NORTHERN TERRITORY OF AUSTRALIA

SEX INDUSTRY ACT 2019

As in force at 12 June 2020

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 12 June 2020

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.

Commissioner, see section 4(1) of the *Consumer Affairs and Fair Trading Act 1990.*

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

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.

5 Application of Criminal Code

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

Note for section 4

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 Commissioner 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 Commissioner for a suitability certificate.

(2) The application must be accompanied by the prescribed fee.

(3) The Commissioner may issue a suitability certificate if the Commissioner 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 Commissioner revokes the certificate.

21 Revocation of suitability certificate

(1) The Commissioner may investigate whether or not a person is a suitable person to operate a sex services business if the Commissioner 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 Commissioner may either:

(a) revoke a suitability certificate if, in the Commissioner'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

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 Consequential amendments

Division 1 Child Protection (Offender Reporting and Registration) Act 2004

29 Act amended

This Division amends the *Child Protection (Offender Reporting and Registration) Act 2004*.

30 Schedule 2 amended (Class 2 offences)

Schedule 2, items 9 to 12

omit, insert

9. An offence against section 12 of the *Sex Industry Act 2019* (causing or allowing child to perform sex work or work in sex services business).

10. An offence against section 13 of the *Sex Industry Act 2019* (receiving payment from sex work by child).

11. An offence against section 14 of the *Sex Industry Act 2019* (agreeing to sex work by child).

Division 2 Commercial Passenger (Miscellaneous) Regulations 1992

31 Regulations amended

This Division amends the *Commercial Passenger (Miscellaneous) Regulations 1992*.

32 Schedule 3 amended (Disqualifying offences)

Schedule 3

omit

An offence against any of the following provisions of the *Prostitution Regulation Act 1992*:

1. Section 13 (Causing or inducing infant to take part in prostitution)

2. Section 14 (Allowing infant to take part in prostitution)

3. Section 15 (Obtaining payment in respect of prostitution services provided by infant)

4. Section 16 (Entering into agreement for provision of prostitution services by infant)

insert

An offence against any of the following provisions of the *Sex Industry Act 2019*:

1. Section 12 (Causing or allowing child to perform sex work or work in sex services business)

2. Section 13 (Receiving payment from sex work by child)

3. Section 14 (Agreeing to sex work by child)

Division 3 Criminal Records (Spent Convictions) Act 1992

33 Act amended

This Division amends the *Criminal Records (Spent Convictions) Act 1992*.

34 Section 15 amended (Exclusions in relation to spent convictions)

(1) Section 15(f)

omit

publication; or

insert

publication.

(2) Section 15(g)

omit

Division 4 Fines And Penalties (Recovery) Regulations 2001

35 Regulations amended

This Division amends the *Fines And Penalties (Recovery) Regulations 2001*.

36 Schedule 1 amended

Schedule 1

omit

Prostitution Regulation Act 1992

insert (in alphabetical order)

Sex Industry Act 2019

Division 5 Serious Sex Offenders Act 2013

37 Act amended

This Division amends the *Serious Sex Offenders Act 2013*.

38 Schedule 1 amended (Serious sex offences)

Schedule 1

omit

Prostitution Regulation Act

section 14	Allowing infant to take part in prostitution
section 15	Obtaining payment in respect of prostitution services provided by infant
section 16	Entering into agreement for provision of prostitution services by infant

insert

Sex Industry Act 2019

section 12	Causing or allowing child to perform sex work or work in sex services business
section 13	Receiving payment from sex work by child
section 14	Agreeing to sex work by child

Division 6 Repeal of Part

39 Repeal of Part

This Part is repealed on the day after it commences.

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

2 LIST OF LEGISLATION

***Sex Industry Act 2019* (Act No. 40, 2019)**

Assent date	13 December 2019
Commenced	12 June 2020 (*Gaz* S35, 11 June 2020)