

A framework for a decriminalised sex work industry in Queensland

Consultation Paper WP 80

April 2022

Front matters and Chapters 1 to 6

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 - (b) the extent to which existing legislation should be repealed to give effect to a decriminalised sex work industry, including the *Prostitution Act 1999*, *Prostitution Regulation 2014*, Chapter 22A of the Criminal Code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

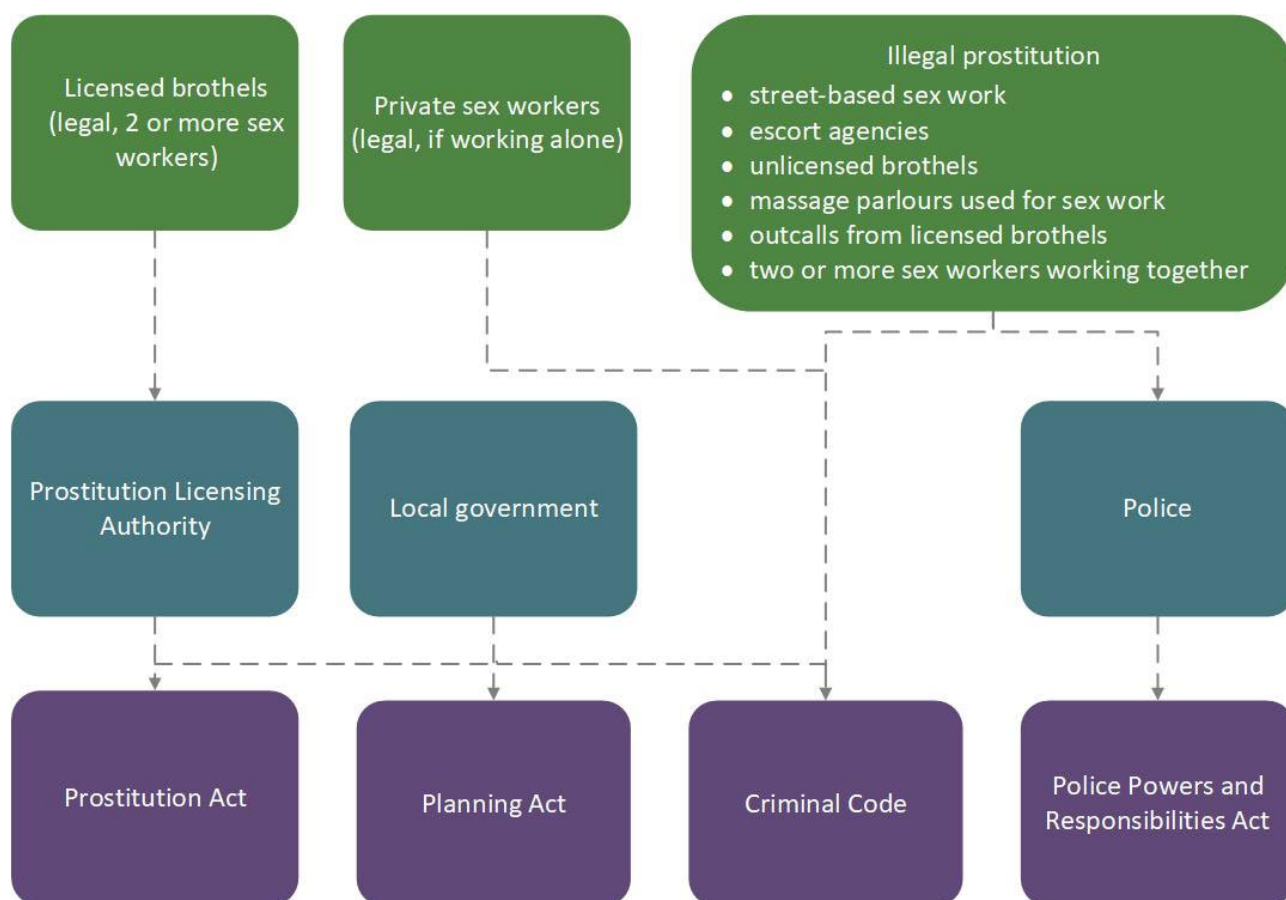
⁸ Criminal Code (Qld) s 229E(1).

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).

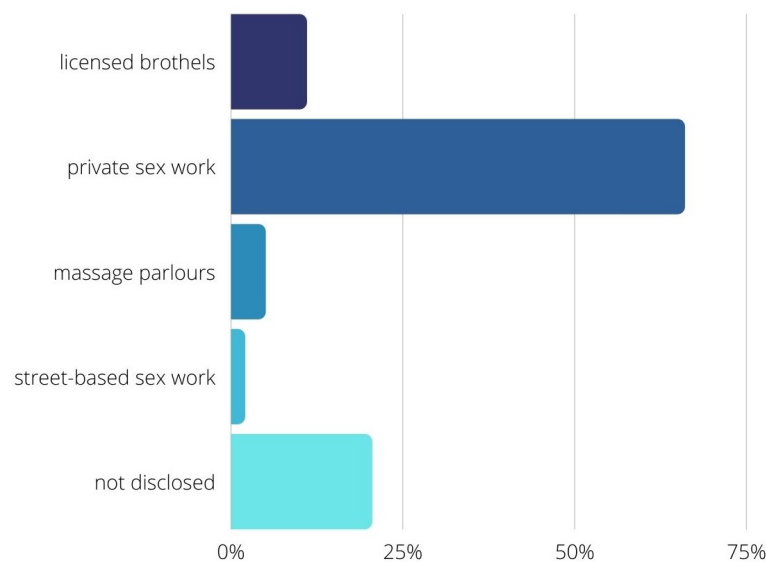
³² CMC Prostitution Report (2011) xiii. See also CMC Prostitution Report (2006) 15–16.

- 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.

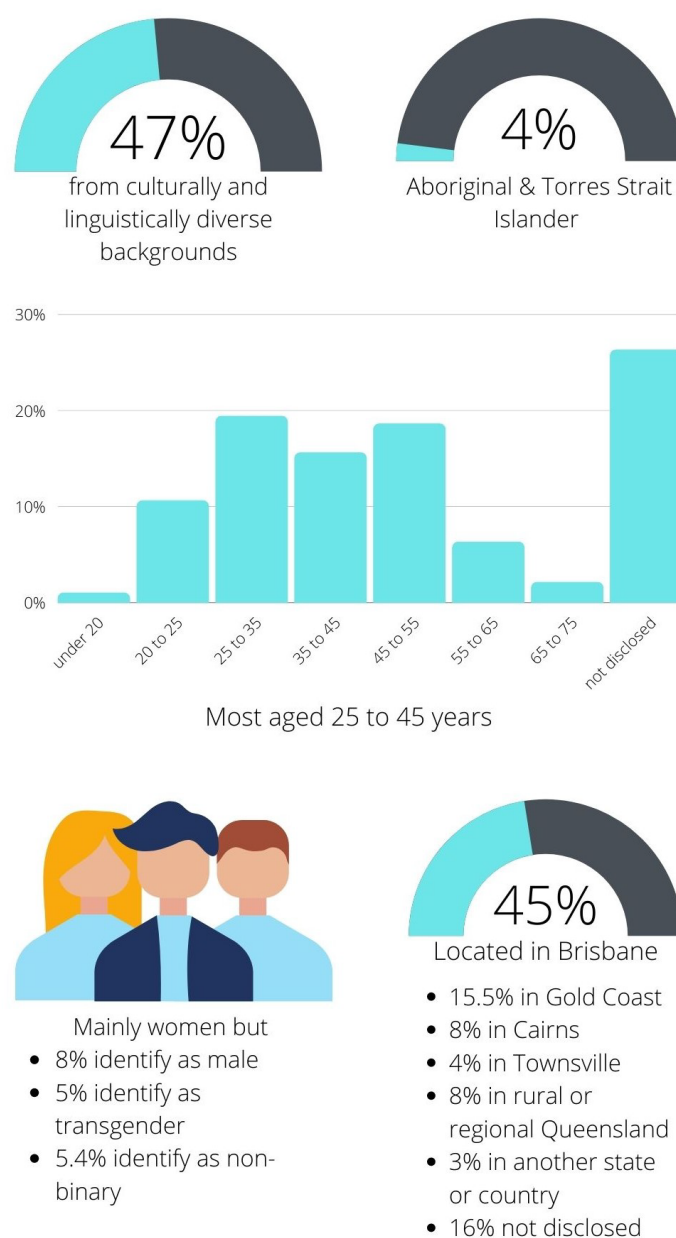
⁴⁵ Respect Inc (2015) above n 30, 2–4; Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 12; J Jones et al, *Factors Influencing Transgender and Male Sex Worker Access to Sexual Health Care, HIV Testing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

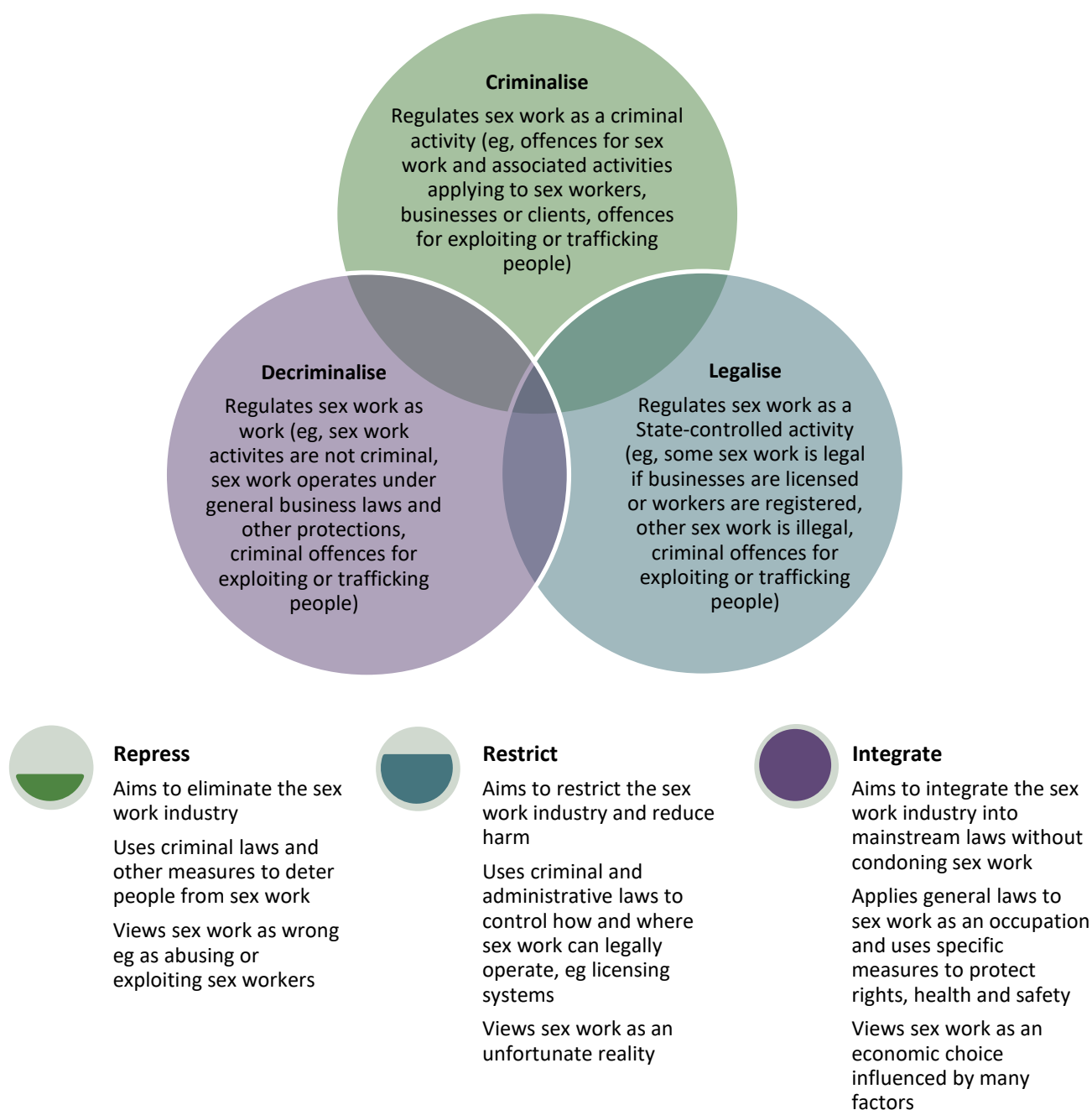
5.7 Decriminalisation aims to protect the rights of people working in the industry. Other steps might be taken to address factors that influence people to enter or leave sex work. No one should have to rely on sex work to survive or be forced into sex work against their will.

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').

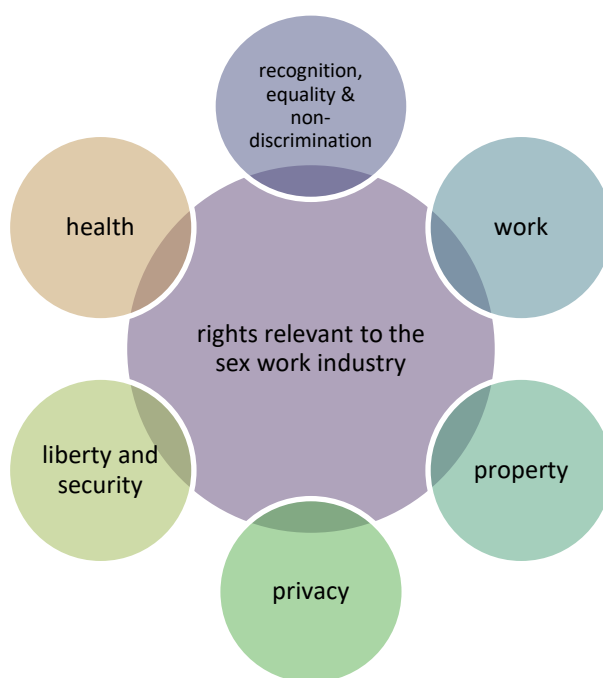
Compatibility with human rights

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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)	<p>ICESCR art 12*</p> <p>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.</p>	<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
<p>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).</p> <p>*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.</p>		

- 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).

