 A 1999 New South Wales Parliamentary Library Briefing Paper referred to concerns that there were operators with ‘criminal connections’, and ‘less savoury elements’ were not being filtered out because there was no screening of operators’ suitability.²⁰⁷ A 2003 Briefing Paper said that issues of concern ‘include the vetting of brothel applicants as to their fame and character’. It noted that the Local Government and Shires Associations of NSW supported a brothel licensing system for ‘larger commercial operations’.²⁰⁸
- 9.54 In 2007, the Independent Commission Against Corruption recommended that government consider ‘adopting a system to prevent unsuitable persons operating brothels’ as a barrier to corrupt conduct at brothels. It noted that:²⁰⁹
- the NSW approach of treating brothels as a planning matter alone means that only the use of premises as a brothel is subject to scrutiny. There is no ‘fit and proper person’ requirement applicable to intending brothel operators, and there is no check for criminal links.
- 9.55 In 2011, the government proposed a licensing system ‘with stringent vetting of brothel licence applicants’ to address ‘the use of brothels by organised crime groups and unsuitable

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Ibid.

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Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, *Inquiry into the Sex Industry Bill 2019* (Report, November 2019) 22.

206

Ibid 25.

207

S Smith, ‘The regulation of prostitution: a review of recent developments’ (Briefing Paper No 21/99, NSW Parliamentary Library Research Service, November 1999) 9.

208

S Smith, ‘The control of prostitution: an update’ (Briefing Paper No 14/03, NSW Parliamentary Library Research Service, July 2003) 1, 12.

209

Independent Commission Against Corruption (NSW), *Report on an Investigation into Corrupt Conduct Associated with the Regulation of Brothels in Parramatta* (August 2007) 25–6, Rec 2.

persons'.²¹⁰ In 2012, the Better Regulation Office identified a licensing system as one of three possible options to reform the regulation of the sex work industry.²¹¹

9.56 In 2015, the New South Wales Select Committee on the Regulation of Brothels found that the sex work industry is attractive to organised crime because the industry operates discreetly, and is largely cash-based, making it easier to launder the proceeds of crime.²¹² The committee heard evidence from the New South Wales Police Force of the involvement of outlaw motorcycle gangs and Asian organised crime in brothels, along with sexual servitude and exploitation of sex workers.²¹³

9.57 However, sex worker organisations disputed the involvement of criminal activity in the sex work industry.²¹⁴ The Sex Workers Outreach Project (SWOP) told the committee:²¹⁵

In relation to organised crime, we are aware of regular and frequent allegations of criminality in the sex industry, but apart from unsubstantiated media reports, there is little hard data to support these claims or any evidence of the rates of criminal involvement in the sex industry at all, let alone above other industries.

9.58 The committee recommended a system of brothel licensing in New South Wales.²¹⁶ Its recommendations included the following:

Recommendation 11: A system of licensing of brothels (as defined) should be introduced because it would assist with proper enforcement of the planning laws, allow for better protection of sex workers from exploitation and danger, assist with fighting organised criminal elements in the industry, and ensure only fit and proper persons control and operate brothels.

...

Recommendation 13: That all owners, managers, employees (other than sex workers), and their associates, be required to be fit and proper persons to be affiliated with a licensed brothel under the proposed NSW brothel licensing scheme.

9.59 The committee also recommended that, if the proposed licensing system is not implemented, 'more resources be allocated to local councils for them to continue to investigate and prosecute owners and operators of unauthorised brothels'.²¹⁷

9.60 The government considered, but did not adopt, the committee's recommendations about licensing, explaining that:²¹⁸

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.

...

210 See L Roth, 'Regulation of brothels: an update' (e-brief 15/2011, NSW Parliamentary Library Research Service, November 2011) 1.

211 Better Regulation Office (NSW), *Regulation of Brothels in NSW* (Issues Paper, 2012) 43.

212 Select Committee on the Regulation of Brothels, Legislative Assembly of New South Wales, *Inquiry into the Regulation of Brothels* (Report, November 2015) 60.

213 Ibid 47–8.

214 Ibid 54–5, 57.

215 Ibid 54, quoting Sex Workers Outreach Project Inc (SWOP).

216 Select Committee on the Regulation of Brothels, Legislative Assembly of New South Wales, *Inquiry into the Regulation of Brothels* (Report, November 2015) Recs 11–20.

217 Ibid Rec 22.

218 New South Wales Government, *Response to the Legislative Assembly Inquiry into the Regulation of Brothels* (May 2016) 5–10.

[However] The NSW Government will continue to work with councils to assist them with effectively monitoring and enforcing their regulatory responsibilities. The NSW Government has also provided additional assistance to councils through legislation that grants them greater powers and access to premises.

Victoria

- 9.61 The *Sex Work Decriminalisation Act 2022* (Vic) will repeal the *Sex Work Act 1994* (Vic) and its licensing system. Licensing in Victoria was criticised for creating a two-tiered industry of a licensed (lawful) sector and an unlicensed (unlawful) sector, 'where workers have access to different rights and protections under the law purely based on how, where and with whom they work'.²¹⁹ According to the Victorian Government, the licensing system:²²⁰

is complex, costly and onerous. This has led to poor compliance and the growth of a large, unlicensed sex work industry in Victoria, which neither criminalisation nor licensing has been able to eliminate. This system has many negative impacts for sex workers and business operators ...

- 9.62 There are no suitability requirements for sex work business operators under the new framework. A certificate system was rejected by the Victorian Parliament because it would continue the harms of the old framework and be ineffective:²²¹

The introduction of an industry-specific certification system essentially maintains the current licensing and regulation system and is fundamentally at odds with what this bill is doing, which is decriminalisation. There is significant evidence that the current system is not working to protect sex workers. In fact it undermines sex worker rights and erodes working conditions. Establishing a similar licensing system, albeit with slightly different criteria or procedural requirements, would result in a continuation of the current harms. Further evidence demonstrates that the certification of brothel managers is not effective, and for practical reasons a certification process is not able to consider what makes a person a good brothel owner.

- 9.63 A proposal to make it a criminal offence for certain prohibited persons to own or operate a sex work business was also rejected by the parliament. The responsible minister said:²²²

The criteria proposed by the amendment to prohibit a person from working in the sex work industry are broad and perpetuate the stigma associated with the sex work industry, creating further barriers to sex workers and operators. The amendment in essence will introduce a harmful regulatory system at odds with a decriminalisation model.

- 9.64 The Victorian approach is not to single out the sex work industry for added regulation but to bring it under existing regulation that applies to all businesses. The Explanatory Memorandum to the *Sex Work Decriminalisation Bill 2021* (Vic) says:²²³

The rationale for this approach is that sex work businesses should be treated the same as other Victorian businesses and regulated through standard planning,

219 Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3882 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating).

220 Department of Justice and Community Safety (Vic), *Decriminalising Sex Work* (Discussion Paper, 2021) 2. See also *ibid*.

221 Victoria, *Parliamentary Debates*, Legislative Council, 10 February 2022, 235 (Leane, Minister for Local Government, Minister for Suburban Development, Minister for Veterans) (and at 236).

222 *Ibid* 264 (and at 262–5).

223 Explanatory Memorandum, *Sex Work Decriminalisation Bill 2021* (Vic) 10.

occupational health and safety and other business regulations that apply to all businesses in Victoria.

Should the new framework include a licensing system?

- 9.65 Decriminalisation is intended to improve sex workers' rights, health and safety and to bring the sex work industry into the mainstream of business regulation.
- 9.66 By allowing sex work businesses to operate lawfully, more transparently and without the fear of criminal sanctions, it is argued there may be less opportunity for criminal elements and corruption.
- 9.67 It remains important for a decriminalised framework to include safeguards to deter illegal activity and the exploitation of sex workers.
- 9.68 A licensing system could be one possible safeguard. Its main purpose would be to prevent unsuitable people from operating sex work businesses.
- 9.69 The personal and private nature of the sex work industry may mean that sex workers can be vulnerable to abuse and exploitation. This risk is heightened when sex workers are working in a business under the ownership or control of another person.
- 9.70 Lawful sex work businesses could be attractive to organised crime, especially for the purpose of money laundering. Sex work businesses might use cash and tend to operate in private. Organised crime groups that infiltrate lawful industries may use 'unfair competitive practices', like failing to follow industry, tax or employment laws to reduce their operating costs, or using 'coercive and intimidatory practices' to collect debts or 'drive competitors from the market'.²²⁴
- 9.71 On the one hand, a licensing system might help address these risks. Licensing systems are not an unusual feature of industry regulation. Queensland's brothel licensing system has been successful in quarantining brothels from organised crime and corruption.
- 9.72 If business operators are screened for suitability, they may be more likely to meet their regulatory obligations, respect the agency and autonomy of sex workers, and operate the business lawfully and safely.
- 9.73 A light touch licensing system is the approach taken in the Northern Territory and New Zealand.
- 9.74 On the other hand, the history of sex work industry licensing in Queensland (and Victoria) is problematic. Licensing is criticised for being costly to administer and creating a two-tiered industry of a licensed (lawful) sector and an unlicensed (unlawful) sector. This has resulted in a large unlicensed sector which is said to undermine sex workers' rights, health and safety.
- 9.75 Operators could be left out of the system or choose to remain outside it. This could blunt the health and safety benefits of decriminalisation and maintain barriers to sex workers' access to protection and redress from relevant authorities.

- 9.76 Sex worker organisations say that decriminalisation does not involve licensing.²²⁵ Respect Inc and DecrimQLD advocate for the repeal of the Prostitution Act and its licensing system, which they say have failed.²²⁶ They submitted to the Northern Territory Government that:²²⁷
- licensing systems create a two-tiered industry whereby only a very small percentage can meet the requirements to licence and the rest of the industry has no option but to operate illegally. This model takes the opposite approach to maximising compliance—it creates a section of the industry that can never comply and is therefore criminalised.
- 9.77 Sex worker organisations also highlight concerns about a system that requires a certificate of suitability for sex work business operators.²²⁸ In their submission to the Northern Territory Select Committee, Respect Inc and DecrimQLD said:²²⁹
- This is a layer of unnecessary regulation that will create a barrier to compliance and unnecessarily complicate the decriminalisation model. Application of this approach to individual sex workers would reverse many benefits of [decriminalisation].
- 9.78 Licensing might be seen as incompatible with the intent of decriminalisation to bring the sex work industry into the mainstream of business regulation. General business regulation will apply to the sex work industry. There is a view that the industry should not be singled out for an extra overlay of regulation. This is the approach in Victoria.

If there is a licensing system, what should it look like?

- 9.79 If the new framework were to include a licensing system, we need to consider what type of system it should be.
- 9.80 Licensing can encompass a range of approaches from simple or basic, to more complex or onerous. In its simplest form, it might require a suitability check to rule out particular people. A more onerous system might impose rules on how the licensee and business operates and include monitoring and disciplinary action.
- 9.81 Suitability requirements can also range in complexity. Under a basic system, a person might be considered suitable if they have not been convicted of a disqualifying offence in a given period. More complex suitability checks might require a decision-maker to consider other matters, such as: any criminal convictions; the person's reputation, character, honesty and integrity; the person's associates; whether the person has been bankrupt; the financial viability of their business; the transparency of their business structure; whether they have previously had a licence or certificate cancelled; and their corporate history. This might involve the decision-maker in a more subjective assessment, rather than a 'checklist' exercise.

²²⁵ See, eg, Scarlet Alliance, *Full Decriminalisation of Sex Work in Australia*, Briefing Paper <https://scarletalliance.org.au/library/briefing_paper_full_decrim>.

²²⁶ Respect Inc, 'Decriminalise sex work' (2018) <<https://respectqld.org.au/decriminalise-sex-work/>>; #DecrimQLD, 'What would decriminalisation mean for Queensland?' (Laws, Facts, Rights & Safety Infographic No 6, 2018) <<https://respectqld.org.au/wp-content/uploads/2021-No-6-infographics-Final-1-pdf.jpg>>.

²²⁷ Respect Inc & DecrimQLD, Submission to Department of Justice and the Attorney General (NT), *Reforming Regulation of the Sex Industry in the Northern Territory* (13 May 2019) 8.

²²⁸ See generally Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, *Inquiry into the Sex Industry Bill 2019* (Report, November 2019) 22.

²²⁹ Respect Inc & DecrimQLD, Submission No 22 to NT Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, *Sex Industry Bill 2019* (8 October 2019) 2.

9.82 In its 2011 report on the Prostitution Act, the CMC commented:²³⁰

It is generally acknowledged that illegal prostitution will never be eliminated, but the balance between the legal sector and the illegal sector needs to be shifted so that the illegal sector diminishes.

9.83 An effective licensing system must strike a difficult balance. It must balance the risks of imposing too much regulation (which may lead people to operate outside the lawful sector) and the risks of failing to give enough oversight (which may undermine sex workers' rights). Researcher Ronald Weitzer explains:²³¹

A two-tiered structure of legal and illegal sectors is common in legal prostitution systems, but the size of each sector is influenced by the kinds of regulations adopted. The less onerous and costly the regulations, the smaller the size of the illegal sector (the latter is virtually nonexistent in New Zealand). When the regulations are extensive, expensive, stigmatizing, and perceived as arbitrary or discriminatory compared to other businesses, this amplifies the temptation to opt out and operate illegally. The costs of a licence and of complying with the regulations should not be such as to force operators out of the legal market, as in Queensland. The costs should be comparable to those of other service agencies: there should be no special, added 'sin tax.' At the same time, an overly minimalist system can be a problem. ... A laissez-faire system can result in insufficient safeguards and controls, disempowering sex workers. (notes omitted)

9.84 The greater the regulatory cost and burden, the more probable that operators may not follow the law and the licensing system will be ineffective.

9.85 In Queensland, there are high barriers to entering and remaining in the licensed sector of the sex work industry. The brothel licence application process is lengthy and expensive. Brothel licences are valid for three years.²³² Initial fees are between \$23 005 and \$64 405, depending on the size of the brothel and the number of licensees involved, and annual fees are payable in the remaining years.²³³ There are also frequent audits and inspections of brothels by the PLA to monitor and enforce regulatory compliance. The higher the 'red tape' burden, the greater the incentive to operate outside the licensing system. There is substantial non-compliance with the requirement to hold a licence, shown by the estimated number of massage parlours operating as sex work businesses and the small number of licensed brothels: see chapter 3.

9.86 A simpler and less costly licensing system may be more likely to encourage operators to obtain a licence. To give a minimum level of comfort to the community, it could rule out people who have a serious criminal history from operating a sex work business. However, this might not be considered enough to make sure of high standards of practice.

9.87 The rest of this chapter asks about particular features of any such system.

Who should the licensing system apply to?

9.88 In Queensland, brothel operators (people who carry on the business) and managers must hold a licence or certificate, respectively. Licensing requirements do not apply to individual sex workers.

²³⁰ CMC Prostitution Report (2011) 30.

²³¹ R Weitzer, *Legalizing Prostitution: From Illicit Vice to Lawful Business* (NYU Press, 2012) 210.

²³² *Prostitution Act 1999* (Qld) s 19(4).

²³³ See *Prostitution Regulation 2014* (Qld) s 20 sch 2; PLA, 'Licence fees and forms' (2022) <<https://www.pla.qld.gov.au/licensing/licence-fees-and-forms>>.

- 9.89 In New Zealand and the Northern Territory, an ‘operator’ of a sex work business must hold a certificate. This is because they manage or have control over sex workers in their business.
- 9.90 ‘Operator’ is defined broadly in New Zealand as:²³⁴
- a person who, whether alone or with others, owns, operates, controls, or manages the business; and includes (without limitation) any person who—
- (a) is the director of a company that is an operator; or
 - (b) determines—
 - (i) when or where an individual sex worker will work; or
 - (ii) the conditions in which sex workers in the business work; or
 - (iii) the amount of money, or proportion of an amount of money, that a sex worker receives as payment for prostitution; or
 - (c) is a person who employs, supervises, or directs any person who does any of the things referred to in paragraph (b).
- 9.91 This definition includes owners and managers. Depending on their roles, it also includes receptionists, who might interview or hire sex workers, or set and supervise their working conditions.²³⁵ The aim is to cover people in the business who have control over sex workers’ working conditions.²³⁶
- 9.92 In the Northern Territory, an ‘operator’ is ‘a person who owns or operates the business’. A body corporate may operate a sex services business, but each executive officer and any nominee (a person with day-to-day control of the business) must also hold a suitability certificate. All executive officers and nominees of the body corporate must be found suitable before a certificate can be issued for the business.²³⁷
- 9.93 In New Zealand, every operator of a sex work business must hold a certificate, no matter how many sex workers they engage. However, ‘small owner-operated brothels’, of up to four sex workers who each keep control over their own earnings, do not have an operator, and none of the sex workers in those brothels needs to hold a certificate: see table 1.
- 9.94 In the Northern Territory, an operator does not need to hold a certificate unless the business engages three or more sex workers: see table 1. This was done to distinguish between ‘small scale operations’, which can be carried out as home-based businesses under planning laws, and ‘commercial scale ventures’.²³⁸

What should a suitability check involve?

- 9.95 Requiring sex work business operators to meet a suitability standard would be a central part of any licensing system. It would serve two complementary purposes:
- filtering out people who are considered to be unsuitable to operate a sex work business (which would help to protect sex workers’ health and safety); and

²³⁴ *Prostitution Reform Act 2003* (NZ) s 5(1).

²³⁵ See Prostitution Law Review Committee, above n 201, 86.

²³⁶ See Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 28, 29–30.

²³⁷ See *Sex Industry Act 2019* (NT) ss 4 (definition of ‘operator’), 17, 18(2), 19(3).

²³⁸ See Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, *Inquiry into the Sex Industry Bill 2019* (Report, November 2019) 25.

- deterring the involvement of illegal activity in the sex work industry (which would help to protect sex workers' rights and the integrity of the industry).

9.96 What should a suitability check involve to meet these purposes?

9.97 A person's suitability to operate a sex work business could be affected by numerous factors. Suitability requirements could vary in how complex they are and how much discretion is given to the decision-maker. Three main approaches could be taken:

- a simple check against a list of objective criteria;
- a wider 'fitness of character' test, taking into account any relevant matter; or
- an approach that combines elements of the first two approaches.

A check against objective criteria

9.98 One approach might require the decision-maker to consider a list of objective matters, without exercising any discretion. An example of this is where an applicant is considered suitable if they have not been convicted of a disqualifying offence. This is the approach in New Zealand.

9.99 This would limit the suitability check to questions of fact. The criteria would be clear and objective. The decision-maker would not need to make any subjective judgments, and would typically not need to ask for extra information from the applicant.

9.100 A list of objective matters could be limited to whether the person has been convicted (or found guilty) of certain serious offences, as in New Zealand. Or it could include other things, as in the Northern Territory, like:

- whether the person was an executive officer of a body corporate when it was found guilty of indictable offences against the *Fair Work Act 2009* (Cth) or a work health and safety law;
- whether the person has been bankrupt; and
- whether the person has had a certificate or similar licence cancelled under sex work laws here or in another Australian state or territory.

9.101 Depending on what matters are included, this approach might be expected to have fewer time and resource costs. It might also have less effect on the applicant's privacy.

9.102 The disqualifying offences that apply in Queensland, the Northern Territory, and New Zealand are set out in table 2.

Table 2: Disqualifying offences in Queensland, the Northern Territory and New Zealand²³⁹

QLD*	NT	NZ
unlawful homicide (murder or manslaughter) or attempt to murder kidnapping and kidnapping for ransom	an indictable offence involving assault	crimes against the person, including murder, manslaughter, assault and abduction
rape or attempt to commit rape an offence in ch 22 of the Criminal Code, if it relates to a child or person with an impairment of the mind	an indictable offence involving sexual assault	sexual crimes, including rape
trafficking in dangerous drugs or in relevant substances or things	an indictable offence involving a dangerous drug, such as possession of a traffickable quantity, supply, cultivation, or manufacture	dealing with controlled drugs, cultivating prohibited plants, and other related offences
—	—	firearms offences, such as selling, possessing, and carrying
an offence in ch 22A of the Criminal Code, if it relates to a child or a person with an impairment of the mind	an indictable offence arising from the provision of sex work (except if committed merely by being a sex worker or sex services business operator)	an offence under the <i>Prostitution Reform Act 2003</i> (NZ) (except for some offences about certificates)
extortion	an indictable offence involving fraud, dishonesty or theft	robbery, extortion and burglary
money laundering	—	money laundering
official corruption	—	
—	—	participation in an organised criminal group
various offences under the <i>Migration Act 1958</i> (Cth)	—	—
—	an indictable offence against the <i>Fair Work Act 2009</i> (Cth) or a work health and safety law (including if the person was an executive officer of a body corporate when it was found guilty of such an offence)	—
*In Queensland, this includes offences that would be disqualifying offences if committed in that State		

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Prostitution Act 1999 (Qld) schs 1, 2, 4 (definition of 'disqualifying offence'); *Sex Industry Act 2019* (NT) s 19(3)(b); *Sex Industry Regulations 2020* (NT) reg 5; *Prostitution Reform Act 2003* (NZ) s 36.

- 9.103 In New Zealand, a person can apply for a waiver of disqualification.²⁴⁰ In the Northern Territory, disqualifying offences are relevant only if the person was found guilty in the 10 year period before the licence application is made.²⁴¹

A wider test

- 9.104 A different approach might require the decision-maker to form an opinion that the person is 'suitable', based on a wider list of matters, including the person's character and reputation. This is the approach under Queensland's existing brothel licensing system.
- 9.105 This would require the decision-maker to exercise a discretion and form a subjective judgment. Relevant factors could be listed in the legislation. But it would be for the decision-maker to consider them and give them whatever weight they thought appropriate. The decision-maker would need to collect and look at more information from applicants and others.
- 9.106 This approach might be expected to take more time and resources. It might have a greater effect on the applicant's privacy, and may require more steps for procedural fairness (including giving reasons for the decision).
- 9.107 Relevant matters to consider in deciding whether a person is suitable could include things like:²⁴²
- the person's reputation, including their character, honesty, and integrity;
 - the person's criminal history;
 - the criminal history of the person's associates, including executive officers of corporations;
 - any history of bankruptcy;
 - the transparency of the person's business structure and its financial viability; and
 - whether the person will have arrangements in place to protect sex workers' safety and meet regulatory obligations.
- 9.108 It has been suggested that, in high-risk industries, a person's associates should be looked at to decide if the person is suitable to operate the business. The aim would be to identify if the applicant is a 'front person' (someone without criminal convictions who has applied for a licence for an organised crime group and who will not be the genuine operator). The Victorian Law Reform Commission suggests that a licence application should be refused only if the person has a criminal associate with the 'ability to influence the business of the applicant'. However, investigating a person's associates 'is likely to require significant regulatory resources' and 'creates a burden for legitimate applicants, particularly because it will probably mean that applications take longer to process'.²⁴³

A combined approach

- 9.109 A third approach is to combine elements of the other two approaches.

²⁴⁰ See *Prostitution Reform Act 2003* (NZ) ss 35(5)(c)(ii), 37.

²⁴¹ See *Sex Industry Regulations 2020* (NT) reg 5(1).

²⁴² See, eg, *Prostitution Act 1999* (Qld) s 17; *Liquor Act 1992* (Qld) ss 107(1)–(2), 107E(1); *Tattoo Industry Act 2013* (Qld) s 12(2).

²⁴³ Victorian Law Reform Commission, above n 197, 72.

- 9.110 In effect, the existing brothel licensing system in Queensland does this. Under the Prostitution Act:
- a person is not eligible to apply for a brothel licence if (among other things) the person has been convicted of a disqualifying offence; and
 - the PLA must refuse the person's application for a licence if satisfied the person is 'not a suitable person to operate a licensed brothel', based on 'all relevant matters'.
- 9.111 The approach under the decriminalisation laws in the Northern Territory also combines elements of both approaches. The commissioner may issue a 'suitability certificate' if satisfied the person:²⁴⁴
- is 'suitable' to operate a sex services business; and
 - meets the set requirements (which include not being found guilty of a disqualifying offence and not having been bankrupt).

Striking a workable balance

- 9.112 A suitability check aims to give some minimum level of comfort that sex work businesses will operate lawfully and safely. We also need to consider the intention of decriminalisation to bring the sex work industry within the mainstream of business regulation.
- 9.113 The more complex the suitability requirements are, the greater the potential administrative and resource burden for government and industry, and the higher the risk that businesses will operate without a licence.²⁴⁵
- 9.114 When considering the Prostitution Reform Bill 2000 (NZ), the New Zealand Justice and Electoral Committee said that:²⁴⁶
- A certification regime should be simple and straightforward. It should not be onerous or expensive as this may discourage compliance. Extending it to factors other than disqualifying convictions leads to a more complex regime.
- Basing the fitness of character test on previous convictions (except for prostitution-related offences) is a clear, objective measure forming a solid basis for the test. For this reason we have rejected the idea of a wider fitness of character test which might include general requirements as to appropriate character alongside a list of prohibited convictions. The criteria proposed to get certification should be open, transparent and related to the reason for having a certification regime—namely the protection of sex workers. A person should be entitled to a certificate (as of right) if he or she has no disqualifying convictions.
- 9.115 The risk of non-compliance has the potential to continue a two-tier system of licensed and unlicensed sex work business operators. Because sex work occurs in private, it is possible to operate a sex work business with the appearance of a different business. This is how erotic massage parlours operate. Outwardly they appear to offer massage services only while actually offering commercial sexual services.
- 9.116 The review of New Zealand's decriminalisation laws found that a two-tier system did 'not seem to have developed' there, but that this danger should be avoided. The review committee

²⁴⁴ Sex Industry Act 2019 (NT) s 19(3); Sex Industry Regulations 2020 (NT) reg 5(1).

²⁴⁵ See generally Victorian Law Reform Commission, above n 197, 58.

²⁴⁶ Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66–2* (Report, November 2002) 29.

considered that ‘regulation should initially be kept to a minimum whilst still providing adequate checks on those managing sex workers’. The committee commented that ‘[g]radual changes are needed to ensure the confidence and support of the industry’.²⁴⁷

9.117 On the other hand, a system of suitability checks that is too simple may also carry risks.

9.118 The review of New Zealand’s decriminalisation laws found that some operators thought it was ‘too easy to get a certificate’, and that the number of operator certificates had ‘decreased each year’ since the licensing system started. The review committee said that:²⁴⁸

Factors responsible for the decline in the number of certificates may include: brothel operators not requiring that all staff that should hold a certificate do so [in part due to some confusion about who is required to hold a certificate]; a lack of enforcement; and/or brothels operating illegally as SOOBs [small owner-operator brothels]; or a decline in the number of brothels.

9.119 The review found that the suitability test ‘appears to be robust’ and there was no evidence of people attempting to avoid the system by ‘using a “front person” with no disqualifying convictions’. But it also found the system did not include steps to check that brothel operators hold a valid certificate and are promoting sex workers’ health and safety. The review committee concluded that the licensing system has merit, but needed more enforcement.²⁴⁹

9.120 Whatever is included in a suitability check, factors such as privacy, procedural fairness, information sharing, and notice requirements will also likely need to be considered.

Licensing fees

9.121 Depending on the cost structure involved, licensing fees might be a barrier to entry. Licence fees are likely to be high if the licensing system is based on full or substantial cost recovery. High fees might increase the likelihood of a person operating a sex work business without holding a licence. There is also a risk that ‘[v]ery high licence fees may provide a perverse incentive to organised crime groups to enter the occupation/industry on an unlicensed basis and operate below cost’.²⁵⁰

9.122 Unlike Queensland, the licensing systems in New Zealand and the Northern Territory have low fees: see table 1 and [9.85] above. The review of New Zealand’s decriminalisation laws found that high fees can be a barrier. The review committee concluded that fees should remain low, and an increase ‘should only be considered at a time when the system is operating with the confidence and support of the industry’.²⁵¹ At the time, the application fee was \$205. It is now \$250.

For how long should a licence be valid?

9.123 In New Zealand, operator certificates are valid for one year. The review committee referred to criticism that the certificate renewal process was ‘inconvenient and time consuming’. It

²⁴⁷ Prostitution Law Review Committee, above n 201, 91, 94.

²⁴⁸ Ibid 91, 93.

²⁴⁹ Ibid 93–4.

²⁵⁰ Victorian Law Reform Commission, above n 197, 59. See also [9.85] above.

²⁵¹ Prostitution Law Review Committee, above n 201, 95.

recommended that certificates should be valid for three years.²⁵² Queensland brothel licences are valid for three years.²⁵³

- 9.124 In the Northern Territory, suitability certificates are valid until they are no longer needed or are revoked. Although administratively simple, this may mean that certificates will remain in force even if a person is no longer operating a sex work business. This might happen if the holder of the certificate does not tell the responsible agency that they have stopped being an operator.

What should happen if an operator does not hold a licence or does not follow a licence requirement?

- 9.125 If there is no penalty for operating a sex work business without holding a licence it might encourage people not to follow the law and lead to a two-tier system of licensed and unlicensed operators. On the other hand, the possibility of a serious fine or other penalty may discourage non-compliance.
- 9.126 In New Zealand, it is an offence for an operator of a business of prostitution not to hold an operator certificate, punishable by a fine of up to \$10 000. In contrast, in the Northern Territory it is not an offence if the operator of a sex services business does not hold a suitability certificate, but they may be liable to pay a civil penalty.²⁵⁴
- 9.127 Convictions for criminal offences can have significant effects. For example, a convicted person might be required to disclose their conviction when seeking certain types of employment, be disqualified from particular occupations or roles, and experience the social stigma of having a criminal conviction. As such, a criminal offence might be more effective than a civil penalty at discouraging people from operating without a licence. However, to secure a conviction, the prosecution would need to prove the offence ‘beyond a reasonable doubt’, which is a high standard of proof.
- 9.128 Civil penalties are imposed by civil rather than criminal court processes and are usually in the form of monetary penalties. The standard of proof is ‘on the balance of probabilities’, which is a lower standard than in criminal matters. This may make it easier to prove that a person has been operating a sex work business without a licence.
- 9.129 A civil penalty may also be more in keeping with the aim of removing criminal penalties for involvement in the sex work industry. In a different context, the Australian Law Reform Commission said:²⁵⁵
- Civil monetary penalties play a key role in regulation as they may be sufficiently serious to act as a deterrent (if imposed at a high enough level) but do not carry the stigma of a criminal conviction. Civil penalties may be more severe than criminal penalties in many cases. (note omitted)
- 9.130 However, in the case of the Sex Industry Bill 2019 (NT), the Northern Territory Economic Policy Scrutiny Committee considered that:²⁵⁶

the absence of a penalty for not complying with certification requirements results in legislation that is of questionable enforceability. ... it is rare for compliance to be

²⁵² Ibid 91, 97.

²⁵³ *Prostitution Act 1999* (Qld) s 19(4).

²⁵⁴ See *Prostitution Reform Act 2003* (NZ) s 34; *Sex Industry Act 2019* (NT) s 18.

²⁵⁵ Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report No 108 (May 2008) vol 3, 2398.

²⁵⁶ Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, *Inquiry into the Sex Industry Bill 2019* (Report, November 2019) 26.

sought through civil injunctive action in the courts and that without an offence there is little incentive for sex work businesses to obtain a suitability certificate. This is likely to result in low levels of compliance and greater potential for 'unsuitable' employers to enter or remain in the industry, as they would be able to operate a sex services business with relative impunity.

- 9.131 Another matter to consider is what should happen if an operator does not follow any requirements or conditions imposed by the licence. For example, a civil penalty might apply or the person's licence might be suspended or cancelled.

Who should be responsible for issuing a licence?

- 9.132 If there were a licensing system for sex work business operators, we need to consider who should be responsible for its administration. This could be a new or an existing regulatory body.
- 9.133 In Queensland, the PLA administers the brothel licensing system and decides applications for brothel licences and approved manager's certificates under the Prostitution Act. It has established experience as a sex work industry regulator. However, its functions are limited to one industry and, in particular, to the licensed brothel sector which makes up only a small part of the sex work industry.
- 9.134 Some agencies in Queensland and other jurisdictions perform licensing and registration functions across multiple industries. This may create economies of scale and contain administration costs. Bringing the sex work industry within this framework might also be seen to fit with the intended aims of decriminalisation.
- 9.135 In Queensland, the Office of Fair Trading 'enforces consumer protection laws and regulates several industries to achieve a fair and safe marketplace'. It is responsible for licensing property agents, motor dealers, security providers, tattoo salon operators and tattooists, auctioneers, second-hand dealers and pawnbrokers, debt collectors and process servers, introduction agents, and inbound tour operators.²⁵⁷
- 9.136 In Victoria, the Business Licensing Authority was responsible for licensing sex work service providers to operate brothels or escort agencies. This will end when the licensing system is repealed by the *Sex Work Decriminalisation Act 2022* (Vic). The Business Licensing Authority is also responsible for licensing and registration of conveyancers, estate agents, motor car traders, owners corporation managers, professional engineers, rooming house operators, and second-hand dealers and pawnbrokers.²⁵⁸
- 9.137 In the Northern Territory, Licensing NT decides applications for suitability certificates for sex services business operators. It is also responsible for licensing and registration for many other professions and industries including auctioneers, associations, gambling, gaming machine, liquor, lotteries, motor vehicle dealers, pawnbrokers and second hand dealers, security, tobacco, and real estate, business and conveyancing agents.²⁵⁹
- 9.138 In New Zealand, applications for an operator certificate are made to and decided by the Registrar of the District Court at Auckland.

²⁵⁷ Department of Justice and Attorney-General (Qld), 'Office of fair trading' (23 December 2021) <<https://www.justice.qld.gov.au/about-us/services/fair-trading>>. See generally Office of Fair Trading (Qld), 'Regulated industries, licensing and legislation' (2022) <<https://www.qld.gov.au/law/fair-trading>>.

²⁵⁸ See generally Consumer Affairs Victoria, 'Licensing and registration' <<https://www.consumer.vic.gov.au/licensing-and-registration>>; Consumer Affairs Victoria, 'Business Licensing Authority' (17 October 2019) <<https://www.consumer.vic.gov.au/about-us/who-we-are-and-what-we-do/public-committees-and-boards/business-licensing-authority>>.

²⁵⁹ See generally Northern Territory Government, 'Licensing NT online' (24 June 2020) <<https://nt.gov.au/industry/licences/licensing-nt-online>>.

- 9.139 As well as deciding applications to be a sex work business operator, the relevant agency would be responsible for cancelling the licence if the holder ceased to be a suitable person. If the system was 'light touch' and based on disqualifying offences, a licence could be cancelled automatically if the holder was convicted of a disqualifying offence. This is the position under the Prostitution Act.²⁶⁰
- 9.140 Whichever agency is responsible for issuing (and cancelling or suspending) licences, other matters might also need to be considered, such as whether the agency should have any particular powers or functions to monitor if operators have a valid licence and are meeting other requirements. In the review of New Zealand's decriminalisation laws, it was observed that '[o]ngoing monitoring is key to a robust system of certification'.²⁶¹

Review of decisions

- 9.141 Another issue to consider is the availability of review of decisions of the agency who issues (or refuses, suspends or cancels) a licence.
- 9.142 Decisions to refuse, suspend or cancel an operator's licence are likely to be reviewable under the *Judicial Review Act 1991*. That Act gives a person whose interests are adversely affected by an administrative decision made under a statute a right to apply to the court for an order for review of the decision.²⁶² This is the position for decisions about licences made by the PLA under the Prostitution Act.
- 9.143 The decriminalisation laws could alternatively allow a person to apply to the Queensland Civil and Administrative Tribunal (QCAT) for review of decisions. This is the approach in many other licensing systems in Queensland.²⁶³ It is also the approach in the Northern Territory, where decisions to refuse or revoke a suitability certificate can be reviewed by the Northern Territory Civil and Administrative Tribunal.²⁶⁴ This might be a more accessible and faster avenue for review than going to court.

²⁶⁰ *Prostitution Act 1999* (Qld) s 25(a).

²⁶¹ Prostitution Law Review Committee, above n 201, 93 (and at 94).

²⁶² *Judicial Review Act 1991* (Qld) ss 4, 7, 20, 30.

²⁶³ See, eg, *Property Occupations Act 2014* (Qld) ss 171, 176, sch 1; *Tattoo Industry Act 2013* (Qld) s 56; *Motor Dealers and Chattel Auctioneers Act 2014* (Qld) s 196, sch 2; *Security Providers Act 1993* (Qld) s 26; *Second-hand Dealers and Pawnbrokers Act 2003* (Qld) s 107; *Liquor Act 1992* (Qld) s 21.

²⁶⁴ See *Sex Industry Act 2019* (NT) s 23, sch.

CONSULTATION QUESTIONS

Whether a licensing system is needed

- Q6** Should sex work business operators be required to have some form of licence to operate a sex work business in Queensland? Why or why not?

Features of a licensing system

- Q7** If a licence were to be required what should the system look like?

- Q8** Should the requirement to hold a licence apply to:

- (a) all sex work businesses; or
- (b) only those who employ a certain number of sex workers?

- Q9** What should a suitability check involve? For example, should it:

- (a) be limited to checking whether the person has convictions for serious disqualifying offences (like New Zealand)?
- (b) include checking whether the person has been bankrupt, had another licence for operating a sex work business revoked, or been an executive officer of a body corporate that was found guilty of a serious offence against workplace laws (like the Northern Territory)?
- (c) require the decision-maker to form an opinion that the person is 'suitable', based on any relevant matter (like the Prostitution Act or in the Northern Territory)?

- Q10** Should the fee for a licence be set at a nominal amount (like the Northern Territory and New Zealand) or a higher amount (like the Prostitution Act)?

- Q11** For how long should a licence be valid?

- Q12** What should happen if an operator:

- (a) does not hold a valid licence? For example, should there be a criminal penalty, civil penalty, or both?
- (b) does not follow any requirements or conditions imposed by the licence? For example, should there be a civil penalty, suspension or cancellation of the licence, or both?

- Q13** Who should be responsible for carrying out suitability checks and issuing licences? For example, should this be:

- (a) an existing body that deals with other industries, like the Office of Fair Trading; or
- (b) an existing or newly created body with a role specific to the sex work industry, like the PLA?

- Q14** Should decisions to refuse an application for a licence or to suspend or cancel a licence be reviewable by QCAT?

Other considerations or options

- Q15** What is the best way for a licensing system (if any) to balance:

- (a) the need to protect against illegal activity; and

(b) the need to limit the administrative and resource burden on government and the sex work industry?

Q16 Apart from a licensing system, what is the best way to deter illegal activity and to protect sex workers from being exploited under the new regulatory framework?

Q17 What other factors should we consider (if any) in recommending a licensing system?

Workplace laws

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Introduction

- 10.1 We are required to consider health and safety protections for sex workers and their clients, and safeguards against exploitation. We are also asked to consider potential impacts on the industry of moving to the new framework.²⁶⁵
- 10.2 Sex workers, like other workers, may be covered by general laws that regulate aspects of work, including work health and safety, workers' compensation and workplace relations laws. These laws include both federal and State laws. They give general protections to workers.
- 10.3 However, sex workers may have difficulty accessing or seeking to enforce these protections under the current framework: see chapter 4. Fear or threat of arrest or prosecution, repercussions from employers, or identification as a sex worker can be practical barriers.
- 10.4 Some sex worker organisations say decriminalising sex work will improve access to workplace entitlements and protections. They say it will empower sex workers and enhance opportunities for collective bargaining and advocacy in the workplace.²⁶⁶
- 10.5 In this chapter, we look at:
- general workplace laws in Queensland that apply to all workers, including sex workers; and
 - special workplace requirements that apply to sex workers in licensed brothels under the current framework.
- 10.6 We focus on how general workplace laws apply to sex workers (like other workers). We look at whether additional laws or other measures (such as guidelines or codes of practice) might be needed.
- 10.7 We also look at:
- enforcing contracts for sex work; and
 - protecting sex workers' autonomy to refuse to provide or continue providing sex work.

What workplace laws apply?

- 10.8 Three main laws regulate aspects of work in Queensland:
- State work health and safety laws;
 - State workers' compensation laws; and
 - Commonwealth workplace relations laws.
- 10.9 These are general laws that apply across all industries.
- 10.10 Sex work-specific laws or other measures can also apply.
- 10.11 In Queensland, specific work health and safety rules apply to licensed brothels under the Prostitution Act and Prostitution Regulation.
- 10.12 In other jurisdictions, sex work-specific laws or measures include:
- a work health and safety code of practice or guideline for the sex work industry;
 - provision to recognise sex work contracts as valid; and

²⁶⁵ See terms of reference para 1(d), (e), (k)(i)-(ii).

²⁶⁶ Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 42.

- provision to protect sex workers' right to refuse to perform sex work.

Working arrangements and the sex work industry

- 10.13 A person's entitlements and protections under workplace laws can depend on the nature of their contractual arrangement. This is the same for all workers in Queensland.
- 10.14 For example, the 'Fair Work system' established under the *Fair Work Act 2009* (Cth) applies only to 'employees' covered by it: see box 1.²⁶⁷ It therefore would not apply to sex workers who work as independent contractors.
- 10.15 However, they would be covered by the *Independent Contractors Act 2006* (Cth). The Act sets up a national unfair contracts remedy scheme for contractors, who generally negotiate their own fees and working arrangements.²⁶⁸
- 10.16 Whether a worker is an employee or an independent contractor is determined by the nature of the relationship and depends on several factors. Generally, independent contractors work for themselves and employees work in someone else's business.²⁶⁹ In practice, however, determining a person's status may be difficult.²⁷⁰ This is an issue that arises in all industries.
- 10.17 Sex workers may work as independent contractors, employees, or a mixture of both.²⁷¹ We understand that most sex workers in Queensland are engaged as independent contractors.²⁷² However, some sex worker organisations say that some sex workers may not be receiving the full benefits of their independent contractor status.²⁷³ It is illegal for an employer to attempt to disguise an employment relationship as a contractor relationship ('sham contracting').²⁷⁴ The Fair Work Ombudsman can provide information and advice in relation to workplace laws and assist in resolving disputes.²⁷⁵
- 10.18 Some sex worker organisations say decriminalisation would enhance opportunities for sex workers to have their employment arrangements accurately classified, form unions and lobby

Box 1: What is the 'Fair Work system' and who does it apply to?

- The Fair Work system provides a safety net of minimum entitlements for wages and conditions of employment for employees covered by it
- An employee in Queensland is covered by the Fair Work system if they work in the private sector or for a 'constitutional corporation' (that is, an Australian financial corporation or trading corporation or a foreign corporation that does business in Australia)

²⁶⁷ See generally Fair Work Ombudsman, 'The Fair Work system' <<https://www.fairwork.gov.au/about-us/legislation/the-fair-work-system>>; Fair Work Ombudsman, 'Protections at work' <<https://www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/protections-at-work>>.

²⁶⁸ Fair Work Ombudsman, 'Independent contractors' <<https://www.fairwork.gov.au/find-help-for/independent-contractors>>.

²⁶⁹ See generally Business.gov.au, 'Employee or contractor?' (26 March 2021) <<https://business.gov.au/people/contractors/employee-or-contractor>>; Fair Work Ombudsman, 'Independent contractors: the difference between contractors and employees' <<https://www.fairwork.gov.au/find-help-for/independent-contractors#difference-between-contractors-and-employees>>; Business.gov.au, 'Contractor rights & protections' (24 June 2020) <<https://business.gov.au/people/contractors/contractor-rights-and-protections>>.

²⁷⁰ See, eg, two recent cases of the High Court of Australia overturning decisions of the Full Federal Court about whether workers were employees or independent contractors: *ZG Operations Australia Pty Ltd v Jamsek* (2022) 96 ALJR 144; *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* (2022) 96 ALRJ 89.

²⁷¹ Scarlet Alliance, above n 266, 48.

²⁷² PLA, *Operational Standards Manual*.

²⁷³ Scarlet Alliance, above n 266, 42. See also Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 29, 39, 42.

²⁷⁴ Fair Work Ombudsman, 'Independent contractors: sham contracting' <<https://www.fairwork.gov.au/find-help-for/independent-contractors#sham-contracting>>. See also Business.gov.au, 'Employee or contractor?' (26 March 2021) <<https://business.gov.au/people/contractors/employee-or-contractor>>.

²⁷⁵ Fair Work Ombudsman, 'Independent contractors: where to get information and help' <<https://www.fairwork.gov.au/find-help-for/independent-contractors#get-information-and-help>>; Business.gov.au, 'Contractor rights & protections' (24 June 2020) <<https://business.gov.au/people/contractors/contractor-rights-and-protections>>.

for industry awards. They also say it will enhance opportunities for collective bargaining and advocacy.²⁷⁶

Work health and safety

- 10.19 Queensland's work health and safety laws ensure the health and safety of all workers in the workplace.
- 10.20 Queensland also has specific health and safety requirements for licensed brothels under the Prostitution Act.

What are Queensland's work health and safety laws?

- 10.21 Each state and territory has work health and safety laws. They have been harmonised across Australia to create a nationally consistent framework.²⁷⁷ There is a regulator in each state and territory that is responsible for ensuring compliance.²⁷⁸
- 10.22 In Queensland, the work health and safety legislation is:
- the *Work Health and Safety Act 2011*; and
 - the *Work Health and Safety Regulation 2011*.
- 10.23 They are supported by codes of practice.
- 10.24 Workplace Health and Safety Queensland is the regulator responsible for promoting, monitoring and enforcing work health and safety laws. It is part of the Office of Industrial Relations.

Who is protected?

- 10.25 Work health and safety laws protect the health and safety of all 'workers' in the 'workplace'. A person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking: see box 2.²⁷⁹
- 10.26 They also protect the health and safety of other people (the general public), so they are not put at risk by work activities.

Box 2: Who is a 'worker' and what is a 'workplace'?

- '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
- 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'

²⁷⁶ Scarlet Alliance, above n 266, 42. See also Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 29, 39, 42.

²⁷⁷ Except for Victoria, each state and territory has enacted legislation based on model laws: Safe Work Australia, 'Model WHS laws' <<https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws#harmonising-whs-laws>>.

²⁷⁸ Safe Work Australia, 'WHS regulators and workers' compensation authorities contact information' <<https://www.safeworkaustralia.gov.au/law-and-regulation/whs-regulators-and-workers-compensation-authorities-contact-information>>.

²⁷⁹ *Work Health and Safety Act 2011* (Qld) ss 7–8.

Who has work health and safety obligations and what are they?

10.27 The *Work Health and Safety Act 2011* makes every 'person conducting a business or undertaking' responsible for work health and safety: see box 3.²⁸⁰ This legal obligation is known as a 'duty of care'. The person conducting the business or undertaking has the main (or primary) duty of care. Other people also have duties under the Act.

10.28 In the sex work industry, examples of a person conducting a business or undertaking are a brothel licensee and a private sex worker (as a self-employed person).

10.29 A person conducting a business or undertaking must ensure:²⁸¹

- the health and safety of workers in the workplace, so far as is reasonably practicable; and
- that the health and safety of other persons is not put at risk from work carried out by the business or undertaking.

10.30 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.²⁸²

10.31 A duty to ensure health and safety means the person must eliminate or, if elimination is not possible, minimise risks to health and safety, so far as is 'reasonably practicable': see box 4.²⁸³

Box 3: Who is a 'person conducting a business or undertaking'?

- A person conducts a business or undertaking whether the person conducts it alone or with others, and whether or not 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)

Box 4: What is 'reasonably practicable' in ensuring health and safety?

- Doing what is 'reasonably practicable' to ensure health and safety means the person must do what is reasonably able to be done, taking into account and weighing up all relevant matters, including:
 - the likelihood of the hazard or risk occurring;
 - the degree of harm that might result from it;
 - what the person concerned knows, or ought reasonably to know, about the hazard or risk and ways of eliminating or minimising it;
 - the availability and suitability of ways to eliminate or minimise it; and
 - the cost associated with eliminating or minimising it, and whether the cost is grossly disproportionate to the risk

10.32 Without limiting the general duty, the Act sets out specific duties a person conducting a business or undertaking must comply with, so far as is reasonably practicable. They include:²⁸⁴

- providing and maintaining a work environment without risks to health and safety;
- providing and maintaining safe systems of work;
- providing adequate facilities for the welfare of workers;

²⁸⁰ *Work Health and Safety Act 2011* (Qld) s 5.

²⁸¹ *Work Health and Safety Act 2011* (Qld) s 19(1)–(2).

²⁸² *Work Health and Safety Act 2011* (Qld) s 19(5).

²⁸³ *Work Health and Safety Act 2011* (Qld) ss 17–18.

²⁸⁴ *Work Health and Safety Act 2011* (Qld) s 19(3).

- providing workers with information, instruction, training or supervision needed for them to work safely and without risks to their health; and
 - monitoring the health of their workers and the conditions of the workplace under their management and control to prevent injury and illness.
- 10.33 All Queensland businesses should have an effective risk management process. The person conducting a business or undertaking should identify hazards, assess risks, find ways to control those risks, and then make sure those controls keep working.²⁸⁵
- 10.34 They must consult with workers who are, or are likely to be, directly affected by a matter relating to work health and safety. This includes when identifying hazards and assessing risks and when making decisions about ways to eliminate or minimise those risks.²⁸⁶
- 10.35 The Act also requires:²⁸⁷
- officers of a person conducting a business or undertaking (such as managers) to exercise due diligence to ensure the person conducting a business or undertaking complies with work health and safety duties; and
 - workers and other persons at the workplace (such as customers and visitors) to:
 - take reasonable care for their own health and safety and the health and safety of others who may be affected by their actions or omissions;
 - follow reasonable instructions given by the person conducting a business or undertaking; and
 - cooperate (if they are a worker) with any reasonable policy or procedure to ensure work health and safety.
- 10.36 If a worker has a reasonable concern about a serious risk to their health or safety from immediate or imminent exposure to a hazard, they may stop or refuse to carry out work.²⁸⁸

How are work health and safety obligations monitored and enforced?

- 10.37 Workplace Health and Safety Queensland educates employers and employees on their legal duties, inspects workplaces to make sure work health and safety duties are being met, and takes appropriate enforcement action if they are not. It also investigates work-related fatalities and serious injuries.
- 10.38 A workplace inspection may occur in response to a health and safety incident, notification or complaint. It may also take place as part of a statewide compliance campaign or workplace assessment.
- 10.39 An inspector has the power to enter a workplace, or a place they reasonably suspect is a workplace. They do not need to give notice first, and do not need consent from the person who

²⁸⁵ WorkSafe.qld.gov.au, 'Managing risks' (2021) <<https://www.worksafe.qld.gov.au/safety-and-prevention/creating-safe-work/managing-risks>>.

²⁸⁶ *Work Health and Safety Act 2011* (Qld) pt 5 div 2.

²⁸⁷ *Work Health and Safety Act 2011* (Qld) ss 27, 28, 29.

²⁸⁸ *Work Health and Safety Act 2011* (Qld) s 84.

manages or controls the place. They can also enter a place used for residential purposes to access a suspected workplace: see box 5.²⁸⁹ If an inspector enters a place that is not a workplace, they must leave immediately.²⁹⁰

10.40 An inspector may enter any place if the entry is authorised by a search warrant. A search warrant may be issued by a magistrate if there are reasonable grounds for suspecting there is a particular thing or activity that may be evidence of an offence against the *Work Health and Safety Act 2011* at the place.²⁹¹

10.41 During workplace visits, inspectors may identify breaches that the duty holder can rectify in the presence of the inspector. Breaches that cannot be immediately rectified will result in other measures.²⁹² For example, inspectors can issue notices to direct compliance with the Act (such as improvement notices or prohibition notices: see box 6).²⁹³ Failure to comply with a notice is an offence.²⁹⁴ Workplace Health and Safety Queensland can also apply to a Magistrates Court for an injunction to require a person to comply with a notice, or to restrain them from contravening a notice.²⁹⁵

10.42 If a duty holder does not follow work health and safety laws, they could be:²⁹⁶

- given an infringement notice (on the spot fine);
- required to give an enforceable undertaking (a legally binding written agreement to put in place effective health and safety measures); or
- prosecuted for offences for breach of health and safety laws.

10.43 If a person is found guilty of an offence against the Act, the court may impose a penalty or make other orders. The maximum penalty for breaching a health and safety duty is:²⁹⁷

Box 5: Inspectors powers to enter a place used for residential purposes

- An inspector may not enter any part of a place used only for residential purposes unless they:
 - have consent from the person with management or control of the place;
 - are authorised under a search warrant; or
 - need to enter to gain access to a suspected workplace, but only:
 - if the inspector reasonably believes that no reasonable alternative access is available; and
 - at a reasonable time having regard to the times they believe work is being carried out at the suspected workplace

Box 6: What is an 'improvement notice' or 'prohibition notice'

- An 'improvement notice' requires a person to remedy a breach of the work health and safety laws or prevent a likely breach
- A 'prohibition notice' prohibits a person from carrying on an activity that involves serious risk to a person's health or safety from an immediate or imminent exposure to a hazard, until the inspector is satisfied that the risks have been remedied

²⁸⁹ *Work Health and Safety Act 2011* (Qld) s 170.

²⁹⁰ *Work Health and Safety Act 2011* (Qld) s 163(1)–(3).

²⁹¹ *Work Health and Safety Act 2011* (Qld) ss 163(4), 167.

²⁹² WorkSafe.qld.gov.au, 'Enforcement options' (2021) <<https://www.worksafe.qld.gov.au/laws-and-compliance/compliance-and-enforcement/audits-and-inspections/workplace-inspections/enforcement-options>>.

²⁹³ *Work Health and Safety Act 2011* (Qld) pt 10 divs 1–3.

²⁹⁴ The maximum penalty is 500 penalty units (\$68 925) for an improvement notice and 1000 penalty units (\$137 850) for a prohibition notice: *Work Health and Safety Act 2011* (Qld) ss 193, 197.

²⁹⁵ *Work Health and Safety Act 2011* (Qld) s 215.

²⁹⁶ See further WorkSafe.qld.gov.au, 'Compliance and enforcement' (2021) <<https://www.worksafe.qld.gov.au/laws-and-compliance/compliance-and-enforcement>>; Workplace Health and Safety Queensland and Electrical Safety Office Queensland, *Compliance Monitoring and Enforcement Policy* (December 2018).

²⁹⁷ *Work Health and Safety Act 2011* (Qld) s 33.

- 500 penalty units (\$68 925) for a worker or other person;
 - 1000 penalty units (\$137 850) for a person conducting a business or undertaking or officer; and
 - 5000 penalty units (\$689 250) for a corporation.
- 10.44 Higher penalties apply if the duty holder breaches a health and safety duty that exposes a person to risk of death or serious injury or illness, or if the duty holder engages in conduct that recklessly exposes a person to risk of death or serious injury.²⁹⁸
- 10.45 Other orders the court may make include:²⁹⁹
- adverse publicity orders;
 - restoration orders;
 - work health and safety project orders;
 - work health and safety undertakings;
 - injunctions; and
 - training orders.

What specific work health and safety requirements apply for licensed brothels?

- 10.46 A brothel licensee is a person conducting a business or undertaking. As such, they must meet the general work health and safety laws outlined above.
- 10.47 Brothel licensees must also meet requirements in the Prostitution Act and Prostitution Regulation, such as:
- a requirement to make sure each room in the brothel has a concealed alarm button (or equivalent communication device) in working order;³⁰⁰ and
 - requirements about health, including safe sex practices and sexual health management (discussed in chapter 11).
- 10.48 They must also comply with the conditions or restrictions in their brothel licence.³⁰¹ Some conditions are standard to all brothel licences and others may be included for an individual licence. Standard licence conditions include requirements about:³⁰²
- having sufficient electronic surveillance for the safety and security of sex workers, staff and clients (Brothel Licence Conditions 15.1–15.5);
 - documenting policies and procedures that show how legal and regulatory obligations are met (including under the Prostitution Act, Prostitution Regulation and licence conditions) (Brothel Licence Condition 17.1);
 - introducing new sex workers and managers to their roles (induction) and giving them information (Brothel Licence Conditions 6.1–6.3, 7.1–7.2);

²⁹⁸ *Work Health and Safety Act 2011* (Qld) ss 31–32.

²⁹⁹ *Work Health and Safety Act 2011* (Qld) ss 234–242. The maximum penalty for not following an order, without reasonable excuse, is 500 penalty units (\$68 925).

³⁰⁰ *Prostitution Regulation 2014* (Qld) s 23(a).

³⁰¹ *Prostitution Act 1999* (Qld) s 19(5)(d)(iii).

³⁰² See PLA, *Brothel Licence Conditions* (v 14, 13 May 2019).

- recording and responding to complaints or incidents (Brothel Licence Condition 18.1);
- facilities (such as showers, toilets and change facilities and sharps containers) (Brothel Licence Conditions 12.1–12.3);
- managing clinical waste (Brothel Licence Condition 16.1); and
- maintenance and cleaning (Brothel Licence Condition 22.1).

10.49 Brothel licensees receive an Operational Standards Manual from the PLA before they are granted a brothel licence. It outlines requirements under the Prostitution Act and Prostitution Regulation and standard brothel licence conditions. It also gives practical guidance about how brothel licensees can meet their work health and safety obligations under the *Work Health and Safety Act 2011* and control hazards specific to sex work.³⁰³ This includes practical guidance on managing workplace violence, threats, bullying, coercion and harassment.³⁰⁴

How are work health and safety obligations of brothel licensees monitored and enforced?

10.50 The PLA monitors the operation of all licensed brothels to make sure they follow the Prostitution Act, Prostitution Regulation and their brothel licence conditions or restrictions. Authorised PLA officers carry out audits and inspections at least twice a year. They also give information and help to licensees and managers to improve compliance.³⁰⁵

10.51 The PLA can carry out disciplinary inquiries and take disciplinary action against brothel licensees and approved managers on certain grounds. This includes if a brothel licence condition is breached, or if the brothel is being managed in a way that makes it desirable for action to be taken.³⁰⁶ A breach of the Prostitution Act or Prostitution Regulation is deemed to be a breach of the licence.³⁰⁷ The PLA can do one or more of the following:³⁰⁸

- reprimand the licensee or manager;
- add a condition or restriction to the licensee's licence or the manager's certificate;
- require the licensee or manager to enter into an undertaking to perform, or not perform, particular tasks;
- require the licensee or approved manager to meet a requirement specified by the PLA within or for a specified time;
- order the licensee or manager to pay into the fund an amount that is not more than the monetary value of 135 penalty units (\$18 609.75);
- suspend the licensee's licence or manager's certificate for a specified period of not more than one year;
- cancel the licensee's licence or manager's certificate;
- order that the licensee or manager is not eligible to apply for a licence or be an approved manager either permanently or for a specified period.

303 PLA, *Operational Standards Manual*.

304 Ibid.

305 PLA, 'Queensland brothel licence compliance' (2022) <https://www.pla.qld.gov.au/licensing/brothel-licence#comply_license_conditions>.

306 *Prostitution Act 1999* (Qld) ss 27(c)–(d), 53(b)–(c).

307 See PLA, *Brothel Licence Conditions* (v 14, 13 May 2019).

308 *Prostitution Act 1999* (Qld) ss 29, 55.

- 10.52 Authorised PLA officers can also issue a penalty infringement notice (on the spot fine) for many offences under the Prostitution Act and Prostitution Regulation.³⁰⁹ The amount varies depending on the offence. For example, it is an offence if a brothel licensee fails to follow the requirement under section 23 of the Prostitution Regulation for each room to have an alarm. The maximum penalty is 4 penalty units (\$551.40).
- 10.53 Workplace Health and Safety Queensland inspectors can also attend licensed brothels to make sure general work health and safety laws are being followed.
- 10.54 Police officers can also issue penalty infringement notices for offences under the Prostitution Act and Prostitution Regulation.³¹⁰ Authorised police officers have powers to enter licensed brothels under part 3, division 3 of the Prostitution Act.
- 10.55 The PLA can refer suspected offences under the Prostitution Act and Prostitution Regulation to the Queensland Police Service for investigation and action. It is an offence for a licensee or an approved manager to provide prostitution at the brothel in breach of any condition or restriction of a licence or certificate.³¹¹
- 10.56 As well as workplace laws, criminal laws (such as laws against assault, rape and stalking) are part of the overall framework that protects the safety of sex workers and others. A police officer may also enter a licensed brothel for an emergency, in response to a call for assistance or as part of an investigation under another police power. Entries made under these circumstances are regulated by the *Police Powers and Responsibilities Act 2000*. Police are responsible for investigating crimes such as rape, assault, or stalking. They are also responsible for investigating illegal sex work.

Work health and safety and the sex work industry

- 10.57 Queensland's licensed brothels generally operate to a high standard of compliance with their regulatory requirements,³¹² and 'provide a relatively safe and healthy environment' for sex work.³¹³ The PLA works with licensed brothels to ensure they meet the best practice operating standards for work health and safety.³¹⁴ However, the PLA identifies a '[l]ack of capacity to respond adequately to health and safety risks, impacting sex workers, clients and the community'.³¹⁵
- 10.58 In 2017, Respect Inc surveyed 200 sex workers in licensed brothels in Queensland. Participants in the survey identified barriers to accessing work health and safety standards in brothels, including inadequate training and a lack of awareness of legal rights:³¹⁶
- 33% of participants said they did not think their training was sufficient;
 - 30% said they were unsure or not aware of their legal rights as a sex worker working in a licensed brothel;
 - 29% said management did not always allow them to refuse clients; and
 - 49% said they had or might have felt pressured by management to see a client they were not comfortable with.

309 *State Penalties Enforcement Regulation 2014* (Qld) ss 4–6, sch 1.

310 *State Penalties Enforcement Regulation 2014* (Qld) ss 4–6, sch 1.

311 *Prostitution Act 1999* (Qld) s 78(1)(c). The maximum penalty is 200 penalty units (\$27 570) or five years imprisonment.

312 PLA, *Annual Report 2020–2021* (2021) 4.

313 *Ibid* 59.

314 *Ibid* 15.

315 *Ibid* 11.

316 Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 14, 27, 30.

- 10.59 Participants were reluctant to report experiences of workplace coercion or bullying because of stigma, discrimination and concerns about confidentiality. Nearly half the participants said they would not make a complaint to police if they were assaulted at work.³¹⁷
- 10.60 Participants also identified health and safety issues with their work environment, including a lack of light and ventilation and inadequate facilities.³¹⁸
- 10.61 The report emphasised the importance of peer-driven education and advocacy and improving relationships between sex workers, regulators and the police.³¹⁹
- 10.62 Licensed brothels represent only a small proportion of the overall sex work industry in Queensland: see chapter 3.
- 10.63 As self-employed persons, private sex workers have obligations under general work health and safety laws to ensure their own health and safety while at work and the health and safety of others who may be put at risk. However, some sex worker organisations say the current laws regulating sex work are a barrier to work health and safety, because private sex workers may not work together for safety or to share costs. This limits the type of safety strategies that can be used. Private sex workers can not lawfully, for example:
- share staff or premises;
 - have a receptionist manage bookings and screen clients for them;
 - message another sex worker to check in for safety before and after an appointment (although they can tell another person who is not a sex worker and who does not take on this role for any other sex worker); or
 - hire a bodyguard or driver, unless that person is licensed as a bodyguard or crowd controller and does not work for any other sex worker.
- 10.64 Some sex worker organisations say this means private sex workers 'have to choose between working safely and working legally'. They also say these laws reduce the likelihood that sex workers will report crime (because of fear of prosecution) and increase isolation and stigma.³²⁰
- 10.65 Other forms of sex work are illegal in Queensland (such as sex work in escort agencies or massage parlours, street-based sex work and two or more private sex workers working together under a co-operative arrangement). It has been noted that sex workers in the illegal industry:³²¹
- are vulnerable to the risk of abuse and exploitation by operators and clients. Health and safety may not be prioritised, and conditions may be unsanitary. Because these operations are unregulated and unscrutinised, workers do not have access to basic protections and avenues of redress.
- 10.66 Some sex worker organisations say decriminalisation will improve access to existing work health and safety laws for all sex workers. They also say it will improve sex worker health and safety by decreasing isolation and stigma and increasing opportunities for education and support.³²² It has also been noted that decriminalisation will improve the safety of sex workers

317 Ibid 21.

318 Ibid 38.

319 Ibid 42–3 (and at 35, 37).

320 See, eg, 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); 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, 144; B Smee, 'Sex workers in Queensland must choose: be safe or be legal', *The Guardian* (online, 7 March 2019) <<https://www.theguardian.com/society/2019/mar/07/sex-workers-in-queensland-must-choose-be-safe-or-be-legal>>.

321 PLA, *Annual Report 2020–2021* (2021) 18.

322 See generally Scarlet Alliance, above n 266, ch 3.

by removing barriers to accessing justice, empowering sex workers to know their rights, and increasing the likelihood of sex workers reporting crimes to police.³²³

- 10.67 In 2008, the New Zealand Prostitution Law Review Committee completed a review of the impact of decriminalisation on the sex work industry in New Zealand.
- 10.68 Generally, the Committee noted that decriminalisation had an overall positive effect on sex worker health and safety, with sex workers reporting ‘increased confidence, well-being and a sense of validation’ because sex work was no longer criminal.³²⁴
- 10.69 Research indicated there was an increased level of awareness of health and safety requirements in the sex work industry. The committee observed there was a low level of complaints, which might indicate a high level of compliance. However, it also considered that a complete picture could not be given because there was no system of regular inspections. It noted that inspections tended to be reactive in response to a complaint, rather than proactive. The Committee recommended that the health and safety regulator should be resourced to carry out regular inspections. It also recognised the need for education and support and for a good relationship to be developed between the regulator and the sex work industry to promote cooperation and compliance.³²⁵
- 10.70 The Committee also noted the importance of improving relationships between the sex work industry and the police. There was conflicting evidence on whether sex workers were more likely to report violent behaviour by clients to police. It was intended that decriminalisation would make it more likely for sex workers to report such behaviour to police, which would increase their safety ‘as clients realised that they could no longer “get away with it”’. The Committee noted that it had been only five years since decriminalisation and that ‘simply decriminalising an industry will not produce overnight changes in entrenched attitudes’. It also noted that stigma was a key factor in the non-reporting of incidents and would take time to lessen.³²⁶

What approach is taken in other jurisdictions?

- 10.71 In New South Wales, the Northern Territory, and New Zealand, where sex work is decriminalised, sex work businesses are regulated by general laws that apply to all businesses. This includes work health and safety laws and planning laws.
- 10.72 The same approach is being taken in Victoria. The *Sex Work Decriminalisation Act 2022* (Vic) repeals the licensing scheme and criminal laws that are not needed.³²⁷ The sex work industry will be regulated just like any other industry, by agencies such as local government, WorkSafe and the Department of Health.³²⁸
- 10.73 Some jurisdictions have kept sex work-specific health laws (see chapter 11) and some have specific guidelines for work health and safety.

³²³ See, eg, G Abel, ‘A decade of decriminalization: sex work “down under” but not underground’ (2014) *Criminology & Criminal Justice* (online).

³²⁴ Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 50.

³²⁵ *Ibid* 53, 55.

³²⁶ *Ibid* 58.

³²⁷ *Sex Work Decriminalisation Act 2022* (Vic) ss 1(c), 37. The licensing system in the *Sex Work Act 1994* (Vic) will be repealed in the second stage of decriminalisation.

³²⁸ Department of Justice and Community Safety (Vic), *Decriminalising Sex Work* (Discussion Paper, 2021) 3.

Is there a role for special guidelines or a code of practice?

- 10.74 Guidelines and codes of practice give people conducting a business or undertaking practical guidance on how they can meet their work health and safety obligations. Many industries in Queensland have codes of practice under the *Work Health and Safety Act 2011*.³²⁹
- 10.75 The PLA gives brothel licensees an Operational Standards Manual that gives practical guidance about how brothel licensees can meet their work health and safety obligations and control hazards specific to sex work.³³⁰
- 10.76 Under a decriminalised framework, Workplace Health and Safety Queensland can work with the sex work industry to ensure work health and safety. Practical guidance and education may be needed, especially given the change to a decriminalised sex work industry. Only some forms of sex work are legal under the current framework and most sex work in Queensland occurs outside the licensed sector. Guidance could be given in sex work-specific guidelines or a code of practice.
- 10.77 New South Wales and New Zealand have work health and safety guidelines for the sex work industry.³³¹ Guidelines are also proposed in Victoria.³³²
- 10.78 The Australian Capital Territory has a code of practice for the sex work industry.³³³
- 10.79 Scarlet Alliance has also developed a Best Practice Guide to Occupational Health and Safety in the Sex Industry.³³⁴ They suggest this could be adapted for use in all Australian states and territories.³³⁵

What matters are covered by the guidelines or codes of practice?

- 10.80 The guidelines in New South Wales and New Zealand and the code of practice in the Australian Capital Territory, at [10.77] to [10.78] above, cover several matters. These include:³³⁶
- training and information that should be given to staff, both as part of the induction process and ongoing (including training in safe sex measures, the correct way to use equipment, and work safety procedures);
 - supply and use of personal protective equipment (such as condoms and lubricant);
 - installing safety devices and establishing policies to ensure personal security and prevent workplace violence, bullying and harassment (such as alarm buttons, screening clients, ejecting inappropriate clients and having clear safety procedures);
 - housekeeping and cleaning (including the disposal of sharps, managing clinical waste, dealing with blood and other bodily fluid spills and laundry management);
 - providing and maintaining amenities (including adequate heating, cooling and lighting, and ergonomic furniture).

³²⁹ See generally WorkSafe.qld.gov.au, 'Codes of practice' (2022) <<https://www.worksafe.qld.gov.au/laws-and-compliance/codes-of-practice>>.

³³⁰ PLA, *Operational Standards Manual*.

³³¹ 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).

³³² Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 10 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating).

³³³ Work Health and Safety (Sexual Services Industry) Code of Practice 2011 (ACT).

³³⁴ D Edler, *A Guide to Best Practice: Occupational Health and Safety in the Australian Sex Industry* (Scarlet Alliance, 1999).

³³⁵ Scarlet Alliance, above n 266, 42.

³³⁶ See also Edler, above n 334.

10.81 Similar matters are covered in the PLA Operational Standards Manual for brothel licensees.³³⁷

How are guidelines or codes of practice made and what status do they have?

10.82 Codes of practice are approved by the Minister under section 274 of the *Work Health and Safety Act 2011*. A person conducting a business or undertaking must either:³³⁸

- follow an approved code of practice; or
- manage hazards and risks arising from work in a way that is different to the code but meets a standard of health and safety that is the same as or higher than the standard required in the code.

10.83 A code of practice can be used in legal proceedings for an offence against the Act. The court may have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control. It can also use the code to decide if a person has met their duty by doing what is reasonably practicable.³³⁹

10.84 An inspector can also refer to a relevant code of practice when directing a person, in an improvement or prohibition notice, to remedy a contravention.³⁴⁰

10.85 Guidelines are less formal than a code of practice as they are not approved under the Act. However, they can educate and influence practice and give practical guidance on how sex work businesses can meet their work health and safety obligations. Guidelines could be made by Workplace Health and Safety Queensland, in consultation with other agencies and organisations and with the sex work industry.

10.86 In New South Wales, it can be a condition of receiving development consent from local government that a sex work business must follow the health and safety guidelines.³⁴¹

CONSULTATION QUESTIONS

Q18 What is the best way to make sure people in the sex work industry meet their work health and safety standards?

Q19 Should there be a guide for the sex work industry on how to meet work health and safety obligations (for example, a code of practice made under the *Work Health and Safety Act 2011* or guidelines)?

Q20 Are there any other work health and safety matters we should consider in developing a framework for a decriminalised sex work industry?

Workers' compensation

10.87 Workers' compensation is a form of insurance paid to employees if they are injured at work or become sick because of their work.

³³⁷ PLA, *Operational Standards Manual*.

³³⁸ *Work Health and Safety Act 2011* (Qld) s 26A.

³³⁹ *Work Health and Safety Act 2011* (Qld) s 275.

³⁴⁰ *Work Health and Safety Act 2011* (Qld) s 204.

³⁴¹ P Crofts et al, 'Ambivalent regulation: the sexual services industries in NSW and Victoria—sex work as work, or as a special category?' (2012) 23(3) *Current Issues in Criminal Justice* 393, 404. See also, eg, City of Sydney, *Adult Entertainment and Sex Industry Premises Development Control Plan* (2006).

- 10.88 Each state and territory has workers' compensation laws.
- 10.89 Queensland's workers' compensation framework is established by the *Workers' Compensation and Rehabilitation Act 2003* and the *Workers' Compensation and Rehabilitation Regulation 2014*.
- 10.90 The Act requires all Queensland employers to take out workers' compensation insurance to cover themselves and workers they employ against work-related injury or illness. This may be under either a WorkCover insurance policy or a licence as a self-insurer.
- 10.91 The policy covers a person who is a 'worker' employed by the business within the meaning of the Act: see box 7.³⁴²
- 10.92 The policy does not cover a person who is not a 'worker' for purposes of the Act (for example, a person who is a director or partner of their own business). They can take out Workplace Personal Injury Insurance, although this is not compulsory.³⁴³
- 10.93 If a sex worker meets the definition of a 'worker', they will be covered by the employer's accident insurance policy for the business. Whether a person is a worker for the purposes of workers' compensation will depend on their working arrangements and how they are engaged.³⁴⁴
- 10.94 Sex workers who do not meet the definition of worker (such as independent contractors, sole operators or self-employed persons, and those operating in a partnership) can take out their own insurance. This is the same for workers in other industries.

Box 7: Who is a 'worker' for the purposes of workers' compensation?

- Only an individual can be a worker (sole traders may be considered workers, but a corporation, partnership or trust is not a worker)
- A 'worker' is a person who works under a contract and, in relation to the work, is an employee for the purpose of assessment for PAYG withholding under the *Taxation Administration Act 1953* (Cth)
- The Act also sets out specific inclusions and exclusions
- In particular, a person is a worker if:
 - they are paid entirely or partly by commission; or
 - are a party to a 'contract of service'

Are contracts for sex work enforceable?

- 10.95 A court may hold that a contract is unenforceable because it:³⁴⁵
- involves conduct that is criminal or otherwise prohibited by legislation; or
 - is contrary to public policy.
- 10.96 A contract may be held to be contrary to public policy if it is 'sexually immoral'.³⁴⁶ For example, in *Ashton v Pratt (No 2)*, it was found that an agreement by a wealthy businessman to pay a sex worker to become his mistress would be unenforceable as it was a 'contract to provide meretricious sexual services'.³⁴⁷
- 10.97 On the other hand, courts have held that illegality does not prevent sex workers, or other persons who work in brothels, from accessing benefits under employment legislation. For a

³⁴² *Workers' Compensation and Rehabilitation Act 2003* (Qld) s 11, sch 2; WorkSafe.qld.gov.au, 'Who should I cover' (14 September 2021) <<https://www.worksafe.qld.gov.au/claims-and-insurance/workcover-insurance/who-should-i-cover>>.

³⁴³ WorkSafe.qld.gov.au, 'Who should I cover' (14 September 2021) <<https://www.worksafe.qld.gov.au/claims-and-insurance/workcover-insurance/who-should-i-cover>>.

³⁴⁴ Ibid.

³⁴⁵ M Irving, *The Contract of Employment* (LexisNexis, 2nd ed, 2020) [5.30]–[5.31].

³⁴⁶ Ibid.

³⁴⁷ [2012] NSWSC 3.

contract to be unenforceable, the illegality must be 'sufficiently serious' for public policy to require that result. The court can also have regard to wider public policy considerations. For example, in *Phillipa v Carmel*, a sex worker who performed sex services at a brothel was entitled to seek compensation for unfair dismissal under the *Industrial Relations Act 1988* (Cth).³⁴⁸ In *Barac v Farnell*, a receptionist in a brothel was entitled to seek workers' compensation under the *Workers' Compensation Act 1951* (ACT).³⁴⁹

- 10.98 Under a decriminalised framework, criminal offences that are no longer needed will be removed. Sex work will be recognised as legitimate work.
- 10.99 Some sex worker organisations say decriminalisation will remove barriers to enforcing contracts for sex work (such as contracts between sex worker and client, or for hiring premises, drivers, receptionists or security).³⁵⁰
- 10.100 The Northern Territory and New Zealand, which have decriminalised sex work, have included legislative provisions to make it clear that a contract for sex work is not illegal or unenforceable on public policy grounds.
- 10.101 Section 7 of the *Sex Industry Act 2019* (NT) says:
- Contract for sex work not void**
- No contract for or to arrange sex work is illegal or void on public policy or similar grounds.
- 10.102 This section:³⁵¹
- explicitly provides that contracts for sex work are legal, thereby overriding the common law position that a contract for sex work is illegal or void on public policy or similar grounds, purely because the subject matter of the contract relates to sex work.
- 10.103 Similar provision is made in section 7 of the *Prostitution Reform Act 2003* (NZ). It was explained that:³⁵²
- Common law may currently make contracts for commercial sexual services unenforceable. The purpose of clause 5 is to ensure that contracts for the provision of (or arranging the provision of) commercial sexual services are enforceable. It is part of the overall framework of the bill that aims to make prostitution subject to the controls and regulations that govern the operation of other businesses.
- 10.104 Other Australian states and territories, including New South Wales and Victoria, do not have the same provision.

CONSULTATION QUESTION

- Q21** Under a decriminalised framework for the sex work industry, should legislation state that a contract for or to arrange sex work is not illegal or void on public policy or similar grounds?

³⁴⁸ [1996] IRCA 451.

³⁴⁹ (1994) 53 FCR 193.

³⁵⁰ Scarlet Alliance, above n 266, 44, 47.

³⁵¹ Explanatory Statement, Sex Industry Bill 2019 (NT) 2.

³⁵² Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 10.

Sex worker autonomy

10.105 Sex work laws in the Northern Territory and New Zealand include a positive statement that sex workers may refuse to perform sex work despite anything in a sex work contract.

10.106 Section 9 of the *Sex Industry Act 2019* (NT) provides:

Refusal to perform sex work

- (1) Despite anything in a contract for sex work, a person may, at any time, refuse to perform or continue to perform sex work.
- (2) The fact that a person has entered into a contract for sex work does not of itself constitute consent for the purposes of the criminal law if the person does not consent, or withdraws the person's consent, to performing sex work.
- (3) However, nothing in this section affects any right to rescind or cancel, or to recover damages for, a contract for sex work that is not performed.

10.107 The explanatory notes say this balances 'the competing interests between worker safety and the general application of contract law'.³⁵³

10.108 Section 9(1) states the right of sex workers 'to refuse to undertake sex work'. This 'is to allow a sex worker to stop the booking and withdraw their services at any time where they fear for their safety or wellbeing (whether it be physical, psychological or health), or otherwise'.³⁵⁴

10.109 Section 9(2) makes it clear that a contract for sex work does not constitute consent for the purposes of the criminal law.³⁵⁵

Reflecting that consent is a fundamental (and ongoing) requirement for sex work, subclause (2) prevents an offender using the consent initially provided through a contract for sex work as a defence to an assault or other crime committed against the sex worker. While a worker may have consented to engage in sex work, that consent does not necessarily translate to consent in the participation of activities that would ordinarily constitute a criminal offence (such as assault or sexual assault).

10.110 Section 9(3) reinforces the common law position that applies to all contracts: that, where a person breaches a contract (in this case by exercising their right to refuse under section (1)), and does not provide what was contracted for, the other party may have a right to reimbursement, or remedies other than specific performance. However, it was explained that:³⁵⁶

This does not mean that sex workers will be required to pay compensation to clients on every occasion a contract is terminated. As the common law acknowledges, the entitlement to damages for a breach of contract will depend on the particular circumstances around that breach. For example, if a worker is assaulted, then an offence has occurred, and it is that action which has brought the booking to an end at the instigation of the perpetrator. There would not be recourse under the law of contract (or the criminal law) for the perpetrator to seek compensation as the perpetrator brought the contract to an end, not the worker.

Likewise, if the worker is an employee, that worker would not be liable to reimburse an employer (operator) if that employer were obliged to pay compensation because the worker refused to provide the services agreed to between the employer and the client. Under general employment law, the employer is vicariously liable for actions of its

³⁵³ Explanatory Statement, Sex Industry Bill 2019 (NT) 3.

³⁵⁴ Ibid.

³⁵⁵ Ibid. Consent where a person fraudulently promises to pay money to a sex worker is discussed in ch 18.

³⁵⁶ Explanatory Statement, Sex Industry Bill 2019 (NT) 3–4.

employees, and is obliged to indemnify them for any actions they have done in good faith. In addition, public policy precludes an employer seeking compensation from an employee where that employee is exercising a statutory right in favour of the employee's health and safety (such as that provided under subclause (1)).

10.111 Section 17 of the *Prostitution Reform Act 2003* (NZ) includes a similar provision.

10.112 During the parliamentary debates, it was noted that sex workers would:³⁵⁷

have the right, at any time, to withdraw from a contract to provide a sexual service if they felt the situation was getting threatening.

10.113 The Justice and Electoral Committee noted that a provision stating the right of sex workers to refuse to provide commercial sexual services:³⁵⁸

equalises the power imbalance between sex workers and their clients and management, it recognises the right to choose without fear of reprisal, and gives sex workers power and ability to make choices about bodily integrity.

10.114 There is no similar provision in other Australian states and territories.

10.115 Under work health and safety laws, a person conducting a business or undertaking must have effective risk management processes to control risks to work health and safety. This includes risks of workplace violence, abuse, bullying, coercion and harassment. Workers also have a right to stop or refuse to carry out work if it is unsafe. For example, sex workers may stop or refuse to perform a sexual practice if there is a risk to health (for example, if the client refuses to wear a condom and there is risk of contracting a sexually transmissible infection), or if there is a risk to safety from violent, abusive or threatening behaviour.

10.116 The work health and safety guidelines for the sex work industry in New South Wales state:³⁵⁹

- employers should '[a]cknowledge that workers have the right to refuse particular clients on the basis of prior violent, abusive or threatening behaviour by that client'; and
- if 'a client requests that a worker does not use a condom, the worker has the right to refuse to engage in any sexual practice', due to increased risk of contracting a sexually transmissible infection.

10.117 The code of practice in the Australian Capital Territory says that:³⁶⁰

- '[s]ex workers have the right to refuse particular clients, or particular kinds of work'; and
- '[a]ny worker has the right to refuse to participate in any work activity where they have reason to believe that to do so may place them at risk'.

10.118 In Queensland, brothel licensees must also follow the conditions of their licence, including the following standard conditions.

10.119 Brothel licence condition 5.1 says:

Sex Worker Autonomy

Sex workers must not, either expressly or impliedly, be:

- a) coerced, directed, bullied, threatened, or unfairly penalised by whatever means; or

³⁵⁷ New Zealand, *Parliamentary Debates*, House of Representatives, 19 February 2003, 3608 (T Barnett).

³⁵⁸ Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 17.

³⁵⁹ 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].

³⁶⁰ Work Health and Safety (Sexual Services Industry) Code of Practice 2011 (ACT) app 4 (prevention of workplace violence).

- b) compelled to provide an introduction, to see a client, or to provide a particular service.

- 10.120 Brothel licence condition 7.2(b) requires new managers to be given information to make sure they always follow brothel licence condition 5.1.
- 10.121 Brothel licence condition 6.2(c) also requires that the induction of sex workers includes information about brothel licence condition 5.1. This is restated in the PLA Operational Procedures Manual for brothel licensees.
- 10.122 Some sex worker organisations say decriminalisation will improve access to workplace laws, including work health and safety laws, and empower sex workers.³⁶¹
- 10.123 Scarlet Alliance tells us that:

Sex workers must be able to retain a contractual right to withdraw services at any time during a booking, without this being perceived as a contractual breach that may cause monetary liability. This ensures that we are able to enforce our boundaries and practice safety strategies without the fear of clients pursuing us for breach of contract.

CONSULTATION QUESTION

- Q22** Should there be a new law stating that a person may, at any time, refuse to perform or continue to perform sex work?

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Scarlet Alliance, above n 266, 42.

Public health and the health of sex workers

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Introduction

- 11.1 Queensland has some sex work-specific health laws, as well as general laws about protecting public health. This chapter summarises those laws and asks some questions about how to protect people's health in a decriminalised framework.³⁶²
- 11.2 One of the purposes of decriminalisation is to promote health, including by:
- recognising sex workers' role in promoting safe and healthy practices;
 - supporting effective access to health and education services; and
 - promoting public health.

Public health strategies

- 11.3 Australia and Queensland have strategies and action plans about sexual health, sexually transmissible infections and blood borne viruses.³⁶³ These guide national and State responses for reducing transmission and improving diagnosis and treatment rates.
- 11.4 Sex workers are a priority population in some of these strategies and plans because sex work can put people at more risk of being exposed to infections and viruses. However, some strategies recognise that the rate of condom usage by sex workers is high and, because of successful health programs, the rates of sexually transmitted illnesses in Australian sex workers are 'among the lowest in the world'.³⁶⁴
- 11.5 Some strategies state that sex workers face barriers to accessing health services, such as stigma and discrimination. They also state that they face regulatory and legal issues, such as criminalisation, licensing or registration, and mandatory health testing. This affects sex workers' access to services and increases risks to their health, safety and livelihood. The National HIV strategy states that evidence from a global study of HIV in female sex workers 'definitively shows that decriminalisation of sex work is linked to the reduction of HIV risk and rates'.³⁶⁵

Overview of laws in Australia and New Zealand

- 11.6 When the Prostitution Act was introduced in Queensland, specific regulation of health matters was considered necessary.³⁶⁶

Health risks associated with the sex industry are extremely high, particularly in relation to sexually transmitted infections including HIV. Through adoption of safe sex practices, risks can be minimised and a properly regulated industry provides the best vehicle for the implementation and monitoring of appropriate practices and standards. The proposed framework will ensure that the health status of sex workers is regularly

³⁶² Terms of reference para 1(d), (h).

³⁶³ See generally Department of Health (Australia), 'Blood borne viruses and sexually transmissible infections' <<https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1>>; Queensland Health, 'Queensland Sexual Health Strategy' (28 June 2021) <<https://www.health.qld.gov.au/public-health/topics/sexual-health/strategy>>. The *Queensland Sexual Health Strategy 2016–2021* (2016) 'will become an enduring Framework from 2022' after 'a light touch refresh'.

³⁶⁴ Department of Health (Australia), *Fourth National Sexually Transmissible Infections Strategy 2018–2022* (2018) 22; Queensland Health, *Queensland Sexual Health Strategy 2016–2021* (2016) 31.

³⁶⁵ Department of Health (Australia), *Eighth National HIV Strategy 2018–2022* (2018) 22, citing K Shannon et al, 'Global epidemiology of HIV among female sex workers: influence of structural determinants' (2015) 385 *The Lancet* 55.

³⁶⁶ Explanatory Notes, Prostitution Bill 1999 (Qld) 2.

monitored and that health risks to workers, their clients and the community are minimised.

11.7 Other Australian jurisdictions take different approaches to sex work-specific health laws. These approaches vary, and they are not always linked to whether sex work is decriminalised.

11.8 Most other Australian jurisdictions that have not decriminalised sex work have similar offences about prophylactics, working while infectious, and sexual health testing (or about some of those matters): see box 1 for Queensland.

11.9 In Victoria, public health offences about sex work are in the *Sex Work Act 1994* (Vic) and the *Public Health and Wellbeing Act 2008* (Vic). They are repealed by the *Sex Work Decriminalisation Act 2022* (Vic) to 'remove discriminatory, industry specific public health offences'.³⁶⁷ It was explained:³⁶⁸

- These offences are intended to promote public health but make unsupported assumptions about sex work and sexually transmitted diseases.
- '[E]vidence indicates that Australian and Victorian sex workers have comparatively higher rates of compliance with safer sex practices and lower rates of sexually transmitted infections than the general population'.
- Removing these offences is intended to address stigma and result in the sex work industry being treated like other industries. This will promote the right to recognition and equality before the law for sex workers.

11.10 The Victorian changes are in two stages. In the first stage, offences in the *Sex Work Act 1994* (Vic) about the use of prophylactics and sexually transmitted infections are repealed.³⁶⁹ In the second stage, which will start later, the provisions in the *Public Health and Wellbeing Act 2008* (Vic) about infectious diseases in brothels and escort agencies will be repealed.³⁷⁰ Instead, there will be 'a new public health and infection control framework for the sex work industry' developed as part of the reforms.³⁷¹

11.11 There are no offences of this kind in New South Wales. The Northern Territory has a single offence about the use of information for medical testing.³⁷² This was also the position before decriminalisation. However, each jurisdiction has particular laws about public health. In New South Wales, work health and safety guidelines apply to owners and managers of commercial

Box 1: Offences in the Prostitution Act

- Prophylactics must be used by sex workers and clients, and in brothels
- Sex workers must not work or be permitted to work in a brothel while infectious with a sexually transmitted disease
- Sexual health testing is required for any sex worker who works in a brothel
- Information about sexual health testing must not be used by a sex worker in a brothel to induce a belief that the worker does not have a sexually transmitted disease

³⁶⁷ Explanatory Memorandum, *Sex Work Decriminalisation Bill 2021* (Vic) 3–4. See *Sex Work Decriminalisation Act 2022* (Vic) ss 8–10

³⁶⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3876–77 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating).

³⁶⁹ *Sex Work Decriminalisation Act 2022* (Vic) ss 8–10, repealing *Sex Work Act 1994* (Vic) ss 18A, 19–20, 20A. These provisions commence on 10 May 2022: s 2(1)–(2).

³⁷⁰ *Sex Work Decriminalisation Act 2022* (Vic) pt 7 div 10, repealing *Public Health and Wellbeing Act 2008* (Vic) pt 8 div 10 (ss 158–165). These provisions commence on 1 December 2023 (unless proclaimed earlier): s 2(1), (3).

³⁷¹ Explanatory Memorandum, *Sex Work Decriminalisation Bill 2021* (Vic) 23.

³⁷² *Sex Industry Act 2019* (NT) s 16.

sex services premises such as brothels, massage parlours and escort agencies.³⁷³ The Northern Territory is developing work health and safety guidelines.

- 11.12 In contrast, New Zealand decriminalised sex work but kept requirements to ‘adopt safer sex practices’. This includes requirements about prophylactics, sexually transmissible infections and the use of information about medical examinations.³⁷⁴ The intent was to create an environment that would protect the occupational health and safety of sex workers and clients, and therefore enhance public health. Sex workers had been ‘reluctant to promote safer sex products’ as they could be used as evidence of a crime, which inhibited safer sex practices. To ‘reduce the existing climate of fear’, it was important for the law to include provisions about safer sex.³⁷⁵ It was also important for these to apply to sex workers, clients and business operators so that illegal or ‘risky’ practices did not shift to street-based sex work.³⁷⁶
- 11.13 Some argue that to fully decriminalise sex work, these kinds of sex work-specific health laws must be removed. The Sexual Health Society of Queensland, some sex worker organisations, human rights groups, government bodies, and researchers consider that these laws encourage stigma and create barriers to accessing health services. They consider that best practice is made up of peer-based educational programs and sex workers voluntarily using safer sex practices and having sexual health testing.³⁷⁷
- 11.14 This is the approach in New South Wales. After decriminalisation, the government worked with community-based sex worker organisations to offer outreach, educational and sexual health services. These resulted in high rates of condom use and sexual health testing, and low rates of sexually transmitted infections among sex workers. To maintain this, services for specific sex workers (such as new brothel workers and street-based sex workers) are recommended.³⁷⁸
- 11.15 Scarlet Alliance says sex workers should have freedom to make their own health decisions:³⁷⁹
- a sex worker’s decision to seek STI and HIV testing or to use condoms and dams should be an individual one, based on our workload, practices and level of risk, rather than mandated at law in a way that bears no relevance to the sex worker’s own personal practices.

Prophylactics

- 11.16 In some jurisdictions, prophylactics must be used for sex work: see table 1.

373 SafeWork NSW, ‘Health and safety guidelines for sex services premises in NSW’ [1] <<https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw>>.

374 *Prostitution Reform Act 2003* (NZ) ss 8, 9. See also Occupational Safety & Health Service (NZ), *A Guide to Occupational Health and Safety in the New Zealand Sex Industry* (2004).

375 Explanatory Note, *Prostitution Reform Bill 2003* (NZ) 1; Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 10–12.

376 Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 66–2, 11–12.

377 See, eg, Sexual Health Society of Queensland, *Position Statement—Decriminalisation of Sex Work in Queensland* (2018); Scarlet Alliance, *Full Decriminalisation of Sex Work in Australia*, Briefing Paper <https://scarletalliance.org.au/library/briefing_paper_full_decrim>; Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 4–5; A Daniel, ‘The sexual health of sex workers: no bad whores, just bad laws’ (Social Research Briefs No 19, 2010) 2–3; S Sakha, E Greytak & M Haynes, ‘Is sex work decriminalization the answer? What the research tells us’ (ACLU Research Brief, 2020) 8–10; M Decker et al, ‘Human rights violations against sex workers: burden and effect on HIV’ (2015) 385 *The Lancet* 186, 191, 193–96.

378 See, eg, 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) 11–13, 23–4; B Donovan et al, ‘Improving the health of sex workers in NSW: maintaining success’ (2010) 21(3-4) *NSW Public Health Bulletin* 74; D Callander et al, *Sex Worker Health Surveillance: A Report to the New South Wales Ministry of Health* (April 2016).

379 Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 66.

Table 1: Use of prophylactics

	Qld	ACT	NSW	NT	SA	Tas	Vic*	WA	NZ
Prophylactic must be used by sex workers and clients	✓	✓	✓ (WHS guidelines)			✓	✓	✓	✓
Business operator (eg brothel) must ensure use of prophylactics and not discourage use	✓	✓ (and provide prophylactics and personal protective equipment)	✓ (WHS guidelines)				✓ (and provide condoms)		✓
* Under sections of the <i>Sex Work Act 1994</i> (Vic) and the <i>Public Health and Wellbeing Act 2008</i> (Vic) that are repealed by <i>Sex Work Decriminalisation Act 2022</i> (Vic)									

11.17 In Queensland, the Prostitution Act defines ‘prophylactic’: see box 2. Where sex work involves sexual intercourse or oral sex, it is an offence for:³⁸⁰

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

Box 2: What is a prophylactic?

- Under the Prostitution Act, a prophylactic is ‘a condom or another device that adequately prevents the transmission of a sexually transmissible disease’
- A ‘prophylactic’ could be a male condom, female condom or dental dam

11.18 At a brothel, sex workers must be given adequate personal protective equipment (PPE), including condoms, dental dams, disposable gloves and lubricant, at no cost.³⁸¹ The licensee or an approved manager must take reasonable steps to make sure a person does not offer, provide, request or obtain sex work involving sexual intercourse, oral sex or hand relief without a prophylactic. PPE must be used for those activities.³⁸² Licensees and managers must not

³⁸⁰ *Prostitution Act 1999* (Qld) s 77A(1)–(4), (7) (definitions of ‘interfere with’ and ‘prophylactic’); *Macquarie Dictionary* (online at 5 November 2021) ‘prophylactic’.

³⁸¹ PLA, *Brothel Licence Conditions* (v 14, 13 May 2019) [4.3]. See also Explanatory Notes, Prostitution Bill 1999 (Qld) 22.

³⁸² *Prostitution Act 1999* (Qld) s 77A(5)–(6); PLA, *Brothel Licence Conditions* (v 14, 13 May 2019) [4.1]–[4.2]. The use of a prophylactic for hand relief is included only in brothel licence conditions.

discourage prophylactic use.³⁸³ A sign must be prominently displayed in the brothel's reception area, stating 'only safe sexual activities are practised on these premises'.³⁸⁴

- 11.19 These offences about prophylactics apply to all sex workers (including those working privately, in brothels or illegally) and their clients to 'minimis[e] the risks of sexual diseases being transmitted'.³⁸⁵ The offences were intended to 'empower' sex workers to refuse requests from clients for services without a condom on the basis that they would both be committing an offence.³⁸⁶
- 11.20 Some other places have similar laws about the use of prophylactics for sex work and, where relevant, the obligations of brothel and escort agency operators.³⁸⁷ In Victoria, the *Sex Work Decriminalisation Act 2022* (Vic) repeals these offences.³⁸⁸
- 11.21 There are no such laws in New South Wales or the Northern Territory. However, under work health and safety guidelines in New South Wales, owners and managers of commercial sex services premises must supply PPE such as condoms, dams, gloves and lubricant at no cost. Condoms should be used for insertive sexual services to protect against infections.³⁸⁹
- 11.22 Research about the sex work industry shows that condoms are used during sex work. However, the studies or surveys that inform this research are about different parts of the sex work industry and have different limitations.
- 11.23 A 2017 survey of sex workers in licensed brothels in Queensland by Respect Inc found that 95% of workers were given adequate condoms and lubricant. However, 36% of workers said that brothels 'had excessive safer sex strategies', referring to the requirements to use dental dams and gloves. Only a very small number of workers said they would perform sexual services without protection. Respect Inc stated that the mandatory use of gloves and dams does not decrease the risk of transmitting illness, and might cause burnout in sex workers because they have to negotiate these requirements with their clients. They also stated there is 'little evidence' that these laws protect public health, and support sex workers having autonomy around safer sex.³⁹⁰
- 11.24 In New South Wales, the use of condoms with clients is 'high'. In 2009, condoms were used in 'over 99% of all commercial vaginal sex encounters' in Sydney. More recently, 97% of female sex workers and 80% of male sex workers have reported using condoms at least 90% of the

³⁸³ *Prostitution Act 1999* (Qld) s 77A(5)–(6).

³⁸⁴ *Prostitution Regulation 2014* (Qld) s 23(c). See also Explanatory Notes, *Prostitution Bill 1999* (Qld) 22.

³⁸⁵ *Police Powers and Responsibilities and Other Legislation Amendment Act 2003* (Qld) s 39; Explanatory Notes, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2003* (Qld) 18–19; Queensland, *Parliamentary Debates*, 28 October 2003, 4362 (T McGrady, Minister for Police and Corrective Services and Minister Assisting the Premier on the Carpentaria Minerals Province).

³⁸⁶ Queensland, *Parliamentary Debates*, 2 December 1999, 5852 (TA Barton, Minister for Police and Corrective Services). See also Sex Industry Regulation Bill 2005 (Tas) cl 28(3); Tasmania, *Parliamentary Debates*, House of Assembly, 9 June 2005, 98–9 (Jackson, Minister for Justice and Industrial Relations).

³⁸⁷ *Sex Work Act 1992* (ACT) ss 26A, 27; *Sex Industry Offences Act 2005* (Tas) s 12(1)–(2); *Prostitution Act 2000* (WA) s 8; *Prostitution Reform Act 2003* (NZ) ss 8(1)(a)–(b), 9(1); Work Health and Safety (Sexual Services Industry) Code of Practice 2011 (ACT) 17, 22; Occupational Safety & Health Service (NZ), *A Guide to Occupational Health and Safety in the New Zealand Sex Industry* (2004) [6].

³⁸⁸ See [11.9]–[11.10] above.

³⁸⁹ SafeWork NSW, 'Health and safety guidelines for sex services premises in NSW' [1], [6]–[7] <<https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw>>.

³⁹⁰ Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 15, 17, 39–40. One participant said they would perform sex without a condom, three would perform services without a dam and five without a glove: 17.

time. In New Zealand, over three quarters of sex workers surveyed after decriminalisation 'always used a condom for vaginal, anal and oral sex'.³⁹¹

- 11.25 In each of those places, there were lower rates of condom use for oral sex. In New Zealand, street-based sex workers were more likely to perform unprotected sexual services, although the differences between the sectors was described as 'small'.³⁹² Research has also found that male sex workers have lower rates of consistent condom use.³⁹³
- 11.26 In Western Australia, rates of condom use have decreased for vaginal, anal and oral sex. The reasons for this include '[i]ncreasing client demand, fear of losing clients and the ability to charge more for condomless sex'. One study recommended increased education for sex workers and clients. It also recommended decriminalisation of sex work 'to facilitate peer outreach, reduce stigma and allow brothels to more openly promote condom use'.³⁹⁴
- 11.27 Rates of diagnosis with sexually transmitted infections and HIV in sex workers are usually found to be consistent with, or lower than, the general population. This is attributed to high rates of condom use, as well as other factors such as peer education. Other research has found that sex workers and clients have higher rates of infection, or that some infection rates have increased over time. However, it has been noted that some increases are consistent with rates of diagnosis in the general population, and that not all infections will be linked to sex work. Sex workers also get tested more frequently, which could lead to higher rates of diagnosis.³⁹⁵
- 11.28 Research has shown there are higher risks of infection for sex workers and clients when sex work is regulated or criminalised, or when a sex worker is working illegally. These circumstances might limit a sex worker's ability to screen clients or insist on safe sex practices, such as condom use. They might also be connected with clients making requests for unprotected sex.³⁹⁶ Some research about places where sex work is decriminalised or regulated (for example, through licensing or registration) has found that they 'mostly displayed consistent and improved condom usage', compared to places where sex work is wholly or partially criminalised.³⁹⁷
- 11.29 Peer education about safe sex is considered a necessary and important part of maintaining condom use. It is sometimes preferred to criminal offences as a way of ensuring prophylactic

391 Donovan et al (2012), above n 378, 23–4; Callander et al (2016), above n 378, 7; 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) 123, 135.

392 Abel, Fitzgerald & Brunton, above n 391, 123.

393 See, eg, EM Turek et al, 'HIV, sexually transmitted infections and sexual practices among male sex workers attending a sexual health clinic in Melbourne, Australia: 2010 to 2018' (2021) 48(2) *Sexually Transmitted Diseases* 103; Abel, Fitzgerald & Brunton, above n 391, 123, 135. See also PLA, *In Touch Newsletter* (Issue No 159, February 2021).

394 L Selvey et al, *Law and Sex Worker Health (LASH) Study: A Summary Report to the Western Australian Department of Health* (2017) 27, 52; L Selvey et al, 'Declining condom use among sex workers in Western Australia' (2018) 6 *Frontiers in Public Health* (online) 1, 9, citing, in particular, Shannon et al, above n 365.

395 See, eg, EM Turek et al, 'Are genital examinations necessary for STI screening for female sex workers? An audit of decriminalized and regulated sex workers in Melbourne, Australia' (2020) 15(4) *PLoS ONE* (online); E Chow et al, 'Testing commercial sex workers for sexually transmitted infections in Victoria, Australia: an evaluation of the impact of reducing the frequency of testing' (2014) 9(7) *PLoS ONE* (online); C Seib et al, 'Sexually transmissible infections among sex workers and their clients: variation in prevalence between sectors of the industry' (2009) 6 *Sexual Health* 45; Callander et al (2016), above n 378, 13. Some studies have limits, such as a limited sample of people.

396 See, eg, Seib et al, above n 395; Sakha, Greytak & Haynes, above n 377, 8–10; Turek et al (2021), above n 393; Select Committee on the Regulation of Brothels, Legislative Assembly of New South Wales, *Inquiry into the Regulation of Brothels* (Report, November 2015) 71–4, 79–80, 85–7; K Shannon et al, 'Structural and environmental barriers to condom use negotiation with clients among female sex workers: implications for HIV-prevention strategies and policy' (2009) 99(4) *American Journal of Public Health* 659.

397 See, eg, J McCann, G Crawford & J Hallett, 'Sex worker health outcomes in high-income countries of varied regulatory environments: a systematic review' (2021) 18 (3956) *International Journal of Environmental Research and Public Health* (online) 7, and the articles cited there.

use, and it is thought that education works best in a decriminalised sex work industry.³⁹⁸ However, in New Zealand (where sex work is decriminalised but prophylactics must be used) some clients commonly request services without a condom and most sex workers respond that it is illegal.³⁹⁹

Sexually transmitted infections

11.30 In Australia and New Zealand, the laws about sexually transmissible infections vary. Some are specific to the sex work industry, while others are part of the public health and criminal laws: see table 2.

Table 2: Sexually transmissible infections

	Qld	ACT	NSW	NT	SA	Tas	Vic*	WA	NZ
Sex worker must not work while infectious	✓ (in brothel)						✓		
Business operator must not permit sex worker to work while infectious	✓						✓		
Take reasonable steps to minimise risk of infection			✓ (WHS guidelines)	✓ (adopt and promote safe sex)		✓	✓		✓
Business operator must give health information	✓ (brothel licence condition)	✓ (WHS code of practice)	✓ (WHS guidelines)				✓		✓
Public health: Offence to transmit disease	✓	✓	✓ (and sexually transmitted conditions)			✓		✓	✓
Criminal: Offence to transmit disease	✓		✓	✓	✓		✓ (not repealed)	✓	✓
* Under sections of the <i>Sex Work Act 1994</i> (Vic) and the <i>Public Health and Wellbeing Act 2008</i> (Vic) that are repealed by <i>Sex Work Decriminalisation Act 2022</i> (Vic)									

³⁹⁸ See, eg, Turek et al (2021), above n 393, 107; Callander et al (2016), above n 378, 13; Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 4, 30, 57–8; Queensland Health, *Queensland Sexual Health Strategy 2016–2021* (2016) 31; Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 35–6; Select Committee on the Regulation of Brothels, Legislative Assembly of New South Wales, *Inquiry into the Regulation of Brothels* (Report, November 2015) 79–80.

³⁹⁹ Abel, Fitzgerald & Brunton, above n 391, 124, 128.

Transmission of diseases or infections

- 11.31 Under the Prostitution Act, a 'sexually transmissible disease' is any disease or condition listed in that Act or prescribed under a regulation. The list includes serious and less serious diseases or conditions: see box 3.⁴⁰⁰
- 11.32 It is an offence for a sex worker to work at a licensed brothel knowing they are infectious with a sexually transmissible disease. It is also an offence for a brothel licensee or an approved manager to allow a sex worker to work at a brothel knowing that he or she is infectious.⁴⁰¹ Knowledge will be presumed unless it is proved that, at the time of the offence:⁴⁰²
- for a sex worker, they had been medically examined or tested for sexually transmissible diseases every three months and believed on reasonable grounds that they were not infectious; or
 - for a licensee or manager, they believed on reasonable grounds that the sex worker had been medically examined or tested for sexually transmissible diseases every three months and was not infectious.
- 11.33 A sex worker who has a sexually transmissible disease may work during times when the disease is not infectious and cannot be passed on.⁴⁰³
- 11.34 In Victoria, the *Sex Work Decriminalisation Act 2022* (Vic) repeals similar offences.⁴⁰⁴ It was observed that criminal laws about transmitting disease already apply to the sex work industry.⁴⁰⁵
- 11.35 The Australian Capital Territory repealed offences of this kind in 2018 because they were discriminatory.⁴⁰⁶ Instead, the *Sex Work Act 1992* (ACT) refers to public health laws to make it clear that the standards for the general community apply equally to sex workers.⁴⁰⁷ Similar offences were proposed but not passed in Western Australia, including because existing

Box 3: Under the Prostitution Act, what is a 'sexually transmissible disease'?

- Chancroid
- Donovanosis
- Genital chlamydia
- Genital herpes (visible lesions)
- Genital warts (visible lesions)
- Gonorrhoea
- Hepatitis A (acute)
- Hepatitis B (acute or chronic until not infectious)
- Hepatitis C (acute)
- Human immunodeficiency virus (HIV)
- Lymphogranuloma venereum
- Pubic lice
- Scabies
- Syphilis
- Trichomoniasis

⁴⁰⁰ *Prostitution Act 1999* (Qld) sch 4 (definition of 'sexually transmissible disease'); *Prostitution Regulation 2014* (Qld) s 26.

⁴⁰¹ *Prostitution Act 1999* (Qld) ss 89(1), 90(1). It does not matter if the sex worker works under a contract of service or a contract for service: ss 89(2), 90(2).

⁴⁰² *Prostitution Act 1999* (Qld) ss 89(3), 90(3); *Prostitution Regulation 2014* (Qld) s 14.

⁴⁰³ Queensland, *Parliamentary Debates*, 2 December 1999, 5851 (TA Barton, Minister for Police and Corrective Services).

⁴⁰⁴ *Sex Work Decriminalisation Act 2022* (Vic) s 9, repealing *Sex Work Act 1994* (Vic) ss 19–20. These offences were similar to the ones in Queensland. For individual sex workers, the offence was broader because it applied to every sex worker no matter where they were working.

⁴⁰⁵ 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). See also Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 68.

⁴⁰⁶ *Prostitution Amendment Act 2018* (ACT) s 23; Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 7 June 2018, 2168 (Rattenbury, Minister for Climate Change and Sustainability, Minister for Justice, Consumer Affairs and Road Safety, Minister for Corrections and Minister for Mental Health). See also Standing Committee on Justice and Community Safety, Legislative Assembly of the Australian Capital Territory, *Inquiry into the Prostitution Act 1992* (Report, February 2012) 71–95.

⁴⁰⁷ *Sex Work Act 1992* (ACT) s 27 note, referring to *Public Health Regulation 2000* (ACT) s 21(1).

criminal and public health laws were enough. However, requirements to use prophylactics were added to reduce the risks of unprotected sexual intercourse.⁴⁰⁸

- 11.36 Sex worker advocates are opposed to laws that make it a crime to work as a sex worker while infectious, or laws that require a person to tell someone else they have a disease or condition (this is included in some public health laws: see [11.38] below). They say these laws affect sex workers more than other people, which increases stigma and discrimination. Some sex workers might choose not to have sexual health testing or tell others about their condition. This might mean that sex workers do not get the health services they need, and there is increased transmission of illnesses.⁴⁰⁹
- 11.37 Some researchers say that decriminalisation could decrease rates of HIV and sexually transmitted infections.⁴¹⁰ In 2014, they reviewed studies about HIV and female sex workers from around the world. They looked at different changes that might reduce HIV infections in that group and concluded that decriminalising sex work would have the most significant effect. Decriminalisation could improve issues about violence, police harassment and unsafe working conditions, and could prevent 33 to 46% of the predicted HIV infections in female sex workers and their clients.⁴¹¹

Public health laws

- 11.38 In Queensland, public health laws set out a process for managing 'notifiable conditions'. These include serious and less serious sexually transmissible diseases, but not all the sexually transmissible diseases listed in the Prostitution Act. Some notifiable conditions are also identified as 'controlled notifiable conditions' where:⁴¹²
- 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.
- 11.39 Some controlled notifiable conditions are sexually transmissible: see box 4.
- 11.40 Queensland Health uses a 'staged process' for dealing with a person who has a serious medical condition and is a risk to the community. This begins with giving the person counselling, education and support, then escalates to intensive management and supervision.⁴¹³ If this is unsuccessful, and if a person has or may have a controlled notifiable condition and is an immediate risk to public health, then a court order may be made. This order can detain a person for diagnosis or

Box 4: Controlled notifiable conditions that can be sexually transmitted

- Hepatitis C
- HIV
- Syphilis

⁴⁰⁸ Prostitution Bill 1999 (WA) cll 8, 9, 17; Western Australia, *Parliamentary Debates*, Legislative Council, 9 December 1999, 4041–49, 4059, 4081.

⁴⁰⁹ See, eg, Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 66–8; 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, 203–5; E Jeffreys, K Matthews & A Thomas, 'HIV criminalisation and sex work in Australia' (2010) 18(35) *Reproductive Health Matters* 129, 134–5; Daniel, above n 377. See also McCann, Crawford & Hallett, above n 397, 9.

⁴¹⁰ See, eg, Sakha, Greytak & Haynes, above n 377, 8–9.

⁴¹¹ Shannon et al, above n 365.

⁴¹² *Public Health Act 2005* (Qld) ss 63–64; *Public Health Regulation 2018* (Qld) s 31, sch 1.

⁴¹³ Explanatory Notes, *Public Health Bill 2005* (Qld) 12. See also, eg, Queensland Health, *Guideline for the Management of People Living with HIV who Place Others at Risk of HIV* (No QH-GDL-367:2014, 6 November 2014).

treatment, or require a person to have counselling, avoid doing some things or visiting some places, or agree to supervision and monitoring.⁴¹⁴

- 11.41 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.⁴¹⁵ This offence (or criminal offences) may be used when the staged process is not enough to manage particular circumstances.⁴¹⁶
- 11.42 In some other jurisdictions, it is an offence to fail to take reasonable precautions against transmitting or spreading a disease or condition, knowingly or recklessly put another person at risk of contracting a disease or condition, or cause a public health risk. It is sometimes a defence for another person to voluntarily accept the risk of contracting the disease or condition.⁴¹⁷
- 11.43 In Australian jurisdictions where sex work has been decriminalised, public health laws include offences about sexually transmissible diseases or make some other kind of provision for sex work.
- 11.44 In New South Wales:
- A person who knows they have a sexually transmissible disease or condition listed in the *Public Health Act 2010* (NSW) must take reasonable precautions against spreading it. What is 'reasonable' is objective, and includes safe sex practices such as condom use.⁴¹⁸ This requirement is also recognised in work health and safety guidelines.⁴¹⁹
 - It is an offence for the owner or occupier of a building or a place to let another person have sexual intercourse at that building or place for the purpose of carrying out sex work, if the owner or occupier knows the other person is breaching the requirement to take reasonable precautions.⁴²⁰
 - A doctor who suspects a patient has a sexually transmitted infection must give the patient information about the public health implications; their diagnosis, prognosis and treatment options; and precautions to minimise the risk of infecting others (such as using condoms and having treatment).⁴²¹
- 11.45 In the Northern Territory, sex work is a 'declared activity' under public health laws, meaning it is considered an activity that carries a risk of harm to public health.⁴²² The Minister for Health

⁴¹⁴ *Public Health Act 2005* (Qld) ch 3 pt 5 divs 1–4; Explanatory Notes, Public Health Bill 2005 (Qld) 12, 14. See also *Public Health Act 2005* (Qld) ch 3 pt 4 (orders by the chief executive).

⁴¹⁵ *Public Health Act 2005* (Qld) s 143. A person does not commit an offence by refusing or failing to be vaccinated against a condition.

⁴¹⁶ Explanatory Notes, Public Health Bill 2005 (Qld) 12.

⁴¹⁷ See *Sex Work Act 1992* (ACT) s 27 note; *Public Health Regulation 2000* (ACT) s 21(1); *Public Health Act 2010* (NSW) s 52; *Public Health Act 1997* (Tas) s 51; *Public Health Act 2016* (WA) ss 36–38; *Health Act 1956* (NZ) s 80; D Callander, 'Punishing one person for STI transmission weakens public health efforts', *The Conversation* (online, 21 September 2017) <<https://theconversation.com/punishing-one-person-for-sti-transmission-weakens-public-health-efforts-84210>>.

⁴¹⁸ *Public Health Act 2010* (NSW) s 79(1)–(2); New South Wales, *Parliamentary Debates*, Legislative Assembly, 24 November 2010, 28130 (A McDonald, Parliamentary Secretary); 10 August 2017, 529 (B Hazzard, Minister for Health and Minister for Medical Research). It suggested that this is more effective to protect public health than a requirement to disclose an infection, and that other offences apply if transmission is associated with malicious or criminal intent.

⁴¹⁹ See SafeWork NSW, 'Health and safety guidelines for sex services premises in NSW' [6] <<https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw>>.

⁴²⁰ *Public Health Act 2010* (NSW) s 79(2).

⁴²¹ *Public Health Act 2010* (NSW) s 78; *Public Health Regulation 2012* (NSW) s 40. There are also some specific precautions to minimise risk for people who have a HIV infection.

⁴²² *Sex Industry Act 2019* (NT) s 6(1); *Public and Environmental Health Act 2011* (NT) ss 4 (definitions of 'declared activity', 'public health' and 'public health risk'), 9(1).

may impose standards for declared activities.⁴²³ Standards have not been issued for sex work, but it was suggested there could be guidelines or standards about ‘health and hygiene for sex services businesses’. It was suggested these would help give sex workers control to perform services in a way that protects their health and safety.⁴²⁴

- 11.46 In Victoria, as part of the decriminalisation reforms, the Department of Health is developing ‘a new public health and infection control framework for the sex work industry’.⁴²⁵

Criminal laws

- 11.47 In Queensland, it is an offence to intentionally transmit a ‘serious disease’ to another person. This is 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).⁴²⁶
- 11.48 In most other jurisdictions, it is an offence to intentionally or recklessly infect another person with a disease. Sometimes it is also an offence to put a person in danger of infection, or to do or not do something that causes a person to be infected.⁴²⁷ In jurisdictions that do not have a specific offence about the transmission of a disease it is an offence to intentionally or recklessly cause ‘grievous bodily harm’ to a person,⁴²⁸ and that might sometimes include infecting a person with a disease.⁴²⁹
- 11.49 Criminal offences must be proved ‘beyond reasonable doubt’. Whether it is possible to prove some parts of an offence, such as a person’s intention or that a person was ‘in danger’, will depend on the facts of a case. For those reasons, criminal offences might not always apply when one person infects another with a disease.⁴³⁰

Obligations to take reasonable steps

- 11.50 In Tasmania and New Zealand, sex workers and clients must take ‘all reasonable steps’ to minimise the risk of acquiring or transmitting a sexually transmissible infection. In New Zealand, this also applies to business operators.⁴³¹ A similar requirement existed in Victoria but is being repealed as part of the first stage of decriminalisation.⁴³²
- 11.51 In the Northern Territory, sex workers and business operators ‘must take all reasonable steps to adopt and promote safe sex practices’.⁴³³ It was explained that this ‘does not override other

⁴²³ *Public and Environmental Health Act 2011* (NT) s 102.

⁴²⁴ Explanatory Statement, Sex Industry Bill 2019 (NT) 2; Northern Territory, *Parliamentary Debates*, , Legislative Assembly, 18 September 2019, 7026 (McCarthy, Acting Attorney-General and Minister for Justice).

⁴²⁵ Explanatory Memorandum, Sex Work Decriminalisation Bill 2021 (Vic) 23.

⁴²⁶ Criminal Code (Qld) ss 1 (definition of ‘serious disease’), 317. It does not matter if treatment is or could have been available.

⁴²⁷ *Crimes Act 1900* (NSW) ss 4 (definition of ‘grievous bodily harm’), 33, 35; Criminal Code (NT) ss 1 (definitions of ‘harm’ and ‘serious harm’), 1A, 174B, 174D, 174E, 177, 186; *Criminal Law Consolidation Act 1935* (SA) ss 21 (definitions of ‘harm’ and ‘serious harm’), 23, 24, 29; *Crimes Act 1958* (Vic) ss 15 (definitions of ‘injury’ and ‘physical injury’), 18; Criminal Code (WA) ss 1(1) (definition of ‘grievous bodily harm’), (4), 294(1)(a), (h), 297, 304, 317, 317A; *Crimes Act 1961* (NZ) s 201.

⁴²⁸ *Crimes Act 1900* (ACT) ss 4, 19, 20, sch (definition of ‘grievous bodily harm’); Criminal Code (Tas) ss 1 (definition of ‘grievous bodily harm’), 170, 172.

⁴²⁹ See, eg, *R v Dica* [2004] 3 All ER 593.

⁴³⁰ See further *R v Reid* [2007] 1 Qd R 64; *Zaburoni v The Queen* (2016) 256 CLR 482; Lexis Advance, *Carter’s Criminal Law of Queensland* [s 317] (April 2018).

⁴³¹ *Sex Industry Offences Act 2005* (Tas) s 12(3); *Prostitution Reform Act 2003* (NZ) ss 8(1)(e), 9(3).

⁴³² *Sex Work Decriminalisation Act 2022* (Vic) s 8, repealing *Sex Work Act 1994* (Vic) s 18A(2).

⁴³³ *Sex Industry Act 2019* (NT) s 8. There is no penalty attached to this requirement.

laws providing for occupational health and safety, however directs industry to specifically consider safe sex practices in conjunction with those other laws'.⁴³⁴

Obligations to give information

11.52 In Queensland brothels, written information about sexually transmissible diseases must be available to all staff and sex workers, and in client waiting areas. Sex workers must be given an induction before working at a brothel, which must include detailed information about sexual health: see box 5.⁴³⁵ A brothel licensee must make sure:⁴³⁶

- each room in the brothel has enough lighting for sex workers to check for 'clearly visible signs' of a sexually transmissible disease; and
- a sign is prominently displayed in the brothel's reception area stating 'only safe sexual activities are practised on these premises'.

Box 5: Information given to sex workers

- Sexual health and health testing
- Sexually transmissible diseases
- Safe sex
- Prophylactic use
- Checking clients for signs of infection

11.53 In New Zealand, there are similar requirements for business operators (such as brothel and escort agency proprietors) to give sex workers and clients information about safe sex and sexually transmissible infections. The information must also be displayed in brothels.⁴³⁷

11.54 Similar provisions are included in the *Public Health and Wellbeing Act 2008* (Vic). In Victoria, a brothel or escort agency proprietor must not require a sex worker to perform services if the worker suspects a client has an infection, or the client refuses to use a condom.⁴³⁸ As explained above, these requirements will be repealed in Victoria as part of the second stage of decriminalisation.⁴³⁹

11.55 In New South Wales and the Australian Capital Territory, under work health and safety guidelines, sex workers must be given information and training about:⁴⁴⁰

- maintaining their own sexual health, for example, information about sexually transmitted infections and blood borne viruses, how to react to 'exposure incidents' and sexual health testing;
- safer sex practices and the correct use of prophylactics; and
- visual health checks on clients, to protect against some infections.

Sexual health testing

11.56 Some jurisdictions require sex workers to have sexual health tests or limit what can be done with information about health testing: see table 3.

⁴³⁴ Explanatory Statement, Sex Industry Bill 2019 (NT) 3.

⁴³⁵ PLA, *Brothel Licence Conditions* (v 14, 13 May 2019) [4.6], [6.1]–[6.2]; PLA, *Operational Standards Manual* [2.5] (and at [5.1]).

⁴³⁶ *Prostitution Regulation 2014* (Qld) s 23(b)–(c).

⁴³⁷ *Prostitution Reform Act 2003* (NZ) s 8(1)(b), (c).

⁴³⁸ *Public Health and Wellbeing Act 2008* (Vic) ss 160, 162.

⁴³⁹ See [11.9]–[11.10] above.

⁴⁴⁰ SafeWork NSW, 'Health and safety guidelines for sex services premises in NSW' [6], [14] <<https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw>>; Work Health and Safety (Sexual Services Industry) Code of Practice 2011 (ACT) 16.

Table 3: Sexual health testing

	Qld	ACT	NSW	NT	SA	Tas	Vic*	WA	NZ
Sexual health testing is mandatory	✓ (in brothel)		✓ (can request under WHS guidelines)				✓		✓ (can request under OHS guidelines)
Testing may not be used to induce belief a sex worker is not infectious	✓ (in brothel)	✓		✓			✓		✓
* Under sections of the <i>Sex Work Act 1994</i> (Vic) and the <i>Public Health and Wellbeing Act 2008</i> (Vic) that are repealed by <i>Sex Work Decriminalisation Act 2022</i> (Vic)									

Mandatory sexual health testing

- 11.57 In Queensland, sexual health testing is mandatory for any sex worker who works in a brothel. A licensee or an approved manager must have proof from a health practitioner (for example, a 'sexual health check certificate of attendance') that a sex worker has been medically examined or tested for sexually transmissible diseases. The licensee or an approved manager must sight the original certificate and an endorsed copy must be kept for one year.⁴⁴¹
- 11.58 The requirement for sexual health testing is not stated in the Prostitution Act. It is a result of offences in that Act prohibiting sex workers from working, or being permitted to work, in a brothel while infective with a sexually transmissible disease.⁴⁴²
- 11.59 In Victoria, similar offences applying to all sex workers are included in the *Sex Work Act 1994* (Vic). This made sexual health testing mandatory for all sex workers. However, the *Sex Work Decriminalisation Act 2022* (Vic) repeals these offences, removing the requirement for sexual health testing.⁴⁴³ It was explained that mandatory testing 'reinforces the harmful "vectors of disease" stereotype, frames sex workers as a risk to the wider public, fuels sex work stigma and is used to justify discriminatory practices'. It was stated that removing mandatory testing would promote the rights to privacy and reputation, and protection from torture and cruel, inhuman or degrading treatment.⁴⁴⁴
- 11.60 Sexual health testing is not mandatory in other places. However, in New South Wales and New Zealand, work health and safety guidelines state that owners or operators, or employers, can request that a sex worker provide a 'certificate of attendance' from a doctor who carries out a

⁴⁴¹ PLA, *Brothel Licence Conditions* (v 14, 13 May 2019) [4.4]–[4.5]. The licensee and manager should have procedures for assessing a certificate.

⁴⁴² See *Prostitution Act 1999* (Qld) ss 89, 90.

⁴⁴³ *Sex Work Decriminalisation Act 2022* (Vic) ss 8–9, repealing *Sex Work Act 1994* (Vic) ss 18A, 19–20. See also Explanatory Memorandum, *Sex Work Decriminalisation Bill 2021* (Vic) 4.

⁴⁴⁴ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3877 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating).

sexual health assessment, stating when the sex worker attended but not any results, diagnoses or medical information.⁴⁴⁵

11.61 Sex worker advocates and researchers are opposed to mandatory testing for the following reasons:⁴⁴⁶

- It may infringe human rights. Sex workers have rights to bodily integrity and to not be subjected to medical treatment without their consent, as well as the right to have information about their health or health care kept private.
- It does not take into account that sex workers have high rates of prophylactic use and low rates of sexually transmitted illnesses and HIV, and that most will voluntarily undertake sexual health testing based on their individual needs.
- It encourages stigma and prejudice, which means that sex workers might sometimes hide their profession or avoid having sexual health testing. Similar requirements are not put on other at risk professions, such as health workers.
- Peer-based and community education about safer sex and sexual health testing is effective, and there is 'no evidence' that mandatory testing leads to better outcomes. Educational programs can more easily reach sex workers if sex work is decriminalised.
- It is an expensive burden on the public health system and funding could be redirected to other successful strategies, such as peer education.
- It can give clients a 'false sense of security', which can lead to more requests for unprotected sexual services.

11.62 The National Sexually Transmissible Infections Strategy 2018–2022 says that testing for sex workers (and other priority populations) should be '[r]egular, comprehensive and voluntary ... on the basis of risk'. It recognises that outreach services and peer-based education are important for these groups.⁴⁴⁷ Queensland's action plans for HIV and sexually transmitted infections aim to increase voluntary testing.⁴⁴⁸

11.63 The Queensland Sexual Health Strategy 'aims to support healthy and safe sexual experiences and optimal reproductive health' and to offer services that respond to the needs of all Queenslanders. To achieve improved sexual health outcomes, some population groups require a targeted approach. Sex work is a 'risk occupation' to exposure to infectious disease because of 'high numbers of sexual encounters'. Some sex workers are more vulnerable than others and 'require specific targeted interventions for health promotion and prevention'. '[P]revention initiatives [including information about safe sex and providing free condoms] driven by peer education, support networks and outreach' have resulted in a low rate of HIV and sexually transmissible infections in sex workers. To sustain high rates of condom use and low rates of

445 SafeWork NSW, 'Health and safety guidelines for sex services premises in NSW' [6] <<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) [5].

446 See, eg, Jeffreys, Fawkes & Stardust, above n 409; Daniel, above n 377; Decker et al, above n 377, 191, 193–96; Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 35, 56, 64–6; Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 36–7; Sex Workers' Voices Victoria Project, *Decriminalising Sex Work in Victoria* (2020) 8–9. See generally Queensland Government, *Review of Prostitution Laws in Queensland* (Discussion Paper, November 1998) 33–4; CJC Prostitution Report (1991) 232–3; and ch 6.

447 Department of Health (Australia), *Fourth National Sexually Transmissible Infections Strategy 2018–2022* (2018) 27–8. See also Department of Health (Australia), *Eighth National HIV Strategy 2018–2022* (2018) 26.

448 See generally Queensland Health, 'Queensland Sexual Health Strategy' (28 June 2021) <<https://www.health.qld.gov.au/public-health/topics/sexual-health/strategy>>.

sexually transmissible infections, 'continued sex worker-specific health promotion initiatives' are required.⁴⁴⁹

- 11.64 Respect Inc is a peer-based sex worker organisation funded by Queensland Health. One of its roles is to '[d]eliver health promotion activities for sex workers aimed at the prevention of STI & HIV transmission (peer education, outreach, community development)'.⁴⁵⁰
- 11.65 Low rates of infection are reported in Sydney and Perth, where sexual health testing is voluntary.⁴⁵¹ In New Zealand, after decriminalisation, most sex workers have regular sexual health checks.⁴⁵² Research has shown that decriminalisation is connected with better access to health, education and support services for sex workers and increased use of those services.⁴⁵³
- 11.66 Queensland Health guidelines about testing asymptomatic people include guidelines for sex workers. For most conditions, testing should be based on whether the condition is commonly found in the community, the person's symptoms, and any contact they have had with an infected person. How often a person is tested should be based on their sexual history and condom use, or can be at their request.⁴⁵⁴

Use of information about sexual health testing

- 11.67 In Queensland, it is an offence for a sex worker at a licensed brothel to use the fact that they have had a sexual health test, or the results of any examination or test, to induce a client to believe they are not infectious with a sexually transmissible disease. A brothel licensee or an approved manager must take reasonable steps to prevent those facts or results from being used in that way.⁴⁵⁵ Those steps might include outlining expectations during an induction or in a code of practice and, if a person attempts to use information in a prohibited way, taking immediate action and reminding other staff that the behaviour is unacceptable.⁴⁵⁶
- 11.68 The PLA has explained that a negative test result does not guarantee that a person does not have a sexually transmissible disease. Also, a person might contract a disease in the time between two sexual health tests.⁴⁵⁷

⁴⁴⁹ Queensland Health, *Queensland Sexual Health Strategy 2016–2021* (2016) 5, 26, 31.

⁴⁵⁰ Respect Inc, *Strategic Plan 2018 to 2021*, 4. See generally Respect Inc, 'Respect Inc—who are we?' (5 March 2021) <<https://respectqld.org.au/what-is-respect-inc/>>.

⁴⁵¹ See, eg, DP Wilson et al, 'Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia' (2010) 86 *Sexually Transmitted Infections* 117, 122; Select Committee on the Regulation of Brothels, Legislative Assembly of New South Wales, *Inquiry into the Regulation of Brothels* (Report, November 2015) 83–4.

⁴⁵² See, eg, G Abel, 'Sex workers' utilisation of health services in a decriminalised environment' (2014) 127(1390) *New Zealand Medical Journal* 30.

⁴⁵³ See, eg, 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; Sakha, Greytak & Haynes, above n 377, 10; McCann, Crawford Hallett, above n 397, 9.

⁴⁵⁴ Queensland Health, 'STI/BBV testing tool for asymptomatic people' (December 2020) 2 <https://www.health.qld.gov.au/_data/assets/pdf_file/0025/726523/sti-bbv-testing-tool.pdf>. See also Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine, 'Australian STI management guidelines for use in primary care: Sex workers' (Consultation draft, December 2021) <<https://sti.guidelines.org.au/populations-and-situations/sex-workers/>>.

⁴⁵⁵ *Prostitution Act 1999* (Qld) ss 89(4), 90(4). It does not matter if the sex worker is infectious with a sexually transmissible disease: ss 89(5), 90(5).

⁴⁵⁶ Explanatory Notes, *Prostitution Bill 1999* (Qld) 21.

⁴⁵⁷ PLA, *In Touch Newsletter* (Issue No 34, March 2009). See also Queensland Government, *Review of Prostitution Laws in Queensland* (Discussion Paper, November 1998) 33; CJC Prostitution Report (1991) 232–3; CMC Prostitution Report (2004) 59.

- 11.69 Similar offences exist in the Australian Capital Territory and New Zealand.⁴⁵⁸ In Victoria, a similar offence in the *Public Health and Wellbeing Act 2008* (Vic) will be repealed as part of the second stage of decriminalisation.⁴⁵⁹
- 11.70 The Northern Territory also has a similar offence, which existed before decriminalisation. That offence applies to any person—sex workers, business operators and clients—because any medical examination shows a person’s health only at that time and ‘cannot be held out as a “clean bill of health”’. However, this does not prevent a sex worker from giving information about a medical examination to their employer as part of a ‘health, safety and wellbeing regime’.⁴⁶⁰
- 11.71 In New South Wales and New Zealand, work health and safety guidelines state that a certificate of attendance for sexual health testing must not be displayed or shown to any clients.⁴⁶¹

CONSULTATION QUESTIONS

- Q23** Should laws or other measures be taken to promote public health and protect the health of sex workers and their clients about:
- (a) the use of prophylactics;
 - (b) managing the risk of sexually transmitted infections;
 - (c) sexual health testing; or
 - (d) another matter?
- Q24** If yes to Q23, what should those measures be and why?

⁴⁵⁸ *Sex Work Act 1992* (ACT) s 26; *Prostitution Reform Act 2003* (NZ) ss 8(1)(d), 9(2).

⁴⁵⁹ *Sex Work Decriminalisation Act 2022* (Vic) s 73, repealing *Public Health and Wellbeing Act 2008* (Vic) pt 8 div 10 (including s 161). See also Explanatory Memorandum, *Sex Work Decriminalisation Bill 2021* (Vic) 23.

⁴⁶⁰ *Sex Industry Act 2019* (NT) s 16; Explanatory Statement, *Sex Industry Bill 2019* (NT) 5–6.

⁴⁶¹ SafeWork NSW, ‘Health and safety guidelines for sex services premises in NSW’ [6] <<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) [5].

Planning laws and sex work

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Introduction

- 12.1 Our terms of reference ask us to consider appropriate safeguards to maintain public amenity, including the location of sex work premises. They also ask us to consider the potential impacts of the recommended new framework for the sex work industry and government.⁴⁶²
- 12.2 Planning laws manage how new development happens across cities, towns, and regional areas. Planning powers in Australia rest with the state and territory governments. The responsibility for many aspects of planning and development is delegated to local governments. Each state and territory has a different planning system.
- 12.3 In Queensland a range of tools under the *Planning Act 2016* support different parts of the planning system. They include:
- State government laws, such as the *Planning Regulation 2017*, which set out the rules and framework;
 - State planning instruments, such as the State Planning Policy, which set out the state planning interests across Queensland; and
 - local planning instruments that guide growth and development in each local government area. These are established by local governments and are approved by the State.
- 12.4 Decriminalising sex work will have implications for the planning and development of sex work businesses, particularly how development applications for sex work businesses are assessed. This chapter looks at residential premises used for sex work (which we refer to here as ‘home-based’ sex work businesses), and other premises used for sex work (which we refer to here as ‘commercial sex work businesses’).
- 12.5 In developing the framework for a decriminalised sex work industry, we need to consider how the development of premises used for sex work, both for a home-based business and a commercial sex work business, should be regulated.
- 12.6 We will need to consider and balance many different factors, including:
- the recognition of sex work as legitimate work—one of the aims of decriminalising sex work is to bring sex work businesses into the mainstream of business regulation and to reduce unfair discrimination against sex workers;
 - the rights and interests of sex workers—limiting the places where sex work business premises can operate may impact on sex workers’ safety, freedom of movement and enjoyment of property rights;
 - the interests of local communities—some people may have concerns about the impact of sex work businesses on local amenity, nearby places of worship or schools, community safety and quiet enjoyment of their homes; and
 - the impact on government and industry—the decriminalisation framework should minimise the resource burden on government and the industry.

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Terms of reference para 1(f), (k). See also para (l).

- 12.7 The planning and development requirements for sex work businesses must be practical so that businesses have viable pathways to meet them. If planning requirements are too burdensome, existing and new sex work businesses may not be able to meet them.
- 12.8 In this chapter, we consider:
- the ability to prohibit sex work businesses in certain locations or local government areas;
 - the level of discretion local governments should have in setting the assessment benchmarks for development of sex work businesses (both home-based and commercial) in their local government area;
 - requirements for commercial sex work businesses, including separation distances; and
 - requirements for home-based sex work businesses.

Development in Queensland

- 12.9 Under the *Planning Act 2016*, Queensland has three categories of development: prohibited, accepted and assessable: see box 1⁴⁶³ and table 1.⁴⁶⁴ All development falls within one of these categories. The nature of the development and its location will determine which category applies, and the level of scrutiny required to assess any development application.

Box 1: 'What is development'?

- Development includes a material change of use of premises
- A 'material change of use' means starting a new use, reestablishing a use that has been abandoned, or increasing the intensity or scale of an existing use

- 12.10 'Prohibited development' is not allowed under any circumstances. Only the State can decide what is prohibited and this is set out in the *Planning Regulation 2017*.⁴⁶⁵

- 12.11 'Accepted development' does not require a development approval, so no development application is required. However, in some instances the development must meet certain requirements to be considered accepted development. Local governments will set their own requirements for accepted development, which are contained in their planning scheme: see box 2.⁴⁶⁶

Box 2: What is a planning scheme?

- A planning scheme regulates what development can occur and how
- It includes documents such as local government planning schemes and temporary local planning instruments
- It will usually include a map, which zones every piece of land, and a code that outlines what can be done in a particular zone

- 12.12 'Assessable development' requires a development approval. An applicant can obtain a development approval by submitting a development application, which is usually assessed by the relevant local government.⁴⁶⁷

⁴⁶³ *Planning Act 2016* (Qld) sch 2 (definitions of 'development' and 'material change of use').

⁴⁶⁴ See *Planning Act 2016* (Qld) ch 3; Queensland Government, 'Categories of Development' (2021) <https://planning.statedevelopment.qld.gov.au/data/assets/pdf_file/0034/55699/categories-of-assessment.pdf>.

⁴⁶⁵ *Planning Act 2016* (Qld) s 44(2), (5); *Planning Regulation 2017* (Qld) sch 10.

⁴⁶⁶ *Planning Act 2016* (Qld) ss 4(c), 6, sch 2 (definition of 'planning scheme').

⁴⁶⁷ *Planning Act 2016* (Qld) s 44(3).

- 12.13 If approved, a development approval attaches to the land and transfers to subsequent landholders.⁴⁶⁸
- 12.14 Carrying out prohibited development, as well as failing to follow a development approval or failing to obtain a development approval before carrying out assessable development, are offences under the *Planning Act 2016*. The maximum penalty for each of these offences is 4500 penalty units (\$620 325).⁴⁶⁹

Table 1: Categories of development for deciding development applications in Queensland

	Prohibited development	Accepted development	Code assessable development	Impact assessable development
Description	Not allowed under any circumstances	Development a local government does not seek to regulate due to its low impact	Development that is consistent with the intent of the zone	Development that is contrary to the intent of the zone and public input is warranted
Development application required	Not applicable	No	Yes	Yes
Assessment	Not applicable	None But the development must meet certain thresholds or requirements	Yes, carried out against the relevant assessment benchmarks	Yes, carried out against the relevant assessment benchmarks, and any other relevant matter
Public notification	Not applicable	No	No	Yes, advertisement on site, notices given to all adjoining landowners and publication in a local newspaper
Community input	Not applicable	None	None	Public can make submissions
Decision	Not applicable	Not applicable	Development must be approved if the assessment benchmarks are complied with	Development may be approved, refused, or approved in part

⁴⁶⁸ *Planning Act 2016* (Qld) s 73.

⁴⁶⁹ *Planning Act 2016* (Qld) ss 162–64.

Development assessment in Queensland

12.15 'Assessable development' can be code or impact assessable.

12.16 'Code assessable development' fits within the requirements of the planning scheme: see boxes 2 and 3⁴⁷⁰. However, it must be assessed, usually by the local government. It does not require public advertisement and must be approved if the development meets the requirements contained in the planning scheme's code: see table 1.

12.17 'Impact assessable development' is development that is not contemplated in the planning scheme. It requires the opportunity for the public to provide input. Impact assessable applications are carried out against any relevant matter, including planning need, and the public can make submissions. A person who has made a 'properly made' submission has the right to appeal a decision to refuse or approve the development in the Planning and Environment Court. Judges on that Court step into the position of the original decision-maker and review the decision on its merits.

Box 3: What is a zone?

- A zone allocates a piece of land for a particular use
- For example, there are zones for residential, commercial and industrial development
- The *Planning Regulation 2017* sets out the zones that local governments can use in Queensland

Current planning requirements for sex work businesses in Queensland

12.18 This section discusses the current planning requirements for licensed brothels and home-based sex work businesses.

Licensed brothels

12.19 A 'brothel' is defined in the Prostitution Act as premises made available for prostitution by two or more prostitutes at the premises.⁴⁷¹

12.20 Under the existing regulatory framework, brothels are prohibited development in Queensland if they are within:⁴⁷²

- 200 metres of a residential area (measured by closest distance on foot or by vehicle);
- 200 metres of land on which there is a residential building or public building; or
- 100 metres of land on which there is a residential building or public building (measured in a straight line).

12.21 Development applications for brothels are code assessable if they are in an industrial area or on strategic port land. This means a development approval is required but there is no requirement for public notice or community input. Development that meets the relevant assessment benchmarks must be approved: see table 1.

12.22 All other applications are impact assessable, which requires public advertisement (both on a sign onsite and in a local newspaper). When assessing the development application, the

⁴⁷⁰ Queensland Government, 'Queensland zoning information' (20 December 2021) <<https://planning.statedevelopment.qld.gov.au/planning-framework/plan-making/local-planning/zoning-information>>.

⁴⁷¹ *Prostitution Act 1999* (Qld) sch 4 (definition of 'brothel').

⁴⁷² *Planning Act 2016* (Qld) s 44(2); *Planning Regulation 2017* (Qld) sch 10 pt 2 div 1.

assessment manager (usually the local government) considers submissions from third parties, including community members: see table 1.⁴⁷³

12.23 Most licensed brothels in Queensland are located in metropolitan South East Queensland and in industrial areas.

12.24 Under the Prostitution Act, a brothel must have a brothel licence issued by the PLA to operate lawfully. Even if a development approval has been given, the PLA may refuse a licence. In deciding whether to grant a licence, the PLA can consider whether other licences or adult entertainment permits have been granted in the locality and the extent to which the character of the locality may be affected if the application were granted.⁴⁷⁴

12.25 Part 4 of the Prostitution Act allows applicants who have submitted a development application for a brothel to apply to the Queensland Civil and Administrative Tribunal (QCAT) for review of any decision by the relevant assessment manager (usually the local government). This is an alternative to review by the Planning and Environment Court of development decisions about brothels.

Home-based sex work businesses

12.26 Where a sex work business is carried out from a place of residence (a home-based sex work business), the business use must be secondary to the residence and must not include employees of an off-site business who work from home.

12.27 Currently, home-based sex work businesses do not have any specific planning requirements that are different to other home-based businesses. However, offences in the Prostitution Act and the Criminal Code impose limits on sex work that do not apply to other home-based businesses. For example, sex workers operating from home must work alone and cannot employ staff.

12.28 The *Planning Regulation 2017* states that home-based businesses cannot be assessable development. This means that a development approval is not required if the applicant can meet the requirements in the relevant planning scheme.

12.29 Queensland local governments can set requirements for home-based businesses, including hours of operation, gross floor area limits, and employment limits (for both total employees of the business and employees that do not live at the dwelling). These are contained in the local government planning scheme and vary between local government areas.

Planning requirements in jurisdictions that have decriminalised sex work

12.30 The sex work industry is decriminalised in New South Wales, the Northern Territory and New Zealand. Victoria is in the process of decriminalising sex work.

12.31 In each of those jurisdictions, decriminalisation has involved changes to the planning and development requirements for sex work businesses. The requirements vary under the different planning frameworks. The key differences involve the level of discretion provided to local governments and whether the framework differentiates between home-based and commercial sex work, and between home-based sex work and other types of home-based businesses.

⁴⁷³ *Planning Regulation 2017* (Qld) sch 10 pt 2 div 3.

⁴⁷⁴ *Prostitution Act 1999* (Qld) s 15(3).

12.32 A summary of the differences is outlined in table 2.⁴⁷⁵ The Victorian planning requirements are expected to start by December 2023.

Table 2: Comparison of planning regulation in jurisdictions that have decriminalised sex work

	NSW	Vic	NT	NZ
Planning permit requirements for home-based sex work	Depends on location For local government areas that allow home-based sex work (local governments can prohibit it), a planning permit can be required	Under the proposed new system, no planning permit is required Development will be subject to the same requirements as any other home-based business	Does not require a planning permit in any residential zone, industrial zone, and certain commercial or business zones if certain requirements are met Development is subject to slightly different requirements from other home-based businesses and has a separate land use category	Depends on location In Auckland and Wellington, home-based business does not require a planning permit
Planning permit for sex work at a commercial business	Depends on location 'Sex services premises' are widely prohibited in residential and commercial zones across the state For local government areas that allow 'sex services premises' in residential zones, generally they cannot be co-located with a dwelling, unless the 'sex services premises' has a separate street entrance	Under the proposed new system, commercial sex work businesses will be able to operate in commercial and residential zones without a planning permit	Depends on location Prohibited in all residential zones, and certain commercial or business zones Does not require a planning permit in industrial zones if certain requirements are met. Requires planning permit in Central Business and Commercial zones	Depends on location. In some zones, a resource consent is not required, such as the mixed-use zone in Auckland

Planning requirements for sex work businesses in Queensland under a decriminalised framework

Commercial sex work businesses

12.33 This chapter refers to a commercial sex work business as any sex work business that is not a home-based business. Under a decriminalised framework, a commercial sex work business

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See New South Wales Government, *Standard Instrument—Principal Local Environmental Plan (2006 EPI 155a)*; Department of Justice and Community Safety (Vic), *Decriminalising Sex Work* (Discussion Paper, 2021) 5–7; Northern Territory Government, *Northern Territory Planning Scheme 2020*; and see, for example Auckland Council, *Auckland Unitary Plan* table J1.3.1.

could include various types of sex work businesses such as an escort agency or a massage parlour that offers sex work services.

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

- 12.34 The *Planning Regulation 2017* allows local governments to prohibit the development of a brothel in a town of less than 25 000 residents, if the Minister agrees: see box 4.⁴⁷⁶
- 12.35 This ability to prohibit development applications for brothels was relocated to the planning legislation in 2009, after previously being in the Prostitution Act.⁴⁷⁷
- 12.36 Historically, over 200 shires and towns banned the development of brothels under the Prostitution Act, including Atherton, Beerwah, Dalby, and Stanthorpe.⁴⁷⁸
- 12.37 When the Prostitution Bill 1999 was introduced into parliament, the Minister for Police said that planning restrictions responded to ‘the concerns of the community during an extensive public consultation phase’.⁴⁷⁹ The Minister said that giving small local governments the ability to prohibit brothels ‘will ensure that local governments control the approval process’.⁴⁸⁰
- 12.38 Outright prohibitions are contrary to the aims of decriminalisation in recognising sex work as legitimate work.⁴⁸¹ Prohibitions could have the effect of sex work businesses operating without a development approval: see [12.10] and [12.14] above.

Box 4: Are there any local governments that have prohibited brothels across their jurisdiction?

- Yes. The Minister agreed in 2012 that brothel development is prohibited in the Central Highlands local government area. This includes the town of Emerald

CONSULTATION QUESTION

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

Assessment of development applications for commercial sex work businesses

- 12.39 The existing Queensland framework for the development of a brothel controls the size and location of licensed brothels. In practice, it limits the development of brothels to industrial areas: see [12.20] to [12.21] above. Some sex worker organisations say that limiting brothels to

⁴⁷⁶ *Planning Regulation 2017* (Qld) sch 10 pt 2 div 1 s 2(1)(c).

⁴⁷⁷ With the introduction of the *Sustainable Planning Act 2009* (Qld), s 64 of the *Prostitution Act 1999* (Qld) (as passed) was incorporated into the *Sustainable Planning Act 2009* (Qld): see Explanatory Notes, Sustainable Planning Bill 2009 (Qld) 385. The *Sustainable Planning Act 2009* (Qld) was later repealed by the *Planning Act 2016* (Qld): see *Planning Act 2016* (Qld) s 321 (as passed).

⁴⁷⁸ R Easten & J Fear, ‘The Prostitution Amendment Bill 2001 (Qld)’ (Research Brief No 2001/29, Queensland Parliamentary Library, 2001).

⁴⁷⁹ Queensland, *Parliamentary Debates*, 10 November 1999, 4828 (TA Barton, Minister for Police and Corrective Services).

⁴⁸⁰ Ibid.

⁴⁸¹ See, eg, Better Regulation Office (NSW), *Regulation of Brothels in NSW* (Issues Paper, 2012) 15.

such areas (which are often distant from public transport, with limited foot traffic) maintains the social stigma towards sex work and creates unsafe working environments.⁴⁸²

- 12.40 The framework also restricts the number of rooms that can be used for sex work,⁴⁸³ and the number of sex workers and staff employed at a brothel.⁴⁸⁴
- 12.41 It is not uncommon for local governments to include size restrictions for other uses in their planning schemes: see box 5.⁴⁸⁵
- 12.42 Unlike most development applications, the assessment benchmarks for development applications for brothels are not contained in local government planning schemes. Instead, they are contained in the Prostitution Regulation. This ensures that the assessment benchmarks are consistent across the State.
- 12.43 Other jurisdictions that have decriminalised sex work broadly define a commercial sex work business as any sex work business that is not a home-based business.⁴⁸⁶
- 12.44 In New South Wales, the requirements for commercial sex work businesses vary between local governments. Following decriminalisation in 1995, local governments were advised that an outright prohibition throughout a local government area was not supported. However, they could limit brothels to industrial zones. This was revised in 2009, with the government requiring local governments to allow brothels 'somewhere in their local government area'.⁴⁸⁷
- 12.45 Some sex worker organisations say that excessive planning requirements that limit brothels to particular zones can make it difficult for brothels to operate lawfully. This could also have the result of effectively banning commercial sex work businesses.⁴⁸⁸ Researchers claim that the view of the relevant local government determines whether sex work is seen as a policing or a planning matter in New South Wales, despite sex work being decriminalised.⁴⁸⁹
- 12.46 Neither New South Wales nor the Northern Territory have set requirements about the size, floor area or number of sex workers or staff of commercial sex work businesses. However, some local governments require these things to be considered when deciding to grant an approval.⁴⁹⁰
- 12.47 Maintaining requirements for a development approval for sex work businesses that do not apply to other commercial businesses (such as limits based on location or size, or sex worker and staff employment limits) may not meet the aims of decriminalisation. Such limits may be viewed as an unfair rule that affects the viability of businesses. It also may not provide a pathway for existing (but currently unlawful) businesses to meet the planning requirements. On

Box 5: Do any other uses restrict employment numbers or rooms?

- Yes. For example, in Brisbane, rooming accommodation is only available for up to five occupants in the low density residential zone
- Many local government planning schemes have gross floor area limits for various commercial uses

⁴⁸² Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 113, 120.

⁴⁸³ Brothels with more than five rooms are prohibited under *Planning Regulation 2017* (Qld) sch 10 div 3 pt 2 s 2(1)(a).

⁴⁸⁴ See *Prostitution Act 1999* (Qld) s 78(2), sch 3.

⁴⁸⁵ Brisbane City Council, *Brisbane City Plan 2014* (v 23, 10 December 2021) 9.3.19.

⁴⁸⁶ See eg, Northern Territory Government, *Northern Territory Planning Scheme 2020* sch 2.

⁴⁸⁷ 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) 35–6.

⁴⁸⁸ Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 117.

⁴⁸⁹ P Crofts, P Hubbard & J Prior, 'Policing, planning and sex: governing bodies, spatially' (2013) 46(1) *Australian and New Zealand Journal of Criminology* 51, 57.

⁴⁹⁰ See, eg, City of Sydney, *Sydney Local Environmental Plan 2012* s 7.21.

the other hand, some restrictions may be considered desirable by members of the community, particularly to limit impacts on public amenity. This includes requirements for separation distances.

CONSULTATION QUESTIONS

- Q26** Should commercial sex work businesses have specific planning requirements, different to other commercial businesses?
- Q27** Should the State set the categories of assessment for commercial sex work businesses, or should local governments have discretion to set the categories of assessment in their local government area?
- Q28** Should local governments have discretion to limit commercial sex work businesses to certain zones (for example, mixed use or industrial zones)? Why or why not?
- Q29** Should there be size limits on commercial sex work businesses, such as gross floor area, number of rooms or number of sex workers?
- Q30** If yes to Q29, should there be different requirements for sex work businesses in different zones?

Review of decisions about development applications for commercial sex work businesses

- 12.48 Generally, applicants can apply to the Planning and Environment Court for review of decisions relating to a development application. Part 4 division 3 of the Prostitution Act gives an alternative review mechanism for decisions about code and impact assessable development applications for brothels. This does not apply to other types of development applications.
- 12.49 These provisions allow applicants who have submitted a development application for a brothel to apply to QCAT for review of any decision by the relevant assessment manager (usually the local government). Part 4 of the Prostitution Act prevails over any inconsistency with the *Planning Act 2016*.⁴⁹¹
- 12.50 If an applicant applies to QCAT for review of a development decision for a brothel, the Planning and Environment Court is prevented from hearing or deciding any appeal.⁴⁹² We are not aware of any reviews by QCAT under these provisions.

CONSULTATION QUESTION

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

⁴⁹¹ *Prostitution Act 1999* (Qld) s 63A.

⁴⁹² *Prostitution Act 1999* (Qld) ss 64A(4), 64B(4).

Should separation distances apply to commercial sex work businesses?

- 12.51 Brothels must be certain distances from residential areas and public buildings in Queensland: see [12.20] above. Some sex worker organisations say that separation distances are not justified and limit sex workers' freedom of movement and choice of work.⁴⁹³ It has been noted that most sex work premises operate discreetly and have minimal impacts on local amenity. Like other land uses, any impacts could be controlled by other measures (for example, controls on design, signage, and general appearance).⁴⁹⁴
- 12.52 Local governments can include separation distances for other uses in their planning schemes: see box 6.⁴⁹⁵
- 12.53 Some jurisdictions that have decriminalised sex work specify separation distances from 'sensitive' land uses, such as schools, childcare centres, kindergartens, hospitals, and buildings used for residential or cultural activities. This includes the Northern Territory⁴⁹⁶ and some local governments in New South Wales and New Zealand. Separation distances 'appear to be founded on an assumption that there is an inherent conflict' between a sex work business and these other land uses.⁴⁹⁷
- 12.54 The principle of locating brothels in areas 'least likely to offend' has been largely adopted by New South Wales local governments to guide planning decisions.⁴⁹⁸
- 12.55 The Victorian Government proposes that, following decriminalisation, no separation distances will be required. It says that such requirements are 'discriminatory, reinforce harmful social stigma towards sex workers and are a barrier to sex work taking place in safe locations'.⁴⁹⁹
- 12.56 Even if local governments maintain or introduce separation distances, sex work businesses that do not meet them could, in practice, still apply for a development approval to allow them to operate in that location (assuming that the ability to prohibit development no longer applied to sex work businesses): see table 1 and [12.17] above.

Box 6: Do any other uses require separation distances?

- Yes. For example, adult stores in Brisbane must be located greater than 200 metres from an existing childcare centre, place of worship or educational establishment that caters for children in order to be accepted development

⁴⁹³ Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 116.

⁴⁹⁴ Sex Services Premises Planning Advisory Panel (NSW), *Sex Services Premises: Planning Guidelines* (NSW Department of Planning, 2004) 35. See also ch 13.

⁴⁹⁵ Brisbane City Council, *Brisbane City Plan 2014* (v 23, 10 December 2021) Table 9.3.3.3.A.

⁴⁹⁶ There is one planning scheme that covers the whole of the Northern Territory, except for Jabiru. The Development Consent Authority, appointed by the relevant Northern Territory Minister, is an independent authority that makes decisions about development applications.

⁴⁹⁷ Sex Services Premises Planning Advisory Panel (NSW), *Sex Services Premises: Planning Guidelines* (NSW Department of Planning, 2004) 35. See also Department of the Attorney-General and Justice (NT), 'Outcome of NT sex industry reforms' (10 March 2020) <https://justice.nt.gov.au/data/assets/pdf_file/0004/799627/outcome-of-nt-sex-industry-reforms.pdf>.

⁴⁹⁸ See *Martyn v Hornsby Shire Council* [2004] NSWLEC 614 [18].

⁴⁹⁹ Department of Justice and Community Safety (Vic), *Decriminalising Sex Work* (Discussion Paper, 2012) 5.

CONSULTATION QUESTIONS

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

Q33 If yes to Q32:

- (a) What land uses (for example, schools, childcare centres, places of worship) should require a separation distance?
- (b) Should local governments have discretion to decide what separation distances (if any) apply in their local government area?

Home-based sex work businesses

12.57 In Queensland, home-based sex work businesses currently operate subject to the same planning requirements as other home-based businesses. However, as explained at [12.27] above, the Criminal Code makes it an offence for sex workers to work together or hire staff, except in limited circumstances.

12.58 Under the existing Queensland planning framework, home-based businesses must be secondary to the primary use of the dwelling. This means that employees of the home-based business must live at the dwelling. Many local government planning schemes state that only one external person (that is, a person who does not live at the dwelling) is allowed to work at a home-based business. For example, Brisbane City Council allow no more than one external employee to work at a home-based business. In addition, there are requirements about hours of operation (generally only regular business hours are acceptable): see, for example, box 7.⁵⁰⁰

Box 7: What are the hours of operation of home-based businesses?

- Depends on the local government
- In Brisbane, the home-based business code sets an acceptable outcome of hours of operation from 8:00am to 6:00pm on Monday through Saturday, except for office activities

12.59 If the business is of such a scale that it is no longer 'secondary to the primary use of the dwelling', then a development may not be considered a 'home-based business'. In this case, an assessable development application may be required: see table 1 and [12.15] above.

12.60 New South Wales and the Northern Territory separate the planning requirements for home-based sex work businesses from other home-based businesses. For example, under the Northern Territory Planning Scheme, all home-based businesses must be 'compatible with the character of the local area and...not unreasonably impact upon the amenity of adjoining or nearby residential uses'.⁵⁰¹ However, limitations apply to home-based sex work businesses that do not apply to other home-based businesses, including:

- the dwelling can be used by up to two sex workers and both must reside at the dwelling;
- no signs, other devices or markings indicate that premises is used for sex work;

⁵⁰⁰ Brisbane City Council, *City Plan 2014* (v 23, 10 December 2021) 9.3.10.

⁵⁰¹ Northern Territory Government, *Northern Territory Planning Scheme 2020* pts 5.4.10.1, 5.4.10.2.

- the dwelling does not abut and is not directly opposite a pre-school, school, childcare service or place of worship.⁵⁰²

12.61 In contrast, under the same planning scheme other home-based businesses may employ one external employee who does not live at the dwelling, and there are no limitations about the content of signage, or location of the business.⁵⁰³

CONSULTATION QUESTIONS

- Q34** Should there be consistent planning codes across Queensland for home-based sex work businesses, or should local governments have discretion to set the categories of assessment in their local government area?
- Q35** Should home-based sex work businesses have the same planning requirements as other home-based businesses (and therefore be able to operate without a development approval if the requirements for accepted development are met)?
- Q36** Should separation distances apply to home-based sex work businesses? If yes, what land uses should require a separation distance (for example, schools, childcare centres, places of worship)?
- Q37** Is there a need to limit the number of sex workers, rooms or floor area used for sex work in a home-based business? If yes, is there an appropriate number of workers in a home-based sex work business (who live in the dwelling or otherwise)?

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Ibid.

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Ibid.

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.

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

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

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?

Public solicitation

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Introduction

- 14.1 In Queensland and some other jurisdictions, it is an offence to publicly solicit for sex work. These offences can apply to any person, but they are most likely to affect street-based sex workers and their clients.
- 14.2 This chapter looks at how public solicitation is regulated in Australia and New Zealand. It also considers other laws used to regulate street-based sex work (such as police move on powers and public nuisance offences).
- 14.3 Jurisdictions that have decriminalised sex work have either removed the offence or restricted the circumstances in which it applies. The issues raised by street-based sex work and public solicitation are complex and involve balancing the rights of street-based sex workers and community interests. This includes concerns about public amenity and safety.

Public solicitation laws

- 14.4 In Queensland and some other jurisdictions, there are laws that prohibit public solicitation.

Queensland

- 14.5 Under the Prostitution Act, it is an offence for a person to ‘publicly solicit’ for sex work. This offence applies broadly, including to sex workers and their clients. It prohibits a person from offering or accepting an offer for sex work in a public place and loitering in a public place for that purpose: see figure 1.⁵⁸⁸

Figure 1: Public solicitation in Queensland

Who can commit the offence?	What is solicitation?	Where is solicitation prohibited?	What is the maximum penalty?
<ul style="list-style-type: none"> • Males • Females • Sex workers • Clients of sex workers • People acting for sex workers • People acting for clients of sex workers 	<ul style="list-style-type: none"> • A person ‘solicits’ if they offer to provide sex work • A person also ‘solicits’ if they accept an offer to provide sex work • Soliciting will not be an offence if it happens in a licensed brothel and cannot be seen by anyone outside the brothel • Loitering for the purpose of soliciting for sex work is prohibited; ‘loitering’ is not defined 	<ul style="list-style-type: none"> • It is an offence to solicit a person: <ul style="list-style-type: none"> • who is in a public place; or • at a place that can be seen or heard by someone who is in a public place • It is an offence to loiter in a public place or a place that can be seen from a public place • ‘Public place’ is not defined 	<ul style="list-style-type: none"> • First offence: A fine of 15 penalty units (\$2067) • Second offence: A fine of 25 penalty units (\$3446) • Third or subsequent offence: A fine of 30 penalty units (\$4135) or six months imprisonment

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Prostitution Act 1999 (Qld) s 73. A person does not commit this offence if the soliciting happens in a licensed brothel: s 74. There is also an exception to soliciting offences where the soliciting is done by a police officer under an authority given under chs 10 or 11 of the *Police Powers and Responsibilities Act 2000* (Qld): s 75. See also ch 2.

- 14.6 In Queensland, the number of reported offences of public solicitation has substantially declined over the years. There were approximately 800 offences reported in 2002–03, approximately 60 in 2009–10 and three in 2016–17. In most years, public solicitation has remained one of the more commonly reported prostitution-related offences. Since 2010, the majority of reported offences have occurred in Brisbane.⁵⁸⁹
- 14.7 At various times, changes to Queensland's approach to public solicitation have been considered. Broadly, options have included continuing to criminalise or partly criminalising public solicitation, relying on other laws to regulate behaviour and implementing initiatives to support street-based sex workers: see box 1.⁵⁹⁰
- 14.8 Evaluating these approaches involved balancing the interests of sex workers and the community, which have both undergone changes. On the one hand, continuing to prohibit solicitation was seen to be consistent with community attitudes and protective of street-based sex workers, who may be vulnerable and disadvantaged. There were also concerns that changing the law would lead to an increase in street-based sex work. On the other hand, it was thought that decriminalising solicitation could ensure positive health outcomes for sex workers and the public, and improve access to services for sex workers.
- 14.9 Changes to public solicitation laws were not recommended by government bodies, but a need for '[n]ew policies and strategies to support the health and human rights of street-based sex workers' was identified in a 2003 study commissioned by the PLA.⁵⁹¹

Box 1: Alternatives to the offence of public solicitation

- Options considered in Queensland for removing or changing the offence of public solicitation have included:
- removing the offence and relying on other laws, such as public nuisance laws and police powers, to regulate behaviour
- permitting solicitation in some places, for example, in designated zones or in any place that is not near a dwelling, place of worship, hospital or school
- keeping the offence but implementing other initiatives, such as safe places to take clients and health and support services for street-based sex workers

Other jurisdictions

- 14.10 Public solicitation for sex work is also an offence in most other Australian jurisdictions. Usually, these offences apply to any person—including sex workers and clients—and prohibit soliciting or loitering in a public place.⁵⁹² Some jurisdictions define a 'public place' as a place that is open to the public (or some of the public) all or part of the time, for free or with payment. For

⁵⁸⁹ CMC Prostitution Report (2011) 14; CMC Prostitution Report (2004) 78–9; Queensland Police Service, *Annual Statistical Review 2016–17* (2017) 14, 153. See also annual statistics for other years at: Queensland Police Service, 'Annual Statistics' (14 October 2021) <<https://www.police.qld.gov.au/maps-and-statistics/annual-statistics>>.

⁵⁹⁰ See generally CJC Prostitution Report (1991) 61, 66, 146–54, 218–19; Queensland Government, *Review of Prostitution Laws in Queensland* (Discussion Paper, November 1998) 23–5, 121–22; C Woodward et al, *Selling Sex in Queensland 2003: A Study of Prostitution in Queensland* (PLA, June 2004) 55; CMC Prostitution Report (2004) xiii, 24–5, 45–6, 85–8, Rec 10. See also, eg, in other jurisdictions, Brothels Task Force (NSW), *Report of the Brothels Task Force* (Final Report, October 2001) 23–5; 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) 20–1, 30–2, Rec 6; Attorney-General's Street Prostitution Advisory Group (Vic), *Final Report* (2002); M Neave, *Inquiry into Prostitution* (Final Report, October 1985) 48–51, 177, 254–62.

⁵⁹¹ Woodward above n 590, 12.

⁵⁹² *Sex Work Act 1992* (ACT) s 19; *Summary Offences Act 1988* (NSW) ss 19, 19A; *Summary Offences Act 1953* (SA) s 25; *Sex Industry Offences Act 2005* (Tas) s 8; *Sex Work Decriminalisation Act 2022* (Vic) ss 6, 28, repealing *Sex Work Act 1994* (Vic) ss 12–14 and inserting new div 3A in the *Summary Offences Act 1966* (Vic); *Prostitution Act 2000* (WA) ss 5, 6.

example, a public place could be a park, church, school, road, footpath, railway station or public vehicle.⁵⁹³

- 14.11 In jurisdictions that have decriminalised sex work, different approaches have been taken to public solicitation.
- 14.12 In the Northern Territory and New Zealand, public solicitation is no longer an offence. In New Zealand, research found that decriminalisation did not increase the number of street-based sex workers. It also found that decriminalisation has improved the safety of street-based sex workers. They no longer need to hide their work, meaning they can work in safer areas and more easily screen, negotiate with or refuse clients. It has also improved relationships between street-based sex workers and police, leading to increased information sharing and police being seen as ‘protectors’. Some sex workers are now more confident in reporting matters to the police.⁵⁹⁴
- 14.13 In New South Wales and Victoria, solicitation (and, in Victoria, loitering) is usually prohibited only in or near some places, such as schools, churches and hospitals. Also, the Victorian offence is limited to solicitation happening at particular times of the day: see figure 2.⁵⁹⁵

Figure 2: Public solicitation in New South Wales and Victoria

Where is public solicitation prohibited in New South Wales?	Where and when is public solicitation prohibited in Victoria?
<ul style="list-style-type: none"> • In a school, church or hospital • In a road or road related area (such as a footpath) that is near or within view of a dwelling, school, church or hospital • In, near or within view of a dwelling, school, church, hospital or public place in a way that harasses or distresses the other person 	<ul style="list-style-type: none"> • In a public place that is at or near a school, education and care service or children’s service between 6am and 7pm on any day • In a public place that is at or near a place of worship, at any time on a prescribed day and between 6am and 7pm on any other day • A ‘prescribed day’ would be a holy day or a day of religious significance, if it is relevant to a particular place of worship

- 14.14 In New South Wales, this law was made after a period of time when solicitation was not an offence. Sex work was seen as a commercial activity and the aim was to redirect it from residential areas into commercial and industrial areas.⁵⁹⁶

⁵⁹³ *Summary Offences Act 1988* (NSW) s 3; *Summary Offences Act 1953* (SA) s 4; *Summary Offences Act 1966* (Vic) s 3; *Prostitution Act 2000* (WA) s 3.

⁵⁹⁴ See, eg, Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 119, 121–22; GM 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, 527–29; 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) 35, 37, 45; 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.

⁵⁹⁵ *Summary Offences Act 1988* (NSW) ss 3(1) (definition of ‘road related area’), 19, 19A; *Road Transport Act 2013* (NSW) s 4 (definition of ‘road related area’); *Sex Work Decriminalisation Act 2022* (Vic) ss 6, 28, repealing *Sex Work Act 1994* (Vic) ss 12–14 and inserting *Summary Offences Act 1966* (Vic) div 3A. The new Victorian offence will commence on 10 May 2022: s 2(1)–(2). In New South Wales, it is also an offence to use or allow the use of premises held out as being available for massage, sauna or steam baths, physical exercise or photography (or similar) for the purpose of sex work or soliciting for sex work: *Summary Offences Act 1988* (NSW) ss 16, 17.

⁵⁹⁶ New South Wales, *Parliamentary Debates*, Legislative Assembly, 29 March 1983, 5244 (Walker, Minister for Youth and Community Services, Minister for Aboriginal Affairs, and Minister for Housing).

- 14.15 Unlike in Victoria and some other jurisdictions, loitering is not included in the New South Wales law. There were concerns that it could be abused, impact on a person's right to lawfully use a street and create opportunities for corruption in the form of 'deals' between sex workers and police. Criminalising loitering was also considered to be an attempt to outlaw street-based sex work altogether, which would force sex workers 'underground' and impact on public health.⁵⁹⁷
- 14.16 The aim of the street-based sex work offences in Victoria is to 'limit where and when street-based sex work can occur'. There is no intention to prevent sex workers or clients going to these places for other reasons (for example, to take a child to school or attend a religious service) or prevent people travelling to another public or private place where they intend to solicit, loiter or participate in sex work.⁵⁹⁸
- 14.17 In Victoria, it was explained that decriminalisation is generally consistent with the right to privacy and reputation, allowing people to exercise autonomy and make their own choices about sex work. It was observed that the proposed laws about public solicitation might limit a sex workers' right to freedom of movement, by limiting their ability to work where they choose. However, it was reasoned that this is 'proportionate, reasonable and necessary' to promote the protection of children and the right to practice religion, and that including prescribed hours and days means that the right is limited in the least restrictive way.⁵⁹⁹
- 14.18 Some sex workers say that prohibiting solicitation near churches and schools will force them to work in unsafe and isolated industrial areas. They believe this approach continues to criminalise part of the sex work industry, which 'undermines decriminalisation' and means that concerns about policing sex work will still exist.⁶⁰⁰ In parliament, there was some support for removing this provision altogether because of the vulnerability of street-based sex workers (and it was suggested that regulation is unnecessary as most solicitation now happens online).⁶⁰¹
- 14.19 Scarlet Alliance advocates for street-based sex work to be decriminalised. They state that laws attempting to control this work are ineffective and consider New Zealand an example of successful decriminalisation. They also say that laws reduce the safety of street-based sex workers because those workers:⁶⁰²
- are forced to operate in unsafe or unfamiliar locations;
 - have to prioritise avoiding arrest over using safety strategies, such as screening and negotiating with clients;
 - may be separated from their peer networks, and outreach services may not be able to find them; and
 - do not report crimes to police as they fear being arrested.

⁵⁹⁷ New South Wales, *Parliamentary Debates*, Legislative Assembly, 31 May 1988, 80–7 (Dowd, Attorney-General).

⁵⁹⁸ Explanatory Memorandum, Sex Work Decriminalisation Bill 2021 (Vic) 7–8.

⁵⁹⁹ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3875–76 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating).

⁶⁰⁰ See, eg, R Tuffield, 'Sex workers slam new laws making it illegal to work near schools and churches as "unsafe"', *The Australian* (online, 27 October 2021).

⁶⁰¹ Victoria, *Parliamentary Debates*, Legislative Assembly, 27 October 2021, 4298 (Read).

⁶⁰² Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 19–20, 31–2; Scarlet Alliance, *Full Decriminalisation of Sex Work in Australia*, Briefing Paper <https://scarletalliance.org.au/library/briefing_paper_full_decrim>.

Other laws used to regulate street-based sex work

14.20 Other laws are used to regulate street-based sex work, including police move on powers and public nuisance laws.

Move on powers

14.21 In Queensland, a police officer can sometimes direct a person to leave or ‘move on’ from a public place or a prescribed place, and to not return for up to 24 hours. This direction can be given in various circumstances, including when a person’s behaviour causes an officer to reasonably suspect the person is soliciting for sex work: see figure 3.⁶⁰³

Figure 3: Police move on directions in Queensland

Where can a police officer direct a person to move on?	When can a police officer direct a person to move on?
<ul style="list-style-type: none"> • In a public place: <ul style="list-style-type: none"> • a place that the public can access as of right, for free or with payment, even if access is sometimes restricted • part of a place that an occupier lets the public enter, while the place is open to the public • a place that another law says is a public place • In a prescribed place: <ul style="list-style-type: none"> • for example, a shop, child care centre, school, railway station, mall or licensed premises • if the person is soliciting for sex work, a ‘prescribed place’ does not include part of a licensed brothel that cannot be seen from outside the brothel 	<ul style="list-style-type: none"> • If a police officer reasonably suspects that, because of a person’s behaviour, the person is soliciting for sex work • If a person’s behaviour is or has been disorderly, offensive, indecent or threatening to someone entering, at or leaving a place • If a person’s presence or behaviour is or has been: <ul style="list-style-type: none"> • 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 • disrupting the peaceable and orderly conduct of an event, entertainment or gathering at a place

14.22 Police can give a person a direction to move on instead of charging them with public solicitation. When the Prostitution Act was introduced, it was explained that move on directions would be the ‘general response’ to soliciting. This was intended to give police a way of dealing with the ‘nuisance’ that can be connected to soliciting and lead to community complaints, without requiring police to use excessive resources or take enforcement action. However, it was also explained that people could still be charged with solicitation when necessary; for example, if a person ‘blatantly and repeatedly’ broke the law.⁶⁰⁴

14.23 In 2016–17, police gave a total of 19 move on directions that were specifically connected with soliciting for prostitution. These were spread across all regions of Queensland, with most in Brisbane and the Southern region.⁶⁰⁵

⁶⁰³ *Police Powers and Responsibilities Act 2000* (Qld) ch 2 pt 5, sch 6 (definitions of ‘prescribed place’ and ‘public place’).

⁶⁰⁴ Queensland, *Parliamentary Debates*, 10 November 1999, 4830 (TA Barton, Minister for Police and Corrective Services).

⁶⁰⁵ Queensland Police Service, *Annual Statistical Review 2016–17* (2017) 40.

- 14.24 Police in other jurisdictions have similar powers. For example, in Western Australia, a police officer can give a move on direction if they suspect a person of committing or intending to commit any sex work-related offence in a public place. A court can also make a restraining order that stops a person from entering or staying in a place if the person has solicited and is likely to do so again, or has already been given a move on direction.⁶⁰⁶ In Victoria, police can give a notice to a person suspected of soliciting as a client, banning them from a particular area for up to 72 hours. However, to promote the right to freedom of movement, the *Sex Work Decriminalisation Act 2022* (Vic) repeals those provisions.⁶⁰⁷

Public nuisance offences

- 14.25 Street-based sex work and public solicitation have sometimes been associated with concerns about public order or 'nuisance' behaviours. These might include increased noise, littering (for example, of a prophylactic or its wrapper) and criminal or antisocial behaviour. There are also concerns that this might impact on the safety or amenity of a community.⁶⁰⁸
- 14.26 In Queensland, other laws might sometimes apply to these behaviours.
- 14.27 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. A 'public place' is a place that is open to or used by the public, for free or with payment.⁶⁰⁹
- 14.28 Examples of behaviour that might be a public nuisance are listed in box 2.⁶¹⁰
- 14.29 It is also an offence for a person to litter. The penalty is increased if a person's litter causes or is likely to cause harm to another person (such as a syringe left in a public place).⁶¹¹

Box 2: Behaviour that might be a public nuisance

- Using offensive, obscene or indecent language in a public place
- Calling a person offensive names in public
- Engaging in sexual acts that others can see in a public place
- Behaving in a way that makes other people leave a public place

Local laws

- 14.30 In Queensland, local governments can make and enforce local laws: see box 3.⁶¹² Each local government makes their own local laws, meaning that different local laws will apply in different areas.

⁶⁰⁶ *Prostitution Act 2000* (WA) s 24, pt 5.

⁶⁰⁷ *Sex Work Decriminalisation Act 2022* (Vic) s 11, repealing *Sex Work Act 1994* (Vic) pt 2A. This is due to commence on 10 May 2022: s 2(1)–(2). See also Victoria, *Parliamentary Debates*, 13 October 2021, 3876 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating).

⁶⁰⁸ See, eg, CJC Report (1991) 150–54, 218–19; Queensland Government, *Review of Prostitution Laws in Queensland* (Discussion Paper, November 1998) 25; CMC Prostitution Report (2004) 24–5, 45; Queensland, *Parliamentary Debates*, 10 November 1999, 4830 (TA Barton, Minister for Police and Corrective Services).

⁶⁰⁹ *Summary Offences Act 2005* (Qld) s 6, sch 2 (definition of 'public place').

⁶¹⁰ Explanatory Notes, *Summary Offences Bill 2004* (Qld) 3–4.

⁶¹¹ *Waste Reduction and Recycling Act 2011* (Qld) s 103.

⁶¹² *Local Government Act 2009* (Qld) ch 3 pt 1.

Box 3: Local government laws in Queensland

- A local government may make and enforce a local law
- The local law must be 'necessary or convenient for the good rule and local government' of the area
- Local laws must be consistent with Queensland laws; if there is any inconsistency, Queensland law will apply
- Local laws cannot be made about prohibited subjects, such as alternative development processes for planning
- A local government will sometimes need to consult about Queensland's interests in a proposed local law before it is made

14.31 Local laws can limit a person's actions in some places. For example, Brisbane City Council local laws prohibit activities that cause or could cause a nuisance, such as a 'noise nuisance', in a park (unless the council has assigned a place for that activity). Also a person must have a permit to carry on a business or commercial activity in or on malls and roads.⁶¹³

14.32 Following decriminalisation in Victoria, a local law must not be inconsistent with the purposes of the *Sex Work Decriminalisation Act 2022* (Vic) or undermine the purposes of 'decriminalis[ing] sex work' and reducing 'discrimination against, and harm to, sex workers'.⁶¹⁴ It was explained that local laws should not undermine the Act's intent, for example by re-enacting repealed laws about sex work or providing for sex work businesses to be treated differently to other types of businesses.⁶¹⁵

14.33 In New Zealand, public solicitation for sex work is not an offence. However, territorial authorities have general powers to make by-laws (see box 4)⁶¹⁶ and some authorities have made by-laws that prohibit solicitation.⁶¹⁷

14.34 For example, the Hamilton City Council by-laws prohibit soliciting, which means offering commercial sexual services without being invited to do so:⁶¹⁸

- within the Hamilton City Council area;
- in any street, road, footpath, road reserve, public place or area; or
- within the Hamilton City Council area where the person offering the services is, or may be, visible from a public place, reserve or area.

Box 4: Power of territorial authorities in New Zealand to make by-laws

- A territorial authority may make by-laws to:
 - protect the public from nuisance
 - protect, promote and maintain public health and safety
 - minimise the potential for offensive behaviour in public places
 - regulate trading in public places

⁶¹³ *Public Land and Council Assets Local Law 2014* (BCC) ss 11(1)(e), 12(1)(e), (2), 17(1), 23(1), 59–60, 71–2, sch 1 table 1; sch 2 table 1, sch 3 (definitions of 'council assets' and 'council land').

⁶¹⁴ *Sex Work Decriminalisation Act 2022* (Vic) s 3. This is 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.

⁶¹⁵ Explanatory Memorandum, *Sex Work Decriminalisation Bill 2021* (Vic) 2.

⁶¹⁶ *Local Government Act 2002* (NZ) ss 145, 146(1)(a)(vi). The *Prostitution Reform Act 2003* (NZ) ss 12–14 sets out sex work-related matters territorial authorities can make by-laws about, which do not include public solicitation.

⁶¹⁷ See, eg, Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008), referring to historical by-laws.

⁶¹⁸ Hamilton City Council (NZ), *Prostitution Bylaw 2019* ss 1 (definition of 'solicit'), 5.

- 14.35 In at least some places, by-laws were made as a precautionary measure, and not in response to complaints about sex work.⁶¹⁹ However, in parts of Auckland and Christchurch, there have been concerns about the ‘public nuisance impacts’ of street-based sex work and soliciting, such as noise and litter.⁶²⁰
- 14.36 In Auckland, following unsuccessful attempts to make local laws prohibiting solicitation, the council implemented a non-regulatory response to solicitation and street-based sex work. This involved peer-based education, community engagement and informal agreements about how sex work would take place: see box 5.⁶²¹
- 14.37 In Christchurch, street-based sex work moved to a residential area following earthquakes. This was addressed by having outreach workers encourage sex workers to return to their former locations to avoid the council making regulations. Other non-regulatory approaches, as in Auckland, have since been recommended.⁶²²

Box 5: Auckland’s non-regulatory response

- A peer-based education program to instil a sense of community responsibility into street-based sex workers, including by encouraging them to reduce noise and not litter
- An informal 7am to 7pm curfew on sex workers, allowing areas to be ‘shared’ with businesses and the community
- Community engagement with residents, business owners and sex workers to build relationships and mutual respect

CONSULTATION QUESTIONS

- Q42** Should a person be prohibited from publicly soliciting for sex work? Why or why not?
- Q43** If yes to Q42:
- Should public solicitation always be prohibited?
 - Alternatively, should public solicitation be prohibited in particular circumstances only (like New South Wales and Victoria) and, if so, what should those circumstances be?
- Q44** If public solicitation is prohibited, how should this be regulated? For example, by:
- laws that are about sex work;
 - local laws;
 - some other form of regulation?
- Q45** Should a police officer be able to direct a person suspected of soliciting to ‘move on’? If yes, in what circumstances should an officer be able to give this direction?
- Q46** If publicly soliciting for sex work is prohibited or regulated, then should loitering in public for the purpose of soliciting be treated the same way?

⁶¹⁹ Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 125, 139–42.

⁶²⁰ Ibid 146–49; 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, 203, 211.

⁶²¹ Abel, above n 620, 203–9.

⁶²² Ibid 209–16.

Review of the new regulatory framework

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Introduction

- 15.1 Decriminalisation of the sex work industry is a significant change to the regulatory approach in Queensland. It is a shift away from the existing licensing framework for brothels established under the Prostitution Act and managed by the PLA, and the criminalisation of other forms of sex work (except sex work by a private sex worker who works alone).
- 15.2 In other jurisdictions that decriminalised the sex work industry, legislation included a requirement to review the impact of the new regulatory framework.
- 15.3 A review requirement was included in the Prostitution Act. When that Act was passed it also established an advisory body, but it was later disbanded.
- 15.4 In this chapter, we look at whether there should be a requirement in Queensland legislation to review the new regulatory framework following decriminalisation and, if so, what the features of the requirement should be. We also consider if there should be a requirement to collect baseline data.

Prostitution Act

- 15.5 The Prostitution Act included a requirement for the Act to be reviewed after three years of operation. It also established an advisory body to monitor the operation of the Act and report to the government about the regulation of sex work, including about social and health factors.

Requirement to review the effectiveness of the Act

- 15.6 When the Prostitution Act was passed, it included a requirement to review the effectiveness of the Act after three years of operation.⁶²³ That review was done by the CMC (now the Crime and Corruption Commission) in 2004. The CMC recommended that a further review of the effectiveness of the Act should be carried out, noting the lack of empirical evidence for the successful regulation of sex work and the possibility for 'unintended consequences and unexpected outcomes'. It considered that the sex work industry 'requires ongoing monitoring to ensure that the government can be responsive to problems as they arise'.⁶²⁴
- 15.7 In 2006, the Prostitution Act was amended. The review requirement was updated to require another review three years after the commencement of the amending Act.⁶²⁵ That review was completed by the CMC in 2011.⁶²⁶

Advisory body

- 15.8 When the Prostitution Act was passed, it also established a Prostitution Advisory Council to report to a ministerial committee.⁶²⁷ One of the underlying principles of the Prostitution Act was to address social factors that contributed to involvement in the sex work industry. The role of the Prostitution Advisory Council was to 'focus on the underlying social problems which make some people more vulnerable to involvement in prostitution'.⁶²⁸

⁶²³ *Prostitution Act 1999* (Qld) s 141 (as passed).

⁶²⁴ CMC Prostitution Report (2004) 135, Rec 29.

⁶²⁵ *Prostitution Act 1999* (Qld) s 141 (as amended by the *Prostitution Amendment Act 2006* (Qld)).

⁶²⁶ CMC Prostitution Report (2011).

⁶²⁷ *Prostitution Act 1999* (Qld) pt 7 div 2 (as passed).

⁶²⁸ Explanatory Notes, Prostitution Bill 1999 (Qld) 1–2.

- 15.9 The Prostitution Advisory Council's functions were set out in the Prostitution Act. They included monitoring the operation of the Prostitution Act, advising the ministerial committee on issues related to the regulation of sex work in Queensland, and promoting and coordinating programs that:⁶²⁹
- promote sexual health care;
 - help sex workers leave the sex work industry;
 - divert minors and other vulnerable persons from sex work; and
 - raise awareness in sex workers, judicial officers, police, community workers and the community about issues relating to sex work.
- 15.10 The Prostitution Advisory Council was required to include:⁶³⁰
- a sex worker representative;
 - a person with experience as a sexual health care doctor or social worker with sex workers;
 - a person with knowledge of issues for marginalised or disadvantaged young people; and
 - a representative of religious or community interests.
- 15.11 However, there were concerns about the effectiveness of the Prostitution Advisory Council and the adequacy of its funding.⁶³¹ It was disbanded in 2003, with some of its functions transferred to the PLA.⁶³² An informal inter-agency committee was formed in mid-2004.⁶³³
- 15.12 In 2004, the CMC recommended that the inter-agency committee be formalised.⁶³⁴ This recommendation was supported by the government.⁶³⁵
- 15.13 In 2011, the CMC noted that the inter-agency committee was no longer operating. It recommended that a Ministerial Advisory Committee should be established under the Prostitution Act. The CMC considered that the role of the committee could include general oversight of the sex work industry (both the legal and illegal sector), advising the Minister on how to respond to emerging issues, and addressing social factors that contribute to people becoming involved in sex work. It envisaged that the committee could consist of representatives from key agencies involved in the industry, along with other key government departments and representatives (including a representative of sex workers, brothel licensees and community organisations).⁶³⁶
- 15.14 The CMC's recommendation was not implemented.

⁶²⁹ *Prostitution Act 1999* (Qld) s 114 (as passed).

⁶³⁰ *Prostitution Act 1999* (Qld) s 115 (as passed).

⁶³¹ CMC Prostitution Report (2004) xiv, 57.

⁶³² *Ibid* 57. See also PLA, *Annual Report 2003–2004* (2004).

⁶³³ CMC Prostitution Report (2004) 91.

⁶³⁴ *Ibid* 123, Rec 25.

⁶³⁵ J Spence (Minister for Police and Corrective Services), *Queensland Government Response to Recommendations of the Crime and Misconduct Commission's Evaluation of the Prostitution Act 1999 Regulating Prostitution* (2005) 12.

⁶³⁶ CMC Prostitution Report (2011) 46–48, Rec 2.

Review requirements in other jurisdictions following decriminalisation

- 15.15 In the Northern Territory, Victoria and New Zealand, decriminalisation included a requirement in legislation to review the new regulatory framework within a set period of time. This is a way to assess the impacts of the framework and how effectively it is meeting its objectives.
- 15.16 To help assess the effect of decriminalisation on the size and nature of the sex work industry, the legislation in the Northern Territory and New Zealand also requires the collection of baseline data as soon as possible after it commences. There is no similar requirement in the *Sex Work Decriminalisation Act 2022* (Vic).
- 15.17 No decriminalised jurisdictions have established a sex work-specific advisory body under an Act.

Requirement to review the operation of the new regulatory framework

- 15.18 The *Sex Industry Act 2019* (NT) requires a review of the operation of the Act and other associated matters within a set period of time.⁶³⁷
- 15.19 That review requirement was included because the legislation ‘introduces significant changes to the way the sex industry operates’. It was considered ‘important to ensure a review process is in place to assess the impact of these changes so that any adjustments can be identified and implemented’.⁶³⁸
- 15.20 A similar review requirement was included in the *Prostitution Reform Act 2003* (NZ).⁶³⁹
- 15.21 The *Sex Work Decriminalisation Act 2022* (Vic) includes a requirement for a review of the operations of the amendments made by it.⁶⁴⁰
- 15.22 In each of these jurisdictions, a report of the review must be given to the government and tabled in parliament.⁶⁴¹

Conduct of the review

- 15.23 In the Northern Territory and New Zealand, the review must be carried out by a review committee.
- 15.24 The *Sex Industry Act 2019* (NT) establishes a ‘Review Committee’. It must consist of five members appointed by the Minister, including:⁶⁴²
- one person who represents the interests of the community;
 - two persons who represent the interests of the sex work industry;

⁶³⁷ *Sex Industry Act 2019* (NT) s 26(2).

⁶³⁸ Northern Territory, *Parliamentary Debates*, Legislative Assembly, 26 November 2016, 7485 (Sievers, Chair of Economic Policy Scrutiny Committee). See also Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, *Inquiry into the Sex Industry Bill 2019* (Report, November 2019) [3.61], Rec 6.

⁶³⁹ *Prostitution Reform Act 2003* (NZ) s 42.

⁶⁴⁰ *Sex Work Decriminalisation Act 2022* (Vic) s 4.

⁶⁴¹ *Sex Industry Act 2019* (NT) s 26(2)(e), (3); *Prostitution Reform Act 2003* (NZ) s 42(1)(b)(vii), (2); *Sex Work Decriminalisation Act 2022* (Vic) s 4(4)–(5).

⁶⁴² *Sex Industry Act 2019* (NT) s 25(1)–(2). The Minister for Racing, Gaming and Licensing is responsible for administering the *Sex Industry Act 2019* (NT): *Administrative Arrangements Order* (No 3) 2021 (NT) s 5, sch 2.

- one person with expertise and experience in public health; and
 - one person with expertise and experience in occupational health and safety.
- 15.25 It was considered that this ‘adequately represents the interests of the sex work industry, relevant government departments and the broader community’.⁶⁴³
- 15.26 The *Prostitution Reform Act 2003* (NZ) establishes a Prostitution Law Review Committee. It consists of 11 members, including:⁶⁴⁴
- two persons nominated by the Minister of Justice;
 - a person nominated by the Minister of Women’s Affairs after consultation with the Minister of Youth Affairs;
 - a person nominated by the Minister of Health;
 - a person nominated by the Minister of Police;
 - two persons nominated by the Minister of Commerce to represent operators of businesses of prostitution;
 - a person nominated by the Minister of Local Government; and
 - three persons nominated by the New Zealand Prostitutes Collective.
- 15.27 In contrast, the *Sex Work Decriminalisation Act 2022* (Vic) requires the review to be carried out by a ‘person appointed by the Minister’.⁶⁴⁵ During the debates on the Bill in parliament, it was noted that the review will likely be undertaken by relevant government departments.⁶⁴⁶

Timing of the review

- 15.28 In each jurisdiction, the review must be completed within a set period of time.
- 15.29 In the Northern Territory, the review must be done within five years after the commencement of the *Sex Industry Act 2019* (NT).⁶⁴⁷
- 15.30 In New Zealand, the review was required no earlier than three years, but no later than five years after the commencement of the *Prostitution Reform Act 2003* (NZ).⁶⁴⁸
- 15.31 In Victoria, the review must commence no earlier than three years and no later than five years after the day on which all the provisions of the *Sex Work Decriminalisation Act 2022* (Vic) are in operation.⁶⁴⁹
- 15.32 This allows time for the new regulatory framework to be operating and the impacts to become apparent, before the review is carried out.

⁶⁴³ Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, *Inquiry into the Sex Industry Bill 2019* (Report, November 2019) [3.61].

⁶⁴⁴ *Prostitution Reform Act 2003* (NZ) s 43(1)–(2).

⁶⁴⁵ *Sex Work Decriminalisation Act 2022* (Vic) s 4(4).

⁶⁴⁶ Victoria, *Parliamentary Debates*, Legislative Council, 10 February 2022, 235 (S Leane, Minister for Local Government, Minister for Suburban Development, Minister for Veterans). It was also noted that the Minister who will be responsible for administering the Act is the Minister for Workplace Safety.

⁶⁴⁷ *Sex Industry Act 2019* (NT) s 26(2).

⁶⁴⁸ *Prostitution Reform Act 2003* (NZ) s 42(1)(b).

⁶⁴⁹ *Sex Work Decriminalisation Act 2022* (Vic) s 4(2). Decriminalisation is in two stages. The first stage commences on 10 May 2022. The second stage will commence on 1 December 2023 (unless proclaimed earlier): s 2.

Matters considered by the review

- 15.33 In the Northern Territory and New Zealand, the legislation sets out the functions of the review committee and requires it to consider particular matters.
- 15.34 The *Sex Industry Act 2019* (NT) states that the Minister may determine the terms of reference for the Review Committee.⁶⁵⁰ It also requires the Review Committee to:⁶⁵¹
- review the operation of the Act since its commencement;
 - assess the impact of the Act on the number of sex workers in the Territory and the nature of the environment in which they work;
 - consider whether any amendments to the Act or any other law are necessary or desirable in relation to sex workers or sex work and, in particular:
 - whether the suitability certificate requirements are effective or could be improved;
 - whether any other Agency could or should administer the suitability certificate requirements;
 - whether a system is needed for identifying the location of sex services businesses; and
 - consider whether any further review or assessment of these matters is necessary or desirable.
- 15.35 The *Prostitution Reform Act 2003* (NZ) required the Prostitution Law Review Committee to consider similar matters.⁶⁵² It was also required to:⁶⁵³
- assess the nature and adequacy of the means available to help people avoid or stop working as sex workers.
- 15.36 The Prostitution Law Review Committee completed its review and reported in 2008. It did not consider that a further review of the operation of the Act was necessary at that stage. However, it considered that a further review should be carried out by 2018. It noted that this timeframe would enable the longer-term impact of the *Prostitution Reform Act 2003* (NZ) to be assessed.⁶⁵⁴
- 15.37 The *Sex Work Decriminalisation Act 2022* (Vic) states that:⁶⁵⁵
- The review must review the operation of the amendments made by this Act in accordance with the terms of reference determined by the Minister, including the effect of the repeal of the *Sex Work Act 1994* and related amendments to other Acts.

⁶⁵⁰ *Sex Industry Act 2019* (NT) s 25(4).

⁶⁵¹ *Sex Industry Act 2019* (NT) s 26(2).

⁶⁵² *Prostitution Reform Act 2003* (NZ) s 42(1)(b)(i)–(iii), (iv)–(vi).

⁶⁵³ *Prostitution Reform Act 2003* (NZ) s 42(1)(b)(iii).

⁶⁵⁴ Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 168.

⁶⁵⁵ *Sex Work Decriminalisation Act 2022* (Vic) s 4(3).

15.38 During the parliamentary debates on the Bill, it was noted that the review is expected to consider:⁶⁵⁶

whether the Bill has achieved its stated purpose of reducing discrimination against, and harm to sex workers, as well as the operation of laws, policies and regulations enacted as a result of the repeal of the Sex Work Act.

Requirement to collect baseline data

15.39 In the Northern Territory and New Zealand, the review committee must assess the impact of decriminalisation on the number of sex workers.

15.40 The legislation also requires the review committee, as soon as possible after it commences, to assess the number of sex workers (and, in the Northern Territory, the nature of the environment in which they work) in its jurisdiction. The review committee must report its findings to the government and the report must be tabled in parliament.⁶⁵⁷

15.41 This requirement was included to give baseline data on the size of the sex work industry. It ensures there is comparable data to evaluate the impact of the new regulatory framework when the review of the Act is carried out.⁶⁵⁸ This was considered important, noting the lack of robust data that were available about the sex work industry, given that much of it was previously 'hidden' and unregulated.⁶⁵⁹

15.42 There are no similar requirements in the *Sex Work Decriminalisation Act 2022* (Vic).

CONSULTATION QUESTIONS

Q47 Should there be a requirement in legislation to review the new regulatory framework for the sex work industry within a set period of time after decriminalisation? If so:

- (a) who should conduct the review (for example, should it be carried out by a relevant government department or should a review committee be established and, if so, what should its membership be);
- (b) when should the review begin; and
- (c) what matters should the review consider?

Q48 If yes to Q47, should there also be a requirement to collect baseline data as soon as possible after decriminalisation commences? If so, who should collect that data and what data should they be required to collect (for example, data about the number of sex workers in Queensland and the nature of the environment in which they work)?

⁶⁵⁶ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 2021, 4282 (Symes, Leader of the Government, Attorney-General and Minister for Emergency Services). See also Explanatory Memorandum, Sex Work Decriminalisation Bill 2021 (Vic) 2–3.

⁶⁵⁷ *Sex Industry Act 2019* (NT) s 26(1), (3); *Prostitution Reform Act 2003* (NZ) s 42(1)(a), (2).

⁶⁵⁸ Northern Territory, *Parliamentary Debates*, Legislative Assembly, 26 November 2019, 7541–2 (Fyles, Attorney-General and Minister for Justice); Prostitution Law Review Committee, *The Nature and Extent of the Sex Industry in New Zealand: An Estimation* (April 2005) 1, 9.

⁶⁵⁹ Prostitution Reform Bill (NZ), *Amendments recommended by the Justice and Electoral Committee*, Commentary 27.

Discrimination against sex workers

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Introduction

- 16.1 Some sex worker organisations say criminalisation creates ‘unwarranted stigma, discrimination, prejudice and general misunderstanding about sex work’. This creates barriers for sex workers to access essential services, including goods and services, housing and accommodation, and access to justice.⁶⁶⁰
- 16.2 Queensland’s anti-discrimination laws protect all individuals from unlawful discrimination, including sex workers, working lawfully.
- 16.3 One of the purposes of a decriminalisation framework is to safeguard sex workers’ human rights. This includes the right to equal and effective protection against discrimination.⁶⁶¹

Anti-Discrimination Act 1991

- 16.4 The *Anti-Discrimination Act 1991* makes unfair discrimination, sexual harassment, vilification, and victimisation unlawful in Queensland.
- 16.5 For conduct to be unlawful discrimination under the Act, it must:⁶⁶²
- be based on an attribute listed in the Act;
 - take place in an area of activity listed in the Act; and
 - result in the person being treated less favourably than someone without that attribute.
- 16.6 There are exemptions that allow conduct that would otherwise be discriminatory.
- 16.7 The Queensland Human Rights Commission (QHRC) is currently reviewing the Act.

Discrimination on the basis of lawful sexual activity

- 16.8 A person engaging in lawful forms of sex work in Queensland is protected under the *Anti-Discrimination Act 1991* against unlawful discrimination.
- 16.9 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 self-employed’.⁶⁶³
- 16.10 The protection applies to a lawfully employed sex worker. Under the current law, this means a sex worker working in a licensed brothel and a private sex worker working on their own. However, it does not apply to a person engaging in unlawful forms of sex work. This includes street-based sex work, sex work in an unlicensed brothel or massage parlour, escort agencies and two or more private sex workers providing sex work under a co-operative arrangement.

⁶⁶⁰ 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).

⁶⁶¹ See terms of reference para 1(g); and ch 6.

⁶⁶² Queensland Human Rights Commission, ‘Discrimination’ (28 June 2019) <<https://www.qhrc.qld.gov.au/your-rights/discrimination-law>>.

⁶⁶³ *Anti-Discrimination Act 1991* (Qld) s 7(l), sch 1 (definition of ‘lawful sexual activity’).

16.11 The Act also includes a protected attribute for 'sexuality', which is defined as 'heterosexuality, homosexuality or bisexuality': see box 1.⁶⁶⁴

16.12 Discrimination based on a protected attribute is prohibited in certain areas of activity. This includes:⁶⁶⁵

- work and work related areas;
- education;
- provision of goods and services;
- superannuation or insurance;
- disposition of land;
- accommodation;
- club membership and affairs;
- administration of State laws and programs; and
- local government.

16.13 Examples of discrimination on the basis of lawful sexual activity include:⁶⁶⁶

- a shop or restaurant refusing service to a person because they are a sex worker;
- a bank manager refusing a loan to a person who is a sex worker even though they meet the financial and other criteria for the loan; or
- a school refusing to enrol a child because the child's parent works as a sex worker.

16.14 A person may make a complaint about unlawful discrimination to the QHRC.⁶⁶⁷

16.15 The QHRC has observed that 'the current definition of lawful sexual activity is narrow and means a person's *status* as a lawfully employed sex worker, whether or not self-employed'.⁶⁶⁸ It also noted that the:⁶⁶⁹

[i]nclusion of the term 'lawful' means that only sex workers operating within the law are currently protected.

16.16 Some sex worker organisations say decriminalisation will improve access to anti-discrimination protections. By making more forms of sex work lawful, the protected attribute of 'lawful sexual activity' will apply to more sex workers.⁶⁷⁰

16.17 They also say decriminalisation will, over time, help to reduce stigma and discrimination against sex workers, as well as increasing opportunities for outreach, education and

Box 1: History of protected attribute of 'lawful sexual activity'

- 'Lawful sexual activity' was included as a protected attribute when the *Anti-Discrimination Act 1991* was first passed
- However, at that time it was not defined and separate protection for sexuality was not included: this meant lawful sexual activity was initially given a wider meaning than it has now
- When 'sexuality' was added as a separate attribute in 2002, the present definition of lawful sexual activity was also added

⁶⁶⁴ See *Discrimination Law Amendment Act 2002* (Qld) ss 12(1), 14(1); Queensland, *Parliamentary Debates*, 6 November 2002, 4445 (RJ Welford, Attorney-General and Minister for Justice).

⁶⁶⁵ *Anti-Discrimination Act 1991* (Qld) ch 2 pt 4.

⁶⁶⁶ 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>>.

⁶⁶⁷ Ibid.

⁶⁶⁸ Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act* (Discussion Paper, 2021) 98.

⁶⁶⁹ Ibid.

⁶⁷⁰ Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 75.

support.⁶⁷¹ Following decriminalisation in New Zealand, it was observed that cultural change does not happen overnight and stigma takes time to dissipate.⁶⁷² Others have also noted that reducing stigma ‘requires a systematic response that necessitates but goes beyond the decriminalisation of sex work’.⁶⁷³

- 16.18 Some sex worker organisations also consider that decriminalisation ‘must be coupled with comprehensive human rights and anti-discrimination protections for sex workers at state, territory and federal levels to be fully effective’.⁶⁷⁴

Other jurisdictions

- 16.19 Legislation in Victoria and Tasmania also prohibits discrimination on the basis of lawful sexual activity.⁶⁷⁵ In those jurisdictions, the definition of ‘lawful sexual activity’ is not limited to sex work. In Victoria, ‘lawful sexual activity’ is defined to mean ‘engaging in, not engaging in or refusing to engage in a lawful sexual activity’.⁶⁷⁶ In Tasmania, ‘sexual activity’ includes ‘not engaging in, or refusing to engage in, sexual activity’.⁶⁷⁷

- 16.20 In its submission to the Review into the decriminalisation of sex work, the Victorian Equal Opportunity & Human Rights Commission supported the decriminalisation of all forms of sex work.⁶⁷⁸ It noted this ‘is an important step in helping prevent stigma, as well as discrimination and other rights violations’.⁶⁷⁹ It also stated that decriminalisation would expand the coverage of existing anti-discrimination protections.⁶⁸⁰

Decriminalisation of sex work would have the positive effect of broadening the existing protected attribute of ‘lawful sexual activity’ to cover discrimination against any sex worker that is related to their profession, occupation or trade. If, however, certain types of sex work remain criminal, the available anti-discrimination protections would continue to be curtailed.

- 16.21 The Victorian Equal Opportunity & Human Rights Commission noted that some stakeholders preferred for discrimination against sex workers to be addressed by including a new protected attribute related to profession, occupation or trade (rather than relying on the ‘lawful sexual activity’ attribute). Legislation in the Australian Capital Territory protects the attribute of ‘profession, trade, occupation or calling’ as a ground of discrimination, which covers sex workers.⁶⁸¹ The Victorian Equal Opportunity & Human Rights Commission was not opposed to this suggestion but considered that:⁶⁸²

⁶⁷¹ Ibid 28, 72.

⁶⁷² Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 58.

⁶⁷³ 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, 144.

⁶⁷⁴ Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 28.

⁶⁷⁵ *Anti-Discrimination Act 1998* (Tas) s 16(d); *Equal Opportunity Act 2010* (Vic) s 6(g).

⁶⁷⁶ *Equal Opportunity Act 2010* (Vic) s 4(1) (definition of ‘lawful sexual activity’).

⁶⁷⁷ *Anti-Discrimination Act 1998* (Tas) s 3 (definition of ‘sexual activity’). ‘Lawful sexual activity’ is not defined.

⁶⁷⁸ Victorian Equal Opportunity and Human Rights Commission, *Submission to the Review into the Decriminalisation of Sex Work*, 20 July 2020, 1, Rec 1.

⁶⁷⁹ Ibid 3.

⁶⁸⁰ Ibid 4.

⁶⁸¹ *Discrimination Act 1991* (ACT) s 7(1)(p).

⁶⁸² Victorian Equal Opportunity and Human Rights Commission, *Submission to the Review into the Decriminalisation of Sex Work*, 20 July 2020, 5.

the [*Equal Opportunity Act 2010* (Vic)] already protects sex workers against discrimination related to their profession, occupation or trade — protections that would be extended should all sex work be decriminalised.

- 16.22 It also considered ‘there is a need for greater education and information to support sex workers to understand and realise their rights’, including by increasing resources to key peer and other sex worker support services.⁶⁸³
- 16.23 The *Sex Work Decriminalisation Act 2022* (Vic) inserts a new protected attribute in the *Equal Opportunity Act 2010* (Vic) to protect persons from discrimination on the basis of their ‘profession, trade or occupation’. It also inserts an exception for genuine occupational requirements.⁶⁸⁴ This protected attribute is not limited to sex workers but applies more broadly.
- 16.24 The Minister who introduced the Bill explained:⁶⁸⁵
- This amendment is intended to prevent discrimination by promoting the right of sex workers to recognition and equality before the law but may also have broader benefits in promoting the rights of other cohorts who face discrimination and stigma as a result of their occupation.

Exemptions

- 16.25 There are exemptions in the *Anti-Discrimination Act 1991* that allow conduct that would otherwise be unlawful discrimination.
- 16.26 The Act contains general exemptions that apply to all protected attributes. This includes something done to protect public health or the health and safety of people at work.⁶⁸⁶
- 16.27 The Queensland Civil and Administrative Tribunal (or, for work-related exemptions, the Queensland Industrial Relations Commission) also has a general power to grant an exemption on application. The exemption may be to a person, people or class of people from the operation of a specified provision of the Act.⁶⁸⁷
- 16.28 The Act also includes exemptions that are specific to lawful sexual activity for work with children and accommodation for use in connection with work as a sex worker.

Work with children

- 16.29 Section 28(1) of the Act provides that discrimination on the basis of lawful sexual activity (sex workers) or gender identity (such as transgender or intersex people) is not unlawful 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.

⁶⁸³ Ibid 5, Rec 2.

⁶⁸⁴ *Sex Work Decriminalisation Act 2022* (Vic) ss 34–35. These provisions commence on 10 May 2022 (unless proclaimed earlier): s 2(1)–(2).

⁶⁸⁵ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3879 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, and Minister for Fishing and Boating).

⁶⁸⁶ *Anti-Discrimination Act 1991* (Qld) ch 2 pt 5.

⁶⁸⁷ *Anti-Discrimination Act 1991* (Qld) s 113. See generally Queensland Human Rights Commission, ‘Tribunal exemptions’ (1 February 2021) <<https://www.qhrc.qld.gov.au/resources/legal-information/exemptions>> and ‘Applying for a tribunal exemption’ (15 November 2021) <<https://www.qhrc.qld.gov.au/your-responsibilities/for-employers/discrimination-and-harassment-at-work/applying-for-a-tribunal-exemption>>.

- 16.30 Section 28 was included when the Act was first enacted and before lawful sexual activity was defined. When the Act was debated in parliament, it was suggested that section 28 could operate to allow discriminatory treatment of staff where there is 'promiscuity between unmarried people on the staff of a school' which the school finds 'morally offensive'.⁶⁸⁸
- 16.31 No other Australian state or territory permits discrimination against sex workers (or transgender or intersex people) on this basis.
- 16.32 The QHRC has stated that section 28 appears:⁶⁸⁹
- to perpetuate an offensive stereotype that sex workers, transgender, or intersex people pose inherent risks to children, which is not aligned with contemporary community attitudes.
- 16.33 The QHRC also noted that Queensland has a working with children risk management and screening system, known as the 'blue card system'. This aims to create safe environments for children when participating in activities or receiving services, including childcare, education, sport, cultural activities and foster care. The blue card system screens and monitors people who work with minors. It also requires organisations, business operators and self-employed operators to implement a child and youth risk management strategy.⁶⁹⁰

Accommodation for use in connection with work as a sex worker

- 16.34 Section 106C of the Act provides that discrimination on the basis of lawful sexual activity is not unlawful in:
- refusing to supply accommodation;
 - evicting a person from accommodation; or
 - treating a person unfavourably in connection with accommodation (for example, by charging a higher rate for cleaning).
- 16.35 An accommodation provider can use this exemption if they reasonably believe the other person is using, or intends to use, the accommodation in connection with that person's, or another person's, work as a sex worker.⁶⁹¹
- 16.36 '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.⁶⁹²
- 16.37 Section 106C was introduced in 2012 in response to the decision of the appeal tribunal in *GK v Dovedeen Pty Ltd*.⁶⁹³ It was held in that case that a motel had contravened the *Anti-Discrimination Act 1991* by refusing to provide accommodation to a private sex worker in the future, because she was performing sex work at the motel.⁶⁹⁴ Section 106C was inserted to 'give accommodation providers certainty and control in the use that is made of their

⁶⁸⁸ See *Anti-Discrimination Act 1991* (Qld) (as passed). See also Queensland, *Parliamentary Debates*, 3 December 1991, 3608 (B Littleproud).

⁶⁸⁹ Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act* (Discussion Paper, 2021) 119.

⁶⁹⁰ Ibid. 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>>.

⁶⁹¹ See generally 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>>.

⁶⁹² *Anti-Discrimination Act 1991* (Qld) sch 1 (definition of 'accommodation').

⁶⁹³ See Explanatory Notes, Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012 (Qld) 4.

⁶⁹⁴ *GK v Dovedeen Pty Ltd* [2012] QCATA 128. This decision was later overturned by the Court of Appeal: *Dovedeen Pty Ltd v GK* [2013] QCA 116.

premises'.⁶⁹⁵ It applies only 'if the property is being used or will be used for sex work, not solely on the basis that the occupant is a sex worker themselves'.⁶⁹⁶

- 16.38 However, this exemption has been criticised because it is broad and enables accommodation providers to lawfully discriminate against sex workers. It only requires the accommodation provider to 'reasonably believe' the person 'intends to use' the accommodation 'in connection with' sex work. As a result, sex workers may experience difficulties in obtaining housing and accommodation, face eviction, or be subject to additional charges and rude treatment.⁶⁹⁷ It has been noted that the exemption 'forms a viable pretext for blanket refusal' or eviction of persons who are known to be sex workers 'in nearly any circumstances'.⁶⁹⁸

- 16.39 A similar exemption is currently included in section 62 of the *Equal Opportunity Act 2010* (Vic). The Victorian Equal Opportunity and Human Rights Commission suggested the Victorian Government consider repealing this section.⁶⁹⁹ It noted this exemption seems inconsistent with decriminalisation and the aim of reducing stigma and discrimination. It considered that 'its mere existence could further perpetuate stigmatising social attitudes related to sex work and deter individuals from initiating complaints of discrimination'. It explained:⁷⁰⁰

The exception seeks to balance equal access to accommodation and the ability of accommodation providers to exercise some degree of control over who occupies their premises and for what purpose it is used. However, as it operates only in relation to persons who wish to provide commercial sexual services, it appears to be about permitting prejudice. Furthermore, as a blanket exception, it arguably does not operate in the least restrictive means possible and seems incongruous with steps to decriminalise sex work and bring Victoria in line with leading best practice.

- 16.40 The Victorian Equal Opportunity and Human Rights Commission also noted that accommodation providers could apply to the Victorian Civil and Administrative Tribunal (VCAT) to grant an exemption under its general power.⁷⁰¹ It considered that this could be 'a more balanced approach', noting that:⁷⁰²

Under this approach, individual providers would need to persuade VCAT that it is a reasonable limitation of the right to equality to refuse to provide accommodation to another person for a lawful sexual activity on a commercial basis.

- 16.41 The *Sex Work Decriminalisation Act 2022* (Vic) repeals section 62 of the *Equal Opportunity Act 2010* (Vic).⁷⁰³ The Victorian Government explained this 'will address stigmatising social attitudes relating to sex work and remove a barrier to sex work taking place in safe locations'.⁷⁰⁴

⁶⁹⁵ See Explanatory Notes, Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012 (Qld) 5.

⁶⁹⁶ Queensland Human Rights Commission, 'Lawful sexual activity' (28 June 2019) <<https://www.qhrc.qld.gov.au/your-rights/discrimination-law/lawful-sexual-activity>>.

⁶⁹⁷ 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; Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 75–6, 78.

⁶⁹⁸ Hobbs and Trotter, above n 697, 205–6.

⁶⁹⁹ Victorian Equal Opportunity and Human Rights Commission, *Submission to the Review into the Decriminalisation of Sex Work*, 20 July 2020, 6, Rec 4.

⁷⁰⁰ Ibid 6.

⁷⁰¹ Ibid, referring to *Equal Opportunity Act 2010* (Vic) s 89. Similar provision is made in *Anti-Discrimination Act 1991* (Qld) s 113: see [16.27] above.

⁷⁰² Victorian Equal Opportunity and Human Rights Commission, *Submission to the Review into the Decriminalisation of Sex Work*, 20 July 2020, 6, Rec 4.

⁷⁰³ *Sex Work Decriminalisation Act 2022* (Vic) s 36. This provision commences on 10 May 2022: s 2(1)–(2).

⁷⁰⁴ Department of Justice and Community Safety (Vic), *Decriminalising Sex Work* (Discussion Paper, 2021) 4.

Queensland Human Rights Commission review

- 16.42 The Queensland Human Rights Commission (QHRC) administers the *Anti-Discrimination Act 1991*.
- 16.43 On 4 May 2021, the Attorney-General asked the QHRC to undertake a review of the Act. The terms of reference ask the QHRC to consider whether there is a need for any reform to enhance and update the Act to best protect and promote equality and non-discrimination and the realisation of human rights. The QHRC is to consider whether there is any need for reform, and if so, the scope of the reform. This includes reforms about the protected attributes, areas of activity, and exemptions under the Act.⁷⁰⁵
- 16.44 The QHRC released a discussion paper in November 2021, seeking submissions on many issues. The questions in the discussion paper include:⁷⁰⁶
- Should there be a new definition of lawful sexual activity, and if so, what definition should be included in the Act? Should the name of the attribute be changed, and if so, what should it be? (Discussion question 28);
 - Are there reasons why the work with children exemption should not be repealed? (Discussion question 45);
 - Should the sex worker accommodation exemption be retained, changed or repealed? (Discussion question 47).
- 16.45 Submissions to that review closed on 1 March 2022. The QHRC has also established a Reference Group to provide advice to its review. The QHRC must finalise its report on the review by 30 June 2022.⁷⁰⁷
- 16.46 Given the QHRC is considering those matters as part of its review of the Act, we are not asking specific questions about the same issues. We will have regard to the QHRC's report and recommendations (and any submissions that might be made to us in our review) on these issues.

CONSULTATION QUESTION

- Q49** Is there anything you would like to tell us about how the *Anti-Discrimination Act 1991* could best protect sex workers against unlawful discrimination in light of the decriminalisation of the sex work industry?

⁷⁰⁵ Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act* (Discussion Paper, 2021) 9–10.

⁷⁰⁶ Ibid 98, 119, 121.

⁷⁰⁷ Queensland Human Rights Commission, 'ADA review' (13 July 2021) <<https://www.qhrc.qld.gov.au/law-reform>>.

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The potential impact of the new framework for the sex work industry

- 17.1 We are asked to consider the potential impacts of a new framework for the sex work industry, including the current licensed brothel sector.⁷⁰⁸
- 17.2 In many parts of this paper, we identify the potential benefits for the sex work industry and for the broader community of a framework that decriminalises the sex work industry. Detailed attention has been given to the anticipated benefits of a new framework for sex workers who currently undertake either legal or illegal sex work.
- 17.3 The operators of existing licensed brothels might be thought to be at a competitive disadvantage compared to the operators of unlicensed brothels, massage parlours used for sex work, and escort agencies. In contrast to their unlawful competitors, brothel licensees have a regulatory and compliance burden and pay substantial licensing fees. A change from the existing framework to a new framework would remove that competitive disadvantage.
- 17.4 The particular benefits of decriminalisation for the current licensed brothel sector will depend upon the specifics and compliance costs of any new regulatory framework, as well as the circumstances of individual operators.
- 17.5 A change from the existing framework to a new framework may come at a financial cost for some parts of the current licensed brothel sector. Any change in the regulation of an industry comes with costs and benefits for particular participants. For example, some operators of currently licensed brothels may incur costs if they choose to relocate or redesign their premises to respond to a new regulatory framework. Some licensees may not be able to easily relocate their business. The Commission is not able to assess the financial benefits and costs to the current licensed brothel sector of adopting a new regulatory framework.

What other measures are needed to support the new framework?

- 17.6 Most of the issues raised in our paper so far are about the laws that would apply, or need to be repealed or changed, under the new regulatory framework. In this section we consider some of the other measures that might be needed to support the new framework and help achieve the intended benefits of decriminalisation.
- 17.7 The change to a decriminalised industry is not just a change in the legal status of sex work. To be successful, it also requires cultural change. Recognising sex work as work rather than a crime means a 'conceptual shift' in the way laws, policies and services are framed and delivered. 'Regulations are one thing; enforcement is another'.⁷⁰⁹
- 17.8 As we have seen, sex workers are often stigmatised and encounter negative attitudes. Removing the criminal penalties for sex work is seen as a necessary first step to address stigma and discrimination and to improve sex workers' rights, health and safety. But many sex

⁷⁰⁸ Terms of reference para 1(k).

⁷⁰⁹ R Weitzer, *Legalizing Prostitution: From Illicit Vice to Lawful Business* (NYU Press, 2012) 212.

worker organisations and human rights groups also highlight the need for other actions to support those outcomes.⁷¹⁰

17.9 Persistent stigma is seen as a key challenge to the ‘smooth functioning’ of a decriminalised sex work system.⁷¹¹ It is observed that, ‘[e]ven where criminal penalties have been lifted, sex work still attracts stigma’.⁷¹²

17.10 The Victorian Government recognises the importance of addressing stigma as part of its decriminalisation reforms.⁷¹³

Destigmatising the sex work industry and reducing discrimination is essential for protecting people working in the industry and shifting public perceptions of sex work. Entrenched negative perceptions of the sex work industry impacts sex workers’ mental health, reinforces attitudes that drive violence against sex workers, creates barriers to accessing healthcare, social services and housing, and limits educational and employment opportunities for workers, including those who wish to leave the industry.

17.11 The experience in other places shows that ‘simply decriminalising an industry will not produce overnight changes in entrenched attitudes’.⁷¹⁴ A successful framework will depend on many factors. This might include:

- involving sex workers and their peer organisations in policies and reforms;
- co-ordinating responses across government and non-government agencies; and
- allocating enough funding for policies, services and programs to support the framework.

17.12 Some of the supporting measures that might be needed are as follows.

Creating public awareness

17.13 Stigma is a barrier to improving sex workers’ access to health, labour and human rights. Public education and awareness programs are likely to be a necessary part of the change to a decriminalised industry.⁷¹⁵

17.14 The PLA recognises the opportunity for educating the community about issues to do with sex work ‘in a way which challenges persistent mythologies and stereotypes about the industry and which addresses the persistent stigma of sex work’.⁷¹⁶

17.15 Sex worker organisations and the Queensland Human Rights Commission (QHRC) might play a role in public education and raising awareness.

⁷¹⁰ See, eg, 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, 154; United Nations Development Programme, *Sex Work and the Law in Asia and the Pacific* (Report, 2012) 28–9, 33–9; Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016, 26 May 2016) 2, 7, 9.

⁷¹¹ See, eg, Weitzer, above n 709, 204–5.

⁷¹² Stardust et al, above n 710, 143.

⁷¹³ Department of Justice and Community Safety (Vic), *Decriminalising Sex Work* (Discussion Paper, 2021) 2; Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3882 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating). See generally Victorian Government, ‘Decriminalising sex work in Victoria’ (22 February 2022) <<https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>>.

⁷¹⁴ Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 58 (and at 122, 168). See generally Weitzer, above n 709, 205.

⁷¹⁵ See, eg, United Nations Development Programme, above n 710, 33; Amnesty International, above n 710, 7.

⁷¹⁶ PLA, *Strategic Plan 2020–2024* (2020). See also PLA, *Annual Report 2020–2021* (2021) 11.

Building relationships between sex workers, police and other authorities

- 17.16 One of the intended benefits of decriminalisation is to improve sex workers' safety and access to justice. This includes increasing sex workers' willingness to report violence and other crimes committed against them to police. It also relies on authorities responding appropriately to complaints from sex workers.
- 17.17 Under the present system, sex workers may view police and other authorities with mistrust or unease. They may not expect their complaints to be taken seriously.⁷¹⁷
- 17.18 A 2017 study of the needs of sex workers in Queensland's licensed brothels found that almost half of the participants (99) would not report a workplace assault to police. The reasons they gave for this were stigma, privacy concerns, mistrust of police or the legal system, and anticipated discrimination. Some sex workers in the study were also uncertain about the PLA's role or found the PLA unhelpful with workplace complaints.⁷¹⁸
- 17.19 The authors of the study commented that:⁷¹⁹
- Not only does this lack of recourse impact the mental and emotional health of workers in licensed brothels, it also sends a message to the public that assaults against sex workers will not incur recourse or penalty, which mirrors the public attitude at large and poses a risk to the general safety of sex workers.
- 17.20 The change to a decriminalisation framework involves a shift in attitude from prosecution to protection. Positive relationships based on cooperation between sex workers, police and other authorities are needed. This might require specific training and liaison activities.⁷²⁰
- 17.21 The review of New Zealand's decriminalisation laws highlighted that a level of suspicion and unease 'is the inevitable result of years of the sex industry operating illegally, with the Police seen as posing a threat rather than offering protection'. The review committee said:⁷²¹
- traditions and attitudes developed over many years cannot be changed overnight. ... there remains disapproval and dislike directed by some people at people who work in the sex industry and mistrust and suspicion directed at the authorities by some people in the sex industry. In this atmosphere, the Committee believes that a period of relationship building will be necessary before the rights and responsibilities of those in the sex industry will be fully realised. People working in the sex industry, and those working in organisations that deal with the sex industry, need to make positive efforts to work together.

Educating the sex work industry about their rights and obligations

- 17.22 The change to a decriminalisation framework is intended to improve sex workers' access to standard workplace rights and other protections. It will bring new rights and responsibilities for sex work businesses transitioning from unlawful operations to legitimate businesses.

⁷¹⁷ See generally Stardust et al, above n 710.

⁷¹⁸ Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 21, 31, 37.

⁷¹⁹ Ibid, 37 (and at 38).

⁷²⁰ See, eg, L Selvey et al, *Law and Sex Worker Health (LASH) Study: A Summary Report to the Western Australian Department of Health* (2017) 55.

⁷²¹ Prostitution Law Review Committee, above n 714, 58, 168. See generally Weitzer, above n 709, 212.

- 17.23 Sex workers and sex work business operators will need access to information, education and training about their rights and responsibilities.⁷²² This will support them to understand and follow the law. For example, it could include information about work health and safety, best practice employment contracts, anti-discrimination, advertising rules and planning laws.
- 17.24 Considerations might include:
- offering information that is comprehensive, user-friendly, tailored and accessible, including to migrant sex workers;
 - including sex worker organisations in shaping education programs;
 - co-ordinating information and training programs across government agencies; and
 - ensuring sex workers and sex work business operators know where to go for information, advice and complaints.

Educating officials and organisations who deal with the sex work industry

- 17.25 To support the recognition of sex work as work, and a human rights approach, officials and organisations who deal with sex workers may also need access to education and training.⁷²³
- 17.26 This might include:
- State and local government agencies involved in land use planning, work health and safety, public health or justice services;
 - police and other law enforcement officials;
 - legal, health and social service providers; and
 - members and staff of Queensland courts and tribunals.
- 17.27 Education and training could help proactively address stigma and support non-discrimination. It could help ensure co-ordinated responses that support the purposes of decriminalisation.

Offering peer support and outreach services for sex workers

- 17.28 Sex worker organisations and others highlight that peer support and outreach services for sex workers are highly effective. This has been noted especially for educating sex workers about STIs and safer sex practices.⁷²⁴
- 17.29 Scarlet Alliance says that the change to decriminalisation ‘amplifies opportunities for health promotion, including outreach, and magnifies capacities for peer education’.⁷²⁵
- 17.30 Information, support and services can be given by peer organisations, community groups and other service providers.
- 17.31 For example, Respect Inc is funded by Queensland Health to deliver a health promotion and peer education program for sex workers. Part of this work includes confidential data collection and reporting. As a statewide sex worker organisation in Queensland, Respect Inc also.⁷²⁶

⁷²² See, eg, Prostitution Law Review Committee, above n 714, 95, 97, 154, 159–60.

⁷²³ See, eg, Weitzer, above n 709, 212; United Nations Development Programme, above n 710, 37; and Amnesty International, above n 710, 9, 13.

⁷²⁴ See, eg, Department of Health (Australia), *Fourth National Sexually Transmissible Infections Strategy 2018–2022* (2018) 22; 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) 11–12.

⁷²⁵ Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 30 (and at 28, 37, 83).

⁷²⁶ See generally Respect Inc, ‘Respect Inc—who are we?’ (5 May 2021) <<https://respectqld.org.au/what-is-respect-inc/>>.

- offers education, information and resources to support sex workers and increase their awareness of their rights and responsibilities;
- carries out research; and
- advocates on policy changes.

17.32 Considerations might include:⁷²⁷

- identifying what services are needed;
- supporting data collection and research, including on sex workers' needs;
- allowing access to free and confidential sexual health testing; and
- finding ways to give appropriate support to different groups, including street-based sex workers, private sex workers, migrant sex workers, Aboriginal and Torres Strait Islander sex workers, LGBTIQ sex workers, and sex workers who may wish to leave the industry.

CONSULTATION QUESTIONS

Q50 What are the potential impacts of a new framework for the sex work industry?

Q51 What other supporting measures are needed as part of the decriminalisation framework? For example:

- (a) education and training, such as:
 - i. public education and awareness programs to address stigma and educate the community about sex workers;
 - ii. information, education and training for sex workers and sex work business operators on their rights and obligations;
 - iii. education and training programs for officials and organisations who deal with sex workers;
- (b) steps to build positive relationships between sex workers, police and other authorities;
- (c) peer support and outreach services for sex workers on health and other matters.

Q52 Is there anything else you would like to tell us about these or any other matters raised by the terms of reference to ensure the legislative framework for decriminalisation is appropriate and effective?

⁷²⁷

See generally Prostitution Law Review Committee, above n 714, 80–2, 129, 132; Department of Justice and Community Safety (Vic), *Decriminalising Sex Work* (Discussion Paper, 2021) 4; Selvey et al, above n 720, 55–6.

Fraudulent promise to pay a sex worker for a sexual act

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Introduction

- 18.1 In recommending a framework for a decriminalised sex work industry, our terms of reference ask us to consider 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.⁷²⁸
- 18.2 We take this to mean non-payment where a person fraudulently promises to pay a sex worker. This differs from non-payment that does not involve fraud (for example, where a client intends to pay but the payment is declined or reversed because of an administrative error).
- 18.3 We considered this issue in our June 2020 report on consent laws and the excuse of mistake of fact in the Criminal Code, but did not recommend changes to those laws to address this issue. The Commission decided that it raised broader policy issues about regulating and protecting sex workers and how sex workers are treated in the criminal justice system, which were outside the scope of the review.⁷²⁹
- 18.4 We are now looking at this issue in light of the change to a decriminalised sex work industry.

Sex work is both a commercial exchange and an activity that requires consent

- 18.5 Sex work engages areas of civil law (like the law of contract) and criminal law (especially the law about consent to sexual activity).
- 18.6 Sex work is a commercial exchange between a sex worker and a client for sexual acts. Usually, the sexual acts are exchanged for payment of money (but payment in another form might be agreed, like goods or accommodation): see chapter 7. Sex work is negotiated and agreed between the parties.
- 18.7 In chapter 10, we consider the enforceability of sex work contracts and the sexual autonomy of sex workers. We ask if there should be a new law stating that a person may, at any time, refuse to perform or continue to perform sex work.
- 18.8 Sex work is different to other commercial exchanges because it concerns the sex worker's bodily integrity and issues of consent. Like any other person, sex workers have sexual autonomy. Entering a commercial arrangement for sex work does not itself constitute consent for this purpose: see chapter 10. Under the criminal law, each person participating in a sexual act must give consent to the act. Consent must be given 'freely and voluntarily'.
- 18.9 In this chapter, we ask if the criminal law should be changed to deal with fraudulent promises to pay a sex worker for a sexual act.
- 18.10 Some sex worker organisations report an increase in clients withdrawing or reversing their payments to sex workers.⁷³⁰ Some say the criminal law does not deal effectively with situations where a client fails to pay or withdraws or reverses their payment. In Queensland, police sometimes prosecute non-payment as the offence of fraud, which may result in the offender being fined.⁷³¹ There is support in Queensland's sex worker community to change the criminal

⁷²⁸ Terms of reference para 2.

⁷²⁹ QLRC, *Review of Consent Laws and the Excuse of Mistake of Fact*, Report No 78 (2020) 133–34.

⁷³⁰ A Schultz, 'No payment, no consent: sex worker advocacy groups say fraud and rape is on the rise', *Crikey* (online, 5 August 2020) <<https://www.crikey.com.au/2020/08/05/sex-work-advocacy-fraud-rape/>>.

⁷³¹ M McGowan and 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>>.

law so that a fraudulent promise by a client to pay a sex worker for a sexual act is treated as a rape (or sexual assault).⁷³²

Relevant criminal laws in Queensland

18.11 The Criminal Code includes several laws that might apply and are relevant:

- the crimes of rape and sexual assault, and the definition of consent that is relevant to those crimes;
- the crime of procuring a sexual act by false pretence; and
- the crime of fraud.

Rape, consent and circumstances where consent is negated

18.12 Chapter 32 of the Criminal Code includes the crimes of ‘rape’ (section 349) and ‘sexual assault’ (section 352). The maximum penalty for rape is life imprisonment. For sexual assault, the maximum penalty is 10 years imprisonment, or higher in certain cases.

18.13 Consent is a key element of those crimes. To prove rape or sexual assault, it must be proved that the sexual activity took place without consent.⁷³³

18.14 ‘Consent’ is defined in section 348.⁷³⁴ Section 348(1) says:

In this chapter, **consent** means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.

18.15 Section 348(2) gives a list of circumstances in which a person’s consent is not freely and voluntarily given. These are sometimes called circumstances that ‘negate’ consent. This means that the person’s consent was not free and voluntary, and is prevented from being effective, because of the particular way in which it was obtained. Section 348(2) says that:

Without limiting subsection (1), a person’s consent to an act is not freely and voluntarily given if it is obtained—

- (a) by force; or
- (b) by threat or intimidation; or
- (c) by fear of bodily harm; or
- (d) by exercise of authority; or
- (e) by false and fraudulent representations about the nature or purpose of the act; or
- (f) by a mistaken belief induced by the accused person that the accused person was the person’s sexual partner.

18.16 One of those circumstances, in section 348(2)(e), is where consent is obtained by false or fraudulent representations about the nature or purpose of the act. This is limited to false or

⁷³² See, eg, Respect Inc, Submission No 46 to Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020* (2021) 1. See also Evidence to Parliamentary Legal Affairs and Safety Committee, Parliament of Queensland, Brisbane, 21 January 2021, 24 (Dr E Jeffries, State Coordinator, Respect Inc); Respect Inc, Submission to Women’s Safety and Justice Taskforce, Queensland Parliament, *Discussion Paper Two: Women’s and Girls’ Experience of the Justice System* (2021) 15.

⁷³³ Criminal Code (Qld) ss 245, 347, 349(2)(a), 352(1). See also QLRC, *Review of Consent Laws and the Excuse of Mistake of Fact*, Report No 78 (2020) 13.

⁷³⁴ See Criminal Code (Qld) s 347 (definitions of ‘assault’ and ‘consent’).

fraudulent representations ‘about the nature or purpose of the act’. It does not cover other types of fraud.

- 18.17 In the context of a commercial transaction between a sex worker and client for sex work, it might be said the ‘nature’ of the act is to engage in the particular sexual act (such as sexual intercourse, masturbation, or oral sex). The ‘purpose’ of the act would typically be the sexual gratification of the client. But this would depend on the facts of each case.
- 18.18 Case law on this is not settled. But it is unlikely that a client’s fraudulent promise to pay a sex worker for a sexual act would fall within section 348(2)(e).⁷³⁵
- 18.19 Importantly, however, the list of circumstances in section 348(2) does not limit the definition of consent in section 348(1). This means that other circumstances may ‘negate’ a person’s consent, even if they are not stated in section 348(2).⁷³⁶
- 18.20 It is a question for the jury to decide whether the person’s consent was given freely and voluntarily. Depending on the facts, a jury in a particular case might be satisfied that a fraudulent promise to pay the sex worker for the sexual act means the sex worker’s consent was not given freely and voluntarily. This possibility was raised in *R v Winchester*, in which it was said:⁷³⁷

[section 348](2), which expressly provides that it does not limit [section 348](1), does not purport to define exhaustively the circumstances in which a consent will be deemed not [to] be free and voluntary. ...

Whether the consent of a promisee entering into sexual relations after a promise or offer ... can be considered not to be ‘freely and voluntarily given’ will depend on whether, having regard to the circumstances in which the promise or offer is made and characteristics of the offeree ..., the offeree is to be regarded as not having exercised her free choice.

- 18.21 It will therefore depend on the particular facts of the case whether rape or sexual assault will be found.

Procuring a sexual act by a false pretence

- 18.22 Chapter 22 of the Criminal Code deals with ‘offences against morality’ and includes the crimes of ‘procuring a sexual act by coercion etc’ (section 218).
- 18.23 Section 218(1) says:
- A person who—
- ...
- (b) by a false pretence, procures a person to engage in a sexual act, either in Queensland or elsewhere; ...
- commits a crime.

⁷³⁵ See, eg, *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.

⁷³⁶ See J Crowe, ‘Consent, power and mistake of fact in Queensland rape law’ (2011) 23(1) *Bond Law Review* 21, 22–4.

⁷³⁷ *R v Winchester* [2014]1 Qd R 44, 65–8 [75]–[85] (Muir JA). That case was not about sex work. It included evidence alleging the defendant had offered the complainant child the gift of a racehorse, which he did not own, in exchange for sexual intercourse.

- 18.24 That section also makes it a crime for a person to use ‘threats or intimidation of any kind’ to procure another person to engage in a sexual act, or to drug another person to overpower them so that a sexual act can be engaged in with them.⁷³⁸
- 18.25 The maximum penalty is 14 years imprisonment.
- 18.26 For this offence:⁷³⁹
- A person engages in a sexual act if the person:
 - allows a sexual act to be done to the person’s body; or
 - does a sexual act to the person’s own body or the body of another person; or
 - otherwise engages in an act of an indecent nature with another person.
 - Engaging in a sexual act is not limited to sexual intercourse or acts involving physical contact.
 - ‘Procure’ means ‘knowingly entice or recruit for the purposes of sexual exploitation’.
- 18.27 Before changes were made in 1992, section 218 had said:⁷⁴⁰
- Any person who—
- ...
- (2) By any false pretence procures a woman or girl, who is not a common prostitute or of known immoral character, to have unlawful carnal connection with a man, either in Queensland or elsewhere; ...
- is guilty of a misdemeanour ...
- 18.28 The *Prostitution Laws Amendment Act 1992* (Qld) changed this to remove the words ‘who is not a common prostitute or of known immoral character’ and use more gender-neutral language.⁷⁴¹
- 18.29 A client who fraudulently promises to pay a sex worker for a sexual act could be charged under this section.
- 18.30 Other jurisdictions have similar procurement offences, but they vary in scope and how they operate. Some writers describe procurement offences like the one in section 218 as ‘lesser offence[s] to punish fraudulent sex that does not fall within the limited categories of consent-vitiating fraud’. The Queensland offence is ‘notable for both its breadth (eg, all sexual acts, gender neutrality and no morality requirement) and severity (ie, 14 years imprisonment)’. In contrast, similar offences in other jurisdictions have a lower maximum penalty.⁷⁴²

⁷³⁸ Criminal Code (Qld) s 218(1)(a), (c).

⁷³⁹ Criminal Code (Qld) s 218(2)–(3), (4).

⁷⁴⁰ RF Carter, *Criminal Law of Queensland* (Butterworths, 8th ed, 1992) 4118.

⁷⁴¹ See *Prostitution Laws Amendment Act 1992* (Qld) s 9; Explanatory Notes, *Prostitution Laws Amendment Bill 1992* (Qld) 2. See also *Criminal Law Amendment Act 1997* (Qld) s 29, increasing the penalty from 7 to 14 years and inserting the definition of ‘procure’.

⁷⁴² J Chen, ‘Fraudulent sex criminalisation in Australia: disparity, disarray and the underrated procurement offence’ (2020) 43(2) *UNSW Law Journal* 581, 583, 591.

Fraud

- 18.31 A client who fraudulently or dishonestly promises to pay money to a sex worker in exchange for a sexual act and does not pay could also be charged with the crime of ‘fraud’ under section 408C of the Criminal Code.
- 18.32 This is contained in chapter 37 of the Criminal Code which deals with ‘offences analogous to stealing’.
- 18.33 Section 408C(1) says:
- A person who dishonestly—
- ...
- (d) gains a benefit or advantage, pecuniary or otherwise, for any person; or
- ...
- (g) induces any person to do any act which the person is lawfully entitled to abstain from doing; ...
- commits the crime of fraud.
- 18.34 The maximum penalty is five years imprisonment, or higher in some cases.

How should a fraudulent promise by a client to pay a sex worker for a sexual act be dealt with under the criminal law?

- 18.35 A fraudulent promise by a client to pay money to a sex worker in exchange for a sexual act may fall within various criminal offences. This will depend on the particular circumstances of the case. It could be:
- fraud (under section 408C);
 - procurement by false pretence (under section 218); or
 - rape or sexual assault, if it is found that the fraudulent promise to pay negated the sex worker’s consent.
- 18.36 Decriminalising sex work might have practical effects on the setting in which these scenarios arise. Decriminalising sex work will remove barriers to sex workers’ reporting of crimes committed against them. It should also improve sex workers’ ability to screen and negotiate with clients, adopt safety strategies and transparent business practices, and access other protections. It might also lead to changes in individual, social and cultural attitudes about sex work and sex workers with positive effects on sex workers’ rights and safety.
- 18.37 Sex workers negotiate with their clients about the sexual services that will, and will not, be provided. Like any other person, a sex worker has sexual autonomy. Under the criminal law, each adult who participates in the sexual act must give free and voluntary consent to the act.
- 18.38 On one view, a sex worker’s consent to the sexual act is secured on the basis of payment. They may not have given consent to the sexual act had they known they would not be paid for their sexual services. On this view, sexual activity where there was a fraudulent promise to pay the sex worker might be seen as violating the sex worker’s sexual autonomy and bodily integrity.

18.39 Respect Inc argues that:⁷⁴³

In sex work, a key aspect of consent for sexual services is payment for the services negotiated. If payment is not made or withdrawn, whether or not the sex worker is yet aware, consent is also withdrawn. When the payment and therefore consent is breached access to a person's body and sexual labour is sexual violence ...

18.40 Respect Inc says that section 348(2) of the Criminal Code should be amended so that 'consent is not freely and voluntarily given by a sex worker when payment for sexual services is withdrawn or not given'. They say this is 'essential to provide clear direction to police and the justice system'.⁷⁴⁴

18.41 In the Commission's review of consent laws and mistake of fact, it asked if section 348(2) of the Criminal Code should be changed to list a new circumstance 'to address the situation where the complainant consents to a sexual act under a mistaken belief induced by the defendant that there will be a monetary exchange in relation to the sexual act'.⁷⁴⁵

18.42 Several submissions to that review supported such a change. Some of the reasons given in support of this were:⁷⁴⁶

- to 'communicate the standards of respect we expect people to show each other';
- 'that there is a lack of clarity as to whether non-payment of sex workers amounts to rape under the current law and that this affects the attitudes of police officers and their approaches to survivors'; and
- that sex workers can experience barriers to reporting acts of sexual violence and the addition of such a circumstance would give 'in principle support to sex workers having the same right to free and voluntary sexual consent as all other Queenslanders'. (notes omitted)

18.43 Other submissions to that review did not support any change to the circumstances in section 348(2) of the Criminal Code.

18.44 One legal stakeholder said:⁷⁴⁷

The offence of rape carrying a maximum penalty of life imprisonment should not be aligned with circumstances relating to the recovery of money. This is fraud, not rape. Including this type of circumstance into the non-exhaustive list under section 348(2) could have the impact of creating separate categories of rape. Work needs to be done regarding education in relation to the circumstances already covered but misunderstood, rather than introducing new categories that traditionally would not be understood by most members of the community as rape. A better way to protect sex workers would be to reform the law of that industry, particularly where at present a sex worker who has someone assisting with protection and recovery of money is breaking the law.

⁷⁴³ Respect Inc, Submission No 46 to Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020* (2021) 1.

⁷⁴⁴ Ibid.

⁷⁴⁵ See QLRC, *Review of Consent Laws and the Excuse of Mistake of Fact*, Report No 78 (2020) 131.

⁷⁴⁶ Ibid 132.

⁷⁴⁷ Ibid 133.

- 18.45 Another legal stakeholder stated that ‘a distinct offence is not necessary as such conduct is already captured by the broad definition of fraud in section 408C of the Criminal Code’.⁷⁴⁸

Approaches in some other jurisdictions

- 18.46 Criminal laws in Australia have developed and operate differently. There are significant differences in the way criminal responsibility for serious offences is structured, and in the scope and operation of offences and defences (including for rape and sexual assault). We need to be careful when comparing laws. But we can look to other jurisdictions for possible options.
- 18.47 A fraudulent promise to pay a sex worker for a sexual act is addressed in criminal laws in other jurisdictions in various ways. As a general summary, this includes:⁷⁴⁹
- rape, where consent is negated if it is obtained by fraud or false representation (as in the Australian Capital Territory, Tasmania and Western Australia);⁷⁵⁰
 - in some other jurisdictions, the list of circumstances in which consent is negated includes false or fraudulent representation about the nature or purpose of the act (like Queensland and the Northern Territory), but the list is not exhaustive;⁷⁵¹
 - procuring a sexual act by fraud (such as in Victoria);⁷⁵² and
 - fraud or criminal deception (such as in the Northern Territory).⁷⁵³

The Australian Capital Territory

- 18.48 The Australian Capital Territory amended its definition of ‘consent’ in 1985 to effectively provide that any type of fraud may negate consent.⁷⁵⁴
- 18.49 Section 67(1)(g) of the *Crimes Act 1900* (ACT) provides that:

67 Consent

- (1) For sections 54, 55(3)(b), 60 and 61 (3)(b) and without limiting the grounds on which it may be established that consent is negated, the consent of a person to sexual intercourse with another person, or to the committing of an act of indecency by or with another person, is negated if that consent is caused—

...

- (g) by a **fraudulent misrepresentation of any fact** made by the other person, or by a third person to the knowledge of the other person; ... (emphasis added)

- 18.50 In *R v Livas*, the offender pretended to pay a sex worker \$850, with what turned out to be an envelope containing folded up paper. The sex worker discovered this only after having sexual intercourse. The offender ‘pleaded guilty to one offence of sexual intercourse without consent,

⁷⁴⁸

Ibid.

⁷⁴⁹

See generally Chen, above n 742, 597.

⁷⁵⁰

See *Crimes Act 1900* (ACT) s 67(1)(g); Criminal Code (Tas) s 2A(2)(f); Criminal Code (WA) s 319(2)(a).

⁷⁵¹

See Criminal Code (NT) s 192(2)(g).

⁷⁵²

See *Crimes Act 1958* (Vic) s 45.

⁷⁵³

See Criminal Code (NT) s 227.

⁷⁵⁴

Crimes (Amendment) Act (No 5) 1985 (ACT) s 4 (as passed).

the apparent consent of the complainant, having been obtained by fraud'. He was sentenced to a period of imprisonment for 25 months, with a total of eight months to be served.⁷⁵⁵

- 18.51 In her victim impact statement, the complainant described the impact of the offending:⁷⁵⁶

My retrospective regret focused mainly upon my naivety. In my work, I do not simply allow clients access to my body. For a short time I give them the opportunity to feel loved. In a world that values romantic fantasy, I offer a commercialised version. The care and attention that I showed Mr Livas during what I thought to be an honest service was completely devalued when I realised that I had been deceived. The tenderness of the act of lovemaking was shared by the man who called himself 'Peter', and was incongruent with the violation that was really happening. My desire to give clients a service that I think they deserve was used to goad me into not checking the payment. Nevertheless, I made several attempts to check the payment, but was physically blocked by Mr Livas as he used his body to herd me into the shower and onto the bed. He was not aggressive per se in these manoeuvres, but I did have a sense of powerlessness after being thwarted in my attempts. In the days following the incident, I was unable to think clearly, eat or sleep properly and I felt continuously tired. I was confused and hurt in a deeply emotional way, feeling shame about my gullibility.

- 18.52 The judge said of the offending:⁷⁵⁷

it must be clearly understood that something that looks like a consent to sexual intercourse, if obtained by fraudulent activity as this one clearly was, is not a consent. The offence of having sexual intercourse with a person, without her consent, is clearly made out ...

The offence was clearly premeditated and the statement of facts makes it clear that Mr Livas abused the trust that the complainant had placed in him. On the other hand, I accept, as was indeed noted by the complainant in her Victim Impact Statement, that there was no force or violence used to achieve sexual intercourse ...

It seems that Mr Livas is still focused on the event as a commercial transaction that he says he always intended to make good. While he may be genuinely regretful that he was not able to pay the money, it is hard to see this as remorse for the deliberate deception, and the violation of the complainant's personal integrity that he achieved by it ...

Sex workers clearly fall into the category of vulnerable workers in general and may be particularly vulnerable to abuse of this kind. Certainly, no one should doubt that fraudulently achieving sexual intercourse by this kind of activity constitutes rape, rather than a dishonesty offence, although of course dishonesty is a major element of this fact situation.

- 18.53 The offender appealed his sentence on a number of grounds, including that the fraudulent obtaining of consent reduced 'the objective seriousness of the offence'.⁷⁵⁸ The appeal was dismissed. The appeal court quoted paragraph [36] from the judge's reasons in the case:⁷⁵⁹

⁷⁵⁵ *R v Livas* [2015] ACTSC 50, [1], [39], [41].

⁷⁵⁶ *Ibid* [22].

⁷⁵⁷ *Ibid* [21], [23], [25], [34].

⁷⁵⁸ *Livas v The Queen* [2015] ACTCA 54, [5].

⁷⁵⁹ *Ibid* [21].

I note Mr Livas's lack of offending in the last four years and his employment and other positive factors in his life. It is unfortunate to have to sentence a person in those circumstances to imprisonment, but rape is a serious offence and this rape, although not the worst kind of rape, must be taken seriously.

18.54 The appeal court went on to say that:⁷⁶⁰

Her Honour was correct to describe the offence as a serious one. In our view, a period of full-time custody was inevitable and the period he was ordered to serve was modest. In this regard we read her Honour's remarks at paragraph [36] as saying merely that despite the appellant's favourable subjective circumstances, the objective circumstances required the imposition of full-time custody.

18.55 In the later case of *R v Mynott (No 2)*, the defendant pleaded guilty to two counts of engaging in sexual intercourse without consent with two sex workers he had agreed to pay for sexual services but did not pay after having received those services. In each case, the complainants had consented to sexual intercourse, but that consent was negated because it had been obtained by a fraudulent misrepresentation by the offender.⁷⁶¹

18.56 In the first instance, NI had agreed to travel to Canberra from Sydney to provide sexual services on the basis of an offer made by the offender that his return flights would be paid for and he would be paid \$1500. NI arrived in Canberra and on asking about payment was told by the offender that he would go to an ATM later to withdraw the money, which the sex worker agreed to. NI and the offender engaged in sexual activity without payment having been made. NI again asked about payment and was told 'that they would stop at an ATM on the way to the airport'.⁷⁶² They took a taxi to the airport and on the way the offender left the taxi, ostensibly to get money from an ATM to pay NI, but the offender did not return to the taxi. The sex worker made subsequent unsuccessful attempts to be paid and eventually caught a bus back to Sydney empty handed.

18.57 In the second instance, KS agreed to an offer by the offender to come from Victoria to Canberra to provide sexual intercourse in exchange for return flights and payment of \$2000. KS ended up paying for his own flight, on the basis he would be reimbursed by the offender. KS was not collected at the airport by the offender as agreed but was told by the offender to use an Uber. Subsequently, KS agreed to an offer by the offender for an extra payment of \$500 for a third person to join them. 'KS repeatedly emphasised the importance of payment' and told the offender he needed part payment before any sexual activity.⁷⁶³ They ended up having sex without any payment being made. Afterward, the offender left, saying that he would be back in 10 minutes, but he never returned.

18.58 In his victim impact statement, NI said he had felt 'very upset, betrayed and sad'.⁷⁶⁴ The court said:⁷⁶⁵

The loss of trust associated with the incident affected NI's ability to engage in escort work and he had to change his line of work.

⁷⁶⁰ Ibid [25].

⁷⁶¹ *R v Mynott (No 2)* [2020] ACTSC 232.

⁷⁶² Ibid [13].

⁷⁶³ Ibid [24].

⁷⁶⁴ Ibid [32].

⁷⁶⁵ Ibid [33]–[34].

KS did not provide a victim impact statement, but it is clear from the agreed statement of facts that he was shocked and upset by the offence.

18.59 The court found that:⁷⁶⁶

Each offence was of significant objective seriousness. Each was associated with significant planning. The offender did not reveal his real name to the complainants, and he financed or attempted to finance their expenses using the credit card details of a third party. Each offence encompassed several episodes of sexual activity. Because of the nature of sex work, sex workers are vulnerable to sexual offences of this kind.

18.60 On both counts, the offender was given a total sentence of three years and four months' imprisonment, with a non-parole period of 16 months.⁷⁶⁷

Western Australia

18.61 Western Australia defines the types of factors that will negate consent to sexual activity at a much more general level. Any kind of material fraudulent misrepresentation has the potential to negate consent to sexual intercourse.

18.62 For this purpose, section 319(2)(a) of the Criminal Code (WA) says:⁷⁶⁸

consent means a consent freely and voluntarily given and, without in any way affecting the meaning attributable to those words, a consent is not freely and voluntarily given if it is obtained by force, threat, intimidation, **deceit, or any fraudulent means**; ... (emphasis added)

18.63 Whether this encompasses a situation in which a person has fraudulently promised to pay a sex worker for a sexual act will depend if it is interpreted broadly to include any fraud or more narrowly to limit it to fraud about the nature or purpose of the act.⁷⁶⁹

18.64 In Western Australia, (in circumstances where the fraudulent conduct of the client does not fall within consent-vitiated fraud) the 'lesser' procurement offence does not apply to sex workers. Unlike Queensland, Western Australia has not abolished the morality requirement in its procurement offence, which excludes a person who is 'a common prostitute or of known immoral character'.⁷⁷⁰

⁷⁶⁶ Ibid [35].

⁷⁶⁷ Ibid [75], [77].

⁷⁶⁸ Western Australia amended its definition of 'consent' in 1985: *Acts Amendment (Sexual Assaults) Act 1985* (WA) s 8. The definition previously said 'a consent is not freely and voluntarily given if it is obtained by force, threat, intimidation, deception or fraudulent means'.

⁷⁶⁹ See *Michael v Western Australia* (2008) 183 A Crim R 348.

⁷⁷⁰ Criminal Code (WA) s 192(1)(b). See [18.27]–[18.28] above.

CONSULTATION QUESTIONS

- Q53** In a decriminalised sex work industry, are Queensland's criminal laws adequate to deal with circumstances where there is a fraudulent promise by a person to pay money to a sex worker in exchange for a sexual act? Why or why not?
- Q54** If no to Q53, what changes (if any) should be made to the Criminal Code to address this issue? For example, should the Criminal Code be changed:
- (a) to widen the list of circumstances in section 348(2) that negate consent (and if so, in what way); or
 - (b) in some other way?
- Q55** What other factors should we consider (if any) in recommending changes to the criminal law on this issue?

Prostitution-related offences in Queensland

Appendix A: Prostitution-related offences in Queensland

- A.1 The tables on the following pages describe the offences in the Prostitution Act and the Prostitution Regulation, and relevant offences in the Criminal Code (Qld). The offences are listed by section number and described by the wording of the section or by subject matter.
- A.2 To see the provisions set out in full, see the legislation available at: Queensland Parliamentary Counsel, 'In force legislation' <<https://www.legislation.qld.gov.au/browse/inforce>>.⁷⁷¹

⁷⁷¹

See *Prostitution Act 1999* (Qld); *Prostitution Regulation 2014* (Qld); Criminal Code (Qld) ch 22A.

Prostitution Act		
Section	Offence	Maximum penalty
Part 3 Licensing system, Division 1 Brothel licences		
s 11	Requirement for applicant to update licence application— If, before a licence application is decided, an applicant becomes aware of a change in the information given to the PLA, they must, within 10 days of becoming aware, give particulars of the change to the PLA by signed notice	60 penalty units (\$8271)
s 20	Requirement for licensee to notify changes in information given for the licence application— If a licensee becomes aware of a change in the information given at any time to the PLA by the licensee for the application for the licence, they must, within 10 days of becoming aware, give particulars of the change to the PLA by signed notice	60 penalty units (\$8271)
s 22	Endorsement of licence— Licensee must comply with any requirement to produce the licence to endorse a variation, revocation or addition to a condition or restriction of the licence	10 penalty units (\$137 850)
s 28C	Failure by licensee to take oath or answer question— Licensee must not fail to take an oath or answer a question (without reasonable excuse) at a hearing of a licensee disciplinary inquiry	60 penalty units (\$8271)
s 28D(3)	PLA may require information relevant to licensee disciplinary inquiry— Licensee or another person must not fail to give PLA (without reasonable excuse) required information relevant to a disciplinary inquiry	60 penalty units (\$8271)
s 28E(4)	Attendance notice for hearing of a licensee disciplinary inquiry— A person given a notice to attend a hearing or to give evidence or to produce stated documents or other things at a hearing must not fail, without reasonable excuse, to attend as required by the notice or to continue to attend as required by the PLA	60 penalty units (\$8271)
s 28E(5)	Requirements for a witness at a hearing of a licensee disciplinary inquiry—	60 penalty units (\$8271)

Prostitution Act		
Section	Offence	Maximum penalty
	A witness at a hearing must not (without reasonable excuse) fail to take an oath or affirmation, answer a question, or produce a document or other thing, as required	
s 32	Surrendered, suspended or cancelled licence must be returned— Licensee must return the licence to the PLA within 7 days after licence is surrendered, suspended or cancelled	10 penalty units (\$137 850)
Part 3 Licensing system, Division 2 Approved managers		
s 36	Requirement to update application for an approved manager's certificate— If, before a certificate application is decided, an applicant becomes aware of a change in the information given to the PLA, they must, within 10 days of becoming aware, give particulars of the change to the PLA by signed notice	60 penalty units (\$8271)
s 45	Requirement for approved manager to notify changes in information given— Approved manager or licensee must notify PLA of any changes in information given, at any time, for the application for an approved manager's certificate	60 penalty units (\$8271)
s 48	Endorsement of certificate— Approved manager must comply with any requirement to produce the certificate to endorse a variation, revocation or addition to a condition or restriction of the approved manager's certificate	10 penalty units (\$137 850)
s 54C	Failure by approved manager to take oath or answer question— Approved manager must not fail to take an oath or answer a question (without reasonable excuse) at a hearing of an approved manager disciplinary inquiry	60 penalty units (\$8271)
s 54D(3)	PLA may require information relevant to approved manager disciplinary inquiry— Approved manager or another person must not fail to give PLA (without reasonable excuse) required information relevant to a disciplinary inquiry	60 penalty units (\$8271)
s 54E(4)	Attendance notice for hearing of an approved manager disciplinary inquiry—	60 penalty units (\$8271)

Prostitution Act		
Section	Offence	Maximum penalty
	A person given a notice to attend a hearing or to give evidence or to produce stated documents or other things at a hearing must not fail, without reasonable excuse, to attend as required by the notice or to continue to attend as required by the PLA	
s 54E(5)	Requirements for a witness at a hearing of an approved manager disciplinary inquiry— A witness at a hearing must not (without reasonable excuse) fail to take an oath or affirmation, answer a question, or produce a document or other thing, as required	60 penalty units (\$8271)
s 58	Surrendered, suspended or cancelled certificate must be returned— Approved manager must return the certificate to the PLA within 7 days after the certificate is surrendered, suspended or cancelled	10 penalty units (\$137 850)
Part 5 Prohibited brothels		
s 68	Offence in relation to posted up declaration— A person must not interfere with (that is, cover, remove, deface or destroy) a copy of a declaration posted up on a prohibited brothel	60 penalty units (\$8271) or 6 months imprisonment
s 69	Offence of being in or entering or leaving prohibited brothel— A person must not be found in or entering or leaving a prohibited brothel However, a person other than the owner or occupier may enter or leave the premises for a lawful purpose, and the owner or occupier may enter the premises under a court order	60 penalty units (\$8271) or 1 years' imprisonment
s 70	Offence if prohibited brothel used as brothel after declaration given— The occupier and owner of the premises each commit an offence if a prohibited brothel is used as a brothel after notice has been given	200 penalty units (\$27 570) or 3 years imprisonment
Part 6 Offences, Division 1 General offences relating to prostitution		
s 73	Public soliciting for purposes of prostitution— A person must not publicly solicit for prostitution	First offence: 15 penalty units (\$206 775)

Prostitution Act		
Section	Offence	Maximum penalty
	<p>A person publicly solicits for prostitution if, for that purpose, the person solicits a person who is in a public place or at a place within the view or hearing of a person who is in a public place, or loiters in or near a public place or in a place that can be viewed from a public place</p> <p>‘Solicit’ includes offering to provide prostitution and accepting an offer to provide prostitution</p> <p>This applies to both prostitutes and their clients, and those acting on their behalf</p>	<p>Second offence: 25 penalty units (\$344 625)</p> <p>Third or subsequent offence: 30 penalty units (\$413 550) or 6 months imprisonment</p>
s 76	<p>Nuisances connected with prostitution—</p> <p>A person must not cause unreasonable annoyance to, or unreasonable disruption to the privacy of, another person</p> <p>This applies to conduct that:</p> <ul style="list-style-type: none"> (a) happens in the vicinity of a place that is reasonably suspected of being used for prostitution; and (b) to a significant extent, is caused by the presence, or suspected presence, of prostitution at the place 	<p>First or second offence: 15 penalty units (\$206 775)</p> <p>Third or subsequent offence: 25 penalty units (\$344 625)</p>
s 77	<p>Duress—</p> <p>A person must not do any of the following acts, either directly or indirectly, to make another person continue to provide prostitution:</p> <ul style="list-style-type: none"> (a) cause or threaten wilful injury to the person or anyone else; (b) cause or threaten wilful damage to property of the person or anyone else; (c) intimidate or harass the person or anyone else; (d) make a false representation or use any false pretence or other fraudulent means 	<p>200 penalty units (\$27 570) or 7 years imprisonment</p>
s 77A(1)–(2)	<p>Use of prophylactics by prostitute—</p> <p>A prostitute must not provide, or offer to provide, prostitution involving sexual intercourse or oral sex unless a prophylactic is used</p>	<p>100 penalty units (\$13 785)</p>
s 77A(3)	<p>Use of prophylactics by client—</p>	<p>100 penalty units (\$13 785)</p>

Prostitution Act		
Section	Offence	Maximum penalty
	A client must not ask for, accept an offer of, or obtain prostitution involving sexual intercourse or oral sex without a prophylactic being used	
s 77A(4)	<p>Client not to interfere with prophylactics—</p> <p>A person obtaining prostitution involving sexual intercourse or oral sex must not:</p> <ul style="list-style-type: none"> (a) interfere with the efficacy of a prophylactic used by the person; or (b) use, or continue to use, a prophylactic that the person knows, or could reasonably be expected to know, is damaged 	100 penalty units (\$13 785)
s 77A(5)	<p>Ensuring safe sex at brothels—</p> <p>A person who is a licensee or an approved manager of a licensed brothel must, for any period the licensed brothel is being used to provide prostitution, take reasonable steps to ensure that:</p> <ul style="list-style-type: none"> (a) a person does not provide or obtain prostitution involving sexual intercourse or oral sex at the licensed brothel unless a prophylactic is used; or (b) a person does not offer to provide, or ask a prostitute to provide, prostitution involving sexual intercourse or oral sex at the licensed brothel without a prophylactic being used 	120 penalty units (\$16 542)
s 77A(6)	<p>Not discourage the use of prophylactics—</p> <p>A person who is a licensee or an approved manager of a licensed brothel must not discourage the use of prophylactics at the brothel</p>	120 penalty units (\$16 542)
Part 6 Offences, Division 2 Offences relating to the operation of a licensed brothel		
s 78(1)	<p>Brothel offences—</p> <p>A person who is a licensee or an approved manager of a licensed brothel must not:</p> <ul style="list-style-type: none"> (a) provide prostitution under the licence at a place other than the brothel; or (b) have more than 13 staff at the brothel at any 1 time; or (c) provide prostitution at the brothel in contravention of any condition or restriction of a licence or a certificate; or 	200 penalty units (\$27 570) or 5 years imprisonment

Prostitution Act		
Section	Offence	Maximum penalty
	(d) provide prostitution at the brothel while the licensee's licence is suspended	
s 78(2)	Exceeding the permissible number of prostitutes at a brothel— A person who is a licensee or an approved manager of a licensed brothel that is, under the development permit for the licensed brothel, permitted to have a total number of rooms stated in schedule 3, column 1, used for providing prostitution must not, at any 1 time, have at the licensed brothel more than the number of prostitutes set out opposite in schedule 3, column 2	200 penalty units (\$27 570) or 5 years imprisonment
s 79	Operating licensed brothel other than in a building— A licensee must not operate a licensed brothel other than in a building	200 penalty units (\$27 570) or 5 years imprisonment
s 80	Personal supervision of brothel— A licensed brothel must at all times when open for business be personally supervised by the licensee or an approved manager	60 penalty units (\$8271) or 6 months imprisonment
s 81	Licensee not to operate brothel in partnership or in association with unlicensed person— A licensee must not operate a brothel in partnership with, or otherwise in association with, a person who is not also licensed to operate the brothel	200 penalty units (\$27 570) or 5 years imprisonment
s 82	Having an interest in more than 1 licensed brothel— A person must not have, at any 1 time, an interest in more than 1 licensed brothel	200 penalty units (\$27 570) or 5 years imprisonment
s 83	Possessing liquor in brothel— A person must not possess liquor at a licensed brothel If liquor is found, the licensee and any approved manager whose duty it was to personally supervise the brothel at the relevant time each commit an offence	40 penalty units (\$5514)
s 84	Complying with police requirement— If a police officer enters a licensed brothel under s 59, a person must comply with a requirement made under s 60(1)(c) or (d) unless the person has a reasonable excuse	20 penalty units (\$2757)

Prostitution Act		
Section	Offence	Maximum penalty
s 85	<p>Person to state age—</p> <p>If police officer reasonably believes a person in a licensed brothel may be a minor, the police officer may require the person to give particulars of their age, and in some cases, give evidence to verify the particulars</p> <p>The person must not fail to comply and must not give false particulars or evidence about the person's age</p>	20 penalty units (\$2757)
s 86	<p>Giving name and address—</p> <p>Licensee and approved manager must not (without reasonable excuse) fail to state their name or address if a police officer or the PLA requires it, and must not give false particulars of their name or address</p>	20 penalty units (\$2757)
s 87	<p>Display of licence—</p> <p>Licensee must clearly display either their licence for the brothel or a notice stating the licence number, address of the brothel and date on which the licence expires, and must not display a document falsely purporting to be a licence</p>	100 penalty units (\$13 785)
s 88	<p>Production of licence or certificate—</p> <p>A licensee or approved manager must not, without reasonable excuse, fail to produce his or her licence or certificate to a police officer or the PLA if the police officer or PLA asks the licensee or approved manager to do so</p>	10 penalty units (\$137 850)
Part 6 Offences, Division 3 Offences relating to prostitutes working in licensed brothels		
s 89(1)	<p>Permitting prostitute to work while infective with a sexually transmissible disease—</p> <p>A person who is a licensee or an approved manager of a licensed brothel must not permit a person to work as a prostitute at the brothel during any period in which the person knows the prostitute is infective with a sexually transmissible disease</p>	120 penalty units (\$16 542)
s 89(4)	<p>Use of medical examination by licensee or approved manager—</p> <p>A person who is a licensee or an approved manager of a licensed brothel must take reasonable steps to prevent the fact that a prostitute has been medically examined or tested, or the results of the examination or</p>	40 penalty units (\$5514)

Prostitution Act		
Section	Offence	Maximum penalty
	test, from being used to induce a client of the prostitute to believe that the prostitute is not infective with a sexually transmissible disease	
s 90(1)	Working while infective with a sexually transmissible disease— A person must not work as a prostitute at a licensed brothel during any period in which the person knows he or she is infective with a sexually transmissible disease	100 penalty units (\$13 785)
s 90(4)	Use of medical examination by prostitute— A prostitute must not, for the purpose of prostitution, use the fact that the prostitute has been medically examined or tested, or the results of the examination or test, to induce a client of the prostitute to believe that the prostitute is not infective with a sexually transmissible disease	40 penalty units (\$5514)
Part 6 Offences, Division 4 Advertising offences		
s 93	Advertising prostitution— A person must not publish an advertisement for prostitution that describes the services offered, that is not in the approved form, or through radio or television or by film or video recording	<p>If a website has been established for the advertisement:</p> <ul style="list-style-type: none"> if the cost of establishing the website is \$1000 or less—70 penalty units (\$964 950) if the cost of establishing the website is more than \$1000—an amount that is 10 times the commercial cost of establishing the website <p>Otherwise:</p> <ul style="list-style-type: none"> if the cost of publishing the advertisement is \$1000 or less—70 penalty units (\$964 950) if the cost of publishing the advertisement is more than \$1000—an amount that is 10

Prostitution Act		
Section	Offence	Maximum penalty
		times the cost of publishing the advertisement
s 94	Statements inducing persons to become prostitutes— 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	Advertising prostitution as massage services— 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)
s 96A	Advertising social escort services— A person must not publish an advertisement for social escort services that does not, by the use of the words 'non-sexual' or 'sexual services are not provided', unequivocally state that the services are not sexual or that sexual services are not provided A person must not publish an advertisement for social escort services that is not in the approved form	If the cost of establishing the website (for an ad on an internet website) or the cost of publishing the ad is: <ul style="list-style-type: none"> \$1000 or less—70 penalty units (\$964 950); or more than \$1000—an amount that is 10 times the commercial cost of establishing the website or of publishing the ad
s 96B	Clients of social escort services to be informed that prostitution is not provided— An employee of a social escort provider and a social escort must not arrange for the provision of a social escort service, or begin a social escort service, to a person, unless they have clearly informed the person that prostitution is not provided	70 penalty units (\$964 950)
Part 6 Offences, Division 5 Other offences		
s 97	False or misleading statements— A person must not, in connection with this Act, state anything to the PLA that the person knows is false or misleading in a material particular	100 penalty units (\$13 785)

Prostitution Act		
Section	Offence	Maximum penalty
s 98	<p>False or misleading documents—</p> <p>A person must not, in connection with this Act, give to the PLA a document containing information the person knows is false or misleading in a material particular</p> <p>This does not apply if the person tells the PLA, to the best of their ability, how the document is false or misleading, and gives the correct information (if the person has, or can reasonably, obtain it)</p>	100 penalty units (\$13 785)
Part 7 Prostitution Licensing Authority		
s 108(2)	<p>Member of PLA disclosing an interest—</p> <p>If a member of the PLA has a direct or indirect interest in a matter being considered, or about to be considered, by the PLA, the member must disclose the nature of the interest to a meeting of the PLA as soon as practicable after the relevant facts come to the member's knowledge</p>	100 penalty units (\$13 785)
s 108(4)	<p>Member of the PLA voting on a matter they have an interest in—</p> <p>If the interest is a material personal interest, the member must not vote on the matter, vote on a proposed resolution about the matter, be present while the matter, or a related matter, is being considered by the PLA, or otherwise take part in any decision in relation to the matter or a related resolution</p>	100 penalty units (\$13 785)
s 108C(1)	<p>Disclosure of a change in criminal history by PLA member—</p> <p>If there is a change in the extended criminal history of a member of the PLA, the member must, unless the member has a reasonable excuse, immediately disclose the change to the Minister</p>	100 penalty units (\$13 785) or 2 years imprisonment
s 108D	<p>Disclosure about change in criminal history by PLA member must not be false, misleading or incomplete—</p> <p>A member of the PLA must not give the Minister an approved form under s 108C(1) that is false, misleading or incomplete in a material particular</p>	100 penalty units (\$13 785) or 2 years imprisonment
s 110KB	<p>Executive Director must disclose change in criminal history—</p> <p>If there is a change in the extended criminal history of the executive director, the executive director must, unless the executive director has a reasonable excuse, immediately disclose the change to the Minister</p>	100 penalty units (\$13 785) or 2 years imprisonment

Prostitution Act		
Section	Offence	Maximum penalty
s 110KC	Disclosure about change in criminal history by Executive Director must not be false, misleading or incomplete— The executive director must not give the Minister an approved form under s 110KC(1) that is false, misleading or incomplete in a material particular	100 penalty units (\$13 785) or 2 years imprisonment
s 110S	PLA staff member to disclose change in criminal history— A staff member must not fail to give the executive director a disclosure required under s 110R or make a false, misleading or incomplete disclosure	100 penalty units (\$13 785) or 2 years imprisonment
Part 8 General		
s 133	Disclosure of information— An official must not disclose information obtained by the official in the administration of this Act	100 penalty units (\$13 785)
s 133A	Confidentiality— A relevant person who acquired information or gained access to a document about someone's criminal history for assessing the person's suitability for appointment as a member of the PLA, appointment as the executive director, or engagement as a staff member under this Act, must not disclose it to anyone else	100 penalty units (\$13 785)

Prostitution Regulation		
Section	Offence	Maximum penalty
s 21	Record keeping at brothels— Brothel licensees must keep certain records of business	40 penalty units (\$5514)
s 22	Documents to be given to PLA—	40 penalty units (\$5514)

Prostitution Regulation		
Section	Offence	Maximum penalty
	Brothel licensee or approved manager must comply with notice to give the PLA a stated document within a stated time (unless have reasonable excuse)	
s 23	<p>Licensee's duty about alarm, lighting and sign—</p> <p>Licensee must ensure there is an alarm button in each room, that there is enough lighting to check for visible signs of sexually transmissible disease, and that there is a sign stating 'only safe sexual activities are practised on these premises' in the reception area</p>	40 penalty units (\$5514)

Criminal Code		
Section	Offence	Maximum penalty
Chapter 22A Prostitution		
s 229FA	<p>Obtaining prostitution from person who is not an adult—</p> <p>A person (a client) who obtains prostitution from a person who is not an adult and who the client knows, or ought reasonably to know, is not an adult, commits a crime</p>	7 years imprisonment or 14 years imprisonment, if the person who provides prostitution is under 16 years of age
s 229G	<p>Procuring engagement in prostitution—</p> <p>A person who:</p> <ul style="list-style-type: none"> (a) procures another person to engage in prostitution, either in Queensland or elsewhere; or (b) procures another person: <ul style="list-style-type: none"> (i) to leave Queensland for the purpose of engaging in prostitution elsewhere; or (ii) to come to Queensland for the purpose of engaging in prostitution; or (iii) to leave the other person's usual place of residence in Queensland for the purpose of engaging in prostitution, either in Queensland or elsewhere; 	7 years imprisonment or 20 years imprisonment if the procured person is not an adult or is a person with an impairment of the mind

Criminal Code		
Section	Offence	Maximum penalty
	commits a crime	
s 229H	<p>Knowingly participating in provision of prostitution—</p> <p>A person who knowingly participates, directly or indirectly, in the provision of prostitution by another person commits a crime</p> <p>See s 229HA below for exceptions</p>	<p>First offence: imprisonment for 3 years</p> <p>Second offence: imprisonment for 5 years</p> <p>Third or subsequent offence: imprisonment for 7 years</p> <p>However, if a person who is not an adult or is a person with an impairment of the mind is, to the offender's knowledge, engaged in the provision of the prostitution, the offender is liable to a maximum penalty of 14 years imprisonment</p>
s 229HA	<p>When s 229H does not apply</p> <p>Sets out exceptions where section 229H does not apply, eg, the provision of prostitution in licensed brothel or where participant is the holder of a licence under <i>Security Providers Act 1993</i> and is performing the functions of a bodyguard or functions of a driver</p>	
s 229HB	<p>Carrying on business of providing unlawful prostitution—</p> <p>A person who knowingly carries on the business of providing unlawful prostitution commits a crime</p>	<p>7 years imprisonment</p> <p>However, if a person who is not an adult or is a person with an impairment of the mind is, to the offender's knowledge, engaged in the provision of the prostitution, the offender is liable to a maximum penalty of 14 years imprisonment</p>

Criminal Code		
Section	Offence	Maximum penalty
s 229HC	<p>Persons engaging in or obtaining prostitution through unlawful prostitution business—</p> <p>A person who engages in, or who obtains (without reasonable excuse), prostitution through a business suspected on reasonable grounds of providing unlawful prostitution commits a crime</p>	<p>First offence: 3 years imprisonment</p> <p>Second offence: 5 years imprisonment</p> <p>Third or subsequent offence: 7 years imprisonment</p>
s 229I	<p>Persons found in places reasonably suspected of being used for prostitution—</p> <p>A person who, without reasonable excuse, is found in, or leaving after having been in, a place suspected on reasonable grounds of being used for the purposes of prostitution by 2 or more prostitutes commits a crime</p> <p>Exception for licensed brothels</p>	<p>First offence: 3 years imprisonment</p> <p>Second offence: 5 years imprisonment</p> <p>Third or subsequent offence: 7 years imprisonment</p> <p>However, if a person who is not an adult or is a person with an impairment of the mind is, to the offender's knowledge, in the place at the time of the offence, the offender is liable to a maximum penalty of 14 years imprisonment</p>
s 229J	<p>Certificate of discharge for particular offences—</p> <p>If a person has been charged with an unlawful prostitution offence or an unlawful presence offence, and they have been granted a certificate of discharge, the court may make an order prohibiting the identification of that person</p> <p>It is an offence to contravene this order</p>	<p>2000 penalty units (\$275 700), 5 years imprisonment or both</p>

Criminal Code		
Section	Offence	Maximum penalty
s 229K(2), (3), (3A), (3B)	<p>Having an interest in premises used for prostitution—</p> <p>(2) A person who:</p> <p>(a) is an interested person in relation to premises; and</p> <p>(b) knowingly allows the premises to be used for the purposes of prostitution by 2 or more prostitutes</p> <p>commits a crime</p> <p>(3A) Offence does not apply to an interested person in relation to a licensed brothel</p> <p>(3B) However, exception for licensed brothel does not apply if, to the interested person's knowledge, a person who was not an adult or who was a person with an impairment of the mind was in the premises when the interested person was allowing the person to be using the premises for prostitution</p>	<p>First offence: 3 years imprisonment</p> <p>Second offence: 5 years imprisonment</p> <p>Third or subsequent offence: 7 years imprisonment</p> <p>However, if a person who is not an adult or is a person with an impairment of the mind is, to the offender's knowledge, in the premises at a time of the offence, the offender is liable to a maximum penalty of 14 years imprisonment</p>
s 229K(7), (8)	<p>Having an interest in premises used for prostitution—</p> <p>If a person who is an interested person in relation to premises is served with a warning by a police officer that premises are being used for the purposes of prostitution by 2 or more prostitutes, or if the person has reasonable grounds to suspect it is being used for the purposes of prostitution by 2 or more prostitutes, the person may serve an occupier or user of the premises with written notice to leave the premises (not later than 7 days after the service of the notice) and not return</p> <p>A person who contravenes that notice without reasonable excuse commits a crime</p>	7 years imprisonment
s 229L	<p>Permitting young person etc to be at place used for prostitution—</p> <p>A person who knowingly causes or permits 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 commits a crime</p>	14 years imprisonment

Comparative table: Regulation of sex work in Australia and New Zealand

Appendix B: Comparative table: Regulation of sex work in Australia and New Zealand

- B.1 The table on the following pages gives a brief overview of the regulation of sex work in Australia and New Zealand.
- B.2 The table refers to laws that are about sex work. It does not typically refer to general laws that apply to everyone, including sex workers and sex work businesses.
- B.3 The information in this table should be read together with the discussion in the body of the consultation paper.

	Qld	ACT	NSW	NT	SA	Tas	Vic ⁷⁷²	WA	NZ
Legislation	<i>Prostitution Act 1999</i> Criminal Code	<i>Sex Work Act 1992</i>	<i>Summary Offences Act 1988</i> <i>Restricted Premises Act 1943</i>	<i>Sex Industry Act 2019</i>	<i>Summary Offences Act 1953</i> <i>Criminal Law Consolidation Act 1935</i>	<i>Sex Industry Offences Act 2005</i>	<i>Sex Work Decriminalisation Act 2022</i>	<i>Prostitution Act 2000</i> Criminal Code	<i>Prostitution Reform Act 2003</i>
Private sex work	Permitted Must work alone	Permitted	Permitted	Permitted Up to two sex workers may work from their residence	Permitted	Permitted Must be self-employed. Can operate with one other sex worker, but neither can employ or manage the other	Permitted	Permitted	Permitted
Sex work businesses (eg, brothels, escort agencies, massage parlours)	Permitted (brothels)	Permitted (brothels and escort agencies)	Permitted (sex services premises)	Permitted (sex services businesses)	Not permitted	Not permitted	Permitted	Permitted (escort agencies)	Permitted (business of prostitution)
Licensing, registration and suitability requirements	Person must be licensed to operate a brothel Person must have an approved manager's certificate to manage a licensed brothel	Operators of commercial brothels and escort agencies must register Sole operators of brothels and escort agencies are exempt		Each operator of a business engaging three or more sex workers must hold a suitability certificate			Stage 1: Licensing will continue to be required, but not registration of small owner-operated businesses Stage 2: Licensing no longer required		Business operators must each hold an operator certificate Sex workers who are working in a small owner-operated brothel are exempt

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The *Sex Work Decriminalisation Act 2022* (Vic) was given Royal Assent on 1 March 2022. It will commence in two stages. The first stage commences on 10 May 2022. It will: remove offences and criminal penalties for adults participating in the act of consensual sex work in most circumstances; review and amend advertising controls; repeal the exempt small owner-operator register; and introduce anti-discrimination protections for sex workers. The second stage commences on 1 December 2023 (unless proclaimed earlier). It will include the remainder of the reforms and repeal the licensing system.

	Qld	ACT	NSW	NT	SA	Tas	Vic ⁷⁷²	WA	NZ
Planning	Limits on the size and location of brothels	Brothels may only operate in prescribed locations (unless used by a single sex worker)	Local councils make planning decisions about brothels. There are varying limits on their location. Planning laws sometimes apply to a home-based business	'Home based' sex services: must operate from residence; limits on number of employees and location 'Commercial premises' sex services: limits on the location of services			Planning requirements are to be developed		Territorial authorities may make by-laws regulating location of brothels
Public solicitation	Not permitted	Not permitted	Permitted, except near or in view of a dwelling, school, church or hospital, or in a school, church or hospital	Permitted	Not permitted	Not permitted	Permitted, except during specific times at or near a school, education and care service, children's service or place of worship	Not permitted	Permitted (but some territorial authorities have made by-laws limiting solicitation)
Advertising	Restricted	No specific restrictions (but regulations can be made)	Restricted	Restricted	No specific restrictions	No specific restrictions	Restricted	No specific restrictions	Restricted

	Qld	ACT	NSW	NT	SA	Tas	Vic	WA	NZ
Health	Requirements about STIs, prophylactics, sexual health testing and use of test results	Requirements about prophylactics and use of sexual health testing results	Public health offences about transmission of some STIs and use of premises for sex work	Sex work is a public health risk activity; safe sex practices required	No specific requirements	Requirements about STIs and prophylactics	A new public health and infection control framework for the sex work industry will be developed	Requirement to use prophylactics	Requirements about STIs, prophylactics, adoption of safer sex procedures and use of sexual health testing results
WHS codes of practices or guidelines etc for sex work	PLA: Brothel licence conditions PLA: Operational Standards Manual for licensed brothels	Work Health and Safety (Sexual Services Industry) Code of Practice 2011	Health and safety guidelines for sex services premises	Under development			Proposed		Guide to Occupational Health and Safety in the New Zealand Sex Industry
Sex work industry regulator	Specific regulator administers brothel licensing scheme: Prostitution Licensing Authority (PLA)	General regulator registers brothel and escort agencies: Commissioner for Fair Trading		General regulator issues suitability certificates: Commissioner of Consumer Affairs					

