

Outcome of NT sex industry reforms

Introduction

On 26 November 2019, the Northern Territory Legislative Assembly passed the *Sex Industry Act 2019*. The new Act will commence in 2020 following consideration of amendments to the operation of sex services businesses under the Northern Territory Planning Scheme.

Current law

Sex work was partially legalised in 1992 in the Northern Territory through the *Prostitution Regulation Act 1992* (the 1992 Act).

The 1992 Act provides a regulatory framework for operation of an escort agency business, a business providing prostitution services.

The 1992 Act requires that an operator or manager of an escort agency business obtain a licence to operate the business. Licensing NT must keep two registers of these licences, a public and a private register. The registers record the name of the business and other information. A business with three or less persons providing prostitution services is recorded on the private register while a business with more than three persons providing prostitution services is generally recorded on the public register.

The Act prohibits street solicitation and brothels, being a premises where prostitution services are both arranged and provided at the premises. Prostitution services cannot be arranged at the same place where the service is provided. Prostitution services may be provided in any premises so long as the arrangement for the service is not made at the same premises.

The regulation of the sex industry under the 1992 Act was intended to protect workers from exploitation, however, the 1992 Act did not meet this intent. This has been partially attributed to the layered regulation and selective criminalisation of elements of the industry which has led to confusion and non-compliance with the 1992 Act, often to the detriment of workers. Solo operators also cannot employ security or other support staff to provide a safer work environment.

New law coming in 2020

The *Sex Industry Act 2019* decriminalises sex work entirely, removing the confusion within the 1992 Act, and promotes the right of sex workers to a safe and healthy work environment. The terminology refers to sex work, sex services businesses and sex workers.

Sex work will be a declared activity and regulated under the *Public and Environmental Health Act 2011* so that public and environment health standards will apply to sex work.

The new Act will enhance sex worker safety by allowing sex workers to work together and employ support staff, and enshrining a right for sex workers to refuse to perform sex work and not be penalised for that refusal. The new law will reinforce that children cannot participate in, or be used for, sex work and retains heavy penalties.

Under the new Act, the sex industry will have to operate in accordance with the laws of the Northern Territory and the Commonwealth as they apply generally. So laws relating to employment, occupational health and safety, discrimination and planning will apply to sex service businesses and sex workers.

An application to amend the Planning Scheme to provide for sex service businesses under planning law is before the Northern Territory Planning Commission. The application proposes to regulate sex service businesses under the Planning Scheme by providing requirements for businesses to operate in certain zones.

What is changing in 2020

Under the new Act, there will be no requirement for operators or managers to obtain a licence.

An operator, or nominee of an operator, of a sex services business with three or more sex workers will have to obtain a suitability certificate from the Commissioner of Consumer Affairs.

A suitability certificate will identify if the person is a suitable person to operate a sex services business. Assessment of suitability will consider matters such as the person's criminal history and compliance with occupational health and safety laws.

Individuals, whether working at premises by themselves as solo workers or with another worker, will no longer be required to obtain a licence and be on the private register of licensees.

Terminology changes in the new Act refer to the sex industry rather than prostitution. The term brothel is no longer used. Escort agency businesses are sex service businesses.

Sex workers will be able to conduct their business at the same premises where the sex work is arranged.

Under the 1992 Act, the planning laws do not apply. Currently, a lawful sex services business may operate in any location without consideration of the Planning Scheme.

If the application to amend the Planning Scheme is approved, the Planning Scheme will regulate where sex services businesses may operate.

Up to two sex workers may provide services from their residence. However the residence cannot be next to a kindergarten, school, childcare centre, or place of worship, or in a restricted development zone.

A sex services business with three or more sex workers will be able to operate a premises in an industrial zone without consent of the Development Consent Authority, or with consent in a central business or commercial zone. However the premises cannot be next to a kindergarten, school, childcare centre, or place of worship, or in any other zone.

The Development Consent Authority will have the ability to intervene in resolution of any issues associated with impact on local amenity, and could order a restriction on hours of operation if it affects local amenity.

The new Act establishes a review committee to assess and report on the impact of the new law. That committee will comprise community and industry representatives and public health and occupational health and safety experts.

What is not changing

- Adults may consensually engage in sex work.
- Sex workers can provide services from their residential premises.
- Sex services businesses can operate in industrial, central business or commercial zones.
- Restrictions on advertising of sex work and sex services businesses.