

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

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

Submission to Housing, Big Build and
Manufacturing Committee

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Introduction

1. Thank you for the opportunity to make a submission on the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (the Bill).

About the QHRC

2. The Queensland Human Rights Commission (**QHRC**) is a statutory body established under the *Anti-Discrimination Act 1991* (Qld) (**the AD Act**) and deals with complaints made under that Act and the *Human Rights Act 2019* (Qld). The QHRC also has functions to promote an understanding and public discussion of human rights in Queensland, and to provide information and education about human rights.
3. The QHRC deals with complaints of discrimination, sexual harassment, vilification, and other objectionable conduct under the AD Act, including discrimination on the basis of lawful sexual activity.

Summary of submission

4. The QHRC generally supports the passage of the Bill with recommended amendments, as outlined below. The Bill establishes a decriminalised framework for the sex work industry based on the recommendations of the Queensland Law Reform Commission.¹
5. The Bill implements aspects of the QHRC's recent *Building Belonging Report – Review of Queensland's Anti-Discrimination Act 1991 (Building Belonging)* by updating an attribute intended to protect sex workers and by removing an exemption that permitted discrimination against sex workers in the area of accommodation.²
6. Through decriminalising sex work, and enhancing protections against discrimination, the Bill delivers reforms which are necessary to ensure the right to privacy, freedom of expression, freedom of movement, and equality before the law of sex workers in Queensland.

Recommendations

7. The Committee should recommend the following changes to the Bill:

Amend the definition of 'sex work activity' in Clause 6 by:

¹ Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland*, Report No 80 (March 2023).

² Queensland Human Rights Commission, *Building belonging – Review of Queensland's Anti-Discrimination Act 1991* (July 2022) Recommendation 24.

- (i) removing the word 'adult' in paragraph (a) to make it consistent with the definitions contained in Clauses 8 and 28 and Schedule 1 Other Amendments; and
 - (ii) inserting the word 'or' at the end of paragraph (a)(i) for the sake of clarity.
8. The Committee should also recommend that the Government undertake further reviews in relation to:
- (i) Adult entertainment licences under Division 6 of the *Liquor Act 1992* (Qld).
 - (ii) Potential expungement of criminal records for prior convictions under the relevant provisions of the *Criminal Code*.

Amendments to the AD Act

Omission of section 106C

9. The Commission supports the omission of section 106C of the AD Act, consistent with recommendation 24.3 of *Building Belonging*.
10. The AD Act currently provides that it is not unlawful for an accommodation provider to discriminate against another person by refusing to supply accommodation, evicting them, or treating them unfavourably in any way in connection with accommodation, if the accommodation provider reasonably believes the other person is using, or intends to use, the accommodation in connection with that person's, or another person's, work as a sex worker.³
11. Accommodation is defined broadly to include business premises, houses, flats, hotels, motels, boarding houses and hostels, caravans, manufactured homes, camping sites, and building or construction sites.⁴
12. Queensland is the only jurisdiction in Australia to have this exception in its discrimination law. The most recent repeal of a similar provision occurred in February 2022 in Victoria.⁵

Purpose of the exception

13. The provision was introduced in 2012 in response to a finding of the Appeal Tribunal of QCAT that a motel operator had contravened the Act by refusing accommodation to a sex worker. That decision was subsequently overturned by the Court of Appeal.⁶

³ *Anti-Discrimination Act 1991* (Qld) s 106C.

⁴ *Anti-Discrimination Act 1991* (Qld) Dictionary - 'accommodation'.

⁵ *Decriminalisation of Sex Work Act 2022* (Vic) s 36.

⁶ See *GK v Dovedeen Pty Ltd & Anor* [2012] QCATA 128 for the Appeal Tribunal decision, and *Dovedeen Pty Ltd v GK* [2013] QCA 116 for the Court of Appeal decision.

14. Records of parliamentary debate provide an insight into the policy intention at the time to: 'protect businesses from this sort of complaint and give them control over the use that is made of their premises...it will not allow a person to refuse to provide accommodation to someone merely because the other person is a sex worker.'⁷

Scope and how the exception is being applied currently

15. The sex worker accommodation exception may apply if 'the accommodation provider reasonably believes' that the accommodation is being used in connection with sex work.⁸ This provision is based on the subjective view of the property owner without the need for evidence of an intention to use, or actual use of, the property for sex work. While the belief must be 'reasonable', in practice the reasonableness or otherwise of the property owner's belief will rarely, if ever, be subjected to scrutiny by a court or tribunal. Once a person has been evicted, it would be rare for them to make a complaint of discrimination.
16. Researchers Hobbs and Trotter have commented that the exception forms a 'viable pretext' for unfair treatment sex workers in a broad range of circumstances, and can result in poor treatment, overcharging and eviction, and could result in housing instability and homelessness.⁹

Human rights considerations

17. The Human Rights Act protects and promotes human rights of people in Queensland. Human rights may be subject to reasonable limitations that can be demonstrably justified in a free and democratic society based on human dignity, equality, and freedom. In deciding whether rights can be reasonably and justifiably limited, consideration should be given to the factors outlined in the Human Rights Act.¹⁰
18. Under the Human Rights Act, sex workers have a right to privacy and reputation¹¹ (which includes the right not to have their privacy, family, or home arbitrarily interfered with) which must be balanced with the accommodation providers' property rights¹² (which includes the right to own property and not be arbitrarily deprived of their property). The peace, comfort, and privacy of others, including other residents, guests, and neighbours to accommodation premises must also be considered.

⁷ Queensland, Parliamentary Debates, Legislative Assembly, 1 November 2012, 2382 (JP Bleijie, Attorney-General).

⁸ *Anti-Discrimination Act 1991* (Qld) s 106C.

⁹ Harry Hobbs and Andrew Trotter, 'How far have we really come? Civil and political rights in Queensland' (2013) 25(2) *Bond Law Review* 166, 205–6; Scarlet Alliance, *The Principles for Model Sex Work Legislation* (2014) 75–6, 78.

¹⁰ *Human Rights Act 2019* (Qld) s 13.

¹¹ *Human Rights Act 2019* (Qld) s 25.

¹² *Human Rights Act 2019* (Qld) s 24.

19. Placing the threshold at a 'reasonable belief' may amount to an arbitrary interference with a sex worker's right to privacy, particularly in residential tenancy situations.
20. When a similar exception was repealed in Victoria, the human rights statement of compatibility addressed these potentially competing rights and determined that repeal of the exception would not mean that accommodation provider's property rights are unfairly limited.¹³
21. The QHRC's Review of the AD Act¹⁴ formed the view that the exception may not be compatible with human rights because it unreasonably limits the right to equality and the right to privacy of sex workers, including the right not to have a person's home arbitrarily interfered with, such as through eviction.
22. The Queensland Law Reform Commission also formed the view that 'removing the exemption is consistent with decriminalisation, including the aims of reducing stigma and discrimination, and safeguarding sex workers' human rights.'¹⁵

Definition of sex work activity

Replacement of 'lawful sexual activity' attribute

23. The QHRC endorses the omission of the current 'lawful sexual activity' attribute and its replacement with the attribute 'sex work activity'.
24. The QHRC's Review of the AD Act¹⁶ formed the view that:
 - (i) the current 'lawful sexual activity' attribute only protects lawful sex workers, but people who work outside of the regulated and licenced sector are still experiencing discrimination.
 - (ii) The attribute and its definition should not be limited to a person's status as a sex worker, and should also include the activity of engaging in sex work. This would create certainty in the law and avoid an ongoing gap in discrimination protection.
25. The QHRC endorses the new proposed definition of 'sex work activity' in Clause 6 with 2 amendments:

¹³ Victoria, Parliamentary Debates, Legislative Assembly, 13 October 2021, 3875.

¹⁴ Queensland Human Rights Commission, *Building belonging – Review of Queensland's Anti-Discrimination Act 1991* (July 2022), 293.

¹⁵ Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland*, Report No 80 (March 2023), 103.

¹⁶ Queensland Human Rights Commission, *Building belonging – Review of Queensland's Anti-Discrimination Act 1991* (July 2022), 286-290.

- (i) removing the word 'adult' in paragraph (a) to make it consistent with the definitions contained in Clauses 8 and 28 and Schedule 1 Other Amendments; and
- (ii) inserting the word 'or' at the end of paragraph (a)(i) for the sake of clarity.

Inclusion of the term 'adult'

26. The QHRC in no way endorses or encourages children to be involved in sex work activity. However, this definition is not about who should or should not do sex work activity; it is aimed at protecting those who do sex work activity from unlawful discrimination.
27. The inclusion of the term 'adult' in the definition of sex worker activity is problematic for three reasons:
 - (i) it is inconsistent with other definitions of 'sex work' throughout the Bill;
 - (ii) it introduces unequal protection of the law into the AD Act, based on the age of the complainant at the time they did sex work; and
 - (iii) it potentially disadvantages children who have been victims of crimes, including the new coercion offences.
28. Firstly, clauses 8¹⁷ and 28¹⁸ and Schedule 1 Other Amendments¹⁹ also refer to definitions of 'sex work' and neither contain the reference to 'adult'. The Explanatory Notes do not explain this discrepancy.
29. Secondly, being a sex worker who works alone at age 16 or 17 is not currently unlawful in Queensland, nor will it be if the Bill passes. Children are not barred from making a complaint currently under lawful sexual activity attribute but may be barred from bringing a complaint under the new attribute.
30. To present a hypothetical example:

A person had engaged in sex work at age 17. Now they are 20 years old and working in a bookstore. Their current employer dismisses them from their non-sex work related employment because they become aware of their previous job. This person would not be protected from discrimination.
31. Section 15(4) of the *Human Rights Act 2019* provides the right to equality, which ensures that every person is entitled to equal and effective protection against discrimination. By providing rights for some sex workers, and not others, on the

¹⁷ *City of Brisbane Act 2010* (Qld) – insertion of new s40A Regulation of sex work including a definition of 'sex work'.

¹⁸ *Local Government Act 2009* (Qld) – insertion of new s37A Regulation of sex work including a definition of 'sex work'.

¹⁹ Amendments to the *Introduction Agents Act 2001* (Qld), Schedule 2 – definition of 'sex work'.

basis of age, the provision may therefore be incompatible with the HR Act, and this has not been justified in the Statement of Compatibility.²⁰

32. Thirdly, as the proposed definition in Clause 6 stands, it could result in a situation where a child who has been coerced or forced into sex work (a criminal offence under section 229G of the *Criminal Code*) would not then be protected from discrimination at a later stage because the sex work conducted by them would not fall under this definition.
33. A child victim of a crime in this situation should be given the fullest protection from discrimination as possible.

‘Participating’ or ‘use or display’

34. The proposed definition of sex work activity has two limbs to describe the services that a person may be providing for payment or reward:
 - (i) services that involve the person participating in a sexual activity with another person;
 - (ii) services that involve the use or display of the person’s body for the sexual arousal or gratification of another person; etc
35. The QHRC recommends addition of the word ‘or’ between paragraphs (i) and (ii) for the sake of clarity. This would make it clear that the services can involve the person participating in certain activities OR use or display of the person’s body but that the definition does not require both limbs to be made out.

Other review processes recommended

Adult entertainment

36. The Explanatory Notes²¹ highlight that the QLRC did not make any recommendations about the future regulation of the adult entertainment industry. The Notes also refer to the QLRC position that these are complex policy issues which require separate consultation and Government consideration.
37. The QHRC supports a further detailed review of the adult entertainment industry.

²⁰ Noting that in relation to the absolute liability sections of the Bill which would amend Chapter 22 of the *Criminal Code*, the Statement of Compatibility explicitly identifies that the purpose of the limitation of human rights of the person charged with a criminal offence is to ‘also protect against the exploitation of children aged 16 and 17’. See *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024*, Statement of Compatibility, 7.

²¹ *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024*, Explanatory Notes, 2.

Expungement scheme

Human rights considerations

38. The Human Rights Act protects and promotes human rights of people in Queensland.
39. The *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024* will regulate sex work and remove many offences from the statute book. This reform alone will fail to address the stigma that a historical conviction for sex work related activity carries.
40. Having a conviction for sex work related activity that is no longer considered a criminal offence can be a great disadvantage where convictions have to be disclosed, for example, in employment. People who have a conviction for an historical sex work offence may choose to limit their own career choices or participation in community life, for fear that their conviction may be revealed, and that they may suffer from associated stigma or discrimination.
41. While Queensland has 'spent convictions' legislation²² to protect people from unauthorised disclosure of convictions once a certain period of time has elapsed, there are a number of exceptions where disclosure is permitted or required, including when applying for certain jobs or positions.²³
42. On this basis, the QHRC supports the process of a further supplementary review of an expungement scheme to be followed by legislative changes, as a matter of priority.

Conclusion

43. Thank you for the opportunity to comment on this Bill.
44. The QHRC would be pleased to answer any follow up questions in relation to this submission.

²² *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld).

²³ This includes, for example, persons applying to be police officers, corrective services officers, justices of the peace, lawyers and (for certain types of sexual and other offences) teachers.