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HOUSING, BIG BUILD AND MANUFACTURING COMMITTEE

Members present:

Mr CG Whiting MP—Chair
Mr JJ McDonald MP
Mr DJ Brown MP
Ms A Leahy MP
Mr RI Katter MP (videoconference)
Mr TJ Smith MP

Staff present:

Ms S Galbraith—Committee Secretary
Dr V Lowik—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE CRIMINAL CODE (DECRIMINALISING SEX WORK) AND OTHER LEGISLATION AMENDMENT BILL 2024

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 22 MARCH 2024

Brisbane

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The committee met at 10.45 am.

CHAIR: I declare open this public briefing for the committee's inquiry into the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024. My name is Chris Whiting. I am the member for Bancroft and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are fortunate to live in a country with two of the oldest continuing living cultures in Aboriginal and Torres Strait Islander peoples whose lands, winds and waters we all share.

With me here today are: Jim McDonald, the member for Lockyer and deputy chair; Don Brown, the member for Capalaba; Anne Leahy, the member for Warrego, who is substituting for Michael Hart, the member for Burleigh; Tom Smith, the member for Bundaberg; and Robbie Katter, the member for Traeger, who is joining us via videoconference.

This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the briefing at the discretion of the committee. I remind committee members that officials are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask people to turn their mobile phones off or onto silent and to turn your computers onto silent as well.

ASTON, Mr Chris, Executive Director, Department of Housing, Local Government, Planning and Public Works

GALLAGHER, Ms Dominique, Director, Department of Housing, Local Government, Planning and Public Works

OTTO, Ms Catherine, Manager, Department of Housing, Local Government, Planning and Public Works

PICKERING, Ms Tess, Deputy Director-General, Department of Housing, Local Government, Planning and Public Works

CHAIR: I now welcome representatives from the Department of Housing, Local Government, Planning and Public Works. I invite you to make a brief opening statement after which committee members will have some questions for you.

Ms Pickering: Thank you to the committee for having us along today. We are delighted to be here and to have the opportunity to discuss the planning framework with you. I also recognise the traditional owners of the lands on which we are meeting, the Yagara and Turrbal peoples, and pay my respects. I note that the First Nations communities in Australia were indeed the first land use planners and that we have much to learn from our First Nations communities here in Queensland and in Australia.

As the committee is aware, in August 2021 the QLRC was asked to undertake a review and to recommend a framework for decriminalising sex work in Queensland. The various *Hear her voice* reports dealt with related matters. Of significance in report two, there was a recommendation about sex work that noted it was not within their scope but that there needed to be a framework for decriminalising sex work in Queensland. In March, the QLRC released a report and in that, a number of planning-related recommendations were included. There were a total of 10, being R15 to R24. We

also note that R23 within that grouping is a local government related recommendation and not one that we will be addressing today, given that you have already had local government officers present to the committee.

Broadly, the recommendations relate to the various matters in the planning framework. We would summarise those as three key factors, being: removing the provisions relating to the ability for local governments to prohibit brothels that currently exist within the planning regulation in Queensland; the treatment of sex work business the same as any other business, including a home-based business; and a various approaches to transitional provisions to cater for the current existing, lawful and unlawful sex work uses that are operating in Queensland at the moment.

In April, the Queensland government indicated broad support for the recommendations of the QLRC paper. On 11 October, the Attorney-General tabled the broad package relating to the decriminalisation of sex work. The planning-related matters are effectively and best dealt with through the detailed requirements in the planning regulation and not the Planning Act. There were no specific Planning Act changes that were put forward to the committee through that package; however, we are here to talk to you today about the potential options in the regulation. For context and clarity, we want to be clear that in Queensland we do have a performance-based planning system. That means that the regulation sets some ground rules but, essentially, a lot of that flows through to the local government to regulate land use, planning and development through their local planning schemes, right through from specific intent to zoning, overlay, code provisions and the level of assessment for certain types of development.

Generally, you would see a lower level of assessment for development that is consistent with the intention of a land use and something that you expect to see in an area. That would likely fall in the lower range, being either accepted or exempt development. If it is a more contentious or more constrained sort of development, you would expect it to be up in the assessable development category, which can be either code or impact assessment. I want to be clear that that is the current framework that we are working within. As we can appreciate, there are many different ways that the intent of the QLRC report can be taken, adapted and implemented through the planning regulation changes, but, broadly, we are looking and working to ensure sex work businesses are treated equally to other businesses within the planning framework.

Those are the major comments that we wanted to make clear. The other factor is that we know DJAG undertook some targeted consultation on provisions and they have provided feedback to us on what they received through that process. As is our standard practice, we will continue to engage with our industry and local government stakeholders about the finalisation of a regulation. The current intent is that we would like to keep working with stakeholders, with the aim of having a regulation to take effect at the same time as the bill package commences. We thank the committee. We are here to engage and answer your questions. Thank you.

CHAIR: Thank you for your overview. It is very useful and it ties in with what we have learnt from the departmental response. Can you pass on our thanks to the department. The response is quite substantial, and answers a lot of the questions that we had.

I want to check I understood this correctly. The general view is that we are talking about decriminalisation, not deregulation, as you said. What we would see with this bill is that businesses would be subject to no more or less regulation than other legal businesses—that is probably a good overarching statement; do I have that right?

Ms Pickering: Yes. The government has supported the intent of the QLRC report to treat sex work businesses the same as any other business in Queensland and to not have a way of delineating sex work businesses that would expose them to potentially being treated individually in a different way by council through development assessment processes that may be cumbersome or not allow the use to actually ever eventuate in the same way that another use would be able to.

CHAIR: I think that is an important intent of this legislation that is very clear: you cannot overburden these businesses to the point where they cannot get anything passed. You made the point about the regulation sitting under the act. You said that it is important then that the onus is on local government in terms of such things as overlays and the levels of assessment. An important part of this is that we set the ground rules so that local governments, as with all other businesses, have a role in assessing these businesses to manage the impact; have I understood that correctly?

Ms Pickering: Yes. Like any other use, if we determine there is a state interest in setting an upper limit, for example, on a category of assessment—that is, we think something has to be exempt or deregulated, which is a very rare circumstance—that would be categorised in a regulation as 'exempt'. Therefore a planning approval may not be able come forward, but a building approval would.

An example would be a house in a residential zone with no constraint. They are the things that the planning system does not need to know about because it is the right use in the right location with no constraints on that site. We take your point that this is not about deregulation; this is about making sure there is equal treatment of the use. We would be looking at the other types of uses that regulate business in the planning framework, including home-based businesses and shops, and working out how we can ensure they are regulated in a way that sets an upper limit of a category of assessment that the state is comfortable with, but then a local government takes that upper limit and reflects that through amendments in their planning scheme to make sure it aligns with their community's expectations and where and how they want these businesses to be provided for in their local government area.

CHAIR: Thank you for saying that you are still working with the stakeholders over the development of the regulations. Would it be correct that you would be taking on the opinions of the committee and the evidence you have heard through this inquiry to develop those regulations?

Ms Pickering: Yes. We are very happy to receive feedback and the views of the committee to inform the finalisation of the regulation.

Mr McDONALD: Thank you all for being here. I have a couple of concerns about some aspects of the changes that will impose controls on local government generally. As I understand, a lone worker in a residential house can now operate legally; is that correct?

Ms Pickering: Yes.

Mr McDONALD: I am concerned about a business being located near a school or a childcare centre. What unintended consequences could there be in allowing those sort of businesses near a school or a childcare centre?

Ms Pickering: To clarify, when you say 'business' you do not mean a home-based business but what would currently be considered a brothel and will be moving towards a sex work business?

Mr McDONALD: Yes.

Ms Pickering: I guess that is what we are working through at the moment. The QLRC report is very clear that sex work businesses need to be treated equal to other businesses. In a planning sense, that means shops and other land use categories that exist already. I think what we need to consider is the most effective way of doing that with any transitional provisions that still allow the local government the opportunity to—as they always do with every land use—determine the zoning and the right application of where they are comfortable with certain uses eventuating in their local government area. If we are changing a definition to equalise and balance business, including sex work, then we need to work with local governments on how that turns into an appropriate policy translation in their planning scheme.

Mr McDONALD: You would agree that it may not be appropriate for some businesses to be located near a school or a childcare centre? I was concerned when you said we are looking at an upper limit. I would ask you to maybe look at a lower limit that says as soon as there is two workers in a residential place, it would not be appropriate for it to be beside a school or a childcare centre. Could you give us an understanding of your considerations around that in the regulation?

Ms Pickering: I guess we are coming from the perspective that the current framework includes a prohibition and we have been very clearly told to remove that prohibition and to have, as I said before, a performance-based approach to this type of land use and equalising its rights with other land uses that exist in Queensland. What that would mean for any other type of use is that a local government determines what sorts of uses are appropriate as per the zoning that they apply to land—be it near sensitive uses or not. The QLRC report did make a firm recommendation that separation distances were not an equal treatment here in terms of this use, so I guess that is a boundary of what is informing our development of a response. In Queensland, local governments can apply buffers and rezone things as they see fit within their planning schemes already.

Mr McDONALD: In terms of a brothel or sex work business opening up near a school, what would the local government be relying on to determine if that is appropriate or not? Is it the planning and environment act?

Ms Pickering: I guess that is what we need to work out: what the regulation is going to set as minimum requirements or maximum requirements for the local government to then refine locally in terms of their local regulation. The state will not see the development applications. This is about working out which development applications a council does or does not want to see. In some cases, they already do not want to see certain types of businesses or applications; they have already deregulated and had categories of assessment lowered to accepted. They need to recalibrate, look

at those levels of assessment and determine whether that is still appropriate within the upper limit that we set because that will determine what sorts of applications they get to see or not across their local government area. Is there anything else you would add to that, Chris?

Mr Aston: It is important to clarify. The majority of those regulations in planning schemes are effectively vested in the public interests, so it is quite common for planning schemes to regulate out-of-centre development—by that I mean shops outside of centres. It is quite common for planning schemes to regulate hazardous uses in proximity to residential areas. I suppose what we are needing to take into account in drafting a planning regulation is understanding whether there are any impacts on the public interests as opposed to any type of shop and the QLRC gives some pretty clear recommendations towards that.

Mr McDONALD: I understand, but I am concerned about the practical application of a business opening in what could be considered in that local government not appropriate. Could you consider the issue of location near a sensitive site, to use your term, Ms Pickering? Also, for the amenity, if a business opens up in a quiet cul-de-sac which actually increases the level of traffic flow, pedestrian flow or what have you, what ability does the local government have to take action against the business that might not fit within the surrounds? Some of these businesses may start up with two workers but increase to a larger volume.

Mr Aston: If I further my example to practical application, we found particularly during COVID a lot of business activity occurring at home which was impacting people's residential amenity. The majority of local planning schemes have basically size and threshold provisions for businesses where they do occur. At the moment it is a bit of detail, but the Planning Act says if you are going to have a home-based business it needs to be subservient to the residential purpose on that site. You will commonly see hours of operation, size and restrictions on the amount of to and fro, effectively all bounded in the premise that it is a residential area and the use of the business on that site should not impact the ability for someone to effectively reside. They might be living, sleeping, whatever they are going to do in their residential premise.

Mr McDONALD: What we are talking about is code assessable applications to a certain limit. Will the local government, wherever they are in the state, have the opportunity to modify that code assessment or the code design?

Ms Pickering: That is what we are working through. There are a broad range of options here and many varied views. You can imagine having a full model code where councils are unable to adjust any benchmark. LGAQ and the likes of course prefer the ability to refine and have local responses. We would tend to agree with that as a drafting principle—that the state ensures those matters that the state declares to have an interest in are set but we allow for the local refinement through a scheme on other matters that do not override the protection of the state interests. For a home-based business, we know that the worker issue and the safety of the worker is a particular consideration that we will need to have because at the moment a lot of home-based businesses are about one worker and we know that raises some safety issues for sex workers. We are hearing that from some stakeholders and that has to be balanced with the appropriate local refinement, as you say, about managing those impacts in a street. If it is a home-based business is one thing, but if it ticks up into an actual business it would be classified as a different use, as per every other type of use in Queensland.

Mr BROWN: It sounds like, and correct me if I am wrong, with the regulations coming in at the same time it is actually giving more powers for local councils than in Victoria. Is that correct?

Ms Pickering: Victoria has a different system where they have a single planning scheme that is set by the state government and we do not have that. It is a different model to Queensland. They also do not have a performance-based model like we have here. It is a different application of a solution to the matter. We are working within the planning regulation here which is different to the single scheme model in Victoria.

Mr BROWN: With the difference in the models, there are inherently more powers and responsibilities handed to local government in this respect.

Ms Pickering: I would have to clarify whether we agree or not with that on a technical level. We are not sure.

Mr SMITH: Thank you all for being here. I have a couple of quick questions around different planning. Is there an ability now for councils to say that gun and ammo shops, tobacco shops, gel blaster shops and adult shops can have some sort of a buffer between schools? Is that an opportunity for councils?

Mr Aston: Yes, it is.

Mr SMITH: Is that based off their own planning and identification of that business? I imagine those businesses would be classed as retail outlets but is it the nature of what they are selling that can be planned against?

Mr Aston: Going to the point Tess was raising before, you are right, that is an assessment that the local government and state government have agreed for any of those separation distances in those planning schemes—that it is in the public interest that those distances and separation requirements are included for those types of shops.

Ms Pickering: Also, there are licensing arrangements for some of those uses that are being removed as per this package, and decriminalising the licensing arrangements around formally what was known as brothels being removed. That removes that link to separation distances that may be afforded through other licensing arrangements with some of those uses you mentioned. I will say as well that there are many different tools and planning schemes where local councils can refine the types of uses that can happen on a site. You can have a neighbourhood plan; you can have a subprecinct in a zone category. There are ways of being clear and nuancing exactly what uses can happen on a site.

Mr SMITH: Does a business currently have to declare what kind of a business it is or stay within the industry? For example, if they are starting up a retail business, do they actually have to declare to council what they will be selling?

Ms Pickering: It depends. If it is a material change of use application—that is, it is currently a house and they want it to be a bakery—they will have to make a development application to seek approval to change that use from residential to commercial. Through that process, you would expect, yes, they would declare what the business use is that they are moving towards. In some cases, if it is an intended use within the zoning, councils may not want to see an application. It may be accepted development to have a retail use there and therefore it would be a building work approval. I do not think there would be a separate retail component. There is not a planning requirement specifically to say what the type of retail is.

Mr Aston: You are right. It comes down to the conditioning. If you can imagine a vehicle window tinting business versus a performance mechanic or repair shop, they have different impacts that might need to be conditioned differently through an application and an approval.

Mr SMITH: When we get to a home business around sex services, if there is only one individual living at that property and they are engaging in sex services for their income, do they have to actually declare that to council and planning because it is their place of residence? This legislation is going to rightfully decriminalise sex work to the point where sex work can be engaged in at any time of the day in any form in any matter.

CHAIR: Not for a home business.

Mr SMITH: What I am asking is what is the difference between someone living at a property and engaging in a conversation and from that conversation two adults consent to engaging in sex for the exchange of a financial benefit, to someone saying, 'I'm going to do this Monday to Friday, day in, day out as my sole job.' What is the difference in having to declare that to the council?

Ms Pickering: Currently councils have codes, including home-based business codes, where they define the thresholds that they care about with respect to a home-based business in their area. Some councils already provide for up to two workers and within certain hours for a physio or a nail specialist, for example; they already sort of regulate that. This would be about taking into account the fact that we know the safety of sex workers is a different matter and we have clear recommendations around making sure we are prioritising and upholding safety. We have to look at how the planning regulation therefore sets a minimum requirement or maximum requirement that we accept is going to protect the safety of a sex worker in a home-based business—that is, is it actually two workers in some cases that is going to make this safe? At the moment local governments can refine home-based business and how it occurs. This would be taking the QLRC method of equalising. We have to look at how the regulation could put in any assessment benchmarks that protect the sex work aspect of that if it is to be treated the same.

Ms LEAHY: Thank you for coming in to brief us. You mentioned changes to the planning regulation. Does that go to changing the State Planning Policy? Will that regulation inform a change in the State Planning Policy to effect what the government's policy intent is?

Ms Pickering: We will not need to change the State Planning Policy. It is purely a regulatory framework change. It is a code provision change. It does not require a policy statement.

Ms LEAHY: With that regulation, what will govern whether councils will look at residential-based sex worker applications as either a code or an impact assessable development?

Ms Pickering: That will be set out in the regulation.

Ms LEAHY: Will councils have the flexibility to decide either code or impact?

Ms Pickering: That is what we are working through—how we establish the right level of assessment in an upper limit in the regulation to enable local governments to balance the need for local consideration with also ensuring the protection of sex work businesses and them being treated equally and not being able to be I guess carved out or prosecuted differently to any other shop. That is what we have to work through and how the regulation is best going to crack that nut in terms of level of assessment.

Ms LEAHY: Regardless of whether it is code or impact assessable, on the basis that an application is successful through a council, if you are the resident in that street where there is a home-based business, what recourse will you have if there is impact on your amenity that you did not foresee when the application came forward?

Mr Aston: Impact assessable applications require notification, and just through the process if you do make a submission you have appeal rights under impact assessable. Code assessment does not require notification, but you can still make submissions to council as part of the application. Generally, when we see complaints from people about businesses, normally it is a compliance action from council to make sure that the business is complying with any conditions that are imposed on their approval. If you have made submissions to council through the application process, someone has the ability to go and talk to council in terms of the decision and how and why their considerations or their issues were taken into effect or not.

Ms LEAHY: If it is code or impact assessable, will the regulation place an obligation on councils to advise all of the residents adjoining a particular street of a home-based business for sex work? Will there be any obligation?

CHAIR: There is none now.

Ms LEAHY: There is none now?

Mr Aston: I cannot think of an example in the planning regulation where that exists for any other business at the moment, no.

Ms Pickering: If we are treating it equally, that has never been the approach in Queensland for a use.

Ms LEAHY: Could the situation occur in a residential street where you would have multiple home-based sex work businesses? Could that occur under either code or impact assessable?

CHAIR: It is a council decision.

Ms Pickering: It is a council decision. I guess there would be streets with multiple home-based businesses now, and they will have eventuated in line with the council's appetite for home-based business in their local government area. It will just be about folding into that environment the fact that the council has comfort they are adequately seeing and knowing and able to manage the impacts of those types of uses.

Mr McDONALD: If it is code assessable obviously there will not be a need for notification, but if it goes over the trigger then it will be impact assessable, which will require public advertising.

Ms Pickering: It is up to the council. The way it works in Queensland is that it will be up to the council. We will set what the state minimum requirements are, and then things outside of that may trigger impact assessment. We will be looking to set a requirement of what we expect and accept as appropriate for code or accepted development.

Mr McDONALD: Could they take it on notice? I am pretty sure if it is impact assessable there will have to be a notification period.

CHAIR: There is a set process for impact assessable applications. Obviously, for a home business it is different.

Mr McDONALD: If it is code assessable?

CHAIR: Yes.

Mr McDONALD: As long as they meet the minimum requirements. If it goes over that to be impact assessable to a home-based business with three workers or four workers, I believe they would have to advertise.

CHAIR: That would be for any business where they set up in a shop industrial area. Wherever there is an application in for anywhere, if it is impact assessable up goes the sign. Have I got that right?

Ms Pickering: Yes.

Mr McDONALD: I am just checking to see that the unintended consequences I was talking about will not stop this from happening and proper advertising.

Ms Pickering: I think that comes back to the principle that this is not deregulation. This is decriminalisation, so we would be looking at how to keep something appropriate in code. In Queensland, anything that is not appropriate with that code kicks up into that impact category.

Mr McDONALD: The wording in the explanatory notes is about removing issues for signage. Will sex work businesses be able to have larger signage than other businesses? That is just how it is written in the explanatory notes.

Mr SMITH: The Queensland Law Reform Commission does note that they would say there is no sign, and because it is not for—

Mr McDONALD: I understand, but I am just raising it so you can take that onboard.

Ms Pickering: Signage is a local government matter and that is within the bill, so we are not the right people to advise on signage.

CHAIR: I have a final observation. I do not think the planning system has dealt with those illegal businesses that are clearly operating in shops. It has been interesting for us to have a look around and see all of these businesses that may or may not be doing the right thing. They are operating in shopping land use zones already, and it is something we have had to deal with as a committee. The point is that that level of activity is already happening in Queensland in shops that would sell products or services. I am just making an observation on that. I do not know if you want to add anything to that.

Mr Aston: In plain English, recommendation 21 of the QLRC report effectively says that if you are currently unlawfully operating a business you will be able to put your hand up within 12 months without fear of prosecution. That has been something we have been advised we will need to do through the Planning Act itself, looking at potential answers for that.

Mr McDONALD: I have two quick questions that can be taken on notice. Have you considered any changes to the child exploitation act, and is there anything to stop a child from working on the front desk of a sex work business?

CHAIR: That was covered in the departmental response. Do you have anything to add?

Mr Aston: I understand that is part of the Department of Justice and Attorney-General's remit into this. It is not something related to the planning framework.

CHAIR: Do you want to send that off?

Mr McDONALD: We can do that.

Ms LEAHY: Just in relation to hotels, there has been a bit of concern raised around those. If there are home-based businesses or workers working out of hotels, I am particularly thinking of the safety of the general public and women and children in those hotels. Can you give us any idea whether the planning regulation will impact on hotels and enable hotels to keep their customers safe?

CHAIR: I note that is already in the departmental response. Do you want to add anything to that?

Mr Aston: In terms of the planning framework, I suppose if we as the department go and visit a regional area and we do work in a hotel on our computers, the planning framework does not regulate that any differently to anyone else doing work in the hotel either, so the planning framework probably would not look into that level of detail.

CHAIR: That concludes the briefing. Thank you to everyone who has participated today. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public briefing closed.

The committee adjourned at 11.23 am.