



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

**Report No. 4, 57th Parliament**  
**Housing, Big Build and Manufacturing Committee**  
April, 2024

## **Housing, Big Build and Manufacturing Committee**

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### **Acknowledgements**

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All web address references are current at the time of publishing.

## Contents

<b>Chair’s foreword</b>	<b>iii</b>
<b>Recommendations</b>	<b>iv</b>
<b>1 Introduction</b>	<b>1</b>
1.1 Policy objectives of the Bill	1
1.2 Queensland Law Reform Commission (QLRC) report	1
1.3 Government consultation on the Bill	3
1.4 Legislative compliance	3
1.4.1 Legislative Standards Act 1992	3
1.4.2 Human Rights Act 2019	3
1.5 Should the Bill be passed?	4
<b>2 Examination of the Bill</b>	<b>5</b>
2.1 Amendments to the Criminal Code	5
2.1.1 Enhancing the protection and safety of workers	5
2.1.2 Opposition to a decriminalised framework	6
2.1.3 Enhanced protection of children	8
2.1.4 Legislative compliance – Fundamental legislative principles	8
Committee comment	10
2.1.5 Expungement of sex work convictions	10
2.1.6 Section 216 – Use of the term impairment of the mind	10
Committee comment	11
2.2 Amendments to the <i>Anti-Discrimination Act 1991</i>	12
2.2.1 Addressing stigma and discrimination	12
2.2.2 Accommodation exemption	13
2.2.3 Definition of sex work activity	14
Committee comment	15
2.2.4 Legislative compliance - Human rights	15
Committee comment	16
2.3 Amendment to the <i>Local Government Act 2009 and City of Brisbane Act 2010</i>	16
2.3.1 Planning regulations	16
2.3.2 Support for amendments	17
2.3.3 Local government authorities	18
2.3.4 Potential impact on public amenity	18
Committee comment	19
2.4 Repeal of the <i>Prostitution Act 1999</i>	19
2.4.1 Removal of public solicitation offences	19
2.4.2 Removal of the licensing framework	20
Committee comment	21
2.4.3 Access to justice	21
2.4.4 Advertising requirements	22
2.4.5 Public health and mandatory STI health checks	22

Committee comment	24
2.4.6 Compensation for brothel licensees	24
2.5 Amendments to the <i>Work Health and Safety Act 2011</i>	24
2.5.1 Statutory review of amendments	24
2.5.2 Workplace health and safety guidelines	25
Committee comment	26
2.5.3 Industrial relations	26
Committee comment	27
2.5.4 Peer support and education	27
2.6 Amendment to the <i>Liquor Act 1992</i>	28
Committee comment	29
<b>Appendix A – Submitters</b>	<b>30</b>
<b>Appendix B – Officials at public departmental briefings</b>	<b>35</b>
<b>Appendix C – Witnesses at public hearings</b>	<b>36</b>

## Chair's foreword

This report presents a summary of the Housing, Big Build and Manufacturing Committee's examination of the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The consideration of this Bill has been a unique experience for the committee, and each member and the Secretariat have approached the task with careful consideration.

The recommendations, and especially the committee comments in the report, reflect the objective deliberations of the committee. We would like to acknowledge the Queensland Law Reform Commission whose extensive report on this matter proved to be a valuable resource in our examination of the Bill.

We also thank the diverse range of submitters and witnesses who courageously gave us the benefit of their experience and insight into this issue. We especially acknowledge those workers in the industry who have remained steadfastly focused on providing a safe working environment for themselves and the co-workers.



Chris Whiting MP

Chair

## Recommendations

### Recommendation 1

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The committee recommends the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 be passed.

### Recommendation 2

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The committee recommends that amendments to the Planning Regulation 2017 which support a decriminalised sex work framework, reflect the principle that the regulation of sex work, including land use and planning applications related to sex work businesses, be no more and no less than for other legal businesses.

## Executive Summary

The objective of the Bill 2024 (the 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. The framework proposed by the Bill is based on the recommendations of the Queensland Law Reform Commission (QLRC) report: *A decriminalised sex-work industry for Queensland* (the QLRC report).

The Bill:

- repeals sex work specific offences such as those relating to working alone or with others, public solicitation and sex work advertising, as located in the Criminal Code, *Prostitution Act 1999* (Prostitution Act) and Prostitution Regulation 2014 (Prostitution Regulation)
- removes the current licensing system and specific obligations on brothel licensees
- repeals sex work specific health offences that are located in the Prostitution Act and Prostitution Regulation
- implements the QLRC's recommendations to update discrimination protections in the *Anti-Discrimination Act 1991* (AD Act)
- ensures that the power to make local laws, which reside with local government authorities, should be restricted so that a local law must not be made which prohibits or regulates sex work or the conduct of sex work businesses
- repeals sex work specific offences in the Criminal Code, and introduces a definition of 'commercial sexual services' in addition to new offences that address coercion and the exploitation of children in commercial sexual services
- introduces a legislated review requirement to assess the operation and effectiveness of the new regulatory framework of the Bill and the decriminalised sex work industry in Queensland
- implements consequential amendments to reflect the decriminalisation of the sex work industry and removal of the brothel licensing system.<sup>1</sup>

## Issues canvassed by committee

The committee received a diverse range of views on the proposed decriminalised framework.

Inquiry participants discussed the enhanced protection and safety for workers, reduced stigma and discrimination, increased access to justice and improved industrial relations, should the sex work framework be decriminalised. Some held alternate views raising concerns about the potential repercussions of decriminalisation. These issues are discussed throughout the committee's report.

**The committee considered the evidence before it and has recommended that the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 be passed.**

## Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA). The committee was satisfied that potential breaches to fundamental legislative principles were reasonable and sufficiently justified in all cases and that the Bill is compatible with human rights outlined in the HRA.

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<sup>1</sup> Explanatory notes, p 1.





## 1 Introduction

### 1.1 Policy objectives of the Bill

The objective of the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (the 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.<sup>2</sup> The framework proposed by the Bill is based on the recommendations of the Queensland Law Reform Commission (QLRC) report: *A decriminalised sex-work industry for Queensland* (the QLRC report).

#### Key objectives

The explanatory notes state that the Bill:

- repeals sex work specific offences such as those relating to working alone or with others, public solicitation and sex work advertising, as located in the Criminal Code, *Prostitution Act 1999* (Prostitution Act) and Prostitution Regulation 2014 (Prostitution Regulation)
- removes the current licensing system and specific obligations on brothel licensees
- repeals sex work specific health offences that are located in the Prostitution Act and Prostitution Regulation
- implements the QLRC's recommendations to update discrimination protections in the *Anti-Discrimination Act 1991* (AD Act)
- ensures that the power to make local laws, which reside with local government authorities, should be restricted so that a local law must not be made which prohibits or regulates sex work or the conduct of sex work businesses
- repeals sex work specific offences in the Criminal Code, and introduces a definition of 'commercial sexual services' in addition to new offences that address coercion and the exploitation of children in commercial sexual services
- introduces a legislated review requirement to assess the operation and effectiveness of the new regulatory framework of the Bill and the decriminalised sex work industry in Queensland
- implements consequential amendments to reflect the decriminalisation of the sex work industry and removal of the brothel licensing system.<sup>3</sup>

### 1.2 Queensland Law Reform Commission (QLRC) report

In August 2021, the then Attorney-General asked the QLRC to conduct an independent review and recommend a framework for a decriminalised sex work industry in Queensland. The QLRC delivered its report on 31 March 2023 and made 47 recommendations. The recommendations covered 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.<sup>4</sup>

<sup>2</sup> Explanatory notes, p 1.

<sup>3</sup> Explanatory notes, p 1.

<sup>4</sup> Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland*, 80(1), March 2023.

The Attorney-General informed the House that most submissions to the QLRC supported decriminalisation and an end to the current licensing framework, but it was acknowledged that some others held equally strong views for retaining some sex work specific regulations.<sup>5</sup>

Ultimately, the QLRC 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.<sup>6</sup>

Currently, in Queensland there are two legal forms of sex work: sex work that occurs in a licensed brothel, and sex work performed by a private sex worker who works alone. 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.<sup>7</sup>

The QLRC identified that the current regulatory framework stigmatises sex workers and increases a sex worker's vulnerability to exploitation and violence. It also found that the current framework:

- fails to protect sex workers human rights;
- is highly restrictive and difficult to comply with;
- undermines a sex worker's autonomy and privacy; and
- creates incentives to avoid the attention of authorities, causing sex workers to be isolated, increasing their vulnerability to exploitation and violence.<sup>8</sup>

The QLRC determined that sex workers should not have to choose between working lawfully and working safely. To this effect, they concluded that decriminalisation would treat sex work as work rather than as a crime. It would also 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.<sup>9</sup>

The QLRC emphasised that decriminalisation does not mean no regulation at all. Their review found that regulating sex work could 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 would continue to apply.<sup>10</sup>

The QLRC also recommended that there should be strong criminal penalties for coercion or involving children in commercial sexual services.<sup>11</sup>

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<sup>5</sup> Hon. Y D'ath, Attorney-general and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, Queensland Parliament, Record of Proceedings, 15 February 2024, p. 253.

<sup>6</sup> Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland*, Report No 80 Volume 1, March 2023, p 71.

<sup>7</sup> Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland*, Report No 80 Volume 1, March 2023, p 4.

<sup>8</sup> Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland*, Report No 80 Volume 1, March 2023, p 56.

<sup>9</sup> Hon. Y D'ath, Attorney-general and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, Queensland Parliament, Record of Proceedings, 15 February 2024, p. 253.

<sup>10</sup> Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland*, Report No 80 Volume 1, March 2023, p 58.

<sup>11</sup> Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland*, Report No 80 Volume 1, March 2023, p 64.

### **1.3 Government consultation on the Bill**

In addition to the consultation undertaken by the QLRC, the Department of Justice and Attorney-General (DJAG) engaged in targeted consultation with respective government departments and agencies, sex worker representative bodies, and other external organisations on a confidential draft of the Bill between 17 October 2023 and 10 November 2023. Stakeholders were invited to provide feedback on the Bill and this feedback was considered in finalising the Bill.<sup>12</sup>

### **1.4 Legislative compliance**

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the Parliament of Queensland Act 2001, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

#### **1.4.1 Legislative Standards Act 1992**

The committee's assessment of the Bill's compliance with the LSA included consideration of fundamental legislative principles (FLPs) which are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The committee considered the following FLPs relating to the rights and liberties of individuals:

- Penalties should be relevant and proportionate
- Double jeopardy exception

The committee's FLP considerations are discussed throughout this report.

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain.

The committee is satisfied that the explanatory notes tabled contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

#### **1.4.2 Human Rights Act 2019**

A law is compatible with human rights if it does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable.<sup>13</sup>

The committee's assessment of the Bill's compatibility with the HRA considered the potential issues and limitations on human rights:

- Recognition and equality before the law
- Protection of property
- Freedom of thought and religion
- Right to take part in public life
- Rights in criminal proceedings
- Right to privacy and reputation
- Right not to be tried or punished more than once
- Protection of children

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<sup>12</sup> Explanatory notes, p 9.

<sup>13</sup> Human Rights Act 2019, s 8.

The committee's considerations of human rights are discussed throughout this report.

The committee considered the Bill to be compatible with the Human Rights Act and that potential limitations on human rights proposed by the Bill are demonstrably justified.

A Statement of Compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

### **1.5 Should the Bill be passed?**

The committee is required to determine whether or not to recommend that the Bill be passed.

#### **Recommendation 1**

The committee recommends the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 be passed.

## 2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

### 2.1 Amendments to the Criminal Code

Currently, chapter 22A (Prostitution) of the Criminal Code criminalises commercial sex work businesses that are not licensed with the Office of the Prostitution Licensing Authority, and sex workers who do not work on their own.<sup>14</sup> The Bill repeals Chapter 22A of the Criminal Code as recommended in the Queensland Law Reform Commission (QLRC) report to actualise the decriminalisation of sex work<sup>15</sup>

The QLRC also recommended that the decriminalised framework should clearly distinguish between sex work, which is between consenting adults, and sexual exploitation.<sup>16</sup> In line with this recommendation, the Bill inserts into Chapter 22 a definition of commercial sex services (section 207A) along with new offences to address coercion and the exploitation of children in commercial sexual services (sections 217A, 217B and 217C).<sup>17</sup>

#### 2.1.1 Enhancing the protection and safety of workers

Inquiry participants submitted significant support for the repeal of Chapter 22A of the Criminal Code. This support came from a broad range of organisations and individuals such as Respect Inc. & DecrimQLD, Scarlet Alliance, Public Advocate, Queensland Council of Unions and the Public Health Association of Australia.<sup>18</sup>

Mish Pony, from Scarlet Alliance, told the committee that decriminalisation is considered best practice for sex work by many bodies, including the World Health Organization, the Lancet Medical Journal, multiple United Nations agencies, Amnesty International, the International Labour Organization and the Global Alliance Against Traffic in Women.<sup>19</sup>

A key reason put forward by supporters of the Bill was the extra protection and safety that decriminalisation would bring to sex workers. Elizabeth Nichol, from Respect Inc., explained that currently laws criminalise sex workers who work in pairs or contact each other for safety. Decriminalisation would mean that workers can check in with another person at the end of a booking; share where they are and who they are with; drive another sex worker to an outcall; or hire a receptionist to screen calls.<sup>20</sup>

Numerous individuals working in the sex industry agreed and submitted how they would like to have a safe and healthy workplace, where they can work with another person and not be alone, as this would keep them safe from dangerous clients.<sup>21</sup>

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<sup>14</sup> Explanatory notes, p 4.

<sup>15</sup> Explanatory notes, p 4.

<sup>16</sup> Explanatory notes p 4.

<sup>17</sup> Explanatory notes p 4.

<sup>18</sup> Respect Inc. & DecrimQLD, submission 136, p 2. (see also, for example, Scarlet Alliance, submission 109; Public Advocate, submission 55; Queensland Council of Unions, submission 147; Public Health Association of Australia, submission 148; Leanne Daniell, submission 36, Stonewall Medical Centre, submission 48; Townsville Community Law, submission 135).

<sup>19</sup> Mish Pony, Chief Executive Officer, Scarlet Alliance, Public hearing transcript, Brisbane, 22 March 2024, p 2.

<sup>20</sup> Elizabeth Nichol, Relief State Coordinator, Respect Inc., Public hearing transcript, Brisbane, 22 March 2024, p 1.

<sup>21</sup> Name withheld, submission 26, p 1.

Stonewall Medical Centre<sup>22</sup> operates a drop-in Sexual Health Testing Service which is well utilised by sex workers. The Stonewall team stressed that their grass roots exposure to the issues of sex workers informs them that sole operators can be in real, grave danger under the current laws. In their medical practice they have attended to sex workers who have been the victims of violence.<sup>23</sup>

Another stakeholder supported reforms that will allow sex workers to work in groups or collectives other than in licensed brothels. They proposed this would give sex workers more freedom to choose how to work without compromising their own personal safety, especially since Queensland has many remote areas where there may not be any brothels.<sup>24</sup>

Rachael Brennan's research (University of Queensland's School of Public Health) confirmed the ageism related challenges experienced by older women who are being pushed out of licensed brothels. Consequently, the lower earnings and the prohibitions on working together and sharing costs are particularly onerous for older women.<sup>25</sup>

#### *2.1.1.1 Departmental response*

The Queensland Police Service (QPS) acknowledged that some sex workers fear apprehension by police officers under current laws. The QPS advised that it continues to develop an environment where sex workers feel comfortable reporting offences to police. This is essential to delivering the Queensland Government vision that everyone in Queensland lives free of the fear, threat or experience of sexual violence.<sup>26</sup>

#### **2.1.2 Opposition to a decriminalised framework**

Other submitters opposed the decriminalisation of sex work in Queensland. The Australian Christian Lobby (ACL) outlined concerns about the repercussions that decriminalising sex work could have on families and communities. The committee received multiple submissions aligning with ACL's position on the Bill.<sup>27</sup>

ACL was concerned that decriminalisation would possibly shift the perception of sex work from an activity largely hidden from the broader community to an activity that will become far more visible in all areas of the community. ACL cited potential scenarios of landlords being compelled to lease their premises for commercial sex work use; and sex workers soliciting for clients outside of schools or other public places in various stages of undress.<sup>28</sup> ACL also suggested that decriminalisation could expose women and young girls to unwanted sexual advances or facilitate the grooming of children into prostitution before they are adults by allowing them to be employed in 'non sex sale situations' in commercial sex work businesses.<sup>29</sup>

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<sup>22</sup> Stonewall Medical Centre, submission 48, p 1. (see also, for example, Public Advocate, submission 55; Mandy Bliss, submission 79; Elle Coles, submission 120; Society of Australian Sexologists, submission 126; Global Network of Sex Work Projects, submission 129; Public Health Association of Australia, submission 148; National Association of People with HIV Australia, submission 161).

<sup>23</sup> Stonewall Medical Centre, submission 48, p 1.

<sup>24</sup> Alaska Montford, submission 39, p 1.

<sup>25</sup> Rachael Brennan, Public hearing transcript, Brisbane, 26 March 2024, p 12.

<sup>26</sup> QPS response to written questions from the committee, 8 April 2024, pp 1-2.

<sup>27</sup> Form A or Variation of Form A, submission 174.

<sup>28</sup> Australian Christian Lobby, submission 60, pp 3-4.

<sup>29</sup> ACL, submission 60, p 6.

Other stakeholders raised concerns with the decriminalisation of sex work. A number of stakeholders drew on their faith and viewed sex work and all manner of sexual activity outside of marriage as sins against God's moral law,<sup>30</sup> with sex work considered to have no valid social purpose.<sup>31</sup>

Several inquiry stakeholders outlined concerns about exploitation and human trafficking increasing under decriminalisation.<sup>32</sup> These participants held the view that decriminalisation would have a negative impact on society and result in the commodification and enslavement of women.<sup>33</sup> Others referred to serious criminal activities associated with brothels including child trafficking, the exploitation of women and men, sexual violence, and sexual servitude.<sup>34</sup>

#### 2.1.2.1 *Departmental response*

In response, DJAG acknowledged the diverse range of views put forward by stakeholders on the proposed decriminalisation of the framework. DJAG advised that sex work is already lawful in Queensland. Section 7 of the Anti-Discrimination Act prohibits discrimination on the basis of certain attributes. Under this section, discrimination on the basis of person's 'lawful sexual activity' (which means 'a person's status as a lawfully employed sex worker, whether or not self-employed') is already prohibited.<sup>35</sup>

DJAG advised that criminal laws against coercion and the involvement of children in commercial sexual services are still needed and the Bill provides for new offences to guard against children being engaged in commercial sex services. This is discussed further below.<sup>36</sup> Other existing offences available under state and Commonwealth laws, including those related to unlawful sexual activity, child protection, slavery and human trafficking will continue to apply.<sup>37</sup>

DJAG also drew attention to the QLRC report which found that the current sex work laws are highly restrictive and difficult to comply with, undermining sex workers' autonomy and privacy. The QLRC report stated that the current framework creates incentives to avoid the attention of authorities and isolates sex workers, increasing their vulnerability to exploitation and violence. QLRC stated that this creates a two-tiered industry where most sex work is criminalised or occurs outside the licensing system and that the existing framework contributes to stigma and discrimination, and creates barriers to accessing health, safety and legal protections.<sup>38</sup>

The QPS advised that it works with Australian Government agencies which have the primary responsibility for investigating and prosecuting people who exploit sex workers for modern slavery under the *National Action Plan to Combat Human Trafficking and Slavery 2020-25*. The QPS assists in the investigation of offences against *Criminal Code Act 1995* (Cth) chapter 8 (Offences against humanity and related offences). Where a matter involves aspects of modern slavery, the QPS refers it to the Australian Federal Police for investigation. Following changes to sex work laws, the QPS will

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<sup>30</sup> Neil van der Wel, submission 44, p 1.

<sup>31</sup> Family Voice, submission 46, p 2.

<sup>32</sup> Anna Welsh, submission 23, p 1. (see also Australian Federation for the Family, submission 25; William Tento, submission 31; Coalition for the Abolition of Prostitution, submission 32; Karen Johns, submission 54; Wahine Toa Rising, submission 110).

<sup>33</sup> Lukas Butler, submission 14, p 1.

<sup>34</sup> Family Voice, submission 46, p 7.

<sup>35</sup> DJAG response to submission, 20 March 2024, pp 23-24.

<sup>36</sup> DJAG response to submissions, 20 March 2024, pp 9-10.

<sup>37</sup> DJAG response to submissions, 20 March 2024, pp 9-10.

<sup>38</sup> DJAG responses to submissions, 20 March 2024, pp 9-10.

continue to work with partner law agencies to prevent, disrupt, respond and investigate the exploitation of sex workers for modern slavery.<sup>39</sup>

### 2.1.3 Enhanced protection of children

The QLRC recommended that the decriminalised framework should clearly distinguish between sex work, which is between consenting adults, and sexual exploitation.<sup>40</sup> In line with this recommendation, the Bill inserts into Chapter 22 a definition of commercial sex services along with new offences to address coercion and the exploitation of children in commercial sexual services.

Clause 13 of the Bill inserts three new offences which guard against children being engaged in commercial sexual services:

- New section 217A creates an offence for 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 is 14 years imprisonment, and if the child is under 12 years of age the maximum penalty is life imprisonment. The Bill also amends section 678 of the Criminal Code to expand the list of prescribed offences for a double jeopardy exception to include new section 217A(1) (obtaining commercial sexual services from another person who is not an adult) where the punishment in new section 217A(3) applies (if the child is under 12, the person is liable to a maximum penalty of imprisonment for life).<sup>41</sup>
- New section 217B creates an offence for allowing a person who is not an adult to take part in commercial sexual services. The maximum penalty is 14 years imprisonment.
- New Section 217C creates 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.<sup>42</sup>

Consistent with the QLRC report, these offences provide serious penalties for those who coerce individuals or involve children in commercial sexual services. Other existing offences available under state and Commonwealth laws, including those related to unlawful sexual activity, child protection, slavery and human trafficking will continue to apply.<sup>43</sup>

### 2.1.4 Legislative compliance – Fundamental legislative principles

#### 2.1.4.1 *General rights and liberties of individuals - penalties*

To have sufficient regard for the rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. In line with this, a penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.<sup>44</sup> The committee considered the three new offence provisions from this perspective.

The explanatory notes do not address the fundamental legislative principle regarding relevant and proportionate penalties specifically. However, the maximum penalty amounts are consistent with other offences in the Criminal Code, such as the indecent treatment of children under 16 (ranging from 14 to 20 years),<sup>45</sup> permitting the abuse of children on premises (ranging from 10 years to life

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<sup>39</sup> QPS response to written questions from the committee, 8 April 2024, pp 4-5.

<sup>40</sup> Explanatory notes p 4.

<sup>41</sup> Explanatory notes, p 5.

<sup>42</sup> Explanatory notes, p 4.

<sup>43</sup> DJAG response to submission, 20 March 2024, pp 9-10.

<sup>44</sup> Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook* (Notebook), p 120. See also LSA, s 4(2)(a).

<sup>45</sup> Criminal Code, s 210.



imprisonment)<sup>46</sup> and taking a child for immoral purposes (ranging from 10 years to life imprisonment).<sup>47</sup>

The Bill also amends an existing offence relating to procuring sexual acts by coercion, however the maximum penalty remains unchanged.<sup>48</sup>

Whilst the penalties for the new provisions are significant, the overall purpose of the provisions is to safeguard children from exploitation. The penalties are consistent with the approach taken in the Criminal Code and are scaled to reflect the seriousness of the relevant conduct. Nevertheless, the penalties include imprisonment, the most serious of penalties, which has a significant impact on individual rights and liberties.

#### 2.1.4.2 General rights and liberties of individuals -double jeopardy exception

The right not to be tried or punished more than once for an offence for which a person has already been convicted or acquitted (the rule against double jeopardy) operates as part of the procedural protections afforded to criminal defendants. It is also a safeguard for the rule of law, by promoting certainty and finality in criminal proceedings.<sup>49</sup>

To have sufficient regard for rights and liberties of individuals,<sup>50</sup> legislation should not abrogate rights, in the broadest sense of the word, from any source without justification.<sup>51</sup>

The Bill adds the offence in proposed section 217A(1) (obtaining commercial sexual services from a child), in circumstances where the child is under the age of 12 years (proposed section 217A(3)), to the list of prescribed offences in the Criminal Code<sup>52</sup> to which the expanded double jeopardy exception would apply.<sup>53</sup>

In other words, an acquitted person could be retried for the offence if the Court of Appeal is satisfied there is fresh and compelling evidence against the acquitted person in relation to the offence and it is in the interests of justice.<sup>54</sup> This could have a serious impact on the rights and liberties of the acquitted person.

Whilst the explanatory notes do not address this fundamental legislative principle specifically, it can be seen from the statement of compatibility that the justification for adding this offence to the proposed list of prescribed offences is to ensure serious offenders can be brought to justice and to preserve the integrity of the criminal justice system.<sup>55</sup> It is noted that the maximum penalty for this offence is life imprisonment, which is consistent with other proposed prescribed offences.<sup>56</sup>

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<sup>46</sup> Criminal Code, s 213.

<sup>47</sup> Criminal Code, s 219.

<sup>48</sup> Bill, cl 14 (Criminal Code, amends s 218).

<sup>49</sup> Statement of compatibility, p 4.

<sup>50</sup> LSA, s 4(2)(a).

<sup>51</sup> OQPC, Notebook, p 110.

<sup>52</sup> As proposed to be inserted by the Criminal Code (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2023, cl 27.

<sup>53</sup> See Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2023, which is currently before the House. It seeks to expand the fresh and compelling evidence double jeopardy exception to 10 prescribed offences in addition to murder. Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2023, explanatory notes, p 1.

<sup>54</sup> See Statement of compatibility, p 5.

<sup>55</sup> Statement of compatibility, pp 7, 9.

<sup>56</sup> See Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2023, cl 27 (Criminal Code, amends s 678).

### **Committee comment**

The committee considers the decriminalisation of sex work will afford sex workers safety and protection. The committee notes the new offences that offer children protection against exploitation and note that other state and Commonwealth laws continue to offer further protection in relation to trafficking, slavery and unlawful sexual activity. The committee is satisfied that the penalties are relevant and appropriate.

The committee is satisfied that the expanded double jeopardy exception has sufficient regard to rights and liberties of individuals, noting the seriousness of the offence and the significant impact a retrial could have on an acquitted person. The rationale for the limitation is clear and the committee is satisfied that the limitation is sufficiently justified in the circumstances.

#### **2.1.5 Expungement of sex work convictions**

Various stakeholders supported the expungement of sex work convictions to prevent ongoing impacts on sex workers moving forward.<sup>57</sup>

For example, SIN strongly supported the inclusion of expungement or spent conviction inclusions in Queensland as part of future legislative reform, submitting that it will reduce discriminatory impacts on sex workers moving forward. SIN considered this to be an important inclusion that removes barriers associated with past convictions, such as when police clearances are required for other employment.<sup>58</sup>

Another stakeholder considered it important to expunge the criminal records of people who have been charged with prostitution offences as having these charges is stigmatising and can be harmful for migrants to Australia who are seeking permanent residency/citizenship.<sup>59</sup>

##### ***2.1.5.1 Departmental response***

In response, DJAG noted that the QLRC Report considered the stigmatising effect of criminal convictions and that criminal convictions for sex work affect a person's ability to work in certain jobs. Those convictions also provide a basis for discrimination. The QLRC Report did not make any recommendations in relation to the expungement (removal) of sex work convictions from a person's criminal history as it considered an expungement scheme to be a secondary issue to the decriminalisation of the sex work industry. Nevertheless, the Department advised that work would commence in 2024 to consider the expungement of criminal convictions for sex work.<sup>60</sup>

#### **2.1.6 Section 216 – Use of the term impairment of the mind**

Currently section 216 in Chapter 22A of the Criminal Code uses the term 'person with an impairment of the mind' in sections that would prohibit such a person being a worker, client, or even being present on the premises where sex work occurred. The QLRC noted that this creates 'problems for people living with mental impairment who are able to negotiate consent as a sex worker, or who want to hire a sex worker'.<sup>61</sup>

The Public Advocate submitted that Chapter 22A includes a number of references to people 'with an impairment of the mind', a term which the QLRC Report found is 'outdated, discriminatory and

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<sup>57</sup> Sex Worker Outreach Program (SWOP NT), submission 168, p 24. (see also, for example, Queensland Council for LGBTI Health, submission 134; Respect Inc. & DecrimQLD, submission 136; Micah Projects, submission 140; Magenta Sex Workers Project, submission 145; Queensland Positive People, submission 146; Public Health Association of Australia, submission 148; National Association of People with HIV Australia, submission 161).

<sup>58</sup> SIN, submission 45, p 4.

<sup>59</sup> Name withheld, submission 64, p 2.

<sup>60</sup> DJAG response to submissions, March 2024, p 12

<sup>61</sup> Public Advocate, submission 55, p2.

stigmatising'. The Public Advocate considered the definition to be broad, and one that can unfairly disadvantage some people. The Public Advocate advised that the Queensland Court of Appeal has expressed concern the definition is so broad that it can include people who do not have 'any diminution in the capacity to acquire knowledge', and simply require some level of neurological impairment that affects the power to communicate, and that the definition could include a 'cerebral palsy sufferer of genius IQ'.<sup>62</sup>

Queensland Advocacy for Inclusion (QAI), Queenslanders with Disability Network (QDN) and Working With people with Intellectual and Learning Disabilities (WWILD) also supported the removal of references to 'impairment of the mind' in section 229L of the Criminal Code, however they stated that without repealing section 216 of the Criminal Code, a significant inconsistency remains in force in legislation in Queensland. This inconsistency would disadvantage and discriminate against many people with disability, and in particular, people with an intellectual disability.<sup>63</sup>

QAI, QDN and WWILD reasoned that while the purpose of section 216 of the Criminal Code may be to protect the vulnerable from sexual exploitation, the consequence of the provision is to render many naturally formed and informed sexual relationships illegal. These submitters told the committee that essentially, this prohibits intimate relationships for many Queenslanders with a disability, including all Queenslanders with an intellectual disability. This has the potential to have a wide range of detrimental effects; they may experience social isolation, loneliness, rejection, all of which impacts the person, their family, support systems, and ultimately, the health system.<sup>64</sup>

#### 2.1.6.1 Departmental response

In response, DJAG advised that this issue is outside the scope of the Bill.<sup>65</sup>

Clause 22 inserts a new definition into the Liquor Act for commercial sexual service which includes the term 'with an impairment of the mind'. This term is used because the definition is based on the definition of prostitution under s229E of the Criminal Code.

DJAG notes the feedback provided by the Public Advocate and will further consider the matter as part of the broader review of the adult entertainment legislation.<sup>66</sup>

#### **Committee comment**

The committee notes the calls from various stakeholders for amendments to the use of the term 'person with an impairment of the mind'. While technically outside of the scope of this Bill, the arguments put forward by the Public Advocate, the Human Right Commissioner<sup>67</sup> and various interest groups were compelling.

The committee has therefore written to the Department of Justice and Attorney-General, presenting the evidence put to the committee, and suggesting that they consider this matter further with a view to ensuring that definitions do not unfairly disadvantage some members of our community.

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<sup>62</sup> Public Advocate, submission 55, p 1.

<sup>63</sup> QAI, QDN & WWILD, submission 167, p 3.

<sup>64</sup> QAI, QDN & WWILD, submission 167, p 4.

<sup>65</sup> DJAG response to submission, 20 March 2024, p34.

<sup>66</sup> DJAG response to submissions, 20 March 2024, p 45.

<sup>67</sup> Queensland Human Rights Commission, *Review of consent laws and the excuse of mistake of fact*, Submission to the Queensland Law Reform Commission, 31 January 2020, pp 14-16.

## 2.2 Amendments to the *Anti-Discrimination Act 1991*

The QLRC found that sex workers experience barriers to exercising their rights along with significant stigma and discrimination from other people. As a result, the QLRC report recommended that protections from discrimination under the *Anti-Discrimination Act* be strengthened.<sup>68</sup>

The Bill amends the *Anti-Discrimination Act* by omitting the protected attribute of ‘lawful sexual activity’ and replacing it with ‘sex work activity’, providing discrimination protection for sex workers. DJAG advised that in line with stakeholder feedback, the proposed definition is wider than the definition proposed by the QLRC and is not restricted to acts involving physical contact.<sup>69</sup>

Consistent with the principle that sex work should be treated the same as any other business, the Bill implements the recommendation of the QLRC by repealing section 106C of the *Anti-Discrimination Act* which allows accommodation providers to discriminate against someone if they reasonably believe the person is using, or intends to use, the accommodation for sex work.

### 2.2.1 Addressing stigma and discrimination

There was broad support from inquiry participants on amendments which strengthen protections against discrimination for sex workers.<sup>70</sup> This included support from Respect Inc. and DecrimQLD, Scarlet Alliance, Sex Work, Education, Advocacy & Rights (SWEAR WA), Global Network of Sex Work Projects, Professor John Scott, Professor Basil Donovan AO, Queensland Law Society, and Queensland Council of Unions.<sup>71</sup> Many submitters reflected on the stigma and discrimination that sex workers currently experience. Submitters told the committee that stigma and discrimination<sup>72</sup> can be further exacerbated due to age,<sup>73</sup> gender, sexual orientation,<sup>74</sup> ethnicity,<sup>75</sup> and disability.<sup>76</sup>

Academic, Rachael Brennan, representing the University of Queensland School of Public Health, spoke of the stigma and discrimination that undermine older sex workers from accessing accommodation, banking and financial services, mental health care and justice. Her research revealed sex workers’ experiences of discrimination, isolation and social marginalisation.<sup>77</sup>

Others reflected on their own experiences. Katia told the committee that her experiences of discrimination, through being a sex worker with disability, are significantly compounded when working in jurisdictions without full decriminalisation of sex work. She considered decriminalisation

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<sup>68</sup> DJAG, Correspondence, 27 February 2024, p 4.

<sup>69</sup> Sakitha Bandaranaike, Acting Assistant, Director General Strategic Policy and Legislation, DJAG, transcript public briefing, 26 February 2024, p. 2.

<sup>70</sup> Candi Forrest, submission 108, p 1. (see also, for example Katrina Swain, submission 91; United Workers Union, submission 105; Dr Erin O’Brien, submission 112; Dr Fiona Bucknall, submission 117; Robert Fawkes, submission 118).

<sup>71</sup> SWEAR WA, submission 30, p 1. (see also, for example Professor John Scott, submission 35; Scarlet Alliance, submission 109; Global Network of Sex Work Projects, submission 129; Respect Inc. & DecrimQLD, submission 136; Joint submission – various health, sexual health and allied services (Professor Basil Donovan AO), submission 111; Queensland Council of Unions, submission 147; Queensland Law Society, submission 176).

<sup>72</sup> Name withheld, submission 64, p 2. (see also, for example, Mandy Bliss, Public hearing transcript, Brisbane, 22 March 2024, p 5; Professor Basil Donovan, Public hearing transcript, Brisbane, 26 March 2024, p 13).

<sup>73</sup> Rachael Brennan, Public hearing transcript, Brisbane, 26 March 2024, p 12; Anonymous submissions provided to Respect Inc., submission 121, p 24; Elle Coles, submission 120, p 1.

<sup>74</sup> Queensland Council for LGBTI Health, submission 134, p 2; Robert Fawkes, submission 118, p 1.

<sup>75</sup> Name withheld, submission 17, p 1.

<sup>76</sup> Katia Schwartz, submission 142, p 2.

<sup>77</sup> Rachael Brennan, Public hearing transcript, Brisbane, 26 March 2024, p 12.

and anti-discrimination protections for sex workers to be vital tools in breaking down stigma and acknowledging that sex workers are valuable members of the community.<sup>78</sup>

One submitter highlighted the difficulties sex workers can have when attempting to secure stable housing. Such difficulties, they feel, are caused by societal misconceptions and prejudices, perpetuated by criminalisation.<sup>79</sup> Another submitter acknowledged it was difficult for sex workers to be approved for financial products as banks will not work with them for moral reasons. The submitter said sex workers struggle to gain access to accountants, rental accommodation as real estate companies will not recognise their work as regular income, and approval for loans from a bank because again their work is not recognised.<sup>80</sup>

Respect Inc and DecrimQLD submitted that many sex workers feel uncomfortable disclosing their occupation to healthcare providers.<sup>81</sup> One sex worker described how after disclosing her occupation to a doctor, the receptionist called to cancel the follow up appointment.<sup>82</sup>

### 2.2.2 Accommodation exemption

The QLRC found that exemptions in the Anti-Discrimination Act that allow discrimination specifically against a person because they are a sex worker are not needed, are inconsistent with decriminalisation, and should be removed. To give effect to this recommendation, Clause 5 repeals the ‘accommodation exemption’ found in section 106C of the Anti-Discrimination Act.

Section 106C currently provides that accommodation providers can discriminate against someone if they reasonably believe the person is using, or intends to use, the accommodation for sex work.<sup>83</sup> Under the Act, an accommodation provider can refuse to supply accommodation; evict a person from accommodation, or treat a person unfavourably in connection with accommodation (for example, by charging a higher rate for cleaning).<sup>84</sup> Queensland is the only state to have this exemption in place.

#### 2.2.2.1 Stakeholder views

Various stakeholders supported the repeal of section 106C.<sup>85</sup> This included Scarlet Alliance, SWOP NSW, University of Queensland School of Public Health, Queensland Human Rights Commission, and the Queensland Law Society.<sup>86</sup>

The Queensland Human Rights Commission (QHRC) supported the omission noting that it was consistent with recommendation 24.3 of its recent *Building Belonging Report – Review of Queensland’s Anti-Discrimination Act 1991 (Building Belonging)*.<sup>87</sup> The QHRC also considered that by decriminalising sex work and enhancing protections against discrimination, the Bill will deliver the

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<sup>78</sup> Katia Schwartz, submission 142, p 2.

<sup>79</sup> Name withheld, submission 28, p 1.

<sup>80</sup> Summer Gwynne, submission 2, p 1.

<sup>81</sup> Sex Worker Outreach Program NT & The Sex Worker Reference Group, submission 168, p 8.

<sup>82</sup> Respect Inc. & DecrimQLD, tabled document 26 March 2024, p 11.

<sup>83</sup> DJAG response to submissions, 20 March 2024, pp 27-28.

<sup>84</sup> DJAG response to submissions, 20 March 2024, pp 27-28.

<sup>85</sup> SWOP NSW, submission 133, p 4. (see also, for example, Kimberley Henderson, submission 16; Global Network of Sex Work Projects, submission 129; Queensland Council for LGBTI Health, submission, 134; Magenta Sex Workers Project, submission 145; Queensland Council of Unions, submission 147).

<sup>86</sup> Scarlet Alliance, submission 109, p 2. (see also, for example, SWOP NSW, submission 133; University of Queensland, School of Public Health, submission 66; Queensland Human Rights Commission, submission 113; Queensland Law Society, submission 176).

<sup>87</sup> Queensland Human Rights Commission, *Building belonging – Review of Queensland’s Anti-Discrimination Act 1991* (July 2022) Recommendation 24.

reforms which are necessary to ensure the human rights to privacy, freedom of expression, freedom of movement, and equality before the law of sex workers in Queensland.<sup>88</sup>

Some inquiry submitters who are sex workers shared their own experiences of being evicted from hotel accommodation in the middle of the night,<sup>89</sup> sometimes due to a vindictive client reporting the sex worker to an accommodation provider because the sex worker refused to engage in a sexual activity which was either illegal or not provided by the sex worker.<sup>90</sup> Others submitted they had been denied accommodation unless they provided sexual favours.<sup>91</sup>

Conversely, the Queensland Hotels Association (QHA)<sup>92</sup> and the Australian Christian Lobby (ACL)<sup>93</sup> outlined reservations with the amendment.

The QHA submitted that there is an inconsistency between section 152 of the Liquor Act and the proposed removal of section 106C from the Anti-Discrimination Act. The QHA submitted that if section 106C is repealed and the licensee refuses to permit a sole operator sex worker to conduct his or her business in licenced premises, then the licensee will have likely breached the Anti-Discrimination Act on the ground of 'lawful sexual activity'. However, if the licensee allows the sole operator sex worker to conduct his or her business in licenced premises, then the licensee will be in breach of the Liquor Act.<sup>94</sup>

The QHA also submitted that tourist accommodation businesses need certainty and should be able to retain the right to refuse sex workers operating out of their businesses in line with their service standards, the expectations of guests (including families) and those of the general Queensland community.<sup>95</sup>

#### *2.2.2.2 Departmental response*

In response, DJAG confirmed that if section 106C is repealed, accommodation providers will still be able to control the use of their premises in the same way they can for any other person, including to comply with land use and planning laws. For example, a motel operator can have policies about the use of their rooms to carry out certain kinds of commercial activity that attracts clients, since the purpose of a motel is to provide short-term accommodation to travellers or tourists. An example is, for instance, a hairdresser.<sup>96</sup>

### **2.2.3 Definition of sex work activity**

Clause 4 of the Bill omits the protected attribute of 'lawful sexual activity' and replaces it with 'sex work activity'.

Clause 6 of the Bill provides a definition of '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.<sup>97</sup>

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<sup>88</sup> QHRC, submission 113, p 2.

<sup>89</sup> Anonymous submissions provided to Respect Inc., submission 121, p 23.

<sup>90</sup> Name withheld, submission 27, p 1.

<sup>91</sup> Respect Inc. & DecrimQLD, tabled document, 26 March 2024, p 11.

<sup>92</sup> Queensland Hotels Association, submission 141, p1.

<sup>93</sup> Australian Christian Lobby, submission 60, p 3.

<sup>94</sup> Queensland Hotels Association, submission 141, p 2.

<sup>95</sup> Queensland Hotels Association, submission 141, p 2.

<sup>96</sup> DJAG response to submissions, 20 March 2024, pp 27-28.

<sup>97</sup> DJAG, Correspondence, 27 February 2024, p 4.

DJAG noted that this change is consistent with the aim of reducing stigma and safeguarding sex workers' human rights, including the right to equal and effective protection against discrimination.<sup>98</sup>

### 2.2.3.1 *Stakeholder views*

The Queensland Law Society (QLS) suggested that the words '*sexual arousal or gratification*' in the definition of 'sex work activity' are subjective.<sup>99</sup> The QLS explained that should this definition become an element of offences, courts and juries are required to determine whether evidence is sufficient to prove the element beyond a reasonable doubt. When adjectives like '*gratification*' or other terms that are of unsure remit and definition are used there can be problems in fact finding.<sup>100</sup>

QLS recommended a more neutral use of terminology such as that found in the Northern Territory as follows:

*Sex work means the provision by a person of services that involve the person participating in sexual activity with another person in return for payment or reward.*<sup>101</sup>

Other submitters, advocated for the definition of 'sex work activity' to include additional wording to clarify that it extends to online services and other commercial sexual services like phone sex or sexting services, erotica and fetish classes.<sup>102</sup>

### 2.2.3.2 *Departmental response*

In response to the expansion of the definition, DJAG explained that the definition of 'sex work activity' in Clause 6 of the Bill is drafted broadly. The definition provides that sexual activity with another person is included, however, it also adds 'services that involve the use or display of the person's body for the sexual arousal or gratification of another person'. Depending on the circumstances, the attribute will apply to the services outlined in the submission.<sup>103</sup>

It is noted that the department was unable to provide comment on the QLS submission due to the submission's receipt date by the committee.

## **Committee comment**

The committee notes the submission of the Queensland Law Society that states the use of subjective terms in the definition of 'sex work activity' could result in challenges in fact finding if a matter proceeds to court. The committee has written to the Attorney-General to request the definition of 'sex work activity' be monitored to ensure it is fit for purpose, and if needed, be addressed or amended through a review of the Bill if passed.

## **2.2.4 Legislative compliance - Human rights**

The committee also considered these amendments from the perspective of the Human Rights Act, including recognition and equality before the law (s 15); property rights (s 24) and freedom of thought and religion (s 20).

In relation to property rights, the Statement of Compatibility acknowledged that accommodation providers may feel 'arbitrarily deprived' of their property, or that their right to 'demonstrate [their] religion or belief in worship, observance, practice and teaching' is impaired by the occupancy of their

<sup>98</sup> DJAG, response to submissions, 20 March 2024, p 22.

<sup>99</sup> Dominic Brunello, Chair, Criminal Law Committee, Queensland Law Society, Public hearing transcript, Brisbane, 22 March 2024, p 27.

<sup>100</sup> Dominic Brunello, Chair, Criminal Law Committee, Queensland Law Society, Public hearing transcript, Brisbane, 22 March 2024, p 27.

<sup>101</sup> *Sex Industry Act 2019* (NT).

<sup>102</sup> Tobias Kennett, submission 15, p 1.

<sup>103</sup> DJAG, response to submissions, 20 March 2024, p 24.

premises by sex workers.<sup>104</sup> However, when considering the possible impacts of the Bill on the right to property of accommodation providers, it is noted that the Human Rights Act only applies to natural persons not corporate accommodation providers.

The Statement of Compatibility also sets out that the limitations on the rights of accommodation providers is to eliminate discrimination against sex workers and remove stigma against those who engage in this line of work. Access to premises by sex workers for the exercise of economic activity is a fundamental requirement for their economic activity, which would be rendered much more difficult (and unsafe and stigmatized) without clear access to the premises. There is thus a direct relationship between the limitations and their purpose.

### **Committee comment**

The committee considers the strengthening of anti-discrimination protection for sex workers to be necessary and beneficial in creating a context for reducing stigma and discrimination. We are of the view that the amendment to remove the accommodation exemption is also appropriate.

The committee agrees with analysis in the Statement of Compatibility that most of the amendments in the Bill support and promote human rights. In particular, decriminalising sex work will assist sex workers with reducing stigma and discrimination and safeguard their human rights, remove barriers to sex workers' safety, health and access to justice, treat sex work like other work, and not single out sex work for special laws without justification.

## **2.3 Amendment to the *Local Government Act 2009* and *City of Brisbane Act 2010***

The QLRC Report recommended that the power to make local laws, which resides with local government authorities, should be restricted so that a local law may not be made which prohibits or regulates sex work. The objective of the recommendation is to ensure the aims and benefits of decriminalisation may be realised across all of Queensland.<sup>105</sup> Clauses 8 and 28 of the Bill amends the *Local Government Act 2009* and the *City of Brisbane Act 2010* to give effect to this recommendation.

DJAG advised that the Department of Housing, Local Government, Planning and Public Works (DHLGPPW) are preparing changes to the planning regulation to give effect to the intent of the QLRC recommendations regarding the decriminalisation of sex work in Queensland.<sup>106</sup>

### **2.3.1 Planning regulations**

Tess Pickering from the Department of Housing, Local Government, Planning and Public Works (DHLGPPW) advised that the QLRC made a number of planning related recommendations. This included:

- removing the provisions relating to the ability for local governments to prohibit brothels that currently exist within the planning regulation in Queensland;
- the treatment of sex work business the same as any other business, including a home-based business; and
- various approaches to transitional provisions to cater for the current existing, lawful and unlawful sex work uses that are operating in Queensland at the moment.<sup>107</sup>

Tess Pickering explained that Queensland has a performance-based planning system and the regulation will set some ground rules, but essentially, local government authorities will continue to

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<sup>104</sup> Statement of compatibility, p 4.

<sup>105</sup> Explanatory notes, p 6.

<sup>106</sup> DJAG response to submissions, 20 March 2024, p 21.

<sup>107</sup> Tess Pickering, Deputy Director-General DHLGPPW, Public briefing transcript, Brisbane, 22 March 2024, p 2.



regulate land use, planning and development through their local planning schemes (zoning, overlay, code provisions and the level of assessment for certain types of development).<sup>108</sup>

Further, she stated that under the current planning framework there is a lower level of assessment for development that is consistent with the intention of a land use in a specific area. Hence, such applications would be considered either accepted or exempt development. If a more contentious or more constrained sort of development application was presented it would fall into the assessable development category, which can be either code or impact assessment.<sup>109</sup>

Broadly the department are working to ensure sex work businesses are treated equally to other businesses within the planning framework.<sup>110</sup>

Tess Pickering advised the department will be ‘looking at the other types of uses that regulate business in the planning framework, including home-based businesses and shops, and working out how they can ensure businesses are regulated in a way that sets an upper limit of a category of assessment that the state government is comfortable with.’ Ms Pickering continued ‘a local government takes that upper limit and reflects that through amendments in their planning scheme to make sure it aligns with their community’s expectations and where and how they want these businesses to be provided for in their local government area.’<sup>111</sup>

Tess Pickering said the department recognises that the current framework includes a prohibition, and they have been very clearly told to remove the prohibition so there is a performance-based approach to this type of land use - equalising its rights with other land uses that exist in Queensland. Therefore, she explained that local government will determine the uses that are appropriate as per the zoning that they apply to land—be it near sensitive uses or not.<sup>112</sup>

Tess Pickering advised that the QLRC report made a firm recommendation that separation distances were not an equal treatment in terms of this use, and this will inform the department’s development of a response. In Queensland, local governments can apply buffers and rezone uses as they see fit within their planning schemes already.<sup>113</sup>

### **2.3.2 Support for amendments**

Various stakeholders supported the amendments to ensure local government authorities do not make local laws that undermine the intent of decriminalisation.<sup>114</sup>

For example, SIN submitted that the amendments will prevent the scope of decriminalisation being limited by local government laws and will prevent local governments from banning sex industry establishments or sex work in their respective areas. SIN also supported policies that promote sex

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<sup>108</sup> Tess Pickering, Deputy Director-General DHLGPPW, Public briefing transcript, Brisbane, 22 March 2024, p 2.

<sup>109</sup> Tess Pickering, Deputy Director-General DHLGPPW, Public briefing transcript, Brisbane, 22 March 2024, p 2.

<sup>110</sup> Tess Pickering, Deputy Director-General DHLGPPW, Public briefing transcript, Brisbane, 22 March 2024, p 2.

<sup>111</sup> Tess Pickering, Deputy Director-General DHLGPPW, Public briefing transcript, Brisbane, 22 March 2024, p 3.

<sup>112</sup> Tess Pickering, Deputy Director-General DHLGPPW, Public briefing transcript, Brisbane, 22 March 2024, p 3.

<sup>113</sup> Tess Pickering, Deputy Director-General DHLGPPW, Public briefing transcript, Brisbane, 22 March 2024, p 3.

<sup>114</sup> Dr Zahra Stardust, submission 124, p 2. (see also, for example, SWEAR WA, submission 30; Professor John Scott, submission 35; Faye Clark, submission 132; Respect Inc. & DecrimQLD, submission 136; UQ Union Student Rights Collective and the UQ Union Queer Collective, submission 138; Micah Projects, submission 140; Queensland Council of Unions, submission 147).

worker safety through the ability to work independently in collectives or in small groups without having to seek local government approval.<sup>115</sup>

Vixen also supported the proposed Queensland amendments to prevent local governments from implementing unique planning restrictions on sex industry businesses. In their experience, where local governments are allowed to single out sex workers, restrictive bylaws from local governments could create pockets of sex workers who are once again forced into non-compliance. Vixen argues that no otherwise-compliant home-based businesses are singled out or subject to exceptional restriction by local government.<sup>116</sup> They reflected on the challenges in NSW during decriminalisation which were particularly observed in local government and planning, where delays and lack of information hampered implementation.<sup>117</sup>

### **2.3.3 Local government authorities**

The Local Government Association of Queensland (LGAQ) outlined concerns that amendments in Clauses 8 and 28 of the Bill, as currently drafted, will remove the ability for local governments to make local laws that regulate *any* aspect of sex work businesses, including for example the size of advertising signage associated with a sex work business. This would, in their view, be inconsistent with the policy intent to ensure sex work businesses are treated the same as any other businesses. The LGAQ maintains that appropriate regulation of sex work businesses, from a planning and development perspective, does not inhibit decriminalisation of the sex work industry in Queensland.<sup>118</sup>

Alison Smith, Chief Executive Officer of the LGAQ, further explained that Councils are concerned that they would not have any ability to take into account community amenity or community concerns because they would not be able to necessarily identify things such as location around size and scale, car parking, traffic, noise, or hours of operation for example.<sup>119</sup>

The LGAQ recommended the Bill (clauses 8 and 28) be amended to clarify that local laws may still regulate the 'conduct of sex work businesses', consistent with the approach applied to other businesses; and that the State Government consults further with the LGAQ and local governments on any consequential amendments proposed to the Planning Regulation 2017.<sup>120</sup>

#### **2.3.3.1 Departmental response**

In response, DJAG advised that under the proposed amendments, a local government would still be able to make a local law which is applied universally to all business types, including sex work. For example, a local law made by a local government about the use of advertising devices by a business, including the size and location of such devices, may apply to a sex work business.<sup>121</sup>

### **2.3.4 Potential impact on public amenity**

The Australian Christian Lobby is concerned that a reduction in local government law making ability will result in the increased presence of commercial sex work businesses in residential neighbourhoods, near schools or places of worship.<sup>122</sup>

Professor Basil Donovan AO argues that the public amenity around brothels is a non-issue. He states brothels are the quietest places in town. They have no traffic, and their customers are deliberately

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<sup>115</sup> SIN, submission 45, p 2.

<sup>116</sup> Vixen, submission 171, p 4.

<sup>117</sup> Vixen, submission 171, p 5.

<sup>118</sup> LGAQ, submission 76, pp 1-2.

<sup>119</sup> Alison Smith, CEO LGAQ, Public hearing transcript, Brisbane, 26 March 2024, p 8.

<sup>120</sup> LGAQ, submission 76, p 2.

<sup>121</sup> DJAG response to submissions, 20 March 2024, pp 46-47.

<sup>122</sup> Australian Christian Lobby, submission 60, p

very discreet and quiet. Professor Donovan stresses public amenity is not an excuse to ban a brothel or to restrict development applications, and that has been proven over and over again.<sup>123</sup>

### **Committee comment**

The committee considers that the principle enunciated by the LGAQ that the decriminalisation of the sex work sector should result in it being regulated no more and no less than other legitimate and legal businesses, is a fair principle. The local government sector has established it can regulate this industry within an overall legal framework set by the state, through local planning instruments. We would like to see this principle reflected in the forthcoming regulations.

The committee also considers it important that the department consult with relevant stakeholders, including the local government sector in finalising recommendations to the Planning Regulation 2017.

### **Recommendation 2**

The committee recommends that amendments to the Planning Regulation 2017 which support a decriminalised sex work framework, reflect the principle that the regulation of sex work, including land use and planning applications related to sex work businesses, be no more and no less than for other legal businesses.

## **2.4 Repeal of the *Prostitution Act 1999***

The QLRC Report proposed the repeal of the entire Prostitution Act and Prostitution Regulation, except for provisions relating to social escort advertising of the Prostitution Act, and section 16 of the Prostitution Regulation. Clause 35 of the Bill repeals the entirety of the Prostitution Act. The effect of the repeal is, amongst other things, is to:

- remove public solicitation offences
- remove the current prostitution licensing provisions and abolish the Prostitution Licensing Authority
- remove sex work specific advertising provisions
- repeal sex work specific health offences.<sup>124</sup>

### **2.4.1 Removal of public solicitation offences**

In relation to solicitation offences, the QLRC indicated that street-based sex work is a very small part of Queensland's sex-work industry, noting that it has become less common. The QLRC also noted that the retention of a street solicitation offence would provide an avenue for vulnerable and marginalised people to be further marginalised through continued criminalisation.<sup>125</sup>

Several inquiry participants did not support the repeal of solicitation offences, who noted that the Bill would enable solicitation to occur in inappropriate public places.<sup>126</sup>

#### **2.4.1.1 Departmental response**

In response, DJAG advised of the findings of the QLRC report which found that street-based sex work has become much less common and there are no longer any specific locations in the state that are known for this form of work. DJAG also advised that submissions and consultations to the QLRC did

<sup>123</sup> Professor Basil Donovan AO, Public hearing transcript, Brisbane, 26 March 2024, p 14.

<sup>124</sup> DJAG, correspondence, written briefing, p 4.

<sup>125</sup> DJAG, correspondence, response to submissions, p 54.

<sup>126</sup> See for example submissions 7, 52, 60 and 102.

not hear any evidence that street-based sex work is prevalent or an issue of concern around particular places like schools, places of worship or hospitals in Queensland.<sup>127</sup>

DJAG also confirmed that general laws about commercial soliciting and touting in public places apply to sex workers, like anyone else and that any public amenity impacts of street-based sex work will be addressed through mechanisms including the public nuisance offence in the *Summary Offences Act 2005* and general police move on powers.<sup>128</sup>

#### **2.4.2 Removal of the licensing framework**

The Bill repeals the current licensing framework, and no new licensing system is proposed.

The QLRC found that the current licensing systems should be abolished, and no new licensing system should be established. The QLRC found that only a very small part of the industry makes up the licensed sector, estimated to be 10 per cent of the industry.<sup>129</sup>

The QLRC report outlined that licensing does not necessarily ensure the health and safety of workers (most of whom work outside the licensed sector), does not mean that a person will be a good business operator, and is not well suited to keeping criminal elements out of the industry.<sup>130</sup> The QLRC stated that any criminal elements in the industry are a matter for the enforcement of criminal laws by law enforcement agencies, not licensing.<sup>131</sup>

Inquiry participants submitted a broad range of views on the repeal of the licensing framework.

Various stakeholders supported repealing the licensing system.<sup>132</sup> Respect Inc. and DecrimQLD submitted that licensing has created a two-tier system that magnifies division in the industry and results in propaganda campaigns and work practices that are hostile toward other sex workers who are not part of the licensed industry.<sup>133</sup>

Vixen agreed, also submitting that the licensing system has been destructive for sex worker health and safety. Vixen stressed that criminalisation and licensing models, impede sex workers safety strategies, limit sex workers access to justice, and exacerbate a power imbalance between sex workers, sex industry owners/operators, and sex work clients.<sup>134</sup>

Conversely, the Office of the Prostitution Licensing Authority (PLA) submitted that the licensing system provides a high degree of visibility of the operations of licensed brothels, the licensees and managers and that this contrasts sharply with sole operators and those operating illegally, the extent of which remains unverifiable.<sup>135</sup>

The PLA expressed concerns that the disestablishment of a regulatory framework would mean the current licensed sector would become similarly invisible. The PLA expounds that it is difficult to understand how the proposed changes can be evaluated in the absence of reliable information.<sup>136</sup>

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<sup>127</sup> DJAG, correspondence, response to submissions, p 55.

<sup>128</sup> DJAG, correspondence, response to submissions, p 55.

<sup>129</sup> DJAG, correspondence, response to submissions, p 51.

<sup>130</sup> DJAG, correspondence, response to submissions, p 51.

<sup>131</sup> DJAG, correspondence, response to submissions, p 51.

<sup>132</sup> Professor John Scott, submission 35, p 1. (see also, for example, SWEAR WA, submission 30; SIN, submission 45; Stonewall Medical Centre, submission 48; Queensland Sexual Assault Network, submission 78; Respect Inc. & DecrimQLD, submission 136; Queensland Council of Unions, submission 147).

<sup>133</sup> Respect Inc. & DecrimQLD, submission 136, p 22.

<sup>134</sup> Vixen, submission 171, p 4.

<sup>135</sup> PLA, submission 81, p 2.

<sup>136</sup> PLA, submission 81, p 2.

The Hon. Mr Colin Forrest SC, Chair of the PLA told the committee that the authority's primary concerns are with the idea that money laundering, worker coercion, people trafficking and illicit drug dealing in a totally decriminalised system can truly be properly overseen and regulated by the general law enforcement and criminal justice system.<sup>137</sup>

The PLA also held concern with the idea that sex worker and client health and safety and rights, as well as public health safety and issues surrounding that, are all able to be appropriately managed through Workplace Health and Safety Queensland and the health department.<sup>138</sup>

The Queensland Adult Business Association (QABA), an industry voice for the licensed sector, also submitted that it does not support the repealing of the licensing system. Presently, licensees are required to meet a threshold to ensure safety, uphold the reputation of the industry, reduce stigma and deter infiltration from serious and organised crime. QABA described how the licensed commercial sex work venues support over one hundred staff and a thousand sex workers and shared that last financial year three licensed venues achieved over 50,000 client bookings. QABA submitted that regulations, safety and administration are some the of the many contributing factors as to why sex workers and clients, more often than not, choose to work from or visit commercial sex work venues.<sup>139</sup>

### **Committee comment**

The committee acknowledges the range of views on removing licensing of the commercial sex work industry due to concerns about organised crime infiltrating the sector.

Those in support of the removal of the licensing sector attest that the current framework has created a two-tier system that marginalises division within the industry, limit safety strategies and exacerbate a power imbalance between sex workers, owners/operators and clients. Those outlining concerns, including the Chair of the Prostitution Licensing Authority, cites a concern over increased criminality.

The committee notes the extent of criminality in the unlicensed commercial sex work industry is unknown and unresearched by the Prostitution Licensing Authority. The Prostitution Licensing Authority has not established the extent or presence of criminality in the licensed sector. The Prostitution Licensing Authority has not offered evidence behind their claim that there is a threat that criminality might emerge in the decriminalised setting of the industry.

The committee agrees that any criminal elements in the sex work industry, as in any industry, are a matter for the enforcement of criminal laws by law enforcement agencies, not licensing bodies. We are therefore satisfied that amendments which abolish the Prostitution Licensing Authority are appropriate.

The committee notes that under decriminalisation the Queensland Police Service will continue to investigate intelligence or any allegations of criminal activity relating to a commercial sex work business as they would for any other legal business.

### **2.4.3 Access to justice**

Various stakeholders supported the amendment to repeal the Prostitution Act, including the removal of police powers to regulate the sex work sector.<sup>140</sup>

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<sup>137</sup> The Hon. Mr Colin Forrest SC, Chair, Office of the Prostitution Licensing Authority, Public hearing transcript, Brisbane, 26 March 2024, p 2.

<sup>138</sup> The Hon. Mr Colin Forrest SC, chair, Office of the Prostitution Licensing Authority, Public hearing transcript, Brisbane, 26 March 2024, p 2.

<sup>139</sup> QABA, submission 102, p

<sup>140</sup> Lorraine Kelly, submission 43, p 1. (see also, for example, Stonewall Medical Centre, submission 48; Name withheld, submission 58; Candi Forrest, submission 108; Magenta Sex Workers Project, submission 145).

Vixen supports the removal of licensing as it creates an enabling environment for sex worker safety, where sex work is treated as a job like any other and is not singled out for unique forms of regulation. This allows sex workers to safely access essential support services, including health and justice and facilitates compliance with universal regulations.<sup>141</sup>

Respect Inc. and DecrimQLD also support the repeal of the Prostitution Act and note that general criminal laws that apply to everyone will still apply to the sex industry. Importantly, they state that sex workers will have improved access to justice after the passage of this Bill. In a Respect Inc./DecrimQLD survey, 76.5 per cent of sex workers said they would not make a police report under the current laws.<sup>142</sup>

Elizabeth Nichol, from Respect Inc. went on to explain that some 73.5 per cent of those who worked in licensed brothels said that they would not make a complaint to police if they were assaulted. She concurred that after the Bill commences, sex workers will have fewer barriers to accessing justice. Ms Nichols refers to the decriminalisation of sex work in New Zealand stating sex workers were 70 per cent more likely to report crime after decriminalisation.<sup>143</sup>

#### **2.4.4 Advertising requirements**

The QLRC Report recommended that the same general laws, standards and codes that apply to all advertising in Australia apply to sex-work advertising.

Stakeholders submitted mixed feedback on this issue. Multiple inquiry participants supported the repeal of sex work specific advertising laws, noting that national advertising laws would apply and that it would enable sex workers to be clear around services offered.<sup>144</sup>

Others had reservations. For example, QABA submitted that current guidelines regarding advertising for prostitution are outdated and should be updated at state level to ensure a level playing field.<sup>145</sup>

##### ***2.4.4.1 Departmental response***

In response, DJAG advised that 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.

DJAG explained that under National law, the Australian Association of National Advertisers Code of Ethics prohibits the harmful use of sex, sexuality or nudity in advertising and requires content of this kind to be appropriate for the relevant audience. There are also rules about the use of explicit language and overtly sexual imagery. Complaints can be made of advertisements to Ad standards if concerned.

#### **2.4.5 Public health and mandatory STI health checks**

Currently, regulations under the Prostitution Act mandate that sex workers in the commercial sex work industry provide a certificate as evidence they have attended a clinic for a three-monthly sexually transmitted infections (STI) health check. The repeal of the Prostitution Act would remove this requirement and inquiry participants expressed mixed views on this approach.

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<sup>141</sup> Vixen, submission 171, p 3.

<sup>142</sup> Respect Inc. & DecrimQLD, submission 136, pp. 2-3.

<sup>143</sup> Elizabeth Nichol, Relief State Coordinator, Respect Inc., Public hearing transcript, Brisbane, 22 March 2024, p 1.

<sup>144</sup> Name withheld, submission 26, p 1. (see also, for example, Professor John Scott, submission 35; Queensland Council for LGBTI Health, submission 134; Respect Inc. & DecrimQLD, submission 136, UQ Union Student Rights Collective and the UQ Union Queer Collective, submission 138).

<sup>145</sup> QABA, Submission 102.

Mandy Bliss, from Respect Inc., explained that the certificate of attendance issued by a clinic does not verify the results of the sexual health test. She also clarified that mandatory testing is only for brothel workers, who are a small percentage of the sex work industry, with sex workers outside of the commercial sector taking responsibility for their own sexual health, just like the rest of the community.<sup>146</sup>

The Hon. Mr Colin Forrest, Chair of the Prostitution Licensing Authority, stated that any complaints regarding fraudulent sexual health certificates are immediately referred to the QPS Prostitution Enforcement Taskforce, who then investigate the complaint.<sup>147</sup>

Meridian and the Sex Worker Outreach Program (SWOP ACT) argue that mandatory STI testing laws are based on stigma and discrimination rather than evidence. In their view, Queensland's mandatory testing framework subjects sex workers in the commercial sex industry to an invasive testing schedule, regardless of whether the testing scope and frequency is clinically appropriate to the individual. Meridian and SWOP ACT support sex workers being subject to the same public health laws applying to all Queenslanders.<sup>148</sup>

Professor John Scott expounds the findings from research that indicates decriminalisation delivers better public health outcomes for sex workers, as well as improved working conditions, safety and well-being. He explains decriminalisation is best conceptualised in terms of a 'harm reduction' approach, with sex work regulated using existing systems and laws, meaning that general laws that apply to everyone will still apply to the sex industry.<sup>149</sup>

Respect Inc. and DecrimQLD concur that decriminalisation can deliver a low-cost and high-compliance model of regulation. They explain that sex workers have lower or equivalent rates of STIs as the general community, high rates of condom use and high rates of sexual health testing. In their experience as a sex worker peer support organisation, peer education and health promotion are a more effective way to ensure good public health outcomes than criminal laws.<sup>150</sup>

Professor Basil Donovan AO and associates conducted a rigorous research study funded by the National Health and Medical Research Council about 15 years ago. The results revealed that the rates of infection in sex workers were much lower than what was being determined in community cohorts of women of similar age.<sup>151</sup> Professor Donovan argues that the sexual health and public health implications of sex work in Australia are minimal.<sup>152</sup>

#### 2.4.5.1 Departmental response

In response, DJAG advised that there is no evidence that sex workers in Australia have blood borne viruses and sexually transmitted infection rates that are higher than the general population. Additionally, sexually transmitted infection rates in Australian sex workers are amongst the lowest in the world.

DJAG also advised that Australian sex workers undergo voluntary testing at high rates. They also possess high levels of knowledge and use of safer sex practices. The QLRC Report noted that existing public health laws and work health and safety laws apply and can effectively address sexual health

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<sup>146</sup> Mandy Bliss, State Coordinator, Respect Inc., Public hearing transcript, Brisbane, 22 March 2024, p 6.

<sup>147</sup> The Hon. Mr Colin Forrest SC, Chair, Office of the Prostitution Licensing Authority, Public hearing transcript, Brisbane, 26 March 2024, p2.

<sup>148</sup> Meridian & SWOP ACT, submission 63, p 3.

<sup>149</sup> Professor John Scott, submission 35, p 2.

<sup>150</sup> Respect Inc. & DecrimQLD, submission 136, p 25.

<sup>151</sup> Professor Basil Donovan AO, Public hearing transcript, Brisbane, 26 March 2024, pp 12-13.

<sup>152</sup> Professor Basil Donovan AO, Public hearing transcript, Brisbane, 26 March 2024, p 14.

risks in the sex work industry. It also considered that the same general laws should apply to sex workers and clients as to everyone else.<sup>153</sup>

Queensland Health confirmed that existing health legislation supports the decriminalised framework in the Bill. Provisions in the *Public Health Act 2005* relevant to infectious disease transmission, apply to all persons in the community. In Queensland, it is not a criminal offence to have sex (with or without a prophylactic) whilst infected with a blood borne virus (BBV) or sexually transmitted infection (STI). However, those who test positive for any infectious disease have a responsibility under section 66 of the *Public Health Act 2005* to take reasonable precautions to prevent spreading the infection to others. Similarly, section 143 of the *Public Health Act 2005* states a person must not recklessly spread controlled notifiable diseases.<sup>154</sup>

### **Committee comment**

It was clear from evidence that sex industry practitioners exercise a higher level of health care (STIs) than what is perceived or assumed by the public. Multiple stakeholders to the inquiry attest that there is not a higher risk of STIs in the sex work sector, and that when sex work is recognised as a decriminalised industry, businesses and workers can adopt relevant work health and safety plans and actions, as done in other sectors of the economy.

The health care practices of the unlicensed sector are unknown and undiscoverable, due to their fear of prosecution. The committee believes decriminalisation will potentially increase health safety and care in the sector.

#### **2.4.6 Compensation for brothel licensees**

The matter of compensation for those who have invested in licenses was raised by several inquiry participants. QABA submitted that the Queensland Government should provide fiscal compensation to each business in view of brothels having made certain business decisions in view of the current licencing framework. In addition, fee relief or refunds should be considered.<sup>155</sup>

##### ***2.4.6.1 Departmental response***

The QLRC recommended that the Queensland Government should consider a compensatory mechanism, such as fee relief for brothel licensees and approved managers, as an interim measure during the transition period before the new decriminalisation framework commences.<sup>156</sup>

Compensation options noted by the QLRC included: waiving fees that become payable during the transition period or refunding the unused portion of fees paid (by brothel licensees and, separately, brothel managers) during the transition period; or refund, on a pro rata basis, any fees during the transition period and any fees in excess of the transition period, and to waive any licence or certificate fees payable during the transition period for brothel licensees and, separately, brothel managers.

DJAG noted that possible fee waivers or refunds to brothel licensees and approved managers will be further considered by Government.<sup>157</sup>

## **2.5 Amendments to the *Work Health and Safety Act 2011***

### **2.5.1 Statutory review of amendments**

The QLRC recommended a review of legislative changes which decriminalise the sex work industry, should they be passed. In line with this recommendation, the Bill provides that the Minister must

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<sup>153</sup> DJAG response to submissions, 20 March 2024, pp 15-16.

<sup>154</sup> Queensland Health, correspondence, 14 March 2024, p1.

<sup>155</sup> QABA, submission 102, pp 4-5.

<sup>156</sup> DJAG response to submissions, 20 March 2024, p 4.

<sup>157</sup> DJAG response to submissions, 20 March 2024, p 5.



review the amendments in the Bill after at least 4 years, but not more than 5 years after commencement. The Bill also provides that the review should be carried out by an independent and appropriately qualified entity and that the review report be tabled in the Legislative Assembly as soon as practicable after it is completed.<sup>158</sup>

#### 2.5.1.1 Stakeholder views

Multiple inquiry participants supported the amendment noting that it should be taken in consultation with peer sex worker organisations.<sup>159</sup> Stakeholders also spoke of the importance of allowing sufficient time for any new framework to bed down before undertaking such a review.

Conversely, the Queensland Adult Business Association (QABA) suggested that the review be conducted after two years as there may be unintended implications if left for five years. QABA submitted that the review must be informed by accurate data.<sup>160</sup>

The UQ School of Public Health submitted that public health focused research must be at the centre of the review of any reform. They submitted that the review must be appropriately designed using community participatory, co-designed approaches, noting that it should be peer-reviewed (both academically and by sex workers) and published.<sup>161</sup>

### **2.5.2 Workplace health and safety guidelines**

The QLRC recommended that Workplace Health and Safety Queensland (WHSQ) should develop work health and safety guidelines for and in consultation with the sex-work industry, including sex-worker organisations and other relevant people and agencies.<sup>162</sup> The QLRC found that guidelines will improve understanding of work health and safety laws for all sex work businesses and sex workers.<sup>163</sup>

Currently, Queensland does not have a specific work health and safety guidance for the sex-work industry. However, DJAG advised that decriminalisation of the sex-work industry will allow sex-work businesses and sex workers to be regulated by Queensland's WHS framework. This will provide for relevant codes such as the *Managing the work environment and facilities 2021*, *First aid in the workplace 2021*, *Work health and safety consultation, cooperation and coordination 2021* to apply and assist the industry with meeting their WHS obligations, just as they do for other industry sectors.<sup>164</sup>

DJAG also confirmed that the Office of Industrial Relations is developing guidance to support sex workers with WHS requirements and rights.<sup>165</sup>

#### 2.5.2.1 Stakeholder views

Multiple stakeholders endorsed the QLRC's proposal that guidelines be developed to protect the health and safety of sex workers in their workplaces.<sup>166</sup> For example, Respect Inc. and DecrimQLD

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<sup>158</sup> Explanatory notes, p 2.

<sup>159</sup> See for example, Respect Inc and DecrimQLD, submission 136, p 20.

<sup>160</sup> QABA, submission 102, p 13.

<sup>161</sup> UQ School of Public Health, submission 66.

<sup>162</sup> DJAG, response to submissions, 20 March 2024, p 47.

<sup>163</sup> DJAG response to submissions, 20 March 2024, p 47.

<sup>164</sup> DJAG, response to submissions, 20 March 2024, p 48.

<sup>165</sup> DJAG, response to submissions, 20 March 2024, p 48.

<sup>166</sup> Kimberley Henderson, submission 16, p 1. (see also QSAN, submission 78; Name withheld, submission 89; Elle Coles, submission 120; Faye Clark, submission 132; Respect Inc. & DecrimQLD, submission 136; Queensland Council of Unions, submission 147).

outlined their support for the approach submitting that sex workers are already very aware of workplace health and safety regulations in their workplaces.<sup>167</sup>

However, QABA voiced concerns that guidelines will be inadequate to deal with the sex work industry and submitted that the industry must have a Code of Practice as with, for example, the construction, food services and accommodation industries.<sup>168</sup>

Ms Jacqueline King from Queensland Council of Unions explained that once decriminalisation of sex work occurs, that will allow at least 85 to 90 per cent of the industry currently operating in the shadow of the law, to fully operate under work health and safety law.<sup>169</sup>

Ms King outlined that there is a commitment to develop standalone sex work guidelines across the different sectors of industry and that work is well underway, with a commitment of further consultation with all industry stakeholders. Ms King assured the committee that there has been a deep level of engagement in this process so that both the inspectorate and industry will have guidelines that they can operate under that are similar, in most respects, to every other workplace that currently operates.<sup>170</sup>

#### 2.5.2.2 Departmental response

In response, DJAG advised that a work health and safety code of practice was considered and not recommend by the QLRC.

#### **Committee comment**

The committee is satisfied that amendments to the Workplace Health and Safety Act are appropriate. The committee acknowledges that the Bill provides for a statutory review and is satisfied that a period of four to five years would provide sufficient time for a new decriminalised framework to bed down before a statutory review takes place.

The committee notes that decriminalisation of the sex-work industry will allow sex-work businesses and sex workers to be regulated by Queensland's existing WHS framework. The committee welcomes advice that work on standalone guidance for the sex work industry is underway. We are of the view that thorough consultation with stakeholders will be important to ensure that the guideline is practical, fit for purpose and protects the health and safety of sex workers in their workplaces.

#### **2.5.3 Industrial relations**

Decriminalisation of sex work in Queensland will result in commercial sex work businesses and sex workers being subject to the general laws and industrial relations that apply to other legal businesses and workers.

##### 2.5.3.1 Stakeholder views

Mish Pony, from Scarlet Alliance told the committee that industrial laws will more clearly apply to sex work workplaces. For example, instead of a criminal approach to safer sex practices and testing, workplace health and safety guidelines will apply alongside existing general public health laws.<sup>171</sup>

Mandy Bliss, from Respect Inc. noted that this was important as currently sex workers are very unwilling to bring forth any kind of complaints relating to their work for a multitude of reasons. Ms

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<sup>167</sup> Respect Inc. and DecrimQLD, submission 136, p 23.

<sup>168</sup> QABA, submission 102, p 6.

<sup>169</sup> Jacqueline King, General Secretary, Queensland Council of Unions, Public hearing transcript, Brisbane, 26 March 2024, p 29.

<sup>170</sup> Jacqueline King, Queensland Council of Unions, Public hearing transcript, Brisbane, 26 March 2024, p 29.

<sup>171</sup> Mish Pony, Chief Executive Officer, Scarlet Alliance, Public hearing transcript, Brisbane, 22 March 2024, p 2.

Bliss states that sex workers will need to be informed of their workplace rights so they can bring forth a complaint to the regulator, because if someone is running a brothel then those workplaces need to meet safety standards.<sup>172</sup>

Vixen defends decriminalisation as an evidence-based approach, enabling sex workers to access the full range of civil and industrial rights that all other workers enjoy. They clarify that it is not a unique regulatory model - instead it is simply the process of giving sex workers access to the same regulatory models utilised by all other industries in Australia, without singling sex work out for unique regulation or enforcement.<sup>173</sup>

Ms King from the Council of Unions highlighted that the area of industrial relations will also be regulated under the decriminalisation model. Therefore, should a sex worker's work conditions in a commercial sex work business satisfy the employment control test, they will be considered an employee not an independent contractor. She states it is an offence under the Fair Work Act, section 357, for any person to misrepresent employment as an independent contracting arrangement. Importantly, sex workers who are employees will be able to enter into collective agreements and have access to minimum standards of employment and protections, as well as the general protections from adverse action if they exercise their industrial rights.<sup>174</sup>

Ms King also stressed that safe workplaces are generally more productive. She finds if employers are operating in that space with a sense of goodwill and they are looking after their workers, they generally will ensure there are better outcomes. In terms of the sex work industry, Ms King says bringing it into the existing legislative framework will not only raise the protections but definitely give protections which are not there for sex workers today. Decriminalisation will definitely raise levels of safety and allow businesses to operate in a fair and safe manner.<sup>175</sup>

### **Committee comment**

The committee supports the sex work industry and sex workers being regulated, supported and protected through general laws and industrial relations.

#### **2.5.4 Peer support and education**

Various stakeholders recommended that Respect Inc. be resourced to undertake an awareness program to address sex work stigma and to inform sex workers about decriminalisation, in line with Recommendation 38 of the QLRC Report.<sup>176</sup>

##### ***2.5.4.1 Departmental response***

In response, DJAG noted that chapter 8 (Education and other measures) of the QLRC Report observes that decriminalisation of the sex work industry will need to be accompanied by broader measures to support transition to, and implementation of, the decriminalised framework, and to help achieve the aims of decriminalisation. QLRC suggested that information, awareness programs, education and training will be needed to promote health and safety in the industry, address stigma, and change

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<sup>172</sup> Mandy Bliss, State Coordinator, Respect Inc., Public hearing transcript, Brisbane, 22 March 2024, p 5.

<sup>173</sup> Vixen, submission 171, p 3.

<sup>174</sup> Jacqueline King, General Secretary, Queensland Council of Unions, Public hearing transcript, Brisbane, 26 March 2024, p 30.

<sup>175</sup> Jacqueline King, General Secretary, Queensland Council of Unions, Public hearing transcript, Brisbane, 26 March 2024, p 32.

<sup>176</sup> Mish Pony, Chief Executive Officer, Scarlet Alliance, Australian Sex Workers Association, Public hearing transcript, Brisbane, 22 March 2024, p 1. (see also, for example, SWEAR WA, submission 30; Professor John Scott, submission 35; SIN, submission 45; Mandy Bliss, submission 79; Health Equity Matters, submission 82; Queensland Youth Policy Collective, submission 93; Robert Hawkes, submission 118).

attitudes to sex work and sex workers. Policies and practices will need to be developed to support the recognition of sex work as work, rather than as a crime.<sup>177</sup>

DJAG advised that the QLRC Report recommended that the Queensland Government lead and establish a temporary working group to help implement the decriminalisation reforms. The QLRC Report stated that the working group should consist of regulators and other government agencies with areas of responsibility that affect the sex work industry, sex worker organisations and other non-government organisations with industry knowledge.<sup>178</sup>

DJAG advised that subject to the passage of the Bill, a temporary working group is to be established to assist with implementation activities.<sup>179</sup>

## **2.6 Amendment to the *Liquor Act 1992***

The QLRC did not make any recommendations about the future regulation of the adult entertainment industry or amendments to the Liquor Act to reflect the decriminalisation of the sex work industry. The QLRC noted these are complex policy issues which require separate consultation and Government consideration.<sup>180</sup>

The Bill therefore amends the Liquor Act to maintain the status quo until consultation and final determination is made about the extent and nature of adult entertainment and sex work which can occur at liquor licensed premises.<sup>181</sup>

DJAG advised that it is in the process of consulting with the sex work industry, government, and union stakeholders as part of a review of adult entertainment regulation and potential liquor licensing of sex work businesses following the decriminalisation of sex work. As part of its review, DJAG will consider how other jurisdictions regulate adult entertainment following the decriminalisation of sex work.<sup>182</sup>

### **2.6.1.1 Stakeholder views**

Various stakeholders, supported the amendment that removes the Police Commissioner from a role in the development of the Adult Entertainment Code, in line with the intention of decriminalisation.<sup>183</sup> However, some including Respect Inc and DecrimQLD remained concerned that police will maintain an enforcement role in relation to the work and workplaces of adult entertainers.<sup>184</sup>

### **2.6.1.2 Departmental response**

DJAG confirmed that enforcement roles and responsibilities under any new adult entertainment framework, will be considered as part of the review of adult entertainment and potential liquor licensing of sex work venues.<sup>185</sup>

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<sup>177</sup> DJAG response to submissions, 20 March 2024, pp 7-8.

<sup>178</sup> DJAG response to submissions, 20 March 2024, pp 7-8.

<sup>179</sup> DJAG response to submissions, 20 March 2024, pp 7-8.

<sup>180</sup> DJAG, response to issues raised in submissions, p 39.

<sup>181</sup> Explanatory notes, p 6.

<sup>182</sup> Explanatory notes, p 6.

<sup>183</sup> Professor John Scott, submission 35, p 3. (see also SWEAR WA submission 30; SIN, submission 45; UQ School of Public Health, submission 66; Mandy Bliss, submission 79; Scarlet Alliance, submission 109; Dr Fiona Bucknall, submission 117; Dr Zahara Stardust, submission 124; SWOP NSW, submission 133; Respect & DecrimQLD, submission 136; Magenta Sex Workers Project, submission 145).

<sup>184</sup> Respect Inc, DecrimQLD, submission 136.

<sup>185</sup> DJAG, response to issues raised in submissions, p 36.

**Committee comment**

The committee is satisfied that amendments to the Liquor Act are appropriate. The committee welcomes advise that a review of the adult entertainment framework is well underway and encourages DJAG to consider and reflect on the submissions received to this inquiry as part of this review.

## Appendix A – Submitters

Sub #	Submitter
1	Name Withheld
2	Summer Gwynne
3	Jon Cherian
4	Lisa Blair
5	Heather Mackay
6	Jenni Giles
7	Name Withheld
8	Name Withheld
9	Paul Voskulen
10	Name Withheld
11	Brian Geytenbeek
12	Confidential
13	Confidential
14	Lukas Butler
15	Tobias Kennett
16	Kimberley Henderson
17	Name Withheld
18	William Wells
19	Name Withheld
20	Ian Belz
21	Confidential
22	Confidential
23	Anna Welsh
24	Women Ending Exploitation by Prostitution
25	Australian Federation for the Family
26	Name Withheld
27	Name Withheld
28	Name Withheld
29	Name Withheld
30	SWEAR WA
31	William Tento
32	CAP International - Coalition for the Abolition of Prostitution
33	Name Withheld

- 34 Keith Benn
- 35 John Scott
- 36 Leanne Daniell
- 37 John Ungerer
- 38 Allison Crouche
- 39 Alaska Montford
- 40 Confidential
- 41 Name Withheld
- 42 John Byrnes
- 43 Lorraine Kelly
- 44 Neil van der Wel
- 45 SIN
- 46 FamilyVoice
- 47 Name Withheld
- 48 Stonewall Medical Centre
- 49 Albert Young
- 50 Cara Strydom
- 51 Name Withheld
- 52 Lisa Quirk
- 53 Name Withheld
- 54 Karen Johns
- 55 Public Advocate
- 56 David Kerrigan
- 57 Emma Turley
- 58 Name Withheld
- 59 Nerissa Scott
- 60 Australian Christian Lobby
- 61 Terrence Eyles
- 62 Katy Kucks
- 63 Meridian
- 64 Name Withheld
- 65 Name Withheld
- 66 The University of Queensland, School of Public Health
- 67 Women's Health and Equality Queensland
- 68 Inner City Legal Centre

69	Confidential
70	Stephen Barton
71	Stuart Chalmer
72	Rose Hunter
73	Confidential
74	National Civic Council (Qld)
75	Name Withheld
76	Local Government Association of Queensland
77	Name Withheld
78	Queensland Sexual Assault Network
79	Mandy Bliss
80	Erin Campbell
81	Office of the Prostitution Licensing Authority
82	Health Equity Matters
83	Eros Association
84	Coalition Against Trafficking in Women Australia (CATWA)
85	Name Withheld
86	Name Withheld
88	Sacha Faddoul
89	Name Withheld
90	Olivia Hollingdrake
91	Katrina Swain
92	Jenna Love
93	Queensland Youth Policy Collective
94	Children By Choice
95	Name Withheld
96	Rodney Ballinger
97	Mary Crowley
98	Ruth Crowe
99	Name Withheld
100	Name Withheld
101	Logan Keats
102	Queensland Adult Business Association (QABA)
103	James Evans
104	Selina Chan



- 105 United Workers Union
- 106 WEEP Qld
- 107 Helen Easton
- 108 Candi Forrest
- 109 Scarlet Alliance, Australian Sex Workers Association Incorporated
- 110 Wahine Toa Rising
- 111 Joint submission - various health, sexual health and allied services
- 112 Dr Erin O'Brien, Associate Professor
- 113 Queensland Human Rights Commission
- 114 Andrew Mitchell
- 115 Ori Diskett
- 117 Dr Fiona Bucknall
- 118 Robert Fawkes
- 119 Name Withheld
- 120 Elle Coles
- 121 Anonymous submissions provided to Respect Inc
- 122 Confidential
- 123 Confidential
- 124 Dr Zahra Stardust
- 125 Name Withheld
- 126 Society of Australian Sexologists
- 127 Marion Hale
- 128 Sisters Inside Inc
- 129 Global Network of Sex Work Projects (NSWP)
- 130 Name Withheld
- 131 Name Withheld
- 132 Faye Clark
- 133 SWOP NSW
- 134 Queensland Council for LGBTI Health
- 135 Townsville Community Law
- 136 Respect Inc & DecrimQLD
- 137 Planning Institute Australia
- 138 UQ Union Student Rights Collective and the UQ Union Queer Collect
- 139 Brisbane City Council
- 140 Micah Projects

- 141 Queensland Hotels Association
- 142 Katia Schwartz
- 143 Confidential
- 144 Australian Women and Girls' Health Research Centre
- 145 Magenta Sex Workers Project
- 146 Queensland Positive People
- 147 Queensland Unions
- 148 Public Health Association of Australia
- 149 Astrid Day
- 150 Olivia Moss
- 151 Name Withheld
- 152 Name Withheld
- 153 Confidential
- 154 Brisbane Rape & Incest Survivors Support Centre
- 155 Confidential
- 156 Mark Northage
- 157 ASHM Health
- 158 Name Withheld
- 159 Natasha Spanks
- 160 Helen Pringle
- 161 National Association of People with HIV Australia
- 162 Nassim Arrage
- 163 Stop Demand Foundation
- 164 Confidential
- 165 Phil Prisk
- 166 Name Withheld
- 167 QAI, QDN, WWILD
- 168 Sex Worker Outreach Program, Sex Worker Reference Group
- 170 Declan Winterton
- 171 Vixen
- 172 Tamika Hicks
- 173 Full Stop Australia
- 174 Form A or Variation of Form A
- 175 Confidential
- 176 Queensland Law Society

## Appendix B – Officials at public departmental briefings

### Brisbane, 26 February 2024

#### Department of Justice and Attorney-General

- Sakitha Bandaranaike, A/Assistant Director-General, Strategic Policy and Legislation
- David McKarzel, Executive Director, Regulatory Policy
- Justin O'May, Director, Strategic Policy and Legislation
- Adam Savage, A/Principal Legal Officer, Strategic Policy and Legislation

#### Department of Housing, Local Government, Planning and Public Works

- Jordan Watts, Director, Policy and Legislation (Local Government Division)
- Karl Holden, Manager, Policy and Legislation (Local Government Division)

### Brisbane, 22 March 2024

#### Department of Housing, Local Government, Planning and Public Works

- Tess Pickering, Deputy Director-General
- Chris Aston, Executive Director
- Dominique Gallagher, Director
- Catherine Otto, Manager

## Appendix C – Witnesses at public hearings

### Brisbane, 22 March 2024

#### Respect Inc.

- Mandy Bliss, State Coordinator
- Elizabeth Nichol, Relief State Coordinator

#### Scarlet Alliance, Australian Sex Workers Association Inc

- Mish Pony, Chief Executive Officer
- Dr Elena Jeffreys, Advocacy and Policy Manager

### Brisbane, 26 March 2024

#### Office of the Prostitution Licensing Authority

- The Hon. Colin Forrest SC, Chair
- Andrew Ross, Executive Director

#### Local Government Association of Queensland

- Alison Smith, Chief Executive Officer
- Crystal Baker, Manager, Strategic Policy – Advocate

#### University of Queensland School of Public Health

- Rachael Brennan
- Associate Professor Linda Selvey
- Professor Basil Donovan AO, Kirby Institute, UNSW

#### Australian Christian Lobby

- Rob Norman, State Director Queensland

#### Human Rights Commission

- Neroli Holmes, Deputy Commissioner

#### Office of the Public Advocate

- Dr John Chesterman, Public Advocate

#### Queensland Advocacy for Inclusion

- Matilda Alexander, Chief Executive Officer

#### Queenslanders with Disability Network

- Donna Best
- Michelle Moss

#### Queensland Law Society

- Rebecca Fogerty, President, Queensland Law Society
- Dominic Brunello, Chair Criminal Law Committee, Queensland Law Society

**Queensland Council of Unions**

- Jacqueline King, General Secretary

**DecrimQld**

- Janelle Fawkes, Campaign Leader
- Candi Forrest – DecrimQld Committee Member



## STATEMENT OF RESERVATIONS

### CRIMINAL CODE (DECRIMINALISATION OF SEX WORK) AND OTHER LEGISLATION AMENDMENT BILL 2024

JIM MCDONALD MP (DEPUTY CHAIR) AND MICHAEL HART MP

#### Introduction

The LNP is well aware sex work has been and will always likely be, part of our society. It is right sex workers are protected and their health and safety is paramount.

The objective of the 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.”

While decriminalisation will go some way to achieving the above outcomes, we hold concerns the current proposal by the Government does not offer clarity on regulation at any substantive level.

Some stakeholders have expressed concern the industry would be left without regulation. This increases the potential for criminal activity. The LGAQ raised concerns about the regulatory regime without regulatory certainty.

The Local Government Association Queensland is concerned the Bill removes the ability of local governments to make local laws that regulate sex work businesses, as local governments do with other businesses.<sup>1</sup>

*As currently drafted, these provisions of the Bill remove the ability of local governments to make local laws that regulate any aspect of a sex work businesses, including for example, the size of advertising signage associated with a sex work business. This is very concerning from a local government and community perspective, and is in fact, treating sex work businesses differently to other businesses which the LGAQ understands, is inconsistent with the State Government’s policy intent to ensure sex work businesses are treated the same as any other business.*

The LGAQ are concerned about local governments not being able to regulate the need for separation distances in certain circumstances, amenity considerations such as traffic, car parking, size and scale, hours of operation and noise, as well as the importance of achieving performance outcomes, such as active street frontages, in certain zones.<sup>2</sup>

The Department has responded to this submission; however it demonstrates the lack of clarity there is on the new regulatory system that will be in place from a state level. It is not good enough to say it is underway, these issues should have been resolved prior to the introduction of the Bill.

Again, the LNP believes all Queenslanders should feel safe in their homes, communities and workplaces and we will continue to work to that priority.

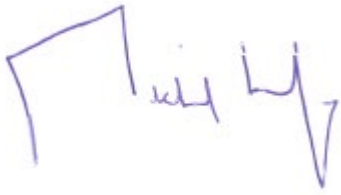
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<sup>1</sup> Local Government Association of Queensland, submission 76, p 3.

<sup>2</sup> Local Government Association of Queensland, submission 76, p 5.



Jim McDonald  
Deputy Chair  
Member for Lockyer



Michael Hart  
Member for Burleigh