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To the Queensland Law Reform Commission,

Thank you for the opportunity to make a submission in response to the QLRC's Consultation Paper '*A framework for a decriminalised sex work industry in Queensland*'. We are pleased to see the government's commitment to the decriminalisation of sex work in Queensland, and seek to provide a further evidence base for the full decriminalisation of sex work, as well as provide input on the areas the Consultation Paper has identified for further exploration.

Scarlet Alliance is the Australian Sex Workers Association. Through our objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry. Formed in 1989, Scarlet Alliance is Australia's national peak body representing a membership of individual sex workers, and sex worker networks, groups and community-based projects and organisations from around Australia. Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. Our member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Through our projects and the work of our membership we have a high level of access to sex industry workplaces in the major cities. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms.

We work in close collaboration with our Queensland member organisation, Respect Inc., as the recognised sex worker peer organisation, and the DecimQLD campaign and committee. Respect Inc. has long advocated to get decriminalisation on the agenda with Queensland lawmakers, and they are essential to the work of Scarlet Alliance as the national peak body of sex workers and sex worker organisations. We strongly endorse their submission and encourage ongoing collaboration with them as the full suite of changes flowing from the legislative change are implemented. Respect Inc. have been and will continue to be essential to engaging the sex worker community to ensure that this implementation is effective and provides maximum benefit to sex workers and the wider Queensland community.

Scarlet Alliance permits the QLRC to quote from our submission and refer to our organisation in the QLRC report. Please do not hesitate to contact us if you have any further questions or require any further information on +61 411 985 135 or at ceo@scarletalliance.org.au.

Regards,

Jules Kim
Chief Executive Officer

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Executive Summary

The *Prostitution Act 1999*, the *Criminal Code 1899* and the *Police Powers and Responsibilities Act 2000* proscribe the narrow window of legal sex work in Queensland. The framework formed by the intersection of this legislation criminalises many forms of sex work, greatly restricts sex workers' abilities to employ safety strategies at work, enforces discriminatory health provisions on sex workers, places burdensome restrictions on advertising and broadens the scope of police powers and immunity. The difficulties created by the current regulatory framework have resulted in the formation of a two-tiered industry, where businesses and sex workers who are unable to comply are exposed to criminalisation. Queensland sex workers face the difficult decision of complying with laws that put their safety and right to privacy at risk, or working safely, which in turn puts them at risk of criminalisation and prosecution.¹

The *Consultation Paper* makes a number of salient observations about the outdated and unworkable legislation and regulations relating to sex work in Queensland, and in many ways falls into line with what sex workers have known and been advocating for for decades. There are, however, a number of concerning preoccupations with retaining aspects of the current licensing regime, preserving some Criminal Code offences, continuing the criminalisation of street-based sex workers and sex workers with a disability or mental health concern and criminalising our work, workplaces and clients under some circumstances. Should any form of criminalisation, licensing or specific regulation remain in Queensland, the new framework will fall short of decriminalisation, running the risk of replicating the detrimental effects of the current framework.

In the process of decriminalising sex work, there can be a tendency to replicate familiar frameworks of surveillance, control, and discrimination that are entrenched in the longstanding licensing environment that has been in place in Queensland since 1999. To avoid replication, it is necessary to continuously refer back to the negative impact of the licensing system and not seek to duplicate them through contingencies within the new framework. We cannot, for example, replace the current licencing of brothels with a requirement for 'suitability licenses', nor can we replace the current restrictions on locations of sex industry businesses with onerous local planning requirements or free reign for councils to discriminate against sex industry businesses. Any model that maintains any sex work-specific criminal penalties cannot be termed decriminalisation.

The implementation of planning frameworks must be consistent and non-discriminatory towards sex work businesses. In NSW, local councils apply their own planning restrictions to sex work businesses and home-occupation sex work businesses. This has resulted in unfair, inconsistent and discriminatory practices, often relegating sex work businesses to industrial zones. Restrictive or discriminatory planning controls can deeply undermine the beneficial intent of decriminalisation by empowering each local council to take a different regulatory approach. A non discriminatory and effective planning approach consistent with decriminalisation will require legislated amendments to the *QLD Planning Regulations 2017*, supported by a clause such as the one in Victorian *Sex Work Decriminalisation Act 2022, Part 2 s3* that prevents local laws from undermining the intent of

¹ Elena Jeffreys, Erin O'Brien and Janelle Fawkes, 'The Case for Decriminalisation: Sex Work and the Law in Queensland' (2019) 9 *Crime and Justice Briefing Paper* 1

decriminalisation and to provide for the reduction of discrimination against, and harm to, sex workers.

Decriminalisation must be supported by sufficient anti-discrimination protections that are accessible to sex workers and sends a clear legislative signal that discrimination against sex workers is unacceptable. Sex workers are subject to widespread stigma and discrimination in many facets of our lives. Gaps have emerged in jurisdictions that have decriminalised sex work but failed to implement anti-discrimination protections. In Queensland, 'lawful sexual activity' has proved to be an ineffective attribute in protecting sex workers. Victoria have recently repealed 'lawful sexual activity' provisions in recognition that they were ineffective. The 'lawful sexual activity' attribute must be replaced with the new attributes, 'sex work' and 'sex worker' in the *Anti-Discrimination Act 1991* (Qld). Further the exemptions that exist in the *Anti-Discrimination Act 1991* that enable lawful discrimination against sex workers must be repealed. With such a long history of entrenched pervasive stigma and discrimination and a history of inaccessible mechanisms for redress, work must be done to ensure that anti-discrimination protections are accessible to sex workers.

Queensland sex workers' human rights are currently impacted by sex work specific laws that limit or remove those rights. The Prostitution Act, Criminal Code and Police Rights and Responsibility Act laws have not been reviewed for compatibility with the 23 rights that have protected Queenslanders since 2020 in the Human Rights Act (Qld) because the laws are not retrospective. However, the new decriminalisation framework will need to be measured for compatibility with these human rights. While human rights are not absolute in Queensland they should only be limited after careful consideration and only in a way that is 'necessary, justifiable and proportionate'. It is our opinion that the human rights of sex workers, a community that experiences high levels of stigma and discrimination, should not have our human rights limited in the law that results from this review process.

Our intention in our response is to ensure that sex workers continue to be at the core of the decriminalisation process, and that the practice matches the theory. The full decriminalisation of sex work acknowledges the ability of existing regulatory frameworks, which are deemed suitable for all other industries, to apply to and support the sex industry. The existing Queensland and Commonwealth regulations will do this job; the creation of a myriad of new controls and frameworks is unnecessary, and more importantly fails to actualise decriminalisation.

A fully decriminalised framework with sufficient resourcing, planning and capacity for implementation will result in improvements to human rights, workplace health and safety and overall better outcomes for government, sex workers and the broader community. The full decriminalisation of sex work ensures sex industry businesses are regulated in the same way as other businesses and subject to a range of existing laws and regulatory mechanisms, making for a well regulated and transparent sex industry. Discriminatory laws and regulations must be repealed and not replaced or duplicated in policy or practice by the state, regulatory bodies nor business owner/operators. Queensland is well positioned to learn from the experiences in other jurisdictions and put forward a best practice framework that achieves all the intended benefits of the full decriminalisation of sex work.

Summary of Recommendations

Part 2 (ch. 7): What should the full decriminalisation of sex work look like?

1.1. Recommendation: The purposes of the new framework should be:

1. To fully decriminalise sex work in Queensland to:
 - (a) recognise sex work as work;
 - (b) enhance the human rights and workplace health and safety of sex workers;
 - (c) reduce stigma and provide for discrimination protections for sex workers;
 - (d) allow sex workers to work together and in collectives, and employ support staff;
 - (e) protect sex workers and businesses to enable them to operate in accordance with the laws of the State and the Commonwealth as they apply to all individuals and businesses generally, including laws governing employment, workplace health and safety guidelines, workers compensation and rehabilitation, planning and discrimination.
2. To achieve full decriminalisation by repealing all current laws that refer specifically to sex work in Queensland so that existing general laws can be utilised.

1.2 Recommendation: Repeal legislation that criminalises our work, workplaces and clients and remove police as regulators of our industry:

- *Prostitution Act 1999* (Qld),
- *Prostitution Regulations 2004* (Qld),
- Chapter 22A of *Criminal Code 1899* (Qld),
- Section of *Police Powers and Responsibilities Act 2000* (Qld): Schedule 2 Item 4 (relating to 'prostitution') & Item 5, Schedule 5 Part 1(1) (relating to 'prostitution') & Part 2(9).
- Consequential amendments in the following Acts and Regulations that undermine the intent of and are inconsistent with decriminalisation, namely:
 - *Public Health Act 2005* (Qld) Section 88 (3), a;
 - *Disability Services Act 2006* (Qld) Sch 2, 4;
 - *Introduction Agents Act 2001* (Qld) s21 Sch 1;
 - *Liquor Act 1992* (Qld) 107E;
 - *Adult entertainment licence*;
 - *Liquor (Approval of Adult Entertainment Code) Regulations 2002* (Qld);
 - *Working with Children (Risk Management and Screening) Act 2000* (Qld) Sch 2,4,6;
 - *Transport Operations (Passenger Transport) Act 1994* (Qld) Sch 1A (1,2).

1.3 Recommendation: Amend the definition of sex work.

'Sex work' is the provision by a person of services that involve the person or persons participating in sexual activity with another person in return for payment or reward.

'Sex worker' means a person who performs sex work.

1.4 Recommendation: Disband the Prostitution Licensing Authority (PLA) and the Prostitution Enforcement Task Force of the Queensland Police Service (PETF).

1.5 Recommendation: The decriminalisation framework should apply to all sex workers and all sex industry businesses. Sex work should be decriminalised in all settings (e.g. street based sex work, collectives) and by all sex workers (e.g. private, sex workers with a disability, strippers etc).

- Repeal legislation that criminalises our work, workplaces and clients and remove police as regulators of our industry. Repeal:
 - *Prostitution Act 1999* (Qld),
 - Prostitution Regulations 2004 (Qld),
 - Chapter 22A of the *Criminal Code 1899* (Qld),
 - Sections of the *Police Powers and Responsibilities Act 2000* (Qld);
- Disband the PLA and the PETF;
- Expunge criminal records related to 'prostitution offences';
- Amend the definition of sex work;
- Introduce robust anti-discrimination protections;
- Ensure non-discriminatory approaches to sex work businesses, advertising, work health and safety guidelines, and public health.

Part 3 (ch. 8): Offences to protect against commercial sexual exploitation

2.1 Recommendation: Full decriminalisation of sex work is the best way to protect people from exploitation at work. Rather than providing support and protection, additional laws directed at the sex industry increase and exacerbate the potential for exploitation, including by police.

2.2 Recommendation: Repeal all of the laws listed in Q5a and do not reformulate them elsewhere:

- s 77 Prostitution Act — forcing a person to do sex work
- s 229G Criminal Code — advertising for, or asking someone to do, sex work
- s 229FA Criminal Code — employing or transacting with someone who is not an adult (under 18) to do sex work
- s 229L Criminal Code — allowing someone who is not an adult or has impairment of the mind to be on premises of a sex work business

2.3 Recommendation: Promote clear distinctions between human trafficking, sexual exploitation, and sex work.

2.4 Recommendation: Take a worker-centred and human rights-based approach to preventing trafficking and exploitation in the sex industry.

2.5 Recommendation: Acknowledge the role that sex workers and our organisations already play to protect ourselves from violence, exploitation and human rights violations.

Part 4 (ch. 9): Licensing of sex work business operators

3.1 Recommendation: Do not retain any aspect of licensing, including suitability licences and certificates.

3.2 Recommendation: Adopt a labour rights and worker centred approach to exploitation and ‘illegal activity’ within the sex industry.

3.3 Recommendation: De-link the sex industry from organised crime in legal and policy approaches.

Part 5 (ch. 10): Workplace laws

4.1 Recommendation: Implement WHS Guidelines developed by Respect Inc. in partnership with Scarlet Alliance, WorkSafe QLD, relevant unions and the Office of Industrial Relations Queensland.

The complete decriminalisation of sex work and the inclusion of sex worker organisations in the development and implementation of WHS Guidelines is the best way to ensure that sex workers can access and meet our WHS rights and obligations.

4.2 Recommendation: Fund Respect Inc. to conduct peer education and owner-operator education about workplace laws and obligations.

4.3 Recommendation: Validate sex work contracts.

With sex work decriminalised, public policy must reflect this major shift and there should not be a requirement for legislation to ensure recognition in the courts and in other ways that a contract for sex work is not illegal or void on public policy or similar grounds.

4.4 Recommendation: A sex worker may refuse to perform or continue to perform sex work in line with relevant state and federal WHS and industrial legislation and consent provisions in the QLD Criminal Code 1899. These do not require any new provisions but should be made explicit in the WHS Guidelines.

Part 6 (ch. 11): Public health

5.1 Recommendation: Remove and do not reformulate all provisions regarding:

- Mandatory PPE use (s 77A),
- Mandatory testing (s 89),
- Criminalisation of sex workers living with BBV and STI (s 90).

Do not transfer current offences under the *Prostitution Act 1999* to a different public health framework. Public health outcomes are best achieved by education not criminalisation.

Decriminalisation cannot retain any discriminatory public health legislation that specifically targets sex workers nor can it allow owner operators to replicate this in their businesses.

5.2 Recommendation: Recognise sex workers and our organisations as the experts on our health.

5.3 Recommendation: Resource and prioritise sex worker-led community health programs for Queensland sex workers.

Part 7 (ch. 12): Planning laws

6.1 Recommendation: Develop a State-wide planning approach for sex work businesses, and private sex work, prohibit local government from applying their categorising instruments to sex work, and add a provision to prevent local government from creating new laws and policies that discriminate against sex work, similar to the Victorian provision .

6.2 Recommendation: Private sex work, including collectives and private sex workers doing escort bookings to be added into Planning Regulations (2017), Schedule 6, Part 2, Section 2 (1) and therefore permitted, without DA approval or compliance with Home-Business rules, in Class 1 and Class 2 buildings.

6.3 Recommendation: Escort agencies to be covered by existing provisions for 'offices' (in centre zones) and 'home based businesses' in residential zones.

6.4 Recommendation: Massage Parlours to continue as 'health services', or added to Schedule 6.

6.5 Recommendation: Brothels to be added to Schedule 6. Amendments to the Liquor Act to allow brothels to serve alcohol.

6.6 Recommendation: Location size and amenity rules already provide self-regulation of size and number of rooms or workers for sex work businesses. Alterations or decisions about number of rooms will also be influenced by the WHS guidelines once they are in place. If amenity impact is occurring, local government have mechanisms to address this, without discretionary powers.

Part 8 (ch. 13): Advertising

7.1 Recommendation: Do not retain or transfer the current advertising restrictions on sex workers and our businesses.

The national Australian framework of advertising and broadcasting regulation is adequate for sex industry businesses; additional regulation on sex industry businesses which does not apply to other businesses is unnecessary, discriminatory and inconsistent with the intent of decriminalisation.

7.2 Recommendation: Allow sex workers to advertise our services clearly and transparently, including imagery, wording and use of the term 'massage'.

There must be no restrictions on the terminology used in sex work advertising in order to maintain the workplace health and safety of sex workers and ensure the ability to negotiate consent.

7.3 Recommendation: Allow sex work businesses to accurately advertise job opportunities.

Sex workers and sex work businesses, must be able to advertise employment opportunities with transparency and clarity. Sex workers also need to be able to advertise safely and transparently for coworkers and staff.

Part 9 (ch. 14): Street-based sex work

8.1 Recommendation: Do not retain or transfer public solicitation offences or the criminalisation of street-based sex work.

Repeal all legislation that criminalises street-based sex work in favour of an evidence-based approach to maximise street-based sex workers' access to services and rights. The small size of the street-based sex worker population and the extremely low number of related historical offences do not justify the suppression of our human rights.

8.2 Recommendation: Repeal s 46(5) of the *Police Powers and Responsibilities Act 2000* (Qld) to prevent police targeting of street-based sex workers

Do not allow police to utilise their move-on powers to control street-based sex workers. Move-on orders are frequently used inappropriately by police to disproportionately target marginalised groups.

Part 10 (ch. 15): Review of regulatory framework

9.1 Recommendation: A review of the legislation must not occur sooner than 5 years after the full implementation of decriminalisation.

Part 11 (ch. 16): Discrimination against sex workers

10.1 Recommendation: Replace the 'lawful sexual activity' attribute with the new attributes, 'sex work' and 'sex worker' in the *Anti-Discrimination Act 1991* (Qld).

10.2 Recommendation: Include 'sex work' and 'sex worker' as a recognised 'ground' for unlawful and serious vilification under s 124A and s 131A of the *Anti-Discrimination Act 1991* (Qld).

10.3 Recommendation: Remove all exemptions that allow for lawful discrimination against sex workers. Specifically:

- s 106C Anti-Discrimination Act – in relation to accommodation providers.
- s 28 Anti-Discrimination Act – in relation to working with children.

10.4 Recommendation: Make the complaints process accessible to sex workers.

Remove the barriers which prevent us from reporting discrimination and following through with complaints. Enable representative organisations such as Respect Inc. to make complaints on behalf of individual sex workers. Both of these measures will protect the privacy and safety of sex workers.

Part 12 (ch. 15): Implementation of decriminalisation

11.1 Recommendation: Educate government, community, and law enforcement by working with and resourcing sex worker community organisations.

11.2 Recommendation: Remove all possibilities for police and other authorities to target sex workers.

11.3 Recommendation: Work with sex worker peer organisations throughout the implementation process.

Part 13 (ch. 17): Other matters

12.1 Recommendation: Decriminalisation of sex work should consider eligibility for sex industry businesses to serve alcohol. This will require consideration of amendments to the Liquor Act 1992 and its regulations or codes.

12.2 Recommendation: All sex workers must be included in the framework including strippers. An amendment to the Liquor Act and Liquor Regulations and the Liquor (Approval of Adult Entertainment Code) Regulation 2002 will be necessary to achieve this.

12.3 Recommendation: The decriminalisation Bill that results from this process must expunge criminal records related to ‘prostitution offences’. Failure to do this will exclude sex workers from a range of employment options, opportunities for travel and impacts of discrimination in a range of areas of our lives.

12.4 Recommendation: Queensland’s decriminalisation framework should provide sex workers with full access to the human rights protections in the Human Rights Act 2020 (Qld). No laws applicable to sex work or the sex industry should limit these basic human rights.

12.5 Recommendation: Decriminalisation of sex work should be implemented immediately following the passing of the Queensland Sex Work Decriminalisation Act and should not occur in a staged process as has happened in Victoria resulting in confusion, misinformation and unintended negative consequences. If decriminalisation of sex work is properly implemented, all of the reforms can be planned to commence on one date, resulting in greater efficiency, efficacy and consistency in the roll out of decriminalisation in Queensland.

Part 14 (ch. 18): Fraudulent non-payment of sex workers is sexual assault

13.1 Recommendation: Amend s 348 of the *Criminal Code 1899* to better recognise the non-payment of sex workers as sexual assault rather than fraud.

Section 348 (2)(e) of the *Criminal Code 1899* states ‘by false and fraudulent representations about the nature or purpose of the act’. This must be amended by adding ‘or the withdrawal of payment or non-payment of a sex worker’.

13.2 Recommendation: Amend the definition of consent in the *Criminal Code 1899* to explicitly criminalise stealthing.

Section 348 (2) of the *Criminal Code 1899* must be amended to include ‘by an intentional misrepresentation about the use of a condom’. This provision should be a criminal offence that applies to all people, not only sex workers.

Part 1: The current licensing model in QLD

Consultation Paper Chapter 9: Licensing of sex work business operators

The *Prostitution Act 1991*, the *Criminal Code 1899* and the *Police Powers and Responsibilities Act 2000* significantly limit legal sex work options in Queensland. The laws combine to create a framework which criminalises many forms of sex work, greatly limiting sex workers' abilities to employ safety strategies, enforce discriminatory health provisions on sex workers, place burdensome restrictions on advertising and provide for excessive police powers and immunity. The difficulties created by the current regulatory framework have resulted in the formation of a 'two-tiered industry', where businesses and sex workers who are unable to comply are exposed to criminalisation. Queensland sex workers face the difficult decision of complying with laws that put their safety and right to privacy at risk, or working safely outside of the licensing framework, which in turn puts us at risk of criminalisation and prosecution.²

The licensed framework of the Queensland sex industry, which has largely failed sex workers and the state of Queensland by a number of measures, represents only a small proportion³ of the overall industry. Respect Inc., Queensland's sex worker peer organisation, approximates that at least 80% of QLD sex workers work outside of the licensing framework.⁴ Research repeatedly finds that punitive police targeting of sex workers 'produce[s] greater, rather than less, risk'.⁵

Police corruption and inaction is a common thread within sex industries that have any elements of criminalisation.⁶ The findings of the *Report of the Commission of Inquiry Pursuant to Orders in Council ('Fitzgerald Report')*⁷ detailed systemic police corruption in relation to the Queensland sex industry. The *Fitzgerald Report* found '**no coherent reason to keep a specialised police force in relation to sex work**'.⁸ Further, the report labelled the police call for *more* powers to police the sex industry as 'illegitimate',⁹ instead advising that '[r]ather than merely being given more powers, what police need is better instruction about the present ambit and exercise of their powers'.¹⁰ The *Fitzgerald Report* further found that:

'The Queensland Police Force is debilitated by misconduct, inefficiency, incompetence, and deficient leadership...The culture which shares responsibility for and is supported by this grossly unsatisfactory situation includes contempt for the criminal justice system, disdain for

² Elena Jeffreys, Erin O'Brien and Janelle Fawkes, 'The Case for Decriminalisation: Sex Work and the Law in Queensland' (2019) 9 *Crime and Justice Briefing Paper* 1.

³ Prostitution Licensing Authority, *Annual Report 2019-2020* (Report, 2020) 16.

⁴ Respect Inc., *Regulating Bodies: An in-depth assessment of the needs of sex workers [sexual service providers] in Queensland's licensed brothels* (Report, June 2017) ('*Regulating Bodies*').

⁵ Stardust, Z., Treloar, C., Cama, E., and Kim, J., 2021. 'I Wouldn't Call the Cops if I was Being Bashed to Death': Sex Work, Whore Stigma and the Criminal Legal System. *International Journal for Crime, Justice and Social Democracy*, 10 (3), 142–157.

⁶ Ibid.

⁷ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council* (Report, 1989) ('*Fitzgerald Report*').

⁸ Elena Jeffreys, Erin O'Brien and Janelle Fawkes, 'The Case for Decriminalisation: Sex Work and the Law in Queensland' (2019) 9 *Crime and Justice Briefing Paper* 1.

⁹ *Fitzgerald Report* 179.

¹⁰ Ibid 180.

the law and rejection of its application to police, disregard for the truth, and abuse of authority.¹¹

Despite these findings, the *Prostitution Act* was legislated 10 years later, and Queensland has since increasingly broadened the scope of police powers in relation to sex workers. The following excerpt outlines the development of the current licensing system:

‘It took until 1992, then 1999, for changes to the sex industry laws in Queensland. However, instead of removing police, the Prostitution Act 1999 (Qld) created a licensing framework, and added a new layer of criminal laws for brothels. The Prostitution Laws Amendment Act 1992 inserted new crimes relating to independent sex workers via Chapter 22A of the Criminal Code 1899 (Qld) including the charge “Knowingly participate in the provision of prostitution”, which is broadly interpreted and one of the most common charges used against sex workers.

‘In 2000 the Police Powers and Responsibilities Act expanded the role for police when undertaking entrapment of sex workers. In 2011 this Act was amended to include immunity for police when explicitly posing as clients to encourage sex workers to verbally or in writing agree to illegal activity, in order to obtain evidence and then charge the person. The powers held by police in relation to sex work in Queensland are far greater today than at any time before the Fitzgerald Inquiry.’¹²

The Queensland Police Service and the Prostitution Licensing Authority receive significant public funding and resources to regulate and enforce compliance. Police are never appropriate regulators of our industry, and this is of particular concern in the context of sex worker access to justice, where they play dual and conflicting roles as both prosecutor and protector.

Licensing has clearly failed sex workers and is counterproductive to the Queensland government’s overall push to ensure access to human rights and labour rights. The impact of the licensing system is well-documented by Respect Inc. and Decrim QLD.^{13 14 15} In summary, the licensing system is detrimental in the following ways:

1. It criminalises many of our safety strategies, forcing sex workers to choose between working safely and legally.
2. It punitively regulates our sexual health through mandated PPE use and testing, while also criminalising sex workers living with STI and BBV. These measures are counter-productive to broader public health initiatives and have been identified as barriers to health by Australia’s STI and BBV Strategies.
3. It places police in the role of regulator of the sex industry, which affects our ability to access justice and report crimes as we anticipate prosecution and discrimination. Interacting with

¹¹ Ibid 200.

¹² Elena Jeffreys, Erin O’Brien and Janelle Fawkes, ‘The Case for Decriminalisation: Sex Work and the Law in Queensland’ (2019) 9 *Crime and Justice Briefing Paper* 1

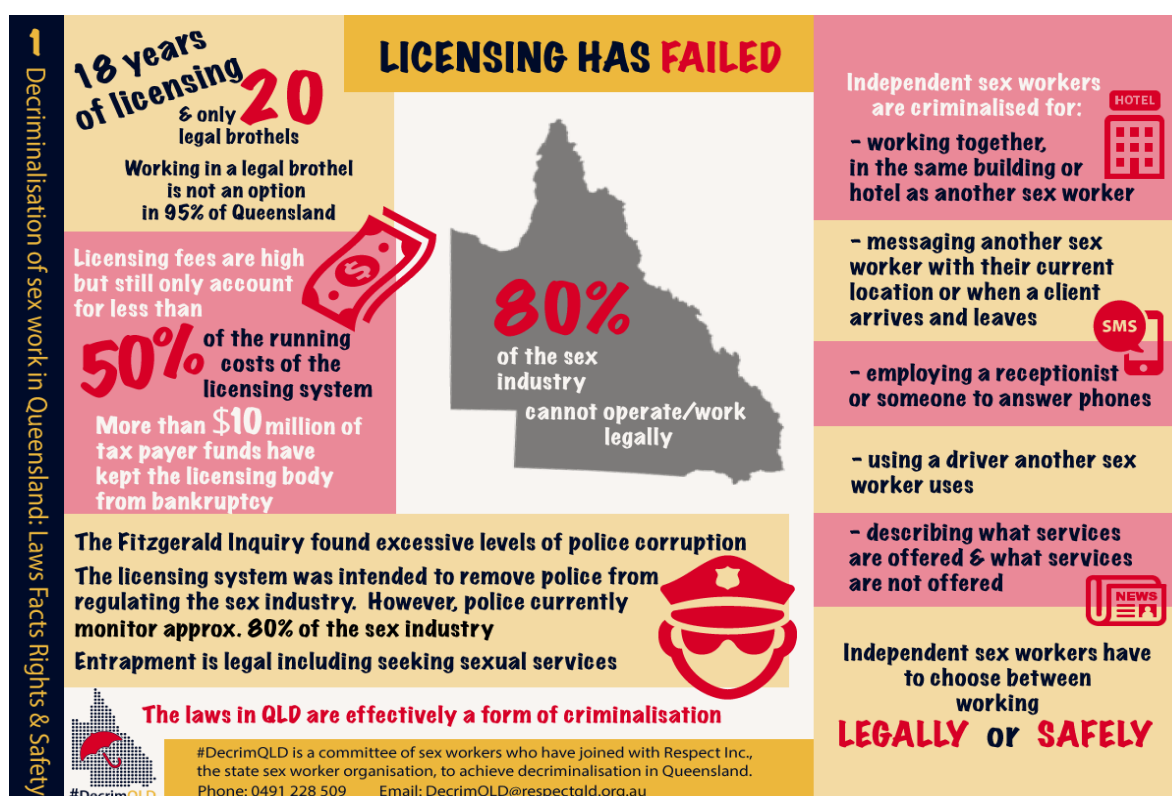
¹³ Respect Inc., ‘Sex worker safety should be sexy NOT criminal #DecrimQLD’ (YouTube, 12 February 2021) <<https://www.youtube.com/watch?v=kQ1Xjk4RC0k>>

¹⁴ Respect Inc., ‘Evidence’, <<https://respectqld.org.au/decriminalise-sex-work/the-evidence/>>.

¹⁵ DecrimQLD, ‘Resources’, <<https://respectqld.org.au/decriminalise-sex-work/resources/>>.

police also comes with the risk of identification and subsequent surveillance and entrapment.

4. It pushes sex workers underground, decreasing our access to our workplace health and safety rights, criminal justice, and support services such as peer education and outreach. In turn, this further marginalises us, increasing our likelihood of experiencing violence, coercion and exploitation, as third parties can act with impunity.
5. It sends a dangerous and stigmatising message to the broader Queensland community that sex work and sex workers are in need of hyper-regulation, surveillance and control.
6. It costs the State in taxpayer funds to license the sex industry, without any evidence of its benefit.



DecrimQLD infographic (2018).

This current inquiry into decriminalisation presents an important opportunity for the QLRC to send a strong message to government, sex workers and our organisations, and the broader community of the critical need to dismantle the current licensing system. Only through the full decriminalisation of all sex work, workplaces and clients, will the beneficial possibilities of decriminalisation be accessible to everyone. Sex workers across the world are calling for the decriminalisation of our work. We want access to justice, access to our human rights, industrial rights and rights under anti-discrimination law. It is integral that the government acknowledge sex workers as the experts on our work and by extension, experts on the best practice model to regulating our industry.

[Further information about the laws and their impact.](#)

Part 2: What should the full decriminalisation of sex work look like in QLD?

Consultation Paper Chapter 7: What might a decriminalised sex work industry look like?

Questions

1. What should be the main purposes of the recommended framework for a decriminalised sex work industry in Queensland, and why?

The purposes of the new framework should be:

1. To fully decriminalise sex work in Queensland to:
 - (a) recognise sex work as work;
 - (b) enhance the human rights and workplace health and safety of sex workers;
 - (c) reduce stigma and provide for discrimination protections for sex workers;
 - (d) allow sex workers to work together and in collectives, and employ support staff;
 - (e) protect sex workers and businesses to enable them to operate in accordance with the laws of the State and the Commonwealth as they apply to all individuals and businesses generally, including laws governing employment, workplace health and safety guidelines, workers compensation and rehabilitation, planning and discrimination.
2. To achieve full decriminalisation by repealing all current laws that refer specifically to sex work in Queensland so that existing general laws can be utilised.

A decriminalised framework recognises that sex work is work. The full decriminalisation of sex work ensures sex industry businesses are regulated in the same way as other businesses and subject to a range of existing laws and regulatory mechanisms, making for a well regulated and transparent sex industry. Decriminalisation improves sex workers' occupational choices by supporting autonomy, control, workplace health and safety (WHS), and industrial rights. Decriminalisation will mean sex workers can report crime to the police without fear of prosecution. A decriminalised system amplifies opportunities for outreach and peer education, supports sex worker self-determination, maximises compliance, increases transparency and minimises discrimination. There is an accumulating body of evidence globally and locally supporting the full decriminalisation of sex work as it ensures sex workers access to our human rights.^{16 17 18}

Scarlet Alliance's briefing paper on [The Full Decriminalisation of Sex Work in Australia](#) states:

'Full decriminalisation of sex work is the removal of all sex work-specific criminal and licensing laws that apply only to sex workers, our workplaces, clients, and third parties.'

¹⁶Harcourt, C., O'Connor, J., Egger, S., Fairley, C., Wand, H., Chen, M., et al. (2010). The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers. *Aust NZ J Public Health*, 34, 482–486.

¹⁷Lancet Series: HIV and Sex Work 2014, <<https://www.thelancet.com/series/hiv-and-sex-workers>>.

¹⁸Global Network of Sex Work Projects, 'Decriminalisation: A Smart Sex Workers Guide', n.d. <https://www.nswp.org/sites/default/files/sg_to_decriminalisation_prf05.pdf>.

Criminal laws that apply to everyone are still enforced by police. Civil laws are implemented by government agencies and regulators, not the police. Civil laws protect people's health, safety, privacy, autonomy, human and industrial rights, and are meant to apply to everyone. Full decriminalisation gives sex workers access to workplace health and safety protections and civil law.'

International organisations and policy makers such as UNAIDS¹⁹, the World Health Organization (WHO)²⁰, the United Nations Population Fund (UNFPA), and the United Nations Development Programme (UNDP)²¹, Amnesty International²², International Labour Organization (ILO)²³, The Lancet medical journal²⁴, Global Alliance Against Traffic in Women (GAATW)²⁵, Global Network of Sex Work Projects (NSWP) and Asia Pacific Network of Sex Workers (APNSW) have called for the decriminalisation of sex work and elimination of unjust non-criminal laws and regulations against sex workers.²⁶ They have also recognised that violence against sex workers must be prevented and addressed in partnership with sex workers and their organisations, and that sex workers and their organisations should be meaningfully included in policy making.

2. Overall, what might the new framework look like?

Decriminalisation must remove all criminal laws specific to the sex industry, including those in the *Prostitution Act 1999*, *Criminal Code 1899*, *Police Powers and Responsibilities Act 2000* and *Prostitution Regulations 2004* and other Acts and Regulations. By repealing the laws which single out and criminalise aspects of sex work, sex workers are able to access the rights and protections afforded to other employees, contractors and small business owners in Queensland. Rather than resulting in de-regulation or 'no regulation', the full decriminalisation of sex work ensures that sex industry businesses are regulated in the same way as other businesses, subject to existing regulatory mechanisms such as industrial protections and workplace health and safety guidelines. Under a decriminalised framework the sex industry is subject to a whole-of-government regulation including WHS, council, business, industrial, taxation, migration, planning, health and criminal laws and regulations.

Within a decriminalised sex industry, existing laws that criminalise exploitative workplace practices, violence, human trafficking, robbery, fraud, sexual assault, and harassment will continue to apply to

¹⁹ Joint United Nations Programme on HIV/AIDS (UNAIDS) (2009) UNAIDS Guidance Note on HIV and Sex Work. UNAIDS/09.09E / JC1696E (English original, March 2009)

²⁰ World Health Organisation WHO (2016), Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations.

<<https://apps.who.int/iris/bitstream/handle/10665/246200/9789241511124-eng.pdf?sequence=8>>

²¹ UNDP, UNFPA, UNAIDS (2012). Sex Work and the Law in the Asia Pacific. ISBN: 978-974-680-343-4

²² Amnesty International, 'Amnesty International policy on State obligations to respect, protect and fulfil the human rights of sex workers', 2016, <<https://www.amnesty.org/en/documents/pol30/4062/2016/en/>>.

²³ ILO (2010), Recommendation Concerning HIV and AIDS in the World of Work <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/normativeinstrument/wcms_142706.pdf>

²⁴ Lancet Series: HIV and Sex Work (2014), <<https://www.thelancet.com/series/hiv-and-sex-workers>>.

²⁵ Global Alliance Against Traffic in Women (GAATW) (2018). Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions. p. 40. <<https://gaatw.org/publications/SWorganising/SWorganising-complete-web.pdf>>

²⁶ World Health Organization, UNFPA, UNAIDS, and NSWP, 2012. Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: recommendations for a public health approach. Geneva: World Health Organization.

the sex industry more effectively than they do while sex work is licensed and criminalised. Where sex work is decriminalised, sex workers are more likely to report crime or harassment to the police and benefit from existing laws and policies that protect all workers.

Full decriminalisation does not include registration or licensing. The *NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels* (NSW Government Response to the Brothel Inquiry) established that sex industry businesses within decriminalisation do not need a licensing component to ensure the comprehensive regulation of the sex industry. The NSW Government Response to the Brothel Inquiry indicated that introducing a licensing component and greater police involvement in the regulation of sex work 'risks creating similar outcomes to re-criminalising sex work'²⁷, such as increased police corruption and reduced access to legal, health and support services for sex workers.

A decriminalised framework must also include the following components:

- Expungement of all criminal records pertaining to 'prostitution offences' (part 13);
- No sex work specific criminal laws maintained (part 3);
- Acknowledgement that sex workers are the experts in our health and workplace safety (part 5);
- Sex worker led public health approaches (part 6);
- Prevention of local council discrimination against sex work businesses (part 7);
- Removal of discriminatory advertising provisions (part 8);
- Robust anti-discrimination protections (part 11); and
- Recognition that non-payment of sex workers amounts to sexual assault (part 14).

3. What changes would need to be made to the current framework, and why?

Repeal all laws that specifically criminalise and regulate sex workers, our clients and our workplaces.

The full decriminalisation of sex work in Queensland must occur with the complete removal of all current laws that specifically criminalise and regulate sex work such as:

- *Prostitution Act 1999* and Regulations,
- *Criminal Code 1899* (Chapter 22A)
- *Police Powers and Responsibilities Act 2000*: Schedule 2 Item 4 (relating to 'prostitution') & Item 5, Schedule 5 Part 1(1) (relating to 'prostitution') & Part 2(9)
- Other Acts and regulations including sex work specific laws or disqualifications.

These laws force more than 80% of sex workers to choose between working safely or legally. The laws allow the police to search, entrap, charge and move-on sex workers and their friends/associates, as well as enforce a criminal approach to sex workers' sexual health. They criminalise most sex work workplaces and give power to the PLA to govern the (only) 20 existing

²⁷ Minister for Innovation and Better Regulation. (2016). NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels. Retrieved from <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=185#tab-governmentresponses> p. 3.

licensed brothels and decide how sex workers can advertise. It will also be necessary to dissolve the PLA and the Prostitution Enforcement Task Force of the Queensland Police Service (PETF).

There is extensive research, internationally and locally, highlighting the negative impacts of criminalisation on sex workers' work, health and legal rights. Evidence demonstrates that the current regulatory model criminalising and licensing sex workers:

- Reduces sex workers access to justice mechanisms as sex workers fear that reporting crime will result in surveillance, being exposed as a sex worker, charges laid, harassment, incarceration, or deportation;²⁸
- Reduces our ability to safely advertise, screen clients and negotiate our services;²⁹
- Forces sex workers to choose between working safely and legally as our safety strategies (such as operating with other workers) are criminalised;³⁰
- Affects our access to health care. The *Eighth National HIV Strategy* and the *Fourth National Sexually Transmissible Infections Strategy* explicitly list 'criminalisation, licensing, registration and mandatory testing' as significant barriers to implementing public health strategies within the sex industry and increasing risk to HIV and STI, 'loss of livelihood, and risk to personal and physical safety';^{31 32}
- Creates barriers to accessing work health and safety protections;³³ and
- Compromises our ability to access peer education. Brothel licensing and criminalisation in Australia has resulted in poorer access to health promotion and support.³⁴

Remove police powers that specifically target sex workers

The use of entrapment practices to charge and arrest sex workers for 'prostitution' offences is both legal and common in Queensland. Entrapment involves police posing as clients of sex workers in person, over the phone or online in order to 'entrap' sex workers working illegally. In 2000, the Queensland government broadened police powers in the *Powers and Responsibilities Act 2000* to include the entrapment of sex workers. By 2012, this legislation was amended further to grant police immunity from prosecution when entrapping sex workers. Immunity is enshrined in s75 of the *Prostitution Act 1999*,³⁵ which exempts police from 'soliciting offences' if the soliciting is conducted 'under an authority given under the *Police Powers and Responsibilities Act 2000*'.³⁶ Immunity within

²⁸ Amnesty International, 'Amnesty International policy on State obligations to respect, protect and fulfil the human rights of sex workers', 2016, <<https://www.amnesty.org/en/documents/pol30/4062/2016/en/>>.

²⁹ Amnesty International, "'We live within a violent system.'" Structural violence against sex workers in Ireland', 2022, <<https://www.amnesty.org/en/documents/eur29/5156/2022/en/>>

³⁰ *Criminal Code 1899*, Ch 22A

³¹ Department of Health. (2018a). Eighth National HIV Strategy 2018-2022. <<https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1//SFile/HIV-Eight-Nat-Strategy-2018-22.pdf>> on 19/06/22. p. 22.

³² Department of Health. (2018b). Fourth National Sexually Transmissible Infections Strategy 2018-2022. <<http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/SFile/STI-Fourth-Nat-Strategy-2018-22.pdf>> on 19/06/22. p. 22.

³³ Donovan, B et al., (2010). The sex industry in Western Australia: a report to the Western Australian Government. National Centre in HIV Epidemiology and Clinical Research, University of New South Wales, Sydney.

³⁴ Harcourt, C et al., (2010). The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers. *Australian and New Zealand Journal of public health*, 34(5), 482-486.

³⁵ *Prostitution Act 1999* (Qld).

³⁶ *Police Powers and Responsibilities Act 2000* (Qld).

this context allows police to seek and engage in sexual services with sex workers that would otherwise criminalise both the worker and client. This also means that an officer is able to request and/or procure sex work services from a sex worker under false pretences.

To grant sex workers the same access to justice as others, police should not be regulators of the sex industry, as it is impossible to occupy the dual role of '(alleged) protector and prosecutor'.³⁷

A Respect Inc. study conducted with Queensland sex workers in 2017³⁸ asked participants if they would make a complaint to police if they were assaulted at work. Only 46% said that they would, and 50% said they would not. 66% of respondents who said they would not report cited stigma and privacy concerns as key barriers for them and 38% indicated that they 'mistrusted police, their competence, the legal system and/or anticipated discrimination'.³⁹ Other sex work literature and research echoes this mistrust of police, including fears that police will charge workers with prostitution offences if they are sexually assaulted while working unlawfully or unlicensed.⁴⁰

Criminalisation also brings the risks of identification and investigation, which can 'lead to entrapment, harassment, assault, arrest or attempts at bribery'.⁴¹ In another recent study, sex worker participants indicated that seeking police assistance is a 'last resort' and 'pointless'⁴² due to negative personal and peer experiences. Sex worker participants further described 'varying degrees of dissatisfaction, disappointment and frustration' about their interactions with police as victims of crime, with only a few reporting positive outcomes.⁴³ This study effectively highlights that as sex workers we anticipate proactive police action 'in charging, arresting or reporting'⁴⁴ us, whilst also expecting complete police inaction when addressing our experiences of crime.

Migrant sex workers who work in the unlicensed sector have compounding barriers associated with concerns about visa cancellation or deportation. Migrant sex workers working under the licensing model reported incidents of police arriving 'at their workplace with an unspoken expectation that they would receive free services in return for not reporting [them]'.⁴⁵ When police become perpetrators of sex by blackmail, they are no longer a viable source of protection. As one sex worker writes, 'Historically and globally, police have been the source of continued abuse, rape, violence and harassment of sex workers. They are not our protectors.'⁴⁶

³⁷ Z. Stardust et al., 'I wouldn't call the cops if I was being bashed to death': Sex work, whore stigma and the criminal legal system', *International Journal for Crime, Justice and Social Democracy* (advance)(2021), vol.10, no.2, 2021., p.6.

³⁸ Respect Inc., *Regulating Bodies: An in-depth assessment of the needs of sex workers [sexual service providers] in Queensland's licensed brothels* (Report, June 2017) ('*Regulating Bodies*').

³⁹ Ibid 21.

⁴⁰ Sullivan, B., 2010. When (Some) Prostitution is Legal: The Impact of Law Reform on Sex Work in Australia. *Journal of Law & Society*, 37 (1), 85–104.

⁴¹ Z. Stardust et al., 'I wouldn't call the cops if I was being bashed to death': Sex work, whore stigma and the criminal legal system', *International Journal for Crime, Justice and Social Democracy* (advance)(2021), vol.10, no.2, 2021. P. 6.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid, p. 8.

⁴⁶ MsEloise, 'Because I'm a Whore, 'An Open Letter to Australian Feminists Concerned about Sex Worker Exploitation', *Feminaust: Contemporary Australian Feminism* (Blog Post 20 August 2011) accessed at <<https://feminaeaustralis.wordpress.com/2011/08/20/open-letter-to-australian-feminists-concerned-about-sex-work-exploitation/>> 16 July 2021.

Sex workers in Queensland are largely entrapped for advertising and for implementing safety strategies. According to the *2016-2017 Queensland Police Service Annual Statistical Review*, the offence of 'Advertising Prostitution' rose by 450% from the previous year.⁴⁷

Safety strategies include: working with other sex workers, letting someone know where and when we are meeting clients, and employing support staff.⁴⁸ These are basic, practical strategies sex workers utilise to increase our safety. When a sex worker agrees, either verbally or in writing to illegal activity, the police may use this evidence to press charges.⁴⁹ DecrimQLD, the campaign for decriminalisation of sex work in Queensland, and Respect Inc. have indicated that police use entrapment laws to:

- use the lure of payment to pressure sex workers to agree to perform a doubles booking (a booking with two workers);
- make a fake booking with a sex worker to monitor how the sex worker travels to the booking, and then arrest our driver if the driver is unlicensed or is also known to drive other sex workers;
- call sex workers on the phone, posing as clients, asking for illegal sexual services such as any sex without a condom;
- contact sex workers, pressuring us to state we have received assistance in developing or placing an advertisement, particularly if English is not our first language;
- call sex workers to find out if we are using a receptionist to assist in the running of our business;
- call or visit sex workers to ask for services that we do not offer, and then attempt to convince us to refer them to another worker that does offer the service;
- call us or visit us at our place of work while posing as a client to then ask if we have a friend or anyone else on the premises who is available for a booking.

These practices are incredibly invasive and distressing for sex workers who are targeted by police:

*"I was also working privately in Queensland...I was aware of police doing this thing where they call up your number and they try to get you to agree to an uncovered blow job over the phone, because they are trying to get prosecution for any kind of unprotected sex...I did have a situation where an undercover police officer came in pretending to be a client and asked all of the questions almost like they had a list of all the illegal things and it was incredibly unnerving and very distressing. And you feel like your whole world has been kind of, you know, invaded by, non-consensually, you know...Yeah it was really horrible and then he did the whole, 'I've left my wallet in the car, I'll be back in a minute' and left and never came back (Focus Group 4)."*⁵⁰

⁴⁷ Queensland Police Service, *2016 - 2017 Annual Statistical Review* (Report 2017) 14 ('QPS Stats').

⁴⁸ Scarlet Alliance Submission to Legal Affairs and Community Safety Committee (Queensland), *Inquiry on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2019* (08 October 2019) ('Police Powers Submission').

⁴⁹ Jeffreys, E., O'Brien, E., and Fawkes, J., 2019. The Case for Decriminalisation: Sex Work and the Law in Queensland. *Crime and Justice Briefing Paper*, (1), 4.

⁵⁰ Z. Stardust et al., 'I wouldn't call the cops if I was being bashed to death': Sex work, whore stigma and the criminal legal system', *International Journal for Crime, Justice and Social Democracy* (advance)(2021), vol.10, no.2, 2021, p. 8.

Police entrapment of sex workers ‘fosters deep mistrust between the sex worker community and the police, significantly reducing sex workers access to justice’.⁵¹ Entrapment exemplifies that QLD’s law enforcement culture is predatory and discriminatory towards sex workers. Within the landscape of entrapment, sex workers are actively criminalised for seeking what other workers are encouraged to pursue: the safest possible working conditions and financial security. This is a serious, invasive and unconscionable violation of our human rights that allows police corruption to flourish in immunity. Police entrapment also has the effect of creating distrust between sex workers and other support services, as it is plausible that other services are working with the police as part of an entrapment strategy. A Queensland sex worker further explains the negative effects of this mistrust as follows:

“Police pose as clients to identify if we are implementing these same safety strategies. Sex workers are charged and our money, phones and laptops, our so called ‘tainted property’ is seized. Consequently, police are viewed as unhelpful when experiencing crime. And so many crimes go unreported or if they are reported sex workers do not feel we are taken seriously.”⁵²

In such an environment, it is understandable that sex workers do not view police as reliable protectors or safe people to whom to disclose our experiences when crimes are committed against us at work. The cultivation of mistrust enabled by entrapment is a strong barrier to reporting and, for many sex workers, can invoke traumatic experiences of entrapment, arrest, and consequences meted out as a result of the unworkable Queensland sex work laws.

How will decriminalisation address the harms of licensing and criminalisation?

The full decriminalisation of sex work improves sex workers’ occupational choices by supporting autonomy, control, WHS and industrial rights. Decriminalisation means that sex workers and sex industry businesses are treated like other workers and businesses with the same access to their industrial, health and human rights. Decriminalisation will mean sex workers can report crime to the police without fear of prosecution. In New South Wales (NSW), decriminalisation has brought:

- Exceptionally good public health outcomes and low rates of STIs and HIV;^{53 54 55}
- No evidence of organised crime;⁵⁶
- Better access to WHS. A government review of decriminalisation by the Brothels Taskforce established by the NSW Attorney General and the Minister for Urban Affairs and Planning found that decriminalisation has ‘had a positive impact on access for workers to health services and occupational health and safety programs’;⁵⁷

⁵¹ *Police Powers Submission* (n 47).

⁵² Scarlet Alliance, Australian Sex Workers Association and Respect Inc., *Sex Work Laws and Workplace Health and Safety Symposium Report* (Report, 14 November 2018) p. 9.

⁵³ Donovan, B et al., (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Sydney: Kirby Institute, University of New South Wales.

⁵⁴ Department of Health. (2018a). *Eighth National HIV Strategy 2018-2022*.

<[http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1//\\$File/HIV-Eight-Nat-Strategy-2018-22.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1//$File/HIV-Eight-Nat-Strategy-2018-22.pdf)> on 03/04/19.

⁵⁵ C Harcourt et al. ‘Decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers’, 2010, vol. 34, *Aust NZ J Public Health*, p.482

⁵⁶ Minister for Innovation and Better Regulation. (2016). *NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels*. Retrieved from <<https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=185#tab-governmentresponses>> on 03/04/19.

⁵⁷ NSW Government. (2001). *Final Report of the Brothels Taskforce*.

- In NSW, Workcover and NSW Health worked in partnership with sex workers to create the Health and Safety Guidelines for Brothels,⁵⁸ which has been translated to Thai, Chinese and Korean. A recent update to the guidelines has been conducted by Safework NSW together with the NSW Ministry of Health, SWOP NSW, Touching Base, Urban Realists and Scarlet Alliance;
- Little to no amenity impacts;^{59 60 61 62 63}
- No increase in the size of the sex industry;^{64 65} and
- More transparent operation of sex industry businesses and increased access to support for all sex workers, reducing the opportunity for exploitation.

4. Who should the new framework apply to, and why?

The decriminalisation framework should apply to all sex workers and the entire sex industry. Existing sex industry businesses of all types, regardless of whether they are currently operating legally or illegally, should be decriminalised as part of this process. If some sections of the sex industry are not decriminalised the Queensland sex industry will remain divided and split into two-tiers. The Prostitution Act permitted licensing of brothels but provided no options for other sex industry businesses to operate legally. The framework itself divides the industry. This submission outlines the impact of this approach and why this must be avoided in the new framework. Other jurisdictions which have left some sex workers criminalised have seen continued marginalisation, criminalisation and the resulting impacts of increased stigma and reduced access to justice.

We note that the terms of reference recognises that for this review 'sex work includes all forms of sex work legal or illegal' and only excludes activities authorised under an adult entertainment permit. The Adult Entertainment Permits do not authorise services strippers provide that are contact and non-contact activities including: masturbation, oral sex, sexual intercourse, touching genitalia, penetration, placing genitalia or anus close to a person's face and soliciting for prostitution.

The intention of the Terms of Reference is that sex work wherever it occurs is covered by the review and should be decriminalised. We strongly recommend the Commission include decriminalisation of strippers who provide these services as part of this review.

Terminology

⁵⁸ NSW Department of Health, & WorkCover NSW. (2001). Health and safety guidelines for brothels in NSW. WorkCover NSW.

⁵⁹ Hubbard, P et al., (2013). Noxious neighbours? Interrogating the impacts of sex premises in residential areas. Environment and Planning A, 45(1).

⁶⁰ Donovan, B et al (2012). The sex industry in New South Wales: a report to the NSW Ministry of Health. Sydney: Kirby Institute, University of New South Wales. p. 43.

⁶¹ Eva Cox "UTS Students' Research on Home Occupations," UTS Student Project Under Supervision of Eva Cox, Nov 2003 <http://www.scarletalliance.org.au/library/cox_03>

⁶² M. O'Mullane, 'The Subversion of Progressive Intent; The realities of sex work policy: When and how it is enforced', Sydney, *Touching Base Incorporated*.2015.

⁶³ Prior, J., & Crofts, P. (2015). Is Your House a Brothel? Prostitution Policy, Provision of Sex Services from Home, and the Maintenance of Respectable Domesticity. Social Policy and Society, 14(1). p. 131.

⁶⁴ Donovan, B et al (2012). The sex industry in New South Wales: a report to the NSW Ministry of Health. Sydney: Kirby Institute, University of New South Wales. p. 43.

⁶⁵ Abel, G. M. 2014. "A decade of decriminalization: Sex work 'down under' but not underground", *Criminology & Criminal Justice* 14(5), 580-92.

Within decriminalisation processes, a recurrent problem is the tendency of regulators and policy makers to split and categorise the sex industry in a manner that does not reflect the actual lived experiences of sex workers. For example, this is exemplified in the Consultation Paper's delineation between 'private' and 'managed' sex worker - a distinction that has not been recommended by sex workers and is not used within our community. The terminology of 'managed sex worker' is not constructive and does not accurately reflect the diversity of working arrangements in the sex industry. For the process of decriminalisation of sex work in Queensland to be accessible, navigable and understandable, the QLRC should adopt the language of the workers whose industry they are seeking to reform. We recommend that the following definitions be employed in the future and address issues with some of the terminology used in the *Consultation Paper*.

Private sex workers may work alone, in pairs or in a group. A group of sex workers working together is a collective. This describes private sex workers who will often work together for reasons of safety and security, to share costs and resources and for peer support. Unlike a co-operative as defined in QLD *Co-operatives Act 1997*⁶⁶ sex worker collectives do not pool and share profits, instead they operate independently from each other in a supportive structure as independent contractors.

The terminology 'home based sex work business' does not reflect the reality of how private sex workers currently operate and forces us to have to reside at the premises. Further, when forced into the home based business definition, sex workers are unable to meet the requirements and are therefore classified as non-compliant. Forcing private sex workers into the home based business framework will result in a large proportion of sex workers unable to access the intended benefits of decriminalisation.

SOOB (small owner-operated brothels) is not a productive fit with the Queensland planning approach. Queensland already has a number of common types of workplaces that are compliant with amenity rules in their zone. Adding a new definition would create unnecessary arbitrary styles of work based on size and scale, excluding existing workplaces from the decriminalised framework, creating potentially insurmountable barriers to compliance with planning laws, and leading to gaps and failures in the new framework. Collectives are not brothels and terminology that infers this creates legislative and planning problems.

Sex work and sex worker

The current definition of sex work in QLD including "any other activity that 'involves the use of one person by another' for their sexual satisfaction 'involving physical contact'" is outdated. An important component of modernising sex work laws in Queensland through decriminalisation is a change to the definition of sex work. This includes removing stigmatising and outdated terms like 'prostitution', but it is also essential that the definition be reflective of what sex work is in 2022 in Queensland, and that the definition is not in and of itself stigmatising.

Sex workers do not offer ourselves or our bodies for the 'use' of another person. By reflecting outdated attitudes to sex work, as if a client pays for the use of a sex worker's body, the current definition undermines critical understandings of consent in a sex work setting. Sex workers provide a

⁶⁶ Queensland Cooperatives Act 1997. Retrieved at 22/06/22 from <https://www.legislation.qld.gov.au/view/pdf/inforce/2012-01-30/act-1997-039>

wide variety of services, which are better captured by the definition used in the *NT Sex Industry Act 2019*:

‘*Sex work* is the provision by a person of services that involve the person participating in sexual activity with another person in return for payment or reward.

Sex worker means a person who performs sex work.’⁶⁷

Sex workers are diverse and so are sex work businesses. The definition of sex work should include sex workers who do contact and non-contact sex work: erotic dance/stripping, erotic massage, full service sex work, BDSM, sex for favours, online and in-person services. It should also include sex workers who work independently, co-operatively, do incall/outcall, street/bar-based work or work in massage parlours, with escort agencies, in brothels and online.

Sex work businesses

The terminology of ‘commercial sex work business’ is redundant. Whether referred to as ‘sex services premises’, ‘sex industry businesses’, ‘sex industry premises’, or some other combination of these, sex work business premises are commercial in nature, and it is unnecessary to use this qualifier. We raise concern that it could create confusion in practice, as the use of the word ‘commercial’ implies the existence of ‘non-commercial’ sex work businesses.

1. Recommendations

1.1. Recommendation: The purposes of the new framework should be:

1. To fully decriminalise sex work in Queensland to:
 - (a) recognise sex work as work;
 - (b) enhance the human rights and workplace health and safety of sex workers;
 - (c) reduce stigma and provide for discrimination protections for sex workers;
 - (d) allow sex workers to work together and in collectives, and employ support staff;
 - (e) protect sex workers and businesses to enable them to operate in accordance with the laws of the State and the Commonwealth as they apply to all individuals and businesses generally, including laws governing employment, workplace health and safety guidelines, workers compensation and rehabilitation, planning and discrimination.
2. To achieve full decriminalisation by repealing all current laws that refer specifically to sex work in Queensland so that existing general laws can be utilised.

1.2 Recommendation: Repeal legislation that criminalises our work, workplaces and clients and remove police as regulators of our industry:

- *Prostitution Act 1999* (Qld),
- *Prostitution Regulations 2004* (Qld),
- Chapter 22A of *Criminal Code 1899* (Qld),
- Section of *Police Powers and Responsibilities Act 2000* (Qld): Schedule 2 Item 4 (relating to ‘prostitution’) & Item 5, Schedule 5 Part 1(1) (relating to ‘prostitution’) & Part 2(9).

⁶⁷ NT Sex Industry Act 2019, s. 4

- Consequential amendments in the following Acts and Regulations that undermine the intent of and are inconsistent with decriminalisation, namely:
 - *Public Health Act 2005 (Qld) Section 88 (3), a;*
 - *Disability Services Act 2006 (Qld) Sch 2, 4;*
 - *Introduction Agents Act 2001 (Qld) s21 Sch 1;*
 - *Liquor Act 1992 (Qld) 107E;*
 - *Adult entertainment licence;*
 - *Liquor (Approval of Adult Entertainment Code) Regulations 2002 (Qld);*
 - *Working with Children (Risk Management and Screening) Act 2000 (Qld) Sch 2,4,6;*
 - *Transport Operations (Passenger Transport) Act 1994 (Qld) Sch 1A (1,2).*

1.3 Recommendation: Amend the definition of sex work.

‘Sex work’ is the provision by a person of services that involve the person or persons participating in sexual activity with another person in return for payment or reward.

‘Sex worker’ means a person who performs sex work.

1.4 Recommendation: Disband the Prostitution Licensing Authority (PLA) and the Prostitution Enforcement Task Force of the Queensland Police Service (PETF).

1.5 Recommendation: The decriminalisation framework should apply to all sex workers and all sex industry businesses. Sex work should be decriminalised in all settings (e.g. street based sex work, collectives) and by all sex workers (e.g. private, sex workers with a disability, strippers etc).

Part 3: Offences to protect against commercial sexual exploitation

Consultation Paper Chapter 8: Offences to protect against commercial sexual exploitation

Questions

5. What offences or other provisions should be included to protect people from being exploited in commercial sexual activity?

In line with the intent of decriminalisation, new offences singling out the sex industry for new offences or the continuation or replication of Prostitution Act s77 or Criminal Code s 229G, s 229 FA, s 229L is not of benefit to sex workers or the broader community. Criminal laws specific to any aspect of our work or workplaces have not protected sex workers from exploitation, in fact they have often been used against us, or our partners and they dangerously maintain a role for police in the regulation of our work. Full decriminalisation is the single most impactful change to sex workers ability to work safely, access rights and report crimes. Protections are better achieved when WHS guidelines are applied to all workplaces, and sex workers have the ability to report concerns and criminal offences through laws which apply to all businesses.

When exploitation occurs within our workplaces, it must be addressed as an issue of industrial rights in the same way that it is in other industries, such as agriculture, construction, nursing, and education. Scarlet Alliance does not encourage the separation of ‘commercial sexual exploitation’ from ‘labour exploitation’ when referring to exploitation within our industry. This is fundamental to sex work being recognised as work throughout any process of decriminalisation. As GAATW states ‘drawing a line between ‘sexual exploitation’ and ‘labour exploitation’ in itself suggests that sex work is not work.’⁶⁸ The proposals to single out the sex industry in criminal provisions against ‘commercial sexual exploitation’ are counterproductive to the QLRC’s intent to recognise ‘sex work as work’. The QLRC’s suggestions in Chapter 8 appear to offer only a conventional ‘law and order’⁶⁹ solution to the complex labour, criminological, social and economic conditions that cause labour exploitation within our industry. This proposed ‘solution’ also obscures and distracts from the key issues of working conditions, labour rights, WHS and access to legal redress. It also renders our current struggles to secure equal industrial rights invisible, as we often have to undergo the educational labour of convincing law and policy makers that our work is legitimate work rather than criminal behaviour.

Therefore, when we refer to ‘exploitation’ within the context of our labour rights, it is not from the perspective that sex work is inherently exploitative. Rather, it is the surrounding socio-cultural, political and legal contexts that create an environment where workplace exploitation and precarious labour occurs. Mounting national and international evidence suggests that criminal law consistently fails to address issues of exploitation, trafficking, coercion and violence within any industry, and in

⁶⁸ Global Alliance Against Traffic in Women, ‘Sex workers can tell you why sex work is work. Speak to them.’ 2020 <<https://gaatw.org/blog/1052-sex-workers-can-tell-you-why-sex-work-is-work-speak-to-them#:~:text=Sex%20work%20as%20work%2C%20sex,to%20collectively%20analyse%20their%20situation.>>

⁶⁹ Harcourt, C., Egger, S., Donovan, B., Harcourt, C., Egger, S., and Donovan, B., 2005. Sex work and the law. *Sexual Health*, 2 (3), 121–128.

many cases only increases vulnerability to exploitation.⁷⁰ Instead of introducing further anti-trafficking and sex work offences, the Queensland government must completely decriminalise our work, ensure that we have access to appropriate anti-discrimination protections, and focus on the 'labour market actors [third parties] associated with the avoidance and violation of basic labour standards' within sex industry workplaces.⁷¹ The ICRSE provides:

Only by focusing on sex workers' working conditions, as well as employment practices and arrangements under which sexual services are sold and exchanged, can we come to a better understanding of - and challenge - exploitation in the sex industry. The most effective way to address exploitation is to improve the labour protections available to the workers involved and their ability to organise.⁷²

Creating new sex-work-specific exploitation laws will only serve to maintain harmful stereotypes, stigma and discrimination. Rather, decriminalisation should bring sex workers under the universal protection provided by hundreds of existing laws in the Criminal Code, Workplace Health and Safety Act and Fair Work Act: all sufficient to protect people from being exploited in any job, including sex work. There are significant federal laws that provide police and other agencies with extensive powers to investigate and prosecute criminal exploitation in the workplace. Additional state offences would be an unnecessary duplication.⁷³ Rather than implementing or transferring legislation that specifically criminalises 'commercial exploitation', sex workers and our organisations should be viewed as key 'agents of change'⁷⁴ in Queensland efforts to address exploitation, trafficking and violence against sex workers.

We also note that Chapter 8 does not clearly differentiate exploitation, trafficking, young sex workers and 'impairment of the mind' as separate topics, instead placing them all under the umbrella of 'commercial exploitation'. There is a tendency in sex work discourse to conflate these topics as one of the same 'issue', that can and should be addressed through specific legislation that criminalises aspects of our work, clients or workplaces. This approach not only worsens outcomes for sex workers⁷⁵, it also steers away from recognising that sex work is work. The following section disentangles the topics addressed under 'commercial exploitation' and re-orientates the concerns raised by Chapter 8 as key issues of labour, migration and human rights, rather than framing 'commercial exploitation' as particular to and inherent in the sex industry.

Labour exploitation in the sex industry

⁷⁰ Amnesty International, "'We live within a violent system.'" Structural violence against sex workers in Ireland', 2022, <<https://www.amnesty.org/en/documents/eur29/5156/2022/en/>>.

⁷¹ C. Benoit, 'Understanding Exploitation in Consensual Sex Work to Inform Occupational Health & Safety Regulation', 2021, *Current Issues and Policy Implications*, p. 241

⁷² International Committee on the Rights of Sex Workers in Europe, 'From vulnerability to resilience: sex workers organising to end exploitation', May 2021, <https://d3n8a8pro7vhmx.cloudfront.net/eswa/pages/83/attachments/original/1622042222/Exploitation_paper.pdf?1622042222>.

⁷³ Division 270 of the Commonwealth Criminal Code 'Slavery-like Offences'. <https://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/cca1995115/sch1.html>

⁷⁴ International Committee on the Rights of Sex Workers in Europe (ICRSE), 2021. *From vulnerability to resilience: sex workers organising to end exploitation*. p. 14

⁷⁵ Amnesty International, "'We live within a violent system.'" Structural violence against sex workers in Ireland', 2022, <<https://www.amnesty.org/en/documents/eur29/5156/2022/en/>>

“Exploitation and unsafe and unhealthy working conditions exist in many labour sectors. Work does not become something other than work in the presence of these conditions. Even when performed under exploitative, unsafe or unhealthy conditions, sex work is still work.”

- Global Network of Sex Work Projects⁷⁶

Like all labour markets within Australia and across the globe, the sex industry is susceptible to exploitative practices. However, the criminalisation and licensing of our work, workplaces and clients impedes our access to workers’ rights and avenues for redress. Labour arrangements that enable one person to take advantage of the work of another person need to be analysed through the lens of employment and labour exploitation, regardless of the industry. Sex workers cannot be protected from exploitative working conditions as long as our work is not recognised as work and we are not granted access to labour rights accordingly.⁷⁷ The nature of exploitation within the Australian sex industry is poorly understood, often conflated with issues of sex trafficking and ‘sexual servitude’ or dismissed by detractors as an ‘occupational hazard’. When exploitation has been found in other industries, such as on-demand platform work or Australia’s agricultural industry or from service providers such as 7-Eleven⁷⁸ and Dominos⁷⁹, the societal response has been to grant more industrial rights to workers, not to further marginalise workers by criminalising and stigmatising their work. The difference in how exploitation is perceived in the sex industry is linked to how law and policy merge sex work with issues of sexual exploitation/sex trafficking. This frames sex work as a ‘problem’ and sex workers as either deviants that need to be criminalised and heavily regulated or as victims in need of rescue.

Legal frameworks regulating sex work can present barriers to sex workers accessing industrial rights, which in turn influences the prevalence of precarity within the Australian sex industry.⁸⁰ Other legal factors that seek to narrow access to sex industry work can increase precarity for sex workers. These include federal laws that take a discriminatory approach to the issuing of working visas, jurisdictional laws that criminalise people living with HIV and other blood borne viruses (BBVs), laws that restrict or criminalise advertising of services, and laws that restrict workers from employing drivers and other safety personnel. These laws directly contribute to job insecurity by restricting who can access sex work, and under what conditions.

Trafficking

Australia already has extensive federal trafficking laws that are in effect and will continue to apply after decriminalisation in Queensland. There is no need for additional state-based laws.

⁷⁶ Global Network of Sex Work Projects, ‘Policy Brief: Sex Work is Work’, 2017, <https://www.nswp.org/sites/nswp.org/files/policy_brief_sex_work_as_work_nswp_-_2017.pdf> accessed 17 Aug 2021

⁷⁷ International Committee on the Rights of Sex Workers in Europe, ‘Exploitation Unfair labour arrangements and precarious working conditions in the sex industry’, *ICRSE*, p. 6

⁷⁸ Fair Work Ombudsman, ‘More than \$192,000 in penalties for former 7-Eleven operators who underpaid vulnerable workers’ 2018, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/april-2018/20180410-vippe-r-and-viplus-mr>> accessed August 26 2021

⁷⁹ Fair Work Ombudsman ‘FWO audits 33 Domino’s Stores’ 2018 <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/september-2018/20180907-dominos-media-release>> accessed August 26 2021

⁸⁰ C. Benoit ‘Understanding Exploitation in Consensual Sex Work to Inform Occupational Health & Safety Regulation’, 2021, *Current Issues and Policy Implications*, p. 238.

Current debates in Australia often conflate terminology such as trafficking, debt bondage, sexual servitude, deceptive recruitment and forced labour, and fail to recognise sex work as distinct from these concepts. Advocates for the abolition of the sex industry continue to use these terms interchangeably in a way that suggests all sex work is tantamount to sexual exploitation, or that the term ‘migrant sex worker’ is synonymous with ‘victim’. This has undermined efforts to address trafficking and labour exploitation. Evidence from sex worker organisations, evidence-based research and government statistics consistently support that trafficking and exploitation is not the experience for the vast majority of migrant sex workers in Australia.^{81 82} In a 2018 report to the UN General Assembly, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, noted that conflation of ‘sexual exploitation’ with all sex work denies sex workers agency and treats them as victims.

“Laws, policies and services that are “gender-sensitive” have often been protectionist in nature, particularly in the anti-trafficking and sexual exploitation spheres. These instruments may reinforce harmful stereotypes about women as victims of slavery without any agency and also lead to the gender-specific causes of the many contemporary forms of slavery being overlooked.”⁸³

The obscurity generated by the conflation of sex work with sexual exploitation and trafficking allows police, border enforcement, immigration authorities and other state actors such as social workers, healthcare providers and public judicial officers to target sex workers.⁸⁴ These interventions often occur under the presumption that we must be experiencing exploitation, trafficking or degradation and therefore deserve to be criminalised, regulated, pressured into leaving the industry or deported. This inevitably leads to ‘cracking down on prostitution and trafficking’ being utilised as a political tool of ‘moral signalling’ by state actors and activists within the abolition of ‘prostitution’ movement to appeal to historically embedded prejudice against sex workers in order to justify our differential treatment. The ICRSE states:

The conflation of (migrant) sex work with human trafficking permits states’ arrests and prosecutions of migrant sex workers that do little or nothing to address egregious forms of exploitation. Evidence shows that police raids and rescue operations often result in migrant sex workers having to work clandestinely, rendering them particularly vulnerable to exploitation and abuse.⁸⁵

The mobilisation of stigmatised presumptions about sex workers are often utilised in tandem with fear mongering or victim-framing of asylum seekers, migrant workers, people who use drugs, queer, trans and gender diverse people, First Nations people and people of colour. This ‘othering’⁸⁶ and differentiating of sex work and sex workers as distinct from other industries and workers reflects the

⁸¹ Australian Government (2016) *Trafficking in persons: The Australian Government Response*, Canberra: The Parliament of the Commonwealth of Australia: Commonwealth of Australia, p. 4.

⁸² Renshaw, L., Kim, J., Fawkes, J., & Jeffreys, E. (2015) *Migrant sex workers in Australia*, Australian Institute of Criminology Reports, Research and Public Policy Series 131.

⁸³ UN General Assembly, 10th July 2018, “Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences,” A/73/139.

⁸⁴ International Committee on the Rights of Sex Workers in Europe, ‘Exploitation Unfair labour arrangements and precarious working conditions in the sex industry’, *ICRSE*, p. 6

⁸⁵ Ibid.

⁸⁶ Ibid.

marginalisation, discrimination, moralism, protectionism and paternalism that has been levied against sex workers throughout history.

The Empower Foundation in Thailand writes:

If we were travelling from a rich country with documents, we could be tourists, experts, consultants, researchers, exchanged students or attending a meeting (just like me, I'm here today). But if we were from a poor country and have no documents we would become illegal migrants, smugglers, criminals or even terrorists. But if we are sex workers, it doesn't matter if we have document or not. We will be called victims, sex slaves or prostitutes and nowadays we are called 'victims of human trafficking.'⁸⁷

Again, sex worker organisations are beginning to be globally recognised as instrumental actors in addressing trafficking. A recent report published by the International Committee on the Rights of Sex Workers in Europe, outlines the importance of sex work peer organisations and projects in the field of anti-trafficking.⁸⁸

Sex work and young people

Like any aspect of sex work, when either our work, clients or workplaces are criminalised, our health and safety is put at risk. This risk applies to all sex workers, regardless of age. While we recognise the beneficial intent behind s229FA, research finds that the criminalisation of clients only serves as a barrier to young people being able to sex work safely.^{89 90} Despite claims that the criminalisation of clients, also known as the Swedish or Nordic model, will protect sex workers while driving down demand for commercial sexual services and sex trafficking, research conducted in countries where legislation similar to the Swedish model has been introduced reveals that the model has:

- hindered sex workers' ability to report crime to the police;⁹¹
- forced sex workers to operate in more isolated settings or via the internet;⁹²
- not reduced the number of sex workers;⁹³
- rushed sex workers' client negotiations and screenings of potentially dangerous clients;^{94 95}

⁸⁷ Empower Foundation, 'Travel to Build a Better Life' Presented at an anti-trafficking networking day facilitated by Scarlet Alliance, printed in *Provision*, 5, 28.

⁸⁸ International Committee on the Rights of Sex Workers in Europe, 'From vulnerability to resilience: sex workers organising to end exploitation', May 2021, https://d3n8a8pro7vhmx.cloudfront.net/eswa/pages/83/attachments/original/1622042222/Exploitation_paper.pdf?1622042222.

⁸⁹ World Health Organisation, 2015. A Technical Brief: HIV and Young People who Sell Sex. Geneva, Switzerland.

⁹⁰ Global Network of Sex Work Projects, 'A Policy Brief: Young People and Sex Work', 2016, p. 7, <https://www.nswp.org/sites/default/files/Policy%20Brief%20Young%20Sex%20Workers%20-%20NSWP%2C%202016.pdf>.

⁹¹ Amnesty International. (2016a). The human cost of 'crushing' the market: Criminalisation of sex work in Norway. Retrieved from https://www.amnestyusa.org/wp-content/uploads/2017/04/norway_report_-_sex_workers_rights_-_embargoed_-_final.pdf on 03/04/19. p. 55.

⁹² Bail, H. L., & Giametta, C. (2018). What do sex workers think about the French prostitution act: a study on the impact of the law from 13th April 2016 against the 'Prostitution System' in France. <http://www.medecinsdumonde.org/sites/default/files/ENGLISH-Synth%C3%A8se-Rapport-prostitution-BD.PDF> p. 7.

⁹³ Ibid

⁹⁴ Amnesty International, "'We live within a violent system.'" Structural violence against sex workers in Ireland', 2022, <https://www.amnesty.org/en/documents/eur29/5156/2022/en/>

⁹⁵ Amnesty International. (2016b). Amnesty International policy on State obligations to respect, protect and

- made sex workers more vulnerable to violence;^{96 97}
- deteriorated sex workers' living conditions.⁹⁸

The impact of criminalising one of the two parties involved is that police detection and surveillance is on both the client and the sex worker. The Global Network of Sex Work Projects states:

The criminalisation of clients has been shown to increase violence against sex workers, and decrease earnings by pushing sex work to the margins of society in order to avoid detection by law enforcement. Sex workers operating under this framework are also far less likely to report violence and abusive or coercive practices. It impedes access to health and social services and isolates sex workers from their support networks. **There is no conclusive evidence to suggest that criminalising clients eliminates or significantly reduces sex work.**⁹⁹

There are complexities as to why young people are entering sex work; complexities which cannot be addressed through a carceral approach to either young sex workers or clients.¹⁰⁰ A joint briefing report¹⁰¹ published by WHO, UNFPA, UNHCR, UNDP, UNESCO, ENODC, MSMGF, UNAIDS, UNICEF, ILO, NSWP, INPUD, the World Bank and the HIV Young Leaders Fund provides a global assessment on young sex workers, drafted through consultation with young sex workers around the world. The report states:

Governments have a legal obligation to respect, protect and fulfil the rights of children to life, health and development, and indeed, societies share an ethical duty to ensure this for all young people. This includes taking steps to lower their risk of acquiring HIV, while developing and strengthening protective systems to reduce their vulnerability. However, in many cases, **young people from key populations are made more vulnerable by policies and laws that demean, criminalize or penalize them or their behaviours**, and by education and health systems that ignore or reject them and that fail to provide the information and services, including treatment they need to keep themselves safe.¹⁰²

In those countries where the sale of sex is criminalized or otherwise penalized, or where it is not criminalized but law enforcement officials nevertheless treat those who sell sex as offenders, **young people who sell sex are often marginalized and disengaged from services due to fear of legal sanctions.**¹⁰³

fulfil the human rights of sex workers. Retrieved from

<<https://www.amnesty.org/en/documents/pol30/4062/2016/en/>> on 03/04/19.

⁹⁶ Ibid

⁹⁷ Amnesty International, "‘We live within a violent system.’ Structural violence against sex workers in Ireland", 2022, <<https://www.amnesty.org/en/documents/eur29/5156/2022/en/>>

⁹⁸ Bail, H. L., & Giametta, C. (2018). What do sex workers think about the French prostitution act: a study on the impact of the law from 13th April 2016 against the 'Prostitution System' in France.

<<http://www.medecinsdumonde.org/sites/default/files/ENGLISH-Synth%C3%A8se-Rapport-prostitution-BD.PDF>> on 03/04/19.

⁹⁹ NSWP Sex Work is not Sexual Exploitation, NSWP - 2019

<https://www.nswp.org/sites/default/files/briefing_note_sex_work_is_not_sexual_exploitation_nswp_-_2019_0.pdf> p.3

¹⁰⁰ World Health Organization, 2015. A Technical Brief: HIV and Young People who Sell Sex. Geneva, Switzerland.

¹⁰¹ Ibid p. 6.

¹⁰² Ibid p. 4.

¹⁰³ Ibid p. 6.

In countries where sex workers are not criminalized but those who procure or purchase sex are, sex workers report that they are **forced to go “underground”** – contacting and meeting clients in less public places and reducing the time spent assessing clients for risk. This can **make it harder for them to maintain their physical safety and to access social and health programmes**, including for HIV prevention and treatment.^{104 105 106 107}

Mandatory reporting and child protection laws can also act as a deterrent for young sex workers accessing support.¹⁰⁸ Such laws may result in a young sex worker being reported to the police or child protection services, which can lead to loss of income, housing and social peer supports. Engaging protection services also distances peer sex worker organisations from supporting a young sex worker. For example the Queensland Government Legal Aid website states:

There are many health and safety issues for people working as sex workers. If you’re under 17 and you’re working as a sex worker, the police or Child Safety Services may decide that you’re at risk of harm and apply to the court for a child protection order which places you in the care of Child Safety Services.¹⁰⁹

This interventionist approach has a stigmatising and detrimental effect on young people in the sex industry and is counterproductive to the broader intent of decriminalisation. All sex workers, regardless of age, should be able to access services, justice and sex worker peer organisations without fear of police and child protection intervention. Further, should police retain the power granted under s 229, there is the possibility that they could use it to target and harass workers by requesting verification of our age, which places our privacy at risk.

Repealing s 229 will not leave young people who are being coerced in to sex work unprotected, nor does it leave perpetrators of such a crime without criminalisation – existent laws around sexual assault and coercion would apply. The full decriminalisation of sex work in Queensland will increase transparency and give sex workers access to our work health and safety and industrial rights. This transparency and access mitigates the risk of young people being coerced into sex work or forced ‘underground’. Queensland can lead best practice in protecting *all* sex workers by removing police entirely from prosecuting *any* sex work related offences.

A policy brief written by the Global Network of Sex Work Projects about young people and sex work makes the following recommendations for policy makers:

- Undertake law reform to decriminalise sex work, drug use, and same-sex sexual activities.

¹⁰⁴ Skilbrei ML. & Holmström C. (2013). Prostitution policy in the Nordic region: Ambiguous sympathies. Ashgate Publishing Company, Burlington, VT.

¹⁰⁵ Chu S & Glass R. (2013) Sex work law reform in Canada: Considering problems with the Nordic model, Alberta Law Review, 51(1), pp. 101–124.

¹⁰⁶ Dodillet S. & Östergren P. (2011) The Swedish Sex Purchase Act: Claimed success and documented effects; Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, March 3 and 4, 2011.

¹⁰⁷ Norwegian Ministry of Justice and the Police, Working Group on the Legal Regulation of the Purchase of Sexual Services (2004). *Purchasing sexual services in Sweden and the Netherlands: legal regulation and experiences*. Oslo, Norway

¹⁰⁸ World Health Organisation (2015). A Technical Brief: HIV and Young People who Sell Sex. Geneva, Switzerland.

¹⁰⁹ Legal Aid Queensland (2022). ‘Prostitution and sex workers’, <<https://www.legalaid.qld.gov.au/Find-legal-information/Relationships-and-children/Relationships/Having-sex/Prostitution-and-sex-workers>>.

- Implement comprehensive, accessible, and affordable SRH services and information for young people under 18. This must include HIV prevention and treatment, harm reduction supplies and information, abortion and maternal care.
- Prioritise rights-based and evidence-based interventions.
- Strengthen measures to provide access to affordable housing and education, and improve economic security and reduce levels of poverty among young people.¹¹⁰

Sex workers who are parents

Section 229L of the *Criminal Code* is unnecessary and stigmatising against sex workers who are parents.

There exists an array of legislation across criminal law, family law and children's law that protects children from sexual abuse, emotional abuse and neglect and aims to preserve their physical and mental safety and wellbeing. Laws that criminalise the inappropriate behaviour of adults apply regardless of the adult's profession and protect children from being present to the sexual activity of adults.

Existent legislation will continue to address the provision of sex work services in settings where a child or children are present. The decriminalisation process must avoid discriminatory restrictions on independent sex workers, including that which would unnecessarily criminalise sex workers who are parents or carers, or create burdensome restrictions on where an independent sex worker may conduct business, particularly in relation to home occupation or home-based sex work businesses.

Legislation that restricts the ability of sex working parents to conduct business in domestic environments where children may reside implies a causal relationship between sex work and inappropriate sexual activity. This is discriminatory and has no evidence base, and should not be a basis upon which decisions about change to sex work law in Queensland is made.

Sex working parents should not bear any additional burden or restriction on our ability to work in a manner that maximises our workplace health and safety and is affordable, convenient and allows us to care for our dependents. We note that lawful sexual activity taking place between adults in a private residence is not currently criminalised, whether or not children also reside in or visit the residence. The presence of a commercial exchange should not warrant different treatment under the law.

A note on 'impairment of the mind'

Section 229L currently criminalises 'allowing someone who has impairment of the mind to be on premises of a sex work business'. The current definition of 'impairment' is very broad and includes many circumstances and issues that sex workers who are capable of negotiating consent may experience: *'a person with a disability attributable to an intellectual, psychiatric, cognitive or neurological impairment or any combination of these where the disability substantially reduces the*

¹¹⁰ Global Network of Sex Work Projects (2016). 'A Policy Brief: Young People and Sex Work', p. 7, <<https://www.nswp.org/sites/default/files/Policy%20Brief%20Young%20Sex%20Workers%20-%20NSWP%2C%202016.pdf>>.

person's capacity for communicating, interacting socially or learning, and results in the person needing support'.¹¹¹

The Public Advocate QLD and disability organisations oppose the current overly broad definition of 'impairment of mind' and its use in laws about sexual activity, including sex work, "which has been interpreted to have such a broad application in the Criminal Code that it includes not only people who have impaired decision-making ability, but those with disabilities that have no impact on decision-making ability".¹¹² 'Impairment of the mind' is also an outdated, stigmatising and ableist term which does not align with contemporary disability advocacy, nor with Australia's commitment to adopt a disability rights framework under the Convention on the Rights of Persons with Disabilities.¹¹³

Scarlet Alliance does not support the criminalisation of any aspect of our work, workplaces or clients. Section 229L places sex workers with disability at risk of criminalisation and/or exclusion from sex work businesses for fear of criminalisation. Sex workers with disability comprise a considerable portion of our community, due to the accessibility, autonomy and independence that can come from sex work. However, sex workers with disability face innumerable barriers to accessing our sexual autonomy, legal personhood and industrial rights in a manner that is equitable to other workers. We have experienced an extensive history of ableist legislation which criminalises our consensual sexual behaviour and consensual workplace practices on the assumption that we cannot communicate consent.¹¹⁴ Section 229L is a contemporary example of such legislation. In recent years, extensive evidence and advocacy has emerged which illustrates that state approaches to policing our sexual autonomy are rooted in paternalism and ableist perceptions of 'normal' sexual communication¹¹⁵, rather than in evidence or in the lived experiences of sex workers with disability. As noted by the Public Advocate QLD, this is a form of state discrimination against people with disability:

It is equally important to acknowledge that aspects of the criminal justice system place restrictions on the rights of people with disability that do not apply to people without disability, creating a situation of inequity.¹¹⁶

People with disabilities are already overrepresented in the criminal justice system.¹¹⁷ Section 229L is particularly alarming as it involves the intersection of sex work and disability, two communities who continue to be targeted by state actors (police, government, social services) for surveillance,

¹¹¹ *Criminal Code Act 1899*. Schedule 1, p. 42.

<<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1899-009>>

¹¹² The Public Advocate Qld (Jan 2022) A discussion of section 216 of the Queensland Criminal Code: A call to review the criminalisation of sexual relationships involving people with 'an impairment of the mind'.

<https://www.justice.qld.gov.au/_data/assets/pdf_file/0006/703770/202201-section-216-report-final-22.pdf>

¹¹³ Ibid.

¹¹⁴ Fritsch, K., Heynen, R., Ross, A.N., and van der Meulen, E., 2016. Disability and sex work: developing affinities through decriminalization. *Disability & Society*, 31 (1), 84–99.

¹¹⁵ Addlakha, R., Price, J., and Heidari, S., 2017. Disability and sexuality: claiming sexual and reproductive rights. *Reproductive Health Matters*, 25 (50), 4–9.

¹¹⁶ The Public Advocate Qld (Jan 2022) A discussion of section 216 of the Queensland Criminal Code: A call to review the criminalisation of sexual relationships involving people with 'an impairment of the mind'.

<https://www.justice.qld.gov.au/_data/assets/pdf_file/0006/703770/202201-section-216-report-final-22.pdf> p. 2.

¹¹⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability (Jan 2020) Issues Paper-Criminal Justice System <<https://disability.royalcommission.gov.au/publications/criminal-justice-system>>

protection or ‘rescue’. Mitigating harm against sex workers with disability should not come from a carceral, criminalising approach. Criminalising our presence in sex work businesses only forces our work underground, cuts us off from peer support and education and further stigmatises our work. Section 229L also directly contravenes Article 12 of the Convention on the Rights of Persons with a Disability, which requires States to ensure that people with a disability have equal recognition and personhood before the law.¹¹⁸ Further, the functioning of 229L could result in arduous, traumatic and counter-productive criminal trials against sex workers with disability:

The current law means it is possible for a consensual relationship involving a person with disability or impairment to be made the subject of criminal charges and court proceedings, with a requirement that the defendant prove a lack of sexual exploitation. This will necessarily involve the person with disability in the criminal justice system as a victim and witness, which brings with it many other issues of access to justice. Whilst a defence may ultimately be proved, this will come at a cost to all parties involved.¹¹⁹

If the intention of 229L is to ‘protect’ us, we encourage the QLRC to instead consider the evidence and advocacy around the sexual and labour rights of sex workers with disability, including consulting with us and Respect Inc. Criminalisation does not enable our safety or access to justice, it merely contributes to the endemic stigmatisation of our work and marginalises us further. Decriminalising sex work yet retaining the criminalisation of sex workers with disability is extremely concerning, a violation of our labour and human rights and damaging to the safety and wellbeing of many sex workers. If s 229L is retained or transferred, Queensland will fall short of its commitment to decriminalisation.

We refer you to Touching Base for issues relating to clients with a disability, including the access and provision of sexual services for people with a disability.

2. Recommendations

2.1 Recommendation: Full decriminalisation of sex work is the best way to protect people from exploitation at work. Rather than providing support and protection, additional laws directed at the sex industry increase and exacerbate the potential for exploitation, including by police.

2.2 Recommendation: Repeal all of the laws listed in Q5a and do not reformulate them elsewhere:

- s 77 Prostitution Act — forcing a person to do sex work
- s 229G Criminal Code — advertising for, or asking someone to do, sex work
- s 229FA Criminal Code — employing or transacting with someone who is not an adult (under 18) to do sex work
- s 229L Criminal Code — allowing someone who is not an adult or has impairment of the mind to be on premises of a sex work business

¹¹⁸ United Nations Convention on the Rights of Persons with Disabilities, December 13, 2006, <<https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx>>

¹¹⁹ Ibid p.3.

2.3 Recommendation: Promote clear distinctions between human trafficking, sexual exploitation, and sex work.

The conflation of these distinct terms fosters harmful policies and practices which exacerbate precarious working conditions, violate sex workers' human rights and hinder anti-trafficking efforts.¹²⁰

2.4 Recommendation: Take a worker-centred and human rights-based approach to preventing trafficking and exploitation in the sex industry.

Frameworks based on criminalisation are counterproductive to genuine anti-exploitation efforts. They fail to address structural barriers (e.g. lack of labour protections, lack of access to justice, services, and social protection, stigma and discrimination, poverty, isolation, criminalisation and fear of arrest) that create vulnerability to labour exploitation and trafficking.¹²¹

2.5 Recommendation: Acknowledge the role that sex workers and our organisations already play.

Sex workers already organise, unionise and develop initiatives to protect ourselves from violence, exploitation and human rights violations. We share strategies of how to work independently, where to work and how to keep ourselves safe.¹²² Queensland would do well to recognise the knowledge and expertise accumulated within our community as a result of having to keep ourselves connected and safe without state support. The Global Commission on HIV and the Law¹²³ points to evidence that where sex workers' communities are empowered, supported and consulted, they can be strong allies for anti-exploitation efforts, providing critical information about trafficked and underage people.

¹²⁰ NSW Sex Work is not Sexual Exploitation, NSW - 2019
<https://www.nswp.org/sites/default/files/briefing_note_sex_work_is_not_sexual_exploitation_nswp_-_2019_0.pdf> p.3

¹²¹ Ibid.

¹²² International Committee on the Rights of Sex Workers in Europe, 'From vulnerability to resilience: sex workers organising to end exploitation', May 2021,
<https://d3n8a8pro7vnmx.cloudfront.net/eswa/pages/83/attachments/original/1622042222/Exploitation_paper.pdf?1622042222>.

¹²³ Global Commission on HIV and the Law, 2012. Risk, Rights & Health. New York: UNDP.

Part 4: Licensing of sex work business operators

Consultation Paper Chapter 9: Licensing of sex work business operators

Questions

6. Should sex work business operators be required to have some form of licence to operate a sex work business in Queensland? Why or why not?

No. Any form of licensing is not decriminalisation.

Introducing a ‘suitability licensing’ for sex work business operators will replicate the issues evident in Queensland’s current framework (outlined in Part 1). The Consultation Paper implies that a suitability certificate regime will benefit our work place health and safety by ensuring that only ‘suitable’ operators will receive a license to run a sex work business. This claim is not supported by evidence and does not align with sex worker experiences in Queensland, the Northern Territory or New Zealand. Queensland currently has a system of licensing where brothel owners apply for a licence and managers apply for a certificate. This application process includes suitability/probity checks, criminal history checks and financial viability checks. After 20 years of licensing in Queensland, there is no evidence that licensing which relies on suitability checks is beneficial to sex workers. Implementing a suitability license runs the risk of replicating current issues within Queensland, where sex workers who work in unlicensed venues are restricted from accessing our industrial rights for fear of losing income and affecting the income of our colleagues. Robust and accessible work health and safety guidelines are a much better mechanism to ensure that sex worker health and safety is achieved. It is important that sex workers are not placed in the position of having to choose between our industrial rights and our income.

As noted in the Consultation Paper, suitability licensing also exists in New Zealand and the Northern Territory. Our colleagues in New Zealand advise us that the certification process is unnecessary, has had no positive impact for sex workers or the community, and that it has resulted in the same two-tiered outcome that licensing has historically created. The introduction of suitability licensing in New Zealand has resulted in low compliance, minimal enforcement and a costly administrative burden to the government. Further, the New Zealand Human Rights Tribunal case of *DML v Montgomery*¹²⁴ illustrates that suitability checks do not prevent ‘unsuitable’ people from operating brothels. In this case, a sex worker sought compensation from the operator and manager of their workplace for sexual harassment. The worker was awarded compensation and the operator and management staff were ordered to undergo ‘training’ to ensure that the defendants were aware of their obligations under the *Human Rights Act*.¹²⁵ In this case, the licence was not revoked. While the proposal to introduce a suitability licensing scheme is well-intended, it will not ensure our work health and safety, as one’s ‘suitability’ for owning or managing a sex business cannot be determined by criminal record or financial viability. Similarly in the Northern Territory, the introduction of suitability certification has resulted in low compliance with no benefit to the health and safety of NT sex workers.

¹²⁴ *DML v Montgomery* [2014] NZHRRT 6 (12 February 2014)

¹²⁵ *Ibid* [155]-[155.4].

Within the decriminalisation processes in NZ and NT, no peer sex worker organisations or sex workers called for the introduction of suitability licensing. We encourage Queensland to follow in the footsteps of Victoria and NSW, where both governments determined that any form of licensing would replicate the harms that decriminalisation was intended to resolve and be a further waste of government resources.

In NSW, brothels are regulated through standard business, planning and industrial codes. Allowing local councils to apply planning controls for sex service premises gives the local council and the community an opportunity to consider the scale and potential impact of each premises. In NSW, brothels are not required to undergo special licensing and registration processes and are regulated through standard applicable codes. In response to *the NSW Brothel Inquiry Report*, the NSW Government rejected the recommendation to introduce a licensing component to the regulation of NSW brothels as it 'risks creating similar outcomes to re-criminalising sex work' and recognised that decriminalisation is 'the best way of protecting sex workers and maintaining a more transparent sex work industry'.¹²⁶

The NSW Sex Service Premises Planning Advisory Panel highlighted that 'establishing controls which are reasonable (rather than unnecessarily restrictive) is likely to result in a high proportion of sex services premises complying with council requirements, with corresponding benefits to council operations, the local community and health service providers'.¹²⁷ Equitable and fair provisions that are consistently applied provide sex industry businesses greater clarity and certainty about the state and council expectations of sex services premises. It also means sex industry businesses are more likely to invest in long term plans to maintain compliance with council regulations, including maintaining optimal occupational health and safety standards, rather than invest in short-term plans aimed solely at evading detection.

The Government of the Australian Capital Territory (ACT) has also signalled its intention to introduce legislation in the Legislative Assembly during its current term to achieve the full decriminalisation of sex work, and to better protect the safety and human rights of sex workers, in the ACT.¹²⁸

As depicted below in the 2018 DecrimQLD infographic, the current licensing regime in Queensland has resulted in low compliance, a costly administrative burden on government and an unnecessary enforcement burden on police. Licensing has also been actively detrimental to sex workers, our workplaces and clients. Licensing does not benefit our work health and safety and ultimately, steers further away from recognising sex work as work. It is integral that Queensland listen to sex workers, take an evidence-based approach and remove any possibilities of the new framework replicating the detriments of the old.

¹²⁶ Minister for Innovation and Better Regulation. (2016). NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels. Retrieved on 25/04/20 from <https://www.parliament.nsw.gov.au/ladocs/inquiries/1703/Government%20Response%20-%20Inquiry%20into%20the%20Regulation%20of%20Brothels.pdf> p. 3.

¹²⁷ Sex Services Premises Planning Advisory Panel (2004). Sex services premises: planning guidelines. NSW: NSW Department of Planning. Pg ii.

¹²⁸ Personal communication with Chief Minister and SWOP ACT

Licensing laws in QLD are a waste of resources



The intention was for the licensing system to be cost neutral

Licensing fees cover less than 50% of the cost
of licensing & the Prostitution Licensing Authority

18 years & \$10 million of tax payer funds later
the licensing system is still not working & the majority of
the industry is forced to work outside of the legal system



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**After 18 years of licensing there are only
legal brothels in Queensland**

In most areas in Queensland there is no option
to work in a legal brothel

Brothel licensing fees are excessive

In 2018 a 3-room brothel pays \$28,742/year in licensing fees
Brothels are closing at a greater rate than
new ones are opening



Police now monitor approx. 80% of the sex industry with charges
related to minor offences (e.g. advertising) up by 450%

Diverting police resources away from serious crimes



#DecrimQLD

#DecrimQLD is a committee of sex workers who have joined with Respect Inc.,
the state sex worker organisation, to achieve decriminalisation in Queensland.

Phone: 0491 228 509 Email: DecrimQLD@respectqld.org.au

DecrimQLD infographic (2018).

16. Apart from a licensing system, what is the best way to deter illegal activity and to protect sex workers from being exploited under the new regulatory framework?

The best way to deter illegal activity is to decriminalise sex work. Exploitation within our industry must be viewed through the lens of labour exploitation. Not only does this stance align with reframing sex work as work, it also promotes industrial and WHS rights and protections as the key mechanism for ensuring our health and safety at work, rather than promoting a carceral, criminalised approach. Simply, when our work, workplaces or clients are criminalised or punitively regulated in any way, this creates more opportunities for third-party exploitation and 'illegal activity' as aspects of our industry are forced to operate 'underground'. Further, the implication that licensing and retaining police regulation will alleviate exploitation does not align with evidence from other jurisdictions. One of the major drivers for decriminalisation in NSW was the findings of the Wood Royal Commission showing 'a clear nexus between police corruption [in the NSW Police Force] and the operation of brothels'.¹²⁹ Since the decriminalisation of the NSW sex industry, there has been no evidence of organised crime within the sex industry. The *NSW Government Response to the Brothel Inquiry* rejected the recommendation to re-introduce greater police-involvement in the regulation of the sex industry as it 'risks creating similar outcomes to re-criminalising sex work'¹³⁰, such as increased police corruption and reduced access to legal, health and support services for sex workers.

The Global Alliance Against Traffic in Women explicitly advocates for "the decriminalisation of sex work, for labour rights for sex workers, and the conceptual de-linking of sex work and trafficking in persons".¹³¹ This is due to compounding research that indicates criminalisation creates a complex matrix of impediments to implementing evidence-based trafficking prevention strategies and for sex workers' access to support. Additionally, providing police with discretionary powers to entrap, over-compliance check and investigate sex industry workplaces creates a climate of distrust between the authorities and sex workers and deters sex workers from using support services to redress exploitative workplace conditions. Sex workers need labour rights and human rights-based approaches to exploitation and human trafficking that address the circumstances which create trafficking and prioritise the needs, agency and self-determination of victims over criminal prosecutions and increased surveillance. A rights-based approach would address labour exploitation through a focus on prevention, industrial rights, civil remedies, statutory compensation, and equitable access to visas, migration channels and support.

When police are positioned as the monitors and enforcers of sex industry regulation, sex workers are deterred from accessing justice as using the services of the police can result in surveillance or being shut down, fined, and even deported. These barriers to accessing justice are exacerbated for sex workers experiencing compounding marginalisation, such as migrant sex workers or sex workers who

¹²⁹ New South Wales Government. (1997). *Royal Commission into the NSW Police Service: Final Report- Corruption (Vol. 1)* Retrieved on 25/04/20 from <<https://www.pic.nsw.gov.au/Report.aspx?ReportId=100>>. p. 13.

¹³⁰ Minister for Innovation and Better Regulation. (2016). *NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels*. Sydney: Parliament of NSW Retrieved on 25/04/20 from <<https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=185#tab-governments-responses>>. p. 3.

¹³¹ GAATW-IS (Oct 2013). Statement on attack on UN research calling for the decriminalisation of sex work. Retrieved on 21/06/22 from <<https://www.gaatw.org/component/content/article?id=754:gaatw-is-statement-on-attack-on-un-research-calling-for-the-decriminalisation-of-sex-work>>

are operating outside of the licensing and registration framework. In a decriminalised sex industry, police continue to have the same powers to investigate crime and prosecute offenders, same as in any other industries. Removing police as the main monitors and enforcers of sex industry regulation will mean that sex workers in Queensland can report crime to police without fearing prosecution and the police can prioritise their role in maintaining the safety of sex workers in the same way that they maintain the safety of all other workers.

Therefore, the phrasing of this question should not lead with ‘apart from a licensing system’, because we know that licensing creates a two-tiered industry which enables ‘illegal activity’ and exploitation. It is important that the government interrogates paternalistic assumptions about what we may ‘need for protection’. Time and again, discriminatory government approaches to sex work (even with the best intentions) has resulted in our work, workplaces and clients being detrimentally affected. *Listen to sex workers*. We are calling for the full decriminalisation of sex work, not licensing – and the two cannot co-exist.

A note on organised crime and the sex industry

Scarlet Alliance is aware that the concern regarding ‘criminal elements’ and organised crime within the sex industry continuously arises in processes of sex work legislative reform across Australia, despite a lack of contemporary evidence. Large-scale organised crime and ‘pimping’ is not a characteristic of the sex industry in Australia.¹³²

The Consultation Paper reflects a preoccupation with the notion that sex work is inherently vulnerable to organised crime. These claims come from historical stereotypes and the continual focus and misrepresentations of criminality and sex work made by politicians, police and the media. However, like any topic that recurrently cycles through media sensationalism and mythologisation, this connection is not rooted in current evidence nor in the contemporary lived experiences of sex workers in decriminalised jurisdictions. Evidence from NSW suggests:

‘In a decriminalised regime, one of the primary objectives must be to de-link the sex industry from associated crime and corruption. This appears to have been achieved in NSW, where police charges for prostitution offences have declined dramatically since the 1980s¹³³ and also, benefiting the wider community, police corruption involving street workers¹³⁴ seems to have disappeared.’¹³⁵

As elaborated above, the greatest threat to our safety is the criminalisation of our work, clients and workplaces. Our primary concern is the state-sanctioned criminalisation, marginalisation, discrimination and violence against sex workers that we currently experience in Queensland. We encourage the QLRC to take an evidence-based approach when considering how to address any presence of organised crime in the Queensland sex industry. Organised crime is not a facet of the current Australian sex work landscape. Specific legislation does not need to be enacted to respond to

¹³² Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., & Fairley, C.K. (2012) The sex industry in New South Wales: a Report to the NSW Ministry of Health. Sydney: Kirby Institute, University of New South Wales, p. 22.

¹³³ Brown D, Farrier D, Egger S, McNamara L. Criminal laws. Sydney: Federation Press; 2001. pp. 1051–68.

¹³⁴ Harcourt C, van Beek I, Heslop J, Donovan B. The health and welfare of female and transgender street sex workers in New South Wales. *AustNZJPublicHealth* 2001; 25: 84–9.

¹³⁵ Harcourt, C., Egger, S., Donovan, B., Harcourt, C., Egger, S., and Donovan, B., 2005. Sex work and the law. *Sexual Health*, 2 (3), 121–128, p. 125.

organised crime within the sex industry. A decriminalised framework allows sex work to take place in a way that is visible and able to be regulated with a whole-of-government approach, meaning that sex workers are able to operate with greater transparency and less fear of authorities and creating less vulnerability to exploitation.

3. Recommendations

3.1 Recommendation: Do not retain any aspect of licensing, including suitability licences and certificates.

3.2 Recommendation: Adopt a labour rights and worker centred approach to exploitation and 'illegal activity' within the sex industry.

3.3 Recommendation: De-link the sex industry from organised crime in legal and policy approaches.

Part 5: Workplace laws

Consultation Paper Chapter 10: Workplace laws

Questions

18. What is the best way to make sure people in the sex work industry meet their work health and safety standards?

Decriminalise our work, workplaces and clients.

‘Positioning sex work as ‘work’ – in law and policy – brings a range of industrial and occupational health and safety (OHS) protections to sex workers. Legislation that recognises sex work as a legitimate occupation affords sex workers better control over our working rights and conditions, improves our abilities to implement safer sex practices, enhances opportunities for collective bargaining and industrial advocacy (for holiday pay, sick leave, superannuation, parental leave, industrial award coverage), recognises contracts made for working purposes (between sex worker and client, or in the hiring of premises, drivers or security), legitimises income (paying taxes, claiming work-incurred expenses and applying for loans), and gives sex workers better legal redress for unfair dismissal and other injustices in the workplace.’

Scarlet Alliance, *The Principles for Model Sex Work Legislation*.¹³⁶

The largest barrier that sex workers face to accessing and meeting our work health and safety rights is the criminalisation and discriminatory regulation of our work, workplaces and clients.

Decriminalisation in Queensland would mean that sex workers and our businesses would be covered by existing workplace laws that apply to other industries. Licensing directly undermines the implementation of these standards and guidelines. As highlighted above in Part 4, the existing licensing system has resulted in a large portion of the sex industry being forced to operate outside of the regulations. These businesses are actively discouraged from investing in long term plans of maintaining WHS standards such as keeping sufficient safer sex tools on premises, and investing in suitable facilities (for example, installing adequate showers and toilets, reception and break areas, and safe access into and out of the sex work premises) which could be used against businesses as evidence of their ‘illegal’ operation. Research has demonstrated that sex workers’ access to occupational health and safety and support, legal, and health services is significantly reduced in jurisdictions where brothels are criminalised compared with NSW where brothels are decriminalised.¹³⁷

Prioritise sex worker-led responses

Like other workers, sex workers proactively implement work health and safety measures. Our health and our incomes depend on it. When sex work is over-regulated as a ‘public health’ or ‘workplace

¹³⁶ Scarlet Alliance, ‘The Principles for Model Sex Work Legislation’, 2014, <https://scarletalliance.org.au/library/principles_2014> p. 44, Accessed 17 Aug 2021

¹³⁷ Donovan, B et al., (2010). The sex industry in Western Australia: a report to the Western Australian Government. National Centre in HIV Epidemiology and Clinical Research, University of New South Wales, Sydney.

health' issue, it creates barriers to our uptake of safer work practices. Paternalistic and over-bearing regulation and licensing of our workplaces does not benefit our work health and safety, and it implies that sex workers do not actively implement our own WHS standards. Sex worker peer-led and delivered education, information and support provided by Respect Inc. is the best way to enable sex workers to meet our work health and safety standards. Peer-only sex worker organisations are best placed to provide peer education and support on workplace health and safety that is non-judgmental, destigmatising, tailored to our individual needs, and current.

The [Red Book Online](#), a sexual health resource made by and for sex workers, is a key example of how the sex worker community engages in peer education through sharing safety tips, the latest sexual health information and referrals to sex worker-friendly health services. We are the experts on our own health and workplace safety. Sex workers have long engaged in proactive efforts to keep our community safe and healthy in our workplaces and it is important that the government recognise a peer-led rather than interventionist approach is the most effective way to support sex workers.

Respect Inc. should be supported to deliver peer-led education, information and support to sex workers across Queensland. This should include resourcing for translated information for culturally and linguistically diverse and migrant sex workers across Queensland, as well as increasing the availability of culturally and linguistically diverse, migrant and Aboriginal and Torres Strait Islander sex worker peer educators.

19. Should there be a guide for the sex work industry on how to meet work health and safety obligations (for example, a code of practice made under the Work Health and Safety Act 2011 or guidelines)?

WHS Guidelines are the best approach

Workplace health and safety guidelines, when designed and written in partnership with sex worker peer organisations, are able to inform managers and staff of sex industry businesses on best practice workplace health and safety measures that impact on sex worker health and wellbeing. Guidelines are preferred by Scarlet Alliance as a guiding document providing standards that can be addressed through the WHS regulator (as is the case for other businesses). The best way to encourage compliance and support sex worker complainants is through collaboratively developed guidelines that engage sex worker peer-led organisations, such as Respect Inc. and Scarlet Alliance. Evidence and experience in other jurisdictions demonstrates that Queensland WHS Guidelines for the decriminalised industry would be best developed by Respect Inc. and Scarlet Alliance in partnership with WorkSafe QLD, relevant unions and the Office of Industrial Relations Queensland.

We note that the Prostitution Licensing Authority developed an *Operational Standards Manual*,¹³⁸ which includes WHS guidelines for licensed brothels in Queensland. It is important that Queensland makes a fresh start on drafting WHS Guidelines during the decriminalisation process. The current *Manual* was not drafted in collaboration with sex workers and is not suited to be applied within a decriminalised context.

¹³⁸ Prostitution Licensing Authority *Operational Standards Manual for Licensed Brothels*
<https://www.pla.qld.gov.au/_data/assets/pdf_file/0004/691321/Operational-Standards-Manual-Final.pdf>

New WHS Guidelines would include topics such as: workplace injury, density ratios, reporting of incidents and accidents, personal protective equipment (not mandatory), repetitive strain injury, security and safety, drugs and alcohol, smoking, first aid, fire, cleanliness, linen/laundry, body fluid spill protocols, waste disposal, number and location of toilets, spas and pool management, food storage and shared kitchen facilities for workers, staff support, heating and cooling, lighting inside the building, at entrances and exits, grievance process for WHS implementation in the workplace, and workplace documentation of WHS incidents.

There are duties under WHS legislation that ensure workplace conditions do not expose workers to risks to their health and safety. Work conditions must be in accordance with industrial relations laws, WHS, and workers compensation laws. Formal WHS guidelines and protections for sex workers exist in some Australian jurisdictions and New Zealand, each based on Scarlet Alliance's *A Guide to Best Practice OHS in the Australian Sex Industry*.¹³⁹ A set of WHS Guidelines are also in development in the NT, through a joint committee composed of government, SWOP NT, and Scarlet Alliance, based on the Scarlet Alliance model WHS guidelines. This process serves as a model for best practice development of WHS guidelines, as it engages sex workers and our representative organisations to create guidelines that are fit for purpose for the sex industry.

The Best Practice Guide supports sex workers and owner/operators 'in developing best practice OHS standards in their own workplaces', stating that 'all workers, no matter what industry they work in, have a right not to have their health put at risk through carrying out the normal requirements of their work'.¹⁴⁰ The Best Practice Guide indicates that sex industry businesses have an obligation to implement a host of strategies aimed at maintaining the emotional and physical wellbeing of sex workers. These include strategies to ensure sex workers are not subjected to behaviours, practices or processes that may constitute harassment or victimisation and increase sex workers' access to a variety of safer sex practices in a workplace setting. The Best Practice Guide recommends that sex industry businesses:

- Provide information on safer sex in a variety of common community languages;
- Provide free supplies of personal protective equipment (such as condoms, lubricant, alarms and mobile phones for escort workers);
- Provide training for staff in cleaning toys, aids and surfaces;
- Prevent occupational overuse (such as repetitive strain injury) by ensuring proper work tool design (adjustable massage tables, correct massage techniques, alternating between repetitive and non-repetitive activities);
- Install safety devices (alarm buttons, policies of ejecting inappropriate clients);
- Maintain temperature regulation (heating and cooling);
- Ensure adequate lighting; and
- Provide written policy documents for staff covering trauma, condom breakage and safety procedures.

Why not a code of practice?

¹³⁹ Scarlet Alliance (1999) A guide to best practice OHS in the Australian sex industry.

<<https://scarletalliance.org.au/library/bestpractise>>

¹⁴⁰ Ibid.

As noted in the Consultation Paper, the ACT has a 'code of practice' model approach to the sex industry. Scarlet Alliance spoke with our colleagues in the ACT about some problems with the 'code of practice' model. The following issues with codes were raised:

- It is difficult to find and difficult to navigate for most sex workers.
- It contains a combination of mandatory and voluntary guidelines.
- It singles out the sex industry for requiring special laws and regulations. Other industries that have a specific code of practice are:
 - Spray painting and powder coating;
 - Delivery of cash;
 - Other codes of practice exist but they are either related to construction/other heavy manual work, or are general and relate to all workplaces on a particular risk (hazchem, falls, etc).
- There is no way for sex workers to report anonymously on a violation of the code of practice *and* get a follow-up on the action taken on the complaint.

It is important that Queensland avoid re-penalising workplace practices disproportionately through a code of practice. The existent measures in WHS law are sufficient to cover sex industry premises and businesses, a code of practice is unnecessary and provides opportunity for discriminatory enforcement approaches.

20. Are there any other work health and safety matters we should consider in developing a framework for a decriminalised sex work industry?

Our workplaces in Queensland have historically, and continue to be, targeted by authorities that do not target other workplaces, such as police and public health officials. Sex work is constantly placed under more scrutiny than other types of work. Ultimately, the special treatment of our workplaces signals that our work is not work and harks back to stereotypes that sex workers are 'vectors of disease' and that our workplaces are inherently prone to exploitation and crime. Therefore, to completely recognise sex work as work, it is important to ensure that special inspection powers are not provided to law enforcement or other agencies that don't normally regulate other types of work.

Further, it is important that work health and safety inspectors form a strong relationship with Respect Inc.. Currently, sex worker peer organisations and our outreach workers support sex workers who have work health and safety concerns in Queensland. Peer outreach workers are experientially and professionally equipped to advocate for our work health and safety within our workplaces. Sex industry work health and safety inspectors should not be required to conduct inspections of sex work businesses any more so than other industries. Sex work businesses are no less compliant with work health and safety obligations than other comparable industries and thus should not be subject to disproportionate scrutiny. Implementing extra inspection procedures for sex work businesses runs the risk of replicating the over-regulation and hyper-surveillance of sex workers and our workplaces that currently exists in Queensland. Government policies and practices that specifically target sex work businesses are discriminatory and would undermine the workplace health and safety benefits that come from decriminalisation.

Sex workers must be able to initiate a workplace health and safety complaint with the knowledge that such a complaint will not result in a disproportionate, discriminatory nor dismissive response from workplace health and safety inspectors. Interacting with government officials comes burdened with Queensland's history of discrimination and targeting of sex workers by government, police and immigration authorities. Due to this history, sex workers may be hesitant to contact WorkSafe with a complaint and may find routine inspections of our workplaces distressing. This would further deter sex workers from being assured that our privacy and incomes will be safeguarded if we decide to approach WorkSafe with a complaint.

Work health and safety inspectors should also develop procedures on how to manage vexatious WHS complaints.

On the whole, the government must recognise that our ability to practice work health and safety compliance is dependent on the full decriminalisation of our work, workplaces and clients. Maintaining any level of sex work specific regulation or criminalisation forms a major barrier to accessing information and support and practicing our safety strategies at work. Sex workers want to work in a way that best suits our safety and health needs; it is unevidenced government intervention, law and policy, and broad discrimination that prevent us from doing so. The complete decriminalisation of sex work is the best way to ensure sex workers can access and meet our WHS rights and obligations.

21. Under a decriminalised framework for the sex work industry, should legislation state that a contract for or to arrange sex work is not illegal or void on public policy or similar grounds?

Currently, sex workers' contractual rights are limited by the criminalisation and heavy regulation of our work. The full decriminalisation of sex work in Queensland should remove all criminal offences relating to sex work, thus removing the possibility of sex work contracts being vitiated on the basis of illegality. The complete commitment to the decriminalisation of sex work will represent a substantial shift in public policy approaches and the perception of the 'public interest' in relation to sex work. Therefore, there is no current need to include a specific provision as the decriminalisation of sex work is able to address this issue.

22. Should there be a new law stating that a person may, at any time, refuse to perform or continue to perform sex work?

In a sex work setting, consent to perform the work can be altered, withdrawn or expanded at any time, at the discretion of the sex worker. Like other workers, sex workers should have the right to cease unsafe work and to not be coerced into work. Decriminalisation will bring sex workers under the protection of existent Commonwealth and state laws that:

- Protect workers from coercion in the workplace (*Fair Work Act 2009* (Cth), s 343);
- Penalise the making of false or misleading representations about workplace rights, or the exercise of workplace rights (*Fair Work Act 2009* (Cth) s 345);

- Enforce the right of workers to cease unsafe work (*Work Health and Safety Act 2011* (Qld) s 84).

Additionally, existent *Criminal Code* provisions outline protections relating to consent, which must be applied equally to sex workers. The full decriminalisation of sex work in Queensland should bring sex workers under the protection of existent industrial and criminal laws that protect our rights to refuse to perform our work. Therefore, a specific law is unnecessary here.

4. Recommendations

4.1 Recommendation: Implement WHS Guidelines developed by Respect Inc. in partnership with Scarlet Alliance, WorkSafe QLD, relevant unions and the Office of Industrial Relations Queensland.

The complete decriminalisation of sex work and the inclusion of sex worker organisations in the development and implementation of WHS Guidelines is the best way to ensure that sex workers can access and meet our WHS rights and obligations.

4.2 Recommendation: Fund Respect Inc. to conduct peer education and owner-operator education about workplace laws and obligations.

The development and implementation of realistic, accurate and viable sex industry WHS guidelines in Queensland, including explanation of workplace laws, will need to be funded adequately and in at least four languages. Health promotion of this nature requires multiple methods: short explanatory videos, pictorial diagrams, on-site support, workshops, one-on-one peer education and advice, extensive documentation and possibly economic support. An evaluation of implementation and compliance should be conducted, in four languages, to determine required alterations and future resourcing after five years.

4.3 Recommendation: Validate sex work contracts.

With sex work decriminalised, public policy must reflect this major shift and there should not be a requirement for legislation to ensure recognition in the courts and in other ways that a contract for sex work is not illegal or void on public policy or similar grounds.

4.4 Recommendation: A sex worker may refuse to perform or continue to perform sex work in line with relevant state and federal WHS and industrial legislation and consent provisions in the QLD Criminal Code 1899. These do not require any new provisions but should be made explicit in the WHS Guidelines.

If sex work is decriminalised there is no need for a special law to protect this right; this will be in line with the relevant provisions in the *Work Health and Safety Act 2011*, *Fairwork Act 2009* and *Criminal Code 1899*.

Part 6: Public health

Consultation Paper Chapter 11: Public health and the health of sex workers

Questions

23. Should laws or other measures be taken to promote public health and protect the health of sex workers and their clients about:

- (a) the use of prophylactics;**
- (b) managing the risk of sexually transmitted infections;**
- (c) sexual health testing; or**
- (d) another matter?**

We are the experts on our health

Sex workers in Australia are incorrectly presumed to be a public health risk and stigmatised as ‘vectors of disease’. This misconception is not supported by evidence. In fact, the evidence indicates that sex workers have rates of blood borne viruses (BBVs) and sexually transmitted infections (STIs) that are equal to, or lower than, the general population.¹⁴¹ This is due in no small part to the work of sex worker peer organisations, projects and groups providing formal and informal peer education, community development and health promotion services to sex workers, including outreach and distribution of PPE. The success of the public health response for sex workers has been in empowering workers to implement safer sex practices through a peer model – not through government and law enforcement intervention. Such interventions have never been effective and reproduce the licensing regime. Victoria has recently repealed discriminatory laws around mandatory condom use, mandatory testing and the criminalisation of BBV and STI and sex work in Stage 1 of the *Sex Work Decriminalisation Act 2022* reforms. These outdated laws have been repealed, have not been reformulated and instead are dealt with within the broader public health and WHS framework as would apply to anyone else. Additionally Victoria has funded a peer led response for health promotion, peer and community education and support.

Best practice in sex worker health promotion employs a community-led approach that acknowledges the skills and expertise of the sex worker community to design and implement health programming. This approach is globally recognised as best practice by the WHO, UNFPA, UNAIDS, NSW, The World Bank and UNDP in their Sex Worker Implementation Tool (SWIT).¹⁴² The SWIT names the following Principles for Implementing Comprehensive HIV and STI Programmes with Sex Workers:

1. Community empowerment;
2. Community participation and leadership in the design, implementation, monitoring and evaluation of programmes;

¹⁴¹ Australian Government, Health Department (2018) *Fourth national sexually transmissible infections strategy*. <[https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/STI-Fourth-Nat-Strategy-2018-22.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/STI-Fourth-Nat-Strategy-2018-22.pdf)>

¹⁴² World Health Organization, United Nations Population Fund, Joint United Nations Programme on HIV/AIDS, Global Network of Sex Work Projects, The World Bank, ‘Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions.’ Geneva, World Health Organization, 2013. <https://www.nswp.org/sites/default/files/SWIT_en_UNDP%20logo.pdf> [Accessed 21 August, 2021]

3. Programmes should address structural barriers;
4. Programmes must operate at multiple levels, from the front-line to the national policy arena;
5. Programmes should be holistic – considering all the services sex workers need; and complementary – finding ways to coordinate and integrate service delivery, to be more effective and accessible;
6. These recommendations and principles should be seen as a minimum global standard, applying equally to higher income countries and lower and middle income countries.¹⁴³

Peer-delivered projects, health promotion and outreach services are the best practice, evidence-based approach to delivering services to meet the needs of sex workers.^{144 145} Peer-run services have ideal access to our own communities, and are uniquely placed to understand the issues sex workers face because of our shared experience living and working as sex workers. Peer-run organisations are able to train, mentor, and pass on peer knowledge in a way that non-peers cannot. Both the National HIV strategy and QLD HIV Action Plan^{146 147} identify sex worker peer education as a key action area, emphasising the central role of peer education and peer sex worker organisations in best practice prevention, treatment and health promotion strategies.

Queensland law currently heavily regulates sex worker sexual health. Under the [Prostitution Act 1999](#) it is illegal:

- To provide or offer sexual services without a condom or other safer sex PPE;
- For clients to ask for, or accept an offer for sexual services without a condom or other safer sex PPE;
- For workers to work while knowingly having an STI;
- To work in a licensed brothel without a STI test every 3 months.

¹⁴³Global Network of Sex Work Projects, 'The Smart Sex Workers Guide to SWIT', 2015, <https://nswp.org/sites/default/files/Smart%20Guide%20to%20SWIT_PDF_0.pdf> [Accessed 27 August 2021]

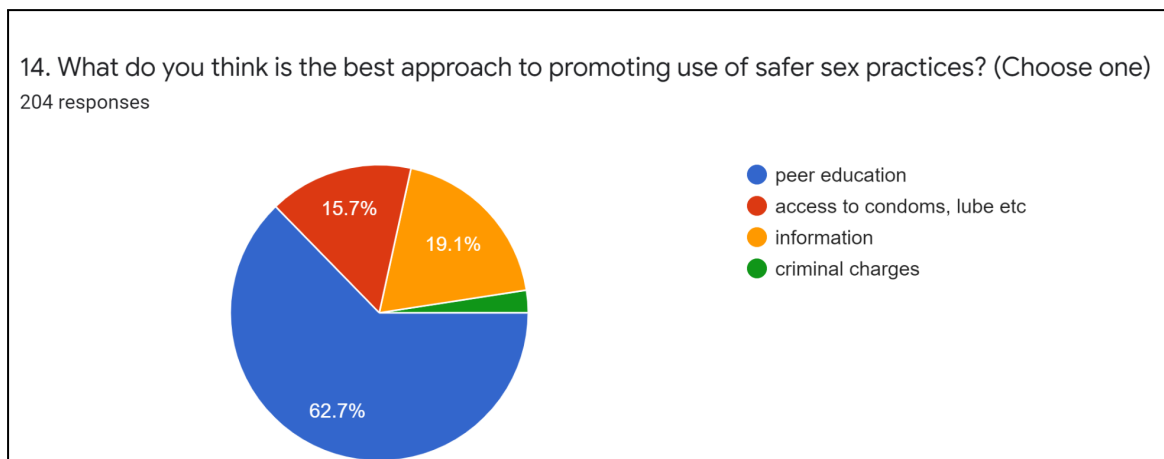
¹⁴⁴ Kerrigan D, Kennedy CE, Morgan-Thomas R, et al. A community empowerment approach to the HIV response among sex workers: effectiveness, challenges, and considerations for implementation and scale-up. *Lancet*. 2015;385(9963):172-185. doi:10.1016/S0140-6736(14)60973-9

¹⁴⁵ World Health Organisation, 2013. Community Empowerment. Implementing Comprehensive HIV-STI Programs. [online] pp.4-5. Available at: <https://www.who.int/hiv/pub/sti/swit_chpt1.pdf?ua=1> [Accessed 7 July 2020].

¹⁴⁶ Commonwealth Department of Health, (2018). *Eight National HIV Strategy 2018 - 2022*. <[https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/HIV-Eight-Nat-Strategy-2018-22.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf)> [Accessed 21 August, 2021]

¹⁴⁷ Queensland Health (2019), *Queensland HIV Action Plan 2019–2022* <https://www.health.qld.gov.au/_data/assets/pdf_file/0032/601889/qh-hiv-action-plan.pdf> [Accessed 20 June, 2022]

Sex workers are as concerned about our health and that of our communities as non sex workers, if not more so. Access to healthcare is a cornerstone of our ability to work sustainably, and sex workers have very high levels of PPE use and STI and BBV testing¹⁴⁸. Supporting sex workers' uptake of safe working practices and regular testing is best achieved through peer education, WHS guidelines and access to free, voluntary and anonymous testing, NOT criminal charges. This is consistent with the findings among QLD sex workers as was revealed in a recent survey conducted by Respect Inc., where 62.7% of respondents referred to peer education as the best approach to promoting safer sex practices, with information (19.1%), and access to condoms, lube, etc (15.7%) also prominent. Only 2.5% chose criminal charges as helpful in promoting safer sex practices.



The Sex Industry in New South Wales: A Report to the NSW Ministry of Health asserts that the licensing of sex work should not be regarded as a viable legislative response and is a 'threat to public health'.¹⁴⁹ The *Eighth National HIV Strategy* and the *Fourth National Sexually Transmissible Infections Strategy* explicitly listed 'criminalisation, licensing, [and] registration' as significant barriers to implementing public health strategies within the sex industry.^{150 151}

To support the health and wellbeing of sex workers, the government must provide funding for peer sex worker organisations, such as Respect Inc. and Scarlet Alliance, as peer education and peer-led outreach services achieve the best health outcomes for sex workers.¹⁵² Peer education is recognised in the *Eighth National HIV Strategy 2018-2022* as contributing to the low rates of HIV amongst sex

¹⁴⁸ E. Jeffreys et al., 'Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention', *World Journal of AIDS*, 2012, 2, p203-211

¹⁴⁹ Donovan, B., et al. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Retrieved on 25/04/20 from https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_NSW-Sex-Industry-Report-2012_.pdf. p. 7.

¹⁵⁰ Department of Health. (2018a). *Eighth National HIV Strategy 2018-2022*. Retrieved on 25/03/20 from [http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/HIV-Eight-Nat-Strategy-2018-22.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf). p. 22.

¹⁵¹ Department of Health. (2018b). *Fourth National Sexually Transmissible Infections Strategy 2018-2022*. Retrieved on 25/04/20 from [http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/STI-Fourth-Nat-Strategy-2018-22.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/STI-Fourth-Nat-Strategy-2018-22.pdf). p. 22.

¹⁵² R. Wotton, 'HIV prevention strategies within the Australian sex worker population - an overview of successful implementation', Presentation at the XVII International AIDS Conference 3-8 August 2008, 2008.

workers.¹⁵³ This is in stark contrast with rates of HIV globally where sex workers are 30 times greater risk of acquiring HIV than the general female population.¹⁵⁴ An Australian study about the positive health outcomes of decriminalisation for sex workers also notes:

*Long-term risk reduction and enduring health improvements are more likely to occur when there is ongoing peer-led education, supported by community-based organisation and advocacy.*¹⁵⁵

The design of sex worker-led community health programs should begin with a needs assessment of the Queensland sex worker community, designed and implemented by sex workers ourselves. Respect Inc. and Scarlet Alliance, as the recognised sex worker peer organisations for Queensland and Australia respectively, are the best positioned to conduct a project that looks at the health needs of Queensland sex workers.

The [Red Book Online](#), a sexual health resource made by and for sex workers, is a key example of how the sex worker community engages in peer education through sharing safety tips, the latest sexual health information and referrals to sex worker-friendly health services. We are the experts on our own health and workplace safety. Sex workers have long engaged in proactive efforts to keep our community safe and healthy in our workplaces, and it is important that the government recognise that a peer-led rather than interventionist approach is the most effective way to support sex workers.

Respect Inc. should be supported to deliver peer-led education, information and support to sex workers across Queensland. This should include resourcing for translated information for culturally and linguistically diverse and migrant sex workers across Queensland, as well as increasing the availability of culturally and linguistically diverse and migrant sex worker peer educators.

A needs assessment is a necessary step in ensuring that the inclusion of sex workers in Queensland's health programming is culturally appropriate, accessible, and responsive to the needs of the diverse sex worker community. This would also be an opportunity to inform sex workers of the legislative changes around our work and communicate what they mean for sex workers in various workplaces, geographical locations, and languages.

(a) Use of prophylactics

Mandatory condom use is based on the assumption that without legal intervention, safer sex practices will not be implemented. Research demonstrates that there are high rates of condom use amongst sex workers, including migrant sex workers, in jurisdictions that do not legally mandate sex workers to use condoms. For example, *the Sex Industry in NSW: a Report to the Ministry of Health* study found that sex workers were approaching 100% condom use in Sydney brothels with no differences for migrant sex workers.¹⁵⁶ However, as mandatory condom use laws are difficult and

¹⁵³ Department of Health, 'Eighth National HIV Strategy 2018-2022', Australian Government, 2018, Canberra. p.22

¹⁵⁴ UNAIDS. (2021) *HIV and Sex Work. Human Rights Fact Sheet Series*. Accessed on 20/06/22

<https://www.unaids.org/sites/default/files/media_asset/05-hiv-human-rights-factsheet-sex-work_en.pdf>

¹⁵⁵ C. Harcourt et al., 'The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers', *Australian and New Zealand Journal of Public Health*, vol. 34, no.5, 2010, p. 482.

¹⁵⁶ Donovan, B., et al. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Retrieved on 25/03/20 from

<https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_NSW-Sex-Industry-Report-2012.pdf>. Pg vi.

costly to enforce, they often lead to the entrapment of sex workers by police and create needless barriers to sex workers accessing health and justice services.

The implementation of sex worker peer education programs have been central in maintaining low rates of STIs and BBVs amongst sex workers. Peer educator programs in Australia were instrumental in persuading brothel managers and workers to adopt safer sex practices. Condom use in brothels rose from under 11% of sexual encounters to over 90% between 1985 and 1989, and high rates of condom use has been consistently maintained by sex workers since; the health of sex workers improved commensurately.¹⁵⁷

(b) Criminalising sex workers with BBV and STI

The *National Needs Assessment of Sex Workers who Live with HIV* shows that laws that criminalise working with HIV mean that workers may be afraid to take sexual health tests, fail to recognise that HIV-positive people participating in safer sex do not necessarily put our clients at risk, fails to recognise that undetectable = untransmittable,¹⁵⁸ and remains an ineffective way of reducing transmissions.¹⁵⁹ The Lancet Series on HIV and sex workers showed that the decriminalisation of sex work would have the greatest effect on the course of HIV epidemics across all settings, averting 33–46% of HIV infections in the next decade.¹⁶⁰

As a result, criminalisation of sex workers living with HIV has the potential to increase STI and BBV transmissions and to increase the stigma and discrimination experienced, which in turn increases the likelihood of sex workers living with HIV having access only to precarious work.¹⁶¹

Existing public health and criminal law already covers malicious and reckless acts in regards to STI and BBV transmissions; criminalising workers who live with HIV only acts to remove WHS and basic working protections for people who already bear the dual stigmas associated with sex work and living with HIV.¹⁶² Further, there is already a comprehensive process in Queensland to manage the very small number of cases where a person living with HIV places another person at risk. The *Public Health Act 2005* allows for the management of HIV-related risks, such as when a person living with HIV may place others at risk of transmission, for example through unprotected sex with a detectable viral load. The process outlines a staged approach for the management and supervision of counselling, education and support for those persons living with HIV who place others at risk and have not responded to initial interventions at the local level, or are unwilling or unable to change their risk behaviours. Each Australian state and territory has implemented management processes that align with the *National Guidelines for Managing HIV Transmission Risk Behaviours*¹⁶³.

¹⁵⁷ Ibid, p. 11.

¹⁵⁸ UNAIDS, 'Undetectable = Untransmittable, Public Health and HIV Viral Load Suppression', <<https://www.unaids.org/en/resources/presscentre/featurestories/2018/july/undetectable-untransmittable>> accessed online 17 Aug 2021

¹⁵⁹ K. Matthews, 'The National Needs Assessment of Sex Workers who Live with HIV', 2008, *Scarlet Alliance*.

¹⁶⁰ Shannon, K et al., (2015). Global epidemiology of HIV among female sex workers: influence of structural determinants. *The Lancet*, 385(9962), 55-71.

¹⁶¹ A. Daniel, 'The Sexual Health of Sex Workers: No Bad Whores, Just Bad Laws', 2010, *Social Research Briefs, NSW Health*, 19, 1.

¹⁶² E. Jeffreys, K. Matthews and A. Thomas, 'HIV Criminalisation and Sex Work in Australia', *Reproductive Health Matters*, 2010, 18:35, pp. 129-136

¹⁶³ Department of Health. (2018a). *National Guidelines for Managing HIV Transmission Risk Behaviours*. Retrieved on 20/06/22 from

The responsibilities and powers provided to the Chief Health Officer and the Department of Health contained within the *Public Health Act 2005* to manage people living with HIV who put others at risk, apply to everyone irrespective of the setting where the sexual activity occurs. Additional laws are not necessary.

Criminalisation of sex workers with HIV:

- Violates sex workers' human rights and is state-sanctioned workplace discrimination. Criminalisation violates sex workers' rights to privacy and confidentiality, free choice of employment and just and favorable conditions of work, and equal protection and treatment before the law;
- Forces sex workers to operate covertly, creating barriers to accessing essential, targeted and supportive legal and health services. Where sex workers are operating outside of the regulated sex industry and have less access to formal legal protections, there are greater barriers for sex workers to enforce workplace conditions, such as implementing safer sex practices;
- Creates disincentives for all sex workers to test and know our HIV status, as a positive HIV result can lead to instant exclusion from the regulated sex industry, unemployment, stigma and discrimination, and in the instance that we need to keep working, criminal prosecutions, incarcerations and fines; and
- Compromises our medical confidentiality, making it difficult to roll out targeted HIV responses to sex workers with HIV. Fear of criminal investigations and having our confidentiality breached creates barriers for sex workers with HIV to disclose our HIV status and sex work, reducing health professionals' ability to comprehensively assess our health needs. In the 2008 *National Needs Assessment of Sex Workers Living with HIV*, a number of participants stated that disclosing sex work and HIV status led to very poor treatment and harassment by health and support care workers.¹⁶⁴

The ACT and VIC have both recently repealed the discriminatory restrictions against sex workers and clients with HIV or STI's from receiving or providing sexual services. This change was welcomed by sex workers and advocates as it is supported by evidence, recognises that sex workers offer a range of services which do not always include a risk of transmission, recognises the advances in biomedical interventions and current epidemiology of HIV among sex workers in Australia and protects the rights of *all sex workers*.

(c) Mandatory sexual health testing

The Eighth National HIV Strategy and *The Fourth National Sexually Transmissible Infections Strategy* explicitly identify mandatory testing of sex workers as a key barrier to evidence-based prevention

<[https://www1.health.gov.au/internet/main/publishing.nsf/Content/B4D7BD21A78763EDCA257BF0001F951B/\\$File/Nat-Guide-HIV-Risk-Behaviours-2018.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/B4D7BD21A78763EDCA257BF0001F951B/$File/Nat-Guide-HIV-Risk-Behaviours-2018.pdf)>

¹⁶⁴ Scarlet Alliance, & AFAO. (1999). *Unjust and Counter-Productive: The failure of government to protect sex workers from discrimination*. Retrieved on 25/03/20 from <<http://www.scarletalliance.org.au/library/unjust-counterproductive>>.

and access to testing and healthcare services.^{165 166} This is because mandatory testing “endorses a false sense of security in the form of a ‘certificate’, which, due to window periods, doesn’t actually confirm a sex worker’s sexual health status, but instead just indicates that the sex worker has participated with the state’s” mandatory testing regime.¹⁶⁷

An Australian study of the cost-benefit of mandatory testing in Australia recommended that testing should not be ‘locked by legislation’.¹⁶⁸ The cost of over-testing is high—screening sex workers for HIV every 12 weeks costs \$4mil for every one HIV infection averted.¹⁶⁹ Mandatory testing also places an unnecessary burden on sexual health clinics which are already beyond capacity. Sex workers in need of quick access to sexual health services are particularly marginalised by mandatory testing regimes. Mandatory testing of sex workers is considered a rights violation by a number of international human rights organisations, including the Office of the United Nations High Commissioner for Human Rights, and UNAIDS. In Australia, mandatory testing has had negative consequences for sex workers’ confidentiality, human rights and industrial rights.

Decades of research indicate that sex workers have maintained low rates of STIs and BBVs and high rates of condom use across Australia, including in states without mandatory testing, with no reportable differences between migrant and non-migrant sex workers. Mandatory testing is recognised as a harmful and costly practice that provides no discernable benefits.

Further, mandatory testing of sex workers is incompatible with the *Queensland Human Rights Act* by impacting the right not to be subject to medical treatment without full, free and informed consent. Laws can limit human rights, but only when it is ‘necessary, justifiable and proportionate’, which is not the case here.

It is essential when mandatory testing is repealed it is essential that this discriminatory and redundant practice is not able to be replicated by sex industry business owner/operators. Mandatory testing is an unnecessary and burdensome practice, for both sex workers and the public health system and must not be allowed to continue being enforced either by the state or sex industry business owner/operators.

¹⁶⁵ Department of Health. (2018a). Eighth National HIV Strategy 2018-2022. <[https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/HIV-Eight-Nat-Strategy-2018-22.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf)> on 19/06/22. p. 22.

¹⁶⁶ Department of Health. (2018b). Fourth National Sexually Transmissible Infections Strategy 2018–2022. <[http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/STI-Fourth-Nat-Strategy-2018-22.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/STI-Fourth-Nat-Strategy-2018-22.pdf)> on 19/06/22. p. 22.

¹⁶⁷ Jeffreys, E., et al. (2012). Mandatory testing for HIV and sexually transmissible infections among sex workers in Australia: a barrier to HIV and STI prevention. *World Journal of AIDS*, 2(03), 203.

¹⁶⁸ Wilson, D. P., Heymer, K. J., Anderson, J., O'Connor, J., Harcourt, C., & Donovan, B. (2010) ‘Sex workers can be screened too often: A cost-effectiveness analysis in Victoria, Australia’, *Sexually Transmitted Infections*. 86(2).

¹⁶⁹ Ibid.



DecrimQLD infographic (2020).

5. Recommendations

5.1 Recommendation: Remove and do not reformulate all provisions regarding:

- Mandatory PPE use (s 77A),
- Mandatory testing (s 89),
- Criminalisation of sex workers living with BBV and STI (s 90).

Do not transfer current offences under the *Prostitution Act 1999* to a different public health framework. Public health outcomes are best achieved by education not criminalisation.

Decriminalisation cannot retain any discriminatory public health legislation that specifically targets sex workers nor can it allow owner operators to replicate this in their businesses.

5.2 Recommendation: Recognise sex workers and our organisations as the experts on our health.

Best practice in sex worker health promotion employs a community-led approach that acknowledges the skills and expertise of the sex worker community to design and implement health programming. The [Red Book Online](#), a sexual health resource made by and for sex workers, is a key example of how the sex worker community engages in peer education through sharing safety tips, the latest sexual health information and referrals to sex worker-friendly health services.

5.3 Recommendation: Resource and prioritise sex worker-led community health programs for Queensland sex workers.

To support the health and wellbeing of sex workers, the government must provide funding for peer sex worker organisations, such as Respect Inc. as peer education and peer-led outreach services achieve the best health outcomes for sex workers. Both the National HIV strategy and QLD HIV Action Plan^{170 171} identify sex worker peer education as a key action area, emphasising the central role of peer education and peer sex worker organisations in best practice prevention, treatment and health promotion strategies.

¹⁷⁰ Commonwealth Department of Health, (2018). *Eighth National HIV Strategy 2018 - 2022*. <[https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/HIV-Eight-Nat-Strategy-2018-22.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf)> [Accessed 21 August, 2021]

¹⁷¹ Queensland Health (2019), *Queensland HIV Action Plan 2019–2022* <https://www.health.qld.gov.au/_data/assets/pdf_file/0032/601889/qh-hiv-action-plan.pdf> [Accessed 20 June, 2022]

Part 7: Planning laws and sex work

Consultation Paper Chapter 12: Planning laws and sex work

Questions

Commercial sex work businesses

A note on the term ‘commercial sex work businesses’

This terminology is redundant. Whether referred to as ‘sex services premises’, ‘sex industry businesses’, ‘sex industry premises’, or some other combination of these, sex work businesses premises are commercial in nature, and it is unnecessary to use this qualifier. We raise concern that it could create confusion in practice, as the use of the word ‘commercial’ implies the existence of ‘non-commercial’ sex work businesses.

25. Should local governments have discretion to prohibit the development of commercial sex work businesses in their entire local government area?

No, local governments should not be granted this discretionary power. Local government have demonstrated for the most part, that they are unable to apply their discretion fairly and have consistently discriminated against the sex industry. Scarlet Alliance has observed the misuse of these discretionary powers in NSW and Queensland. Based on the evidence, history and negative impact of council misuse of discretionary power over sex work businesses, Scarlet Alliance do not support local government maintaining discretionary power in Queensland. Decriminalisation in Queensland instead requires a legislative approach that offers consistent and non-discriminatory planning direction for sex work businesses without arbitrary local government discretion. This will require legislated amendments to the *QLD Planning Regulations 2017*, supported by a clause such as the one in Victoria. The *VIC Sex Work Decriminalisation Act 2022, Part 2 s3* states that a local law made under the *VIC Local Government Act 2020* must not be inconsistent with decriminalisation or it must not undermine purposes of decriminalisation and ‘*provide for the reduction of discrimination against, and harm to, sex workers.*’¹⁷²

In NSW, local councils apply their own planning restrictions to sex work businesses and home-occupation sex work businesses. This has resulted in unfair, inconsistent and discriminatory practices, often relegating sex work businesses to industrial zones or prohibiting them entirely from their area.¹⁷³ It has lowered opportunities for compliance, thus limiting sex worker access to WHS rights within certain local government areas. Local governments should not have the discretionary power to completely prohibit sex work businesses as this can force sex workers to choose between working in a compliant premises or working in a location that is best suited for us. Restrictive or discriminatory planning controls can deeply undermine the beneficial intent of decriminalisation by

¹⁷² Sex Work Decriminalisation Act 2022 (VIC). Retrieved on 21/06/2022 from <https://www.legislation.vic.gov.au/as-made/acts/sex-work-decriminalisation-act-2022>

¹⁷³ P. Prior, ‘Not in my neighbourhood: Home businesses (sexual services) and council responses’, *LGLJ*, vol.9, no.10, 2003, p.13

empowering each local council to take a different regulatory approach.¹⁷⁴ The evidence from NSW suggests that the punitive regulation of sex work did not dissipate in the wake of decriminalisation.¹⁷⁵ Instead, regulation merely shifted from a carceral framework to the planning framework, wherein council workers and planners instrumentalise law in a way that reflects stigmatised and unevidenced assumptions about sex workers, our workplaces and our presence within communities.

‘The legislative and regulatory regime for sex services premises was constructed, and has since been applied, based on assumptions unsupported by empirical evidence of the effects of sex services upon neighbourhoods.’¹⁷⁶

Discrimination against sex work businesses by local government is already evidenced in Queensland and has been observed by Scarlet Alliance for the entire history of the *Prostitution Act 1999*. When Queensland’s licensing laws were introduced, many councils took up the option of applying to prohibit the sex industry within their local government areas. As a result, brothels are banned in more than 200 Queensland towns and only 12 of 77 councils have ever approved a brothel.¹⁷⁷ This response from Queensland local councils unfortunately aligns closely with NSW processes, demonstrating ‘the evidential power of planning to reinforce dominant moral geographies through instruments which at first glance, appear to be focused on objective questions of amenity and the ‘best use of land’¹⁷⁸, but in fact are based on unevidenced presumptions.

The legislative approach to planning in Queensland needs to be applied fairly across all sex work business types. Creating another two-tiered system of sex work within planning law would be counterproductive, replicative of the current licensing regime, and decreases the safety of sex workers. Using police, licensing or zoning to force sex workers into specific locations is incompatible with the decriminalisation of sex work. The NSW Sex Services Premises Planning Advisory Panel has highlighted that ‘establishing planning controls which are reasonable (rather than unnecessarily restrictive) is likely to result in a high proportion of sex service premises complying with council requirements, with corresponding benefits to council operations, the local community and health service providers’.¹⁷⁹ Therefore, it is integral that Queensland take the discretionary planning power to prohibit sex work businesses away from councils and instead implement a consistent statewide planning framework that can provide reliable planning guidance to all sex work business types.

Local council discrimination against sex industry businesses: NSW case study

Research from NSW exemplifies that local councils engage in discriminatory practices against sex work businesses, including home-based businesses.^{180 181} This occurs through inconsistent,

¹⁷⁴ M. O’Mullane, ‘The Subversion of Progressive Intent; The realities of sex work policy: When and how it is enforced’, Sydney, *Touching Base Incorporated*.2015. p. 16.

¹⁷⁵ Crofts, P. and Prior, J., 2012. Intersections of Planning and Morality in the Regulation and Regard of Brothels in New South Wales Criminal Justice Special Issue. *Flinders Law Journal*, 14 (2), 329–358, p. 334

¹⁷⁶ *Ibid*, p. 331.

¹⁷⁷ Prostitution Licensing Authority (2012) Annual Report 2011-2012, p. 24.

<https://www.pla.qld.gov.au/_data/assets/pdf_file/0008/674720/pla-annual-report-2011-2012.pdf>

¹⁷⁸ Crofts, P. and Prior, J., 2012. Intersections of Planning and Morality in the Regulation and Regard of Brothels in New South Wales Criminal Justice Special Issue. *Flinders Law Journal*, 14 (2), 329–358, p. 335.

¹⁷⁹ Sex Services Premises Planning Advisory Panel (2004). Sex services premises: planning guidelines. NSW: NSW Department of Planning. Pg ii. (SSPPG)

¹⁸⁰ Eva Cox “UTS Students’ Research on Home Occupations,” UTS Student Project Under Supervision of Eva Cox, Nov 2003 <http://www.scarletalliance.org.au/library/cox_03>

¹⁸¹ Crofts, P., 2003. Not in my neighbourhood: Home businesses (sexual services) and council responses, 11.

discriminatory and over-bearing development approval frameworks, licensing, zoning and separation distance regulations that often relegate sex work businesses to industrial zones.^{182 183}

There is no uniform approach to planning regulations for sex work businesses in NSW, resulting in arbitrary and discriminatory practices that are centred in political and moral ideals rather than evidence and lack of certainty for sex work businesses. The *Standard Instrument Principal Local Environmental Plan (LEP)* requires local governments to permit sex work businesses to operate within their government area, but allows local governments to designate which zones can be used;¹⁸⁴ it does not require local governments to allow home-based businesses to operate. Due to the inarticulate scope of the *LEP*, local governments retain discretionary power to withhold planning consent from sex work businesses, a practice that is not applied to non-sex work businesses.¹⁸⁵ There is no town planning justification as to why sex work businesses need to be regulated differently in planning law, demonstrating that government-based discrimination still occurs within NSW.¹⁸⁶

Some local councils in NSW also employ private investigators to inspect sex work businesses whilst posing as clients. This may be triggered by a vexatious complaint from a community member or another sex industry business owner. It is important to acknowledge that any situation in which someone poses as a client in order to enforce laws or regulations or entrap sex workers is incredibly problematic and a violation of sex workers' consent. Some jurisdictions have even explored the framing of such tactics as 'sex by deception', bringing these practices into the realm of sexual assault.

The resource-intensive nature of this practice is further evidence in favour of the creation of accessible planning provisions that encourage compliance.

'Whilst some LG (local government) choose to ignore these types of complaints, a small number of LGs engage private investigators to try and uncover sufficient evidence of sex service practices occurring, to allow them to take further action. This requires these LGs to allocate significant time and resources to uncover evidence of wrongdoing by premises. The levels of LG time and financial costs involved in responding to relatively minor complaints about SIPs (Sex Industry Premises) suggests an over bureaucratisation and misuse of resources by some LGs in regulating SSP (Sex Service Premises) in their areas.'¹⁸⁷

This has greatly undermined the beneficial intent of decriminalisation in NSW as it has created a plethora of inconsistent council regulations with which sex work businesses and individual sex workers cannot reasonably comply. Scarlet Alliance and the Sex Workers Outreach Project NSW are currently taking steps to address council discrimination as one of the most significant issues facing NSW sex workers. The Victorian government, in their recent decision to decriminalise sex work,

¹⁸² M. O'Mullane, 'The Subversion of Progressive Intent; The realities of sex work policy: When and how it is enforced', Sydney, *Touching Base Incorporated*.2015.

¹⁸³ Hubbard, P., Boydell, S., Crofts, P., Prior, J., and Searle, G., 2013. Noxious Neighbours? Interrogating the Impacts of Sex Premises in Residential Areas. *Environment and Planning A: Economy and Space*, 45 (1), 126–141.

¹⁸⁴ *Ibid*.

¹⁸⁵ B. Sullivan, 'When (Some) Prostitution is Legal: The Impact of Law Reform on Sex Work in Australia', *Journal of Law and Society*, Vol. 37, No. 1, 2010, p. 85, p. 103.

¹⁸⁶ M. O'Mullane, 'The Subversion of Progressive Intent; The realities of sex work policy: When and how it is enforced', Sydney, *Touching Base Incorporated*.2015. p. 9.

¹⁸⁷ *Ibid*, p. 16.

recognised the issues caused by local council discrimination by including the following provision in the Part 2, s.3(1) of the *Sex Work Decriminalisation Act 2022* (VIC):

‘A local law made under the Local Government Act 2020 must not be inconsistent with the purposes of this Act or undermine the purposes of this Act to decriminalise sex work and provide for the reduction of discrimination against, and harm to, sex workers.’

While this is an important and necessary provision, it is not yet known whether this will be sufficient in dealing with the widespread and systemic discrimination against the sex industry in the context of planning.

Queensland is in a position not to repeat NSW’s failure to implement a planning system that is in line with decriminalisation or replicate the uncertainty of the Victorian legislation, and has the ability to address planning explicitly and fairly at a state level. To ensure that Queensland meets their commitment to decriminalise sex work, state-wide planning laws should not grant discretion to councils regarding zoning, separation distances or development approval requirements for sex work businesses. As seen in NSW, granting such discretion provides scope for local governments to enforce discriminatory and unworkable regulations against sex work businesses. The *Sex Services Premises Planning Guidelines 2004*¹⁸⁸ (*SSPP Guidelines*) provides the following recommendations for best practice planning implementation for sex work businesses:

- Sex services premises should be treated in a similar manner to other commercial enterprises, and should be able to rely on consistency and continuity in local planning decisions;
- Planning provisions should acknowledge all types of sex services premises and ensure that controls relate to the scale and potential impact of each premises;
- Reasonable, rather than unnecessarily restrictive, planning controls are likely to result in a higher proportion of sex services premises complying with council requirements, with corresponding benefits to council, the local community and health service providers;
- Provision and consideration of sound information enables appropriate policy and decision-making processes; and
- Engaging the community, including the sex industry, and developing professional strategies can assist the community and professionals to understand the nature of sex services premises and recognise that they are a legitimate land use to be regulated through the NSW planning system.

Even so, the above recommendations have not been adopted in NSW. Council discretion has stymied the application of good policy developed in that jurisdiction. Queensland can learn from this and take advantage of the long-term research and findings that NSW provides; all of which demonstrate that councils are not equipped to appropriately regulate sex work locations and instead adopt a standardised statewide approach through amendments to the *Planning Regulations 2017*.

26. Should commercial sex work businesses have specific planning requirements, different to other commercial businesses?

¹⁸⁸ Sex Services Premises Planning Advisory Panel (2004). Sex services premises: planning guidelines. NSW: NSW Department of Planning.

Sex work businesses should not be discriminated against or subject to council scrutiny. Based on our experiences in NSW, we believe it is necessary to implement specific protections for sex work businesses that will provide certainty and direction for established and new businesses, and mitigate against council discrimination. Scarlet Alliance concur with the legislative planning approach identified by Respect Inc and DecrimQLD. A number of local planning experts supported Respect Inc and DecrimQLD to conduct extensive research, consult with sex workers and then use demographic, location and sectoral data on sex work in Queensland to decide which planning solutions available within current Queensland planning regulations are the best fit for decriminalisation:

- Private sex work, including collectives and private sex workers doing escort bookings to be added into Planning Regulations (2017), Schedule 6, Part 2, Section 2 (1) and therefore permitted, without DA approval or compliance with Home-Business rules, in Class 1 and Class 2 buildings.
- Escort agencies to be covered by existing provisions for 'offices' (in centre zones) and 'home based businesses' in residential zones.
- Massage Parlours to continue as 'health services', or added to Schedule 6.
- Brothels to be added to Schedule 6. Amendments to the Liquor Act to allow brothels to serve alcohol.
- Location size and amenity rules already provide self-regulation of size and number of rooms or workers for sex work businesses. Alterations or decisions about number of rooms will also be influenced by the WHS guidelines once they are in place. If amenity impact is occurring, local government have mechanisms to address this, without discretionary powers.

The process of amending Queensland's current planning regulations for application to sex work businesses should include close consultation with Scarlet Alliance and Respect Inc., to ensure that the provisions are practical, fair, realistic, in line with the current shape of the industry in Queensland, non-discriminatory and fit-for-purpose.

Opposition to the presence of sex work businesses by local government originates from the stigma-informed presumption that they 'encourage a broad range of negative effects such as immorality, nuisance, antisocial behaviour and criminality'¹⁸⁹. This is not based in evidence and results in sex worker premises being 'spatially and socially marginalised'¹⁹⁰. Evidence from NSW shows that sex work businesses have a neutral or positive effect on neighbourhoods and many people living and working in areas where sex industry businesses are located are unaware of the operation of that business.¹⁹¹ Discretionary powers have meant councils in NSW have unfortunately not converted the evidence into policy, and this remains a key area of unresolved tensions, uncertainty and draw-out court cases that Queensland absolutely must avoid.

¹⁸⁹Prior, J. and Crofts, P. (2012) Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use, *New Zealand Geographer* 68, 130–140 p. 131.

¹⁹⁰ Ibid.

¹⁹¹ Crofts, P. and Prior, J. (2012). Intersections of Planning and Morality in the Regulation and Regard of Brothels in New South Wales Criminal Justice Special Issue. *Flinders Law Journal*, 14 (2), 329–358.

27. Should the State set the categories of assessment for commercial sex work businesses, or should local governments have discretion to set the categories of assessment in their local government area?

No. As aforementioned, when discretionary power is conferred onto local councils, discriminatory practices against sex work businesses can materialise, which in turn can greatly undermine the benefits of decriminalisation. Councils must be prohibited from categorising sex work locations as ‘assessable’, and as such should not be able to prohibit or make arbitrary rules designed to exclude some sex workers from decriminalisation. As argued above, this requires amendments to Schedule 6 of the *Planning Regulations (2017)*.

28. Should local governments have discretion to limit commercial sex work businesses to certain zones (for example, mixed use or industrial zones)? Why or why not?

No. Sex work businesses such as brothels and massage parlours should be permitted to operate in Centre and Mixed Zones. This should be ensured at a State level to prevent local councils from restricting sex work businesses to inappropriate zones, such as industrial zones.

Industrial zones are inappropriate for sex work as they are often isolated, minimally populated at night, have poor lighting, minimal public surveillance and ‘little to no public transport’.¹⁹² Buildings in industrial areas are also less likely to be suitable for use as sex work, often requiring significant financial outlay in order to meet work health and safety standards and accessibility requirements.¹⁹³ Relegating sex workers to isolated zones and disincentivising compliance with work health and safety requirements forms an unsafe working environment for sex workers, compromising our safety and workplace conditions. It is important that planning controls do not form a barrier to our ability to work gainfully and safely. Sex workers have indicated they have serious concerns for their safety as a result of being forced to work in isolated industrial areas:

“When I leave the brothel where I work I have to walk to the nearest taxi accessible pickup point, a few hundred metres away in the dark, often at 4am. I am nervous that clients may be waiting outside when I leave to follow me.”

“The brothel I work at is isolated, far from public transport and very poorly lit, surrounded by worksites making it incredibly dangerous for providers to get to and from, and impossible to get to and from work without receiving harassment or assault from nearby workers or drivers.”¹⁹⁴

Sex workers strategically choose the location of our workplaces based on access to essential services, public facilities including public transport, access to clients, visibility, lighting, and safety. Zoning of

¹⁹² Ibid.

¹⁹³ Prior, J. and Crofts, P. (2012) Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use, *New Zealand Geographer* 68, 130–140 p. 131.

¹⁹⁴ Comments by two different Victorian sex workers during the Scarlet Alliance and Vixen Collective “Review into the Decriminalisation of Sex Work” consultations.

sex worker workplaces to isolated, poorly lit, under-resourced and unsafe areas undermines sex workers' safety.

As communities perceive little to no amenity impact from sex industry businesses, imposing these zoning restrictions on sex work businesses is unnecessary.¹⁹⁵ Further, research from NSW shows that a majority of complaints made about sex work businesses are about sex work businesses in industrial zones. This suggests that:

'[T]he harshest regulatory framework (industrial) is ineffective in reducing the perceived 'problem' of SIPs [sex industry premises] from within the community. Complaints are still being made about SIPs in the LGs [local governments] that restricted them to Industrial zones, suggesting that even the strictest forms of regulation do not remove potential for non-amenity based complaints.'¹⁹⁶

'Individuals who are going to complain about SIPs are going to complain about the provision of sex services no matter where SIPs are located. But by limiting SIPs to industrial zones, LG are creating safety problems for workers and clients'¹⁹⁷[...] It is clear that LGs that restrict SIP to industrial zones are not acting on the basis of communities experiencing any major social or amenity problems caused by SIPs'.¹⁹⁸

The zoning of sex industry businesses is incompatible with full decriminalisation and there is no evidence to support the value of segregating sex industry businesses or sex workers to restricted areas.¹⁹⁹

29. Should there be size limits on commercial sex work businesses, such as gross floor area, number of rooms or number of sex workers?

No limitations on floor area or number of workers or rooms should be in place in the Queensland Planning Provisions. Such limitations would continue the 'two-tiered' approach currently enforced by licensing. There is no standard "appropriate size" for a sex work business. Sex industry businesses come in different sizes, and sex workers should be able to choose to work in the style and size of establishment that suits them.

Research from NSW suggests that sex work businesses tend to be small-scale, having on average seven workers in total, who have shifts at different times of the day.²⁰⁰ This results in no impact to public amenity that is greater than that of any other business. If business activity becomes an amenity problem, local government have powers to address it at the time. Importantly, resolution should be able to be found without the business being in contravention of a sex industry-specific

¹⁹⁵ Prior, J. and Crofts, P. (2012) 'Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use', *New Zealand Geographer* 68, 130–140 p. 131.

¹⁹⁶ M. O'Mullane, 'The Subversion of Progressive Intent; The realities of sex work policy: When and how it is enforced', Sydney, Touching Base Incorporated.2015. p. 9.

¹⁹⁷ Ibid, p.12.

¹⁹⁸ Ibid, p.14

¹⁹⁹ Scarlet Alliance (2021) 'The Full Decriminalisation of Sex Work in Australia'

<https://scarletalliance.org.au/library/briefing_paper_full_decrim>

²⁰⁰ NSW Government, Better Regulation Office, Issues Paper, p. 29.

planning regulation or planning law. The amenity impact should be addressed in the same way local government address amenity for any other business.

31. Should an alternative review mechanism of development applications for commercial sex work businesses (as currently applies for brothels) be kept?

No. There should be no DA processes for sex industry businesses, except when applying for permission to serve alcohol.

32. Should separation distances apply to commercial sex work businesses? Why or why not?

No. There should not be sex industry-specific separation distances from any other land uses.

A NSW study posed the research question ‘can sex services premises be good neighbours?’ The results suggest that sex work businesses have a neutral or positive effect on neighbourhoods²⁰¹ and that residents believe that other local businesses have similar amenity impacts²⁰². Further research illustrates that of 400 residents living in close proximity to sex services premises in the City of Sydney and Parramatta, 43.1% were unaware they lived within 400m of these premises, and of those who did know, 48.2% believed the business had no overall impact in the local area, and 24.1% rated it positively.²⁰³ This research suggests that sex work businesses have minimal amenity impact on neighbourhoods. However, it was noted that the reactions of residents who knew about a nearby sex work business varied greatly depending on whether they were residents of City of Sydney or Parramatta.²⁰⁴ This difference has been located in how sex work businesses are *regulated* within each LGA. In City of Sydney, sex work business are seen as legitimate businesses and residents have a ‘neutral’ relationship with them. Whereas in Parramatta, the council has a negative and restrictive approach to sex work businesses and residents were very unhappy with nearby premises.²⁰⁵ This nexus between local council regulation, the consequent portrayal of sex work businesses, and local resident perceptions has been identified as evidence of the complex relationship between law and morality:

‘The survey findings contribute to the argument that the relationship between law and morality is not oppositional, but that each has the potential to reflect and reinforce the other.’²⁰⁶

²⁰¹ Prior, J. and Crofts, P. (2012). Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use. *New Zealand Geographer*, 68 (2), 130–140.

²⁰² NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 29.

²⁰³ Prior, J. and Crofts, P. (2012). Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use. *New Zealand Geographer*, 68 (2), 130–140.

²⁰⁴ Crofts, P. and Prior, J., 2012. Intersections of Planning and Morality in the Regulation and Regard of Brothels in New South Wales Criminal Justice Special Issue. *Flinders Law Journal*, 14 (2), 329–358, p. 332

²⁰⁵ Ibid, p. 333.

²⁰⁶ Ibid.

Unfortunately, in NSW the moral regulation of sex work has shifted from a criminalised framework to a localised planning framework, exemplifying how ‘moral geographies’²⁰⁷ continue to spatially and socially marginalise sex workers and our workplaces, even within a decriminalised jurisdiction. This shift in moral policing has greatly undermined our ability to be seen as legitimate workers and businesses within the eyes of the State and by extension, our local communities.

The perception of how sex work businesses may impact an area is not proportionate to the amenity impact that they actually have. A NSW study conducted about the nature of complaints that local governments receive about sex work businesses found low volumes of complaints about sex work businesses when compared to other businesses.²⁰⁸ The majority of the complaints centred around the ‘lawfulness’ of businesses operating in a particular zone. Only 3% of the 115 complaints received within the two local government focus areas reference amenity impact.²⁰⁹ Upon investigation, the majority (70%) of the ‘unapproved’ sex work business complaints and every amenity complaint resulted in insufficient evidence to pursue further action.²¹⁰ This data suggests that rather than amenity impact, the greatest concern for members of the community is around perceived non-compliance with local government area regulations, a situation caused by the limiting, unnecessary and stigmatising practices of the governments themselves. Evidence suggesting that sex work businesses negatively impact their local area has been critiqued for its limited validity and reliability, as findings are based on ‘subjective assumptions [...] rather than empirical data’.²¹¹

It is important that the Queensland government takes a consistent, non-discriminatory and evidence-based approach to planning at a state level for sex work. Any implementation of discriminatory separation distancing regulations is incompatible with the full decriminalisation of sex work and will be weaponised against businesses already operating discreetly in built-up and high density centre zones.

34. Should there be consistent planning codes across Queensland for home-based sex work businesses, or should local governments have discretion to set the categories of assessment in their local government area?

Neither. The category of ‘home-based business’ is inadequate for home-based sex work businesses due to the workplace health and safety requirements of operating a home-based sex work business. The ‘home-based business’ category compels private sex workers to reside in the dwelling from which they operate their business; sex workers deserve to have the choice of privacy and the separation of our home and work environments, and we should not be forced to live in our workplaces if we want to operate independently.

²⁰⁷ Prior, J., Crofts, P., and Hubbard, P., 2013. Planning, Law, and Sexuality: Hiding Immorality in Plain View. *Geographical Research*, 51 (4), 354–363.

²⁰⁸ Eva Cox “UTS Students’ Research on Home Occupations,” UTS Student Project Under Supervision of Eva Cox, Nov 2003 <http://www.scarlettalliance.org.au/library/cox_03>

²⁰⁹ Ibid, p.23.

²¹⁰ Ibid, p.16

²¹¹ Crofts, P. and Prior, J., 2012. Intersections of Planning and Morality in the Regulation and Regard of Brothels in New South Wales Criminal Justice Special Issue. *Flinders Law Journal*, 14 (2), 329–358, p. 333.

Currently, private sex work workplaces in Class 1 and Class 2 buildings in Residential Zones represent up to 60% of the sex industry in Queensland. They fit inconspicuously into residential zones. Police should have no rights to enter, question or arrest people on the basis of sex work-specific laws and powers.

To mitigate these issues, the 'Material Change of Use' regulations that currently covers the privacy of DV shelters should be amended to include private sex work. This will provide the needed confidentiality protection for private sex workers in solo and collective workplaces in residential areas.

In NSW, the discretion granted to local governments has resulted in unfair, inconsistent and discriminatory practices.²¹² In many cases local governments have either prohibited sex workers from operating in residential areas or relegated us to industrial zones. This approach has resulted in burdensome regulations which are difficult, unsafe and at times, completely impossible for home-based sex work businesses to comply with. It is important that the QLRC recommends that the Queensland government takes steps to prevent this discriminatory approach from being replicated in their state. The NSW Sex Services Premises Planning Advisory Panel has highlighted that 'establishing planning controls which are reasonable (rather than unnecessarily restrictive) is likely to result in a high proportion of sex service premises complying with council requirements, with corresponding benefits to council operations, the local community and health service providers'.²¹³

35. Should home-based sex work businesses have the same planning requirements as other home-based businesses (and therefore be able to operate without a development approval if the requirements for accepted development are met)?

Not applicable. The category of 'Home-based' is not a good fit for private sex work.

Private sex work can involve one or more sex workers operating from our primary residence or from a different residence that we do not live in. Sex workers choose to work in this setting for safety, familiarity, control over our workplaces and to share costs with other workers.

Evidence shows that in NSW home-based sex work generally does not have the same amenity impact as other businesses; they have less. Private sex workers in residential zones are discreet and have lower or minimal impact on the neighbourhood compared to other home-based businesses.²¹⁴ This is demonstrated by the 'negligible' number of complaints made about home-based sex businesses to local government areas in NSW.²¹⁵ In many cases, the surrounding community is unaware that home-based sex work businesses are operating in their area.²¹⁶

It is important to note that private sex work should be able to operate without development approval even if sex workers are working in a space that is not their permanent residence. Working

²¹² Prior, P., 'Not in my neighbourhood: Home businesses (sexual services) and council responses' (2003) 9 *LGLJ* 10, p. 13.

²¹³ Sex Services Premises Planning Advisory Panel (2004). Sex services premises: planning guidelines. NSW: NSW Department of Planning. Pg ii.

²¹⁴ Minister for Innovation and Better Regulation.

²¹⁵ M. O'Mullane, 'The Subversion of Progressive Intent; The realities of sex work policy: When and how it is enforced', Sydney, Touching Base Incorporated.2015. p.18.

²¹⁶ Eva Cox "UTS Students' Research on Home Occupations," UTS Student Project Under Supervision of Eva Cox, Nov 2003 <http://www.scarletalliance.org.au/library/cox_03>

from a different residence is a safety strategy that sex workers employ to support our privacy, anonymity and safety. Although this doesn't currently meet the requirements for accepted development in Queensland, it is integral that sex workers are not forced to apply for development approval if we wish to work in a co-operative residential space with other workers (or by ourselves). This is a further aspect of why private sex work in Residential Zone Class 1 and Class 2 buildings should be covered by Schedule 6, Part 2, Section 2, (1) of the *Planning Regulations (2017)*.

Imposing a development approval requirement on private sex work would force sex workers to connect our legal names to our work with a local authority in order to work in an environment that is familiar, safe and discreet. This is yet another replication of the licensing system and an unnecessary breach of our privacy. The negative effects of implementing an approval or permit system for private sex workers is disproportionate to the proven social and amenity impacts.²¹⁷ Data from NSW also suggests that imposing approval requirements on private sex workers in residential zones has not 'produced workable policies that sex workers can, or are willing to, comply with.'²¹⁸

The *SPPG Guidelines* note that there are 'no known advantages of councils requiring a permit or development consent application from home-based [private] sex workers.'²¹⁹ The *SPPG Guidelines* do outline the following significant disadvantages that arise when home occupation sex workers are forced to apply for council approval:

'Sex workers are unlikely to comply as a permit reveals sex workers' addresses, making them vulnerable to abuse and violence from the public and coercion from operators of larger premises. As a result, home occupations may continue to exist illegally within council areas, exposing sex workers to criminalisation and isolating us from sex worker peer support and health services.'²²⁰

'It is inequitable as there is no evidence that home occupation sex work has any more impact than other home occupations e.g. an architect working from home, accountant, tax agent, photographer etc.'²²¹

'The low, or negligible, impact does not warrant the need for a permit, which involves considerable cost and time and raises the possibility of neighbour objections.'²²²

Forcing registration is also contrary to achieving the best public health outcomes for sex workers. As the 2001 Report of the Brothels Taskforce states:

'The identification of individual sex workers through the development application process is also contrary to the recommendations of the Legal Working Party of the Intergovernmental

²¹⁷ Godwin, J. 2012. Sex work and the law in Asia and the Pacific, p. 19

²¹⁸ B. Donovan et al. *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health, Kirby Institute*, University of New South Wales, 2012, Sydney, cited in O'Mullane, M., 'The Subversion of Progressive Intent', p.18.

²¹⁹ Sex Services Premises Planning Advisory Panel (2004). Sex services premises: planning guidelines. NSW: NSW Department of Planning. p. 54.

²²⁰ Ibid.

²²¹ Ibid.

²²² Ibid.

Committee on AIDS Organisations (AFAO) and the AIDS Council of NSW. Such requirements are also counter to the UN Declaration of Commitment on HIV/AIDS, 2001.²²³

36. Should separation distances apply to home-based sex work businesses? If yes, what land uses should require a separation distance (for example, schools, childcare centres, places of worship)?

No. There should be no separation distances between private sex work, sensitive land uses and residential dwellings. The argument for distancing private sex work from 'sensitive land uses' is based in stereotypes and misunderstandings of sex work rather than evidence. Sex workers choose to operate in low-key Class 1 and Class 2 buildings because of the familiarity, safety and independence of the working environment. Due to pervasive sex work stigma, a key aspect of our safety is maintaining our anonymity and privacy. As a result, private sex work is conducted discreetly and is not noticeable in residential areas. Research conducted in two Sydney suburbs found that in those residential zones there was limited awareness of home businesses (of any type) *in general*, that there was no awareness of home-based *sex work* (despite there being some in the area) at all, and that the presence of sex workers had no impact on the 'residents' perception of crime'.²²⁴ This evidence speaks to the negligible amenity impact that private sex work has on neighbourhoods as they operate discreetly to maintain anonymity, privacy and safety.²²⁵ If restrictive locational regulations are implemented, it forces us to choose between working in a way that we feel is comfortable and safe, and working legally in compliance with planning regulations. Creating another two-tiered system of sex work within planning law is counterproductive and decreases the safety of sex workers. Using police, licensing or zoning to force sex workers into specific locations or to be non-compliant for safety reasons is not full decriminalisation.

37. Is there a need to limit the number of sex workers, rooms or floor area used for sex work in a home-based business? If yes, is there an appropriate number of workers in a home-based sex work business (who live in the dwelling or otherwise)?

No. It is not necessary to place restrictions on the 'appropriate number of workers' or limit the number of rooms used for private sex work, whether it is one, two or more sex workers, irrespective of whether they live at the dwelling. Collectives are a very common way for sex workers to work, sharing costs and enjoying a greater sense of safety. If a private sex work location is creating amenity impact, there is already methods to address, as is for activity in a residential zone. Local government aims to address amenity impact in a way that is suitable to the specific area. Importantly, when complaint with general amenity impact there should be no additional sex-work specific regulations that make private sex workers non-compliant simply due to the number of people or floor-space being used inside the building.

²²³ M. O'Mullane, 'The Subversion of Progressive Intent; The realities of sex work policy: When and how it is enforced', Sydney, Touching Base Incorporated .2015. p.12.

²²⁴ Eva Cox "UTS Students' Research on Home Occupations," UTS Student Project Under Supervision of Eva Cox, Nov 2003 <http://www.scarletalliance.org.au/library/cox_03>

²²⁵ M. O'Mullane, 'The Subversion of Progressive Intent; The realities of sex work policy: When and how it is enforced', Sydney, Touching Base Incorporated.2015. p. 18

6. Recommendations

6.1 Recommendation: Develop a State-wide planning approach for sex work businesses, and private sex work, prohibit local government from applying their categorising instruments to sex work, and add a provision to prevent local government from creating new laws and policies that discriminate against sex work, similar to the Victorian provision .

6.2 Recommendation: Private sex work, including collectives and private sex workers doing escort bookings to be added into Planning Regulations (2017), Schedule 6, Part 2, Section 2 (1) and therefore permitted, without DA approval or compliance with Home-Business rules, in Class 1 and Class 2 buildings.

6.3 Recommendation: Escort agencies to be covered by existing provisions for 'offices' (in centre zones) and 'home based businesses' in residential zones.

6.4 Recommendation: Massage Parlours to continue as 'health services', or added to Schedule 6.

6.5 Recommendation: Brothels to be added to Schedule 6. Amendments to the Liquor Act to allow brothels to serve alcohol.

6.6 Recommendation: Location size and amenity rules already provide self-regulation of size and number of rooms or workers for sex work businesses. Alterations or decisions about number of rooms will also be influenced by the WHS guidelines once they are in place. If amenity impact is occurring, local government have mechanisms to address this, without discretionary powers.

Part 8: Advertising

Consultation Paper Chapter 13: Advertising sex work

Questions

38. Should there be specific restrictions on the advertising of sex work and sex work businesses? Why or why not?

Sex work specific restrictions on our advertising are unnecessary and discriminatory

No, there should not be specific restrictions on advertising. The *Prostitution Act 1999* (Subdivisions 2 and 3) and the Prostitution Regulation 2014 set out extensive restrictions for advertising of sex work in Queensland and give the PLA discretion to decide the approved form. Advertising restrictions placed upon sex work businesses are likely to breach the *Human Rights Act* under sections 15 and 21.

The repeal of the advertising restrictions which form part of the licensing system in Queensland will be a welcome change for individual sex workers and sex work businesses. Sex workers in Queensland are not allowed to describe services, use certain images, advertise through television or radio, advertise for employees or co-workers, or use specific words. In particular, the word ‘massage’ is prohibited in sex work advertising, and the guidelines even specifically disallow the use of ‘skywriting’ for sex work advertising.

Advertising is a basic necessity for conducting any business successfully and attracting customers, and there are already adequate laws and regulations in the federal advertising standards (as noted in the Consultation Paper) that will apply to Queensland’s sex industry. Importantly, sex work businesses must be able to advertise employment opportunities with transparency and clarity, and sex workers also need to be able to advertise safely and transparently for clients and/or co-workers.

With the passing of the *Sex Work Decriminalisation Act 2022* in Victoria, sex worker advertising is now subject to the same standards as other businesses. The advertising controls for the sex industry changed on 10 May 2022 that mean:

- Services offered will be able to be described in sex work advertisements;
- Sex work advertisements will be able to broadcast or televised;
- Vacant positions for sex workers or other positions that may involve sex work will be able to be advertised. (Deceptive recruitment for commercial sexual services remains a crime); and
- Sex work businesses will be able to use words associated with massage services in advertisements.

The Sex Work Regulations 2016 (Vic) have also been amended, and many of the previous advertising controls no longer apply. Sex work businesses and sex workers can now:

- Publish advertisements without including their licensee or exempt registration number;
- Advertise using partial or full body images;
- Refer to any diagnostic procedures or medical testing undertaken by sex workers;
- Use nude images in internet advertisements; and

- Publish adverts larger than 18 centimetres by 13 centimetres in a newspaper or other publication.²²⁶

Advertisements are still subject to the discretion of the relevant advertising host. Relevant federal and state laws and codes also apply.

Specific advertising regulations are unnecessary and would result in duplication as Commonwealth's Classification (Publications, Films and Computer Games) Act 1995, Radiocommunications Act 1992 and Broadcasting Services Act 1992, already govern various forms of publication and suitable advertising through those channels. Advertising content is further regulated by the Australian Advertising Standards Authority.

Image restriction in advertising

The advertising guidelines prohibit the use of images that contain 'sexual organs or the anus of a person', 'a sexual act or simulated sexual act', 'an adult intended to be given the appearance of a child' and 'animal[s]' in internet advertising.²²⁷ Not only are these restrictions impossible to enforce due to the nature of the internet as the PLA themselves have admitted,²²⁸ but they are broad and subjective enough to mean that the decision on when an image is compliant is completely at the discretion of the PLA staff member or police officer critiquing the advertisement. A pet in the background of a photograph or a hairstyle interpreted as 'childlike' can lead to the entrapment of sex workers.

There should be no restrictions placed upon the images in sex work advertisements.

Using the term 'massage' in sex work advertising

The PLA maintains a list of words and phrases which are not permitted to be used in sex work advertising. This includes the term 'massage' which is specifically prohibited in s 95 of the *Prostitution Act*, preventing sex workers who offer erotic massage from accurately describing our service offerings and therefore impacting our safety. Many erotic massage providers do not also provide other sexual services, which leaves us at a loss for how to accurately communicate to clients that we only offer erotic massage. This confusion leaves sex workers open to feeling pressured into full service by clients who felt misled due to advertising that couldn't include the word 'massage', or to entrapment by police if we try to describe our services using the prohibited words in an effort to protect our safety. Sex workers who are culturally and linguistically diverse and migrant sex workers are particularly vulnerable to violating these laws by accident.

The Consultation Paper states that the intention of s 95 is to 'stop legitimate massage businesses receiving inquiries for prostitution', but this is not based in evidence. Prohibiting the word 'massage' simply forces erotic massage providers to operate in a way that involves negotiations on service offerings with clients in person. This means that clients are accustomed to requesting sexual services from businesses which don't openly offer sexual services, on the understanding that erotic massage

²²⁶ Consumer Affairs Victoria, 'Sex work advertising, licences and signage', 2022, <<https://www.consumer.vic.gov.au/licensing-and-registration/sex-work-service-providers/running-your-business/advertising-licences-and-signage>>.

²²⁷ PLA, Guidelines about the Approved Form for Advertisements for Prostitution (18 August 2021).

²²⁸ QLRC (April 2022). Consultation Paper WP 80, para 13.25.

businesses are forced to operate outside of the law; clients will ask for these services when in the room alone. Remedial massage providers are therefore propositioned for sexual services by customers who believe them to be sex workers, because clear and transparent advertising isn't permitted.

In a statement obtained by the Sex Workers Outreach Program NT, a Darwin remedial massage therapist known as 'L.L.' says:

'I am very happy to be operating my business alongside operators of sex work businesses. In fact it would be helpful to me for such businesses to be able to openly advertise themselves as sex work businesses rather than masquerading as "massage parlours". The benefit to me would be that my own remedial massage business would be less likely to be confused for a sex business by sex work customers. This would be a relief as while I support the existence of sex work, it is a drag to receive calls requesting sexual service by clients who think "massage" means sex work.'²²⁹

Sex workers must be permitted to use any words we choose in our advertising in order to accurately and transparently advertise our services and maintain our safety.

Advertising is key to sex workers conducting our work safely

The ability to advertise is an essential part of conducting business in Australia for all businesses including for small businesses, sole traders and the self-employed. For sex workers, advertising also serves as the start of negotiating boundaries and establishing consent to provide services, which is the first step in forming the contract for a sex work booking. In Queensland, discriminatory controls on sex industry advertising make it difficult for sex workers to advertise in ways that protect our safety and make our services clear. In a recent survey conducted by Respect Inc. of 204 Queensland sex workers, many emphasised the need to accurately describe their services so that the client would know what to expect in the booking. Being able to clearly describe services in the advertising was said to be important to negotiate consent '*so the client knows*', '*so clients clearly understand*', and therefore it would save time during the booking process and improve safety in bookings.²³⁰

Further, the current advertising regime in Queensland allows sex workers to be specifically targeted by police. The PLA publishes advertising guidelines that include approved and prohibited words, and both the PLA and police have powers to issue infringements for non-compliant advertising. The PLA no longer offers assistance to sex workers in making our advertising compliant with regulation since a 2006 review of the legislation by the Crime and Misconduct Commission, where it was found that the process was too much of an administrative burden on the PLA,²³¹ leaving sex worker organisations to take on the sole responsibility of interpreting the confusing guidelines for sex workers who ask for help in making our advertising compliant. Concurrently, after the 2006 review, the PLA increased the

²²⁹ PA2019/0332 - Proposed Planning Scheme amendment, Case study from: Meeting between NTPC Chairman and Scarlet Alliance Australian Sex Workers Association, SWOP NT and SWRG representatives, 11 February 2020.

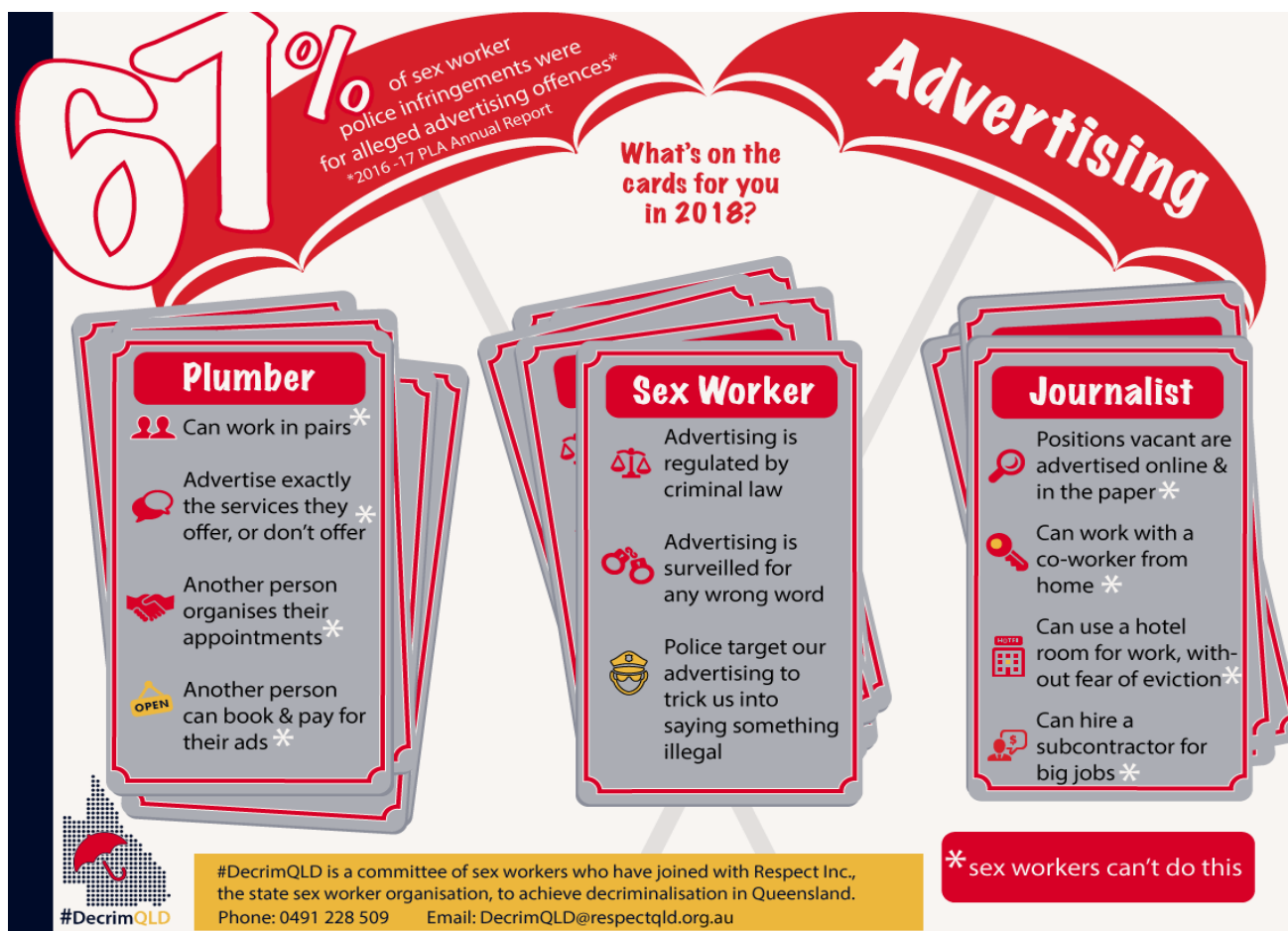
²³⁰ DecrimQLD and Respect Inc, 'Unprotected & Under-reported: synopsis on sex workers' experiences of discrimination and anti-discrimination protections in Queensland', 2022. Accessed at <<https://respectqld.org.au/wp-content/uploads/Documents/SurveySexWorkersQLD22.pdf>>

²³¹ Crime and Misconduct Commission (2006) *Regulating outcall prostitution: Should legal outcall prostitution services be extended to licensed brothels and independent escort agencies?* p. 52.

complexity of the advertising guidelines, adding a further eight recommendations for new requirements and offences regarding the use of the term 'social escorts', and seven recommendations for new offences related to advertising generally. Advertising guidelines act as a trigger for police attention, entrapment and overreach, which furthers the degradation of our trust in police and prevents us from accessing justice for crimes committed against us. For sex work to be seen as legitimate work, it is essential that our business tools, such as advertising, are not subject to specific discriminatory requirements.

Advertising and discrimination

The ability to advertise is crucial to autonomy over our work, and enables sex workers to transition between workplaces or to their own independent business or cooperative workplace. In addition to legislated restrictions on advertising, sex workers in Australia experience discrimination when engaging with advertising platforms. Newspapers, for example, often charge exorbitant rates for adult industry advertisements, extorting sex workers who have no choice but to advertise with them, particularly in rural and regional areas where online advertising is less common. Newspapers may also have arbitrary policies about the content of sex worker advertising. Scarlet Alliance and our member organisations advocate for anti-discrimination protections for sex workers (covered further in Part 10), giving us the ability to challenge such practices. Stable access to nationally-consistent and non-discriminatory advertising standards and stronger protections against price-gouging and discriminatory policy and practice from advertising platforms would be a valuable contribution to sex worker job security in Australia.



DecrimQLD infographic (2018).

41. Should there be specific requirements for signage for sex work businesses? If so, how should they be regulated?

Rules about advertising signage for all businesses already exist.^{232 233} Sex work business signage should be regulated in line with similar industries, provided that a non-discriminatory approach is taken to this regulation and that local councils are not empowered to discriminate against sex industry businesses. Most sex industry businesses and private sex workers prefer discreet signage that allows them to blend into the surrounding land use, as demonstrated above in Part 7.

7. Recommendations

7.1 Recommendation: Do not retain or transfer the current advertising restrictions on sex workers and our businesses.

²³² Edwards, J. (10 July 2018). Guide to Brisbane City Council Signage Regulations. *Brand Hero*.
<<https://brandhero.com.au/guide-to-brisbane-city-council-signage-regulations/>>

²³³ Brisbane City Council. Advertising Signs. *Local Government Toolbox*. Accessed 20/06/2022
<<https://www.lgtoolbox.qld.gov.au/brisbanecitycouncil/topics/other-business/advertising-signs>>

The national Australian framework of advertising and broadcasting regulation is adequate for sex industry businesses; additional regulation on sex industry businesses which does not apply to other businesses is unnecessary, discriminatory and inconsistent with the intent of decriminalisation.

7.2 Recommendation: Allow sex workers to advertise our services clearly and transparently, including imagery, wording and use of the term 'massage'.

There must be no restrictions on the terminology used in sex work advertising in order to maintain the workplace health and safety of sex workers and ensure the ability to negotiate consent.

7.3 Recommendation: Allow sex work businesses to accurately advertise job opportunities.

Sex workers and sex work businesses, must be able to advertise employment opportunities with transparency and clarity. Sex workers also need to be able to advertise safely and transparently for coworkers and staff.

Part 9: Street-based sex work

Consultation Paper Chapter 14: Public solicitation

Questions

42. Should a person be prohibited from publicly soliciting for sex work? Why or why not?

No, retaining any criminal offences that target street-based sex workers fails to meet the government's commitment to decriminalisation.

As noted in the Consultation Paper, street-based sex workers make up a very small proportion (2%) of the Queensland sex industry. Singling us out for ongoing criminalisation will only continue to marginalise us and from an evidence standpoint, this is completely unjustifiable. The government must adopt an evidence-based approach when implementing decriminalisation. Stigma against street-based sex workers is rooted in moral panic rather than empirical evidence. Historical and contemporary public representations of street-based sex workers fuel the misconception that street-based sex workers are deviant and a threat to communities and children; these representations express a deep misunderstanding as to why we may choose to conduct street-based sex work. For many of us, especially sex workers who are parents or who live with disability or mental illness, street-based sex work is an accessible way to work, as we set our own hours, rates, and location of work and it involves low business overheads. Ultimately, we are workers, who like other workers aim to work in ways that are the most suitable for us and our clients. Due to the pervasive nature of sex work stigma and being targeted by the public and police, this suitability always involves discretion, as we want to work in the safest and least intrusive way possible.

The criminalisation of street-based sex work relies on the dual representation of our work as in need of either 'punishment' or 'rescue', where we are either demonised or condescended to by the law. Neither approach supports our autonomy, health, safety or ability to access our industrial rights. Rather, retaining any criminalisation of street-based sex work will perpetuate significant barriers for street-based sex workers to reporting crime or exploitation to the police, for fear that reporting will result in charges being laid against us. The criminalisation of street-based sex work:

- Forces street-based sex workers to operate covertly to avoid detection by the authorities as the work we do is regarded as criminal activity;²³⁴
- Forces street-based sex workers to take greater risks to avoid detection, such as working alone, only at night, and in poorly-lit, isolated areas, increasing our vulnerability to violence;
- Creates barriers for outreach workers to deliver essential harm reduction programs, such as condom distribution and the needle and syringe program, as street-based sex workers are reluctant to use services in fear that it may lead to further discrimination and stigmatisation or being reported to the police;²³⁵

²³⁴ E. Albright and K. D'Adamo, 'Decreasing human trafficking through sex work decriminalization', *AMA journal of ethics*, vol.19, no.1, 2017, p.123.

²³⁵ Ibid, p.123.

- Results in soliciting charges being recorded in street-based sex workers' criminal records which can greatly undermine street-based sex workers' access to alternative work, government assistance, or training opportunities;²³⁶
- Forces street-based sex workers to work more frequently, for longer hours, and take greater risks to pay off soliciting fines;²³⁷ and
- Decreases our ability to employ safety strategies such as screening and negotiating with clients, working in places that are familiar and accessible, and working alongside peers.

Maintaining a stigmatised approach to street-based sex work is counter-productive to broader public health initiatives. The *Eighth National HIV Strategy Plan 2018-2022* identifies stigma as a key barrier to an effective public health response, as it has 'a significant impact on health outcomes as well as relationships and employment prospects and can lead to social isolation and mental ill health'.²³⁸ An enabling environment free of stigmatisation and criminalisation is essential to ensuring that street-based sex workers have access to the same levels of healthcare and support as all members of the sex worker community.

Any legislation that allows police to continue to regulate any part of the Queensland sex industry – particularly where it targets marginalised sex workers for ongoing monitoring by law enforcement – will continue to force street-based sex workers to prioritise avoiding the police over our own health and safety. This is an important opportunity for the Queensland government to take a positive, evidence-based and human rights-aligned approach to street-based sex work. The benefits of decriminalisation must be available to all sex workers, and must not leave any sex workers criminalised, stigmatised or subject to police enforcement and targeting.

44. If public solicitation is prohibited, how should this be regulated? For example, by:

- (a) laws that are about sex work;**
- (b) local laws;**
- (c) some other form of regulation?**

Regulations specifically criminalising the movement of street-based sex workers create barriers to workers accessing justice, health and social services. Street-based sex workers do not actively seek to carry out our work near places of worship or children. Instead, we aim to perform our work in locations which are most familiar to us, safe and accessible to clients and peers, and discreet. This approach also fails to consider that many communities integrate these types of land uses in mixed-use zones, and it may be impossible to avoid travelling past or through them to get to a location where clients and sex workers generally meet. Any singling out of sex workers under Queensland law is not consistent with decriminalisation. As explored in detail in Part 7, when the regulation of sex work is placed in the hands of local councils, discriminatory and inconsistent regulations arise. Under no circumstances should local councils be granted the power to create specific zoning regulations for street-based sex work.

²³⁶ Ibid, p.124.

²³⁷ Ministry of Justice. (2008). Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act 2003. *New Zealand: New Zealand Government*. p130.

²³⁸ Department of Health, 'Eighth National HIV Strategy Plan 2018-2022', *Australian Government*, 2018, Canberra. p. 30.

Victoria has retained certain offences in relation to street based sex workers in certain location, during certain hours and prescribed holy days. Offences in the Summary Offences Act 1966 mean street based sex workers can't legally work at or near places of worship, schools, children's services and education and care services at specified times and on prescribed days. This has caused confusion among street based sex workers in which location they can work and when their work is and isn't permissible. Street based sex workers are expected to know when it is one of the 12 prescribed days they are not legally permitted to work. The penalties remain significant for breaching these laws with police retaining discretion over whether you are issued with an on the spot fine of 2 penalty units or charged resulting in fines of up to 60 penalty units (\$10,904.40) or up to 6 months imprisonment. There is no clarity on what will result in an on the spot fine or a charge.

One of the government's stated intent of decriminalisation was to remove discriminatory laws and improve safety and access to justice by removing police as regulators of the sex industry. These new laws mean that police can continue to surveille, criminalise and entrap street based sex workers, resulting in the same issues regarding threat to safety and lack of access to justice for street based sex workers. Street based sex workers in Victoria continue to be subject to discriminatory and unjust laws.

**45. Should a police officer be able to direct a person suspected of soliciting to 'move on'?
If yes, in what circumstances should an officer be able to give this direction?**

No, section 46(5) of the *Police Powers and Responsibilities Act 2000* should be repealed. The full decriminalisation of sex work must include street-based sex workers in all circumstances. Allowing police to retain any powers to criminalise sex workers, even if under the guise of a 'move on' order is counter-productive to the benefits of decriminalisation. If Queensland were to repeal 'public solicitation' offences whilst maintaining 'move on' orders for a person 'suspected of soliciting', this would clearly still place street-based sex workers at risk of police targeting and criminalisation.

Move on orders are also subject to general criticism, as they are often used by police inappropriately to target marginalised groups who have a 'noticeable' street presence, such as people with precarious housing, people who use drugs, trans and gender diverse people, people of colour, people with disability and mental illness, Aboriginal and Torres Strait Islander People, young people, queer people and sex workers. Evidence suggests that Queensland police misuse their 'move on' powers to enact state violence and maintain the 'status quo' against already marginalised communities, including street-based sex workers.^{239 240 241} Street-based sex workers must not be left behind during this process of decriminalisation in Queensland. Our work, workplaces and clients must be completely decriminalised, including repealing provisions that allow police to target us with move-on or loitering offences.

²³⁹ Spooner, P., 2001. Moving in the wrong direction: an analysis of police move-on powers in Queensland. *Youth Studies Australia*, 20 (1), 27–31.

²⁴⁰ Taylor, M. and Walsh, T., 2006. Nowhere to go: The impact of police move-on powers on homeless people in Queensland.

²⁴¹ Mullins, R., 2015. Police misconduct in Queensland: A public wrong. *University of Queensland Law Journal*, The, 34 (2), 287–299.

8. Recommendations

8.1 Recommendation: Do not retain or transfer public solicitation offences or the criminalisation of street-based sex work.

Repeal all legislation that criminalises street-based sex work in favour of an evidence-based approach to maximise street-based sex workers' access to services and human rights. The small size of the street-based sex worker population and the extremely low number of related historical offences do not justify the suppression of our human rights.

8.2 Recommendation: Repeal s 46(5) of the *Police Powers and Responsibilities Act 2000* (Qld) to prevent police targeting of street-based sex workers

Do not allow police to utilise their move-on powers to control street-based sex workers. Move-on orders are frequently used inappropriately by police to disproportionately target marginalised groups.

Part 10: Review of regulatory framework

Consultation Paper Chapter 15: Review of the new regulatory framework

Questions

47. Should there be a requirement in legislation to review the new regulatory framework for the sex work industry within a set period of time after decriminalisation?

There is a need to review the new framework no sooner than five years after implementation. The focus of the review should be the success or challenges of implementing work health and safety and health promotion for sex workers. Respect Inc. should be funded to design the review in partnership with WorkSafe QLD, sex workers should collect the data and the analysis should be led by a partnership of agencies with prominent sex worker membership.

The burden of research is carried by the community who are the subjects. It is unethical to conduct a research project on an industry in transition. It will not create an accurate baseline and is likely to replicate similar research efforts at the beginning of licensing. It can paint a picture of the moment of transition and all the anomalies that occur during change, but is not useful.

9. Recommendations

9.1 Recommendation: A review of the legislation must not occur sooner than 5 years after the full implementation of decriminalisation.

Part 11: Discrimination against sex workers

Consultation Paper Chapter 16: Discrimination against sex workers

Questions

49. Is there anything you would like to tell us about how the Anti-Discrimination Act 1991 could best protect sex workers against unlawful discrimination in light of the decriminalisation of the sex work industry?

The *Anti-Discrimination Act 1991* must include ‘sex work’ and ‘sex worker’ as protected attributes.

In Queensland, licensing and its resultant criminalisation and over-regulation of sex workers operates in tandem with and reinforces generalised stigma that is levied against sex workers. Sex work stigma can ‘be seen as a driving force behind many policies and regulatory frameworks that govern sex work, including criminalisation, licensing and end-demand policies’.²⁴² The development of Queensland’s licensing system and the gradual extension of police powers reinforces sex worker stigma by promoting the idea that the community must be protected from sex workers, rather than viewing them as citizens equally deserving of protection under the law. Stigma against sex workers has been identified as a negative health determinant that affects the mental and physical health of workers,²⁴³ our ability to access non-judgemental health care²⁴⁴ and our access to basic needs like housing, financial security and legal support.

While decriminalisation does break down many of the legal barriers that sex workers face to accessing labour rights, decriminalisation does not eradicate the pervasive stigma surrounding sex work. Sex work stigma is an issue that is informed by the historical and contemporary marginalisation and demonisation of sex work as a moral and social issue that necessitates control and containment. For example, in NSW where sex work has been decriminalised since 1995, sex workers continue to experience systemic discrimination and vilification, which affects our health, wellbeing and access to basic needs such as housing, financial, legal and health services, education and other employment. This shows that even in the absence of laws which heavily regulate or criminalise some or all aspects of our work, discrimination remains a pervasive issue for sex workers. As such, there is currently a bill before the NSW Parliament to provide anti-discrimination and anti-vilification protections for sex workers, using the attributes ‘sex work’ and ‘sex worker’.²⁴⁵

²⁴² Zahra Stardust et al., ‘I wouldn’t call the cops if I was being bashed to death’: Sex work, whore stigma and the criminal legal system’ (2021) 10(2) *International Journal for Crime, Justice and Social Democracy* (advance) 2 (‘Stardust’).

²⁴³ Carla Treolar et al., ‘Rethinking the Relationship between Sex Work, Mental Health and Stigma: A Qualitative Study of Sex Workers in Australia’ (2021) 268 *Social Science & Medicine* 113468.

²⁴⁴ Cecilia Benoit et al., ‘Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers’ (2018) 55(4–5) *The Journal of Sex Research* 457, 458.

²⁴⁵ *Anti-Discrimination Amendment (Sex Workers) Bill 2020* (NSW), accessed at <<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3774>>

In early 2022, Scarlet Alliance made a submission to the ‘Review of Queensland’s Anti-Discrimination Act 1991 Discussion Paper’²⁴⁶ and also published a Briefing Paper titled ‘Anti-Discrimination Protections for Sex Workers in Australia’.²⁴⁷ Further, Scarlet Alliance and Respect Inc. contributed a joint submission to the 2021 Queensland ‘Inquiry into Serious Vilification and Hate Crimes’.²⁴⁸ We encourage the QLRC to review all of these publications.

The importance of robust anti-discrimination protections

Sex workers are a specific group of people who experience direct, indirect, interpersonal and systemic discrimination, which is informed and shaped by pervasive and historical stigma against us. *As a result, we require protections that are more robust than those afforded to the general working public.* The current anti-discrimination and vilification protections for sex workers are inconsistent, inadequate and not inclusive of all sex workers.

The best model for anti-discrimination protections for past and current sex workers must include the protected attributes ‘sex work’ and ‘sex worker’. Explicitly naming these attributes recognises the unique stigma that we experience as sex workers, and that our work is seen differently than other types of work, even where our work is decriminalised. The attributes ‘occupation’, ‘trade’, ‘profession’, ‘calling’, or ‘lawful sexual activity’ do not acknowledge the historical and contemporary marginalisation, criminalisation, and stigmatisation that sex workers experience. Like other marginalised communities, sex workers require equitable law reform which recognises the pervasive and unique effect that sex work stigma has on our lives, health, safety, and standing in the community.

Additionally, protections must include past and present sex workers, families and associates of sex workers, and those presumed to hold a characteristic that is generally imputed to persons who are or were sex workers.

Without vilification protections, sex workers remain without redress against public acts that incite hatred, serious contempt, and severe ridicule towards us.

The inadequacy of ‘lawful sexual activity’

The attribute also fails sex worker complainants and would-be complainants in its restrictive application to the ‘status’ that is a person being a sex worker. It does not provide protection for discrimination committed against a person who is *conducting activities related to sex work*. For sex workers, discrimination can occur both in the course of occupying our sex worker status **and** in the course of the actions we take when sex working – including purchasing advertisements, hiring accommodation, purchasing financial products or services, and other activities. Given the depth of debate surrounding the distinction between status and actions in the available case law for

²⁴⁶ Scarlet Alliance, ‘Review of Queensland’s Anti-Discrimination Act: Discussion Paper’, submission (March 2022), <https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0020/38612/Sub.129-Scarlett-Alliance.-Australian-Sex-Workers-Association_Final.pdf>

²⁴⁷ Scarlet Alliance, ‘Briefing Paper: Anti-Discrimination and Vilification Protections for Sex Workers in Australia’, briefing paper (February 2022), <https://scarletalliance.org.au/library/Anti_Discrim2022>

²⁴⁸ Scarlet Alliance and Respect Inc., ‘Re: Inquiry into Serious Vilification and Hate Crimes’, submission (August 2021), <https://respectqld.org.au/wp-content/uploads/Documents/sub_250821.pdf>

complaints based on the attribute²⁴⁹, it is also clear that the legislation fails to provide clarity or direction to the courts on what, precisely, is included in the attribute.

No exemptions

There can be no loopholes in which it is appropriate or lawful to discriminate against sex workers in any area of public life. Within Queensland, s 28 and s 106C of the *Anti-Discrimination Act 1991* are exemptions that position sex workers as less deserving of protection than other people, are based on misinformation and stigma, and significantly weaken our access to recourse. They also signal to the community that sex workers are less 'desirable' members of the Australian community, which encourages other forms of harm towards sex workers and indifference when we are harmed.

Protect sex workers who have criminal and/or licensing records

Sex work is still criminalised or subject to restrictive licensing regulations in the majority of Australian jurisdictions. As a result, many sex workers may have criminal convictions or licensing records that negatively impact a wide range of aspects of our lives. Having a criminal record can negatively affect our search for other employment, leasing property, and gaining custody of children and in adoption applications, and protections must be accessible to us regardless of the legal environment in which we work. Protections must exist against discrimination based on past criminal or licensing records for sex work, spent convictions and irrelevant criminal records. Criminal convictions or licensing records related to sex work should be expunged.

Discrimination affects our health, safety and access to justice

Sex workers expect to experience stigma when interacting with the legal system, law enforcement, immigration and other government services such as welfare, education and health care. The anticipation of this stigma and the lack of anti-discrimination protections can deter sex workers from accessing these basic services, including deterrence from reporting crimes committed against us and accessing justice in cases where our labour rights are breached.

Respect Inc. and DecrimQLD, the only peer-led sex worker organisations and projects in Queensland, conducted consultations, workshops and online discussions followed by a survey of 204 Queensland sex workers to grasp the scale of discrimination and the barriers to reporting experienced by sex workers. Overall, these processes found that discrimination against sex workers in Queensland is over-experienced and under-reported. The survey found that 72.5% of participants had experienced discrimination and a further 14.2% were unsure if what they had experienced would be considered discrimination. Of those who did experience it, only 9% reported the discrimination. 91% did not.²⁵⁰

These findings align with a national study conducted by Scarlet Alliance in partnership with the Centre for Social Research in Health at UNSW. It recently surveyed 647 sex workers in relation to stigma and discrimination. Within this survey, 96% of participants reported experiencing any stigma or discrimination related to their sex work within the last 12 months, including 34% who indicated

²⁴⁹ *GK v Dovedeen Pty Ltd and Anor* [2012] QCATA 128, *Payne v APN News & Media* [2015] QCAT 514, *Payne v APN News & Media* [2016] QCATA 140

²⁵⁰ DecrimQLD and Respect Inc, 'Unprotected & Under-reported: synopsis on sex workers' experiences of discrimination and anti-discrimination protections in Queensland', 2022. Accessed at <<https://respectqld.org.au/wp-content/uploads/Documents/SurveySexWorkersQLD22.pdf>>

that this ‘often’ or ‘always’ occurred. 91% of participants reported any negative treatment by health workers, including 24% who indicated this ‘often’ or ‘always’ happened.²⁵¹ In 2015, research by CSRH found that 31% of health workers self-reported they would behave negatively toward sex workers because of their sex work. Among the general public, 64% self-reported they would behave negatively toward sex workers because of their sex work.²⁵² This widespread discrimination is a result of deeply embedded stigma and the criminalisation of sex workers.

Sex work stigma and discrimination compounds differently for sex workers from other marginalised communities who are routinely targeted by police, the media and the general public, and for sex workers who are parents, use drugs, are young or work as street-based sex workers.²⁵³ For Aboriginal and Torres Strait Islander sex workers, racism further exacerbates sex work stigma as they already ‘face targeted police interaction and disproportionate rates of incarceration’.²⁵⁴ Migrant sex workers experience racialised sex work stigma as well, often based on assumptions that they cannot work independently and thus must be involved in organised crime as victims of trafficking or pimping.

Especially in the wake of decriminalisation, where there may be public backlash, sex workers must have access to robust anti-discrimination protections. This will allow sex workers to access redress if they experience backlash from the public, police and service providers responding to decriminalisation.

10. Recommendations

10.1 Recommendation: Replace the ‘lawful sexual activity’ attribute with the new attributes, ‘sex work’ and ‘sex worker’ in the *Anti-Discrimination Act 1991* (Qld).

10.2 Recommendation: Include ‘sex work’ and ‘sex worker’ as a recognised ‘ground’ for unlawful and serious vilification under s 124A and s 131A of the *Anti-Discrimination Act 1991* (Qld).

10.3 Recommendation: Remove all exemptions that allow for lawful discrimination against sex workers. Specifically:

- s 106C Anti-Discrimination Act – in relation to accommodation providers.
- s 28 Anti-Discrimination Act – in relation to working with children.

10.4 Recommendation: Make the complaints process accessible to sex workers.

Remove the barriers which prevent us from reporting discrimination and following through with complaints. Enable representative organisations such as Respect Inc. to make complaints on behalf of individual sex workers. Both of these measures will protect the privacy and safety of sex workers.

²⁵¹ Centre for Social Research in Health and Scarlet Alliance (2021). Stigma Monitoring Project: Sex Workers. Accessed at <https://scarletalliance.org.au/library/Stigma_Indicators>

²⁵² Centre for Social Research in Health and Scarlet Alliance (2020). Sex Work Stigma Research Collaboration. Accessed at <<https://scarletalliance.org.au/library/Sexworkstigmaresearchcollaboration>>

²⁵³ Z. Stardust et al., ‘I wouldn’t call the cops if I was being bashed to death’: Sex work, whore stigma and the criminal legal system’, *International Journal for Crime, Justice and Social Democracy* (advance)(2021), vol.10, no.2, 2021.

²⁵⁴ Ibid.

Part 12: Implementation of decriminalisation

Consultation Paper Chapter 15: Review of the new regulatory framework

Questions

50 What are the potential impacts of a new framework for the sex industry?

Decriminalisation of sex work is recognised as the best practice model of sex industry regulation. Evidence from jurisdictions where decriminalisation has been implemented have demonstrated the positive impacts of a decriminalised framework. Decriminalisation has improved workplace, health and safety for all sex workers and improved sex workers ability to access justice and police in the event of a crime. Without the threat of criminal sanctions, sex industry workplaces have greater capacity to implement WHS strategies and policies. Decriminalisation also means sex workers are better able to assert our WHS rights.

Decriminalisation is mistakenly understood to be an absence of regulation. Instead decriminalisation is a whole of government response, resulting in greater transparency, and a low cost, high compliance model. reduced administrative and cost burden on the sex industry and the government

- Reduced annual cost for government (licensing authority funding)

Evidence demonstrates that decriminalisation does not increase the size of the sex industry. In NSW, the Law and Sex Worker Health (LASH) report shows that the number of sex workers in Sydney brothels in 2011 was similar to estimates from 20 years ago. Research evaluating the impact of decriminalisation in New Zealand, five years after the enactment of the *Prostitution Reform Act 2003*, also provides strong evidence that decriminalisation does not lead to an increase in the size of the sex industry.

Instead decriminalisation removes barriers to BBV and STI prevention, treatment, testing and health. It amplifies opportunities for health promotion and peer education. Decriminalisation improves workplace health and safety and access to human, civil, and industrial rights. Favourable experiences of decriminalisation in NT, NZ and New South Wales demonstrate that decriminalisation supports sex worker self-determination, maximises compliance, increases transparency, reduces police corruption and minimises discrimination.

However, all this could be undermined if in the process of decriminalising sex work, familiar frameworks of surveillance, control, and discrimination are replicated. These frameworks are entrenched in the longstanding licensing environment that has been in place in Queensland since 1999. Decriminalisation will only be effective if it is full decriminalisation for all sex workers. The full decriminalisation of sex work is *the removal of all criminal and licensing laws specific to sex work, sex workers, and our workplaces, clients and third parties*. This enables existing laws, industrial protections and regulatory mechanisms to be applied to sex work where they are appropriate to support the rights, privacy and workplace health and safety needs of sex workers. For these benefits to be realised Queensland must fully decriminalise sex work and introduce anti discrimination protections for 'sex work' and 'sex workers'.

51. What other supporting measures are needed as part of the decriminalisation framework? For example:

- (a) education and training;**
- (b) steps to build positive relationships between sex workers, police and other authorities;**
- (c) peer support and outreach services for sex workers on health and other matters.**

Decriminalisation is the first step, but sex workers must be supported to contribute to law and policy development that impacts on our work. The success of decriminalisation relies not only on legislative change, but also on effective implementation and communication.

Queensland's sex worker organisation, Respect Inc., will play a key role in both engaging sex workers with the process of legislative change and implementation. As part of this phase, resourcing will be needed to ensure sex workers and a wide range of sex industry businesses are aware of their changing rights and responsibilities, including WHS rights for sex workers and responsibilities for businesses. Communication is essential for the government and police to understand the impact of the laws.

Educate government, community, and law enforcement

The government should work with the sex worker community, Respect Inc. and Scarlet Alliance to ensure all relevant agencies involved in the regulation of sex work are educated about both the intent and implementation of decriminalisation. This must include ongoing work to ensure police are informed about decriminalisation, and have awareness of their changed role under decriminalisation and awareness of the new legislative framework.

Similarly, the government should work closely with sex workers and our organisations to communicate rights and responsibilities under decriminalisation to both sex workers and sex industry business owners, and promote understanding of the changes involved.

There will be a need for funding to be provided to Respect Inc. to produce and lead the following education and training suggested by the Consultation Paper:

1. Public education and awareness programs to address stigma and educate the community about sex workers;
2. Peer education, information and training for sex workers and sex work business operators on their rights and obligations; and
3. Sensitivity education and training programs for officials and organisations who deal with sex workers.

Remove all possibilities for police and other authorities to target sex workers

For our relationship with the police and other authorities to improve in Queensland, it is essential that the government completely remove police as the regulators of our industry. Without this, police will continue to occupy the dual role of prosecutor and protector, which evidently does not benefit our workplace health and safety or access to justice. Negative relationships between sex workers and police or other authorities (such as public health officials or immigration authorities), can also be compounded by our intersectional experiences of state violence, brutality, targeting and marginalisation. Therefore, even in the event of full decriminalisation, our relationship with police will continuously be marred if we are a part of other marginalised communities that experience state targeting, such as migrant workers, people who use drugs, Aboriginal and Torres Strait Islander People, people with disability, trans and gender diverse people, queer people and people of colour. Police and other authorities must work with the guidance of Respect Inc., and provide funding for the ability to engage diverse community members for consultation and outreach. Ultimately, retaining any discriminatory regulation of our work in Queensland will severely undermine our relationship with police.

Work with sex worker peer organisations throughout the implementation process

The government should prioritise partnerships with Respect Inc., Queensland's recognised peer-run sex worker organisation, and Scarlet Alliance, to ensure ongoing consultation with sex workers and an effective policy feedback loop between government and sex workers throughout the decriminalisation process. This includes working with us to ensure access to pathways and mechanisms relating to anti-discrimination protections, industrial protections and WHS, and enactment of active initiatives around stigma and discrimination.

11. Recommendations

11.1 Recommendation: Educate government, community, and law enforcement by working with and resourcing sex worker community organisations.

11.2 Recommendation: Remove all possibilities for police and other authorities to target sex workers.

11.3 Recommendation: Work with sex worker peer organisations throughout the implementation process.

Part 13: Other matters

Consultation Paper Chapter 17: Other matters

Questions

52. Is there anything else you would like to tell us about these or any other matters raised by the terms of reference to ensure the legislative framework for decriminalisation is appropriate and effective?

a) Brothels serving alcohol

Currently sex industry businesses in Queensland cannot serve alcohol. A person who has a Liquor Act licence or permit under the Liquor Act 1992 cannot be a brothel licensee.

As part of decriminalisation of sex work in Queensland it will be necessary to consider amendments to the Liquor Act 1992 and its regulations or codes to permit sex industry businesses to be eligible to apply to serve alcohol at their business.

b) Strippers should not be excluded from the review

Strippers work in a variety of locations in Queensland including from licensed venues or strip clubs. While Adult Entertainment permits cover the people who work in these licensed venues they explicitly state they do not authorise contact and non-contact activities including: masturbation, oral sex, sexual intercourse, touching genitalia, penetration, placing genitalia or anus close to a person's face and soliciting for prostitution. This leaves strippers criminalised under the current laws. It is our strong belief that sex workers, regardless of their work setting, should be decriminalised through this review in line with the intention of the TOR as outlined on our response to Q.4.

Currently, it is necessary to apply for an Adult Entertainer Permit. This includes a suitability certification process that requires the Commissioner to consider if a person has been charged under the Prostitution Act in order to decide '*whether an applicant for an adult entertainment permit is a suitable person to hold an adult entertainment permit*', meaning a person could potentially be refused a permit on this basis, including for historic charges.

The Liquor (Approval of Adult Entertainment Code) Regulation 2002²⁵⁵ states that the Code must be 'read and construed with the *Criminal Code Act 1992*, *Prostitution Act 1999*, *Prostitution Regulation 2000*, *Liquor Act 1992* and *Liquor Regulation 2002*' and notes that where there is any discrepancy those Acts prevail over the Adult Entertainment Code.

For this reason we assert that the Liquor Act, Regulations the Adult Entertainment Permit and the Prostitution Act and Regulations are currently intertwined and the decriminalisation of sex work will require consideration and amendment of the Liquor Licensing Act and Code. At which time the decriminalisation of sex workers should also be progressed through an amendment to the Act.

²⁵⁵ Liquor (Approval of Adult Entertainment Code) Regulation 2002.
<<https://www.legislation.qld.gov.au/view/pdf/inforce/current/sl-2002-0229>>

c) Expungement of criminal records

Sex workers in Queensland have been charged for offences related to implementing basic safety strategies and offences which are unlikely to be compatible with the Queensland Human Rights Act. This has often been the result of working in pairs or from the same accommodation as another sex worker, employing support staff, driving each other to a booking or being deceived into offering an illegal service by an undercover police officer. Offences that should never have been illegal.

The burden of criminalisation has taken a heavy toll on sex workers health (including mental health) and well-being and reduced sex workers access to justice.

Unless these offences are expunged sex workers employment in other occupations will be negatively impacted, some for the remainder of their lives.

An example is the most common charges under the Criminal Code 229H 'knowingly participate in the provision of prostitution' can then exclude a person from a taxi, bus or ferry licence under the Transport Operations (Passenger Transport) Act 1994 (Qld). 'Prostitution' offences are also 'disqualifying offences' under the Disability Services Act 2006 (Qld), Introduction Agents Act 2001 (Qld), Liquor Act 1992 (Qld) for an Adult Entertainment licence. Others are exclusions for Working with Children (Risk Management and Screening) Act 2000 (Qld).

As part of the shift to recognising sex work as work expungement of 'prostitution'-related offences are an important aspect as they were for gay men in relation to 'homosexual sex offences'. Decriminalisation is a major policy shift in Queensland and sex workers should not be impacted in employment, travel and career options by a criminal record for sex work.²⁵⁶

d) Human Rights

Queensland sex workers' human rights are currently impacted by sex work specific laws that limit or remove those rights. The Prostitution Act, Criminal Code and Police Rights and Responsibility Act laws have not been reviewed for compatibility with the 23 rights that have protected Queenslanders since 2020 in the Human Rights Act (Qld) because the laws are not retrospective. However, the new decriminalisation framework will need to be measured for compatibility with these human rights. While human rights are not absolute in Queensland they should only be limited after careful consideration and only in a way that is 'necessary, justifiable and proportionate'. It is our opinion that the human rights of sex workers, a community that experiences high levels of stigma and discrimination, should not have our human rights limited in the law that results from this review process.

e) Implementation of decriminalisation should not be split

The implementation of decriminalisation should not occur in a staged process such as in Victoria. The splitting of the reforms into two stages has caused confusion and led to unintended consequences. From our experience in VIC, it has become apparent that sex workers, business owner/operators, the general public and even some government departments are unclear about certain aspects of the reforms resulting in misinformation and negative consequences. Additionally there are

²⁵⁶ Burke, G. (11 May 2017). Queensland makes apology for past gay sex laws. *ABC News*.
<<https://www.abc.net.au/news/2017-05-11/queensland-parliament-makes-apology-for-past-gay-sex-laws/8518158>>

misconceptions as to what is and what isn't currently in force. Some sex workers such as private sex workers who have mistakenly believed that all sex work is now decriminalised, are currently operating illegally until Stage 2 and are at risk of being arrested and fined. There have also been unintended impacts in the legislation whereby parts of the legislation that was intended to be repealed, were in fact not repealed for all sex workers due to conflict with remaining reforms that will come in to effect at Stage 2. For example, the beneficial public health reforms that were intended to benefit all sex workers in Stage 1 does not apply to private sex workers as they are still classified as a 'brothel or escort agency' according to the Sex Work Act 1992 that has yet to be repealed in full.

12. Recommendations

12.1 Recommendation: Decriminalisation of sex work should consider eligibility for sex industry businesses to serve alcohol. This will require consideration of amendments to the Liquor Act 1992 and its regulations or codes.

12.2 Recommendation: All sex workers must be included in the framework including strippers. An amendment to the Liquor Act and Liquor Regulations and the Liquor (Approval of Adult Entertainment Code) Regulation 2002 will be necessary to achieve this.

12.3 Recommendation: The decriminalisation Bill that results from this process must expunge criminal records related to 'prostitution offences'. Failure to do this will exclude sex workers from a range of employment options, opportunities for travel and impacts of discrimination in a range of areas of our lives.

12.4 Recommendation: Queensland's decriminalisation framework should provide sex workers with full access to the human rights protections in the Human Rights Act 2020 (Qld). No laws applicable to sex work or the sex industry should limit these basic human rights.

12.5 Recommendation: Decriminalisation of sex work should be implemented immediately following the passing of the Queensland Sex Work Decriminalisation Act and should not occur in a staged process as has happened in Victoria resulting in confusion, misinformation and unintended negative consequences. If decriminalisation of sex work is properly implemented, all of the reforms can be planned to commence on one date, resulting in greater efficiency, efficacy and consistency in the roll out of decriminalisation in Queensland.

Part 14: Fraudulent non-payment of sex workers is sexual assault

Consultation Paper Chapter 18: Fraudulent promise to pay a sex worker for a sexual act

Questions

53. In a decriminalised sex work industry, are Queensland’s criminal laws adequate to deal with circumstances where there is a fraudulent promise by a person to pay money to a sex worker in exchange for a sexual act? Why or why not?

Queensland’s criminal law is currently inadequate to prosecute perpetrators for the non-payment of sex work services. Sex workers agree to conduct bookings with clients on the basis of payment, whether that be money or other goods and services. When a client refuses to fulfil this agreement, whether by withdrawing/cancelling payment or by misleading us into believing a payment was made when it was not, our consent is induced through fraudulent misrepresentation and thus not freely given. This constitutes sexual assault. Respect Inc., our Queensland member organisation, further explains how non-payment amounts to sexual violence:

*In sex work, a key aspect of consent for sexual services is payment for the services negotiated. If payment is not made or withdrawn, whether or not the sex worker is yet aware, consent is also withdrawn. When the payment and therefore consent is breached access to a person’s body and sexual labour is sexual violence.*²⁵⁷

The Criminal Code section 348(2)(e) currently states that consent is not “freely and voluntarily given” if it is obtained “by false and fraudulent representations”. While this technically captures non-payment, pervasive sex work stigma can greatly impact how we are perceived as victims/survivors of sexual assault by police, which in turn affects how s 348(2)(e) is interpreted and enforced by police. Currently, there is widespread misunderstanding about whether the non-payment of sex workers amounts to sexual assault, with police and legal officers often mischaracterising non-payment as ‘fraud’. ‘Even sex workers who surmount the significant barriers to reporting rape or sexual assault are being told by police, ‘I don’t see the crime,’ or ‘It is a civil, not a criminal, matter.’”²⁵⁸

Elena Jeffreys, State Coordinator of Respect Inc., describes police responses to sex workers reporting sexual violence in Queensland as a ‘lottery’, which is dependent on the ‘skills, knowledge and attitude’ of police.²⁵⁹ Jeffreys further provides that ‘generally, it’s a bad experience and sex workers need to attempt to report the crime several times before identifying a supportive police officer.’²⁶⁰ Alternatively, a sex worker may be treated so poorly by the police that they decide not to proceed at

²⁵⁷ Respect Inc. Submission to Legal Affairs and Safety Committee, *Inquiry into Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020* (12 January 2021)

²⁵⁸ Transcript of Proceedings, Public Hearing - *Inquiry into Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020* (Legal Affairs and Safety Committee, 21 January 2021) 24 (Elena Jeffreys)

²⁵⁹ Georgie Wolf, ‘No justice for sexual assault victims: Sex workers ‘less than citizens’ (17 January 2019) *Archer Magazine* <<https://archermagazine.com.au/2019/01/no-justice-sexual-assault-victims-sex-workers-less-citizens/>> (‘Wolf 2019’)

²⁶⁰ *Ibid.*

all.²⁶¹ As sex workers, our interactions with others can shift dramatically if we disclose our work. Sex workers have described this shift occurring with police to negative effect:

*"I had to engage with the police in reporting [of a sexual assault] ... as part of reporting it, it became clear to the police that I was a sex worker ... and a lot of things were said to me during that time that were completely unacceptable and I noticed it was just like everything is going along and you're being treated with respect and then just you know, click your fingers and all of a sudden, everything is very different ... I was really just treated with no dignity, with no humility, with no respect (Focus Group 3)"*²⁶²

"Where's the crime? What is it you want from us?" the police officer asked.... "I said, there has to be a crime, it's sexual assault. It doesn't matter that I was getting paid, because even though you're getting paid, you still have the right to say no." Despite this, the officer wouldn't take her statement." (Independent Escort, Brisbane)²⁶³

"I think my experience with the police that day was actually worse than being assaulted.... There was no compassion, no recognition that I'd obviously gone through trauma.... I didn't want to go anywhere near the police system again." (Independent Escort, Brisbane)²⁶⁴

Sex workers' ability to equitably access those reporting mechanisms available to other Queenslanders is paramount to community and public safety. "When sex workers have persisted until they find a supportive police officer who will take their report, it is often found that they are not the only person targeted by this perpetrator."²⁶⁵

Clearly, as long as this 'misunderstanding' persists, perpetrators are emboldened to sexually assault sex workers knowing that they will likely face minor monetary charges at most. If we expect to be turned away from police because non-payment seems like a 'civil/contractual matter', which is an experience shared by many sex workers who have attempted to seek support from police,²⁶⁶ we are unlikely to report. Downgrading sexual assault to 'fraud' serves to perpetuate damaging beliefs that we are 'unrapeable' and not credible victims.

Therefore, within this context of misunderstanding and discrimination, we encourage the QLRC to consider a more directive approach to classifying non-payment of a sex worker as sexual assault under the Criminal Code. As an example, s 348(2)(e) should explicitly recognise within its definition of consent that sex workers do not freely or willingly provide consent when payment for sexual services is withdrawn or not given by including 'or the withdrawal of payment or non-payment of a sex worker' to s 348(2)(e). Explicitly acknowledging non-payment as sexual assault supports sex

²⁶¹ Scarlet Alliance, Australian Sex Workers Association and Respect Inc., *Sex Work Laws and Workplace Health and Safety Symposium Report (Report, 14 November 2018)* p. 9.

²⁶² Z. Stardust et al., 'I wouldn't call the cops if I was being bashed to death': Sex work, whore stigma and the criminal legal system', *International Journal for Crime, Justice and Social Democracy (advance)*(2021), vol.10, no.2, 2021, p. 7.

²⁶³ *Wolf 2019* cited in Jeffreys, E., O'Brien, E., and Fawkes, J., 2019. The Case for Decriminalisation: Sex Work and the Law in Queensland. *Crime and Justice Briefing Paper*, (1), 4.

²⁶⁴ Ibid.

²⁶⁵ Scarlet Alliance, Australian Sex Workers Association and Respect Inc., *Sex Work Laws and Workplace Health and Safety Symposium Report (Report, 14 November 2018)* p. 9.

²⁶⁶ Respect Inc. and Scarlet Alliance Submission to Legal Affairs and Safety Committee, *Inquiry into Human Rights Bill 2018* (26 November 2018).

workers in making complaints and recognises the unique barriers that we face in reporting crime in Queensland.

55. What other factors should we consider (if any) in recommending changes to the criminal law on this issue?

Stealthing

Stealthing involves the non-consensual, intentional misrepresentation of condom use by removal, tampering or misuse of the condom, before or during sexual intercourse. Stealthing compromises the conditions of consent and constitutes sexual assault. Stealthing is gradually being criminalised as a form of sexual assault within Australia, with the ACT becoming the first jurisdiction to explicitly criminalise it in the *Crimes (Stealthing) Amendment Act 2021*.²⁶⁷ In May, Tasmania passed the Criminal Code Amendment Bill (Stealthing) 2022 amending the definition of consent in section 2A of the Criminal Code 1924 to make it plain that there is no free agreement to sexual intercourse in the event of intentional removal or tampering with the condom, before or during sexual intercourse. Victoria is also committed to follow the ACT's lead this year; Premier Daniel Andrews issued a November 2021 press release confirming that his government will 'amend laws to make it explicit that stealthing is a crime'.²⁶⁸ These laws are a positive and necessary progression towards having adequate consent laws. It is important to note again that sexual violence protections will always be undermined by laws which criminalise aspects of our work, because fear of self-incrimination and arrest is a barrier to reporting crimes committed against us at work. Therefore, while the decriminalisation of sex work in Queensland will increase reporting and access to justice, it is important that the *Criminal Code 1899* is amended to explicitly criminalise stealthing.

13. Recommendations

13.1 Recommendation: Amend s 348 of the *Criminal Code 1899* to better recognise the non-payment of sex workers as sexual assault rather than fraud.

Section 348 (2)(e) of the *Criminal Code 1899* states 'by false and fraudulent representations about the nature or purpose of the act'. This must be amended by adding 'or the withdrawal of payment or non-payment of a sex worker'.

13.2 Recommendation: Amend the definition of consent in the *Criminal Code 1899* to explicitly criminalise stealthing.

Section 348 (2) of the *Criminal Code 1899* must be amended to include 'by an intentional misrepresentation about the use of a condom'. This provision should be a criminal offence that applies to all people, not only sex workers.

²⁶⁷ *Crimes (Stealthing) Amendment Act 2021* (ACT). Accessed at <https://www.legislation.act.gov.au/DownloadFile/a/2021-23/20211014-77634/PDF/2021-23.PDF>

²⁶⁸ Premier of Victoria, the Hon. Daniel Andrews. (12 November 2021). *Stronger Laws for Victim-Survivors of Sexual Violence*. [Press Release] <<https://www.premier.vic.gov.au/stronger-laws-victim-survivors-sexual-violence>>