

Western Australia

## **Prostitution Act 2000**

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## Prostitution Act 2000

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Western Australia

## **Prostitution Act 2000**

**An Act to make provisions about prostitution and for related purposes, and to amend certain other Acts <sup>2</sup>.**

## Part 1 — Preliminary

1. **Short title**

This Act may be cited as the *Prostitution Act 2000*<sup>1</sup>.

2. **Commencement**

This Act comes into operation on a day fixed by proclamation<sup>1</sup>.

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

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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.

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## 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).

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- (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.

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- (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 3 of the *Nurses Act 1992*.

**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).

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- (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 21<sup>st</sup> 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 21<sup>st</sup> 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

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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. Embargo notices**

Sections 90B, other than subsection (1), and 90C of the *Police Act 1892* apply as if —

- (a) the reference in section 90B(2) to seizure under Part V of that Act included a reference to seizure under this Part; and

- (b) when those provisions apply as modified by paragraph (a) —
  - (i) each reference in them to proceedings under that Act were a reference to proceedings under this Act; and
  - (ii) each reference in them to forfeiture under that Act were a reference to forfeiture under this Part.

*[Section 34 amended by No. 70 of 2004 s. 82.]*

**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.

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(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.

**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,

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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.

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- (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.]*

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**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

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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:

*Censorship 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.]*

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

### Notes

<sup>1</sup> 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. 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 *Prostitution Act 2000* as at 22 Jul 2005** (includes amendments listed above except those in the *Children and Community Services Act 2004*)

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