

A framework for a decriminalised sex work industry in Queensland

Consultation Paper WP 80

April 2022

Chapter 7

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What might a decriminalised sex work industry look like?

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Introduction

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

What should be the main purposes of the framework?

7.2 To develop a new regulatory framework, we need to know what it aims to achieve. The main purposes of the framework will guide us in identifying issues, balancing different interests and working out the features of the framework.

7.3 Our terms of reference state that a decriminalised sex work industry ‘will ensure better public health and human rights outcomes for sex workers while reducing barriers sex workers face in accessing health, safety and legal protections’. We can identify some of the purposes of the framework from the matters we are asked to consider, such as:⁸⁹

- protecting the health, safety and economic interests of sex workers and clients;
- deterring illegal activity and exploitation;
- maintaining public amenity;
- ensuring compatibility with human rights; and
- protecting public health and safety.

7.4 The frameworks in the Northern Territory and New Zealand, and the new framework in Victoria, aim to protect sex workers’ health, safety and human rights and to reduce discrimination: see figure 1. In New South Wales, the original focus was on non-discrimination, public health and safety.

7.5 Many sex worker organisations, human rights groups and other commentators say that protecting health, labour and other human rights are central purposes of decriminalisation.⁹⁰ Many point out that decriminalising sex work is part of a wider process of recognising and better protecting sex workers’ autonomy and rights. This includes better working conditions, access to justice and health services, and improved options for those entering or wishing to leave sex work.

7.6 The Global Network of Sex Work Projects (NSWP) describes decriminalisation in this way:⁹¹

decriminalisation creates safer working environments for sex workers, affords them the protection of workers’ rights, improves their access to health services, reduces their vulnerability to [sexual health risks], violence, stigma and discrimination, and is key to tackling the exploitation that occurs within the sex industry.

7.7 Preliminary feedback we received from Queensland sex worker organisations and other consultees highlighted the same matters.

⁸⁹ Terms of reference para 1(d)–(h).

⁹⁰ See, eg, Stella, ‘The basics: decriminalization of sex work 101’ (Infosheet 1, April 2013) NSWP <<https://www.nswp.org/sites/default/files/StellaInfoSheetTheBasic.pdf>>; Human Rights Watch, ‘Why sex work should be decriminalized: questions and answers’ (7 April 2019) <<https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>>; UNAIDS, ‘HIV and sex work—human rights fact sheet series 2021’ (2021) <<https://www.unaids.org/en/resources/documents/2021/05-hiv-human-rights-factsheet-sex-work>>.

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

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

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

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

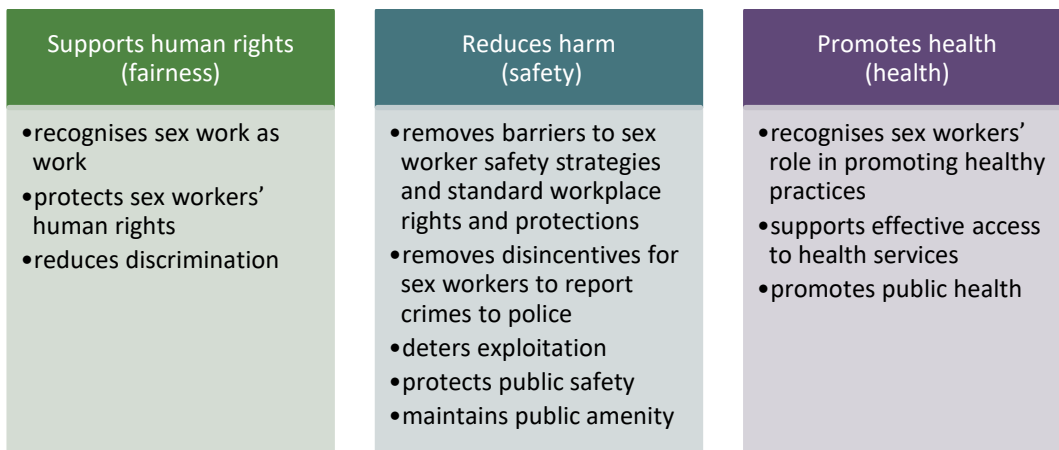
⁹² See New South Wales, *Parliamentary Debates*, Legislative Assembly, 23 April 1979, 4923 (Walker, Attorney-General and Minister for Justice) and 20 September 1995, 1189 (Wheelan, Minister for Police); *Sex Industry Act 2019* (NT) s 3; *Sex Work Decriminalisation Act 2022* (Vic) s 1; Explanatory Memorandum,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

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

- deters illegal activity and exploitation.

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

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



CONSULTATION QUESTION

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

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

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

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

⁹⁵ Weitzer, above n 93, 207.

What might this look like in Queensland?

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

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

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

7.19 In Queensland, this would mean:

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

Box 1: Common features of decriminalisation frameworks

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

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

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

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

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

CONSULTATION QUESTIONS

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

Who should the new framework apply to?

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

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

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

¹⁰⁰ See terms of reference para 1(c).

¹⁰¹ Terms of reference para 5.

¹⁰² Ibid.

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

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

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

The sex work industry is diverse

7.26 Sex work includes many activities and ways of working. For example, one international study identified 'at least 25 types of sex work ... according to worksite, principal mode of soliciting clients, or sexual practices'. This included:¹⁰⁷

- soliciting in public;
- sex work in brothels or massage parlours;
- escorts working at hotels or other premises; and
- private sex workers working from their own premises.

7.27 Scarlet Alliance highlights that sex work 'is an umbrella term that incorporates a wide, inclusive range of different practices'. The diversity of sex work in Australia includes 'working at a brothel, working privately from a residential space, commercial space, or on the street, doing escort work, or visiting the home or hotel of another person(s)'.¹⁰⁸

7.28 Sex work is often described by the nature of the activity, where it takes place or the sex worker's working arrangements: see figure 3. All these features can vary. They can also influence the laws and rules that apply. For example, the law presently allows a private sex worker to work from a dedicated location as well as to provide escort sex work. But a licensed brothel may provide sex work only at its premises and cannot arrange escort services.

7.29 Scarlet Alliance points out that the boundaries between different kinds of sex work are not fixed or clear cut. Sex work activities may overlap and many sex workers move frequently between different kinds of sex work or related activities. For example, we know that some Queensland sex workers who work privately also work in licensed brothels or in massage parlours: see chapter 3. 'Simplified understandings of sex work that only recognise a few ways of working result in poor policy decisions.'¹⁰⁹

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

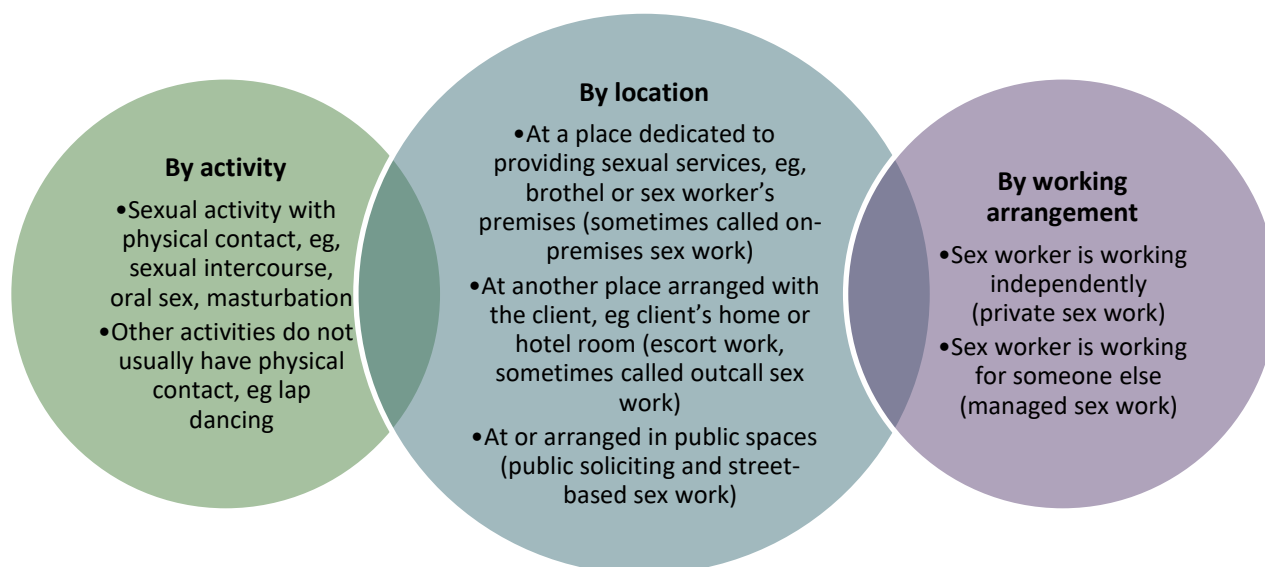
106 Terms of reference p 1 (background).

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

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

109 Ibid.

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



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

What is sex work?

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

Box 2: What is sex work?

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

7.32 We also understand that sex work can:

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

¹¹⁰

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

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

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

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

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

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

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

¹¹⁴ Criminal Code (Qld) s 229E(3).

¹¹⁵ Criminal Code (Qld) s 229(4).

¹¹⁶ Criminal Code (Qld) s 229E(2).

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

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

7.41 These are legal definitions used for particular purposes. The purposes and features of the legal framework vary between jurisdictions.

7.42 The definition in Victoria is intended to apply across all relevant laws. In particular, it would apply for offences that prohibit a person from forcing or coercing someone else into providing commercial sexual services. For this reason, the definition is intentionally wide so that it does not leave anyone out of this protection.¹¹⁸

7.43 In comparison, the New Zealand definition was narrowed so that it did not capture more people than intended. The definition applies both to offences that protect against exploitation and to the other parts the Act, including health and safety rules. It was explained that the definition would:¹¹⁹

- include activities like lap dancing or nude massage where they involve physically participating in sexual acts; but
- exclude activities like stripping where they do not involve physical or intimate contact.

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

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

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

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

Who are sex workers?

- 7.48 As we have seen, sex workers come from many backgrounds, work in a variety of locations, may move in and out of the industry and do not always self-identify as sex workers: see chapter 3.
- 7.49 Like sex work (see figure 3 above), sex workers can be described in different ways depending on features like:
- what kind of sex work activity they are doing;
 - where they are working and how they engage their clients; and
 - what their working arrangements are.

¹²⁰ See, eg, Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 19; UNAIDS, *Terminology Guidelines* (2015) 5; Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016, 26 May 2016) 3.

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

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

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

¹²⁴ Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016, 26 May 2016) 3.

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

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

¹²⁷ See, eg, Z Stardust et al, "I wouldn't call the cops if I was being bashed to death": sex work, whore stigma and the criminal legal system' (2021) 10(3) *International Journal for Crime, Justice and Social Democracy* 142, 149 and the references cited there.

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

Figure 5: Private and managed sex workers

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

- 7.52 Private sex workers work as independent, self-employed workers. They might work:
- on their own: see box 4;
 - with others in small ‘co-operative’ arrangements;
 - with or without engaging others to help with things like reception, security or advertising.

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

Box 4: Sole operators

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

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

128 See Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 48.

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

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

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

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

7.60 Other sex work businesses include businesses run as:

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

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

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

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

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

Box 5: What is a sex work business?

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

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

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

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

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

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

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

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

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

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

Who else will the framework apply to?

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

CONSULTATION QUESTION

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

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

