
The Secretary
Queensland Law Reform Commission
PO Box 13312
George Street Post Shop Qld 4003
By email: lawreform.commission@justice.qld.gov.au

3 June 2022

Dear Secretary,

Re: Sex Work Industry Review

Sex Work Law Reform Victoria Inc. (SWLRV) is an independent non-partisan volunteer group led by sex workers, lobbying for the legal rights of sex workers in Victoria.

SWLRV advocates for, amongst other things:

- the full decriminalisation of consensual adult sex work in Victoria, its implementation, and the implementation of accompanying reforms

Our submission draws on recent developments and research in Victoria, which is currently in the process of decriminalising sex work.

We appreciate this opportunity to contribute to the *Sex Work Industry Review* and attach our submission accordingly.

Sincerely,

Lisa Dallimore

President, Sex Work Law Reform Victoria Inc.

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1. Who We Are

Sex Work Law Reform Victoria Inc. (SWLRV) is a volunteer run non-partisan advocacy group led by former and current sex workers. Structured as a not-for-profit organisation, we formed in 2018 with the express purpose of advocating for the legal rights of sex workers in Victoria. We recognise that sex workers in other Australian jurisdictions face similar law reform struggles to our own and we support other state sex workers' rights campaigns.

2. Executive Summary

Sex work decriminalisation relies on a number of fundamental principles. One is to avoid sex industry specific clauses in legislation. Another is to repeal all criminal legislation relating to the activities of consensual adult sex work. The continued criminalisation of sex work to any degree, results in significant police resources being allocated to addressing crimes of consensual adult activity, diverting resources away from preventing the exploitation of children in the sex industry. As such, we oppose any form of light touch brothel certificate system or licensing in Queensland. We recommend the broad and inclusive protected attribute 'occupation' be inserted into anti-discrimination legislation.

3. Main Recommendations

Recommendation 1

Insert 'profession, trade, occupation or calling' as a protected attribute in the *Anti-Discrimination Act 1991* (QLD).

Recommendation 2

Queensland to eschew any clauses in a sex work decriminalisation bill which would result in the adoption of a licensing model (or light touch brothel certification model) of sex industry regulation.

4. Terms of Reference

This submission will address some of the Terms of Reference and questions posed in the Consultation Paper. We note that item 4 of the Scope of the Terms of reference reads:

In making its recommendations the Commission should also have regard to:

- a. the experiences of members of the sex work industry under legislative arrangements in other jurisdictions
- b. recent developments, legislative and regulatory arrangements, and research in other Australian jurisdictions.

Victoria is currently in the process of decriminalising sex work. Sex Work Law Reform Victoria has been active in bringing about these changes. Our submission will draw on the Victorian experience.

5. Sex Work Laws in Queensland and Victoria

At the time of writing, neither Queensland nor Victoria has yet decriminalised sex work. In both states, a licensing system of sex work laws is in place, giving the police powers to charge sex industry workers and third parties with crimes relating to consensual adult sex work.^{1 2} Victoria's sex work laws are more similar to those in Queensland than any other state or territory in Australia. At present, Victoria is in the process of repealing its sex industry licencing laws. On 10 February 2022, the Victorian Parliament passed the *Sex Work Decriminalisation Act 2022* (Vic), which will decriminalise sex work by December 2023.

Both states currently legalise some forms of sex work using a licensing framework whereby all sex industry businesses, owners and managers must obtain a license from their respective state governments.³ Until 10 May 2022, individual self-employed sex workers were required to register with the Victorian Government.⁴ Highly restrictive local government planning schemes⁵ and prohibitively high annual licensing fees (sometimes in excess of \$10,000)⁶ drive most Victorian brothels underground. Street based sex work remains a crime for both sex worker and client in Queensland; in Victoria such offences apply only at certain times of the day and in certain locations.^{7 8}

In practice, Victoria's outdated laws have criminalised most of the state's sex workers, driving much of the industry underground. Estimates vary, but as much as 80% of Victoria's sex industry may have been operating outside the licensing framework (that is, operating illegally), prior to recent reforms. Queensland sex worker organisation Respect Inc. estimates that the same percentage (80%) of the sex industry in that state cannot work legally.⁹

6. Concerns Around Human Trafficking, Sex Slavery, Deceptive Recruiting, Sexual Servitude, and the Recruitment of Children

Across Australia, concerns remain about serious crimes within the sex industry, such as human trafficking, sex slavery, deceptive recruiting, sexual servitude, and the recruitment of children into the sex industry. Such crimes have nothing to do with consensual adult sex work. The crimes referred to

¹ See the *Prostitution Act 1999* (QLD) and s 229 of the *Criminal Code Act 1899* (QLD).

² See *Sex Work Act 1994* (Vic) ('*Sex Work Act*'); *Sex Work Regulations 2016* (Vic); *Sex Work (Fees) Regulations 2014* (Vic).

³ In Victoria licensing and registration is via the Business Licensing Authority. In Queensland, licensing is via the Prostitution Licensing Authority.

⁴ Consumer Affairs Victoria, *How to register as a small owner-operator* (Web page, 21 March 2021)

<<https://www.consumer.vic.gov.au/licensing-and-registration/sex-work-service-providers/small-owner-operators/how-to-register-as-a-small-owner-operator>>.

⁵ See Victoria State Government, *Victoria Planning Provisions* (Planning Scheme, 30 April 2021)

<https://planning-schemes.api.delwp.vic.gov.au/_data/assets/pdf_file/0007/481723/VPPs_All_Clauses.pdf?ga=2.254615886.790392141.1618868434-1886335051.1618868434>.

⁶ Eros Association, *Did You Know*, (Web page)

<<https://www.eros.org.au/wp-content/uploads/2019/08/EA-071901-Brothel-Fact-sheet-1-2.pdf>>.

⁷ *Sex Work Act 1994* (Vic) (n 2) ss 12–13 and the *Prostitution Act 1999* (QLD) s 73(1).

⁸ See *Summary Offences Regulations 2022* (Vic)

⁹ Respect Inc, *DecrimQLD Resources: Licensing Has Failed* (17 December 2018) Respect Inc.

<<https://respectqld.org.au/decriminalise-sex-work/resources/>>

above instead relate to minors, or non-consensual sex work where an adult does not make an informed decision to willingly work in the sex industry.

The *Criminal Code Act 1899* (QLD) already contains numerous crimes relating to obtaining, procuring, or providing sexual services by children (people under 18) or mentally impaired people.¹⁰ We recommend retaining these crimes, which attract penalties of between 7 and 20 years imprisonment.¹¹

Decriminalising sex work in Queensland would have no impact on existing strict federal human trafficking and sex slavery related offences contained in the *Criminal Code Act 1995* (Cth).¹² Should Queensland decriminalise sex work, all human trafficking and sex slavery federal offences would remain in place and continue to apply to human traffickers.

7. Police Powers Diverted from Protecting Children

Both Victoria and Queensland criminalise most or all aspects of their respective sex industries. Police statistics from both states show that state police resources are predominantly used to charge people with offences relating to consensual adult sex work.

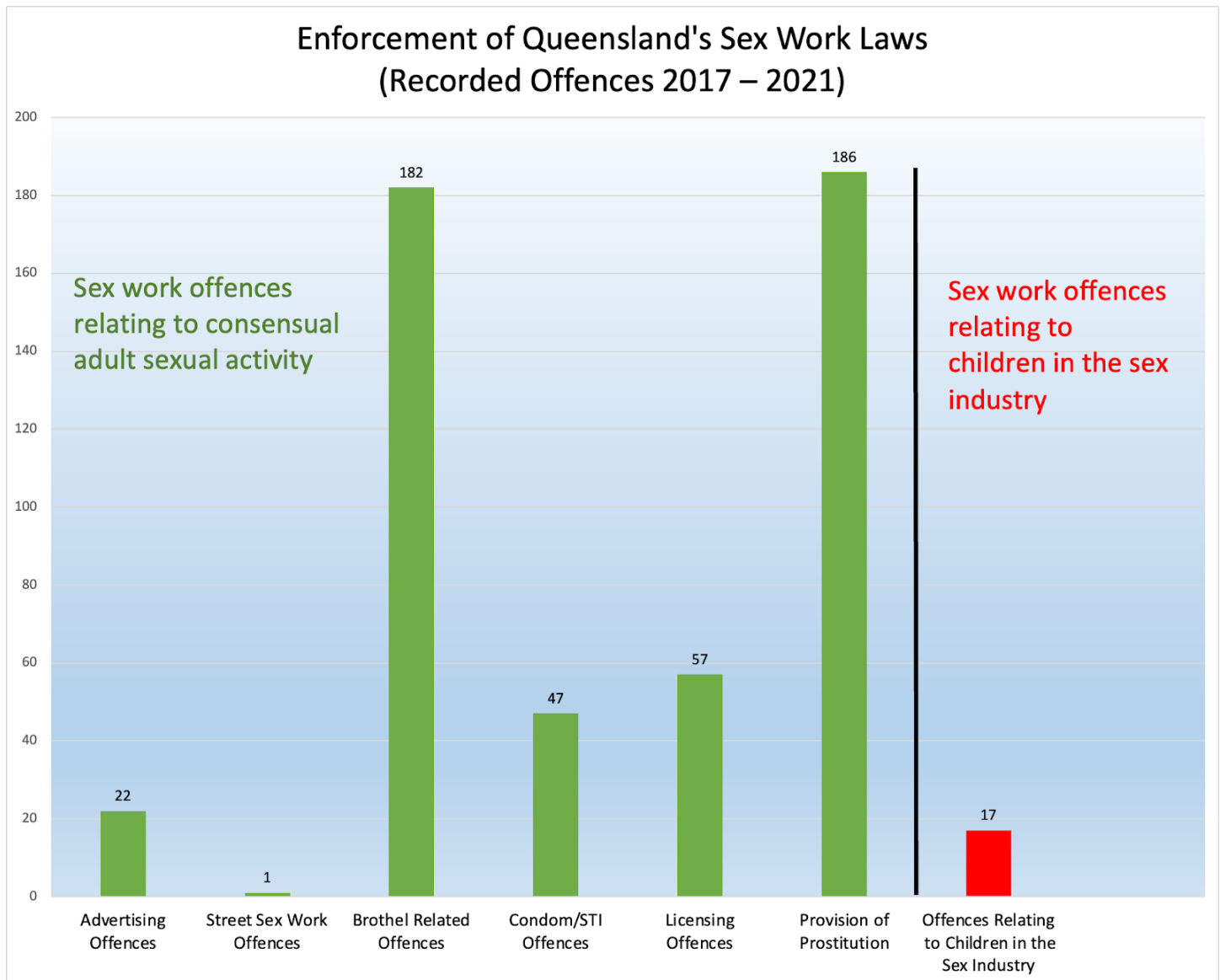
Criminalising most forms of sex work in Queensland continues to divert police resources from protecting children.

¹⁰ See *Criminal Code Act 1899* (QLD) ss 229FA, 229G, 229H and 229L.

¹¹ Ibid

¹² *Criminal Code Act 1995* (Cth) divs 270–1.

Chart 1 – Queensland



Source for Chart 1 – Queensland

Statistical Services, Queensland Police
(data extracted on 25/02/2022)

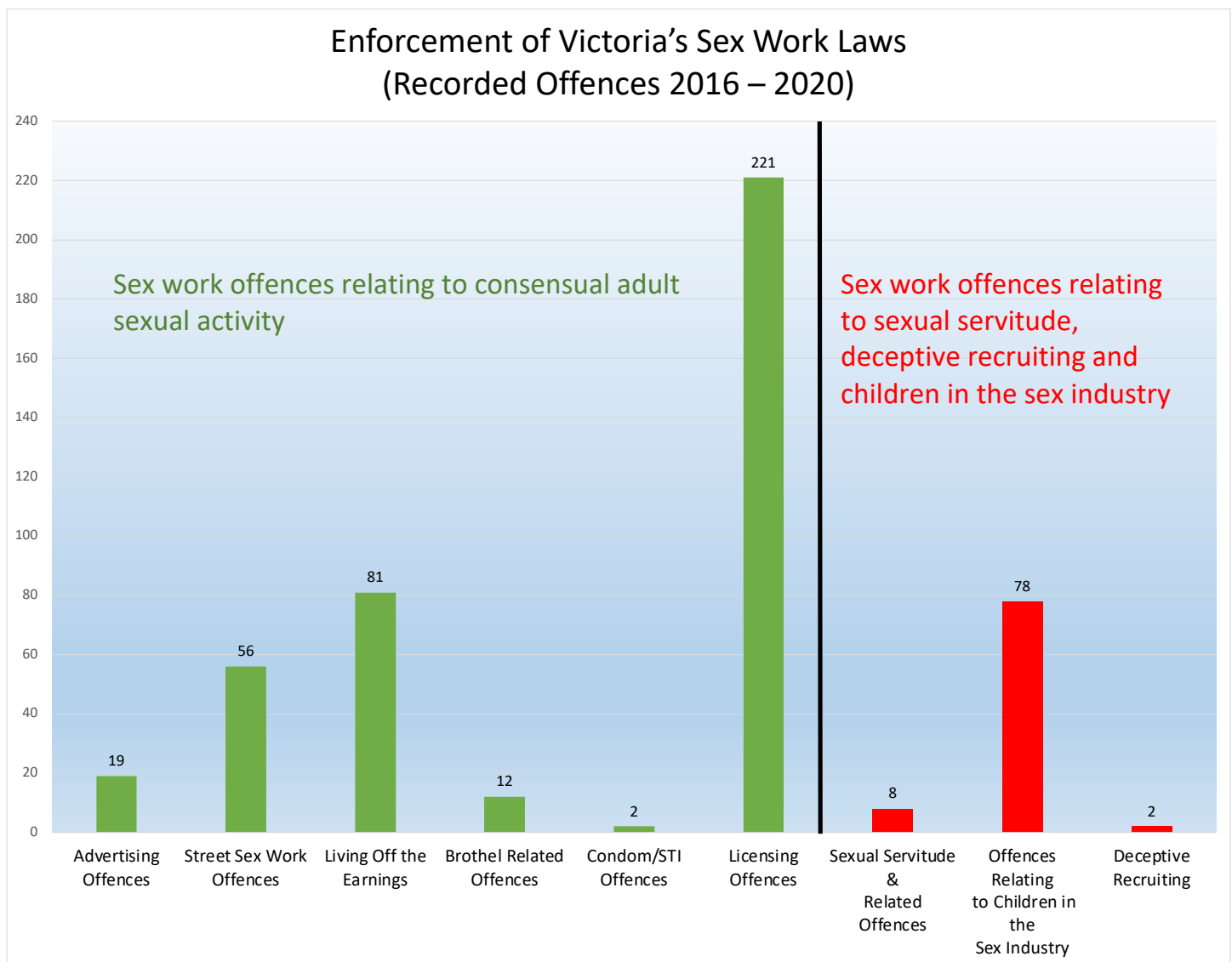
Notes on Chart 1 – Queensland

1. Sex work offences are state/territory offences relating specifically to the sex industry.
2. The graph captures the number of recorded offences, not convictions.
3. Number of offences is not the same as the number of offenders, as one offender may commit more than one offence in the time period captured by the data.
4. STI means sexually transmissible infection
5. Queensland sex work offences are found in the *Criminal Code Act 1899* (QLD) and the *Prostitution Act 1999* (QLD).

6. Recorded offences do not reveal court/sentencing outcomes.
7. Total offences are for the five-year period 01/01/2017 – 31/12/2021.
8. Comparisons between the Queensland and Victorian graphs must consider differences between the two states such as population size and the differences between specific sex work offences in each jurisdiction.
9. This offending data provided by Queensland Police is preliminary and may be subject to change.
10. Offences have been grouped into categories. See Appendix 1 for more information.

Victoria’s licensing model of sex work regulation criminalises most aspects of sex work in Victoria, diverting police resources from protecting children and combatting sexual servitude and deceptive recruiting.

Chart 2 – Victoria



Source for Chart 2 – Victoria

The Victorian Crime Statistics Agency
(data extracted from LEAP on 18 January 2021)

Notes on Chart 2 – Victoria

1. Sex work offences are state/territory offences relating specifically to the sex industry.
2. The graph captures the number of recorded offences, not convictions.
3. Number of offences is not the same as the number of offenders, as one offender may commit more than one offence in the time period captured by the data.
4. All Victorian sex work offences are found in the *Sex Work Act 1994* (Vic), the *Public Health and Wellbeing Act 2008* (Vic), the *Sex Work Regulations 2006* (Vic), the *Sex Work Regulations 2016* (Vic) and the *Crimes Act 1958* (Vic).
5. All Victorian sex work legislation is enforced by Victoria Police except the *Public Health and Wellbeing Act 2008* (Vic) which is enforced by the Victorian Department of Health
6. Recorded offences do not reveal court/sentencing outcomes.
7. Comparisons between the South Australian and Victorian graphs must consider differences between the two states such as population size and the differences between specific sex work offences.
8. STI means sexually transmissible infection
9. Offending data extracted from the Victoria Police Law Enforcement Assistance Program (LEAP)
10. Total offences are for the five-year time period 01/01/2016 – 31/12/2020
11. Offences have been grouped into categories. See Appendix 2 for more information.
12. The Victorian Department of Health reported no recorded sex work offences in the *Public Health and Wellbeing Act 2008* (Vic) between 2016 – 2020. Offences under this Act are therefore not included in the above chart.

8. Licensing of sex work business operators

After considering sex industry legislative reforms, some jurisdictions have adopted a brothel certificate model of regulation (New Zealand¹³ and Northern Territory¹⁴).

From a health and safety perspective, greater regulation of brothels and individual sex workers might at first appear to be desirable. In practice, not all forms of regulation result in positive health and safety outcomes, with many academics opposing the brothel certificate and licensing models of sex industry regulation.

For example, in 2012, The Kirby Institute at the University of New South Wales found that,

¹³ Select Committee on the Regulation of Brothels, Parliament of New South Wales, *Inquiry into the Regulation of Brothels* (Report No 1/56, November 2015) [2.86]
<<https://www.parliament.nsw.gov.au/ladocs/inquiries/1703/Final%20Report%20-%20Inquiry%20into%20the%20Regulation%20of%20Brot.pdf>>.

¹⁴ *Sex Industry Act 2019* (NT) s 18(1)-(2).

*'Licensing of sex work ('legalisation') should not be regarded as a viable legislative response.....Thus, licensing is a threat to public health.'*¹⁵

The Northern Territory's sex worker organisation, SWOP NT, opposed brothel certificate systems (as adopted by New Zealand in 2003) in their submission to a sex industry inquiry in 2019,

*'SWOP NT and SWRG do not recommend a return to certification or registration of sex workers or the licensing of sex industry business.'*¹⁶

Since 1994, the licensing system in Victoria has given Victoria Police powers to charge sex industry workers and third parties with crimes relating to consensual adult sexual activity. 'Chart 2 – Victoria' presented in this submission clearly demonstrates Victoria Police powers have predominantly been used to charge sex industry workers and third parties with crimes relating to consensual adult sex work.

The experience from other Australian jurisdictions demonstrate that brothel certificate or licensing models of sex industry regulation do not provide any benefits to the health and safety of sex workers or the community at large. Such certification requirements have in practice been poorly adopted and rarely enforced. At best, such approaches are unnecessary; at worst they drive most of the sex industry underground. Charts 1 and 2 in this submission identify police enforcement of licensing and brothel related offences. The charts clearly demonstrate that retaining any such licensing type offences will continue to drive sections of the sex industry underground.

Terms of Reference Scope

1(b) the extent to which existing legislation should be repealed to give effect to a decriminalised sex work industry, including the Prost Act 1999, Prostitution Regs 2014, Chapter 22A of the Criminal Code and provisions of the Police Powers and Responsibilities Act 2000

Response: We recommend laws which specifically relate to consensual adult sex work activity be repealed. This includes repealing all offences related to the licensing of sex industry businesses.

Specifically, we recommend any sex work decriminalisation bill in Queensland repeal in full the *Prostitution Act 1999* (QLD) and the *Prostitution Regulations 2014* (QLD). Key sections of the *Police Powers and Responsibilities Act 2000* (QLD) which refer to prostitution and the *Prostitution Act 1999* (QLD) should be repealed (see Appendix 3 for details). Some sections of the *Criminal Code Act 1989* (QLD) which specifically relate to consensual adult sex work activity should be repealed (see Table 1 in Appendix 1). Sections of the *Criminal Code Act 1989* (QLD) which relate to children or mentally impaired people should be retained (See the last row of Table 1 in Appendix 1 for details).

Consultation Paper Question 6 - Whether a licensing system is needed

¹⁵ Basil Donovan et al. (2012). *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*. Sydney: Kirby Institute, University of New South Wales 7 [Recommendation 2].

¹⁶ Sex Worker Outreach Program and Sex Worker Reference Group, 'Reforming Regulation of the Sex Industry in the Northern Territory' (Discussion Paper 29 March 2019) 9 [6.1.2] <https://irp-cdn.multiscreensite.com/7a46c311/files/uploaded/final_swop_nt_swrg_submission_law_reform_nt.pdf>.

Should sex work business operators be required to have some form of licence to operate a sex work business in Queensland? Why or why not?

Response: No, because there is no evidence from other jurisdictions that such requirements will deter illegal activity or the exploitation of sex workers. Such requirements fail to achieve their stated purpose of preventing unsuitable people from operating sex work businesses. Sex worker organisations are as concerned as anyone else about the abuse and exploitation of sex workers, particularly those sex workers operating under the ownership and control of another person. However, these concerns are not addressed by the light touch brothel certificate systems in place in the Northern Territory and New Zealand. Training of police officers and workplace health and safety officers to respond more effectively to complaints from sex workers are much more beneficial initiatives.

Consultation Paper Question 7

If a licence were to be required what should the system look like?

Response: We oppose any form of sex industry licensing anywhere in Australia. This includes licensing or registration of individual sex workers or sex industry businesses or their owners. This also includes the light touch licensing systems in place in New Zealand and the Northern Territory.

Consultation Paper Question 16

Apart from a licensing system, what is the best way to deter illegal activity and to protect sex workers from being exploited under the new regulatory framework?

Response:

1. Fund sex worker support programs to inform and raise awareness amongst sex workers about their legal rights and to whom and how they can report violations of those rights.
2. Fund sex worker support programs to work constructively with the police, to train and educate the police on how to effectively respond to sex workers who report crimes. Changing laws will not necessarily change police attitudes or conduct.
3. Fund sex worker support programs to work constructively with WorkSafe Queensland, to train and educate their staff on how to effectively respond to sex workers who report OH & S breaches.
4. WorkSafe Queensland should develop programs tailored to the sex industry, in consultation with Respect Inc. and Eros Association.

9. Discrimination against sex workers

Consultation Paper Question Q49

Is there anything you would like to tell us about how the *Anti-Discrimination Act 1991* could best protect sex workers against unlawful discrimination in light of the decriminalisation of the sex work industry?

Response: In addition to our submission to the *Queensland Human Rights Commission*,¹⁷ we make the following comments about amendments to the *Anti-Discrimination Act 1991* (QLD).

We recommend repealing section 106C (Accommodation for use in connection with work as sex worker), to end the lawful discrimination against sex workers in accommodation settings.

We recommend repealing section 28 (Work with children) to end the lawful discrimination against sex workers who have a second job caring for or instructing children.

We recommend retaining the protected attribute ‘lawful sexual activity’.

We recommend inserting a new protected attribute ‘profession, trade, occupation or calling’ for several reasons:

A Narrow and Exclusionary Attribute

While sex workers face uniquely high levels of stigma which no doubt contribute to the discrimination they experience, porn performers and strippers also experience high levels of stigma. The terms ‘sex worker’ or ‘sex work’ exclude strippers, porn performers and ancillary staff working in the sex industry. Ancillary staff include people working in administration, telephone reception, managers, drivers, cleaners or photographers in brothels or escort agencies. All of these people can and do experience discrimination. None of them would be covered by the protected attribute ‘sex work’ or ‘sex worker’. Sex workers are also increasingly working in different ways, engaging in porn performance (such as via the website OnlyFans) in addition to their in-person sex work. A sex worker who also produces adult imagery online (pornography) needs legal protection from discrimination in their capacity as a sex worker and as a porn performer.

Where the protected attributes ‘sex worker’ or ‘sex work’ have been proposed or tabled in bills, the terms ‘sex work’, ‘sex worker’ or ‘commercial sexual services’ have either not been defined or have been defined narrowly to exclude porn performers and strippers.^{18 19} In the absence of a clear

¹⁷ Sex Work Law Reform Victoria submission to the Queensland Human Rights Commission’s 2021 *Review of the Anti-Discrimination Act*

https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0005/38615/Sub.132-Sex-Work-Law-Reform-Victoria-Inc-SWLRV_Final.pdf

¹⁸ Respect Inc’s guide to anti-discrimination law reform in Queensland, *Unprotected and under-reported (2022) Synopsis 1: Sex workers’ experiences of discrimination and discrimination protections in Queensland* fails to define ‘sex work’ or ‘sex worker’, despite recommending both as protected attributes.

Page 7 of Respect Inc’s 2022 *Info sheet on ‘A framework for a decriminalised sex work industry in Queensland’ Consultation Paper WP 80* recommends a definition of sex work confined to in person commercial sexual services (which excludes stripping or porn).

<https://respectqld.org.au/wp-content/uploads/Decrim/Info-Kit-QLRC-May22.pdf>

Scarlet Alliance’s 2022 Briefing Paper *Anti-Discrimination & Vilification Protections for Sex Workers in Australia* fails to define ‘sex work’ or ‘sex worker’, despite recommending both as protected attributes.

https://scarletalliance.org.au/library/Anti_Discrim2022

¹⁹ Page 12 of Scarlet Alliance’s submission to the Modernisation of the Northern Territory (NT) *Anti Discrimination Act 1993* (NT) recommends ‘sex worker’ and ‘sex work’ as protected attributes and defines sex work to be the ‘sale/exchange of consensual adult sexual services’, but fails to define ‘sexual services’. In Australia, where sexual services have been defined, the definition has excluded pornography services and stripping services.

A 2022 proposed amendment to the *Anti-Discrimination Amendment (Sex Workers) Bill 2020* (NSW) defined sex work to involve sexual services, but failed to define ‘sexual services’.

<https://www.parliament.nsw.gov.au/bill/files/3774/GRN%20c2022-011A.pdf>

definition, usage of the term ‘sex work’ in existing legislation generally refers to in-person sex work involving physical contact (i.e. excludes porn and stripping).²⁰

10. Planning Laws and Sex Work

Victoria is currently decriminalising sex work. The first step in this process was to repeal, in full, the *Sex Work Act 1994* (Vic) which comprised Victoria’s sex industry specific crimes relating to consensual adult sex work activity. Following the repeal of this Act, the Victorian Government is separately amending its planning laws (the Victoria Planning Provisions) to ensure such planning laws no longer discriminate against the sex industry. These reforms to planning laws will achieve this by removing all sex industry specific references from planning schemes, with the new planning schemes treating brothels in the same way as hairdressers.²¹ Home-based sex work will be treated in the same way as other forms of home-based businesses and will be subject to the same restrictions and regulations.²² Such restrictions on home-based sex work include, but are not limited to:

- The person conducting the home-based business must use the dwelling as their principal place of residence;
- No more than two persons who do not live in the dwelling may work in the home-based business at any one time;
- The business must not adversely affect the amenity of the neighbourhood in any way.

A smaller, or low impact home-based business which meets the three conditions above as well as a raft of other conditions, does not require a planning permit and is permitted to exist in almost all planning zones, including residential zones.²³

Victoria’s reforms to planning laws will rely on existing general planning and other laws to regulate sex work and address amenity impacts from sex work.

²⁰ One example is the definition of ‘sexual services’ in section 3 of the *Sex Work Act 1994* (Vic)

²¹ The Victoria Planning Provisions will refer to brothels as ‘sex services premises’. Both the land use terms ‘sex services premises’ and ‘hairdresser’ will be nested under the land use term ‘shop’ in the Victoria Planning Provisions. See clause 73.04-12 - Retail premises group (sub-group of Shop).

<https://planning-schemes.app.planning.vic.gov.au/Victoria%20Planning%20Provisions/ordinance>

Victorian Government 2022 Information Sheet detailing these planning reforms.

<https://sexworklawreformvictoria.org.au/wp-content/uploads/2022/03/Planning-Scheme-Changes-Fact-Sheet.pdf>

²² See clause 52.11-1 of the Victoria Planning Provisions

<https://planning-schemes.app.planning.vic.gov.au/Victoria%20Planning%20Provisions/ordinance>

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²³ See clause 52.11-1 of the Victoria Planning Provisions

<https://planning-schemes.app.planning.vic.gov.au/Victoria%20Planning%20Provisions/ordinance>

See the Victorian Government 2022 Information Sheet detailing these planning reforms.

<https://sexworklawreformvictoria.org.au/wp-content/uploads/2022/03/Planning-Scheme-Changes-Fact-Sheet.pdf>

If we seek to treat sex work as work, then we need to have faith that existing general planning and other laws can address issues such as public amenity and the location of brothels.

After all, existing general laws already apply to and regulate other industries. Fully integrating sex work into all existing regulation, including planning regulation, is the simplest reform option, as well as presenting fewer political hurdles in achieving support for such reforms.

Consultation Paper Question 25

Should local governments have discretion to prohibit the development of commercial sex work businesses in their entire local government area?

Response: No. Local governments in both Queensland and Victoria already have powers to prohibit the development of retail and service businesses in certain locations, such as in residential areas. Local governments do not currently have the power to entirely prohibit other personal service businesses, and sex industry businesses should be treated no differently.

Consultation Paper Question Q26

Should commercial sex work businesses have specific planning requirements, different to other commercial businesses?

Response: No. The entire point of sex work decriminalisation, now being implemented in Victoria, is to avoid specific requirements of any kind which apply to sex workers or sex work businesses. Existing planning requirements applying to other personal service businesses could apply to sex work, adequately regulating the sex industry.

Consultation Paper Question Q28

Should local governments have discretion to limit commercial sex work businesses to certain zones (for example, mixed use or industrial zones)? Why or why not?

Response: No. Existing planning requirements which apply to other personal service businesses already limit such businesses to certain zones. The same zoning restrictions applying to other personal service businesses could apply to sex work, adequately regulating the sex industry.

Consultation Paper Question Q29

Should there be size limits on commercial sex work businesses, such as gross floor area, number of rooms or number of sex workers?

Response: No. Existing planning requirements which apply to other personal service businesses already limit such businesses to certain zones. The same zoning restrictions applying to other personal service businesses could apply to sex work, adequately regulating the sex industry.

Consultation Paper Question Q32

Should separation distances apply to commercial sex work businesses? Why or why not?

Response: No. Existing planning requirements which apply to other personal service businesses already place restrictions on the location of such businesses. The same restrictions on business location applying to other personal service businesses could apply to sex work, adequately regulating the sex industry.

Consultation Paper Question Q34

Should there be consistent planning codes across Queensland for home-based sex work businesses, or should local governments have discretion to set the categories of assessment in their local government area?

Response: There should be consistent planning codes across Queensland for home-based sex work businesses. In Victoria, local governments in outer Melbourne have often been hostile to the concept of sex work decriminalisation, with regional councils being the most hostile. Sex workers and sex industry business owners want easy to understand and consistent regulations across local government areas. Consistent planning codes also make compliance much easier for sex workers.

Giving discretion to local government areas increases the likelihood that local governments who are hostile to sex work will use these powers to discriminate against sex industry businesses.

Consultation Paper Question Q35

Should home-based sex work businesses have the same planning requirements as other home-based businesses (and therefore be able to operate without a development approval if the requirements for accepted development are met)?

Response: Yes. The goal ought to be, wherever possible, to regulate sex work using existing mechanisms, including planning requirements applicable to home-based businesses. In December 2023, Victoria will do exactly this, by permitting sex workers to operate from home in small numbers without a planning permit in around half of all zones.²⁴

Consultation Paper Question Q36

Should separation distances apply to home-based sex work businesses? If yes, what land uses should require a separation distance (for example, schools, childcare centres, places of worship)?

Response: No. See response to Consultation Paper Question 35.

Consultation Paper Question Q38

²⁴ See clause 52.11-1 of the Victoria Planning Provisions

<https://planning-schemes.app.planning.vic.gov.au/Victoria%20Planning%20Provisions/ordinance>

Victorian Government 2022 Information Sheet detailing these planning reforms.

<https://sexworklawreformvictoria.org.au/wp-content/uploads/2022/03/Planning-Scheme-Changes-Fact-Sheet.pdf>

Should there be specific restrictions on the advertising of sex work and sex work businesses? Why or why not?

Response: No. The goal ought to be, wherever possible, to regulate sex work using existing mechanisms, including content regulation, content classification, advertising laws and advertising regulations. There are already in place laws to regulate sex work advertising in both Victoria and Queensland. On 10 May 2022, the Victorian Government repealed all existing sex industry specific advertising laws and regulations,²⁵ in recognition of the fact that the following laws already contain provisions to adequately regulate advertising in all industries in Victoria:

- *The Crimes Act 1958* (Vic);
- the *Summary Offences Act 1966* (Vic)

In addition to these two laws, the following laws and bodies also regulate advertising in all industries in Victoria, Queensland, and the rest of Australia:

- the Australian Consumer Law;
- Ad Standards Authority;
- the *Classification (Publications, Films and Computer Games) Act 1995* (Cth);
- *Radiocommunications Act 1992* (Cth);
- *Broadcasting Services Act 1992* (Cth);
- *Online Safety Act 2021* (Cth);

Terms of Reference Scope

1(f) appropriate safeguards to maintain public amenity including in respect of the location of sex work premises;

Response: In a manner which is non-discriminatory towards sex work, fully integrate the sex industry into Queensland's planning laws by reforming the *Planning Act 2016* (QLD) and the *Planning Regulation 2017* (QLD).

Terms of Reference Scope

1(k)i the adoption of the new framework

Response: As Victoria decriminalises sex work, one of the lessons learned for any government planning to decriminalise sex work is to begin detailed work on reforming planning laws at an early stage, consulting with sex industry and with councils. Preparation work for reforms to planning schemes should occur alongside preparation for and implementation of any bill repealing sex work laws.

Terms of Reference Scope

1(k)ii the transition from the existing framework to the new framework

Response: Victoria passed the *Sex Work Decriminalisation Bill 2021* (Vic) in February 2022, with the final enactment date to occur almost two years later, in December 2023. Some stakeholders expressed

²⁵ See the factsheet *Proposed changes to the Sex Work Regulations 2016*, published by the Victorian Department of Justice and Community Safety in early 2022.

<https://sexworklawreformvictoria.org.au/wp-content/uploads/2022/03/Regulation-Changes-Fact-Sheet.pdf>

confusion and dissatisfaction that long fought for changes would not be implemented until almost two years later. However, it has since become clear that ample time is needed to bring nervous councils on board and fully explain such reforms to the local government sector and its representative bodies. Interestingly, in Victoria, there was minimal opposition to reforms from the police. There was, and continues to be, significant and vocal opposition to sex industry reform from several Victorian councils. As such, we recommend providing plenty of time to transition to the new framework. One way of achieving this is to set an enactment date for any bill well into the future.

11. Street Based Sex Work

Consultation Paper Question Q38 Q42

Should a person be prohibited from publicly soliciting for sex work? Why or why not?

Response: No. Such prohibitions are a fundamental violation of sex workers' rights and the human rights of street-based sex workers. We argued so in our 2021 submission to the Scrutiny of Acts and Regulations Committee of the Victorian Parliament.²⁶

12. Conclusion

We appreciate the opportunity to submit to this inquiry. We look forward to reading the final report and hope that Queensland will find a path to sex work decriminalisation.

13. Glossary

Crime Statistics Agency

A Victorian agency which publishes Victorian offending data extracted from the Victoria Police Law Enforcement Assistance Program (LEAP).

LEAP

The Law Enforcement Assistance Program. A database where Victoria Police enters recorded offences. Victoria's Crime Statistics Agency (CSA) extracts data from LEAP to conduct statistical analysis.

Licensing Model

A model of sex industry regulation using criminal law (as opposed to civil law) to require licensing/registration of sex industry businesses as well as individual sex workers. Licensing model laws are largely enforced by police.

Sex work laws

²⁶ Sex Work Law Reform Victoria Inc, Submission to Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Inquiry into the Sex Work Decriminalisation Bill 2021* (19 October 2021) 2. https://www.parliament.vic.gov.au/images/stories/committees/sarc/Alert_Digests/submissions/19-10-21_Sex_Work_Law_Reform_Victoria.pdf

State/territory criminal laws which relate specifically to the sex industry.

STI

Sexually transmissible infection.

Suitability Certificates

A registration certificate required by individuals/companies to operate a sex industry business.

14. Appendices

Appendix 1 – Queensland Sex Work Offences

Chart 1 groups all Queensland sex work offences into categories according to the table below. The table identifies the statutory sections from each Act where offences have been committed, which have been classified into each category labelled in Chart 1. Statutory sections with zero recorded offences across the chart timeframe (01/01/2017 – 31/12/2021) have been included in the table below.

Table 1 Acronyms

*PROS means *Prostitution Act 1999* (QLD)

**CC means *Criminal Code Act 1989* (QLD)

Table 1 – Queensland

Horizontal Axis Category Label on Chart 1	Law	Statutory Section	Law Description	Recorded Offences (1/01/'17 - 31/12/'21)	Maximum Penalty
Advertising	PROS*	93(1)	Sex work advertisement describes services	19	70 penalty units (\$9,614)
		93(2)	Sex work advertisement not in approved form	0	70 penalty units (\$9,614)
		95(1)	Sex work advertisement uses 'massage' related words	3	200 penalty units (\$27,470) or 5 years imprisonment

Horizontal Axis Label on Chart 1	Law	Statutory Section	Law Description	Recorded Offences (1/01/'17 - 31/12/'21)	Maximum Penalty
Street Sex Work Offences	PROS*	73(1)	Street solicitation by sex worker	1	15-30 penalty units (\$2,060 - \$4,120)
Brothel Related Offences	CC**	229G(1)(a)	Procurement	13	7 years' imprisonment
	CC**	229G(1)(a) & 535	Attempt to procure	0	7 years' imprisonment
	CC**	229HB(1)	Illegal brothel owner	18	7 years' imprisonment
	CC**	229HC(1)	Sex worker works in illegal brothel	124	3-7 years' imprisonment
		229HC(2)	Client pays sex worker in illegal brothel	3	3-7 years' imprisonment
		229I(1)	Person enters illegal brothel	8	3-7 years' imprisonment
		229K(2)(a) & (b)	Landlord allows property for illegal brothel use	15	3-7 years' imprisonment
		76(2)(a)	Person in illegal brothel causes unreasonable annoyance to neighbours	1	15-25 penalty units (\$2,060 - \$3,433)
	PROS*	76(2)(b)	Person in illegal brothel causes disruption in privacy of neighbours	0	15-25 penalty units (\$2,060 - \$3,433)
Condom/STI Offences	PROS*	77A(1)	Sex worker fails to use condom	9	100 penalty units (\$13,735)
		77A(2)	Sex worker offers to provide condomless sex	34	100 penalty units (\$13,735)
		77A3(3)(a)	Client asks sex worker for condomless sex	4	100 penalty units (\$13,735)

Horizontal Axis Category Label on Chart 1	Law	Statutory Section	Law Description	Recorded Offences (1/01/'17 - 31/12/'21)	Maximum Penalty
Condom/STI Offences	PROS*	77A(3)(b)	Client accepts sex workers offer of condomless sex	0	100 penalty units (\$13,735)
		77A(3)(c)	Client sees sex worker without condom	0	100 penalty units (\$13,735)
		77A(4)(a)	Interfere with efficacy of prophylactic	0	100 penalty units (\$13,735)
Licensing Offences	PROS**	78(1)(c) 80(1) 81(1) 83(1) 20(2) 98	Brothel manager or owner breaches conditions of licence	54	200 penalty units (\$27,470) or 5 years imprisonment
			Licensed owner or manager fails to personally supervise open brothel	0	60 penalty units (\$8,241) or 6 months imprisonment
			Licensed owner or manager fails to personally supervise open brothel	0	200 penalty units (\$27,470) or 5 years imprisonment
			Licensed owner or manager fails to personally supervise open brothel	0	40 penalty units (\$5,494)
			Brothel licensee fails to notify authority of changes	2	60 penalty units (\$8,241)
			Knowingly provide licensing authority with false or misleading documents	1	100 penalty units (\$13,735)
Provision of Prostitution	CC*	229H(1)	Participating in provision of prostitution	186	3-7 years' imprisonment

Horizontal Axis Category Label on Chart 1	Law	Statutory Section	Law Description	Recorded Offences (1/01/'17 - 31/12/'21)	Maximum Penalty
Offences Relating to Children in the Sex Industry	CC**	229FA(1)	Obtain sex work from child 16-18 years	1	7 years' imprisonment
		229FA(1) & 2	Obtain sex work from child under 16 years of age	0	14 years' imprisonment
		229G(1)(a) & (2)	Procure child or mentally impaired	9	20 years' imprisonment
		229G(1)(a) & (2) & 535	Attempt to procure child or mentally impaired	2	20 years' imprisonment
		229H(1) & (2)	Knowingly provide sex work services to child or mentally impaired	5	14 years' imprisonment
		229L	Permit child inside brothel	0	14 years' imprisonment
		229K(2)(a) & (b) & (3)	Landlord allows property for illegal brothel use with children or mentally impaired inside	0	14 years' imprisonment

Notes on Table 1

1. Some offences attract a penalty of a fine, calculated in penalty units. Between 01/07/2021 and 30/06/2022, one penalty unit in Queensland was \$137.35. The value of one penalty unit changes each financial year. All dollar amounts in Table 1 above under the column 'Maximum Penalty' were calculated using the 2021/2022 penalty unit of \$137.35.
2. Some offences with no charges recorded in the five year analysis period (01/01/2017 - 31/12/2021) have been omitted from Table 1.
3. Source: Statistical Services, Queensland Police (data extracted on 25/02/2022)

Appendix 2 - Victorian Sex Work Offences

Chart 2 groups all Victorian sex work offences into categories according to the table below. The table identifies the statutory sections from each Act which has been classified into each category identified on Chart 2. Most statutory sections with zero recorded offences across the chart timeframe (2016 – 2020) have been omitted from the table below, including ss 158-165 of the *Public Health and Wellbeing Act 2008* (Vic).

Acronyms used in Table 2

SWA means *Sex Work Act 1994* (Vic)

SWR6 means *Sex Work Regulations 2006* (Vic)

SWR16 means *Sex Work Regulations 2016* (Vic)

CA means *Crimes Act 1958* (Vic)

SOA means *Summary Offences Act 1966* (Vic)

Table 2 – Victoria

Horizontal Axis Category Label on Chart 1	SWA	SWR6	SWR16	CA	SOA
Street Sex Work Offences	12(1) – 3 offences; 12(1)(d) – 0 offences; 12(2)(a) – 5 offences; 12(2)(b) – 27 offences; 13(1) – 1 offence; 13(2) – 16 offences; 21G(1) – 1 offence; 21G(2) – 2 offences.				18(a) – 3 offences.
Licensing Offences	15 – 12 offences; 22(1)(a) – 135 offences; 22(1)(b) – 2 offences; 22(1A)(a) – 52 offences; 22(1A)(b) – 1 offence; 22(3) – 2 offences; 22(4) – 0 offences; 42(4) – 1 offence; 42(5) – 1 offence; 45(1) – 1 offence; 49(3) – 11 offences;				

	57(1) – 2 offences; 61 – 0 offences; 81(3) – 1 offence.				
Horizontal Axis Category Label on Chart 1	SWA	SWR6	SWR16	CA	SOA
Living Off the Earnings	10(1) – 81 offences.				
Brothel Related Offences	11A(1) – 10 offences; 21A(1) – 4 offences; 58(b) – 0 offences; 59(3)(a) – 0 offences; 59(3)(b) – 0 offences; 59(3)(c) – 1 offence.	7(3) – 0 offences.	7(2) – 1 offence.		
Advertising Offences	17(1)(a) – 1 offence; 17(1)(b) – 0 offences; 17(3)(a) – 0 offences; 17(3)(b) – 0 offences; 17(4)(a) – 0 offences; 17(4)(b) – 0 offences.				
Condom/STI Offences	18A(1) – 1 offence;				

	20(1) – 0 offences.				
Offences relating to children in the sex industry	5(1) – 20 offences; 6(1) – 9 offences; 7(1) – 39 offences; 11(1) – 10 offences.				
Sexual servitude and related offences	8(1)(a) – 1 offence; 8(1)(b) – 4 offences; 9(1) – 1 offence; 9(1)(a) – 0 offences; 9(1)(b) – 1 offences; 9(1)(c) – 0 offences; 16(a) – 0 offences; 16(b) – 1 offence.				
Deceptive Recruiting				60AE(1) – 2 offences. ²⁷	

Appendix 3 - Police Powers and Queensland’s Sex Industry

The *Police Powers and Responsibilities Act 2000* (QLD) refers to ‘prostitution’ and the *Prostitution Act 1999* (QLD) in a manner which police are given special powers over the sex industry, above and beyond their powers to regulate or enforce other similar service industries. Table 3 identifies the ways the *Police Powers and Responsibilities Act 2000* (QLD) singles out the sex industry.

²⁷ Repealed in 2017 by s 16 of the *Criminal Amendment (Sexual Offences) Act 2016* (Vic), which came into effect in 2017.

Table 3 - Police Powers and Responsibilities Act 2000 (QLD)

Chapter	Schedule	Part	Section	Description
24	2	-	5	Relevant offences for controlled operations and surveillance device warrants (Prostitution Act 1999)
24	5	2	9	Additional controlled activity offences (Prostitution Act 1999)
-	-	-	46(5)	A police officer may exercise special powers if an officer reasonably suspects a sex worker is engaging in street-based sex work in a regulated place.
-	2	-	4	Relevant offences for controlled operations and surveillance device warrants: -Knowingly participating in provision of prostitution -Persons found in places reasonably suspected of being used for prostitution
-	5	2	9	Additional controlled activity offences in the <i>Prostitution Act 1999</i>
-	6	-	-	Dictionary. Definition of ‘identifying particulars offence’ includes an offence from the Prostitution Act 1999. Definition of ‘licensed brothel’. Definition of ‘prescribed place’ includes areas used for street based sex work. Definition of ‘indictable offence’ includes any sex work related offences.