

18 March 2024

Our ref: LP:MC

Committee Secretary
Housing, Big Build and Manufacturing Committee
Parliament House
George Street
Brisbane QLD 4000

By email: [REDACTED]

Dear Committee Secretary

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

Thank you for the opportunity to provide feedback on the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024. The Queensland Law Society (QLS) appreciates being consulted on this important piece of legislation.

As the Committee will be aware, QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

QLS commends the QLRC for its examination of the relevant issues and the recommendations made to achieve reform.

QLS supports the decriminalisation of sex work and acknowledges the intent, namely to improve the working conditions of sex workers, that underpins the Bill.

Decriminalising sex work dispels worries about arrest, allowing workers to focus on issues of safety and other workplace related matters. It also offers, in principle, the opportunity for sex workers to avail themselves of the protective powers of the police and to seek their help in the event of criminality.

Amendments to the Criminal Code**New criminal offences 217A, 217B and 217C**

We hold the view that new sections 217A, 217B and 217C are not necessary on the basis that they seek to capture conduct that is already captured within existing general laws. For instance,

similar conduct may already be an offence under other provisions of the Criminal Code, including: s 210 (Indecent treatment of children under 16), s 215 (Engaging in penile intercourse with a child under 16), s 229FA (Obtaining prostitution from a person who is not an adult) and s 229B (Repeated sexual conduct with a child). The maximum penalties for these extant offences are substantial.

In circumstances where the proposed amendments to the Criminal Code are progressed, we make the following comments:-

- (a) we hold reservations about the new definition of commercial sexual services in section 207A;
- (b) we oppose the provision that seeks to include new section 217A as an exception to the rule against double jeopardy; and
- (c) we recommend that any criminal record related to the previous sex work legislation or regulation must be removed under a spent conviction scheme.

Review of section 216

QLS echoes calls from the Queensland Public Advocate for a review of section 216 of the Criminal Code as it relates to persons with 'an impairment of the mind'¹.

We encourage the government to consider what legal frameworks and principles exist in various jurisdictions, as well as issues such as the level of protection people with impaired decision-making capacity may require, in consultation with people who have knowledge and understand of such situations.

Amendment to the Anti-Discrimination Act 1991

QLS supports the change in terminology proposed by these amendments.

We note, however, some submitters have raised concerns with the removal of s. 106C from the *Anti-Discrimination Act 1991* (QLD) (AD Act) and the consequences of the proposed amendments to the Local Government Act 2009 and the City of Brisbane Act 2010 with respect to restricting local laws.

In considering the implications of the removal of this provision from the AD Act, the QLRC referenced the Queensland Human Rights Commission's findings in the *Building Belonging: Our review of Queensland's Anti-Discrimination Act* report as follows:

The QHRC recommends the repeal of the accommodation exemption in section 106C of the Anti-Discrimination Act following the outcome of our review. It said the threshold for the exception is too low, and that it may not be compatible with human rights because it unreasonably limits the right to equality and the right to privacy of sex workers. However, the QHRC also said that '[i]t is not the intention ... to create rights for sex work businesses over and above the rights of any other business owners'. It said that acts done in direct compliance with laws regulating the sex-work industry should not amount

¹QLRC Report pp. 6.55 – In our view, a separate offence to protect people with an impairment of the mind in commercial sexual services is not needed. The coercion offence will give appropriate protection.

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to discrimination under Queensland anti-discrimination legislation, and that the Queensland Government should consider if an exception needs to be introduced to cover these situations. Under the decriminalisation framework we recommend, sex work is regulated under existing general regulatory frameworks, including planning laws².

While QLS supports the general premise that a person should not be discriminated against on the basis of sex work, we have not, at this time, been able to consider the practical impacts of these changes on accommodation providers or local governments.

However, we understand that new work health and safety guidelines and planning regulations are to be made as part of these reforms. We would urge that these be consulted on and completed prior to the commencement of these amendments to ensure that affected parties, including sex workers and accommodation providers are aware of their rights and obligations.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED]

Yours faithfully



Rebecca Fogerty
President