

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

Explanatory Notes

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

Short title

The short title of the Bill is the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024.

Policy objectives of the Amendments

The objectives of the amendments to the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (the Bill) to be moved during consideration in detail are to:

- make minor technical amendments to the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (CCAC Act);
- address a technical drafting conflict within an amendment to the *Liquor Act 1992* (Liquor Act); 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).

Amendments to the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024

The policy objective of the amendment which makes minor technical amendments to the CCAC Act is to enable the partial repeal of *the Criminal Law (Sexual Offences) Act 1978* (CLSO Act). This is intended to facilitate the implementation and commencement

of amendments in the CCAC Act which modernise, update and relocate the relevant provisions of the CLSO Act into the *Evidence Act 1977*.

Enabling the repeal of sections 4, 4A and 5 of the CLSO Act, ahead of repeal of the CLSO Act pursuant to section 103 of the CCAC Act, will support the staged commencement of reforms in the CCAC Act in line with necessary implementation activities.

Technical drafting conflict – *Liquor Act 1992*

The policy objective of the proposed amendment is to address a technical drafting conflict within an amendment to the *Liquor Act 1992* (Liquor Act) at clause 22 of the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (Bill).

The definition *interest in a sex work business* is provided in the Bill as part of broader amendments to the Liquor Act to ensure that the status quo of the legislative provisions that currently apply to the provision of adult entertainment and sex work occurring on liquor licensed premises remains once decriminalisation of sex work occurs more broadly under the Bill.

To maintain the status quo of ensuring that a person cannot apply for or hold a liquor licence or permit if they hold an interest in a brothel, a new definition *interest in a sex work business* will be added to the Liquor Act to replace the definition *interest in a brothel*. This is because *interest in a brothel* is contained in the *Prostitution Act 1999*, which is being repealed by the Bill.

Subsections 1(b) and (c) of the *interest in a sex work business* definition at clause 22 of the Bill provide that a person has an interest in a sex work business (and are therefore not eligible for a liquor licence or permit) if they own or are the lessor of premises used for carrying on a sex work business. Subsections 1(b) and (c) when read in conjunction with the definition of *sex work business*, which defines commercial sexual services as being provided by one or more persons, means a licensee may not be able to rent or let a room to a sole operator sex worker to conduct their business on a licensed premises. There is no current restriction specifically applying in the Liquor Act to sole operator sex workers as this activity is not currently unlawful. Therefore, the proposed provisions currently in the Bill are not consistent with the policy intent of maintaining the legislative status quo.

Planning Act 2016

The objectives will be achieved by inserting new Clause 31B, that inserts a new part 10 in Chapter 8 to provide for any unlawful sex work businesses a period of time to seek to become lawful without the risk of enforcement or compliance action being taken against them.

Achievement of the Objectives

Technical amendments to 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 drafting conflict – *Liquor Act 1992*

The policy objective will be achieved by amending the *interest in a sex work business* and *sex work business* definitions proposed in the Bill to fix the technical drafting conflict.

Amendment 5 amends clause 22 of the Bill to replace the reference ‘1 or more persons’ with ‘2 or more persons’ in the definition of *sex work business*. This reflects an intention that sole operator sex workers be clearly excluded from the application of the definition of an *interest in a sex work business* and will mean a licensee will not be specifically prevented from renting or letting a room to a sole operator sex worker to conduct their business on a licensed premises. Further, the amendment will not prevent the sole operator sex worker from holding a liquor licence or permit.

Amendment 2 amends clause 22 of the Bill to remove subsection (2) of the definition of *interest in a sex work business* as this subsection, which excludes sole operator sex workers from being prevented from holding a licence or permit, is no longer required as changing the definition of *sex work business* from ‘1 or more persons’ to ‘2 or more persons’ in Amendment 5 above, makes subsection (2) redundant.

Amendments 3 and 4 amend clause 22 to make minor consequential wording changes to subsections (3) and (4) of the *interest in a sex work business* definition due to the removal of subsection (2) by Amendment 2 above.

Planning Act 2016

The amendment to the Bill will provide for the insertion of new Part 10 into the Planning Act. New Part 10 will implement recommendation 21 of the QLRC Report.

Proposed section 362 provides for the circumstances where the provisions apply. The circumstances include where a material change of use was carried out before commencement and the material change of use was either;

- Prohibited development as set out in schedule 10 of the *Planning Regulation 2017* and applied by a local government in its local planning scheme;
- Assessable development as set out in schedule 10 of the *Planning Regulation 2017*; or
- Assessable development under a local planning scheme.

Proposed section 363 provides definitions for ‘relevant MCU’, ‘sex work’ and ‘sex work business’ which apply to this part. The definition of ‘sex work business’ is an inclusive definition.

Proposed section 364 relates to proceedings for offences committed before the commencement where, on the commencement, the relevant conduct is no longer an offence. The proposed section provides that if a person carried out a material change of use for a use that is a sex work business that was prohibited development or assessable development under the *Planning Regulation 2017*, the person cannot be convicted of or punished for an offence against section 162 (Carrying out prohibited development), 163 (Carrying out assessable development without permit) or 165 (Unlawful use of premises) of the Planning Act unless the person was charged with the offence before the commencement.

Proposed section 365 provides a protection from prosecution during the moratorium period for a relevant offence for a sex work business that was operating before the commencement without development approval, but for which no enforcement or compliance action had been commenced. A prosecution may not be started if, after the end of the moratorium period, all of the development permits necessary are in effect or the use of the premises for the relevant sex work business has been abandoned.

Proposed section 365 also ensures that information which was provided as part of any development application cannot be used for the purposes of enforcement or compliance action in relation to a relevant offence.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving these policy objectives.

Estimated Cost for Government Implementation

There will be no cost for government in implementing the amendments.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to the fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992*.

No potential inconsistencies with fundamental legislative principles have been identified.

Consultation

In respect of the Planning Act amendments, consultation occurred with key stakeholders including the Local Government Association of Queensland, Planning Institute of Australia, Respect QLD and the Scarlett Alliance in relation to the amendments.

Some of the amendments also respond to the Housing, Big Build and Manufacturing Committee's report and the submissions received during the Committee's inquiry on the Bill.

NOTES ON PROVISIONS

Amendment 1 inserts Part 4A into the Bill which amends the CCAC Act.

Clause 18B of the Bill will amend section 2 (Commencement) of the CCAC Act to provide that parts 3 and 3A will commence on a day to be fixed by proclamation.

Clause 18C of the Bill will insert a new Part 3A into the CCAC Act to omit 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.

Clause 18D of the Bill will amend Schedule 1 (Other Amendments) of the CCAC Act to make consequential amendments to the *Childrens Court Act 1992*, Criminal Code and Evidence Act related to the partial repeal of the CLSO Act.

Clause 18E of the Bill will amend the long title of the CCAC Act to also provide that it is an Act to amend the CLSO Act.

Amendment 2 amends clause 22 to remove subsection (2) of the definition of *interest in a sex work business* as the provision is redundant due to amendments to the definition of *sex work business* contained in Amendment 5.

Amendment 3 amends clause 22 to make a minor change to wording in subsection (3) of the definition of *interest in a sex work business*, replacing 'Also' with 'However'.

Amendment 4 amends clause 22 to make a minor change to wording in subsection (4) of the definition of *interest in a sex work business*, replacing 'In addition' with 'Also'.

Amendment 5 amends clause 22 to replace the words '1 or more persons' with '2 or more persons' in the definition of *sex work business* to ensure that sole operator sex workers are excluded from the application of the definition of *interest in a sex work business* and are not subject to restrictions on the conduct of their business that don't currently apply.

Amendment 6 inserts Part 8A into the Bill which amends the Planning Act.

Section 362 (Application of part) provides for the circumstances where the provisions will apply and the definition of relevant sex work business.

Section 363 (Definitions for part) provides for definitions for sex work and sex work business and relevant MCU to ensure clarity on the development to which the provisions apply.

Section 364 (Proceedings for pre-commencement offences relating to material change of use of premises for a use that is a sex work business) relates to proceedings for offences committed before the commencement of the Bill.

Section 365 (Application of development offences for particular offences for particular material change of use and restriction on use of information) relates to the use of a

premises for a material change of use for a sex work business which was assessable development was undertaken without approval before the moratorium commenced.

Section 365(4) and (5) provides for the protection of the use of any information which an applicant provided in a development application for a material change of use, and ending the day any development application is ‘finally decided’ including the protection of any action under section 226 of the Planning Act for the provision of false or misleading information.

Section 365(6) provides for the definition of terms ‘finally decided’ and ‘moratorium period’ to ensure clarity on the operation of the moratorium provisions to support unlawful sex work businesses to become lawful and the protection of existing enforcement action undertaken prior to the commencement.

Amendment 7 amends the long title of the Bill to include that it is an Act to amend the CCAC Act.

Amendment 8 amends the long title of the Bill to include that it is in Act to amend the Planning Act.