Legal Affairs and Community Safety Committee
lacsc@parliament.qld.gov.au

RE: Serious and Organised Crime Legislation Amendment Bill 2016 Inquiry

Dear Committee

This submission covers clauses 97, 99 and 100 which propose amendments to sections 229H, 229K & 229L in chapter 22A of the Criminal Code Act 1899 (Prostitution)

Reasons for the amendments

I could find little, if any, direct mention of recommendations for amendments to sections 229H, 229K & 229L of the Criminal Code Act 1899 in the opening speech addressing this bill by the Attorney General, Hon. YM D'ATH; the recommendations contained in the Queensland Organised Crime Commission of Inquiry Report; the Report of the Taskforce on Organised Crime Legislation; or the Review of the Criminal Organisation Act 2009 report, nor was there an explanation of why the amendments are proposed in the explanatory notes to the bill. However, due to the historical susceptibility of prostitution to manipulation by organised crime and the nature of the bill, it is assumed that the purpose of the amendments are to reduce or prevent future involvement of organised crime with prostitution.

The trade-off between sex worker safety & well being and prevention of association with organised crime

In the current legislation regulating private sex work (outside of licensed brothels) in Queensland (ch22A Criminal Code Act 1899, Prostitution Act 1999), there appears to be a trade off between the prevention of association with organised crime and the safety of sole operators. This is apparent to me from the restrictions placed on who can work with or support a private sex worker despite such restrictions leaving sex workers vulnerable to assault and social isolation.
It is currently unlawful for a private sex worker in Queensland working outside a licensed brothel to associate with another person in the provision of their services, including another sex worker. The exceptions are the hiring of a suitably licensed security guard for security, a crowd controller licensed person for driving and a message taker to monitor that a sex worker is still safe after a booking. In practice the security person and driver options are rarely taken up. This is mainly due to the cost of employing staff, who are not lawfully able to work for other sex workers at the same time, making it economically unviable. This leaves a large majority of private sex workers working alone where they are vulnerable to assault and social isolation, which often leads to poorer health and wellbeing outcomes.

In my recent role in sex worker support and advocacy, I have come in contact with a number of sex workers charged with the more common prostitution offence of "knowingly participating in the provision of prostitution of another person" (Criminal Code Act 1899 s229H). I got to see that often the charge came about because another person had supported them in some way in their business. These charges did not involve organised crime groups or individuals who were managing sex workers. Often just a friend or

relationship partner helping them out. I once asked a police officer who charged a sex worker how it could be that the sex worker was charged when they were the provider and “the other person” rather than the participant in the provision. I was told that the sex worker was still considered a participant in the provision and therefore committing an offence. It seems that often the sex worker is charged for an offence that was designed to protect them, rather than prevent them from working safely.

Proposed insertions improve effectiveness and render some costly inclusions of current legislation redundant

In this bill, the proposed insertions into sections 229H, 229HB, 229K and 229L of the Criminal Code Act 1899 refer to the proposed section 161Q, which along with proposed sections 161O and 161P of the Penalties and Sentences Act 1992 give a clear definition of criminal organisations, participation in criminal organisations and the circumstance of aggravation. I believe these insertions will be more effective in preventing organised crime’s manipulation of sex workers and their businesses as intended by the insertion of Chapter 22a in to the Criminal Code Act 1899 than the current sections in the Criminal Code Act do, thus making some of the existing legislation, which has a negative impact on the safety and wellbeing of sex workers, redundant.
For example, by leaving in the offence of “participating in the provision of prostitution of another person” (s229H Criminal Code Act 1899) and reference to illegal prostitution being where 2 or more prostitutes are involved, it will still mean that a sex worker can be charged for having an English speaking person take their incoming call when they are unable to speak English or working in co-op with another sex worker or having a partner or friend nearby for security and well being,

Additional suggested amendments to realise greater overall benefit of the proposed amendments in the bill

In order to fully realise the benefits of the proposed insertions into sections 229H, 229HB, 229K and 229L of the Criminal Code Act 1899 by improving the safety and wellbeing of sex workers without cost to the wider community, I suggest the following amendments to the Criminal Code Act 1899:

s229C Definitions for ch 22A, unlawful prostitution: replace “2 or more prostitutes” with “5 or more sex workers”.
This amendment increases the permitted size of a group of sex workers working in a co-op outside of a licensed brothel from 1 (with restrictive support) to 4. This should give ample opportunity for co-ops to set themselves up to have 2 sex workers on shift for 2 shifts a day, providing the sex workers with increased safety and well being during these periods. The change in terminology from “prostitutes” to “sex workers” is in line with efforts of sex worker advocates to reduce stigma towards sex workers and recent changes to Queensland legislation such as “The Anti-Discrimination Act 1991, s106C Accommodation for use in connection with work as sex worker.”
There may be a small increase in competition with Queensland licensed brothels as some sex workers may opt for a co-op arrangement rather than a licensed brothel, however, there

would be no overlap with current Queensland licensed brothels in numbers of sex workers permitted on shift, as schedule 3 of the Prostitution Act 1999 currently permits 8 sex workers on shift for a 5 room brothel and 6 sex workers on shift for a 4 room brothel. At the time of this submission, I understand all Queensland brothels to have 5 rooms and thus permit 8 on shift, with no limit to the number of sex workers who may use the brothel over a period of time. An example definition of where 4 sex workers are permitted to work together (without extra licensing of certificate) is covered in the “Prostitution Reform Act 2003 (NZ)” which states in section 4 Interpretation “small owner-operated brothel means a brothel: (a) at which not more than 4 sex workers work; and (b) where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel”

s229H Knowingly participating in provision of prostitution: Amend the current wording “Knowingly participating in provision of prostitution (1) A person who knowingly participates, directly or indirectly, in the provision of prostitution by another person commits a crime.” to “**Controlling** the provision of prostitution **of another person** (1) A person who **controls**, directly or indirectly, the provision of prostitution by another person commits a crime. The examples for this section to be removed or amended accordingly.
This removes from the offences, acts that are for the safety and wellbeing of sex workers where there is no link to organised crime.

s229I, s229K & s229L: Replace “2 or more prostitutes” with “5 or more sex workers”
These amendments are to integrate the suggested definition of unlawful prostitution as being 5 or more sex workers rather than 2 or more prostitutes as described in the notes to s229C above.

I also suggest the following amendment to the “*Prostitution Act 1999, Schedule 4, Dictionary*”: Replace “brothel means premises made available for prostitution by 2 or more prostitutes at the premises” with “brothel means premises made available for prostitution by **5** or more **sex workers** at the premises”
This brings the Prostitution Act 1999 in line with the suggested amendments to the Criminal Code Act 1899, above.

Although this bill focuses mainly on a realistic and evidence based approach to the prevention of the negative effects of organised crime of various parts of the community, I ask that the committee takes a further step to increase the benefits of the bill if passed, to a sector of the community, by recommending the further amendments I have suggested

Yours sincerely

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