

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

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Submitted by: Respect Inc & DecrimQLD
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Housing, Big Build and Manufacturing Committee
HBBMC@parliament.qld.gov.au

Dear Committee Secretary,

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

Thank you for the opportunity to submit to this process. Please find attached a submission in support of the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024* that is informed by the lived experiences of sex workers in Queensland under the existing laws, as well as research, consultations and surveys.

This reform has the potential to be the most significant policy change for sex workers, our partners, friends, families and children to ever happen in Queensland whilst simultaneously resulting in very little change for most other community members. That sex workers in Queensland and our workplaces would no longer be criminalised but instead afforded the same workplace, health and safety rights as other workers is significant. Equally, decriminalisation can deliver a low-cost and high-compliance model of regulation that provides benefits for the broader community and government. The model has the ability to free-up police resources and end the significant administration and resource burden of licensing on the industry and on government.

The difficult task for this Parliamentary Committee is to maintain a focus on facts and the current sex industry in 2024 and not perceptions, myths and stereotypes of who sex workers are, where and how they work. The fact is that most sex workers now work indoors, in very discreet ways, utilising internet and mobile phone technology.

Sex workers are an integral part of the Queensland community who urgently require legislative change in the form of decriminalisation paired with human rights and protection from discrimination and vilification.

We confirm this submission can be published and we would appreciate the opportunity to discuss any of these matters further at the hearing

DecrimQld and Respect Inc also endorse the submission made by Scarlet Alliance.

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State Coordinator

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Janelle Fawkes
DecrimQLD Campaign Leader

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Executive summary page

This submission outlines our support of the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (the Bill)* as long overdue reform crucial for sex worker health, safety and rights, to align Queensland with other jurisdictions that have modernised their sex work laws and to replace the current regulatory model that has failed sex workers and Queenslanders. Once the criminal law approach to sex work regulation is repealed, existing regulations will apply to all businesses and workplaces. The Bill also provides protections to ensure fair treatment of sex workers under the new framework, in-line with this change in regulatory approach (local government and anti-discrimination).

The Bill implements recommendations from the eighteen month Queensland Law Reform Commission (QLRC) review to which many, including many sex workers, submitted. The review sets out a comprehensive model of decriminalisation. The table on page 15 communicates the new model (see attached Appendix 2). Existing sex work specific criminal laws are repealed, including those in Chapter 22A of the Criminal Code that undermine sex worker safety. Sex workers state that the laws undermine workplace health and safety protections, isolate and prevent sex workers from building community and socialising, as well as impact on mental health and community connectedness. With the removal of these laws, sex workers will be able to legally implement safety strategies, including communicating with each other and working together. It also repeals the licensing system and abolishes the Prostitution Licensing Authority. The licensing system has created a two tiered industry, criminalising all sex industry businesses except the 17 licensed brothels and leaving 90% of the industry under the regulation of police.

Sex workers in Queensland have spoken out about the harms caused by the current laws for more than two decades. This has included speaking to many thousands of Queenslanders at public forums, markets and events and by far the majority of Queenslanders are surprised that sex work has not already been decriminalised and are shocked by the antiquated laws and police powers. The majority of Queenslanders are unlikely to see any change from the introduction of this Bill as research demonstrates there has not been an increase in the size of the sex industry when it is decriminalised.¹

Alongside the legislative reform in this Bill, Workplace Health & Safety Guidelines will be developed for all sex work workplaces. Sex workers will be able to report workplace matters to the regulator.

General criminal laws that apply to everyone will still apply to the sex industry. And importantly, sex workers will have improved access to justice after the passage of this Bill. 76.5% of sex workers in our survey said they would not make a police report under

¹ Abel GM. A decade of decriminalization: Sex work 'down under' but not underground. *Criminology & Criminal Justice*. 2014;14(5):580-92.

the current laws. The Bill also implements the recommendation from the Women’s Safety and Justice Taskforce review of experiences across the Criminal Justice System, for the decriminalisation of sex work.² The report says ‘Victim-survivors also told the Taskforce that past negative experiences dissuaded victims from seeking help through the criminal justice system in the future. During a small-group discussion with sex workers, participants told the Taskforce about being treated disrespectfully and not taken seriously by police’. The current law has empowered perpetrators to act with impunity. When sex work is not a crime and police are removed as regulators, sex workers will be more able to report crimes without the fear of police charging us with sex work-related offences, surveilling us, or not responding to the report.

This submission outlines a small number of minor (but important) amendments to the Bill set out on our recommendations list below. Our recommendations also include areas where future reform is necessary. While these reforms should not hold up the progress of this Bill they are important to the overall decriminalisation of sex work in Queensland.

Note: References are made throughout this submission to our survey. The survey was conducted in 2022, was advertised widely and invited sex workers to participate in a survey or in consultation events online. 204 sex workers participated and the findings have supported the development of our policy positions. Survey participants are quoted throughout this submission.

“I don’t comply [with the laws] or I would risk my safety. If I don’t come home who will look after my family.” [Survey participant 98]

“If I value my safety, it is impossible to comply with the current sex work laws. I reckon they made them so unsafe to scare us and stop us working.” [Survey participant 100]

“I regularly breach the laws. It is just impossible to be safe AND follow the laws. I follow the laws where possible, business laws, tax law...However, when it comes to safety calls, checking in with other workers, sharing resources, allowing more than one worker to work from the same property venue, etc, there are times where I choose my safety over the law...” [Survey participant 161]

We dedicate this submission to the sex workers who have endured the burden of laws that criminalise basic safety strategies and our workplaces and to those that have experienced police entrapment and criminal prosecutions as a result of the laws that will be repealed by the Decriminalising Sex Work Bill.

² Women’s Safety and Justice Taskforce, Hear Her Voice Report Vol. 2 Rec.102 https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0008/723842/Hear-her-voice-Report-2-Volume-1.pdf

Recommendations

Recommendation 1: The committee recommend the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024* be passed. (p.7)

Recommendation 2: Commencement by 1 July, 2024. Any delay will leave sex workers at risk of criminal penalties and their safety undermined. (p.8 and p.20)

Recommendation 3: We support Part 2 amendment of the Anti-Discrimination Act including c 14 replacing attribute 7(l) 'lawful sexual activity' with a new attribute 'sex work activity', and cl 5 - Omission of s 106C. **However we strongly recommend removal of 'adult' from the cl6 definition** as it unnecessarily would disadvantage and limit persons under 18 from the protection. (p.8)

Recommendation 4: Respect Inc and DecrimQLD support Parts 3 and 7 of the Bill, preventing local council from banning or unnecessarily imposing extra regulations on sex work in their areas. We also recommend sex workers working in small groups and collectives should be able to do so without barriers to compliance. (p.12)

Recommendation 5: Respect Inc and DecrimQLD support the repeal of Ch22A Criminal Code including the laws that criminalise sex worker safety. (p.14)

Recommendation 6: Respect Inc and DecrimQLD recommend inclusion of an example or explanatory note in subsection 217A, demonstrating that the intent of the section is not the police surveillance of young people engaging in sex work. (p.15)

Recommendation 7: Respect Inc and DecrimQLD recommend inclusion of an example or explanatory note in subsection 217C (1)(c) demonstrating that the intent of this subsection is not the targeting of the friends or family members of sex workers. (p.16)

Recommendation 8: We recommend the further removal of police from an enforcement role in relation to the Adult Entertainment Code. We recommend a review of the Adult Entertainment laws and those sections of the Liquor Act in order to address this. (p.17)

Recommendation 9: Respect Inc and DecrimQLD support the review of the new Act to decriminalise sex work after at least 4 and no more than 5 years after commencement, in line with the recommendation of the QLRC. (p.20)

Recommendation 10: We support the repeal of the Prostitution Act in its entirety. This repeal is essential to the decriminalisation of sex work. (p.20)

Recommendation 11: Social escort should be removed from the Child Employment Act as it has been from other Acts. (p.28)

Recommendation 12: Respect Inc is resourced to undertake an awareness program to address sex work stigma and inform sex workers about decriminalisation in line with QLRC Recommendation 38. (p.29)

Recommendation 13: Expungement of sex work offences is important to include in future legislation to prevent ongoing impacts on sex workers. (p.31)

Recommendation 14: We support the call for a review of the s216 Criminal Code definition of 'impairment of the mind', which criminalises sexual activity involving a person with an 'impairment of the mind', even when that person has capacity to consent to the sexual activity. (p.31)

Recommendation 15: Respect Inc and DecrimQLD recommend that the revised attribute of 'sex work activity' as defined in the Anti Discrimination Act (excluding 'adult' in Schedule 1 (a)), be included as a protected ground for vilification. (p.32)

Who we are

Respect Inc is the state-wide sex worker organisation in Queensland that provides a comprehensive health promotion and peer education program for sex workers. Respect Inc has offices and sex worker drop-in spaces in Cairns, Brisbane and the Gold Coast and provides regional outreach in other locations. Respect Inc supports sex workers from all sectors, including strippers, opportunistic sex workers and people who engage in sex for favours.

DecrimQLD is a committee of sex workers who have joined with Respect Inc to progress the removal of harmful and discriminatory sex work laws and achieve decriminalisation in Queensland.

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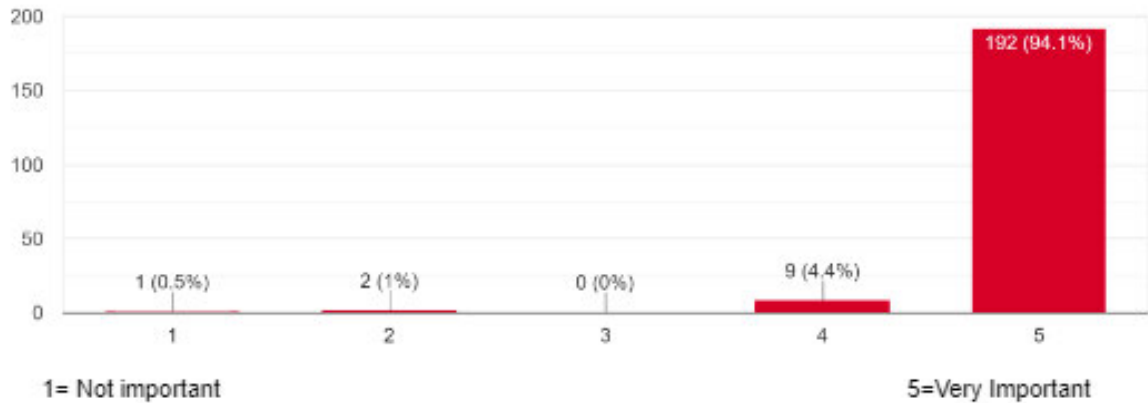
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Decriminalisation is essential reform

Recommendation 1: The committee recommend the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 be passed.

11. How important is decriminalisation of sex work to you?

204 responses



Respect Inc and DecrimQLD support the Bill being passed. It will deliver improved health, safety and rights outcomes for sex workers in Queensland. In our survey, 94% of sex workers, from across all sectors of the industry, indicated that decriminalisation was very important to them. This is because, as our survey also showed, there are major barriers to sex workers being able to comply with the laws, criminalisation of sex worker safety strategies and workplaces puts sex workers at unnecessary risk, and criminalisation and policing practices reduce access to justice.

Decriminalisation can deliver a low-cost and high-compliance model of regulation. Many of the outcomes deliver benefits for the broader community (public health and greater social cohesion) and free-up resources (police, PLA, medical) as well as delivering considerable benefits for sex workers when our work and workplaces are no longer criminalised and we are instead afforded the same workplace, health and safety rights as other workers. The proposed model has the ability to end the significant administration and resource burden of licensing on the industry and on government.

"I tried to report a crime and I was treated like I was the criminal because I do sex work. I would never do it again."

"...I would be extremely unlikely, if ever, to go to the police. I would be worried that I have outed myself to them, that I wouldn't be taken seriously, that I would be blamed for the way I am working. I would be more likely to make a report in NSW or the NT."

Part 1 Preliminary (Page 6)

Recommendation 2: Commencement by 1 July, 2024. Any delay will leave sex workers at risk of criminal penalties and their safety undermined.

A delayed commencement would mean unnecessarily continuing sex worker criminalisation and reduced access to justice. It also means sex workers would continue to have to choose between working legally or safely.

In other jurisdictions an increase in police focus on the sex industry including raids and charges has occurred ahead of laws changing. If this were to happen in Queensland, it would only add more strain to an already fragile relationship between sex workers and police, making it more challenging for sex workers to access justice and report crimes against them.

There are a number of transitional offences in Part 8 that mean any new charges laid will stand after commencement, so sex workers may be charged under the outgoing laws in the period between introduction and commencement, then have these matters heard in court and possibly be convicted and punished for those offences even after commencement, when the offences will no longer exist.

The two stage implementation approach in Victoria created major confusion within industry and regulators and resulted in much extra work as aligning the two was a complex task. Queensland must learn from the Victorian experience here and avoid a staged approach to implementation.

Part 2 Amendment of the Anti-Discrimination Act 1991 (Page 6)

Recommendation 3: We support Part 2 amendment of the Anti-Discrimination Act including cl4 replacing attribute 7(l) 'lawful sexual activity' with a new attribute 'sex work activity', and cl 5 - Omission of s 106C. **However we strongly recommend removal of 'adult' from the cl6 definition** as it unnecessarily would disadvantage and limit persons under 18 from the protection.

Sex workers in Queensland experience extremely high levels of discrimination, and reporting of discrimination is very low. Consultation with sex workers and a review of discrimination cases in Queensland demonstrates that the attribute 'lawful sexual activity' does not provide adequate discrimination protection for sex workers and fails to provide clear direction to the courts or the community.

Questions in the Queensland sex worker survey found 72.5% of participants had experienced discrimination and a further 14.2% were unsure if what they had experienced would be considered discrimination (because of confusion over what the attribute covers).

This scale of discrimination points to widespread and normalised unfavourable treatment of sex workers across many areas of life. Survey participants provided

detailed examples in the areas of goods and services provision, health care settings, accommodation, banking, superannuation and insurance, education, work and administration of state laws and programs as well as sexual harassment and vilification. [Appendix 1](#) provides examples.

“It [discrimination] is a day to day experience that compounds over time. I have been called names and dumped on a dark street by a taxi driver, told by a nurse that HIV positive sex workers should be jailed and then refused treatment when I disagreed with her, told by a real estate agent that ‘whores are dirty’ and not given a short term lease, charged more for accommodation, advertising and other services.”³[Survey participant 7]

“There are honestly too many different and varying instances to count.” [Survey participant 96]

‘Lawful sexual activity’ ineffective

The attribute ‘lawful sexual activity’ is severely limited, to such a degree that it is wholly ineffective in the majority of cases. In the court decision (*Dovedeen Pty Ltd v GK* [2013] QCA 116) it was decided that the ‘lawful sexual activity’ attribute covered the ‘status’ of being a lawful sex worker and not discrimination related to doing sex work.

It is also limited to covering only individuals who undertake ‘lawful’ sex work, in a context where approximately 90% of sex work occurs unlawfully as a result of outdated Criminal Code laws that criminalise many day-to-day activities essential to being a sex worker, including many safety strategies, alongside licensing laws that deem all sex industry businesses to be illegal, except for 17 licensed brothels across the state.

‘Lawful sexual activity’ also fails to provide clear direction as to who is covered by the attribute and what activities are protected from unlawful discrimination to the Queensland community, services and institutions as well as to the Human Rights Commission, QCAT, and the courts. This is demonstrated by the lengthy legal debates over the attribute and definition that have ensued in each case heard by the tribunal and the confusion among lawyers, sex workers and services as to rights and responsibilities.

Legal advice received by Respect Inc states:

*The effect of the legislative history and the decision in *Dovedeen* for sex workers in Queensland is that there is not sufficient protection from discrimination by the current Anti-Discrimination Act 1991 (Qld) in circumstances where:*

- *The person is a sex worker without the status of a “lawfully employed” sex worker; and / or,*
- *The alleged discrimination is based on the activity of engaging in sex work, as opposed to their status as a sex worker.”⁴*

³ Each quotation is from the 2022 survey of 204 sex workers who have worked in Queensland.

⁴ Per legal advice provided to Respect Inc by Cairns Community Legal Centre.

'Sex Work Activity' attribute

The new attribute 'sex work activity' will provide sex workers with improved coverage and protection under the Anti-Discrimination Act. It provides clarification in (a) that protections includes the act of providing sex work services and (b) that the protection also covers being or having been a sex worker.

The Anti-Discrimination Act already covers associates and people presumed to be the attribute in s8 'someone with the attribute, imputed to or presumed to have the attribute or an attribute they had (even if they didn't have it at the time' and family and associates in s.7(p) 'association with, or relation to, a person identified on the basis of any of the above attributes'.

Amendment to Sex Work Activity

The new attribute definition of 'sex work activity' is supported only with 'adult' removed. The existing attribute provides protection for sex workers of any age. The inclusion of 'adult' in this new definition is incongruous with the stated intention of other parts of the Bill that seek to protect persons under 18 years old by removing an existing protection.

This amendment will effectively mean a person 16 or 17 years of age who undertakes sex work, is excluded from protection under the Anti-Discrimination Act. The current definition does not include the word "adult" which means persons below the age of 18 are losing protections under the new definition.

All of the types of discrimination that sex workers of all ages experience, become compounding barriers to persons 16 and 17 years of age. Inclusion of the word 'adult' in the new attribute will also limit access to services for young sex workers and leave this marginalised group vulnerable to discrimination, with no access to justice.

As sex workers are already intended to be covered by Queensland's Act, removing the word "adult" from the definition would ensure more effective protections for all sex workers. It is not a question of whether sex workers should be protected.

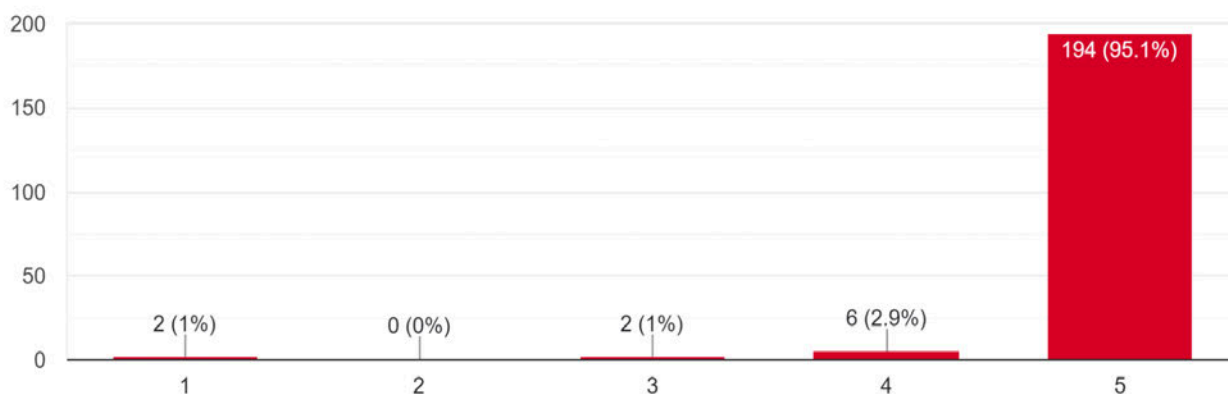
We support cl 5 - Omission of s 106C - repealing the lawful discrimination exemption 106C Accommodation.

Repeal of exemption 106C will remove lawful discrimination and return a requirement to treat sex workers fairly and in-line with other Queenslanders. This repeal is a recommendation from both the QLRC review and the Building Belonging review of the Anti-Discrimination Act by the Queensland Human Rights Commission.⁵

⁵ QHRC, Building Belonging: Review of Queensland's Anti-Discrimination Act 1991. (2023) https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0012/40224/QHRC-Building-Belonging.WCA.G.pdf

21. Currently accommodation providers are legally allowed to treat sex workers (suspected of working there) less favourably. This may include evi...re. How important is the repeal of this law to you?

204 responses



This is particularly important as Australians are currently facing a housing crisis, leaving many people with no fixed address or secure accommodation, and rentals in very high demand. For sex workers, housing instability is a major concern, and it is exacerbated by accommodation providers being able to lawfully discriminate against us.

"I have found it difficult to get leases - I have been refused on the grounds that I'm a sex worker. I have been evicted on the grounds that I'm a sex worker. I have been evicted from hotels I was working from." [Survey participant 188]

Omitting s106C would allow sex workers to be treated fairly within accommodation, or to be able to seek recourse if discriminated against.

Hotel providers would no longer be able to charge sex workers at higher rates than other guests, and sex workers won't feel like they need to comply with unreasonable and unlawful requests such as to provide free services to be allowed to stay in the hotel.

"My stay at hotels have been cut short unless I paid more...The manager of the body corporate threatened to tell the neighbours if I didn't provide sex for free." Survey participant 205

This is particularly problematic in regional areas where sex workers can be evicted with nowhere to stay, or stranded due to legal discrimination.

Part 3 Amendment of City of Brisbane Act 2010 and

Part 7 Amendment of Local Government Act 2009

Recommendation 4: Respect Inc and DecrimQLD support Parts 3 and 7 of the Bill, preventing local council from banning or unnecessarily imposing extra regulations on sex work in their areas. We also recommend sex workers working in small groups and collectives should be able to do so without barriers to compliance.

Restrictions on local laws

We support the inclusion in Part 3 and 7 that local councils would be restricted from making local laws that ban or regulate sex industry businesses. The amendment is similar to an amendment in Victoria's Sex Work Decriminalisation Act 2022 intending to prevent new local laws from inconsistency with the Act and is a recommendation in the QLRC report. It is a clear statement from the Government that local councils should not be looking for ways around decriminalisation. The intention of the proposed Parts 3 and 7 of the Bill align with the Victorian legislation by disallowing local laws that would undermine the intention of decriminalisation in Queensland. This inclusion is important because history has demonstrated that the levels of discrimination sex workers experience generally, also impact on local government decisions and approaches.

'Many of the women I spoke with prided themselves on their 'work legality' but any requirement for disclosure or planning permission would push them into the shadows of illegality or non-compliance, and potentially deter them from accessing police, health or other services as needed.' –Former sex worker QLRC submission

'[I]f the Queensland Government decides to adopt planning regulations that are convoluted and impossible to comply with, or unreasonably restrictive, people will simply continue to operate outside of the law.' –Sex worker QLRC submission

Local government should play a role in the effective implementation of decriminalisation. However, decades of research and evidence shows that almost all NSW councils have taken advantage of discretionary powers and DA processes to behave in an unreasonably hostile way towards brothels, massage parlours and sex workers broadly, even against the advice of their own planning staff and lawyers. This has effectively undermined the implementation of decriminalisation in NSW and is despite the fact that sex work is located across every suburb and city area in NSW.

Planners often find themselves caught between community disputes and internal political machinations when development proposals for these activities are submitted for approval.⁶

Council discretion and decision making over DAs in NSW has caused harm. Academics and sex workers argue this is because when given the opportunity, councils actively exclude sex industry workplaces from civil participation. Evidence shows this has led to decades of unreasonable closure orders, unwanted media attention and lengthy court cases. In particular, requiring sex workers to apply for development approval draws

⁶ Papadopoulos, C. & Steinmetz, C. (2011). 'Why is sex so complex? An examination of commercial sex premises in the New South Wales planning system'. Paper presented at the *World Planning Schools Congress*, Perth, 4-7 July 2011. <https://apo.org.au/sites/default/files/resource-files/2011-12/apo-nid60050.pdf>

attention and vilification to local scale-appropriate workplaces that research shows would otherwise operate without neighbours even being aware they were there.⁷

'When I'm working from home, I am very discreet and conscious of my surroundings and neighbours. I have set business hours... I don't have a red light on my letter box (people do not know what happens in my house). I do not have a line-up of clients down the street. An average week I would see 5–7 clients. My neighbour gets more visitors than me. Home hairdressers, beauty salons etc. have more traffic. My impact on my neighbours is non-existent. It's stigma and prejudice that is the only thing that creates issues.' –Sex worker submission to the QLRC review.

In order to encompass the current landscape of sex workers working together, planning approaches must not exclude collectives of private workers from being eligible for inclusion in the new framework. Sex workers currently work in small groups in Queensland without impacting the noise levels, parking, traffic or any other amenity. They already live and work in a range of zones and go unnoticed, because sex workers and their clients have an imperative to maintain discretion, which would remain the case after decriminalisation.

If private sex workers working alone or in small groups were required to make a development application, we would see a repeat of the NSW experience, with extremely low or no compliance. The QLRC recommended against requirements for sex workers to work alone, and Respect Inc and DecrimQLD recommend that sex workers be able to work together in small groups or collectives without risking privacy, confidentiality or penalty because of assessment requirements. If this is not the case, the new model of regulation will, again, result in extremely low levels of compliance. Low levels of compliance may land us in the situation of having a new group of undercover actors taking the place of police in our bedrooms - council inspectors or private investigators engaged by councils as is the case in NSW and previously in Victoria.

If permitted, arbitrary decisions by councils to zone sex workers out of inner-city and suburban locations would be a decision based on stigma and not actual impact on public amenity. Sex work businesses can also have positive impacts when they are allowed to operate alongside other industries, both in the reduction of stigma towards sex work businesses and the flow-on economic benefits.

Queensland should take the lessons learnt from the NSW experience and avoid the costly and damaging effects of council discretionary powers on Government, councils and sex workers alike.

When the Prostitution Act was passed in December 1999 small towns with populations below 25 000 were able to apply for ministerial exemptions to allow them to deny

⁷ Prior, J., Crofts, P. & Hubbard, P. (2013), 'Hiding immorality in plain view', *Geographical Research*, vol 51, pp. 354-363. <https://doi.org/10.1111/1745-5871.12033>

council approval for all licensed brothel DAs. By 2006-7 there were 204 small towns in Queensland that had applied for and received exemption from the laws to approve applications for brothels. As a result, brothels were banned in more than 200 Queensland towns and only 12 of 77 councils have ever approved a brothel. Bill Carter, the Chair of the Prostitution Licensing Authority at the time, accused local authorities of being 'needlessly obstructionist' toward brothel applications: *'The major concern in relation to the operation of the legislation has really been the attitude of local authorities. The approach of [councils] has been extremely negative. It has been said that local authorities have sought to hijack the legislation and they've made it extremely difficult for applicants to get approval in respect of development applications made for premises.'*

The history of problems with council discretion in Queensland are a strong argument against retaining or extending these prohibition/discretionary powers.

Queensland councils must not be allowed to become the new site of marginalisation and targeted social exclusion of the sex industry. Maintaining, extending or allowing councils discretionary power and decision-making roles over approvals in Queensland has the potential to replicate the failed current framework, where ill-fitting laws and regulations are exercised simply because they exist. Council discretion after decriminalisation would allow the same.

Part 4 Amendment of Criminal Code (Page 8)

Recommendation 5: Respect Inc and DecrimQLD support the repeal of Ch22A Criminal Code including the laws that criminalise sex worker safety.

The current criminal approach to sex work regulation has failed in its intention to 'protect' sex workers, and instead the unintended consequences have been that many of the laws that were meant to protect sex workers have been used against them, their partners, family members and friends, especially when police have sought to target them for charges under the current Criminal Code Chapter 22A.

Sex workers will be much better protected by law under the new Act, with sex work completely decriminalised to enable sex workers to report crime and access WHS protections.

Decriminalisation is in line with the recommendation from The Global Alliance Against Traffic in Women (GAATW) for the 'complete' decriminalisation of sex work:

'Complete decriminalisation of sex work is not a panacea, but it is the first step to better protect sex workers' rights. The decriminalisation argument is based on an understanding that sex work is work, and is a precondition for establishing safer, healthier workplaces in an industry in which sex workers' rights are protected by labour laws, and in which sex workers are afforded the same labour protections which other

workers enjoy. As in other sectors, this would lead to fewer opportunities for exploitative working conditions, including human trafficking.⁸

New offences

While the stated intention of the new offences are to provide protections to persons under 18, we remain concerned about the new subsection *Criminal Code 217A (Obtaining commercial sexual services from person who is not an adult)* and how the policing of this offence may impact on the under 18 year old. We know from the experience of how the Criminal Code offences have been policed, and also in other jurisdictions, that in order to make an arrest in relation to a person purchasing sexual services, it is the sex worker who is surveilled by police.

Young sex workers are often the most marginalised, many of whom are queer, with unstable housing, estranged from family, and engaged in survival sex work. Police surveillance of young sex workers means that this already marginalised group is more likely to come into contact with police for a range of reasons unrelated to sex work which may result in a range of other negative outcomes including charges against the young person. Police surveillance has a negative impact on a sex worker's ability to negotiate boundaries as the transaction needs to be done in a faster manner to avoid detection. It means young people are less likely to report crimes against them to police, they are less likely to engage in contact with support services, and results in an extremely detrimental effect on their mental health and wellbeing.

Recommendation 6: Respect Inc and DecrimQLD recommend inclusion of an example or explanatory note in subsection 217A, demonstrating that the intent of the section is not the police surveillance of young people engaging in sex work.

We have similar concerns with subsection 217C (1) (c) -

(1) A person who— receives a payment or reward that the person knows, or ought reasonably to know, is derived directly or indirectly from commercial sexual services provided by another person who is not an adult;

An example or explanatory note will be required here to explain that the intention of this section is not for it to be used against the friends and family of sex workers, especially those who may be offering support to vulnerable young people by providing, for example, a room for rent.

We know from the experiences of sex workers working and having friends, family, household members and support people charged under current laws (specifically Criminal Code Ch 22A 229H), that when there is room for interpretation as there is in this new section by the use of *'ought reasonably to know'* and *'directly or indirectly'* that people close to and supporting sex workers will be charged. We understand that this is not the intent of this section, therefore we recommend that the intent be made clear through the use of an example or explanatory note.

⁸ Global Alliance Against Traffic in Women (GAATW). (2018). Sex workers organising for change: Self-representation, community mobilisation, and working conditions. p. 40.

Recommendation 7: Respect Inc and DecrimQLD recommend inclusion of an example or explanatory note in subsection 217C (1)(c) demonstrating that the intent of this subsection is not the targeting of the friends or family members of sex workers.

Criminalisation of sex workers working together

A significant reason sex workers find it difficult to comply with laws in Queensland is the inability to work together with another sex worker: at the same hotel; to share accommodation; live together; drive each other to work (bookings) or provide any other practical support for another sex worker.

Safety was the most commonly stated reason that sex workers found it difficult to comply with the current laws. Many sex workers explicitly stated that they choose to work illegally in order to protect their safety. For sex workers, safety took priority over complying with sex work laws, which they felt were arbitrary at best, and at worst purposefully harm and punish sex workers. In the words of survey respondents:

"I don't comply or I would risk my safety. If I don't come home who will look after my family." [Survey participant 98]

"Yes. The nobody, specifically other sex workers, in the house law is ridiculous and makes the job dangerous...i try to avoid working alone when i can. i don't like putting my life or health at risk for arbitrary laws." [Survey participant 44]

Some sex workers work illegally some or all of the time because they cannot afford to cover overheads alone; to subsidise their rent or mortgage; because hiring a security guard for safety is prohibitively expensive; or because they can not afford to lose the additional income from doubles bookings.

Many sex workers choose, or want to have the option, to work with others to support their mental wellbeing and social needs. The legal requirement to work alone is socially isolating, and not standard in any other industry. The need for peer support is particularly true in a stigmatised profession, where sex workers may not be able to share details of their work with non-sex work peers to support their social and mental health.

The current criminalisation of sex workers working together puts them in a precarious situation by both empowering perpetrators of violence to act with impunity, and making it more difficult to access justice in cases where sex workers are the victims of crime.

Even for sex workers who do work alone in order to stay within the law, it is almost impossible to work legally, given the stipulation that no two sex workers should work from the same premise, including a hotel.

The prohibition on communication between sex workers is another major reason sex workers find it difficult to comply with the law. Specifically, the inability to use 'check-in'

calls or let another sex worker know the details of a booking for safety. In the words of one sex worker:

“Yes. I live in fear of one day being raped or murdered by a client because I can’t text another worker to check in before and after bookings.” [Survey participant 59]

As several survey respondents highlighted, peers are often the main support network for sex workers because they have the practical knowledge to keep one another safe, and sometimes because sex workers are not ‘out’ to their friends and family. As one sex worker wrote:

“There’s absolutely no way I’m going to work there without sharing the details of my sessions with a safety person, and most of my friends are sex workers. I’m aware that this would put me in breach of the law.” [Survey participant 38]

Access to justice

Sex workers in Queensland experience significant barriers to accessing justice. More than 90% of the industry is criminalised, including most workplaces.

The current laws, combined with a problematic culture of policing sex work in Queensland, have resulted in sex workers targeted for fines and arrest and the majority of crimes against sex workers going unreported. When sex workers attempt to report crime it is often not taken seriously. 76.5% of sex workers said they would not make a police report under the current laws. We produced this synopsis on sex workers’ access to justice, based on sex worker experiences revealed in our survey:

<https://respectqld.org.au/wp-content/uploads/Decrim/Access-to-Justice-Survey-Synopsis-2-sex-workers-in-QLD-1.pdf>

10 years after decriminalisation in New Zealand, statistics showed sex workers are 70% more likely to report crimes. Relationships between police and sex workers improved across the board including justice outcomes in court.⁹

This important law reform means sex workers would have the ability to utilise safety strategies legally, without the fear of fines or criminal charges.

Part 6 Amendment of Liquor Act 1992 (Page 17)

Recommendation 8: We recommend the further removal of police from an enforcement role in relation to the Adult Entertainment Code. We recommend a review of the Adult Entertainment laws and relevant sections of the Liquor Act in order to address this.

Part of the sex work community (strippers) have not been included in this repeal Bill even though that was the initial intention. Strippers work under a licensing framework with punitive laws and no WHS protections or industrial rights.

⁹ Abel GM. A decade of decriminalization: Sex work ‘down under’ but not underground. *Criminology & Criminal Justice*. 2014;14(5):580-92.

An Adult Entertainment Permit is required under *the Liquor (Approval of Adult Entertainment Code) Regulation 2002* (the Code). This is the Code for adult entertainment referred to in section 103E of the Liquor Act 1992. This Code prescribes the live entertainment that may be performed for an audience, by a person performing an act of an explicit sexual nature (adult entertainment), on licensed premises or premises to which a general purpose permit or restricted club permit relates under an adult entertainment permit.

A Permit is applied for by the licensee, however many of the restrictions focus on the activities of the individual performing the adult entertainment. Activities not permitted under an Adult Entertainment Permit are outlined in the Code. The activities not permitted according to the Code go further than what is restricted in the Act, by also excluding penetration by an object, touching genitalia or placing genitalia or anus close to someone's face.

The Code has not been reviewed for over two decades and it is not known why there are restrictions beyond those in the Act.

Police continue to be a co-regulator of the Act with compliance checked mainly by QPS to approximately 20 venues across Queensland, primarily around Brisbane. The QLRC did not review the relevant sections of the Liquor Act or the Code and did not consider the intersection of Adult Entertainment laws with other sex work laws in the Criminal Code or Prostitution Act.

However, the Liquor (Approval of Adult Entertainment Code) Regulation 2002 shows how they are intertwined in s12 and s13:

12 This Code is to be read and construed with the Criminal Code, Prostitution Act 1999, Prostitution Regulation 2000, Liquor Act 1992 and Liquor Regulation 2002.

13 To the state of any inconsistency between this Code and the Liquor Act 1992 or Liquor Regulation 2002, Prostitution Act 1999 or Prostitution Regulation 2000 or Criminal Code, those enactments shall prevail over the Adult Entertainment Code.

It is imperative that the Adult Entertainment Code and related sections of the Liquor Act are reviewed, particularly in light of the decriminalisation of sex work outlined in this Bill. While this process should not hold up the progress of the Decriminalisation Bill, the process of review should be progressed urgently with legislative and non-legislative change to follow.

We recommend a review of the Adult Entertainment laws and the relevant sections of the Liquor Act.

We note that Victoria's Sex Work Decriminalisation Act 2022 includes an amendment to the Liquor Control Act 2023 to change the definition of sexually explicit entertainment as part of decriminalisation. Changes like this should follow this process.

We support the clause 23 amendment that removes the Police Commissioner from a role in the development of the Code, in line with the intention of decriminalisation. However, we are very concerned that police will maintain an enforcement role in relation to the work and workplaces of adult entertainers.

Queensland Police Service are currently investigators under the [Liquor Act 1992](#) and have significant entry powers under the Criminal Code. Strippers describe police regularly visiting licensed venues and entering the 'floor' or area where individuals are conducting their work. It is believed these visits are to check compliance with the Act. However, that role seems particularly unclear and without effective oversight.

We recommend the further removal of police from an enforcement role in relation to the Adult Entertainment Code.

The result of this Bill (and the review) not including the decriminalisation of strippers is that many sections of the drafting were required to maintain a 'status quo' in the Adult Entertainment laws while decriminalising sex work.

The intersection of the Acts have resulted in drafting complexities and in some areas a broadening of the legislation. For example Cl 22 Inserts a definition of 'interest in a sex work business' to replace the exclusion from applying for an adult entertainment permit if the person has 'an interest in a brothel'. While point 2 of the definition clarifies that this does not include persons who are the sole operator of a sex work business, it still encompasses a much larger group of people than those with an interest in a brothel. This broadening and any impact should also be considered in the review of the Adult Entertainment Code.

Part 8 Amendment of Penalties and Sentences Act 1992 (Page 22)

Refer to Recommendation 2: Commencement by 1 July, 2024. Any delay will leave sex workers at risk of criminal penalties and their safety undermined.

There are a number of transitional offences in Part 8 that mean any new charges laid between the passage of the Bill and the commencement date will stand after commencement. This means that a person may be charged under the current laws, even after this Bill has been passed, and have the matter heard in court, and then be convicted and punished. The possibility of sex workers continuing to be charged after the passage of this Bill is completely out of step with the spirit of decriminalisation. If sex workers are able to continue to be charged under these Criminal Code offences until commencement, it is imperative that the commencement date is set as 1 July, or sooner if practicable.

In decriminalised jurisdictions where criminal charges continued in the lead up to commencement, there has been a stark increase in the number of sex workers charged during that time. This is a situation that Queensland must work to avoid if the intention of the Government in decriminalising sex work is to increase sex workers' health, safety, rights and access to justice. If sex work is to be viewed as work, the risk of an increase in criminal charges of sex workers in the lead up to commencement is unacceptable.

Part 9 Amendment of Work Health and Safety Act 2011 (Page 23)

Recommendation 9: Respect Inc and DecrimQLD support the review of the new Act to decriminalise sex work after at least 4 and no more than 5 years after commencement, in line with the recommendation of the QLRC.

Similar reviews have taken place in other jurisdictions when sex work has been decriminalised, and these reviews have provided positive evidence of the effectiveness of a decriminalised sex work industry on the safety of sex workers, public health, access to services, relationships with law enforcement and levels of compliance.

In order for a review of the Act to truly reflect the experiences of sex workers throughout implementation and beyond, it is imperative that sex worker organisations are consulted throughout the review process. Sex worker organisations in Queensland (Respect Inc and Scarlet Alliance) have close and ongoing relationships with sex workers across all sectors and are able to consult with our membership base on matters relevant to the review.

Membership of both of these organisations are made up entirely of sex workers. Respect Inc and Scarlet Alliance will be key organisations for consultation throughout the review process.

We recommend that there are no further or earlier reviews on the effects or effectiveness of decriminalisation in any area. Communication to sex workers, training and implementation will take time, so to ensure that the outcomes of the review are an accurate reflection of the fully implemented effects of a decriminalised sex work industry, it should not take place any sooner. It should also not be ongoing, to ensure that the burden on sex workers to contribute to the review without further disruption to their work and lives is minimised.

Respect Inc should also be properly resourced to undertake any role required in this consultation and review.

Part 10 Repeal of legislation (Page 35)

Recommendation 10: Respect Inc and DecrimQLD support the repeal of the Prostitution Act in its entirety. This repeal is essential to the decriminalisation of sex work.

The Prostitution Act:

- creates the licensing system that has failed as a regulatory model in Queensland, criminalising all but 17 licensed brothels,
- establishes the Prostitution Licensing Authority (PLA) responsible for the licensing of this small component of the industry - 17 brothels,
- sets the approved form of advertising and gives the PLA responsibility for development of the guidelines

- establishes criminal offences related to condom use, and working with an STI
- criminalises sex workers working in pairs or collectives
- criminalises street based sex work
- and other offences

We address each of these areas below.

Licensing System

Queensland has almost twenty-five years of experience with a licensing framework. The current system is expensive and places an unnecessary burden on the industry and government, excludes many sex industry businesses and business models, and only regulates approximately 10% of the sex industry in Queensland. Research commissioned by the PLA in 2009 found that licensing created a two-tiered industry with the majority of sex industry workplaces criminalised, that licensing created no measurable health benefits for sex workers and concluded that 'sex workers may be in a more precarious position now than they were when the legislation was first passed'.¹⁰

Currently there are only 17 licensed brothels in Queensland, this number has steadily decreased from approximately 27 at the highest point. Even at its highest number the licensed brothel sector is only a small percentage of the industry. After a survey of sex workers in Queensland we produced this synopsis on the impacts of licensing.

<https://respectqld.org.au/wp-content/uploads/Licensing-Synopsis.pdf>

Police are the primary regulators under licensing. The system maintains a major role for police in relation to approximately 90% of the industry that is not able to meet the licensing requirements. Our experience in Queensland demonstrates that illegal workplaces and sex workers who work there are being forced outside of the legal system due to the licensing framework, placing them at risk of police charges for simply doing their job safely.

Licensing has resulted in reduced reporting of crimes to police. Sex workers avoid contact with the police due to fear of criminal repercussions and increased targeting under a licensing system, as well as a concern that their report won't be actioned; this leads to serious underreporting of crime. Business owners have been reported to not support sex workers to report crime that has happened on a licensed brothel premises because business owners are fearful of this impacting on their licence.

In our survey 73.5% of respondents said that they would not make a complaint to the police if they were assaulted.

Compliance barriers

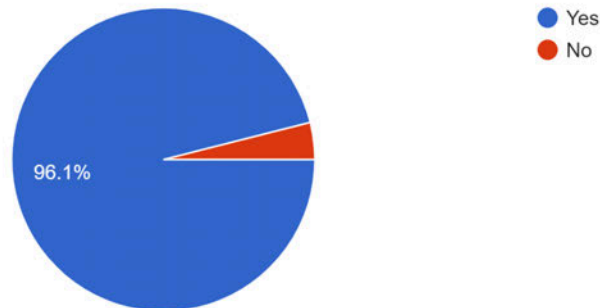
Eighty-nine percent of sex workers in our survey stated they find it difficult to comply with current laws. When the licensing system is removed, there will be much higher rates

¹⁰ Edwards. A. (2009). *Selling sex : regulating prostitution in Queensland: A report to the Prostitution Licensing Authority.*

of compliance.

12. The licensing laws in QLD only allow sex workers to work in a licensed brothel or alone. Would having more options be better for you?

203 responses



Ninety-six percent of sex workers in our survey stated they would prefer more workplace options than licensed brothels or working alone.

We submit that our organisations and members want something better for Queensland. We want a framework that promotes compliance, and provides an incentive to be part of the legitimate industry. To do this, policy makers must also shift their approach to the sex industry *away from perceptions to facts*. Stigma should not underpin decisions on what is needed to effectively regulate the sex industry in Queensland.

Unintended consequences of licensing—two-tier outcomes

One of the problems with any type of licensing of sex work, regardless of whether it is the Queensland framework with a PLA, or the (now repealed) Victorian approach under the BLA, is that some sex work business owners who are eligible to obtain a licence blame their unrelated business issues on competition from 'unlicensed' or 'illegal' businesses. Unfortunately, the Prostitution Licensing Authority has contributed to this messaging.

This magnifies division in the industry and results in propaganda campaigns and work practices that are hostile toward other sex workers who are not a part of the licensed industry. This unjustified and illogical 'blame game' has serious consequences for sex worker community building, peer education and health promotion. This is shown by responses to Q30 of our recent survey where 54.4% of licensed brothel workers say they did not receive any information about Respect Inc.

Licensed brothel workers are reluctant to report crime to police

It is not just sex workers in criminalised work sectors who are reluctant to report crime to police. Our survey found that sex workers who work in licensed brothels were also reluctant to report crime to police, and they are less likely to do so now than they were five years ago.

In our 2022 survey of Queensland sex workers more participants who worked in licensed brothels said that they would not report a crime to police, 73.5% compared with 50% of the licensed brothel workers who responded to the 2017 *Regulating Bodies*¹¹ survey. In the most recent survey only 26.5% said they would report to police, compared with 46% in the 2017 survey. This suggests that sex workers in licensed brothels have become less confident about reporting assaults in the workplace to the police in the last five years.

Work conditions under licensing

Sex workers working in licensed brothels also report sub-optimal work conditions that don't align with basic Workplace, Health and Safety requirements including 45% of respondents indicating they are penalised if they refuse to see clients. 54% of brothel workers also reported that the brothel they work in does not allow workers to do private work on the side. Sex workers are currently referred to by management as sub contractors, pay their own tax, superannuation etc, are not employees and do not receive wages paid by the brothel. It is unreasonable that any business should expect that a worker works only in their business. Industrial rights will be more accessible to sex workers under a decriminalised sex industry with clear WHS requirements.

Prostitution Licensing Authority (PLA)

We support the abolishment of the Prostitution Licensing Authority as recommended by the QLRC report. The Prostitution Licensing Authority was largely responsible for the licensing of the 17 brothels and checking compliance at only those businesses. They also managed the licensing of managers. As these matters will no longer be required we support the detailed approach in the Bill to the closure of the PLA. Workplace Health & Safety in workplaces which will be regulated by WHSQ as the regulator will take the place of the PLA under decriminalisation. Sex workers are very aware of WHS in their workplaces already, as evidenced in the synopsis based on sex workers' understanding of WHS from our survey.¹²

When WHS guidelines are developed in consultation with sex workers, there will likely be high levels of understanding of people's rights and obligations as well as high levels of compliance.

Public health

We support the repeal of public health related offences in the Prostitution Act as recommended by the QLRC:

4.89 Removing the offences in sections 89 and 90 of the Prostitution Act aligns with evidence-based best practice in public health. National and state sexual health policies and action plans support informed decision-making, voluntary

¹¹ Respect Inc. (2017). *Regulating bodies: An in-depth assessment of the needs of sex workers [sexual service providers] in Queensland's licensed brothels*, p. 21.

<https://respectqld.org.au/wp-content/uploads/Documents/Regulating-Bodies-BWNA-2017.pdf>

¹² DecrimQLD "Let us prioritise our safety: Synopsis 4: Work Health and Safety (2023)

<https://respectqld.org.au/wp-content/uploads/Decrim/WHS-Survey-Synopsis-4.pdf>

testing and treatment, access to information and health care, and community led health promotion programs for the successful prevention of BBVs and STIs.

Effectively the same laws were repealed in Victoria in 10 May 2022 and there have been no negative impact on the industry or public health, but many benefits for sex workers in reduced stigma.

Sex workers have lower or equivalent rates of STIs with the general community, high rates of condom use, high rates of sexual health testing, and peer education and health promotion is a more effective way to ensure good public health outcomes than criminal laws.¹³

A better system is for a focus on peer education, improving access to free and anonymous testing and enabling sex workers to make informed decisions about best-practice safe work practices and testing.

Peer education programs (like Respect inc) have been instrumental since the beginning of the HIV pandemic¹⁴ in persuading brothel managers and workers to adopt safer sex practices. Condom use in brothels rose from under 11% of sexual encounters to over 90% between 1985 and 1989 and high rates of condom use have been consistently maintained by sex workers since, with the health of sex workers improving commensurately.¹⁵

This major contribution to HIV and STI prevention by sex workers and sex worker community organisations is now recognised as an essential component of HIV and STI prevention in Australia:

*Continued health promotion and prevention efforts of peer-based sex worker organisations have sustained the low prevalence of HIV among sex workers.*¹⁶

*Strong and sustained health promotion programs among sex workers have led to rates of STI in this priority population among the lowest in the world.*¹⁷

Respect Inc promotes and supports sex workers' uptake of safe working practices and regular testing, which is best achieved through the community development approach of peer education, WHS guidelines and access to free, voluntary and anonymous testing.

¹³ Australian Government, Health Department. (2018). Fourth national sexually transmissible infections strategy. [https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/STI-Fourth-Nat-Strategy-2018-22.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/STI-Fourth-Nat-Strategy-2018-22.pdf)

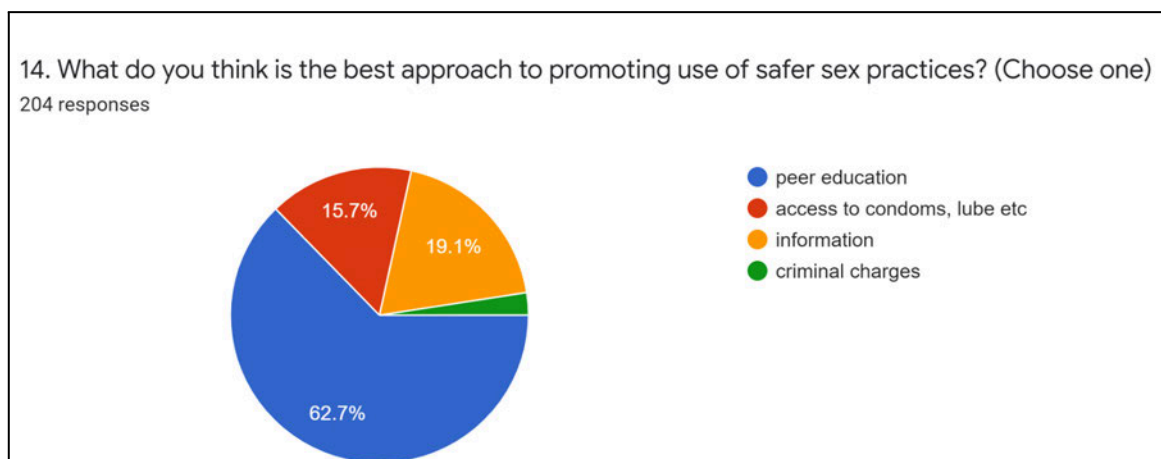
¹⁴ Australian Broadcasting Corporation (ABC). (2007). *Rampant: How a city stopped a plague* (part 5). <https://www.youtube.com/watch?v=gqrcHF10Rk&list=PLZ9KDADG-2mhngQci4JqJnSqbWWwPmqOw&index=5>

¹⁵ Donovan, B., et al. (2012). p. 11.

¹⁶ Australian Government Department of Health Eighth National HIV Strategy 2018-2022 p. 14. [https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/HIV-Eight-Nat-Strategy-2018-22.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf)

¹⁷ Australian Government, Health Department (2018) *Fourth national sexually transmissible infections strategy*, p. 14. [https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/STI-Fourth-Nat-Strategy-2018-22.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/STI-Fourth-Nat-Strategy-2018-22.pdf)

This was supported in our recent survey where 62.7% of sex worker participants selected peer education as the best approach to promoting the use of safer sex practices, 19.1% selected information, 15.7% selected access to condoms, lube, etc. Only 2.5% chose criminal charges as helpful in promoting safer sex practices, as shown in the graph below:



Laws criminalising condom use, sex workers living with STIs and sexual health testing are harmful to public health and do not achieved positive health outcomes:

*The public health evidence clearly shows the harms associated with all forms of sex work criminalisation, including regulatory systems, which effectively leave the most marginalised, and typically the majority of, sex workers outside of the law. These legislative models deprioritise sex workers' safety, health, and rights and hinder access to due process of law.*¹⁸

The idea that criminal laws and police enforcement are needed to protect the wider community and maintain good sexual health of sex workers reinforces harmful stigma.¹⁹ It is also counterproductive to the desired health outcomes²⁰ and is recognised in state and national policy as creating barriers to accessing health services.

Advertising

Queensland sex workers have endured a confusing and complex system of advertising restrictions for over two decades. Section 93(1) of the Prostitution Act makes it an offence for a person to publish a sex work ad that describes the services offered. Various iterations of the restrictions developed by the PLA have made it very difficult for

¹⁸ Platt, L., Grenfell, P., Meiksin, R., Elmes, J., G. Sherman, S., Sanders, T., Mwangi, P., Crago, A-L. 2018 [Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies](#) | PLOS Medicine

¹⁹ Stardust, Z. et al 2021.

²⁰Jeffreys, E., Fawkes, J. & Stardust, Z. (2012). [Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia](#), *World Journal of AIDS*, vol 2, pp. 203-211.

sex workers to comply or to know if they comply. Many sections of the restrictions have gone beyond what is set out in the Act.

While not used as often in the last two years, for many years fines in the form of a penalty infringement notice (PIN) have been used against sex workers found not compliant. However, the fine did not outline the problem with the advertisement, only that it was an offence against the Act. Decades of advocacy by sex workers and sex worker organisations resulted. Some sex workers also noted that the inability to state what they do offer in advertising causes an unnecessary administrative burden to respond to inquiries and makes it more difficult for clients to find services that suit their needs.

For other sex workers, the advertising regulations were so strict that they had found themselves inadvertently breaking the law without intending to. This was particularly the case for sex workers who worked across states and had to negotiate several different legal frameworks. As survey respondents wrote:

"The list of words forbidden in advertising is truly insane, and it is difficult to ensure all of my ads are in compliance. I have lived and worked in other states, and sometimes third party websites steal my ads to post on their sites without my consent; this means old ads may be visible that we're compliant in the states I posted them in, but aren't in QLD and law enforcement may attempt to charge me for non compliance." [Survey participant 28]

"The other difficulty is the laws around advertising. I've been in sexwork for four years and I STILL do not know what is and is not legal. It is unclear and there is no one to ask for guidance or clarification." [Survey participant 161]

In our survey sex workers described how the advertising laws negatively affect their safety and how they negotiate their services because of the inability to clearly communicate service inclusions to clients. As one participant wrote:

"Yes, I hate not being able to advertise my actual service. A few times people have been really angry when they turned up and found out I wasn't offering the services they wanted - it was really scary and i had to decide if I was going to do the service or try and get an angry person out of where i was staying// Being able to clearly list the service you offer is a huge part of being able to have safe intera[c]tions with clients." [Survey participant 35]

Section 95 makes it an offence to advertise sex work and make any reference to a massage service. They said they need to be able to describe their services, including massage, in their advertising to negotiate boundaries effectively, manage client expectations, and avoid misunderstandings or conflicts.

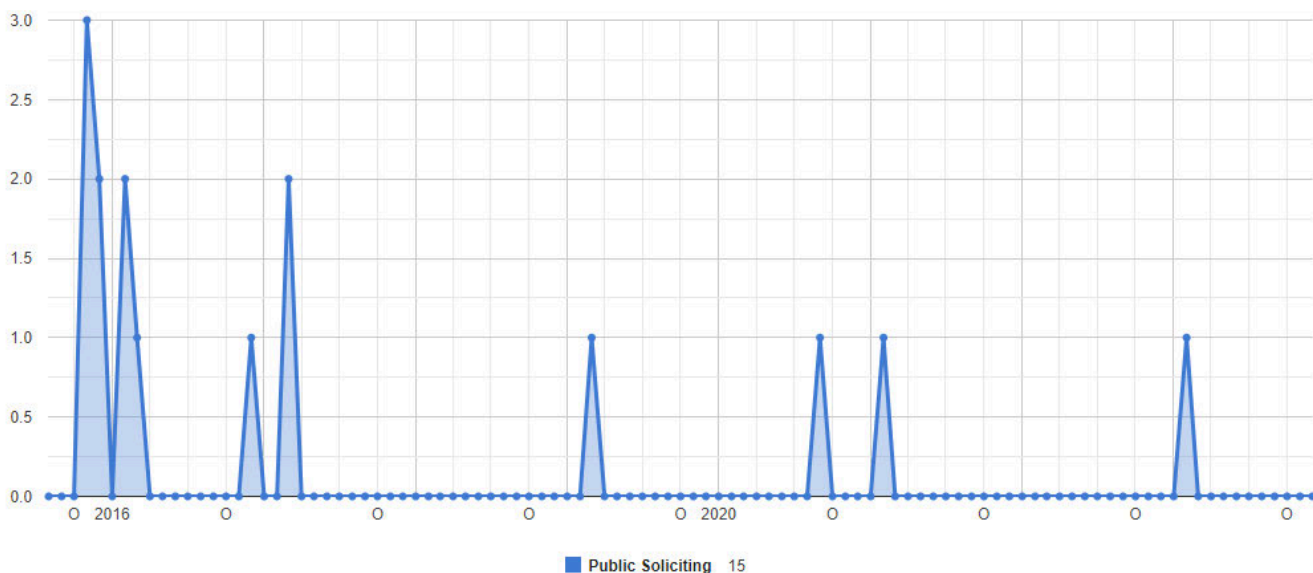
We support the repeal of sex work specific advertising restrictions, and the national requirements that apply to all advertising applying to the sex industry, in line with the QLRC report 2.135 where they state:

“In our view, it is appropriate to deal with community expectations and concerns under the general laws, standards and codes that apply to all advertising, including the Australian Association of National Advertisers Code of Ethics. That Code prohibits the harmful use of sex, sexuality or nudity in advertising and requires content of this kind to be appropriate for the relevant audience. There are also rules about the use of explicit language and overtly sexual imagery. A member of the community who believes an ad does not meet the standards can make a complaint to Ad Standards.⁷⁵”

Street based sex work

We support the repeal of these offences in the Prostitution Act as they undermine human rights and would prevent the benefits of decriminalisation applying to all sex workers, including the very small street-based sector in Queensland, which constitutes less than 2% of sex workers.

The internet has resulted in changes to where sex workers meet clients and where clients access sex workers' services. In the last decade (as shown in this table below) there have been negligible charges under this offence. With very low offence numbers (0 or 1 in most years) it is fair to assume that this equates to negligible community public amenity or nuisance impact.



The QLRC report considered these offences in detail on pages 26-39 and recommended the repeal of the offences. Maintaining a criminal law against public soliciting is harmful to sex workers because it criminalises, maintains stigma and stereotypes a small part of the sex work community that remains at risk of police interactions or charges.

Criminalisation creates significant barriers for street-based sex workers to report crime to the police for fear that reporting will result in charges being laid against them.

Human Rights Act (HRA) incompatibility

Many existing current sex work laws are unlikely to be compatible with the HRA. Legal advice provided to Respect Inc and DecrimQLD also indicates that criminal laws against public solicitation, loitering and move-on notices are unlikely to be compatible with the HRA as they limit recognition and equality before the law (s 15), freedom of movement (s 19) as well as peaceful assembly and freedom of association (s 22) provisions. While the Act allows for rights to be reduced when limited, this is only after careful consideration and only in a way that is necessary, justifiable and proportionate. As there have only been 0 or 1 offence each year for the past eight years across the entire state it is likely there has been very little, if any, impact and it is unlikely to meet the 'necessary, justifiable and proportionate' criteria.

Sex workers will have the same human rights as other Queenslanders after decriminalisation.

Part 11 Other amendments (Page 35)

Recommendation 11: *Social escort* should be removed from the Child Employment Act as it has been from other Acts.

Changes to laws to include the concept of the 'social escort' came about in 2010 when brothel licensees argued that illegal escorts were undermining the financial viability of their businesses. At the public hearing, the idea was presented that escort agencies might try to get around the law by posing as social escort services that do not provide sexual services. Recommendations were made by the CMC to restrict advertising further as a way to '*...close off the loophole that allows illegal prostitution providers to advertise as "social" escorts*', even though the CMC acknowledged at the time that:

The recommendations in this section are not made because we believe there are a large number of true social escorts who need to be regulated...The reason for the recommendations is to target illegal prostitution providers. If there is a set of regulations defining the advertising and other activities of "social escorts", illegal prostitution providers will no longer be able to masquerade as "social" escorts and thereby obtain a competitive advantage over the legal prostitution industry.²¹

There has never been any suggestion that there were children working as social escorts but as a part of this process the addition of s8B in the Child Employment Act was automatically made to include a ban on a child being employed as a 'social escort'. We note that the term 'social escort' is not used in any of the child employment codes or guides; it only exists in the Child Employment Act and should be removed from the Act in

²¹ Crime and Misconduct Commission. (CMC). (2006). *Regulating outcall prostitution*, p. 47.
<https://www.ccc.qld.gov.au/sites/default/files/Docs/Public-Hearings/Escort-agency-hearings/Regulating-outcall-prostitution-Report-2006.pdf>

line with the new decriminalised framework in Queensland so that the extensive and existing safeguards for all child employment apply.

As discussed above, the Child Employment Act itself contains adequate safeguards, which would protect persons under 18 being employed in any type of work requiring nudity, exposure of genitalia or erotic dress (8A) and an employer must not require or permit a child to work in a role or situation that is inappropriate for the child, having regard to the child's age, emotional and psychological development, maturity and sensitivity (8C).²² With this Bill, all references to 'social escorts' will be removed from all other Queensland legislation. This removal is an acknowledgement by the Government that the idea of a 'social escort' is a myth. Allowing inclusion of this reference to 'social escort' in the Child Employment Act is stigmatising, and would serve to further place at risk marginalised young sex workers.

Implementation resourcing

Recommendation 12: Respect Inc is resourced to undertake an awareness program to address sex work stigma and inform sex workers about decriminalisation in line with QLRC Recommendation 38.

Decriminalisation of sex work is a change that will not affect the majority of Queenslanders, however for sex workers, organisations that provide services to sex workers, service providers who were previously able to legally discriminate against sex workers, and others, these changes will need to be communicated in order for the new regulatory model to be implemented and to ensure compliance and the best results for sex workers and the community. Respect Inc is the organisation that is best placed to lead on this communication and training.

Respect Inc peer educators already provide Workforce Development training, including training on current laws and sex work affirmative care to many Government departments, community organisations, health care practitioners and other service providers. We run several different types of training presentations depending on the audience, including sex worker sensitivity training for those in health, mental health and AOD, police, legal services, schools and universities, youth organisations/services and GPs. Respect Inc must be resourced to undertake further workforce development training for workers who provide services to sex workers. It is in these training sessions that those providing services to sex workers get to hear from and see sex workers in front of them, as real people, telling them how they want to be treated. This is what breaks down stigma and this is how we will end discrimination against sex workers. It is only by having sex workers delivering this training, that we will succeed. These organisations and services must also be informed of the law changes, as the services they provide and how they provide them will also change. For example, all QPS new recruits should have training on the laws around sex work, and how to work with sex workers, especially as victims of crime, in the training academy. This is critical in

²² Child Employment Act. (2006). <https://www.legislation.qld.gov.au/view/pdf/inforce/2010-10-14/act-2006-002>

repairing the relationships between sex workers and police, breaking down stigma and discrimination and ensuring sex workers have access to safety and justice. Health practitioners should know that Certificates of Attendance are no longer required for brothel workers, and how to provide best practice, sex work affirmative care including testing and treatment. Similar training will be required across many Government departments, services and organisations.

As the state sex worker organisation, we also run training for those new to the sex work industry across any sector, and assist those looking to upskill. We conduct regional outreach multiple times per year to provide resources, safer sex supplies, community development and peer education to sex workers. This would need to be further funded once the law changes, to provide updated information, training and resources to more regional areas to ensure information, peer education and resources reach every sex worker in Queensland.

Much of the work we already do includes educating sex workers about the laws, including their rights and obligations under the law, such as Anti Discrimination protections, tax obligations and the use of PPE. Respect Inc has a membership of over 1000 Queensland sex workers, and has established channels of communication with our membership. In order for information to reach every Queensland sex worker about the changes to the laws and to sex workers' rights and obligations, Respect Inc must be properly resourced to undertake this communication, training and upskilling of sex workers.

Respect Inc conducts outreach to brothels, however access is often difficult due to some brothel owners refusing Respect Inc access to the workplace, not allowing peer educators time alone with the workers at the brothel, being obstructive or taking the Respect Inc peer educator away from the worker's area or asking us to come in before any sex workers arrive for the shift. Brothel workers do access Respect Inc offices for peer education, but often like to be discreet when contacting us for fear of repercussions from management of their workplace. Some brothel owners have sought to become the gateway between the sex workers working in their business, and the information and support that Respect Inc provides. However well intentioned these actions may be, brothel owners and management are not the appropriate place for sex workers to access information and support on their health, safety and rights, when the interests of the business owner (to make money) may be in direct conflict with the interests of the sex worker, especially in relation to accessing their industrial rights. Sex work business operators should not be relied upon to educate and inform sex workers working in their businesses about this law reform and the new rights that those sex workers will have access to.

Respect Inc and DecrimQLD recommend the redirection of the remaining Prostitution Licensing Authority funds to the purchase of a building to house the sex worker organisation in order to free up funding for work related to implementation, or at least increased funding.

Expungement

Recommendation 13: Expungement of sex work offences is important to include in future legislation to prevent ongoing impacts on sex workers.

Expungement for sex workers who have been entrapped and/or charged should be part of the shift from criminalisation to decriminalisation. People who have criminal records relating to sex work should not be discriminated against.

Some sex workers live with sex work charges issued by corrupt police during the pre-Fitzgerald era, and many others with charges issued by police, including through entrapment, since then. Sex workers and their colleagues or family members can currently be charged with consorting offences under the Police Powers and Responsibilities Act 2000 (Qld) 53BAC, 53BAD, 53BAE, and the potential for this must not continue after decriminalisation. If historic sex work charges are not expunged, the risk for more people to be charged under consorting offences still exists.

A person's criminal history can be accessed/is required in many situations, such as employment application processes, Family Court proceedings, legal matters—including as a victim seeking justice, volunteering and travelling overseas. Having historic sex work charges left on criminal records after decriminalisation of sex work leaves sex workers facing barriers to future employment, access to justice, unfair outcomes with child custody orders and discrimination in future employment opportunities and travel opportunities based on personal opinion and stigma. It is imperative to expunge sex worker charges to prevent unjust discrimination based on stigma, and to avoid circumstances where historical charges continue to limit the opportunities afforded to sex workers.

S.216 Impairment of the mind

Recommendation 14: We support the call for a review of the s216 Criminal Code definition of 'impairment of the mind', which criminalises sexual activity involving a person with an 'impairment of the mind', even when that person has capacity to consent to the sexual activity.

This offence could impact on both sex workers and the clients of sex workers, as well as any carers or family members that organise a person considered to have an 'impairment of the mind' to access the services of a sex worker.

The current definition of a 'person with an impairment of the mind' is very broad: 'a person with a disability attributable to an intellectual, psychiatric, cognitive or neurological impairment or any combination of these where the disability substantially reduces the person's capacity for communicating, interacting socially or learning, and results in the person needing support'.²³ This definition captures many people including sex workers and clients who are capable of negotiating consent. For many sex workers

²³ Criminal Code Act 1899 Schedule 1, p. 42.

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1899-009>

with disability, sex work provides them with a stable income, capacity to pay for and attend care/treatment/therapy and the flexibility to schedule work around their disability. Review of the offence and definition is needed to ensure there are not unintentional impacts. We note that disability advocates have called for this definition to be reviewed.

The Public Advocate Qld and disability organisations such as Queensland Advocacy Inclusion (QAI) also oppose the current overly broad definition of 'impairment of the mind' and its use in Queensland laws about sexual activity under s216 of the Criminal Code, including sex work, 'which has been interpreted to have such a broad application that it includes not only people who have impaired decision-making ability, but those with disabilities that have no impact on decision-making ability'.²⁴

In recent years the NDIS has provided people who have a range of disabilities, including 'impairment of mind' with access to sexual services.²⁵ They have a right to reasonable and necessary support, but a carer in Queensland who is concerned about a potential prison term is going to be reluctant to provide that support for a client who has impairment that is encapsulated under the definition of 'impairment of mind'.

Laws like this can also be used to limit the rights of a person with disability to engage in activity to which they have the capacity to consent by carers who may disagree on moral grounds to sex work, or sexual activity in general, and who will use the law to argue against it.

Vilification

Recommendation 15: Respect Inc and DecrimQLD recommend that the revised attribute of 'sex work activity' as defined in the Anti Discrimination Act (excluding 'adult' in Schedule 1 (a)), be included as a protected ground for vilification.

Sex workers in Queensland experience excessive levels of serious vilification, are not currently covered by s124A and s131A and have not been included in the new vilification protections and therefore currently have no recourse to justice.

Sex workers, or the new attribute of 'sex work activity' has not been listed to be included in the newly updated vilification legislation.

This is for two reasons:

- firstly the vilification inquiry was focused on racial vilification, due to significant racial vilification occurring in the community
- secondly because of the timing of these reforms.

In the period following the Legal Affairs and Safety Committee Report No. 22 ("Report No. 22"), the **Queensland Human Rights Commission (QHRC) Building Belonging report**

²⁴ The Public Advocate Qld. (Jan 2022). A discussion of section 216 of the Queensland Criminal Code: A call to review the criminalisation of sexual relationships involving people with 'an impairment of the mind'. https://www.justice.qld.gov.au/_data/assets/pdf_file/0006/703770/202201-section-216-report-final-22.pdf

²⁵ Touching Base Inc. NDIS and sex work, <https://www.touchingbase.org/ndis-and-sex-work/>

was released. It included a recommendation to amend the attributes to provide better protections for sex workers. The Queensland Government response to Report No. 22 indicated an intention to extend the vilification attributes **to align with new attributes** proposed for the Anti-Discrimination Act.

Unfortunately, this issue has fallen through the cracks as vilification toward sex workers has not been widely reported. This should not be surprising because vilification of sex workers is not currently protected, which leaves no avenue for reporting. Reporting is also unlikely because sex workers currently experience such extreme barriers to reporting, while 90% of the industry is criminalised.

In 2022, our survey of sex workers found excessively high levels of discrimination across a broad range of areas and extremely high levels of unreported discrimination. While participants did not always refer to their experiences as vilification, many described it.²⁶

Sex worker safety and vilification

Sex workers also report experiencing vilification when a home or work address becomes known publicly. Sex workers report receiving threats and abuse and feeling unsafe. Circulating sex workers' legal names and addresses publicly is used to vilify individual sex workers and sex work businesses by means of letterbox dropping and also in online community spaces. In recent examples: other residents have leafleted the neighbourhood circulating the local address of a sex worker; a QLD social media group post listed an address and accused the resident of being a sex worker; a sex worker was accused of living with HIV and their photo and address were publicised; a suburban massage parlour was talked about in a suburban social media group and flyers were distributed naming the location as a "threat to children". In each of these examples the point was to incite hate and action by others against the individual or group, by actions that put their safety at risk. Unfortunately, this vilification is an extremely common and regular experience for sex workers when our address becomes known. As such, malicious address distribution is vilification. It is intended to make sex workers feel vulnerable, unsafe, in danger and personally targeted.

²⁶ Scarlet Alliance, Anti-Discrimination and Vilification Protections for Sex Workers in Australia, *Briefing Paper*, February 2022 p5
https://scarletalliance.org.au/wp-content/uploads/2022/07/Anti_Discrim2022.pdf

Appendix 1 Anti-discrimination examples

Sex workers are commonly discriminated against in the areas of provision of goods and services, especially housing/accommodation, health care, financial services and online platforms, police services, advertising and education.

These are a sample of the areas of discrimination reported to Respect Inc

Finance	Banking facilities such as Eftpos and loans being refused.
	Accounts being closed or refused without notice or cause.
	Insurance companies refusing coverage for life insurance or income protection. As Workcover QLD still does not provide coverage to sex workers within brothels, these sex workers continue to be recognised as independent contractors.
Education	Schools refusing children of sex workers to be enrolled.
	Training providers refusing to acknowledge the skills and knowledge gained as a sex worker or refusing enrolment by 'out' sex workers.
Community groups	Churches and clubs refusing enrolment or membership.
Welfare programs	Community services refusing to provide assistance: <ul style="list-style-type: none"> • Forms of aid such as Emergency Relief Funding • Children/family support programs • Homeless outreach charities • Domestic violence support services
	Homelessness support services where evictions upon discovery of sex worker status or discovery of sex work activities outside of the housing provided occur regularly.
	Children's community services disadvantaging families where one family member has identified as a sex worker.
	Centrelink threatening to cut off payments due to sex work.
	Centrelink-associated job providers not acknowledging that sex work is a valid form of employment.
Media	Advertising media charging more for sex work ads and refusing to charge on account, insisting on pre-paid accounts and refusing to allow the option of opting out of additional, expensive online advertising.
	Vilifying media articles.
Policing	Refusal to take reports across a variety of criminal actions towards

	sex workers, using stigma and discrimination to drive unbelieveability of the sex worker making the report.
	Accusing sex workers of conducting illegal activity due to lack of knowlege on sex work laws.
Employment	Where a person is dismissed or harassed until they resign due to knowledge of their past or current sex worker status.
	Refusal to grant Blue Cards to allow employment in sectors that work with minors if a person discloses their sex work.
Accommodation	Eviction.
	Refusing an accommodation booking.
	Charging more per night, additional fees.
	Inability to rent a premises or house due to stigma and discrimination around sex workers being bad tenants or attracting more traffic to the location.
	Adding sex workers to a banned list.
	Supplying untrue or derogatory references to other housing or accommodation providers.
Health	When sex worker status is discovered refusal to continue with diagnostics unless an STI test is performed.
	Obsessive focus around sexual health, STI's and BBV's.
	Mental health professionals blaming sex work for a broad range of health conditions, regardless of the sex worker's experiences.
	Recommendations to stop work as the remedy for all difficulties or diseases.

Legal framework for a decriminalised sex-work industry based on safety, health and fairness

