Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024

Submission No:	76
Submitted by:	Local Government Association of Queensland
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Attachments:

Submitter Comments:

Every Queensland community deserves to be a liveable one

8 March 2024

Committee Secretary
Housing, Big Build and Manufacturing Committee
Parliament House
George Street
Brisbane Qld 4000

Via email: HBBMC@parliament.qld.gov.au

Dear Committee Secretary

RE: Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024

The Local Government Association of Queensland (LGAQ) appreciates the opportunity to provide feedback to the Housing, Big Build and Manufacturing Committee on the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024* (the Bill) introduced on 15 February 2024.

The LGAQ understands the Bill seeks to implement recommendations from the *Queensland Law Reform Commission (QLRC) report: A decriminalised sex work industry for Queensland*[1]. In support of this, the stated purpose of the Bill is to establish a legal framework that will enact a safe, decriminalised sex work industry in Queensland, while improving the health, safety, rights and legal protections for sex workers.

This review has been of significant interest to the LGAQ and local governments, as evidenced by previous engagement with the QLRC and the LGAQ making a submission to the QLRC in June 2022, specifically with regards to the removal of licencing arrangements, planning and development requirements, and enforcement and compliance roles and responsibilities associated with sex work businesses.

Specifically in relation to the Bill, the LGAQ does not have any comments regarding proposed amendments to the *Anti-Discrimination Act 1991*, Criminal Code, *District Court of Queensland Act 1967*, *Liquor Act 1992*, *Penalties and Sentences Act 1992*, *Work Health and Safety Act 2011* or the repeal of the *Prostitution Act 1999*.

However, the LGAQ is concerned with the proposed amendments in clauses 8 and 28 of the Bill, relating to local law-making powers under the *City of Brisbane Act 2010* and the *Local Government Act 2009*.

As currently drafted, these provisions of the Bill remove the ability of local governments to make local laws that regulate any aspect of a sex work businesses, including for example, the size of advertising signage associated with a sex work business. This is very concerning from a local government and community perspective, and is in fact, treating sex work businesses *differently to other businesses* which the LGAQ understands, is inconsistent with the State Government's policy intent to ensure sex work businesses are *treated the same as any other business.*

The LGAQ acknowledges the State Government's objective of destigmatising and decriminalising sex work in Queensland. However, it is critical to note that *'decriminalisation'* and *'deregulation'* (from a land use planning and development perspective) are materially different.

[1] QLRC Report: A decriminalised sex-work industry for Queensland (March 2023)

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The LGAQ maintains that appropriate regulation of sex work businesses, from a planning and development perspective, does not inhibit decriminalisation of the sex work industry in Queensland.

Any consequential amendments to the *Planning Regulation 2017* are, therefore, likely to be of great interest to local governments. It is critical that Queensland councils and the LGAQ are consulted and have the opportunity to make a submission on proposed amendments to the *Planning Regulation 2017* at an appropriate time, following local government elections.

Attachment 1 to this submission includes more detailed feedback regarding the primary concerns of local government and the LGAQ at this stage, including:

1. Limiting the ability of local governments to make local laws;
2. Regulation and criminalisation; and
3. Potential consequential amendments.

In total, the LGAQ makes the following four recommendations for consideration of the Committee and looks forward to working closely with the State Government to ensure workable solutions are implemented:

> **Recommendation 1:** The LGAQ recommends the Bill (clauses 8 and 28) be amended to clarify that local laws may still regulate the 'conduct of sex work businesses', consistent with the approach applied to other businesses.
>
> **Recommendation 2:** The LGAQ recommends the Committee notes that decriminalisation and deregulation are materially different, and deregulating sex work businesses (from a town planning perspective) is not necessary to achieve decriminalisation objectives.
>
> **Recommendation 3:** The LGAQ recommends the Committee notes the already-established ability of the State Government to ensure sex work businesses are not subject to undue regulation by local governments through planning scheme review processes.
>
> **Recommendation 4:** The LGAQ recommends the State Government consults further with the LGAQ and local governments, following local government elections, on any consequential amendments proposed to the *Planning Regulation 2017*.

Please do not hesitate to contact Matthew Leman – Lead, Planning and Development Policy via [redacted] or Kim Driver – Manager, Governance and Advisory Services via [redacted] should you wish to discuss any aspect of this letter.

Yours sincerely

[redacted]

Alison Smith
CHIEF EXECUTIVE OFFICER

Attachment 1: Detailed comments on key issues related to decriminalisation of the sex worker industry

Issue	Detailed Comments	Recommendation
Limiting the ability of local governments to make local laws	As currently drafted, the Bill seeks to remove the ability of local governments to make local laws that regulate sex work businesses. More specifically, the Bill has been drafted to state that *"council must not make a local law that (…) regulates (…) the conduct of a sex work business"* and *"a local law has no effect to the extent that it is contrary to this section"*. The *Local Government Act 2009 and the City of Brisbane Act 2012* provides local governments in Queensland with the power to do anything that is necessary or convenient for the good rule and local government of its local government area, providing such actions comply with all necessary laws and regulations (including the *Human Rights Act 2019)*. This includes the power to make and enforce local laws necessary or convenient for the good rule and local government of its local government area. This is a very important responsibility that local governments take very seriously to ensure the ongoing cohesiveness of their local government areas. While these powers might seem broad, local governments are strongly governed. They operate by a set of statutory principles to ensure the system of local government is accountable, effective, efficient and sustainable. These include: (a) transparent and effective processes, and decision-making in the public interest; and (b) sustainable development and management of assets and infrastructure, and delivery of effective services; and (c) democratic representation, social inclusion and meaningful community engagement; and (d) good governance of, and by, local government; and (e) ethical and legal behaviour of councillors, local government employees and councillor advisors. The *Local Government Act 2009 and City of Brisbane Act 2012* provides a framework which requires local laws to be consistent with law made by the State Government, to be drafted in compliance with the guidelines issued by the Parliamentary Counsel under the *Legislative Standards Act 1992,* to undergo State interest checks, public consultation at various stages of the local law making process, to be adopted by resolution of the Council, and to be forwarded to the Minister for gazettal. There are already strong controls in place to ensure proper process, and consideration of broader legislative obligations and community needs are upheld. The drafting of the proposed amendment is of significant concern for Queensland councils as it would have the effect of making all local laws unapplicable to sex work businesses (i.e. a local law could not	**Recommendation 1:** The LGAQ recommends the Bill (clauses 8 and 28) be amended to clarify that local laws may still regulate the 'conduct of sex work businesses', consistent with the approach applied to other businesses.

	regulate a sex work business). As a result of this drafting, local laws which regulate the location, size and luminosity of advertising signage (for example) would apply to all other land uses, *other than a sex work business.* This is very concerning from a community cohesion perspective. It is understood that this drafting may have been unintentional, and rather, the State Government intends to ensure local laws do not regulate sex work businesses *differently to other businesses.* This is understood because, in her opening statement at Public Briefing on the matter (dated 26 February 2024) the A/ Assistant Director-General, Strategic Policy and Legislation, Department of Justice and Attorney-General, explained that the Bill was intended to ensure *"sex work should be treated the same as any other business".* If it is indeed the intention of the State Government to ensure sex work businesses are treated the same as any other business, drafting should reflect this – rather than removing the applicability of local laws which apply to all other businesses. Similarly, the ability for local governments to control locations where touting for any business activity is allowed (including sex work), should remain with councils and be based on the best knowledge of the local government area, and best practices planning principles.	
Decriminalisation vs Deregulation	The LGAQ understands the State Government's objective of destigmatising and decriminalising sex work in Queensland. However, it is critical to note that *'decriminalisation'* and *'deregulation'* (from a land use planning and development perspective) are materially different. The LGAQ maintains that appropriate regulation of sex work businesses, from a planning and development perspective, does not inhibit the decriminalisation of the sex work industry in Queensland. It is important to acknowledge that almost every land use in Queensland is *regulated* by the planning framework. This regulation may take the form of car parking requirements for a shopping centre, height limits for office towers, or boundary setbacks for houses. This *regulation* does not constitute *criminalisation.* Rather, planning regulation seeks to uphold the safety, amenity and enjoyment of land – ensuring every Queensland community is a liveable one. As such, it is the LGAQ's view that decriminalisation objectives can be achieved alongside appropriate planning regulation by local governments.	**Recommendation 2:** The LGAQ recommends the Committee notes that decriminalisation and deregulation are materially different, and deregulating sex work businesses (from a town planning perspective) is not necessary to achieve decriminalisation objectives.
Potential consequential amendments	The LGAQ Policy Statement explains that local governments should be subject to minimum intervention from other spheres of government with respect to its legitimate interests and jurisdictional responsibilities (including local laws and land use planning).	**Recommendation 3:** The LGAQ recommends the Committee notes the already-established ability of the State Government to ensure sex

	Furthermore, local governments should be recognised as the sphere of government immediately responsible for land use planning and development assessment in Queensland. This should include the discretion to set planning requirements, such as levels of assessment and separation distances for any land use, in consultation with their local community when making or amending a local planning scheme. Potential consequential amendments to the *Planning Regulation 2017* which seek to remove the ability of local governments to define appropriate planning requirements for their local area are unlikely to be supported by Queensland councils. The needs, interests and expectations of local communities differ throughout the state and a one-size-fits-all approach, state-wide codes, or capped levels of assessment are not considered appropriate in a state as diverse as Queensland. Local governments are best placed to plan for local areas in consultation with their local communities and it is critical that local governments retain autonomy and discretion for planning and development, in order to reflect and address specific local circumstances and community sentiment. Whilst some other jurisdictions are looking to classify sex work businesses as a 'shop', the LGAQ has previously received mixed feedback in relation to this - with some councils indicating that retaining a separate land use category in Queensland will help to ensure clarity in the setting of planning scheme requirements, alignment with planning schemes, and managing community expectations for this particular land use. Key considerations that have been raised in the context of commercial sex work businesses and home-based sex work businesses include the need for separation distances in certain circumstances, amenity considerations such as traffic, car parking, size and scale, hours of operation and noise as well as the importance of achieving performance outcomes, such as active street frontages, in certain zones. It is also important to consider the potential unintended consequences of adopting an approach similar to that being considered in other states. If the ability of local governments to differentiate between a 'shop' and a 'brothel' were removed, councils may seek to remove the ability for *all shops* to locate in certain locations (e.g. adjoining schools and childcare centres). At present, councils typically seek to support the liveability, amenity and convenience of communities by supporting co-location of certain uses (e.g. a corner store next to a daycare). Councils may seek to remove their facilitation of this co-location, if there were a risk that sex work businesses were able to locate (as a 'shop') in certain locations. This would likely have notable impacts on the economic development of Queensland and hinder the convenience many Queenslanders currently enjoy.	work businesses are not subject to undue regulation by local governments through planning scheme review processes. **Recommendation 4:** The LGAQ recommends the State Government consults further with the LGAQ and local governments, following local government elections, on any consequential amendments proposed to the *Planning Regulation 2017.*

	This concern would also apply if consideration were given to removing the ability of local governments to differentiate between a conventional home-based business and a home-based sex work business. For example, if a local government were no longer able to differentiate between a conventional home-based business and a home-based sex work business, it is possible they may choose to apply the highest degree of regulation possible to *all* home-based businesses – in an attempt to ensure impacts can be appropriately managed and understood. Given Queensland's State Interest Review process (whereby planning scheme amendments are reviewed and approved by the State Government prior to adoption), it is considered unnecessary to remove the ability of local governments to differentiate between home-based or larger scale sex work businesses, and other businesses. Rather, the LGAQ believes the State Government should utilise their existing review processes to ensure local planning schemes are not placing undue regulation on sex work businesses.	