

Justice (Decriminalising Sex Work) and Other Legislation Amendment Regulation 2024

Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Justice (Decriminalising Sex Work) and Other Legislation Amendment Regulation 2024* (the Amendment Regulation) made under the following legislation:

Section 267 of the *Criminal Proceeds Confiscation Act 2002*

Sections 43 and 284 of the *Planning Act 2016*

Section 809 of the *Police Powers and Responsibilities Act 2000*

Section 287 of the *Public Sector Act 2022*

Section 25 of the *Public Sector Ethics Act 1994*

Section 224 of the *Queensland Civil and Administrative Tribunal Act 2009*

Section 165 of the *State Penalties Enforcement Act 1999*

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Criminal Code (Decriminalising Sex work) and Other Legislation Act 2024* (the Act) received assent on 9 May 2024.

The objective of the Act is to establish a legal framework that will enact a safe, decriminalised sex work industry in Queensland, while improving the health, safety, rights and legal protections for sex workers. The Act establishes a decriminalised framework for the sex work industry based on the recommendations of the Queensland Law Reform Commission (QLRC) report: *A decriminalised sex-work industry for Queensland* (the QLRC Report).

Amongst other things, the Act repeals the entirety of the *Prostitution Act 1999* (Prostitution Act) and Chapter 22A (Prostitution) of the Criminal Code. As a consequence of the repeal of the Prostitution Act and the provisions of the Act, the Prostitution Licensing Authority will be abolished upon commencement of the Act.

Consequential Amendments

Several consequential amendments are required to support commencement of the Act. References to Chapter 22A Criminal Code offences and the *Prostitution Act 1999* and terms defined under that Act, including references to the Prostitution Licensing Authority, will be omitted from the:

- *Criminal Proceeds Confiscation Regulation 2023* (CPCR);
- *Planning Regulation 2017* (Planning Regulation);

- *Police Powers and Responsibilities Regulation 2012 (PPRR)*;
- *Public Sector Ethics Regulation 2023 (PSER)*;
- *Public Sector Regulation 2023 (PSR)*;
- *Queensland Civil and Administrative Tribunal Regulation 2019 (QCATR)*;
- *State Penalties Enforcement Regulation 2014 (SPER)*.

Planning Regulation amendments

The Amendment Regulation amends the Planning Regulation to support the commencement of the Act and to provide that sex work businesses be treated the same as any other business in the planning framework.

The Amendment Regulation amends the Planning Regulation to ensure the Queensland planning framework gives effect to the intent of the Act and achieves the policy objectives by:

- removing provisions for the purpose of brothels assessed against Schedule 3 of the *Prostitution Regulation 2014* in section 17, Part 3;
- inserting new section 17A to limit all home-based businesses category of assessment to code assessment with assessment benchmarks to regulate the number of workers and visitors at a time;
- removing the definition of brothel as a land use term from Schedule 3;
- removing prohibitions and assessment provisions of a brothel in Schedule 10;
- amending the land use definitions of home-based business and shop in Schedule 3 to include a sex work business as an example of these uses;
- including a new administrative definition in Schedule 4 for ‘sex work business’ to clarify the land use definitions of home-based business and shop include sex work business; and
- including new provisions in Schedule 6 to ensure a material change of use for a home-based business cannot be made assessable development where it meets certain requirements in relation to the number of workers and visitors.

Human Rights Issues

Planning Regulation amendments

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

I have considered each of the rights protected by Part 2, Division 2 and 3 of the HR Act. In my opinion, the human rights relevant to the Planning Regulation amendments are:

- freedom of expression (section 21 of the HR Act);
- taking part in public life (section 23 of the HR Act)
- property rights (section 24 of the HR Act); and
- privacy and reputation (section 25 of the HR Act).

Planning Regulation amendments will allow a sex work business to be either an accepted or code assessable development, removing the requirement for public notification and reducing the level of scrutiny by members of the community or vexatious appeals.

The proposed amendments will no longer allow community members to voice their opinion and concerns regarding an impact assessable development for a brothel under the planning framework. This means that the right of individuals to make submissions about development applications for sex work businesses will be limited.

(a) the nature of the right

Freedom of expression

The right to freedom of expression in section 21(2) of the HR Act protects the right of all persons to seek, receive and impart information and ideas (including verbal and non-verbal communication). The right to freedom of expression and the free flow of information and ideas, particularly about public and political issues, is considered to be a touchstone of a democratic society.

Taking part in public life

The right to take part in public life in section 23 of the HR Act affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It ensures all persons have the opportunity to contribute to the political process and public governance, directly or through freely chosen representatives.

Property rights

Section 24 of the HR Act protects individuals' right to own property alone or in association with others, and the right not to be arbitrarily deprived of their property. An 'arbitrary' interference is one that is 'capricious, unpredictable, or unjust' or 'unreasonable in the sense of not being proportionate to a legitimate aim sought.' If an interference with the right to property results in a deprivation of property that is not 'arbitrary' within this meaning, the proper interpretation is that there has been no limit to the right.

Privacy and reputation

Section 25(1) of the HR Act protects a person's right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The scope of the right to privacy is very broad, and encompasses not just informational privacy, but also a person's sense of mental or physical integrity. At its most basic, the right is concerned with notions of personal autonomy and dignity, including a person's sense of personal and social individuality and identity.

The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law. An 'arbitrary' interference is one that is 'capricious, unpredictable, or unjust' or 'unreasonable in the sense of not being proportionate to a legitimate aim sought.' If an interference with the right to privacy is not 'arbitrary' within this meaning, the proper interpretation is that there has been no limit to the right.

(b) the nature of the purpose of the limitation to be imposed by the amendment regulation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the proposed Planning Regulation amendments is to support the decriminalisation of sex work in Queensland to ensure a sex work business is treated the same as any other business.

The purpose of the limitation is to protect the rights of sex workers to be recognised and protected equally before the law without discrimination (section 15 of the HR Act) by recognising sex work as a legitimate occupation and provide equal protection to sex work businesses as any other business. The proposed amendments will assist to ensure sex worker safety by creating a safer environment in which to operate and protect sex workers right to privacy (section 25 of the HR Act).

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

The Planning Regulation amendments support the objectives of the Act by ensuring that the planning framework is able to effectively operate and reflect decriminalised sex work framework by removing current provisions which restrict the development of a sex work business. The amendments ensure that a sex work business will be treated as any other business, including a home-based businesses.

(d) whether there is a less restrictive and reasonably available way of achieving the purpose of the amendments

There is no less restrictive and reasonably available way of achieving the purpose of the amendment. Subjecting sex work businesses to impact assessment would require public notification, and therefore not achieve the purpose of the amendments.

(e) the balance between the importance of the purpose of the limitation potentially imposed by the Amendment Regulation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, it is considered that the importance of achieving the purpose of the limitation to protect the rights of sex workers to be recognised and protected equally before the law without discrimination and to ensure sex worker safety by creating a safer environment in which to operate and protect sex workers right to privacy outweighs the potential adverse impact on community members who will be restricted from making submissions about development applications for sex work businesses.

Consequential amendments

The amendments relating to the CPCR, PPRR, PSER, PSR, QCATR and SPER contained in this subordinate legislation do not raise human rights issues because they do not engage or limit any human rights protected under the HR Act.

Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

YVETTE D'ATH MP
Attorney-General and Minister for Justice and
Minister for the Prevention of Domestic and Family Violence

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