

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

**Submission No:** 15  
**Submitted by:** Tobias Kennett  
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**Submitter Comments:**

**SUBMISSION TO THE INQUIRY INTO THE CRIMINAL CODE (DECRIMINALISING SEX WORK)  
AND OTHER LEGISLATION AMENDMENT BILL 2024**

**BY**

**TOBIAS KENNETT**

**Introduction**

The *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024* is a strong Bill which will implement overdue legislative reform. It will lead to positive outcomes for sexual workers across Queensland.

However, several amendments to the Bill should be made:

1. To provide clarity and ensure that sex work as understood by the modern world is covered, the definition of *sex work activity* proposed to be inserted into the *Anti-Discrimination Act 1991* ('ADA') should be amended to include additional wording clarifying it extends to online services and additional paragraphs clarifying it extends to other commercial sexual services like phone sex or sexting services, erotica and fetish classes.
2. To provide clarity that sex workers have broad discretion to share information they honestly believe is relevant to their health and safety and are not be required to disclose that many people involved in the provision of commercial sexual services may know client information, given that the cases of *AVB v TDD* [2014] EWHC 1442 (QB) and *Mosley v News Group Newspapers* [2008] EWHC 1777 (QB) indicate sex workers owe duties of confidence to their clients.
3. To provide clarity of how the non-consensual sharing of images and recordings offence regime apply to persons who distribute images or recordings of sex workers.

This submission is not made on behalf of any organisation. This submission is my own.

## **Commentary on Part 2 Amendment of Anti-Discrimination Act 1991**

### *Ambiguity of inclusion of online sex work activity*

Online sex work is a reality of the modern world,<sup>1</sup> yet was barely touched on in the Queensland Law Reform Commission's report. Many sex-workers provide sexual services to clients through teleconference or the exchange of videos. Many sex workers now also produce pornography through subscription services like OnlyFans on top of 'traditional' 'full-service' or online sex work. Many sex workers now only produce still image or recorded pornography which is personalised to the client's requirements, meaning their services exist on the border between 'traditional' sex-work delivered through an online medium and pure pornography.

Regardless of the type of online sex work activity, whether more traditional or more pornographic, sex-workers who provide services through technology face the same discrimination - 'debanking', housing or general discrimination – that traditional 'full service' sex workers do. Consequently, the anti-discrimination provisions should equally protect these sex workers.

Presently, while it is arguable that the current definition *may* cover these services, the definition is ambiguous. First, as *sexual activity* is not defined in the ADA, it could be construed narrowly, especially given historical notions that *sexual activity* means 'full-service' sex work and its juxtaposition against the broader definition *sexual activity*, paragraph (b). Second, while definition *sexual activity*, paragraph (b) is boarder, the focus on 'use or display of a person's body' suggests a physical presence.

### *Lack of inclusion of other sex work activities*

This Bill presents a significant opportunity to properly cover the broad range of commercial sexual services that Queenslanders provide and face discrimination in relation to. The definition of *sex work activity* should be reflective of the diversity of commercial sexual services available. Specifically, the definition of *sex work activity* should encompass:

- phone sex services and sexting services, and similar;
- distributing erotic literature and art, and similar;
- fetish classes, such as rope bondage classes, and similar;.

Like with online sex work activity, it is ambiguous as to whether the current definition is broad enough to include the above services. The focus on 'use or display of a person's body' does not in its plain meaning extend to oral conversations (ie phone sex, sexting) which do not involve the 'body' in the sense used in the clause. Further, the definition plainly does not extend to distributing erotica or holding classes relating to sexual activity, like rope bondage classes or other fetish classes.

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<sup>1</sup> For example, see <https://www.abc.net.au/news/2022-06-25/rise-of-the-sexfluencers-how-sexworkers-are-becoming-celebrities/101173328>; <https://www.abc.net.au/news/2022-11-14/onlyfans-adults-only-gig-economy-nude-next-door/101610276>.

**Recommended amendment to the Bill**

**4 Amendment of s 7 (Discrimination on the basis of certain attributes prohibited)**

Section 7(1) —

*omit, insert—*

- (l) **commercial sexual service** activity;

**6 Amendment of sch 1 (Dictionary)**

(1) Schedule 1, definition *lawful sexual activity*—

*omit.*

(2) Schedule 1—

*insert—*

***commercial sexual service activity*—**

(a) means the provision, **whether in the physical presence of the other person or not**, by an adult person of the following services for payment or reward—

(i) services that involve the person participating in a sexual activity with another person;

(ii) services that involve the use or display of the person's body for the sexual arousal or gratification of another person; **and**

*Examples—*

**erotic dancing, cybersex, pornography**

(iii) **services that involve the person engaging in sexually explicit conversations, whether oral, written, telephone or otherwise, for the sexual arousal or gratification of another person;**

*Examples—*

**phone sex service, sexting service**

(iv) **services that involve the person distributing written or image content for the sexual arousal or gratification of another person;**

*Examples—*

**sale of erotic literature, painting erotic art on commission**

(i=v) **services that involve the person teaching about sexual activity; and**

*Example—*

**rope bondage class**

(b) includes being or having been a person who provides services mentioned in paragraph (a).

**Commentary on remaining provisions of the Bill, including in relation to licencing, health, planning etc.**

I have been involved within the YMCA Queensland Youth Parliament for the past 5 years (2019 to 2023). As many of you will know as MPs, it is funded by the State Office for Youth and supported by the Queensland Parliament. YMCA Queensland Youth Parliament is regularly consulted by both the State and Federal Offices for Youth, and forms part of the Queensland Government's youth strategy. See, for example, Queensland Youth Strategy Highlights Reports from 2020-21 and from 2021-22.

In 2019, the YMCA Queensland Youth Parliament completed the *Sex Work Decriminalisation Youth Bill 2019*, which passed the Youth Parliament with a considerable majority. I have annexed a copy of the Youth Bill in Annexure A.

I am delighted with the consistency between what we proposed then in 2019 and what has been proposed in the current legislation. This includes. not directly criminalising minors who engage in commercial sexual services, and instead criminalising those who obtain or allow minors to engage in commercial sexual services.

I do note that this Bill will go, in repealing the existing *Prostitution Act 1999*, considerably further than the *Sex Work Decriminalisation Youth Bill 2019*. However, I am generally in agreement with the proposed legislation and the reasoning behind it as explained in the Explanatory Notes and the Queensland Law Reform Commission's Report.

My only recommendation is to update the definition of *commercial sexual service* to reflect some of the expanded scope proposed for the ADA definition of *sex work activity*. Subparagraphs (iv) and (v) have not been included given it is not foreseeable that such services would be obtained by minors or through coercion. Expanding the Criminal Code definition of *commercial sexual services* will ensure greater enforceability of the provisions of the Criminal Code, particularly against individuals who seek to obtain sexual services from non-adults through online mediums. It will also increase the enforceability of the proposed section 218(1).

**Recommended amendment to the Bill**

Update the definition of *commercial sexual service* to reflect the expanded scope proposed for the ADA definition *sex work activity*.

**12 Amendment of s 207A (Definitions for this chapter)**

Section 207A—

*insert—*

***commercial sexual service*** means a service—

- (a) provided by a person, **whether in the physical presence of the other person or not**, involving—
  - (i) a sexual act as described in section 218(2) and (3) engaged in by the person; or

- (ii) the use or display of the person’s body for the sexual arousal or gratification of another person; ~~and or~~;  
*Examples—*  
erotic dancing, cybersex, pornography
  - (iii) sexually explicit conversations, whether oral, written, telephone or otherwise, for the sexual arousal or gratification of another person;  
*Examples—*  
phone sex service, sexting service
- (b) that is—
  - (i) provided for payment or reward, whether the payment or reward accrues or is given to the person providing the service or someone else; and
  - (ii) provided under an arrangement of a commercial character.

### **Commentary on the need to implement express provisions in relation to confidentiality and sex work**

*Sex workers appear to owe duties of confidence to their clients*

As identified in the Queensland Law Reform Commission Report, section 229H operates in a manner which prevents sex workers from sharing information, leading to unsafe working environments. However, even after 229H is repealed, sex-workers may face barriers with sharing client information for safety purposes. Sex-workers regard their services as discrete and confidential and hold them out as such. There is law to support the proposition that the sex-workers owe confidentiality obligations to their clients. Although there has never been any Australian case law on the subject, in the UK courts have accepted the sex workers can owe duties of confidence to their clients.

*AVB v TDD [2014] EWHC 1442 (QB)*

In *AVB v TDD [2014] EWHC 1442 (QB)*, a lawyer sought an injunction against a sex worker to restrain the misuse of private and confidential information, and damages. The claim was both under contract (via a confidentiality agreement) and at general law. The court found, in relation to the general law, that:

- the relationship between the sex work and their client was a business relationship between a professional sex work and a client;<sup>2</sup>
- the nature of the relationship between the sex worker and their client was confidential information that could be protected in law;<sup>3</sup>
- but found no breach of confidence in either contract or the general law in relation to such information.<sup>4</sup>

However, in reaching its ultimate conclusion, the court placed emphasis on the fact that the lawyer refused to pay the sex worker and was generally exploitative towards the sex worker. This conduct acted to void any implied contractual or general law obligation of confidentiality because the sex worker was entitled to act to protect her own interest by complaining about his failure to pay and conduct.<sup>5</sup> Consequently, the outcome of the case indicates that, had there not been public policy grounds to operate, an obligation of confidence would have existed.

*Mosley v News Group Newspapers [2008] EWHC 1777 (QB)*

Similar, in *Mosley v News Group Newspapers [2008] EWHC 1777 (QB)*, Max Mosley (racing car driver) sued *News of the World* for breach of confidence by an unauthorised disclosure of personal information that was inherently private in nature. A sex worker ('Woman E') secretly recorded Mosely engaging in a group sado-masochistic ritual. Importantly, Mosley's argument was founded on the sex worker who recorded the incident herself having breached his trust in

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<sup>2</sup> [2014] EWHC 1442 (QB) [59].

<sup>3</sup> *Ibid* [48], [66], [69]-[74], [78].

<sup>4</sup> *Ibid* [199], [208].

<sup>5</sup> *Ibid* [65]-[67], [199]-[201], [208], [241].

confidence, which should have been apparent to *News of the World*. The court did find that Woman E owed a duty of confidence, including having regard to the fact Mosley paid her.<sup>6</sup>

#### *Recommendation*

In light of the possibility that sex-workers may owe obligations of confidentiality to their clients in law, it would be prudent to expressly legislate to the contrary. This is particularly important given the illegality and public-policy considerations applicable to sex-work ‘contracts’,<sup>7</sup> which makes creates vagueness in how the law applies to the sex-worker-client relationship.

Including express provisions does somewhat undermine the desire of the Bill to reflect a complete deregulation of the sex-work industry, but these provisions do not regulate but rather instead clarify the law. Potential drafting of such express legislative provision is recommended below.

#### **Recommended amendment to the Bill**

After clause 32, insert the following—

#### **32A Insertion of new pt 6A**

After pt 6—

*insert—*

#### **Part 6A**

#### **Rights of persons involved in provision of commercial sexual services**

#### **155A Right to disclose information for health and safety purposes in connection with commercial sexual services**

- (1) Despite any other law, a person (**person A**) may disclose to any other person any information, including prescribed information, that person A honestly believes is relevant for the purposes of ensuring person A’s or another person’s health and safety in connection with the provision of commercial sexual services
- (2) In this section—  
**commercial sexual service** has the meaning has the meaning given by the Criminal Code, section 1.  
**prescribed information** means the following information—
  - (a) another person’s personal information; and
  - (b) another person’s location; and

<sup>6</sup> [2008] EWHC 1777 (QB) [105]–[109].

<sup>7</sup> [2014] EWHC 1442 (QB) [84].



- (c) information about the sexual or other activities that are intended to be provided in the course the provision of the commercial sexual service.
- (d) information about sexual or other activities that were provided in the course the provision of the commercial sexual service.

**155B Right to not disclose certain information in connection with commercial sexual services**

- (1) Despite any other law, a person involved the provision of a commercial sexual service (**person A**) is not required to disclose to a recipient of the commercial sexual service (**person B**) that—
  - (a) drivers, bodyguards or other persons may be involved in the provisions of the commercial sexual service may know; and
  - (b) persons involved in the provisions of the commercial sexual service may know—
    - (i) person B’s personal information; and
    - (ii) person B’s location; and
    - (iii) the sexual or other activities that are intended to be provided to person B in the course the provision of the commercial sexual service.
    - (iv) information about sexual or other activities that were provided to person B in the course the provision of the commercial sexual service.
- (2) In this section—  
**commercial sexual service** has the meaning has the meaning given by the Criminal Code, section 1.

**Commentary on a need to amend Criminal Code sections 223, 227B and 229A to ensure sex workers are protected.**

*General comment*

The relevant provisions of the Criminal Code mentioned above have recently been commented on in Report No. 63, 57th Parliament Legal Affairs and Safety Committee on the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023.<sup>8</sup>

The YMCA Queensland Youth Parliament proposed extension of these laws to deepfakes and generated content, like the committee has in their report, all the way back in 2020.<sup>9</sup> However, our proposal also proposed that:

- the provisions be extended to intimate sounds (including deepfaked sound recordings), such as recordings purporting to be recordings of persons engaging in sexual activity given they can be equally distressing and identifying;
- the meaning of intimate image be updated to specifically include three-dimensional representations (ie 3d models) and also source code/text files which can be used to reproduce images, giving the growing trend of non-consensual generative pornography moving towards three-dimensional models.

I fully support the commentary put forward in that Report, but note that, if such law reform is to be conducted, it should also be extended to include sounds (including generated sounds) and generated three-dimension representations and source code/text files.

*Sex workers*

Of relevance to the current inquiry is that Criminal Code sections 223, 227B and 229A may not protect sex workers.

Sections 223, 227B and 229A provisions require that the distribution of the intimate image or recording be ‘in a way that would cause the other person distress reasonably arising in all the circumstances’ (for section 227B, a similar wording to this can be found in the definition of *prohibited visual recording* in section 207A). In my view, many situations the distribution of images or recordings of a sex worker (eg privately sexted images, images taken during sexual activity with consent) would clearly be *reasonably* distressing to current and former sex workers. Such distribution involves a clear violation of their right to bodily autonomy and right to control to what extent their bodies are presented publicly. Further, it involves a breach of discreteness (confidentiality) and trust by their client.<sup>10</sup>

However, many ‘full-service’ sex workers have a limited number of publicly available intimate images as part of their advertisement of commercial sexual services. Further, as identified

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<sup>8</sup> At section 2.10

<sup>9</sup> See *Digital Identity Replication and Usage Youth Bill 2020*, annexed at annexure B.

<sup>10</sup> For some example see <https://www.dailymail.co.uk/news/article-8058201/Gold-Coast-woman-Fans-account-warns-women-revenge-porn.html>. An insightful report on the subject can be found at [https://nationaluglymugs.org/wp-content/uploads/2022/02/NUM-Visual-Violence-Report-FINAL\\_10022022.pdf](https://nationaluglymugs.org/wp-content/uploads/2022/02/NUM-Visual-Violence-Report-FINAL_10022022.pdf).

earlier, many 'sex workers' now provide services that exist on the border between 'traditional' sex-work delivered through an online medium and pure pornography, and many sex workers are directly involved in the production of pornography on top of sex work. This has changed how many people view sex workers (ie more open with intimate images, less private). Finally, the law generally takes a conservative and out-dated view towards sex-workers. Considering this, many reasonable minds could conclude that disturbing an intimate image or recording would not cause a particular sex worker or someone who has previously publicly shared intimate images distress *reasonably* arising because some intimate images are available publicly.

In my view, the Criminal Code should be amended to provide clarity in a manner which better protect sex workers who, although are comfortable with some level of private or public intimate image sharing, are not comfortable with greater levels of sharing. Specifically, it should be expressly stated that simply because a person is a sex worker or has privately or publicly distributed intimate images does not necessarily mean the distribution does not cause the other person distress reasonably arising in all the circumstances. This would also, more generally, provide better protection for all victims of revenge pornography.

**Recommended amendment to the Bill**

Make the following modification to clause 12—

**12 Amendment of s 207A (Definitions for this chapter)**

(1) Section 207A—

*insert—*

**commercial sexual service** means a service—

- (a) provided by a person, involving—
  - (i) a sexual act as described in section 218(2) and (3) engaged in by the person; or
  - (ii) the use or display of the person's body for the sexual arousal or gratification of another person; and
- (b) that is—
  - (i) provided for payment or reward, whether the payment or reward accrues or is given to the person providing the service or someone else; and
  - (ii) provided under an arrangement of a commercial character.

**commercial sexual service worker** means a person who provides, whether in the physical presence of the other person or not, one or more of the following services for payment or reward—

- (a) services that involve the person participating in a sexual activity with another person;

	(b)	services that involve the use or display of the person’s body for the sexual arousal or gratification of another person; <i>Examples—</i> erotic dancing, cybersex, pornography
	(c)	services that involve the person engaging in sexually explicit conversations, whether oral, written, telephone or otherwise, for the sexual arousal or gratification of another person; <i>Examples—</i> phone sex service, sexting service
	(d)	services that involve the person distributing written or image content for the sexual arousal or gratification of another person; <i>Examples—</i> sale of erotic literature, painting erotic art on commission
	(e)	services that involve the person teaching about sexual activity. <i>Example—</i> rope bondage class
(2)	Section 207A, ‘In this chapter’— <i>omit, insert—</i>	
	(1)	In this chapter—
(3)	Section 207A — <i>insert—</i>	
	(2)	For section 207A, definition <i>prohibited visual recording</i> , a visual recording of a person is not to be taken to not be made in circumstances where a reasonable adult would expect to be afforded privacy only because the person—
	(a)	is or has been a commercial sexual service sex worker; or
	(b)	has previously privately distributed intimate images to the person or another person; or
	(c)	has previously distributed intimate images publicly.
Insert the following after clause 15—		
<b>15A</b>	<b>Amendment of s 223 (Distributing intimate images)</b>	
(1)	Section 233— <i>insert—</i>	
	(4A)	A person is not to be taken to not distribute an intimate image of another person in a way that would cause the other person

distress reasonably arising in all the circumstances only because the other person—

- (a) is or has been a sex worker; or
- (b) has previously privately distributed intimate images to the person or another person; or
- (c) has previously distributed intimate images publicly.

- (2) Sections 223(3A) to (5)—  
*renumber* as sections 223(4) to (6).

**15B Amendment of s 229A (Threats to distribute intimate image or prohibited visual recording)**

- (1) Section 229A—  
*insert—*

(3A) For subsection (1), a person is not to be taken to not make a threat to another person to distribute an intimate image distribute an intimate image or prohibited visual recording of the other person in a way that would cause the other person distress reasonably arising in all the circumstances only because the other person—

- (a) is or has been a sex worker; or
- (b) has previously privately distributed intimate images to the person or another person; or
- (c) has previously distributed intimate images publicly.

(3B) For subsection (2), a person is not to be taken to not make a threat to person A to distribute an intimate image distribute an intimate image or prohibited visual recording of person B in a way that would cause person B distress reasonably arising in all the circumstances only because person B—

- (a) is or has been a commercial sexual service sex worker; or
- (b) has previously privately distributed intimate images to the person or another person; or
- (c) has previously distributed intimate images publicly.

- (2) Sections 229A(3A) to (5)—  
*renumber* as sections 223(4) to (7).

## **ANNEXURES A & B**



# **Sex Work Decriminalisation Youth Bill 2019**







Queensland

# Sex Work Decriminalisation Youth Bill 2019

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**2019**

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## **A Bill**

for

**A Youth Act to decriminalise and legitimise sex work, to protect the interests and safety of sex workers.**

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[s 1]

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<b>The Parliament of Queensland enacts—</b>	1
<b>Part 1 Preliminary</b>	2
<b>1 Short title</b>	3
This Youth Act may be cited as the <i>Sex Work Decriminalisation Youth Act 2019</i> .	4 5
<b>2 Commencement</b>	6
This Youth Act commences on a day to be fixed by proclamation.	7 8
<b>3 Main purpose of Youth Act</b>	9
The main purpose of this Youth Act is to decriminalise sex work, legitimise the sex work industry, and legislate the rights to safety, dignity and fair working conditions for sex workers.	10 11 12
<b>4 Definitions</b>	13
In this Youth Act—	14
<i>breach register</i> means a register maintained by the Queensland Sex Work Association which lists sex workers who are not permitted to engage in sex work in Queensland.	15 16 17
<i>clearance notice</i> means a notification to the Queensland Sex Work Association advising that a medical practitioner is satisfied that the sex worker does not pose a transmission risk.	18 19 20
<i>contraceptive methods</i> mean aids or technology designed to prevent the transmission of sexually transmitted illness and/or pregnancy. For the purpose of this Youth Act, contraceptive methods refers to condoms.	21 22 23 24

*entrapment* means a practice whereby a law enforcement agent or agent of the state induces a person to commit a criminal offense that the person would have otherwise been unlikely or unwilling to commit.

*Queensland Sex Work Association* means the regulatory body for the sex work industry in Queensland.

*sex work* means the exchange of sexual services of a transactional nature, including but not limited to sexual intercourse.

*sex worker* means the exchange of sexual services of a transactional nature, including but not limited to sexual intercourse.

## **Part 2 Health of sex workers**

### **5 Mandatory immunisations**

- (1) Sex workers must have all available annual immunisations in accordance with the National Immunisation Program Schedule
- (2) If a sex worker is unable to receive any required immunisation for medical reasons, they must provide a letter from a medical practitioner to the Queensland Sex Work Association.
- (3) It is an offence to perform sex work without having received all required immunisations, unless
  - (a) written disclosure has been provided to the Queensland Sex Work Association.
- (4) If a sex worker contravenes this Section, their name will be listed on the breach register.

### **6 Temporary suspension of licence if transmittable illness risk**

- (1) If a sex worker is diagnosed with a transmittable illness and the diagnosing medical practitioner reasonably believes the

[s 7]

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sex worker is likely to transmit the condition through sex work, the medical practitioner must—	1 2
(a) advise the sex worker of the diagnosis in writing; and	3
(b) provide reasonable and appropriate medical care and treatment.	4 5
(2) In the event of a diagnosis of any sexually transmissible illness or infection, the sex worker must either—	6 7
(a) notify the Queensland Sex Work Association and temporarily cease work until they are issued a clearance notice from a medical practitioner; or	8 9 10
(b) notify the Queensland Sex Work Association and obtain written consent from all clients until such time as a medical practitioner provides a clearance notice.	11 12 13
(i) records of written consent must be kept for seven years.	14 15
(3) It is an offence to fail to report a diagnosis deemed by the diagnosing medical practitioner as a transmission risk to the Queensland Sex Work Association.	16 17 18
(4) At such time that the medical practitioner is satisfied a sex worker no longer poses a transmission risk, the medical practitioner must—	19 20 21
(a) advise the sex worker of the diagnosis in writing; and	22
(b) provide a clearance notice to the Queensland Sex Work Association.	23 24
(5) It is an offence for a sex worker to work in the absence of a clearance notice.	25 26
<b>7 Pregnancy resultant of sex work</b>	27
(1) Sex workers must use contraceptive methods when engaging in sexual intercourse.	28 29
(2) If a sex worker becomes pregnant, in the absence of an agreement with the other party, the sex worker is entitled to	30 31

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	exercise full and free will in relation to management of the pregnancy.	1 2
(3)	If a sex worker causes a pregnancy, in the absence of an agreement with the other party, the party who is pregnant is entitled to exercise full and free will in relation to management of the pregnancy.	3 4 5 6
<b>8</b>	<b>Health inspections</b>	7
(1)	A sexual health inspection must be performed by a medical practitioner biannually.	8 9
(2)	The de-specified results of the sexual health inspection, indicating only positive or negative results to each indicator, must be provided to the Queensland Sex Work Association.	10 11 12
<b>9</b>	<b>Access to counselling and support</b>	13
(1)	The Queensland Sex Work Association must, in partnership with established and appropriately qualified counselling services, make counsellors available 24 hours a day by telephone for sex workers.	14 15 16 17
(2)	The Queensland Sex Work Association must provide information and training to the Queensland Police Service in relation to the sex work industry, with a focus on the sex work industry in rural, regional and remote communities.	18 19 20 21
<b>Part 3</b>	<b>Amendment of <i>Criminal Code Act 1899 (Qld)</i></b>	22 23
<b>10</b>	<b>Amendment of Act</b>	24
	This part amends the <i>Criminal Code Act 1899 (Qld)</i> .	25

[s 11]

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<b>11</b>	<b>Amendment of Section 229FA (Obtaining prostitution from a person who is not an adult)</b>	1
		2
	Section 229FA—	3
	<i>omit, insert—</i>	4
	(1) Sex workers must be 16 years of age.	5
	(2) It is an offence for a person to perform sex work if that person is under 16 years of age.	6
		7
	Maximum penalty — 2 years imprisonment.	8
	(3) It is an offence for any person to procure, obtain or otherwise access sex work provided by a person under 16 years of age.	9
		10
		11
	Maximum penalty — life imprisonment.	12
	(4) It is an offence for a person under 16 years of age to procure, obtain or otherwise access sex work provided by a person under 16 years of age.	13
		14
		15
	Maximum penalty — 10 years imprisonment.	16

## **Part 4**                      **Industry rights**                      17

<b>12</b>	<b>Legitimacy</b>	18
	(1) Sex work is a contractual service.	19
	(2) Sex workers have the right to—	20
	(a) negotiate the terms of client agreements, whether verbal or written;	21
		22
	(b) access community legal centres in relation to contractual legal disputes;	23
		24
	(c) develop industry bodies, unions and advocacy groups;	25
	(d) promote employment opportunities on traditional and non-traditional media channels;	26
		27
	(e) refuse clients;	28



- 
- (f) seek legal redress for any unlawful or unfair treatment in relation to sex work; 1  
2
  - (g) sub-contract, and 3
  - (h) report breaches to the Queensland Sex Work Association. 4  
5

**13 Queensland Sex Work Association** 6

- (1) The Queensland Sex Work Association will regulate the activity of the sex work industry in Queensland. 7  
8
- (2) The Queensland Sex Work Association will have regulatory powers under this Act, and generally relating to— 9  
10
  - (a) enforcing this Act; 11
  - (b) health inspections; 12
  - (c) mandatory immunisations; 13
  - (d) issuing clearance notices; 14
  - (e) providing counselling services; 15
  - (f) maintaining the breach register; 16
  - (g) conducting disciplinary processes; 17
  - (h) liaising with Queensland Police Service, and 18
  - (i) advocating on behalf of sex workers and working with community-based organisations. 19  
20

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**14 Police Entrapment** 22

- (1) A police officer is not able to solicit services from a sex worker for the purpose of entrapment. 23  
24
- (2) Additional penalties will apply to any police officers who solicit services from a sex worker for the purpose of entrapment if they offer higher payment or otherwise coerce a 25  
26  
27

[s 15]

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	sex worker into agreeing to committing any contravention of this Act.	1 2
<b>15</b>	<b>Location Sharing</b>	3
	(1) A sex worker is allowed to share details about their location, starting time, and finish time with another person for the purpose of their safety, and	4 5 6
	(2) The person being told these details can be another sex worker.	7
<b>16</b>	<b>Drivers</b>	8
	(1) A sex worker is allowed to use any driver of their choosing to take them to and from work locations.	9 10
	(a) the driver can be paid.	11
	(b) the driver can be contracted by more than one sex worker.	12 13
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	(1) A sex worker can use a bodyguard, on the condition that they hold a current bodyguard license under the <i>Security Providers Act 1993</i> (Qld).	15 16 17
	(a) The bodyguard can be paid.	18
	(b) The bodyguard can be contracted by more than one sex worker.	19 20
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	(1) Multiple sex workers can operate within the same premises.	22

---

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	(1) Sex workers are permitted to advertise their services.	3
	(2) Advertising must not include language or images of an explicit pornographic nature, unless—	4 5
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	(d) Section 76;	20
	(e) Section 93;	21
	(f) Section 94;	22
	(g) Section 96A;	23
	(h) Section 96B; and	24
	(i) Section 96C;	25

[s 21]

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		3
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(b)	Section 229H;	5
(c)	Section 229HA;	6
(d)	Section 229HB;	7
(e)	Section 229HC;	8
(f)	Section 229I;	9
(g)	Section 229K;	10
(h)	Section 229L;	11
(i)	Section 229M; and	12
(j)	Section 229N.	13



Queensland

# **Digital Identity Replication and Usage Youth Bill 2020**





Queensland

# Digital Identity Replication and Usage Youth Bill 2020

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**2020**

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**A Bill**

for

**A Youth Act to safeguard the digital identities of residents in  
the state of Queensland**

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The Parliament of Queensland enacts—

## Part 1 Preliminary

### 1 Short title

This Youth Act may be cited as the *Digital Identity Replication and Usage Youth Act 2020*.

### 2 Commencement

This Youth Act commences on the earlier of—

- (a) a day to be fixed by proclamation; and
- (b) the first day of the fourth month after the Royal Assent.

### 3 Act does not affect other rights

- (1) The cause of actions and remedies in this Act are in addition to any other right of action or remedy available.
- (2) This Act does not abolish, limit or modify the operation of any other right of action or remedy available.
- (3) This Act does not require that compensation awarded for an action for distributed media causing serious invasion of privacy or action for appropriation in assessing compensation or damages in any other proceedings arising out of the same conduct that was the invasion of privacy or appropriation.

### 4 Definitions

In this Youth Act -

***action for appropriation*** means the cause of action in section 47.

***android licence*** means a licence to manufacturer androids.

***android*** means a machine which has—

- (a) human appearance; and
- (b) actions, movements, sounds or other similar characteristics which mimic human behaviour.

***consent*** means permission given freely and voluntarily by a person with the cognitive capacity to do so.

**digital identity** means the visible qualities of a person that define them online

**distribute** includes—

- (a) communicate, exhibit, send, supply or transmit to someone, whether to a particular person or not; and
- (b) make available for access by someone, whether by a particular person or not; and
- (c) enter into an agreement or arrangement to do something in paragraph (a) or (b); and
- (d) attempt to distribute.

**humanoid** means a three-dimensional object which has human appearance.

**information commissioner** see the *Right to Information Act 2009*, section 123.

**privacy commissioner** see the *Information Privacy Act 2009*, section 141.

**public figure** means a person of public interest or fame paid by taxpayers or a board.

**synthetic media** means a moving image, still image, sound, three-dimensional representation or any other similar thing—

- (a) that has been altered or created using—
  - (i) machine learning; or
  - (ii) an algorithm on a computer; or
  - (iii) editing software; or
  - (iv) any other similar technology; and
- (b) includes the representation of a thing in paragraph (a) or (b) in text, numbers, letters, symbols or anything else which can be interpreted by a person qualified to interpret the representation, such as in—
  - (i) computer language; and
  - (ii) data and instructions.

**realistic synthetic media**, of a person, means synthetic media that an ordinary person would, due to the characteristics of the media, believe was a photo, audio recording, visual recording or any other similar thing of the person.

*Examples of characteristics for paragraph (b)—*

- (a) *the media looking or sounding as if it was the person*
- (b) *the media looking or sounding as if it was an photo, audio recording or visual recording*
- (c) *references to the person's identity, such as their name, location or history*
- (d) *the media not being distributed through a satirical, comedic or similar program, magazine, website or other similar thing.*

## **Part 2                      Creation of synthetic media**

### **5                      Main objects of this part**

- (1) The main objects of this part are to—
- (a) prevent the spread of synthetic media without appropriate watermarks to show it is altered or created media; and
  - (b) prevent the misuse of synthetic media; and
  - (c) ensure the creative arts, education, legal and scientific industries have freedom to use synthetic media without disclaimers in a reasonable manner.

### **6                      Application of pt 2**

This part does not apply to synthetic media of a person—

- (a) that is—
- (i) created for a genuine artistic, educational, legal, medical, scientific or public benefit purpose; and
  - (ii) in the circumstances, it is reasonable for the synthetic media to not have a watermark; or
- (b) created with the consent of the person depicted; or
- (c) exempt by a statutory instrument made by the Minister.

*Examples for paragraph (2)(a)—*

- 1     The synthetic media is a moving image and sound depicting a deceased person delivering a monologue which they gave permission for prior to their death in a film which will be distributed publicly.
- 2     The synthetic media is a still image printed onto a canvas which is held in a private collection.
- 3     The synthetic media is a still image of a person’s face and is produced as part of scientific research into the generation of synthetic media.

### **7                      Text overlay required for still or moving realistic images**

- (1) Any synthetic media of a person which is a still or moving image, with or without accompanying sound, must have a text overlay at the bottom of the synthetic media stating that the synthetic media is synthetic media.

*Example of text overlay—*

‘This [*type of media*] is synthetic media.’

- (2) The text in subsection (1) must be visible to an ordinary person viewing the media in the ordinary manner of viewing.

*Examples of possible contraventions of subsection (2)—*

- 1 A synthetic moving image and sound posted to a video sharing site which has the text overlay in black on a dark background, making it difficult for an ordinary person to see.
- 2 A synthetic still image displayed on the side of a moving vehicle which has a text overlay which cannot be seen from the footpath due to the small size of the text.

## **8 Watermark required for realistic sound**

- (1) Any synthetic media of a person which is sound without accompanying still or moving image must state audibly, at the beginning of the synthetic media, that the media is synthetic media.

*Example—*

‘This [*type of media*] is synthetic media.’

## **Part 3 Usage of Synthetic Media**

### **9 Prohibited uses of synthetic media**

- (1) Synthetic media must not be used to—
  - (a) mislead voter; or
  - (b) falsify information; or
  - (c) make something appear to have happened which has not.

### **10 Hosting services must act on synthetic media**

- (2) Persons who own a hosting service that hosts content from 10,000 or more people must implement processes for finding and removing synthetic media which is unlawful under this Act.

### **11 Regulation-making power for s 10**

- (3) A regulation may prescribe for section 10 the required—
  - (a) method of finding unlawful synthetic media; and
  - (b) manner in which unlawful synthetic media must be removed; and
  - (c) way of calculating or deciding the amount of staff or hours of work dedicated to finding and removing unlawful synthetic media; and
  - (d) any other similar thing.
- (4) Before the Minister may recommend to the Governor in Council the making of a regulation mentioned in subsection (1), the Minister must—
  - (a) consult representatives of the hosting industry; and
  - (b) consult with the information commissioner.

**12 Insertion of new s 132D**

- (1) This section amends the *Evidence Act 1977*.
- (2) After section 132C

*Insert—*

**132D Question of synthetic media**

If—

- (a) a party to the proceedings questions the authenticity of evidence on the grounds that it may be synthetic media; and
- (b) the court thinks that, on the available evidence, the evidence’s authenticity should be investigated;

the court may order an expert to inspect the evidence and provide their opinion on whether the evidence is synthetic media or not.

**13 Indigenous and Cultural Synthetic media usage**

- (1) This section prohibits the use of synthetic media to reanimate deceased patrons from relevant indigenous and cultural groups within Queensland;
  - (a) Reanimation of deceased Indigenous persons within synthetic media can be utilised with expressed or implied consent by either the person in question before death;
  - (b) Or if the family/cultural group provides consent after death
- (2) Synthetic media that does display deceased indigenous patrons as classified in the Act may face the following implications;
  - (a) Where possible the media created will be effectively deleted or destroyed
    - (i) Use of this media by other sources that are unaware of the illegality will not be held accountable for the distribution, but will be required to suspend usage and/or destroy any copy of the media
  - (a) Persons will face a financial penalty
    - (i) First offence, a maximum penalty of 20 penalty units
    - (ii) Second offence, a maximum penalty of 50 penalty units
    - (iii) Third offence, a maximum penalty of 100 penalty units

**Part 4 Civil cause of action for synthetic media which invades privacy**

**Division 1 Preliminary**

**14 Main objects of this part**

The main objects of this part are—

- (1) to create a cause of action for serious invasions of privacy which result from the distribution of a person’s likeness or voice; and
- (2) to restrict the action to only serious invasions where—
  - (a) there is high harm and loss of dignity, and
  - (b) widespread distribution and publicity; and
  - (c) disregard for the societal values and beliefs about what should be displayed in public; and
- (3) to balance the interest in privacy against other competing interests; and
- (4) to protect a persons’ welfare, emotional well-being and freedom from mental distress.

**Division 1 Cause of action for serious breach of privacy through realistic synthetic media.**

**15 Action for realistic synthetic media causing serious invasion of privacy**

- (1) A person has a cause of action against another person if—
  - (a) the individual intentionally, knowingly or recklessly distributes realistic synthetic media of another individual; and
  - (b) the individual’s conduct is an invasion of the other individual’s privacy; and
  - (c) the invasion of the individual’s privacy is serious; and
  - (d) the public interest in privacy outweighs any competing public interest.

**16 Reasonable expectation of privacy**

- (1) Circumstances that pertain to an individual's right to privacy—
  - (a) the means used to obtain the data used to create the still image, moving image or sound of the plaintiff’s likeness or voice; and
  - (b) where the data used was held; and
  - (c) whether and to what extent the data used was already in the public domain; and
  - (d) the place, time and location where the distribution occurred; and
  - (e) the purpose of the distribution; and
  - (f) the relevant attributes of an individual, such as the age, occupation and cultural background; and



- (g) the relevant societal values and beliefs, such as wide held beliefs or laws about what should be seen or heard in public; and
- (h) the conduct of an individual, including whether an individual invited publicity or manifested a dire for privacy.

**17 Invasion of privacy must be serious**

When determining whether the invasion of an individual's privacy was serious, the court must consider—

- (a) the degree of any offence, distress or harm to dignity that the invasion of privacy was likely to cause to an ordinary person; and
- (b) whether intent to harm or invade privacy was likely to offend, distress or harm the dignity of an individual; and
- (c) any other thing it considers necessary.

**18 Interest in privacy outweighs competing interests**

- (1) When determining whether the public interest in privacy outweighs any competing public interest, the court must be satisfied that the public interest in privacy outweighs any competing public interest.
- (2) Competing public interests the court may consider include—
  - (a) freedom of expression, including political communication and artistic expression; and
  - (b) freedom of the media, particularly to responsibly investigate and report matters of public concern and importance; and
  - (c) the proper administration of government; and
  - (d) open justice; and
  - (e) public health and safety; and
  - (f) national security; and
  - (g) the prevention and detection of crime and fraud.

**Division 2 Defences**

**19 Defences in the general law**

- (1) The defences in this section are existing defences in general law.
- (2) It is a defence to an action for realistic synthetic media causing serious invasion of privacy if the defendant proves that their conduct—
  - (a) was required or authorised by law—defence of lawful authority; or
  - (b) was in defence of person or property—including the defences of self-defence, defence of another person and defence of property; or

- (c) was necessary—defence of necessity; or
- (d) was consensual—defence of consent; or
- (e) was done where the defendant had absolute privilege—defence of absolute privilege.

**20 Defences in the *Defamation Act 2005***

- (1) The defences in this section—
  - (a) are existing defences in the *Defamation Act 2005*; and
  - (b) are available even if the realistic synthetic media is not defamatory.

*Note—*

To avoid any doubt, paragraph (1)(b) means that, even though the media is not defamatory, a defence in subsection (2) is successfully made out when all the elements of the defence are established when it is assumed that the media is defamatory.

- (2) It is a defence to an action for realistic synthetic media causing serious invasion of privacy if the defendant proves that their conduct—
  - (a) was done where the defendant had absolute privilege—defence in section 27; or
  - (b) was the publication of public documents—defence in section 28; or
  - (c) was a fair report of proceedings of public concern—defences in section 29.

**Division 3 Remedies**

**21 Application of div 3**

The court may grant relief to an action for realistic synthetic media causing serious invasion of privacy according to this division.

**22 Damages—generally**

- (1) The court may award damages, including damages for emotional distress
- (2) The court may not award aggravated damages.
- (3) The court may award exemplary damages in exceptional circumstances only.
- (4) The amount of damages awarded under subsection (1) and (4) must not exceed the maximum damages amount that may be awarded under subsection 35(1) of the *Defamation Act 2005*.

**23 Damages—profits**

- (1) The court may award an account of profits if the defendant has profited from the invasion of an individual's privacy.
- (2) If the individual is a public figure, the damages awarded under subsection (1) are to be determined based on what the offending

party would have profited had the individual been an ordinary person.

- (3) If the damages awarded under subsection (1) are less than the profits made by the offending party, the remaining profit must be donated to a charity of the court's choosing.

## **24 Injunctions**

- (1) The court may, at any stage of proceedings, grant an interlocutory or other injunction to restrain the threatened or apprehended invasion of privacy.
- (2) When considering whether to grant injunctive relief before trial to restrain distribution of the media which is a invasion of an individual's privacy, the court must consider—
  - (a) freedom of expression; and
  - (b) any other matters of public interest.

## **25 Delivery or destruction of material**

The court may make an order requiring that the offending party deliver to an individuals or destroy any material concerning the individual that—

- (c) The offending party has in their possession or can retrieve; and
- (d) was obtained, made, distributed or published—
  - (i) as a result of the invasion of an individual's privacy; or
  - (ii) during the conduct that was an invasion the individual's privacy.

## **26 Correction**

The court may make an order for the publication of a correction.

## **27 Apology**

The court may make an order requiring the offending party to apologise.

# **Division 4 Procedure, Limitations and Exemptions**

## **28 Action available to natural persons only**

An action for distributed media causing serious invasion of privacy can only be brought by individuals.

## **29 Conduct of children under 16 exempt**

An action for distributed media causing serious invasion of privacy cannot be brought for conduct of a person under 16 years old.

## **30 Action does not survive death of plaintiff**

An action form distributed media causing serious invasion of privacy does not survive for the benefit of an individual's estate or against the offending party's estate.

## **Part 5**                    **Amendment of Criminal Code— distributing intimate images and sounds made using advanced technologies**

### **Division 1**                **Preliminary**

#### **31**                    **Code amended**

This part amends the Criminal Code.

### **Division 2**                **Distributing or threatening distribution of intimate images made using advanced technology an offence**

#### **32**                    **Main objects of division**

The main objects of this division are—

- (a) to prevent the distribution of intimate images that are created, rather than just prevent images altered from existing images—see section 5; and
- (b) to prevent the distribution of intimate three-dimensional representations of persons, such as 3D models—see section 6; and
- (c) to prevent the distribution of code, data and instructions which allow a person to generate a specific intimate image of another person—see section 7; and
- (d) to protect a person from distress arising from the exploitation of the person’s autonomy and bodily integrity in the age of photorealistic image generation; and
- (e) to prevent the growing rise of deepfake pornography.

#### **33**                    **Amendment of s 207A (Definitions for this chapter)**

Section 207A, definition *intimate image*—

*insert—*

- (d) includes a moving or still image that—
  - (i) has been created using—
    - (A) machine learning; or
    - (B) an algorithm on a computer; or
    - (C) image editing software; or
    - (D) any other similar thing; and

- (ii) appears to show any of the things mentioned in paragraph (a)(i) to (iii);

which an ordinary person would, due to the characteristics of the moving or still image, believe was a photo or visual recording of the person.

**34 Amendment of s 207A (Definitions for this chapter)**

Section 223(1), definition *intimate image*—  
*insert*—

- (e) includes the three-dimensional representation of data that, when displayed on a computer monitor, television screen liquid crystal display or similar medium, shows or appears to show any of the things mentioned in paragraph (a)(i) to (iii).

**35 Amendment of s 207A (Definitions for this chapter)**

Section 223(1), definition *intimate image*—  
*insert*—

- (f) includes the representation of things in paragraph (a) to (e) in text, numbers, letters, symbols or anything else which can be interpreted by a person qualified to interpret representation, such as in—
  - (i) machine computer language; and
  - (ii) data and instructions.

**Division 3                      Distributing or threatening distribution of intimate sounds made using advanced technology an offence**

**36 Main objects of division**

The main objects of this division are—

- (a) to create the definition of an intimate sound targeting intimate sounds made using synthetic media—see section 5; and
- (b) to prevent the distribution of these intimate sounds without consent—see section 6; and
- (c) to make it an offence to threaten to distribute these intimate sounds—see section 7; and

- (d) to include intimate sound within the existing rectification order framework—see section 8; and
- (e) to protect a person from distress arising from the exploitation of the person’s autonomy and bodily integrity in the age of realistic sound generation.

**37 Amendment of s 207A (Definitions for this chapter)**

Section 207A—

*insert—*

*intimate sound*, of a person—

- (a) means sound that sounds as if the person engaged in an intimate sexual activity that is not ordinarily done in public which an ordinary person would, due to the characteristics of the sound, believe was an audio recording of the person; and
- (b) includes sound that has been altered or created using—
  - (i) machine learning; or
  - (ii) an algorithm on a computer; or
  - (iii) sound editing software; or
  - (iv) any other similar technology;to sound as if the person engaged in an intimate sexual activity that is not ordinarily done in public.
- (c) includes the representation of things in paragraph (a) to (b) in text, numbers, letters, symbols or anything else which can be interpreted by a person qualified to interpret representation, such as in—
  - (i) machine computer language; and
  - (ii) data and instructions.

*Examples of characteristics for paragraph (a)(ii)—*

- the human speech sounding as if the person was speaking
- the sexual sounds sounding as if the person made them
- the sound sounding as if it was a real audio recording
- references to the person’s identity, such as their name, history or workplace
- other speech or sexual sounds that sound as if their sexual partner made them

**38 Amendment of s 223 (Distributing intimate images)**

(1) Section 223, heading, after ‘images’—  
*insert—*

**, intimate sounds**

(2) Section 223(1)  
*insert—*

(1A) A person who distributes an intimate sound of another person—

- (a) without the other person’s consent; and
- (b) in a way that would cause the other person distress reasonably arising in all the circumstances;

commits a misdemeanour.

*Examples of circumstances for subsection (1)(b)—*

- the circumstances surrounding the distribution of the intimate sound
- the extent to which the distribution of the intimate sound interferes with the other person’s privacy
- the relationship, if any, between the person who distributes the intimate sound and the other person

Maximum penalty—3 years imprisonment.

(3) Section 223(2), after ‘for subsection (1)(a)’—  
*insert—*

, (1A)(a)

(4) Section 223(3), after ‘for subsection (1)(a)’—  
*insert—*

, (1A)(b)

(5) Section 223(3), after ‘the intimate image’—  
*insert—*

, intimate sound

(6) Section 223(4), after ‘against subsection (1)’—  
or (1A)

**39 Amendment of s 229A (Threats to distribute intimate image or prohibited visual recording)**

(1) Section 229A, heading, after ‘to distribute intimate image’—  
*insert—*

**, intimate sound**

(2) Section 229A(1)(a), after ‘to distribute an intimate image’—  
*insert—*

**, intimate sound**

(3) Section 229A(2)(a), after ‘to distribute an intimate image’—  
*insert—*

**, intimate sound**

(4) Section 229A(3)(a), after ‘the intimate image’—  
*insert—*

**, intimate sound**

**40 Amendment of s 229AA (Rectification order—offence against s 223, 227A, 227B or 229A)**

Section 229AA(1), after ‘offence against section 223(1)’—  
*insert—*

**or (1A)**

**Part 6 Amendment of Criminal Code—  
influencing elections using synthetic  
media**

**41 Code amended**

This part amends the Criminal Code.

**42 Main objects of this part**

The main objects of this part are to—



- (a) make it a crime to influence elections using synthetic media and other similar technologies; and
- (b) protect the rule of law and the system or representative and responsible government; and
- (c) ensure citizens are well-informed and are not misled when voting in elections in the age of photorealistic image generation.

**43 Insertion of new pt 3, ch 14, ch div 4**

Part 3, chapter 14—

*Insert—*

**Chapter division 4                      Influencing elections**

**114A Definitions for this chapter division**

In this chapter division—

***consent*** means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.

***corrupt conduct*** see the *Crime and Corruption Act 2001*, section 15.

***defamatory*** has the meaning that it has in the law of tort (as modified by the Defamation Act 2005) relating to defamation.

***private act*** see section 207A.

***prohibited realistic synthetic media***, of a person, means realistic synthetic media that—

- (a) has been altered or created to depict something which has not occurred; and
- (b) depicts—
  - (i) the person doing an act or omission which is—
    - (A) an offence in the law of Queensland or the Commonwealth; or
    - (B) corrupt conduct; or
    - (C) any other similar thing of a scandalous nature; or

- (ii) the person suffering from an illness, disease or other similar condition; or
- (iii) the person endorsing, giving praise to, agreeing with, disagreeing with or condemning a candidate standing in an election or any other similar act; or
- (iv) the person endorsing, giving praise to, agreeing with, disagreeing with or condemning a policy, project, belief or other similar thing; or
- (v) the person engaging in a private act; or
- (vi) the person in a state of undress; or
- (vii) any other similar thing of a scandalous nature or capable of misleading voters;

***realistic synthetic media***, of a person, means synthetic media that an ordinary person would, due to the characteristics of the media, believe was a photo, audio recording, visual recording or any other similar thing of the person.

*Examples of characteristics for paragraph (a)(ii)—*

- the moving or still image looking as if it was the person
- the human speech sounding as if the person was speaking
- the moving or still image or sound appearing or sounding as if it was a real photo, visual recording or audio recording.
- references to the person’s identity, such as their name, location of campaign or history
- the synthetic media not being distributed through satirical, comedic or similar program, magazine, website or other similar thing.

***state of undress*** see section 207A.

***synthetic media*** means a moving image, still image, sound, three-dimensional representation or any other similar thing—

- (a) that has been altered or created using—
  - (i) machine learning; or
  - (ii) an algorithm on a computer; or
  - (iii) editing software; or
  - (iv) any other similar technology; and

- (b) includes the representation of a thing in paragraph (a) or (b) in text, numbers, letters, symbols or anything else which can be interpreted by a person qualified to interpret the representation, such as in—
  - (i) computer language; and
  - (ii) data and instructions.

**114B Influencing elections using advanced technology**

A person who intentionally or knowingly distributes prohibited realistic synthetic media of a candidate in an election—

- (a) without the candidate's consent; and
- (b) in a way that would mislead voters;  
commits a crime.

Maximum penalty—3 years imprisonment.

**114C Influencing elections—defence of public benefit purpose**

It is a defence to a charge of an offence against section 114B to prove that—

- (a) the accused person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal, medical, scientific or public benefit purpose; and
- (b) the accused person's conduct was, in the circumstances, reasonable for that purpose.

**114D Influencing elections—defences in *Defamation Act 2005***

- (1) The defences in this section—
  - (a) are existing defences in the *Defamation Act 2005*; and
  - (b) are available even if the realistic synthetic media is not defamatory.

*Note—*

To avoid any doubt, paragraph (1)(b) means that, even though the media is not defamatory, a defence in subsection (2) is successfully made out when all the elements of the defence are established when it is assumed that the media is defamatory.

- (2) It is a defence to a charge of an offence against section 114B if the accused person, having regard only to the circumstances happening before or at the time of distribution, proves that their conduct—
- (a) was justified due to the imputations carried being substantially true—defence in *Defamation Act 2005* section 25; or
  - (b) was done where the defendant had absolute privilege—defence in *Defamation Act 2005* section 27; or
  - (c) was the publication of public documents—defence in *Defamation Act 2005* section 28; or
  - (d) was a fair report of proceedings of public concern—defences in *Defamation Act 2005* section 29; or
  - (e) was trivial—defence in *Defamation Act 2005* section 33;

**114E Influencing elections—law enforcement not criminally responsibility**

A person is not criminally responsible for an offence against section 114B if—

- (a) the person is, at the time of the offence, a law enforcement officer acting in the course of the person’s duties; and
- (b) the person’s conduct is reasonable in the circumstances for the performance of the duties.

## **Part 7                      Creation and distribution of androids and humanoids**

### **Division 1                  Creation of androids and humanoids which depict persons**

#### **44                      Main objects of this part**

The main objects of this part are—

- (a) to regulate the use of a person’s likeness or voice for androids; and
- (b) protect the privacy and limited commercial right that a person holds over their likeness; and
- (c) ensure proper standards of manufacturer are followed; and
- (d) protect a person from distress arising from the exploitation of the person’s autonomy and bodily integrity.

#### **45                      Androids and humanoids of individuals**

- (1) A person must not—
  - (a) create or distribute an android or humanoid; and

(b) do so with knowledge of how the android or humanoid reproduces, mimics or parodies a person's likeness or voice.  
without the written consent of the person.

- (2) Subsection (1) does not apply to an android or humanoid which reproduces, mimics or parodies the likeness or voice of a public figure.

#### **46      Androids depicting members of organisations**

- (1) A person must not create or distribute an android which gives the impression that the android is a representative, agent, member or any other similar thing of a business, organisation, association, movement or any other similar thing without the written consent of the business, organisation, association, movement or any other similar establishment.
- (2) Subsection (1) does not apply to android which is—
- (a) created for a genuine artistic, educational, legal, medical, scientific or public benefit purpose; and
  - (b) displayed with adequate disclaimers; and
  - (c) in the circumstances, reasonable.

#### **47      Androids and humanoids of children**

- (1) A person must not create or distribute an android or humanoid of a child who is under the age of 16.
- (2) Subsection (1) does not apply to an android or humanoid which is—
- (a) created for a genuine artistic, educational, legal, medical, scientific or public benefit purpose; and
  - (b) created with the child's guardian's written consent; and
  - (c) displayed with adequate disclaimers; and
  - (d) in the circumstances, reasonable.

*Examples for subsection (2)—*

- 1    An android of a child actor in a science fiction film which will be distributed publicly.
- 2    A sculpture (humanoid) of a child two years old which is displayed in a public art gallery without any identifying information.

### **Division 2                      Cause of action for appropriation**

#### **48      Cause of action for appropriation**

- (1) A person has a cause of action against another person if the—
- (a) Offending individual's conduct is unlawful under section 44 or 46; and

- (b) the individual is the person depicted by the android or humanoid.
- (2) The plaintiff is not required to prove actual damage.

#### **49 Defences**

- (1) Defence of consent
  - (a) It is a defence to an action for appropriation if the offending party proves that the individual consented to the creation of the android.
- (2) Defence of public benefit purpose—public figures
  - (a) It is a defence to an action for appropriation if the offending party proves that the individual was, at the time, a public figure.
- (3) Defence of public benefit purpose—children
  - (a) It is a defence to an action for appropriation where an individual is under the age of 16 if the defendant proves that the android or humanoid—
    - (i) created for a genuine artistic, educational, legal, medical, scientific or public benefit purpose; and
    - (ii) created with the child’s guardian’s written consent; and
    - (iii) displayed with adequate disclaimers; and
    - (iv) in the circumstances, reasonable.

#### **50 Application of ss 50–53**

The court may grant relief to an action for appropriation according to sections 50–53.

#### **51 Damages—generally**

- (1) The court may award damages, including damages for emotional distress
- (2) The court may not award aggravated damages.
- (3) The court may award exemplary damages in exceptional circumstances only.
- (4) The amount of damages awarded under subsection (1) and (3) must not exceed the maximum damages amount that may be awarded under subsection 35(1) of the *Defamation Act 2005*.

#### **52 Damages—profits**

- (1) The court may award an account of profits if the defendant has profited from the appropriation.
- (2) If an individual is a public figure, the damages awarded under subsection (1) are to be determined based on what an offending party would have profited had the individual been an ordinary person.

- (3) If the damages awarded under subsection (1) are less than the profits made by an offending party, the remaining profit must be donated to a charity of the court's choosing.

**53 Injunctions**

- (1) The court may, at any stage of proceedings, grant an interlocutory or other injunction.
- (2) When considering whether to grant injunctive relief before trial to restrain the appropriation, the court must consider—
  - (a) freedom of expression; and
  - (b) any other matters of public interest.

**54 Delivery or destruction of material**

The court may make an order requiring that an offending party deliver to an individual or destroy any material concerning the individual that—

- (1) the offending party has in their possession or can retrieve; and
- (2) was obtained, made, distributed or published—
  - (a) as a result of the appropriation; or
  - (b) during the conduct that was the appropriation.

**55 Action available to natural persons only**

An action for appropriation can only be brought by individuals.

**56 Conduct of children under 16 exempt**

An action for appropriation cannot be brought for conduct of a child under 16 years old.

**57 Action does not survive death of plaintiff**

An action for appropriation does not survive for the benefit of the individual's estate or against the offending party's estate.

**Division 3                      Creating, distributing or threatening distribution of intimate androids or humanoids an offence**

**58 Code amended**

This division amends the Criminal Code.

**59 Main objects of division**

The main objects of this division are to—

- (1) create the definition of an intimate android—see section 59; and
  - (a) prevent the distribution of intimate androids or humanoids without consent—see section 60; and

- (b) make it an offence to threaten to distribute these intimate androids or humanoids—see section 61; and
- (c) include intimate sound within the existing rectification order framework—see section 63; and
- (d) protect a person from distress arising from the exploitation of the person’s autonomy and bodily integrity; and
- (e) prevent the growing rise of businesses which create androids or humanoids for sexual purposes of other persons without their consent.

**60 Amendment of s 207A (Definitions for this chapter)**

Section 207A—

*Insert—*

***android*** means a machine which has—

- (a) human appearance; and
- (b) actions, movements, sounds or other similar characteristics which mimic human behaviour.

***humanoid*** means a three-dimensional object which has human appearance.

***intimate android***, of a person, means an android—

- (a) that depicts—
  - (i) the person engaged in an intimate sexual activity that is not ordinarily done in public; or
  - (ii) the person’s genital or anal region, when it is bare or covered only by underwear; or
  - (iii) if the person is female or a transgender or intersex person who identifies as female—the person’s bare breasts; and
- (b) which an ordinary person would, due to the characteristics of the android, believe was a reproduction, mimic or parody of the person’s likeness.

***intimate humanoid***, of a person, means a humanoid

- (a) that depicts—
  - (i) the person engaged in an intimate sexual activity that is not ordinarily done in public; or



- (ii) the person’s genital or anal region, when it is bare or covered only by underwear; or
  - (iii) if the person is female or a transgender or intersex person who identifies as female—the person’s bare breasts; and
- (b) which an ordinary person would, due to the characteristics of the android, believe was a reproduction, mimic or parody of the person’s likeness.

**61 Insertion of new s 223A**

After section 223—

*insert—*

**223A Creating and distributing intimate androids and humanoids**

- (1) A person who creates or distributes an intimate android or intimate humanoid of another person without the other person’s consent commits a misdemeanour.

Maximum penalty—3 years imprisonment.

- (2) For subsection (1), a child under the age of 16 years is incapable of giving consent

- (3) It is a defence to a charge of an offence against subsection (1) to prove that—

(a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal, medical, scientific or public benefit purpose; and

(b) the person’s conduct was, in the circumstances, reasonable for that purpose.

- (4) In this section—

*consent* means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.

**62 Amendment of s 229A (Threats to distribute intimate image or prohibited visual recording)**

- (1) Section 229A, heading, after ‘to distribute intimate image’—

*insert—*

**, intimate android, intimate humanoid**

- (2) Section 229A(1)(a), after ‘to distribute an intimate image’—  
*insert—*

**, intimate android, intimate humanoid**

- (3) Section 229A(2)(a), after ‘to distribute an intimate image’—  
*insert—*

**, intimate android, intimate humanoid**

- (4) Section 229A(3)(a), after ‘the intimate image’—  
*insert—*

**, intimate android, intimate humanoid**

**63 Amendment of s 227C (Persons who are not criminally responsible for offences against ss 223, 227A and 227B)**

- (1) Section 227C, heading, after ‘ss 223,’—  
*insert—*

**223A,**

- (2) Section 227C(1), after ‘section 223’—  
*insert—*

**223A,**

- (3) Section 227C(2), after ‘section 223’—  
*insert—*

**223A,**

**64 Amendment of s 229AA (Rectification order—offence against s 223, 227A, 227B or 229A)**

- (1) Section 227C, heading, after ‘ss 223,’—  
*insert—*

**223A,**

- (2) Section 229AA(1), after ‘offence against section 223(1),’—  
*insert—*

223A(1),

## **Part 8                      Manufacture of androids**

### **65                      Main objects of this part**

The main objects of this part are to—

- (a) establish boundaries on who can manufacture and store androids.
- (b) establish procedures for the manufacture and storage of androids.

### **66                      Manufacturing androids without licence**

A person must not produce an android without an android licence.

Maximum penalty—40 penalty units

### **67                      Issuing of licences**

The Minister may issue an android licence to a person only if—

- (a) a copy of the written consent of the person whose likeness will be depicted has been given to the Minister; and
- (b) the android design has been presented to and approved by two scientists chosen by the Minister; and
- (c) the place where the androids will be manufactured has been inspected and approved by the Minister, including inspection and approval of the method of holding personal data.

### **68                      Regulation-making power for android licence**

- (1) A regulation may prescribe—
  - (a) the method for obtaining an android production licence; and
  - (b) the requirements of licence holders; and
  - (c) the length of time an android production licence lasts for; and
  - (d) The way of calculating or deciding the cost of an android production licence lasts for; and
  - (e) any other similar thing.
- (2) Before the Minister may recommend to the Governor in Council the making of a regulation mentioned in subsection (1), the Minister must—
  - (a) consult representatives of the android production industry; and
  - (b) consult with the privacy commissioner.

### **69                      Storage of out of production androids**

Androids that have been created after the expiration of a license and not sold to a consumer within six months of creation must—

- (a) Have all identifying features, such as facial features, bodily marks and tattoos, removed and destroyed; and
- (b) either be—
  - (i) disposed of at a recycling facility determined by the Minister; or
  - (ii) Placed into a secure storage facility determined by the Minister.

## **Part 9                      Usage and distribution of androids and humanoids**

### **70                      Main objects of this part**

The main objects of this part are—

- (a) To differentiate between regulations for public figure humanoids/androids and regulations for person humanoids/androids
  - (b) Establishing boundaries and inappropriate intents for humanoid usage
  - (c) Establishing boundaries and inappropriate intents for humanoid and android distribution
  - (d) Ensuring that the usage of humanoids and androids is consensual to all involved
  - (e) Ensuring that the distribution of humanoids and androids is consensual to all involved
  - (f) Establishing penalties for prohibited humanoid/android usage and distribution
- (3) Person humanoids and androids must not be used -
- (a) for sexual purposes without the person’s consent
  - (b) to communicate false information
  - (c) to commit actions that the person would not have committed themselves
  - (d) to commit harmful or illegal actions
  - (e) without visible identification of it being a humanoid or android, as opposed to the real person
  - (f) as a substitute for a parental figure
  - (g) as a means of revenge
- (4) Public figure humanoids and androids must not be used -
- (a) for sexual purposes without their consent
  - (b) To communicate false information
  - (c) Unless they are a public figure due to the sexual nature of their occupation

- (d) to commit harmful or illegal actions
  - (e) without visible identification of it being a humanoid or android, as opposed to the real public figure
  - (f) as a substitute for a parental figure
  - (g) as a means of revenge
- (5) Person humanoids and androids must not be distributed -
- (a) without their consent
  - (b) as a means of revenge
  - (c) by a child under the age of 18 if the person is a child under the age of 18
  - (d) as a threat to manipulate the person
  - (e) anonymously
    - (i) person must know the identification details of the distributor
    - (ii) recipients of distributed humanoids or androids must provide identification details to the person
- (6) Public figure humanoids and androids must not be distributed -
- (7) as a means of revenge
  - (8) by a child under the age of 18
  - (9) if the public figure is a child under the age of 18
  - (10) as a threat to manipulate the public figure
  - (11) for sexual purposes without their consent, unless the public figure is a public figure due to the sexual nature of their occupation

Consent is not valid when -

- (a) supplied by a child under the age of 18
- (b) supplied through means of coercion