

A framework for a decriminalised sex work industry in Queensland

Consultation Paper WP 80

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Chapter 15

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Review of the new regulatory framework

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Introduction

- 15.1 Decriminalisation of the sex work industry is a significant change to the regulatory approach in Queensland. It is a shift away from the existing licensing framework for brothels established under the Prostitution Act and managed by the PLA, and the criminalisation of other forms of sex work (except sex work by a private sex worker who works alone).
- 15.2 In other jurisdictions that decriminalised the sex work industry, legislation included a requirement to review the impact of the new regulatory framework.
- 15.3 A review requirement was included in the Prostitution Act. When that Act was passed it also established an advisory body, but it was later disbanded.
- 15.4 In this chapter, we look at whether there should be a requirement in Queensland legislation to review the new regulatory framework following decriminalisation and, if so, what the features of the requirement should be. We also consider if there should be a requirement to collect baseline data.

Prostitution Act

- 15.5 The Prostitution Act included a requirement for the Act to be reviewed after three years of operation. It also established an advisory body to monitor the operation of the Act and report to the government about the regulation of sex work, including about social and health factors.

Requirement to review the effectiveness of the Act

- 15.6 When the Prostitution Act was passed, it included a requirement to review the effectiveness of the Act after three years of operation.⁶²³ That review was done by the CMC (now the Crime and Corruption Commission) in 2004. The CMC recommended that a further review of the effectiveness of the Act should be carried out, noting the lack of empirical evidence for the successful regulation of sex work and the possibility for ‘unintended consequences and unexpected outcomes’. It considered that the sex work industry ‘requires ongoing monitoring to ensure that the government can be responsive to problems as they arise’.⁶²⁴
- 15.7 In 2006, the Prostitution Act was amended. The review requirement was updated to require another review three years after the commencement of the amending Act.⁶²⁵ That review was completed by the CMC in 2011.⁶²⁶

Advisory body

- 15.8 When the Prostitution Act was passed, it also established a Prostitution Advisory Council to report to a ministerial committee.⁶²⁷ One of the underlying principles of the Prostitution Act was to address social factors that contributed to involvement in the sex work industry. The role of the Prostitution Advisory Council was to ‘focus on the underlying social problems which make some people more vulnerable to involvement in prostitution’.⁶²⁸

⁶²³ *Prostitution Act 1999* (Qld) s 141 (as passed).

⁶²⁴ CMC Prostitution Report (2004) 135, Rec 29.

⁶²⁵ *Prostitution Act 1999* (Qld) s 141 (as amended by the *Prostitution Amendment Act 2006* (Qld)).

⁶²⁶ CMC Prostitution Report (2011).

⁶²⁷ *Prostitution Act 1999* (Qld) pt 7 div 2 (as passed).

⁶²⁸ Explanatory Notes, Prostitution Bill 1999 (Qld) 1–2.

- 15.9 The Prostitution Advisory Council's functions were set out in the Prostitution Act. They included monitoring the operation of the Prostitution Act, advising the ministerial committee on issues related to the regulation of sex work in Queensland, and promoting and coordinating programs that:⁶²⁹
- promote sexual health care;
 - help sex workers leave the sex work industry;
 - divert minors and other vulnerable persons from sex work; and
 - raise awareness in sex workers, judicial officers, police, community workers and the community about issues relating to sex work.
- 15.10 The Prostitution Advisory Council was required to include:⁶³⁰
- a sex worker representative;
 - a person with experience as a sexual health care doctor or social worker with sex workers;
 - a person with knowledge of issues for marginalised or disadvantaged young people; and
 - a representative of religious or community interests.
- 15.11 However, there were concerns about the effectiveness of the Prostitution Advisory Council and the adequacy of its funding.⁶³¹ It was disbanded in 2003, with some of its functions transferred to the PLA.⁶³² An informal inter-agency committee was formed in mid-2004.⁶³³
- 15.12 In 2004, the CMC recommended that the inter-agency committee be formalised.⁶³⁴ This recommendation was supported by the government.⁶³⁵
- 15.13 In 2011, the CMC noted that the inter-agency committee was no longer operating. It recommended that a Ministerial Advisory Committee should be established under the Prostitution Act. The CMC considered that the role of the committee could include general oversight of the sex work industry (both the legal and illegal sector), advising the Minister on how to respond to emerging issues, and addressing social factors that contribute to people becoming involved in sex work. It envisaged that the committee could consist of representatives from key agencies involved in the industry, along with other key government departments and representatives (including a representative of sex workers, brothel licensees and community organisations).⁶³⁶
- 15.14 The CMC's recommendation was not implemented.

629 *Prostitution Act 1999* (Qld) s 114 (as passed).

630 *Prostitution Act 1999* (Qld) s 115 (as passed).

631 CMC Prostitution Report (2004) xiv, 57.

632 *Ibid* 57. See also PLA, *Annual Report 2003–2004* (2004).

633 CMC Prostitution Report (2004) 91.

634 *Ibid* 123, Rec 25.

635 J Spence (Minister for Police and Corrective Services), *Queensland Government Response to Recommendations of the Crime and Misconduct Commission's Evaluation of the Prostitution Act 1999 Regulating Prostitution* (2005) 12.

636 CMC Prostitution Report (2011) 46–48, Rec 2.

Review requirements in other jurisdictions following decriminalisation

- 15.15 In the Northern Territory, Victoria and New Zealand, decriminalisation included a requirement in legislation to review the new regulatory framework within a set period of time. This is a way to assess the impacts of the framework and how effectively it is meeting its objectives.
- 15.16 To help assess the effect of decriminalisation on the size and nature of the sex work industry, the legislation in the Northern Territory and New Zealand also requires the collection of baseline data as soon as possible after it commences. There is no similar requirement in the *Sex Work Decriminalisation Act 2022* (Vic).
- 15.17 No decriminalised jurisdictions have established a sex work-specific advisory body under an Act.

Requirement to review the operation of the new regulatory framework

- 15.18 The *Sex Industry Act 2019* (NT) requires a review of the operation of the Act and other associated matters within a set period of time.⁶³⁷
- 15.19 That review requirement was included because the legislation ‘introduces significant changes to the way the sex industry operates’. It was considered ‘important to ensure a review process is in place to assess the impact of these changes so that any adjustments can be identified and implemented’.⁶³⁸
- 15.20 A similar review requirement was included in the *Prostitution Reform Act 2003* (NZ).⁶³⁹
- 15.21 The *Sex Work Decriminalisation Act 2022* (Vic) includes a requirement for a review of the operations of the amendments made by it.⁶⁴⁰
- 15.22 In each of these jurisdictions, a report of the review must be given to the government and tabled in parliament.⁶⁴¹

Conduct of the review

- 15.23 In the Northern Territory and New Zealand, the review must be carried out by a review committee.
- 15.24 The *Sex Industry Act 2019* (NT) establishes a ‘Review Committee’. It must consist of five members appointed by the Minister, including:⁶⁴²
- one person who represents the interests of the community;
 - two persons who represent the interests of the sex work industry;

⁶³⁷ *Sex Industry Act 2019* (NT) s 26(2).

⁶³⁸ Northern Territory, *Parliamentary Debates*, Legislative Assembly, 26 November 2016, 7485 (Sievers, Chair of Economic Policy Scrutiny Committee). See also Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, *Inquiry into the Sex Industry Bill 2019* (Report, November 2019) [3.61], Rec 6.

⁶³⁹ *Prostitution Reform Act 2003* (NZ) s 42.

⁶⁴⁰ *Sex Work Decriminalisation Act 2022* (Vic) s 4.

⁶⁴¹ *Sex Industry Act 2019* (NT) s 26(2)(e), (3); *Prostitution Reform Act 2003* (NZ) s 42(1)(b)(vii), (2); *Sex Work Decriminalisation Act 2022* (Vic) s 4(4)-(5).

⁶⁴² *Sex Industry Act 2019* (NT) s 25(1)-(2). The Minister for Racing, Gaming and Licensing is responsible for administering the *Sex Industry Act 2019* (NT): *Administrative Arrangements Order (No 3) 2021* (NT) s 5, sch 2.

- one person with expertise and experience in public health; and
 - one person with expertise and experience in occupational health and safety.
- 15.25 It was considered that this ‘adequately represents the interests of the sex work industry, relevant government departments and the broader community’.⁶⁴³
- 15.26 The *Prostitution Reform Act 2003* (NZ) establishes a Prostitution Law Review Committee. It consists of 11 members, including:⁶⁴⁴
- two persons nominated by the Minister of Justice;
 - a person nominated by the Minister of Women’s Affairs after consultation with the Minister of Youth Affairs;
 - a person nominated by the Minister of Health;
 - a person nominated by the Minister of Police;
 - two persons nominated by the Minister of Commerce to represent operators of businesses of prostitution;
 - a person nominated by the Minister of Local Government; and
 - three persons nominated by the New Zealand Prostitutes Collective.
- 15.27 In contrast, the *Sex Work Decriminalisation Act 2022* (Vic) requires the review to be carried out by a ‘person appointed by the Minister’.⁶⁴⁵ During the debates on the Bill in parliament, it was noted that the review will likely be undertaken by relevant government departments.⁶⁴⁶

Timing of the review

- 15.28 In each jurisdiction, the review must be completed within a set period of time.
- 15.29 In the Northern Territory, the review must be done within five years after the commencement of the *Sex Industry Act 2019* (NT).⁶⁴⁷
- 15.30 In New Zealand, the review was required no earlier than three years, but no later than five years after the commencement of the *Prostitution Reform Act 2003* (NZ).⁶⁴⁸
- 15.31 In Victoria, the review must commence no earlier than three years and no later than five years after the day on which all the provisions of the *Sex Work Decriminalisation Act 2022* (Vic) are in operation.⁶⁴⁹
- 15.32 This allows time for the new regulatory framework to be operating and the impacts to become apparent, before the review is carried out.

643 Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, *Inquiry into the Sex Industry Bill 2019* (Report, November 2019) [3.61].

644 *Prostitution Reform Act 2003* (NZ) s 43(1)–(2).

645 *Sex Work Decriminalisation Act 2022* (Vic) s 4(4).

646 Victoria, *Parliamentary Debates*, Legislative Council, 10 February 2022, 235 (S Leane, Minister for Local Government, Minister for Suburban Development, Minister for Veterans). It was also noted that the Minister who will be responsible for administering the Act is the Minister for Workplace Safety.

647 *Sex Industry Act 2019* (NT) s 26(2).

648 *Prostitution Reform Act 2003* (NZ) s 42(1)(b).

649 *Sex Work Decriminalisation Act 2022* (Vic) s 4(2). Decriminalisation is in two stages. The first stage commences on 10 May 2022. The second stage will commence on 1 December 2023 (unless proclaimed earlier): s 2.

Matters considered by the review

- 15.33 In the Northern Territory and New Zealand, the legislation sets out the functions of the review committee and requires it to consider particular matters.
- 15.34 The *Sex Industry Act 2019* (NT) states that the Minister may determine the terms of reference for the Review Committee.⁶⁵⁰ It also requires the Review Committee to:⁶⁵¹
- review the operation of the Act since its commencement;
 - assess the impact of the Act on the number of sex workers in the Territory and the nature of the environment in which they work;
 - consider whether any amendments to the Act or any other law are necessary or desirable in relation to sex workers or sex work and, in particular:
 - whether the suitability certificate requirements are effective or could be improved;
 - whether any other Agency could or should administer the suitability certificate requirements;
 - whether a system is needed for identifying the location of sex services businesses; and
 - consider whether any further review or assessment of these matters is necessary or desirable.
- 15.35 The *Prostitution Reform Act 2003* (NZ) required the Prostitution Law Review Committee to consider similar matters.⁶⁵² It was also required to:⁶⁵³
- assess the nature and adequacy of the means available to help people avoid or stop working as sex workers.
- 15.36 The Prostitution Law Review Committee completed its review and reported in 2008. It did not consider that a further review of the operation of the Act was necessary at that stage. However, it considered that a further review should be carried out by 2018. It noted that this timeframe would enable the longer-term impact of the *Prostitution Reform Act 2003* (NZ) to be assessed.⁶⁵⁴
- 15.37 The *Sex Work Decriminalisation Act 2022* (Vic) states that:⁶⁵⁵
- The review must review the operation of the amendments made by this Act in accordance with the terms of reference determined by the Minister, including the effect of the repeal of the *Sex Work Act 1994* and related amendments to other Acts.

⁶⁵⁰ *Sex Industry Act 2019* (NT) s 25(4).

⁶⁵¹ *Sex Industry Act 2019* (NT) s 26(2).

⁶⁵² *Prostitution Reform Act 2003* (NZ) s 42(1)(b)(i)–(ii), (iv)–(vi).

⁶⁵³ *Prostitution Reform Act 2003* (NZ) s 42(1)(b)(iii).

⁶⁵⁴ Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 168.

⁶⁵⁵ *Sex Work Decriminalisation Act 2022* (Vic) s 4(3).

15.38 During the parliamentary debates on the Bill, it was noted that the review is expected to consider:⁶⁵⁶

whether the Bill has achieved its stated purpose of reducing discrimination against, and harm to sex workers, as well as the operation of laws, policies and regulations enacted as a result of the repeal of the Sex Work Act.

Requirement to collect baseline data

15.39 In the Northern Territory and New Zealand, the review committee must assess the impact of decriminalisation on the number of sex workers.

15.40 The legislation also requires the review committee, as soon as possible after it commences, to assess the number of sex workers (and, in the Northern Territory, the nature of the environment in which they work) in its jurisdiction. The review committee must report its findings to the government and the report must be tabled in parliament.⁶⁵⁷

15.41 This requirement was included to give baseline data on the size of the sex work industry. It ensures there is comparable data to evaluate the impact of the new regulatory framework when the review of the Act is carried out.⁶⁵⁸ This was considered important, noting the lack of robust data that were available about the sex work industry, given that much of it was previously ‘hidden’ and unregulated.⁶⁵⁹

15.42 There are no similar requirements in the *Sex Work Decriminalisation Act 2022 (Vic)*.

CONSULTATION QUESTIONS

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

⁶⁵⁶ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 2021, 4282 (Symes, Leader of the Government, Attorney-General and Minister for Emergency Services). See also Explanatory Memorandum, *Sex Work Decriminalisation Bill 2021 (Vic)* 2–3.

⁶⁵⁷ *Sex Industry Act 2019* (NT) s 26(1), (3); *Prostitution Reform Act 2003* (NZ) s 42(1)(a), (2).

⁶⁵⁸ Northern Territory, *Parliamentary Debates*, Legislative Assembly, 26 November 2019, 7541–2 (Fyles, Attorney-General and Minister for Justice); Prostitution Law Review Committee, *The Nature and Extent of the Sex Industry in New Zealand: An Estimation* (April 2005) 1, 9.

⁶⁵⁹ Prostitution Reform Bill (NZ), *Amendments recommended by the Justice and Electoral Committee*, Commentary 27.

