

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

Submission No: 147
Submitted by: Queensland Unions
Publication:
Attachments:
Submitter Comments:



**Submission to the
Housing, Big Build and Manufacturing Committee**

**CRIMINAL CODE (DECRIMINALISING
SEX WORK) AND OTHER
LEGISLATION AMENDMENT BILL 2024**

8 March 2024

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Introduction

The Queensland Council of Unions (QCU) is the peak body of unions in Queensland representing around 400,000 workers. First established in 1885, our objective is to achieve economic and social justice for all Queensland workers.

The QCU has expertise in a range of areas affecting Queensland workers, including in workplace, industrial and discrimination law, as well as within the work health and safety (WHS) legislative framework.

It is primarily through this lens that the QCU supports the decriminalisation of the sex work industry and the Criminal Code (Decriminalising Sex Work) and Other Legislation amendment Bill 2024 (the Bill).

Decriminalisation will improve sex worker's workplace rights, including their personal and work health and safety by regulating the sex work industry and sex workers in the same way as other Queensland businesses and workers.

The QCU supports the principal submissions made by DecrimQLD on behalf of sex workers in the industry and provides the following supplementary submissions.

Background

The QCU Executive endorsed a position supporting the decriminalisation of the sex work industry in May 2022 and in providing a supporting submission to the then Queensland Law Reform Commission's Review into decriminalisation of the sex work industry.

Among other things, the QLRC recommended that a new legislative framework for the sex work industry should ensure the same work laws and rights for everyone, including work health and safety, industry-specific work health and safety guidelines, and there should be no sex-work-specific workplace offences.

The QLRC recommended framework was to –

'...treat(s) sex work as work, not as a crime. It aims to regulate sex work as far as possible under the same general laws and in the same way as other work. Our review found that this is a better way to enhance safety, promote health and protect the human rights of people working in the industry' [emphasis added].

In its findings, the QLRC said that the current legislative system inhibited sex workers from being able to access basic work rights and that their effect was to isolate sex workers from and to create barriers to sex workers accessing health, safety and legal protections.

The QCU supports these tenets and findings and submits to the Parliamentary Committee that its considerations of the Bill should also be guided by the same i.e., -

- sex work is to be treated as work;
- sex work should be regulated in the same manner as other forms of work; and
- measures should be taken to ensure the safety, health and protection of the human rights of sex workers.

For sex workers, this will mean that regardless of the type of industry sector they work in, they will be subject to the provisions of –

- The *Work Health and Safety Act 2011* (Qld)
- The *Workers Compensation and Rehabilitation Act 2003* (Qld)
- The *Fair Work Act 2009* (Cth)
- The *Anti Discrimination Act 1991* (Qld) (and any relevant federal discrimination laws).

Comments are now provided below on specific Parts or aspects of the Bill.

The Bill

Part 1 - Preliminary

Clause 2 of the Bill states that the commencement of the Act is on a day to be fixed by proclamation.

The QCU position is that the commencement date for the Bill should be 1 July 2024 to prioritise the personal and work health and safety of sex workers and to ensure sex workers are able to access the benefits of ordinary workplace laws as outlined above.

Part 2 – Amendment of the Anti Discrimination Act (AD Act)

Clause 4 of the Bill replaces the current protected attribute of ‘lawful sexual activity’ under the AD Act which means ‘a person’s status as a lawfully employed sex worker, whether or not self-employed’, with a new protected attribute ‘sex work activity’ meaning –

- ‘(a)...the provision by an adult person of the following services for payment or reward –

- (i) services that involve the person participating in a sexual activity with another person;
- (ii) services that involve the use or display of the person's body for the sexual arousal or gratification of another person; and

(b) includes being or having been a person who provides services mentioned in paragraph (a).¹

The current protected attribute only applies to sex work that is undertaken lawfully under a criminalised model.

The new definition will mean that all sex workers will be covered under the new protected attribute where it will be unlawful to discriminate against an adult who engages in sex work activity and is consistent with a decriminalised model.

Clause 6 of the Bill also removes the current positive discrimination measure contained within section 106C of the AD Act which permits a person to discriminate against a person by refusing to supply a sex worker accommodation, evict them from accommodation, or treat them unfavourably in any way in connection with accommodation.

The removal of this section is consistent with the QLRC recommended framework for stronger protection of all sex workers from unfair discrimination, recognising the human rights of sex workers, and that no special exemptions allowing discrimination against sex workers should remain.

Part 3 and Part 7 – Local Government

Part 3 amends the *City of Brisbane Act 2010* and Part 7 amends the *Local Government Act of 2009*.

These Parts of the Bill prevent local governments from making any new or additional local laws relating to sex work that would prohibit or regulate sex work or the conduct of a sex work business, and explicitly states that a local law that seeks to do so will have no effect. Examples provided in the Bill include seeking to further regulate an escort agency providing services that include sex work, or home based sex work business.

These Parts will ensure that local councils are unable to make by local laws that would otherwise undermine the key principles of a decriminalised sex work industry in that

¹ Clauses 4 and 6 the Bill.

they should be treated in the same manner as other businesses, and in particular that all sex-work businesses should be integrated into the planning framework, that home-based sex work is treated like other home-based businesses, and that there are no sex-work specific local laws or prohibitions.

The QCU also supports the development of a model Home Based Business Code for adoption by local governments that would permit sex workers to form cooperatives and operate in a similar manner to other home based businesses.

The QLRC recommended framework also included that advertising for sex work businesses should also be subject to the same laws, codes and standards as all advertising and that there should be no sex-work-specific advertising offences.

Part 4 Amendment of Criminal Code

Clause 15 of the Bill repeals chapter 22A of the Criminal Code 'Prostitution' and is supported. This is a key component to decriminalise sex work in Queensland and is consistent with the QLRC recommended framework which specified that there should be no sex-work-specific criminal offences or police powers against consensual adult sexual activity, and that sex workers should be able to work alone or with others and should be able to use safety strategies.

Other clauses in Part 4 primary address offences in relation to children not taking part in commercial sexual services, including making it an offence for a person to obtain commercial sexual services from a child. This is also consistent with the QLRC recommended framework which recommended that there should be serious penalties for those who coerce others or involve children in commercial sexual services.

Part 6 – Amendment of the Liquor Act 1992

Clause 23 amends the Act to clarify that the Adult Entertainment Code is a Code made by the Commissioner and not the Commissioner and the Commissioner for Police which is consistent with decriminalisation of sex work under the Criminal Code.

The QCU notes that further work is occurring to address the need and/or scope of the existing Adult Entertainment Code within a decriminalised environment.

However, the QCU submits that there is a need to ensure that the Liquor Act is further amended to remove references to currently criminalised aspects of sex work such as prostitution, as well to consider the relevance of retaining the Code in the context of adult entertainment (stripping) within a decriminalised framework i.e., what is the

purpose of an Adult Entertainment Code other than to regulate exclusion of minors and the provide controls around the serving of liquor that apply to all other businesses.

Part 9 – Amendment of Work Health and Safety Act

Clause 33 of the Bill provides that the Minister responsible for work health and safety ensures that a review of the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* is reviewed at least 4 years, but no more than 5 years after the commencement of the section.

The QCU submits that any review should be undertaken in consultation with affected stakeholders, primarily being sex worker organisations, as the context for the review should be conducted within the lens of work health and safety for the industry.

Part 10 – Repeal of Legislation

Part 10 of the Bill repeals the *Prostitution Act 1999* in its entirety and is supported.

The *Prostitution Act* enables the licensing system for brothels as well as advertising guidelines and public health laws, and also prohibits street based sex work and sex workers working in pairs or cooperatives.

The repeal of this Act is also at the heart of decriminalisation and will mean that brothels and all other forms of sex work will be regulated in the same manner as every other business in Queensland.

This is consistent with the QLRC recommended framework which includes that there should be no sex-work licensing and that the Prostitution Licensing Authority should be abolished.

Part 11 – Other Amendments

Schedule 1 of the Bill amends a range of related pieces of legislation.

These amendments are supported. However, the Bill does not repeal existing section 8B 'Prohibition on work as social escort' of the *Child Employment Act 2006* which prohibits an employer from requiring or permitting a child to work as a social escort. The term social escort is a misnomer and has been repealed from other pieces of legislation and should also be repealed from the *Child Employment Act* as it is not relevant. The other prohibitions in the *Child Employment Act* are considered sufficient.

In addition, the new provisions contained within sections 217A to 217C of the Criminal Code make it an offence for a person to obtain sexual services from a person who is not an adult, or for a person who owns or occupies or is in control of premises to allow another person who is not an adult to enter into and remain on the premises for the purpose of taking part in providing commercial sexual services, or to cause or induce another person to provide commercial sexual services by a child.

Other

The QCU notes that we continue to work with DecrimQLD from an industry perspective on provisions relating to overlapping issues contained within the Adult Entertainment Code as well as the development of work health and safety guidelines for all aspects of the industry in consultation with the WHS Regulator within the Office of Industrial Relations.

Consistent with the QLRC recommended framework, WHS Industry Guidelines for the industry will be approached in the same way as that of other industries, sectors and occupations meaning that the duties and obligations outlined within the existing WHS legislative framework, including a duty to ensure, so far as is reasonably practicable, the health and safety of workers and of other persons affected by the operations of a business or undertaking will be undertaken in accordance with the WHS Act and overseen by the WHS Regulator.

The QCU commends the Bill to the Committee and supports its passage through the Parliament.