

SEX WORK (PROSTITUTION) AND THE LAW IN QUEENSLAND

What is sex work (prostitution)?

In Queensland, a person engages in sex work (prostitution) if they engage, or offer to engage, in the provision to another person, under an arrangement of a commercial character, of any of the following:

- sexual intercourse
- oral sex
- masturbation
- any other activity that involves the use of one person by another for his or her sexual satisfaction involving physical contact (except where the activity is authorised under an adult entertainment permit).

Sexual intercourse means the penetration of the vagina, vulva or anus of a person by any part of the body of another person or by another person using an object.

Oral sex means the bringing into contact of any part of the genitalia or anus of a person with any part of the mouth of another person.

Legal forms of sex work

The act of prostitution itself is not illegal anywhere in Australia but certain activities associated with prostitution are illegal. Prostitution laws vary from state to state. What is legal in one state might be illegal in another. For details of the law in other states, contact Scarlet Alliance or the local sex worker organisation in that state. Scarlet Alliance can be contacted on 02 9326 9455 or go to www.scarletalliance.org.au.

There are two legal forms of sex work in Queensland:

1. Sex work conducted in a licensed brothel, from which outcalls are prohibited. Depending on the size of the brothel, there may be up to eight sex workers on premises at any one time.

2. Private work (sole operator) – a sex worker that works privately from a premises, that provides outcalls, or both. It is illegal for a sole operator sex worker to operate in conjunction with any other sex worker.

Any other form of sex work is illegal in Queensland. This includes escort agencies, unlicensed brothels, massage parlours, street workers (publicly soliciting for prostitution is an offence), and two or more sex workers providing prostitution from a single premises (even if they work in split shifts).

As the name suggests, except in a limited number of circumstances, sole operator sex workers must work alone. However, sole operator sex workers may:

- employ the holder of a current licence issued under the *Security Providers Act 1993* for carrying out the functions of a bodyguard to act as a bodyguard (the bodyguard can work only for one sex worker)
- employ the holder of a current licence issued under the *Security Providers Act* for carrying out the functions of a crowd controller to act as a driver (the driver can work only for one sex worker)
- give a person a message about their current location or activities, to ensure the safety of that sole operator (the message taker must not be a current sex worker and may not assist any other sex worker).

A person may be both a bodyguard and a driver provided that they hold a licence as both a bodyguard and a licence as a crowd controller (as outlined above).

There are no licensing or registration requirements for sex workers in Queensland. They do not have to be registered with the PLA or any other government body. They may work only as a sole operator or only as a sex worker at a licensed brothel or both.

They may also work at multiple licensed brothels. Their working arrangements are their personal choice.

Minors and prostitution

Under s. 229FA of the Criminal Code, it is an offence for a person (a client) to obtain prostitution from a person who is not an adult and who the client knows, or ought reasonably to know, is not an adult.

It is an offence under s. 229L of the Criminal Code to permit a person who is not an adult to be at a place used for the purposes of prostitution by two or more sex workers. This would include licensed brothels and illegal prostitution venues.

Can clients of illegal sex workers be charged?

Yes. A person who, without reasonable excuse, obtains prostitution through a business suspected on reasonable grounds of providing unlawful prostitution commits a crime under s. 229HC of the Criminal Code. It is also an offence under s. 229I of the Criminal Code for a person, without reasonable excuse, to be found in or leaving a place suspected on reasonable grounds of being used for the purposes of prostitution by two or more sex workers (except for a licensed brothel, unless the person was aware of the presence of a minor or the presence of a person with an impairment of the mind at the brothel).

How does the Prostitution Act regulate sole operator sex workers?

The *Prostitution Act 1999* is mostly about the regulation of brothels but there are some sections that impact on all sex workers in Queensland:

- s. 73 of the Act makes it illegal for a person to publicly solicit for prostitution
- s. 76 of the Act makes it an offence for a person to cause unreasonable annoyance or unreasonable disruption

to the privacy of another person as a result of conduct that happens in the vicinity of a place that is reasonably suspected of being used for prostitution, and that, to a significant extent, is caused by the presence, or suspected presence, of prostitution at the place

- s. 77 of the Act makes it illegal to coerce or apply duress to a person to provide prostitution
- s. 77A of the Act makes it an offence for a sex worker to provide or offer to provide prostitution involving sexual intercourse or oral sex without a prophylactic (male condom, female condom, or dental dam)
- under the same section of the Act, it is illegal for clients of sex workers to ask for sexual intercourse or oral sex without a prophylactic, or to accept such an offer, or to obtain prostitution involving sexual intercourse or oral sex without a prophylactic
- clients must also not interfere with the efficacy of a prophylactic, or use, or continue to use, a prophylactic that they know, or could reasonably be expected to know, is damaged
- s. 93 of the Act provides that a person must not publish an advertisement for prostitution that is not in the approved form.

Otherwise, Chapter 22A of the Criminal Code has a far-reaching impact on sex workers in Queensland. It effectively prohibits sex workers from operating in conjunction with each other, except at licensed brothels, so that sex worker cooperatives are prohibited. Sole operator sex workers must operate independently of other persons, subject to the exceptions identified above. This means, for example, that they must not have a receptionist, and a sex worker's partner or friend may not place an advertisement on their behalf.

Sex worker autonomy

A person must have freely chosen to sell sex. It is illegal to force a person to provide prostitution, such as by threatening, intimidating or harassing them or anyone else. It is up to sex workers whether or not to see a particular client. They must never be pressured or forced to see a client against their will. The particular services that are provided are a matter for negotiation between the sex worker and client.

Prostitution advertising

A person cannot say anything they want in an advertisement for prostitution. There are limits on words and images. The PLA is responsible for regulating prostitution advertising in Queensland. Advertisements for prostitution published in Queensland must be in the approved form. The PLA has issued *Guidelines about the Approved Form for Advertisements for Prostitution*. It is an offence to publish an advertisement that is not in the approved form (which does not comply with the guidelines).

Under the Prostitution Act it is an offence for any prostitution advertising to:

- describe the services offered
- be published through radio or television, or by film or video recording
- state directly or indirectly, that the person's business provides or is connected with massage services
- be worded such that the advertisement might induce a person to seek employment as a sex worker.

Sex workers, brothel licensees, and publishers (including the ethnic media) are responsible for ensuring that proposed advertisements comply with the guidelines. The guidelines may be obtained from the PLA or downloaded at www.pla.qld.gov.au/advertising. The PLA is available to assist in the interpretation and application of the guidelines.

The framework for licensed brothels

The Prostitution Act establishes a framework for licensed brothels in Queensland. In order to legally operate a brothel a person must first hold a brothel licence granted by the PLA and have received development approval from the relevant local government authority for the brothel premises. To manage a brothel on behalf of a licensee, a person requires an approved manager's certificate granted by the PLA. A licence or certificate is granted for a period of three-years, and as well as the initial fees, there are fees payable annually. Fees are set out in Schedule 2 of the *Prostitution Regulation 2000*. Holders may apply for the renewal of their licence or certificate.

Under the Prostitution Act, certain persons are ineligible to apply for a licence or certificate. For example, they are ineligible if they are a corporation, a minor, an insolvent under administration, the holder of a licence or permit under the *Liquor Act 1992*, or have been convicted of a disqualifying offence. Applicants are subject to probity checking, which is particularly intensive for licence applicants. In determining whether an applicant is a suitable person to be granted a licence or certificate the PLA must consider a range of matters prescribed by the Prostitution Act. These include the applicant's character, honesty and integrity, and any convictions.

A person may not hold more than one brothel licence, so that a person may not own multiple brothels. The PLA must refuse to grant a licence if it is satisfied that the applicant has an interest in another licensed brothel. The only place that prostitution may be provided is the brothel, so that outcalls (escorts) from brothels are prohibited. A licensed brothel may have a maximum of five rooms and there must be no more than 13 staff (including sex

workers) at the brothel at any one time. The number of sex workers permitted at the brothel at any one time depends on the number of rooms, as set out in Schedule 3 of the Prostitution Act. For a five room brothel there may be a maximum of eight sex workers on premises at any one time.

To ensure the efficient and lawful running of a licensed brothel:

- licensees and approved managers must comply with all relevant requirements of the Prostitution Act, Prostitution Regulation, conditions of licence, and any other relevant legislation (e.g. workplace health and safety legislation, fire safety legislation, planning legislation)
- licensees must have measures in place to address risks to the health and safety of staff (including sex workers) and clients
- it must be personally supervised by the licensee or an approved manager at all times when it is open for business
- a licensee must not operate it in partnership or association with a person who does not hold a brothel licence
- liquor must not be permitted
- the licence (or a notice with the licence number, address of the brothel, and date on which the licence expires) must be displayed at a conspicuous place inside the front entrance of the brothel
- all staff (including sex workers) must be at least 18 years of age
- sex workers must not work, or be permitted to work by a licensee or an approved manager, during any period in which they are knowingly infective with a sexually transmissible infection
- licensees and approved managers must take reasonable steps to ensure that only safer sex occurs and must not discourage the use of prophylactics
- licensees must keep required records of brothel operations and maintain financial records.

Further information

Refer to the Prostitution Act, Prostitution Regulation, Criminal Code (Chapter 22A), available from www.legislation.qld.gov.au.

The PLA can provide information about the law in Queensland, especially in relation to the Prostitution Act. The PLA does not provide legal advice. Persons must obtain their own independent legal advice.

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Disclaimer: This is not intended to be a comprehensive account of the law relating to prostitution in Queensland. It is no substitute to the Prostitution Act, Criminal Code, or any other legislation. Whilst the PLA has made every effort to ensure the accuracy of this information at the time of printing, it does not warrant its accuracy and accepts no liability for reliance on the information.