

Queensland



PROSTITUTION AMENDMENT ACT 2001

Act No. 77 of 2001

Queensland



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Queensland



Prostitution Amendment Act 2001

Act No. 77 of 2001

An Act to amend the *Prostitution Act 1999*, and for other purposes

[Assented to 15 November 2001]

The Parliament of Queensland enacts—**1 Short title**

This Act may be cited as the *Prostitution Amendment Act 2001*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act amended

This Act, other than section 24, amends the *Prostitution Act 1999*.

4 Amendment of s 15 (Consideration of application)

(1) Section 15(3), ‘subsection (2)(b)’—

omit, insert—

‘subsection (3)(b)’.

(2) Section 15(2) to (4)—

renumber as section 15(3) to (5).

(3) Section 15—

insert—

‘(2) However, the Authority is not obliged to consider an application until the relevant assessment manager gives development approval for a material change of use of the premises to which the application relates for a brothel.’.

5 Amendment of s 16 (When authority must refuse application)

(1) Section 16(1)(b)—

omit.

(2) Section 16(1)(c) and (d)—

renumber as section 16(1)(b) and (c).

(3) Section 16(2)—

omit.

(4) Section 16(3), ‘15(2)(c)’—

omit, insert—

‘15(3)(c)’.

(5) Section 16(3)—

renumber as section 16(2).

6 Amendment of s 17 (Suitability of applicant)

(1) Section 17(1)(d) to (k)—

renumber as section 17(1)(e) to (l).

(2) Section 17(1)—

insert—

‘(d) whether the applicant has been convicted of an offence, the circumstances of which constituted the running of a brothel;’.

(3) Section 17(2), ‘subsection (1)(d)’—

omit, insert—

‘subsection (1)(d) or (e)’.

7 Amendment of s 41 (When Authority must refuse application)

(1) Section 41(1)(b)—

omit.

(2) Section 41(1)(c)—

renumber as section 41(1)(b).

(3) Section 41(2)—

omit.

8 Amendment of s 42 (Suitability of applicant)

(1) Section 42(1)(d) to (g)—

renumber as section 42(1)(e) to (h).

(2) Section 42(1)—

insert—

‘(d) whether the applicant has been convicted of an offence, the circumstances of which constituted the running of a brothel;’.

(3) Section 42(2), ‘subsection (1)(f)’—

omit, insert—

‘subsection (1)(d) or (g)’.

9 Replacement of s 62 (Definitions for pt 4)

Section 62—

omit, insert—

‘Division 1—Preliminary

‘62 Definitions for pt 4

‘In this part—

“**application land**” means land the subject of a development application to which this part applies.

“**code assessable development application**” means a development application to which this part applies, if the application is required to be the subject of code assessment under the Integrated Planning Act.

“**development application**” means an application for a development approval under the Integrated Planning Act.’.

10 Amendment of s 63 (Application of pt 4)

Section 63, ‘licensed’—

omit.

11 Insertion of new ss 63A–63B

After section 63—

insert—

‘63A Integrated Planning Act

‘(1) This part applies despite the Integrated Planning Act.

‘(2) If this part is inconsistent with the Integrated Planning Act, this part prevails to the extent of the inconsistency.

‘(3) Further, for the application of the Integrated Planning Act to a development application, an industrial area is land, however described, that is designated in a planning scheme or other planning instrument under the Integrated Planning Act as industrial, or that is predominantly industrial in character, having regard to—

- (a) dominant land uses in the area; or
- (b) the relevant provisions of a planning scheme or planning instrument applying to the area.

Examples of ways of describing industrial areas—

- 1. heavy industry
- 2. commercial industry
- 3. light industry
- 4. service industry
- 5. general industry
- 6. waterfront industry.

‘Division 2—Particular provisions about development applications

‘63B Notification by assessment manager of development application

‘Within 10 business days after receiving a development application, the assessment manager must give the Authority—

- (a) a copy of the application; and
- (b) a written notice stating whether the development application is required to be subject to code assessment or impact assessment under the Integrated Planning Act.’.

12 Amendment of s 64 (When assessment manager must refuse application)

(1) Section 64(1), ‘the application if’—

omit, insert—

‘a development application if’.

(2) Section 64(1)(a) and (b)—

omit, insert—

‘(a) the application land—

(i) is in, or within 200 m of the closest point on any boundary of, a primarily residential area or an area approved for residential development or intended to be residential in character; or

(ii) is within 200 m of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities;

measured according to the shortest route a person may reasonably and lawfully take, by vehicle or on foot, between the application land and the other land; or

(b) the application land is within 100 m of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities, measured in a straight line; or’.

(3) Section 64(2) and (3)—

omit, insert—

‘(2) In this section—

“**residential building**”, for subsection (1)(a)(ii) and (1)(b), means a building or part of a building used primarily for private residential use, other than a building or part of a building used only for a caretaker’s residence on land in an industrial area.

“**vehicle**” includes any type of transport that moves on wheels but does not include a train or tram.’.

13 Insertion of new ss 64A–64V

Part 4, after section 64—

insert—

‘Division 3—Object of appeal divisions**‘64A Object of appeal divisions**

‘(1) The object of the appeal divisions is to provide for easily accessible, informal, fair, speedy and just reviews of decisions about code assessable development applications.

‘(2) In this section—

“**appeal divisions**” means divisions 4 to 7.

‘Division 4—Independent assessor**‘64B Independent assessor**

‘(1) The Minister may appoint an independent assessor for this Act.

‘(2) An independent assessor must be a lawyer of at least 5 years standing.

‘(3) However, the Minister may make an appointment only if the Minister is satisfied the person has sufficient expertise or experience in town planning and is otherwise suitable for appointment.

‘(4) Subject to section 64D, the terms and conditions of the appointment are as decided by the Minister.

‘64C Acting independent assessor

‘The Minister may appoint a person qualified to be an independent assessor to act as the independent assessor—

- (a) during a vacancy in the office of the independent assessor; or
- (b) during any period, or during all periods, when the independent assessor is absent from duty or the State or is, for another reason, unable to perform the duties of office.

‘64D Independent assessor remuneration

‘The independent assessor is to be paid the fees and allowances decided by the Governor in Council.

‘64E Independent assessor not subject to control

‘The independent assessor is not subject to control or direction by anyone in the way the independent assessor performs the independent assessor’s functions.

‘64F Independent assessor’s jurisdiction

‘The independent assessor may hear and decide appeals made to the independent assessor under this part.

‘64G If conflict of interest

‘(1) If the independent assessor has a conflict of interest in relation to an appeal, the independent assessor must not decide the appeal.

‘(2) Without limiting subsection (1), the independent assessor has a conflict of interest for this section if—

- (a) premises to which an appeal relates are premises—
 - (i) the independent assessor owns; or
 - (ii) in relation to which the independent assessor was, is, or is to be, a planner; or
 - (iii) situated or to be situated in the area of a local government of which the independent assessor is an officer, employee or councillor; or
- (b) the independent assessor has acted or is acting as the appellant’s lawyer and the independent assessor’s involvement as the appellant’s lawyer could conflict with the proper performance of the independent assessor’s duties in relation to the appeal; or
- (c) the independent assessor has a direct or indirect personal interest in a matter to be considered by the independent assessor, and the interest could conflict with the proper performance of the independent assessor’s duties in relation to consideration of the matter.

‘64H Protection

‘(1) The independent assessor has, in the performance of the independent assessor’s duties, including in the performance or exercise of an administrative function or power conferred on the independent assessor under an Act, the same protection and immunity as a Supreme Court judge has in a proceeding in the Supreme Court.

‘(2) A person representing a party before the independent assessor has the same protection and immunity as a lawyer has in appearing for a party in a proceeding in the Supreme Court.

‘(3) A person making oral submissions to the independent assessor has the same protection as a witness has in a proceeding in the Supreme Court.

‘64I Assessor’s registrar

‘(1) The Minister may at any time by gazette notice appoint a registrar for appeals to the independent assessor (“**assessor’s registrar**”), and other officers the Minister considers appropriate to help the independent assessor perform functions under this Act.

‘(2) A public service officer may be appointed under subsection (1) or may be assigned by the chief executive to perform duties to help the independent assessor and may hold the appointment or perform the duties concurrently with any other appointment the officer holds in the public service.

‘(3) In performing the functions of assessor’s registrar, or a function delegated to the registrar by the independent assessor, the assessor’s registrar is not subject to direction by the Minister or the chief executive.

‘64J Delegation

‘The independent assessor may delegate to the assessor’s registrar the independent assessor’s powers, other than power to hear and decide an appeal.

‘Division 5—Appeals**‘64K Appeals by applicants**

‘(1) An applicant for a code assessable development application may, as permitted under the Integrated Planning Act, section 4.1.27 appeal to the independent assessor against—

- (a) the assessment manager’s refusal, or the refusal in part, of the application; or
- (b) a matter stated in a development approval for the application, including any condition applying to the development; or
- (c) a decision to give a preliminary approval when a development permit was applied for; or
- (d) the length of a currency period; or
- (e) a deemed refusal.

‘(2) The appeal must be started within 20 business days after—

- (a) the decision notice is given to the applicant; or
- (b) if a negotiated decision notice is also given to the applicant—the negotiated decision notice is given to the applicant.

‘(3) If the appeal is made to the Planning and Environment Court, the court must not hear or decide the appeal.

‘(4) Subsections (1) and (3) do not prevent the making of an application under the Integrated Planning Act, section 4.1.21 for a declaration about the meaning, effect or enforcement of a condition of a development approval.

‘Division 6—Starting an appeal**‘64L Starting an appeal**

‘(1) A person starts an appeal to the independent assessor by lodging a notice of appeal, in the approved form, with the assessor’s registrar.

‘(2) The notice of appeal must state the grounds of the appeal, including why the appellant considers the decision is wrong, and must be accompanied by the fee prescribed under a regulation.

‘64M Notice of appeal to other parties

‘(1) The assessor’s registrar must, within 5 business days after the day the appeal is started, give notice of the starting of the appeal to the assessment manager.

‘(2) The assessor’s registrar may also give notice of the starting of the appeal to the Authority.

‘(3) The notice must be accompanied by a copy of the appellant’s notice of appeal.

‘64N Development approval suspended until appeals decided

‘A development approval is suspended until the end of any period for appealing against any matter stated in the approval and any proceeding started because of an appeal.

‘64O Assessment manager to provide documents

‘(1) The assessor’s registrar must ask the assessment manager to give the registrar—

- (a) all documents, including plans and specifications, about the aspect of the development application being appealed; and
- (b) for a deemed refusal, a statement of the reasons the assessment manager had not decided the application during the decision making period or any extension of the decision making period; and
- (c) any other information the registrar requires.

‘(2) The assessment manager must give the material mentioned in subsection (1) within 10 business days after the day the assessor’s registrar asks for the material.

‘Division 7—Procedure**‘64P Procedure for deciding appeal**

‘For deciding the appeal, the independent assessor—

- (a) need not proceed in a formal way; and

- (b) is not bound by the rules of evidence, but must comply with natural justice; and

Example—

Giving the parties a reasonable opportunity to make oral submissions by using any reasonable form of contemporaneous communication.

- (c) may inform him or herself in the way the independent assessor considers appropriate; and
- (d) may seek the views of any person; and
- (e) may give the directions about the conduct of the appeal the independent assessor considers reasonably necessary.

‘64Q Independent assessor may allow longer period to take step

‘(1) This section applies if a step in an appeal must be taken within a stated time.

‘(2) The independent assessor may allow a longer time to take the step.

‘(3) Subsection (2) does not apply to a notice of appeal that is not received within the time stated for starting the appeal.

‘64R Costs

‘Each party to an appeal must bear the party’s own costs for the appeal.

‘64S Preliminary assessment

‘(1) Within 10 business days after receiving material from the assessment manager under section 64O,¹ the independent assessor must—

- (a) make a preliminary assessment of the assessment manager’s decision or failure to decide; and
- (b) give a copy of the preliminary assessment and the reasons for the preliminary assessment to the appellant and the respondent.

‘(2) The independent assessor must give the parties 10 business days after receiving the preliminary assessment to make written submissions about the assessment.

¹ Section 64O (Assessment manager to provide documents)

‘(3) The independent assessor must decide the appeal within 5 business days after the end of the period for making written submissions, unless the time for deciding the appeal is extended under subsection (4).

‘(4) If the independent assessor considers it appropriate, the independent assessor may extend the time for deciding the appeal to the extent necessary.

Example—

An extension of time may be necessary to allow parties to make oral submissions to the independent assessor or because the appeal is complex.

‘64T Matters the independent assessor may consider in making a decision

‘(1) The independent assessor must decide the appeal based on the laws and policies applying when the application was made and the materials made available to the assessment manager.

‘(2) Subsection (1) does not stop the independent assessor considering new material submitted by the parties to the appeal if satisfied considering the material will help the independent assessor decide the appeal.

‘64U Appeal decision

‘(1) In deciding an appeal the independent assessor may make the orders the independent assessor considers appropriate.

‘(2) Without limiting subsection (1), the independent assessor may—

- (a) confirm the decision appealed against; or
- (b) change the decision appealed against; or
- (c) set aside the decision appealed against and make a decision replacing the decision set aside.

‘(3) If the independent assessor acts under subsection (2)(b) or (c), the independent assessor’s decision is taken, for this Act (other than this division) and the Integrated Planning Act to be the decision of the assessment manager that made the decision appealed against.

‘(4) The assessor’s registrar must give all parties to the appeal and the Authority notice of the independent assessor’s decision and the reasons for the decision.

‘(5) The independent assessor’s decision can not be appealed against under this Act or the Integrated Planning Act.

‘Division 8—General

‘64V Parties’ access to documents

‘(1) This section applies to documents in the independent assessor’s possession for an appeal.

‘(2) The assessor’s registrar must allow the parties to the appeal to inspect and make copies of the documents.

‘(3) For subsection (2), the assessor’s registrar must give the parties reasonable access to the documents during normal business hours.’.

14 Amendment of s 65 (Application to Magistrates Court)

(1) Section 65, after ‘for an order’—

insert—

‘under section 66 (“**section 66 declaration**”) or 66A (“**temporary declaration**”)’.

(2) Section 65—

insert—

‘(2) An application for a temporary declaration may be made—

- (a) before a proceeding for a section 66 declaration is started; or
- (b) before a proceeding for a section 66 declaration ends.

‘(3) An application by a police officer for a temporary declaration may also be made to a magistrate.

‘(4) If an application is made under subsection (3), the *Police Powers and Responsibilities Act 2000*, sections 451 to 453 apply to a temporary declaration as if it were a prescribed authority under those sections.’.

15 Amendment of s 66 (Declaration that premises are a prohibited brothel)

(1) Section 66(2) to (4)—

renumber as section 66(3) to (5)

(2) Section 66

insert—

‘**(2)** Also, the court may declare premises to be a prohibited brothel if it is satisfied, on the balance of probabilities, that on the day stated in the application—

- (a) a person was operating a brothel without a licence at the premises; or
- (b) the premises were being used for a brothel in contravention of the Integrated Planning Act.’.

16 Insertion of new s 66A

After section 66—

insert—

‘66A Temporary declaration that premises are prohibited brothel

‘**(1)** The issuer may declare premises to be a prohibited brothel if it is satisfied, on the balance of probabilities, there is a likelihood the premises will be a brothel because—

- (a) a person will operate a brothel without a licence at the premises; or
- (b) the premises will be used for a brothel in contravention of the Integrated Planning Act.

‘**(2)** The issuer may make the declaration for a specified period, but may extend the declaration from time to time until a section 66 declaration is made or an application for a section 66 declaration for the premises is withdrawn or dismissed.

‘**(3)** The issuer may make the declaration only if it is satisfied that the applicant has made a reasonable attempt to notify the owner or occupier of the premises of the making of the application.

‘**(4)** In considering the application, the issuer may inform itself in any way it considers appropriate and is not bound by rules or practice about evidence.

‘**(5)** In this section—

“issuer” means—

- (a) for an application made to the court under section 65(1), the court; or
- (b) for an application made to a magistrate under section 65(3), the magistrate.’.

17 Amendment of s 67 (Publication of declaration)

Section 67—

insert—

‘(4) Subsections (1)(a) and (b)(iii) and (2) do not apply to a temporary declaration.’.

18 Amendment of s 132 (Evidentiary provision)

(1) Section 132(2), ‘the Authority’—

omit, insert—

‘the Authority, the independent assessor’.

(2) Section 132(3), ‘the Authority’—

omit, insert—

‘the Authority, the independent assessor’.

19 Amendment of s 133 (Disclosure of information)

Section 133(3), definition “official”, paragraphs (d) and (e)—

omit, insert—

- (d) the independent assessor; or
- (e) the registrar; or
- (f) the assessor’s registrar; or
- (g) an authorised officer of a relevant local government.’.

20 Amendment of s 134 (Protection from liability)

(1) Section 134(3), definition “official”, paragraphs (e) and (f)—

renumber as paragraphs (f) and (g).

(2) Section 134(3), definition “official”—

insert—

‘(e) the independent assessor; or’.

21 Insertion of new s 138A

After section 138—

insert—

‘138A Delegation

‘The Authority may delegate powers of the Authority under this Act, other than power to grant, renew or cancel a licence, to the registrar.’.

22 Insertion of new pt 9

After section 141—

insert—

‘PART 9—TRANSITIONAL PROVISION FOR PROSTITUTION AMENDMENT ACT 2001

‘142 Transitional provision about appeals

‘An appeal started in the Planning and Environment Court under the Integrated Planning Act before the commencement of this section in relation to an application made to an assessment manager for development approval for a licensed brothel may continue to be dealt with under that Act as if the *Prostitution Amendment Act 2001* had not been enacted.’.

23 Amendment of sch 1 (Disqualifying offence provisions under the Criminal Code)

(1) Schedule 1, item 4, ‘Section 347’—

omit, insert—

‘Section 349’.

(2) Schedule 1, item 5—

omit.

(3) Schedule 1—

insert—

‘3A. Section 306 (Attempt to murder)

5. Section 359 (Attempt to commit rape)’.

(4) Schedule 1, as amended, items 1 to 10—

renumber as items 1 to 11.

24 Amendment of sch 4 (Definitions)

(1) Schedule 4, definition “disqualifying offence”—

omit.

(2) Schedule 4—

insert—

‘ **“application land”**, for part 4, see section 62.

“assessment manager” has the meaning given by the Integrated Planning Act, section 3.1.7.²

“assessor’s registrar” see section 64I.

“code assessable development application”, for part 4, see section 62.

“development application”, for part 4, see section 62.

“disqualifying offence” means—

- (a) an offence or an attempt to commit, or to conspire to commit or to counsel or procure a person to commit an offence, against any of the following—
 - (i) the *Crimes (Confiscation) Act 1989*, section 90;³
 - (ii) the *Drugs Misuse Act 1986*, section 5;⁴
 - (iii) a provision of the Criminal Code mentioned in schedule 1;
 - (iv) a provision of the *Migration Act 1958* (Cwlth) mentioned in schedule 2; or

2 *Integrated Planning Act 1997*, section 3.1.7 (Assessment manager)

3 *Crimes (Confiscation) Act 1989*, section 90 (Money laundering)

4 *Drugs Misuse Act 1986*, section 5 (Trafficking in dangerous drugs)

(b) an offence that, if committed in Queensland, would be a disqualifying offence under paragraph (a).

“independent assessor” see section 64B.⁵

“Integrated Planning Act” means the *Integrated Planning Act 1997*.

“local government area” means a part of the State established as a local government area under the *Local Government Act 1993*, section 3.⁶

“section 66 declaration” see section 65.

“temporary declaration” see section 65.’.

25 Amendment of Integrated Planning Act

(1) This section amends the *Integrated Planning Act 1997*.

(2) Schedule 8, item 5, ‘licensed’—

omit.

(3) Schedule 8, item 22, definition “licensed brothel”—

omit.

(4) Schedule 8, item 22—

insert—

‘ **“brothel”** see the *Prostitution Act 1999*, schedule 4.’.

5 Section 64B (Independent assessor)

6 *Local Government Act 1993*, section 3 (Definitions)

SCHEDULE**MINOR AMENDMENTS**

section 3

1 Part 2, heading, ‘AND BASIC CONCEPTS’—*omit.***2 Part 2, divisions 1 and 2, headings—***omit.***3 Section 16, heading, ‘authority’—***omit, insert—***‘Authority’.****4 Section 19(1), ‘*Integrated Planning Act 1997*’—***omit, insert—***‘Integrated Planning Act’.****5 Section 66(1)(b), ‘*Integrated Planning Act 1997*’—***omit, insert—***‘Integrated Planning Act’.****6 Section 72(1), ‘section 66(2)’—***omit, insert—***‘section 66(3)’.**

SCHEDULE (continued)

7 Schedule 4, definition “development permit”, ‘*Integrated Planning Act 1997*’—*omit, insert—*

‘Integrated Planning Act’.

8 Schedule 4, definition “IDAS”, ‘*Integrated Planning Act 1997*’—*omit, insert—*

‘Integrated Planning Act’.