

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

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

Full Stop Australia Submission, March 2024



Full Stop Australia acknowledges the Traditional Custodians of Country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them, their cultures and their Elders past and present.

## About Full Stop Australia

Full Stop Australia thanks the Housing, Big Build and Manufacturing Committee (the **Committee**) for inviting us to provide input to its inquiry on the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (the **Bill**) (**Inquiry**).

Full Stop Australia is a nationally focused not-for-profit organisation, which has been working in the field of sexual, domestic, and family violence since 1971. We perform the following functions:

- Provide expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic, or family violence, and specialist help for their supporters and those experiencing vicarious trauma.
- Conduct best practice training and professional services to support frontline workers, government, the corporate and not-for-profit sector.
- Advocate to governments and in the media for laws and systems that better respond to, and ultimately prevent, gender-based violence.

Our advocacy draws upon the expertise of our trauma-specialist counsellors, who support people impacted by sexual, domestic and family violence across the country. It also draws on the lived expertise of over 600 survivor-advocates in Full Stop Australia's [National Survivor Advocate Program \(NSAP\)](#). The NSAP gives survivor-advocates a platform to share their experiences to drive positive change—by accessing opportunities to tell their stories in the media, weigh in on Full Stop Australia's submissions to Government, and engage directly with Government. We are committed to centring the voices of victim-survivors in our work, and advocating for laws and systems that genuinely meet their needs.

## About this submission

This submission was prepared by Emily Dale, Head of Advocacy and Taran Buckby, Legal Policy Officer. If you have any questions in relation to this submission, please do not hesitate to contact Emily Dale at [REDACTED].

This submission was informed by consultation with Scarlet Alliance, the national peak body for sex workers and sex worker organisations in Australia—which is working to advance sex worker rights through equality and social, legal, political, cultural, health and economic justice for past and present workers in the sex industry. We thank Scarlett Alliance for their advocacy on behalf of people engaging in sex work across the country, and for taking the time to engage with us to ensure our submission was informed by the lived expertise of sex workers.

**Full Stop Australia** is working to put a full stop to sexual, domestic, and family violence through **support, education, and advocacy.**

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## Full Stop Australia supports the decriminalisation of sex work

Full Stop Australia is generally supportive of the Bill. We wish to take the opportunity to commend the Queensland government for its development of a piece of legislation that has the potential to meaningfully increase safety for sex workers in Queensland, by removing an outdated and discriminatory legislative framework, and instead regulating sex work in the same way as all other work.

We have addressed some of the specific changes made by the Bill below.

### By allowing sex work to be regulated in the same way as other work, the Bill increases the safety of people engaging in sex work

Full Stop Australia supports the approach taken by the Bill—which moves away from treating sex work as a crime, and towards recognising it as work. This gives sex workers the same rights, responsibilities and protections as all other workers.

As a sexual, domestic and family violence service, Full Stop Australia wishes to emphasise the disproportionate risk sex workers face of sexual and other violence, discrimination and harassment. Queensland's current regime of criminalisation increases vulnerability to these risks—by promoting the stigmatisation and over-policing of sex work, driving sex work underground, and allowing power imbalances between individual sex workers, and their clients and business owners, to go unchecked.

We also wish to emphasise how the current legislation governing sex work in Queensland compromises sex worker safety strategies. For example, under Queensland's current law, except in a licensed brothel, two or more sex workers cannot work together to ensure their safety. As noted in the Queensland Law Reform Commission (QLRC)'s report recommending decriminalisation (QLRC Report), "sex workers must choose between working safely or working lawfully."<sup>1</sup>

Full Stop Australia supports the following changes delivered by the Bill, which we think will increase sex worker safety by addressing the above issues in Queensland law:

- Repealing all criminal laws that apply to sex work. Full Stop Australia supports the repeal of Chapter 22A (Prostitution) of the *Criminal Code Act 1899* (Qld) (**Criminal Code**) and the *Prostitution Act 1999* (Qld) (**Prostitution Act**).
- Allowing sex work to be regulated in the same way as other work—including by requiring compliance with applicable work, health and safety (**WHS**), planning, advertising and nuisance laws. This increases safety for sex workers, and also

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<sup>1</sup> Queensland Law Reform Commission. (2023). *A Decriminalised Sex-Work Industry for Queensland: Report Volume 1*. Queensland Law Reform Commission.  
[https://www qlrc.qld.gov.au/\\_data/assets/pdf\\_file/0003/763383/qlrc-report-80-a-decriminalised-sex-work-industry-for-queensland-vol-1-.pdf](https://www qlrc.qld.gov.au/_data/assets/pdf_file/0003/763383/qlrc-report-80-a-decriminalised-sex-work-industry-for-queensland-vol-1-.pdf).

delivers greater consistency in the regulation of work and workplace safety across industries. According to Scarlet Alliance:

*“Repeal of these criminal laws allows for the same laws and regulations that apply to all businesses to apply to the sex industry. WHS is a good example. The WHS regulator currently has no role in relation to sex industry workplaces, sex workers want WHS guidelines that apply to every workplace. Decriminalisation is the path to fair and equal regulation.”<sup>2</sup>*

### **Content advertising sex work would be regulated by general advertising laws**

By repealing the Prostitution Act, the Bill removes advertising guidelines that apply specifically to the sex work industry.

We agree with the QLRC Report:

*“These laws negatively affect sex workers and business operators. They are difficult to comply with, create barriers to negotiating with clients effectively and safely, and put people at risk of being fined and having a criminal record.”<sup>3</sup>*

We also support the QLRC Report’s findings that the regulation of signage for sex work businesses, and content advertising sex work, can be regulated under existing laws, which are not specific to the sex work industry. Doing so offers greater consistency and clarity in how the law operates, and avoids exposing sex workers to stigma, discrimination and overcriminalisation. We agree with the QLRC, that any concerns about explicit or offensive signage or advertising content can be addressed under existing laws that apply to all industries:

*“In our view, the sex-work-specific advertising offences are not needed and should be removed... Singling out sex work for special advertising offences is inconsistent with the aims of decriminalisation, including the recognition of sex work as legitimate work... Signs for sex-work businesses should be regulated by any relevant planning requirements and local laws, like signs for other businesses. The same general laws, standards and codes that apply to all advertising in Australia apply to sex-work advertising. Removing sex-work-specific offences does not mean sex-work advertising or signage will be unregulated, or that the community will be exposed to explicit and offensive material. Community expectations and concerns can be met by general advertising laws, standards and codes.”<sup>4</sup>*

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<sup>2</sup> Scarlet Alliance. (2024). *Sex workers welcome WHS protections over criminal penalties*. Scarlet Alliance. <https://scarletalliance.org.au/sex-workers-welcome-whs-protections-over-criminal-penalties/#:~:text=%20Repeal%20of%20these%20criminal%20laws,that%20apply%20to%20every%20workplace.>

<sup>3</sup> QLRC Report, above n 1.

<sup>4</sup> Ibid.

## The sexual health of sex workers would be regulated by existing public health and WHS laws

The Bill repeals sections 77A, 89 and 90 of the Prostitution Act, which:

- Require sex workers to use condoms.
- Prohibit sex workers at licensed establishments from working with a sexually transmissible infection (**STI**).

Full Stop Australia supports these changes—the effect of which is to stop subjecting sex workers to a separate public health and WHS regime to all other workers. The current approach contributes to stigmatisation, undermines sex workers’ human rights, and puts sex workers at risk of discrimination and targeting by police. These provisions are “not aligned with evidence-based best practice in public health, which promotes informed and voluntary adoption of safer sex practices for the successful prevention of STIs.”<sup>5</sup>

Pursuant to the changes in the Bill, sex workers—like all other workers—would be subject to public health and WHS laws of general application. The QLRC report explains this:

*“Public health laws and policy approaches [would] apply to protect public health and promote the health of all Queenslanders, including sex workers and clients. Work health and safety laws that apply to everyone at work [would] ensure the work health and safety of sex workers and clients, including by the adoption of safer sex practices.”<sup>6</sup>*

We consider that the risk of STI transmission is adequately dealt with by existing public health and WHS laws of general application. In particular:

- The *Public Health Act 2005* (Qld) (**Public Health Act**) supports a best-practice framework to manage ‘notifiable conditions’, which includes STIs of particular significance to public health.<sup>7</sup> According to the QLRC Review:

*“The Public Health Act aims to protect people from notifiable conditions, including by preventing or minimising their spread, in ways that balance protecting public health and individual rights to liberty and privacy. This includes protecting a person’s right to make informed decisions about their medical treatment. The Public Health Act promotes shared responsibilities for public health. Section 66 states that at-risk individuals should take all reasonable precautions to avoid acquiring or transmitting a notifiable condition. A person who thinks they may have a notifiable condition should find out if they have the condition and what precautions they should take to prevent transmission to others.*

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> This includes chlamydia, gonorrhoea, donovanosis, hepatitis B and C, HIV and syphilis. See Public Health Act Chapter 3 (Notifiable Conditions) and *Public Health Regulation 2018* (Qld).

*Reasonable precautions will depend on a person's individual circumstances, but can include educating themselves about STI risks and safer sex practices, consistent use of prophylactics, regular testing, accessing treatment and following a health professional's advice.*<sup>8</sup>

- WHS laws impose legal duties on sex-work business operators, sex workers and clients to ensure the health and safety of workers and others who may be affected by the work. According to the QLRC Report, this includes “the provision and use of prophylactics and information to prevent or minimise the risk of STIs.”<sup>9</sup> In addition, “sex workers have rights and protections under work health and safety laws, including the right to refuse to see a client or engage in a particular sexual activity if they believe their health and safety is at risk.”<sup>10</sup> In addition, the *Work Health and Safety Regulation 2011* includes an obligation to notify the regulator (Workplace Health and Safety Queensland) of any serious injury or illness.<sup>11</sup>

We do not think that the Bill's repeal of sections 77A, 89 and 90 of the Prostitution Act gives rise to any heightened public health risks. We note that:

- The Public Health Act (which would continue to apply to sex workers, along with all other workers) includes a requirement to take ‘reasonable precautions’ to avoid acquiring or transmitting certain STIs.<sup>12</sup> It also includes a requirement for someone who suspects they have a relevant STI, to ascertain whether they have the condition, and what precautions can be taken to prevent others from contracting it.<sup>13</sup>
- The Public Health Act also requires people who have, or may have, certain STIs to report to Queensland Health, who will hold that information on a confidential register. This allows Queensland Health to monitor incidences and outbreaks, take steps to prevent or minimise transmission, and plan services and strategies to minimise transmission.
- It is more appropriate for public health issues to be managed by Queensland Health than Police. We are concerned by instances of Queensland Police “pos[ing] as clients and entrap[ping] sex workers” to check compliance with the current requirement for condom use.<sup>14</sup> Police deliberately targeting sex workers in this way is inappropriate, and contributes to fear and mistrust of Police.

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<sup>8</sup> QLRC Review, above n 1.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> *Work Health and Safety Regulation 2011* (Qld) s 699.

<sup>12</sup> Public Health Act, s 66(b). This requirement applies to STIs listed in the *Public Health Regulation 2018* (Qld).

<sup>13</sup> Public Health Act, s 66(c).

<sup>14</sup> Gillespie, Eden. (2023). *'It was frightening': undercover stings on sex workers criticised as Queensland moves to decriminalisation*. The Guardian. <https://www.theguardian.com/australia-news/2023/apr/29/it->

- The offences in sections 77A, 89 and 90 of the Prostitution Act may actually heighten public health risk and drive poor health outcomes for sex workers, by imposing a barrier to sex workers seeking healthcare. As noted in the QLRC Report:

*“They contribute to stigma and marginalisation, which can negatively influence health-seeking behaviours and create barriers to accessing health care and support services, leading to poorer health outcomes... Research shows that fear of criminalisation can interfere with personal health and safety strategies and cause people to avoid contact with authorities, including with health and support systems. Criminalisation can undermine public health efforts, and lead to higher infection risks and poorer health outcomes for sex workers.”<sup>15</sup>*

Instead, sexual health risks are most effectively managed by:

*“Access to good-quality health information and support, including health promotion and peer education; safer sex practices that are informed, consistent and voluntary; shared responsibilities for public health and a supportive environment that enables people to take care of their health; and reliable access to person-centred, evidence-based, inclusive health care and other services.”<sup>16</sup>*

- The requirement for mandatory sexual health testing for workers in ‘licensed brothels’ does not reflect medical advances in STI (particularly HIV) management and prevention, and may have negative public health impacts—for example, by increasing demand on sexual health services by people who do not require healthcare, and thereby preventing access by others with acute needs.
- There is no evidence that sex workers in Australia have STI rates that are higher than the general population,<sup>17</sup> and evidence shows that Australian sex workers have high rates of voluntary condom use, sexual health testing and knowledge about safe sex. As noted in the QLRC Report, “research from 2007–14 in New South Wales<sup>18</sup> shows that sex workers have a high uptake of sexual health screening, high rates of consistent condom use with clients, and low rates of STIs (particularly among female workers).”<sup>19</sup>

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[was-frightening-undercover-stings-on-sex-workers-criticised-as-queensland-moves-to-decriminalisation.](#)

<sup>15</sup> QLRC Review, above n 1.

<sup>16</sup> Ibid.

<sup>17</sup> D Callander et al, *Sex Worker Health Surveillance: A Report to the New South Wales Ministry of Health* (2016) 13; D Callander et al, ‘A cross-sectional study of HIV and STIs among male sex workers attending Australian sexual health clinics’ (2016) 93(4) *Sexually Transmitted Infections* 299.

<sup>18</sup> In NSW, sex work is decriminalised and there are no offences equivalent to those in sections 77A, 89 and 90 of the Prostitution Act.

<sup>19</sup> QLRC Review, above n 1. See also D Callander, B Donovan & R Guy, *The Australian Collaboration for Coordinated Enhanced Sentinel Surveillance of Sexually Transmissible Infections and Blood Borne Viruses: NSW STI Report 2007–2014* (2015) 10; D Callander et al, *Sex Worker Health Surveillance: A Report to the New South Wales Ministry of Health* (2016) 13.

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This change would bring Queensland law in line with other Australian jurisdictions that have decriminalised sex work. NSW, Victorian and Northern Territory law do not contain sex-work-specific health offences.

### **Street-based sex work and public nuisance are adequately regulated by other laws**

The Bill repeals sections 73–75 of the Prostitution Act, which prohibit ‘publicly soliciting’ sex work, and section 76 of the Prostitution Act, which prohibits sex workers causing ‘nuisances connected with prostitution.’ These changes primarily affect the activities of street-based sex workers.

Full Stop Australia supports these changes. The ‘public solicitation’ offence impacts vulnerable groups—as noted in the QLRC Report, “street-based sex workers are more likely to be people who are socio-economically marginalised and vulnerable. Many submissions told us these workers are often homeless, transgender, Aboriginal and Torres Strait Islander, drug dependent, or experiencing mental health issues or trauma. They may not self-identify as sex workers but use sex work to meet their immediate needs.”<sup>20</sup>

In response to concerns about public nuisance, we note that public nuisance is already addressed by the general criminal law. This would continue to apply to sex workers, along with all other people. Section 6 of the *Summary Offences Act 2005* (Qld) includes a public nuisance offence that applies to anyone behaving in a disorderly, offensive, threatening or violent way if their behaviour interferes, or is likely to interfere, with another person passing through or enjoying a public place. Police also have general move-on powers, which apply to everyone. There is no reason why sex workers should be singled out by the laws in sections 73 to 76 of the Prostitution Act.

### **Full Stop Australia supports amendments to the *Local Government Act 2009* and *City of Brisbane Act 2010***

We support the Bill’s proposed amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009*, which provide that a local law may not be made which prohibits or regulates sex work, to ensure the aims and benefits of decriminalisation may be realised across Queensland. As noted in the QLRC Report, this change will “make sure sex work is not singled out for additional restrictions or requirements.”<sup>21</sup> We note that the approach in the Bill aligns with the approach taken in Victorian law.

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<sup>20</sup> QLRC Review, above n 1.

<sup>21</sup> Ibid.

## Other comments on the Bill

### **Full Stop Australia supports the new offences introduced by the Bill**

We support the Bill's creation of three new offences in Chapter 22 of the Criminal Code, which prohibit:

- Obtaining commercial sexual services from a person who is not an adult (section 217A)—which carries a maximum penalty of 10 years imprisonment, or 14 years imprisonment for a child under 16, or life imprisonment for a child under 12.
- Allowing a person who is not an adult to take part in commercial sexual services (section 217B)—which carries a maximum penalty of 14 years imprisonment.
- Conduct relating to the provision of commercial sexual services by a person who is not an adult (section 217C)—which carries a maximum penalty of 14 years imprisonment.

We also support the Bill's amendment of section 218 of the Criminal Code—which would apply that section's prohibition on procuring sexual acts by coercion, to coercion in the context of commercial sexual services.

We support the Bill's differentiation between sex work as occurring between consenting adults and exploitation and child abuse. We believe these changes:

- Will help ensure that participation in the sex work industry is voluntary.
- Protect vulnerable people from exploitation through involuntary sex work (e.g. Modern Slavery).
- Will help safeguard vulnerable children from exploitation—while, most importantly, not criminalising children subjected to exploitation and abuse.

### **Full Stop Australia supports strengthening anti-discrimination protections**

We support the Bill's repeal of section 106C of the *Anti-Discrimination Act 1991* (Qld). Section 106C provides that it is not unlawful for an accommodation provider to discriminate against another person if they reasonably believe that the other person is using, or intends to use, the accommodation in connection with that person's, or another person's, work as a sex worker by:

- Refusing to supply accommodation.
- Evicting a person from the accommodation.
- Treating a person unfavourably in any way in connection with the accommodation.

This provision is clearly inconsistent with contemporary community values—which support the protection and promotion of human rights, including the right to live free from discrimination. The repeal of this provision will increase sex workers' access to safe accommodation options, increase protection from discrimination and help reduce

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stigmatisation of sex work. We note that this change also aligns with Queensland law's inclusion of 'sex work activity' as a protected attribute.

### **The Bill should specify a commencement date**

We note that the Bill is currently set to commence on "a day to be fixed by proclamation."<sup>22</sup> To assist with clarity and community education, we recommend that the Bill specify a commencement date.

This clarity would help avoid unnecessary confusion and support compliance with the law. We understand from consultation with Scarlet Alliance that the experience of decriminalisation in Victoria was plagued by confusion, due to the Victorian legislation's approach to commencement. Victorian legislation decriminalising sex work passed in 2022, however because provisions commenced at different times and by proclamation, there was significant community confusion regarding when sex work was or would be fully decriminalised. This caused anxiety and distress among sex workers, who weren't clear on whether their work was lawful at various times.

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<sup>22</sup> *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024*, clause 2.