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## Editorial Introduction

For the decades preceding the Fitzgerald Inquiry, sex work in Queensland was known as "the joke" – defined as illegal within the law, yet ubiquitous thanks to police corruption. In the 30 years since, Queensland has not yet managed to break out of this duplicitous mould. The laws and practise of sex work remain deeply at odds, causing problems for safety through costly and harmful policing. In this briefing paper, sex workers Elena Jeffreys and Janelle Fawkes, with academic Erin O'Brien explain the landscape, the evidence, and point towards the benefits of a decriminalised approach to sex work laws in Queensland.

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# The Case for Decriminalisation: Sex Work and the Law in Queensland

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***International Sex Worker Rights Day, Ann Street, Brisbane. ©Respect Inc, 2019.***

## Introduction

Despite a recommendation from the Fitzgerald Inquiry in 1989 that sex work should be recognised as work, and released from police control, sex workers in Queensland are still heavily policed, with significant negative impacts to their health, safety, legal and human rights.

## The Fitzgerald Inquiry: sex work recommendations

On 3rd July, 1989 Tony Fitzgerald QC tabled his report from the *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* known as the Fitzgerald Inquiry. The report detailed systemic police corruption in relation to the sex industry and associated police misconduct. Fitzgerald found no coherent reason to keep a specialised police force in relation to sex work, with the report stating that regulation would be better handled by civil authority. **Tony Fitzgerald recommended a legalised or decriminalised approach to sex work.**

**The Fitzgerald Inquiry found excessive levels of police corruption**

**The licensing system was intended to remove police from regulating the sex industry. However, police currently monitor approx. 80% of the sex industry**

**Entrapment is legal including seeking sexual services**

**The laws in QLD are effectively a form of criminalisation**

## Sex work laws in Queensland today

It took until 1992, then 1999, for changes to the sex industry laws in Queensland. However, instead of removing police, the *Prostitution Act 1999* (Qld) created a licensing framework, and added a new layer of criminal laws for brothels. The *Prostitution Laws Amendment Act 1992* inserted new crimes relating to independent sex workers via Chapter 22A of the *Criminal Code 1899* (Qld) including the charge "Knowingly participate in the provision of prostitution", which is broadly interpreted and one of the most common charges used against sex workers.

In 2000 the Police Powers and Responsibilities Act expanded the role for police when undertaking entrapment of sex workers. In 2011 this Act was amended to include immunity for police when explicitly posing as clients to encourage sex workers to verbally or in writing agree to illegal activity, in order to obtain evidence and then charge the person. **The powers held by police in relation to sex work in Queensland are far greater today than at any time before the Fitzgerald Inquiry.**

### Licensing laws

Queensland currently licenses twenty brothels, criminalising all other sex industry business models. Massage parlours are not eligible for licensing. Individual sex workers can operate legally but only under restrictive conditions that limit implementation of safety strategies, prevent working in pairs and require compliance with the "Approved Form" of advertising. Licensing laws limit to five the number of rooms a brothel can operate, and the maximum number of sex workers allowed to be working on premises at any time is eight. There are mandatory testing laws for brothel sex workers, with criminal penalty for non-compliance.

Most sex work happens outside the licensing system (PLA 2018, p.4). An evaluation commissioned by the Queensland government in 2009 found that "…the framework is not working. Sex workers may be in a more precarious position now than they were when the legislation first passed…. They cannot work in small groups to provide safety backup for one another unless they seek to register as a brothel" (Edwards 2009, p 4).

### Ongoing criminalisation

Street based sex work, massage parlours, any sex workers working in co-op or overhead sharing arrangements, escort agencies, and all communication between sex workers or third parties that could be considered "Knowingly Participating In the Provision of Prostitution" is illegal and strictly policed in Queensland. The Prostitution Enforcement Taskforce, a specialised police unit, is enlisted to enforce the laws against sex work. Advertising outside of the "Approved Form," is criminalised and prevents sex workers describing their services even in the industry's coded language or acronyms. The "Approved Form" heavily restricts advertising and bans all descriptions of sex worker services.

Standard safety strategies that would be common in a workplace are criminalised for independent sex workers.

## Impact of Current Law


### Safety

The current laws criminalise safety strategies that are used in any other Queensland workplace, such as colleagues keeping track of workers' movement, and checking in and out after an appointment. The laws also reduce the likelihood that sex workers will report crime, creating barriers to short and long term efforts to prevent sexual violence. Even within the licensing system, nearly half of sex workers in licensed brothels in a 2017 study reported that they were unlikely to report crimes experienced at work to police due to putting their job in the brothel at risk (Respect Inc 2017, p.21).

### The Cost to Queenslanders

The licensing system was meant to be cost neutral. Instead, more than 10 million dollars has been spent on licensing the sex industry since 1999. In 2017-

2018, the government subsidised licensing by 45%, paying $724,000 to the Prostitution Licensing Authority (PLA 2018, 56). Additionally, police still invest thousands of hours a year and an unknown amount of money into policing sex workers. The current legal system also inflicts higher costs onto Queensland sex workers, as many of the more routine parts of any work such as sharing overheads, phone lines, advertising, referral of clients and subcontracting, are illegal.

### Stigma and Discrimination

The current approach to sex work in Queensland promulgates unwarranted stigma, discrimination, prejudice and general misunderstanding about sex work. This environment creates barriers to brothel based sex workers accessing essential services such as medical care, legal and financial services and childcare (Respect Inc, 2017, p.37). Male sex workers, and trans sex workers, experience barriers when attempting to access health, housing and income security (Brookfield et al, 2019). Sex workers experiencing multiple intersecting forms of stigma including people living with HIV, migrants, women, young people, people with disability, Aboriginal and Torres Strait Islander people, people of Māori and Pacific Islander background, are more disadvantaged by the laws than other sex workers.

Research with private sex workers advertising online in Queensland found that this group experience isolation due to laws which criminalise the ability to associate (Bucknall 2017). These laws also contribute to the isolation of migrant (Respect Inc 2015), and male and transgender sex workers (Brookfield et al 2019).

## Policing Approaches and Problems

### Entrapment

Entrapment of sex workers by police is a constant factor in the current landscape of sex work in Queensland. Police use the strict "Approved Form" of advertising to trigger entrapment operations. The Queensland Police Service's own 2016-2017 statistics show a 450% increase in this kind of offence.


### Clogging up the courts with victimless crimes

In 2016-2017, the Queensland Police statistical review showed that overall charges for sex work-related offences were up 57%, 'knowingly participate in the provision of prostitution' offences were up by 126%, and most offenders were women over 30 years of age (QPS 2017, p.14, 111). Alongside this increase in police activity, courts often seen to reflect community attitudes, have been reluctant to penalise sex workers. Recent massage parlour raids resulting in relatively low $500-1500 fines demonstrate clear evidence of a disinterest within the justice system to penalise sex workers. Regardless, the ramifications of appearing in court for individual sex workers, who are effectively outed in the process, are extreme.

### Not acting on crimes against sex workers

When reported, very few of the crimes committed against sex workers are investigated (Jeffreys quoted in Wolf, 2019). Sex workers tell of their experiences in their own words:

> ""Where's the crime? What is it you want from us?" the police officer asked…. "I said, there has to be a crime, it's sexual assault. It doesn't matter that I was getting paid, because even though you're getting paid, you still have the right to say no." Despite this, the officer wouldn't take her statement." (Wolf, 2019)
>
> ***- Anna, Independent Escort, Brisbane***
>
> "I think my experience with the police that day was actually worse than being assaulted…. There was no compassion, no recognition that I'd obviously gone through trauma…. I didn't want to go anywhere near the police system again". (Sophie quoted in Wolf, 2019).
>
> ***- Sophie, Independent Escort, Brisbane***

Yet when police do pursue charges against offenders, such as recent fraud and assault cases, the judicial responses have been promising (State v Reihana, 2018, Rushton, 2019). These cases demonstrate that fair treatment of sex workers in the Queensland justice system is possible, but criminalisation and resultant police behaviour and attitudes create a barrier.

## The Case for Decriminalisation

Decriminalisation is the *removal* of exceptional laws that single out sex workers or the sex industry for special regulation. Decriminalisation is not 'de-regulation' or 'no regulation', as it allows the sex industry to be regulated by the comprehensive system of pre-existing rules that govern other commercial activities, workplaces, public health issues, local planning and anti-discrimination.

Decriminalisation in New Zealand has been found to lead to an increase in sex worker willingness to reporting crimes (Abel 2014). In New South Wales it has led to major occupational health and safety advances for sex workers (Donovan et al 2010), including migrant workers (Pell, Dabbhadatta, Harcourt, Tribe & O'Connor, 2007). There is strong evidence that decriminalisation leads to better health for sex workers in all settings (Donovan et al, 2010), and a reduction in HIV rates (Shannon, 2015).

The International Labour Organization and Amnesty International identify decriminalisation as a best practise for labour rights and human rights.

Other approaches to regulation pose unacceptable risks to sex workers' safety and rights. Criminalisation has observable negative impacts on sex workers' health, wellbeing, human rights and access to justice (Vanwesenbeeck 2017, p 1532-1533), while criminalising clients has led to similar outcomes (Le Bail, 2018).

### What would decriminalisation mean for Queensland?

QLD WorkSafe, Queensland privacy protections, Anti-Discrimination law, *Industrial Relations Act 2016*, *Workplace Health & Safety Act*, *Regulations and Codes of Practice 2011*, Town Planning regulations, amenity & aesthetics regulations, *Fair Work Act 2009* and *Public Health Act 2005* would all regulate a decriminalised sex industry.

### Finishing the work of Fitzgerald

Thirty years on, the benefits of change expected after the Fitzgerald Report have not been realised for sex workers. Criminalisation of safety strategies, police entrapment, increased charges and lack of action on crimes reported by sex workers point to very few gains. Queensland could finish the work of Fitzgerald by repealing Chapter 22A, of the *Criminal Code 1899* (Qld), repealing the *Prostitution Act 1999* (Qld), and repealing the sections of the *Police Powers and Responsibilities Act 2000* (Qld) that provide police additional powers in relation to the sex industry and sex workers.

To address stigma, prejudice, and discrimination, the government should also expunge criminal records for sex work related offences. The evidence demonstrates an urgent need for Queensland to address this unfinished work through full decriminalisation of sex work.

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