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

Submission No:	93
Submitted by:	Queensland Youth Policy Collective
Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

Queensland Youth Policy Collective

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Submission to the Criminal Code (Decriminalising Sex Work and Other Legislation Amendment Bill 2024

7 March 2024

Introduction

The following submission has been written and prepared for the Housing, Big Build and Manufacturing Committee to assist in its consideration of the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 202*4 (the Bill).

The Queensland Youth Policy Collective (QYPC) was founded four years ago and has approximately forty active members from across Queensland. We are non-partisan and comprised of young people who want to contribute evidence-based, youth-led perspectives in public debate, particularly in the fields of human rights, climate change and youth justice.

QYPC supports the Bill as essential legislative reform for sex workers and their clients' health, safety and rights. A decriminalised framework is established in line with the recommendations of the Queensland Law Reform Commission's (QLRC) eighteen-month review.

Overview of Decriminalisation

Currently, sex work in Queensland is subject to stigma, discrimination, prejudice and general misunderstanding about sex work. The reforms recognise that sex work is best contextualised as an activity between rational, consenting adults. Decriminalisation is not 'deregulation.' The reform proposes to regulate sex work under the same general laws as other work to enhance safety, promote health and protect the human rights of people working in the industry. It will align Queensland with other jurisdictions and will replace the current regulatory model that has failed sex workers in Queensland. Decriminalisation of sex work will reduce the barriers sex workers face in accessing standard rights and protections.[1] Furthermore, a vast body of research indicates that decriminalisation is a policy that benefits the health and safety of both sex workers and their clients.[2]

Part 3 Amendment of City of Brisbane Act 2010 and Part 7 Amendment of Local Government Act 2009

QYPC supports the inclusion of Part 3 and Part 7 of the Bill as they relate to the City of Brisbane and Local Government Acts. It should be noted that the Amendment of the City of Brisbane Act 2010 and the

[1] Abel, G. M. 2014. A decade of decriminalization: Sex work 'down under' but not underground. Criminology & Criminal Justice 14 (5): 580–92; Scarlet Alliance, Australian Sex Workers Association and Respect Inc., Sex Work Laws and Workplace Health and Safety Symposium Report (Report, 14 November 2018) 1.
[2] Donovan, B., Harcourt, C., Egger, S., Fairley, C. 2010. Improving the health of sex workers in NSW: maintaining success. *Public Health Bulletin*, Vol. 21(3–4) 2010; Queensland Law Reform Commission (QLRC), report summary: *A decriminalised sex-work industry for Queensland*, Report 80.

Amendment of Local Government Act 2009 are one and the same, with the difference being 'the council' or 'the local government'.

Part 3 and Part 7 of the Bill ensure that the implementation of decriminalisation is not undermined by local councils making regulations to limit the practical effect of the decriminalisation of sex work. This is supported by the QLRC Report, Recommendation 23[3] and aligns with other jurisdictions, such as Victoria. The inclusion of Part 3 and Part 7 will prevent council members from creating regulations that would treat sex work differently than any other business or profession.

In other jurisdictions where decriminalisation has been implemented discontent has arisen between local government authorities and sex workers. This may be attributed to the stigma, discrimination, prejudice and general misunderstandings regarding sex work. Research conducted by Respect Inc. and DecrimQLD has shown that council discretion and decision-making over development approvals (DAs) in New South Wales have caused harm. "Academics and sex workers argue this is because when given the opportunity, councils actively exclude sex industry workplaces from civil participation".[4] This has resulted in lengthy court cases and media coverage which mitigates against the discrete and confidential nature of the profession. Accordingly, sex workers may be deterred from working in small groups or applying for a DA due to concerns in relation to privacy and confidentiality – ultimately having to choose between privacy or legality.

To address concerns in relation to DA approval, and in line with the QLRC, it is recommended that the Queensland Government support and implement public education and awareness programs to address sex work stigma and educate the community about the sex work industry and the aims of decriminalisation. This educational awareness will contribute to preventing harm and discontent between local government and sex workers.[5] To address the concerns in relation to privacy, it is further recommended that the Queensland Government should prepare guidance material to assist sex-work business development applicants to request (and local governments to apply) existing privacy mechanisms available under the Planning Act and is in line with Recommendation 20 of the QLRC.

Recommendation 1: The Queensland Government supports and implements public education and awareness programs to address sex work stigma, educate the community about the sex work industry and raise awareness of the aims of decriminalisation.

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[3] Queensland Law Reform Commission (QLRC) report: *A decriminalised sex-work industry for Queensland* (the QLRC Report) page 110.
[4] https://respectqld.org.au/wp-content/uploads/Decrim/S8Planning.pdf
[5] Queensland Law Reform Commission (QLRC) report: *A decriminalised sex-work industry for Queensland* (the QLRC Report) page 117.

Queensland Law Reform Commission Report: Recommendations vs Implementation

On 24 August 2021, the QLRC was requested to conduct an independent review of and recommend a framework for a decriminalised sex work industry in Queensland. The QLRC delivered its report on 31 March 2023 (the Report), and the Queensland Government subsequently announced its general support of the recommendations.

The primary purpose of the Bill is to broadly give effect to the recommendations of the Report.[6] The table below analyses the extent to which the recommendations made by the Report have been adopted and implemented within the Bill.

QLRC's Report Recommendation	Commentary
Decriminalisation	
Recommendation 1: The offences that criminalise sex work other than in licensed brothels or that require sex workers to work on their own should be removed. Sections 229G to 229K of the Criminal Code should be repealed, as well as related provisions in sections 229C to 229F and 229M to 229O of the Criminal Code. The related nuisance offence in section 76 of the Prostitution Act should be repealed.	Part 4 of the Bill amends the Criminal Code (clause 9). Pursuant to clause 15, Chapter 22A (prostitution) of the Criminal Code is to be repealed in its entirety. This is consistent with the recommendations made by QLRC in respect of decriminalising sex work. Clause 35 of the Bill repeals the entirety of the Prostitution Act.
Recommendation 2: The specific public soliciting offence for sex work should be removed and sections 73–75 of the Prostitution Act should be repealed, so that there are no sex-work-specific public soliciting laws. There should be no specific move-on power for police if they suspect a person is soliciting for sex work and section 46(5) of the Police Powers Act should be repealed.	Clause 35 of the Bill repeals the entirety of the Prostitution Act. The Bill does not repeal s 46(5) of the Police Powers and Responsibilities Act. Therefore, there remains a specific move-on power for police if they suspect a person is soliciting for sex work. QYPC supports the repeal of s 46(5) of the Police Powers Act as its repeal is consistent with the Bill's overarching purpose and decriminalisation of sex work. Additionally, the sections repeal is consistent with the adopted repeal of the public soliciting provisions in the Prostitution Act. Thus, the maintenance of s 46(5) appears futile against the backdrop of the proposed legislative changes.
Recommendation 3: The sex work advertising offences should be removed and sections 93–96 of the Prostitution Act and section 15 of the Prostitution Regulation should be repealed. The guidelines about the approved form for sex work advertisements issued by the Prostitution Licensing Authority (PLA) under section 139A of the Prostitution Act should also be removed. No new sex-work-specific advertising offences should be enacted.	Clause 35 of the Bill repeals the entirety of the Prostitution Act. No explicit mention is given to the Prostitution Regulation in the Bill, including any proposed amendments or repeals. However, given the Bill's proposed repeal of the Prostitution Act – the Regulation's authorising act – the Prostitution Regulation will cease to have operative effect. Therefore, the Bill inadvertently adheres to QLRC's recommendation in

[6] Explanatory Notes, Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (Qld) 2.

	respect of repealing s 15 of the Regulation. The Bill does not introduce any new sex-work-specific advertising offences.
Recommendation 4: The assessment benchmarks about brothel signage should be removed by repealing item 5 of the table in schedule 3 of the Prostitution Regulation.	Clause 35 of the Bill repeals the entirety of the Prostitution Act. No explicit mention is given to the Prostitution Regulation in the Bill, including any proposed amendments or repeals. However, given the Bill's proposed repeal of the Prostitution Act – the Regulation's authorising act – the Prostitution Regulation will cease to have operative effect. Therefore, the Bill inadvertently adheres to QLRC's recommendation in respect of repealing item 5 of the table in schedule 3 of the Regulation.
Recommendation 5: Sex-work-specific covert powers given to police should be removed. References in schedule 2 of the Police Powers Act to sections 229H, 229I and 229K of the Criminal Code and to sections 78(1), 79(1), 81(1) and 82 of the Prostitution Act should be removed. The reference in schedule 5 of the Police Powers Act to section 73 of the Prostitution Act should also be removed.	Proposed changes to the Police Powers Act are contained in Schedule 1 to the Bill (other amendments). The Bill proposes minimal amendments to the Police Powers Act and has not adopted the removal of references to (proposed) repealed sections in Schedules 2 and 5. QYPC considers the Bill's position is inconsistent with the decriminalisation of sex work and the sex-work-specific cover powers should be removed. Retaining references to repealed legislative provisions is of no value.
Licensing	
Recommendation 6: The current licensing system should be removed and no new system of licensing or certification for sex-work business operators should be introduced. The Prostitution Licensing Authority and its associated Office of the Prostitution Licensing Authority should be abolished. Parts 3, 5, 7, 7A, 7B, part 6 divisions 2 and 5, and schedules 1–3 of the Prostitution Act should be repealed. Related provisions in part 2, parts 8–9, and schedule 4 of the Prostitution Act, and parts 2–3, 5–6, and schedules 1–2 and 4 of the Prostitution Regulation should also be repealed, as identified in our table of drafting instructions in volume 2 of our report.	Clause 35 of the Bill repeals the entirety of the Prostitution Act. No explicit mention is given to the Prostitution Regulation in the Bill, including any proposed amendments or repeals. However, given the Bill's proposed repeal of the Prostitution Act – the Regulation's authorising act – the Prostitution Regulation will cease to have operative effect. Therefore, the Bill inadvertently adheres to QLRC's recommendation in respect of repealing parts 2-3, 5-6, and schedules 1-2 and 4 of the Regulation. Part 9 of the Bill amends the *Work Health and Safety Act 2011*. Relevantly, clause 34 provides for the insertion of a new Part 16, Division 9, under which the Prostitution Licensing Authority and office is abolished on the commencement of the Act (s 343(1)).
Health, safety and worker rights	
Recommendation 7: Specific obligations on brothel licensees about alarms, lighting and signs should be removed. Section 23 of the Prostitution Regulation should be repealed as part of the	Clause 35 of the Bill repeals the entirety of the Prostitution Act. No explicit mention is given to the Prostitution Regulation in the Bill, including any proposed amendments or

removal of the licensing system, and no similar sex-work-specific laws should be enacted.	repeals. However, given the Bill's proposed repeal of the Prostitution Act – the Regulation's authorising act – the Prostitution Regulation will cease to have operative effect. Therefore, the Bill inadvertently adheres to QLRC's recommendation in respect of repealing s 23 of the Regulation. The Bill does not implement any new sex-work-specific laws in respect to licensing systems.
Recommendation 8: Workplace Health and Safety Queensland should develop work health and safety guidelines for and in consultation with the sex work industry, including sex worker organisations and other relevant people and agencies.	This recommendation is not within the scope of the Bill. However, QYPC endorses this recommendation broadly and agrees that as the work health and safety regulator, the development of guidelines falls within Work Health and Safety Queensland's function to promote awareness and provide information. The development of guidelines is particularly pertinent following significant changes to Queensland's regulatory framework and the decriminalisation of sex work.
Recommendation 9: A legislative provision stating that a contract for sex work is not illegal or unenforceable on public policy or similar grounds is not needed.	No legislative provision to this effect is proposed under the Bill, remaining consistent with the recommendation.
Recommendation 10: A legislative provision stating that a sex worker may, at any time, refuse to perform or continue to perform sex work and that a contract for sex work does not constitute consent for the purposes of criminal law is not needed.	No legislative provision to this effect is proposed under the Bill, remaining consistent with the recommendation.
Recommendation 11: Sex-work-specific health offences should be removed. The offences in sections 77A, 89 and 90 of the Prostitution Act, the definition of 'sexually transmissible disease' in the Act, and the related provisions in sections 14 and 26 of the Prostitution Regulation should be repealed. No new sex-work-specific health offences should be enacted.	Clause 35 of the Bill repeals the entirety of the Prostitution Act. No explicit mention is given to the Prostitution Regulation in the Bill, including any proposed amendments or repeals. However, given the Bill's proposed repeal of the Prostitution Act – the Regulation's authorising act – the Prostitution Regulation will cease to have operative effect. Therefore, the Bill inadvertently adheres to QLRC's recommendation in respect of repealing sections 14 and 26 of the Regulation. The Bill does not implement any new sex-work-specific health offences.
Recommendation 12: The protected attribute of 'lawful sexual activity' in section 7(l) of the Anti-Discrimination Act should be retained. However, the definition of 'lawful sexual activity' in the schedule to the Act should be repealed and replaced with a new definition. 'Lawful sexual	Part 2 of the Bill amends the *Anti-Discrimination Act 1991* (**ADA**). The Bill proposes to remove the protected attribute of 'lawful sexual activity' in s 7(l) of the ADA, inconsistent with the QLRC's recommendation. Instead, the Bill proposes to

activity' should be defined to include being a sex worker or engaging in sex work. For this purpose, 'sex work' should be defined to mean an adult providing consensual sexual services, involving physical contact, to another adult in return for payment or reward.	introduce a new protected attribute in its place – 'sex work activity'. The original definition of 'lawful sexual activity' in Schedule 1 is to be omitted and replaced with a new definition of 'sex work activity'. Notably, the proposed definition of 'sex work activity' does not require the sexual services to be consensual to fall within the definition, or to occur from one adult to another adult. Additionally, the proposed definition expands the scope of 'sex work activity' than what was initially conceptualised by the QLRC as it does not mandate physical contact, as a service made instead simply involve the 'display of the person's body'.
Recommendation 13: The accommodation exemption in section 106C of the Anti-Discrimination Act should be repealed.	Part 2, Clause 5 provides for the omission of s 106C of the ADA, adhering the QLRC's recommendation.
Recommendation 14: The work with children exemption as it applies to sex workers in section 28(1) of the Anti-Discrimination Act should be repealed.	The Bill does not repeal or amend s 28(1) of the ADA. This appears inconsistent with the aforementioned amendments to s 7(l) and the Schedule to the ADA, which removes the operation and definition of a 'lawful sexual activity'. Section 28(1) is currently framed to express the lawfulness of discriminating on the basis of lawful sexual activity, which is no longer an operation term under the proposed changes.
Planning and local laws	
Recommendation 15: The land-use term 'brothel' and its definition should be removed from schedule 3 of the Planning Regulation under the Planning Act. It should be replaced with the new land-use term 'sex work services', defined as the use of premises for sex work, with or without an ancillary outcall service. The new land use should not include: (a) sex-work businesses that fall within the land-use definition of home-based business (b) escort agency offices if no sex work occurs at the office or (c) adult entertainment or non-sex-work sex-on-premises venues (e.g. swinger clubs).	The Bill does not make any amendments or additions to either the Planning Act or the Planning Regulation. The position adopted by the Bill is inconsistent with the QLRC's recommendations of this nature.
Recommendation 16: To help interpret the new land-use term and its definition, the following new administrative terms and definitions should be inserted in schedule 4 of the Planning Regulation: (a) 'sex work' means an adult providing consensual sexual services to another adult for payment or reward	The Bill does not make any amendments or additions to the Planning Regulation. The position adopted by the Bill is inconsistent with the QLRC's recommendations of this nature.

(b) 'sexual services' means participating in sexual activities that involve physical contact, including sexual intercourse, masturbation, oral sex or other activities involving physical contact for the other person's sexual gratification.	
Recommendation 17: All prohibited development provisions relating to brothels in schedule 10, part 2 of the Planning Regulation should be repealed so there are no sex-work-specific prohibitions. Any existing sex work prohibitions applying in local government areas should cease to have effect.	The Bill does not make any amendments or additions to the Planning Regulation. The position adopted by the Bill is inconsistent with the QLRC's recommendations of this nature.
Recommendation 18: Sex-work businesses should be treated similarly to other businesses. This means: (a) there should be no requirements for separation distances from other land uses or other sex-work businesses (b) planning provisions should guide sex-work business sizes to the same extent as other commercial and home-based businesses (c) home-based sex-work businesses should be treated like any other 'home-based business' land use (d) 'sex work services' land uses should be guided towards centre (commercial) zones, mixed-use zones and, in recognition of existing arrangements, industrial zones and strategic port land.	Clause 25 of the Bill amends s 107D (Restriction on grant of adult entertainment permit) of the *Liquor Act 1992*. In particular, the reference to 'licensed brothels' in s 107D(1)(b) and references to the 'red light district' in the example are repealed. This is consistent with reducing the stigma associated with these terms and the proposed decriminalisation of the sex work industry. However, under the new s 107D(1)(b), the operation of sex work businesses in a locality remains relevant to deciding an application for an adult entertainment permit. In order to achieve the other listed targets of recommendation 18, Part 2, Division 2, Subdivision 1 of the Planning Regulation ought be amended to insert new provisions pertaining to home-based business parameters and sex work services parameters. These insertions are not observed in the Bill.
Recommendation 19: The Queensland Government should lead integration of decriminalised sex work into the planning framework, while giving local governments some discretion, by: (a) repealing section 25 and schedule 3 of the Prostitution Regulation under the Prostitution Act, which set out assessment benchmarks for brothels (b) setting new planning requirements, including updated assessment benchmarks, in the Planning Regulation (c) making the new planning requirements and assessment benchmarks the default provisions applying to sex work services when decriminalisation starts (d) ensuring the planning requirements and assessment benchmarks for sex work services reflect recommendations in this report and include a	Clause 35 of the Bill repeals the entirety of the Prostitution Act. This amendment adheres to the recommendation outlined in 19(a). The Bill does not make any amendments or additions to the Planning Act or the Planning Regulation. The position adopted by the Bill is inconsistent with the QLRC's recommendations of this nature.

requirement that all activities relating to sex work be contained wholly within a building and not be visible from windows, doors or outside the premises (e) setting, or guiding, categories of assessment and ensuring the planning requirements do not prevent sex work services from being categorised as accepted development in suitable circumstances (f) giving local governments the opportunity to set their own alternative planning requirements and assessment benchmarks, subject to State-imposed requirements designed to make sure: i. principles outlined in this chapter are implemented and ii. reasonable opportunities are available for sex-work businesses to establish or become compliant with planning laws.	
Recommendation 20: To help address sex worker privacy concerns (which may be a barrier to seeking planning approval), the Queensland Government should prepare guidance material to help sex-work business development applicants to request – and local governments to apply – existing privacy mechanisms available under the Planning Act.	This recommendation is not within the scope of the Bill.
Recommendation 21: To support existing sex-work businesses to become compliant with planning laws, a new provision should be inserted in the Planning Act that prevents information in development applications for sex work services and home-based sex work being used as evidence of a development offence (or as a springboard to obtain evidence), providing the application is properly made within 12 months after decriminalisation starts. The protected information should not trigger limitation periods in the Planning Act.	The Bill does not make any amendments or additions to the Planning Act. The position adopted by the Bill is inconsistent with the QLRC's recommendations of this nature.
Recommendation 22: The dispute-resolution avenues to the Queensland Civil and Administrative Tribunal should be removed by repealing sections 64A to 64E, and related definitions in part 4, of the Prostitution Act so that all planning appeals and declaratory proceedings about sex-work businesses are directed to the Planning and Environment Court. The requirement to notify the Prostitution Licensing Authority of development applications for brothels, in part 4 of the Prostitution Act, should also be removed.	Clause 35 of the Bill repeals the entirety of the Prostitution Act. However, the Bill amends the Work Health and Safety Act 2011 and inserts a new Part 16, Division 9 (Transitional Provisions). A newly inserted s 356 retains the operation of Part 4, Division 3 of the (repealed) Prostitution Act in certain circumstances and allows for applications to continue in QCAT.
Recommendation 23: New provisions should be inserted in the Local Government Act and City of Brisbane Act to require that: (a) local laws must not re-establish a sex-work licensing system, or sex-work offences that are the	Part 7 of the Bill amends the *Local Government Act 2009*. Clause 28 provides for the insertion of a new s 37A (regulation of sex work), which provides that a 'local government must not make a local law that

same or substantially similar to those removed from State law under decriminalisation (b) local laws must not prohibit sex work (c) local laws must not apply exclusively to sex work, sex workers or sex-work businesses.	prohibits or regulates sex work or the conduct of a sexual work business'. Part 3 of the Bill amends the *City of Brisbane Act 2010*. Clause 8 provides for the insertion of a new s 40A in identical terms to the new provision in the Local Government Act.
Recommendation 24: When implementing the changes in R15 to R23, the Queensland Government should: (a) include transitional provisions to replace any remaining references to 'brothel' with the new land-use term 'sex work services' in relevant documents under the Planning Act and related legislation, including in existing development approvals (b) make the other amendments to the Planning Act and related legislation identified in our table of drafting instructions in volume 2 of our report (c) provide information and guidance about the new arrangements to the sex-work industry and local government to help them understand their roles and responsibilities (d) consider making corresponding changes to other planning laws and frameworks so that sex-work businesses have similar opportunities to establish in areas affected by different planning frameworks, including (but not limited to) priority development areas under the Economic Development Act 2012.	The Bill does not make any amendments or additions to the Planning Act or the Planning Regulation. The position adopted by the Bill is inconsistent with the QLRC's recommendations of this nature. As identified in QLRC's table of drafting instructions in volume 2 of the Report, definitions of 'sex work' and a 'sex-work business' must be adequately defined in the Local Government Act and City of Brisbane Act. Such definitions have been included in the newly implemented s 37A and s 40A respectively. Notably, definitions of 'sexual services' and 'sex worker' have been omitted, but the new provisions make no mention of such terms.
Coercion and the exploitation of children	
Recommendation 25: Sections 229FA and 229L of the Criminal Code, and section 77 of the Prostitution Act, should be repealed to help distinguish between sex work and exploitation.	Clause 15 of the Bill repeals Chapter 22A (prostitution) of the Criminal Code in its entirety. Notably, this includes sections 229FA and 229L as recommended. Clause 35 of the Bill repeals the entirety of the Prostitution Act.
Recommendation 26: A new chapter should be inserted in part 5 of the Criminal Code for offences addressing coercion and the exploitation of children in commercial sexual services. It should define 'commercial sexual services' as services that involve the person engaging in a sexual act with another person in return for payment or reward under an arrangement of a commercial character (whether the payment or reward is given to the person providing the services or another person). The definition should state that 'sexual act' is limited to acts involving physical contact, and includes sexual intercourse, oral sex and masturbation.	Part 4 of the Bill amends the Criminal Code. Clause 12 provides for an amendment of s 207A and the insertion of the definition of 'commercial sexual service'. One notable departure is observed from QLRC's recommended definition, in which the Bill does not limit the definition of a 'sexual act' to acts involving physical contact.

Recommendation 27: The new chapter in part 5 of the Criminal Code should make it a crime for a person, by coercion, to intentionally induce another person to: provide or continue to provide commercial sexual services; or provide or continue to provide payment derived directly or indirectly from commercial sexual services. For this offence: (a) 'coercion' should be defined to include: i. intimidation or threats of any kind ii. improper use of a position of trust or influence iii. taking advantage of a person's vulnerability iv. assault of any person v. damage to the property of any person vi. false representation, false pretence or other fraud or vii. supplying or offering to supply a dangerous drug to a person (where 'dangerous drug' has the meaning given in section 4 of the Drugs Misuse Act 1986) (b) the maximum penalty should be imprisonment for 10 years.	Clause 14 amends s 218, which governs the procurement of sexual acts by coercion. The definition of 'coercion' contained in s 218(4) includes notable omissions from the QLRC's recommendation, including the improper use of a position of trust or influence, and the taking advantage of a person's vulnerability. The new offence under s 218 holds a maximum penalty of 14 years imprisonment, which is markedly higher than recommended by the QLRC.
Recommendation 28: The new chapter in part 5 of the Criminal Code should make it a crime for a person to obtain commercial sexual services from a person under 18. The maximum penalty for this offence should be imprisonment for 10 years or, if the child is under 16, imprisonment for 14 years.	Clause 13 provides for the insertion of a s 217A, which creates a new offence for obtaining commercial sexual services from a person who is not an adult. In addition to QLRC's recommended penalties, the section increases the maximum penalty to imprisonment for life if the child is under 12 years.
Recommendation 29: The new chapter in part 5 of the Criminal Code should make it a crime for a person to: (a) cause or induce a person under 18 to provide commercial sexual services (b) enter or offer to enter into an agreement for a person under 18 to provide commercial sexual services or (c) receive a payment that the person knows, or ought reasonably to know, is derived directly or indirectly from commercial sexual services provided by a person under 18. The maximum penalty for these offences should be imprisonment for 14 years	Clause 13 provides for the insertion of a s 217C, which creates a new offence for conduct relating to the provision of commercial sexual services by a person who is not an adult. The offence is drafted in substantially identical terms as recommended by the QLRC.
Recommendation 30: The new chapter in part 5 of the Criminal Code should make it a crime for an owner, occupier or person in control of premises to allow a person under 18 to be at the premises for the purpose of taking part in commercial sexual services. The maximum penalty for the offence should be imprisonment for 14 years.	Clause 13 provides for the insertion of a s 217B, which creates a new offence for allowing a person who is not an adult to take part in commercial sexual services.

Recommendation 31: The circumstance of aggravation for serious organised crime in section 161Q of the Penalties and Sentences Act should, if retained, apply to the offences we recommend in R27 to R30 above.	The circumstances of aggravation in s 161Q of the Penalties and Sentences Act applies to the new offences proposed under the Bill: see ss 217A(4), 217B(2) and 217C(2).
Recommendation 32: The criminal justice system should not be the primary focal point for responding to the exploitation of children or vulnerable adults in commercial sexual services. To support the aims of decriminalisation and ensure an effective and compassionate response to exploitation: (a) sex workers, police and other authorities should work together to help identify, prevent and respond to the exploitation of children and vulnerable adults in commercial sexual services – including recognising sex workers' roles in providing peer support and education (b) the Queensland Government should arrange and ensure adequate funding for sex workers, sex-work business operators and the wider community to receive information and education about the offences we recommend in R27 to R30 above, and where people can go for help or support (c) the Queensland Government should arrange and ensure adequate funding for police and other relevant state and local government officials to receive information, education and training on issues affecting children and vulnerable people (including those aged 16 or 17 and migrant workers) who may be involved in commercial sexual services and responses to exploitation (including harm-minimisation approaches).	This recommendation is not within the scope of the Bill.
Implementation	
Recommendation 33: If the Queensland Parliament passes legislation to decriminalise the sex work industry, all legislative reforms should take effect at the same time, rather than taking a staged approach to commencement.	Clause 2 provides that the Act is to commence on a day to be fixed by proclamation. There is nothing within the Bill that suggests that all legislative reforms will not take effect on that date.
Recommendation 34: The Queensland Government should consider a compensatory mechanism, such as fee relief, for brothel licensees and approved managers, as an interim measure during the transition period before the new decriminalisation framework commences.	This recommendation is not within the scope of the Bill.
Recommendation 35: If the Queensland Parliament passes legislation to decriminalise the sex work industry, the legislation should require the responsible Minister to ensure that the operation of the legislation is reviewed no sooner than 4 years	Clause 33 of the Bill provides for an insertion of a new Part 4, Division 2A in the *Work Health and Safety Act 2011*. The new s 275A requires that the 'Minister must ensure the operation of the amendment and repeal effected by the [Act] is reviewed at least 4

and no later than 5 years after the new regulatory framework is implemented.	years, but not more than 5 years, after the commencement of this section'. This provision is consistent with QLRC's recommendation.
Recommendation 36: The legislation should require: (a) the Minister to establish a committee to carry out the review (b) the review committee to: i. review the operation of the legislation ii. consider if any amendments to the legislation or any other laws are necessary or desirable in relation to sex workers or sex work iii. consider if any further review or assessment of the matters in paragraphs (i) and (ii) is necessary or desirable and iv. give a written report to the Minister and (c) the Minister to table a copy of the report about the outcome of the review in the Legislative Assembly as soon as practicable.	Under the proposed new s 275A, the legislative review 'must be carried out by an independent and appropriately qualified entity' (s 275A(2)), as opposed to a committee established by the Minister. No guidance or requirements are provided for the review's conduct, other than it is to be conducted in respect of the 'operation of the amendments and repeal effected by the [Act]'. Section 275A(3) requires the Minister to table a report about its outcome in the Legislative Assembly as soon as practicable after the review is completed. The Bill is only partially consistent with this recommendation.
Recommendation 37: The legislation should not require the review committee to assess the impact of the legislation on the number of sex workers in Queensland, or collect baseline data, including about the number of sex workers.	The proposed new s 275A in the *Work Health and Safety Act 2011* does not mandate what assessment is to be conducted during the Act's review. This is consistent with QLRC's recommendation, although it does not address these concerns explicitly.
Recommendation 38: The Queensland Government should develop and implement public education and awareness programs to address sex work stigma and educate the community about the sex work industry and the aims of decriminalisation. This could be integrated into existing and future education campaigns and activities of relevant regulators and government agencies.	This recommendation is not within the scope of the Bill.
Recommendation 39: Regulators and other government agencies with areas of responsibility that affect the sex work industry – including those involved in land-use planning, work health and safety, public health, anti-discrimination, law enforcement and justice services – should provide information, education and training for sex workers and sex-work business operators on changes to the law and their legal rights and obligations under the new framework. They should develop this in consultation with sex-worker organisations and sex-work business operators	This recommendation is not within the scope of the Bill.

Recommendation 40: The Queensland Government should develop and implement education and training programs about the new framework and how to respond sensitively and appropriately to issues facing sex workers and others in the industry, for officials and organisations who deal with sex workers or are affected by changes to the law under the new framework, including: (a) state and local government agencies involved in land-use planning, work health and safety, public health or justice services (b) police and other law enforcement officers (c) legal, health and social service providers (d) members and staff of Queensland courts and tribunals.	This recommendation is not within the scope of the Bill.
Recommendation 41: Steps should be taken to build positive relationships between sex workers, police and other law enforcement authorities. This is a shared responsibility. The Queensland Police Service and sex worker organisations should work collaboratively to develop measures and strategies to achieve this outcome.	This recommendation is not within the scope of the Bill.
Recommendation 42: Sex worker organisations in Queensland, such as Respect Inc, should provide peer-support and outreach services for sex workers, on health, safety and other matters. The Queensland Government should consider the range of services to be delivered by sex-worker organisations under decriminalisation, and the associated staff and resource implications.	This recommendation is not within the scope of the Bill.
Recommendation 43: The Queensland Government should lead and establish a temporary working group to help implement the decriminalisation reforms. It should consist of regulators and other government agencies with areas of responsibility that affect the sex work industry, sex worker organisations and other non-government organisations with industry knowledge. The working group should be established before legislation introducing the reforms takes effect.	This recommendation is not within the scope of the Bill. However, QYPC supports the establishment of a temporary working group to aid the implementation of the decriminalisation reforms and encourages the diversity of its composition with both representation from the Prostitution Licensing Authority and non-profit, peer-based organisations.
Recommendation 44: The Queensland Government should coordinate, and ensure adequate funding for, the measures we recommend in R38 to R43 above.	This recommendation is not within the scope of the Bill. QYPC agrees with QLRC's observations that costs previously associated with the operation of the Prostitution Licensing Authority may be redirected to fund education and support services that enable the efficient

	implementation of the decriminalisation framework.
Other matters	
Recommendation 45: As part of the education and other measures we recommend in R39 to R41: (a) the Queensland Police Service should give police officers guidance and support to help them respond appropriately to sex workers as victims of crime, including information about relevant offences that may apply in cases involving fraudulent promises to pay a sex worker for agreed sexual services, and taking a victim-centred approach (b) the Director of Public Prosecutions should give prosecutors information and guidance about the approach to prosecuting offences involving sex-worker complainants (c) community legal services should offer support for sex workers to help them access their legal rights, including in cases where clients do not pay for agreed services.	This recommendation is not within the scope of the Bill.
Recommendation 46: The supply of alcohol by sex-work businesses should be regulated by the Liquor Act, with policy developed by the Office of Liquor and Gaming Regulation.	Clause 35 of the Bill repeals the entirety of the Prostitution Act. Relevantly, the repeal of the Prostitution Act includes Part 6, Division 2 (offences relating to the operation of a licensed brothel). This action leaves liquor licensing as a matter for the Liquor Act, as recommended.
Recommendation 47: The consequential amendments to other legislation that we identify in our table of drafting instructions in volume 2 of our report should be made. The provisions refer to offences, provisions and terms in the Prostitution Act or chapter 22A of the Criminal Code that need to be amended to reflect the recommended repeal of provisions to decriminalise sex work and remove the brothel licensing system.	The table of consequential amendments to other legislation in Volume 2 of the Report identifies 25 Acts and Regulations to be amended to reflect the recommended repeal of provisions to decriminalise sex work and remove the brothel licensing system. Schedule 1 to the Bill makes other amendments to 18 additional Acts.

Amendments to the *Criminal Code 1899*

Part 4 of the Bill proposes amendments to the *Criminal Code 1899* (Qld) ('the Code'). These amendments include:

- Repeal of Chapter 22A of the Code (and consequential amendments);
- Insertion of a new offence of 'commercial sexual services';
- Insertion of three new offences to address the involvement of people who are not adults in commercial sexual services; and

- Amendment of s 218 of the Code to additionally apply to coercion in the context of commercial sexual services.

QYPC supports the repeal of Chapter 22A of the Code. Full decriminalisation of sex work is essential to ensuring the barriers to safety and access to justice are lifted for sex workers. The Scarlet Alliance has stated that "[d]ue to the complex criminal legislation that regulates the sex industry, a large proportion of Queensland sex workers are forced to work outside of the legal framework in order to preserve their safety".[7]

A key aspect of decriminalisation is to ensure that sex workers are not disincentivised from reporting crimes to police and other authorities, as well as employment legal concerns.

Recommendation 2: **Chapter 22A of the Code should be repealed.**

QYPC supports the insertion of a definition for commercial sexual services. It acknowledges that the proposed definition maintains existing references to sex work from s 218 of the Code, explicitly does not limit sex work to physical contact only, and continues references to "use" of a person's body. The former is supported by QYPC however the latter is not.

QYPC endorses the definition of commercial sexual services as contained in the QLRC Report, namely:

> "Services that involve the person engaging in a sexual act with another person in return for payment or reward under an arrangement of a commercial character (whether the payment or reward is given to the person providing the services or another person)...".[8]

However, QYPC supports the Government's intention to maintain a broader definition of sexual act, namely, one that is inclusive of non-physical activity. In our submission, this properly encapsulates the full breadth of sex work, especially in the modern and technological age. Limiting sex work to physical sexual acts will alienate and exclude from protection those who provide sex work through an exchange of sexualised photographs, videos, phone calls or video calls for payment or reward.[9]

QYPC submits that a broad, inclusive and simplified definition of commercial sexual services that does not contain stigmatised language is essential. This can be achieved by utilising the definition in the QLRC Report but defining sexual act as "physical contact such as sexual intercourse, oral sex and masturbation, and non-physical contact of an intimate and/or sexual nature".

Recommendation 3: **Commercial sexual services should be defined as contained in the QLRC Report, with the exception that sexual act be defined as "physical contact such as sexual**

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[7] Scarlet Alliance, Australian Sex Workers Association and Respect Inc., Sex Work Laws and Workplace Health and Safety Symposium Report (Report, 14 November 2018) 1.
[8] QLRC Report Vol 1 pg. 145 [6.40], Vol 2 pg. 8.
[9] See e.g., Victorian Government, Better Health Channel, 'Sex work' (17/07/2023), available at <https://www.betterhealth.vic.gov.au/health/healthyliving/sex-work>; Global Network of Sex Work Projects, 'Sex Work: 14 Answers to your Questions' (2007), available at <https://www.nswp.org/sites/default/files/14answersstella.pdf>.

intercourse, oral sex and masturbation, and non-physical contact of an intimate and/or sexual nature".

QYPC supports the intention of Parliament to ensure that the decriminalised framework clearly distinguishes between sex work and sexual exploitation and the importance of protecting children. The legislation should protect all children, including 16 and 17 year olds. The Government should maintain a clear policy position that people under the age of 18 should not be engaging in commercial sexual services. However, "having a clear policy position in the criminal law should not prevent responses that give priority to harm minimisation and recognise the evolving capacities of people aged 16 or 17".[10]

Recommendation 4: **Sections 217A to 217C of the Code should be included as drafted.**

QYPC supports the amendment to s 218 of the Code to apply to coercion in the context of commercial sexual services, to ensure that participation in sex work is consensual and voluntary. However, QYPC raises two concerns.

First, the proposed definition of coercion, although non-exhaustive, is not sufficiently inclusive. In comparison to the definition recommended by the QLRC Report,[11] the proposed definition does not include the following examples of coercion:

- improper use of a position of trust or influence
- taking advantage of a person's vulnerability
- supplying or offering to supply a dangerous drug (within the meaning of section 4 of the Drugs Misuse Act 1986) to a person

These examples must be included to ensure the true breadth of coercion is reflected in the legislation, as well as novel situations as appropriate. The former two additional examples also ensures that the intersectional vulnerabilities of migrant and marginalised sex workers is adequately recognised in legislation.[12]

Recommendation 5: **The amendments to s 218 of the Code should include the definition of coercion as recommended by the QLRC Report.**

To ensure that coercion is appropriately captured in the Code, QYPC also recommends that the Government consider as part of a review of sexual offences generally the inclusion of coercion in s 348(2) of the Code regarding when a person's consent is not freely and voluntarily given if it is obtained. It is accepted that it would be premature to make this amendment at this stage without further community consultation and review, however, it presents a clear gap in the Code which would only be widened upon decriminalisation of sex work.

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[10] QLRC Report Vol 1 pg. 149 [6.71].
[11] QLRC Report, Vol 1, pg. 146 [6.45], Vol 2, pg. 10.
[12] See, e.g., Scarlet Alliance, 'Briefing Paper: Full Decriminalisation of Sex Work in Australia' (2021), available at <https://scarletalliance.org.au/wp-content/uploads/2021/02/briefing_paper_full_decrim.pdf>.

Amendments to the *Anti-Discrimination Act 1991* (Qld)

The definition of 'sex work activity' in clause 6, proposed to replace the definition of 'lawful sexual activity' in schedule 1 of the *Anti-Discrimination Act 1991* (Qld) broadly aligns with the QLRC's recommendation of defining sex work inclusively. The QLRC noted in its recent report that the definition should be defined inclusively to clarify and strengthen discrimination protections for sex workers. The proposed definition appropriately includes persons who are currently or have previously engaged in sex work. QYPC supports clause 4 which implements this definition change.

QYPC also supports the omission of the current exemptions under the *Anti-Discrimination Act 1991* (Qld) allowing discrimination against sex workers. These exemptions are inconsistent with decriminalisation and should be removed. QYPC supports clause 5 and the omission of the 'accommodation exemption' which currently allows accommodation providers to discriminate based on the belief a person will use accommodation for sex work.

Recommendation 6: **QYPC recommends that the 'work with children' exemption in s 28 *Anti-Discrimination Act 1991* (Qld) as it applies to sex workers be repealed.**

However, QYPC also recommends that the Bill repeal the 'work with children' exemption in s 28 of the *Anti-Discrimination Act 1991* (Qld) as it applies to sex workers. This exemption perpetuates the stigma that sex workers are a threat to children or not fit to care for children. The stigma that sex workers face when seeking employment is unjust and unfounded; a person's participation in sex work has no relation to their ability to work with children. QYPC recommends that this exemption be removed.

QYPC also notes that community education is needed to address the stigma and discrimination that sex workers will continue to face after the implementation of these reforms. Further education is also required to support sex workers to recognise discrimination and to understand and exercise their rights.

Amendments to the Liquor Act 1992

The Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (the Bill) proposes a decriminalised framework for the sex work industry in Queensland. The Bill is based on the recommendations from the Queensland Law Reform Commission's report 'A decriminalised sex-work industry for Queensland.' The Queensland Law Reform Commission did not make any recommendations about amendments to the Liquor Act to reflect the decriminalisation of the sex work industry. The Queensland Law Reform Commission noted that this was a complex policy issue that requires separate

consultation and Government consideration, which will commence later in 2024. At this stage, the Bill amends the Liquor Act 1992 to maintain the status quo on the conduct of adult entertainment and the prohibition of sex work occurring on liquor-licensed premises, with the result being that the supply and consumption of alcohol is prohibited on premises where sex work occurs.

The permission or prohibition of the supply and consumption of alcohol on premises where sex work occurs is a contentious issue. In recent changes to Victorian legislation decriminalising sex work that came into operation late last year, the Victorian state government opted to remove restrictions on serving, selling and consuming liquor in brothels, allowing the service of liquor in brothels. This was in opposition to the recommendations of the Ministerial Advisory Committee on sex work recommending that the State Government retain restrictions on serving, selling and consuming liquor in brothels, a recommendation which was accepted by the then government. There was significant parliamentary debate around this decision, with some Members of Parliament arguing that allowing the supply and consumption of alcohol in brothels could potentially increase the risk of alcohol-fuelled violence or result in situations where clients may not be able to give their full and informed consent. However, it is important to note that this is not in alignment with the position of sex workers in Victoria with Vixen, Victoria's peer-only sex work organisation arguing that liquor licensing regulations should apply equally to sex work at they do for other industries and that the creation of specific restrictions or regulation undermines the intention of decriminalisation.

Recommendation 7: **QYPC recommends that consultation be undertaken with sex workers, representative organisations, and those with lived experience safely and respectfully on changes to the Liquor Act 1992 as a matter of priority.**

With this in mind, the continual prohibition of the service and consumption of alcohol on premises where sex work occurs would be out of step with what comparable jurisdictions are doing. Further, Respect Inc and DecrimQLD also noted in their joint submission to the Queensland Law Reform Commission's consultation on the decriminalisation of sex work that prohibition was an extreme restriction. However, the QYPC also notes that this is a complex policy issue and that we do not have the requisite lived experience to provide a recommendation on this issue one way or another. Fundamentally, the answer to this policy issue should come from those most affected by it. Therefore. QYPC recommends further consultation being conducted on the matter. The QYPC strongly advocates for the prioritisation of direct consultation of sex workers and representative organisations safely and respectfully. This is an area in particular in which lived experience is vital to be listened to to inform policy and legislative change.

Concluding Remarks

QYPC thanks you for the opportunity to make this submission.. Should you have any queries, please feel free to contact QYPC.

List of Recommendations

Recommendation 1: The Queensland Government supports and implements public education and awareness programs to address sex work stigma, educate the community about the sex work industry and raise awareness of the aims of decriminalisation.

Recommendation 2: **Chapter 22A of the Code should be repealed.**

Recommendation 3: **Commercial sexual services should be defined as contained in the QLRC Report, with the exception that sexual act be defined as "physical contact such as sexual intercourse, oral sex and masturbation, and non-physical contact of an intimate and/or sexual nature"**

Recommendation 4: **Sections 217A to 217C of the Code should be included as drafted.**

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Recommendation 7: **QYPC recommends that consultation be undertaken with sex workers, representative organisations, and those with lived experience safely and respectfully on changes to the Liquor Act 1992 as a matter of priority.**