

Western Australia

Prostitution Act 2000

As at 14 Apr 2008

Version 01-j0-01

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

Prostitution Act 2000

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Definitions	2
4.	Prostitution	3

Part 2 — General provisions about prostitution

Division 1 — Persons generally

5.	Seeking prostitute in or in view or within hearing of public place	4
6.	Seeking client in or in view or within hearing of public place	5
7.	Seeking to induce person to act as prostitute	6
8.	Prophylactic to be used	6
9.	Promoting employment in prostitution industry	6
10.	Prohibition of certain sponsorships	7
11.	Hindering performance of functions	7
12.	Contravening direction by police to move on	8
13.	Failure to comply with certain police requirements	8

Division 2 — Prostitutes

14.	Section 14 offence	9
15.	Acting as a prostitute for a child	9

Part 3 — Other provisions about children

16.	Causing, permitting, or seeking to induce child to act as prostitute	10
17.	Obtaining payment for prostitution by a child	10
18.	Agreement for prostitution by a child	10
19.	Child not to seek services of prostitute	10
20.	Prostitution at place where child present	11
21.	Allowing child to be at place involving prostitution	12

Part 4 — Provisions for police

22.	Interpretation	13
23.	Powers to obtain information	13
24.	Police may direct person to move on	15
25.	Detention, search and seizure without warrant	15
26.	Entry of, and seizure at, place of business without warrant	16
27.	Search and seizure with warrant	16
28.	Warrant may be obtained remotely	17
29.	Provisions about searching a person	18
30.	Retaining something seized but not forfeited	19
31.	Forfeiture and delivery on conviction	20
32.	Forfeiture and delivery other than on conviction	21
33.	Disposal of thing forfeited	22
34.	Powers to assist seizing things	22
35.	Undercover officers	23
36.	Commissioner may delegate a function	24

Part 5 — Restraining orders

37.	Restraining order to prevent further offence	25
38.	Restraining order against person who could be required to move on	25
39.	Provisions about making the order	25
40.	Terms of restraining order	26
41.	Duration of restraining order	27
42.	Variation or cancellation	27
43.	Court to notify parties of decision	29
44.	When cancellation takes effect	29
45.	Provisions about children	29
46.	Breach of a restraining order	30

47.	Appeals	30
48.	Order not to conflict with family order	31
Part 6 — Evidence		
49.	Accused presumed to know if person is a child	32
50.	Person residing with child prostitute presumed to receive payment	32
51.	Accused presumed to have allowed presence of child	32
52.	Intention presumed in some cases	32
53.	Certificate that undercover officer was authorised	33
54.	Averment that prostitution business carried on	33
Part 7 — Miscellaneous		
55.	Legal proceedings	34
56.	Protection of certain persons	34
57.	Exchange of information between State authorities	34
58.	Confidentiality	36
59.	Liability of managerial officer for offence by body corporate	36
61.	Regulations	37
62.	Regulations relating to restraining order applications	37
Schedule 1 — Offence history that may be an element of a section 14 offence		
Notes		
	Compilation table	40
	Provisions that have not come into operation	41

Western Australia

Prostitution Act 2000

An Act to make provisions about prostitution and for related purposes, and to amend certain other Acts ².

Part 1 — Preliminary

1. **Short title**

This Act may be cited as the *Prostitution Act 2000*¹.

2. **Commencement**

This Act comes into operation on a day fixed by proclamation¹.

3. **Definitions**

In this Act, unless the contrary intention appears —

“**act as a prostitute**” means to take part, as a prostitute, in an act of prostitution;

“**act of prostitution**” means anything the doing of which amounts to prostitution;

“**child**” means a person whose age is less than 18 years;

“**client**” has the meaning given to that term in section 4;

“**Commissioner of Police**” means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

“**document**” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“**place**” means anywhere at all, and includes anywhere in or on something that is moving or can move;

“**prohibited drug**” has the meaning given to that term by section 3 of the *Misuse of Drugs Act 1981*;

“**prostitute**” has the meaning given to that term in section 4;

“**prostitution**” has the meaning given by section 4;

“**public place**” means —

- (a) any place to which the public, or any section of the public, have or are permitted to have access whether on payment or otherwise;

- (b) a school, university or other place of education, other than a part of it to which neither students nor the public usually have access; or
- (c) a privately owned place that is unoccupied or is occupied by a person who is not the owner and does not have the authority of the owner.

4. Prostitution

When this Act refers to prostitution it means prostitution in which payment is consideration for the sexual stimulation of a person (“**the client**”) by means of physical contact between the client and another person (“**the prostitute**”), or between either of them and anything controlled by or emanating from the other, and it is irrelevant whether payment is in money or any other form.

Part 2 — General provisions about prostitution

Division 1 — Persons generally

5. Seeking prostitute in or in view or within hearing of public place

- (1) A person who, in or in the view or within hearing of a public place, seeks another person to act as a prostitute commits an offence under this subsection.
- (2) The offence under subsection (1) is a crime if the person whom the offender seeks to act as a prostitute, or any of them if there are more than one, is a child.
- (3) A person who commits an offence under subsection (1) is liable —
 - (a) if it is a simple offence, to imprisonment for 2 years;
 - (b) if it is a crime, to imprisonment for 7 years.
- (4) For the purposes of subsection (1), a person (in this section called “**the offender**”) seeks another person to act as a prostitute if the offender —
 - (a) invites or requests another person to act as a prostitute; or
 - (b) loiters in or frequents a place for the purpose of, or with the intention of —
 - (i) inviting or requesting another person to act as a prostitute; or
 - (ii) receiving an invitation for another person to act as a prostitute.
- (5) It makes no difference —
 - (a) whether or not the offender is the prospective client;
 - (b) whether or not a particular person is sought to act as a prostitute; or

- (c) whether the offender makes or intends to make the invitation or request directly or through someone else to, or intends to receive the invitation directly or through someone else from, the person whom the offender seeks to act as a prostitute.

6. Seeking client in or in view or within hearing of public place

- (1) A person who, in or in the view or within hearing of a public place, seeks another person to be a prostitute's client commits an offence under this subsection.
- (2) A person who commits an offence under subsection (1) is liable —
 - (a) if the person whom the offender seeks to be a prostitute's client, or any of them if there are more than one, is a child, to imprisonment for 3 years;
 - (b) in any other case, to imprisonment for one year.
- (3) For the purposes of subsection (1), a person (in this section called "**the offender**") seeks another person to be a prostitute's client if the offender —
 - (a) invites or requests another person to be a prostitute's client; or
 - (b) loiters in or frequents a place for the purpose of, or with the intention of —
 - (i) inviting or requesting another person to be a prostitute's client; or
 - (ii) receiving an invitation for another person to be a prostitute's client.
- (4) It makes no difference —
 - (a) whether or not the offender, or any particular person, is the prospective prostitute;
 - (b) whether or not a particular person is sought to be a client; or

- (c) whether the offender makes or intends to make the invitation or request directly or through someone else to, or intends to receive the invitation directly or through someone else from, the person whom the offender seeks to be a prostitute's client.

7. Seeking to induce person to act as prostitute

- (1) A person is not to —
 - (a) assault or threaten to assault anyone;
 - (b) intimidate anyone;
 - (c) supply or offer to supply a prohibited drug to anyone;
 - (d) make a false representation or use any false pretence or other fraudulent means; or
 - (e) do anything else, or refrain from doing anything,

with the intention of inducing another person who is not a child to act, or continue to act, as a prostitute.

- (2) An offence under subsection (1) is a crime.

Penalty: Imprisonment for 10 years.

Summary conviction penalty: Imprisonment for 3 years.

8. Prophylactic to be used

It is an offence for a person to engage in an act of prostitution without using a prophylactic that is appropriate for preventing the transmission of bodily fluid from one person to another.

Penalty: \$5 000.

9. Promoting employment in prostitution industry

A person is not to publish or cause to be published a statement that is intended or likely to induce a person to —

- (a) seek employment as, or act as, a prostitute; or
- (b) seek employment in any other capacity in any business involving the provision of prostitution.

Penalty: \$50 000.

10. Prohibition of certain sponsorships

- (1) A person is not, in Western Australia, to promote or publicize, or agree to promote or publicize —
- (a) any person as a prostitute; or
 - (b) any business involving prostitution,
- under a contract, or an arrangement (whether or not legally binding), under which a sponsorship is provided, or to be provided, by another person.
- (2) A person (whether inside or outside Western Australia) is not to provide, or agree to provide, in Western Australia a sponsorship under a contract or arrangement of a kind referred to in subsection (1).
- (3) In this section —
- “sponsorship”** includes —
- (a) a scholarship, prize, gift or other like benefit; and
 - (b) any financial arrangement (other than a bona fide contract of employment or a bona fide contract for services) for directly promoting or publicizing a person or business as referred to in subsection (1)(a) or (b) through any medium.

Penalty: \$50 000.

11. Hindering performance of functions

A person is not to delay, obstruct or otherwise hinder a police officer or any other person in the performance of any function under this Act.

Penalty: Imprisonment for 2 years.

12. Contravening direction by police to move on

A person is not to, without lawful excuse, contravene a direction given under section 24.

Penalty: For a first offence, \$6 000.

For a subsequent offence, imprisonment for one year.

[Section 12 amended by No. 50 of 2003 s. 87(2).]

13. Failure to comply with certain police requirements

(1) A person is not to, without lawful excuse, refuse or fail to produce a document or other thing as required under section 23.

(2) A person is not to, without lawful excuse, refuse or fail to answer a question or otherwise give information when required to do so under section 23.

Penalty: For an offence against subsection (1) or (2), imprisonment for 2 years.

(3) Where an individual is required under section 23 to answer a question or otherwise give information or produce anything neither —

- (a) an answer given by the individual that was given to comply with the requirement;
- (b) the fact that any information that was given by the individual to comply with the requirement was given; nor
- (c) the fact that anything that was 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 perjury or for an offence arising from the false or misleading nature of the answer or information given.

- (4) Nothing in this Act prevents —
- (a) an individual from refusing to answer a question or otherwise give information or produce a document or other thing because the answer or information might, or the document or thing contains information that might, incriminate the individual or render the individual liable to a penalty; or
 - (b) a person refusing to answer a question or otherwise give information or produce a document or other thing because the answer or information would relate to, or the document or thing contains information in respect of which the person claims legal professional privilege.

Division 2 — Prostitutes

14. Section 14 offence

A person who acts as a prostitute commits an offence under this section if —

- (a) the person is a child;
- (b) the person has been declared under section 32A of the *Misuse of Drugs Act 1981* to be a drug trafficker; or
- (c) the person has been found guilty of an offence described in Schedule 1.

Penalty: Imprisonment for 2 years.

15. Acting as a prostitute for a child

A person who acts as a prostitute for a client who is a child commits an offence under this section.

Penalty: Imprisonment for 9 months.

[Section 15 amended by No. 50 of 2003 s. 87(3).]

Part 3 — Other provisions about children

16. Causing, permitting, or seeking to induce child to act as prostitute

- (1) A person is not to cause or permit a child to act, or continue to act, as a prostitute.
- (2) A person is not to do anything with the intention of inducing a child to act, or continue to act, as a prostitute.
- (3) An offence under subsection (1) or (2) is a crime.
Penalty: Imprisonment for 14 years.

17. Obtaining payment for prostitution by a child

- (1) A person is not to receive a payment, in money or any other form, knowing that it or any part of it has been derived, directly or indirectly, from a child taking part in an act of prostitution, whether as a prostitute or as a client.
Penalty: Imprisonment for 14 years.
- (2) An offence under subsection (1) is a crime.
- (3) A person has a defence to a charge of an offence under subsection (1) if it is proved that the payment was received in the ordinary course of a business unrelated to prostitution.

18. Agreement for prostitution by a child

- (1) A person is not to enter into, or offer to enter into, an agreement under which a child is to act as a prostitute, whether for that person or anyone else.
Penalty: Imprisonment for 14 years.
- (2) An offence under subsection (1) is a crime.

19. Child not to seek services of prostitute

- (1) A child is not to seek another person to act as a prostitute.
Penalty: \$6 000.

- (2) For the purposes of subsection (1), a child seeks another person to act as a prostitute if the child —
- (a) invites or requests another person to act as a prostitute; or
 - (b) loiters in or frequents a place for the purpose of, or with the intention of —
 - (i) inviting or requesting another person to act as a prostitute; or
 - (ii) receiving an invitation for another person to act as a prostitute.
- (3) It makes no difference —
- (a) whether or not the child is the prospective client;
 - (b) whether or not a particular person is sought to act as a prostitute; or
 - (c) whether the child makes or intends to make the invitation or request directly or through someone else to, or intends to receive the invitation directly or through someone else from, the person whom the child seeks to act as a prostitute.

[Section 19 amended by No. 50 of 2003 s. 87(4).]

20. Prostitution at place where child present

- (1) A person who takes part, whether as a prostitute or as a client, in an act of prostitution at a place where the person knows that a child is present commits an offence under this section.

Penalty:

- (a) for a first offence — \$25 000;
 - (b) for any subsequent offence — imprisonment for 2 years.
- (2) For the purposes of subsection (1), the place extends as far as the limits up to which either a prostitute or a client taking part in

s. 21

the act of prostitution exercises, or is able to exercise, control over who is allowed to be there.

- (3) It makes no difference whether control is, or is able to be, exercised solely or in common with others.

21. Allowing child to be at place involving prostitution

A person who allows a child to enter or remain at a place at which the person knows or could be reasonably expected to know —

- (a) an act of prostitution is taking place; or
- (b) a business involving more than one prostitute in the provision of prostitution is being carried on,

commits an offence under this section.

Penalty:

- (a) for a first offence — \$25 000;
- (b) for any subsequent offence — imprisonment for 2 years.

Part 4 — Provisions for police

22. Interpretation

- (1) In this Part —
- “**Commissioner**” means the Commissioner of Police;
 - “**conveyance**” means anything used or capable of being used to transport people or goods by air, land, or water, and it does not matter how it is propelled or that it may ordinarily be stationary;
 - “**juvenile justice team**” means a juvenile justice team under Part 5 Division 2 of the *Young Offenders Act 1994*;
 - “**offence**” means an offence under this Act.
- (2) For the purposes of this Part a person is lawfully entitled to possess something if —
- (a) the person owns it or is authorised by the owner to possess it; and
 - (b) the possession is not prohibited by law or is authorised, justified or excused by law.

23. Powers to obtain information

- (1) A police officer may, for the purpose of performing any function in respect of an offence under section 7 or any offence involving a child —
- (a) require a person to produce to the police officer any document or other thing that is in the possession or under the control of the person;
 - (b) inspect any document or other thing produced to the police officer and retain it for such reasonable period as the police officer thinks fit, and make copies of a document or any of its contents; and
 - (c) require a person —
 - (i) to give the police officer such information as the police officer requires; and

- (ii) to answer any question put to that person.
- (2) A requirement made under subsection (1) to produce a document or other thing —
- (a) is to be made in writing given to the person required to produce the document or other thing;
 - (b) is to specify the time at or within which the document or other thing is to be produced;
 - (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) to give information or answer a question —
- (a) may be made orally or in writing served on the person required to give information or answer a question, as the case may be;
 - (b) is to 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;
 - (ii) be given at or sent or delivered to a place specified in the requirement;
 - (iii) in the case of written information or answers, be sent or delivered by means specified in the requirement;
 - (iv) be verified by statutory declaration.

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

24. Police may direct person to move on

A police officer who has reason to suspect that a person has committed, or intends to commit, an offence in or in the view or within hearing of a public place may, in writing in a form approved by the Commissioner, direct the person to move away from that place and a surrounding area specified in the direction, and stay away from it for a period of not more than 24 hours specified in the direction.

25. Detention, search and seizure without warrant

- (1) A police officer may without a warrant stop, detain and search anyone whom the police officer suspects on reasonable grounds to be —
- (a) committing an offence; or
 - (b) carrying anything that will afford evidence as to the commission of an offence.
- (2) A police officer may without a warrant stop, detain and search any conveyance where the police officer suspects on reasonable grounds that there is —
- (a) anyone who is committing an offence; or
 - (b) anything that will afford evidence as to the commission of an offence.
- (3) The power to stop and detain a conveyance includes the power to detain anyone in or on the conveyance for as long as is reasonably necessary to search the conveyance even though, until the conveyance has been searched, the person may not be suspected of anything because of which the person can be detained under subsection (1).

s. 26

- (4) A police officer may without a warrant seize anything that the police officer suspects on reasonable grounds will afford evidence as to the commission of an offence.

26. Entry of, and seizure at, place of business without warrant

- (1) A police officer may, without a warrant, at any time, enter any place at or from which a business involving the provision of prostitution is being, or is suspected of being, carried on and inspect any articles and records kept there.
- (2) Subsection (1) does not apply unless the police officer has reason to believe that an offence under section 7 or any offence involving a child has been, is being or may be committed.
- (3) A police officer who has entered a place under subsection (1) may —
- (a) search the place;
 - (b) stop, detain and search anyone at the place; and
 - (c) seize anything that the police officer suspects on reasonable grounds will afford evidence as to the commission of an offence.
- (4) A police officer may use any force that is reasonably necessary in exercising powers given by subsections (1) and (3).

27. Search and seizure with warrant

- (1) If a justice is satisfied that there are reasonable grounds for suspecting that there is in a place anything that will afford evidence as to the commission of an offence, the justice may grant a warrant of search and seizure in relation to that place.
- (2) A warrant under subsection (1) authorises any police officer at any time, with such assistance as the police officer thinks necessary and with such force as is reasonably necessary —
- (a) to enter the place at any time;
 - (b) to search the place;

- (c) to stop, detain and search anyone at the place; and
 - (d) to seize anything that the police officer suspects on reasonable grounds will afford evidence as to the commission of an offence.
- (3) The authority given by a warrant lapses at the end of a period of 30 days after it was granted and, until it lapses or the purpose for which it was given is satisfied, the authority it gives may be exercised from time to time unless the warrant expressly limits that authority.

28. Warrant may be obtained remotely

- (1) An application for a warrant under section 27 may be initially submitted by telephone, fax, radio or another form of communication if the applicant considers it necessary because of urgent circumstances or the applicant's remote location.
- (2) Before submitting an application under this section, the applicant is to prepare a written application setting out the grounds for seeking the warrant and describing the place to which the warrant relates.
- (3) If an application is submitted under this section, the information in the written application required by subsection (2) is to be verified by affidavit and, if it is necessary to do so, the application may be submitted before the affidavit has been sworn.
- (4) When issuing a warrant upon an application submitted under this section, the justice is to —
 - (a) complete and sign the warrant;
 - (b) inform the applicant of the terms of the warrant and the date on which and the time at which it was signed;
 - (c) record on the warrant the reasons for issuing the warrant; and
 - (d) send a copy of the warrant to the applicant.

s. 29

- (5) If a warrant is issued upon an application submitted under this section, the applicant may complete a form of warrant in the terms indicated by the justice under subsection (4)(b) if the applicant writes on it the name of the justice who issued the warrant and the date on which, and the time at which, it was signed.
- (6) If the applicant completes a form of warrant in accordance with subsection (5), the applicant is to send to the justice who signed the warrant, not later than the day next following the day on which the warrant ceases to have effect, the form of warrant completed by the person and the affidavit sworn in connection with the warrant.
- (7) On receiving the documents referred to in subsection (6), the justice is to attach them to the warrant signed by the justice and deal with the documents in the manner in which the justice would have dealt with the affidavit if the application for the warrant had not been submitted under this section.
- (8) A form of warrant completed in accordance with subsection (5) is to be regarded as the warrant itself.

29. Provisions about searching a person

- (1) A police officer cannot carry out a search of a person under this Part unless of the same sex as the person searched.
- (2) If a police officer of the same sex as the person to be searched is not immediately available to carry out the search, another police officer may —
 - (a) cause the search to be carried out, under the direction of a police officer, by another person of the same sex as the person to be searched;
 - (b) detain the person for as long as is reasonably necessary for the person to be searched in accordance with this section; or
 - (c) convey or conduct the person to a place where the person can be searched in accordance with this section.

- (3) Nothing in this Part authorises a search by way of an examination of the body cavities of a person unless it is carried out under subsection (5) by a medical practitioner or a registered nurse.
- (4) A police officer may arrange for a medical practitioner or registered nurse nominated by the police officer to examine the body cavities of the person to be searched and may —
 - (a) detain the person until the arrival of that medical practitioner or registered nurse; or
 - (b) convey or conduct the person to that medical practitioner or registered nurse.
- (5) A medical practitioner or registered nurse may carry out an examination arranged by a police officer under subsection (4) and no action lies against the medical practitioner or registered nurse in respect of anything reasonably done for the purposes of the examination.
- (6) A police officer may use any force that is reasonably necessary, and may call on any assistance necessary, in order to perform a function under this section.
- (7) In this section —
 - “**medical practitioner**” means an individual who is registered as a medical practitioner under the *Medical Act 1894*;
 - “**registered nurse**” means a person registered under Part 4 of the *Nurses and Midwives Act 2006*.

[Section 29 amended by No. 50 of 2006 s. 114.]

30. Retaining something seized but not forfeited

- (1) This section applies to anything seized under this Act that —
 - (a) is not forfeited to the Crown; and
 - (b) a court has not ordered to be delivered to a person under section 31(1)(b) or 32(6).

s. 31

- (2) A police officer may retain anything to which this section applies if —
- (a) it is required —
 - (i) for the investigation of an offence or the prosecution of someone for an offence; or
 - (ii) for the purposes of a matter that is being dealt with by a juvenile justice team;
 - or
 - (b) no person has satisfied the Commissioner that the person is lawfully entitled to possess it.
- (3) Anything to which this section applies that cannot be retained under subsection (2) is to be returned to the person from whom it was seized.

31. Forfeiture and delivery on conviction

- (1) A court convicting a person of an offence may order that —
- (a) anything relating to the offence, whether or not it has been seized and retained by a police officer under this Act, is forfeited to the Crown;
 - (b) anything relating to the offence that has been seized and retained by a police officer under this Act be delivered to another person who is lawfully entitled to possess it.
- (2) A person claiming to be lawfully entitled to possess anything in respect of which an order may be made under subsection (1)(b) may, in connection with the making of an order —
- (a) be heard in the proceedings for the offence;
 - (b) make an application under section 71 of the *Criminal Procedure Act 2004* as if the person were a party to the prosecution for the offence; and
 - (c) appeal against the order under Part 2 of the *Criminal Appeals Act 2004*.

[Section 31 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 78.]

32. Forfeiture and delivery other than on conviction

- (1) A person claiming to be lawfully entitled to possess anything seized and retained under this Act may, if the application is not prevented by subsection (2) and the last day for applying has not passed, apply to the Magistrates Court for an order that the thing be delivered to the person.
- (2) An application cannot be made under subsection (1) for an order for the delivery of anything if —
 - (a) an order has been made under section 31(1) for its forfeiture or delivery;
 - (b) a relevant juvenile justice team matter that has commenced has not been finally disposed of by the team; or
 - (c) a relevant charge that has been laid has not been withdrawn or heard and determined.
- (3) In subsection (2) —

“relevant charge” means a charge of an offence to which the thing that was seized relates;

“relevant juvenile justice team matter” means a matter to which the thing that was seized relates that is or was being dealt with by a juvenile justice team.
- (4) The last day for applying for an order under subsection (1) is the 21st day after the day on which the thing was seized unless the last day for applying is postponed by subsection (5).
- (5) If, for any part of the time when an application could otherwise be made in accordance with subsection (4), the making of the application is prevented by subsection (2)(b) or (c), the last day for applying (whether under subsection (4) or as postponed by this subsection) is postponed until the 21st day after the day on which the making of the application ceases to be prevented by subsection (2)(b) or (c).
- (6) On an application under subsection (1), the court may order that the thing seized be delivered to the person making the application

s. 33

if the court is satisfied on the balance of probabilities that the person is lawfully entitled to possess it.

- (7) The court may adjourn the application if it is satisfied that the thing seized should, for the time being, continue to be retained because it is required for a reason described in section 30(2)(a).
- (8) If the last day for applying under subsection (1) for an order for the delivery of a thing has passed and either no application has been made or each application made has been dealt with without ordering that the thing be delivered to a person, that thing is forfeited to the Crown.

[Section 32 amended by No. 59 of 2004 s. 141.]

33. Disposal of thing forfeited

- (1) If anything is forfeited to the Crown under this Act, the Commissioner may direct that it be sold, destroyed, or otherwise disposed of, as the Commissioner thinks fit, unless subsection (2) prevents the Commissioner from giving the direction.
- (2) If anything is forfeited to the Crown —
 - (a) by an order under section 31(1)(a); or
 - (b) after an order dismissing an application under section 32(1),

the Commissioner is not to give a direction under subsection (1) before the expiration of the time allowed for instituting an appeal against the order or, if an appeal is lodged within that time, before the determination of the appeal.

34. Powers to assist seizing things

Sections 146 to 150 of the *Criminal Investigation Act 2006*, with any necessary changes, apply to and in respect of seizing a thing that is or may be seized under this Act.

[Section 34 inserted by No. 59 of 2006 s. 72.]

35. Undercover officers

- (1) The Commissioner may, in writing, authorise a police officer to act as an undercover officer and may in writing revoke that authority.
- (2) Before authorising a police officer to act as an undercover officer the Commissioner is to ensure that the police officer is a suitable person to have the functions of, and the immunity given to, an undercover officer.
- (3) The identity or purpose of an undercover officer may, for the time being, be concealed or misrepresented for the purpose of detecting the commission of an offence.
- (4) An undercover officer may do anything specified in the authorisation given by the Commissioner for the purpose of detecting the commission of an offence.
- (5) If an undercover officer does anything as described in subsection (4) —
 - (a) the undercover officer does not commit an offence and is not liable as a party to an offence committed by another person; and
 - (b) the undercover officer's evidence in any proceedings against another person for an offence in connection with which the undercover officer did anything as described in subsection (4) is not the evidence of an accomplice.
- (6) The Commissioner is required, whenever requested to do so by the Minister, to give the Minister a report in writing containing such particulars of the activities of undercover officers as the Minister requires.
- (7) In this section —

“Minister” means the Minister responsible for the administration of the *Police Act 1892*;

“undercover officer” means a police officer acting as an undercover officer under this section.

s. 36

36. Commissioner may delegate a function

The Commissioner may by instrument in writing delegate a function conferred on the Commissioner under this Part other than a function given by section 35(6) or this power of delegation.

Part 5 — Restraining orders

37. Restraining order to prevent further offence

If a court finds that a person has committed an offence under section 5 or 6 or any other offence under this Act prescribed for the purposes of this section by the regulations and the court is satisfied that, unless restrained, the person is subsequently likely to commit an offence of a similar kind, the court may make a restraining order if it considers that making the order would be appropriate in the circumstances.

38. Restraining order against person who could be required to move on

- (1) If circumstances arise that would give sufficient grounds for a police officer to give a person a direction under section 24 and that person has previously been given a direction under that provision, the police officer may apply for a restraining order against the person.
- (2) The application is to be made —
 - (a) if the person against whom the order is sought is a child, to the Children’s Court; or
 - (b) otherwise, to the Magistrates Court.
- (3) If the court to which the application is made considers it appropriate in the circumstances to do so, it may make a restraining order.

[Section 38 amended by No. 59 of 2004 s. 141.]

39. Provisions about making the order

- (1) A court is not to make a restraining order against a person under this Part unless the person has been given an opportunity to be heard on the matter.
- (2) If a restraining order has been, or is about to be, made against a person under this Part and the person is present, the court may,

in order to facilitate service of the restraining order, order the person to remain in a place designated by the court for a period of not more than one hour until the order is served on the person.

40. Terms of restraining order

- (1) If the restraining order is made under section 37, it may impose any restraints on the lawful activities and behaviour of the person against whom it is made that the court considers appropriate to prevent the person from subsequently committing an offence similar in kind to the offence the person is found to have committed or from subsequently giving a police officer grounds for giving the person a direction under section 24.
- (2) If the restraining order is made under section 38, it may impose any restraints on the lawful activities and behaviour of the person against whom it is made that the court considers appropriate to prevent the person from subsequently giving a police officer grounds for giving the person a direction under section 24.
- (3) Without limiting the restraints that may be imposed, the order may restrain the person against whom it is made from —
 - (a) being on or near specified premises or in a specified locality or place;
 - (b) engaging in behaviour of a specified kind, either at all or in a specified place, at a specified time, or in a specified manner.
- (4) A restraint may be imposed absolutely or on any terms the court considers appropriate.
- (5) A restraining order may restrain the person against whom it is made from entering or remaining in a place, or restrict the person's access to a place, even if the person has a legal or equitable right to be there.

41. Duration of restraining order

- (1) A restraining order takes effect when it is served on the person against whom it is made or, if a later time is specified in the order, at that time.
- (2) Unless it is cancelled sooner, a restraining order remains in effect for the period specified in the order or, if no period is specified, for one year from the day on which it took effect.

42. Variation or cancellation

- (1) An application for the court to vary or cancel a restraining order may be made by a police officer nominated by the Commissioner of Police or, with the leave of the court, by the person against whom the order was made.
- (2) The application is to be made —
 - (a) if the person against whom the order was made is a child, to the Children’s Court; or
 - (b) otherwise, to the Magistrates Court,and is to be accompanied by an affidavit in support of the application.
- (3) If subsection (1) requires the leave of the court for an application to be made, an application seeking leave is to be accompanied by an affidavit disclosing all facts material to the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) Neither the application nor the affidavit are to be served on the person upon whose application the restraining order was made (in this section called “**the respondent**”) unless the court orders under subsection (6) that they are to be served on the respondent.

s. 42

- (5) Even though the giving of leave may not be prevented by subsection (7), the court may refuse the application for leave if it considers that —
 - (a) the affidavit does not disclose everything required by subsection (3) to be disclosed; or
 - (b) the facts disclosed by the affidavit do not give sufficient reason to vary or cancel the restraining order.
- (6) Before the court grants an application for leave it is to —
 - (a) order that a copy of the application and accompanying affidavit be served on the respondent; and
 - (b) give the respondent an opportunity to oppose the application for leave.
- (7) Leave is not to be given unless the court is satisfied there has been a substantial change in the relevant circumstances since the restraining order was made.
- (8) The person against whom the order was made and the respondent are to be given an opportunity to be heard at the hearing of an application to vary or cancel a restraining order.
- (9) At the hearing of the application to vary or cancel a restraining order, the court may receive as evidence any record of evidence given or affidavit filed in connection with an application for leave mentioned in subsection (3).
- (10) The court may dispose of the application to vary or cancel a restraining order by —
 - (a) dismissing the application;
 - (b) making a new restraining order in addition to the original restraining order; or
 - (c) cancelling the original restraining order with or without making a new restraining order.
- (11) Anything in this Part that applies to a restraining order made in the first instance also applies to a new restraining order made under this section.

[Section 42 amended by No. 59 of 2004 s. 141.]

43. Court to notify parties of decision

If a person who was entitled to be given an opportunity to be heard was not present when the court disposed of the application to vary or cancel a restraining order, the clerk is to notify the person of how the application was disposed of.

44. When cancellation takes effect

The cancellation of a restraining order has effect —

- (a) if another restraining order is made when the original order is cancelled, at the time the new order takes effect; or
- (b) otherwise, at the conclusion of the hearing at which the order was cancelled.

45. Provisions about children

- (1) No restraining order is to be made against a child whose age is less than 10 years.
- (2) In an application to vary or cancel a restraining order against a child, section 45 of the *Young Offenders Act 1994* applies as if the matter were proceedings for an offence.
- (3) If the Children's Court hears an application for a restraining order under section 38 against a person or an application to vary or cancel a restraining order against a person in the belief that the person is a child when in fact the person is not a child —
 - (a) as soon as it becomes aware the person is not a child, the Children's Court is to transfer the matter to the Magistrates Court;
 - (b) the Children's Court proceedings are not, for that reason, invalidated; and
 - (c) an order made by the Children's Court before it became aware the person was not a child, is as valid and has the

same effect as if it had been made by the Magistrates Court.

- (4) If the Magistrates Court hears an application for a restraining order under section 38 against a person or an application to vary or cancel a restraining order against a person in the belief that the person is not a child when in fact the person is a child —
 - (a) as soon as it becomes aware the person is a child, the Magistrates Court is to transfer the matter to the Children's Court;
 - (b) the Magistrates Court proceedings are not, for that reason, invalidated; and
 - (c) an order made by the Magistrates Court before it became aware the person was a child, is as valid and has the same effect as if it had been made by the Children's Court.

- (5) If a court transfers a matter to another court under this section, the registrar of each court is to give effect to the transfer.

[Section 45 amended by No. 59 of 2004 s. 141.]

46. Breach of a restraining order

A person against whom a restraining order was made under this Part who contravenes the order commits an offence.

Penalty: \$5 000.

47. Appeals

- (1) A person aggrieved by the decision of a court relating to a restraining order under this Part may appeal against that decision in accordance with this section.

- (2) If the decision was made by the Magistrates Court, the appeal is to be made in accordance with Part 7 of the *Magistrates Court (Civil Proceedings) Act 2004*.

- (3) If the decision was made by the Children's Court when constituted so as not to consist of or include a Judge, the appeal is to be made to the Supreme Court in accordance with section 41 of the *Children's Court of Western Australia Act 1988* as if the decision were a decision within the meaning of section 41(2) of that Act.
- (4) If the decision was made by the Children's Court when constituted so as to consist of or include a Judge, the appeal is to be made to the Court of Appeal in accordance with section 43 (other than subsections (2) and (3)) of the *Children's Court of Western Australia Act 1988* as if the decision were a decision within the meaning of section 43(3b) of that Act.
- (5) If the decision was made by the District Court, the appeal is to be made to the Court of Appeal in accordance with section 79(1)(a) of the *District Court of Western Australia Act 1969*.
- (6) If the decision was made by a Judge of the Supreme Court, the appeal is to be made to the Court of Appeal in accordance with section 58 of the *Supreme Court Act 1935*.

[Section 47 amended by No. 45 of 2004 s. 37; No. 59 of 2004 s. 141.]

48. Order not to conflict with family order

- (1) If a court does not have jurisdiction to adjust a family order the court is not to make a restraining order that conflicts with that family order.
- (2) In this section —
“family order” has the same meaning as it has in the *Restraining Orders Act 1997*.

Part 6 — Evidence

49. Accused presumed to know if person is a child

If, in proceedings for an offence under this Act, it is relevant whether or not a person was a child, it is to be conclusively presumed that the accused knew that the person was a child unless it is proved that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the age of the person concerned was at least 18 years.

50. Person residing with child prostitute presumed to receive payment

If in a proceeding for an offence under section 17(1) it is proved that, at the time of the offence, the accused was residing with a prostitute who was a child, the accused is presumed to be guilty of the offence unless the contrary is proved.

51. Accused presumed to have allowed presence of child

If, in proceedings for an offence under section 21, it is proved that a child was at a place at a particular time, the accused is conclusively presumed to have allowed the child to enter or remain at the place unless it is proved that the accused did not know, and could not reasonably have known, that a child was at the place at that time.

52. Intention presumed in some cases

- (1) A person loitering in or frequenting a place in circumstances giving reasonable grounds for suspecting that the person had an intention described in section 5(4)(b) or 6(3)(b) is to be presumed to have had that intention unless the contrary is proved.
- (2) A person doing anything in circumstances giving reasonable grounds for suspecting that the person had an intention

described in section 16(2) is to be presumed to have had that intention unless the contrary is proved.

53. Certificate that undercover officer was authorised

A certificate purporting to be signed by the Commissioner of Police or his delegate and stating that the person named in that certificate was, at the time or during the period specified in that certificate —

- (a) a police officer acting as an undercover officer under section 35; and
- (b) authorised to do anything stated in the certificate,

is, without proof of any appointment, delegation, or signature, evidence of the facts stated in the certificate.

54. Averment that prostitution business carried on

In proceedings for an offence under sections 9 and 21(b) an averment by the prosecution that a person is or was carrying on a business involving the provision of prostitution is to be taken to have been proved unless the contrary is proved.

Part 7 — Miscellaneous

55. Legal proceedings

- (1) A prosecution for an offence under this Act can only be commenced by a police officer.
- (2) A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.

[Section 55 amended by No. 84 of 2004 s. 80.]

56. Protection of certain persons

- (1) An action in tort does not lie against a person for anything that he or she has, in good faith, done as a police officer or when assisting a police officer in the performance or purported performance of a function under this Act.
- (2) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (3) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

57. Exchange of information between State authorities

- (1) A State authority specified in subsection (4) may disclose to another State authority specified in subsection (4) any information that is, or could reasonably be expected to be, relevant to the performance of a function of the State authority to which the information is disclosed.
- (2) If an administrative head referred to in subsection (4), in writing, requests another administrative head referred to in subsection (4) to disclose any information, the administrative head receiving the request is to comply with the request unless the exception in subsection (3) applies.

- (3) The Commissioner of Police may decline to disclose information requested under subsection (2) if to do so would be likely to compromise an investigation.
- (4) The State authorities specified in this subsection are —
- (a) the Commissioner of Police (who is the “**administrative head**”), police officers, and persons employed in the department of the Public Service principally assisting in the administration of the *Police Act 1892*;
 - (b) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Young Offenders Act 1994* (who is the “**administrative head**”) and persons employed in that department;
 - (c) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Children and Community Services Act 2004* (who is the “**administrative head**”) and persons employed in that department.
- (5) The authority given by this section to disclose information applies even though the disclosure may be contrary to any duty of confidentiality imposed by law or otherwise arising and whether or not the duty of confidentiality arose before this Act commenced but, without limiting the authority given by this section to disclose information, a person to whom confidential information is disclosed under this section is bound by the same duty of confidentiality as applied to the person making the disclosure.
- (6) A person making a disclosure under this section incurs no civil or criminal liability as a result of the disclosure, and is not to be regarded for any purpose as being in breach of the duty of confidentiality.

[Section 57 amended by No. 34 of 2004 s. 251.]

s. 58

58. Confidentiality

- (1) A person to whom this subsection applies must not, whether directly or indirectly, record, disclose, or make use of any information obtained in the course of duty except —
- (a) in the course of duty;
 - (b) as required or allowed by this Act or any other written law;
 - (c) for the purpose of proceedings for an offence under this Act;
 - (d) with the written authority of the Minister or the person to whom the information relates; or
 - (e) in other prescribed circumstances.

Penalty: \$5 000.

- (2) The prohibition in subsection (1) extends to the giving of evidence or the production of a book, document or record in civil proceedings in a court or tribunal.
- (3) Subsection (1) does not apply to the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (4) Subsection (1) applies to a person who is or was —
- (a) a police officer; or
 - (b) a person employed in the department of the Public Service principally assisting in the administration of the *Police Act 1892*.

59. Liability of managerial officer for offence by body corporate

- (1) If a body corporate is found to have committed an offence under this Act, each person who is a managerial officer of the body is also to be treated as having committed the offence unless the person proves that —
- (a) the offence was committed without the person's consent or connivance; and

- (b) the person exercised all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and to all the circumstances.
- (2) In subsection (1) —
 - “managerial officer”** means —
 - (a) a director or secretary of the body;
 - (b) a person who exercises or exerts control or influence over the body, or is in a position to do so;
 - (c) a person who at any time takes responsibility for the management of a business carried on by the body; or
 - (d) a person who is a shareholder of the body, if the body is a proprietary company.

[60. *Repealed by No. 4 of 2004 s. 58.*]

61. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) The regulations may exempt a place described in the regulations from being a place that is or is in the view or within hearing of a public place for the purposes of this Act or for any particular purpose.

62. Regulations relating to restraining order applications

- (1) Without limiting section 61, the Governor may make regulations as to the making of applications for the making, variation or cancellation of orders under Part 5 and the procedure on the hearing of such applications.
- (2) References in subsection (1) to an application for the variation or cancellation of an order refer also to an application seeking

s. 62

leave to make an application for the variation or cancellation of an order.

[63. *Repealed by No. 33 of 2003 s. 4.*]

[64. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

Schedule 1 — Offence history that may be an element of a section 14 offence

[s. 14(c)]

An offence under any of the following enactments:

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

s. 60

The Criminal Code

s. 181

s. 186

s. 204A

s. 278 or 279

s. 281A

s. 297

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. 332

s. 333

s. 338A, 338B, or 338C

s. 343

s. 396, 397, or 398

Children and Community Services Act 2004

s. 192(1) or (2)

[Schedule 1 amended by No. 34 of 2004 s. 251; No. 10 of 2006 s. 4(2).]

[Schedule 2 omitted under the Reprints Act 1984 s. 7(4)(e).]

Notes

¹ This is a compilation of the *Prostitution Act 2000* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Prostitution Act 2000</i>	17 of 2000	22 Jun 2000	29 Jul 2000 (see s. 2 and <i>Gazette</i> 28 Jul 2000 p. 3987)
<i>Prostitution Amendment Act 2002</i>	9 of 2002	28 Jun 2002	28 Jun 2002 (see s. 2)
<i>Prostitution Amendment Act 2003</i>	33 of 2003	23 Jun 2003	23 Jun 2003 (see s. 2)
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 87</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Criminal Code Amendment Act 2004 s. 58</i>	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Children and Community Services Act 2004 s. 251</i>	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Acts Amendment (Court of Appeal) Act 2004 s. 37</i>	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Law Amendment (Simple Offences) Act 2004 s. 82</i>	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78 and 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 1: The <i>Prostitution Act 2000</i> as at 22 Jul 2005 (includes amendments listed above except those in the <i>Children and Community Services Act 2004</i>)			
<i>Censorship Amendment Act 2006 s. 4(2)</i>	10 of 2006	8 May 2006	10 Jun 2006 (see s. 2 and <i>Gazette</i> 9 Jun 2006 p. 2029)
<i>Nurses and Midwives Act 2006 s. 114</i>	50 of 2006	6 Oct 2006	19 Sep 2007 (see s. 2 and <i>Gazette</i> 18 Sep 2007 p. 4711)

Short title	Number and year	Assent	Commencement
<i>Criminal Investigation (Consequential Provisions) Act 2006</i> Pt. 13	59 of 2006	16 Nov 2006	1 Jul 2007 (see s. 2 and <i>Gazette</i> 22 Jun 2007 p. 2838)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Criminal Law and Evidence Amendment Act 2008</i> s. 69 ³	2 of 2008	12 Mar 2008	To be proclaimed (see s. 2)
<i>Prostitution Amendment Act 2008</i> Pt. 2 ⁴	13 of 2008	14 Apr 2008	To be proclaimed (see s. 2(b))

² The provisions in this Act amending those Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).

³ On the date as at which this compilation was prepared, the *Criminal Law and Evidence Amendment Act 2008* s. 69 had not come into operation. It reads as follows:

“

69. Prostitution Act 2000 amended

- (1) The amendments in this section are to the *Prostitution Act 2000*.
- (2) Schedule 1 is amended by deleting “s. 321A(3)” under the heading “*The Criminal Code*” and inserting instead —
“ s. 321A(4) ”.

”.

⁴ On the date as at which this compilation was prepared, the *Prostitution Amendment Act 2008* Pt. 2 had not come into operation. It reads as follows:

“

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 211;

“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.
- (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, ”.

- (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. 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)	

”.