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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
Ms V Lowik—Assistant Committee Secretary

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

TRANSCRIPT OF PROCEEDINGS

Friday, 22 March 2024

Brisbane

FRIDAY, 22 MARCH 2024

The committee met at 11.23 am.

BLISS, Ms Mandy, State Coordinator, Respect Inc

JEFFREYS, Dr Elena, Advocacy and Policy Manager, Scarlet Alliance, Australian Sex Workers Association Inc.

NICHOL, Ms Elizabeth, Relief State Coordinator, Respect Inc

PONY, Mx Mish, Chief Executive Officer, Scarlet Alliance, Australian Sex Workers Association Inc. (via videoconference)

CHAIR: Good morning. Would each group like to make an opening statement before we ask our questions? Perhaps we can have Mandy and Elizabeth go first.

Ms Nichol: Respect Inc. is Queensland's sex worker organisation, and I am also a sex worker. We acknowledge the traditional owners of the lands on which we meet today—the lands of the Turrbal and Yagara people, lands that have never been ceded. Respect Inc. is the statewide sex worker organisation in Queensland. Our organisation provides comprehensive health promotion and a pure education and community engagement program, with offices and sex worker drop-in spaces at the Gold Coast, Brisbane and Cairns and regional outreach to other locations. Everyone in our organisation is a sex worker at every level of the organisation.

Decriminalisation is the repeal of sex work specific criminal offences so that sex work is not treated as a crime but instead as work and regulated in line with this new approach. This is reflected in the bill before this committee and why our organisation supports it. The repeal of sex work specific criminal law impacts directly on sex worker safety as it will no longer be a crime for sex workers to implement safety strategies as part of their day-to-day work. Chapter 22A, repealed by this bill, has for the last decade included offences most used to charge sex workers, particularly 229H, 'Knowingly participating in the provision of prostitution'. These laws criminalise sex workers working in pairs and contacting each other for safety; checking in with another sex worker at the end of a booking; sharing where you are and who you are with; driving another sex worker to an outcall; or hiring a receptionist to screen calls. This repeal will also improve access to justice in line with the Women's Safety and Justice Taskforce recommendation.

Some 76.5 per cent of sex workers in our study said that they would not report crime under the current laws. Some 73.5 per cent of those who worked in licensed brothels said that they would not make a complaint to police if they were assaulted. After the bill commences, sex workers will have fewer barriers. In New Zealand, sex workers were 70 per cent more likely to report crime after decriminalisation. This reform will also free up police resources wasted on policing a workforce of Queenslanders for basic safety strategies that should not be crimes.

The repeal of the Prostitution Act in this bill will dismantle the failed licensing system. This regulatory model has failed so evidently that there are only 17 licensed brothels in the entire state. This licensing model is, at its core, a prohibition model. It has prohibited 90 per cent of the industry. Sex industry businesses, including escort agencies, are excluded from being able to apply for a licence. This 90 per cent of the industry is under police surveillance and at risk of criminal charges. It is simply not true that this bill is shifting Queensland away from an effective regulatory model or deregulating the industry. A model that has cost approximately \$20 million and licenses only 17 brothels, or 10 per cent of the industry, cannot be considered a success or an effective method of regulation. Other jurisdictions with this model have also had to modernise their laws. Queensland is now the only jurisdiction left with the licensing model. Licensing, when applied to the sex industry, is a divisive model. Those 17 venues with licences see everyone else as competition and seek to maintain the status quo.

The QLRC model outlined in the bill intends to ensure that the entire industry is covered by regulation and that compliance is maximised. This shifts us away from the current problem where most businesses cannot comply and almost no independent sex worker can comply without

jeopardising their safety and risking a criminal charge. Sex workers made it clear to the QLRC review and in our survey that being able to work together is essential to their safety, for peer support and to share costs. Currently, sex workers working together are criminalised. Two sex workers working in the same hotel, even though they could not know another sex worker is there, are both criminalised. A licensing model inherently divides sex industries and disincentivises compliance, and that is what has happened in Queensland. Once decriminalised, there will be significantly fewer barriers to compliance. This will only happen if regulations are not put in place that sex workers are unable to comply with.

There is one major difference between sex workers and most other people in the community, and that is that we experience high levels of stigma and discrimination. The consequences are major safety impacts for sex workers and our families. For this reason, privacy is essential to sex workers. Having our name attached to a process that includes our address and relates to sex work will not result in compliance. We are happy to answer any of your questions, including on the small but important changes we propose in our submission, but we will pass over first to our national colleagues to add a short statement.

Mx Pony: I am dialling in from Gadigal land of the Eora nation. Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of sex workers in Australia's sex industry. Through our work and that of our member organisations and projects, we have the highest level of contact with sex workers and access to sex industry workplaces throughout Australia. Respect Inc is our Queensland member organisation. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms. Decriminalisation is considered best practice sex worker recognition by many bodies, including the World Health Organization, the *Lancet* medical journal, multiple United Nations agencies, Amnesty International, the International Labour Organization and the Global Alliance Against Traffic in Women. Decriminalisation requires regulators to shift the focus from prohibition to compliance.

The bill repeals and concludes Queensland's current criminal and licensing regime. In its place, regulations that applied generally will become the new framework that replaces the repealed laws. The new framework is comprehensive and encourages compliance. Work health and safety guidelines will be developed and applied to all sex industry workplaces.

For the first time, the workplace health and safety regulator will be engaged in implementing the same workplace health and safety protections and responsibilities that apply to all other workplaces, including the many existing codes such as Managing the Risk of Psychosocial Hazards at Work. The provision of PPE, including condoms, will of course be required, as will training on storage and use. From commencement of the laws, sex workers from all types of workplaces will be eligible to report unsafe incidents to WorkSafe Queensland. Workplace health and safety regulations will be applied universally.

Advertising will still be regulated, but, instead of this being under criminal laws, which has seen police resources wasted checking for a word wrong in sex worker advertising, all advertising will be covered by the National Advertisers' code, which prohibits the harmful use of sex, sexuality or nudity in advertising and requires content of this kind to be appropriate to the relevant audience. There are also rules around the use of explicit language and overtly sexual imagery. A member of the community who believes an ad does not meet the standards can make a complaint to Ad Standards.

Sex workers and sex industry businesses, regardless of legality, are already required to meet federal requirements, including taxation. Under decriminalisation, industrial laws will more clearly apply to sex work workplaces. Instead of a criminal approach to safer sex practices and testing, workplace health and safety guidelines will apply alongside existing general public health laws. In addition, Respect Inc will continue their current role in promoting safer sex practices, providing safer sex supplies, and supporting sex workers to implement safer sex practices in the workplace.

Access to testing is also promoted by Respect at their clinic, along with partner organisation clinics and public sexual health clinics, and Respect and Scarlet Alliance continue to advocate for greater availability for appropriate testing sites and options for sex workers. Sex workers will continue to be supported with resources, including the Scarlet Alliance sexual health *Red Book Online* and Respect Inc's own resources.

The bill demands the same treatment within the planning system as other businesses, without sex work being differentiated as a separate land use in each council's own planning scheme. The new planning approach is already in place. The regulation is established within each council now. In fact, the bill specifically prevents sex work being added as an exceptional land use into planning schemes. Councils should be thinking now about encouraging and incentivising compliance with local

laws, not seeking powers to prohibit. Sex work businesses will be regulated by the same noise, traffic, signage, parking, size, scale, powers of operation and street frontage rules and local laws that already exist for every other business. The bill asks councils to regulate amenity impact based on the same rules that are applied to other businesses and not create new regulations based on stereotypes, misinformation or guesswork about what amenity impacts and community expectations are.

At this stage it may seem like the bill is taking away more regulatory powers than it is putting in place, but that is only because the nature of decriminalisation is repealing criminal laws and, by doing so, allowing existing regulations to apply. Having been part of the establishment of decriminalisation in other jurisdictions, we understand some will seek new ways to replace sex work specific punitive laws with sex work specific punitive regulations, but that must be avoided in order not to undermine the intention of decriminalisation as the benefits it delivers to the community, government and sex workers. Thank you.

CHAIR: Thank you, everyone. It is instructive to hear that we are the last jurisdiction to persist with the licensing model in Australia; is that correct?

Dr Jeffreys: Yes, that is correct.

CHAIR: What we have learned from this is that only 10 per cent of the industry work happens within that licensing and legal framework, so 90 per cent of it is happening outside this licensing and legal framework.

Dr Jeffreys: Currently that is the case. I would add that in all of those other jurisdictions over the last 30 years we know that the shape, size and number of sex work and sex work businesses does not increase; it is just that the industrial, human rights, work health and safety and access to justice that every other worker enjoys is extended to sex workers. It is less a matter of new businesses popping up and more a case of businesses that already exist will now have access to the same rights and have the same responsibilities as the business next door.

CHAIR: Under the current scheme, workers have not been able to create or enforce their worker safety and worker rights within this employment agency. That is the nub of what we are looking at here, is it not?

Ms Bliss: Yes. Private sex workers particularly or those working together in small groups for safety reasons are at risk of criminal charges under the current model for implementing those safety strategies.

CHAIR: From this bill, looking back, we have a system where you have licensed organisations under a fairly strict regime, then people working by themselves in a variety of—

Dr Jeffreys: That is all that is permitted currently in Queensland. That is not the shape of the industry. The shape of the industry is quite different. Having to choose daily whether to work safely or whether to risk breaking the Criminal Code is a really tough and unnecessary position of pressure to put sex workers in. Maybe others can speak more to that.

Ms Bliss: Workers who work alone also struggle right now to work legally because it is illegal for them to check in with another sex worker about where they are and even to work in the same hotel as another sex worker. They probably would not know if that was the case. That is why right now it is a very small percentage of sex workers that can work within the licensing framework legally and why 90 per cent of us work outside of that framework.

Mr McDONALD: With regard to the process of implementation, can we discuss why we should not use a staged model like Victoria did?

Ms Bliss: Absolutely. What we have heard from Victorian sex workers, councils or anyone who was involved in any of the implementation changes in Victoria is that there was a lot of confusion between the first tranche of changes and the second tranche. There was 18 months between those changes. Effectively, there were three different models in place for sex industry businesses and sex workers over only a two-year period. No-one was really across any of those models to a point where there was a really deep level of understanding and therefore compliance.

Dr Jeffreys: The other thing I would add is that in Victoria government departments, local councils, sex workers and sex worker organisations noted that the gap between the first tranche coming in and the second tranche coming in allowed some bad-faith actors to take advantage of the situation and undermine where decriminalisation was going. We know that that is a risk in terms of a staged implementation. We do not have to create that risk for sex workers here in Queensland.

Mr McDONALD: Could you give us an example of the bad-faith actors?

CHAIR: Bear in mind, too, that if you want to go into private session at any stage, that may—

Mr McDONALD: I am not too sure what you mean by 'bad faith'.

Dr Jeffreys: It is in the Vixen submission. They have a few pages addressing that. You can go into that, but I think, stepping back to some of the things that Mish pointed out, this approach needs a compliance focus at this point. Seeking further ways to prohibit after the Criminal Code is repealed, which is what we hope will happen with decriminalisation, is not the intention of decriminalisation. The failure of prohibition is what has got us to this point. Licensing was attempting to change and raise some of the prohibitions on sex work in Queensland so that Queensland could have a legalised industry, but it still sought to prohibit everybody else. All of the other jurisdictions that were similar have now realised that a prohibition approach is enforcing inability to comply upon sex workers. We are already members of the community. We are already working in all of the different suburbs. Bad-faith actors would be seeking loopholes through which to try to enforce prohibitions that—as once the full implementation of decriminalisation came in in Victoria—are not allowed to be pursued any longer.

Mr McDONALD: The four-year review seems to be a very long time. Why do you think it needs to be four years until a review? They are quite big changes.

Dr Jeffreys: Actually, we recommended longer because it will take time in particular for government agencies to become experienced and settle into the regulatory roles. Public servants, government agencies and local councils are the experts in regulation for every industry, every workplace and every location right now in Queensland, and bringing in decriminalisation and commencing it and giving it time for those people with that expertise to work with regulating the sex industry is very important. We feel that by the time the review comes around those government agencies, government departments and local councils are going to need a few cycles of the year in order to really see what is working and what is not working. We need to give time for the model to be properly evaluated as an implemented model. In some other jurisdictions they looked at it after eight years, for example. We are not the first to do it, but this is the first time Queensland will have done it.

Mr McDONALD: Three of you mentioned the issue of safety and ladies or gentlemen working by themselves as opposed to others. Would it be sensible to modify the code to allow two or three workers to work and support each other and that sort of thing?

Ms Bliss: Absolutely, yes.

Mr McDONALD: Why do we not take that approach as opposed to full decriminalisation?

Ms Bliss: That is part of the approach—yes, absolutely. Especially in home businesses, sex workers should be able to work together for safety. That is how it is in other jurisdictions. They should be able to do that without needing council approval, as it is in other jurisdictions. We know that, as Elizabeth said in her opening speech, when sex workers need to give information regarding their legal name and address associated with their sex work, it is not going to lead to compliance. We have seen that in other jurisdictions like New South Wales and previously Victoria, where there has been extremely low compliance when sex workers have been required to do that to comply.

Mr SMITH: Thank you for coming in and your very clear statements around the importance of decriminalisation and, Mish, especially your statements around regulation and councils. I thought that was very enlightening. I support decriminalisation, and I understand there are safety measures that will come about through this so I probably will not ask my questions in that sense. I might just ask a little bit about how employment currently works in the 17 licensed brothels. Elizabeth, you spoke about this. It seems as though you may have concerns about how those establishments are run at the moment in terms of the competitive nature of them. Do they very much act as an owner of the brothel and then the sex workers are employed under that model, or is it sort of like freelance work? How does taxation work? Could you maybe just take us through a bit of the scope of how sex work actually occurs in terms of an employment and taxation model?

Ms Bliss: Sex workers work on ABNs and are responsible for their own tax and superannuation. When working in a brothel we work as subcontractors and are not paid any wages or allowances or anything to work there.

Dr Jeffreys: I would add just from personal experience that I have worked in licensed brothels here in the city and also in rural and regional locations. There are pros and cons of working within a workplace environment or working for yourself. Just to answer Jim's earlier question about why we would want to decriminalise all of the different forms of sex work, that is because having options for how your work and how your work schedule and your lifestyle needs are working for you at the time is really important. A brothel style workplace is great sometimes; other times people would prefer to just see a few clients privately a week at home. Maybe they are going to go and do escort bookings

at the client's home, or maybe they are doing one or two daytime shifts a fortnight at a brothel. There are all different ways of working, with different pros and cons for the person and their family needs at the time.

Mr SMITH: Does taking away licensing change anything with regard to an ABN? Now it is becoming a wholly decriminalised service; therefore, it could happen through a planned intention of, 'I will be a sex worker and carry this forward as my main source of income.' Please excuse me if this sounds a little bit crass or silly, but the law will be that a person and another person could spontaneously engage in a form of financial transaction for sexual activity. I understand that is probably unlikely. Does that change the need for an ABN?

Ms Bliss: No. The situation you are describing has actually always been the case. That is not going to change.

Mr SMITH: It has just been an illegal act.

Dr Jeffreys: No. One person acting alone is not illegal in Queensland. What the safety problem has been is that you are forced to work alone and act alone because when you contact another worker to tell them what you are doing, or when you are working or sharing overheads with another worker, that is where the illegality and the Criminal Code kick in in Queensland. It is when you are gaining support from another worker.

Mr BROWN: With regard to the line of questioning around ABNs and brothels, the real argument for workplace health and safety is not really there, because in an ABN relationship you are not directly employed. Therefore, you are limited to options about bringing up workplace disputes to Fair Work, for example, and Workplace Health and Safety Queensland because of that ABN arrangement. I imagine that if you try to bring a dispute with regard to workplace health and safety or any dispute in the workplace you are pretty much cut off. Your lease is probably cut off or your access to that licensed establishment is cut off.

Ms Bliss: At the moment, sex workers are very unwilling to bring forth any kind of complaint for a multitude of reasons. One of them is that they may lose shifts at that workplace, and with only 17 licensed brothels, if that is where they are choosing to work or the type of workplace they want to work in, they cannot afford to have that happen, and also because of stigma and discrimination and a lot of other detrimental things that can happen because of that. Once we have decriminalised, sex workers will need to be informed of their workplace rights. My understanding is that they will be able to bring forth a complaint to the regulator, because if someone who is running a brothel is providing a workplace for a person then those workplaces need to meet safety standards.

Dr Jeffreys: Even if all of the sex workers on a premises are contractors, it is still the responsibility of the person who is running the business to provide a safe workplace and comply with all of the codes here in Queensland. Those codes will be applicable after decriminalisation.

Ms Pony: Under decriminalisation, if a sex worker were to make a complaint to the work health and safety regulator, the regulator could take action without notifying the business that has made the complaint. They are protected through anonymity if the regulator is acting as it should be.

Mr BROWN: That has always been the case for licensed brothels but—

Dr Jeffreys: No. Licensed brothels are supposedly regulated by the Prostitution Licensing Authority. The workplace regulator is going to have a new role for all of us after decriminalisation.

Mr BROWN: There is no access right now for a subcontractor in a licensed brothel to bring a complaint about workplace health and safety? Is that what you are trying to say?

Ms Bliss: Not to Workplace Health and Safety Queensland, no.

Dr Jeffreys: They would have to go and give their name to the Prosecution Licensing Authority. The PLA does not take anonymous complaints. As previously explained, just to reiterate, they would lose their shifts. There are only 17 workplaces in the whole state.

Mr BROWN: It is not really safe now in those licensed brothels.

Mr SMITH: It is not a healthy culture.

Dr Jeffreys: We are looking forward to all of the workplaces being regulated fairly and universally by all of the existing codes in Queensland, as is our right and as is the responsibility of those who manage those locations. Many of us, and many more in our community, have invested decades of our lives to see that brought to fruition here in Queensland. It is only fair that it is the same as it is for every other worker. Also, we have an excellent work health and safety system. There is no rational reason why sex workers should be excluded from that here in Queensland. This bill will end that exclusion.

Ms LEAHY: Could you explain how health checks work for people who work for themselves in the sex industry and people who work in licensed premises as well? I am just wondering if you can give us a quick run-down on how the health checks actually operate.

Ms Bliss: Do you mean sexual health testing for sex workers?

Ms LEAHY: Yes.

Ms Bliss: At the moment, sex workers in licensed brothels are under mandatory testing and are required to attend every three months and present a certificate of attendance to the brothel where they work. That certificate of attendance is exactly just that. You do not need to wait for any results to come back. In practice, although the person signing the certificate is supposed to visually examine the genitals of the person, it is widely recognised that that is overly invasive and unnecessary and, with the knowledge that many STIs are asymptomatic, does not achieve anything. That often is not done in practice. That is why we support the amendments to remove mandatory testing. Also, mandatory testing currently is only for brothel workers which, as we know, is such a tiny percentage of the industry. Private workers and workers working in any other type of workplace are currently responsible for their own sexual health in whatever way they see fit, just like the rest of the community, and that is what will continue post decriminalisation.

Dr Jeffreys: As our submission outlined, the research repeatedly demonstrates that sex workers who are not under mandatory testing regimes in Queensland and more broadly in Australia more regularly attend sexual health clinics. We are more regularly being tested. Also, as a result of our own skills in condom use we have lower rates of STIs and HIV than the general community. As a community, outside of the mandatory testing regimes we are very highly recognised—internationally, in fact—for having some of the lowest rates of HIV transmission globally, and that has consistently come out in the research over many decades.

Ms LEAHY: You mentioned HIV. What about HPV?

Dr Jeffreys: HPV is one of the STIs that are checked for in a full STI screen here in Queensland.

Ms Bliss: There is no evidence to suggest that sex workers under decriminalisation have any higher rates or that anything changes. Sex workers in general have lower rates of STIs than the rest of the community.

Dr Jeffreys: That includes HPV.

Ms LEAHY: Dr Jeffreys, I notice that you specialise in human trafficking as well.

Dr Jeffreys: I do, yes. For the past 20 years I have sat on the Commonwealth Attorney-General's round table on that topic.

Ms LEAHY: My question is in relation to what we know from around the world, which I understand you would be across.

Dr Jeffreys: Yes.

Ms LEAHY: Do we see increases in human trafficking with decriminalisation?

Dr Jeffreys: The short answer is no. The more nuanced answer in terms of research is that in the European scale of regulation Germany and Holland have been described by some analysts as a decriminalised setting. To be accurate to the Australian situation, what they have in those countries is licensing and registration. They have essentially right now in those countries in Europe the system that this bill repeals here in Queensland. They have a licensing system. I hope that just illuminates a little bit about relying on any data coming out of Europe. The regulatory system is very different. They have a different situation with borders as well.

Australia is unique. We are very lucky to have a lot of migration from South-East Asia—our South-East Asian colleagues and sex workers who travel to Australia for sex work. For the last 35 years they have also been really highly engaged in accessing free sexual health testing in Australia. We have a lot of data on that. We can see that the sexual health of Asian and migrant sex workers in Australia is comparable to Anglo or white colonial women sex workers here in Australia. The benefits of access to sexual health testing through our public health system and response are part of what has facilitated strong community ties and involvement in the HIV response. All of the sex worker organisations have multilingual and multicultural projects and programs with all of the information available in different languages.

Stats come through from Commonwealth trafficking prosecutions as well, just to remind the committee that it is a Commonwealth crime that is prosecuted by the Australian Federal Police. What we have seen in Australia over the last many decades is that incidents of labour exploitation and human trafficking in Australia are unfortunately much more prevalent in agriculture and hospitality

than they are in sex work. That is not to deny that there are labour exploitation issues with migrant workers, but for Australian systems of sex work regulation we have been very lucky. Migrant sex workers have benefited from the same public health responses and community development responses that people who are not migrants have benefited from. That is quite longstanding. Australia is really seen as a leader in that area. My PhD was done in Australia and Thailand, so I have a background in both.

Ms Bliss: The Global Alliance Against Traffic in Women recommended the decriminalisation of sex work as it would lead to fewer opportunities for exploitative working conditions, including human trafficking.

CHAIR: Thank you very much. That concludes this hearing. Thank you to everyone who has participated today. Thank you to Hansard and our secretariat. A transcript of these proceedings will be available on the committee's webpage in due course. We have no questions on notice. I declare this public hearing closed.

The committee adjourned at 12.02 pm.