



Office of the  
**Prostitution  
Licensing Authority**

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Dear Ms Lowik,

Thank you for your email of 28 February inviting a submission from the Prostitution Licensing Authority (the Authority) regarding the Housing, Big Build and Manufacturing Committee's (the Committee) inquiry into the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (the Bill). The Authority appreciates the opportunity to provide information to assist the Committee's deliberations on the Bill.

The Authority is established as a statutory body and consists of the following eight persons appointed as members:

- the chairperson, who is an independent and appropriately qualified member of the community nominated by the Premier;
- the Detective Chief Superintendent (Crime), Crime and Intelligence Command of the Queensland Police Service;
- the Senior Executive officer (Crime) of the Crime and Corruption Commission;
- a health practitioner who has at least 5 years' experience in the practitioner's profession;
- a lawyer who has been admitted for at least 5 years and has knowledge of or experience in administrative law, company law or criminal law;
- a person who represents local government;
- two persons who represent community interests.

The Authority has followed the Queensland Law Reform Commission *A decriminalised sex-work industry for Queensland* Report with interest. While the recommendations to extend decriminalisation of sex work in Queensland are supported, the Authority has reservations about the extent of deregulation of the industry and reliance on laws of general application to manage industry risks.

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Of particular concern are risks of criminality around money laundering, worker coercion and people trafficking. The regulation on which the current licensing system is founded is designed to prevent the influence of organised crime in the industry and operate in synergy with law enforcement. It provides scrutiny at the management level to ensure suitability of those who would profit from the work of others and protect against exploitation. The Bill seeks to remove these preventative arrangements.

The licensing system provides a high degree of visibility of the operations of licensed brothels, the licensees and managers. The number and distribution of licensed brothels, the method of operation, ownership and management are known in some detail. This contrasts sharply with sole operators and those operating illegally, the extent of which remains unverifiable. Disestablishment of a regulatory framework would mean the currently licensed sector would become similarly invisible. It is difficult to understand how the proposed changes can be evaluated in the absence of reliable information.

These reservations do not mean the Authority believes the current system should be maintained. The current ownership, location and size arrangements inhibit the operation of the sex work industry. There is opportunity to contemporise the regulatory system to reduce the administrative constraints to the benefit of the industry without abandoning the oversight measures necessary to maintain industry safeguards for operators, sex workers and their clients.

The submission below has been prepared by the Authority to provide some contextual information on prostitution generally, describe the operation of the licensed sector in Queensland, and offer some observations and comments from the Authority on the Bill. It is not intended to be exhaustive, and the Authority would be pleased to provide further information or respond to any questions the Committee may have. Representatives of the Authority can be available to assist at the public hearings on 22 March 2024.

Yours sincerely



Hon. Colin Forrest S.C  
**Chairperson**  
**Prostitution Licensing Authority**

## Prostitution in Context

### Historical background

The 1989 Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct report, commonly known as the Fitzgerald Report, was the catalyst for the first moves to decriminalise prostitution in Queensland. The recommendations of this report included the decriminalisation of prostitution, but only after examination and review by the newly established Criminal Justice Commission.

The commencement of the *Prostitution Act 1999* on 1 July 2000, over a decade after the Fitzgerald Report, legalised prostitution when provided either by a sex worker working alone or in a licensed brothel where more than one person was involved in the provision of prostitution. The explanatory notes of the Prostitution Bill 1999 emphasise safeguards against corruption and organised crime, promotion of health and safety of sex workers, their clients and of the community as underlying principles to achieve the objectives of the legislation.

The Prostitution Act created a robust framework for the regulation of licensed brothels, limiting ownership, size and location and creating provisions to support probity of licensees, managers, their family and associates to exclude people who do not meet a proper person test. The operation of a licensed brothel may be further constrained by the imposition of restrictions or conditions on a licence. These can be tailored to an individual licence, or common across all licences, and similar arrangements apply to certificates. A system of fees for licences and managers certificates was also created, currently detailed in the Prostitution Regulation 2014.

The Criminal Justice Commission was charged with oversight functions to ensure the industry was safeguarded against corruption and organised crime, the Authority was created to administer the stringent licensing and monitoring regime, and a separate Prostitution Advisory Council (the Council) was established to focus on the underlying social problems which make some people more vulnerable to involvement in prostitution.

Although the Prostitution Act and associated legislation and subordinate legislation have been amended several times since commencement, it still operates essentially as conceived. The regulation system is preventative in nature, aiming to promote a safe operating environment for sex work by deterring entry of unsuitable individuals into the management structures and promoting safe and healthy service delivery by encouraging good practice.

Of note, the Council provisions were removed in 2004<sup>1</sup> and its advisory and educative functions transferred to the Authority. At the same time two new members were added to the Authority to represent community interest; unlike the composition of the Council neither of these were necessarily industry specific.

The Prostitution Act vests responsibility for regulating prostitution advertising in the Authority. Section 101 of the Prostitution Act mandates the following functions for the Authority:

- to decide licence applications;
- to decide approved manager applications;
- to monitor the provision of prostitution through licensed brothels;

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<sup>1</sup> Police Powers and Responsibilities and Other Legislation Amendment Act 2003

<https://www.legislation.qld.gov.au/view/html/asmade/act-2003-092#act-2003-092> accessed 03/10/23

- to conduct disciplinary inquiries in relation to licensees and approved managers;
- to discipline licensees and approved managers;
- to receive complaints about prostitution;
- to liaise with the police service and other agencies prescribed under a regulation with a view to helping them in carrying out their functions in relation to prostitution;
- to collect fees under the Act;
- to inform relevant government departments and agencies about possible offences that are detected while carrying out its functions;
- to advise the Minister about ways of promoting and coordinating programs that:
  - promote sexual health care; or
  - help prostitutes to leave prostitution; or
  - divert minors and other vulnerable persons from prostitution, especially opportunistic prostitution; or
- raise, in prostitutes, judicial officers, police, community workers and the community, awareness of issues about prostitution;
- to advise the Minister about the development of codes of practice for licensed brothels;
- to raise, in prostitutes, judicial officers, police, community workers and the community, awareness of issues about prostitution.

The Authority also maintains advertising guidelines which constrain advertising prostitution services, including preventing advertising sex worker or manager vacancies who enter the licensed sector to word of mouth.

### Social Considerations

Prostitution serves a social need for the community, particularly for those clients who cannot access the services it provides elsewhere. It provides a source of interpersonal intimacy for certain sectors of society which might not be legitimately or readily be met through another means. Sex work can take various forms sometimes extending beyond basic sexual intercourse. It can include acting out fantasies, imagined personal relationships, or even simple social interaction or companionship. The benefit for those with disability or other vulnerability is pronounced.

Denied the option of sex work, some clients may seek a release elsewhere which may be unwelcome or even extend into socially unacceptable or unlawful behaviours. Sex workers in the licensed sector reported a sense of purpose and value from their work, confident their services provide an outlet which reduces incidents or severity of domestic violence, sexual assault and rape.

Some maintain prostitution is morally reprehensible, others that it manifests structural oppression of women, while the pragmatic consider it provides a legitimate source of income. Regardless of prevailing public attitude, the policy approach or legal status, prostitution is a long-standing occupation which is likely to endure while there are people are willing to pay and people are willing to provide.

### Policy approaches

The range of policy approaches to prostitution extends, in simple terms, from the extremes of full criminalisation to decriminalisation and spanning various degrees of intervening partial decriminalisation. There is no neat solution to the real or perceived social or physical challenges around the sex industry.

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Some consider prostitution to be immoral or exploitative and best addressed through the criminal justice system. Many jurisdictions such as South Australia and the United States maintain a criminalisation approach, making participation in prostitution either directly or indirectly a crime.

Advocates of the Nordic System regard prostitution as systemic exploitation of women in which sex workers are victims. The Nordic System maintains criminal offences for purchasing sex, but not for selling sex. This approach has been adopted in Canada and some northern European countries. A Select Committee of the Legislative Council has been established by the South Australian Parliament to inquire into and report on the Statutes Amendment (Repeal of Sex Work Offences) Bill 2020. If passed, this Bill would apply the Nordic Model in South Australian law.

Other jurisdictions such as New South Wales, Northern Territory and New Zealand have adopted a decriminalised approach. However, decriminalisation is not deregulation. Prostitution remains specifically regulated through central legislation in each of these jurisdictions. In Victoria, which is in the process of moving to a decriminalised model, the question of specific regulation has been left to local government arrangements.

Whether criminalised or partially decriminalised, illegal prostitution persists, sometimes with adverse implications in terms of criminality and public health. Absent explicit statutory defences or legal exemptions, these risks still exist in a decriminalised approach. Even in a regime governed by laws of general application, there will still be part of the sector which will operate illegally outside these minimalist controls.

## Prostitution in Queensland

### The licensed sector model

Licensed brothel businesses are quite constrained. There are a range of restrictions imposed on brothels in Queensland. A brothel can have a maximum of five rooms used for prostitution, with only eight sex workers amongst the 13 staff permitted on site at any one time. A licensed brothel cannot accommodate another type of industry, such as a licensed premises or adult entertainment business. The location of a licensed brothel is restricted to light industrial areas, often poorly serviced by public transport and away from high traffic areas.

A licensee can own or have an interest in only one brothel in Queensland and must meet stringent eligibility and suitability requirements. Managers are subject to the similar eligibility and suitability requirements. Licensees and managers must disclose personal information on their family and associates for probity checking, as well as their own background history, to the satisfaction of the Authority and Police.

Licensees and managers have an obligation to advise the Authority should their circumstances change in a way which might impact on their eligibility or suitability, and to annually furnish the Authority with information to ensure they remain appropriate. They are subject to a quasi-judicial disciplinary regime should their suitability be called into question. They are required to pay fees for their licence or manager certificate at least annually.

The licensing system creates restrictions on advertising a brothel business, and advertising for sex workers is prohibited. Additionally, brothels are prohibited from mentioning 'massage' in what advertising they are permitted, whether or not massage is actually provided by sex workers as part of their services. There is clearly an intention to distance prostitution from massage services,

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notwithstanding the commonly asserted belief many massage parlours in fact operate as illegal brothels.

The licensing system as it stands serves to closely scrutinise commercial sex work business practice. Those businesses which operate successfully cannot expand beyond arbitrary limitations, nor can they replicate their approach by opening a second business elsewhere in the state. The business model is narrowly prescribed. Opportunities to explore contemporary, flexible, online supported service delivery are restricted. Services may only be offered on site, with no provision of out call service of the type available to sex workers working alone.

Despite these business conditions, the licensed sector remains a small but resilient part of the industry.

### The contemporary risk environment

Key industry risks around criminality and health envisioned when the regulatory system created by the Prostitution Act remain current. There are two dominant categories of risk mitigated by the licensing system: criminality and public health.

Extant research confirms many of the risks and vulnerabilities experienced in the illegal sex worker industry are relevant to the legal sector. However, this body of work also acknowledges that for those in unregulated industries, the identified risks are magnified due to the illicit nature of their work and a lack of oversight and/or regulation. Within this illegal context, reporting notes that sex workers are often forced to work in unsafe conditions, a situation compounded by ongoing attempts to avoid police detection.<sup>2</sup>

Reporting acknowledges illegal sex workers are at an increased risk of physical and sexual violence; experience lower standards for preventing unsafe sex and disease transmission; and report poorer physical and mental health outcomes including drug and alcohol abuse.<sup>34</sup>

The Fitzgerald Report highlighted issues around official corruption and organised crime associated with the industry. Although the illegal sector is more closely associated with organised crime and other ancillary crimes as well as human trafficking and debt bondage<sup>5</sup>, these risks are also relevant to the legal sector. A Crime and Corruption Commission review<sup>6</sup> concluded there was no evidence migrant sex workers in Queensland were the subject of sex trafficking or debt bondage, but noted the growth in the number of migrant sex workers means that we need to maintain a focus on ensuring the effective delivery of health, education and advisory services to these workers.

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<sup>2</sup> McCann J., Crawford G. & Hallett J. (2021). Sex worker health outcomes in high-income countries of varied regulatory environments: a systematic review, *International Journal of Environmental Research and Public Health*, 2021 Apr 9; 18(8):3956.

<sup>3</sup> Crime and Misconduct Commission. (2004). *Regulating prostitution: An evaluation of the Prostitution Act 1999 (Qld)*. <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CMC/Regulating-prostitution-An-Evaluation-of-the-Prostitution-Act-1999-%28QLD%29-Report-2004.pdf>

<sup>4</sup> Seib, C., Dunne, M. P., Fischer, J., & Najman, J. M. (2012). Predicting the job satisfaction of female sex workers in Queensland, Australia. *International Journal of Sexual Health*, 24(2), 99–111. <https://doi.org/10.1080/19317611.2011.632073>

<sup>5</sup> McKenzie, N. & Beck, M. (2011) 'Visa agents involved in the sex trade', *The Age*, 31st March 2011 <http://www.theage.com.au/victoria/visa-agents-involved-in-sex-trade-20110330-1cgfb.html>

<sup>6</sup> Regulation Prostitution: A follow-up review of the Prostitution Act 1999 dated June 2011 <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CMC/Regulating-prostitution-A-follow-up-review-of-the-Prostitution-Act-1999-%28QLD%29-Report-2011.pdf> accessed 03/10/23

Coercion can also occur at an individual level, with some sex workers reporting being forced into prostitution through domestic or familial relationships. There is some disagreement about the extent to which risks of coercion or exploitation exist, often validated by infrequent prosecution for trafficking or coercion offences. Whether this might be because of or in spite of effective regulation is less often discussed.

The Authority requires managers and sex workers to be provided information on their rights as part of an induction process to help prevent coercive situations occurring. It supports induction by delivering components of the training and provides an avenue for queries to be addressed either during or subsequent to these sessions. Advice given by the Authority includes application of general legislation and obligations in the context of lawful prostitution, which is not always readily available where a more generalist entity lacking industry specific knowledge is involved.

Prostitution is a cash-intensive industry. Obtaining electronic fund transfer facilities is difficult as financial institutions do not consider brothels to be acceptable businesses and decline to provide equipment. Some brothels have automatic teller cash dispensing machines located in or nearby the reception area. This situation creates obvious risks around loss, theft or robbery risks associated with handling large amounts of cash. The absence of electronic transaction records increases the potential for the business being used for money laundering. Sex workers also encounter challenges demonstrating the consistency and legitimacy of their income when attempting to secure finance or accounting for taxation.

In addition to any scrutiny by Commonwealth agencies, the Authority requires licensees to demonstrate their financial viability by disclosing financial information which would provide an indication of inconsistencies between cash flow and business activity levels. The licence conditions imposed around maintaining comprehensive video security camera coverage in and around the brothel (except for inside the rooms) tends to discourage theft and provide an aid to investigation should an incident occur.

Video security system coverage also tends to have the same mitigating effect on incidents of physical violence against sex workers and staff. Coverage does not extend to the rooms where services are delivered. The requirement to maintain an effective duress alarm system inside rooms is mandated through licence conditions. No video surveillance or alarm system can completely eliminate the risk of physical violence, so sex workers and brothel staff have proven adept at de-escalation techniques and this forms an important component of induction training. The nature of service delivery renders sex workers particularly vulnerable and is a significant point of difference between sex work and other forms of personal service industry.

The extent of risk to public health associated with sex work is disputed, with some claiming incidence of infection it is no greater than experienced in the general population and, due to safe sex practices, it may well be lower. There is no specific data available to support or negate the claim either way. Minimising risks of sexually transmitted infection were certainly a consideration when the current licensing regime was designed, and it may be public attitudes to safe sex practices have matured over the last two decades. However, sex workers report they regularly encounter requests for unprotected sex often incentivised by offers of large amounts of cash.

In addition to infections risks around sexually transmitted infection or blood borne virus, the nature of the work can also contribute to mental health issues either due to significant incidents or the cumulative impact of more minor occurrences over time. The Authority has partnered with the psychology department of the University of Queensland to undertake a formal study into ways of

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improving mental health in the industry for managers and sex workers. This study is expected to be complete and material published by August 2024.

The Authority actively conducts inspections of licensed brothels, either scheduled or with no notice, to ensure compliance with legislation and regulations as well as any restrictions and conditions on a licence. Inspections are rigorous, usually taking most of a day. Compliance issues are usually corrected on direction, but on-the-spot fines can be issued for some offences. Compliance is supportive and includes a significant degree of education to assist licensees and managers meet their obligations. Brothels can expect to be inspected at least twice annually, with additional inspections conducted for those assessed as requiring greater scrutiny. During the 12 months to 30 June 2023, 46 inspections were conducted and 71 corrective actions directed.

The Authority provides a central contact point for complaints to be lodged and investigated. Not all of these are within the mandate of the Authority, but formal arrangements exist for complaints to be referred to partner agencies for attention and for follow up enquiries to ensure they are actioned. Over the five years to 30 June 2023, the Authority received an average of 41 complaints per year, ranging from a high of 72 in 2021-22 to a low of 23 in 2018-19. On average, 48 per cent of complaints were resolved by the Authority and the majority of the remainder relate to illegal prostitution and were addressed by Police.

In addition to ensuring compliance through inspections, the Authority has disciplinary powers over licensees and managers which can be initiated due to contravention of relevant legislation, non-compliance with restrictions or conditions, or if there are concerns over the way a brothel is being managed. A range of corrections can be imposed through this process, but the generally supportive approach of licensees ensure it is not often needed. In the 12 months to 30 June 2023, only one disciplinary inquiry was conducted.

Advocates of a minimalist regulation approach are quick to stress the risks discussed above can be addressed through laws of general application, with law enforcement agencies best placed to deal with criminality and health agencies with issues of public health, for example. Response agencies, however, generally deal with the consequences of these issues without necessarily addressing the harm they cause.

It is also argued mainstream workplace health and safety arrangements can be applied to sex work in the same way as any other industry. This presupposes there is an adequate Code of Practice or industry guidelines as well as sufficient industry knowledge to ensure these mechanisms can be effective. It also implies sex work is sufficiently mainstream work for laws of general application to be effective. Were this assumption valid, there would be no justification for regulation of any work type beyond general application.

There are a wide range of industry types regulated in Queensland<sup>7</sup>. These include, for example, the tattoo industry which was faced with similar concerns around criminality and public health. There is regulation around working with vulnerable people, such as people with a disability, or businesses offering personal services or security. Relying on the same arguments to support the suggestion sex work can be managed through laws of general application, each of these regulatory regimes could be repealed.

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<sup>7</sup> <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/regulated-industries-and-licensing/regulated-industries-licensing-and-legislation>



## The Queensland licensed sector

The business model for licensed brothel is fairly straight forward and has some commonality with other professionals such as lawyers and health practitioners. The style of operation is not dissimilar to a very busy motel/hotel, albeit with markedly more rapid room turn over necessitating considerable capacity for cleaning and laundry support. The brothel employs managers, reception and maintenance staff, but all sex workers are independent contractors who are offered 'shifts' by the brothel management.

Despite a common model, there are different styles of brothel operating in Queensland. Some heavily rely on a transient work force of international or interstate sex workers who are present on a short-term basis before relocating to other jurisdictions. Others have predominantly Queensland-based sex workers who are better able to establish a regular clientele. Different brothels with different management and sex workers seem to target clientele of different characteristics. Although many present as similar, it is an oversimplification to assume the licensing system has created brothels which are exactly the same.

In general terms, a licensed brothel provides a physical facility for prostitution, including security arrangements, maintaining the introduction area and service rooms providing the personal protective equipment mandated in legislation (e.g., condoms, etc), bio-hazard waste management, shower facilities for clients, towels, bedding and furnishings. Rest areas for staff include security lockers for personal items and cash, kitchen and meal room facilities, and quiet space for sex workers. Some brothels also offer basic accommodation for sex workers from interstate or overseas.

Reception procedures include explanation of the limits on service to the client and facilitate the introduction of sex workers with clients on the basis of a minimal level of service (vaginal sexual intercourse, oral sex or masturbation). To complement the standard periodic sexual health check arrangements for sex workers, clients also undergo a visual check for obvious signs of infection before service delivery. Sex workers wear gloves and use designated lighting equipment provided for that purpose while conducting these examinations. Each room has showers and bio-hazard waste bins. Attending to the highest standards of sexual health and hygiene is a key objective for the licensed sector.

Should a sex worker and client agree, the appropriate basic service fee is collected from the client from which the brothel deducts a component and remits the remainder to the sex worker, usually in cash. The division of the basic fee between brothel and sex worker is usually agreed at half each. Unless a different arrangement has been made, the sex worker receives their share of the fee prior to service delivery. The sex worker is usually free to negotiate additional services, or 'extras', direct with the client and agree the additional fees which are collected direct from the client. This can take the form of physical interaction beyond the base level, sometimes as a simple variation in the theme of delivery (such as a 'girlfriend experience') or sometimes for more intimate physical services beyond the standard minimal level. Some brothels agree an additional level of service provision with sex workers on the basis of higher rates, but this arrangement is infrequent.

The number of licensed brothels operating in Queensland has fluctuated over time, stabilising at around 20 in the years up to 30 June 2023. A licensed brothel can operate up to five rooms for the provision of prostitution, although some have elected to operate only four. At 30 June 2023 in total there were 86 rooms licensed across the 20 brothels, which generated a theoretical maximum of 284 hours of prostitution service per day after applying brothel opening hours and deducting 10 minutes per hour for cleaning between services.

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The public release of the QLRC Report has created a degree of uncertainty amongst the licensed sector resulting in some operators exiting the industry. The sector has contracted from 86 rooms across 20 brothels offering 284 hours of service per day at 30 June 2023 to 77 rooms across 16 brothels offering 266 hours of service per day at 29 February 2024.

### Industry participation

As neither sex workers nor their clients typically participate in research activities, collecting accurate information about characteristics and demographics can be difficult. While this acknowledged data gap is filled by claims and estimates about the unlicensed sector, there is reliable information available on those who chose to work in Queensland's brothels.

On 30 June 2023, the Authority recorded 22 licensees (two brothels have more than one licensee) and 79 managers. Numbers of male licensees compared to females are relatively evenly distributed (10 males and 12 females), but managers are predominantly female (69 out of 79). Licensees predominantly regarded the industry from a business perspective, but it was common for licensees to take seriously their moral responsibility to provide a suitable environment for the workforce and clients.

National research shows females account for a greater proportion of sex workers than males and are on average between the ages of 20 and 39 years.<sup>8</sup> Numbers of sex workers is not centrally recorded in Queensland. Advice from licensees on the number of sex workers they have available for work indicates a mid-range estimate of 600. These are predominantly female and are usually Queensland residents with approximately 10 per cent international or interstate-based workers. By contrast, statistics indicate migrant sex workers from Asian countries comprise 45 per cent of the total estimated sex worker population in Australia.<sup>9</sup>

Previous work by the CMC (now CCC) indicates economic incentives as the most prominent motivation for commencing work in the sex industry, with many sex workers in the illegal sector operating to maintain substance misuse.<sup>10</sup> Illegal street workers also tend to be younger when entering the business, with past victimisation or abuse contributing to leaving home.<sup>11</sup> In contrast, legal workers possess higher levels of education, are older and maintain better overall standards of health.<sup>12</sup>

These observations are consistent with the experience of Authority interaction with licensed sector sex workers in Queensland. Even brief discussions about background and experiences of sex workers in the licensed sector suggest there is no such thing as a typical sex worker. Sex workers reported entry into the industry for a wide range of reasons, including flexibility about when and where to work and self-determination while at work, but the potential to earn significant income to fund other ambitions was common. These other ambitions included tertiary education, employment qualifications, investment in property and financial products, and to pay down debt.

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<sup>8</sup> Renshaw, L., Kim, J., Fawkes, J., & Jeffreys, E. (2015). Migrant sex workers in Australia. Australian Government. <https://www.aic.gov.au/sites/default/files/2020-05/rpp131.pdf>

<sup>9</sup> Includes all workers operating in the sex industry – legal and illegal.

<sup>10</sup> Crime and Misconduct Commission. (2011). Regulating prostitution: A follow-up review of the Prostitution Act 1999.

<sup>11</sup> Crime and Misconduct Commission. (2004). Regulating prostitution: An evaluation of the Prostitution Act 1999 (Qld). <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CMC/Regulating-prostitution-An-Evaluation-of-the-Prostitution-Act-1999-%28QLD%29-Report-2004.pdf>

<sup>12</sup> Ibid

Few sex workers see the industry as a long-term prospect. Some draw parallels with professional sport, where there is potential to earn high income which diminishes over time. Many have exited or returned to working in the industry on a short-term basis to fund particular personal objectives. Others saw their future in the industry as licensees, relying on sex work to create networks and generate sufficient capital to invest in facilities and business establishment costs.

## Clients

A representative study of client characteristics within the sex industry found males unmarried or dissatisfied with their marriage, and aged in their late thirties assume the majority of the clientele.<sup>13</sup> Motivations for engaging in services include convenience, desiring extreme sexual contact and the need to feel in control, as well as seeking companionship and being too socially anxious to establish a sexual relationship using conventional methods.<sup>14</sup> Similar to workers, clients of legal businesses reported better health than those participating in the illegal sector, while also being less likely to engage in risky sexual behaviour.<sup>15</sup>

Estimates by sex workers consulted by the Authority during 2023 suggest people with a visible disability represent about 10 per cent of clientele. Some disabilities are quite pronounced. Those who are non-verbal, those who are physically incapable of sex, and those with severe mobility impairment are represented amongst those who seek sexual services in the licenced sector. These clients are usually conveyed to or from an establishment by a carer or family member who assist in negotiating the service level and moving the client into the room but depart the room during delivery.

Sex workers suggest people who have a range of obvious social interaction issues and increasing numbers of elderly clients account for a further 40 per cent of clientele.

Managers and sex workers in some locations note a significant number of clients from overseas either on holiday or recently arrived who have different expectations or public health standard experiences, with interactions sometimes compounded by language difficulties. Whether this clientele present in large numbers or are more readily distinguished from mainstream clients is unclear. It is assumed they form part of the client group who experience difficulty with social interaction in the broader community, hence their attendance at brothels.

Managers report clients at Queensland brothels have confidence in the standards of sexual health. While sex workers support this view, they also report some clients continue to request unprotected sex or 'natural services'. Sex workers report the existence of mandated safe sex practices provide leverage and support in declining such requests.

## Conclusion

Contrary to erroneous public perception of disempowered women being exploited by a system operated by males, the licensed sector is predominantly operated and staffed by women. Sex workers enjoy a high degree of autonomy and self-determination and are typically pragmatic about their work and the services they offer. Sex workers in brothels are self-aware, independent contractors.

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<sup>13</sup> Crime and Misconduct Commission. (2004). Regulating prostitution: An evaluation of the Prostitution Act 1999 (Qld). <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CMC/Regulating-prostitution-An-Evaluation-of-the-Prostitution-Act-1999-%28QLD%29-Report-2004.pdf>

<sup>14</sup> Ibid

<sup>15</sup> Ibid

Licenseses, managers and sex workers agree prostitution is a commercial enterprise, with flexible participation a convenient feature of the business model. A brothel provides a contracted service to sex workers. As a base level of service licensed brothels provide a relatively safe place to deliver sexual services, providing facilities, equipment, and management of clients at a fixed rate for sex workers. Sex workers can negotiate additional levels of service and costs direct with clients. The brothel operator does not have a scalable entitlement to any fees for additional services. The notion a brothel takes half of what a sex worker makes is a misleading simplification.

Clients, however, reportedly remain exclusively male. At about half of total clients, there is a high proportion who would fall into the 'vulnerable' category, either due to physical disability or neuro-cognitive impairment or due to social challenges.

Due to the absence of reliable information, it is not possible to confidently compare and contrast the licensed sector with the unlicensed sector which continues to operate in the shadows. Whether a sex worker operating alone, or a sex worker operating illegally with others or as part of an unlicensed brothel, there is no reliable information outside unverifiable participant claims or when a prosecution occurs.

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

## Key Points

- Extending decriminalisation of sex work is supported. The Authority holds reservations about the utility of laws of general application to effectively regulate the industry.
- Reservations are held about the speed and degree of change proposed for the sex work industry, especially as no reliable information on scale or distribution exists outside the licensed sector.
- Businesses operating similar service models or with similar risks currently attract specific regulation.
- Regulation builds public confidence by ensuring visibility of the participation, scale and distribution of business which would support both robust evaluation and destigmatisation of the sex work industry.
- By contrast, laws of general application do not seem to provide confidence in the oversight of intimate or erotic massage service businesses.
- There is no information provided on establishment of adequate capability amongst agencies which would be responsible for enforcing laws of general application, nor how the lack of confidence of sex workers in government agencies will be addressed.
- There is no information on how the evaluation of the proposals will be conducted, especially in the absence of reliable information and given the proposed minimum four-year interval.

## General Observations

The Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (the Bill) proposes to give effect to the latest step in the policy process of decriminalisation and destigmatisation of sex work initiated in 2000 in Queensland with the commencement of the *Prostitution Act 1999*. Sex work outside the licensing system, away from licensed brothels, is a matter for other government agencies, including law enforcement agencies. Comment on the responsibilities of other agencies in this submission is limited accordingly. The focus of the observations below remains primarily on the potential of the proposed amendments impact on the licensed sector.

The licensing system already provides for decriminalised sex work. Broadening decriminalisation beyond the licensed sector of the industry can be expected to remove a significant barrier preventing clients and sex workers working together from accessing support services, including justice services, due to risks of prosecution. The decriminalisation proposals contained in the Bill means the benefits of decriminalisation which already exist in the licensed sector would apply to sex workers currently operating illegally, that is working with others outside the licensing system. The potential benefits of decriminalisation for this sector of the industry appear to outweigh the risks.

It is noted, however, the licensing system is concerned primarily with maintaining a well-regulated licensed brothel system as a harm minimisation and prevention measure. Other agency responsibilities complement regulation through the management of certain offences and the harm they cause after they have occurred.

The licensing system is designed to mitigate two risk areas of sex work: public health and criminal exploitation. While supportive of further decriminalisation and contemporising of the governing legislation, the Authority has reservations about dismantling the specific regulatory system in favour of laws of general application as the sole mechanism for mitigating industry risks.

Measures in the Prostitution Act to reduce risk or prevent sexual transmitted infection and blood borne virus include mandating the use of prophylactics and regular sexual health checks for sex workers, as well as a range of responsibilities imposed on brothel operators to maintain a safe and hygienic workplace. These measures are founded on health advice and provide a high degree of assurance for workers and clients. The Authority is guided by advice from Queensland Health on issues relating to public health.

Regulation in the licensing system is primarily concerned with licensees who own the brothels and managers who attend to day-to-day operations. It is at this management level, amongst those with a third-party commercial interest, where many of the risks of criminality lie. There is potential for profitability from the work of others, especially where the work force can be coerced or exploited. Licensees and managers are subject to eligibility and suitability assessments to exclude those unsuitable either due to their own background or that of their associates. Annual checks ensure circumstances have not changed. Sex workers themselves are not registered and are free to negotiate their working arrangements with individual brothels.

Advocates of laws of general application promote the slogan 'Sex work is real work and should be treated like any other business'. This view seems to have been adopted by the QLRC, which maintains 'Special laws that single out sex work are not needed since laws of general application are fit for purpose. These general laws – including work, public health, advertising and public amenity laws – protect the rights of individuals and the public interest.'<sup>16</sup> Some advocates add law enforcement agencies are the single body required for dealing with risks of criminality. Despite concluding laws of general application are adequate, however, the QLRC advocates for specific legislation for sex workers around definitions of sex work and a specific coercion offence in the Criminal Code, and specific legislation around discrimination.

Were laws of general application adequate for dealing with health and criminality risks, it could be argued other regulatory regimes, such as tattoo parlour or adult entertainment regulation, could similarly be repealed. The *Tattoo Parlours Act 2013*, for example, delivers the 'policy objective of eliminating and preventing criminal infiltration of the Queensland tattoo industry (particularly by criminal motorcycle gangs) by establishing a new occupational licensing and regulatory framework for the body art tattoo industry.'<sup>17</sup> The regulatory framework created by this Act bears close similarities to that of the prostitution licensing system, although less invasive or intensive.

Other similar industries attract a regulatory framework to ensure operators are of suitable character, such as the Liquor (Approval of Adult Entertainment Code) Regulation 2002. The Explanatory Notes observe the QLRC has not made any recommendations regarding adult entertainment, instead suggesting this complex policy issue requires separate consultation and consideration by Government.<sup>18</sup> This industry is grounded in the same sexual gratification motivators as sex work, there is some work force cross over between the two sectors. The proposed definition of sex work provided at clause 6, 8 and 12 of the Bill includes 'services involving the use or display of the person's body for the sexual arousal or gratification of another person'. It would appear this definition would capture adult entertainment, redefining this as sex work. There are similar key risks

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<sup>16</sup> *A decriminalised sex-work industry for Queensland Report overview* QLRC March 2023, p4

<sup>17</sup> Tattoo Parlours Bill 2013 Explanatory Notes p1

<https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2013-1762>

<sup>18</sup> Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 Explanatory Notes, pp2-3 <https://documents.parliament.qld.gov.au/tp/2024/5724T206-B09C.pdf>

of exploitation and coercion which would support the notion the two matters should be dealt with concurrently.

Repeal of the Prostitution Act will expand the sex work service delivery model to include out call services. Section 96A of the Prostitution Act currently prohibits advertising social escort services from offering sex work. As the Act also prohibits sex work outside a licensed brothel where two or more people are involved, out call sex work is prohibited unless under sole provider arrangements. Should the proposed amendment proceed, there will be nothing to prevent or regulate the establishment of sex work out call businesses. By contrast, a business the purpose of which is to introduce a person to 1 or more other persons who might be interested in having a personal relationship is regulated through the *Introduction Agents Act 2001*. This legislation was introduced due to continuing unfair trading practices in parts of the industry, which have led to considerable consumer detriment.<sup>19</sup> On call sex work business are likely to operate with close similarities to introductory services, and be subject to similar risks, but without the protections around participant suitability, information clarity, contract cost provisions, and regulatory oversight bodies available to the latter.

The Authority is of the view regulatory oversight is necessary to ensure the safe operation of sex work businesses in the same way regulation is required for businesses of a closely related nature such as adult entertainment and introductory services, or business with similar risk to public health or criminality such as the tattoo industry. If laws of general application are considered suitable for the currently highly regulated sex work industry, the validity of regulatory oversight for similar industries might be explored.

These specific regulatory systems can be contrasted with massage parlours, often reputed to operate as unlicensed brothels, which are subject to laws of general application. Authority records indicate of complaints categorised as illegal operations received from 1 Jan 2019 until 5 March 2024 (n=77), 78% (n=60) relate to massage businesses illegally offering sexual services. To distinguish between the prostitution and massage services, section 95 of the Prostitution Act is framed to prohibit sex work being advertised as, or connected with, massage services. Although operators in the licensed sectors are held to this provision, massage services are commonly variously presented as 'sensual' or 'erotic' as well as 'therapeutic', inferring sexual services are available as part of massage services.

The lack of regulatory oversight of massage service means it cannot be readily discerned how many massage businesses operate, who they are operated by, where they are located. The same is not true of licensed brothels, tattoo businesses, or adult entertainment venues. Each of these derives a high degree of visibility to oversight bodies due to regulation. In the case of the prostitution licensing system, considerable information holdings are available to ensure appropriate operation of the industry is demonstrated.

Importantly, the information available through the licensing system provides a sound basis for evaluation of the licensed sector which is not available for other parts of the industry. The number of brothels, their ownership and management as well as method of operation and standards achieved are all known. The number of sex workers operating at licensed brothel can be reliably inferred from information held by the businesses. The same cannot be said of any other sector of the industry. The provenance of the claim that licensed brothels make up ten per cent of the industry, although often

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<sup>19</sup> Introduction Agents Bill 2001 Explanatory Notes p1  
<https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2001-798>

repeated, appears to be based on an estimate decades ago. There is no method of determining how many 'sole operator' sex workers are active in Queensland, let alone how many might operate illegally from unregulated businesses such as 'massage parlours' or privately. The lack of reliable information presents a significant challenge to any evaluation about the effectiveness of legislative change. Abolition of licensing without introducing an alternative system risks similarly consigning brothel businesses to the same shadows.

The utility of a shift to laws of general application is based on an assumption that general agencies already have, or rapidly can acquire, an understanding of the industry and the resources and operational capability and capacity to effectively support the amendments. There is a history of distrust between sex workers and government, particularly law enforcement, which will take some time to overcome. Until trust can be built, it is difficult to understand how sex workers can have sufficient confidence in authorities which will effectively be new to the industry to rely on them for their protection.

Recommendation 44 of the QLRC Report calls for resourcing necessary for a number of key recommendations, including education programs to build understanding and the establishment of an implementation body. Without offering any assessment of what these costs might be, the Explanatory Notes (page 8) suggest any resources necessary will be met from existing agency resources or through normal budgetary processes.

It should be noted many operators have invested in significant building modification, leasing and business establishment costs including licence and manager certificate fees to meet the location requirements of the current licensing system. Most are committed to lease arrangements or would expect a return on investment on fit out costs which could preclude the viability of relocation to locations more conducive to business. Business establishment decisions may have been significantly different if the licensing system had not applied. Recommendation 34 of the QLRC report provides for Government to consider a compensatory mechanism such as fee relief, for licensees and managers, as an interim measure during the transition period before the new decriminalisation framework commences. The Bill is silent on interim fee relief or fee refunds other than applications for licences or certificates which are not decided at the time of commencement (see 354 and 355 of clause 34). It is anticipated licensees may seek compensation beyond fee relief.

The lack of information on timing of commencement, implementation responsibilities and costs is of concern.

### Objectives of the Bill

The Explanatory Notes present eight objectives for the Bill to give effect to the recommendations of the QLRC Report. In addition to the observations raised above, comment is offered below on the views of the Authority on each of these objectives. In general, the Authority welcomes the opportunity to contemporise the legislation and licensing system it creates. The decriminalisation provisions central to the Bill's objectives are supported. While a degree of deregulation may be warranted, reservations are held about reliance on laws of general application to effectively manage the unique risks to the sex work industry.

Repealing sex work specific offences such as those relating to working alone or with others, public solicitation and sex work advertising, as located in the *Criminal Code*, *Prostitution Act 1999* and *Prostitution Regulation 2014*

The repeal of offences committed by sex workers and clients is supported as a core proposition. The change can be reasonably expected to remove significant barriers to accessing services. Coercion

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and exploitation by those with a third-party commercial interest remain a risk of significant concern. Supporting a sex worker with transportation and welfare monitoring absent payment or payment in kind such as might occur amongst sex workers working together serves to improve safety. Measures should be in place to ensure that two or three sex workers working together does not become two or three sex workers working for someone else. In simple terms, where money changes hands the risk of criminal exploitation increases.

The ubiquitous nature of social media has fundamentally altered the solicitation and advertising environment since the current provisions were framed. Street solicitation is now rare apart from individuals experiencing significant socio-economic disadvantage. Where it does occur, it is likely to be small scale, part of broader and more pressing social issues, and best managed by means other than criminalisation.

Clarity in advertising could help reduce disputes about the extent of services available. Removal of the current restrictions would also enable 'out call' service delivery, the provision of which has been sought by some operators in the licensing system for some time. Such a change in service delivery model carries inherent risks as sex workers would sometimes enter unfamiliar surroundings to deliver services to unknown clients. Welfare support in these circumstances would be an important risk mitigation factor, which is currently prohibited.

#### Removing the current licensing system and specific obligations on brothel licensees relating to alarms, lighting and signs

The current licensing system is extremely proscriptive at the management level of the industry. It is complex and restricts ownership, business size, location and method of operation. Administration is manual and expensive. While contemporisation would be welcome, repeal without implementation of a more contemporary system is not supported.

Obligations relating to alarms, lighting and signs are insignificant when compared to restrictions about size and location, and in any case generally form part of a contemporary business model. Limiting licensees to an interest in only one brothel penalises those with a successful operation, and arbitrarily limiting the number of rooms restricts service delivery. Those businesses which can attract sex workers and clients while demonstrably operating sound service delivery system might best be encouraged to expand. Some operators might also consider an 'out call' service or liquor licensing service as part of their business model. Such opportunities are currently inhibited or explicitly prohibited by the current legislated arrangements.

Repealing the current licensing system would significantly change the scale and scope of the industry, presenting new developments and new risk types. The dangers associated with the potential degree of change without any dedicated regulatory oversight is of concern. Support for repeal is therefore conditional on establishment of a replacement, contemporary regulatory model.

#### Repealing sex work specific health offences that are located in the Prostitution Act and Prostitution Regulation

The most appropriate method of maintaining health of workers and clients is a matter for the health authorities. The most appropriate approach is unclear from the expert submissions considered in the QLRC Report. The majority of sex workers, managers and licensees consulted by the Authority remain in favour of mandated use of prophylactics, and report the offence provisions provide them with leverage to resist pressures from clients demanding 'natural services'. Whether the same outcome can be achieved through workplace health and safety measures requiring the use of

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personal protective equipment should be explored, perhaps as part of the development of an industry Code or Practice or guidelines.

Implementing the QLRC's recommendations to update discrimination protections in the *Anti-Discrimination Act 1991*

Sex workers appear routinely and unfairly discriminated against due to the nature of their employment. Any measures to counter such treatment are supported.

Ensuring that the power to make local laws, which reside with local government authorities, should be restricted so that a local law must not be made which prohibits or regulates sex work or the conduct of sex work businesses

To prevent the risks of development of radically different regional variations as a consequence or reflection of inevitable differing community leadership and hence local political leadership views on prostitution, any legislation pertaining to sex work should be centrally mandated. Hence removing the authority of local government to make any local law relating to sex work is supported. The regulation of sex work businesses is therefore left to the land use planning and development compliance framework under the *Planning Act 2016*.

The establishment of businesses openly offering sexual services might impact on local amenity and public concern. Unless a state-wide code under the State Development Assessment Provisions (SDAP) is put in place, local governments are effectively 'left on their own' to determine a new regulatory regime under their planning schemes. This is not considered to be appropriate and would have the unintended consequence of various regulatory regimes being attempted by various local governments without any consistent overarching policy framework. SDAP codes are in place for other challenging forms of development to assist local governments in assessing development applications for levees, dams, railway proximate sites, wind farms, hazardous chemical facilities, dealing with heritage, etc. It would be consistent and essential that a state-wide code is established to assist local governments in dealing with the new regulatory environments for prostitution.

Repealing sex work specific offences in the Criminal Code, and introducing a definition of 'commercial sexual services' in addition to new offences that address coercion and the exploitation of children in commercial sexual services

Moves to clarify definitions in legislation are supported, as are measures to maintain the coercion offence which currently exists in section 77 of the Prostitution Act. Measures to protect children and people with impaired decision-making capacity are strongly supported.

Introducing a legislated review requirement to assess the operation and effectiveness of the new regulatory framework of the Bill and the decriminalised sex work industry in Queensland  
The importance of rigorous evaluation of the significant changes to the regulation of sex work cannot be overstated. Significant reservations are held around the efficacy of such research in the absence of data of the quality generated through the current licensing system or replacement regulatory framework. Concerns are held about the four-to-five-year timeframe for evaluation. While this might be an appropriate timeframe for the full effects of the amendments to manifest, arrangements for interim evaluation activities are advocated to ensure any potentially adverse outcomes are identified and addressed early.

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Implementing consequential amendments to reflect the decriminalisation of the sex work industry and removal of the brothel licensing system

The implementation of consequential amendments is a question best left until later, after the Committee has had opportunity to examine the intent and likely effect of the amendment proposals.