

# Human Rights Act 2019 (Qld) Legislative Review

**Gabrielle Adams, Jesse Hyden, Spencer Hayward**

## About the Authors

This legislative review was researched and authored by UQ law students **Gabrielle Adams**, **Jesse Hyden** and **Spencer Hayward** under the academic supervision of Pro Bono Centre Director **Mandy Shircore**. This legislative review was prepared for and on behalf of Respect Inc. Queensland, a non-profit, peer-based organisation focused on protecting and promoting the rights, health, and wellbeing of Queensland sex workers. Student researchers and Mandy Shircore undertook this task on a *pro bono* basis, without any academic credit or reward, as part of their contribution to service as future members of the legal profession.

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# 1. Executive Summary

The sex industry and sex workers in Queensland are subject to strict laws. In 1989, following the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, the Fitzgerald Report was tabled in Parliament. The Inquiry found that it is better to ‘control’ and ‘regulate’ prostitution rather than imposing strict prohibitions, and a regulated system of prostitution would better serve to protect sex workers and improve their ability seek help ‘when they are being abused’. The report did not support the call for increased police powers by police,<sup>1</sup> and more than thirty years on from the Inquiry, it is clear that the current regulated system not only fails to adequately protect sex workers but also allows for the entrapment, harassment, and persecution of sex workers. The introduction of the *Human Rights Act 2019 (Qld)* (*Human Rights Act*) means that Parliament must consider human rights when enacting new laws, that courts and tribunals must interpret legislation in a way that is compatible with human rights, and that public entities, including the police, must act compatibly with human rights. This review of current laws affecting sex workers identifies that the *Human Rights Act* is not a panacea but a welcome step which necessitates a re-evaluation of Queensland’s laws. And while it does not have retrospective effect, it helps make the case that Queensland law unduly violates the human rights of sex workers on account of their profession.

While there are currently two forms of legal sex work in Queensland:

1. sex work conducted in a licensed brothel, and
2. sex work undertaken as a sole operator, many aspects of the work itself are criminalised.

Sex work in one of the only twenty-one licensed brothels is legal in Queensland, but street-based sex work is not. In Queensland, you can legally work as a sex worker if you work alone (including from your home, unit, motel, or hotel) as long as you do not advertise the services you provide or if you work in a licensed brothel. All other forms of sex work are criminalised under Queensland’s *Criminal Code* including sex workers engaging receptionists, driving each other to bookings or sharing location information for safety. Legal sex work is regulated by the *Prostitution Act 1999 (Qld)* which criminalises sex workers working in pairs or from the same premise and sanctions the entrapment and harassment of sex workers and their associates.

This review identifies current provisions in the *Criminal Code 1899 (Qld)*, the *Police Powers and Responsibilities Act 2000 (Qld)* and the *Prostitution Act 1999 (Qld)* which explicitly target sex workers, and which may be incompatible with the *Human Rights Act*. Sections of the *Human Rights Act* including privacy, freedom of movement, freedom of association and property are raised in relation to several the current provisions covering sex work in Queensland. Section 224 of the Police Powers and Responsibilities Act allows for police participation in controlled activities ‘only if, having regard to the nature or extent of the relevant controlled activity offence, authorising a controlled activity is appropriate in the particular circumstances’. The Human Rights Act now requires police to consider relevant human rights before deciding ‘to exercise powers’ and the case of advertising offences, sex workers working in pairs, hiring a receptionist or sharing location details bring into question whether those provisions are incompatible with the Act. This review demonstrates that sex workers are routinely discriminated against based on their profession. While it is clear that certain legislative provisions are designed to protect sex workers, it is also evident that many of these provisions force sex workers to work outside of the law in order to protect their own safety.

# 2. Methodology

This review begins with an explanation of the *Human Rights Act*, its purpose, operation and effect, and an analysis of key rights subsequently relied upon in the legislative review.

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<sup>1</sup> *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Final Report, 3 July 1989) 193.

Although the *Criminal Code*, *Police Powers and Responsibilities Act*, and the *Prostitution Act* all contain further provisions relevant to sex work in Queensland to those listed here, the authors have chosen to focus on provisions most relevant to the *Human Rights Act*.

Please note that the authors have considered Queensland case law where possible, however, the relatively recent enactment of the Queensland *Human Rights Act* and lack of relevant case law means that this has not always been possible. Instead, the authors have considered the application of similar law in comparable jurisdictions, including Victoria, and secondary sources.

## 3. Overview and application of the *Human Rights Act 2019* (Qld)

### 3.1 Overview of the *Human Rights Act 2019* (Qld)

The *Human Rights Act 2019* (Qld) protects 23 human rights of individuals in Queensland. Individuals need not be an Australian citizen, Queensland resident or hold a visa to be protected under the Act.<sup>2</sup> The Act requires Queensland public entities to act or make decisions compatible with human rights.<sup>3</sup> The Act therefore does not require compliance by private business or individuals who are not the agent of a public entity.<sup>4</sup> The Act does not operate retrospectively and applies only to actions or decisions made after 1 January 2020. Unlike international law, the rights listed in the Act are not absolute, meaning a right can be limited by public entities, but only when reasonable and justifiable.<sup>5</sup>

### 3.2 Public entities

Public entities that must act compatibly with human rights include specifically the Queensland police force, and Queensland Parliament.<sup>6</sup> Parliament must consider all relevant human rights when proposing and scrutinising new laws.<sup>7</sup> It is unlawful for public entities, like the police, to not properly consider an individual's human rights when acting or deciding.<sup>8</sup> The police are therefore required to consider relevant human rights before deciding to exercise powers of arrest, 'move on', or search, for example. As discussed, however, human rights can be limited by police where it is deemed just or reasonable.<sup>9</sup>

### 3.3 Compatibility with human rights

Public entities must act and make decisions in a manner that is compatible with human rights. To do so, the entity must give proper consideration to all relevant human rights.<sup>10</sup> Further, statutory provisions must be interpreted in a manner that is compatible with human rights to the extent possible that is consistent with the provisions purpose.<sup>11</sup> To be found compatible, legislation must not limit human rights, or must only limit rights to a reasonable and demonstrably justifiable extent in a free and democratic society based on human dignity, equality and freedom.<sup>12</sup> The Act lists relevant factors that may be considered when deciding compatibility.<sup>13</sup>

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<sup>2</sup> *Human Rights Act 2019* (Qld) s 11.

<sup>3</sup> *Ibid*, s 4(b).

<sup>4</sup> *Ibid*, s 9.

<sup>5</sup> *Ibid*, s 13.

<sup>6</sup> *Ibid*, s 9(1)(c), s 5(2)(b).

<sup>7</sup> *Ibid*, Part 3 Division 1.

<sup>8</sup> *Ibid*, s 58(1).

<sup>9</sup> *Ibid*, s 13 (1).

<sup>10</sup> *Ibid*, s 58(1)(a)-(b).

<sup>11</sup> *Ibid*, s 48(1).

<sup>12</sup> *Ibid*, s 13(1).

<sup>13</sup> *Ibid*, s 13(2).

## 3.4 Avenues of recourse

Where an individual believes their human rights have been unduly limited by a public entity, there are avenues of recourse. A breach of human rights is not enough under the Act to give rise to a claim of relief or remedy by the courts. The individual must have a separate claim independent of the Act. An alleged human right breach may then be 'attached' to the proceedings to be considered by the court.<sup>14</sup> The court may make a declaration of incompatibility if the legislation cannot be interpreted in a manner compatible with human rights.<sup>15</sup> However, this declaration does not create a legal right or give rise to a civil cause of action for the individual.<sup>16</sup> The declaration is brought to Parliament's attention, who then decide how to appropriately respond.<sup>17</sup> It does not invalidate the relevant legislation.<sup>18</sup>

An individual may also may a complaint to the Queensland Human Rights Commission.<sup>19</sup> Prior to this, the individual must have complained to the relevant public entity, and waited 45 business days for a response, or found the response was unsatisfactory.<sup>20</sup> A complaint to the Commission must be in writing and comply with specific requirements.<sup>21</sup> The Commission can refuse to deal with the complaint in specific circumstances.<sup>22</sup> The Commission may also send the complaint to the public entity for response, and try to resolve the complaint through negotiation or a conciliation conference.<sup>23</sup> Unresolved disputes are detailed in a report by the Commission, and may be published.<sup>24</sup> The Commission does not charge fees for its services.<sup>25</sup>

# 4. Overview of applicable human rights

## 4.1 Recognition and equality before the law

Section 15 of the *Human Rights Act 2019* (Qld) states:

- (1) *Every person has the right to recognition as a person before the law.*
- (2) *Every person has the right to enjoy the person's human rights without discrimination.*
- (3) *Every person is equal before the law and is entitled to the equal protection of the law without discrimination.*
- (4) *Every person has the right to equal and effective protection against discrimination.*
- (5) *Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.*

This right is based on Articles 2, 16 and 26 of the International Covenant on Civil and Political Rights. Section 15 of the HRA provides that all persons should be free from discrimination and that all people have the same rights and deserve to be treated with the same level of respect. In practice, this means that laws, policies, and programs should not be discriminatory nor applied in a discriminatory way.

Discrimination is defined by the Anti-Discrimination Act 1991 (Qld), and is unlawful when based on:

- age;
- breastfeeding;

<sup>14</sup> *Innes v Electoral Commission of Queensland & Anor (No 2)* (2020) QSC 293; *Human Rights Act 2019* (Qld) s 59(1).

<sup>15</sup> *Human Rights Act 2019* (Qld) s 53.

<sup>16</sup> *Ibid*, s 54(b).

<sup>17</sup> *Ibid*, s 56.

<sup>18</sup> *Ibid*, s 54(a).

<sup>19</sup> *Ibid*, s 64.

<sup>20</sup> *Ibid*, s 65(1).

<sup>21</sup> *Ibid*, s 67.

<sup>22</sup> *Ibid*, s 69, s 70.

<sup>23</sup> *Ibid*, s 77, s 79.

<sup>24</sup> *Ibid*, s 88, s 90.

<sup>25</sup> Queensland Human Rights Commission, 'Making a complaint', *Queensland Human Rights Commission* (Web page, February 2020) <<https://www.qhrc.qld.gov.au/complaints/making-a-complaint>>.

- family responsibilities;
- gender identity;
- impairment;
- lawful sexual activity;
- parental status;
- political belief or activity;
- pregnancy;
- race relationship status;
- religious belief or activity;
- sex;
- sexuality;
- trade union activity;
- association with, or relation to, a person identified on the basis of any of the above attributes.

Section 15(5) of the Act provides that measures taken to advance people experiencing discrimination, cannot themselves be considered discrimination. No applicable examples exist yet in Queensland. However, in Victoria, where the same right is included in Section 8 of the *Charter of Human Rights and Responsibilities Act 2006*, measures taken to advance the interests of people experiencing discrimination have been held to not constitute a breach of the right of equality for others.<sup>26</sup> Moreover, in Victoria, it has been held that an exemption from the Equal Opportunity Act 1995 (Vic) will only be provided where there is good reason.<sup>27</sup> In this case, Lifestyle Communities Ltd, an age care provider, could not exclude people under 50. The Victorian Civil and Administrative Tribunal (VCAT) found that an exemption was not a reasonable limitation on the right to equality before the law.<sup>28</sup>

## 4.2 Right to freedom of movement

Section 19 of the *Human Rights Act 2019* (Qld) states:

*Every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it and has the freedom to choose where to live.*

This right, based on article 12 of the International Covenant of Civil and Political Rights, ensures public entities do not unduly restrict individuals' freedom of movement. The right is also found in section 12 of the *Victorian Charter of Rights*. The right is only applicable to those lawfully residing in Queensland. The right allows individuals to move freely within Queensland, preventing entities from arbitrarily forcing a person to remain in or move from a particular place. An individual is entitled to choose where to live, and when to enter or leave Queensland. Police move on powers are a specific example of where this right has the potential to be infringed.<sup>29</sup> Further, orders of strict surveillance on a person when moving may have implications on this right, as well as any regulation on the ability of a person to be in a public place. In Queensland, supervision orders, while limiting an individual's freedom of movement, can be a reasonable limitation to fulfil differing Statute purposes relating to community safety.<sup>30</sup> Further, this right may be limited where necessary to protect the rights of others.<sup>31</sup>

This right is yet to be relevantly considered in Queensland. In Victoria, however, the right to freedom of movement has been raised in cases concerning court orders restricting movement. The imposition of supervision orders for persons newly released from prison is not an unreasonable limit on the right to freedom of movement<sup>32</sup> and freedom of movement can be limited where it is to protect the rights of others.<sup>33</sup>

<sup>26</sup> *Parks Victoria (Anti-Discrimination Exemption)* (2011) VCAT 2238.

<sup>27</sup> *Lifestyle Communities Ltd (No 3) (Anti-discrimination Exemption)* [2011] VCAT 2238.

<sup>28</sup> *Ibid.*

<sup>29</sup> Queensland Human Rights Commission, 'Freedom of movement', *Queensland Human Rights Commission* (Web page, July 2019) <[https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0007/19888/QHRC\\_factsheet\\_HRA\\_s19.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0007/19888/QHRC_factsheet_HRA_s19.pdf)>.

<sup>30</sup> *Attorney-General v Carter* (2020) QSC 217.

<sup>31</sup> *AC (Guardianship)* [2009] VCAT 1186.

<sup>32</sup> *Secretary, Department of Justice v AB* [2009] VCC 1132.

<sup>33</sup> *AC (Guardianship)* [2009] VCAT 1186.

## 4.3 Right to freedom of expression

Section 21 of the *Human Rights Act 2019* (Qld) states:

- (1) *Every person has the right to hold an opinion without interference.*
- (2) *Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether—*
  - (a) *orally; or*
  - (b) *in writing; or*
  - (c) *in print; or*
  - (d) *by way of art; or*
  - (e) *in another medium chosen by the person*

This right entitles individuals to hold and express an opinion, even if their opinions are unpopular or disturbing. The right is also found in section 15 of the *Victorian Charter of Rights*. Individuals also hold the right as an audience member to seek and receive others' opinions. Individuals are not to be subjected to discrimination for any opinions held. This right is very broad in nature, and allows expression in many forms, specifically due to sub-section 2(e) which allows expression in any medium. One can impart information and ideas of all kinds within or outside of Queensland, so long as the expression conveys, or attempts to convey, a meaning. The kind of expression allowed is judged against its impact on reasonable members of the community who do not know the expression's purpose. Forms that are most likely not protected are those which include violence or criminal damage.<sup>34</sup> Laws or decisions this right may be relevant to are those that regulate forms of public expression like displays, promotions, or publications, and those that censor or require review or approval of materials before their publication.<sup>35</sup> This right further implicitly incorporates a right to freedom of information.

## 4.4 Peaceful assembly and freedom of association

Section 22 of the *Human Rights Act 2019* (Qld) states:

- (1) *Every person has the right of peaceful assembly.*
- (2) *Every person has the right to freedom of association with others, including the right to form and join trade unions.*

Section 22 dictates that every person has the right to peaceful assembly and freedom of association. The provision is modelled on Articles 21 and 22 of the *International Covenant on Civil and Political Rights*, and an identically worded provision can be found in section 16 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic). A peaceful assembly is any gathering of individuals for a common purpose, such as meetings or protests. This includes the right to meet as well as the right to form a group, and protection extends to organisers and participants both while preparing and conducting the assembly. Any assembly including violence is excluded from this protection.<sup>36</sup> Freedom of association encompasses all forms of association between individuals and need not be a political association: the provision refers to trade unions simply as an example.<sup>37</sup> This right is relevant to any laws which cause differential treatment on the basis of one's membership of a group or association.<sup>38</sup>

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<sup>34</sup> *Magee v Delaney* (2012) VSC 407

<sup>35</sup> Queensland Human Rights Commission, 'Right to freedom of expression, *Queensland Human Rights Commission* (Web page, July 2019) <[https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0009/19890/QHRC\\_factsheet\\_HRA\\_s21.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0009/19890/QHRC_factsheet_HRA_s21.pdf)>.

<sup>36</sup> Explanatory Notes, Human Rights Bill 2018 (Qld) 4.

<sup>37</sup> Queensland Human Rights Commission, 'Right to peaceful assembly and freedom of association', *Queensland Human Rights Commission* (Web page, July 2019) <[https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0010/19891/QHRC\\_factsheet\\_HRA\\_s22.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0010/19891/QHRC_factsheet_HRA_s22.pdf)>.

<sup>38</sup> *Ibid.*



## 4.5 Property rights

Section 24 of the *Human Rights Act 2019* (Qld) states:

- (1) *All persons have the right to own property alone or in association with others.*
- (2) *A person must not be arbitrarily deprived of the person's property.*

Section 24 protects all people's right to own property alone or with others and holds that they must not be unlawfully or arbitrarily deprived of their property. It is modelled on Article 17 of the *Universal Declaration of Human Rights*, and an equivalent right is captured by section 20 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Although section 24 has yet to be considered by a Queensland court, the analogous Victorian provision has been tested interstate. The right does not extend to compensation when a person is deemed to have been unlawfully deprived of their property.<sup>39</sup> Section 24 may be relevant to laws which provide for the forfeiture of a person's property in accordance with civil or criminal law, empower public authorities to access private property, limit or terminate property rights, or restrict the use of private property.<sup>40</sup>

## 4.6 Privacy and reputation

Section 25 of the *Human Rights Act 2019* (Qld) states:

- A person has the right—*
- (a) *not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with;*
  - and
  - (b) *not to have the person's reputation unlawfully attacked.*

Section 25 broadly protects the rights to privacy and reputation. It is modelled on Article 17 of the *International Covenant on Civil and Political Rights*, and section 13 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) protects the same right with almost identical wording. Queensland courts have provided limited consideration of section 25, while analogous provisions have been tested interstate. The right to privacy covers a person's private life against interference with their appearance, gender, sexuality, home, and physical and mental integrity, as well as personal information and data. The right to privacy encompasses both unlawful and arbitrary interference, thus capturing when something is unreasonable, unnecessary or disproportionate even if it is lawful.<sup>41</sup> Section 25 is relevant to a very wide scope of laws. To name only a few, these include laws which involve surveillance for any purpose, the collection or publication of personal information, powers of search and entry, compulsory physical intervention or examination, and regulation of private sexual behaviour.<sup>42</sup>

## 4.7 Right to liberty and security of person

Section 29 of the *Human Rights Act 2019* (Qld) states:

- (1) *Every person has the right to liberty and security.*
- (2) *A person must not be subjected to arbitrary arrest or detention.*
- (3) *A person must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law.*

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<sup>39</sup> Queensland Human Rights Commission, 'Property rights', *Queensland Human Rights Commission* (Web page, July 2019) <[https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0003/19893/QHRC\\_factsheet\\_HRA\\_s24.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0003/19893/QHRC_factsheet_HRA_s24.pdf)>.

<sup>40</sup> Ibid.

<sup>41</sup> Queensland Human Rights Commission, 'Right to privacy and reputation', *Queensland Human Rights Commission* (Web page, July 2019) <[https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0004/19894/QHRC\\_factsheet\\_HRA\\_s25.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0004/19894/QHRC_factsheet_HRA_s25.pdf)>.

<sup>42</sup> Ibid.

- (4) A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against the person.
- (5) A person who is arrested or detained on a criminal charge—
  - (a) must be promptly brought before a court; and
  - (b) has the right to be brought to trial without unreasonable delay; and
  - (c) must be released if paragraph (a) or (b) is not complied with.
- (6) A person awaiting trial must not be automatically detained in custody, but the person's release may be subject to guarantees to appear—
  - (a) for trial; and
  - (b) at any other stage of the judicial proceeding; and
  - (c) if appropriate, for execution of judgment.
- (7) A person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of the person's detention, and the court must—
  - (a) make a decision without delay; and
  - (b) order the release of the person if it finds the detention is unlawful.
- (8) A person must not be imprisoned only because of the person's inability to perform a contractual obligation.

This right is based on Articles 9 and 11 of the International Covenant on Civil and Political Rights. The Human Rights Act states that every person has a right to liberty and security. This right protects against unlawful or arbitrary detention, establishes a right to be brought to trial without unreasonable delay and provides that persons arrested or detained are entitled to certain minimum rights. No applicable examples yet exist in Queensland. In Victoria, however, involuntary treatment orders have been found to not constitute a breach of the right to liberty.<sup>43</sup>

## 4.8 Right to health services

Section 37 of the *Human Rights Act 2019* (Qld) states:

- (1) Every person has the right to access health services without discrimination.
- (2) A person must not be refused emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person.

Every person is to be afforded the right to health service access without discrimination, and cannot be refused emergency treatment when necessary, to save an individual's life or prevent serious impairment. This right is modelled after article 12 of the International Covenant of Economic, Social and Cultural rights, however, is narrower in nature. This right is further not included in Victoria's Charter of Human Rights and Responsibilities. Due to this, the scope of the right in Queensland is difficult to ascertain. Based on the introductory Bill's Explanatory Notes to Parliament, the right is not intended to include rights that indirectly effect the health of an individual, for example the right to food and water, social security and housing.<sup>44</sup> However, this right may be relevant where actions, decisions or law relates to the access of health information, facilities and services, to reproductive health, and to epidemic diseases like HIV.<sup>45</sup>

<sup>43</sup> *MH6 v Mental Health Review Board (General)* (2008) VCAT 84.

<sup>44</sup> Explanatory Notes, Human Rights Bill 2018 (Qld) 28.

<sup>45</sup> Queensland Human Rights Commission, 'Right to health services', *Queensland Human Rights Commission* (Web page, July 2019) <[https://www.qhrc.qld.gov.au/data/assets/pdf\\_file/0007/19906/QHRC\\_factsheet\\_HRA\\_s37.pdf](https://www.qhrc.qld.gov.au/data/assets/pdf_file/0007/19906/QHRC_factsheet_HRA_s37.pdf)>.

## 5. Legislative review

### 5.1 Criminal Code

| <i>Criminal Code Act 1899 (Qld)</i>                       | Provision wording   | <i>Human Rights Act 2019 (Qld)</i>   | Analysis   |
|---|---|--|--|
| 229H Knowingly participating in provision of prostitution | <p>(1) A person who knowingly participates, directly or indirectly, in the provision of prostitution by another person commits a crime.</p> <p><i>Examples of the crime—</i></p> <p><i>Example 1—</i><br/>a person who knowingly participates in the provision of prostitution by another person through a company, or other entity, or through another individual</p> <p><i>Example 2—</i><br/>a person who provides financial or other resources to enable the establishment of premises from which prostitution is carried out or coordinated knowing that the premises will be so used</p> <p><i>Example 3—</i><br/>a person who receives financial or other benefit from another person engaging in prostitution in return for the procuring of clients</p> <p><i>Example 4—</i><br/>drivers, operators and hirers of vehicles who provide transport, or the means of transport, for prostitutes or clients knowing that the transport provided is assisting</p> | <p>Recognition and Equality before the law – s 15</p> <p>Peaceful assembly and freedom of association – S 22</p> <p>Right to Liberty and security of person – S 29</p> | <p>This provision limits the ability of sex workers to carry out their work safely.</p> <p>Examples of what is an offence under s229H are included in the section. The six examples cover financiers, landlords, franchisors, drivers, receptionists and booking agents participating, directly or indirectly, in the provision of prostitution by another person. Example six is a ‘catch all provision’.<sup>46</sup> It purports to capture a person who participates ‘in any service’.</p> <p>Section 229H of the Criminal Code may be problematic in light of section 15 of the HRA. Section 15 of the HRA enshrines a right to enjoy other human rights without discrimination and provides that all people have the same rights and should be treated with the same level of respect. Relevantly, discrimination is defined by the Anti-Discrimination Act 1991 (Qld), and is unlawful when it is based on, inter alia, lawful sexual activity. Section 15 may be relevant to activities that have a disproportionate impact on people who have one or more of the attributes under the <i>Anti-Discrimination Act</i>.</p> |

<sup>46</sup> Andrew West, ‘Criminal law: can prostitutes be charged with knowingly participating in prostitution by another?’ (2009) 29(5) *The Queensland Lawyer* 241, 241.

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|  | <p>prostitution unless section 229HA(4)(b)(ii) applies</p> <p><i>Example 5—</i><br/>a person who receives, directs or redirects telephone calls or other forms of messages, or who takes bookings or receives money, knowing that the action is in connection with the engaging in of prostitution by another person unless section 229HA(5) applies</p> <p><i>Example 6—</i><br/>a person who participates, directly or indirectly, in any service, action or matter for the purpose of knowingly enabling another person to engage in prostitution</p> <p><i>Note— Some of these examples may also illustrate the offence defined in section 229HB.</i></p> <p>(2) However, if a person who is not an adult or is a person with an impairment of the mind is, to the offender’s knowledge, engaged in the provision of the prostitution, the offender is liable to a maximum penalty of 14 years imprisonment.</p> <p>(3) The Penalties and Sentences Act 1992, section 161Q also states a circumstance of aggravation for an offence against this section.</p> |  | <p>Section 229H of the Criminal Code may also conflict with section 22 of the HRA. Section 22 protects the right of peaceful assembly and freedom of association. It extends to the right to join or form a group with like-minded people. Relevantly, the right to freedom of association is not limited to political purposes.</p> <p>The QHRC note that section 22 may be relevant where laws, policies, acts or decisions treat people differently based on their membership or association with a particular group or where membership of a group or association is prohibited.<sup>47</sup></p> <p>Relevantly, the effect of Section 229H is that independent sex workers are subject to very different restrictions than other businesses. It is unlawful for sex workers working outside regulated brothels to share a workspace, work in the same building as another sex worker or employ a receptionist.<sup>48</sup> Sex workers are also unable provide another sex worker with details of their booking or location. The effect is that independent sex workers are forced to work in secret and are prevented from taking steps to ensure their own safety.<sup>49</sup> Such restrictions may conflict with section 22(2) of the HRA.</p> <p>Section 29(1) of the <i>Human Rights Act</i> further provides that ‘every person has the</p> |
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<sup>47</sup> Queensland Human Rights Commission, ‘Right to peaceful assembly and freedom of association’, (Web Page, 28 June 2019) < <https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-peaceful-assembly-and-freedom-of-association>>.

<sup>48</sup> Inga Stunzner, ‘Queensland sex workers say current laws put their lives at risk’, *ABC News* (online), (online at 13 April 2018) < <https://www.abc.net.au/news/2018-04-13/qld-sex-workers-want-law-changes-to-protect-their-own-safety/9651784>>.

<sup>49</sup> It is lawful for sex workers to provide a non-sex-worker with details of their location provided that the contact is not working as a receptionist.

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|  |   |  | <p>right to liberty and security'. Section 229H of the <i>Criminal Code</i> may be incompatible because it restricts the ability of sex workers to ensure their own security when working.</p>   |
| <p>229I Persons found in places reasonably suspected of being used for prostitution etc.</p> | <p>(1) A person who, without reasonable excuse, is found in, or leaving after having been in, a place suspected on reasonable grounds of being used for the purposes of prostitution by 2 or more prostitutes commits a crime.</p> <p>(2) However, if a person who is not an adult or is a person with an impairment of the mind is, to the offender's knowledge, in the place at the time of the offence, the offender is liable to a maximum penalty of 14 years imprisonment.</p> <p>(3) In sentencing an offender who is a prostitute or client, the court may, in mitigation of sentence, have regard to evidence of an appropriate sexual health check undergone by the offender within 3 months before the offence.</p> <p>(4) Subsection (1) does not apply to a person (the relevant person) if the place is a licensed brothel, unless—</p> <p>(a) if the relevant person, without reasonable excuse, is found in the place—a person who is not an adult or who is a person with an impairment of the mind is, to the relevant person's knowledge, also in the place; or</p> <p>(b) if the relevant person, without reasonable excuse, is found leaving after having been in the place—a person who is not an adult or who is a person with an impairment of the mind was, to the relevant person's knowledge, also in the place when the relevant person was in the place.</p> | <p>Freedom of Movement – s 19</p> <p>Peaceful assembly and freedom of association – s 22</p> | <p>This provision criminalises being near a place which is suspected of being used for sex work by two or more sex workers. The scope of the provision means that it may criminalise clients, friends, associates and relatives of sex workers. As a sex workers home or hotel room may be suspected of being used for sex work by two or more sex workers, this may impact on sex workers regardless of whether or not they are working from their home.</p> <p>There may be scope to contend that section 229I is incompatible with the right to move freely within Queensland. The Right to freedom of movement means that 'public entities cannot act in a way that would unduly restrict freedom of movement'. It prevents people being arbitrarily forced to remain in, or move on from, a particular place. In its current form, section 229I criminalizes a broad range of persons found in, or leaving, a place 'suspected' of being used for prostitution. Again, this provision seems aimed at curtailing the ability of sex workers to ensure their own safety. Accordingly, section 229I may also be incompatible with section 22 of the HRA.</p> |

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| <p>229K Having an interest in premises used for prostitution etc.</p> | <p>(1) In this section— interested person, in relation to premises, means a person who—<br/> (a) owns, leases, rents or otherwise has an interest in premises; or<br/> (b) is entitled to occupy or use premises; or<br/> (c) controls an entity that—<br/> (i) owns, leases, rents or otherwise has an interest in premises; or<br/> If a sex worker works from home and allows another sex worker to work from their home, they would be committing a crime.<br/> (ii) is entitled to occupy or use premises.<br/> (2) A person who—<br/> commits a crime.<br/> (a) is an interested person in relation to premises; and<br/> (b) knowingly allows the premises to be used for the purposes of prostitution by 2 or more prostitutes;</p> | <p>Property Rights – s 24.</p> | <p>This provision limits the ability of sex workers to find and work from appropriate premises. This section may be incompatible with section 24 of the HRA. The QHRC state that section 24 may be relevant where laws, policies, acts or decisions restrict the use of private property or where they limit or terminate property rights.<sup>50</sup></p> |
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<sup>50</sup> Queensland Human Rights Commission, 'Property rights', (Web Page, 28 June 2019) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-peaceful-assembly-and-freedom-of-association>>.

## 5.2 Police Powers and Responsibilities Act 2000 (Qld)

| <i>Police Powers and Responsibilities Act 2000 (Qld)</i>  | Provision wording  | <i>Human Rights Act 2019 (Qld)</i>   | Analysis  |
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| 19 General power to enter to make inquiries, investigations or serve documents                                | <p><i>(3) A police officer may enter a place and stay for a reasonable time on the place to inquire into or investigate a matter.</i></p> <p><i>Examples for subsection (3)—</i></p> <p><i>1 The entry may be to a public area of a place such as a hotel or a nightclub for finding out if an offence is being or has been committed on the place.</i></p> <p><i>2 The entry may be for finding out if a person reasonably suspected of being involved in the commission of an offence is at a place.</i></p> <p><i>3 The entry may be for finding out if a missing person is in the place.</i></p>   | Right to privacy and reputation – s 25   | <p>This section grants police the general power to enter a place that is not a dwelling without consent to inquire into or investigate a matter. Relevant examples are listed in the legislation.</p> <p>Section 19(3) is potentially incompatible with section 25 of the Human Rights Act – the right to privacy and reputation. Through this investigative power, police have the capacity to enter the workplace of sex workers without consent to inquire or investigate a matter, despite the personal nature of their work. While examples of the exercise of this provision are provided, these are not exhaustive - the section is general and broad. This generality broadens the scope of potential infringement of the right to privacy.</p> |
| 29 Searching persons without warrant<br><br>30 Prescribed circumstances for searching persons without warrant | <p><i>Section 29</i></p> <p><i>(1) A police officer who reasonably suspects any of the prescribed circumstances for searching a person without a warrant exist may, without a warrant, do any of the following—</i></p> <p><i>(a) stop and detain a person;</i></p> <p><i>(b) search the person and anything in the person’s possession for anything relevant to the circumstances for which the person is detained.</i></p> <p><i>(2) The police officer may seize all or part of a thing—</i></p> <p><i>(a) that may provide evidence of the commission of an offence;</i></p> <p><i>or</i></p> <p><i>(b) that the person intends to use to cause harm to himself, herself or someone else; or</i></p> <p><i>(c) if section 30(b) applies, that is an antique firearm.</i></p> | Privacy and reputation – s 25<br><br>Peaceful assembly and freedom of association – s 22 | <p>These provisions allow police to search persons without a warrant where they believe a person has consorted, is consorting, or is likely to consort with a recognised offender. Police may seize items that provide evidence of the commission of an offence.</p> <p>A recognised offender per s77 of the <i>Criminal Code</i> is a person who has a recorded conviction for a relevant offence. A relevant offence includes the sections analysed above of the <i>Criminal Code</i>, specifically sections 229H, 229I and 229K.</p>   |

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|  | <p><u>Section 30</u><br/> <i>The prescribed circumstances for searching a person without a warrant are as follows—</i><br/> <i>(i) the person has consorted, is consorting, or is likely to consort with 1 or more recognised offenders.</i></p> <p><u>Schedule 6 Dictionary</u><br/> <i>Recognised offender</i><br/> <i>(a) Generally – see the Criminal Code, section 77</i></p> <p><u>Criminal Code section 77</u><br/> <i>Recognised offender means an adult who has a recorded conviction, other than a spent conviction, for a relevant offence (whether on indictment or summary conviction).</i></p> <p><i>Relevant offence means—</i><br/> <i>(a) an indictable offence for which the maximum penalty is at least 5 years imprisonment, including an offence against a repealed provision of an Act; or</i><br/> <i>(b) an offence against—</i><br/> <i>(i) any of the following provisions of this Code—</i><br/> <i>section 229H</i><br/> <i>section 229I</i><br/> <i>section 229K</i></p> | <p>A person can be charged with consorting if found to have associated with a person convicted of one of these offences. Therefore, a sex worker who offers double bookings (two workers for the one client) where the other worker has been charged with an offence under sections 229H, 229I and 229K may be searched without a warrant by police. Further, a receptionist hired by a recognised offender or a sex worker that shares the workplace of a recognised offender may be searched by police without a warrant if found to have consorted, is consorting or is likely to consort with the offender.</p> <p>These provisions are potentially incompatible with section 25 of the <i>Human Rights Act</i>. The provision allows police to search sex workers without their consent, invading their personal privacy. Anything in the individual's possession may also be searched. Sex workers need only be 'likely' to consort with a recognised offender to be bodily searched without a warrant. This low threshold may lead to arbitrary interference with the individual's privacy. The storage of personal items seized from sex workers also has the potential to infringe on the right to privacy and reputation if exercised in an unreasonable manner.</p> <p>Further, the provisions are potentially incompatible with section 22 of the <i>Human Rights Act</i>. The provisions allow for the non-consensual searching of a sex worker if they freely associated with a person charged with an offence under the <i>Prostitution Act</i>, be it a client or another sex worker. Security or administrative aid hired by a sex worker charged with a recognised offence may be searched without a warrant due to their</p> |
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|   |  |  | association. Family and friends of a recognised offender may also be searched without a warrant if found to have consorted, are consorting or are likely to consort with the worker. Given the right protects all forms of association with others, this provision may come into direct conflict with the <i>Human Rights Act</i> , as it implicitly restricts association between workers, and workers and clients, through the threat of non-consensual searching by police.   |
| 46 When power applies to behaviour<br><br>48 Direction may be given to person | <p><u>Section 46</u></p> <p><i>(1) A police officer may exercise a power under section 48 in relation to a person at or near a regulated place if a police officer reasonably suspects the person’s behaviour is or has been— (a) causing anxiety to a person entering, at or leaving the place, reasonably arising in all the circumstances; or (b) interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or (c) disorderly, indecent, offensive, or threatening to someone entering, at or leaving the place; or (d) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.</i></p> <p><i>(2) If the regulated place is a public place, other than a public place in a safe night precinct, subsection (1) applies in relation to a person at or near the public place only if the person’s behaviour has or had the effect mentioned in subsection (1)(a), (b), (c) or (d) in the part of the public place at or near where the person then is.</i></p> <p><i>(2A) If the regulated place is a public place in a safe night precinct, subsection (1) applies in relation to a person at or near the public place only if the person’s behaviour has or had the effect mentioned in subsection (1)(a), (b), (c) or (d) in any public place located in the safe night precinct.</i></p> <p><i>(3) Subsection (1)(b) applies to premises used for trade or business only if the occupier of the premises complains about the person’s behaviour.</i></p> | Peaceful assembly and freedom of association - s 22<br><br>Freedom of movement – s19 | <p>Under these provisions, police can issue a direction that is reasonable in the circumstances if they suspect a person is soliciting. This direction is usually a ‘move-on’ notice, requiring the sex worker to leave the area for 24 hours.</p> <p>The threshold for what is ‘reasonable’ for a police office to ‘suspect’ is low.</p> <p>These provisions may be incompatible with section 19 of the <i>Human Rights Act</i>. Sex workers can be told to leave a public area potentially unreasonably due to the low threshold required, interfering with their freedom of movement within Queensland.</p> <p>These provisions may also be incompatible with section 22 of the <i>Human Rights Act</i>. Sex workers can be penalised if they refuse to follow a direction. A direction may be given due to their association with a client, or with another sex worker. Indirectly, sex worker’s freedom of association has the potential to be infringed.</p> |

*(4) However, subsections (1)(b) and (3) do not limit subsection (1)(a), (c) and (d). (5) This part also applies to a person in a regulated place if a police officer reasonably suspects that, because of the person's behaviour, the person is soliciting for prostitution. (6) For this part, the person's behaviour is a relevant act.*

**Section 48**

*(1) A police officer may give to a person or group of persons doing a relevant act any direction that is reasonable in the circumstances. Examples for subsection (1)—*

*1 If a person sitting in the entrance to a shop is stopping people entering or leaving the shop when it is open for business and the occupier complains, a police officer may give to the person a direction to move away from the entrance.*

*2 If a group of people have been fighting in a nightclub car park, a police officer may give the people involved in the fight a direction to leave the premises in opposite directions to separate the aggressors.*

*3 If a person has approached a primary school child near a school in circumstances that would cause anxiety to a reasonable parent, a police officer may give the person a direction to leave the area near the school.*

*(2) However, a police officer must not give a direction under subsection (1) that interferes with a person's right of peaceful assembly unless it is reasonably necessary in the interests of—*

*(a) public safety; or*

*(b) public order; or*

*(c) the*

*protection of the rights and freedoms of other persons.*

*Examples of rights and freedoms for subsection (2)(c)— 1 the rights and freedoms of the public to enjoy the place 2 the rights of persons to carry on lawful business in or in association with the place*

*(3) Without limiting subsection (1), a direction may require a person to do 1 of the following—*

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|   | <p>(a) leave the regulated place and not return or be within the regulated place within a stated reasonable time of not more than 24 hours;</p> <p>(b) leave a stated part of the regulated place and not return or be within the stated part of the regulated place within a stated reasonable time of not more than 24 hours;</p> <p>(c) move from a particular location at or near the regulated place for a stated reasonable distance, in a stated direction, and not return or be within the stated distance from the place within a stated reasonable time of not more than 24 hours.</p> <p>(4) The police officer must tell the person or group of persons the reasons for giving the direction.</p>   |   |   |
| <p>53BAC Police powers for giving official warning for consorting</p> <p>53BAD Effect of official warning for consorting</p> <p>53BAE Prevention of consorting with recognised offender</p> | <p><u>s53BAC</u></p> <p>(1) This section applies if a police officer reasonably suspects a person has consorted, is consorting, or is likely to consort with 1 or more recognised offenders.</p> <p>(2) The police officer may stop the person and require the person to remain at the place where the person is stopped for the time reasonably necessary for the police officer to do any or all of the following—</p> <p>(a) confirm or deny the police officer’s suspicion, including, for example, by exercising a power under section 40 or 43B;</p> <p>(b) give the person an official warning for consorting;</p> <p>(c) if the official warning is given orally—confirm under subsection (5) the official warning.</p> <p>Note— Failure to comply with a requirement given under this subsection is an offence against section 791.</p> <p>(3) However, before giving an official warning under subsection (2)(b), the police officer must consider whether it is appropriate to give the warning having regard to the object of disrupting and preventing criminal activity by deterring recognised offenders from establishing, maintaining or expanding a criminal network.</p> <p>(4) If an official warning for consorting is given in writing, the warning must be in the approved form</p> <p>(5) If an official warning for consorting is given orally, the police officer must, within 72 hours after giving the warning orally, confirm the warning by giving it, in the approved form, to the person in the prescribed way.</p> | <p>Peaceful assembly and freedom of association - s 22</p> <p>Freedom of movement – s19</p> | <p>These provisions allow for police to charge people found to have associated with a recognised offender, as discussed previously. However, a recognised offender under section s53BAC is also a sex worker a police officer reasonably suspects is a recognised offender, see the example given in the legislation area.</p> <p>A police officer may also stop a person suspected of consorting, and grant an official warning for consorting, under these powers.</p> <p>‘Consorting’ – person associates with another to seek out or accept the other persons company. This includes electronic association, per s77A(3) of the Criminal Code.</p> <p>An official warning can also include a ‘move-on’ notice. A person may be charged for contravening an official warning.</p> <p>These provisions are potentially incompatible with Section 22 of the <i>Human Rights Act</i>. The Act implicitly criminalises sex workers and clients who associate with a sex worker</p> |

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| <p><i>(6) Unless the contrary is proved—</i></p> <p><i>(a) an approved form given by post is taken to have been received by the person to whom the form was addressed when the form would have been delivered in the ordinary course of post; and</i></p> <p><i>(b) an approved form given by electronic means is taken to have been received by the person to whom the form was sent on the day the form was sent to the electronic address nominated by the person to a police officer.</i></p> <p><i>(7) If practicable, the giving of an official warning under subsection (2)(b) must be electronically recorded.</i></p> <p><i>(8) To remove any doubt, it is declared that—</i></p> <p><i>(a) an official warning for consorting may be given to a person in relation to a recognised offender before, during or after the person has consorted with the recognised offender; and</i></p> <p><i>(b) a failure to comply with subsection (3) does not affect the validity of an official warning for consorting.</i></p> <p><i>(9) In this section— criminal activity means the commission of a relevant offence under the Criminal Code, section 77. electronic address includes an email address and a mobile phone number. electronic means includes by email, multimedia message and SMS message. prescribed way, for giving an approved form to a person, means—</i></p> <p><i>(a) delivering the form to the person personally; or</i></p> <p><i>(b) sending the form by electronic means to the electronic address nominated by the person to a police officer; or</i></p> <p><i>(c) sending the form by post or certified mail to the person at the last known or usual place of residence or business of the person or the last known or usual postal address of the person.</i></p> <p><i>recognised offender includes a person who a police officer reasonably suspects is a recognised offender.</i></p> <p><i>Example of when a police officer might reasonably suspect a person is a recognised offender—</i></p> <p><i>A police officer reasonably suspects a person has been convicted of an indictable offence. The police officer is unable to confirm the nature of the indictable offence, or whether the conviction is spent, due to the unavailability of the person’s complete criminal history or the application of the Criminal Law (Rehabilitation of Offenders) Act 1986. However, the police officer reasonably suspects the person is a recognised offender.</i></p> |  | <p>charged with a sex work offence. The provision has the capacity to unduly limit both workers and client’s freedom of association, as it treats sex workers and clients differently due to their association with charged sex workers. Further, sex workers, clients, employees, family, and friends of recognised or reasonably suspected recognised offenders may be given a warning for mere electronic association with the recognised offender, potentially penalising association with a sex worker who holds a relevant criminal history.</p> <p>These provisions may also be incompatible with section 19 of the <i>Human Rights Act</i>. As discussed previously, the use of a move on notice by police in an unreasonable manner may infringe on individual’s freedom of movement. The restriction of this right due to consorting with a recognised individual may be found unreasonable.</p> |
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*SMS message means a text message sent using the mobile phone service known as the short messaging service.*

*53BAD Effect of official warning for consorting*

*(1) An official warning for consorting given in relation to a stated person who is a recognised offender has effect until the stated person stops being a recognised offender.*

*(2) However, if an official warning for consorting is given orally, and the warning is not confirmed under section 53BAC(5), the official warning stops having effect 72 hours after it is given.*

*(3) Also, if an official warning for consorting is given in relation to a stated person who is not a recognised offender, the official warning stops having effect 24 hours after it is given.*

*(4) A person does not commit an offence against section 791 if—*

*(a) the person was required to do something under section 53BAC(2); and*

*(b) the court is not satisfied the police officer, at the time of making the requirement, had the suspicion mentioned in section 53BAC(1).*

*53BAE Prevention of consorting with recognised offender*

*(1) This section applies if—*

*(a) a police officer has given a person at a place an official warning for consorting; and*

*(b) the police officer reasonably suspects the person is consorting at the place with the person stated in the official warning.*

*(2) The police officer may require the person to leave the place and not return or be within the place within a stated reasonable time of not more than 24 hours. Note— Failure to comply with a requirement given under this subsection is an offence against section 791.*

*(3) However, subsection (2) does not apply if requiring the person to leave the place may endanger the safety of the person or someone else. Example of requirement to leave place that may endanger safety— a requirement for a person to leave a vehicle in which recognised offenders are passengers in*

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|   | <p><i>circumstances in which the person has no access to other transport</i></p> <p><i>(4) A person does not commit an offence against section 791 if—</i></p> <p><i>(a) the person was required to leave a place under subsection (2); and</i></p> <p><i>(b) the court is not satisfied the police officer, at the time of making the requirement, had the power under subsection (1) to make the requirement.</i></p>  |   |  |
| <p>791 Offence to contravene direction or requirement of police officer</p> | <p><i>(1) This section applies if a person is given a requirement or direction under this Act and no other penalty is expressly provided for a contravention of the requirement or direction.</i></p> <p><i>(2) A person must not contravene a requirement or direction given by a police officer, including a requirement or direction contained in a notice given by a police officer, under this Act, unless the person has a reasonable excuse. Maximum penalty—</i></p> <p><i>(a) for contravening a direction given under section 48— (i) within licensed premises, or in a regulated place located in the vicinity of licensed premises; or (ii) in a public place located in a safe night precinct—60 penalty units; or</i></p> <p><i>(b) for contravening another requirement or direction relating to a relevant law for which the penalty for a contravention of a similar requirement or direction made by a public official under the relevant law is more than 40 penalty units—the maximum penalty under the relevant law for the offence; or</i></p> <p><i>(c) otherwise—40 penalty units.</i></p> <p><i>(3) However, for a contravention of a requirement made by a police officer under section 17 or 18, the person may be prosecuted for a contravention of the relevant authorising law or subsection (2), but not both.</i></p> <p><i>(4) Unless otherwise expressly provided, it is a reasonable excuse for a person not to comply with a requirement or direction to give information if giving the information would tend to incriminate the person.</i></p> <p><i>(5) It is not a reasonable excuse for a person not to comply with a requirement or direction given by a police officer under chapter 17 that complying with the requirement or direction would tend to incriminate the person.</i></p> | <p>Peaceful assembly and freedom of association - s 22</p> <p>Freedom of movement – s19</p> | <p>This provision criminalises contravention by an individual of a direction given by a police officer, for example the requirement to move on.</p> <p>The impact of this provision on human rights is dependent on the nature of the direction given. This provision coupled with a move on direction as per s 48 of the <i>Police Powers and Responsibilities Act 2000</i> (Qld), may be incompatible with sections 22 and section 19 of the <i>Human Rights Act 2019</i> (Qld). See analysis of sections 46 and 48 of the <i>Police Powers and Responsibilities Act 2000</i> (Qld).</p> |

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| <p>196 Power to seize evidence generally</p>  | <p><i>(1) This section applies if a police officer lawfully enters a place, or is at a public place, and finds at the place a thing the officer reasonably suspects is evidence of the commission of an offence.</i></p> <p><i>(2) The police officer may seize the thing, whether or not as evidence under a warrant and, if the police officer is acting under a warrant, whether or not the offence is one in relation to which the warrant is issued.</i></p> <p><i>(3) Also, the police officer may photograph the thing seized or the place from which the thing was seized.</i></p> <p><i>(4) The police officer may stay on the place and re-enter it for the time reasonably necessary to remove the thing from the place.</i></p>  | <p>Privacy and reputation - s 25<br/>Property rights – s 24</p> | <p>This power allows police to seize evidence they suspect is related to a crime.</p> <p>As discussed previously, this provision potentially interferes with section 25 of the <i>Human Rights Act</i>. Sex worker's personal items deemed evidence by police can be seized and searched, potentially infringing their broad right to privacy.</p> <p>This provision may also be incompatible with section 24 of the <i>Human Rights Act</i>. Subsection (4) of the provision more specifically may arbitrarily deprive sex workers of their personal property, as the provision allows police to remove property reasonably suspected of amounting to evidence of an offence from a place. Sex worker's personal items could be removed without their consent.</p>   |
| <p>199 Monitoring order applications</p> <p>200 Making of monitoring order</p> <p>201 What monitoring order must state</p> <p>204 Existence and operation of monitoring order not to be disclosed</p> | <p><i><u>199 Monitoring order applications</u></i></p> <p><i>(1) A police officer may apply to a Supreme Court judge for an order (monitoring order) directing a financial institution to give information to a police officer about a named person.</i></p> <p><i>(2) The application—</i></p> <p><i>(a) may be made without notice to any party; and (b) must—</i></p> <p><i>(i) be sworn and state the grounds on which the order is sought; and</i></p> <p><i>(ii) include information required under the responsibilities code about any monitoring orders issued within the previous year in relation to an account held with the financial institution by the named person.</i></p> <p><i>(3) Subsection (2)(b) applies only to—</i></p> <p><i>(a) information kept in a register that the police officer may inspect; and</i></p> <p><i>(b) information the police officer otherwise actually knows.</i></p> <p><i>(4) The judge may refuse to consider the application until the police officer gives the judge all the information the judge requires about the application in the way the judge requires.</i></p> <p><i>Example— The judge may require additional information supporting the application to be given by statutory declaration</i></p> | <p>Privacy and reputation - s 25</p>                            | <p>This power allows officers to apply for a Supreme Court order to request for information regarding a named person from a financial institution. This requires the institution to share the persons financial information. If a sex worker who has, or is suspected to have, committed a prostitution offence listed in the <i>Criminal Code</i>, they may be the subject of a monitoring order, as such offences may be classified as 'serious crime related activities' where the maximum penalty is 5 year or greater. The definition of a serious crime related activity can be found in the <i>Criminal Proceeds Confiscation Act 2002</i> (Qld) s16.</p> <p>This power may be incompatible with section 25 of the <i>Human Rights Act</i>. The personal financial records of sex workers can be subpoenaed and used as evidence without the individual's consent. The broad nature of</p> |

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|  | <p><u>200 Making of monitoring order</u></p> <p><i>The Supreme Court judge may make the monitoring order only if satisfied there are reasonable grounds for suspecting that the person named in the application—</i></p> <p><i>(a) has committed, or is about to commit, a confiscation offence; or</i></p> <p><i>or</i></p> <p><i>(b) was involved in the commission, or is about to be involved in the commission, of a confiscation offence; or</i></p> <p><i>(c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a confiscation offence; or</i></p> <p><i>(d) has been, or is about to be, involved in a serious crime related activity; or</i></p> <p><i>(e) has acquired directly or indirectly, or is about to acquire directly or indirectly, serious crime derived property.</i></p> <p><u>201 What monitoring order must state</u></p> <p><i>(1) The monitoring order must order a financial institution to give information obtained by the institution about transactions conducted through an account held by the named person with the institution and state—</i></p> <p><i>(a) the name or names in which the account is believed to be held; and</i></p> <p><i>(b) the type of information the institution is required to give; and</i></p> <p><i>(c) the period, of not more than 3 months from the date of its making, the order is in force; and</i></p> <p><i>(d) that the order applies to transactions conducted during the period stated in the order; and</i></p> <p><i>(e) that the information is to be given to any police officer or to a stated police officer and the way in which the information is to be given.</i></p> <p><i>(2) In this section— transaction conducted through an account includes—</i></p> <p><i>(a) the making of a fixed term deposit; and</i></p> <p><i>(b) in relation to a fixed term deposit—the transfer of the amount deposited, or any part of it, at the end of the term.</i></p> |  | <p>the right to privacy and the lack of protection of sex worker's personal information within the provision may suggest a possible infringement of the right.</p> |
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204 Existence and operation of monitoring order not to be disclosed

(1) A financial institution that is or has been subject to a monitoring order must not disclose the existence or the operation of the order to any person other than—

(a) a police officer; or

(b) an officer or agent of the institution (an institution officer), for ensuring the order is complied with; or

(c) a lawyer, for obtaining legal advice or representation in relation to the order.

(2) A person to whom the existence or operation of a monitoring order has been disclosed, whether under subsection (1) or under the provision as originally made or remade or otherwise, must not—

(a) while the person is a police officer, institution officer or lawyer, disclose the existence or operation of the order other than to another person to whom it may be disclosed under subsection (1) but only for—

(i) if the person is a police officer—performing the person's duties; or

(ii) if the person is an institution officer—ensuring the order is complied with or obtaining legal advice or representation in relation to the order; or

(iii) if the person is a lawyer—giving legal advice or making representations in relation to the order; or

(b) when the person is no longer a police officer, institution officer or lawyer, make a record of, or disclose, the existence or the operation of the order in any circumstances.

(3) Subsection (2) does not prevent a police officer disclosing the existence or operation of a monitoring order—

(a) for, or in relation to, a legal proceeding; or

(b) in a proceeding before a court.

(4) A police officer can not be required to disclose to any court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) commits a crime. Maximum penalty—350 penalty units or 7 years imprisonment.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which the person

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|   | <p><i>could reasonably be expected to infer the existence or operation of the monitoring order.</i></p> <p><i>(7) In this section— officer, of a financial institution, means—</i></p> <p><i>(a) a secretary, executive officer or employee of the financial institution; or</i></p> <p><i>(b) anyone who, under the Confiscation Act, is a director of the financial institution.</i></p>   |  |   |
| <p>205 Suspension order application</p> <p>206 Making of a suspension order</p> <p>207 What suspension order must state</p> | <p><u>205 Suspension order application</u></p> <p><i>(1) A police officer may apply to a Supreme Court judge for an order (suspension order) directing a financial institution to give information to a police officer about a named person.</i></p> <p><i>(2) The application—</i></p> <p><i>(a) may be made without notice to any person; and (b) must— (i) be sworn and state the grounds on which the order is sought; and</i></p> <p><i>(ii) include information required under the responsibilities code about any suspension orders issued within the previous year in relation to an account held with the financial institution by the named person.</i></p> <p><i>(3) Subsection (2)(b)(ii) applies only to—</i></p> <p><i>(a) information kept in a register that the police officer may inspect; and</i></p> <p><i>(b) information the police officer otherwise actually knows.</i></p> <p><i>(4) The judge may refuse to consider the application until the police officer gives the judge all the information the judge requires about the application in the way the judge requires.</i></p> <p><i>Example— The judge may require additional information supporting the application to be given by statutory declaration.</i></p> <p><u>206 Making of suspension order</u></p> <p><i>The Supreme Court judge may make the suspension order only if satisfied there are reasonable grounds for suspecting that the person named in the application—</i></p> <p><i>(a) has committed, or is about to commit, a confiscation offence; or</i></p> <p><i>(b) was involved in the commission, or is about to be involved in the commission, of a confiscation offence; or</i></p> | <p>Privacy and reputation - s 25</p> <p>Freedom of movement – s 19</p> | <p>A suspension order is like the above monitoring order. It further notifies the police of any transaction made by the named person.</p> <p>This provision may be incompatible with section 25 of the <i>Human Rights Act</i>. As discussed previously, sex worker’s financial records can not only be subpoenaed by police, but an individual can also be surveyed through the tracking of their financial history. Sex worker’s past and future personal information is no longer confidential under this provision. This may amount to a potential infringement of the right to privacy.</p> <p>Section 19 of the <i>Human Rights Act</i> may also be incompatible with the provision. If a suspension order is made, sex workers can be surveyed by police through tracking their financial transactions. Surveillance of an individual when moving within Queensland has the potential to infringe on their unrestricted freedom of movement.</p> |

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|   | <p><i>(c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a confiscation offence; or</i><br/> <i>(d) has been, or is about to be, involved in a serious crime related activity; or</i><br/> <i>(e) has acquired directly or indirectly, or is about to acquire directly or indirectly, serious crime derived property.</i></p> <p><u>207 What suspension order must state</u></p> <p><i>(1) The suspension order must order a financial institution—</i><br/> <i>(a) to notify a police officer immediately of any transaction that has been initiated in connection with an account held with the institution by a person named in the order; and</i><br/> <i>(b) to notify a police officer immediately if there are reasonable grounds for suspecting that a transaction is about to be initiated in connection with the account; and</i><br/> <i>(c) to refrain from completing or effecting the transaction for 48 hours, unless a named police officer gives the financial institution written consent to the transaction being completed immediately.</i><br/> <i>(2) In addition, the suspension order must state— (a) the name or names in which the account is believed to be held; and</i><br/> <i>(b) the type of information the institution is required to give; and</i><br/> <i>(c) the period, of not more than 3 months from the date of its making, the order is in force; and</i><br/> <i>(d) that the order applies to transactions conducted during the period stated in the order; and</i><br/> <i>(e) that the information is to be given to any police officer or to a stated police officer and the way in which the information is to be given.</i></p> |  |  |
| <p>221 Object of ch 10</p> <p>224 Authorised controlled activities</p> <p>225 Protection from liability</p> | <p><u>221 Object of ch 10</u></p> <p><i>(1) The object of this chapter is to ensure the effective investigation of controlled activity offences by—</i><br/> <i>(a) ensuring anything that may be approved or authorised under this chapter is approved or authorised only in appropriate circumstances; and</i><br/> <i>(b) providing appropriate protection from civil and criminal liability for persons acting under this chapter; and</i></p>  | <p>Privacy and reputation - s 25</p> <p>Recognition and equality before the law - s 15</p> | <p>These provisions allow for a police officer to perform 'controlled activities' in relation to an investigation of a relevant offence, some of which are sex work related. As per Schedule 2 of the Act, the offences discussed above (s229H, 229I, 229K of the <i>Criminal Code</i>) are deemed controlled activity offences even where the maximum penalty is less than 7 years imprisonment. Further, brothel related</p> |

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| <p>Schedule 2 Relevant offences for controlled operations and surveillance device warrants</p> | <p><i>(c) clarifying the status of evidence obtained by persons who engage in controlled activities under this chapter.</i></p> <p><i>(2) In this chapter— controlled activity offence means—</i></p> <p><i>(a) a seven year imprisonment offence; or</i></p> <p><i>(b) an indictable offence mentioned in schedule 2; or</i></p> <p><i>(c) an indictable or simple offence mentioned in schedule 5</i></p> <p><u>224 Authorised controlled activities</u></p> <p><i>(1) This section applies if a police officer considers it is reasonably necessary for a police officer to engage in conduct that—</i></p> <p><i>(a) is directed to obtaining evidence of the commission of a controlled activity offence against a person; and</i></p> <p><i>(b) involves the following (a controlled activity)—</i></p> <p><i>(i) 1 or more meetings between the police officer and a person, whether or not the meetings were the result of a written or oral communication with the person;</i></p> <p><i>(ii) deliberately concealing the true purpose of the communication between the police officer and the person;</i></p> <p><i>(iii) the police officer engaging in conduct for which, apart from section 225, the police officer would be criminally responsible.</i></p> <p><i>(2) A police officer of at least the rank of inspector (a senior police officer) may, in accordance with any policy of the police service, authorise another police officer to engage in a stated controlled activity.</i></p> <p><i>(3) The authority must be written and state—</i></p> <p><i>(a) the controlled activity the police officer is authorised to engage in; and</i></p> <p><i>(b) the period, of not more than 7 days, for which the authority is in force.</i></p> <p><i>(4) However, the senior police officer may authorise a police officer to engage in a controlled activity only if, having regard to the nature or extent of the relevant controlled activity offence, authorising a controlled activity is appropriate in the particular circumstances.</i></p> <p><i>(5) A police officer authorised to engage in the controlled activity must comply with any relevant policy or procedure of the police service.</i></p> <p><i>(6) In this section— conduct includes any act or omission.</i></p> |  | <p>offences found in the <i>Prostitution Act</i> are also deemed controlled activity offences (specifically, s78(1), s79(1), s81(1) and s82)</p> <p>This power allows police to engage in conduct directed to obtaining evidence.</p> <p>This power allows police officers to represent themselves as paying clients to sex workers to attempt to charge them with a criminal offence.</p> <p>These provisions may be incompatible with section 25 of the <i>Human Rights Act</i>. Police officers fail to disclose their identity to sex workers when performing controlled activities. Sex workers may provide private information, allow visual and or physical access to their body, non-consensually due to officer's disguised identity, potentially disproportionately infringing on their right to privacy. The right to privacy includes protection of an individual's mental integrity and home life. The disguised operations allowed to be performed by police may be incompatible with this broader right to privacy.</p> <p>Further, these provisions may be incompatible with section 15 of the <i>Human Rights Act</i>. Sex workers, due to their profession, are specifically targeted by police for these controlled operations. Their right to equality before the law may be infringed by these provisions as they are investigated predominately due to their profession.</p> <p>Section 224 allows a police officer to engage in a controlled activity 'only if, having regard to the nature or extent of the relevant controlled activity offence, authorising the</p> |
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|  | <p><u>225 Protection from liability</u></p> <p>(1) This section applies to each of the following persons (a relevant person)—</p> <p>(a) a person who authorised a controlled activity under section 224;</p> <p>(b) a person who is or was authorised under this chapter to engage in a controlled activity.</p> <p>(2) A relevant person does not incur civil liability for an act done, or omission made, in the honest belief that it was done or omitted to be done under this chapter.</p> <p>(3) If subsection (2) prevents a civil liability attaching to the person, the liability attaches instead to the State.</p> <p>(4) Also, a relevant person does not incur criminal liability for an act done, or omission made—</p> <p>(a) under an authority given for a controlled activity; and</p> <p>(b) in accordance with the policy or procedure about controlled activities applying to the particular controlled activity.</p> <p>(5) In addition, a relevant person does not incur criminal liability for an act done, or omission made, that, because of a controlled activity, was reasonably necessary for protecting the safety of any person.</p> <p>(6) However, subsection (5) does not relieve a police officer from criminal liability for an act done or omission made if the act or omission results in— (a) injury to, or the death of, a person; or (b) serious damage to property; or (c) a serious loss of property.</p> <p>(7) This section does not limit the Police Service Administration Act 1990, section 10.5.</p> |  | <p>controlled activity is appropriate in the particular circumstances.’ The <i>Human Rights Act</i> explicitly requires police to consider relevant human rights before deciding to exercise powers. Police therefore are required to consider the impact on relevant human rights when determining whether the use of a controlled activity is appropriate in the case of advertising offences, sex workers working in pairs, where a sex worker has hired a receptionist or where workers share their location details.</p> |
| <p>229 Definitions for ch 11</p> <p>239 Application for authority to conduct controlled operation</p> <p>244 Matters to be taken into account</p> <p>256 Effect of authority</p> | <p><u>229 Definitions for ch 11</u></p> <p><i>controlled operation means an operation that—</i></p> <p>(a) <i>is conducted, or intended to be conducted, for the purpose of obtaining evidence that may lead to the prosecution of a person for a relevant offence; and</i></p> <p>(b) <i>involves, or may involve, controlled conduct.</i></p> <p><u>239 Application for authority to conduct controlled operation</u></p>  | <p>Privacy and reputation - s 25</p> <p>Recognition and equality before the law - s 15</p> | <p>These powers allow for officers to conduct controlled operations. This allows an officer and an authorised civilian to engage in conduct for which they would normally be criminally responsible.</p> <p>Authority is granted if it is reasonably shown an offence has been or is likely to be committed, and the nature of the offence justifies the operation.</p>   |

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| <p>258 Protection from criminal responsibility for controlled conduct during authorised operations</p> | <p><i>(1) A law enforcement officer of a law enforcement agency may apply to the chief executive officer of the agency for authority to conduct a controlled operation on behalf of the agency.</i></p>   |  | <p>These powers may be incompatible with section 25 and section 15 of the <i>Human Rights Act</i>. The analysis discussed above is also applicable to these provisions.</p> |
| <p>265 Recognition of corresponding authorities</p>  | <p><i>(2) An application for an authority may be made</i><br/> <i>(a) by way of a written document signed by the applicant (a formal application); or</i><br/> <i>(b) if the applicant reasonably believes that the delay caused by making a formal application may affect the success of the operation—orally in person or under section 800 (an urgent application).</i><br/> <i>(3) Nothing in this part prevents an application for an authority being made for a controlled operation that has been the subject of a previous application, but in that case the subsequent application must be a formal application.</i><br/> <i>(4) In an application, whether formal or urgent, the applicant must—</i><br/> <i>(a) provide sufficient information to enable the chief executive officer to decide whether or not to grant the application; and</i><br/> <i>(b) state—</i><br/> <i>(i) whether or not the proposed operation, or any other controlled operation in relation to the same criminal activity, has been the subject of an earlier application for an authority or variation of an authority; and</i><br/> <i>(ii) if the proposed operation, or any other controlled operation in relation to the same criminal activity, has been the subject of an earlier application for an authority or variation of an authority, whether or not the authority was given or variation granted; and</i><br/> <i>(iii) if the authority was given, the type of controlled operation authorised.</i><br/> <i>(5) In particular, the information mentioned in subsection (4)(a) must include the following for the proposed operation—</i><br/> <i>(a) an identifying name or number;</i><br/> <i>(b) a description of the criminal activity in relation to which it is proposed to conduct the operation;</i><br/> <i>(c) the name of each person who it is intended will act as a participant in the operation;</i><br/> <i>(d) a precise description of the controlled conduct a civilian participant will be required to engage in for the operation;</i><br/> <i>(e) a general description of the controlled conduct a law enforcement participant will be required to engage in for the operation.</i></p> |  |   |

*(6) The chief executive officer may require the applicant to give additional information about the proposed controlled operation the chief executive officer considers appropriate for consideration of the application.*

*(7) As soon as practicable after making an urgent application, the applicant must make a record in writing of the application and give a copy of it to the chief executive officer. Note— The chief executive officer may delegate powers under this section—see part 6, division 1.*

244 Matters to be taken into account

*(1) An authority to conduct a controlled operation may not be granted unless the chief executive officer is satisfied on reasonable grounds—*

*(a) that a relevant offence has been, is being, or is likely to be committed; and*

*(b) that the nature and extent of the suspected criminal activity justifies the conduct of a controlled operation—*

*(i) in this jurisdiction; or*

*(ii) in this jurisdiction and a participating jurisdiction, if the controlled operation will be or is likely to be conducted in those jurisdictions; and*

*(g) that any conduct involved in the operation will not—*

*(i) seriously endanger the health or safety of any person; or*

*(ii) cause the death of, or serious injury to, any person; or*

*(iii) involve the commission of a sexual offence against any person; or*

*(iv) result in serious loss of or serious damage to property, other than illicit goods; and*

*(h) that any role given to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer; and*

*(i) that any proposed participant in the operation has received appropriate training for the purpose.*

256 Effect of authority

*(1) While it has effect, an authority for a controlled operation—*

*(a) authorises each law enforcement participant to engage in the controlled conduct stated in the authority in relation to the law enforcement participants; and*

*(b) authorises each civilian participant, if any, to engage in the particular controlled conduct, if any, stated in the authority in relation to that participant; and*  
*(c) authorises each participant to engage in that conduct in this jurisdiction or any participating jurisdiction, subject to the corresponding law of the participating jurisdiction.*  
*(2) The authority to engage in controlled conduct given to a participant can not be delegated to any other person.*

*258 Protection from criminal responsibility for controlled conduct during authorised operations*

*(1) Despite any other Act or law of this jurisdiction, a participant who engages in conduct, whether in this jurisdiction or elsewhere, in an authorised operation in the course of, and for the purposes of, the operation, is not, if engaging in that conduct is an offence, criminally responsible for the offence, if—*  
*(a) the conduct is authorised by, and is engaged in, in accordance with, the authority for the operation; and*  
*(b) the conduct does not involve the participant intentionally inducing a person to commit an offence under a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and*  
*(c) the conduct does not involve the participant engaging in any conduct that is likely to—*  
*(i) cause the death of, or serious injury to, any person; or*  
*(ii) involve the commission of a sexual offence against any person; and*  
*(d) if the participant is a civilian participant—the participant acts in accordance with the instructions of a law enforcement officer.*  
*(2) Also, a law enforcement officer is not criminally responsible for conduct that, because of an authorised operation, was reasonably necessary to—*  
*(a) protect the safety of any person; or*  
*(b) protect the identity of a participant; or*  
*(c) take advantage of an opportunity to gather evidence about a relevant offence not mentioned in the authority*



### 5.3 Prostitution Act 1999 (Qld)

| <i>Prostitution Act 1999 (Qld)</i>                  | Provision wording  | <i>Human Rights Act 2019 (Qld)</i> | Analysis   |
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| Section 59 – Police power to enter licensed brothel | (1) A police officer of at least the rank of inspector, or a police officer authorised by a police officer of at least the rank of inspector, may at any time when premises used as a licensed brothel are open for business enter the premises.<br>(2) If entry is made by a police officer who is not of at least the rank of inspector—<br>(a) the police officer must be specifically authorised in writing for the particular entry; and<br>(b) the police officer must produce the authority to the licensee or approved manager if the licensee or manager asks the officer to do so. | Section 24 – Property rights       | This provision has the effect of suspending the usual warrant requirements when police enter a licensed brothel during its business hours.<br><br>The Queensland Human Rights Commission (QHRC) identifies laws which ‘empower public authorities to access private property’ as being relevant to section 24, which dictates that ‘A person must not be arbitrarily deprived of the person’s property’. <sup>51</sup> Although section 24 has yet to be tested in Queensland on relevant facts, some Victorian case law indicates that the analogous provision of the <i>Charter of Human Rights and Responsibilities Act 2006</i> (Vic), section 20, encompasses both real and personal property including land, chattels, money and other economic interests. <sup>52</sup> If Queensland courts consider entry rights within the ambit of ‘property’ for the purposes of section 24, the arbitrary suspension of the usual warrant requirements via section 59 of the <i>Prostitution Act 1999 (Qld)</i> may raise a conflict with this right. |
| Section 60 – Powers after entry                     | (1) A police officer who enters premises under section 59 may inspect the premises and, with the written authorisation of the Authority, do any of the following—<br>(a) inspect, photograph or copy anything required to be kept under this Act;  | Section 24 – Property rights       | This provision has the effect that police can seize things or documents from a licensed brothel without a warrant, subject to the <i>Police Powers and Responsibilities Act 2000</i> , chapter 20, part 2.   |

<sup>51</sup> Queensland Human Rights Commission, ‘Property rights’ (Web page, 28 June 2019) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law/property-rights>>.

<sup>52</sup> *PJB v Melbourne Health (Patrick’s Case)* [2011] VSC 327, [90].

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|  | <p>(b) take possession of a document or thing, if the document or thing is evidence of the commission of an offence against this Act;</p> <p>(c) require the licensee or approved manager to produce stated documents or things for inspection;</p> <p>(d) require the licensee or approved manager to give the police officer reasonable help.</p> <p>(2) If a police officer takes possession of a document or thing under subsection (1)(b), the Police Powers and Responsibilities Act 2000, chapter 20, part 2 applies to the document or thing as if it were seized under that Act.</p>   |   | <p>Similarly to section 59, this provision suspends the usual warrant requirements incumbent on police officers when they are investigating a licensed brothel. This may conflict with Queenslanders' property rights under section 24 of the <i>Human Rights Act 2019</i> (Qld), which states that a person must not be 'arbitrarily deprived' of his or her property. Suspending procedural requirements for the members of a given profession may be sufficiently 'arbitrary' to ground a conflict. Note that the QHRC is explicit that this right may be implicated even when property is seized in accordance with the criminal law.<sup>53</sup></p>  |
| <p>Section 73 – Public soliciting for purposes of prostitution</p> | <p>(1) A person must not publicly solicit for prostitution.</p> <p>(2) A person publicly solicits for prostitution if, for that purpose, the person—</p> <p>(a) solicits a person who is in a public place; or</p> <p>(b) solicits a person at a place within the view or hearing of a person who is in a public place; or</p> <p>(c) loiters in or near a public place; or</p> <p>(d) loiters in a place that can be viewed from a public place.</p> <p>(3) Subsection (1) applies equally to—</p> <p>(a) males and females; and</p> <p>(b) prostitutes and their clients; and</p> <p>(c) persons acting for prostitutes; and</p> <p>(d) persons acting for clients of prostitutes.</p> <p>(4) In this section— solicit includes the following— (a). offer to provide prostitution; (b) accept an offer to provide prostitution.</p> | <p>Section 19 – Freedom of movement</p> <p>Section 15 – Recognition and equality before the law</p> | <p>This provision defines and prohibits public solicitation, including for clients and persons acting for clients. It also prohibits loitering 'in or near' a public place or even 'a place that can be viewed from a public place'. Note that section 74 of the Act provides an exception for soliciting which occurs within licensed brothels, but 'only if the soliciting cannot be viewed by a person outside the brothel'. Furthermore, section 75 exempts undercover police officers from the prohibition of solicitation, allowing for the entrapment of sex workers.</p> <p>Section 74 may raise a potential conflict with section 19 of the <i>Human Rights Act 2019</i> (Qld), which protects freedom of movement for 'every person lawfully within Queensland' – note that this curtails the right's protection over any undocumented migrant sex workers. The right may be invoked even when the person has no particular purpose to move or stay in a particular place. Although there is scant case law considering this right in any Australian jurisdiction, Canadian authority has highlighted</p> |

<sup>53</sup> Queensland Human Rights Commission, 'Property rights' (Web page, 28 June 2019) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law/property-rights>>.

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|  |   |  | <p>provisions prohibiting 'loitering' as being in potential conflict with this right.<sup>54</sup></p> <p>Furthermore, the arbitrary application of section 73 to members of a particular profession may be in conflict with section 15 of the <i>Human Rights Act 2019</i> (Qld), which protects the right to recognition and equality before the law. Section 15 is meant to ensure the enjoyment of other human rights without discrimination: note that 'discrimination' is defined by the <i>Anti-Discrimination Act 1991</i> (Qld), and is unlawful when founded on lawful sexual activity.</p>  |
| Section 76 – Nuisances connected with prostitution                                       | <p>1) This section applies to conduct—</p> <p>(a) that happens in the vicinity of a place that is reasonably suspected of being used for prostitution; and</p> <p>(b) that, to a significant extent, is caused by the presence, or suspected presence, of prostitution at the place.</p> <p>(2) A person must not—</p> <p>(a) cause unreasonable annoyance to another person; or</p> <p>(b) cause unreasonable disruption to the privacy of another person.</p> | Section 15 – Recognition and equality before the law | <p>Section 76 has the effect that police are empowered to fine sex workers for annoyance or disruption. The disruption need only be caused 'to a significant extent ... by the presence, or suspected presence, of prostitution'.</p> <p>This provision provides a basis for police or members of the public to cause sex workers to be fined for conduct which may otherwise be permissible, even for a suspected connection to sex work. It is unclear why this offence should exist in addition to regular causes of action for nuisance. By targeting members of a particular profession – who cannot be discriminated against on the basis of lawful sexual activity, per the <i>Anti-Discrimination Act 1991</i> (Qld) – this provision may be in conflict with section 15 of the <i>Human Rights Act 2019</i>, which protects the right to recognition and equality before the law.</p> |
| Section 77A – Prostitute providing sexual intercourse or oral sex without a prophylactic | <p>(1) A prostitute must not provide prostitution involving sexual intercourse or oral sex unless a prophylactic is used.</p> <p>(2) A prostitute must not offer to provide prostitution involving sexual intercourse or oral sex without a prophylactic being used.</p>  | Section 15 – Recognition and equality before the law | This provision makes it a crime to provide sex work without using a prophylactic. Police have used this provision to entrap sex workers into committing an offence.  |

<sup>54</sup> *R v Heywood* [1994] 3 SCR 761 at 789, 795.

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|                                      | <p>(3) A person must not—</p> <p>(a) ask a prostitute to provide prostitution involving sexual intercourse or oral sex without a prophylactic being used; or</p> <p>(b) accept an offer from a prostitute to provide prostitution involving sexual intercourse or oral sex without a prophylactic being used; or</p> <p>(c) obtain prostitution involving sexual intercourse or oral sex unless a prophylactic is used.</p> <p>(4) A person obtaining prostitution involving sexual intercourse or oral sex must not—</p> <p>(a) interfere with the efficacy of a prophylactic used by the person; or</p> <p>(b) use, or continue to use, a prophylactic that the person knows, or could reasonably be expected to know, is damaged.</p>  |  | <p>The potential for entrapment raised by this provision may be in conflict with the right to equality before the law under section 15 of the <i>Human Rights Act 2019</i> (Qld), because it is being unevenly applied to members of a particular profession. Note that the definition of discrimination found in the <i>Anti-Discrimination Act 1991</i> (Qld) protects lawful sexual activity.</p>   |
| <p>Section 78 – Brothel offences</p> | <p>(1) A person who is a licensee or an approved manager of a licensed brothel must not—</p> <p>(a) provide prostitution under the licence at a place other than the brothel; or</p> <p>(b) have more than 13 staff at the brothel at any 1 time; or</p> <p>(c) provide prostitution at the brothel in contravention of any condition or restriction of a licence or a certificate; or</p> <p>(d) provide prostitution at the brothel while the licensee’s licence is suspended.</p> <p>(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.</p> <p>(3) In this section—</p> <p>staff means the licensee, the approved manager, a person employed at the brothel, or a prostitute.</p> | <p>Section 15 – Recognition and equality before the law</p> <p>Section 22 – Peaceful assembly and freedom of association</p> <p>Section 24 – Property rights</p> | <p>This provision stipulates restrictions on the number of rooms and staff at a licensed brothel. No countervailing justification is immediately apparent or provided by the statute.</p> <p>Firstly, this provision may be in conflict with the right to recognition and equality before the law under section 15 of the <i>Human Rights Act 2019</i> (Qld), because it excludes brothel proprietors from the commercial freedom to expand their business enjoyed by all other Australian businesspeople, merely on the basis of their profession.</p> <p>Furthermore, this provision may also be in conflict with the right to peaceful assembly and freedom of association as protected by section 22 of the <i>Human Rights Act 2019</i> (Qld). No countervailing justification is given for the restriction on the number of sex workers who may be present at a licensed brothel, even when they are lawfully practising their profession. The QHRC is explicit that a given</p> |

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|  |   |  | <p>gathering need not be political to invoke the protection of this right.<sup>55</sup></p> <p>Finally, this provision may be in conflict with the protection of property rights afforded by section 24 of the <i>Human Rights Act 2019</i> (Qld), by limiting the extent to which brothel proprietors can make use of their private property. Although section 24 has yet to be tested in Queensland on relevant facts, some Victorian case law indicates that the analogous provision of the <i>Charter of Human Rights and Responsibilities Act 2006</i> (Vic), section 20, encompasses both real and personal property including land, chattels, money and other economic interests.<sup>56</sup> 'Economic interests' may capture intangible property rights such as using one's premises for profit, the kind of property rights which brothel proprietors seek to exercise. Supporting this argument, the QHRC identifies laws which 'limit or terminate property rights' or 'restrict the use of private property' as being relevant to section 24.<sup>57</sup></p> |
| Section 82 – Person not to have interest in more than 1 licensed brothel | Subject to section 44(2), a person must not have, at any 1 time, an interest in more than 1 licensed brothel. | Section 15 – Recognition and equality before the law<br><br>Section 24 – Property rights | <p>This provision restricts any person to having an interest in no more than one brothel, thereby preventing potential business expansion.</p> <p>Similarly to section 78 above, this provision may be in conflict with the right to recognition and equality before the law under section 15 of the <i>Human Rights Act 2019</i> (Qld), because it excludes brothel proprietors from the commercial freedom to expand their business enjoyed by all other Australian businesspeople, merely on the basis of their profession.</p>   |

<sup>55</sup> Queensland Human Rights Commission, 'Right to peaceful assembly and freedom of association' (Web page, 28 June 2019) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-peaceful-assembly-and-freedom-of-association>>.

<sup>56</sup> *PJB v Melbourne Health (Patrick's Case)* [2011] VSC 327, [90].

<sup>57</sup> Queensland Human Rights Commission, 'Property rights' (Web page, 28 June 2019) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law/property-rights>>.

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|  |  |                                    | Furthermore, it may be in conflict with the property rights protected by section 24 of the <i>Human Rights Act 2019</i> (Qld), which states that 'All persons have the right to own property alone or in association with others'. There appears to be no legitimate justification why brothel proprietors should be precluded from enjoying this right with respect to the acquisition of additional brothels.  |
| Section 90 – Prostitute working while infective with a disease | (1) A person must not work as a prostitute at a licensed brothel during any period in which the person knows he or she is infective with a sexually transmissible disease.<br>(2) For subsection (1), it does not matter whether the prostitute works under a contract of service or a contract for service.<br>(3) For subsection (1), the prostitute is taken to have known that he or she was infective with a sexually transmissible disease, unless the prostitute proves that, at the time the offence is alleged to have been committed, he or she—<br>(a) had been medically examined or tested at intervals prescribed under a regulation to ascertain whether he or she was infective with a sexually transmissible disease; and<br>(b) believed on reasonable grounds that he or she was not infective with a sexually transmissible disease.<br>(4) A prostitute must not, for the purpose of prostitution, use the fact that the prostitute has been medically examined or tested, or the results of the examination or test, to induce a client of the prostitute to believe that the prostitute is not infective with a sexually transmissible disease. (5) For subsection (4), it does not matter whether the prostitute is or is not infective with a sexually transmissible disease. | Section 21 – Freedom of expression | This provision prohibits sex workers from working while they are infective with a sexually transmissible disease, or from advertising the fact that they do not have a sexually transmissible infection.<br><br>By restricting the kind of information which can be included in otherwise lawful advertising on the basis of one's profession, this provision may raise a conflict with the right to freedom of expression under section 21 of the <i>Human Rights Act 2019</i> (Qld). |
| Section 93 – Advertising prostitution                          | (1) A person must not publish an advertisement for prostitution that describes the services offered.<br>(2) A person must not publish an advertisement for prostitution that is not in the approved form.<br>(3) A person must not publish any advertisement for prostitution through radio or television or by film or video recording  | Section 21 – Freedom of expression | These provisions may interfere with sex workers' right to freedom of expression under section 21 of the <i>Human Rights Act 2019</i> (Qld) by significantly restricting the kind of advertisements they are able to publish. The specified 'approved form' of advertisement is extremely limited, and small errors are often used as a basis for entrapment. There is no obvious reason for arbitrarily restricting the  |

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|   |  |                                    | forms of media which the advertising may take, and the freedom to describe the services provided is a crucial part of finding appropriate clients. Note that the QHRC contemplates 'any public expression' including 'promotion' as falling within the ambit of this right's protection. <sup>58</sup>  |
| Section 95 – Advertising prostitution as massage services | (1) A person providing prostitution must not hold out or publish an advertisement that states, directly or indirectly, that the person's business provides or is connected with massage services.<br>(2) In this section—<br>business of a person means the business of a licensed brothel or of an individual prostitute.   | Section 21 – Freedom of expression | This provision holds that sex workers cannot advertise that they provide massage services. Like section 93 above, by restricting the content of 'any public expression' – in this case, a promotion – section 21 of the <i>Human Rights Act 2019</i> (Qld) is invoked and may be in conflict. <sup>59</sup>   |
| Section 96A – Advertising social escort services          | (1) A person must not publish an advertisement for social escort services that does not, by the use of the words 'non-sexual' or 'sexual services are not provided', unequivocally state that the services are not sexual or that sexual services are not provided.<br>(2) A person must not publish an advertisement for social escort services that is not in the approved form. | Section 21 – Freedom of expression | This provision holds that sex workers cannot provide social escort and sexual services in tandem. Again, by restricting the content of sex workers' advertising with no obvious countervailing justification, this provision may be in conflict with the right to freedom of expression under section 21 of the <i>Human Rights Act 2019</i> (Qld). |

<sup>58</sup> Queensland Human Rights Commission, 'Right to freedom of expression' (Web page, 28 June 2019) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law/property-rights>>.

<sup>59</sup> Ibid.



## Contact details

### UQ Pro Bono Centre

T +61 7 3365 8824

E [probono@uq.edu.au](mailto:probono@uq.edu.au)

W [uq.edu.au](http://uq.edu.au)

CRICOS Provider Number 00025B