



The Secretary

Queensland Law Reform Commission

Via email LawReform.Commission@justice.qld.gov.au

**RE: LAW REFORM CONSULTATION CONCERNING
DECRIMINALISATION OF SEX WORK in QUEENSLAND**

Honourable Queensland Law Reform Commission,

We are writing to you on behalf of the members of Sexual Health Society of Queensland (SHSQ). SHSQ is a membership organisation providing evidence-based sexual & reproductive health (SRH) professional education to experts in this field, while advocating for unmet SRH needs in Queensland.

SHSQ welcomes and supports the release of the important Queensland Law Reform Commission's Consultation Paper providing a framework for a decriminalised sex work industry in Queensland and accepting "sex work as work, not as a crime."

We agree that we need a model of decriminalisation that delivers work benefits to sex workers ensuring equal employment rights for all working people in Queensland. We emphasise that mandatory certification or licensing of sex work is not compatible with decriminalisation and equality.





Decriminalisation of sex work removes structural barriers to sex workers, mostly vulnerable women, accessing health promotion programs, sexual and reproductive healthcare, and support in case of exposure to abuse and violence. It is widely recognised that these structural barriers predominantly comprise laws and policing practices that thwart the ability of sex workers to implement safer sex practices and limit their access to health care for themselves and their families.

At the outset, the QLRC report states clearly “The aim of decriminalisation is to recognise sex work as legitimate work. This means sex work will be regulated, as far as possible, like any other business under existing laws (such as planning laws and workplace laws). Sex workers will have the same rights, protections and obligations as other workers.”

With this intent as our focus, the SHSQ wishes to submit its views to the Government concerning those aspects of the report which our members believe are most relevant to the promotion of good public health.

The Kirby Institute ‘Law and sex worker health’ research project compared the sexual health of sex workers working in different **models of regulation** and identified **decriminalisation as resulting in ‘a healthy sex industry’**, without the unnecessary cost of over-regulation and mandatory testing (1). Additional research demonstrated that decriminalisation improves access to sexual health clinics, including for sex workers from cultural and linguistically diverse (CALD) backgrounds, improving safe sex practices such as condom use (2).



Therefore, SHSQ recommends that any form of licencing or regulatory model that differentiates sex work from any other work, will undermine all good intentions of decriminalisation by maintaining the current two-tiered system, legal versus illegal sex work, that exists in Queensland. We point out that Queensland currently operates a licencing model through the Prostitution Licencing Authority, and we believe that it is only through full decriminalisation repealing all current laws that refer specifically to sex work in Queensland, and by allowing existing general workplace health and safety, commercial, industrial, public health, anti-discrimination and business laws applied to all aspects of the sex industry, that optimal health and well-being for all sex workers can be guaranteed. This would also remove any, until now, lawful discrimination against sex workers by law.

The Queensland Sexual Health Strategy reports that sex workers working who are forced to practice outside of the current legal framework, and especially CALD sex workers, experience unsurmountable barriers health care access. Respect Inc, Queensland's peer-based sex workers' organisation, states that more than 80% of the sex industry and sex workers operate outside of the legal framework currently. A licencing or certification model would perpetuate a two-tiered system of legal versus illegal operations. Under such a licencing regime, a venue deemed as non-compliant with licencing, would render all sex workers operating within that venue as working illegally, therefore subject to policing. This is the case even if the employee was not aware of the non-compliance of the venue owners. In order for all sex workers to be accorded their human





rights, all work operations would need to be included within the legitimate industry and be bound by current industrial legislation.

It should be stressed that NSW and Victoria have not adopted a licencing model for this very purpose of avoiding the two-tier system. As described in the QLRC Report, the NSW government considered, but did not adopt, the 2015 NSW Select committee's recommendations about licensing, explaining that: 'This model would be high cost and risks creating incentives for non-compliance. It also risks creating similar adverse outcomes as recriminalisation, such as reduced sexual health screening and protection for sex workers.'

Further, according to the Victorian Government, the licensing system: '..is complex, costly and onerous. This has led to poor compliance and the growth of a large, unlicensed sex work industry in Victoria, which neither criminalisation nor licensing has been able to eliminate. This system has many negative impacts for sex workers and business operators ...'

A licencing model would place an unnecessary burden on business, government and sex workers, and we believe, increases the risk of re-criminalisation of a subset of sex workers, and may perpetuate the stigma and discrimination associated with sex work.

To create a decriminalised framework, it is necessary to remove all the current laws that refer specifically to sex work, in particular the Prostitution Act and Regulations, Criminal Code Ch22A and sections of the Police Powers and Responsibilities Act. Any aspects of sex work that are





retained in the criminal code, maintains the link between policing and the criminalisation of sex workers. Importantly the current Federal and State workplace, and workplace health and safety legislation affords adequate protections against **exploitation and trafficking** of employees without necessarily introducing specific references to sex work. Therefore, we already have comprehensive laws at the Commonwealth level that allow for the Federal police and workplace inspectors to enter the premises of any workplace if trafficking or exploitation is suspected. SHSQ recommends the removal of the duplicate laws at the State level which currently, inadvertently puts sex workers at risk of **exploitation and trafficking**.

With respect to **Public Health**, the SHSQ stresses the following points:

- Research in the last two decades has demonstrated consistently low rates of sexually transmissible infections (STIs) and HIV among sex workers in Australia (1).
- The Joint United Nations Programme on HIV/AIDS recommends ‘Whatever the legal regime, states should ensure that sex workers are not subjected to *mandatory* HIV testing or restrictions on their civil liberties.’
- Australia’s national BBV and STI testing guidelines support voluntary testing and there is no evidence that demonstrates benefits from mandatory STI testing and genital examination targeting sex workers in Queensland.





- Australia's strong and sustained health promotion programs among sex workers with rates of STI among the lowest in the world, is identified as an achievement in its Third National STI Strategy.
- Strong and sustained health promotion programs, including high levels of condom use, regular testing and sex worker uptake of safer sex practices, has been achieved through a combination of strong peer led community health promotion programs, primary prevention strategies, access to voluntary testing and early treatment.
- Australia's long experience of, and fundamental principle for HIV prevention, has been that education, not criminalisation supports behaviour change. Free, anonymous access to testing has been a key pillar of Australia's response.
- With respect to STI testing, genital examination and condom use, there should be no imposition of criminal penalty on any person, but rather encouragement to self-care and empowerment through education.
- New South Wales, the jurisdiction in Australia with the highest number of sex workers, has a voluntary testing approach and longitudinal anonymous notification data demonstrating high levels of voluntary testing and low rates of HIV and STIs amongst sex workers.
- The issue of public health risk for HIV is covered within the Public Health Act and Queensland has a successful protocol for addressing these public health challenges through a staged process of interventions.





- Peer based health promotion alone achieves voluntary condom usage and STI testing by sex workers and not policing and criminalisation strategies.
- Consequently, greater government investment should be encouraged for the provision of free and easy to access peer education and SRH health care through public sexual health services.

With regards to issues raised by **Public Solicitation**, the SHSQ similarly believes that there is no need to retain specific legislation against soliciting in public. The benefits of decriminalisation should apply to all sex workers including the very small street-based sector in Queensland. Continuing criminalisation, or specific controls, will undermine this and stigmatise a small part of the sex work community that remains at risk of police interactions or charges. Mobile technology has dramatically reduced the nature of street-based work, and we believe that existing Public Nuisance laws are sufficient for managing the small frequency of street-based sex work. A police focus on street-based activity would impose a greater burden on a very small group of workers and further marginalise them from access to health services.

The SHSQ also raises concerns about the impact of **Local Planning** laws which inadvertently and/or overtly discriminate against sex workers. The NSW experience has shown that attempts to decriminalise the sex industry have been thwarted by local planning regulations which grant local councils the power to block and discriminate against sex workers.





In this way, the role of police has been replaced and taken up by local councils. Therefore, it is recommended that the Planning framework recommended by Respect Inc be adopted so that sex work is treated fairly like other business, and further, as a historically stigmatised profession, should be specifically protected from local council discrimination.

With respect to **discrimination**, the SHSQ supports a change in the Anti-Discrimination Act to the term 'lawful sexual activity', replacing it with 'sex work/sex worker'. Discrimination exemptions within the Act should be repealed to avoid discrimination from accommodation providers and those services working with children. It is also important that changes are made to the complaints process to address significant barriers to reporting discrimination for sex workers, and that a representative organisation like Respect Inc be empowered to make complaints on behalf of a sex worker. We believe that the stigma long associated with sex work will not be erased once the new decriminalisation act is imposed, therefore sex workers need to be proactively protected from covert or implicit discrimination long-term. This will allow the decriminalisation act to deliver optimal benefits for sex workers in QLD.

The **fraudulent** promise to pay for sexual services is a significant issue and is now recognised within the ACT as constituting rape. QLD legislation is similar and with a minor clarification, could include the 'failure to pay', along with 'stealthing' as a failure to give free consent, and therefore classified as sexual assault.





In conclusion, the members of SHSQ wholeheartedly support and congratulate the Queensland Government and the QLRC for decriminalising sex work in QLD in 2022. It is an honourable goal that SRH experts and advocates of SHSQ have long been advocating for. We have the historic opportunity and obligation to stop all discrimination through our laws and ensure that the dignity, safety and well-being of all sex workers in Queensland is protected and enhanced.

Thank you for taking our submission into consideration.

Please do not hesitate to contact me for further information.

Yours sincerely,

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1 Donovan B, Harcourt C, Egger S & Fairley C (2010). 'Improving the health of sex workers in NSW: Maintaining success', NSW Public Health Bulletin 21(3–4), 2010, pp. 74–77.

2 Pell C, Dabhadatta J, Harcourt C, Tribe K, O'Connor C (2006). 'Demographic, migration status and work-related changes in Asian sex workers surveyed in Sydney: 1993 and 2003'. Australian and New Zealand Journal of Public Health;30: 157–162.

