

# Terms of Reference

## Queensland's laws relating to the regulatory framework for the sex work industry

### **Background**

Queensland's sex work industry is regulated by the *Prostitution Act 1999*, *Prostitution Regulation 2014*, Chapter 22A of the Criminal Code and provisions of the *Police Powers and Responsibilities Act 2000*.

In Queensland, a person engages in sex work (currently referred to as 'prostitution' as defined in section 229E of the Criminal Code) if they provide another person, under an arrangement of a commercial character: sexual intercourse, masturbation, oral sex, or any other activity that involves the use of one person by another for his or her sexual satisfaction involving physical contact (except where the activity is authorised under an adult entertainment permit issued pursuant to the *Liquor Act 1992*).

There are two legal forms of sex work in Queensland:

- i. Sex work provided in a licensed brothel, (but not outcalls from a brothel which remain prohibited); and,
- ii. Sole operator sex work (or 'private workers') – sex work provided by a sex worker who works alone from a premises, providing either in-house or outcall services, or both.

Any other form of sex work is illegal in Queensland. This includes escort agencies, unlicensed brothels, massage parlours, street workers (publicly soliciting) and two or more sex workers providing sex work from a single premises.

Most sex work in Queensland occurs outside of the regulated or licenced sector (legal brothels) in the form of sole operators (legal), unlicensed premises (illegal), and escort agencies (illegal).<sup>1</sup>

Over the last several years, a significant number of sex workers and relevant bodies that represent those workers have advocated for reform to Queensland's laws relating to the sex work industry. Calls for decriminalisation have been made on the basis that current laws criminalise 'safety strategies' used by sex workers, and that many sex workers feel that they must choose between working safely and working legally. Advocates have also suggested that Queensland's current regulatory framework discourages sex workers who have been victims of crime from reporting the crime/s to police.

On 30 June 2020, the Queensland Law Reform Commission (QLRC) delivered its report into the review of consent laws and the excuse of mistake of fact. As part of its report the QLRC considered the issue of when consent to a sexual act is obtained or induced by the promise of payment, but where payment is not ultimately made; and whether any amendment to the definition of consent in section 348 of the Criminal Code or other legislative amendment is required to take account of this circumstance. The Commission noted that this raised broader policy issues relating to the regulation and protection of sex workers which was outside the scope of that review.

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<sup>1</sup> Prostitution Licensing Authority, *2018-2019 Annual Report* (page 4).

In referring the matter of a decriminalised sex work industry for Queensland to the QLRC, the Government intends that sex work will be lawful when conducted in accordance with the recommended regulatory framework. This approach 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.

### **Terms of Reference**

I, SHANNON MAREE FENTIMAN, Attorney-General and Minister for Justice and Minister for Women and Minister for the Prevention of Domestic and Family Violence, refer to the Queensland Law Reform Commission (the Commission) pursuant to section 10 of the *Law Reform Commission Act 1968* for review and investigation, the issue of regulating a decriminalised sex work industry in Queensland.

### **Scope**

1. The Queensland Law Reform Commission is asked to recommend a framework for a decriminalised sex work industry in Queensland with particular regard to:
  - (a) the development of an appropriate legislative framework required to give effect to a decriminalised sex work industry;
  - (b) the extent to which existing legislation should be repealed to give effect to a decriminalised sex work industry, including the *Prostitution Act 1999*, *Prostitution Regulation 2014*, Chapter 22A of the Criminal Code and provisions of the *Police Powers and Responsibilities Act 2000*;
  - (c) who the framework would apply to (i.e. brothel licensees, sole operators, escort agencies, massage parlours);
  - (d) appropriate safeguards including, economic and, health and safety protections for sex workers and their clients;
  - (e) appropriate safeguards to deter the involvement of illegal activity and the exploitation of vulnerable people in the sex work industry in Queensland;
  - (f) appropriate safeguards to maintain public amenity including in respect of the location of sex work premises;
  - (g) the compatibility of the framework with the *Human Rights Act 2019*;
  - (h) whether there are any public health or public safety implications associated with the framework;
  - (i) how the framework would be administered;

- (j) ways in which compliance with the framework can be monitored and enforced;
  - (k) the potential impacts of the framework for the sex work industry (including the current licensed brothel industry) and government associated with:
    - i. the adoption of the new framework; and
    - ii. the transition from the existing framework to the new framework; and
    - iii. any other matters the Commission considers relevant having regard to the issues relating to the referral; and
  - (l) limiting the administrative and resource burden on government and industry.
2. In recommending a framework for a decriminalised sex work industry in Queensland the Commission is asked to consider circumstances where there has been a promise by a person of payment of money in exchange for a sexual act performed by a sex worker where that payment is not forthcoming and recommend what, if any, legislative amendment is required to deal with these circumstances.
- ~~3. The Commission is asked to prepare any draft legislation required to give effect to its recommendations.~~<sup>2</sup>The Commission is asked to provide as part of its report any drafting instructions and/or information which supports its recommendations.
4. In making its recommendations the Commission should also have regard to:
- (a) the existing regulatory framework of the sex work industry in Queensland including the operation of the illegal sex work industry;
  - (b) the Queensland Government's commitment to consider and modernise the law in relation to the sex work industry and associated practices;
  - (c) the experiences of members of the sex work industry under the current regulatory framework and/or under legislative arrangements in other jurisdictions;

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<sup>2</sup> This amendment to the Terms of Reference was made, at the request of the Commission, by a letter from the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice and Minister for Women and Minister for the Prevention of Domestic and Family Violence to the chair of the Commission dated 3 November 2022.

- (d) recent developments, legislative and regulatory arrangements and research in other Australian jurisdictions (including the Northern Territory) and New Zealand; and
  - (e) the views of the Queensland community.
5. For the purposes of this review, 'sex work' includes all forms of legal and illegal sex work, including but not limited to sex work in brothels and escort agencies, sexual services provided in massage parlours and other venues, sex work by sole operators and street-based sex work, but does not include an activity authorised under an adult entertainment permit issued pursuant to the Liquor Act 1992.

### **Consultation**

The Commission shall consult with:

1. the community of sex workers, brothel licensees and relevant bodies that represent those workers and licensees (including but not limited to Respect Inc and the Scarlet Alliance, Australian Sex Workers Association); and
2. any group or individual, in or outside Queensland, the Commission considers relevant having regard to the issues relating to the referral, including but not limited to Government agencies such as the Queensland Police Service and the Queensland Prostitution Licensing Authority and non-government agencies.

### **Timeframe**

The Commission is to provide its final report, including any drafting instructions and/or information which may be ~~draft legislation~~ required to give effect to its recommendations,<sup>3</sup> to the Attorney-General and Minister for Justice, by ~~24 November 2022~~<sup>4</sup> 31 March 2023.

Dated the 24th day of August 2021

### **SHANNON FENTIMAN MP**

Attorney-General and Minister for Justice

Minister for Women and Minister for the Prevention of Domestic and Family Violence

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.