



Queensland

Prostitution Amendment Act 2006

Act No. 40 of 2006



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Prostitution Amendment Act 2006

Act No. 40 of 2006

An Act to amend the *Prostitution Act 1999*, and for other purposes

[Assented to 11 August 2006]

The Parliament of Queensland enacts—**Part 1 Preliminary****1 Short title**

This Act may be cited as the *Prostitution Amendment Act 2006*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Prostitution Act 1999**3 Act amended in pt 2**

This part amends the *Prostitution Act 1999*.

4 Amendment of s 7 (Meaning of *interest in a brothel*)

Section 7—

insert—

- ‘(3) For subsection (1)(i), (j) and (k), a prostitute does not have an *interest in a brothel* merely because the prostitute is entitled by way of remuneration to a proportion of the payments made for the provision of prostitution by the prostitute at the brothel.’.

5 Amendment of s 17 (Suitability of applicant)

- (1) Section 17(3)—

renumber as section 17(4).

(2) Section 17—

insert—

‘(3) For subsection (1)(h), (i), (j) or (k), the applicant may arrange for the Authority to obtain information directly from a person who is or may be an associate of the applicant.’.

6 Amendment of s 19 (The licence)

(1) Section 19(4), ‘1 year’—

omit, insert—

‘3 years’.

(2) Section 19(5)(d)—

omit, insert—

‘(d) is subject to the following conditions or restrictions—

(i) the licensee must pay, by the day prescribed under a regulation, the annual licence fee and the annual licence return fee prescribed under the regulation;

(ii) the licensee must, by the day prescribed under a regulation, give the Authority an annual return, in the approved form, about the information given for the application for the licence;

(iii) any other conditions or restrictions set out in the licence or prescribed under a regulation.

‘(6) Section 14, with necessary changes, applies to an annual return as if—

(a) the annual return were an application for a licence; and

(b) the licensee were an applicant for a licence.’.

7 Amendment of s 23 (Renewal of licence)

Section 23(1) and (4), ‘1 month’—

omit, insert—

‘3 months’.

8 Amendment of s 25 (Automatic cancellation of licence)

Section 25(a)(ii), ‘(other than section 229M)’—
omit.

9 Amendment of s 29 (Disciplinary powers of Authority)

Section 29(4), ‘registrar’—
omit, insert—
‘executive director’.

10 Amendment of s 35 (Application for certificate)

- (1) Section 35(2)(c)(ii)—
omit.
- (2) Section 35(2)(c)(iii) and (iv)—
renumber as section 35(2)(c)(ii) and (iii).

11 Amendment of s 44 (The certificate)

- (1) Section 44(3), ‘1 year’—
omit, insert—
‘3 years’.
- (2) Section 44(4)(d)—
omit, insert—
‘(d) is subject to the following conditions or restrictions—
 - (i) the holder of the certificate must pay, by the day prescribed under a regulation, the annual certificate fee and the annual return fee prescribed under the regulation;
 - (ii) the holder of the certificate must, by the day prescribed under a regulation, give the Authority an annual return, in the approved form, about the information given for the application for the certificate;

(iii) any other conditions or restrictions set out in the certificate or prescribed under a regulation.

- ‘(5) Section 39, with necessary changes, applies to an annual return as if—
- (a) the annual return were an application for a certificate; and
 - (b) the holder of the certificate were an applicant for a certificate.’.

12 Amendment of s 62 (Definitions for pt 4)

- (1) Section 62, definition *code assessable development application*—
omit.

- (2) Section 62—

insert—

‘*code assessable development application* means a development application to which this part applies.

minor change, for a development approval, see the Integrated Planning Act, schedule 10.’.

13 Replacement of s 63 (Application of pt 4)

Section 63—

omit, insert—

‘63 Application of pt 4

‘This part applies to a development application for—

- (a) a material change of use of premises for a brothel, if the application is required to be the subject of code assessment under the Integrated Planning Act; and
- (b) a minor change for a development approval for a brothel or a request to change or cancel conditions of a development approval for a brothel.’.

14 Amendment of s 64K (Appeals by applicants)

- (1) Section 64K(1), after ‘section 4.1.27’—

insert—

‘.’.

- (2) Before section 64K(1)(a)—

insert—

‘(aa) the assessment manager’s decision that the development application is required to be subject to code assessment under the Integrated Planning Act; or’.

- (3) Section 64K(1)(aa) to (e)—

renumber as section 64K(1)(a) to (f).**15 Amendment of s 77A (Prostitute providing sexual intercourse or oral sex without a prophylactic)**

- (1) Section 77A—

insert—

- ‘(1A) A prostitute must not offer to provide prostitution involving sexual intercourse or oral sex without a prophylactic being used.

Maximum penalty—100 penalty units.’.

- (2) Section 77A(2)—

omit, insert—

- ‘(2) A person must not—

(a) ask a prostitute to provide prostitution involving sexual intercourse or oral sex without a prophylactic being used; or

(b) accept an offer from a prostitute to provide prostitution involving sexual intercourse or oral sex without a prophylactic being used; or

(c) obtain prostitution involving sexual intercourse or oral sex unless a prophylactic is used.

Maximum penalty—100 penalty units.’.

(3) Section 77A(4)—

omit, insert—

‘(4) A person who is a licensee or an approved manager of a licensed brothel must, for any period the licensed brothel is being used to provide prostitution, take reasonable steps to ensure that—

(a) a person does not provide or obtain prostitution involving sexual intercourse or oral sex at the licensed brothel unless a prophylactic is used; or

(b) a person does not offer to provide, or ask a prostitute to provide, prostitution involving sexual intercourse or oral sex at the licensed brothel without a prophylactic being used.

Maximum penalty—120 penalty units.’.

(4) Section 77A(1A) to (6)—

renumber as section 77A(2) to (7).

16 Amendment of s 78 (Brothel offences)

(1) Section 78(1)(b), ‘10’—

omit, insert—

‘13’.

(2) Section 78(1)(c)—

omit.

(3) Section 78(1)(d) and (e)—

renumber as section 78(1)(c) and (d).

(4) Section 78(2)—

renumber as section 78(3).

(5) Section 78—

insert—

‘(2) A person who is a licensee or an approved manager of a licensed brothel that is, under the development permit for the licensed brothel, permitted to have a total number of rooms stated in schedule 3, column 1, used for providing prostitution

must not, at any 1 time, have at the licensed brothel more than the number of prostitutes set out opposite in schedule 3, column 2.

Maximum penalty—200 penalty units or 5 years imprisonment.’.

17 Amendment of s 81 (Licensee not to operate brothel in partnership or in association with unlicensed person)

Section 81—

insert—

‘(3) Subsection (2) does not apply merely because a licensee is operating a licensed brothel in partnership with, or otherwise in association with, a corporation that receives income from the licensed brothel if—

- (a) the licensee is the sole director of the corporation; or
- (b) each director of the corporation is a licensee.’.

18 Amendment of s 87 (Display of licence)

Section 87(1)—

omit, insert—

‘(1) A licensee must keep either of the following displayed in a conspicuous place inside the front entrance to the licensee’s brothel—

- (a) the licensee’s licence for the brothel;
- (b) a notice stating—
 - (i) the licensee’s licence number; and
 - (ii) the address of the brothel; and
 - (iii) the date on which the licensee’s licence expires.

Maximum penalty—100 penalty units.’.

19 Amendment of s 93 (Advertising prostitution)

(1) Section 93(1), (2) and (3), penalty—

omit, insert—

‘Maximum penalty—70 penalty units.’

- (2) Section 93(4), definition *approved form*, paragraph (b)—
renumber as paragraph (c).

- (3) Section 93(4), definition *approved form—*

insert—

‘(b) if guidelines under section 139A or a regulation provides for the form of an advertisement, including matters that may or may not be included in an advertisement—a form that complies with the guidelines or regulation; or’.

20 Replacement of pt 7, hdg (Administration)

Part 7, heading—

omit, insert—

‘Part 7 Prostitution Licensing Authority’.

21 Omission of pt 7, div 1, hdg (Prostitution Licensing Authority)

Part 7, division 1, heading—

omit.

22 Amendment of s 101 (Functions of Authority)

- (1) Section 101(j)(iv)—

omit, insert—

‘(iv) raise, in prostitutes, judicial officers, police, community workers and the community, awareness of issues about prostitution;’.

- (2) Section 101—

insert—

‘(l) to raise, in prostitutes, judicial officers, police, community workers and the community, awareness of issues about prostitution.’.

23 Amendment of s 102 (Membership)

(1) Section 102(1)(d)—

omit, insert—

‘(d) a health practitioner who has at least 5 years’ experience in his or her profession;’.

(2) Section 102(1)(f)—

omit, insert—

‘(f) a person who represents local government;’.

(3) Section 102—

insert—

‘(5) In this section—

health practitioner means—

(a) a doctor; or

(b) a person registered under the *Nursing Act 1992*; or

(c) a person registered under the *Psychologists Registration Act 2001*.’.

24 Insertion of new ss 108A–108D

After section 108—

insert—

‘108A Authority is statutory body under the Financial Administration and Audit Act 1977

‘The Authority is a statutory body under the *Financial Administration and Audit Act 1977*.

‘108B Authority is statutory body under the Statutory Bodies Financial Arrangements Act 1982

- ‘(1) The Authority is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.
- ‘(2) Part 2B¹ of that Act sets out the way in which the Authority’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

‘108C Budget

- ‘(1) For each financial year, the Authority must develop, adopt and give to the Minister a budget by the day the Minister directs.
- ‘(2) A budget has no effect until approved by the Minister.
- ‘(3) During a financial year the Authority may develop, adopt and submit to the Minister amendments to its budget.
- ‘(4) An amendment has no effect until approved by the Minister.

‘108D Performance of Authority

- ‘(1) The Minister has the responsibility to ensure the Authority operates to best practice standards.
- ‘(2) To help the Minister discharge the responsibility, the Authority must report to the Minister, when and in the way required by the Minister, on the efficiency, effectiveness, economy and timeliness of the Authority and its systems and processes, including operational processes.
- ‘(3) The Authority must comply with a Ministerial request under this section.
- ‘(4) In the Authority’s annual report for a year under the *Financial Administration and Audit Act 1977*, the Authority must include copies of all requests given to it by the Minister under this section in the year.’.

1 *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts)

25 Omission of ss 109 and 110

Sections 109 and 110—

omit.

26 Insertion of new pt 7A, pt 7B, hdg and pt 7B, div 1, hdg

Before section 111—

insert—

‘Part 7A Office of the Prostitution Licensing Authority**‘Division 1 Establishment****‘109 Establishment of office**

- ‘(1) The Office of the Prostitution Licensing Authority is established.
- ‘(2) The office consists of the executive director and the staff of the office.

‘110 Function

- ‘(1) The office’s function is to help the Authority in the performance of its functions.
- ‘(2) Without limiting subsection (1), the office’s function includes—
 - (a) helping in the development of reports, budgets and policy issues by the Authority; and
 - (b) coordinating the management of the Authority’s functions and providing strategic advice and information to the Authority, including in relation to the Authority’s functions; and
 - (c) establishing and maintaining effective liaison between the Authority, the office, the commissioner, the Minister and other entities; and

- (d) developing and maintaining strategic alliances and partnerships that enhance the Authority's capacity to deliver sustainable services across the State; and
 - (e) developing and implementing policies, procedures, performance standards, operational plans and systems to ensure effective outcomes for the Authority.
- '(3) The office may do anything necessary or convenient to be done in performing its function.

'110A Status

'The office is not a statutory body for—

- (a) the *Financial Administration and Audit Act 1977*; or
- (b) the *Statutory Bodies Financial Arrangements Act 1982*.

Note—

The office is a public service office under the *Public Service Act 1996*.

'Division 2 Executive Director

'110B Appointment of executive director

- '(1) There is to be an executive director of the office.
- '(2) The executive director is to be appointed by the Governor in Council.
- '(3) The executive director is appointed for the term stated in the instrument of appointment and is eligible for reappointment.
- '(4) The stated term must not be longer than 5 years.
- '(5) The *Public Service Act 1996* does not apply to the appointment of the executive director.

'110C Terms of appointment

- '(1) The executive director is to be paid the remuneration and allowances decided by the Governor in Council.
- '(2) The executive director holds office on terms, not provided for by this Act, decided by the Governor in Council.

‘110D Function of executive director

- ‘(1) The executive director’s function is to control the office and be responsible for its efficient and effective administration and operation.
- ‘(2) Subsection (1) does not prevent the attachment of the office to the department for the purpose of ensuring the office is supplied with the administrative support services that it requires to carry out its functions effectively and efficiently.

‘110E Relationship with Authority

- ‘(1) In performing the executive director’s functions and exercising the executive director’s powers in relation to a power delegated by the Authority, the executive director must act independently, impartially, fairly and in the public interest.
- ‘(2) However, the executive director is subject to direction by the Authority.

‘110F Delegation by executive director

‘The executive director may delegate the executive director’s powers under this Act to an appropriately qualified member of the office’s staff.

‘110G Resignation

‘The executive director may resign by signed notice given to the Minister.

‘110H Ending of appointment

‘The Governor in Council may end the appointment of the executive director for any reason or without stating the reason.

‘110I Preservation of rights

- ‘(1) This section applies if a public service officer is appointed as the executive director.

- ‘(2) The person retains and is entitled to all rights that have accrued to the person because of employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as the executive director were a continuation of service as a public service officer.
- ‘(3) At the end of the person’s term of appointment or on resignation—
- (a) the person is entitled to be employed as a public service officer at a classification level not less than the current classification level of a position equivalent to the position the person held before being appointed as executive director; and
 - (b) the person’s service as the executive director is taken to be service of a like nature in the public service for deciding the person’s rights as a public service officer.

‘110J Superannuation for executive director who was previously a public service officer

- ‘(1) This section applies if a public service officer is appointed as the executive director and immediately before the appointment the public service officer was a member of the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*.
- ‘(2) The person continues to be eligible to be, and to be, a member of the scheme.

‘110K Acting executive director

‘The Minister may appoint a person to act as the executive director—

- (a) during a vacancy in that office; or
- (b) during any period, or during all periods, when the executive director is absent from duty or can not, for another reason, perform the functions of that office.

‘Division 3 Staff of the office**‘110L Office staff**

‘The staff of the office are to be employed under the *Public Service Act 1996*.

‘Part 7B Administration**‘Division 1 Register’.****27 Amendment of s 111 (Licence and certificate register)**

- (1) Section 111, ‘registrar’—
omit, insert—
‘executive director’.
- (2) Section 111(2), ‘registrar’s’—
omit.
- (3) Section 111(4)(b), ‘registrar’s’—
omit, insert—
‘executive director’s’.

28 Amendment of s 132 (Evidentiary provision)

Section 132(5), ‘registrar’—
omit, insert—
‘executive director’.

29 Amendment of s 133 (Disclosure of information)

- (1) Section 133(2)(c) to (g)—
renumber as section 133(2)(d) to (h).
- (2) Section 133(2)—
insert—

‘(c) to the Minister; or’.

(3) Section 133(3)—

omit, insert—

‘(3) In this section—

official means—

(a) the Minister; or

(b) the commissioner; or

(c) a member of the Authority; or

(d) the independent assessor; or

(e) the executive director or a member of the staff of the office; or

(f) the assessor’s registrar; or

(g) an authorised officer of a relevant local government.’.

30 Amendment of s 134 (Protection from liability)

(1) Section 134, heading, after ‘Protection’—

insert—

‘of officials’.

(2) Section 134(3), definition *official*, paragraph (e)—

omit, insert—

‘(e) the executive director; or’.

31 Insertion of new s 134A

After section 134—

insert—

‘134A Protection of health professionals from liability

‘(1) This section applies if a health professional reasonably believes that a prostitute at a licensed brothel is a person with an intellectual impairment.

‘(2) The health professional may give a police officer information about the prostitute and the prostitute’s disability.

- ‘(3) The health professional is not liable, civilly, criminally or under an administrative process, for giving the information to the police officer honestly and on reasonable grounds.
- ‘(4) Also, merely because the health professional gives the information, the health professional can not be held to have—
- (a) breached any code of professional etiquette or ethics; or
 - (b) departed from accepted standards of professional conduct.
- ‘(5) Without limiting subsections (3) and (4)—
- (a) in a proceeding for defamation, the health professional has a defence of absolute privilege for publishing the information; and
 - (b) if the health professional would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the health professional—
 - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
 - (ii) is not liable to disciplinary action for giving information.
- ‘(6) In this section—
- health professional*** means—
- (a) a doctor; or
 - (b) a person registered under the *Nursing Act 1992*; or
 - (c) a person registered under the *Psychologists Registration Act 2001*; or
 - (d) another person prescribed under a regulation for this section.
- person with an intellectual impairment*** means an intellectually impaired person under the Criminal Code, section 229F.’.

32 Amendment of s 138A (Delegation)

Section 138A, ‘registrar’—

omit, insert—

‘executive director’.

33 Insertion of new s 139A

After section 139—

insert—

‘139A Guidelines

- ‘(1) The Authority may issue guidelines about the approved form for advertisements for prostitution.
- ‘(2) Without limiting subsection (1), a guideline may provide—
 - (a) for the form of an advertisement for prostitution; or
 - (b) matters that may or may not be included in an advertisement for prostitution.
- ‘(3) A guideline may be replaced or varied by a later guideline issued under this section.
- ‘(4) The Authority must keep a copy of a guideline, issued under this section, available for inspection and permit a person—
 - (a) to inspect the guideline without fee; and
 - (b) to take extracts from the guideline without fee.
- ‘(5) For subsection (4)—
 - (a) a copy of the guideline must be kept at the Authority’s office; and
 - (b) the copy kept under paragraph (a) must be available for inspection during office hours on business days for the office.
- ‘(6) Also, the Authority must keep a copy of a guideline, issued under this section, available for supply to a person and permit a person to obtain a copy of the guideline, or a part of the guideline, without fee.
- ‘(7) In addition, the Authority must keep a copy of a guideline, issued under this section, posted on the Authority’s web site on the internet.’.

34 Amendment of s 140 (Regulation-making power)

Section 140(2)—

insert—

- ‘(h) the development of processes by the Authority to deal with complaints by licensees, including the principles with which the processes must comply;
- (i) advertising by individual prostitutes, including the approval of the advertising by the Authority.’.

35 Amendment of s 141 (Review of Act)

Section 141(1), ‘this section’—

omit, insert—

‘the *Prostitution Amendment Act 2006*, section 34’.

36 Replacement of pt 9, hdg (Transitional provision for Prostitution Amendment Act 2001)

Part 9, heading—

omit, insert—

‘Part 9 Transitional provisions**‘Division 1 Transitional provision for Prostitution Amendment Act 2001’.****37 Insertion of new pt 9, div 2**

After section 142—

insert—

‘Division 2 Transitional provisions for Prostitution Amendment Act 2006

‘143 Transitional provision for registrar and executive director

‘A reference in an Act or a document to the registrar of the Authority may, if the context permits, be taken to be a reference to the executive director.

‘144 Transitional provision for licences

- ‘(1) This section applies to a licence granted before the commencement of this section.
- ‘(2) Despite the *Prostitution Amendment Act 2006*, section 6, the licence continues on the same conditions, and for the same term, that applied to the licence immediately before the commencement.

‘145 Transitional provision for certificates

- ‘(1) This section applies to a certificate granted before the commencement of this section.
- ‘(2) Despite the *Prostitution Amendment Act 2006*, section 11, the certificate continues on the same conditions, and for the same term, that applied to the certificate immediately before the commencement.

‘146 Transitional provision for brothel offences

- ‘(1) This section applies if, before the commencement of this section, a person committed an offence against section 78(1)(b) or (c) (the *relevant provision*).
- ‘(2) From the commencement—
 - (a) the relevant provision, as in force before the commencement, continues to apply in relation to the offence; and

- (b) proceedings for the offence may be continued, or started, against the person as if the *Prostitution Amendment Act 2006*, section 16, had not commenced.

‘147 Membership of Authority

- ‘(1) This section applies to a person who, immediately before the commencement of this section, was a member of the Authority appointed under section 102(1)(d) or (f).
- ‘(2) From the commencement, the person continues to be a member of the Authority as if the *Prostitution Amendment Act 2006*, section 23 had not commenced.

‘148 Proceedings

‘A proceeding that could have been started or continued by or against the registrar before the commencement of this section may be started or continued by or against the executive director.

‘149 Transitional provision for evidentiary certificates

‘A certificate under section 132(5) purporting to be signed by the registrar before the commencement of this section is, on the commencement, taken to have been signed by the executive director.’.

38 Insertion of new sch 3

After schedule 2—

insert—

‘Schedule 3 Restrictions on numbers of prostitutes at licensed brothel

section 78(2)

Column 1 Number of rooms permitted at licensed brothel under development permit	Column 2 Number of prostitutes at licensed brothel at any 1 time
1	2
2	3
3	4
4	6
5	8’.

39 Amendment of sch 4 (Definitions)

- (1) Schedule 4, heading, ‘Definitions’—

omit, insert—

‘**Dictionary**’.

- (2) Schedule 4, definition *registrar*—

omit.

- (3) Schedule 4—

insert—

‘*executive director* means the executive director of the office appointed under section 110B.

minor change, for part 4, see section 62.

office means the Office of the Prostitution Licensing Authority established under section 109.’.

Part 3 **Consequential amendment of Public Service Act 1996**

40 Act amended in pt 3

This part amends the *Public Service Act 1996*.

41 Amendment of sch 1 (Public service offices and their heads)

Schedule 1—

insert—

‘8B Office of the Prostitution Executive director’.
Licensing Authority