Speech By

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

Mr NICHOLLS (Clayfield—LNP) (12.27 pm): Often described as the 'world's oldest profession', there is evidence that prostitution—sex work—occurred over 4,000 years ago. Sumerian records dating back to 2400 BC are the earliest recorded mention of prostitution as an occupation. These describe a temple brothel operated by Sumerian priests in the city of Uruk, an ancient city east of the Euphrates River. In the classic historical work from the 5th century BC *The Histories*, the Greek historian Herodotus documents shrines and temples where sacred prostitution was a common practice. In later years, sacred prostitution and similar classifications for females were known to have existed in Greece, Rome, India, China and Japan. However, many of these practices came to an end in the western world when the emperor Constantine decreed Christianity as the official religion of the Roman Empire.

Since those times, prostitution—what today and in this bill is described as sex work—has continued in various forms and under many guises unabated. Sometimes regularised, inevitably tolerated, often outlawed, occasionally glamorised, often included in popular culture from Tolstoy and *Les Miserables* to *Trading Places* and *Pretty Woman* and a multitude of TV shows, attitudes have changed over the years, particularly in the western world. In Queensland much of our recent political, policing and legal history has been defined by the Fitzgerald inquiry. It might pay to recall that in May 1987 acting Queensland premier Bill Gunn established that commission of inquiry after the media reported possible police corruption involving illegal gambling and prostitution. The results of that inquiry are, of course, well known.

This parliament has dealt with this issue on a number of occasions in the past. The 1991 parliamentary CJC report on prostitution makes for fascinating reading. It is instructive to note the attitudes of parliamentarians in this place over 30 years ago when considering the idea of decriminalising and regulating sex work and how times have changed since then. It is also interesting to see the split in the recommendations of that committee. The majority, consisting of two Labor members and two National Party members, opposed the establishment of licensed brothels and the decriminalisation of sex work. The minority, consisting of two Labor members and one Liberal, supported the alternative, although with serious concerns and conditions attached. It would seem a far cry from how committees work today.

By 1999, one of those minority Labor MLAs was premier and chose to enact the Prostitution Act 1999 to regulate for a highly regulated licensed brothel industry. The guiding principles of that legislation were said to ensure quality of life for local communities; safeguard against corruption and organised crime; address social factors which contribute to involvement in the sex industry; and ensure a healthy society and promote safety. The act commenced operation in July 2000. Not for the first time today, I am reflecting back to my days at the Brisbane City Council. I can recall one of the earliest brothels in Brisbane opening across Breakfast Creek from my electorate in Abbotsford Road, Maine, next to what is now Hoppy's Car Wash.

There was another review into prostitution by the CMC in 2004. It made further recommendations that were not implemented. Since July 2000, the law has remained largely stagnant while, of course, the world has moved on, both with technology and with broader societal change. Today we are now discussing what would have been almost unthinkable in Queensland 30 years ago—the decriminalising of sex work. This bill follows a lengthy review by the Queensland Law Reform Commission and is the result of its report No. 80 of March 2023. As always, I thank the Law Reform Commission and its members for the power of work that they do in producing these reports. They are well researched, lengthy and provide valuable information. That report followed the referral by the then attorney-general, and now health minister, of the issue of regulating a decriminalised sex work industry in Queensland. The scope of the review was to recommend a framework for a decriminalised sex work industry in Queensland with particular regard to—

(a) the development of an appropriate legislative framework required to give effect to a decriminalised sex work industry;

(b) the extent to which existing legislation should be repealed to give effect to a decriminalised sex work industry, including the Prostitution Act 1999, Prostitution Regulation 2014, Chapter 22A of the Criminal Code and provisions of the Police Powers and Responsibilities Act 2000;

In my view, these are the two most important references in the review but, of course, there were many other ancillary matters to be considered in the reference and they are taken up in the commission's report. The essence is that the government had already made up its mind to decriminalise the sex work industry. The government was unwilling to consider or investigate any other method of addressing sex work in Queensland. The failure to do so, and especially to consider the so-called 'Nordic model' of regulation of sex work, is considered by many submitters to the Law Reform Commission and the committee investigating the bill as a failure of consultation by the government, noting the many submissions made to the commission and the committee in support of that model of sex work regulation. That model, broadly speaking, proposes an asymmetric method of regulating sex work by penalising the buyer of sex services, not the sex worker.

Typically, such a system also seeks to encourage workers to stop sex work by offering pathways out of the business. It has been adopted with variations in a number of countries including Sweden, Finland, France, Canada and Ireland. So, if that model was to be rejected, as the government has done, it should have been done so fairly and fully after proper investigation. The government dismissed that model out of hand. Now there may well be good reasons for doing so including the concern that sex workers will still be targeted by police; that they may be denied housing and accommodation; that they may be denied access to financial services; and that they may be subject to further violence and harm from clients seeking to avoid police prosecution or even arrest. It is claimed that criminalising buyers makes it harder for sex workers to screen clients and to share information about unsafe or criminal clients—again, potentially raising issues of harm.

Interestingly, in its 2015 Select Committee on the Regulation of Brothels, the New South Wales parliamentary committee concluded the government should not criminalise sex work where it is consensual activity between adults. The committee stated that it is undesirable to stigmatise sex workers by requiring them to be licensed and forever recorded as having worked in the industry. That committee of the New South Wales parliament also found it was equally undesirable to criminalise the clients of sex workers as suggested by the Nordic model. Clearly, there are substantive issues to be considered in determining the appropriate way to address sex work. There are arguments on both sides. Whether the government's preferred method, or another way, is suitable has not really been considered.

The LNP believes that all workers, and those in vulnerable positions particularly, should be protected from criminal exploitation, coercion and harm. They should have access to the protections the law offers. This includes being able to report offences to and rely on the police and other institutions and laws of the state, as well as enjoying freedom from discrimination in a considered and balanced way. We strongly believe that there must be powerful and clear mechanisms to prevent and punish exploitation, coercion and trafficking as well as to protect children. A society that values the family as a central tenet of our community can do no less. It is with this in mind that we frame our response to this bill.

Currently, there are two legal forms of sex work in Queensland. The first form of lawful sex work is that provided in a licensed brothel. The second is that provided by a sole operator or 'private worker'. In this instance, a sex worker works alone from premises providing either in-house or outcall services, or both. Sex work in any other form is illegal in Queensland. This includes sex work engaged in or by escort agencies, unlicensed brothels, massage parlours, street workers publicly soliciting and two or more sex workers providing sex work from a single premises.

Most sex work in Queensland, according to the reports, occurs outside the licensing framework, meaning that it happens outside the current 17 legal brothels in Queensland—previously 20 was the number used. It is mostly provided by sole operators at unlicensed premises or through escort agencies. Sex work, performed at unlicensed premises or arranged through escort agencies, is unlawful, as the reports tell us. According to the Queensland Law Reform Commission report, at present 90 per cent of workers operate outside the licensed brothel system. This often leads them to work in dangerous situations, particularly when they are forced to work alone. Those figures do not seem to be contested.

The stated objective of this bill is to establish a legal framework that will enact a safe decriminalised sex work industry in Queensland while improving the health, safety, rights and legal protections for sex workers. It proposes to do this by repealing prostitution offences in the Criminal Code, the Prostitution Act and the Prostitution Regulation. It removes the current licensing system and specific obligations on brothel licensees by a complete repeal of the Prostitution Act and it updates discrimination protections for sex workers in section 106 of the Anti-Discrimination Act. It does act to restrict local governments from making local laws that prohibit or regulate sex work through amendments to the City of Brisbane Act and the Local Government Act. It inserts new offences in the Criminal Code to protect against the involvement of children in commercial sexual services and in the procuring of sexual services using coercion. The Attorney-General has outlined some of the attributes of those new sections in her contribution earlier.

It amends the Liquor Act 1992 to maintain the status quo on the conduct of adult entertainment and the prohibition of sex work occurring on licensed premises and it provides for a legislated review requirement to assess the effectiveness of the framework after four but less than five years after commencement. In short, the bill decriminalises sex work completely and removes sex work specific regulation entirely.

As I say, it requires a review of the effectiveness of these measures after four and before five years after commencement. This means that the regulation of sex work will rely on other existing laws, such as the general provisions of the Criminal Code, to deter criminal activity; the provisions of occupational health and safety laws to govern worker health and safety; general advertising laws that apply to all other types of businesses will apply in relation to sex work business; and likewise in relation to planning laws, where will be no local laws specific to or prohibiting sex work. General amenity and public nuisance laws apply, again with no specific provisions for sex work. In short, sex work is to be treated as no different to any other form of business.

While there is no doubt there is much wrong with the current laws about prostitution—and there is—the LNP believes these changes, without some degree of regulation and oversight, particularly in relation to planning, potential criminal involvement in sex work businesses and in striking the right balance in the Anti-Discrimination Act, will not deliver what we all want, which is safer and better outcomes for the community as a whole and sex workers in particular. The absence of a planning regulation available for scrutiny by the committee months after the bill was introduced is an area of concern, and we still do not see that regulation. This matter was raised in the committee and, having read the transcripts and the committee report, I have to say it was not satisfactorily answered by those officers of the department responsible for its preparation.

The bill does enact recommendation 23 of the Queensland Law Reform Commission report, and that shows that the intent of the legislation is to take power away from a local government to prohibit sex work businesses or regulate sex work or sex work businesses in a way different to other businesses. The LGAQ raised its concern in both its written and verbal submissions to the committee. The LGAQ opposed this change, submitting it amounted to a sex work business being treated differently to other businesses with no regulation able to be applied. It is intended that there be no requirement for separation distances from other sensitive land uses or other sex work businesses. The Queensland Law Reform Commission argued planning provisions should guide sex work businesses to the same extent as other commercial and home-based businesses; home-based sex work businesses should be treated like any other home-based business regarding land use; and sex work services should be guided towards centre or commercial zones, mixed-use zones and, in recognition of existing arrangements—that is, for the existing 17 established brothels—industrial zones and strategic port land. In our view this is not protecting community amenity.

We believe there are certain instances where community views on the desirability of a sex work business being near homes, schools, churches or other places of worship or sensitive institutions is highly debatable. While the intention might be to treat sex work businesses just like any other, the reality is that very many people in the community do not regard them as ‘just another business’. Many would feel extremely uncomfortable and concerned about the conduct of sex services businesses anywhere near a place children congregate or frequent. How would people feel if a sex work business, for example, was to open next to the South Bank Parklands or on one of the premises located there or in

a newly developed commercial centre with childcare and kindergarten facilities as well as a playground? We are left wondering in these circumstances what constitutes a home business. Is it two sex workers? Is it three? Is it four? What hours can they operate? Unlike most businesses operating a normal nine-to-five or thereabouts workday, it is entirely conceivable that sex work businesses would work 24 hours a day and predominantly at night and into the early morning hours. Local residential communities may be rightfully upset at that scenario. Under this bill, local authorities are emasculated and local communities are given no right to have their views considered.

Let us look at the Prostitution Licensing Authority's submission and evidence. The Prostitution Licensing Authority's submission supports decriminalisation. However, it also calls for a regulatory regime for the operation and ownership of sex work businesses in Queensland. Again, the submission made by the chair of the authority indicates the concerns that he has raised. These are reasonable concerns validly made in a reasoned submission. Those concerns include the potential for criminal involvement in the ownership and management of brothels with all that that entails. The licensing authority says in its submission—

> Of particular concern are risks of criminality around money laundering, worker coercion and people trafficking. The regulation on which the current licensing system is founded is designed to prevent the influence of organised crime in the industry and operate in synergy with law enforcement.

That submission goes on to say—

> There is opportunity to contemporise the regulatory system to reduce the administrative constraints to the benefit of the industry without abandoning the oversight measures necessary to maintain industry safeguards for operators, sex workers and their clients.

The authority's chair, Mr Colin Forrest SC, makes those same valid observations in his testimony to the committee. These are not unreasonable submissions that have not been thought through. They are the submissions of someone with experience as the chair of the authority in the licensed brothels sector. He makes it clear that he does not speak for the unlicensed part of the industry, but he observes the dangers that may occur in a completely decriminalised system. Notably, the government ignores this suggestion and it is hard to discern why given the state does regulate other business activities with a potential for harm. We regulate the liquor industry; we regulate the gaming industry; we regulate the sale of tobacco; and, perhaps more relevantly, we regulate tattoo parlours. These are all businesses where the state has some form of interest in protecting the community and acts to do so. It imposes regulatory controls.

The Queensland Hotels Association made a submission. They were disappointed that they had not been consulted regarding the bill considering the potential impact it has on over 1,200 hotel and accommodation tourism businesses across the state. Notably, they do not support the repealing of section 106C of the Anti-Discrimination Act. The repeal of this provision, which is the provision that allows an operator to act to not provide that accommodation to a sex worker, would mean an operator would not be able to prohibit a sex worker from conducting business in a rented room. The provision was inserted in the act to specifically deal with that issue; a court case had been brought. In fact, QCAT found in favour of the sex worker and against the owners of a small motel in relation to that matter. It was subsequently overturned on appeal, I might say.

The balancing of the rights of the accommodation provider and the sex worker, which is always the case when we talk about these matters—a balancing of rights—has in our view in this instance tipped the scales too far and the rights of private property owners to determine who uses their premises and what for must take precedence. No-one would expect a motel to allow a mechanic to service cars in his car park because he or she rented a room. In the instance envisaged by the bill though, the accommodation provider would have no choice.

The LNP does support strengthening criminal laws around coercion and exploitation and any attempt to involve children in sex work. We support the intent of the new provisions in new sections 217 and 218 that the bill proposes to insert. Again, this can be done within a regulatory framework designed to also limit the opportunities for criminal behaviour in the first place. One is not exclusive of the other. You can strengthen the criminal law in relation to coercion, exploitation and the involvement of children in the provision of commercial sex work services, but you can also still have a regulatory environment. One does not exclude the other.

I want to also acknowledge the very many submissions from those in support of the government's proposal and those who wish the bill to commence sooner rather than later. My contribution and the LNP do not seek to diminish those individuals' and groups' contributions. I went to many of the meetings that were held here and spoke to many of the people involved in that side of the case, if I can put it that way. They do make valid points around aspects of worker health and autonomy. However, in this instance the LNP believes these aims could well have been achieved by a regulatory model that would

ensure benefits for the sex workers while at the same time address valid and real concerns of many about the potential for criminal involvement and influence, coercion, extortion and trafficking as well as those concerned about the ability of local authorities to take steps to address community amenity concerns that may well be raised and those who are concerned about the issue of being able to manage and control accommodation provided. In those circumstances, the LNP will not be supporting this bill.