

# A framework for a decriminalised sex work industry in Queensland

Consultation Paper WP 80

April 2022

Chapter 17

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# **A framework for a decriminalised sex work industry in Queensland**

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## The potential impact of the new framework for the sex work industry

- 17.1 We are asked to consider the potential impacts of a new framework for the sex work industry, including the current licensed brothel sector.<sup>708</sup>
- 17.2 In many parts of this paper, we identify the potential benefits for the sex work industry and for the broader community of a framework that decriminalises the sex work industry. Detailed attention has been given to the anticipated benefits of a new framework for sex workers who currently undertake either legal or illegal sex work.
- 17.3 The operators of existing licensed brothels might be thought to be at a competitive disadvantage compared to the operators of unlicensed brothels, massage parlours used for sex work, and escort agencies. In contrast to their unlawful competitors, brothel licensees have a regulatory and compliance burden and pay substantial licensing fees. A change from the existing framework to a new framework would remove that competitive disadvantage.
- 17.4 The particular benefits of decriminalisation for the current licensed brothel sector will depend upon the specifics and compliance costs of any new regulatory framework, as well as the circumstances of individual operators.
- 17.5 A change from the existing framework to a new framework may come at a financial cost for some parts of the current licensed brothel sector. Any change in the regulation of an industry comes with costs and benefits for particular participants. For example, some operators of currently licensed brothels may incur costs if they choose to relocate or redesign their premises to respond to a new regulatory framework. Some licensees may not be able to easily relocate their business. The Commission is not able to assess the financial benefits and costs to the current licensed brothel sector of adopting a new regulatory framework.

## What other measures are needed to support the new framework?

- 17.6 Most of the issues raised in our paper so far are about the laws that would apply, or need to be repealed or changed, under the new regulatory framework. In this section we consider some of the other measures that might be needed to support the new framework and help achieve the intended benefits of decriminalisation.
- 17.7 The change to a decriminalised industry is not just a change in the legal status of sex work. To be successful, it also requires cultural change. Recognising sex work as work rather than a crime means a 'conceptual shift' in the way laws, policies and services are framed and delivered. 'Regulations are one thing; enforcement is another'.<sup>709</sup>
- 17.8 As we have seen, sex workers are often stigmatised and encounter negative attitudes. Removing the criminal penalties for sex work is seen as a necessary first step to address stigma and discrimination and to improve sex workers' rights, health and safety. But many sex

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<sup>708</sup> Terms of reference para 1(k).

<sup>709</sup> R Weitzer, *Legalizing Prostitution: From Illicit Vice to Lawful Business* (NYU Press, 2012) 212.

worker organisations and human rights groups also highlight the need for other actions to support those outcomes.<sup>710</sup>

17.9 Persistent stigma is seen as a key challenge to the ‘smooth functioning’ of a decriminalised sex work system.<sup>711</sup> It is observed that, ‘[e]ven where criminal penalties have been lifted, sex work still attracts stigma’.<sup>712</sup>

17.10 The Victorian Government recognises the importance of addressing stigma as part of its decriminalisation reforms.<sup>713</sup>

Destigmatising the sex work industry and reducing discrimination is essential for protecting people working in the industry and shifting public perceptions of sex work. Entrenched negative perceptions of the sex work industry impacts sex workers’ mental health, reinforces attitudes that drive violence against sex workers, creates barriers to accessing healthcare, social services and housing, and limits educational and employment opportunities for workers, including those who wish to leave the industry.

17.11 The experience in other places shows that ‘simply decriminalising an industry will not produce overnight changes in entrenched attitudes’.<sup>714</sup> A successful framework will depend on many factors. This might include:

- involving sex workers and their peer organisations in policies and reforms;
- co-ordinating responses across government and non-government agencies; and
- allocating enough funding for policies, services and programs to support the framework.

17.12 Some of the supporting measures that might be needed are as follows.

### Creating public awareness

17.13 Stigma is a barrier to improving sex workers’ access to health, labour and human rights. Public education and awareness programs are likely to be a necessary part of the change to a decriminalised industry.<sup>715</sup>

17.14 The PLA recognises the opportunity for educating the community about issues to do with sex work ‘in a way which challenges persistent mythologies and stereotypes about the industry and which addresses the persistent stigma of sex work’.<sup>716</sup>

17.15 Sex worker organisations and the Queensland Human Rights Commission (QHRC) might play a role in public education and raising awareness.

<sup>710</sup> See, eg, Z Stardust et al, ‘“I wouldn’t call the cops if I was being bashed to death”: sex work, whore stigma and the criminal legal system’ (2021) 10(3) *International Journal for Crime, Justice and Social Democracy* 142, 154; United Nations Development Programme, *Sex Work and the Law in Asia and the Pacific* (Report, 2012) 28–9, 33–9; Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016, 26 May 2016) 2, 7, 9.

<sup>711</sup> See, eg, Weitzer, above n 709, 204–5.

<sup>712</sup> Stardust et al, above n 710, 143.

<sup>713</sup> Department of Justice and Community Safety (Vic), *Decriminalising Sex Work* (Discussion Paper, 2021) 2; Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3882 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating). See generally Victorian Government, ‘Decriminalising sex work in Victoria’ (22 February 2022) <<https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>>.

<sup>714</sup> Prostitution Law Review Committee, *Report on the Operation of the Prostitution Reform Act 2003* (May 2008) 58 (and at 122, 168). See generally Weitzer, above n 709, 205.

<sup>715</sup> See, eg, United Nations Development Programme, above n 710, 33; Amnesty International, above n 710, 7.

<sup>716</sup> PLA, *Strategic Plan 2020–2024* (2020). See also PLA, *Annual Report 2020–2021* (2021) 11.

## Building relationships between sex workers, police and other authorities

- 17.16 One of the intended benefits of decriminalisation is to improve sex workers' safety and access to justice. This includes increasing sex workers' willingness to report violence and other crimes committed against them to police. It also relies on authorities responding appropriately to complaints from sex workers.
- 17.17 Under the present system, sex workers may view police and other authorities with mistrust or unease. They may not expect their complaints to be taken seriously.<sup>717</sup>
- 17.18 A 2017 study of the needs of sex workers in Queensland's licensed brothels found that almost half of the participants (99) would not report a workplace assault to police. The reasons they gave for this were stigma, privacy concerns, mistrust of police or the legal system, and anticipated discrimination. Some sex workers in the study were also uncertain about the PLA's role or found the PLA unhelpful with workplace complaints.<sup>718</sup>
- 17.19 The authors of the study commented that:<sup>719</sup>
- Not only does this lack of recourse impact the mental and emotional health of workers in licensed brothels, it also sends a message to the public that assaults against sex workers will not incur recourse or penalty, which mirrors the public attitude at large and poses a risk to the general safety of sex workers.
- 17.20 The change to a decriminalisation framework involves a shift in attitude from prosecution to protection. Positive relationships based on cooperation between sex workers, police and other authorities are needed. This might require specific training and liaison activities.<sup>720</sup>
- 17.21 The review of New Zealand's decriminalisation laws highlighted that a level of suspicion and unease 'is the inevitable result of years of the sex industry operating illegally, with the Police seen as posing a threat rather than offering protection'. The review committee said:<sup>721</sup>
- traditions and attitudes developed over many years cannot be changed overnight. ... there remains disapproval and dislike directed by some people at people who work in the sex industry and mistrust and suspicion directed at the authorities by some people in the sex industry. In this atmosphere, the Committee believes that a period of relationship building will be necessary before the rights and responsibilities of those in the sex industry will be fully realised. People working in the sex industry, and those working in organisations that deal with the sex industry, need to make positive efforts to work together.

## Educating the sex work industry about their rights and obligations

- 17.22 The change to a decriminalisation framework is intended to improve sex workers' access to standard workplace rights and other protections. It will bring new rights and responsibilities for sex work businesses transitioning from unlawful operations to legitimate businesses.

<sup>717</sup> See generally Stardust et al, above n 710.

<sup>718</sup> Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 21, 31, 37.

<sup>719</sup> Ibid, 37 (and at 38).

<sup>720</sup> See, eg, L Selvey et al, *Law and Sex Worker Health (LASH) Study: A Summary Report to the Western Australian Department of Health* (2017) 55.

<sup>721</sup> Prostitution Law Review Committee, above n 714, 58, 168. See generally Weitzer, above n 709, 212.



- 17.23 Sex workers and sex work business operators will need access to information, education and training about their rights and responsibilities.<sup>722</sup> This will support them to understand and follow the law. For example, it could include information about work health and safety, best practice employment contracts, anti-discrimination, advertising rules and planning laws.
- 17.24 Considerations might include:
- offering information that is comprehensive, user-friendly, tailored and accessible, including to migrant sex workers;
  - including sex worker organisations in shaping education programs;
  - co-ordinating information and training programs across government agencies; and
  - ensuring sex workers and sex work business operators know where to go for information, advice and complaints.

### Educating officials and organisations who deal with the sex work industry

- 17.25 To support the recognition of sex work as work, and a human rights approach, officials and organisations who deal with sex workers may also need access to education and training.<sup>723</sup>
- 17.26 This might include:
- State and local government agencies involved in land use planning, work health and safety, public health or justice services;
  - police and other law enforcement officials;
  - legal, health and social service providers; and
  - members and staff of Queensland courts and tribunals.
- 17.27 Education and training could help proactively address stigma and support non-discrimination. It could help ensure co-ordinated responses that support the purposes of decriminalisation.

### Offering peer support and outreach services for sex workers

- 17.28 Sex worker organisations and others highlight that peer support and outreach services for sex workers are highly effective. This has been noted especially for educating sex workers about STIs and safer sex practices.<sup>724</sup>
- 17.29 Scarlet Alliance says that the change to decriminalisation ‘amplifies opportunities for health promotion, including outreach, and magnifies capacities for peer education’.<sup>725</sup>
- 17.30 Information, support and services can be given by peer organisations, community groups and other service providers.
- 17.31 For example, Respect Inc is funded by Queensland Health to deliver a health promotion and peer education program for sex workers. Part of this work includes confidential data collection and reporting. As a statewide sex worker organisation in Queensland, Respect Inc also.<sup>726</sup>

<sup>722</sup> See, eg, Prostitution Law Review Committee, above n 714, 95, 97, 154, 159–60.

<sup>723</sup> See, eg, Weitzer, above n 709, 212; United Nations Development Programme, above n 710, 37; and Amnesty International, above n 710, 9, 13.

<sup>724</sup> See, eg, Department of Health (Australia), *Fourth National Sexually Transmissible Infections Strategy 2018–2022* (2018) 22; B Donovan et al, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (Kirby Institute, University of New South Wales, 2012) 11–12.

<sup>725</sup> Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 30 (and at 28, 37, 83).

<sup>726</sup> See generally Respect Inc, ‘Respect Inc—who are we?’ (5 May 2021) <<https://respectqld.org.au/what-is-respect-inc/>>.

- offers education, information and resources to support sex workers and increase their awareness of their rights and responsibilities;
- carries out research; and
- advocates on policy changes.

17.32 Considerations might include:<sup>727</sup>

- identifying what services are needed;
- supporting data collection and research, including on sex workers' needs;
- allowing access to free and confidential sexual health testing; and
- finding ways to give appropriate support to different groups, including street-based sex workers, private sex workers, migrant sex workers, Aboriginal and Torres Strait Islander sex workers, LGBTIQ sex workers, and sex workers who may wish to leave the industry.

## CONSULTATION QUESTIONS

**Q50** What are the potential impacts of a new framework for the sex work industry?

**Q51** What other supporting measures are needed as part of the decriminalisation framework? For example:

(a) education and training, such as:

- public education and awareness programs to address stigma and educate the community about sex workers;
- information, education and training for sex workers and sex work business operators on their rights and obligations;
- 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?

<sup>727</sup>

See generally Prostitution Law Review Committee, above n 714, 80–2, 129, 132; Department of Justice and Community Safety (Vic), *Decriminalising Sex Work* (Discussion Paper, 2021) 4; Selvey et al, above n 720, 55–6.



