

# STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with the Thirteenth Assembly Sessional Orders (Part 12.3) as adopted on 24 August 2017.

## Sex Industry Bill 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

### OVERVIEW OF THE BILL

The proposed Bill will decriminalise sex work (while not endorsing or morally sanctioning it) and thereby provide sex workers with the same health and safety protections afforded to workers of other industries. Accordingly, the Bill will provide a framework that:

- (a) promotes the welfare and occupational health and safety of sex workers;
- (b) safeguards the human rights of sex workers and protects them from exploitation;
- (c) is conducive to public health; and
- (d) prohibits the use of persons under 18 years of age in the provision of sex work.

Through the provision of practical regulation, the Bill will raise the safety of sex workers and their clients by taking sex work out of the ambit of criminal enterprise. Accordingly, the purpose of this Bill is not to legislate on the morality of sex work; its purpose is to solely address the genuine issues associated with the health and safety of sex workers, and their human rights.

### HUMAN RIGHTS IMPLICATIONS

The Bill will afford a significant amount of protection and normalisation to the sex industry and by extension, sex workers, many of whom are vulnerable women. Accordingly, a number of rights provided in the International Convention on Civil and Political Rights (ICCPR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are all positively engaged and are set out in detail below.

#### **The prohibition against slavery and forced labour – Article 8 ICCPR**

The right to be free from forced or compulsory labour prohibits requiring a person to undertake work which the person has not voluntarily consented to, but does so because of threats made, either physical or psychological. Accordingly, it falls on the state not to subject anyone to such treatment and ensure there are adequate laws and measures in place that prevent private individuals or companies from subjecting people to such treatment.

The criminalisation of sex work does not lead to the non-existence of sex work. Instead, it forces sex workers to operate outside of the law, and as a consequence, within the purview of criminal enterprise. There, the likelihood of trafficking and forced labour (sex work) is high, as perpetrators are encouraged in the knowledge that sex workers, who have no recourse to police services due to their criminal status, are unlikely to report their exploitation for fear of legal repercussions.

Accordingly, self-determination in the context of sex work, that is to say, the ability of a sex worker to safely and confidently deny the provision of services to anyone they wish, is a right this Bill will seek to protect and enforce.

### **Right to Work – Articles 6, 7 and 8 (ICESCR)**

The right to work specifies that people have the right to choose an occupation and engage in work, operating under work conditions that are just and favourable, particularly safe working conditions. Additionally, it emphasises that the state adopt measures that reduce workers operating outside of the formal economy.

The regulatory framework provided by this Bill will ensure that operators of sex services businesses adopt and promote safe sex practices and a healthy work environment for sex workers, and in so doing, entice sex workers to move out of the informal, unregulated and therefore, often unsafe economy into the formal economy.

### **States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of women in sex work - Article 6 of CEDAW**

The trafficking of women and the exploitation of female sex workers are more often than not, the conduct of criminal enterprise that takes advantage of the lack of government oversight, and isolated, vulnerable women.

Sex work is a societal inevitability and, as an industry, is near impossible to prevent. History has shown that when demand exists for a good or service, and that service is criminalised, the door is open for criminal elements to come in and operate unscrupulously, regardless of the nature of that good or service. Accordingly, where women are forced to work within a sex industry dominated by criminals, they are much more likely to suffer exploitation and trafficking.

The proposed Bill recognises this fact and will seek to decriminalise sex work, providing a practical regulatory framework for workers and their advocates, so that the women who operate within the sex industry can be made aware of their rights (particularly the right to say 'no' and to seek assistance from police), and where they have their rights infringed upon, their recourse to the law will be fully supported. By treating the sex industry like any other business or industry, criminal elements will find it increasingly challenging to hold sway over the industry and exploit or traffic women.

### **CONCLUSION**

This Bill is compatible with human rights as it does not raise any human rights issues.