

Implementing the decriminalisation of sex work in the planning framework

Guidance to support local governments

August 2024

Background

On 2 August 2024 the *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* (the Act) took effect. The Act establishes a legal framework to provide a safe, decriminalised sex work industry in Queensland, and improving the health, safety, rights and legal protections for sex workers.

The Act is based on the recommendations of the [Queensland Law Reform Commission \(QLRC\) report 'A decriminalised sex work industry for Queensland' \(QLRC Report\)](#) which was released in March 2023. The QLRC report identified several recommendations to decriminalise the sex work industry in Queensland, ten of which relate specifically to the planning framework.

For the Act to be given effect and to support the recommendations of the QLRC report, amendments were required to several pieces of legislation, including the Planning Regulation 2017 (Planning Regulation).

Purpose

The information provided in this guidance has been prepared to assist local government to understand the effect of the decriminalisation of the sex work industry in planning for their local communities including the effect on local planning schemes and how a sex work business is assessed to ensure decisions are consistent with the policy intent to ensure sex work business is treated the same as any other business, including a home-based business.

What's changing for planning?

Previous regulation of sex work

Prior to the commencement of these amendments, the planning framework included provisions that restricted where and how a brothel could operate in Queensland. These included:

- A brothel was a defined land use that was available for prostitution by 2 or more prostitutes at the same premises.
- A brothel was assessable development, being either code or impact assessable.
- Assessment could only be undertaken against the relevant assessment benchmarks provided in the Planning Regulation which referred out to Schedule 3 of the Prostitution Regulation 2014.
- Prohibition of brothels in a local government area was available where it met particular criteria:
 - More than 5 rooms where to be used for prostitution.
 - Within 200m of the closest point to any residential area, or residential building or public building, measured in a straight line or by the shortest route
 - Within 100m of a residential area, or residential building or public building or

- was approved by the Minister for Planning only where a town population was less than 25,000*.

Note: Central Highlands local government were the only local government to have this prohibition in effect.

- A sole operator was considered a home-based business and regulated by a local planning scheme like any other home-based business. There were no state provisions to regulate or prohibit a sole operator.

Changes to regulation of sex work business

The Justice (Decriminalising Sex Work) and Other Legislation Amendment Regulation 2024 took effect on 2 August 2024 and made a number of key changes to the Planning Regulation:

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| Plan making | <ul style="list-style-type: none">• Removal of 'brothel' as a defined land use term in Schedule 3 'Use terms' for local planning schemes• Removal of prohibitions and assessment provisions in Schedule 10 'Development Assessment'• Amend the land use definitions of 'home-based business' and 'shop' in Schedule 3 to include a 'sex work business' as an example of types of activity for each use.• Include a new administrative definition in Schedule 4 'Administrative terms' for local planning schemes for 'sex work business' to clarify that a home-based business and shop include sex work business. |
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| Development assessment | <ul style="list-style-type: none">• Removal of provisions in section 17(e) of the Planning Regulation for the assessment of brothels against Schedule 3 of the Prostitution Regulation 2014.• Inclusion of new section 17A Material change of use, limiting all home-based business to the maximum category of assessment of code with specific assessment benchmarks for the number of workers and visitors at a time.• Inclusion of new provisions in Schedule 6 that ensure a material change of use cannot be misused to target a sole operator sex work business where operating as a home-based business. |
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| Enforcement and compliance | <p>To support existing sex-work businesses to become compliant with planning laws, amendments have also been made to the <i>Planning Act 2016</i>. These amendments include provisions that provide for a 12-month moratorium period on development offences and enforcement action to encourage any unlawful or proposed sex work business to seek planning advice and make a planning application, where necessary.</p> |
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Scenarios

Scenario 1 - Prior to commencement of the moratorium

Scenario		Pathway for enforcement and compliance
Existing approved use (formerly brothel) before moratorium	Compliance and enforcement actions had commenced	Standard compliance and enforcement actions applies.
	Compliance and enforcement actions have not commenced	Standard compliance and enforcement actions applies.
Existing unlawful use (formerly brothel)	Compliance and enforcement actions had commenced	Compliance and enforcement actions continue as though the moratorium provisions do not exist.
	Compliance and enforcement actions had not commenced	<p>The existing unlawful sex work business will be protected from compliance and enforcement actions by the moratorium provisions until the end of the 12-month moratorium period.</p> <p>Note: Any action after this period will not be possible if they have sought and received approval during the moratorium period and are consequently lawful.</p> <p>Note: Any action after this period if they remain unlawful cannot include activity undertaken during the moratorium provisions.</p>

Scenario 2 - During the moratorium

Scenario		Pathway for enforcement and compliance
Existing approved use (formerly brothel)	Breaches occur against development approval conditions	Compliance and enforcement actions commence as though the moratorium provisions do not exist.
Unlawful use commences during the moratorium	Requires development approval to be a lawful sex work business.	<p>The unlawful sex work business is protected from compliance and enforcement actions during the moratorium provisions until the end of the period.</p> <p>If a development application is lodged during the moratorium period, the unlawful sex work business will continue to be protected from compliance and enforcement actions until the process is completed. This includes any appeal processes.</p> <p>Note: Any action after the 12-month period will not be possible if they have sought and received approval during the moratorium period and are consequently lawful.</p> <p>Note: Any action after the 12-month period if they remain unlawful cannot include any activity undertaken during the moratorium provisions.</p>

Scenario 3 - After the moratorium

Scenario		Pathway for enforcement and compliance
Approved use	Breaches occur against development approval conditions	Standard compliance and enforcement actions applies.
Unlawful use commences after the moratorium	Requires development approval to be a lawful sex work business.	Standard compliance and enforcement actions applies.
Unlawful use commenced before the moratorium and the activity did not seek, or a development application was refused to become lawful during the moratorium, but the activity has continued.	Requires development approval to be a lawful sex work business.	<p>Compliance and enforcement actions may commence only for the period after the moratorium has ended.</p> <p>Note: Any unlawful activity that occurred before or during the moratorium, where action was not commenced before the moratorium began is protected from enforcement and compliance action whether they become unlawful or not.</p> <p>Note: Any action after this period is treated the as standard compliance and enforcement.</p>

These changes are focused on ensuring sex work business in Queensland is treated the same as any other business and given the opportunity to become lawful by being assessed through the development assessment process without the risk of compliance action for the period of the moratorium. After this period expires normal enforcement and compliance provisions will apply.

What does this mean for plan-making and development assessment?

Plan-making

The amendments to the Planning Regulation for sex work business will override a local planning scheme to the extent of any inconsistency however to ensure transparency for community the department recommend local government undertake the following changes to their planning scheme:

- Remove definition of brothel and any provisions relating to assessment against the Prostitution Regulation 2014
- Remove provisions which relate to the prohibition of brothels
- Amend the use definitions of 'home-based business' and 'shop' to include the example of 'sex work business'
- Include the new administrative definition of 'sex work business'.

These changes may be made by the local government as either a minor or administrative amendment under the [Minister's Guidelines and Rules](#).

Where a local government determines that additional amendments are required to their planning scheme to address locally relevant matters, amendments must be limited only to the impacts of the activity of the sex work business in the same way any other use is managed. This is to ensure a sex work business is treated the same as any other business. These may include matters such as:

- Hours of operation

- Scale of operation of the use
- Parking spaces

Advertising signage remains a matter that is governed by local laws. As part of the comprehensive package the government also made amendments to the *Local Government Act 2009* and the *City of Brisbane Act 2010* to ensure local government cannot make a local law that prohibits or regulates sex work or the conduct of a sex work business.

For general guidance on drafting a planning scheme refer to the department's [Drafting a planning scheme - Guidance for Local Government](#).

Any amendment to a planning scheme **must not** specifically target sex work businesses, however local governments may seek to introduce additional provisions which affect all business uses.

Amendments proposed by a local government which are beyond the scope of any amenity of the use and seek to prohibit sex work business by way of assessment benchmarks or scheme drafting will not be supported by the department through a planning scheme amendment process.

Categories of development and assessment

The amendments introduce provisions which have the effect for all home-based business:

- Home-based business are capped at either accepted development or code assessable with appropriate assessment benchmarks depending on the number of workers and visitors.
- Home-based business **cannot be made impact assessable** under a local government planning scheme and cannot set assessment benchmarks for home-based business to a maximum of 1 person and 1 visitor.
- local governments may support more than 2 workers in a home-based business in the local planning scheme.

Development Assessment

When assessing a development application for home-based business, the local government must only assess a home-based business on any impacts which may be experienced because of the activity such as hours of operation and cannot be made impact assessable. The assessment of a code assessable development application for a home-based business must be carried out against the assessment benchmarks stated in section 17A(3) of the Planning Regulation.