

A framework for a decriminalised sex work industry in Queensland

Consultation Paper WP 80

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Chapter 8

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Offences to protect against commercial sexual exploitation

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Introduction

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of reference ask us to consider which sections of the Prostitution Act and Chapter 22A of the Criminal Code should be repealed to give effect to a decriminalised sex work industry.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

Commercial sexual exploitation offences in Queensland’s existing prostitution laws

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

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

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

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

Figure 1: Existing Queensland offences about commercial sexual exploitation

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

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

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

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

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

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

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

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

Box 1: person with an impairment of the mind

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

Other protections

8.10 Other criminal laws in Queensland prohibit:¹⁴⁰

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

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

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

Box 2: procuring sexual acts by coercion

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

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

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

¹⁴² See Criminal Code (Qld) s 218.

¹⁴³ See Criminal Code (Qld) s 216. Concerns are raised about the potential unfair effect of s 216 on people with disability: see, eg, The Public Advocate, *A Discussion of Section 216 of the Queensland Criminal Code: A Call to Review the Criminalisation of Sexual Relationships Involving People With ‘An Impairment of the Mind’* (Discussion Paper, January 2022).

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

¹⁴⁵ Criminal Code (Qld) ch 32.

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

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

Box 3: social escort

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

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

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

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

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

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

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

The approach in other decriminalised jurisdictions

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

Table 1: Commercial sexual exploitation offences in decriminalised jurisdictions¹⁵⁴

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁶⁰ See, eg, CMC Report (2011) 21

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

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

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

CONSULTATION QUESTIONS

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

