

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

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Submitted by: Helen Easton
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Committee Secretary
Housing, Big Build and Manufacturing Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Committee,

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

1. I write in response to the Housing, Big Build and Manufacturing Committee's (**the Committee's**) inquiry into the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (Qld) (**the Bill**).

Introduction

2. The Bill proposes:

- (i) to repeal sex-work specific offences located in the Criminal Code, *Prostitution Act 1999* (Qld) and Prostitution Regulation 2014 (Qld);
- (ii) to remove the licensing system and obligations on licensees relating to alarms, lighting and signs;
- (iii) to repeal sex-work specific health offences;
- (iv) to update protections against discrimination;
- (v) to restrict the power of local government to make local laws restricting sex work;
- (vi) to introduce a definition of 'commercial sexual services';

- (vii) to create new offences that address coercion and the exploitation of children in commercial sexual services;
 - (viii) to enact a requirement to evaluate the new regulatory framework; and
 - (ix) to address consequential amendments of legislation in line with the Bill's overarching aims of decriminalisation.
3. Full decriminalisation of prostitution is an outdated form of regulation which is associated with an increase in the numbers of women involved in prostitution, greater harms to women, and a neglect of the complicated relationship between men's violence against women and women's involvement in prostitution.
 4. For the reasons given below, I recommend that the Committee in its final report recommend that the Bill not be passed without there being an independent assessment of the empirical evidence and greater consideration to the model of regulation offered by the Gender Equality Model (Nordic Model), a model that was largely overlooked by the Queensland Law Reform Commission in its recent report *A decriminalised sex-work industry for Queensland* (2003).
 5. I write as an academic with expertise in gender inequality and victimisation and most recently with the regulatory mechanisms surrounding prostitution.¹ My recent doctoral research, conducted at Macquarie Law School, directly addresses the concerns that the Bill purports to resolve. It concludes that the decriminalisation of prostitution, while seemingly a common sense, rational response, is instead outdated and based only on a partial picture of prostitution, and, if implemented, is likely to result in social harms. Within this response, I outline the basis for this argument and present evidence in support of an alternative regulatory approach.

Background

6. Queensland is not alone in its reconsideration of the law and policy surrounding prostitution. In Australia, the states and territories have a patchwork of legal arrangements.

¹ *Contested Discourses: A feminist socio-legal examination of legal responses to prostitution in the UK*. Within this thesis I explain how the terms prostitution and sex work represent overlapping but distinct terminologies and the consequences of this in relation to the blurring and dilution of the legal concept of prostitution in regulatory endeavours.

Over the past decade several Australian states have reviewed, and are endeavouring to reform, the legislative and policy arrangements surrounding prostitution. While Victoria has recently decriminalised prostitution,² in South Australia a proposal to criminalise the purchase of sexual services has been put forward in a private member's bill.³ A similar motion was also passed by the Liberal Party in Victoria in April 2018 indicating its support for the Gender Equality Model (the Nordic Model).⁴

7. Internationally, the picture is similar, with a number of jurisdictions reconsidering their existing legal frameworks – various forms of legalisation and decriminalisation - in light of a complex web of social and political factors.⁵
8. My academic expertise and contribution to this issue pertains to the United Kingdom context where recent efforts to reform prostitution law in England & Wales and in Scotland have reached stalemate. In 2016, efforts at reform in England & Wales became polarised between two policy positions – an approach advocating tolerance of prostitution, which views it as work and aims to fully decriminalise as in New Zealand,⁶ and an approach which considers prostitution both a cause and consequence of gender inequality and therefore something a progressive society should not condone.⁷ Northern Ireland adopted the latter model in 2017.⁸ These polarised arguments have a long history, which for the purposes of this consultation I will not expand upon here. The focus instead will be outlining the important distinction between the policy aims and potential outcomes of full decriminalisation – as proposed in the Bill – and the potential alternative offered by partial decriminalisation a version of which is currently under consideration in South Australia.

² Under the [Sex Work Decriminalisation Act 2022 \(Vic\)](#).

³ The [Summary Offences \(Prostitution Law Reform\) Amendment Bill 2023 \(SA\)](#), introduced by the Hon Nicola Centofanti MLC (Lib.) on 30 August 2022.

⁴ 'Liberal Party endorses "Nordic model"', *The Saturday Paper*, May 19-25, 2018

<<https://www.thesaturdaypaper.com.au/news/law-crime/2018/05/19/liberal-party-endorses-nordic-model/15266520006254#hrd>>.

⁵ See for example the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, which was signed by the UK in 2000, ratified in 2006, and supplementing the *UN Convention against Transnational Organised Crime (2000)* and Article 6 of the *UN Convention of the Elimination of Discrimination Against Women (CEDAW)*, effective in 1981, which stipulates that 'State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women'.

⁶ House of Commons, *Home Affairs Committee: Prostitution Inquiry* No HC 26, Session 2016-17).

⁷ All Party Parliamentary Group on Prostitution and the Global Sex Trade, 'Shifting the Burden: Prostitution and The Global Sex Trade' (2014). While commonly known as the Swedish, Nordic, Neo-Abolitionist or Equality Model, I refer to this throughout my research as the Gender Equality Model (GEM).

⁸ *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*.

Full decriminalisation

9. My doctoral research examined the origins of decriminalisation as a response to prostitution. In brief, decriminalisation adopts a politically liberal feminist position, primarily concerned with women's right to formal equality under the law. In the context of employment and education this is a laudable aim and much progress has been made,⁹ however, where women's sexual and economic freedom and equality are concerned, the picture becomes much more complicated and progress towards equality remains slower.¹⁰ Indeed there is global evidence that despite formal efforts, gendered inequality is widening across a number of important domains.

10. Prostitution has always, and continues to be, a gendered activity, a product of its being situated within the gendered social norms, roles and inequalities which precede it. Although much contemporary literature about prostitution has expanded its remit to include men and transgender people who sell sex, prostitution remains an activity that is almost entirely driven by male demand, and this demand is most often fulfilled by women. In contemporary society, the continued presence of prostitution reflects the complex inequality that exists at the intersection of gender and power.¹¹ This relationship between gender and power, and the buyer and seller of sex, remains constant globally, even in the face of significant shifts in sexual mores, formal gender equality, and more recently in the context of shifting patterns of migration and advances in technology.

11. While advocates of sex work have claimed prostitution to be a way for women to reject traditional gender roles and sexual stereotypes, initially campaigns to legitimise prostitution aimed to legalise prostitution and treat it as any other 'profession'. Most efforts to legalise prostitution have however proven unsuccessful and are therefore considered to have failed. The failures are well documented within the international academic and policy literature, which has shown legalisation to:

⁹ Formal legal equality has achieved improvements in some areas but the legal literature provides many examples of unintended consequences and issues which are more difficult to resolve.

¹⁰ See for example chronic disparities in the reporting and recording of sexual and domestic violence and poor legal outcomes for victims, as well as the feminisation of service labour, the ghettoization of women in part time, low paid work, gaps in representation of women in high status employment and particular professions and the consequent effects of these conditions on the gender pay gap.

¹¹ Waltman, Max, 'Assessing evidence, arguments, and inequality in *Bedford v. Canada*'(2014) 37 *Harvard Journal of Law & Gender* 459

- (i) reinforce gendered inequalities by unfairly focussing the legal, regulatory and health burdens of prostitution upon women;
- (ii) contribute to the expansion of prostitution and consequently a reduction in prices which in turn encourages competition and harmful practices;
- (iii) result in a worsening rather than an improvement in the conditions in which women sell sex;¹²
- (iv) increase violence against women involved in the sex trade;
- (v) lead to a proliferation of harmful and illegal forms of sexual exploitation, including human trafficking, which prosper in the shadows of the legitimate sex industry;
- (vi) result in the normalisation of sexual harassment of women in public;
- (vii) encourage the grooming and exploitation of young and vulnerable people into the sex industry;
- (viii) create problems of corruption within both policing and other institutional arrangements; and
- (ix) have little effect on the stigma faced by women who remain, on the whole, reluctant to register legally as sex workers.

12. In response, sex workers and their advocates increasingly prefer full decriminalisation, claiming that it is only through decriminalisation that the stigma of prostitution can be remedied and prostitution made safer. Such an argument appears to suggest that the law is solely responsible for generating the discrimination and harms connected with the sex industry, instead of recognising the well-established and interrelated structural effects of gender inequality on men's violence against women.

13. Advocates of full decriminalisation claim that it is only through the removal of all forms of regulation and the recognition of prostitution as a form of work that the safety and human rights of women involved in prostitution can be guaranteed. Instead, jurisdictions where prostitution has been tolerated or decriminalised have also reported a number of unintended consequences and little decline in stigma and the violence which is claimed to be caused by it. While these may be considered 'teething problems' there is widespread evidence that

¹² Importantly, while legalisation was intended to encourage unionization, there is little evidence that many women selling sex are members of sex worker unions or that the unions operate in the same way that unions in other occupations work to negotiate improved conditions with employers, or address breaches of employment practices.

such problems persist and that as my research illustrates, ingrained gendered social norms and expectations are reinforced rather than challenged by tolerance and decriminalisation.

14. Furthermore, although evaluations of the effects of decriminalisation in New Zealand under the *Prostitution Reform Act 2003* (NZ) suggest there has been little growth in prostitution as a result of decriminalisation, there is however no means of assessing this as Small Owner Operated Brothels are not required to register under the New Zealand system. A cursory review of local news articles suggests that the presence of these small brothels is however far from unproblematic for many New Zealanders.
15. The policy focus on decriminalisation as a solution to the problem of prostitution is in part the product of an ongoing shift away from 'gender' as a framework for analysis and a desire to create formal gender equality in law through the removal of gendered legal provisions. This has, however, as legal feminist scholars like Nicola Lacey have warned, resulted in an unsophisticated analysis of gender inequality which neglects the structural effects of gender on women to its detriment. As my research has identified, in the context of prostitution this has serious implications in relation women's choices about their involvement, the capacity of the law to see and address gender inequalities and harms, and therefore in relation to its effects on women and girls in general. A gender-neutral analysis, while aiming at formal equality, also ignores the reality of the intersectional nature of gender inequality, and the ways in which its effects are felt differently by women of different ages, abilities, races, sexualities, and social classes as well as for example their status as single parents or as indigenous women.
16. As the findings of my PhD research, which drew from empirical data gathered with 53 women involved in indoor prostitution in England & Wales and Scotland, has demonstrated, the proposals within the Bill to tolerate prostitution through full decriminalisation are likely to have consequences which require further consideration. Treating prostitution legally as work is risky, as prostitution is not an equal opportunity employer. Women involved in indoor prostitution describe themselves as financially desperate, in crisis as a result of drug addiction or homelessness, as poor or disabled, as having been physically or sexually abused either by a family member or intimate partner, or vulnerable in some way, frequently as a result of their migration status. According to both women and the practitioners which support them, it is often the case that women

experience the intersection of several of these factors at once. Thus, rather than offering women greater freedom and equality, decriminalisation of prostitution instead has the potential to further marginalise and coerce those from lower socio-economic groups or those who are vulnerable - such as the women included in my study who were fleeing intimate partner violence or sexual abuse in their homes or struggled with physical or mental health problems or addiction - to enter prostitution rather than have an expectation of or indeed be provided with adequate support and protection.

17. Both legalisation and decriminalisation are based on the assumption that prostitution is work and therefore that the decisions surrounding women's engagement in prostitution are simply the result of individual free choice. As my doctoral research explores, such an assumption neglects to consider the interaction of structure and agency in women's decisions and therefore the complex and conditional nature of many women's choice.
18. Furthermore, if prostitution is considered work like any other the logical consequence is that it becomes a possibility that women who refuse to 'work' may also be refused unemployment benefits as was identified in Germany shortly after prostitution was legalised.¹³ Alternatively making an exception in the case of sex work, means undermining the two core arguments on which decriminalisation is based, first, that prostitution is a choice and second, that prostitution is the same as other work. Similar issues can be observed in some jurisdictions in relation to the apparent conflict between the age at which one can consent to sex and engage in employment and the age at which one is legally permitted to engage in prostitution.
19. The proposals in the Bill in relation to coercion and children are also inadequate. On the one hand, it presents concern about coercion and children's involvement in prostitution and outlines hefty punishments dependent upon the age of the child. On the other, without a clear understanding of abuse and the subtle forms of coercion involved, and a lack of authority on the part of the police and other agencies to inspect premises or regulate prostitution in any way, there are few mechanisms through which to identify and address abuses in prostitution with the result that the effective use of these provisions is unlikely.

¹³ <https://www.telegraph.co.uk/news/worldnews/europe/germany/1482371/If-you-dont-take-a-job-as-a-prostitute-we-can-stop-your-benefits.html>

As feminist legal scholars have noted, abuse, coercion and exploitation are already legally slippery areas, and this lack of clarity in the Bill requires further consideration, particularly given the emergence of new laws in the state addressing coercive control and growing concern with models of affirmative consent.

20. Where prostitution is tolerated, women and practitioners report a lack of provision and inquiry into the conditions experienced by women. Coercion and exploitation are assumed therefore not to exist. As my doctoral research has demonstrated, under conditions of tolerance or decriminalisation the police and authorities have no power to oversee the operation of prostitution and identify harms, there is no opportunity to develop expertise, no gathering of information, no dedicated resources, and thus no true knowledge of the nature and extent of coercion and abuse, and an absence of this information within policy debates and responses, which further reinforces the idea that prostitution is without harm, is like work and is with rare exception and informed and rational choice. Furthermore, full decriminalisation not only decriminalises sex sellers but those who control, coerce and exploit them (usually men) for their own gain. The link between prostitution and men's violence against women thus requires further attention in the development of any regulatory model.
21. Finally, while the Bill makes provision to improve the discrimination encountered by those who sell sex, there is little evidence to support the law's capacity to improve this. Instead, decriminalisation is likely to result in the normalisation of prostitution in communities across Queensland, with the potential that those who object can be viewed as being moralistic prudes, and therefore as hating or discriminating against sex workers, rather than presenting a rational objection to the institution of prostitution and its associated problems, which is made on the basis of well-founded evidence.

An alternative: partial decriminalisation

22. A feasible alternative to full decriminalisation, which shares the aim of preventing the unequal treatment in law of those who sell sex, is the model of partial decriminalisation offered by the Gender Equality Model. Rather than aiming for formal equality, partial decriminalisation aims to improve substantive equality by addressing and rectifying imbalances of power. This represents a radical rethinking of the mechanisms through which to regulate prostitution. While both legalisation and decriminalisation respond to the

historic focussing of attention on the disorder, immorality, nuisance and risk presented by women involved in prostitution, the Gender Equality Model addresses the ethics and power dynamics involved in paying for sexual access and the barriers prostitution presents to substantive equality.

23. This approach originated in Sweden in 1999 and has been adopted in various forms in countries including Ireland, Northern Ireland, France, Canada, Iceland, Norway, Israel and most recently the state of Maine in the USA. In 2014 the European Parliament adopted a non-binding resolution that recognized prostitution as both an obstacle to gender equality and as a violation of human dignity, recommending that rather than legalising or decriminalising prostitution, member states adopt the Gender Equality Model.
24. While differing to some extent in practice in these jurisdictions the Gender Equality Model has four common elements. The two legal elements are first, the criminalisation of the purchase of sex, and second, the decriminalisation of the sale of sex. In conjunction with these legal remedies are policies aimed at providing meaningful support for people to exit prostitution and public information programmes aimed at shifting attitudes about the acceptability of purchasing sex in a society that also seeks gender equality.
25. Advocates of the sex industry and decriminalisation are however critical of the Gender Equality Model, claiming that criminalisation of demand creates the indirect criminalisation of those who sell sex and that any form of regulation pushes the problem of prostitution underground. They also argue against claims that the sex industry in Sweden and other early adopting countries have shrunk, and instead attribute this change to the widespread relocation of women from street to indoor prostitution which has been enabled by rapid advancements in technology. There has however been extensive critique of the accuracy of these claims, and of the repeated, uncritical recycling of these ideas among academics, policy makers and other sex industry advocates.¹⁴
26. Given this ongoing debate, and its lack of resolution in England & Wales and Scotland, the central question of my research was to understand if the law makes a difference in relation to women's choices not only to enter, but also while involved in prostitution and in relation

¹⁴ See for example the critical evaluation of these claims offered by Max Waltman. [Citation](#).

to their exit from indoor prostitution. Amongst other things, the findings of this research conclude that legal frameworks that tolerate prostitution and the discourses which surround them operate as a key mechanism in women's decisions to enter and in their day-to-day decisions while involved in prostitution. Most importantly however, tolerance of prostitution operates to restrict women's choice by limiting both their understanding of the structural conditions and circumstances surrounding their involvement, as well as their access to the support they require to leave.

27. Based on the brief summary of my findings and other sources of evidence, I have presented here, I urge the Committee not to support the Bill and for the Committee instead to recommend that, before any attempt to enact the decriminalisation model in Queensland, the government should:

- (i) undertake a thorough and independent investigation of the claims made by advocates of the sex industry;
- (ii) conduct an independent assessment of the evidence surrounding partial decriminalisation and the Gender Equality Model;
- (iii) review the international evidence relating to gender inequality and assess its effects on the lives, and therefore the decisions, of women in Queensland;
- (iv) make provisions that adequately include and address the dissenting and silenced voices in both this debate and in any future evaluation of any new legal arrangements by, amongst other matters, consulting with women who have struggled in the sex industry and who want to or who have left prostitution, and with any organisations and practitioners who provide them with support; and
- (v) be clearer with the public about the aims of the policy of decriminalisation and its potential negative consequences and
 - a. to prepare a strategy to ameliorate these adverse effects;
 - b. to take seriously the experiences of those who become involved in prostitution and later wish to exit; and
 - c. to support such persons to exit prostitution.

Conclusion

28. The findings of my research and over twenty years working on issues connected to gender equality in the law and criminal justice system, suggest that full decriminalisation is both

an outdated and harmful approach to the regulation of prostitution. I therefore recommend that the Queensland Parliament reject outright the passing of the Bill or at least consider postponing its decision. This would allow the issues raised in this response, and the dissenting voices of other contributors, including survivors of prostitution, to be considered independently of the influence of advocates of the sex industry, and to allow greater consideration of the potential effects on all women and girls but also on the entire Queensland community.

29. I am happy to speak further on this matter, or to present the findings of my recent research to Parliament should this be so desired. Please do not hesitate to be in touch.

Yours faithfully,

Dr. Helen Easton

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