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30 July 2021

To: Women's Safety and Justice Taskforce  
GPO Box 149  
BRISBANE QLD 4001

To the Women's Safety and Justice Taskforce,

Thank you for the opportunity to respond to the Discussion Paper 2: Women and girls' experience of the criminal justice system.

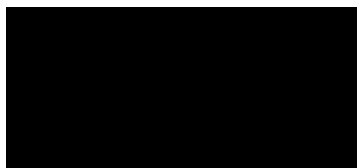
Scarlet Alliance, Australian Sex Workers Association is the national peak body representing a membership of individual sex workers, and sex worker networks, groups, projects, collectives and organisations from around Australia since 1989. Through our objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry, in order for sex workers to be self-determining agents, build their own alliances and choose where and how they work.

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 throughout Australia. Scarlet Alliance represents sex workers on a number of Commonwealth committees and Ministerial advisory mechanisms.

Scarlet Alliance and our members Respect Inc were participants in the recent *Inquiry into Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020* and are pleased to see the formation of the Taskforce to further investigate and seek change in this space. We work alongside Respect Inc., as the voice for Queensland sex workers as the state's sex worker peer organisation, and we strongly endorse their submission on this consultation.

Please find our submission and response to the discussion paper and its questions attached. If you have any questions relating to our submission please do not hesitate to contact us.

Regards,



Jules Kim, Chief Executive Officer  
Scarlet Alliance, Australian Sex Workers Association



## EXECUTIVE SUMMARY

Sex workers experience a number of systemic barriers to accessing justice. Some of these are shared with other women in Queensland, and others are unique to our experiences as criminalised workers.

Due to the complex legislation that regulates the sex industry in Queensland, sex workers face unique and significant barriers to accessing justice. Queensland's licensing framework creates a two-tiered industry, where a large proportion of Queensland sex workers are forced to work outside of the legal framework in order to preserve our safety. The criminalisation of sex worker safety strategies compromises our safety and work and directly impacts the experiences of sex workers seeking justice, as police occupy the role of both (alleged) protector and prosecutor.

The culture of police corruption and entrapment in Queensland, empowered by the laws regulating sex work, has long degraded trust between sex workers and the Queensland police. This environment of criminalisation, sex work stigma and predatory police behaviour greatly restricts our ability to report sexual violence, seek legal redress and receive victims services support. The current legislative framework ensures that the Queensland criminal justice system criminalises sex workers more than it affords their safety and freedom from violence.

In the fight to end sexual violence against women and girls, sex workers must not be invisibilised or excluded. The work of the Taskforce must ensure meaningful and active inclusion of sex workers and the investigation of the criminalisation of sex worker safety as a cross-cutting issue that prevents sex workers from enjoying equitable protection under the law.

Community understandings of sexual violence against sex workers is marred by misinformation, stigma and discrimination, forming a significant barrier to justice for sex workers. Our 'rapeability' is often brought into question and assault can be framed as an occupational hazard that we ought to expect. Community understandings also reflect confusion regarding whether we can be 'victims' at all, and if we can be, it must only be in relation to the terms of our work contracts, rather than in relation to our sovereignty over our bodies.

The criminalisation of sex workers inherent within the licensing framework furthers this stigma as we are framed as criminals from whom the community must be protected. This understanding sets a cultural tone where sex workers experience significant challenges being believed by friends, family and community, health and social service providers, law enforcement, and the criminal justice system. Understandably, this tone resonates throughout all aspects of sex workers' experiences seeking justice, including the decision not to do so.

Queensland's sex work legislation also allows for police to engage in entrapment practices against sex workers with immunity, further breeding mistrust in police. Police can pose as our clients and attempt to incite us into agreeing to or participating in 'illegal' sex work. This is an invasive and predatory practice that violates sex workers' right to safety and privacy. It is the extreme scope of powers granted to police as the 'regulators' of the sex industry, that forms the greatest risk to sex workers accessing justice for sexual violence as we face the risk of criminalising ourselves within a discriminatory system that actively targets sex workers. Queensland sex workers also report that police response to their experience of sexual assault can be questioning, dismissive and disbelieving entirely. Clearly, police cannot simultaneously prosecute us as criminals and protect us as victim-survivors.

Sex workers expect to experience stigma when interacting with the legal system. The anticipation of

this stigma and the unlikelihood of a fair outcome are deterrents for our community in engaging with the legal and criminal justice processes at all. Substantive change would need to occur to ensure a sex worker victim is able to receive a fair, non-discriminatory, trauma-informed trial that does not jeopardise their future prospects.

The full decriminalisation of sex work is central to removing police as the regulators of the sex industry thus ensuring that sex workers can access justice in a safe and equal way. We also advocate for divestment of resources from the licensing of sex work, which targets Queensland sex workers as criminals and allows our experiences of victimhood to be overshadowed by our constructed criminality.

## **SUMMARY OF RECOMMENDATIONS**

We make the following recommendations for action from the Taskforce, the justifications for which can be found throughout our submission.

1. Active inclusion of sex workers as key stakeholders in the work of the Taskforce with unique barriers to accessing justice by working with Respect Inc to ensure that sex workers are able to safely participate in its investigations and other activities.
2. Examination of the criminalisation of sex work and sex workers in Queensland as a key determinant of our access to reporting and seeking justice when victims of crime. Key areas of investigation include:
  - a. Criminalisation of sex worker safety strategies forcing sex workers to take safety risks that would be viewed as unacceptable if forced upon non-sex working women
  - b. The erosion of relationships between the sex worker community and police and resultant barriers to reporting of crimes committed against sex workers
  - c. Police attitudes towards sex workers that are informed by the existence and implementation of sex work specific policing resources, as well as stigma and misinformation about sex work and sex workers.
3. Investigation of the use of entrapment policing tactics against Queensland sex workers and its impact on sex workers' abilities to seek support from police.
4. Investigation of amnesty on sex worker arrests for sex work offences as a potential strategy to improve access to justice.
5. A formulation of a Taskforce position supporting the full decriminalisation of sex work in Queensland as a necessary step toward enabling equitable access to justice.
6. Taskforce support for the ongoing resourcing of Respect Inc to provide training to Queensland police officers, including cadets, on sex worker awareness and sensitivity.

## **INTRODUCTION: SEX WORKER ACCESS TO JUSTICE IN QUEENSLAND**

Sex workers face unique and significant barriers to accessing justice in Queensland. Due to the complex criminal legislation that regulates the sex industry, a large proportion of Queensland sex workers are forced to work outside of the legal framework in order to preserve their safety.<sup>1</sup> The 'licensed sector' 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 proportion<sup>2</sup> of the overall industry. Sex workers are routinely targeted by police for implementing workplace health and safety practices, including working in pairs, calling a colleague to give them information about a booking and letting them know when it's been safely completed, employing a security person or receptionist and driving a colleague for work or

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<sup>1</sup> Scarlet Alliance, Australian Sex Workers Association and Respect Inc., *Sex Work Laws and Workplace Health and Safety Symposium Report* (Report, 14 November 2018) 1 ('Symposium').

<sup>2</sup> Prostitution Licensing Authority, *Annual Report 2019-2020* (Report, 2020) 16.

engaging a driver who also drives other sex workers. Given that these practices are perfectly legal for non-sex working people, it is clear that there is a significant disparity between the way the law regards the safety of sex workers as compared to other women in Queensland.

The criminalisation of sex worker safety strategies directly impacts the experiences of sex workers seeking justice, police intervention in violence, and other support from the victims services and the criminal justice system. The Queensland Law Reform Commission's *Review of consent laws and the excuse of mistake of fact report* recognised "[v]ulnerable populations tend to experience a higher incidence of sexual violence, including Aboriginal and Torres Strait Islander people, women with disability, **and sex workers.**" *Prevent. Support. Believe: Queensland's Framework to address Sexual Violence* , also recognises that sex workers experience high rates of sexual assault.<sup>3</sup>

The barriers to justice experienced by sex workers are compounded if they are part of other marginalised communities. We note the identification of a number of marginalised groups in the 'diversity' cross-cutting issue in the Discussion Paper, which is an important acknowledgement that the impacts of violence are not borne equally by all women, and fall harder upon those who are already marginalised, stigmatised, and disadvantaged. We elaborate on sex worker experiences in the justice system and adjacent services through this submission to make a case for the **intentional inclusion of sex workers in its investigation of the diverse experiences of women seeking access to justice in Queensland.**

We strongly recommend the explicit identification of sex workers as a group with unique barriers to justice warranting investigation. This should be coupled with the engagement of Queensland's sex worker peer organisation, Respect Inc, to undertake investigation of community experiences and the needs of sex worker victim survivors.

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<sup>3</sup> Department of Child Safety, Youth and Women (QLD), *Prevent. Support. Believe: Queensland's Framework to Address Sexual Violence* (Report, 2021) 6 .

**1** Decriminalisation of sex work in Queensland: Laws, Facts, Rights & Safety

**18 years of licensing** & only **20** legal brothels

Working in a legal brothel is not an option in 95% of Queensland

Licensing fees are high but still only account for less than **50%** of the running costs of the licensing system

More than **\$10** million of tax payer funds have kept the licensing body from bankruptcy

**LICENSING HAS FAILED**

**80%** of the sex industry cannot operate/work legally

The Fitzgerald Inquiry found excessive levels of police corruption

The licensing system was intended to remove police from regulating the sex industry. However, police currently monitor approx. **80%** of the sex industry

Entrapment is legal including seeking sexual services

The laws in QLD are effectively a form of criminalisation

Independent sex workers are criminalised for:

- working together, in the same building or hotel as another sex worker
- messaging another sex worker with their current location or when a client arrives and leaves
- employing a receptionist or someone to answer phones
- using a driver another sex worker uses
- describing what services are offered & what services are not offered

Independent sex workers have to choose between working **LEGALLY OR SAFELY**

#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

## **PART 1: WOMEN AND GIRL'S EXPERIENCE OF THE CRIMINAL JUSTICE SYSTEM AS VICTIM-SURVIVORS**

**QUESTION: Should we explore any other cross-cutting issues?**

Sex worker experiences in the Queensland criminal justice system is a vital cross-cutting issue to explore, as it reveals acute tensions between issues of state control, police brutality, paternalism, moralism, colonialism and sexism. Those experiences are deeply intertwined with misinformation and stigma about sex work and sex workers, as well as the inherent conflict between the criminalisation of sex workers' safety and our access to justice. In the fight to end sexual violence against women and girls, sex workers must not be invisibilised or excluded. As the organisation in Queensland with the highest level of contact with the sex working community, Respect Inc, Queensland's sex worker peer organisation, must be a key informant in developing the Task Force's understanding and approach.

**QUESTION: Given rates of victimisation are highest for women and girls with respect to sexual offences, within the time available, do you support the Taskforce focusing inquiries on sexual offending against women? If not, why not and what other offence types should the Task Force focus on?**

The Taskforce would do well to focus its current resources on sexual offences committed against women, provided that this focus is inclusive of *all* women and girls in Queensland, including sex workers and trans and gender diverse people who identify as women or girls. We were unable to determine whether the Taskforce includes transgender women, non-binary, and other female-identified people in the term 'women', but recommend that these people are intentionally and explicitly captured in the work of the Taskforce.

Throughout this document, it should be understood that the issues we raise apply to all sex workers, and are not exclusive of non-binary and masculine identifying sex workers, as they are subject to the

same criminalising laws, police aggression and stigma as sex working women. However, for the purposes of this consultation, we draw on the experiences of sex working women, which includes trans women and non-binary people.

It should be noted that there is some complexity regarding the common understandings of 'sexual offences' as committed against sex workers, where perceptions that sexual offences committed against us should be understood as fraud / a default on a commercial contractual agreement due to the offence taking place within the context of a service provision. It is important that attempts to downplay sexual offences committed against sex workers be addressed in the Taskforce's investigations.

We elaborate below on the barriers that current sex work legislation places on Queensland sex workers accessing justice. While reform of that legislation is expected to be undertaken imminently and falls largely outside of the Taskforce's remit, it should be understood that the licensing framework is just one of many factors impacting sex worker experiences of the criminal justice system.

## **THEME 1. COMMUNITY UNDERSTANDING OF SEXUAL OFFENDING AND BARRIERS TO REPORTING**

***QUESTION: Given the relevance to offending behaviours as well as reporting, do you support the Taskforce examining community attitudes to sexual offending against women and girls? If not, why?***

Scarlet Alliance supports the examination of community attitudes to sexual offending against women and girls, with an intentional investigation of attitudes to sexual offending against sex workers. The misinformation, stigma and discrimination we describe below sets a cultural tone where sex workers experience significant challenges being believed by friends, family and community, health and social service providers, law enforcement, and the criminal justice system. This tone resonates throughout all aspects of sex workers' experiences seeking justice, including the decision not to do so.

A great deal of the stigma that sex workers experience is fuelled by misinformation and negative community understandings of sex work and sex workers. Understanding sex work stigma is essential to the inclusion of sex worker stakeholders in the work of the Taskforce. Inclusion of sex workers in the Taskforce's work can also support it to progress in ways that combat stigma, create safer spaces for sex worker victims of sexual offences to come forward, and support them to pursue redress.

### **1.1 Stigma & Discrimination**

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'.<sup>4</sup> 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

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<sup>4</sup> 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').

negative health determinant that affects the mental and physical health of workers,<sup>5</sup> our ability to access non-judgemental health care<sup>6</sup> and our access to basic needs like housing, financial security and legal support.

As noted in the Discussion Paper, Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, incarcerated women, elderly women, women in rural, remote and regional areas and LGBTIQ+ women face unique barriers when accessing the criminal justice system. Sex worker stigma compounds differently for sex workers from other marginalised communities who are routinely targeted by police and for sex workers who are parents, use drugs, are young or work as street based sex workers.<sup>7</sup> For Aboriginal and Torres Strait Islander sex workers, racism further exacerbates sex worker stigma as they already 'face targeted police interaction and disproportionate rates of incarceration'.<sup>8</sup> Migrant sex workers experience racialised sex worker 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. A Queensland migrant sex worker explains:

*"The police don't believe that we have the ability to work independently. They believe we are being controlled and try to get us to admit that someone put in our advertising, or helped us write it, or that someone is answering our phones. They try to get us to tell them who this is. Even when there is no-one."*

*"The police have the power—we don't have any. It would be very difficult for an Asian sex worker to explain or convince the police they were not doing anything wrong. The attitude of the police is that they don't trust us, they don't like us. When police say to sex workers 'I'm going to send you home' it shows their racism, their lack of professionalism and their hatred towards us."<sup>9</sup>*

In a recent study conducted about the interaction between sex worker stigma and the criminal justice system, participants highlighted various intersectional factors that are 'protective' for sex workers when dealing with police: 'whiteness, class, heterosexuality, and being cisgender, employed outside the sex industry, English-speaking and working in a decriminalised jurisdiction'.<sup>10</sup> The study further notes that for 'sex workers with multiple stigmatised identities, police engagement remain[s] a severe risk'.

## **1.2 Community Understandings of Sexual Offending**

The Discussion Paper acknowledges the need for 'attitudinal and cultural change' across government, institutions, media, workplaces and within the general community. We agree that examining community understandings of sexual assault is essential to improve women and girls' experience of the criminal justice system, especially the cultural stigma associated with sexual violence. For sex workers,

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> Stardust (n 5) 2.

<sup>8</sup> Ibid.

<sup>9</sup> *Symposium* (n 2) 9.

<sup>10</sup> Stardust (n 5) 2.

existent stigma around sexual violence intersects with and is compounded by general sex work stigma and discrimination. The following are examples of common discriminatory stereotypes leveraged against sex workers who are survivors of sexual assault, which we hope will inform the Taskforce's understanding ahead of its work investigating these attitudes.

*Sex workers provide blanket consent and are thus 'unrapeable'*

Sex workers can be seen as 'commonly available to men'<sup>11</sup> and thus in a 'perpetual state of consent'.<sup>12</sup> This stereotype directly effects the perceived 'rapeability' of sex workers and reflects the damaging misunderstanding that a sex worker's body, rather than the negotiated inclusions of their service, may be 'bought' for the length of a booking.<sup>13</sup> This stems from a lack of understanding about the negotiability and diversity of services that sex workers offer and our ability to enact boundaries and to give and withdraw consent. Legal, cultural and social narratives<sup>14</sup> expressed through case law, politics and the media further problematise this perceived 'perpetual state of consent'. For example, current consent and sexual assault law in Queensland can be applied to charge offenders for the non-payment of sex workers. However, due to stigma and the ambiguity around our 'rapeability', these cases of non-payment are often framed as 'fraud' rather than sexual assault.

*Assault is an 'occupational hazard' of sex work*

Sex workers who experience sexual violence can be victim-blamed through the belief that such experiences are an inherent risk associated specifically with sex work. Positioning sexual assault against sex workers as an 'occupational hazard' individualises the crime as particular to the act of sex work, shifting the focus from the perpetrator to the sex working victim. Sexual offences taking place at work is neither endemic nor unique to the sex industry, as is becoming more and more obvious as women across the country mobilise to demand justice for sexual assaults occurring at work and at home.

Like other forms of victim blaming, this assumption aims to turn one's attention away from the overarching legal landscape that enables and perpetuates sexual violence against sex workers. Perpetrators are empowered directly by the licensing system to perpetuate violence against us. This is because 'prostitution' offences and police powers work in tandem to render 'legal' work inaccessible and unsafe while criminalising safety strategies.

Criminalisation makes sex workers vulnerable to violence in part by creating a disincentive for sex workers reporting crime and seeking assistance, as in doing so, we potentially incriminate ourselves. This process of marginalisation, criminalisation and isolation of sex workers created by licensing thus creates a working environment that is exploitable by perpetrators.

Where sex work is decriminalised, sex workers are free to engage in workplace health and safety measures to protect us from assault. We are not inherently more 'at risk' of sexual violence than other workers; it is rather the criminalisation of our safety strategies and degradation of our human rights, as

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<sup>11</sup> Barbara Sullivan, 'Rape, Prostitution and Consent' (2007) 40(2) *Australian and New Zealand Journal of Criminology* 127, 127.

<sup>12</sup> Stardust (n 5) 8.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.



expressed in Queensland's law, policing and media representations that 'responsibilises' sex workers for experiencing work related violence.<sup>15</sup>

### *Sex workers are not 'good' or believable victims*

Sex workers experience sexual violence stigma through popular media representations of sex work where sex workers are seen as 'undesirable and... disposable victims' and are often 'portayed as dead bodies rather than holistic characters'.<sup>16</sup> In a recent study conducted about sex workers experience of the Australian criminal justice system, participants noted that this cultural view of the 'disposability' of sex workers made reporting crime seem 'pointless'.<sup>17</sup> This attitude towards sex workers as victims of crime is 'entrenched in the cultural imagination'.<sup>18</sup>

### *A note on pornography*

The role of pornography in shaping attitudes about gender and sexuality should not be over-emphasized or used as a scapegoat here. Pornography exists alongside a myriad of other cultural texts reinforcing gender norms and normalising patriarchal ideals, and the isolation of pornography for scrutiny fails to acknowledge this, selecting pornography as a convenient scapegoat with the confidence that a largely sex-negative culture, particularly in the DFV sector, will support this. Targeting pornography fails to address the problem of deeply ingrained sexism, misogyny, misogynoir, whorephobia and transphobia in Australian culture, and shifts undue blame to sex workers working in explicit content production.

Interdisciplinary research on pornography, media literacy, affect, sex education and young people complicate and challenge presumptions that there is a unique causal link between pornography and sexual violence. We note a lack of diversity of sources in Discussion Paper 2's references on pornography, and strongly recommend a more thorough and interdisciplinary literature review.

### **1.3 Barriers to Reporting**

***QUESTION: Given under-reporting of sexual offences, do you support the Taskforce examining the barriers to reporting sexual offending against women and girls? If not, why?***

We believe that an investigation of the barriers to women and girls reporting sexual offences is a worthwhile use of the Taskforce's resources. Sex workers experience many of the same barriers that non-sex workers do, *but not always for the same reasons*. We also experience barriers unique to our positionality as sex workers operating in Queensland. We believe that research questions that actively include sex worker experiences are appropriate here.

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<sup>15</sup> Andrea Krüsi et al., 'They won't change it back in their heads that we're trash': The intersection of sex work-related stigma and evolving policing strategies' (2016) 38(7) *Sociology of Health & Illness* 1137 cited in Stardust et al. (n 5) 8.

<sup>16</sup> Lucy V. Hay, *Writing Diverse Characters For Fiction, TV or Film: An Essential Guide for Authors and Script Writers* (Creative Essentials, 2017) cited in Stardust et al. (n 5) 9..

<sup>17</sup> Stardust (n 5) 9.

<sup>18</sup> Ibid.

Queensland's current sex work laws, the criminalisation of our safety strategies, community attitudes about sexual violence against sex workers, discriminatory police powers and sex work stigma all form significant reporting barriers for sex workers. The current licensing model ensures that the QLD criminal justice system criminalises sex workers more than it affords their safety and freedom from violence. It is clear that police cannot effectively occupy both roles of (alleged) protector and prosecutor in a way that benefits sex worker survivors of violent crime<sup>19</sup>. This conflicting role has long been criticised by Australian sex workers and results in various barriers that sex workers face when considering reporting sexual assault<sup>20</sup>.

### *Legislative barriers to reporting under the licensing framework legislating sex work in Queensland*

The sex industry in Queensland is heavily regulated by criminal legislation that defines the narrow window of legal sex work. The *Prostitution Act 1999*, the *Criminal Code 1899* and the *Police Powers and Responsibilities Act 2000* proscribe the two-tiered system of legal and illegal sex work. 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, places burdensome restrictions on advertising and broadens the scope of police powers and immunity. 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 them at risk of criminalisation.<sup>21</sup>

The Queensland Police Service and the Prostitution Licensing Authority receive significant funding and resources to regulate and enforce compliance. Police are never appropriate regulators of 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.

Respect Inc, Queensland's sex worker peer organisation, approximates that 80% of QLD sex workers work outside of the licensing framework.<sup>22</sup> Research repeatedly finds such punitive policing targeting sex workers 'to produce greater, rather than less, risk'.<sup>23</sup> The current state of play regarding legislative barriers to all aspects of the justice system is well-documented in a 2021 webinar from Respect Inc and DecrimQLD<sup>24</sup>.

Police corruption and inaction is a common thread within sex industries that have any elements of criminalisation.<sup>25</sup> The findings of the *Report of the Commission of Inquiry Pursuant to Orders in Council ('Fitzgerald Report')*<sup>26</sup> 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**

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<sup>19</sup> Ibid 6.

<sup>20</sup> Ibid

<sup>21</sup> 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* ('Jeffrey's').

<sup>22</sup> 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*').

<sup>23</sup> Stardust (n 5).

<sup>24</sup> Respect Inc., 'Sex worker safety should be sexy NOT criminal #DecrimQLD' (Youtube, 12 February 2021) <<https://www.youtube.com/watch?v=kO1Xjk4RC0k>>

<sup>25</sup> Ibid 6.

<sup>26</sup> 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*').

**work.**<sup>27</sup> Further, the report labelled the police call for *more* powers to police the sex industry as ‘illegitimate’,<sup>28</sup> 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.’<sup>29</sup> On the topic of police culture in Queensland, the *Fitzgerald Report* 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 the law and rejection of its application to police, disregard for the truth, and abuse of authority.’*<sup>30</sup>

Despite these findings, the *Prostitution Act* was legislated 10 years later, and Queensland has increasingly broadened the scope of police powers in relation to sex workers. A key element of these powers, which will be discussed in detail later, is the right for police to engage in entrapment operations against sex workers with immunity. In this landscape, police are the enforcers of strict, endangering laws *and* are actively attempting to incite sex workers into breaking such laws.

### *Mistrust of police*

Understandably, this culture of corruption and entrapment forms a significant barrier for sex workers reporting sexual violence, as it directly conflicts with the police’s role as ‘civil protectors’. Sex workers who work outside of the licencing framework feel unable to report crimes made against them as they risk consequential legal liability, a permanent record of their sex work on police databases, and potentially making themselves later targets of sex work policing by making themselves known to police. The framing and targeting of sex workers as ‘criminals’ inevitably makes it difficult for sex workers to be believed as victims of crime. 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’.<sup>31</sup>

A Respect Inc. study conducted with Queensland sex workers in 2017<sup>32</sup> 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’<sup>33</sup>. 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.<sup>34</sup>

Criminalisation also brings the risks of identification and investigation, which can ‘lead to entrapment, harassment, assault, arrest or attempts at bribery.’<sup>35</sup> In another recent study, sex worker participants

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<sup>27</sup> Jeffreys (n 24) 1.

<sup>28</sup> *Fitzgerald Report* (n 28) 179.

<sup>29</sup> *Ibid* 180.

<sup>30</sup> *Ibid* 200.

<sup>31</sup> Stardust (n 5) 6.

<sup>32</sup> *Regulating Bodies* (n 25).

<sup>33</sup> *Ibid* 21.

<sup>34</sup> Sullivan (n 14) 128.

<sup>35</sup> Stardust (n 5) 6.

indicated that seeking police assistance is a 'last resort' and 'pointless'<sup>36</sup> 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<sup>37</sup>. This study effectively highlights that as sex workers we anticipate proactive police action 'in charging, arresting or reporting'<sup>38</sup> us, whilst also expecting complete police inaction when addressing our experiences of crime.

Migrant sex workers who work in a criminalised jurisdiction 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]'.<sup>39</sup> 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.'<sup>40</sup>

### *Entrapment practices*

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 s 75 of the *Prostitution Act 1999*,<sup>41</sup> which exempts police from 'soliciting offences' if the soliciting is conducted 'under an authority given under the *Police Powers and Responsibility Act 2000*'.<sup>42</sup> Immunity within 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.

Sex workers in Queensland are largely entrapped for implementing safety strategies and advertising. According to *2016-2017 Queensland Police Service Annual Statistical Review*, the latest publicly available review, the offence of 'Advertising Prostitution' rose by 450% from the previous year.<sup>43</sup>

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid 8.

<sup>40</sup> 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-worker-exploitation/>> 16 July 2021.

<sup>41</sup> *Prostitution Act 1999* (Qld).

<sup>42</sup> *Police Powers and Responsibility Act 2000* (Qld).

<sup>43</sup> Queensland Police Service, *2016 - 2017 Annual Statistical Review* (Report 2017) 14 ('QPS Stats').

Safety strategies include: working with other sex workers, letting someone know where we are meeting clients and employing support staff.<sup>44</sup> 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.<sup>45</sup> 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.
- 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 their 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)."*<sup>46</sup>

Police entrapment of sex workers 'fosters deep mistrust between the sex worker community and the police, significantly reducing sex workers access to justice'.<sup>47</sup> 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:

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<sup>44</sup> 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')

<sup>45</sup> Jeffreys (n 24) 2.

<sup>46</sup> Stardust (n 5) 8.

<sup>47</sup> *Police Powers Submission* (n 47).

*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.”<sup>48</sup>*

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.

#### *Risks of criminalising others*

Section 229H of the *Criminal Code 1899* (QLD) outlines when it is an offence for another person to 'knowingly participate in provision of prostitution'. This criminalises sex workers working together, letting each other know information about bookings, driving each other to work or sharing a driver. It also criminalises people we may hire to help us run our business such as receptionists and security guards. Section 229K makes 'having an interest in premises used for prostitution' an offence, which can also criminalise our landlords, co-tenants and domestic partners of home-based sex workers. Charges under s 229H rose by 126% between 2016-2017 and charges under s 229K rose by 200%.<sup>49</sup> Further, s 229I criminalises 'persons found in places reasonably suspected of being used for prostitution'. These restrictive laws form barriers to reporting sexual offences because contact with the police can mean the identification and criminalisation of others (our friends, partners, and colleagues) as well as ourselves.

#### *Knowledge of evidentiary burden*

By virtue of Queensland's inadequate consent laws, all survivors face the additional barrier of meeting the evidentiary burdens to prosecute sexual assault cases successfully. Sexual assault cases can be extremely invasive and re-traumatising for survivors, and conviction rates are extremely low compared to the occurrence of sexual assault.

Sex workers survivors are charged with the difficulty of establishing that we are capable of being victims of sexual offences. In a recent study, a sex worker described this emotional and educational labour as follows:

*“I would not have the strength to sit there and have to justify the fact that **there is a difference between consensual sex work and sexual assault** and despite the fact that I received money, I did not consent to certain acts or give certain practices...and therefore it was sexual assault (Focus Group 6).”<sup>50</sup>*

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<sup>48</sup> *Symposium* (n 2) 8.

<sup>49</sup> *QPS Stats* (n 46) 14.

<sup>50</sup> *Stardust* (n 5) 11.

Other participants in the same study noted that they go through a difficult deliberation process when deciding whether to report a sexual assault to the police, describing it as a 'sort of cost benefit analysis', 'very mentally draining' and something that 'at the end of the day...doesn't feel worthwhile.'<sup>51</sup> That survivors are expected to choose between a potentially re-traumatising experience with police and courts and not seeking justice for a violent crime, points to severe deficiencies in the criminal justice process. Police attitudes towards sexual violence against sex workers and the necessary educational labour that survivors have to do to *prove* they are victims is a clear and damaging barrier that we face when reporting crime.

Sex workers speak in the Respect Inc 2017 report 'Regulating Bodies' of their concerns about and attitudes towards reporting sexual violence to police. These experiences are also often shared within sex worker peer networks, which can inform how other sex workers approach their own experiences with sexual assault.

*'...[the police] don't take us seriously. They think we are asking for any trouble we get.'*

*'Not much point - the experience of workers who report is that it's horrible, no one believes you, you get treated badly and if it goes to court you lose.'*

*'Because I wouldn't be treated the same way as others.'*

*'Mainly for privacy reasons, I wouldn't want that I work in a brothel on a police file.'*

#### *Intersectional barriers*

The risks associated with any police interaction, including reporting sexual assault are more acute for migrant sex workers who work outside of the legal framework in Queensland. Police identification can lead to a visa investigation, a tip off to immigration authorities or a charge for prostitution offences. In these circumstances, a migrant sex worker who wants to report a sexual assault may face detention or deportation for doing so.<sup>52</sup> Further, sex workers on temporary visas face the assumption from police that they are at fault rather than the perpetrator.<sup>53</sup> A Queensland sex worker provides a case of 'standard policing' and entrapment against a migrant sex worker:

*"...a Chinese speaking sex worker came to the attention of police because of an advertising breach, the police made a booking and found that she was using a receptionist who referred the clients, she was raided and property was seized—the mobile phone and cash \$150. They went through her notebook and phone and found that money was being put into a Chinese bank account—she was charged with several charges, was fined \$500 and no conviction was recorded."<sup>54</sup>*

Multiple axes of marginalisation also puts street based sex workers at greater risk of police harassment. 'Harassment by police was reported by over half of the participating street-based sex workers in

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid 8.

<sup>53</sup> Ibid 7.

<sup>54</sup> *Symposium* (n 2) 8.

Queensland (54.5%). Over a quarter had been sexually or physically assaulted by a police officer in the last five years (27.3%), and over a third had been sexually propositioned (39.4%).<sup>55</sup>

#### 1.4 Full decriminalisation of sex work as an integral change to improving sex worker access to justice

The full decriminalisation of sex work removes sex work-specific criminal and licensing laws and police powers for all sex workers, relying on existing laws that regulate all industries, as well as those in the general criminal code.<sup>56</sup> Investigations the the QLRC into the laws regulating the Queensland sex industry are forthcoming, and change to the outdated and problematic laws we describe throughout this paper will be a core determinant of efforts to improve sex worker access to justice in Queensland. The decriminalisation of sex work in jurisdictions like New South Wales and New Zealand has demonstrated that the removal of criminal penalties for our work results in a tangible improvement in our ability to seek support when we are victims of crime.

#### **Justice - Evidence from decriminalisation in New Zealand and NSW shows:**

##### **Seventy percent of sex workers are more likely to report crimes.**

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

##### **Police and the justice system respond more effectively and fairly when crimes are reported.**

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

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These changes alone, however, will not address the pervasive problem of the marginalisation and silencing of sex workers who are victims of sexual offences. While legal and policy change can certainly work to shift community attitudes, that change can be incredibly slow and must be accompanied by a whole-of-government and whole-of-community approach to reducing stigma and discrimination and correcting the widespread misinformation about sex work and sex workers, including those attitudes formed over more than a century of sex work criminalisation in Queensland.

## **THEME 2. POLICE RESPONSE, INVESTIGATION AND CHARGING OF SEXUAL OFFENCES**

### **2.1 Police Responses to Initial Reports of a Sexual Offence**

**QUESTION: Given that police currently act as a gateway to the criminal justice system for sexual offences, do you support the Taskforce examining the initial police response to reports of sexual offending against women and girls? If not, why?**

<sup>55</sup> Charlotte Woodward et al., *Selling Sex in Queensland 2003* (Prostitution Licensing Authority, 2004) 47 cited in Antonia Quadara, 'Sex workers and sexual assault in Australia' (2008) 8 *Australian Centre for the Study of Sexual Assault Issues*.

<sup>56</sup> Scarlet Alliance, National Sex Workers Association, *Full Decriminalisation of Sex Work in Australia* (Briefing Paper, 2021) <[https://scarletalliance.org.au/library/briefing\\_paper\\_full\\_decrim](https://scarletalliance.org.au/library/briefing_paper_full_decrim)>

<sup>57</sup> Symposium (n 2) 8.



**QUESTION: Given the role police play in investigating and charging sexual offences, do you support the Taskforce examining the police attitudes towards and decision to charge in relation to sexual offending against women and girls? If not, why?**

Scarlet Alliance supports the Taskforce examining initial police responses to sex workers reporting sexual violence, and their follow-through (or lack thereof) in investigating and charging for sexual offences. While police are the 'gateway to the criminal justice system' for sex workers, it is often in our capacity as 'criminal' that sex workers in Queensland are made to interact with police. As discussed above, it can be difficult for sex workers to establish themselves as valid 'victims' in cases of sexual violence, especially when current sex work legislation can shift the focus to circumstances that criminalise the victim themselves. The dual role of police as prosecutor and protector makes this topic of police response, investigation and charging of sexual offences integral for the Taskforce to investigate.

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.<sup>58</sup> 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.'<sup>59</sup> Alternatively, a sex worker may be treated so poorly by the police that they decide not to proceed at all.<sup>60</sup> 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)".<sup>61</sup>*

*"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)<sup>62</sup>*

*"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)<sup>63</sup>*

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<sup>58</sup> 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')

<sup>59</sup> Ibid.

<sup>60</sup> *Symposium* (n 2) 9.

<sup>61</sup> Stardust (n 5) 7.

<sup>62</sup> *Wolf 2019* (n 59) cited in Jeffreys (n 24) 3.

<sup>63</sup> Ibid.

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."<sup>64</sup>

## **2.2. Police investigation and Decision Whether to Lay a Charge for a Sexual Offence**

***QUESTION: Given the role police play in investigating and charging sexual offences, do you support the Taskforce examining the police attitudes towards and decision to charge in relation to sexual offending against women and girls? If not, why?***

Even when sex workers decide to report, Elena Jeffreys from Respect Inc. has stated that very few of the crimes committed against sex workers are investigated in Queensland.<sup>65</sup> Due to lack of information, it is difficult to ascertain the exact prevalence of police refusing to lay a charge for a sexual offence on the basis of our status as sex workers, or the frequency of recommendations to pursue a fraud charge over a violence charge. However, by virtue of evidence of negative police reactions to sex workers reporting sexual assault, widespread mistrust of Queensland police and a lack of procedural clarity about whether non-payment amounts to assault rather than fraud, we can conclude that there is urgent need for improvement in investigations and decisions to lay charges.

We agree that the Taskforce should examine police attitudes in relation to investigations and deciding whether to lay charges. Specifically, the Taskforce should investigate police attitudes regarding sex workers and should seek consultation from sex workers, in collaboration with Respect Inc, who have experienced police reluctance or refusal to investigate reports and / or lay charges.

## **2.3 Support Provided to Victims During the Police Investigation Process**

***QUESTION: Given the role that specialist and mainstream services play, or could potentially play, in supporting victims and survivors of sexual violence offences, do you support the Taskforce examining the role and potential role of sexual violence and mainstream services? If not, why?***

We support this line of investigation in theory, again with the provision that the appropriateness of services, and their awareness of the diverse communities they serve, be a priority in the research.

### *Liaison Officers*

Various police forces have now created sex worker liaison officers and gay and lesbian liaison officers as a conduit between community and police. However, Russell has highlighted that, although these officers are promoted as allies, these protective aspirations are actually conditional on people being 'good queer citizens' or worthy recipients of state recognition and protection (2019: 8). Citizenship involves a provisional granting of rights only where a person assumes certain responsibilities; therefore, sex workers who do not or cannot conform are seen as irresponsible non-citizens, thereby excluded from belonging, participation and eligibility to access the state's protective mechanisms. (Stardust et al p. 6)

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<sup>64</sup> *Symposium* (n 2) 8.

<sup>65</sup> *Wolf 2019* (n 59).

### **THEME 3. LEGAL AND COURT PROCESS FOR SEXUAL OFFENCES**

Sex workers expect to experience stigma when interacting with the legal system. This stems from a long and continuing history of criminalisation, stigmatising laws and discriminatory legal case outcomes. Understandably, anticipation of this stigma and the unlikelihood of a fair outcome are deterrents for our community in engaging with the legal and criminal justice processes at all, particularly in Queensland, as we've established above. One sex worker elaborates on this:

*'In this kind of model of legislation [licensing in Queensland]...in any one day activities I'm doing at work are illegal and others are legal...you are crossing that line backwards and forwards all the time, so it is the fact that it's more difficult to access redress about stuff if you are doing something that is illegal, because you would be making yourself known to be doing that activity, so in moving forward with anything, you are always considering whether it's worth the risk...(Focus Group 4).'*<sup>66</sup>

This lack of trust that we have in the justice system can often result in opting out of the system entirely to 'avoid re-traumatisation, stigmatisation and discrimination'<sup>67</sup>. We encourage the Taskforce to seek input from a diversity of sex workers on how best to improve capacity and capability across the criminal justice system in ways that best respond to the unique barriers of stigma and criminalisation we currently face.

#### **3.1 Adequacy of Current Sexual Offences in Queensland**

***QUESTION: Is it appropriate for the Taskforce to consider the adequacy of Queensland's current sexual offences including provisions about consent and the operation of the excuse of honest and reasonable mistake of fact in the prosecution of sexual offences? If not, why?***

We agree that it is appropriate and important for the Taskforce to consider the adequacy of Queensland's current sexual offences as an avenue of understanding and addressing sexual violence against sex workers. For an in-depth discussion on this, we refer you to Respect Inc's '*Submission on Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020*'.<sup>68</sup>

Respect Inc's submission opens with: 'Consent must apply to sex workers as it does other Queenslanders. In a sex work setting consent can be altered, withdrawn or expanded at any time, at the discretion of the sex worker'.<sup>69</sup> Section 348(2) (e) of the *Criminal Code* states that consent is not 'freely and voluntarily given' if it is obtained 'by false and fraudulent representations' about the 'the nature or purpose of the act'. Due to misunderstandings about sex work and consent, however, this section has not been applied appropriately to situations of non-payment to sex workers, despite such cases falling clearly within the language of the law. As such, any consent law reform process must recognise within its definition of consent that sex workers do not 'freely or willingly' provide consent

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<sup>66</sup> Stardust (n 5) 10.

<sup>67</sup> Ibid.

<sup>68</sup> 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) ('Consent Submission').

<sup>69</sup> Ibid 1.

‘when payment for sexual services is withdrawn or not given’.<sup>70</sup> Respect Inc., further explain 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.*<sup>71</sup>

Current misunderstanding amongst police and judicial officers as to whether non-payment amounts to sexual assault has led to sex workers being advised to pursue sexual offences as fraud rather than assault. ‘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.’<sup>72</sup> Recently in Queensland, a man was charged under s 408C of the *Criminal Code*<sup>73</sup> with two counts of fraud for non-payment of two sex workers. The defendant was ordered to pay restitution of \$350 to each sex worker and was fined \$750 for each offence.<sup>74</sup>

The Queensland Law Reform Commission ‘*Review of consent laws and the excuse of mistake of fact*’ noted that a fraud charge in this case does not recognise the complete criminality of the offence.<sup>75</sup> It seems a great perversion of justice that a survivor of assault would receive only the equivalent cost of the booking in damages, while the state receives over double that in fines. Further, being framed as a victim of fraud rather than sexual assault restricts our ability to access support schemes and victims services that are offered to survivors of violent crimes.

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,<sup>76</sup> we are unlikely to report. Downgrading sexual assault to ‘fraud’ serves to perpetuate damaging beliefs that we are ‘unrapeable’ and un-believable victims.

It should be noted, however, that there have been positive improvements in how police, courts and magistrates ‘implement best practice and human rights approaches to sex workers who are reporting crime’.<sup>77</sup> For example, in aforementioned fraud case:

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<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> 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) (‘*Consent Hearing*’).

<sup>73</sup> *Criminal Code 1899* (Qld).

<sup>74</sup> Queensland Law Reform Commission, ‘*Review of consent laws and the excuse of mistake of fact*’ (Report No 78, June 2020) 126.

<sup>75</sup> *Consent Hearing* (n 73).

<sup>76</sup> Respect Inc. and Scarlet Alliance Submission to Legal Affairs and Safety Committee, *Inquiry into Human Rights Bill 2018* (26 November 2018).

<sup>77</sup> Ibid.

*'The individuals did not have their names outed, or their personal information released by the police. The courts dealt with the case seriously, respectfully and efficiently, removing any possibility for the process to demean or name the two sex workers involved.'*<sup>78</sup>

A particularly hopeful case occurred in 2019 where a man was charged with aggravated sexual assault for orally assaulting a Queensland sex worker.<sup>79</sup> In April 2019, the perpetrator received a partly suspended sentence of 15-months in jail, of which he must serve two months. While this result is relatively positive, an article published after the judgement describes Nikki's initial experience with police:

*The Prostitution Enforcement Taskforce, which Nikki called after her assault, sent her to Upper Mount Gravatt police station. There Nikki says she explained her situation to a plain clothes policeman, who asked her: "Where is the crime?"*

*Nikki was speechless and says she told the police officer she had a right "not to be assaulted in the workplace" just as he did.*

*"If I came around the other side of the desk there and performed oral sex and you say 'no' is that not a crime?" she says she asked him.*

*"He said 'that is different' and I said 'I was doing my job and this person has gone ahead and done something I've said no to'."*<sup>80</sup>

This case conveys that while it is possible for sex workers to access justice, receiving fair and just treatment can come with significant emotional and educational labour in order to overcome police attitudes and discrimination.<sup>81</sup> To minimise the space wherein police can engage in discriminatory behaviour, an affirmative consent model that acknowledges that non-payment for sexual services amounts to sexual assault should be considered by the Taskforce.

We would also like to recommend that stealing be criminalised within the *Criminal Code*.<sup>82</sup>

### **3.2 The Trial Process and Special Measures for Victims During the Court Process**

***QUESTION: Do you support the Taskforce examining the trial process with a focus on the particular needs of victims while ensuring the accused person has a fair trial? If not, why?***

We support the prioritisation of the needs of victims, and design of modifications to trial processes that balance preservation of the wellbeing of the victim and the fairness of the trial. The treatment of victims should be trauma-informed and enable things like attendance by video link and the support of culturally-appropriate advocates of the victim's choosing throughout the process.

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<sup>78</sup> Ibid.

<sup>79</sup> Gina Rushton, 'This Sex Worker Who Was Sexually Assaulted Didn't Think She Would Be Believed. Now Her Client Is Going To Jail' (30 May 2019) *BuzzFeed* <<https://www.buzzfeed.com/ginarushton/sex-worker-assault-sentencing-queensland>>.

<sup>80</sup> Ibid.

<sup>81</sup> Jeffreys (n 24) 3.

<sup>82</sup> Criminal Code 1899 (Qld).

For sex workers, substantive change would need to occur to ensure a sex worker victim is able to receive a fair, non-discriminatory trial that does not jeopardise their future prospects. Sex worker victims of sexual offences must be able to apply for protection of our legal names in court proceedings and records and media reporting, and substantive work would need to be done to ensure that all parties to a trial are informed enough about the disadvantages facing sex worker victims to deliver a fair trial to them. Further consultation with sex workers is necessary in order to understand how our experiences fit into the broader design of alterations to court processes to support the needs of victims.

### **3.3 Support for Victims and Ensuring their Rights are Protected**

***QUESTION: Do you support the Taskforce examining the needs of victims following the prosecution of a sexual offence and whether the establishment of a Victims of Crime Commissioner is appropriate for Queensland? If not, why?***

We support the ongoing support of victims of sexual offences after prosecution of their case, regardless of its result. We believe that the establishment of a Victims of Crime Commissioner could be one appropriate avenue to investigate, but not at the cost of frontline services for victims of sexual and DFV offences.

### **3.4 The Nature and Culture of the Court Process and Alternative Justice Models**

***QUESTION: Do you support the Taskforce examining alternative ways of delivering justice for victims such as through the establishment of specialised courts or through restorative justice? If not, why?***

We support, in theory, the exploration of alternative ways of delivering justice to victims and communities. For many people bearing the burden of a lack of access to justice for sexual offences, police and courts will never be trustworthy facilitators of justice. The damage done by legacies of trauma, colonisation, corruption, racism, and structural violence is not repairable for many people and communities. We are supportive of anything that enables choice for victims of crime. We acknowledge the limitations of reform, particularly as regards the law and police, and support investigations of other processes that would enable sex worker victims new avenues to pursuing justice.

Transformative and reformatory justice frameworks are by their nature community-driven, and require a shift of focus and resources from courts and police to impacted communities. A necessary consideration of the Taskforce's investigation of this issue would be divestment from carceral approaches to justice. We advocate in particular for divestment of resources from the licensing of sex work, which targets Queensland sex workers as criminals and allows our experiences of victimhood to be overshadowed by our constructed criminality.

## **PART 2: WOMEN AND GIRL'S EXPERIENCE OF THE CRIMINAL JUSTICE SYSTEM AS ACCUSED PERSONS**

The criminalisation of sex work in Queensland brings sex workers into unnecessary and frivolous contact with the criminal justice system for what we have outlined to be unjust and discriminatory charges. Because Queensland laws put sex workers at direct risk of experiencing violence at work *and*

being criminalised if we seek to prevent this, a sex worker may approach police as simultaneously a perpetrator and a victim of crime. A sex worker should never have their experience of the latter displaced by the former.

Our members Respect Inc have an intimate knowledge of sex worker experiences as accused persons in the Queensland criminal justice system, and we defer to their ongoing monitoring of these experiences as outlined in depth in their submissions. We also support their recommendations and the sex work-specific lines of inquiry for the Taskforce contained in their responses.

#### CONCLUSION:

The experiences of sex workers seeking justice for crimes committed against us in Queensland are largely shaped by criminalisation, stigma and the cultural myths around sex work that exist in government, law enforcement, victim services, and the community. The Taskforce offers an opportunity to address those matters that are within the scope of its work and resources, and also to make recommendations that result from its research. We urge the Taskforce to adopt the following recommendations as a starting point for supporting the sex worker community in Queensland to improve our access to the justice system for sexual offences:

7. Active inclusion of sex workers as key stakeholders in the work of the Taskforce with unique barriers to accessing justice by working with Respect Inc to ensure that sex workers are able to safely participate in its investigations and other activities.
8. Examination of the criminalisation of sex work and sex workers in Queensland as a key determinant of our access to reporting and seeking justice when victims of crime. Key areas of investigation include:
  - a. Criminalisation of sex worker safety strategies forcing sex workers to take safety risks that would be viewed as unacceptable if forced upon non-sex working women
  - b. The erosion of relationships between the sex worker community and police and resultant barriers to reporting of crimes committed against sex workers
  - c. Police attitudes towards sex workers that are informed by the existence and implementation of sex work specific policing resources, as well as stigma and misinformation about sex work and sex workers.
9. Investigation of the use of entrapment policing tactics against Queensland sex workers and its impact on sex workers' abilities to seek support from police.
10. Investigation of amnesty on sex worker arrests for sex work offences as a potential strategy to improve access to justice.
11. A formulation of a Taskforce position supporting the full decriminalisation of sex work in Queensland as a necessary step toward enabling equitable access to justice.
12. Taskforce support for the ongoing resourcing of Respect Inc to provide training to Queensland police officers, including cadets, on sex worker awareness and sensitivity.

The full decriminalisation of sex work in Queensland would create the most enabling legislative environment for the mission of the Taskforce - to improve the experiences of women and girls in the Queensland criminal justice system - to be realised.