

Western Australia

Prostitution Amendment Act 2008

As at 14 Apr 2008

No. 13 of 2008

Extract from www.slp.wa.gov.au, see that website for further information

Prostitution Amendment Act 2008

CONTENTS

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Prostitution Act 2000</i> amended		
3.	The Act amended	3
4.	Section 1 amended	3
5.	Section 3 amended	3
6.	Section 4 amended	6
7.	Section 4A inserted	6
	4A. Delegation	6
8.	Part 2 heading amended	6
9.	Section 7 amended	7
10.	Section 8 replaced by sections 8 and 8A	8
	8. Minimising risk of acquiring or transmitting prescribed infection or virus	8
	8A. Prohibition on certain commercial sexual acts if infected	8
11.	Section 9 amended	9
12.	Section 10 amended	9
13.	Section 10A inserted	9
	10A. Restrictions on advertising commercial sexual acts	9
14.	Sections 13A and 13B inserted	10
	13A. Refusal to take part in commercial sexual act	10

Contents

	13B.	Refusal to work as sex worker does not affect entitlements	11
15.		Part 2 Division 2 heading replaced	11
16.		Section 14 amended	11
17.		Section 17 amended	11
18.		Section 20 amended	12
19.		Section 21 amended	12
20.		Section 21A and Part 3A inserted	12
	21A.	Obligations, in relation to children, of those who operate sexual service business	12
		Part 3A — Sexual service business	
		Division 1 — Requirement for certificate	
	21B.	Those who must hold a certificate	14
		Division 2 — Manager's or operator's certificate	
	21C.	Who may apply for a certificate or renewal	14
	21D.	Application	15
	21E.	Further information relevant to application	15
	21F.	Report and information provided by Commissioner of Police	16
	21G.	Restrictions on who can have a certificate	17
	21H.	Duration of certificate	18
	21I.	Register of certificate holders	19
	21J.	Inspection of register	19
	21K.	Certificate	20
	21L.	Display of certificate by operator or manager	20
		Division 3 — Suspension or revocation of certificate	
	21M.	Powers of CEO	21
	21N.	Suspension or revocation of a certificate	23
		Division 4 — Conducting a sexual service business	
	21O.	Operator or manager must be present	24
	21P.	Sex worker must be an employee or contractor	24
	21Q.	Sexual service business not to operate at or from licensed premises	25
	21R.	One small owner-operated business to operate from premises	25
		Division 5 — Protection of sex workers and clients	
	21S.	Obligations of operators and managers	25
	21T.	Prevention of penetrative sex if infected	26
	21U.	Prophylactic sheath to be provided for use	27
		Division 6 — Powers of entry	
	21V.	Entry by police officer for certain purposes	27

	Division 7 — Review by State Administrative Tribunal	
	21W. Review	28
	Division 8 — Planning and development controls	
	21X. Approvals for existing well managed places	29
	21Y. Other places	30
	Division 9 — Offences	
	21Z. False or misleading information	31
	21ZA. Offences in relation to determination under section 21M	32
	21ZB. Incriminating information, questions or documents	33
	21ZC. Obstruction of police officer	33
	21ZD. CEO to be notified of certain matters	34
21.	Section 26 amended	35
22.	Section 56 amended	35
23.	Section 57 amended	36
24.	Section 58 amended	36
25.	Sections 59A and 60 inserted	36
	59A. Liability of operator for offence by manager	36
	60. Review of Act	36
26.	Schedule 2 inserted	37
	Schedule 2 — Offences relevant to granting a certificate	
27.	Various references to prostitute changed to sex worker	38
28.	Various references to prostitute's changed to sex worker's	39
	Part 3 — Other Acts amended	
29.	<i>Community Protection (Offender Reporting) Act 2004</i> amended	40
30.	<i>The Criminal Code</i> amended	40
31.	<i>Evidence Act 1906</i> amended	40
32.	<i>Liquor Control Act 1988</i> amended	42
33.	<i>Nurses and Midwives Act 2006</i> amended	42
34.	<i>Western Australian College of Teaching Act 2004</i> amended	42
35.	<i>Working with Children (Criminal Record Checking) Act 2004</i> amended	43
36.	<i>Young Offenders Act 1994</i> amended	44



Western Australia

Prostitution Amendment Act 2008

No. 13 of 2008

An Act to amend —

- **the *Prostitution Act 2000*; and**
- **certain other Acts as a consequence; and**
- **the *Liquor Control Act 1988*.**

[Assented to 14 April 2008]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Prostitution Amendment Act 2008*.

2. Commencement

This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Prostitution Act 2000* amended

3. The Act amended

The amendments in this Part are to the *Prostitution Act 2000*.

4. Section 1 amended

Section 1 is amended by deleting “*Prostitution Act*” and inserting instead —

“ *Sexual Services Act* ”.

5. Section 3 amended

(1) Section 3 is amended as follows:

- (a) in the definition of “client” by deleting “given to that term in” and inserting instead —
“ it has under ”;
- (b) after the definition of “public place” by deleting the full stop and inserting a semicolon instead;
- (c) by deleting the definitions of “act as a prostitute”, “act of prostitution”, “prostitute” and “prostitution”.

(2) Section 3 is amended by inserting in the appropriate alphabetical positions —

“

“**act as a sex worker**” means to take part, as a sex worker, in a commercial sexual act;

“**CEO**” means the chief executive officer of the Department;

“**certificate**” means a certificate issued or renewed under section 21G;

“**certificate holder**” means the holder of a manager’s certificate or an operator’s certificate;

“**commercial sexual act**” has the meaning it has under section 4;

“Department” means the department of the Public Service principally assisting the Minister in the administration of Part 3A of this Act;

“incapable person” means a person who, because of intellectual disability, mental illness, brain damage or senility, is incapable —

- (a) of understanding the nature and effect of a commercial sexual act; or
- (b) of guarding himself or herself against sexual exploitation;

“individual sex worker” means a person who solely owns and carries on a sexual service business —

- (a) involving the provision of a commercial sexual act by that person only; and
- (b) where that person has full control over his or her individual earnings from taking part in commercial sexual acts;

“manage”, in relation to a sexual service business, means undertake the immediate management, direction or control of the conduct of the sexual service business;

“manager” means a person who holds a manager’s certificate;

“officer”, in relation to a proprietary company, means —

- (a) a director or secretary of the company; or
- (b) a person who exercises or exerts control or influence over the company, or is in a position to do so; or
- (c) a person who is a shareholder of the company;

“operate”, in relation to a sexual service business,
means —

- (a) whether alone or with others, own, operate or carry on the sexual service business; or
- (b) employ, supervise or direct any person who undertakes the immediate management, direction or control of the conduct of the sexual service business; or
- (c) exercise or exert, or be in a position to exercise or exert, control or substantial influence over the manner in which the sexual service business is conducted;

“operator” means a person who holds an operator’s certificate;

“proprietary company” has the meaning given to that term in the Commonwealth *Corporations Act 2001* section 9;

“register” means the register referred to in section 21I;

“sexual service business” means the business of providing, or arranging the provision of, a commercial sexual act;

“sex worker” has the meaning it has under section 4;

“small owner-operated business” means a sexual service business —

- (a) in which not more than 2 sex workers work; and
- (b) where each of those sex workers has full control over his or her individual earnings from taking part in commercial sexual acts.

”.

6. Section 4 amended

Section 4 is amended as follows:

- (a) by deleting “prostitution it means prostitution” and inserting instead —
“ a commercial sexual act it means a sexual act ”;
- (b) by deleting “prostitute” and inserting instead —
“ **sex worker** ”.

7. Section 4A inserted

After section 4 the following section is inserted in Part 1 —

“

4A. Delegation

- (1) The CEO may delegate to a person any power or duty of the CEO under another provision of this Act.
- (2) The delegation must be in writing signed by the CEO.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the CEO to perform a function through an officer or agent.

”.

8. Part 2 heading amended

The heading to Part 2 is amended by deleting “prostitution” and inserting instead —

“ **commercial sexual acts** ”.

9. Section 7 amended

Section 7(1) is amended as follows:

(a) after paragraph (d) by inserting —

“

(da) use any power or authority arising out of —

(i) any occupational or vocational position held by the person; or

(ii) any relationship existing between the person and anyone;

or

(db) make an accusation or disclosure (whether true or false) —

(i) of any offence committed by anyone; or

(ii) of any other misconduct that is likely to damage seriously the reputation of anyone; or

(iii) that anyone is unlawfully in Australia;

or

”;

(b) by deleting “prostitute.” and inserting instead —

“

sex worker or to surrender the proceeds of acting as a sex worker.

”;

(c) after each of paragraphs (a), (b) and (c) by inserting —

“ or ”.

10. Section 8 replaced by sections 8 and 8A

Section 8 is repealed and the following sections are inserted instead —

“

8. Minimising risk of acquiring or transmitting prescribed infection or virus

- (1) A person must not take part in a commercial sexual act without using a prophylactic that is appropriate for preventing the transmission of bodily fluid from one person to another.
- (2) A person must not, for the purpose of taking part in a commercial sexual act, state or imply that a medical examination of that person means that he or she is not infected, or likely to be infected, with a prescribed infection or virus.
- (3) A person who takes part in a commercial sexual act must take all other reasonable steps to minimise the risk of acquiring or transmitting a prescribed infection or virus.

Penalty: a fine of \$10 000.

8A. Prohibition on certain commercial sexual acts if infected

A person must not take part in a commercial sexual act involving vaginal, anal or oral penetration, including cunnilingus, if he or she has a prescribed infection or virus.

Penalty:

- (a) for a first offence, a fine of \$20 000;
- (b) for a second or subsequent offence, imprisonment for three years.

”.

11. Section 9 amended

Section 9(b) is amended by deleting “any business involving the provision of prostitution.” and inserting instead —

“ a sexual service business. ”.

12. Section 10 amended

Section 10(1)(b) is deleted and the following paragraph is inserted instead —

“

(b) any sexual service business,

”.

13. Section 10A inserted

After section 10 the following section is inserted —

“

10A. Restrictions on advertising commercial sexual acts

(1) A person must not advertise a commercial sexual act or authorise the advertising of a commercial sexual act other than through —

(a) a newspaper or periodical —

(i) in the classified advertisements section of the newspaper or periodical; and

(ii) in a prescribed manner (if any);

or

(b) the computer network known as the internet in a prescribed manner (if any).

Penalty: a fine of \$50 000.

(2) An advertisement for a sexual service business that is not a small owner-operated business must carry the certificate number of an operator or manager of the business providing the advertised service.

s. 14

- (3) A commercial sexual act is advertised through the computer network known as the internet if an advertisement for the act is sent, or made accessible through, the network or any part of it.
- (4) In this section —
“**advertise**” means advertise by any words, or any pictorial or other representation, used to notify the availability of, or promote the provision of, a commercial sexual act, either generally or specifically.

”.

14. Sections 13A and 13B inserted

After section 13 the following sections are inserted in Part 2 Division 1 —

“

13A. Refusal to take part in commercial sexual act

- (1) Despite anything in a contract to take part in a commercial sexual act, a person may, at any time, refuse to take part in, or to continue to take part in, a commercial sexual act.
- (2) The fact that a person has entered into a contract to take part in a commercial sexual act does not of itself constitute consent for the purposes of the criminal law if he or she does not consent, or withdraws his or her consent, to taking part in a sexual act.
- (3) Nothing in this section affects a right (if any) to rescind or cancel, or to recover damages for, a contract for taking part in a commercial sexual act that is not undertaken.

13B. Refusal to work as sex worker does not affect entitlements

- (1) A person's entitlements under the *Workers' Compensation and Injury Management Act 1981* may not be lost or affected in any way by his or her being capable of working as a sex worker if he or she refuses to do, or to continue to do, that kind of work.
- (2) In this section —
“**refuse**” means refuse to take part in commercial sexual acts in general, rather than a refusal to take part in a particular commercial sexual act or at a particular time.

”.

15. Part 2 Division 2 heading replaced

The heading to Part 2 Division 2 is deleted and the following heading is inserted instead —

“ **Division 2 — Sex workers** ”.

16. Section 14 amended

The penalty provision at the foot of section 14 is repealed and the following penalty is inserted instead —

“

Penalty applicable to paragraph (a): a fine of \$6 000;

Penalty applicable to paragraphs (b) and (c):

Imprisonment for 2 years.

”.

17. Section 17 amended

- (1) Section 17(1) is amended by deleting “an act of prostitution,” and inserting instead —

“ a commercial sexual act, ”.

s. 18

- (2) Section 17(3) is amended by deleting “prostitution.” and inserting instead —

“ a commercial sexual act. ”.

18. Section 20 amended

- (1) Section 20(1) is amended by deleting “an act of prostitution” and inserting instead —

“ a commercial sexual act ”.

- (2) Section 20(2) is amended by deleting “act of prostitution” and inserting instead —

“ commercial sexual act ”.

19. Section 21 amended

Section 21(a) and (b) and “or” after paragraph (a) are deleted and the following is inserted instead —

“

- (a) a commercial sexual act is or may be taking place; or
- (b) a sexual service business other than a sexual service business being carried on by an individual sex worker is being carried on,

”.

20. Section 21A and Part 3A inserted

Before Part 4 the following is inserted —

“

21A. Obligations, in relation to children, of those who operate sexual service business

- (1) A person who operates a sexual service business must ensure that a child is not employed or engaged as a sex worker in the business.

- (2) An offence under subsection (1) is a crime.
Penalty: Imprisonment for 5 years.
Summary conviction penalty: Imprisonment for 3 years.
- (3) A person who manages or operates a sexual service business must ensure that no child is present at a place at or from which the business is carried on.
Penalty:
(a) for a first offence, a fine of \$24 000;
(b) for a second or subsequent offence, imprisonment for 3 years.
- (4) A person who operates a sexual service business must not employ or engage a person as a sex worker in the business unless that person provides evidence to the person operating the business that the person is not a child by one of the following means that bears a photograph of the person and indicates by reference to the person's date of birth or otherwise that the person has reached 18 years of age —
(a) a current passport;
(b) a current Australian driver's licence;
(c) a prescribed document.
Penalty:
(a) for a first offence, a fine of \$24 000;
(b) for a second or subsequent offence, imprisonment for 3 years.
- (5) A person who receives evidence under subsection (4) must —
(a) make a copy of the evidence; and
(b) make a record of when the evidence was provided and to whom the evidence was provided; and

- (c) keep the copy of the evidence and the record for a period of 3 years from the day on which the evidence was copied or the record made.

Penalty:

- (a) for a first offence, a fine of \$24 000;
- (b) for a second or subsequent offence, imprisonment for 3 years.

Part 3A — Sexual service business

Division 1 — Requirement for certificate

21B. Those who must hold a certificate

- (1) A person must not operate a sexual service business unless that person holds an operator's certificate.

Penalty: Imprisonment for 3 years.

- (2) A person must not manage a sexual service business unless that person —
 - (a) holds a manager's certificate; or
 - (b) is an individual who holds an operator's certificate.

Penalty: Imprisonment for 3 years.

- (3) Subsections (1) and (2) do not apply to an individual sex worker or a small owner-operated business.

Division 2 — Manager's or operator's certificate

21C. Who may apply for a certificate or renewal

- (1) An applicant for a manager's certificate or for the renewal of a manager's certificate must be an individual.
- (2) An applicant for an operator's certificate or for the renewal of an operator's certificate must be an

individual or a proprietary company, the shareholders of which are all individuals.

21D. Application

An application for a manager's or operator's certificate or the renewal of such a certificate must —

- (a) be made to the CEO in a form approved by the CEO; and
- (b) be accompanied by any document or information specified in the form for either or both of the following —
 - (i) verifying the background and reputation of the applicant;
 - (ii) relating to a matter referred to in section 21G;

and

- (c) in the case of an application for an operator's certificate, state the name and address of any other person with whom the applicant will operate a sexual service business; and
- (d) in the case of an application for an operator's certificate, the location of the place at or from which the applicant's sexual service business is to be carried on; and
- (e) be accompanied by the prescribed fee (if any).

21E. Further information relevant to application

- (1) An applicant for a certificate or the renewal of a certificate must provide the CEO with any additional document or information that the CEO requires, in any particular case, that is or could be relevant to making a decision on the application.

Penalty: a fine of \$6 000.

- (2) If the CEO requires under subsection (1) that an additional document or information be provided, the CEO does not have to consider the application, or consider it further, until the applicant complies with the requirement.

21F. Report and information provided by Commissioner of Police

- (1) The CEO must send a copy of the application to the Commissioner of Police for a report on the eligibility of the applicant for a certificate or the renewal of a certificate.
- (2) The Commissioner of Police must provide a report to the CEO within 4 weeks of receipt of the copy of the application or such longer period as is agreed between the Commissioner and the CEO.
- (3) The Commissioner of Police may in writing direct the CEO not to communicate or divulge to any other person any information to which this subsection applies and specified in the direction that the Commissioner considers —
 - (a) might prejudice the safety of a person; or
 - (b) might prejudice the effectiveness of an investigation or the prosecution of a person for an offence; or
 - (c) might reveal the identity of an informant; or
 - (d) might reveal confidential police practices or methodology; or
 - (e) might otherwise be contrary to the public interest.
- (4) Subsection (3) applies to the following information —
 - (a) information in a report provided under subsection (2);

- (b) information otherwise provided to the CEO by the Commissioner of Police about a manager, operator or the operation of a sexual service business.
- (5) Subject to the *State Administrative Tribunal Act 2004* section 24, the CEO must comply with the direction.
- (6) Subsections (3) and (5) apply despite the *Freedom of Information Act 1992*.

21G. Restrictions on who can have a certificate

- (1) The CEO may issue a certificate to, or renew the certificate of, an applicant if satisfied that the applicant —
 - (a) is an individual who has reached 18 years of age; and
 - (b) has no charge pending of an alleged offence under the law of this State, the Commonwealth, another State or a Territory that involves an act of violence against the person or involves a victim who was a child or incapable person; and
 - (c) has not been declared under the *Misuse of Drugs Act 1981* section 32A to be a drug trafficker; and
 - (d) has not been found guilty of an offence described in Schedule 2; and
 - (e) has not been found guilty of an offence under the law of the Commonwealth, another State or a Territory, that the CEO considers to be substantially similar to an offence described in Schedule 2; and
 - (f) has not been convicted, in this or another State or a Territory, of any indictable offence, including an offence under a law of the

Commonwealth, any other State or a Territory, that is triable by jury that the CEO considers would make it inappropriate for the CEO to issue the certificate; and

- (g) has not had a certificate issued under this Act to the applicant revoked within the period of 5 years before the application is made; and
 - (h) is not the subject of a violence restraining order within the meaning given in the *Restraining Orders Act 1997* section 3; and
 - (i) is otherwise of good character and is a fit and proper person to hold a certificate; and
 - (j) is ordinarily resident in Western Australia and —
 - (i) is permanently resident in Australia; or
 - (ii) is an Australian citizen;and
 - (k) complies with any other prescribed matter.
- (2) If an application for an operator's certificate or the renewal of an operator's certificate is made by a proprietary company, the CEO may issue a certificate or renew the certificate if satisfied, with respect to each person who is an officer of the company, of any matter referred to in subsection (1)(a) to (k) of which the CEO would need to be satisfied if that person were the applicant.

21H. Duration of certificate

- (1) A certificate may be issued or renewed for a period not exceeding one year.
- (2) The duration of a certificate must be stated in the certificate.

- (3) If a certificate is renewed after, but within 28 days of, the day on which it expired, the renewal is to be taken for all purposes to have taken effect on the day immediately after the day on which the certificate expired.

21I. Register of certificate holders

The CEO is to keep an accurate and up-to-date register of all present and former certificate holders in such manner and form as the CEO determines and in respect of each certificate holder is to record —

- (a) the name of the certificate holder; and
- (b) the business, or other, address of the certificate holder; and
- (c) in the case of an operator, the name and address of any other person with whom the operator operates the operator's sexual service business; and
- (d) in the case of an operator, the location of the place at or from which the operator's sexual service business is being carried on; and
- (e) details of the suspension or revocation of a certificate of the certificate holder under section 21N; and
- (f) such other information, if any, as is prescribed by the regulations.

21J. Inspection of register

- (1) The register must be available for inspection by an officer during normal office hours.
- (2) The register may be made available electronically for inspection by an officer.

- (3) An officer may, on application to the CEO in respect of the register or an entry in the register, and payment of the fee prescribed by the regulations, if any, obtain a certified copy of the register or the entry.
- (4) No fee is payable under subsection (3) if the application is made by a police officer for the purpose of performing a function of a police officer under this Act.
- (5) In this section —
“**officer**” means —
 - (a) a police officer; or
 - (b) a person of a class specified in the regulations for the purposes of this definition.

21K. Certificate

- (1) A certificate that is issued or renewed is to contain prescribed particulars.
- (2) The CEO must give the certificate holder a new certificate if the CEO renews a certificate.
- (3) The CEO may, on payment of the prescribed fee, if any, issue a certified copy of a certificate to the holder of the certificate.

21L. Display of certificate by operator or manager

- (1) A manager of a sexual service business that is being carried on at or from a place must ensure that the manager’s current certificate or a certified copy of the certificate is displayed at the place when the manager is managing the business so that it is visible to a person on entering the place.

Penalty: a fine of \$12 000.

- (2) An operator of a sexual service business that is being carried on at or from a place must ensure that the current certificate of every operator of the business or a certified copy of the certificate is displayed at the place so that it is visible to a person on entering the place.

Penalty: a fine of \$12 000.

- (3) A person must not alter or deface a certificate.

Penalty: a fine of \$12 000.

Division 3 — Suspension or revocation of certificate

21M. Powers of CEO

- (1) The CEO may for the purposes of determining whether or not a certificate should be suspended or revoked —
- (a) require a person to produce to the CEO any document or other thing concerning the determination that is in the possession or under the control of the person; and
 - (b) inspect any document or other thing produced to the CEO and retain it for such reasonable period as the CEO thinks fit, and make copies of a document or any of its contents; and
 - (c) require a person —
 - (i) to give the CEO such information as the CEO requires; and
 - (ii) to answer any question put to that person,in relation to the determination.
- (2) A requirement made under subsection (1)(a) —
- (a) must be made by notice in writing given to the person required to produce the document or other thing; and

- (b) must specify the time at or within which the document or other thing is to be produced; and
 - (c) may, by its terms, require that the document or other thing required be produced at a place and by means specified in the requirement; and
 - (d) where the document required is not in a readable format, is to be treated as a requirement to produce —
 - (i) the document itself; and
 - (ii) the contents of the document in a readable format.
- (3) A requirement made under subsection (1)(c) —
- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be; and
 - (b) must specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
 - (c) may, by its terms, require that the information or answer required —
 - (i) be given orally or in writing; or
 - (ii) be given at or sent or delivered to a place specified in the requirement; or
 - (iii) in the case of written information or answers be sent or delivered by means specified in the requirement; or
 - (iv) be verified by statutory declaration.
- (4) If under subsection (1)(a) the CEO requires a person to produce any document or other thing concerning the determination that is in the possession or under the control of the person, the CEO is to inform that person

that the person is required under this Act to produce the document or thing.

- (5) If under subsection (1)(c) the CEO requires a person to give information or answer a question, the CEO is to inform that person that the person is required under this Act to give the information or answer the question.

21N. Suspension or revocation of a certificate

- (1) The CEO may by notice given to a certificate holder revoke the holder's certificate if —
 - (a) the CEO —
 - (i) is no longer satisfied as to any matter about which the CEO would be required to be satisfied before issuing the certificate; or
 - (ii) comes to know of any other matter that would prevent the CEO from issuing the certificate if an application were only then being made for it;
 - and
 - (b) the CEO has informed the certificate holder that the CEO is considering revoking the certificate and given the certificate holder a reasonable opportunity to be heard or make written representations.
- (2) The CEO may by notice given to a certificate holder suspend the holder's certificate for a period specified in the notice if the CEO has informed the certificate holder that the CEO is considering suspending or revoking the certificate, as is applicable to the case, and given the certificate holder a reasonable opportunity to be heard or make written representations.

Division 4 — Conducting a sexual service business

21O. Operator or manager must be present

- (1) A person who operates a sexual service business at or from a place must ensure that an operator of the business who is an individual or a manager of the business is present at the place at all times during which the business is being carried on at or from the place.

Penalty:

- (a) for a first offence, a fine of \$24 000;
 - (b) for a second or subsequent offence, imprisonment for 3 years.
- (2) Subsection (1) does not apply to an individual sex worker or a small owner-operated business.

21P. Sex worker must be an employee or contractor

- (1) A person who manages or operates a sexual service business must ensure that a person does not act as a sex worker in the business unless —
 - (a) the person has entered into a contract of service with, or been engaged to work for the purposes of the business under a contract for service by, a person who operates the business; and
 - (b) whenever acting as a sex worker in the business, the person is acting in the course of the person's employment or engagement under that contract.

Penalty: a fine of \$50 000.

- (2) This section applies to a person who acts as a sex worker in a sexual service business whether or not the person is also an individual sex worker.
- (3) Subsection (1) does not apply to an individual sex worker or a small owner-operated business.

21Q. Sexual service business not to operate at or from licensed premises

A person must not operate a sexual service business at or from licensed premises within the meaning given in the *Liquor Control Act 1988* section 3(1).

Penalty: a fine of \$50 000.

21R. One small owner-operated business to operate from premises

A person must not operate a small owner-operated business at or from premises at or from which another sexual service business is operating.

Penalty: a fine of \$50 000.

Division 5 — Protection of sex workers and clients**21S. Obligations of operators and managers**

- (1) A person who manages or operates a sexual service business must —
 - (a) take all reasonable steps to ensure that a sex worker employed or engaged by the business does not take part in a commercial sexual act unless a prophylactic sheath or other appropriate barrier is used if the act involves vaginal, anal or oral penetration or another activity with a similar or greater risk of acquiring or transmitting a prescribed infection or virus; and
 - (b) take all reasonable steps to give health information (whether oral or written) to sex workers and clients of the business; and
 - (c) display health information prominently in any place at or from which the business is carried on; and

- (d) not state or imply that a medical examination of a sex worker employed or engaged by the business means that the sex worker is not infected, or likely to be infected, with a prescribed infection or virus; and
- (e) take all other reasonable steps to minimise the risk of a sex worker employed or engaged by or a client of the business acquiring or transmitting a prescribed infection or virus; and
- (f) display information prominently in any place at or from which the business is carried on regarding the right of a sex worker to refuse to take part in, or continue to take part in, a sexual act.

Penalty: a fine of \$12 000.

- (2) In this section —
“**health information**” means information on sex practices and services for the prevention and treatment of a prescribed infection or virus.

21T. Prevention of penetrative sex if infected

- (1) A person who manages or operates a sexual service business must not permit or encourage a person to act as a sex worker and engage in acts involving vaginal, anal or oral penetration, including cunnilingus, if the first-mentioned person knows, or could reasonably be expected to know, that the person has a prescribed infection or virus.

Penalty: Imprisonment for 2 years.

- (2) A person charged with an offence under subsection (1) has a defence if it is proved that the person exercised all due diligence as ought to have been exercised having regard to the nature of the person’s functions and to all the circumstances to prevent a person whom the person charged knows, or could reasonably be

expected to know, has a prescribed infection or virus from acting as a sex worker in the sexual service business.

21U. Prophylactic sheath to be provided for use

A person who manages or operates a sexual service business must give a prophylactic sheath free of charge to a client and a sex worker for use when taking part in a commercial sexual act at the sexual service business.

Penalty: a fine of \$12 000.

Division 6 — Powers of entry

21V. Entry by police officer for certain purposes

- (1) If a police officer has a reasonable suspicion —
- (a) that a place is not a residence; and
 - (b) that a sexual service business that is not a small owner-operated business is being carried on at or from the place,

the officer may enter the place to ensure that —

- (c) an operator or a manager of the business has a certificate; or
 - (d) an operator or a manager of the business is present at the place; or
 - (e) a certificate or a certified copy of the certificate of an operator or a manager of the business is displayed at the place so that it is visible to a person on entering the place.
- (2) If a police officer enters a place under subsection (1), the police officer may require a person apparently operating or managing a sexual service business at or from the place to give the officer his or her name and address and provide proof of his or her identity.

Division 7 — Review by State Administrative Tribunal

21W. Review

- (1) A person who is aggrieved by a decision of the CEO —
 - (a) to refuse to issue or renew a certificate; or
 - (b) to suspend or revoke a certificate,may apply to the State Administrative Tribunal for a review of the decision.
- (2) The Commissioner of Police is a party to a review.
- (3) Despite the *State Administrative Tribunal Act 2004* section 61, if information is specified in a direction under section 21F(3), the CEO or the Commissioner of Police may apply to the State Administrative Tribunal for an order that the information is not to be disclosed to the applicant, the applicant's representative or any other person.
- (4) The Tribunal is to make an order under subsection (3) if it is satisfied that disclosure of the information —
 - (a) might prejudice the safety of a person; or
 - (b) might prejudice the effectiveness of an investigation or the prosecution of a person for an offence; or
 - (c) might reveal the identity of an informant; or
 - (d) might reveal confidential police practices or methodology; or
 - (e) might otherwise be contrary to the public interest.
- (5) The *State Administrative Tribunal Act 2004* section 61(3) applies to an order under subsection (4) as if a reference in section 61(3) to subsection (2) were a reference to subsection (4) of this section.

- (6) An application under subsection (3) may be made without notice to the applicant and may be heard and determined in the absence of the applicant.
- (7) The hearing by the Tribunal of an application under subsection (3) is not to be held in public and the Tribunal may order that no person is to be in the room or place without the Tribunal's permission.
- (8) For the purposes of the *State Administrative Tribunal Act 2004*, information in respect of which an order is made under subsection (4) is protected matter.

Division 8 — Planning and development controls

21X. Approvals for existing well managed places

- (1) If land was being used for the purpose of a sexual service business (other than a small owner-operated business) immediately before 12 September 2006 and continued to be used for that purpose up to and including the day on which the *Prostitution Amendment Act 2008* section 1 came into operation, the use of the land, subject to the approval of the CEO, for that purpose is a use permitted by the planning scheme or interim development order relating to the land.
- (2) An application for the approval of the CEO under subsection (1) is to be made in the prescribed manner.
- (3) In considering an application for approval under subsection (1) the CEO is to liaise with the local government of the district in which the land is located and the Commissioner of Police and is to have regard to —
 - (a) whether the manner of the use of the land for the business has been the subject of complaints before 12 September 2006 from residents or occupiers in the area; and

- (b) whether the operation of the business causes, or is likely to cause, a disturbance in the neighbourhood when taking into account the number of sex workers working in the business, its hours of operation, the noise and vehicular and pedestrian traffic; and
 - (c) whether the operation of the business interferes, or is likely to interfere, with the amenity of the neighbourhood.
- (4) The CEO is to give approval under subsection (1) unless, after having regard to the matters referred to in subsection (3), the CEO is satisfied that the business is not being managed appropriately.

21Y. Other places

- (1) If a development application within the meaning given in the *Planning and Development Act 2005* section 4(1) is made to a responsible authority for the development of land for the purpose of a sexual service business, the authority must —
- (a) consider the application as if that purpose is a use that is not permitted unless the responsible authority has exercised its discretion by granting planning approval; and
 - (b) in exercising its discretion, also have regard to whether the business —
 - (i) is likely to cause a nuisance to ordinary members of the public using the area in which the land is situated; and
 - (ii) is incompatible with the existing character or use of the area in which the land is situated.

- (2) Subsection (1) does not limit or affect the operation of the *Planning and Development Act 2005* in any way, and the subsection may be overridden by a provision of a planning scheme or interim development order.

Division 9 — Offences

21Z. False or misleading information

- (1) A person must not do any of the things set out in subsection (2) —
- (a) in relation to an application under this Part; or
 - (b) in relation to the compliance, or purported compliance, with a requirement under section 21E(1) to give the CEO a document or information.

Penalty: a fine of \$24 000 or imprisonment for 2 years.

- (2) The things to which subsection (1) applies are —
- (a) making a statement which the person knows is false or misleading in a material particular; or
 - (b) making a statement which is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular; or
 - (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or
 - (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether the information is false or misleading in a material particular.

21ZA. Offences in relation to determination under section 21M

(1) Where under section 21M a person is required to give any information, answer any question, or produce any document or thing and that person, without reasonable excuse (proof of which lies on the person) —

- (a) fails to give that information or answer that question at or within the time specified in the requirement; or
- (b) gives any information or answer that is false in any particular; or
- (c) fails to produce that document or thing at or within the time specified in the requirement,

the person commits an offence.

Penalty: a fine of \$24 000 or imprisonment for 2 years.

(2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the accused to show —

- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 21M, the CEO did not, when making the requirement, inform the accused that he or she was required under this Act to give the information or answer the question, as the case may be; or
- (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 21M, the notice did not state that he or she was required under this Act to give the information, answer the question, or produce the document or thing, as the case may be; or

- (c) that the time specified in the requirement did not afford the accused sufficient notice to enable him or her to comply with the requirement; or
- (d) that, in any case, the CEO did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would assist the CEO in making the determination.

21ZB. Incriminating information, questions or documents

An individual is not excused from complying with a requirement under section 21M on the ground that the answer to a question or the production of a document or other thing might incriminate the individual or render the individual liable to a penalty, but neither —

- (a) an answer given by the individual that was given to comply with the requirement; nor
- (b) the fact that a document or other thing produced by the individual to comply with the requirement was produced,

is admissible in evidence in any civil or criminal proceedings against the individual other than proceedings for an offence against section 21ZA(1)(b).

21ZC. Obstruction of police officer

- (1) A person must not prevent or attempt to prevent —
 - (a) a police officer from entering premises under section 21V(1); or
 - (b) otherwise obstruct or impede a police officer in the exercise of his or her powers under section 21V(1).

- (2) If required under section 21V(2) by a police officer to give the officer his or her name and address or provide proof of his or her identity, a person must not fail to give the officer his or her name and address or provide proof of his or her identity.

Penalty: a fine of \$24 000 or imprisonment for 2 years.

21ZD. CEO to be notified of certain matters

- (1) An operator of a sexual service business must give the CEO notice in writing of any notifiable matter within 7 days after becoming aware of the matter.

Penalty: a fine of \$24 000 or imprisonment for 2 years.

- (2) In subsection (1) —

“notifiable matter” means —

- (a) a charge of the commission of an offence under this Act being made against —
- (i) an operator or a manager of the business; or
 - (ii) if a proprietary company is an operator of the business, the company or any officer of the company;

or

- (b) a charge of the commission of an indictable offence being made against —
- (i) an operator or a manager of the business; or
 - (ii) if a proprietary company is an operator of the business, the company or any officer of the company;

or

- (c) if a proprietary company is an operator of the business, a person ceasing to be an officer of the company or a person, not already an

- officer of the company, becoming an officer of the company; or
- (d) a change in the name or address of any other person with whom the operator operates a sexual service business; or
 - (e) the name and address of any other person with whom the operator begins to operate a sexual service business; or
 - (f) a change in the location of the place at or from which the operator's sexual service business is being carried on; or
 - (g) the name and address of any person who exercises or exerts, or is in a position to exercise or exert, control or substantial influence over the manner in which the operator's sexual service business is conducted.

”.

21. Section 26 amended

Section 26(1) is amended by deleting “business involving the provision of prostitution” and inserting instead —

“ sexual service business ”.

22. Section 56 amended

Section 56(1) is amended as follows:

- (a) by inserting after “done as” —
“ the CEO or ”;
- (b) by inserting after “when assisting” —
“ the CEO or ”.

23. Section 57 amended

Section 57(4) is amended by deleting the full stop after paragraph (c) and inserting instead —

“

;

- (d) the CEO (who is the “**administrative head**”) and persons employed in the Department.

”.

24. Section 58 amended

Section 58(4) is amended as follows:

- (a) in paragraph (a) by inserting before “a police officer” —
“ the CEO or ”;
- (b) in paragraph (b) by inserting after “administration of” —
“ Part 3A of this Act or ”.

25. Sections 59A and 60 inserted

After section 59 the following sections are inserted —

“

59A. Liability of operator for offence by manager

If a person who holds a manager’s certificate commits an offence under this Act as the holder of that certificate, a person who has an operator’s certificate for the sexual service business concerned is to be treated as having committed an offence and is liable to the penalty prescribed for the offence committed by the person who holds the manager’s certificate.

60. Review of Act

- (1) The Minister administering the *Health Legislation Administration Act 1984* is to carry out a review of

the operation and effectiveness of this Act as soon as is practicable after the expiration of 2 years from the commencement of the *Prostitution Amendment Act 2008* section 3.

- (2) The Minister is to prepare a report based on the review made under subsection (1) and as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

”.

26. Schedule 2 inserted

After Schedule 1 the following Schedule is inserted —

“

**Schedule 2 — Offences relevant to granting
a certificate**

[s. 21G(1)(d) and (e)]

An offence under any of the following enactments:

Censorship Act 1996

s. 60

Child Welfare Act 1947

s. 108(1)

Children and Community Services Act 2004

s. 192(1) or (2)

*Classification (Publications, Films and Computer Games)
Enforcement Act 1996*

s. 60

The Criminal Code

s. 181

s. 186

s. 27

- s. 187
- s. 204A or 204B
- s. 278 or 279
- s. 281A
- s. 320(2) or (3)
- s. 321(2) or (3)
- s. 321A(3)
- s. 324, 325 or 326
- s. 327
- s. 329
- s. 330(2) or (3)
- s. 331B, 331C or 331D
- s. 332
- s. 343
- s. 396, 397 or 398

”.

27. Various references to prostitute changed to sex worker

In each place listed in the Table to this section “prostitute” is deleted and the following is inserted instead —

“ sex worker ”.

Table

s. 5(1)	s. 10(1)(a)	s. 19(2)(b)(i)
s. 5(2)	s. 14	s. 19(2)(b)(ii)
s. 5(4)	s. 15	s. 19(3)(b)
s. 5(4)(a)	s. 16(1)	s. 19(3)(c)
s. 5(4)(b)(i)	s. 16(2)	s. 20(1)

s. 5(4)(b)(ii)	s. 17(1)	s. 20(2)
s. 5(5)(b)	s. 18(1)	s. 50
s. 5(5)(c)	s. 19(1)	
s. 6(4)(a)	s. 19(2)	
s. 9(a)	s. 19(2)(a)	

28. Various references to prostitute's changed to sex worker's

In each place listed in the Table to this section “prostitute’s” is deleted and the following is inserted instead —

“ sex worker’s ”.

Table

s. 6(1)	s. 6(3)(a)	s. 6(4)(c)
s. 6(2)(a)	s. 6(3)(b)(i)	
s. 6(3)	s. 6(3)(b)(ii)	

Part 3 — Other Acts amended

29. Community Protection (Offender Reporting) Act 2004 amended

- (1) The amendments in this section are to the *Community Protection (Offender Reporting) Act 2004*.
- (2) Schedule 2 is amended by deleting the entry relating to the *Prostitution Act 2000* and inserting instead —

“

Sexual Services Act 2000

- | | |
|-------|---|
| s. 16 | Causing, permitting or seeking to induce a child to act as a sex worker |
| s. 17 | Obtaining payment for commercial sexual act by a child |

”.

30. The Criminal Code amended

- (1) The amendments in this section are to *The Criminal Code*.
- (2) Section 190 is repealed.
- (3) Section 191 is repealed.
- (4) Section 557K(1) paragraph (h) of the definition of “child sex offender” is amended by deleting “*Prostitution Act 2000*” and inserting instead —

“ *Sexual Services Act 2000* ”.

31. Evidence Act 1906 amended

- (1) The amendments in this section are to the *Evidence Act 1906*.
- (2) Section 36A(1) paragraph (a) of the definition of “sexual offence” is amended as follows:
 - (a) by deleting “or 191(1)(a)”;

- (b) by deleting “*Prostitution Act 2000*;” and inserting instead —
“ *Sexual Services Act 2000*; ”.
- (3) Schedule 7 Part A clause 1(a) is amended by deleting “*Prostitution Act 2000*” and inserting instead —
“ *Sexual Services Act 2000* ”.
- (4) Schedule 7 Part B is amended as follows:
- (a) by deleting the entry relating to section 191 of *The Criminal Code*;
- (b) by deleting “*Prostitution Act 2000*” and inserting instead —
“ *Sexual Services Act 2000* ”;
- (c) by deleting “prostitute” in each place where it occurs and inserting instead —
“ sex worker ”;
- (d) by deleting the entries relating to sections 17, 18, 20 and 21 of the *Prostitution Act 2000* and inserting instead —
“
- | | |
|-----|--|
| 17 | Obtaining payment for commercial sexual act by a child |
| 18 | Agreement for child to act as a sex worker |
| 20 | Commercial sexual act at place where child present |
| 21 | Allowing child to be at place involving commercial sexual act or certain sexual service businesses |
| 21A | Obligations of those who operate sexual service business in relation to children |
- ”.

s. 32

32. *Liquor Control Act 1988* amended

- (1) The amendment in this section is to the *Liquor Control Act 1988*.
- (2) After section 37(6) the following subsection is inserted —

“

- (7) An application shall not be granted where the licensing authority is satisfied that the premises to which the application relates are premises at or from which a sexual service business within the meaning of the *Sexual Services Act 2000* section 3 operates.

”.

33. *Nurses and Midwives Act 2006* amended

- (1) The amendments in this section are to the *Nurses and Midwives Act 2006*.
- (2) Schedule 3 clause 18(1) is amended by deleting “*Prostitution Act 2000*.” and inserting instead —

“ *Sexual Services Act 2000*. ”.

34. *Western Australian College of Teaching Act 2004* amended

- (1) The amendments in this section are to the *Western Australian College of Teaching Act 2004*.
- (2) Schedule 2 is amended as follows:
 - (a) by deleting the entry relating to section 191 of *The Criminal Code*;
 - (b) by deleting “*Prostitution Act 2000*” and inserting instead —
“ *Sexual Services Act 2000* ”;
 - (c) by deleting “prostitution industry” and inserting instead —
“ sexual service business ”;

- (d) by deleting “prostitute” in each place where it occurs and inserting instead —
“ sex worker ”;
- (e) by deleting the entries relating to sections 17, 18, 20 and 21 of the *Prostitution Act 2000* and inserting instead —
“
- | | |
|--------|--|
| s. 17 | Obtaining payment for commercial sexual act by a child |
| s. 18 | Agreement for child to act as a sex worker |
| s. 20 | Commercial sexual act at place where child present |
| s. 21 | Allowing child to be at place involving commercial sexual act or certain sexual service businesses |
| s. 21A | Obligations of those who operate sexual service business in relation to children |
- ”.

35. *Working with Children (Criminal Record Checking) Act 2004* amended

- (1) The amendments in this section are to the *Working with Children (Criminal Record Checking) Act 2004*.
- (2) Schedule 2 is amended by deleting the entry relating to the *Prostitution Act 2000* and inserting instead —

“

Sexual Services Act 2000

- | | |
|-------|---|
| s. 16 | Causing, permitting or seeking to induce a child to act as a sex worker |
| s. 17 | Obtaining payment for commercial sexual act by a child |
| s. 18 | Agreement for a child to act as a sex worker |

”.

s. 36

36. *Young Offenders Act 1994* amended

- (1) The amendments in this section are to the *Young Offenders Act 1994*.
- (2) Schedule 2 is amended by deleting the entry relating to the *Prostitution Act 2000* and inserting instead —

“

2A. *Sexual Services Act 2000*

- | | |
|-------|---|
| s. 7 | Seeking to induce person to act as a sex worker |
| s. 16 | Causing, permitting or seeking to induce a child to act as a sex worker |
| s. 17 | Obtaining payment for commercial sexual act by a child |
| s. 18 | Agreement for a child to act as a sex worker |

”
