

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

Submission No: 137
Submitted by: Planning Institute Australia
Publication:
Attachments:
Submitter Comments:

8 March 2024

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

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

Dear Committee Secretary,

Re: Submissions on Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024

The Planning Institute of Australia (PIA) is the national body representing the planning profession, and planning more broadly, championing the role of planning in shaping Australia's future. PIA facilitates this through strong leadership, advocacy and contemporary planning education.

PIA welcomes the opportunity to provide feedback on the recently released **Criminal Code (decriminalisation of sex work) and Other Legislation Amendment Bill 2024** (the Bill) for consideration by the Housing, Big Build and Manufacturing Committee.

Summary Statement

- PIA continues to support the decriminalisation of sex work in Queensland
- PIA has previously called for and continues to call for clarity in how these changes will impact the Planning Regulation and the ability for local governments to regulate sex work businesses
- PIA recommends that the level of regulation that is permitted or desirable to achieve the Bill's intent is clearly articulated to avoid unintended consequences
- PIA recommends a working group be established to ensure workable and practical amendments to the *Planning Regulation 2017* are progressed
- PIA recommends comprehensive industry education is undertaken to convey the changes to the planning system

Background

PIA provides an overview and timeline of its involvement in this matter below:

30 May 2022, submission to the Queensland Law Reform Commission consultation paper

PIA raised concerns on the fundamental operation of the proposed decriminalisation. The submission key points stated:

- *Local Governments are best placed in determining how local land uses are regulated such as those related to the sex work industry*
- *Greater engagement with Local Governments to better understand how decriminalising the sex work industry could be facilitated at a local level is encouraged, and*
- *Guidance material would be beneficial should it be expected that Local Governments regulate land uses associated with the sex work industry in the future.*

31 March 2023, A decriminalised sex-work industry for Queensland Report QLRC

The QLRC delivered its report containing 47 recommendations including Planning and local laws (Chapter 5).

The accompanying summary report created some level of uncertainty. For example: *'State planning requirements for sex-work businesses will apply unless or until a local government makes its own requirements consistent with the principles of decriminalisation'* (QLRC, 2023, Page14).

This statement was taken by PIA to mean that the *Planning Regulation 2017* prevailed (whether this meant as it currently stands or with transitional provisions was unclear) until the 77 Local Government planning instruments were amended to draft a local policy response. How the planning instruments could regulate while remaining consistent with the decriminalisation intent was not outlined.

PIA was equally unclear on the intent of the drafting instructions in the QLRC Report Volume 2 where, the intent is reinforced that sex work is not dealt with differently, but the drafting instructions called for new definitions, which would necessarily mean sex work is separately regulated.

29 May 2023, letter to the Department of Justice an Attorney General (DJAG)

After the QLRC report was released PIA wrote to DJAG requesting further clarification:

PIA has taken the time to review the recommendations made in Volume 1, Chapter 5: Planning and local laws and consider there is significant change that needs to occur to integrate decriminalised sex work into Queensland's planning framework and make sure local planning instruments and local laws support the intent of decriminalisation.

We are writing to seek further information on the next steps for implementation of the recommendations and how PIA can remain involved as this reform progresses through government. We would appreciate your advice in this regard.

22 June 2023, Submission on the Decriminalisation of the Sex work industry for Queensland Report

PIA compiled a comprehensive response, which was generally supportive of the intent, however PIA raised some reservations regarding the practical implications of the changes.

1 November 2023, PIA received a letter response from the Attorney General

The letter provided a confidential copy of the draft bill and sought PIA feedback.

The Queensland Government should lead and establish a temporary working group to help implement the decriminalisation reforms. It should consist of regulators and other government agencies with areas of responsibility that affect the sex-work industry, sex-worker organisations and other non-government organisations with industry knowledge. The working group should be established before legislation introducing the reforms takes effect.'

10 November 2023, Submission to confidential draft copy of the Criminal Code (decriminalisation of Sex work) and Other Legislation Bill

The key points from this submission were:

- *PIA continues to support the decriminalisation of sex work in Queensland, whilst acknowledging that appropriate regulation using existing frameworks is required.*
- *PIA supports the intent of including sex work as a lawful business into the planning framework without unwarranted complexity or unintended consequences.*
- *PIA supports opportunities for sex work businesses to be broadened whilst ensuring operation in appropriate locations.*

PIA has continued to call for greater clarity about how the planning system is to regulate sex work business to balance the reasonable expectation of the community with the health and safety of the legalised sex work industry.

Preamble

The **Criminal Code (Decriminalisation of sex work) and Other Legislation Amendment Bill 2024** and accompanying Explanatory Notes are both silent on the planning framework. PIA is somewhat puzzled by this as the planning framework is the appropriate mechanism to nominate and regulate land uses, as foreshadowed in previous correspondence outlined above.

While PIA agrees that no changes are required to the *Planning Act 2016*, changes will be required to the *Planning Regulation 2017*, such as reflecting the repeal of the *Prostitution Act 1999* upon which it relies to regulate Brothels. Further changes to the *Planning Regulation 2017* are required to provide certainty on the level of regulation intended to occur, or be permitted, and transitional provisions or otherwise under an amended *Planning Regulation 2017*.

Achievement of Policy Objectives of the Bill

The Explanatory Notes state that the objective of the Bill will be achieved through the raft of legislative changes proposed. Of note are the changes to the *Local Government Act 2009* and the *Anti-Discrimination Act 1991*. The Explanatory Notes state:

The QLRC Report considered that protections under the AD Act needed strengthening as part of the decriminalisation framework. This is consistent with the aim of reducing stigma and safeguarding sex workers' human rights, including the right to equal and effective protection against discrimination'.

The QLRC Report proposed that the power to make local laws, which reside with local government authorities should be restricted so that a local law may not be made which prohibits or regulates sex work. The objective of the recommendation is to ensure the aims and benefits of decriminalisation may be realised across all of Queensland.

The Public Hearing reiterated that the intention of the Bill is for subsequent regulation from the State Government, along with other expressions such as ‘treated like any other business’ and having a consistent ‘state-wide approach’.

These statements, coupled with the removal of local government ability to make local laws regulating sex work businesses, and the desire through the AD Act to remove the opportunity to discriminate, leads to the conclusion that legalised sex work businesses may not be able to be regulated by local governments.

Any proposal to introduce new definitions into the planning framework would, as a matter of course, draw attention to sex work businesses and assume a new land use can be regulated. Planning instruments can stipulate zones, locations, and separation distances for defined land uses through planning instrument amendments. The planning framework allows wide discretion in applying regulation in a local context across the state for the majority of land uses. The Explanatory Notes (page 20), changes to the *Part 9 Amendment of Work Health and Safety Act 2011* acknowledged that regulation occurs through the *Planning Act 2016*. This is the case for the current licensed structure for Brothels.

It is recommended that the degree of regulation that is envisaged at a state versus local level for legal sex work businesses, once the Bill is enacted, is clearly articulated to remove confusion, and avoid unintended consequences.

Without a clear articulation of the extent to which sex work businesses can be regulated and what state-wide consistency is envisaged, the policy intent may not be achieved, especially where local governments can currently apply locally derived policy through planning instruments. Conversely, it is envisaged regulation amendments may be required to ensure the intent of the Bill is achieved.

PIA’s Position

PIA supports the intent of the **Criminal Code (decriminalisation of Sex work) and Other Legislation Bill** however seeks further clarification about the implications for the planning system. In addition to PIA, other stakeholders may have difficulty commenting on the Bill where practical outcomes are currently unclear.

PIA makes the following recommendations to the Committee:

1. PIA recommends a clear articulation of how the planning system will regulate sex work businesses to achieve the QLRC recommendations
2. PIA recommends that the level of regulation that is permitted or desired at a local scale to achieve the Bill objectives is articulated, using:
 - worked examples through the planning framework to demonstrate policy to practice,
 - an understanding of land use definitions and their implications
 - an articulation of transitional provisions (where appropriate)
 - the ability to amend a planning scheme (if applicable) and the permitted or desired level of intervention; and

- advice on changes to the *Planning Regulation 2017* to give effect to the permitted or desired level of intervention.
- 3. PIA recommends a working group is formed to ensure the intent of the Bill can be implemented and determine workable and practical amendments to the *Planning Regulation 2017*
- 4. PIA recommends comprehensive industry education through both DJAG and DHLGPPW is undertaken.

Should you wish to discuss the above, contact Nicole Bennetts RPIA, Queensland State Manager on [REDACTED]

Yours sincerely,

[REDACTED]

Sean Cullen RPIA
President, Queensland