

# A framework for a decriminalised sex work industry in Queensland

Consultation Paper WP 80

April 2022

Chapter 11

**Published by:**  
**Queensland Law Reform Commission**

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**ISBN: 978-0-6451809-2-3**

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# Public health and the health of sex workers

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## Introduction

- 11.1 Queensland has some sex work-specific health laws, as well as general laws about protecting public health. This chapter summarises those laws and asks some questions about how to protect people's health in a decriminalised framework.<sup>362</sup>
- 11.2 One of the purposes of decriminalisation is to promote health, including by:
- recognising sex workers' role in promoting safe and healthy practices;
  - supporting effective access to health and education services; and
  - promoting public health.

## Public health strategies

- 11.3 Australia and Queensland have strategies and action plans about sexual health, sexually transmissible infections and blood borne viruses.<sup>363</sup> These guide national and State responses for reducing transmission and improving diagnosis and treatment rates.
- 11.4 Sex workers are a priority population in some of these strategies and plans because sex work can put people at more risk of being exposed to infections and viruses. However, some strategies recognise that the rate of condom usage by sex workers is high and, because of successful health programs, the rates of sexually transmitted illnesses in Australian sex workers are 'among the lowest in the world'.<sup>364</sup>
- 11.5 Some strategies state that sex workers face barriers to accessing health services, such as stigma and discrimination. They also state that they face regulatory and legal issues, such as criminalisation, licensing or registration, and mandatory health testing. This affects sex workers' access to services and increases risks to their health, safety and livelihood. The National HIV strategy states that evidence from a global study of HIV in female sex workers 'definitively shows that decriminalisation of sex work is linked to the reduction of HIV risk and rates'.<sup>365</sup>

## Overview of laws in Australia and New Zealand

- 11.6 When the Prostitution Act was introduced in Queensland, specific regulation of health matters was considered necessary.<sup>366</sup>

Health risks associated with the sex industry are extremely high, particularly in relation to sexually transmitted infections including HIV. Through adoption of safe sex practices, risks can be minimised and a properly regulated industry provides the best vehicle for the implementation and monitoring of appropriate practices and standards. The proposed framework will ensure that the health status of sex workers is regularly

<sup>362</sup> Terms of reference para 1(d), (h).

<sup>363</sup> See generally Department of Health (Australia), 'Blood borne viruses and sexually transmissible infections' <<https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1>>; Queensland Health, 'Queensland Sexual Health Strategy' (28 June 2021) <<https://www.health.qld.gov.au/public-health/topics/sexual-health/strategy>>. The *Queensland Sexual Health Strategy 2016–2021* (2016) 'will become an enduring Framework from 2022' after 'a light touch refresh'.

<sup>364</sup> Department of Health (Australia), *Fourth National Sexually Transmissible Infections Strategy 2018–2022* (2018) 22; Queensland Health, *Queensland Sexual Health Strategy 2016–2021* (2016) 31.

<sup>365</sup> Department of Health (Australia), *Eighth National HIV Strategy 2018–2022* (2018) 22, citing K Shannon et al, 'Global epidemiology of HIV among female sex workers: influence of structural determinants' (2015) 385 *The Lancet* 55.

<sup>366</sup> Explanatory Notes, Prostitution Bill 1999 (Qld) 2.

monitored and that health risks to workers, their clients and the community are minimised.

11.7 Other Australian jurisdictions take different approaches to sex work-specific health laws. These approaches vary, and they are not always linked to whether sex work is decriminalised.

11.8 Most other Australian jurisdictions that have not decriminalised sex work have similar offences about prophylactics, working while infectious, and sexual health testing (or about some of those matters): see box 1 for Queensland.

11.9 In Victoria, public health offences about sex work are in the *Sex Work Act 1994* (Vic) and the *Public Health and Wellbeing Act 2008* (Vic). They are repealed by the *Sex Work Decriminalisation Act 2022* (Vic) to 'remove discriminatory, industry specific public health offences'.<sup>367</sup> It was explained:<sup>368</sup>

- These offences are intended to promote public health but make unsupported assumptions about sex work and sexually transmitted diseases.
- '[E]vidence indicates that Australian and Victorian sex workers have comparatively higher rates of compliance with safer sex practices and lower rates of sexually transmitted infections than the general population'.
- Removing these offences is intended to address stigma and result in the sex work industry being treated like other industries. This will promote the right to recognition and equality before the law for sex workers.

11.10 The Victorian changes are in two stages. In the first stage, offences in the *Sex Work Act 1994* (Vic) about the use of prophylactics and sexually transmitted infections are repealed.<sup>369</sup> In the second stage, which will start later, the provisions in the *Public Health and Wellbeing Act 2008* (Vic) about infectious diseases in brothels and escort agencies will be repealed.<sup>370</sup> Instead, there will be 'a new public health and infection control framework for the sex work industry' developed as part of the reforms.<sup>371</sup>

11.11 There are no offences of this kind in New South Wales. The Northern Territory has a single offence about the use of information for medical testing.<sup>372</sup> This was also the position before decriminalisation. However, each jurisdiction has particular laws about public health. In New South Wales, work health and safety guidelines apply to owners and managers of commercial

#### Box 1: Offences in the Prostitution Act

- Prophylactics must be used by sex workers and clients, and in brothels
- Sex workers must not work or be permitted to work in a brothel while infectious with a sexually transmitted disease
- Sexual health testing is required for any sex worker who works in a brothel
- Information about sexual health testing must not be used by a sex worker in a brothel to induce a belief that the worker does not have a sexually transmitted disease

<sup>367</sup> Explanatory Memorandum, *Sex Work Decriminalisation Bill 2021* (Vic) 3–4. See *Sex Work Decriminalisation Act 2022* (Vic) ss 8–10

<sup>368</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3876–77 (Home, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating).

<sup>369</sup> *Sex Work Decriminalisation Act 2022* (Vic) ss 8–10, repealing *Sex Work Act 1994* (Vic) ss 18A, 19–20, 20A. These provisions commence on 10 May 2022: s 2(1)–(2).

<sup>370</sup> *Sex Work Decriminalisation Act 2022* (Vic) pt 7 div 10, repealing *Public Health and Wellbeing Act 2008* (Vic) pt 8 div 10 (ss 158–165). These provisions commence on 1 December 2023 (unless proclaimed earlier): s 2(1), (3).

<sup>371</sup> Explanatory Memorandum, *Sex Work Decriminalisation Bill 2021* (Vic) 23.

<sup>372</sup> *Sex Industry Act 2019* (NT) s 16.

sex services premises such as brothels, massage parlours and escort agencies.<sup>373</sup> The Northern Territory is developing work health and safety guidelines.

- 11.12 In contrast, New Zealand decriminalised sex work but kept requirements to ‘adopt safer sex practices’. This includes requirements about prophylactics, sexually transmissible infections and the use of information about medical examinations.<sup>374</sup> The intent was to create an environment that would protect the occupational health and safety of sex workers and clients, and therefore enhance public health. Sex workers had been ‘reluctant to promote safer sex products’ as they could be used as evidence of a crime, which inhibited safer sex practices. To ‘reduce the existing climate of fear’, it was important for the law to include provisions about safer sex.<sup>375</sup> It was also important for these to apply to sex workers, clients and business operators so that illegal or ‘risky’ practices did not shift to street-based sex work.<sup>376</sup>
- 11.13 Some argue that to fully decriminalise sex work, these kinds of sex work-specific health laws must be removed. The Sexual Health Society of Queensland, some sex worker organisations, human rights groups, government bodies, and researchers consider that these laws encourage stigma and create barriers to accessing health services. They consider that best practice is made up of peer-based educational programs and sex workers voluntarily using safer sex practices and having sexual health testing.<sup>377</sup>
- 11.14 This is the approach in New South Wales. After decriminalisation, the government worked with community-based sex worker organisations to offer outreach, educational and sexual health services. These resulted in high rates of condom use and sexual health testing, and low rates of sexually transmitted infections among sex workers. To maintain this, services for specific sex workers (such as new brothel workers and street-based sex workers) are recommended.<sup>378</sup>
- 11.15 Scarlet Alliance says sex workers should have freedom to make their own health decisions:<sup>379</sup>
- a sex worker’s decision to seek STI and HIV testing or to use condoms and dams should be an individual one, based on our workload, practices and level of risk, rather than mandated at law in a way that bears no relevance to the sex worker’s own personal practices.

## Prophylactics

- 11.16 In some jurisdictions, prophylactics must be used for sex work: see table 1.

373 SafeWork NSW, ‘Health and safety guidelines for sex services premises in NSW’ [1] <<https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw>>.

374 *Prostitution Reform Act 2003* (NZ) ss 8, 9. See also Occupational Safety & Health Service (NZ), *A Guide to Occupational Health and Safety in the New Zealand Sex Industry* (2004).

375 Explanatory Note, *Prostitution Reform Bill 2003* (NZ) 1; Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 10–12.

376 Justice and Electoral Committee, New Zealand Parliament, *Prostitution Reform Bill 66-2* (Report, November 2002) 66–2, 11–12.

377 See, eg, Sexual Health Society of Queensland, *Position Statement—Decriminalisation of Sex Work in Queensland* (2018); Scarlet Alliance, *Full Decriminalisation of Sex Work in Australia*, Briefing Paper <[https://scarletalliance.org.au/library/briefing\\_paper\\_full\\_decrim](https://scarletalliance.org.au/library/briefing_paper_full_decrim)>; Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 4–5; A Daniel, ‘The sexual health of sex workers: no bad whores, just bad laws’ (Social Research Briefs No 19, 2010) 2–3; S Sakha, E Greytak & M Haynes, ‘Is sex work decriminalization the answer? What the research tells us’ (ACLU Research Brief, 2020) 8–10; M Decker et al, ‘Human rights violations against sex workers: burden and effect on HIV’ (2015) 385 *The Lancet* 186, 191, 193–96.

378 See, eg, 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) 11–13, 23–4; B Donovan et al, ‘Improving the health of sex workers in NSW: maintaining success’ (2010) 21(3-4) *NSW Public Health Bulletin* 74; D Callander et al, *Sex Worker Health Surveillance: A Report to the New South Wales Ministry of Health* (April 2016).

379 Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 66.



Table 1: Use of prophylactics

	Qld	ACT	NSW	NT	SA	Tas	Vic*	WA	NZ
Prophylactic must be used by sex workers and clients	✓	✓	✓ (WHS guidelines)			✓	✓	✓	✓
Business operator (eg brothel) must ensure use of prophylactics and not discourage use	✓	✓ (and provide prophylactics and personal protective equipment)	✓ (WHS guidelines)				✓ (and provide condoms)		✓
* Under sections of the <i>Sex Work Act 1994</i> (Vic) and the <i>Public Health and Wellbeing Act 2008</i> (Vic) that are repealed by <i>Sex Work Decriminalisation Act 2022</i> (Vic)									

11.17 In Queensland, the Prostitution Act defines ‘prophylactic’: see box 2. Where sex work involves sexual intercourse or oral sex, it is an offence for:<sup>380</sup>

- a sex worker to offer or provide prostitution without a prophylactic;
- a person to ask for, accept an offer of, or obtain prostitution without a prophylactic;
- a person obtaining prostitution to interfere with the effectiveness of a prophylactic, including by misusing or damaging it;
- a person obtaining prostitution to use or keep using a prophylactic that the person knows, or could reasonably be expected to know, is damaged.

11.18 At a brothel, sex workers must be given adequate personal protective equipment (PPE), including condoms, dental dams, disposable gloves and lubricant, at no cost.<sup>381</sup> The licensee or an approved manager must take reasonable steps to make sure a person does not offer, provide, request or obtain sex work involving sexual intercourse, oral sex or hand relief without a prophylactic. PPE must be used for those activities.<sup>382</sup> Licensees and managers must not

#### Box 2: What is a prophylactic?

- Under the Prostitution Act, a prophylactic is ‘a condom or another device that adequately prevents the transmission of a sexually transmissible disease’
- A ‘prophylactic’ could be a male condom, female condom or dental dam

380 *Prostitution Act 1999* (Qld) s 77A(1)–(4), (7) (definitions of ‘interfere with’ and ‘prophylactic’); *Macquarie Dictionary* (online at 5 November 2021) ‘prophylactic’.

381 PLA, *Brothel Licence Conditions* (v 14, 13 May 2019) [4.3]. See also Explanatory Notes, Prostitution Bill 1999 (Qld) 22.

382 *Prostitution Act 1999* (Qld) s 77A(5)–(6); PLA, *Brothel Licence Conditions* (v 14, 13 May 2019) [4.1]–[4.2]. The use of a prophylactic for hand relief is included only in brothel licence conditions.

discourage prophylactic use.<sup>383</sup> A sign must be prominently displayed in the brothel's reception area, stating 'only safe sexual activities are practised on these premises'.<sup>384</sup>

- 11.19 These offences about prophylactics apply to all sex workers (including those working privately, in brothels or illegally) and their clients to 'minimis[e] the risks of sexual diseases being transmitted'.<sup>385</sup> The offences were intended to 'empower' sex workers to refuse requests from clients for services without a condom on the basis that they would both be committing an offence.<sup>386</sup>
- 11.20 Some other places have similar laws about the use of prophylactics for sex work and, where relevant, the obligations of brothel and escort agency operators.<sup>387</sup> In Victoria, the *Sex Work Decriminalisation Act 2022* (Vic) repeals these offences.<sup>388</sup>
- 11.21 There are no such laws in New South Wales or the Northern Territory. However, under work health and safety guidelines in New South Wales, owners and managers of commercial sex services premises must supply PPE such as condoms, dams, gloves and lubricant at no cost. Condoms should be used for insertive sexual services to protect against infections.<sup>389</sup>
- 11.22 Research about the sex work industry shows that condoms are used during sex work. However, the studies or surveys that inform this research are about different parts of the sex work industry and have different limitations.
- 11.23 A 2017 survey of sex workers in licensed brothels in Queensland by Respect Inc found that 95% of workers were given adequate condoms and lubricant. However, 36% of workers said that brothels 'had excessive safer sex strategies', referring to the requirements to use dental dams and gloves. Only a very small number of workers said they would perform sexual services without protection. Respect Inc stated that the mandatory use of gloves and dams does not decrease the risk of transmitting illness, and might cause burnout in sex workers because they have to negotiate these requirements with their clients. They also stated there is 'little evidence' that these laws protect public health, and support sex workers having autonomy around safer sex.<sup>390</sup>
- 11.24 In New South Wales, the use of condoms with clients is 'high'. In 2009, condoms were used in 'over 99% of all commercial vaginal sex encounters' in Sydney. More recently, 97% of female sex workers and 80% of male sex workers have reported using condoms at least 90% of the

383 *Prostitution Act 1999* (Qld) s 77A(5)–(6).

384 *Prostitution Regulation 2014* (Qld) s 23(c). See also Explanatory Notes, *Prostitution Bill 1999* (Qld) 22.

385 *Police Powers and Responsibilities and Other Legislation Amendment Act 2003* (Qld) s 39; Explanatory Notes, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2003* (Qld) 18–19; Queensland, *Parliamentary Debates*, 28 October 2003, 4362 (T McGrady, Minister for Police and Corrective Services and Minister Assisting the Premier on the Carpentaria Minerals Province).

386 Queensland, *Parliamentary Debates*, 2 December 1999, 5852 (TA Barton, Minister for Police and Corrective Services). See also *Sex Industry Regulation Bill 2005* (Tas) cl 28(3); Tasmania, *Parliamentary Debates*, House of Assembly, 9 June 2005, 98–9 (Jackson, Minister for Justice and Industrial Relations).

387 *Sex Work Act 1992* (ACT) ss 26A, 27; *Sex Industry Offences Act 2005* (Tas) s 12(1)–(2); *Prostitution Act 2000* (WA) s 8; *Prostitution Reform Act 2003* (NZ) ss 8(1)(a)–(b), 9(1); Work Health and Safety (Sexual Services Industry) Code of Practice 2011 (ACT) 17, 22; Occupational Safety & Health Service (NZ), *A Guide to Occupational Health and Safety in the New Zealand Sex Industry* (2004) [6].

388 See [11.9]–[11.10] above.

389 SafeWork NSW, 'Health and safety guidelines for sex services premises in NSW' [1], [6]–[7] <<https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw>>.

390 Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 15, 17, 39–40. One participant said they would perform sex without a condom, three would perform services without a dam and five without a glove: 17.

- time. In New Zealand, over three quarters of sex workers surveyed after decriminalisation 'always used a condom for vaginal, anal and oral sex'.<sup>391</sup>
- 11.25 In each of those places, there were lower rates of condom use for oral sex. In New Zealand, street-based sex workers were more likely to perform unprotected sexual services, although the differences between the sectors was described as 'small'.<sup>392</sup> Research has also found that male sex workers have lower rates of consistent condom use.<sup>393</sup>
- 11.26 In Western Australia, rates of condom use have decreased for vaginal, anal and oral sex. The reasons for this include '[i]ncreasing client demand, fear of losing clients and the ability to charge more for condomless sex'. One study recommended increased education for sex workers and clients. It also recommended decriminalisation of sex work 'to facilitate peer outreach, reduce stigma and allow brothels to more openly promote condom use'.<sup>394</sup>
- 11.27 Rates of diagnosis with sexually transmitted infections and HIV in sex workers are usually found to be consistent with, or lower than, the general population. This is attributed to high rates of condom use, as well as other factors such as peer education. Other research has found that sex workers and clients have higher rates of infection, or that some infection rates have increased over time. However, it has been noted that some increases are consistent with rates of diagnosis in the general population, and that not all infections will be linked to sex work. Sex workers also get tested more frequently, which could lead to higher rates of diagnosis.<sup>395</sup>
- 11.28 Research has shown there are higher risks of infection for sex workers and clients when sex work is regulated or criminalised, or when a sex worker is working illegally. These circumstances might limit a sex worker's ability to screen clients or insist on safe sex practices, such as condom use. They might also be connected with clients making requests for unprotected sex.<sup>396</sup> Some research about places where sex work is decriminalised or regulated (for example, through licensing or registration) has found that they 'mostly displayed consistent and improved condom usage', compared to places where sex work is wholly or partially criminalised.<sup>397</sup>
- 11.29 Peer education about safe sex is considered a necessary and important part of maintaining condom use. It is sometimes preferred to criminal offences as a way of ensuring prophylactic

391 Donovan et al (2012), above n 378, 23–4; Callander et al (2016), above n 378, 7; G Abel, L Fitzgerald & C Brunton, *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee* (November 2007) 123, 135.

392 Abel, Fitzgerald & Brunton, above n 391, 123.

393 See, eg, EM Turek et al, 'HIV, sexually transmitted infections and sexual practices among male sex workers attending a sexual health clinic in Melbourne, Australia: 2010 to 2018' (2021) 48(2) *Sexually Transmitted Diseases* 103; Abel, Fitzgerald & Brunton, above n 391, 123, 135. See also PLA, *In Touch Newsletter* (Issue No 159, February 2021).

394 L Selvey et al, *Law and Sex Worker Health (LASH) Study: A Summary Report to the Western Australian Department of Health* (2017) 27, 52; L Selvey et al, 'Declining condom use among sex workers in Western Australia' (2018) 6 *Frontiers in Public Health* (online) 1, 9, citing, in particular, Shannon et al, above n 365.

395 See, eg, EM Turek et al, 'Are genital examinations necessary for STI screening for female sex workers? An audit of decriminalized and regulated sex workers in Melbourne, Australia' (2020) 15(4) *PLoS ONE* (online); E Chow et al, 'Testing commercial sex workers for sexually transmitted infections in Victoria, Australia: an evaluation of the impact of reducing the frequency of testing' (2014) 9(7) *PLoS ONE* (online); C Seib et al, 'Sexually transmissible infections among sex workers and their clients: variation in prevalence between sectors of the industry' (2009) 6 *Sexual Health* 45; Callander et al (2016), above n 378, 13. Some studies have limits, such as a limited sample of people.

396 See, eg, Seib et al, above n 395; Sakha, Greytak & Haynes, above n 377, 8–10; Turek et al (2021), above n 393; Select Committee on the Regulation of Brothels, Legislative Assembly of New South Wales, *Inquiry into the Regulation of Brothels* (Report, November 2015) 71–4, 79–80, 85–7; K Shannon et al, 'Structural and environmental barriers to condom use negotiation with clients among female sex workers: implications for HIV-prevention strategies and policy' (2009) 99(4) *American Journal of Public Health* 659.

397 See, eg, J McCann, G Crawford & J Hallett, 'Sex worker health outcomes in high-income countries of varied regulatory environments: a systematic review' (2021) 18 (3956) *International Journal of Environmental Research and Public Health* (online) 7, and the articles cited there.

use, and it is thought that education works best in a decriminalised sex work industry.<sup>398</sup> However, in New Zealand (where sex work is decriminalised but prophylactics must be used) some clients commonly request services without a condom and most sex workers respond that it is illegal.<sup>399</sup>

## Sexually transmitted infections

11.30 In Australia and New Zealand, the laws about sexually transmissible infections vary. Some are specific to the sex work industry, while others are part of the public health and criminal laws: see table 2.

Table 2: Sexually transmissible infections

	Qld	ACT	NSW	NT	SA	Tas	Vic*	WA	NZ
Sex worker must not work while infectious	✓ (in brothel)						✓		
Business operator must not permit sex worker to work while infectious	✓						✓		
Take reasonable steps to minimise risk of infection			✓ (WHS guidelines)	✓ (adopt and promote safe sex)		✓	✓		✓
Business operator must give health information	✓ (brothel licence condition)	✓ (WHS code of practice)	✓ (WHS guidelines)				✓		✓
Public health: Offence to transmit disease	✓	✓	✓ (and sexually transmitted conditions)			✓		✓	✓
Criminal: Offence to transmit disease	✓		✓	✓	✓		✓ (not repealed)	✓	✓
* Under sections of the <i>Sex Work Act 1994</i> (Vic) and the <i>Public Health and Wellbeing Act 2008</i> (Vic) that are repealed by <i>Sex Work Decriminalisation Act 2022</i> (Vic)									

<sup>398</sup> See, eg, Turek et al (2021), above n 393, 107; Callander et al (2016), above n 378, 13; Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 4, 30, 57–8; Queensland Health, *Queensland Sexual Health Strategy 2016–2021* (2016) 31; Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 35–6; Select Committee on the Regulation of Brothels, Legislative Assembly of New South Wales, *Inquiry into the Regulation of Brothels* (Report, November 2015) 79–80.

<sup>399</sup> Abel, Fitzgerald & Brunton, above n 391, 124, 128.

## Transmission of diseases or infections

- 11.31 Under the Prostitution Act, a ‘sexually transmissible disease’ is any disease or condition listed in that Act or prescribed under a regulation. The list includes serious and less serious diseases or conditions: see box 3.<sup>400</sup>
- 11.32 It is an offence for a sex worker to work at a licensed brothel knowing they are infectious with a sexually transmissible disease. It is also an offence for a brothel licensee or an approved manager to allow a sex worker to work at a brothel knowing that he or she is infectious.<sup>401</sup> Knowledge will be presumed unless it is proved that, at the time of the offence:<sup>402</sup>
- for a sex worker, they had been medically examined or tested for sexually transmissible diseases every three months and believed on reasonable grounds that they were not infectious; or
  - for a licensee or manager, they believed on reasonable grounds that the sex worker had been medically examined or tested for sexually transmissible diseases every three months and was not infectious.
- 11.33 A sex worker who has a sexually transmissible disease may work during times when the disease is not infectious and cannot be passed on.<sup>403</sup>
- 11.34 In Victoria, the *Sex Work Decriminalisation Act 2022 (Vic)* repeals similar offences.<sup>404</sup> It was observed that criminal laws about transmitting disease already apply to the sex work industry.<sup>405</sup>
- 11.35 The Australian Capital Territory repealed offences of this kind in 2018 because they were discriminatory.<sup>406</sup> Instead, the *Sex Work Act 1992 (ACT)* refers to public health laws to make it clear that the standards for the general community apply equally to sex workers.<sup>407</sup> Similar offences were proposed but not passed in Western Australia, including because existing

### Box 3: Under the Prostitution Act, what is a ‘sexually transmissible disease’?

- Chancroid
- Donovanosis
- Genital chlamydia
- Genital herpes (visible lesions)
- Genital warts (visible lesions)
- Gonorrhoea
- Hepatitis A (acute)
- Hepatitis B (acute or chronic until not infectious)
- Hepatitis C (acute)
- Human immunodeficiency virus (HIV)
- Lymphogranuloma venereum
- Pubic lice
- Scabies
- Syphilis
- Trichomoniasis

400 *Prostitution Act 1999 (Qld)* sch 4 (definition of ‘sexually transmissible disease’); *Prostitution Regulation 2014 (Qld)* s 26.

401 *Prostitution Act 1999 (Qld)* ss 89(1), 90(1). It does not matter if the sex worker works under a contract of service or a contract for service: ss 89(2), 90(2).

402 *Prostitution Act 1999 (Qld)* ss 89(3), 90(3); *Prostitution Regulation 2014 (Qld)* s 14.

403 Queensland, *Parliamentary Debates*, 2 December 1999, 5851 (TA Barton, Minister for Police and Corrective Services).

404 *Sex Work Decriminalisation Act 2022 (Vic)* s 9, repealing *Sex Work Act 1994 (Vic)* ss 19–20. These offences were similar to the ones in Queensland. For individual sex workers, the offence was broader because it applied to every sex worker no matter where they were working.

405 Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3876 (Home, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating). See also Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 68.

406 *Prostitution Amendment Act 2018 (ACT)* s 23; Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 7 June 2018, 2168 (Rattenbury, Minister for Climate Change and Sustainability, Minister for Justice, Consumer Affairs and Road Safety, Minister for Corrections and Minister for Mental Health). See also Standing Committee on Justice and Community Safety, Legislative Assembly of the Australian Capital Territory, *Inquiry into the Prostitution Act 1992* (Report, February 2012) 71–95.

407 *Sex Work Act 1992 (ACT)* s 27 note, referring to *Public Health Regulation 2000 (ACT)* s 21(1).

criminal and public health laws were enough. However, requirements to use prophylactics were added to reduce the risks of unprotected sexual intercourse.<sup>408</sup>

- 11.36 Sex worker advocates are opposed to laws that make it a crime to work as a sex worker while infectious, or laws that require a person to tell someone else they have a disease or condition (this is included in some public health laws: see [11.38] below). They say these laws affect sex workers more than other people, which increases stigma and discrimination. Some sex workers might choose not to have sexual health testing or tell others about their condition. This might mean that sex workers do not get the health services they need, and there is increased transmission of illnesses.<sup>409</sup>
- 11.37 Some researchers say that decriminalisation could decrease rates of HIV and sexually transmitted infections.<sup>410</sup> In 2014, they reviewed studies about HIV and female sex workers from around the world. They looked at different changes that might reduce HIV infections in that group and concluded that decriminalising sex work would have the most significant effect. Decriminalisation could improve issues about violence, police harassment and unsafe working conditions, and could prevent 33 to 46% of the predicted HIV infections in female sex workers and their clients.<sup>411</sup>

## Public health laws

- 11.38 In Queensland, public health laws set out a process for managing ‘notifiable conditions’. These include serious and less serious sexually transmissible diseases, but not all the sexually transmissible diseases listed in the Prostitution Act. Some notifiable conditions are also identified as ‘controlled notifiable conditions’ where:<sup>412</sup>
- the condition may have a substantial impact on public health;
  - a person’s ordinary conduct is likely to result in transmission to another person; and
  - transmission will, or would be likely to, have long term or serious consequences for the other person’s health.
- 11.39 Some controlled notifiable conditions are sexually transmissible: see box 4.
- 11.40 Queensland Health uses a ‘staged process’ for dealing with a person who has a serious medical condition and is a risk to the community. This begins with giving the person counselling, education and support, then escalates to intensive management and supervision.<sup>413</sup> If this is unsuccessful, and if a person has or may have a controlled notifiable condition and is an immediate risk to public health, then a court order may be made. This order can detain a person for diagnosis or

### Box 4: Controlled notifiable conditions that can be sexually transmitted

- Hepatitis C
- HIV
- Syphilis

<sup>408</sup> Prostitution Bill 1999 (WA) cl 8, 9, 17; Western Australia, *Parliamentary Debates*, Legislative Council, 9 December 1999, 4041–49, 4059, 4081.

<sup>409</sup> See, eg, Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 66–8; E Jeffrey, J Fawkes & Z Stardust, ‘Mandatory testing for HIV and sexually transmissible infections among sex workers in Australia: a barrier to HIV and STI prevention’ (2012) 2 *World Journal of AIDS* 203, 203–5; E Jeffrey, K Matthews & A Thomas, ‘HIV criminalisation and sex work in Australia’ (2010) 18(35) *Reproductive Health Matters* 129, 134–5; Daniel, above n 377. See also McCann, Crawford & Hallett, above n 397, 9.

<sup>410</sup> See, eg, Sakha, Greytak & Haynes, above n 377, 8–9.

<sup>411</sup> Shannon et al, above n 365.

<sup>412</sup> *Public Health Act 2005* (Qld) ss 63–64; *Public Health Regulation 2018* (Qld) s 31, sch 1.

<sup>413</sup> Explanatory Notes, *Public Health Bill 2005* (Qld) 12. See also, eg, Queensland Health, *Guideline for the Management of People Living with HIV who Place Others at Risk of HIV* (No QH-GDL-367:2014, 6 November 2014).

treatment, or require a person to have counselling, avoid doing some things or visiting some places, or agree to supervision and monitoring.<sup>414</sup>

- 11.41 It is an offence for a person to recklessly transmit or recklessly put another person at risk of contracting a controlled notifiable condition, unless the other person knew about the condition and 'voluntarily accepted' the risk.<sup>415</sup> This offence (or criminal offences) may be used when the staged process is not enough to manage particular circumstances.<sup>416</sup>
- 11.42 In some other jurisdictions, it is an offence to fail to take reasonable precautions against transmitting or spreading a disease or condition, knowingly or recklessly put another person at risk of contracting a disease or condition, or cause a public health risk. It is sometimes a defence for another person to voluntarily accept the risk of contracting the disease or condition.<sup>417</sup>
- 11.43 In Australian jurisdictions where sex work has been decriminalised, public health laws include offences about sexually transmissible diseases or make some other kind of provision for sex work.
- 11.44 In New South Wales:
- A person who knows they have a sexually transmissible disease or condition listed in the *Public Health Act 2010* (NSW) must take reasonable precautions against spreading it. What is 'reasonable' is objective, and includes safe sex practices such as condom use.<sup>418</sup> This requirement is also recognised in work health and safety guidelines.<sup>419</sup>
  - It is an offence for the owner or occupier of a building or a place to let another person have sexual intercourse at that building or place for the purpose of carrying out sex work, if the owner or occupier knows the other person is breaching the requirement to take reasonable precautions.<sup>420</sup>
  - A doctor who suspects a patient has a sexually transmitted infection must give the patient information about the public health implications; their diagnosis, prognosis and treatment options; and precautions to minimise the risk of infecting others (such as using condoms and having treatment).<sup>421</sup>
- 11.45 In the Northern Territory, sex work is a 'declared activity' under public health laws, meaning it is considered an activity that carries a risk of harm to public health.<sup>422</sup> The Minister for Health

414 *Public Health Act 2005* (Qld) ch 3 pt 5 divs 1–4; Explanatory Notes, Public Health Bill 2005 (Qld) 12, 14. See also *Public Health Act 2005* (Qld) ch 3 pt 4 (orders by the chief executive).

415 *Public Health Act 2005* (Qld) s 143. A person does not commit an offence by refusing or failing to be vaccinated against a condition.

416 Explanatory Notes, Public Health Bill 2005 (Qld) 12.

417 See *Sex Work Act 1992* (ACT) s 27 note; *Public Health Regulation 2000* (ACT) s 21(1); *Public Health Act 2010* (NSW) s 52; *Public Health Act 1997* (Tas) s 51; *Public Health Act 2016* (WA) ss 36–38; *Health Act 1956* (NZ) s 80; D Callander, 'Punishing one person for STI transmission weakens public health efforts', *The Conversation* (online, 21 September 2017) <<https://theconversation.com/punishing-one-person-for-sti-transmission-weakens-public-health-efforts-84210>>.

418 *Public Health Act 2010* (NSW) s 79(1)–(2); New South Wales, *Parliamentary Debates*, Legislative Assembly, 24 November 2010, 28130 (A McDonald, Parliamentary Secretary); 10 August 2017, 529 (B Hazzard, Minister for Health and Minister for Medical Research). It suggested that this is more effective to protect public health than a requirement to disclose an infection, and that other offences apply if transmission is associated with malicious or criminal intent.

419 See SafeWork NSW, 'Health and safety guidelines for sex services premises in NSW' [6] <<https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw>>.

420 *Public Health Act 2010* (NSW) s 79(2).

421 *Public Health Act 2010* (NSW) s 78; *Public Health Regulation 2012* (NSW) s 40. There are also some specific precautions to minimise risk for people who have a HIV infection.

422 *Sex Industry Act 2019* (NT) s 6(1); *Public and Environmental Health Act 2011* (NT) ss 4 (definitions of 'declared activity', 'public health' and 'public health risk'), 9(1).

may impose standards for declared activities.<sup>423</sup> Standards have not been issued for sex work, but it was suggested there could be guidelines or standards about ‘health and hygiene for sex services businesses’. It was suggested these would help give sex workers control to perform services in a way that protects their health and safety.<sup>424</sup>

- 11.46 In Victoria, as part of the decriminalisation reforms, the Department of Health is developing ‘a new public health and infection control framework for the sex work industry’.<sup>425</sup>

## Criminal laws

- 11.47 In Queensland, it is an offence to intentionally transmit a ‘serious disease’ to another person. This is a disease that would, if not treated, endanger someone’s life, cause permanent injury to their health, or cause loss of a body part or organ or serious disfigurement (or a disease that would be likely to do any of those things).<sup>426</sup>
- 11.48 In most other jurisdictions, it is an offence to intentionally or recklessly infect another person with a disease. Sometimes it is also an offence to put a person in danger of infection, or to do or not do something that causes a person to be infected.<sup>427</sup> In jurisdictions that do not have a specific offence about the transmission of a disease it is an offence to intentionally or recklessly cause ‘grievous bodily harm’ to a person,<sup>428</sup> and that might sometimes include infecting a person with a disease.<sup>429</sup>
- 11.49 Criminal offences must be proved ‘beyond reasonable doubt’. Whether it is possible to prove some parts of an offence, such as a person’s intention or that a person was ‘in danger’, will depend on the facts of a case. For those reasons, criminal offences might not always apply when one person infects another with a disease.<sup>430</sup>

## Obligations to take reasonable steps

- 11.50 In Tasmania and New Zealand, sex workers and clients must take ‘all reasonable steps’ to minimise the risk of acquiring or transmitting a sexually transmissible infection. In New Zealand, this also applies to business operators.<sup>431</sup> A similar requirement existed in Victoria but is being repealed as part of the first stage of decriminalisation.<sup>432</sup>
- 11.51 In the Northern Territory, sex workers and business operators ‘must take all reasonable steps to adopt and promote safe sex practices’.<sup>433</sup> It was explained that this ‘does not override other

<sup>423</sup> *Public and Environmental Health Act 2011* (NT) s 102.

<sup>424</sup> Explanatory Statement, Sex Industry Bill 2019 (NT) 2; Northern Territory, *Parliamentary Debates*, Legislative Assembly, 18 September 2019, 7026 (McCarthy, Acting Attorney-General and Minister for Justice).

<sup>425</sup> Explanatory Memorandum, Sex Work Decriminalisation Bill 2021 (Vic) 23.

<sup>426</sup> Criminal Code (Qld) ss 1 (definition of ‘serious disease’), 317. It does not matter if treatment is or could have been available.

<sup>427</sup> *Crimes Act 1900* (NSW) ss 4 (definition of ‘grievous bodily harm’), 33, 35; Criminal Code (NT) ss 1 (definitions of ‘harm’ and ‘serious harm’), 1A, 174B, 174D, 174E, 177, 186; *Criminal Law Consolidation Act 1935* (SA) ss 21 (definitions of ‘harm’ and ‘serious harm’), 23, 24, 29; *Crimes Act 1958* (Vic) ss 15 (definitions of ‘injury’ and ‘physical injury’), 18; Criminal Code (WA) ss 1(1) (definition of ‘grievous bodily harm’), (4), 294(1)(a), (h), 297, 304, 317, 317A; *Crimes Act 1961* (NZ) s 201.

<sup>428</sup> *Crimes Act 1900* (ACT) ss 4, 19, 20, sch (definition of ‘grievous bodily harm’); Criminal Code (Tas) ss 1 (definition of ‘grievous bodily harm’), 170, 172.

<sup>429</sup> See, eg, *R v Dica* [2004] 3 All ER 593.

<sup>430</sup> See further *R v Reid* [2007] 1 Qd R 64; *Zaburoni v The Queen* (2016) 256 CLR 482; Lexis Advance, *Carter’s Criminal Law of Queensland* [s 317] (April 2018).

<sup>431</sup> *Sex Industry Offences Act 2005* (Tas) s 12(3); *Prostitution Reform Act 2003* (NZ) ss 8(1)(e), 9(3).

<sup>432</sup> *Sex Work Decriminalisation Act 2022* (Vic) s 8, repealing *Sex Work Act 1994* (Vic) s 18A(2).

<sup>433</sup> *Sex Industry Act 2019* (NT) s 8. There is no penalty attached to this requirement.



laws providing for occupational health and safety, however directs industry to specifically consider safe sex practices in conjunction with those other laws'.<sup>434</sup>

## Obligations to give information

11.52 In Queensland brothels, written information about sexually transmissible diseases must be available to all staff and sex workers, and in client waiting areas. Sex workers must be given an induction before working at a brothel, which must include detailed information about sexual health: see box 5.<sup>435</sup> A brothel licensee must make sure:<sup>436</sup>

- each room in the brothel has enough lighting for sex workers to check for 'clearly visible signs' of a sexually transmissible disease; and
- a sign is prominently displayed in the brothel's reception area stating 'only safe sexual activities are practised on these premises'.

### Box 5: Information given to sex workers

- Sexual health and health testing
- Sexually transmissible diseases
- Safe sex
- Prophylactic use
- Checking clients for signs of infection

11.53 In New Zealand, there are similar requirements for business operators (such as brothel and escort agency proprietors) to give sex workers and clients information about safe sex and sexually transmissible infections. The information must also be displayed in brothels.<sup>437</sup>

11.54 Similar provisions are included in the *Public Health and Wellbeing Act 2008* (Vic). In Victoria, a brothel or escort agency proprietor must not require a sex worker to perform services if the worker suspects a client has an infection, or the client refuses to use a condom.<sup>438</sup> As explained above, these requirements will be repealed in Victoria as part of the second stage of decriminalisation.<sup>439</sup>

11.55 In New South Wales and the Australian Capital Territory, under work health and safety guidelines, sex workers must be given information and training about:<sup>440</sup>

- maintaining their own sexual health, for example, information about sexually transmitted infections and blood borne viruses, how to react to 'exposure incidents' and sexual health testing;
- safer sex practices and the correct use of prophylactics; and
- visual health checks on clients, to protect against some infections.

## Sexual health testing

11.56 Some jurisdictions require sex workers to have sexual health tests or limit what can be done with information about health testing: see table 3.

434 Explanatory Statement, Sex Industry Bill 2019 (NT) 3.

435 PLA, *Brothel Licence Conditions* (v 14, 13 May 2019) [4.6], [6.1]–[6.2]; PLA, *Operational Standards Manual* [2.5] (and at [5.1]).

436 *Prostitution Regulation 2014* (Qld) s 23(b)–(c).

437 *Prostitution Reform Act 2003* (NZ) s 8(1)(b), (c).

438 *Public Health and Wellbeing Act 2008* (Vic) ss 160, 162.

439 See [11.9]–[11.10] above.

440 SafeWork NSW, 'Health and safety guidelines for sex services premises in NSW' [6], [14] <<https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw>>; Work Health and Safety (Sexual Services Industry) Code of Practice 2011 (ACT) 16.

Table 3: Sexual health testing

	Qld	ACT	NSW	NT	SA	Tas	Vic*	WA	NZ
Sexual health testing is mandatory	✓ (in brothel)		✓ (can request under WHS guidelines)				✓		✓ (can request under OHS guidelines)
Testing may not be used to induce belief a sex worker is not infectious	✓ (in brothel)	✓		✓			✓		✓

\* Under sections of the *Sex Work Act 1994* (Vic) and the *Public Health and Wellbeing Act 2008* (Vic) that are repealed by *Sex Work Decriminalisation Act 2022* (Vic)

## Mandatory sexual health testing

- 11.57 In Queensland, sexual health testing is mandatory for any sex worker who works in a brothel. A licensee or an approved manager must have proof from a health practitioner (for example, a ‘sexual health check certificate of attendance’) that a sex worker has been medically examined or tested for sexually transmissible diseases. The licensee or an approved manager must sight the original certificate and an endorsed copy must be kept for one year.<sup>441</sup>
- 11.58 The requirement for sexual health testing is not stated in the Prostitution Act. It is a result of offences in that Act prohibiting sex workers from working, or being permitted to work, in a brothel while infective with a sexually transmissible disease.<sup>442</sup>
- 11.59 In Victoria, similar offences applying to all sex workers are included in the *Sex Work Act 1994* (Vic). This made sexual health testing mandatory for all sex workers. However, the *Sex Work Decriminalisation Act 2022* (Vic) repeals these offences, removing the requirement for sexual health testing.<sup>443</sup> It was explained that mandatory testing ‘reinforces the harmful “vectors of disease” stereotype, frames sex workers as a risk to the wider public, fuels sex work stigma and is used to justify discriminatory practices’. It was stated that removing mandatory testing would promote the rights to privacy and reputation, and protection from torture and cruel, inhuman or degrading treatment.<sup>444</sup>
- 11.60 Sexual health testing is not mandatory in other places. However, in New South Wales and New Zealand, work health and safety guidelines state that owners or operators, or employers, can request that a sex worker provide a ‘certificate of attendance’ from a doctor who carries out a

441 PLA, *Brothel Licence Conditions* (v 14, 13 May 2019) [4.4]–[4.5]. The licensee and manager should have procedures for assessing a certificate.

442 See *Prostitution Act 1999* (Qld) ss 89, 90.

443 *Sex Work Decriminalisation Act 2022* (Vic) ss 8–9, repealing *Sex Work Act 1994* (Vic) ss 18A, 19–20. See also Explanatory Memorandum, *Sex Work Decriminalisation Bill 2021* (Vic) 4.

444 Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3877 (Horne, Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Fishing and Boating).

sexual health assessment, stating when the sex worker attended but not any results, diagnoses or medical information.<sup>445</sup>

11.61 Sex worker advocates and researchers are opposed to mandatory testing for the following reasons:<sup>446</sup>

- It may infringe human rights. Sex workers have rights to bodily integrity and to not be subjected to medical treatment without their consent, as well as the right to have information about their health or health care kept private.
- It does not take into account that sex workers have high rates of prophylactic use and low rates of sexually transmitted illnesses and HIV, and that most will voluntarily undertake sexual health testing based on their individual needs.
- It encourages stigma and prejudice, which means that sex workers might sometimes hide their profession or avoid having sexual health testing. Similar requirements are not put on other at risk professions, such as health workers.
- Peer-based and community education about safer sex and sexual health testing is effective, and there is 'no evidence' that mandatory testing leads to better outcomes. Educational programs can more easily reach sex workers if sex work is decriminalised.
- It is an expensive burden on the public health system and funding could be redirected to other successful strategies, such as peer education.
- It can give clients a 'false sense of security', which can lead to more requests for unprotected sexual services.

11.62 The National Sexually Transmissible Infections Strategy 2018–2022 says that testing for sex workers (and other priority populations) should be '[r]egular, comprehensive and voluntary ... on the basis of risk'. It recognises that outreach services and peer-based education are important for these groups.<sup>447</sup> Queensland's action plans for HIV and sexually transmitted infections aim to increase voluntary testing.<sup>448</sup>

11.63 The Queensland Sexual Health Strategy 'aims to support healthy and safe sexual experiences and optimal reproductive health' and to offer services that respond to the needs of all Queenslanders. To achieve improved sexual health outcomes, some population groups require a targeted approach. Sex work is a 'risk occupation' to exposure to infectious disease because of 'high numbers of sexual encounters'. Some sex workers are more vulnerable than others and 'require specific targeted interventions for health promotion and prevention'. '[P]revention initiatives [including information about safe sex and providing free condoms] driven by peer education, support networks and outreach' have resulted in a low rate of HIV and sexually transmissible infections in sex workers. To sustain high rates of condom use and low rates of

445 SafeWork NSW, 'Health and safety guidelines for sex services premises in NSW' [6] <<https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw>>; Occupational Safety & Health Service (NZ), *A Guide to Occupational Health and Safety in the New Zealand Sex Industry* (2004) [5].

446 See, eg, Jeffreys, Fawkes & Stardust, above n 409; Daniel, above n 377; Decker et al, above n 377, 191, 193–96; Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 35, 56, 64–6; Respect Inc, *Regulating Bodies: An In-Depth Assessment of the Needs of Sex Workers [Sexual Service Providers] in Queensland's Licensed Brothels* (2017) 36–7; Sex Workers' Voices Victoria Project, *Decriminalising Sex Work in Victoria* (2020) 8–9. See generally Queensland Government, *Review of Prostitution Laws in Queensland* (Discussion Paper, November 1998) 33–4; CJC Prostitution Report (1991) 232–3; and ch 6.

447 Department of Health (Australia), *Fourth National Sexually Transmissible Infections Strategy 2018–2022* (2018) 27–8. See also Department of Health (Australia), *Eighth National HIV Strategy 2018–2022* (2018) 26.

448 See generally Queensland Health, 'Queensland Sexual Health Strategy' (28 June 2021) <<https://www.health.qld.gov.au/public-health/topics/sexual-health/strategy>>.

sexually transmissible infections, 'continued sex worker-specific health promotion initiatives' are required.<sup>449</sup>

- 11.64 Respect Inc is a peer-based sex worker organisation funded by Queensland Health. One of its roles is to '[d]eliver health promotion activities for sex workers aimed at the prevention of STI & HIV transmission (peer education, outreach, community development)'.<sup>450</sup>
- 11.65 Low rates of infection are reported in Sydney and Perth, where sexual health testing is voluntary.<sup>451</sup> In New Zealand, after decriminalisation, most sex workers have regular sexual health checks.<sup>452</sup> Research has shown that decriminalisation is connected with better access to health, education and support services for sex workers and increased use of those services.<sup>453</sup>
- 11.66 Queensland Health guidelines about testing asymptomatic people include guidelines for sex workers. For most conditions, testing should be based on whether the condition is commonly found in the community, the person's symptoms, and any contact they have had with an infected person. How often a person is tested should be based on their sexual history and condom use, or can be at their request.<sup>454</sup>

## Use of information about sexual health testing

- 11.67 In Queensland, it is an offence for a sex worker at a licensed brothel to use the fact that they have had a sexual health test, or the results of any examination or test, to induce a client to believe they are not infectious with a sexually transmissible disease. A brothel licensee or an approved manager must take reasonable steps to prevent those facts or results from being used in that way.<sup>455</sup> Those steps might include outlining expectations during an induction or in a code of practice and, if a person attempts to use information in a prohibited way, taking immediate action and reminding other staff that the behaviour is unacceptable.<sup>456</sup>
- 11.68 The PLA has explained that a negative test result does not guarantee that a person does not have a sexually transmissible disease. Also, a person might contract a disease in the time between two sexual health tests.<sup>457</sup>

449 Queensland Health, *Queensland Sexual Health Strategy 2016–2021* (2016) 5, 26, 31.

450 Respect Inc, *Strategic Plan 2018 to 2021*, 4. See generally Respect Inc, 'Respect Inc—who are we?' (5 March 2021) <<https://respectqld.org.au/what-is-respect-inc/>>.

451 See, eg, DP Wilson et al, 'Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia' (2010) 86 *Sexually Transmitted Infections* 117, 122; Select Committee on the Regulation of Brothels, Legislative Assembly of New South Wales, *Inquiry into the Regulation of Brothels* (Report, November 2015) 83–4.

452 See, eg, G Abel, 'Sex workers' utilisation of health services in a decriminalised environment' (2014) 127(1390) *New Zealand Medical Journal* 30.

453 See, eg, C Harcourt et al, 'The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers' (2010) 34(5) *Australian and New Zealand Journal of Public Health* 482; Sakha, Greytak & Haynes, above n 377, 10; McCann, Crawford Hallett, above n 397, 9.

454 Queensland Health, 'STI/BBV testing tool for asymptomatic people' (December 2020) 2 <[https://www.health.qld.gov.au/\\_data/assets/pdf\\_file/0025/726523/sti-bbv-testing-tool.pdf](https://www.health.qld.gov.au/_data/assets/pdf_file/0025/726523/sti-bbv-testing-tool.pdf)>. See also Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine, 'Australian STI management guidelines for use in primary care: Sex workers' (Consultation draft, December 2021) <<https://sti.guidelines.org.au/populations-and-situations/sex-workers/>>.

455 *Prostitution Act 1999* (Qld) ss 89(4), 90(4). It does not matter if the sex worker is infectious with a sexually transmissible disease: ss 89(5), 90(5).

456 Explanatory Notes, *Prostitution Bill 1999* (Qld) 21.

457 PLA, *In Touch Newsletter* (Issue No 34, March 2009). See also Queensland Government, *Review of Prostitution Laws in Queensland* (Discussion Paper, November 1998) 33; CJC Prostitution Report (1991) 232–3; CMC Prostitution Report (2004) 59.

- 11.69 Similar offences exist in the Australian Capital Territory and New Zealand.<sup>458</sup> In Victoria, a similar offence in the *Public Health and Wellbeing Act 2008* (Vic) will be repealed as part of the second stage of decriminalisation.<sup>459</sup>
- 11.70 The Northern Territory also has a similar offence, which existed before decriminalisation. That offence applies to any person—sex workers, business operators and clients—because any medical examination shows a person’s health only at that time and ‘cannot be held out as a “clean bill of health”’. However, this does not prevent a sex worker from giving information about a medical examination to their employer as part of a ‘health, safety and wellbeing regime’.<sup>460</sup>
- 11.71 In New South Wales and New Zealand, work health and safety guidelines state that a certificate of attendance for sexual health testing must not be displayed or shown to any clients.<sup>461</sup>

## CONSULTATION QUESTIONS

- Q23** Should laws or other measures be taken to promote public health and protect the health of sex workers and their clients about:
- (a) the use of prophylactics;
  - (b) managing the risk of sexually transmitted infections;
  - (c) sexual health testing; or
  - (d) another matter?
- Q24** If yes to Q23, what should those measures be and why?

<sup>458</sup> *Sex Work Act 1992* (ACT) s 26; *Prostitution Reform Act 2003* (NZ) ss 8(1)(d), 9(2).

<sup>459</sup> *Sex Work Decriminalisation Act 2022* (Vic) s 73, repealing *Public Health and Wellbeing Act 2008* (Vic) pt 8 div 10 (including s 161). See also Explanatory Memorandum, *Sex Work Decriminalisation Bill 2021* (Vic) 23.

<sup>460</sup> *Sex Industry Act 2019* (NT) s 16; Explanatory Statement, *Sex Industry Bill 2019* (NT) 5–6.

<sup>461</sup> SafeWork NSW, ‘Health and safety guidelines for sex services premises in NSW’ [6] <<https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw>>; Occupational Safety & Health Service (NZ), *A Guide to Occupational Health and Safety in the New Zealand Sex Industry* (2004) [5].

