

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

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Yvette D’Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, the Honourable Yvette D’Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, make this statement of compatibility with respect to the amendments to be moved during consideration in detail (ACiDs) of the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (the Bill).

In my opinion, the ACiDs are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the amendments

The objectives of the ACiDs are to:

- make a minor technical amendment to the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (CCAC Act) to facilitate the partial repeal of the *Criminal Law (Sexual Offences) Act 1978* (CLSO Act) to support the implementation of amendments in the CCAC Act;
- address a technical drafting conflict within an amendment to the *Liquor Act 1992*; and
- amend the *Planning Act 2016* (Planning Act) to implement recommendation 21 of the Queensland Law Reform Commission in its report: *A decriminalised sex work industry for Queensland* (QLRC Report).

Technical amendments to the CCAC Act

Amendment 1 inserts new Part 4A into the Bill to amend the CCAC Act to allow the partial repeal of the CLSO Act to facilitate the effective implementation of reforms in the CCAC Act.

The amendment inserts a new Part 3A into the CCAC Act to repeal Part 2 (Evidence), which includes sections 4 (Special rules limiting particular evidence about sexual offences) and 4A (Evidence of complaint generally admissible), and section 5 (Exclusion of public) of the CLSO Act. This is to support the implementation of amendments in the CCAC Act which seek to modernise, update and relocate the relevant provisions of the CLSO Act into the *Evidence Act 1977* (Evidence Act).

The amendment amends section 2 (Commencement) of the CCAC Act to provide that new Part 3A will commence on a day to be fixed by proclamation.

The amendment also inserts, into Schedule 1 of the CCAC Act, consequential amendments to the *Childrens Court Act 1992*, Criminal Code and Evidence Act related to the partial repeal of the CLSO Act.

Further, the amendment amends the long title of the CCAC Act to also provide that it is an Act to amend the CLSO Act.

Amendment 7 amends the long title of the Bill for the purpose of Amendment 1.

Technical correction - *Liquor Act 1992*

Amendments 2 to 5 address a technical drafting conflict within an amendment to the *Liquor Act 1992* (Liquor Act) at clause 22 of the Bill.

***Planning Act 2016* amendments**

Amendment 6 inserts new Part 8A into the Bill to amend the *Planning Act 2016* (Planning Act) to insert transitional provisions for the Bill.

The purpose of the proposed amendments to the Planning Act is to reflect recommendation 21 of the Queensland Law Reform Commission and support the decriminalisation of the sex work industry in Queensland to ensure sex work business is treated the same as any other business and includes transitional provisions to provide a 12-month moratorium period for a sex work business to lodge a development application to become a lawful use without risk of being subject to enforcement and compliance action.

Amendment 8 amends the long title of the Bill for the purpose of Amendment 6.

Human Rights Issues

Human rights relevant to the amendments (part 2, divisions 2 and 3, HR Act)

Technical amendments to the CCAC Act

The amendment to the CCAC Act to support partial repeal of the CLSO Act does not engage or limit any human rights, noting that this is a technical amendment to support implementation of amendments in the CCAC Act which seek to modernise, update and relocate the relevant provisions of the CLSO Act into the *Evidence Act 1977*.

Technical correction - *Liquor Act 1992*

Amendments 2 to 5 to correct a technical drafting conflict within the *Liquor Act 1992* do not engage or limit any human rights.

Planning Act 2016 amendments

Amendment 6 to insert transitional provisions to provide a 12-month moratorium on enforcement action for a sex work business to lodge a development application limits the right to privacy and reputation (section 25 of the HR Act). In my opinion, the limitation is reasonable and justified under section 13 of the HR Act, as follows:

(a) the nature of the right

Section 25 of the HR Act recognises that people have the right not to have their privacy, family home or correspondence unlawfully or arbitrarily interfered with and not have their reputation unlawfully attacked.

(b) the nature of the purpose of the limitation

Arguably, the amendments may result in the development of a sex work business that may impact upon the privacy and reputation of an adjoining land use or property owner. Furthermore, the privacy and reputation of a sex work business may be subject to increased attention or scrutiny by community members.

The purpose of the proposed amendments is to support the decriminalisation of sex work in Queensland and include a 12-month moratorium period for an unlawful sex work business to lodge a development application to become a lawful business without being subject to enforcement or compliance action. This is a short-term period to support sex work businesses to operate lawfully and ensure they are treated the same as any other business.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The amendments support sex work businesses to seek to operate lawfully without risk of interim enforcement or compliance action. Any development approval will be subject to assessment or consideration against a local planning scheme, relevant planning provisions and any regulations set by the state.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There is no less restrictive and reasonably available way of achieving the purpose of the amendment.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation on the right to privacy is appropriate to ensure that sex-work businesses that apply for development approval within the first 12 months after decriminalisation starts will be protected from having information in their application used as evidence of a development offence.

As noted above, the purpose of the amendments are to provide a sex work business with an opportunity to lodge a development application to become a lawful use without the risk of enforcement or compliance action due to the information provided in the application. The 12-month moratorium period will promote and encourage the lawful operation of a sex work business which may then be considered against the relevant planning provisions of a local planning scheme a local government has considered as appropriate for assessment within a particular area and any matters set by a regulation.

The proposed amendment will ensure the expectations of the local government and community are reflected in local planning decisions. The decision achieves a balance to support the longer term impacts regarding the decriminalisation of sex work in Queensland.

Conclusion

In my opinion, the ACiDs for the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 are compatible with human rights for the reasons outlined in this statement.

YVETTE D'ATH MP
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE
MINISTER FOR THE PREVENTION OF DOMESTIC AND FAMILY VIOLENCE

© The State of Queensland 2024