

TO: Housing, Big Build and Manufacturing Committee
Sent via email: hbbmc@parliament.qld.gov.au

8 March 2024

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

The Eros Association is Australia's industry association for adults-only retail, wholesale, media and entertainment. We welcome the opportunity to provide a submission in response to Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 ('the Bill').

This submission is based on our submission to the Queensland Law Reform Commission ('QLRC') inquiry into a framework for a decriminalised sex work industry in Queensland. By way of background, there are 20 licensed brothels in Queensland, but about 80% of the sex industry continues to operate illegally.¹

Whilst we are broadly supportive of the Bill, we note our concern at the outset that adult industry associations such as ours were not consulted in the development of the legislation. As representatives of the adult industry, we have information and viewpoints worth considering. We should be actively included in the development of legislation for a decriminalised sex work industry in Queensland.

Offences to protect against commercial sexual exploitation

We welcome the provisions in the Bill to repeal the *Prostitution Act 1999* (clause 35), chapter 22A of the *Criminal Code 1899* relating to prostitution (clause 15) and related provisions under the *Police Powers and Responsibilities Act 2000* (clause 36).

The *Introduction Agents Act 2001* should also be repealed.² In our view, this is already adequately covered by the *Fair Trading Act 1989*.³

¹ Queensland Adult Business Association, 'Submission in response to the Queensland PLA's proposed changes to the *Prostitution Act 1999*' (2021) 3.

² *Introduction Agents Act 1992*.

³ *Fair Trading Act 1989*.

Licensing of sex work business operators

We welcome the provisions in the Bill to repeal the requirement for a licence to operate a sex work business (clause 35). The licensing and related compliance system is costly and of no benefit to sex workers; the cost and complexity of the licensing system also incentivises illegal operators.⁴

However, we believe that **provisions should be included in the *Dangerous Prisoners (Sexual Offenders) Act 2003* and *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* to explicitly enable the court to make orders that a person sentenced for a serious sexual offence or reportable offence be prohibited from operating a sex work business.**⁵

Workplace laws

The QLRC noted that there were different views on whether there should be a new law stating that a person may, at any time, refuse to perform or continue to perform sex work.⁶ We want to stress that workers should always be allowed to refuse clients and should not be compelled to see a client if it poses an unacceptable risk to their health or safety. In our view, this is already adequately covered by section 84 of the *Work Health and Safety Act* which protects the right of a worker to cease unsafe work,⁷ and section 348(4) of the *Criminal Code* which recognises the right to withdraw consent to a sexual act.⁸ Nevertheless, in our view, **section 348 of the *Criminal Code* should be amended to clarify that if a person has entered into a contract for sex work, this does not of itself constitute consent if they do not consent, or withdraw their consent, to performing an act.**⁹

The QLRC also noted that there were different views on whether legislation should state that a contract for or to arrange sex work is not illegal or void on public policy or similar grounds.¹⁰ In our view, **there should be a provision similar to that in the Northern Territory, that no contract for or to arrange sex work is illegal or void on public policy or similar grounds.**¹¹ This could be placed in the *Sale of Goods Act 1896* or other appropriate legislation, and would avoid moralistic arguments over the legitimacy of sex work.

⁴ Queensland Adult Business Association, 'Submission in response to the Queensland PLA's proposed changes to the *Prostitution Act 1999*' (2021) 7.

⁵ *Dangerous Prisoners (Sexual Offenders) Act 2003* s 16(1); *Child Protection (Offender Reporting and Offender Prohibition) Act 2004* s 13F(1)(e).

⁶ Queensland Law Reform Commission, *A Decriminalised Sex Work Industry for Queensland* (2023) (vol 1) 81.

⁷ *Work Health and Safety Act 2011* s 84.

⁸ *Criminal Code 1899* s 348(4).

⁹ See *Sex Industry Act 2019* (NT) s 9(2).

¹⁰ Queensland Law Reform Commission, *A Decriminalised Sex Work Industry for Queensland* (2023) (vol 1) 81. See *Ashton v Pratt (No 2)* [2012] NSWSC 3.

¹¹ *Sex Industry Act 2019* (NT) s 7.

Planning laws and sex work

We welcome the Minister's statement that "draft changes to the Planning Regulation 2017 are being prepared to give effect to the intent of the QLRC recommendations... which will be consulted on."¹² Brothels are currently banned in more than 200 Queensland towns, and only 12 of 77 local governments have ever approved a brothel.¹³

In our view, commercial sex businesses (including brothels, adult stores and adult entertainment venues) should have the *same* planning requirements as other commercial businesses. We want all commercial businesses to be treated equally under the law. This means the same categories of assessment for commercial businesses should apply to *all* commercial sex businesses (including brothels, adult stores and adult entertainment venues), and **the requirement for adult entertainment permits, local government consent, additional conditions and restrictions relating to suitability, unique grounds for cancelling, suspending and varying permits, unique particulars to be displayed on premises and supervision requirements under the *Liquor Act 1992* should be repealed.**¹⁴

Clause 15 of the Bill repeals section 229L of the *Criminal Code 1899* prohibits permitting a young person to be at a place used for sex work.¹⁵ In addition to this repeal, the similar provision under **section 155AA of the *Liquor Act 1992*, which prohibits minors in adult entertainment venues, should also be repealed.**¹⁶ In our view, this is already adequately covered by section 155 of the *Liquor Act 1992*, which prohibits minors on premises generally,¹⁷ and section 210(1) of the *Criminal Code Act 1899*, which prohibits indecent treatment of children under 16, including by exposing them to indecent acts or images.¹⁸ This can also be addressed under workplace laws.

Finally, **section 168A of the *Liquor Act* which prohibits certain advertising of adult entertainment should also be repealed.**¹⁹ In this regard, we welcome the Minister's statement that "the government is commencing a review of adult entertainment on liquor licensed premises as part of a separate process."²⁰

Advertising sex work

We welcome the provisions in the Bill to repeal specific restrictions on the advertising of sex work and sex work businesses (clause 35). However, in our view, the Bill does not go far enough and **provisions in the *Classification of Films Act 1991* that prohibit the making, public exhibition or sale of X 18+ films should be repealed,**²¹ noting that many sex workers also engage in filmed sex work.

¹² Queensland, *Parliamentary Debates*, 15 February 2024, 256 (Yvette d'Ath, Attorney-General).

¹³ Prostitution Licensing Authority, *Annual Report 2011-2012* (2012) 24.

¹⁴ *Liquor Act 1992* pt 4A div 6, ss 149A, 105B, 107CA-108, 134A-134C, 143A, and 149B.

¹⁵ *Criminal Code 1899* s 229L(1).

¹⁶ *Liquor Act 1992* s 155AA(2).

¹⁷ *Liquor Act 1992* s 155.

¹⁸ *Criminal Code 1899* s 217(1).

¹⁹ *Liquor Act 1992* s 168A.

²⁰ Queensland, *Parliamentary Debates*, 15 February 2024, 255 (Yvette d'Ath, Attorney-General).

²¹ *Classification of Films Act 1991* pt 5.

Public solicitation

We welcome the action that has already been taken under the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* to repeal specific move-on powers directed against solicitation.²²

Review of the new regulatory framework

We welcome the requirement of a review of the new regulatory framework (clause 33). However, in our view:

- **there should be mandated consultation with workers and industry bodies;**
- **the review should begin two years after the commencement day** (not between four-five years, which is a long time from commencement); and
- **the review should consider the operation and effectiveness of the new regulatory framework for the sex work industry and whether any amendments are necessary or desirable.**

Discrimination against sex workers

The Bill proposes various amendment to the *Anti-Discrimination Act 1991* to protect sex workers against unlawful discrimination in light of the decriminalisation of the sex work industry (part 2).

In our view, protection on the ground of “lawful sexual activity”²³ should be retained, but the definition of lawful sexual activity should be removed (as it was originally, and given that it is causing some confusion in the courts²⁴). Therefore, in our view, **clause 4 of the Bill should be amended to not omit section 7(l) of the *Anti-Discrimination Act 1991* and instead insert an additional sub-section “(la) sex work activity”.**

In our view, **there should be a new protected attribute inserted in the *Anti-Discrimination Act 1991* of “profession, trade or occupation”.** As the Victorian Equal Opportunity and Human Rights Commission has noted, this would provide protection to sex workers and those in the sex industry, as well as workers in other industries.²⁵ This would also align with similar protections in the Australian Capital Territory,²⁶ which has been held to include sex workers,²⁷ and in Victoria.²⁸

²² *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* s 50A, repealing *Police Powers and Responsibilities Act 2000* s 46(5).

²³ *Anti-Discrimination Act 1991* s 7(l).

²⁴ *Dovedeen v GK* [2013] QCA 116.

²⁵ Victorian Equal Opportunity and Human Rights Commission, Submission to Review into the Decriminalisation of Sex Work (July 2020) 3-4

<https://www.humanrights.vic.gov.au/static/2aaf9da86629d99172feb50ac58d79fd/Submission-Review_into_the_Decriminalisation_of_Sex_Work-Jul20.pdf>.

²⁶ *Discrimination Act 1991* (ACT) s 7(1)(p).

²⁷ *Edgley v Federal Capital Press of Australia* [1999] ACTSC 95 (1 October 1999). See also ACT Human Rights Commission, ‘Profession, trade, occupation or calling’ <<https://hrc.act.gov.au/discrimination/profession-trade-occupation-calling/>>.

²⁸ Sex Work Decriminalisation Bill 2021 (Vic) cl 34.

As many in our industry work across state and territory borders, we believe in harmonisation of laws in this area; that is, the law should reflect other provisions in interstate equal opportunity laws, such as that in the Australian Capital Territory and Victoria (which also prohibit discrimination based on employment status²⁹ or employment activity³⁰). This would also protect people from financial discrimination, including from banks, insurers, landlords and suppliers, on the basis of their profession, trade or occupation.

The Act also provides protection on the ground of “sexuality”³¹ which is defined as “heterosexuality, homosexuality or bisexuality.”³² As the Human Rights Commission notes, “the definition of sexuality is... narrow.”³³ In our view, **the definition of sexuality in the *Anti-Discrimination Act 1991* should either be removed or replaced with a broad definition that includes a person’s involvement in sexual activity and not be based solely on sexual identity.**

The *Anti-Discrimination Act 1991* should cover discrimination on the ground of irrelevant criminal record, and that attribute should apply to all areas of activity, not just work. This would provide protection from discrimination on the basis of a criminal record, unless the criminal record is of relevance. This is particularly important as, if sex work is to be decriminalised, it would be wrong for people to be discriminated against on the basis of out-of-date criminal laws. This is also consistent with the spirit of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.³⁴

Conclusion

The Eros Association thanks you for taking the time to consider our submission and welcomes the opportunity to discuss with you further our views on these issues at the public hearing.

If you require any further information, please don’t hesitate to contact us.



Graeme Dunne
General Manager
Eros Association

E: manager@eros.org.au | www.eros.org.au

²⁹ *Discrimination Act 1991* (ACT) s 7(1)(f).

³⁰ *Equal Opportunity Act 2010* (Vic) s 6(c).

³¹ *Anti-Discrimination Act 1991* s 7(n).

³² *Anti-Discrimination Act 1991* sch 1.

³³ Queensland Human Rights Commission, *Review of Queensland’s Anti-Discrimination Act: Discussion Paper* (2021) 97.

³⁴ *Criminal Law (Rehabilitation of Offenders) Act 1986* s 6 (contra s 9A(1)).