

Impact Analysis Statement

Details

Lead department	Department of Justice and Attorney-General
Name of the proposal	A Proclamation to commence the provisions of the <i>Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024</i> by: <ul style="list-style-type: none"> - fixing 2 August 2024 for the commencement of the provisions other than section 17; and - providing that section 17 commences immediately after the commencement of the <i>Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Act 2024</i>, section 27.
	<i>Justice (Decriminalising Sex Work) and Other Legislation Amendment Regulation 2024</i> which: <ul style="list-style-type: none"> - makes consequential amendments to the <i>Criminal Proceeds Confiscation Regulation 2023</i>, <i>Police Powers and Responsibilities Regulation 2012</i>, <i>Public Sector Ethics Regulation 2023</i>, <i>Public Sector Regulation 2023</i>, <i>Queensland Civil and Administrative Tribunal Regulation 2019</i>, and <i>State Penalties Enforcement Regulation 2014</i> (consequential amendments); and - amends the <i>Planning Regulation 2017</i> to ensure a sex work business is treated the same as any other business through the planning framework and land use planning (<i>Planning Regulation amendments</i>)
Submission type	Summary Impact Analysis Statement
Title of related legislative or regulatory instrument	<i>Proclamation - Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024</i>
	<i>Justice (Decriminalising Sex Work) and Other Legislation Amendment Regulation 2024</i>
Date of issue	August 2024

Proclamation and consequential amendments

Proposal type	Details
Minor and machinery in nature	The proclamation to fix the commencement dates for the provisions of the <i>Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024</i> is machinery in nature. No regulatory impact analysis is required under the Queensland Government Better Regulation Policy.
	The <i>Justice (Decriminalising Sex Work) and Other Legislation Amendment Regulation 2024</i> makes amendments to the <i>Criminal Proceeds Confiscation Regulation 2023</i> , <i>Police Powers and Responsibilities Regulation 2012</i> , <i>Public Sector Ethics Regulation 2023</i> , <i>Public Sector Regulation 2023</i> , <i>Queensland Civil and Administrative Tribunal Regulation 2019</i> , and <i>State Penalties Enforcement Regulation 2014</i> . The amendments are consequential in nature and remove references to legislation and offences repealed by the <i>Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024</i> . No

	regulatory impact analysis is required under the Queensland Government Better Regulation Policy.
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Amendments to Planning Regulation

What is the nature, size and scope of the problem? What are the objectives of government action?
<p>The <i>Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024</i> (the Act) implements the intent of the Queensland Law Reform Commission's report, <i>A decriminalised sex-work industry for Queensland</i> (QLRC report). A total of 10 recommendations, 15 to 24, were identified in the QLRC report relating to the planning framework (noting recommendation 23 relates to local laws not administered under the planning framework).</p> <p>Amendments to the planning framework are required, consistent with the intent of the Act, to provide that a sex work business is treated the same as any other business, including a home-based business.</p>
What options were considered?
<p>Option 1: Maintain the status quo and no government actions is pursued.</p> <p>This option involves no amendments to the <i>Planning Regulation 2017</i> (Planning Regulation) and maintains the status quo. The effect of this option will mean a sex work business will not be defined in the planning framework and the definition of brothel will no longer have effect as a result of amendments in the Act.</p> <p>This would result in no defined term and no assessment benchmarks and the potential for a local government to make a development impact assessable as its undefined. This option does not align with the intent of the Act or the QLRC report recommendations to support the decriminalisation of sex work and ensure a sex work business is treated the same as any other business.</p> <p>Option 2 (preferred): Proposed amendments to the Planning Regulation consistent with the objective of the Act.</p> <p>To support the implementation of the Act upon proclamation, the Department of Housing, Local Government, Planning and Public Works (DHLGPPW) identified necessary amendments to the Planning Regulation to decriminalise sex work and ensure a sex work business is treated the same as any other business through the planning framework and land use planning.</p> <p>The proposed amendments will support the operation of the planning framework for all businesses, not just sex work and will:</p> <ul style="list-style-type: none"> - remove the definition of brothel and all associated provisions, included in Schedule 10 of the Planning Regulation - limit home-based business, including where for a sex work business, to a maximum of code assessment in all zones where they meet key assessment benchmarks in the Planning Regulation - include assessment benchmarks in the Planning Regulation that are focused on limiting the number of workers and customers to no more than two at the premises at any time, with all other relevant provisions in a local planning scheme to apply - ensure a local government cannot include any other matters in a planning scheme which are specifically targeted at restricting sex work business in a home-based business - include a new administrative definition of sex work business in Schedule 4 of the Planning Regulation and amend the land use definitions of home-based business and shop to identify a sex work business falls within these terms. <p>Option 2 is the preferred option and considered a comprehensive response to support the intent of the Act and the recommendations of the QLRC report to decriminalise the sex work industry in the planning framework.</p>

What are the impacts?

The removal of the definition and associated provisions in the Planning Regulation aligns with the repeal of the *Prostitution Act 1999* (Prostitution Act) and the intent to treat sex work business the same as any other business, including other home-based businesses in the planning framework.

The limiting of the category of assessment to all home-based business ensures there are no opportunities for vexatious appeals but allows local governments the ability to still regulate all other aspects of a home-based business appropriately to its locality.

The inclusion of targeted assessment benchmarks in the Planning Regulation will support the safety issues of sex workers in isolation raised through the QLRC. It will also ensure any home-based business is restricted in operation scale to that which is appropriate for a residential area.

Ensuring a local government cannot include any restrictions in a planning scheme specifically targeting a sex work business in a home-based business will ensure a local government cannot by default apply more stringent benchmarks. As local government planning scheme amendments are reviewed by the department administering the *Planning Act 2016* (Planning Act) under the planning framework, any proposed amendment inconsistent with the intent of the Act or the *Justice (Decriminalising Sex Work) and Other Legislation Amendment Regulation 2024* (Amendment Regulation) will not be supported. This will be communicated through guidance material.

The inclusion of a new administrative term for sex work business that is applied to both home-based business and shop land use terms will ensure the activity of sex work is not an undefined use and cannot be made impact assessable by a local government.

Who was consulted?

The Department of Justice and Attorney-General (DJAG) engaged in targeted consultation on a confidential draft of the Act between 17 October 2023 and 10 November 2023. Consultation included proposed policy for the planning framework to include provisions for home-based businesses to support the QLRC report recommendation that all sex work businesses are integrated into the planning framework and home-based sex work business is treated like any other home-based business.

The targeted consultation included Respect Inc, Scarlett Alliance, Queensland Council of Unions, Queensland Adult Business Association, Massage and Myotherapy Australia, Prostitution Licensing Authority, Queensland Human Rights Commission, Electrical Trades Union Queensland, the Planning Institute of Australia (PIA) and the Local Government Association of Queensland (LGAQ).

DHLGPPW met with PIA and LGAQ during the targeted consultation period and was provided with the following feedback:

- PIA and LGAQ raised concerns about the approach to facilitate the outcomes of the QLRC recommendation through the planning framework, identifying unintended consequences.
- PIA noted statewide benchmarks are not appropriate for existing or new home-based businesses as benchmarks vary across local governments.
- LGAQ noted local governments are best placed to regulate land use planning in response to the local context.

Other stakeholders supported a maximum level of assessment and the removal of the brothel definition and relevant provisions in the Planning Regulation, however, some indicated the proposed policy intent for the planning framework did not go far enough, including removing hours of operation for home-based businesses. DHLGPPW Planning Group officers also met with officers in the Local Government Division and DJAG to discuss the intent of the provisions to ensure they do not override a local government's ability to regulate advertising devices.

Following consultation, the Planning Group further refined the provisions to reflect the recommendations that sex work business is considered like other home-based business, and that there is a maximum level of assessment for home-based business through Queensland. This includes sex work business as an example of both shop and home-based business in the Schedule 4 of the Planning Regulation for administrative terms.

On 21 March 2024, DHLGPPW officers attended the Housing, Big Build and Manufacturing Committee (the committee) to answer questions on the intent of the amendment to the Planning Regulation to support the implantation of the Act through the planning framework. DHLGPPW have considered the recommendations of the committee report released on 12 April 2024 and the submissions made.

What is the recommended option and why?

Option 2 is the recommended option and considered a comprehensive response to support the intent of the Act and the recommendations of the QLRC report to decriminalise the sex work industry in the planning framework.

The proposed amendments to the Planning Regulation will support the implementation of the Act by:

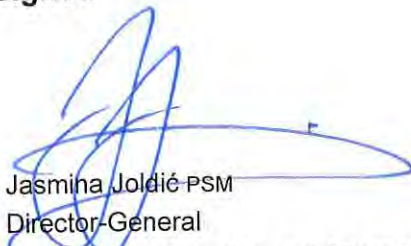
- aligning with the repeal of the Prostitution Act and the intent to treat sex work business the same as any other business, including other home-based business in the planning framework
- limiting the category of assessment to code assessment for all home-based business to ensure there are no opportunities for vexatious appeals but still provide local governments the ability to regulate all other aspects of home-based business appropriately to its locality
- supporting the safety issues of sex workers in isolation raised through the QLRC report. It will also ensure any home-based business is restricted in scale to that which is appropriate for a residential area
- ensuring a local government cannot by default apply more stringent benchmarks to home-based business where for the purpose of sex work business, with any future local government planning scheme amendments to be reviewed by the department administering the Planning Act under the planning framework for any proposed amendment inconsistent with the intent of the Bill or the Amendment Regulation to not be supported.
- ensuring the activity of sex work is not an undefined use and cannot be made impact assessable by a local government.

Impact assessment

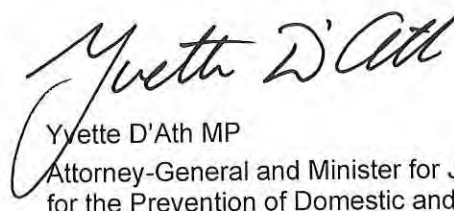
All proposals:

	First full year	First 10 years**
Direct costs – Compliance costs*	There are no compliance costs to business or community as a result of the proposed amendments to the Planning Regulation.	There are no compliance costs to business or community as a result of the proposed amendment to the Planning Regulation. The decriminalisation of sex work business in the planning framework will be treated the same as any other business.
Direct costs – Government costs	There are no government costs as a result of the proposed amendments to the Planning Regulation	There are no government costs as a result of the proposed amendments to the Planning Regulation.

Signed



Jasmina Joldić PSM
Director-General
Department of Justice and Attorney-General



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

Date: 30. 07. 2024

Date: 30/07/2024