Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 15 February 2024

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

Introduction

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (12.26 pm): I present a bill for an act to amend the Anti-Discrimination Act 1991, the City of Brisbane Act 2010, the Criminal Code, the District Court of Queensland Act 1967, the Liquor Act 1992, the Local Government Act 2009, the Penalties and Sentences Act 1992, the Work Health and Safety Act 2011, to repeal the Prostitution Act 1999 and to amend the legislation mentioned in schedule 1 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Community Safety and Legal Affairs Committee to consider the bill

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Today, I am pleased to introduce the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024. This bill serves to implement a number of the recommendations made by the Queensland Law Reform Commission in its report No. 80, *A decriminalised sex-work industry for Queensland*. The recommendations provide an evidence-based path towards the decriminalisation of Queensland's sex work industry. That path leads to improving the safety of sex workers, while balancing the needs and expectations of the community.

I want to first acknowledge the work of Respect Inc, #DecrimQLD, Scarlet Alliance and the Queensland Council of Unions. I acknowledge the representatives from these groups who are present in the gallery today. I wish to acknowledge the advocacy that has been led by these groups for many years—advocacy for reforms to improve the safety and the rights of sex workers in Queensland. I also would like to acknowledge and thank the members of the QLRC, under the leadership of the former chairperson, the Hon. Justice Peter Applegarth AM, for their in-depth and thorough review of Queensland's sex work industry.

The QLRC's task was to recommend the legislative framework to implement the government's commitment to decriminalise the sex work industry. The framework was to be based on a simple idea: to regulate sex work as work, not a crime. The QLRC's review into our state's sex work industry was informed by research and evidence and guided by the key principles of safety, health and fairness. The QLRC made a total of 47 recommendations. These recommendations cover a range of areas including decriminalisation; licensing; health, safety and workers' rights; planning and local laws; protection from coercion and the exploitation of children; implementation activities; and other matters including education and training.

The QLRC recommendations were developed following extensive consultation including several consultation round tables with key people and organisations, and 160 submissions. Many submissions were from individual sex workers across different sectors of the industry. The QLRC also heard from various government agencies, non-government and community organisations and other interested individuals. Most submissions to the QLRC supported decriminalisation and an end to the current licensing framework, but it is acknowledged that some others held equally strong views for retaining some sex work-specific regulations. However, the review found that the aim of the current licensing system to ensure workers' health and safety is better met by work health and safety laws rather than through licensing laws that create a two-tier industry.

Under the current framework, there are two legal forms of sex work in Queensland. Sex work that occurs in a licensed brothel is lawful, and sex work performed by a private sex worker who works alone is also lawful. In Queensland, all other forms of sex work are illegal. The QLRC found that only a very small portion of the sex work industry has adopted the brothel licensing system, with the majority of sex work occurring outside the licensed sector. Many sex workers said that they want to be able to work in private with other sex workers where they can look out for and support one another.

The commission identified that the current regulatory framework stigmatises sex workers and increases a sex worker's vulnerability to exploitation and violence. The regulatory framework fails to protect their human rights. The report also noted that current sex work laws are highly restrictive and difficult to comply with. The current laws undermine a sex worker's autonomy and privacy. The current framework creates incentives to avoid the attention of authorities, causing sex workers to be isolated, increasing their vulnerability to exploitation and violence.

Sex workers should not have to choose between working lawfully and working safely. Decriminalisation treats sex work as work rather than as a crime. Decriminalisation aims to facilitate safe work practices, support health and wellbeing, help address stigma and discrimination, and improve access to protections under general laws and regulatory frameworks that apply to everyone, including work health and safety laws.

Decriminalisation does not mean no regulation at all. The review found that regulating sex work can be achieved under the same general laws as other work, including laws that govern work health and safety, anti-discrimination, public health, advertising and planning. The general criminal law also continues to apply.

The QLRC also recommended that there should be strong criminal penalties for coercion or involving children in commercial sexual services. The bill delivers on these recommendations. The bill proposes a legal framework for a decriminalised sex work industry in Queensland. The framework aims to improve the health and safety of sex workers, promote their human rights and provide for legal protections.

The bill largely implements recommendations of the QLRC report by:

- updating discrimination protections for sex workers in the Anti-Discrimination Act 1991;
- amending the City of Brisbane Act 2010 and the Local Government Act 2009 to restrict local governments from making local laws which prohibit or regulate sex work to ensure local government regulates sex work like any other business;
- inserting new offences in the Criminal Code to protect children from involvement in the provision of commercial sexual services;
- amending an existing offence in the Criminal Code to guard against the use of coercion and exploitation in relation to providing commercial sexual services;
- amending the Penalties and Sentences Act 1992 to ensure the serious and organised crime circumstance of aggravation applies to the new offences inserted into the Criminal Code;
- amending the Work Health and Safety Act 2011 to provide for a legislated review requirement to assess the effectiveness of the new regulatory framework for the sex work industry;
- repealing sex work-specific offences in chapter 22A of the Criminal Code; and
- repealing the Prostitution Act 1999 and Prostitution Regulation 2014.

Ultimately, the bill delivers on the QLRC's recommendations to treat sex work as work and not as crime. The QLRC found that sex workers experience barriers to exercising their rights along with significant stigma and discrimination. The QLRC noted that areas where sex workers are discriminated against include housing, banking and employment. Decriminalising sex work will remove some of these barriers and is a necessary first step to addressing stigma and discrimination.

The bill proposes that protections under the Anti-Discrimination Act 1991 be strengthened to address these issues and safeguard the human rights of sex workers. The bill amends the Anti-Discrimination Act 1991 by repealing the protected attribute of 'lawful sexual activity' and replacing it with 'sex work activity'. The bill defines the new attribute to mean the provision by an adult person of services for payment or reward that involve the person participating in a sexual activity with another person; or services that involve the use or display of the person's body for the sexual arousal or gratification of another person; and includes being or having been a person who provides those services.

Consistent with the principle that sex work should be treated the same as any other business, the bill repeals section 106C in the Anti-Discrimination Act which allows accommodation providers to discriminate against someone if they reasonably believe that the person is using, or intends to use, the accommodation for sex work. Accommodation providers will still be able to control the use of their premises in the same way that they can for any other person, including to comply with land use and planning laws.

The amendments to the Anti-Discrimination Act are consistent with recommendations 12 and 13 of the QLRC report. The QLRC also recommended the repeal of section 28(1) of the Anti-Discrimination Act 1991. Section 28 will be repealed by the Births, Deaths and Marriages Registration Act 2023 when part 12, division 3 of that act commences.

The bill also amends the Criminal Code to give effect to recommendations 1 and 25 to 32 of the QLRC report. The QLRC report noted that existing chapter 22A, 'Prostitution', of the Criminal Code contains offences that make many forms of sex work a crime. Recommendation 1 of the QLRC report is that offences that criminalise sex work other than in licensed brothels or that require sex workers to work on their own should be removed. The bill proposes that chapter 22A of the Criminal Code be repealed.

Decriminalising sex work does not mean the removal of criminal laws that guard against exploitation. The QLRC report considered that Queensland's criminal laws should differentiate between sex work which is between consenting adults and exploitation. Exploitation in this context refers to sex workers coerced into performing sex work and sex work that involves children. The bill inserts three new offences in chapter 22 which relate to the involvement of children under the age of 18 years in commercial sexual services. The bill also amends the existing offence at section 218 of the Criminal Code regarding procuring sexual acts by coercion.

Proposed new section 217A of the Criminal Code creates the offence of obtaining commercial sexual services from a person who is not an adult. The maximum penalty is 10 years imprisonment. If the child is under 16 years of age, the maximum penalty increases to 14 years imprisonment, and if the child is under 12 years of age the maximum penalty is life imprisonment.

Proposed new section 217B of the Criminal Code is an offence of allowing a person who is not an adult to take part in commercial sexual services. The maximum penalty is 14 years imprisonment. Proposed new section 217C of the Criminal Code is an offence for conduct relating to the provision of commercial sexual services by a person who is not an adult. The maximum penalty is 14 years imprisonment.

The intent of these offences is not to criminalise the child. Rather, the focus of the offences is the acts of those people who involve children in commercial sexual services. The purpose of these offences is to safeguard the vulnerability of children from exploitation.

The bill amends existing section 218 of the Criminal Code to ensure the offence captures coercion in the context of commercial sexual services and provides a safeguard to ensure that participation in the sex work industry is voluntary. The maximum penalty for this offence will remain 14 years imprisonment.

The amendment to existing section 218 specifies that coercion includes, for example, coercion by intimidation or threats of any kind, or assaulting a person, or damaging the property of a person, or making false representations or using false pretence or fraudulent means. The definition of coercion provided at section 218 is an inclusive one.

The examples of coercion included in the bill are not exhaustive and would not prevent a prosecution where a person is coerced by the improper use of a position of trust, the taking advantage of a person's vulnerability, or the supply or offer to supply a dangerous drug to the person. The serious organised crime circumstance of aggravation in the Penalties and Sentences Act 1992 will be available in relation to each offence.

The bill inserts a definition of 'commercial sexual service' in section 207A of the Criminal Code, as a service involving a sexual act engaged by a person for payment of reward under an arrangement of a commercial character. The existing definition of 'sexual act' currently defined in section 218 of the Criminal Code is used to ensure the offences capture both physical and non-physical contact.

The definition also includes services involving 'use or display of the person's body for the sexual arousal or gratification of another person', guarding against the involvement of children in sex work and the use of coercion to induce the performance of sex work, including adult entertainment such as stripping.

Furthermore, the bill amends the District Court of Queensland Act 1967 to ensure that the District Court has jurisdiction in relation to the offence under new section 217A 'Obtaining commercial sexual services from a person who is not an adult' as the maximum penalty of life imprisonment applies where the child is under 12 years.

The QLRC did not make any recommendations about the supply or consumption of alcohol on sex work business premises or the regulation of adult entertainment under the Liquor Act. The QLRC noted these are complex policy issues which require consultation and government consideration. The government is commencing a review of adult entertainment on liquor licensed premises as part of a separate process.

The bill removes extraneous references to the Prostitution Licensing Authority and Prostitution Act and related terms such as brothel licence and interest in a brothel. The bill also amends the Liquor Act to remove the Police Commissioner's role in co-signing the Adult Entertainment Code, with the sole power for the code to rest with the Commissioner for Liquor and Gaming.

The QLRC recommended amendments to the City of Brisbane Act 2010 and the Local Government Act 2009 to ensure that local laws about sex work should be restricted to make sure the aims and benefits of decriminalisation filter down to local government areas throughout Queensland.

The bill proposes to insert new sections into the Local Government Act 2009 and the City of Brisbane Act 2010 to prohibit local governments from making a local law that prohibits or regulates sex work or the conduct of a sex work business.

As I mentioned earlier, the bill ensures that the serious and organised crime circumstance of aggravation applies to the new offences in the Criminal Code. The bill therefore amends schedule 1C 'Prescribed offences' of the Penalties and Sentences Act 1992 to include the offences in proposed new sections 217A, 217B and 217C of the Criminal Code. Existing section 218 of the Criminal Code, which the bill also amends, already prescribes an offence to which the circumstance of aggravation applies.

The government acknowledges that decriminalising the sex-work industry will be a significant change to the current regulatory approach in place in Queensland. The QLRC recommended that there be a legislative requirement to ensure that the operation of the legislation giving effect to the changes is reviewed by a committee no sooner than four years and no later than five years after decriminalisation is implemented.

The bill amends the Work Health and Safety Act 2011 to provide a legislated requirement for a review of the new regulatory framework. The bill also amends the Work Health and Safety Act 2011 to include transitional provisions which relate to the repeal of the Prostitution Act 1999.

The bill will repeal, in its entirety, the Prostitution Act 1999. Repealing the Prostitution Act 1999 gives effect to recommendations 2, 3, 4, 5, 6, 11, 22 and 25 of the QLRC report. Repealing the Prostitution Act 1999 addresses much of the concerns identified by the QLRC in that the current regulatory framework stigmatises sex workers, increases their vulnerability to exploitation and violence, and fails to protect their human rights.

The repeal of the act will, amongst other things, have the effect of removing public solicitation offences; removing the current prostitution licensing provisions and abolishing the Prostitution Licensing Authority; removing sex work specific advertising provisions; and repealing sex work specific health offences.

The QLRC also found that licensing can be a useful regulatory approach, but it is not suitable for all industries. Ultimately, the QLRC report noted that sex work licensing does not ensure the health and safety of workers and does not keep criminal elements out of the industry. Rather, the QLRC report concluded that, as most existing licensed sex workers currently operate outside of the existing licensing scheme, the introduction of a widespread licensing scheme will undermine any efforts to afford protection and access to work rights. No replacement licensing scheme is proposed for the sex work industry.

I want to acknowledge and thank the board and staff at the Prostitution Licensing Authority for their dedicated work with administering the brothel licensing framework. I would like to acknowledge the PLA's chair—the Hon. Colin Forrest SC—for his leadership, along with members of his board. I also want to make clear that no public sector jobs will be lost as a result of the abolition of the Prostitution Licensing Authority.

In relation to public health, existing requirements that provide for the use of prophylactics by all sex workers and their clients and prohibitions on sex workers at licensed brothels from working with a sexually transmissible infection are not needed and will be removed. The QLRC report found that sex work specific health offences criminalise and stigmatise sex workers and are not consistent with the aims of decriminalisation. Existing public health laws and policy approaches apply to protect public health and promote the health of all Queenslanders including sex workers and clients.

The QLRC report recommended matters to be addressed in the planning framework to support the decriminalisation of the sex work industry in Queensland. In response, draft changes to the Planning Regulation 2017 are being prepared to give effect to the intent of the QLRC recommendations. The government is preparing a draft amendment regulation and explanatory notes which will be consulted on.

Queensland is not the first Australian jurisdiction to decriminalise sex work. Sex work is decriminalised in New South Wales, the Northern Territory, Victoria and also New Zealand. While each of these jurisdictions have taken a slightly varying path towards decriminalisation, the common theme of decriminalisation is that they all recognise and regulate sex work as legitimate work, rather than as a crime.

The Miles government is proud to introduce a bill to decriminalise the sex work industry—a step towards improving the health, safety and rights for sex workers while meeting the expectations of the community. I commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (12.47 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Community Safety and Legal Affairs Committee

Madam DEPUTY SPEAKER (Ms Lui): In accordance with standing order 131, the bill is now referred to the Community Safety and Legal Affairs Committee.