

NORTHERN TERRITORY OF AUSTRALIA

SEX INDUSTRY ACT 2019

As in force at 1 February 2023

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 February 2023

SEX INDUSTRY ACT 2019

An Act to provide for a regulatory framework for the sex industry

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Sex Industry Act 2019*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Objects of Act

The objects of this Act are:

- (a) to decriminalise sex work and legalise contracts in relation to sex work; and
- (b) to enhance sex worker, client and public health and safety through:
 - (i) applying the *Public and Environmental Health Act 2011* to operators of sex services businesses; and
 - (ii) allowing sex workers to work together and employ support staff; and
 - (iii) providing a mechanism to ensure the suitability of operators of sex services businesses; and
- (c) to prohibit exploitation of sex workers and enshrining the right of sex workers to refuse to perform sex work; and
- (d) to prohibit the use of children for and in sex work; and
- (e) to enable the sex industry to operate in accordance with the laws of the Territory and the Commonwealth as they apply to

all individuals and businesses generally, including laws governing employment, occupational health and safety, workers compensation and rehabilitation, planning, taxation and discrimination.

4 Definitions

In this Act:

affected person, see section 23(2).

child means a person under 18 years old.

dangerous drug, see section 3(1) of the *Misuse of Drugs Act 1990*.

Director means the person holding or occupying the office of Director mentioned in section 26A.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

operator, of a sex services business, means a person who owns or operates the business.

personal information, see section 4A of the *Information Act 2002*.

Review Committee means the Review Committee established under section 24A.

reviewable decision, see section 23(1).

sex services business means a business that provides for or arranges sex work.

sex work means the provision by a person of services that involve the person participating in sexual activity with another person in return for payment or reward.

sex worker means a person who performs sex work.

suitability certificate means a suitability certificate issued under section 19.

Note for section 4

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

5 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 5

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

6 Relationship with *Public and Environmental Health Act 2011*

- (1) Sex work is taken to be a declared activity as defined in section 4 of the *Public and Environmental Health Act 2011*.
- (2) However:
 - (a) sex services businesses are exempt from registration under the *Public and Environmental Health Act 2011*; and
 - (b) a police officer may not exercise powers or perform functions as an authorised officer under the *Public and Environmental Health Act 2011* in relation to sex work.

Part 2 Sex work generally

7 Contract for sex work not void

No contract for or to arrange sex work is illegal or void on public policy or similar grounds.

8 Adoption and promotion of safe sex practices

Operators and sex workers must take all reasonable steps to adopt and promote safe sex practices.

9 Refusal to perform sex work

- (1) Despite anything in a contract for sex work, a person may, at any time, refuse to perform or continue to perform sex work.
- (2) The fact that a person has entered into a contract for sex work does not of itself constitute consent for the purposes of the criminal law if the person does not consent, or withdraws the person's consent, to performing sex work.
- (3) However, nothing in this section affects any right to rescind or cancel, or to recover damages for, a contract for sex work that is not performed.

Part 3 Offences

10 Inducing person to perform sex work

A person (the ***defendant***) commits an offence if:

- (a) the defendant intentionally engages in any of the following conduct:
 - (i) intimidating, assaulting or threatening to assault any person;
 - (ii) supplying or offering to supply a dangerous drug to any person;
 - (iii) making a false representation or otherwise acting fraudulently;
 - (iv) damaging or threatening to damage the property of any person; and
- (b) the conduct results in the person or any other person performing or continuing to perform sex work and the defendant is reckless in relation to the result.

Maximum penalty: Imprisonment for 5 years.

11 Inducing person to provide payment from sex work

A person (the ***defendant***) commits an offence if:

- (a) the defendant intentionally engages in any of the following conduct:
 - (i) intimidating, assaulting or threatening to assault any person;
 - (ii) supplying or offering to supply a dangerous drug to any person;
 - (iii) making a false representation or otherwise acting fraudulently;
 - (iv) damaging or threatening to damage the property of any person; and
- (b) the conduct results in the person or any other person providing or continuing to provide payment to the defendant and the defendant is reckless in relation to the result; and

- (c) the payment is derived directly or indirectly from sex work and the defendant is reckless in relation to that circumstance.

Maximum penalty: Imprisonment for 5 years.

12 Causing or allowing child to perform sex work or work in sex services business

- (1) A person (the ***defendant***) commits an offence if:

- (a) the defendant intentionally engages in conduct; and
- (b) the conduct results in another person performing sex work, or working for or in a sex services business, and the defendant is reckless in relation to the result; and
- (c) the other person is under 14 years old.

Maximum penalty: Imprisonment for 14 years.

- (2) A person (the ***defendant***) commits an offence if:

- (a) the defendant intentionally engages in conduct; and
- (b) the conduct results in another person performing sex work, or working for or in a sex services business, and the defendant is reckless in relation to the result; and
- (c) the other person is a child who is at least 14 years old.

Maximum penalty: Imprisonment for 7 years.

- (3) Strict liability applies to subsections (1)(c) and (2)(c).

13 Receiving payment from sex work by child

- (1) A person (the ***defendant***) commits an offence if:

- (a) the defendant intentionally receives a payment; and
- (b) the payment is derived directly or indirectly from sex work performed by another person and the defendant is reckless in relation to that circumstance; and
- (c) the other person is under 14 years old.

Maximum penalty: Imprisonment for 14 years.

- (2) A person (the ***defendant***) commits an offence if:

- (a) the defendant intentionally receives a payment; and

(b) the payment is derived directly or indirectly from sex work performed by another person and the defendant is reckless in relation to that circumstance; and

(c) the other person is a child who is at least 14 years old.

Maximum penalty: Imprisonment for 7 years.

(3) Strict liability applies to subsections (1)(c) and (2)(c).

14 Agreeing to sex work by child

(1) A person (the **defendant**) commits an offence if:

(a) the defendant intentionally offers, or accepts an offer, to enter into an agreement; and

(b) another person is to perform sex work, or work for or in a sex services business, under the agreement and the defendant is reckless in relation to that circumstance; and

(c) the other person is under 14 years old.

Maximum penalty: Imprisonment for 14 years.

(2) A person (the **defendant**) commits an offence if:

(a) the defendant intentionally offers, or accepts an offer, to enter into an agreement; and

(b) another person is to perform sex work, or work for or in a sex services business, under the agreement and the defendant is reckless in relation to that circumstance; and

(c) the other person is a child who is at least 14 years old.

Maximum penalty: Imprisonment for 7 years.

(3) Strict liability applies to subsections (1)(c) and (2)(c).

15 Non-compliant advertising

(1) A person commits an offence if the person places an advertisement for sex work in a newspaper or on television or radio, other than in accordance with the regulations.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if the person publishes an advertisement that is likely to induce a person to seek employment as a sex worker.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.
- (4) For subsection (2), an advertisement is likely to induce a person to seek employment as a sex worker if the advertisement invites a person to work in, or obtain work through, a sex services business unless the advertisement clearly indicates that the work to which it relates does not involve sex work.

16 Medical examinations

- (1) A person (the **defendant**) commits an offence if:
- (a) the defendant states or implies that the defendant or another person has undergone a medical examination; and
 - (b) as a result of the statement or implication, the person to whom the statement or implication was made:
 - (i) is induced to believe that the defendant or other person is not infected with a sexually transmissible infection or blood borne virus; and
 - (ii) enters into a contract for sex work with the defendant or other person; and
 - (c) the defendant is reckless in relation to the result referred to in paragraph (b).

Maximum penalty: 20 penalty units.

- (2) Strict liability applies to subsection (1)(a).

Part 4 Suitability certificates

17 Body corporate may appoint nominee

If an operator of a sex services business is a body corporate, the operator may nominate one or more individuals with day-to-day control of the business to be a nominee of the operator.

18 Requirement to hold suitability certificate

- (1) If a sex services business engages 3 or more sex workers, each operator of the business must hold a suitability certificate.
- (2) If an operator of a sex services business is a body corporate, each executive officer and any nominee of the operator must also hold a suitability certificate.
- (3) If a person contravenes subsection (1) or (2), the Director may, by written notice, require the person to pay a civil penalty to the Territory in the amount prescribed by the regulations.
- (4) A notice given under subsection (3) must specify the amount and time for payment.
- (5) An amount payable under subsection (3) is a debt due to the Territory by the person.

Note for section 18

A contravention of subsection (1) or (2) is not an offence.

19 Application for suitability certificate

- (1) A person may apply to the Director for a suitability certificate.
- (2) The application must be accompanied by the prescribed fee.
- (3) The Director may issue a suitability certificate if the Director is satisfied that the applicant and any other person required to hold the suitability certificate under section 18(2):
 - (a) are suitable persons to operate a sex services business; and
 - (b) meet any requirements prescribed by regulation.

20 Duration of suitability certificate

A suitability certificate remains in force until:

- (a) the person holding the certificate is no longer required to hold it under section 18(2); or
- (b) the Director revokes the certificate.

21 Revocation of suitability certificate

- (1) The Director may investigate whether or not a person is a suitable person to operate a sex services business if the Director receives any information in relation to:
 - (a) any matter prescribed by regulation; or

- (b) any contravention of a law of the Territory, guideline or standard governing the operation of the business.
- (2) After the investigation, the Director may either:
- (a) revoke a suitability certificate if, in the Director's opinion, the person is no longer a suitable person to operate a sex services business; or
 - (b) confirm that the person is a suitable person to operate a sex services business.

22 Use of information collected under Part

- (1) Information collected under this Part must not be used for any purpose other than the purpose for which it was given.
- (2) Despite the *Information Act 2002*, if the information collected under this Part is personal information, any records of the information must be destroyed as soon as practicable after the person to whom the information relates stops holding the suitability certificate.

Part 5 Miscellaneous matters

22A Director

- (1) The Minister must, in writing, appoint a public sector employee to be the Director.
- (2) The Minister may, in writing, determine that the Director be known by another name.
- (3) If the Minister determines under subsection (2) that the Director be known by another name, a reference in this Act to the Director is taken to be a reference to that name.
- (4) For subsection (1), the Minister may appoint:
 - (a) a public sector employee by name; or
 - (b) a public sector employee by reference to the office, position or designation held or occupied by the employee; or
 - (c) a public sector employee from time to time holding, acting in or performing the duties of a named office, position or designation.

22B Delegation

The Director may, in writing, delegate any of the Director's powers and functions under this Act:

- (a) to another public sector employee; or
- (b) with the consent of the Minister, to any other person.

23 Review by NTCAT

- (1) NTCAT has jurisdiction to review a decision (a **reviewable decision**) specified in the Schedule.
- (2) An **affected person**, for a reviewable decision, is a person specified in the Schedule for the decision.
- (3) An affected person for a reviewable decision may apply to NTCAT for review of the decision.

Note for section 23

The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to the Tribunal for review and other relevant matters in relation to reviews.

24 Regulations

- (1) The Administrator may make regulations under this Act.

Note for subsection (1)

See section 65 of the Interpretation Act 1978.

- (2) A regulation may prescribe any of the following:
 - (a) fees payable under this Act;
 - (b) requirements for advertising;
 - (c) requirements for suitability certificates;
 - (d) matters relevant to the revocation of suitability certificates.

25 Establishment of Review Committee

- (1) The Review Committee is established.
- (2) The Review Committee consists of the following members appointed by the Minister:
 - (a) one person who represents the interests of the community;
 - (b) 2 persons who represent the interests of the sex industry;

- (c) one person with expertise and experience in public health;
 - (d) one person with expertise and experience in occupational health and safety.
- (3) The Minister must appoint one member of the Review Committee to be the chairperson of the Committee.
 - (4) The Minister may determine the terms of the reference for the Review Committee.
 - (5) The Review Committee must comply with the terms of reference determined by the Minister.
 - (6) An act or thing done by the Review Committee is not affected only by reason of a vacancy in the membership of the Committee or a defect in the appointment of a person as a member.

26 Review of Act

- (1) The Review Committee must, as soon as possible after the commencement of this Act:
 - (a) assess the number of sex workers in the Territory and the nature of the environment in which they work; and
 - (b) report on its findings to the Minister.
- (2) The Review Committee must do the following within 5 years after the commencement of this Act:
 - (a) review the operation of this Act since its commencement;
 - (b) assess the impact of this Act on the number of sex workers in the Territory and the nature of the environment in which they work;
 - (c) consider whether any amendments to this Act or any other law are necessary or desirable in relation to sex workers or sex work and, in particular:
 - (i) whether the suitability certificate requirements are effective or could be improved; and
 - (ii) whether any other Agency could or should administer the suitability certificate requirements; and
 - (iii) whether a system is needed for identifying the location of sex services businesses;

- (d) consider whether any further review or assessment of the matters set out in this subsection is necessary or desirable;
 - (e) report on its findings to the Minister.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 18 sitting days after the Minister receives the report.

Part 6 Repeal and transitional matters

27 Acts repealed

The following Acts are repealed:

- (a) *Prostitution Regulation Act 1992* (Act No. 6 of 1992);
- (b) *Prostitution Regulation Amendment Act 1993* (Act No. 47 of 1993);
- (c) *Prostitution Regulation Amendment Act 2000* (Act No. 69 of 2000).

28 Destruction of certain records created under *Prostitution Regulation Act 1992*

Despite the *Information Act 2002*, the following information must be destroyed as soon as practicable after the commencement of this Act:

- (a) all personal information obtained under Part 2, Division 2 of the *Prostitution Regulation Act 1992*;
- (b) all personal information held in the registers referred to in Part 3, Division 7 of the *Prostitution Regulation Act 1992*.

Part 7 Transitional matters for Justice and Licensing Legislation Further Amendment Act 2022

29 Definitions

In this Part:

commencement means the commencement of Part 3, Division 4 of the *Justice and Licensing Legislation Further Amendment Act 2022*.

Commissioner means the Commissioner as defined in section 4 as in force immediately before the commencement.

30 Delegations

A delegation by the Commissioner of any of the Commissioner's powers or functions under this Act that is in force immediately before the commencement is taken to be a delegation by the Director made under section 22B.

31 Pending applications

- (1) Subsection (2) applies in relation to an application if, before the commencement:
 - (a) the application had been made to the Commissioner under this Act; and
 - (b) the Commissioner had not made a decision on the application.
- (2) The application must be dealt with and decided in accordance with this Act as in force immediately before the commencement.
- (3) The decision made by the Commissioner on the application is taken to be a decision made by the Director under this Act.

32 Pending reviews

- (1) Subsection (2) applies in relation to a review if, before the commencement:
 - (a) the review had been commenced under this Act; and
 - (b) a decision on the review had not been made.
- (2) The review must be dealt with in accordance with this Act as in force immediately before the commencement.

33 Reviews not yet commenced

- (1) Subsection (2) applies in relation to a decision if, before the commencement:
 - (a) the decision had been made by the Commissioner and the period for applying for a review of the decision had not expired; and
 - (b) an application for review had not been made.
- (2) A person who would have been entitled to apply for a review of the decision under this Act as in force immediately before the commencement may do so under this Act as in force after the commencement as if the decision had been made by the Director.

34 Continuation of ongoing documents and actions

- (1) On the commencement, an ongoing document continues with the same force and effect as if it had been issued by, or given to, the Director.
- (2) On the commencement, an ongoing action continues with the same force and effect as if it had been done by, or in relation to, the Director.
- (3) This section applies subject to the other provisions of this Part.
- (4) In this section, a reference to something done before the commencement includes a reference to something done after the commencement in accordance with this Part as if it had been done before the commencement.
- (5) In this section:

ongoing action means an action or thing that:

- (a) was done by, or in relation to, the Commissioner before the commencement in or for the exercise of a power or performance of a function under this Act that, on the commencement, is conferred on the Director; and
- (b) immediately before the commencement, had ongoing effect.

ongoing document means a document that:

- (a) was issued by, or given to, the Commissioner before the commencement in or for the exercise of a power or performance of a function under this Act that, on the commencement, is conferred on the Director; and
- (b) immediately before the commencement, had ongoing effect.

Schedule Reviewable decisions and affected persons

section 23

Reviewable decision	Affected person
Refusing to issue a suitability certificate under section 19	Applicant
Revoking a suitability certificate under section 21	Certificate holder

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Sex Industry Act 2019 (Act No. 40, 2019)***

Assent date	13 December 2019
Commenced	12 June 2020 (<i>Gaz</i> S35, 11 June 2020)

Statute Law Revision Act 2020 (Act No. 26, 2020)

Assent date	19 November 2020
Commenced	20 November 2020 (s 2)

Justice and Licensing Legislation Further Amendment Act 2022 (Act No. 21, 2022)

Assent date	31 October 2022
Commenced	pt 3: 1 February 2023; rem: 21 December 2022 (<i>Gaz</i> G50, 21 December 2022, p 1)

3 LIST OF AMENDMENTS

lt	amd No. 26, 2020, s 3
s 4	amd No. 21, 2022, s 37
s 5	amd No. 26, 2020, s 3
ss 18 – 21	amd No. 21, 2022, s 40
ss 22A – 22B	ins No. 21, 2022, s 38
pt 5 hdg	amd No. 21, 2022, s 40
pt 7 hdg	exp No. 40, 2019, s 39
	ins No. 21, 2022, s 39
pt 7	
div 1 hdg	exp No. 40, 2019, s 39
ss 29 – 30	exp No. 40, 2019, s 39
	ins No. 21, 2022, s 39
pt 7	
div 2 hdg	exp No. 40, 2019, s 39
ss 31 – 32	exp No. 40, 2019, s 39
	ins No. 21, 2022, s 39
pt 7	
div 3 hdg	exp No. 40, 2019, s 39

ENDNOTES

ss 33 – 34	exp No. 40, 2019, s 39 ins No. 21, 2022, s 39
pt 7	
div 4 hdg	exp No. 40, 2019, s 39
ss 35 – 36	exp No. 40, 2019, s 39
pt 7	
div 5 hdg	exp No. 40, 2019, s 39
ss 37 – 38	exp No. 40, 2019, s 39
pt 7	
div 6 hdg	exp No. 40, 2019, s 39
s 39	exp No. 40, 2019, s 39