



HUMAN TRAFFICKING WORKING GROUP

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PROSTITUTION OFFENCES, QUEENSLAND

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S 229H Criminal Code (Qld)	Knowingly participating in the provision of prostitution
Physical Elements	<ul style="list-style-type: none"> • Participating • Provision of prostitution by another
Mental Elements	<ul style="list-style-type: none"> • Knowledge
Exceptions/ Defences	<ul style="list-style-type: none"> • No offence where in a licensed brothel, in accordance with conditions, and person is adult and not a person with an impairment of the mind • No offence where prostitution activity is under adult entertainment permit, and person is adult and not a person with an impairment of the mind • No offence where a bodyguard, and person is adult and not a person with an impairment of the mind
Penalty	<ul style="list-style-type: none"> - 1st offence: max. 3 years imprisonment - 2nd offence: max. 5 years imprisonment - 3rd offence: max. 7 years imprisonment - Max. 14 years imprisonment where person in premises at time was not adult or was a person with an impairment of the mind

On October 13, 2008, the Minister announced the introduction of a new offence of “carrying on a business of prostitution” with a maximum penalty of seven years imprisonment, increasing to 14 years if it involves the prostitution of a mentally impaired person.⁵

1.2 Licensed brothels

Operators of licensed brothels may be criminally liable if they fail to comply with certain requirements of the *Prostitution Act 1999* (Qld). Under s 76 *Prostitution Act 1999* (Qld) it is an offence to cause unreasonable annoyance or disruption to the privacy of another person as a result of prostitution, in the vicinity of a place reasonably suspected of being used for prostitution.

S 76 Prostitution Act (Qld)	Nuisance connected with prostitution
Physical Elements	<ul style="list-style-type: none"> • Causing unreasonable annoyance to or unreasonable disruption of the privacy of another • Vicinity of a place reasonably suspected of being used for prostitution • Conduct is significantly caused by the presence or suspected presence of prostitution in that place
Mental Elements	<ul style="list-style-type: none"> • None
Penalty	<ul style="list-style-type: none"> - 1st or 2nd offence: max. 15 penalty units - 3rd or subsequent offence: max. 25 penalty units

Licensees are criminally liable if they fail to ensure the use of prophylactics by sex workers,⁶ or if they knowingly permit a sex worker to work if that person is infected with a sexually transmitted disease.⁷ A licensee/manager must also take reasonable steps to prevent the fact that a

⁵ Queensland, Prostitution Licensing Authority, “Government announces new measures for prostitution” (2008) 31 *In Touch*, *PLA Newsletter* 1.

⁶ Section 77A(6) *Prostitution Act 1999* (Qld).

⁷ Section 89 *Prostitution Act 1999* (Qld).

prostitute has been medically examined from being used to induce a client to believe the prostitute does not have STD's.⁸

S 77A(6) Prostitution Act (Qld)	Providing sexual intercourse or oral sex without a prophylactic
Physical Elements	<ul style="list-style-type: none"> • Licensee or approved manager • Failure to take reasonable steps to ensure sexual intercourse or oral sex are not provided or offered at the licensed brothel without the use of prophylactics, or discouraging the use of prophylactics
Mental Elements	<ul style="list-style-type: none"> • None
Penalty	- Max. 120 penalty units

S 89(1) Prostitution Act (Qld)	Permitting a sex worker with an infectious disease to work
Physical Elements	<ul style="list-style-type: none"> • Licensee or approved manager • Permitting a prostitute to work at a brothel • Prostitute is infective with a sexually transmissible disease (STD)
Mental Elements	<ul style="list-style-type: none"> • Knows that prostitute is infective with a STD
Penalty	- Max. 120 penalty units

S 89(4) Prostitution Act (Qld)	
Physical Elements	<ul style="list-style-type: none"> • Licensee or approved manager • Failing to take reasonable steps to prevent the fact that a prostitute has been medically examined, or the results of such an examination from being used to induce a client to believe the prostitute does not have a sexually transmissible disease
Mental Elements	<ul style="list-style-type: none"> • None
Exceptions/ Defences	<ul style="list-style-type: none"> • Licensee or approved manager proves that at the time the offence is alleged to have been committed, he/she believed on reasonably grounds that the prostitute had been medically examined/tested at intervals prescribed under the regulations and was not infected with a sexually transmissible disease
Penalty	- Max. 120 penalty units

Criminal offences relating to brothel licenses and advertising are set out in ss 78–87, 93 *Prostitution Act 1999* (Qld).

1.3 Pimping

Offences aimed at preventing pimping include s 229G *Criminal Code* (Qld). In short, this section makes it an offence to recruit another person into prostitution. It is an offence for a person to procure another person to leave Queensland, come to Queensland, or leave the person's usual residence wherever that may be, for the purpose of engaging in prostitution. Licensees and approved managers of licensed brothels are exempted from liability.

⁸ Section 89(4) *Prostitution Act 1999* (Qld).

S 229G <i>Criminal Code</i> (Qld)	Procuring another to engage in prostitution
Physical Elements	<ul style="list-style-type: none"> • Procures another person to engage in prostitution in Queensland or elsewhere; or • Procures another person: <ul style="list-style-type: none"> ○ To leave Queensland for the purpose of engaging in prostitution; or ○ To come to Queensland for the purpose of engaging in prostitution; or ○ To leave the person's usual place of residence in Queensland for the purpose of engaging in prostitution either in Queensland or elsewhere
Mental Elements	<ul style="list-style-type: none"> • None
Exceptions/ Defences	<ul style="list-style-type: none"> • No offence where a licensee or approved manager employs an adult who does not have an impairment of the mind, to work as a prostitute in a licensed brothel
Penalty	<ul style="list-style-type: none"> - Max. 7 years imprisonment - Max. 14 years imprisonment where the procured person is not an adult or has an impairment of the mind.

A person who knowingly participates, whether indirectly or directly, in the provision of prostitution by another, commits an offence under s 229H *Criminal Code* (Qld). This replaces the former offence of living off the earnings of prostitution. Exceptions apply for persons holding an adult entertainment permit that allows sexually explicit activity and for certified bodyguards.

S 229H <i>Criminal Code</i> (Qld)	Knowingly participating in the provision of prostitution
Physical Elements	<ul style="list-style-type: none"> • Participating • Provision of prostitution by another
Mental Elements	<ul style="list-style-type: none"> • Knowledge
Exceptions/ Defences	<ul style="list-style-type: none"> • No offence where in a licensed brothel, in accordance with conditions, and person is adult and not a person with an impairment of the mind • No offence where prostitution activity is under adult entertainment permit, and person is adult and not a person with an impairment of the mind • No offence where a bodyguard, and person is adult and not a person with an impairment of the mind
Penalty	<ul style="list-style-type: none"> - 1st offence: max. 3 years imprisonment - 2nd offence: max. 5 years imprisonment - 3rd offence: max. 7 years imprisonment - Max. 14 years imprisonment where a person in premises engaged in the provision of prostitution was at the time not an adult or had an impairment of the mind

Under s 77 *Prostitution Act 1999* (Qld), it is an offence to threaten or intimidate a person to continue to provide prostitution

S 77 Prostitution Act (Qld)	Duress
Physical Elements	<ul style="list-style-type: none"> • Making another continue to provide prostitution by: <ul style="list-style-type: none"> ○ Causing or threatening wilful injury to the person or anyone else; or ○ Causing or threatening wilful damage to property of the person or anyone else; or ○ Intimidating or harassing the person or anyone else; or ○ Making a false representation or using any false pretence or other fraudulent means
Mental Elements	<ul style="list-style-type: none"> • None
Penalty	- Max. 200 penalty units, or 7 years imprisonment

2. Offences for sex workers

Prostitution is not criminalised if it is carried out by a sole operator. Criminal liability for sex workers arises if two or more sex workers offers their services from the same premises (even at different times),⁹ unless that facility is a licensed brothel or the person has a reasonable excuse, s 229I *Criminal Code* (Qld). In *Kelsey v Hill* [1995] 1 Qd R 182 it was held that the purpose of this offence was to prevent the creation of unlicensed brothels, thus a person could not use the fact that it was not illegal for a person to provide prostitution, as a defence. A reasonable excuse also does not include an incorrect, albeit genuine belief that an act does not constitute a sexual act.¹⁰ It was however suggested in *R v Newcombe and Barns* [1996] 1 Qd R 323 that a person whose purpose in being in such a place was unrelated to the purpose of prostitution would have a reasonable excuse.

S 229I Criminal Code (Qld)	Persons found in places reasonably suspected of being used for prostitution
Physical Elements	<ul style="list-style-type: none"> • A person found in or leaving • A place suspected on reasonable grounds of being used for the purposes of prostitution by 2 or more prostitutes
Mental Elements	<ul style="list-style-type: none"> • None
Exceptions/ Defences	<ul style="list-style-type: none"> • The person has a reasonable excuse • No offence where brothel is licensed, unless to the offender's knowledge there was a person on premises at time who was not adult or intellectually impaired
Penalty	<ul style="list-style-type: none"> - 1st offence: max. 3 years imprisonment - 2nd offence: max. 5 years imprisonment - 3rd offence: max. 7 years imprisonment - Max. 14 years imprisonment where person in premises at time was not adult or is a person with an impairment of the mind

Sections 73–75 *Prostitution Act 1999* (Qld) create offences for publicly soliciting for the purposes of prostitution. Publicly soliciting means solicitation that occurs in a public place or in a place that can be viewed or heard by a person in a public place, or if the person loiters, for the purpose of soliciting, in or near a public place or a place that can be viewed from a public place.

⁹ *R v Newcombe and Barns* [1996] 1 Qd R 323.

¹⁰ *R v Newcombe and Barns* [1996] 1 Qd R 323.

According to a 2003 study, 75.8 percent of street based sex workers stated that they had been charged for soliciting offences.¹¹

Ss 73–75 Prostitution Act (Qld)	Public soliciting for the purposes of prostitution
Physical Elements	<ul style="list-style-type: none"> • For the purpose of prostitution, a person: <ul style="list-style-type: none"> ○ Solicits a person who is in a public place; or ○ Solicits a person at a place within the view or hearing of a person who is in a public place; or ○ Loiters in or near a public place; or ○ Loiters in a place that can be viewed from a public place; or
Mental Elements	<ul style="list-style-type: none"> • None
Exceptions/ Defences	<ul style="list-style-type: none"> • No offence where soliciting happens in a licensed brothel and cannot be viewed outside that brothel • No offence on part of police officer where committed by a police officer under <i>Police Powers and Responsibilities Act 2000</i> (Qld)
Penalty	<ul style="list-style-type: none"> - 1st offence: Max. 15 penalty units - 2nd offence: Max 25 penalty units - 3rd or subsequent offence: Max 30 penalty units or 6 months imprisonment

A number of offences arise if sex workers violate health and safety requirements set out in the *Prostitution Act 1999* (Qld). Specifically, it is unlawful for sex workers to provide or offer to provide prostitution involving sexual intercourse or oral sex without the use of a prophylactic,¹² or to work knowing he/she has contracted a sexually transmitted disease. A sex worker is taken to have known he/she is infective unless the person proves that he/she had been medically examined at intervals as prescribed under the regulations and he/she believed on reasonable grounds he/she was STD free. However, a sex worker must not use the fact that he/she has been medically examined or the results of such a test to induce a client to believe he/she is STD free, s 90 *Prostitution Act 1999* (Qld).

S 77A Prostitution Act (Qld)	Providing sexual intercourse or oral sex without a prophylactic
Physical Elements	<ul style="list-style-type: none"> • Prostitute • Providing or offering to provide sexual intercourse or oral sex without a prophylactic
Mental Elements	<ul style="list-style-type: none"> • None
Penalty	<ul style="list-style-type: none"> - Max. 100 penalty units

¹¹ Queensland, Prostitution Licensing Authority, *Selling Sex in Queensland 2003*, Brisbane (Qld): Prostitution Licensing Authority, 2004, 38.

¹² Section 77A *Prostitution Act 1999* (Qld).

S 90 Prostitution Act (Qld)	Working while infective with an STD
Physical Elements	<ul style="list-style-type: none"> • Prostitute • Working at a licensed brothel
Mental Elements	<ul style="list-style-type: none"> • Knowing he/she is infective with a sexually transmissible disease
Exceptions/ Defences	<ul style="list-style-type: none"> • Prostitute proves that at the time the offence is alleged to have been committed, he/she was medically examined/tested at intervals prescribed under the regulations and believed on reasonable grounds he/she was not infected with a sexually transmissible disease.
Penalty	- Max. 100 penalty units

S 90(4) Prostitution Act (Qld)	Claiming to be STD free
Physical Elements	<ul style="list-style-type: none"> • Prostitute • For the purposes of prostitution • Inducing a client to believe that he/she is not infective with a sexually transmissible disease on the basis of medical tests
Mental Elements	<ul style="list-style-type: none"> • None
Penalty	- Max. 40 penalty units

3. Offences for clients

Clients using the service of a sole operator or visiting licensed brothels are not criminal offences. Liability will arise if a client visits an unlicensed brothel, i.e. premises used for prostitution by two or more sex workers, s 229I *Criminal Code* (Qld), or if they publicly solicit for prostitution, ss 73–75 *Prostitution Act* (Qld).

S 229I Criminal Code (Qld)	Persons found in places reasonably suspected of being used for prostitution
Physical Elements	<ul style="list-style-type: none"> • A person found in or leaving a place suspected on reasonable grounds of being used for the purposes of prostitution by 2 or more prostitutes
Mental Elements	<ul style="list-style-type: none"> • None
Exceptions/ Defences	<ul style="list-style-type: none"> • No offence where brothel is licensed, unless to the offender's knowledge there was a person on premises at time who was not adult or intellectually impaired
Penalty	<ul style="list-style-type: none"> - 1st offence: max. 3 years imprisonment - 2nd offence: max. 5 years imprisonment - 3rd offence: max. 7 years imprisonment - Max. 14 years imprisonment where person in premises at time was not adult or is a person with an impairment of the mind

Ss 73–75 Prostitution Act (Qld)	Public soliciting for the purposes of prostitution
Physical Elements	<ul style="list-style-type: none"> • For the purpose of prostitution, a person: <ul style="list-style-type: none"> ○ Solicits a person who is in a public place; or ○ Solicits a person at a place within the view or hearing of a person who is in a public place; or ○ Loiters in or near a public place; or ○ Loiters in a place that can be viewed from a public place
Mental Elements	<ul style="list-style-type: none"> • None
Exceptions/ Defences	<ul style="list-style-type: none"> • No offence where soliciting happens in a licensed brothel and cannot be viewed outside that brothel • No offence on part of police officer where committed by a police officer under <i>Police Powers and Responsibilities Act 2000</i> (Qld)
Penalty	<ul style="list-style-type: none"> - 1st offence: Max. 15 penalty units - 2nd offence: Max 25 penalty units - 3rd or subsequent offence: Max 30 penalty units or 6 months imprisonment

To protect the health and safety of sex workers and prevent the spread of sexually transmitted diseases, clients must not request unsafe sex practices. Specifically, it is an offence for a person to ask, accept, or actually obtain prostitution involving sexual intercourse or oral sex without the use of a prophylactic. It is also an offence for clients to interfere with the efficacy of a prophylactic used by a prostitute, or continue to use a prophylactic which the client knows or could reasonably be expected to know to be damaged, s 77A *Prostitution Act* (Qld).

S 77A (3) Prostitution Act (Qld)	Receiving prostitution services without a prophylactic
Physical Elements	<ul style="list-style-type: none"> • Asking, obtaining or accepting prostitution involving sexual intercourse or oral sex without the use of a prophylactic
Mental Elements	<ul style="list-style-type: none"> • None
Penalty	<ul style="list-style-type: none"> - Max. 100 penalty units

S 77A (4) Prostitution Act (Qld)	Interfering with a prophylactic
Physical Elements	<ul style="list-style-type: none"> • Interfering with the efficacy of a prophylactic used by the person; or • Using a prophylactic that is damaged
Mental Elements	<ul style="list-style-type: none"> • Knowing or is reasonably expected to know prophylactic is damaged
Penalty	<ul style="list-style-type: none"> - Max. 100 penalty units