

Prostitution Control Bill 2003

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Defined Terms

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Prostitution Control Bill 2003

A Bill for

An Act to regulate and control prostitution, to establish a board with licensing and other functions relating to prostitution, to repeal the *Prostitution Act 2000* and amend certain other Acts, and for related purposes.

Reasons for enacting this Act

The Parliament considers that the policy of containing prostitution without a detailed statutory scheme for its control has proven to be inadequate.

The Parliament recognises the need for the control of prostitution to be regulated by law.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Prostitution Control Act 2003*.

2. Commencement

- 5 (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Meanings of certain terms used in this Act

In this Act, unless the contrary intention appears —

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

“**act as a prostitution driver**” has the meaning given to that term in section 105;

15 “**act as a prostitution manager**” has the meaning given to that term in section 31(2);

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

20 “**advertisement of prostitution**” means any writing, still or moving picture, sign, symbol or other visual image or message, or audible message, directly or indirectly promoting or publicising prostitution;

“**appointed member**” means a member of the Board other than an ex officio member under section 9(b);

“**authorised person**” means —

- 25 (a) a police officer;
- (b) an investigator; or
- (c) a person who has been issued with a certificate under section 138 and whose capacity as an authorised person under that section has not terminated;

“Board” means the Prostitution Control Board established by section 8;

“bodily fluid” means —

- (a) semen;
- 5 (b) blood; or
- (c) fluid of a vaginal or anal canal;

“brothel” means any place where a brothel business is carried on, whether or not any other business or activity is carried on at that place;

10 **“brothel business”** means a business involving the provision of prostitution in the course of which acts of prostitution are performed at the place from which the business is carried on, except that it does not include a sole operator brothel business;

15 **“business premises”** means —

- (a) in relation to a brothel business for which a person is or is proposed to be licensed, the premises used or to be used as a brothel;
- 20 (b) in relation to a prostitution agency business for which a person is or is proposed to be licensed, the premises used or to be used as a prostitution agency office;
- (c) in relation to a person who is or proposes to be licensed, the premises that, under paragraph (a) or 25 (b), are the business premises of the brothel business or prostitution agency business for which the person is or proposes to be licensed;

“chairman” means the chairman appointed under section 9(a);

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

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

30 **“Commissioner of Health”** means the person holding or acting in the office of Commissioner of Health in the department of the Public Service principally assisting in the administration of the *Health Act 1911*;

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

“**committee**” means a committee established under section 21;

5 “**contact address**” means the address stated under section 34(2)(a) to be a person’s contact address unless, under section 50, the Board has been notified of a change of that person’s contact address, in which case it is the address as changed;

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

“**formal inquiry**” means an inquiry referred to in section 145;

15 “**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 prostitution; or

20 (b) of guarding himself or herself against sexual exploitation;

“**investigator**” means a person who has been issued with a certificate under section 137 and whose capacity as an investigator has not terminated;

25 “**legal practitioner**” has the meaning given to “practitioner” in the *Legal Practitioners Act 1893* section 3;

“**licence**” means a licence granted under this Act;

“**licensed**” means licensed under this Act;

“**managerial officer**”, in relation to a body corporate, means —

30 (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 acts as a prostitution manager for a brothel business or prostitution agency business carried on by the body; or

5

(d) a person who is a shareholder of the body, if the body is a proprietary company;

“medical examination” includes the taking of a sample of tissue, blood, urine, or other bodily material for medical testing;

10

“medical practitioner” means an individual who is registered as a medical practitioner under the *Medical Act 1894*;

“member of staff” means the registrar, any other person referred to in section 22(1), (2), or (3), or a person whose services are being used under section 24(1);

15

“member of the Board” includes a person who is taken to be a member of the Board under clause 3(3) or 5(1)(b) of Schedule 1;

“mental illness” has the meaning given to that term in *The Criminal Code* section 1(1);

20

“notifiable sexually transmissible infection” means a sexually transmissible infection that is prescribed by regulations to be a notifiable sexually transmissible infection for the purposes of this Act;

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

25

“principal place of residence”, in relation to a person, means the dwelling place of the person at which the person usually sleeps and eats and which the person usually uses as a base for daily activities;

30

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

“prophylactic” means a condom or other device that is designed and intended to prevent the transmission of a sexually transmissible infection and, where applicable, meets any minimum standard prescribed by the regulations;

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

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

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

5 **“prostitution agency business”** means a business involving the provision of prostitution in the course of which acts of prostitution are performed elsewhere than at a brothel except that it does not include a sole operator agency business;

10 **“prostitution agency office”** means the place from which a prostitution agency business is carried on, whether or not that place is a brothel or any other business or activity is carried on at that place;

“public place” means —

15 (a) any place, other than a place that a person has a licence to use as a brothel or prostitution agency office, to which the public, or any section of the public, have or are permitted to have access whether on payment or otherwise;

20 (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

25 (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;

“reasonably suspects” has the meaning given to that term in section 5;

“registrar” means the registrar appointed under section 22(1)(a);

30 **“remote communication”** means any way of communicating at a distance including by telephone, fax, email and radio;

“self-employed sole prostitute” means a person who owns and operates a sole operator brothel business or a sole operator agency business or both of those kinds of business;

“sexually transmissible infection” means —

- (a) a notifiable sexually transmissible infection; or
- (b) any other infection that is prescribed by regulations to be a sexually transmissible infection for the purposes of this Act;

“sole operator agency business” means a business that is owned and operated by one person only, involving the provision of prostitution in the course of which only that person acts as a prostitute and the acts of prostitution are performed elsewhere than at that person’s principal place of residence or a brothel;

“sole operator brothel business” means a business that is owned and operated by one person only, involving the provision of prostitution in the course of which only that person acts as a prostitute and the acts of prostitution are performed only at that person’s principal place of residence.

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.

5. Reasonably suspects

For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she, acting in good faith, personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable.

6. Objectives

The main objectives of this Act are —

- (a) to safeguard public health and wellbeing against effects of prostitution;

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- (b) to prevent children and incapable persons from being involved in prostitution and protect children and incapable persons from being exploited in connection with prostitution;
- 5 (c) to protect the social and physical environment of the community by controlling the location of brothels and prostitution agency offices and the carrying on of businesses involving the provision of prostitution;
- 10 (d) to deter organised and other crime in connection with prostitution;
- (e) to regulate and control people involved in the management of, and people working in, businesses involving the provision of prostitution;
- 15 (f) by promoting the welfare, occupational health, and safety of prostitutes and by other means, to protect prostitutes from exploitation;
- 20 (g) to ensure that persons who act as prostitutes under a contract of service with a person who has a brothel operator's licence or prostitution agent's licence, have the entitlements and protections that are generally available to workers under industrial law, including those arising under workers' compensation laws;
- (h) to regulate and control the ownership and operation of brothel businesses and prostitution agency businesses;
- 25 (i) to regulate and control the advertising of prostitution.

7. Relationship to other written laws

The provisions of this Act are in addition to, and do not derogate from, the provisions of any other written law except to the extent that this Act expressly states otherwise or a provision of another written law is inconsistent with a provision of this Act.

Part 2 — Prostitution Control Board

Division 1 — Establishment of Board

8. Board established

- (1) A body called the Prostitution Control Board is established.
- 5 (2) The Board is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Board in its corporate name.
- (4) The Board is not an agent of the Crown.

9. Membership of Board

10 The members of the Board are —

- (a) a chairman appointed by the Governor on the nomination of the Minister;
- (b) the following persons ex officio —
 - 15 (i) the Commissioner of Health; and
 - (ii) the Commissioner of Police;and
- (c) 3 other persons appointed by the Minister.

10. Qualifications for and manner of appointment

20 Appointments under section 9(c) are to be made as follows —

- 20 (a) one person is to be the nominee of the Minister responsible for the administration of the *Local Government Act 1995*, who is to make the nomination after complying with section 11;
- (b) one person is to be a medical practitioner; and
- 25 (c) the remaining person —
 - (i) is to have knowledge of, or experience in, matters affecting people working in, or involved

in the management of, businesses involving the provision of prostitution; and

- (ii) is to be appointed after the Minister has complied with section 12.

5 **11. Nominees under section 10(a)**

- (1) Whenever a nomination is required to be made —

- (a) under section 10(a); or
(b) for the purposes of Schedule 1 clause 4(4),

10 the Minister mentioned in section 10(a) is to request the body known as the Western Australian Local Government Association to submit to him or her within a specified time a list of 3 nominees.

- (2) If the body fails to comply with such a request the Minister may make the nomination at his or her discretion.

15 **12. Public notification of proposed appointments under section 10(c)**

20 Before the Minister appoints any member referred to in paragraph (c) of section 10 or a deputy of such a member, he or she must cause notice to be published in 2 issues of a daily newspaper circulating throughout the State inviting any person who is interested in being appointed as a member under that paragraph, or as a deputy of such a member, to notify the Minister of his or her interest.

13. Constitution and proceedings

25 Schedule 1 has effect.

14. Remuneration and allowances

30 A member of the Board or of a committee is entitled to such remuneration and allowances, if any, as the Minister from time to time determines on the recommendation of the Minister for Public Sector Management.

Division 2 — Functions of Board

15. Functions

The functions of the Board are —

- 5 (a) to perform the licensing, supervisory, and other functions given to the Board by this Act;
- (b) to advise the Minister on policy in relation to prostitution;
- (c) to disseminate information and provide education in accordance with section 16; and
- 10 (d) to develop strategies to provide persons with alternatives to becoming prostitutes, and to advise prostitutes wishing to cease prostitution.

16. Education and information

- 15 (1) It is a function of the Board to provide education concerning prostitution-related issues for prostitutes and other persons whose activities are controlled by this Act and to disseminate information concerning those issues to those persons, police officers and other officials, community groups, and the community generally.
- 20 (2) The Board may perform its functions under subsection (1) either directly or by making arrangements for other persons to act on its behalf.
- (3) In subsection (1) —
 - 25 **“prostitution-related issues”** includes —
 - (a) the operation of this Act and the rights and obligations arising under it;
 - (b) the functions of the Board;
 - (c) awareness of all aspects of prostitution, whether they are peculiar to prostitution or common to prostitution and other activities;
- 30

- (d) the maintenance of health and avoidance of infection in connection with prostitution;
- (e) matters about which persons intending to become prostitutes should be aware; and
- 5 (f) advice and sources of assistance available to prostitutes wishing to cease prostitution.

17. General power of the Board

- 10 (1) The Board may do all things that are necessary or expedient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the Board may make such inquiries as it considers necessary to enable it properly to perform its functions under this Act.

18. Delegation by Board

- 15 (1) The Board may, unless subsection (2) or any other provision of this Act prevents it from doing so, delegate any power or duty of the Board under another provision of this Act to —
 - (a) a member of the Board;
 - (b) a committee;
 - 20 (c) a member of a committee; or
 - (d) the registrar.
- (2) The Board cannot delegate —
 - (a) the power of delegation;
 - (b) the power to grant a licence under section 32;
 - 25 (c) the power to revoke or suspend a licence under section 49;
 - (d) the power to decide that a person should be given a notice under section 96(2) or (4) the effect of which is to ban a person from acting as a prostitute or to vary or
 - 30 revoke a ban;

- (e) the power to decide that a matter is to be investigated under section 137; or
 - (f) the power to hold a formal inquiry.
- (3) The delegation must be in writing executed by the Board.
- 5 (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) 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
- 10 contrary is shown.
- (6) Nothing in this section limits the ability of the Board to perform a function through an officer or agent.

19. Directions by Minister

- 15 (1) Subject to subsection (2), the Minister may give directions in writing to the Board with respect to the performance of its functions either generally or in relation to a particular matter, and the Board is to give effect to any such direction.
- (2) The Minister cannot under subsection (1) direct the Board with respect to —
- 20 (a) the performance of any of its licensing functions in respect of a particular person; or
- (b) the particular premises that are to be the business premises of a person having or seeking to obtain a brothel operator's licence or a prostitution agent's
- 25 licence.
- (3) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament, or dealt with under subsection (4), within 14 days after the direction is given.

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(4) If —

- (a) at the commencement of the period referred to in subsection (3) a House of Parliament is not sitting; and
- (b) the Minister is of the opinion that that House will not sit during that period,

5

the Minister is to transmit a copy of the direction to the Clerk of that House.

(5) A copy of a direction transmitted to the Clerk of a House is to be regarded —

10

- (a) as having been laid before that House; and
- (b) as being a document published by order or under the authority of that House.

(6) The laying of a copy of a direction that is regarded as having occurred under subsection (5)(a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

15

(7) The text of a direction given under subsection (1) is to be included in the annual report submitted in respect of the Board under the *Financial Administration and Audit Act 1985* section 66.

20

20. Minister to have access to information

(1) The Minister is entitled —

- (a) to have information in the possession of the Board; and
- (b) if the information is in or on a document, to have, and make and retain copies of, that document.

25

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Board to furnish information to the Minister;
- (b) request the Board to give the Minister access to information;

- (c) for the purposes of paragraph (b) make use of a member of staff of the Board to obtain the information and furnish it to the Minister.
- 5 (3) The Board is to comply with a request under subsection (2) and make its facilities and members of staff available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) The Minister is not entitled to have information under this section in a form that —
- 10 (a) discloses the identity of a person; or
(b) might enable the identity of a person to be ascertained, unless that person has consented to the disclosure.
- (5) In this section —
- 15 **“information”** means information specified, or of a description specified, by the Minister that relates to the functions of the Board.

21. Committees

- (1) The Board may from time to time —
- 20 (a) establish any committee to assist it in the performance of its functions, and discharge a committee so established; and
(b) appoint members of the Board and other persons as it thinks fit to be members of a committee so established, and remove and replace members.
- (2) If the Board establishes a committee to provide advice in relation to business involving the provision of prostitution, the Board is to ensure that such of the following groups of persons who are involved in the matter are represented on the committee —
- 25 (a) persons who have a brothel operator’s licence;
30 (b) persons who have a prostitution agent’s licence;

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- (c) persons who act as prostitutes under contracts of employment with persons referred to in paragraph (a) or (b);
- 5 (d) self-employed sole prostitutes who carry on business in accordance with this Act;
- (e) persons who act as prostitution drivers in accordance with this Act.
- (3) The Board may —
- 10 (a) determine the functions and constitution of, and selection procedures for, a committee; and
- (b) give directions with respect to a committee's functions and procedures.
- (4) A committee is to comply with a direction given to it under subsection (3)(b).
- 15 (5) A person with special knowledge or experience may be invited to act in an advisory capacity to a committee if —
- (a) the committee is of the opinion that the person will assist the committee in the performance of its functions; and
- 20 (b) the Board has approved the invitation.
- (6) A committee is to —
- (a) cause accurate minutes to be kept of its proceedings; and
- (b) submit a report to the Board in respect of the functions performed by the committee as and when required by
- 25 the Board.
- (7) Subject to this Act, a committee may determine its own procedures.

Division 3 — Registrar and staff

22. Registrar and staff

- (1) There are to be appointed under the *Public Sector Management Act 1994* Part 3 —
- 5 (a) a registrar of the Board; and
- (b) such other officers as are necessary to assist with the performance of the functions under this Act of the registrar or the Board.
- (2) The Board may employ persons as wages staff otherwise than
- 10 under the *Public Sector Management Act 1994*.
- (3) Subsections (1) and (2) do not detract from the power of the Board to engage a person under a contract for services under the *Public Sector Management Act 1994* section 100.

23. Functions of registrar

- 15 The registrar —
- (a) has the functions given to him or her by this Act; and
- (b) is responsible for administering the day to day operations of the Board in accordance with any directions of the Board.

24. Use of government staff and facilities

- (1) The Board may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
- 25 (a) in the Public Service;
- (b) in a State agency or instrumentality; or
- (c) otherwise in the service of the Crown in right of the State.
- (2) The Board may by arrangement with —
- (a) a department of the Public Service; or

(b) a State agency or instrumentality,

make use of any facilities of the department, agency or instrumentality.

5 (3) An arrangement under subsection (1) or (2) is to be made on terms agreed to by the parties.

Division 4 — Financial provisions and reporting

25. Funds of the Board

The funds of the Board consist of —

- 10 (a) money borrowed by the Board under section 26;
- (b) fees received by the Board; and
- (c) other money lawfully provided for the purposes of this Act or received by the Board in connection with the performance of its functions.

26. Borrowing by Board from Treasurer

15 The Board may borrow from the Treasurer such amounts as the Treasurer approves on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.

27. Prostitution Control Board Account

- 20 (1) The funds referred to in section 25 are to be credited to an account called the “Prostitution Control Board Account” held —
- (a) as part of the Trust Fund constituted under the *Financial Administration and Audit Act 1985* section 9; or
- 25 (b) with the approval of the Treasurer, at a bank as defined in the *Financial Administration and Audit Act 1985* section 3(1).
- (2) The account is to be charged with —
- (a) the remuneration and allowances of members of the Board; and

- (b) all other expenditure lawfully incurred by the Board in the performance of its functions.

28. Application of *Financial Administration and Audit Act 1985*

5 The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Board and its operations.

Division 5 — Other provisions about Board

29. Execution of documents by Board

- 10 (1) The Board is to have a common seal.
- (2) A document is duly executed by the Board, if —
- (a) the common seal of the Board is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Board by a person or
- 15 persons authorised to do so under subsection (5).
- (3) The common seal of the Board is not to be affixed to any document except as authorised by the Board.
- (4) The common seal of the Board is to be affixed to a document in the presence of 2 members of the Board, and each of them is to
- 20 sign the document to attest that the common seal was so affixed.
- (5) The Board may, by writing under its seal, authorise —
- (a) a member or members of the Board; or
 - (b) a member or members of staff,
- 25 to sign documents on behalf of the Board, either generally or subject to such conditions or restrictions as are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.

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- (7) A document executed under this section without the seal of the Board is not to be regarded as being a document under seal.
- (8) When a document is produced bearing a seal purporting to be the common seal of the Board, it is to be presumed that that seal is the common seal of the Board unless the contrary is shown.
- 5

Part 3 — When licence is required

30. Licence needed to carry on business of a brothel or prostitution agency

- 5 (1) A person who carries on a business involving the provision of prostitution commits an offence under this subsection unless —
- (a) the carrying on of the business is in accordance with a brothel operator’s licence or a prostitution agent’s licence; or
 - 10 (b) the business is a sole operator brothel business or a sole operator agency business.
- (2) The offence under subsection (1) is a crime.
Penalty: imprisonment for 14 years.

31. Licence needed to act as prostitution manager

- 15 (1) A person who acts as a prostitution manager commits a crime unless the person has a prostitution manager’s licence for the business concerned.
Penalty: imprisonment for 5 years.
Summary conviction penalty: imprisonment for 3 years.
- 20 (2) A person acts as a prostitution manager if the person has the immediate direction and control of a brothel business or prostitution agency business.
- (3) Subsection (1) applies whether or not the person has a brothel operator’s licence or a prostitution agent’s licence for the business.

Part 4 — Licensing provisions

Division 1 — General licensing provisions

32. Board may grant licence

The Board may, in accordance with this Part, grant —

- 5
- (a) a brothel operator's licence;
 - (b) a prostitution agent's licence; or
 - (c) a prostitution manager's licence,

10 to a person who applies for a licence of that kind and pays to the Board the fee for the grant of the licence that is prescribed by the regulations.

33. Multiple licences

A person may have —

- 15
- (a) licences of 2 or more of the kinds described in section 32(a) to (c) for one or more business premises; or
 - (b) licences of any of those kinds for 2 or more businesses or business premises.

34. Applying for a licence

- 20
- (1) An application for a licence is to be —
 - (a) made in writing, in a form approved by the Board; and
 - (b) lodged in a manner approved by the Board.
 - (2) A person making an application is to state —

25

 - (a) an address that is to be the person's contact address for the purposes of this Act, at which the person may be contacted by anyone performing a function under this Act; and
 - (b) the address of premises at which records are to be held under section 112.

- (3) When applying for a licence, a person is required to pay to the Board the fee for the application that is prescribed by the regulations.

35. Material required to accompany application for licence

- 5 An application for a licence is to be accompanied by —
- (a) evidence of the applicant's age and identity;
 - (b) photographs of the applicant in such number and form as the Board may determine;
 - 10 (c) testimonials from 2 persons as to the applicant's character given not more than 6 months before the application is lodged;
 - (d) proof of any business name, other than a name identified under paragraphs (a) and (b), under which the applicant proposes to do what is sought to be authorised by the licence;
 - 15 (e) if the application is for a brothel operator's licence or a prostitution agent's licence, evidence that the applicant is ordinarily resident in Western Australia and —
 - (i) is permanently resident in Australia; or
 - 20 (ii) is an Australian citizen;and
 - (f) if the application is for a licence on behalf of a partnership or body corporate —
 - (i) where relevant, proof of incorporation;
 - 25 (ii) the same things in respect of each partner or managerial officer as paragraphs (a), (b), (c), (d), and (e) require in respect of the applicant; and
 - (iii) written confirmation from another partner or director, as the case requires, that the applicant is authorised by the partnership or the body
 - 30 corporate to make the application.

36. Finger and palm prints of applicant for licence

- 5 (1) The Board may, in writing, require an applicant for a licence to attend at a specified place and there have fingerprints and palm prints taken by a police officer or a person employed in the department of the Public Service principally assisting in the administration of the *Police Act 1892*.
- (2) An applicant who fails to comply with a requirement made under subsection (1) cannot be granted a licence.
- 10 (3) The Commissioner of Police is to cause fingerprints and palm prints taken under this section and any copy of them to be destroyed —
- (a) if the applicant is not granted a licence; or
 - (b) if the applicant is granted a licence but afterwards —
 - 15 (i) the licence ceases to have effect; and
 - (ii) the person whose prints were taken requests the Commissioner, in writing, to destroy them.

37. Restrictions on who can have licences

- 20 (1) The Board cannot grant a licence to an applicant unless —
- (a) the applicant is an individual whose age is at least 18 years; and
 - (b) the Board is satisfied that —
 - 25 (i) there is sufficient evidence of the applicant's identity;
 - (ii) sufficient information has been provided to enable the applicant's identity to be checked to the satisfaction of the Board;
 - 30 (iii) the applicant has no charge pending of an offence alleged to have been committed in this State that involves an act of violence against the person or involves a victim who was a child or incapable person;

- 5
- (iv) the applicant has not been declared under the *Misuse of Drugs Act 1981* section 32A to be a drug trafficker;
- (v) the applicant has not been found guilty of an offence described in Schedule 2;
- 10
- (vi) the applicant has not been found guilty of an offence under the law of the Commonwealth, another State, or a Territory, that the Board considers to be substantially similar to an offence described in Schedule 2;
- 15
- (vii) the applicant 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 Board considers would make it inappropriate for the Board to grant the licence;
- 20
- (viii) no licence granted under this Act to the applicant has been revoked within the period of 5 years before the application is made;
- (ix) the applicant is not the subject of a violence restraining order as defined in the *Restraining Orders Act 1997* section 3;
- 25
- (x) the applicant is otherwise of good character and is a fit and proper person to have the licence;
- (xi) in the case of a brothel operator's licence or a prostitution agent's licence, there will be adequate management, supervision and control of the business that will be carried on; and
- 30
- (xii) the applicant will be able to comply with any condition or restriction to which the licence is to be made subject.

- (2) If the application is for a licence on behalf of a partnership or a body corporate, the Board cannot grant a licence unless also

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5 satisfied, with respect to each person who is a partner or managerial officer, of any matter referred to in subparagraph (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix) or (x) of which the Board would need to be satisfied if that person were the applicant.

- 10 (3) A person who has been involved in prostitution before this Act imposed any requirement to have a licence is not, for that reason alone, to be regarded as not being of good character or not being a fit and proper person to be licensed or to be a partner or managerial officer.

38. Form of licence document

- 15 (1) If the Board grants a person a licence it is to issue the person with a licence document that is to contain the details and be in the form determined by the Board consistently with this Part.
- (2) The Board may, under subsection (1), determine that 2 or more licences of the same person may be shown in one licence document.

39. Duration of licence

- 20 (1) Unless the term for which a licence has effect is extended under this section, the licence expires on the day specified in the licence, which cannot be more than 3 years after the day when the licence comes into effect.
- (2) The day on which the licence expires is to be specified in the licence document.
- 25 (3) If an application for the renewal of a licence is granted, the Board may extend the term of the licence and —
- (a) issue the applicant with a new licence document; or
 - (b) modify the applicant's current licence document.
- 30 (4) Each extension of a licence cannot be by more than a period of 3 years.

40. How and when to apply for renewal

- (1) An application for the renewal of a licence is to be —
- (a) made in a form approved by the Board;
 - (b) lodged in a manner approved by the Board; and
 - (c) accompanied by the amount of the fee for the renewal of the licence that is prescribed by the regulations.
- (2) An application for renewal cannot be made later than the 28th day before the day on which the licence is due to expire.
- (3) If the application for renewal is refused, the amount of the fee for the renewal of the licence that accompanied the application is to be refunded.

41. Renewal

The Board cannot renew a licence that section 49 requires it to revoke.

42. Other material to support application for licence or renewal

The Board may request an applicant for the grant or renewal of a licence to provide, in support of the application, any further evidence or information specified, or of a kind specified, by the Board and the request may specify the form in which the evidence or information is required.

43. Conditions and restrictions

- (1) The Board may, when it grants a person a licence, make the licence subject to conditions and restrictions set out in, or provided with, the licence document.
- (2) The Board may, by notice in writing given to the licensed person at any time or in the licence document as issued or modified when granting an extension, make an existing licence subject to a new condition or restriction or vary or remove a condition or restriction to which an existing licence is subject.

44. Regulations may prescribe conditions and restrictions

5 The regulations may prescribe conditions and restrictions that, unless otherwise specified in the licence, are to be taken to be attached to each licence, or each licence of a class prescribed by the regulations.

45. Licence not transferable

A licence is not transferable.

46. Duplicate of licence document

10 If the Board is satisfied that a licence document has been lost or destroyed it may issue a duplicate on payment of the relevant fee that is prescribed by the regulations.

47. Amendment of licence

- 15 (1) A person who has a licence may, in a form approved by the Board, apply to the Board for the amendment of the licence.
- (2) The application is to be accompanied by the amount of the fee, if any, for amending a licence on a person's application that is prescribed by the regulations.
- (3) If the application is refused, the amount of the fee that accompanied the application is to be refunded.
- 20 (4) The Board may, whether or not an application has been made under subsection (1), amend a person's licence by notice in writing given to the person.

48. Automatic termination of licence on behalf of partnership or body corporate

- 25 (1) If a person has a licence on behalf of a partnership, the licence terminates automatically if the person ceases to be one of the partners.

(2) If a person has a licence on behalf of a body corporate, the licence terminates automatically if the person ceases to be a managerial officer of the body corporate.

5 (3) A person whose licence terminates under this section is to give the Board notice in writing of the circumstance resulting in the termination and the date on which it occurred, and the notice is to be given within 7 days after the circumstance occurs.

Penalty: \$12 000.

49. Revoking or suspending licence

10 (1) The Board may revoke or suspend a licence by notice in writing given to the person licensed.

(2) Without limiting subsection (1), the Board is to revoke a licence if —

15 (a) it is no longer satisfied as to any matter about which it would be required to be satisfied before granting a licence of the same kind; or

(b) it comes to know of any other matter that would prevent it from granting the licence if an application were only then being made for it.

20 **50. Notice of change of contact address**

A licensed person may give to the Board notice in writing of a change of that person's contact address.

Division 2 — Licensing brothel operators

51. Restrictions on grant of licence

25 (1) A brothel operator's licence can only be granted to an applicant who is ordinarily resident in Western Australia and —

(a) is permanently resident in Australia; or

(b) is an Australian citizen.

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- (2) A person may have the licence on behalf of a partnership but only if —
- (a) the person is one of the partners;
 - (b) each of the partners other than a body corporate is an individual who is ordinarily resident in Western Australia and —
 - (i) is permanently resident in Australia; or
 - (ii) is an Australian citizen;and
 - (c) each of the partners that is a body corporate is a proprietary company each shareholder of which is an individual who is ordinarily resident in Western Australia and —
 - (i) is permanently resident in Australia; or
 - (ii) is an Australian citizen.
- (3) The person may have the licence on behalf of a body corporate but only if the body corporate is a proprietary company and —
- (a) the person who has the licence is a managerial officer of the body corporate; and
 - (b) each managerial officer of the body corporate is an individual who is ordinarily resident in Western Australia and —
 - (i) is permanently resident in Australia; or
 - (ii) is an Australian citizen.
- (4) If the person has the licence on behalf of a partnership or body corporate, the business in respect of which the person has the licence may be transacted in the name of the partnership or body corporate.

52. Consent needed to use premises as brothel

(1) The Board cannot grant a brothel operator's licence unless satisfied that each land-holder has consented in writing to the proposed business premises being used as a brothel.

5 (2) In subsection (1) —

“land-holder” means a person, other than the person applying for the licence, who has an estate or interest in the land on which the proposed business premises are situated.

53. Other consent, approval, or exemption still required

10 The Board cannot grant a brothel operator's licence unless satisfied that any consent, approval, or exemption has been obtained that, because of any other law, would have to be obtained before the business could be carried on.

54. Examples of matters to be considered

15 (1) Without limiting the matters that the Board may consider in making a licensing decision, those matters include —

(a) the location of the premises that are, or are to be, used as a brothel;

20 (b) the identity of any person who has an estate or interest in the land on which the premises proposed to be used as a brothel are situated;

(c) the hours during which business is, or is to be, carried on at the brothel;

25 (d) the number of persons who act, or are to act, as prostitutes at the brothel;

(e) the number of rooms that are, or are to be, provided at the brothel as places for persons to act as prostitutes; and

(f) the number of prostitution business licences that the same person has or is to have.

(2) In this section —

“licensing decision” means a decision as to the grant, renewal, amendment, suspension, or revocation of a brothel operator’s licence;

5 **“prostitution business licence”** means a brothel operator’s licence or a prostitution agent’s licence.

55. Certain matters to be specified in licence

(1) Without limiting other things that may be specified in a brothel operator’s licence, the licence is to specify —

10 (a) the name of —

(i) the brothel business;

(ii) the person who is licensed; and

(iii) if the licence is on behalf of a partnership or body corporate, each partner or the body corporate, as the case requires;

15

and

(b) premises that are to be used as a brothel.

(2) Two or more premises cannot be specified for use as a brothel in one licence, but that does not prevent a person from having more than one brothel operator’s licence or 2 or more licences of the same person from being shown in one licence document.

20

Division 3 — Licensing prostitution agents

56. Restrictions on grant of licence

(1) A prostitution agent’s licence can only be granted to an applicant who is ordinarily resident in Western Australia and —

25

(a) is permanently resident in Australia; or

(b) is an Australian citizen.

- (2) The person may have the licence on behalf of a partnership but only if —
- (a) the person is one of the partners;
 - 5 (b) each of the partners other than a body corporate is an individual who is ordinarily resident in Western Australia and —
 - (i) is permanently resident in Australia; or
 - (ii) is an Australian citizen;and
 - 10 (c) each of the partners that is a body corporate is a proprietary company each shareholder of which is an individual who is ordinarily resident in Western Australia and —
 - (i) is permanently resident in Australia; or
 - 15 (ii) is an Australian citizen.
- (3) The person may have the licence on behalf of a body corporate but only if the body corporate is a proprietary company and —
- (a) the person who has the licence is a managerial officer of the body corporate; and
 - 20 (b) each managerial officer of the body corporate is an individual who is ordinarily resident in Western Australia and —
 - (i) is permanently resident in Australia; or
 - (ii) is an Australian citizen.
- 25 (4) If the person has the licence on behalf of a partnership or body corporate, the business in respect of which the person has the licence may be transacted in the name of the partnership or body corporate.

57. Consent needed to use premises as prostitution agency office

- 30 (1) The Board cannot grant a prostitution agent's licence unless satisfied that each land-holder has consented in writing to the

proposed business premises being used as a prostitution agency office.

(2) In subsection (1) —

5 **“land-holder”** means a person, other than the person applying for the licence, who has an estate or interest in the land on which the proposed business premises are situated.

58. Other consent, approval, or exemption still required

10 The Board cannot grant a prostitution agent’s licence unless satisfied that any consent, approval, or exemption has been obtained that, because of any other law, would have to be obtained before the business could be carried on.

59. Examples of matters to be considered

15 (1) Without limiting the matters that the Board may consider in making a licensing decision, those matters include —

- 15 (a) the location of the premises that are, or are to be, used as a prostitution agency office;
- (b) the identity of any person who has an estate or interest in the land on which the premises proposed to be used as a prostitution agency office are situated;
- 20 (c) the hours during which business is, or is to be, carried on from the prostitution agency office;
- (d) the number of persons who act, or are to act, as prostitutes through the prostitution agency business; and
- 25 (e) the number of prostitution business licences that the same person has or is to have.

(2) In this section —

30 **“licensing decision”** means a decision as to the grant, renewal, amendment, suspension, or revocation of a prostitution agent’s licence;

“prostitution business licence” means a brothel operator’s licence or a prostitution agent’s licence.

60. Certain matters to be specified in licence

- (1) Without limiting other things that may be specified in a prostitution agent's licence, the licence is to specify —
- (a) the name of —
 - 5 (i) the prostitution agency business;
 - (ii) the person who is licensed; and
 - (iii) if the licence is on behalf of a partnership or body corporate, each partner or the body corporate, as the case requires;
 - 10 and
 - (b) premises that are to be used as a prostitution agency office.
- (2) Two or more premises cannot be specified for use as a prostitution agency office in one licence, but that does not prevent a person from having more than one prostitution agent's licence or 2 or more licences of the same person from being shown in one licence document.

Division 4 — Licensing prostitution managers

61. Restrictions on grant of licence

- 20 A person cannot have a prostitution manager's licence on behalf of a partnership or body corporate.

62. Certain matters to be specified in licence

- (1) Without limiting other things that may be specified in a prostitution manager's licence, the licence is to specify —
- 25 (a) the name of —
 - (i) the brothel business or prostitution agency business for which the person is licensed as a manager;
 - (ii) the person who is licensed as a manager; and

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Division 4 Licensing prostitution managers

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- (iii) the person licensed as the brothel operator or prostitution agent for the business concerned;
 - and
 - (b) the location of the business premises.
- 5 (2) A person cannot be specified as a prostitution manager for 2 or more premises in one licence, but that does not prevent a person from having more than one prostitution manager's licence or 2 or more licences of the same person from being shown in one licence document.

Part 5 — Other obligations and offences

Division 1 — Persons generally

63. Inviting services of prostitute prohibited from acting

5 A person who knows, or could reasonably be expected to know, that another person is prohibited by this Act from acting as a prostitute, whether because the person is banned by or under this Act from acting as a prostitute, or for any other reason, is not to invite that other person to act as a prostitute.

Penalty: imprisonment for one year.

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

- 10 (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.
- 15 (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 or incapable person.
- (3) A person who commits an offence under subsection (1) is liable —
- 20 (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 (the “**offender**”) seeks another person to act as a prostitute if the offender —
- 25 (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

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(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;

5 (b) whether or not a particular person is sought to act as a prostitute; or

10 (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.

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

15 (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) 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, the offence is a crime.

20 (3) A person who commits an offence under subsection (1) is liable —

(a) if it is a simple offence, to imprisonment for one year;

(b) if it is a crime, to imprisonment for 3 years.

(4) For the purposes of subsection (1), a person (the “**offender**”) seeks another person to be a prostitute's client if the offender —

25 (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 —

30 (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.

(5) It makes no difference —

5

(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

10

(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.

66. Providing place for prostitution

15

(1) A person who, except as stated in subsection (2), provides a place for the purpose of acts of prostitution being performed there commits a crime.

Penalty: imprisonment for 5 years.

(2) Subsection (1) does not apply to —

20

(a) the provision of premises for use as a brothel in accordance with a brothel operator's licence;

(b) the provision of premises being the principal place of residence of a self-employed sole prostitute; or

25

(c) the provision by a client of a place, on a temporary basis, for the purpose of the client taking part in an act of prostitution —

(i) under an arrangement with a prostitution agency business for which a person is licensed; or

(ii) with a self-employed sole prostitute.

67. Client not to attend a place unlawfully provided

A person is not, as a client, to attend a place provided contrary to section 66 for the purpose of acts of prostitution being performed there.

5 Penalty: \$6 000.

68. Causing, permitting, or seeking to induce child or incapable person to act as prostitute

(1) A person is not to cause or permit a child, or cause or permit an incapable person, to act, or continue to act, as a prostitute.

10 (2) A person is not to do anything with the intention of inducing a child or an incapable person to act, or continue to act, as a prostitute.

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

Penalty: imprisonment for 20 years.

15 **69. Obtaining payment for prostitution by a child or incapable person**

(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 or incapable person taking part in an act of prostitution, whether as a prostitute or as a client.

20

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.

25

70. Agreement for prostitution by a child or incapable person

(1) A person is not to enter into, or offer to enter into, an agreement under which a child or incapable person is to act as a prostitute, whether for that person or anyone else.

30 Penalty: imprisonment for 14 years.

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

71. Child not to seek services of prostitute

(1) A child is not to seek another person to act as a prostitute.

Penalty: \$6 000.

5 (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

10 (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.

15 (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

20 (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.

72. No prostitution where child present

25 (1) A person is not to take 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.

Penalty:

(a) for a first offence — \$25 000;

30 (b) for any subsequent offence — imprisonment for 2 years and \$25 000.

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

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

73. Allowing child to be at place where prostitution involved

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

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

commits an offence under this section.

15 **Penalty:**

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

74. Seeking to induce person to act as prostitute

20 (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
25 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 or an incapable person to act, or continue to act, as a prostitute.

Penalty: imprisonment for 14 years.

30 **Summary conviction penalty:** imprisonment for 3 years.

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

75. Living on earnings of prostitute prohibited from acting

- 5 (1) A person is not to live wholly or in part on, or derive a material benefit from, the earnings from prostitution of a person who is prohibited by this Act from acting as a prostitute, whether because the person is banned by or under this Act from acting as a prostitute, or for any other reason.

Penalty: imprisonment for one year.

- 10 (2) The court convicting a person of an offence under subsection (1) may, as well as imposing a penalty for the offence, order the person to pay to the Crown an amount that the court considers to be not more than the value of the benefit derived by the person from the prostitute's earnings.

76. Persons with certain health conditions not to use prostitutes

- 15 A person who knows, or could reasonably be expected to know, that he or she has a sexually transmissible infection commits an offence if he or she invites or allows another person to act as a prostitute for him or her.

Penalty:

- 20 (a) for a first offence — \$6 000;
(b) for any subsequent offence — imprisonment for one year.

77. Prophylactic to be used

- 25 It is an offence for a person to take part 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: \$6 000.

78. Advertising prostitution

- (1) A person is not to publish or cause to be published an advertisement of prostitution that is contrary to any regulation made for the purposes of this subsection.
- 5 (2) A person is not to broadcast or cause to be broadcast an advertisement of prostitution other than through —
- (a) a newspaper;
 - (b) a part of the computer network known as the internet but only if, before the broadcast, the person notifies the
10 Board of the person’s intention to do so in accordance with the regulations for the purposes of this paragraph; or
 - (c) other means that are approved by the Board.
- 15 (3) If an advertisement of prostitution is broadcast or otherwise published contrary to this section, the offence is committed by —
- (a) any person who publishes the advertisement or causes it to be published, or broadcasts the advertisement or causes it to be broadcast, as the case requires;
 - 20 (b) any person through whose business the advertisement is broadcast or otherwise published; and
 - (c) the person who has the prostitution business licence for the business in the course of which the advertised prostitution would be performed and any person who
25 has a prostitution manager’s licence for the business.
- (4) In this section —
- 30 **“advertisement of prostitution”** includes an advertisement of the name of a person acting as a prostitute, the name of any person who carries on a business involving prostitution, or the name under which a business involving prostitution is carried on, even though there may be nothing besides the name to indicate that it is prostitution that is advertised;

“broadcast” includes to publish —

- (a) by transmitting or otherwise disseminating by radio or television, or through any part of the computer network known as the internet; or
- 5 (b) through any paper, periodical, journal, or other thing circulated to the public or any section of the public;

“prostitution business licence” means —

- (a) a brothel operator’s licence; or
- (b) a prostitution agency licence.

- 10 (5) An advertisement is disseminated through a part of the computer network known as the internet if it is sent, or made accessible through, the network or any part of it.

Penalty: \$6 000.

79. Promoting employment in prostitution industry

15 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.

20 Penalty: \$60 000.

80. Prohibition of certain sponsorships

(1) A person is not, in Western Australia, to promote or publicise, or agree to promote or publicise —

- (a) any person as a prostitute; or
- 25 (b) any business involving the provision of 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.

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(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).

5 (3) In this section —

“**sponsorship**” includes —

(a) a scholarship, prize, gift, or other like benefit; and

10 (b) any financial arrangement (other than a bona fide contract of employment or a bona fide contract for services) for directly promoting or publicising a person or business as referred to in subsection (1)(a) or (b) through any medium.

Penalty: \$60 000.

81. Involvement in the business of self-employed sole prostitute

15 (1) A person who does not own and operate a sole operator brothel business or a sole operator agency business is not to do, in connection with that business, anything of a kind that is similar to anything normally done by a person in connection with a prostitution agency business.

20 (2) Subsection (1) does not apply to a person who is employed or engaged under any kind of arrangement to act as a prostitution driver, in accordance with this Act, for a self-employed sole prostitute.

Penalty: imprisonment for one year.

25 **82. Interest in business of self-employed sole prostitute**

(1) A person who has an interest in a sole operator brothel business or a sole operator agency business but does not own and operate the business commits a crime.

Penalty: imprisonment for 5 years.

30 Summary conviction penalty: imprisonment for 3 years.

- (2) For the purposes of subsection (1) —
“**interest**” has a meaning corresponding to the meaning given
by section 103(5).

83. Possessing another person’s licence document

- 5 A person is not, without lawful excuse, to possess —
(a) a licence document issued to another person; or
(b) a document that purports to be, but is not, a licence
document issued under this Act.

Penalty: imprisonment for one year.

10 **84. Interfering with licence document**

A person is not, without lawful excuse, to wilfully destroy,
mutilate, deface, or alter a licence document, whether it was
issued to that person or another person.

Penalty: imprisonment for one year.

15 **85. Falsely implying certain things**

A person is not to falsely represent, or lead another person to
falsely believe, that —

- (a) a person holds a licence under this Act, whether of a
particular kind or at all; or
20 (b) anything is in accordance with a licence.

Penalty: imprisonment for one year.

86. Inspection of records

- (1) Records required by section 112 to be held are required to be
available for inspection at the premises at which they are
25 required to be held.
(2) A person required by section 112 to hold records, or an agent or
employee of the person who is at the time in charge of the
premises where they are required to be held, is to produce for

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inspection any records referred to in subsection (1) if required to do so by a police officer or other authorised person.

(3) If records required under this section to be produced are not in a readable format, the requirement to produce them is to be

5

treated as a requirement to produce —

(a) the records themselves; and

(b) the contents of the records in a readable format.

(4) A person is not, without lawful excuse, to refuse or fail to comply with a requirement under this section.

10

Penalty:

(a) if the requirement to hold the records applies to the person because the person is or was required to maintain them in the person's capacity as the holder of a brothel operator's licence, a prostitution agent's licence, or a prostitution manager's licence —

15

\$120 000;

(b) in the case of an agent or employee of a person referred to in paragraph (a) — \$60 000.

87. Information to be given to police and other authorised persons

20

(1) A police officer or other authorised person may, for the purposes of performing any function under this Act, request —

(a) any person who is at a brothel or a prostitution agency office; or

25

(b) any person who is known or is reasonably suspected to have acted as a prostitute,

to give that person's name and address, and any other information that may assist in identifying the person, to the person making the request.

(2) A person who, when requested under subsection (1) to give information —

(a) fails to comply with the request; or

5 (b) gives information that the person knows to be false or misleading in a material particular, or likely to deceive in a material way,

commits an offence.

Penalty:

(a) for a first offence — \$6 000;

10 (b) for any subsequent offence — imprisonment for one year.

88. Hindering performance of functions

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

Penalty: imprisonment for 2 years.

89. Other offences relating to the performance of functions

(1) A person is not to give information, orally or in writing, that affects or is intended to affect the performance of a prostitution-related function and that the person knows to be —

(a) false or misleading in a material particular; or

(b) likely to deceive in a material way.

(2) In subsection (1) —

25 “**prostitution-related function**” means a function under this Act, or any other function in respect of an offence under this Act.

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- (3) Without limiting the things to which subsection (1) applies, that subsection extends to the giving of information in an application form or otherwise in connection with the making of an application.

5 Penalty:

- (a) for a first offence — \$6 000;
- (b) for any subsequent offence — imprisonment for one year.

90. Contravening certain orders by the Board

10 A person is not, without lawful excuse, to contravene an order made under Part 6.

Penalty:

- (a) for a first offence — \$6 000;
 - (b) for any subsequent offence — imprisonment for one year.
- 15

91. Contravening direction by police to move on

A person is not, without lawful excuse, to contravene a direction given under section 155.

Penalty:

- (a) for a first offence — \$6 000;
 - (b) for any subsequent offence — imprisonment for one year.
- 20

92. Failure to comply with certain requirements

- (1) A person is not, without lawful excuse, to refuse or fail —
- (a) to attend; or
 - (b) to produce a document or other thing,
- as required under section 140 or 149.
- 25

- 5
- (2) A person is not, without lawful excuse, to refuse or fail —
- (a) to be sworn or make an affirmation when required to do so under section 149; or
 - (b) to answer a question or otherwise give information when required to do so under section 140 or 149.

Penalty:

- (a) for a first offence — \$6 000;
- (b) for any subsequent offence — imprisonment for one year.

- 10
- (3) If an individual is required under section 140 or 149 to answer a question or otherwise give information or produce anything neither —

- 15
- (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,
- 20

is admissible in evidence in any civil or criminal proceedings against the individual other than proceedings for perjury or for an offence under section 89.

- (4) Nothing in this Act —

- 25
- (a) prevents 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
- 30
- (b) prevents a person from 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.

5 **93. Misbehaviour**

A person is not to —

- (a) misbehave during a formal inquiry;
- (b) wilfully insult the Board or a member of the Board; or
- (c) wilfully interrupt the proceedings of a formal inquiry.

10 Penalty:

- (a) for a first offence — \$6 000;
- (b) for any subsequent offence — imprisonment for one year.

94. Execution of warrant to be assisted

15 A person who is in charge of premises named in a warrant issued under section 142 and anyone at the premises under that person's control are to give to any person acting under the warrant who seeks assistance any assistance sought that they are able to give.

20 Penalty:

- (a) for a first offence — \$6 000;
- (b) for any subsequent offence — imprisonment for one year.

95. Returns by courts

25 If a court —

- (a) convicts a licensed person of —
 - (i) an offence under this Act; or
 - (ii) an offence described in Schedule 2;
- or

- (b) convicts a person who is not licensed of an offence under Part 3,

the clerk or registrar of the court is to send to the Board notice of the conviction or finding, any penalty imposed, and any order made.

5

Division 2 — Prostitutes

96. Ban from acting as a prostitute

- (1) A person is banned from acting as a prostitute if —

10

- (a) the person is a child; or
- (b) the person is an incapable person.

- (2) The Board may give a person a notice in writing banning the person, either indefinitely or as specified in the notice, from acting as a prostitute if —

15

- (a) the person has been declared under the *Misuse of Drugs Act 1981* section 32A to be a drug trafficker;
- (b) the person has been found guilty of an offence described in Schedule 2; or
- (c) for any other reason that the Board sees fit.

20

- (3) A person who acts or offers to act as a prostitute while banned by subsection (1)(a) or by a notice under subsection (2) from acting as a prostitute commits an offence under this subsection.

Penalty: in the case of a child — \$6 000.

Penalty: in any other case — imprisonment for 2 years.

25

- (4) The Board may, by notice in writing given to the person, vary or revoke a notice banning a person from acting as a prostitute.

97. Prostitute not to act at place unlawfully provided

A person is not to act as a prostitute at a place provided contrary to section 66 for the purpose of acts of prostitution being performed there.

30

Penalty: \$6 000.

98. Acting as a prostitute for a child

A person is not to act as a prostitute for a client who is a child.

Penalty: imprisonment for 2 years.

99. Persons with certain health conditions not to act as prostitutes

A person who knows, or could reasonably be expected to know, that he or she has a sexually transmissible infection commits an offence if he or she acts or offers to act as a prostitute.

Penalty:

(a) for a first offence — \$6 000;

(b) for any subsequent offence — imprisonment for one year.

100. Medical examination not to be used to imply absence of certain health conditions

(1) A person is not to use —

(a) the fact that the person has had a medical examination; or

(b) the results of a medical examination or the giving of a certificate as to those results,

to imply, in connection with any proposal that the person act as a prostitute, that the person does not have any, or a particular, sexually transmissible infection.

Penalty: \$3 000.

(2) Subsection (1) does not apply if the implication results from a disclosure that the person makes to a person licensed as the brothel operator or prostitution agent, or as a prostitution manager, for the business for which the person acts or proposes to act as a prostitute.

101. Employment contract required in certain cases

- (1) A person is not to act as a prostitute at a brothel unless —
- (a) the person has entered into a contract of service with the person who has the brothel operator’s licence for the brothel, as an employee of that person; and
 - (b) whenever acting as a prostitute at the brothel, the person is acting in the course of the person’s employment under the contract of service.

- (2) A person is not to act as a prostitute through a prostitution agency business unless —
- (a) the person has entered into a contract of service with the person who has the prostitution agent’s licence for the business, as an employee of that person; and
 - (b) whenever acting as a prostitute through the business, the person is acting in the course of the person’s employment under the contract of service.

- (3) This section applies to a person who acts as a prostitute whether or not the person is also a self-employed sole prostitute.
Penalty: \$3 000.

102. Notification of notifiable sexually transmissible infection

A person who acts as a prostitute and becomes aware that the person has a notifiable sexually transmissible infection is to give the Board notice in writing of that fact within 7 days after becoming aware of it.

Penalty: \$6 000.

103. Independence of self-employed sole prostitute

- (1) A person is not to carry on a sole operator brothel business or a sole operator agency business from a place from which any other person carries on a business involving the provision of prostitution.

Penalty: imprisonment for one year.

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- 5 (2) A person carrying on a sole operator brothel business or a sole operator agency business is not to use the services of another person to do, in connection with that business, anything of a kind that is similar to anything normally done by a person in connection with a prostitution agency business.
Penalty: imprisonment for one year.
- 10 (3) Subsection (2) does not apply to a person who is employed or engaged under any kind of arrangement to act as a prostitution driver, in accordance with this Act, for a self-employed sole prostitute.
- (4) A person who carries on a sole operator brothel business or a sole operator agency business is not to allow another person to have an interest in the business.
Penalty: imprisonment for one year.
- 15 (5) For the purposes of subsection (4), a person has an interest in a sole operator brothel business or a sole operator agency business if —
- 20 (a) the person receives any pecuniary or other benefit from the carrying on of that business; or
- (b) the person could reasonably be expected to receive a benefit described in paragraph (a),
- 25 except that a benefit received or expected to be received as a spouse or de facto partner or dependant of the self-employed sole prostitute who owns and controls the business or as a person acting as a prostitution driver for that person, or in the ordinary course of a business not involving the provision of prostitution, is to be disregarded.

104. Self-employed sole prostitutes not to allow certain persons to act as prostitution drivers

A person who carries on a sole operator agency business is not to allow another person to act as a prostitution driver if the prospective driver —

5

- (a) has been declared under the *Misuse of Drugs Act 1981* section 32A to be a drug trafficker; or
- (b) has been found guilty of an offence described in Schedule 2.

10

Penalty: \$6 000.

Division 3 — Prostitution drivers

105. What constitutes acting as a prostitution driver

A person acts as a prostitution driver if —

15

- (a) the person is employed in, or engaged under any kind of arrangement for the purposes of, a business involving the provision of prostitution; and
- (b) the person transports a passenger on a journey that the person knows, or could reasonably be expected to know, is undertaken wholly or partly for the purpose of that passenger taking part, whether as a prostitute or a client, in an act of prostitution.

20

106. Certain persons not to act as prostitution drivers

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

25

- (a) the person has been declared under the *Misuse of Drugs Act 1981* section 32A to be a drug trafficker; or
- (b) the person has been found guilty of an offence described in Schedule 2.

Penalty: imprisonment for 2 years.

107. Driver's licence under *Road Traffic Act 1974*

5 Nothing in this Act affects a prostitution driver's need to hold the appropriate driver's licence under the *Road Traffic Act 1974*, and for the purpose of determining the appropriate licence that is required under that Act the functions of a prostitution driver are to be regarded as involving the carriage of passengers for reward.

108. Limits on what prostitution driver may do

- 10 (1) A person who acts as a prostitution driver commits an offence under this section if —
- 15 (a) the business in respect of which the person is employed or engaged is a brothel business and the person knows, or could reasonably be expected to know, that the person carrying on that business does not have a brothel operator's licence;
 - 20 (b) the business in respect of which the person is employed or engaged is a prostitution agency business and the person knows, or could reasonably be expected to know, that the person carrying on that business does not have a prostitution agent's licence; or
 - 25 (c) the person knows, or could reasonably be expected to know, that a prospective passenger is prohibited by this Act from acting as a prostitute, whether because the person is banned by or under this Act from acting as a prostitute, or for any other reason.

Penalty: imprisonment for 2 years.

- 30 (2) A person who acts as a prostitution driver is not to enter any place in which prostitution in connection with which the person acts as a prostitution driver takes place unless the place is entered because it is reasonably believed that the prostitute is in danger.

Penalty: \$6 000.

109. No weapon to be carried

- (1) A person who acts as a prostitution driver is not to carry a weapon while acting as a prostitution driver.

Penalty: \$6 000.

- 5 (2) Subsection (1) applies even though the person may otherwise be authorised under the *Firearms Act 1973*, the *Security and Related Activities (Control) Act 1996*, or any other law, to carry the weapon.

- (3) In this section —

10 **“weapon”** means —

(a) a firearm as defined in the *Firearms Act 1973* section 4; or

(b) a controlled weapon as defined in the *Weapons Act 1999* section 3 or a prohibited weapon as defined in that section.

15

Division 4 — Licensed persons

110. Return of licence document

- (1) A person whose licence is suspended, expires, or otherwise terminates is required, without delay, to deliver to the Board the licence document that the Board has issued to the person.

20

Penalty: \$6 000.

- (2) It is a defence to a prosecution for an offence under subsection (1) if the defendant satisfies the court that the failure to deliver the document was due to its loss or destruction.

25 **111. Providing licence document to another**

A licensed person is not to —

- (a) dispose of the person’s licence document to another person; or

(b) permit another person to use the licence document.

Penalty: imprisonment for one year.

112. Records to be kept

(1) A licensed person —

5 (a) is required to maintain such records as may be prescribed, containing such particulars as may be prescribed; and

(b) is not to knowingly make any false or misleading entry in any record.

10 (2) The person who is or was required by subsection (1) to maintain any records is required, whether or not the person still has the licence, to hold the records at the notified premises until the end of the retention period unless they are relinquished to the Board in accordance with subsection (5).

15 (3) In subsection (2) —

20 **“notified premises”** means the premises identified in the person’s application for the licence as the premises at which records are to be held under this section unless, under subsection (4), the Board has been notified of other premises, in which case it is the premises of which the Board has been most recently notified under that subsection;

“retention period” means a period of 7 years from when the last entry was made in the records.

25 (4) A person referred to in subsection (2) may notify the Board in writing of a change in the address of the premises at which records are to be held under this section but the premises must be in this State unless the Board otherwise approves in writing.

30 (5) A person referred to in subsection (2) who no longer has the licence may, instead of holding records at the notified premises as required by that subsection, relinquish those records to the Board.

Penalty: \$120 000.

113. Notice of charge or conviction of indictable offence

(1) A licensed person is required to give to the Board, not later than 7 days after becoming aware of the fact, notice of the fact that —

- 5 (a) a police officer has charged the person with an offence under this Act;
- (b) the person has been charged, in this State or elsewhere, with an indictable offence; or
- 10 (c) the person has been convicted, in this State or elsewhere, of an indictable offence.

Penalty: \$12 000.

(2) In subsection (1) —

15 “**indictable offence**” includes an offence under a law of the Commonwealth, any other State, or a Territory, that is triable by jury.

114. Board to be notified of certain other matters

(1) A person who has a licence is to give the Board notice in writing of any matter that would, or knowledge of which would, prevent the Board from granting the person’s licence if the person were then applying for it.

20

(2) The notice is to be given within 7 days after the licensed person becomes aware of the matter.

Penalty: \$12 000.

115. Breach of condition or restriction

25

A person is required to comply with a condition or restriction that is, or is to be taken to be, attached to the person’s licence.

Penalty: \$60 000.

116. Licensed brothel operator or prostitution agent strictly liable for certain matters

5 (1) A person licensed as a brothel operator or a prostitution agent commits an offence if any requirement of this section is contravened.

Penalty:

- 10 (a) if the requirement contravened is a requirement of subsection (2) —
- (i) if subparagraph (ii) does not apply — imprisonment for 3 years;
- (ii) in the case of a first offence arising from a contravention of the requirement of subsection (2)(b)(i) — \$24 000;
- 15 (b) if the requirement contravened is a requirement of subsection (3) — \$12 000;
- (c) if the requirement contravened is a requirement of subsection (4) — \$6 000.

- 20 (2) The requirements of this subsection are that —
- (a) at all times when the brothel business or prostitution agency business is being carried on, a person licensed to act as a prostitution manager for the business act in that capacity at the business premises; and
- (b) at the business premises —
- (i) no child be present; and
- 25 (ii) no person be in possession of a prohibited drug without a lawful excuse.

- 30 (3) The requirements of this subsection are that —
- (a) at each entrance to the business premises, a sign complying with the regulations be conspicuously displayed stating —
- (i) that the business involves the provision of prostitution;

- (ii) that a person whose age is less than 18 years is not allowed to enter the premises; and
 - (iii) anything else that the regulations require the sign to state;
 - (b) the licence document be displayed prominently at the business premises, in the case of a brothel in the reception area;
 - (c) all reasonable steps be taken to keep conditions at the business premises at a satisfactory health standard, and to protect the health of persons taking part, whether as prostitute or client, in acts of prostitution, including steps to encourage prostitutes to have regular medical examinations; and
 - (d) each person licensed as a prostitution manager, and each person who acts as a prostitute, for the brothel business or prostitution agency business attend any educational course that the Board requires them under the regulations to attend.
- (4) The requirements of this subsection are that —
 - (a) in connection with the brothel business or prostitution agency business, each person directly or indirectly under the control of the person acting as the prostitution manager comply with this Act, including any regulations or code of practice published in accordance with regulations under section 208(2)(c);
 - (b) all reasonable steps be taken to require prostitutes and clients to use prophylactics whenever their use is required by this Act; and
 - (c) no use be made, contrary to this Act, of —
 - (i) the fact that a person has had a medical examination; or

(ii) the results of a medical examination,
to imply, in connection with any proposed act of
prostitution by that person, that the person does not have
any, or a particular, sexually transmissible infection.

5 **117. Records**

(1) The records that a person who has a brothel operator's licence
or a prostitution agent's licence is required to maintain under
section 112, include —

(a) particulars of —

10 (i) every person who, whether on a permanent or
full-time basis or not, acts as a prostitute or a
prostitution driver for the brothel business or
prostitution agency business, or works in any
other capacity at the business premises; and

15 (ii) anyone else who has been at the business
premises other than for so long as the person is
there to receive services as, or do business as, a
client;

20 (b) details of each person's attendance at any educational
course as described in section 116(3)(d); and

(c) details of any visit by a police officer or other authorised
person to the premises where the records are held.

(2) Subsection (1) does not limit what records or particulars the
regulations may require to be maintained under section 112.

25 (3) The regulations may require a brothel operator or a prostitution
agent to give the Board periodic returns containing prescribed
information derived from the records.

30 (4) The regulations may require that returns be given using a
medium and format prescribed by the regulations unless they
are given using a medium and format that the Board considers
acceptable, either for returns generally or for the particular
returns concerned.

118. Certain duties of prostitution manager

5 (1) A person who has a prostitution manager's licence is to be at the business premises of the brothel business or prostitution agency business for which the person is licensed at all times while the person acts as a prostitution manager.

Penalty: imprisonment for 2 years.

10 (2) A person who has a prostitution manager's licence is to ensure that, when the person is acting as a prostitution manager —

(a) all reasonable steps are taken to require prostitutes and clients to use prophylactics whenever their use is required by this Act;

(b) use is not made, contrary to this Act, of —

(i) the fact that a person has had a medical examination; or

15 (ii) the results of a medical examination or a certificate as to those results,

to imply, in connection with any proposed act of prostitution by that person, that the person does not have any, or a particular, sexually transmissible infection;

20 (c) the person who has the brothel operator's licence or prostitution agent's licence for the brothel business or prostitution agency business is notified without delay if the prostitution manager becomes aware of a person who acts as a prostitute for the business having a sexually transmissible infection; and

25 (d) each person directly or indirectly under the prostitution manager's control in connection with the brothel business or prostitution agency business complies with this Act, including any regulations or code of practice published in accordance with regulations under

30 section 208(2)(c).
Penalty: \$6 000.

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- (3) A person who has a prostitution manager's licence for a prostitution agency business is to ensure that, at all times when the person is acting as a prostitution manager, each prostitute working for the business can immediately contact the person.

5 Penalty: \$6 000.

119. Obligation to ensure prostitute has employment contract

- (1) A person who has a brothel operator's licence for a brothel is to ensure that each person who acts as a prostitute at the brothel does so as an employee under a contract of service entered into with the person who has the brothel operator's licence for the brothel.

10

- (2) A person who has a prostitution manager's licence for a brothel is to ensure that, when the person is acting as a prostitution manager, each person who acts as a prostitute at the brothel does so as an employee under a contract of service entered into with the person who has the brothel operator's licence for the brothel.

15

- (3) A person who has a prostitution agent's licence for a prostitution agency business is to ensure that each person who acts as a prostitute through the business does so as an employee under a contract of service entered into with the person who has the prostitution agent's licence for the business.

20

- (4) A person who has a prostitution manager's licence for a prostitution agency business is to ensure that, when the person is acting as a prostitution manager, each person who acts as a prostitute through the business does so as an employee under a contract of service entered into with the person who has the prostitution agent's licence for the business.

25

- (5) A person to whom subsection (1), (2), (3), or (4) applies must ensure that before a contract of service is entered into, the identity of the person who is to act as a prostitute is ascertained and verified in accordance with the regulations.

30

Penalty: imprisonment for one year.

120. Acting as prostitution manager under influence of certain substances

5 A person who has a prostitution manager's licence commits an offence if the person is affected by alcohol or a prohibited drug while the person acts as a prostitution manager.

Penalty: \$6 000.

121. Prophylactics to be provided for use

10 A person having a brothel operator's licence or a prostitution agent's licence for a business is to supply prophylactics free of charge to any person who requires them for use when participating in prostitution taking place in the course of that business.

Penalty: \$12 000.

122. Use of prophylactics not to be discouraged

15 A person having a brothel operator's licence, a prostitution agent's licence, or a prostitution manager's licence is not to do anything to discourage a prostitute or client from complying with section 77.

Penalty: \$12 000.

20 123. Strict liability for failure to use prophylactics

(1) 25 If a person contravenes section 77 and the act of prostitution concerned is in the course of a brothel business, the person who has the brothel operator's licence for the business and each person who has a prostitution manager's licence for the business commit an offence under this subsection.

Penalty: \$12 000.

(2) 30 If a person contravenes section 77 and the act of prostitution concerned is in the course of a prostitution agency business, the person who has the prostitution agent's licence for the business and each person who has a prostitution manager's licence for the business commit an offence under this subsection.

Penalty: \$12 000.

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- (3) A person charged with an offence under subsection (1) or (2) has a defence if it is proved that —
- (a) the contravention of section 77 occurred without the person's consent or connivance; and
 - (b) the person exercised all due diligence to prevent the contravention as ought to have been exercised having regard to the nature of the person's functions and to all the circumstances.

124. Person with sexually transmissible infection not to be allowed to act as prostitute

- (1) A person who has a brothel operator's licence, a prostitution agent's licence, or a prostitution manager's licence for a business (the "**licensed person**") commits an offence if the licensed person allows a person to act as a prostitute for the business who the licensed person knows, or could reasonably be expected to know, has a sexually transmissible infection.

Penalty: imprisonment for 2 years.

- (2) The offence under subsection (1) is only capable of being committed by a person as the holder of a prostitution manager's licence while the person is acting as a prostitution manager.

- (3) 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 who the person charged knows, or could reasonably be expected to know, has a sexually transmissible infection from acting as a prostitute for the business.

125. Board to be notified of certain other matters

- (1) A person who has a brothel operator's licence or a prostitution agent's licence is to give the Board notice in writing of any notifiable matter within 7 days after becoming aware of the matter.

Penalty: \$12 000.

(2) In subsection (1) —

“notifiable matter” means —

- (a) a change in who has an estate or interest in the land on which the business premises are situated;
- 5 (b) a change in the rent payable for the business premises, if they are rented;
- (c) a charge of the commission of an indictable offence being made against —
 - 10 (i) the person who has the licence;
 - (ii) if the licence is on behalf of a partnership or body corporate, any partner, the body corporate, or any managerial officer of the body corporate;
 - 15 (iii) a person who acts as a prostitute or as a prostitution driver for the business concerned; or
 - (iv) a person who has a prostitution manager’s licence for the business concerned;
- 20 (d) a person, not already a managerial officer of the body corporate, becoming a shareholder or in any other way becoming a managerial officer of a body corporate on behalf of which the licence is held; or
- 25 (e) a person who acts as a prostitute for the business concerned having a notifiable sexually transmissible infection.

126. No business to be given to self-employed sole prostitute

A person who has a brothel operator’s licence, prostitution agent’s licence, or prostitution manager’s licence is not to directly or indirectly direct or refer a potential client to a self-employed sole prostitute.

Penalty: imprisonment for 2 years.

127. Certain persons not to be allowed to act as prostitution drivers

5 A person having a prostitution agent's licence or a prostitution manager's licence is not to allow another person to act as a prostitution driver if the prospective prostitution driver —

- (a) has been declared under the *Misuse of Drugs Act 1981* section 32A to be a drug trafficker; or
- (b) has been found guilty of an offence described in Schedule 2.

10 Penalty: \$6 000.

Part 6 — Supervisory provisions

Division 1 — Board's supervisory functions

128. Board to keep records about certain people

- 5 (1) The Board is required to keep a record that includes details of —
- (a) anyone who has applied for a licence, whether or not a licence was granted;
 - (b) anyone who has, or has had, a licence; and
 - 10 (c) anyone else who has been found by a court to have acted as a prostitute.
- (2) The Board may amend the details entered in the record to correct any entry that was incorrectly made or to add new details, but it is not to remove an entry that was correctly made unless the entry is removed under subsection (3).
- 15 (3) The Board may, if requested in writing to do so, remove the records of a person having applied for or held a licence if a period of at least 7 years has passed since the person last held the licence or, if the application did not result in the grant of a licence, since the application was disposed of.

20 **129. Board may monitor compliance**

- (1) The Board may, to assist it to perform its functions under this Act, monitor the activities of persons it reasonably suspects may be involved in prostitution or related activities, and may investigate any alleged or suspected contravention of this Act or
25 anything else that is relevant to the performance of its functions under this Act.
- (2) The Board's functions under this section are not confined to cases in which an allegation has been made under section 131 or a matter has been brought to the Board's attention under
30 section 132.

130. Medical examination

- 5 (1) The Board may, if it reasonably suspects that a person is acting as a prostitute and may have a sexually transmissible infection, order the person to undergo, within the time specified by the Board or periodically as specified by the Board, an examination by a medical practitioner nominated by the Board.
- (2) Payment for a medical examination that the Board orders a person to undergo is the responsibility of the Board.
- 10 (3) The Board may, at the request of the person who is the subject of the order or of its own volition, vary or revoke the order.
- (4) A medical practitioner who carries out the examination is to provide a copy of the report of the examination to the person examined and to the Board.

131. Allegations

- 15 (1) A person may allege to the Board that another person is doing or has done anything as a result of which the Board should take action under this Act.
- (2) The allegation may be about anything related to prostitution and need not relate to a contravention of this Act or any other law.
- 20 (3) In subsection (1) a reference to doing anything includes a reference to failing to do anything.

132. Minister may refer matters to the Board

- 25 (1) The Minister may bring to the Board's attention any matter that may affect the performance of any of the Board's functions under this Act, and may make any recommendation considered appropriate in respect of the matter.
- (2) The Board does not have to act on any matter or recommendation it receives under subsection (1) and the Minister cannot direct it to do so.

133. Legal proceedings and other action relating to suspected offences

If the Board has reason to believe that a person has committed an offence under any law it may —

- 5 (a) if the offence was under this Act, cause proceedings, other than proceedings on indictment, to be taken for the offence; or
- (b) in any other case, refer the matter to any person who, it appears, could more appropriately deal with the matter.

10 **134. Injunctions**

(1) The Board may apply to the Supreme Court or the District Court for an injunction to prevent a person from engaging in illegal conduct.

(2) In subsection (1) —

15 **“engaging in illegal conduct”** means —

- (a) doing anything that would constitute a contravention of, or involvement in a contravention of, this Act; or
- (b) failing to do anything the failure to do which would constitute a contravention of, or involvement in a
- 20 contravention of, this Act.

(3) In subsection (2) —

“involvement in a contravention” means —

- (a) aiding, abetting, counselling, or procuring the contravention;
- 25 (b) inducing the contravention, whether by threats or promises or otherwise;
- (c) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention;
- (d) conspiring with others to effect the contravention; or
- 30 (e) attempting to do anything constituting involvement in a contravention under paragraph (a), (b), (c), or (d).

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- 5
- (4) If the Board satisfies the court that it would be appropriate to grant the injunction, it is not necessary for the Board to prove that the act or failure sought to be prevented by the injunction has previously occurred or would, if the injunction were not granted, be likely to occur or continue.
- (5) An interim injunction may be granted before final determination of an application under subsection (1).
- (6) The court is not to require, as a condition of granting an interim injunction, that an undertaking be given as to damages or costs.
- 10 (7) The taking of proceedings against any person for an offence under this Act is not affected by —
- (a) the making of an application under subsection (1) for an injunction;
- (b) the grant or refusal of an injunction upon an application
- 15 under subsection (1); or
- (c) the rescission, variation, or expiry of an injunction granted upon an application under subsection (1).

135. Interim order

- 20 (1) Despite anything else that may be being done under this Part, the Board may give to a person who has a licence an order in writing under this section.
- (2) The order may —
- (a) prohibit the person from doing anything specified in the order in the course of a prescribed activity;
- 25 (b) impose conditions or restrictions specified in the order on the doing of anything by the person in the course of a prescribed activity.
- (3) In subsection (2) —
- 30 **“prescribed activity”** means anything that it would be an offence under this Act for the person to do if the person had no licence, but that the person could, if not precluded by an

order under this section, do without committing an offence under this Act.

- 5
- (4) The order is to specify the period during which it is to have effect, being a period ending not more than 30 days after the order is given.
 - (5) The Board may, by another order in writing given to the person, revoke or vary the order at any time before it ceases to have effect, but the period for which the first order is expressed to have effect cannot be varied.

10 **136. Delegation of power to make interim order**

- (1) The Board cannot delegate a function it has under section 135 except to the chairman.
 - (2) Schedule 1 clauses 5 and 6 extend to a function under section 135 the performance of which has been delegated to the chairman as if it were a function of the chairman.
- 15

137. Investigator for particular matter

- (1) If the Board decides that a person who is a member of staff should investigate a particular matter and report to the Board on it, the Board is to issue to the person a certificate identifying the person and specifying the matter to be investigated.
 - (2) The investigator is to investigate the matter and, within such period as the Board requires, provide the Board with a report on the matter.
 - (3) The capacity of a person as an investigator terminates when the person reports to the Board on the matter unless the Board, in writing given to the person, terminates the person's capacity as an investigator sooner.
 - (4) As soon as a person's capacity as an investigator terminates, the person is to return the certificate to the Board.
- 20
- 25

138. Authorised persons other than police officers and investigators

- 5 (1) If the Board decides that a person who is a member of staff should have all or any of the functions of an authorised person, the Board is to issue to the person a certificate identifying the person and specifying which functions the person is to have.
- (2) A person who is an authorised person under this section is to report to the Board on the performance of any of the person's functions as the Board may require.
- 10 (3) The Board may, in writing given to the person —
- (a) vary the functions that the person is to have as an authorised person and issue to the person a new certificate specifying the functions as varied; or
 - (b) terminate the person's capacity as an authorised person
- 15 under this section.
- (4) A person whose capacity as an authorised person under this section is terminated is to return the person's certificate to the Board, and a person who is issued with a new certificate because the person's functions have been varied is to return the
- 20 person's old certificate to the Board.

Division 2 — Some powers of authorised persons

139. Which powers an authorised person has

- 25 (1) A police officer has, for the purpose of performing any function under this Act or any other function in respect of an offence under this Act, all of the powers of an authorised person under this Division.
- (2) An investigator has, for the purposes of investigating the matter specified in the investigator's certificate, all of the powers of an authorised person under this Division except to the extent that
- 30 the certificate excludes any of those powers.

5 (3) An authorised person other than a police officer or an investigator has, for the purpose of assisting the Board to perform its functions under section 129, any of the powers described in this Division that are specified in the certificate issued by the Board identifying the person as an authorised person.

10 (4) An authorised person other than a police officer is to produce his or her certificate if requested to do so by a person in respect of whom the authorised person has exercised, or is about to exercise, a power under section 140.

140. Powers an authorised person may have

- 15 (1) An authorised person may —
- (a) require a person to produce to the authorised person 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 authorised person and retain it for such reasonable period as the authorised person thinks fit, and make copies of a document or any of its contents;
 - 20 (c) require a person —
 - (i) to give the authorised person such information as the authorised person requires; and
 - (ii) to answer any question put to that person;and
 - 25 (d) exercise other powers conferred on the authorised person by this Act or the regulations.
- (2) A requirement made under subsection (1)(a) —
- (a) is to be made in writing given to the person required to produce the document or other thing;
 - 30 (b) is to specify the time at or within which the document or other thing is to be produced;

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- (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 —
- 5 (i) the document itself; and
- (ii) the contents of the document in a readable format.
- (3) A requirement made under subsection (1)(c) —
- 10 (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
- 15 (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;
- 20 (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.
- 25 (4) If under subsection (1)(c) the authorised person requires a person to give information or answer a question, the authorised person is to inform the person that the person is required under this Act to give the information or answer the question.

141. Warrant to enter premises

- 30 (1) If the Board determines in a particular case that an authorised person other than a police officer has reasonable grounds for believing that entry to premises is necessary, the authorised

person may apply to a justice for a warrant to be issued under section 142.

- 5 (2) An application is to be in writing, setting out the grounds for seeking the warrant and describing the premises to which entry is sought.
- (3) The application is to be accompanied by a statement in writing from the Board to the effect that it has determined in the particular case that the authorised person has reasonable grounds for believing that entry to the premises is necessary.
- 10 (4) The information in an application or given to a justice under this section is to be verified before the justice on oath or affirmation or by affidavit, and the justice may for that purpose administer an oath or affirmation or take an affidavit.

142. Issue of warrant

- 15 (1) A justice to whom an application is made under section 141 may issue a warrant if satisfied that there are reasonable grounds for believing that entry to the premises is necessary.
- (2) The warrant authorises the authorised person named in it, either alone or together with anyone else named or described in the
20 warrant, or a police officer to enter and inspect the premises described in the warrant and inspect the place and any articles and records kept there and there exercise any of the powers described in section 140.
- (3) The warrant is to state the purpose for which it is issued.
- 25 (4) A justice who issues a warrant is to cause a record to be made of particulars of the grounds that the justice has relied on to justify the issue of the warrant.

143. Warrant may be obtained remotely

- 30 (1) An application for a warrant may be initially submitted by remote communication if the applicant considers it necessary

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because of urgent circumstances or the applicant's remote location.

- 5 (2) Before submitting an application under this section, the applicant is to prepare the written application required by section 141(2) and have the Board's written statement required by section 141(3).
- 10 (3) If an application is submitted under this section, the verification required by section 141(4) is to be by an affidavit taken by anyone who is authorised by law to take an 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 —
- 15 (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
- 20 (d) send a copy of the warrant to the applicant and the Board.
- (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
- 25 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
- 30 which the warrant ceases to have effect, the form of warrant completed by the person and the affidavit sworn in connection with the warrant.

- 5 (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.

144. Execution of warrant

- 10 (1) If asked by the occupier or a person in charge of the premises, the person executing a warrant is to produce it for inspection.
- (2) A warrant ceases to have effect —
- (a) at the end of the period of one month after its issue;
 - (b) if it is withdrawn by the justice who issued it; or
 - (c) when it is executed,
- 15 whichever occurs first.

Division 3 — Formal inquiry

145. Board may hold formal inquiry

The Board may, to assist it to perform its functions under this Act, hold a formal inquiry into a matter.

20 **146. Hearings generally not to be public**

- (1) A formal inquiry is not to be held in public except as stated in this section.
- (2) The Board may determine in a particular case, or as to particular aspects of a particular matter —
- 25 (a) that its proceedings are to be conducted in public; and
- (b) who may be present before the Board besides persons or their advisers required or authorised by this Act to be present.

147. Representation of persons involved

- (1) A person appearing before the Board in a formal inquiry may —
- (a) appear personally or, in the case of a body corporate, be represented by a director or member of the body corporate; or
 - (b) if the presiding member of the Board approves, be represented by a legal practitioner or other representative.
- (2) A person who is not a legal practitioner is not entitled to make a charge for representing a person before the Board, but may be reimbursed for out of pocket expenses.

148. Procedure

- (1) In proceedings in a formal inquiry the Board —
- (a) is to proceed with as little formality and technicality and as speedily as the circumstances permit;
 - (b) is not bound by the rules of evidence but may inform itself in any manner it considers just;
 - (c) may, upon its own motion or upon the application of any party, adjourn the proceedings on such terms and conditions as it thinks fit or, if it considers that a matter should not be dealt with by way of formal inquiry, decline to continue a formal inquiry; and
 - (d) subject to this Act, may determine its own procedure.
- (2) The Board may conduct proceedings by means of telephone or video conferencing or any other similar means.
- (3) Regulations may be made as to the procedures to be followed in proceedings in a formal inquiry.

149. Powers on formal inquiry

- (1) For the purposes of conducting a formal inquiry the Board may —
- 5 (a) by notice signed by the registrar and given to the witness require the attendance of a witness at a time and place specified in the notice;
- (b) by notice signed by the registrar and given to a person require the person to produce any document or other thing that is in the possession or under the control of the person and is relevant to the matter before the Board; and
- 10 (c) examine witnesses on oath or affirmation.
- (2) If the person to whom the notice is to be given has a licence, the notice is sufficiently given if it is sent by prepaid registered letter to the person's contact address.
- 15 (3) The presiding member of the Board may —
- (a) require a person who appears to take an oath or make an affirmation; and
- (b) administer an oath or affirmation to the person.
- 20 (4) The Board may inspect a document or other thing produced and retain it for such reasonable period as it thinks fit, and make copies of the document or any of its contents.

Part 7 — Planning controls

150. Meaning of “planning scheme” in this Part

In this Part, unless the contrary intention appears —

- 5 “**planning scheme**” means a planning scheme under a written law including —
- (a) a town planning scheme under the *Town Planning and Development Act 1928*;
 - (b) a redevelopment scheme under —
 - 10 (i) the *Armadale Redevelopment Act 2001*;
 - (ii) the *East Perth Redevelopment Act 1991*;
 - (iii) the *Midland Redevelopment Act 1999*; or
 - (iv) the *Subiaco Redevelopment Act 1994*;and
 - 15 (c) a master plan under the *Hope Valley-Wattleup Redevelopment Act 2000*.

151. Existing planning schemes varied

- (1) Each existing planning scheme —
 - 20 (a) is to be read, and has effect, as if the clause set out in Schedule 3 were part of the planning scheme; and
 - (b) is to be implemented accordingly.
- (2) If a clause of an existing planning scheme is inconsistent with the clause set out in Schedule 3, the clause set out in Schedule 3 prevails to the extent of the inconsistency.
- (3) In this section —
 - 25 “**existing planning scheme**” means a planning scheme in force on the day on which this Part comes into operation.

152. Prostitution control under planning schemes

- 5 (1) Before making or amending a planning scheme after the coming into operation of this Part it is to be ensured that the planning scheme will provide for the use of land for the purpose of prostitution in a manner that gives effect to, and is consistent with, the clause set out in Schedule 3.
- 10 (2) Nothing in this section is to be construed as precluding or restricting the making or amending of a provision relating to prostitution if to do so would not be inconsistent with the clause set out in Schedule 3.

153. Public release day for certain planning concessions

15 The Minister, by order published in the *Gazette*, is to specify as the public release day for the purposes of the clause set out in Schedule 3 the day on which the Minister made available to the public a proposed Bill for an Act to regulate and control prostitution, to establish a board with licensing and other functions relating to prostitution, to repeal the *Prostitution Act 2000* and amend certain other Acts, and for related purposes.

Part 8 — Provisions for police

154. Meanings of certain terms used in this Part

(1) In this Part —

“**Commissioner**” means the Commissioner of Police;

5 “**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;

10 “**juvenile justice team**” means a juvenile justice team under the *Young Offenders Act 1994* Part 5 Division 2;

“**offence**” means an offence under this Act.

(2) For the purposes of this Part a person is lawfully entitled to possess something if —

15 (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.

155. Police may direct person to move on

20 A police officer who reasonably suspects that a person has committed, or intends to commit, an offence in or in the view or within the 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
25 specified in the direction.

156. Detention, search, and seizure without warrant

(1) A police officer may without a warrant stop, detain, and search anyone whom the police officer reasonably suspects 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 reasonably suspects 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).
- (4) A police officer may without a warrant seize anything that the police officer reasonably suspects will afford evidence as to the commission of an offence.

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

- (1) A police officer may, without a warrant, at any time, enter a place that is being, or that the police officer reasonably suspects is being, used as a brothel for which no person has a brothel operator's licence or as a prostitution agency office for which no person has a prostitution agent's licence if the police officer has the approval of a senior police officer under section 158.
- (2) A police officer may, without a warrant, at any time, enter premises used as a brothel under a brothel operator's licence or premises used as a prostitution agency office under a prostitution agent's licence if the police officer —
 - (a) reasonably suspects that —
 - (i) an offence involving a child or incapable person has been, is being or is about to be, committed at the place; or

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- (ii) an offence under section 74 has been, is being or is about to be, committed at the place;
 - and
 - (b) has the approval of a senior police officer under section 158.
 - (3) A police officer who has entered a place under subsection (1) or (2) may —
 - (a) search the place;
 - (b) inspect any articles and records kept there;
 - (c) stop, detain, and search anyone at the place; and
 - (d) seize anything that the police officer reasonably suspects 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), (2) and (3).
- 158. Approvals for entering places without warrant**
- (1) An application for an approval under section 157(1) or (2) must be made to another officer who is a senior officer and not involved in the investigation of the offence to which the proposed entry relates.
 - (2) The application may be made orally in person or by remote communication.
 - (3) The application must —
 - (a) name the place to which it relates, and if known the suspect to whom it relates;
 - (b) state the offence that is suspected as having been, being, or about to be, committed at the place; and
 - (c) state the grounds on which the applicant suspects that the offence has been, is being, or is about to be, committed at the place.

- (4) On an application under subsection (1) a senior officer may approve the entry, without a warrant, at any time, of the place that is the subject of the application.
- 5 (5) A senior officer must not give approval unless he or she is satisfied that in respect of the matters in subsection (3) about which the applicant is required to have a suspicion, there are reasonable grounds for the applicant to have that suspicion.
- (6) As soon as practicable after giving approval a senior officer must make a record of —
- 10 (a) the date and time when it was given; and
(b) the reasons for giving it.
- (7) An approval may be by remote communication.
- 159. Search and seizure with warrant**
- 15 (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
- 20 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
- 25 (d) to seize anything that the police officer reasonably suspects 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
- 30 exercised from time to time unless the warrant expressly limits that authority.

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160. Warrant may be obtained remotely

- 5 (1) An application for a warrant under section 159 may be initially submitted by remote 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.
- 10 (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.
- 15 (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;

20 (c) record on the warrant the reasons for issuing the warrant; and

 - (d) send a copy of the warrant to the applicant.
- (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.
- 25 (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
- 30

completed by the person and the affidavit sworn in connection with the warrant.

- 5 (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.

10 **161. 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 —
- 15 (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
- 20 (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.
- 25 (4) 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.

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162. 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 163(1)(b) or 164(6).
- (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.

163. 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;

- 5
- (b) make an application under the *Justices Act 1902* section 136A as if the person were a party to the proceedings for the offence; and
 - (c) be an aggrieved person for the purposes of the *Justices Act 1902* section 185.

164. Forfeiture and delivery other than on conviction

- 10
- (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 a court of summary jurisdiction 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 —
 - 15 (a) an order has been made under section 163(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
 - 20 (c) a relevant charge that has been laid has not been withdrawn or heard and determined.
 - (3) In subsection (2) —
 - 25 **“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).
 - 30 (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

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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).

- 5 (6) A court hearing an application under subsection (1) may order that the thing seized be delivered to the person making the application if the court is satisfied on the balance of probabilities that the person is lawfully entitled to possess it.
- 10 (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 162(2)(a).
- 15 (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.

165. Disposal of thing forfeited

- 20 (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 —
- 25 (a) by an order under section 163(1)(a); or
- (b) after an order dismissing an application under section 164(1),

30 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.

166. Embargo notices

The *Police Act 1892* sections 90B, other than subsection (1), and 90C apply as if —

- 5 (a) the reference in section 90B(2) to seizure under Part VI of that Act included a reference to seizure under this Part; and
- (b) when those provisions apply as modified by paragraph (a) —
- 10 (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.

167. Undercover officers

- 15 (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
- 20 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.
- 25 (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) —
- 30 (a) the undercover officer does not commit an offence and is not liable as a party to an offence committed by another person; and

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- (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.
- 5 (6) The Minister may, at any time, require the Commissioner to give the Minister a written report on matters specified by the Minister in relation to undercover officers.
- (7) The Commissioner is required as soon as practicable after the end of each financial year, to give the Minister a written report
10 on the operations of undercover officers.
- (8) The Minister is to cause each report given to the Minister under subsection (7) to be laid before each House of Parliament within 14 sitting days of that House after it is received from the Commissioner.
- 15 (9) The Minister may cause to be deleted from a copy of a report that is to be laid before a House of Parliament under subsection (8) a matter that, if made public —
- (a) might prejudice —
- (i) the safety of a person;
- 20 (ii) the effectiveness of investigation or prosecution of a person for an offence under this Act; or
- (iii) the proper administration of this Act;
- or
- (b) might reveal the identity of a police officer acting as an
25 undercover officer under section 167.
- (10) A copy of a report from which any matter has been deleted under subsection (9) must contain a statement, at the place in the document where the matter was deleted, detailing the reasons for the deletion.
- 30 (11) 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.

168. Police may retain records for certain purposes

- 5 (1) If any record kept for the purposes of section 112 is produced for inspection under section 86 a police officer may retain the record for the purpose of making copies or notes of some or all of the record.
- 10 (2) If a record is retained under this section a receipt is to be issued to the person from whom the record was taken as soon as is practicable.

169. Commissioner may delegate a function

- 15 (1) The Commissioner may delegate a function conferred on the Commissioner under this Part other than a function given by section 167(7).
- (2) A function conferred on the Commissioner under section 167(1) can only be delegated to a police officer who has the rank of Assistant Commissioner or a higher rank.
- (3) The delegation must be in writing executed by the Commissioner.
- 20 (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) 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
25 contrary is shown.
- (6) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

Part 9 — Miscellaneous provisions

Division 1 — Evidence

170. Averments to do with the advertisement of prostitution

5 If, when bringing proceedings for an offence under this Act, the person bringing the proceedings avers that a particular thing directly or indirectly promoted or publicised prostitution, the matter averred is to be taken to have been proved unless the contrary is proved.

171. Absence of lawful excuse to be presumed

10 (1) In proceedings for an offence under section 83, the person charged with possessing the document is to be presumed to have had no lawful excuse unless the contrary is proved.

15 (2) In proceedings for an offence under section 84, the person charged with wilfully destroying, mutilating, defacing, or altering a licence document is to be presumed to have had no lawful excuse unless the contrary is proved.

20 (3) In proceedings for an offence under section 86(4), the person charged with refusing or failing to comply with the requirement is to be presumed to have had no lawful excuse unless the contrary is proved.

172. Good faith to be presumed in certain cases

For the purposes of section 201(1) it is to be presumed that a communication or publication referred to in that subsection was made in good faith unless the contrary is proved.

25 **173. 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.

5 **174. Person residing with prostitute who is a child or incapable person presumed to receive payment**

10 If in a proceeding for an offence under section 69(1) it is proved that, at the time of the offence, the accused was residing with a prostitute who was a child or an incapable person, the accused is presumed to be guilty of the offence unless the contrary is proved.

175. Accused prostitution manager presumed to have allowed presence of child

15 If, in proceedings for an offence under section 73, it is proved that a child was at a brothel or a prostitution agency office at a particular time and the accused was, at that time, acting as the prostitution manager for the business premises, the accused is conclusively presumed to have allowed the child to enter or remain at the premises unless it is proved that the accused did not know, and could not reasonably have known, that a child was at the premises at that time.

176. Intention presumed in some cases

25 (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 64(4)(b) or 65(4)(b) is to be presumed to have had that intention unless the contrary is proved.

30 (2) A person doing anything in circumstances giving reasonable grounds for suspecting that the person had an intention described in section 68(2) is to be presumed to have had that intention unless the contrary is proved.

177. Possession of prophylactics not evidence of offence

(1) In proceedings for an offence under this Act, evidence relating to a person's possession of a prophylactic is not evidence of that person, or any other person, being involved in prostitution.

5 (2) In subsection (1) —

“being involved in prostitution” includes —

- (a) taking part in, or seeking or intending to take part in, an act of prostitution;
- 10 (b) inviting or otherwise seeking another person to take part in an act of prostitution; and
- (c) being involved in any business through which prostitution is provided.

178. Permission to use licence document presumed in some cases

15 If a person (the **“defendant”**) permits the person's licence document to be in the possession of another person and that other person uses it, the defendant is to be presumed, in proceedings for an offence under section 111, to have permitted that other person to use it unless the contrary is proved.

20 **179. Presumption of knowledge of sexually transmissible infection**

(1) If a person acted as a prostitute while the person had a sexually transmissible infection, the person is to be conclusively presumed, for the purposes of section 99, to have known at the time the person acted that the person had the sexually transmissible infection unless it is proved that at that time the person —

- 25 (a) had been undergoing medical examinations in accordance with subsection (3); and
 - (b) believed on reasonable grounds that the person did not have a sexually transmissible infection.
- 30

- 5 (2) If a person who had a brothel operator's licence, a prostitution agent's licence, or a prostitution manager's licence for a business (the "**licensed person**") allowed a person (the "**prostitute**") to act as a prostitute for the business and while acting as a prostitute the prostitute had a sexually transmissible infection, the licensed person is conclusively presumed, for the purposes of section 124, to have known at the time the prostitute acted as a prostitute that the prostitute had the sexually transmissible infection unless it is proved that, at that time, the licensed person believed on reasonable grounds that the prostitute —
- 10 (a) had been undergoing medical examinations in accordance with subsection (3); and
- (b) did not have a sexually transmissible infection.
- 15 (3) A person undergoes medical examinations in accordance with this subsection if the person has, as frequently as the regulations require —
- (a) regular blood tests for each sexually transmissible infection for which blood tests are appropriate; and
- 20 (b) any other regular tests that the regulations may require for the purpose of detecting the presence of any other sexually transmissible infection.

180. Certificate that undercover officer was authorised

- 25 A certificate purporting to be signed by the Commissioner of Police 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 167; and
- (b) authorised to do anything stated in the certificate,
- 30 is, without proof of any appointment or signature, evidence of the facts stated in the certificate.

181. Other evidentiary provisions

- (1) In any proceedings for an offence under this Act production of a certificate containing a statement described in subsection (2) and purporting to be signed on behalf of the Board is, without proof of any appointment or signature, evidence of the facts stated in the certificate.
- (2) The certificate may state any of the following —
- (a) the address that is the person's contact address or the address of which the Board has been notified under section 112(4);
 - (b) that a person has or had, or does not or did not have, a licence of a particular kind;
 - (c) that a licence is or was, or is not or was not, on behalf of a particular person or persons;
 - (d) that a licence is or was suspended;
 - (e) the conditions and restrictions to which a licence is or was subject;
 - (f) the premises for which a person is or was licensed;
 - (g) the day or days or period on or during which anything referred to in any of paragraphs (a) to (f) applied.
- (3) A certificate purporting to have been issued under section 137 is, without proof that it was issued by the Board, evidence in any court of the appointment to which the certificate purports to relate.
- (4) In proceedings for an offence under this Act an averment by the prosecution that —
- (a) a person is or was a member or deputy of a member of the Board;
 - (b) a person is or was authorised under section 198(1) to take proceedings in the name of the Board;
 - (c) a particular notice was given by the Board to a person at a particular time; or

(d) a person had the immediate direction and control of a brothel business or prostitution agency business,

is to be taken to have been proved in the absence of evidence to the contrary.

5 (5) In proceedings for an offence under this Act 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.

10 (6) Judicial notice is to be taken by all courts of the fact that a person is the registrar and of the registrar's signature on a document purporting to have been signed under this Act by the registrar.

Division 2 — Notifications by Board and appeals

182. Notice of decisions to affected persons

15 (1) Where the Board makes a decision to which this subsection applies, it is to record the reasons for the decision and, as soon as is practicable but in any case not later than 14 days after making the decision, is to give to the person to whom the decision relates notice of the decision and, subject to
20 section 183, reasons for the decision.

(2) Subsection (1) applies to a decision of the Board —

- 25
- (a) to refuse to grant or renew a licence;
 - (b) as to the term of a licence;
 - (c) under section 43 as to a condition or restriction to which a licence is at any time made subject;
 - (d) to amend, or to refuse to amend, a licence;
 - (e) to revoke or suspend a licence; or
 - (f) under section 96(2) to ban a person from acting as a prostitute.

183. Non-disclosure of certain information

- 5 (1) The Commissioner of Police may direct the Board to not disclose the source and content of information that the Commissioner has provided to the Board for the purposes of the Board performing its functions under this Act if the Commissioner is satisfied that the disclosure —
- (a) might prejudice —
- 10 (i) the safety of a person;
- (ii) the effectiveness of investigation or prosecution of a person for an offence under this Act; or
- (iii) the proper administration of this Act;
- (b) might reveal the identity of a police officer acting as an undercover officer under section 167; or
- (c) might otherwise be contrary to the public interest.
- 15 (2) The Board is to comply with a direction of the Commissioner under subsection (1).

184. Appeal

- (1) A person who is aggrieved by a decision of the Board referred to in section 182(1) may appeal to the District Court.
- 20 (2) An appeal under this section —
- (a) is to be heard and determined by a District Court Judge;
- (b) must be instituted within the time, and in accordance with the procedure, prescribed by rules of the District Court; and
- 25 (c) is to be in the nature of a rehearing and determined on the material that was before the Board or on such additional or fresh evidence, either oral or by affidavit, as the Court allows.
- 30 (3) The Board and the Commissioner of Police are entitled to be parties to the appeal and to be represented at the hearing of the appeal by a legal practitioner or other representative.

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- (4) A person who is not a legal practitioner is not entitled to make a charge for representing the Board or the Commissioner, but may be reimbursed for out of pocket expenses.
- 5 (5) The operation of a decision to which the appeal relates is not affected by the commencement of an appeal unless, on application by the appellant to the District Court, the Court orders otherwise.
- (6) An application under subsection (5) is to be heard and determined by a District Court Judge.
- 10 (7) On the hearing of an appeal under this section, the District Court may —
- 15 (a) allow or dismiss the appeal;
- (b) confirm, quash, or vary the decision appealed from;
- (c) remit the matter to the Board for reconsideration, with or without directions; and
- (d) make any incidental or ancillary order including as to costs.
- (8) The Board is to give effect to the decision of the District Court in an appeal under this section.

20 **185. Dealing with certain undisclosed information**

- (1) If the District Court proposes to determine an appeal under section 184 on the material that was before the Board, the Board must ensure that the Court is provided with all information to which the Board had regard in making the decision that is the subject of the appeal.
- 25 (2) Subsection (1) applies even if the source and content of the information was not disclosed in the Board's reasons for the decision by way of complying with a direction of the Commissioner of Police under section 183(1).
- 30 (3) A District Court Judge may order that the source and content of information to which subsection (1) applies is not to be

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Division 3 Restraining orders

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disclosed to the appellant, the appellant's representative or any other person if, on an application by the Board or the Commissioner of Police, the Judge is satisfied that the disclosure —

- 5 (a) might prejudice —
- (i) the safety of a person;
 - (ii) the effectiveness of investigation or prosecution of a person for an offence under this Act; or
 - (iii) the proper administration of this Act;
- 10 (b) might reveal the identity of a police officer acting as an undercover officer under section 167; or
- (c) might otherwise be contrary to the public interest.
- (4) An application under subsection (3) may be made without notice to the appellant and may be heard and determined in the
- 15 absence of the appellant.
- (5) The room or place in which the Judge hears and determines an application under subsection (3) is not to be regarded as an open court, and the Judge may order that no person is to be in the room or place without the Judge's permission.
- 20 (6) The reasons for the decision of the District Court on an appeal under section 184 must not disclose the content or source of information that is the subject of an order made under subsection (3).

Division 3 — Restraining orders

25 **186. Restraining order to prevent further offence**

If a court finds that a person has committed an offence under section 64 or 65 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

30 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.

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

- 5 (1) If circumstances arise that would give sufficient grounds for a police officer to give a person a direction under section 155 and that person has previously been given a direction under that provision, the police officer may apply for a restraining order against the person.
- 10 (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 a court of summary jurisdiction.
- (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.

15 **188. Provisions about making the order**

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

25 **189. Terms of restraining order**

- 30 (1) If the restraining order is made under section 186, 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 155.

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Division 3 Restraining orders

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- 5 (2) If the restraining order is made under section 187, 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 155.
- 10 (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.
- 15 (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.

20 **190. 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.
- 25 (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.

191. Variation or cancellation

- 30 (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 a court of summary jurisdiction,
- 5 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.
- 10
- (4) Neither the application nor the affidavit are to be served on the person upon whose application the restraining order was made (the “**respondent**”) unless the court orders under subsection (6) that they are to be served on the respondent.
- 15
- (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.
- 20
- (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.
- 25
- (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.
- 30

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- (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.
- 5 (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 —
- 10 (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.
- 15 (11) Anything in this Division that applies to a restraining order made in the first instance also applies to a new restraining order made under this section.

192. Court to notify parties of decision

20 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.

193. When cancellation takes effect

The cancellation of a restraining order has effect —

25 (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.

194. Provisions about children

- (1) No restraining order is to be made against a child whose age is less than 10 years.
- 5 (2) In an application to vary or cancel a restraining order against a child, the *Young Offenders Act 1994* section 45 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 187 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 —
- 10 (a) as soon as it becomes aware the person is not a child, the Children's Court is to transfer the matter to a court of summary jurisdiction;
- 15 (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 court of summary jurisdiction to which the matter is transferred.
- 20 (4) If a court of summary jurisdiction hears an application for a restraining order under section 187 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 —
- 25 (a) as soon as it becomes aware the person is a child, the court of summary jurisdiction is to transfer the matter to the Children's Court;
- 30 (b) the court of summary jurisdiction proceedings are not, for that reason, invalidated; and
- (c) an order made by the court of summary jurisdiction 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 clerk of each court is to give effect to the transfer.

5 **195. Breach of restraining order**

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

Penalty: \$6 000.

196. Appeals

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

- (2) If the decision was made by a court of summary jurisdiction, the appeal is to be made to the Supreme Court in accordance with the *Justices Act 1902* Part VIII.

- 15 (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 the *Children's Court of Western Australia Act 1988* section 41 as if the decision were a decision within the meaning of subsection (2) of that section.

- 20 (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 Full Court in accordance with the *Children's Court of Western Australia Act 1988* section 43 (other than subsections (2) and (3)) as if the decision were a decision within the meaning of subsection (3b) of that section.

- 25 (5) If the decision was made by the District Court, the appeal is to be made to the Full Court in accordance with the *District Court of Western Australia Act 1969* section 79(1)(a).

(6) If the decision was made by a Judge of the Supreme Court, the appeal is to be made to the Full Court in accordance with the *Supreme Court Act 1935* section 58.

(7) In this section —

5 “**Full Court**” has the same meaning as it has in the *Supreme Court Act 1935*.

197. 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.

10

(2) In this section —

“**family order**” has the meaning given to that term in the *Restraining Orders Act 1997* section 5.

Division 4 — Other miscellaneous provisions

15 **198. Legal proceedings**

(1) A complaint of an offence under this Act can only be made —

(a) by a police officer; or

(b) in the name of the Board, by the registrar or any other person authorised in that behalf by the Board.

20 (2) A member of staff authorised by the Board to represent it as the complainant in proceedings for an offence under this Act may appear for the Board in proceedings for an offence under this Act that were commenced in the name of the Board.

25 (3) A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.

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199. 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) a police officer or a person assisting a police officer;
- 5 (b) a medical practitioner;
- (c) a member of the Board or of a committee; or
- (d) a member of staff,

in the performance or purported performance of a function under this Act.

10 (2) The Board and the Crown are also relieved of any liability that either of them might otherwise have had for another person having done anything as described in subsection (1).

(3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable
15 of being done whether or not this Act had been enacted.

(4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

200. Protection in supervisory matters

20 A person who, in relation to any investigation, inquiry or hearing under Part 6 —

- (a) performs any function under that Part; or
- (b) is otherwise concerned in proceedings under that Part,

has, in respect of any such function or concern, the same
25 protection and immunity as a member or officer of the Supreme Court, or a witness or party before the Supreme Court, would have in respect of a function or concern of a like nature related to the jurisdiction of the Supreme Court.

201. Publication of Board's findings, decisions and reasons

- 5 (1) Without limiting any other protection given by this Part, no action, claim or demand lies against a person to whom this subsection applies in respect of the communication or publication in good faith of any finding, or reasons or decision of the Board or a committee.
- 10 (2) Subsection (1) applies to —
- (a) the Board, any member of the Board, the registrar or any officer or delegate of the Board or registrar;
 - (b) any committee or any member of a committee or person referred to in section 21(5); or
 - (c) the proprietor or any person concerned in the publication or operation of any newspaper or periodical or of any electronic medium.
- 15 (3) Unless this Act states otherwise, the Board may notify a finding, reason, or decision of the Board to any person who, in the opinion of the Board, should be made aware of the finding, reason or decision, and may publish notice of the finding, reason or decision in the *Gazette* or in such other manner as the
- 20 Board thinks fit.

202. Exchange of information

- 25 (1) A person who has, or has access to, information obtained in the course of the administration of this Act may disclose that information to any other person for the purposes of the performance of a statutory function that has any connection with the administration of this Act.
- 30 (2) A person may, in order to obtain information to facilitate the administration of this Act, request a person who has, or has access to, information obtained in the course of performing functions under any other Act to disclose to the person making the request any of that information of a kind described in the request.

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- (3) Information the disclosure of which is requested under subsection (2) may be, but is not required to be, disclosed in accordance with the request.
- (4) This section does not authorise a person who is not an
5 employing authority to —
- (a) disclose information, whether under subsection (1) or in response to a request under subsection (2); or
 - (b) under subsection (2), request the disclosure of information,
10 except with the approval of the person’s employing authority.
- (5) An employing authority’s approval under subsection (4) may apply to a particular disclosure of specified information or may apply generally as specified in the approval.
- (6) In subsection (4) —
15 **“employing authority”** has the meaning given to that term in the *Public Sector Management Act 1994* section 5.
- (7) 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
20 whether or not the duty of confidentiality arose before this section 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
25 making the disclosure.
- (8) 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 because of the disclosure.

203. 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 —

- 5 (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;
- 10 (d) with the written authority of the Minister or the person to whom the information relates; or
- (e) in other circumstances prescribed by the regulations.

Penalty:

- 15 (a) in the case where the person recording, disclosing or making use of the information caused, or intended to cause, detriment, or gained or intended to gain a benefit from the recording, disclosure or use of the information — imprisonment for 5 years;
- 20 (b) in the case where the person recording, disclosing or making use of the information caused detriment, or gained a benefit from the recording, disclosure or use of the information, and the value of the detriment or gain was more than \$10 000 — imprisonment for 10 years;
- 25 (c) in any other case — imprisonment for 2 years.

(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.

30 (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.

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(4) Subsection (1) applies to a person who is or was —

- (a) a police officer;
- (b) a member of the Board or of a committee;
- (c) an employee performing functions under this Act; or
- 5 (d) a person employed in the department of the Public Service principally assisting in the administration of the *Police Act 1892*.

(5) A person who is or was engaged under a contract for services to perform functions under this Act must not, whether directly or

10 indirectly, record, disclose, or make use of any information contrary to the contract.

Penalty: \$6 000.

204. Liability of brothel operator or prostitution agent for offence by manager

15 If a person who has a prostitution manager's licence commits an offence under this Act as the holder of that licence, the person who has the brothel operator's licence or prostitution agent's licence for the business concerned is to be treated as having committed an offence and is liable to the penalty prescribed for

20 the offence committed by the person who has the prostitution manager's licence.

205. Liability of partners and bodies corporate for offences by persons licensed on their behalf

(1) If a person has a licence on behalf of a partnership or body

25 corporate and the person who has the licence is found to have committed, or is to be treated as having committed, an offence under this Act —

- (a) subject to subsection (2), each of the other partners; or
- (b) the body corporate,

30 as the case may be, is to be treated as having committed an offence and is liable to the penalty prescribed for the offence committed by the person who has the licence.

-
- (2) Subsection (1) does not apply to a partner who proves that —
- (a) the offence was committed without the partner’s consent or connivance; and
 - (b) the partner 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 partner’s functions and to all the circumstances.

206. Liability of managerial officer for offence by body corporate

If a body corporate is found to have committed, or is to be treated as having 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.

207. Summary trial of crimes

- (1) If, after a provision of this Act, “Summary conviction penalty:” appears followed by a penalty, a charge before a court of summary jurisdiction that a person has committed an offence under that provision may be dealt with summarily in accordance with this section and the person is liable on summary conviction to that penalty.
- (2) A charge can only be dealt with summarily in accordance with this section if the prosecutor and the person charged consent and the court considers that the charge can be adequately dealt with summarily having regard to —
 - (a) the nature and particulars of the offence;

- 5
- (b) such particulars of the circumstances relating to the charge and the antecedents of the person charged as the court may require from the prosecutor; and
 - (c) whether or not it is appropriate to deal with the charge summarily.

208. Regulations

- 10
- (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 —
 - 15 (a) specify any place described in the regulations as a place where section 64(1) or 65(1), or each of those provisions, does not apply;
 - (b) contain provisions about prophylactics, which may include but are not limited to, provisions about —
 - (i) the standards of prophylactics;
 - (ii) the provision, use, or disposal of, prophylactics;
 - 20 (c) provide for the Minister to publish in the *Gazette* codes of practice;
 - (d) provide for the size, form, and content of advertisements of prostitution;
 - (e) provide for applications for the Board's approval under section 78(2) of means other than a newspaper or the internet by which an advertisement of prostitution can be broadcast;
 - 25 (f) prohibit the advertisement of prostitution by means other than a newspaper or the internet;
 - (g) prohibit the advertisement of prostitution that expressly or by implication describes what is offered in a way that is intended or is likely to suggest that it is anything other than prostitution;
 - 30

-
- 5 (h) provide for any other matter in relation to the advertisement of prostitution;
- (i) regulate the meetings and proceedings of, and the conduct of business by, the Board;
- 5 (j) regulate the conduct of investigations under Part 6;
- (k) provide for planning and development standards for businesses involving the provision of prostitution including matters relating to location, parking and signage;
- 10 (l) provide for the matters that can and cannot be taken into account by local governments and other planning authorities when making decisions about businesses involving the provision of prostitution;
- 15 (m) provide for the procedure in relation to applications for the Board's approval for land, referred to in subclause (6) of the clause set out in Schedule 3, to be used in the manner referred to in that subclause until the occurrence of an event set out in that subclause.
- 20 (3) Regulations prescribing an infection to be a sexually transmissible infection or a notifiable sexually transmissible infection for the purposes of this Act can only be made on the recommendation of the Minister responsible for the administration of the *Health Act 1911*, and a recommendation that an infection be prescribed to be a sexually transmissible
- 25 infection can only be made if the infection is capable of being transmitted by sexual activity.
- (4) Regulations in relation to matters affecting local governments and planning matters for the purposes of this Act can only be made on the recommendation of the Minister responsible for the
- 30 administration of the *Town Planning and Development Act 1928*.
- (5) A regulation made under this Act may provide for a penalty for contravention of the regulation or a provision of the regulation not exceeding a fine of \$6 000.

209. Regulations relating to restraining order applications

- 5
- (1) Without limiting section 208, the Governor may make regulations as to the making of applications for the making, variation or cancellation of orders under Division 3 and the procedure on the hearing of such applications.
 - (2) A reference in subsection (1) to an application for the variation or cancellation of an order refers also to an application seeking leave to make an application for the variation or cancellation of an order.

10 **210. Prostitution Act 2000 repealed and other Acts amended**

- (1) The *Prostitution Act 2000* is repealed.
- (2) Other Acts are amended as shown in Schedule 4.

211. Review of Act

- 15
- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 3 years from the commencement of section 8, and in the course of that review the Minister is to consider and have regard to —
 - 20 (a) the effectiveness of the operations of the Board;
 - (b) the need for the continuation of the functions of the Board; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
 - 25 (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.

Schedule 1 — Constitution and proceedings of Board

[s. 3, 11(1)(b), 13, 136(2)]

Division 1 — Term of office

1. Term of office

- 5 (1) The term for which a person is appointed to be an appointed member is to be fixed in the instrument of appointment and is to be not longer than 3 years.
- (2) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.

10 2. Vacation of office by appointed member

- (1) An appointed member may resign from office by notice in writing delivered to the Minister.
- (2) The chairman may be removed from office by the Governor if the Governor is satisfied that one or more of the grounds in subclause (4) applies.
- 15 (3) An appointed member may be removed from office by the Minister if the Minister is satisfied that one or more of the grounds in subclause (4) applies.
- (4) The grounds for removal of an appointed member are —
- 20 (a) mental or physical disability, incompetence, neglect of duty or misconduct that impairs the performance of the member's duties;
- (b) the member is an insolvent under administration, as that term is defined in the *Commonwealth Corporations Act 2001*;
- 25 (c) the member has been absent without leave of the Board from 3 consecutive meetings of the Board of which the member has had notice; or
- (d) any other act or omission of the member that in the opinion of the Governor or the Minister, as the case may be, may cause
- 30 prejudice or injury to the Board.

Division 2 — Deputies and representatives

3. Representatives of ex officio members

- 5 (1) The Commissioner of Health and the Commissioner of Police may each nominate a senior member of his or her staff to represent him or her —
- (a) either generally at meetings of the Board; or
 - (b) at a particular meeting.
- (2) A nomination must be in writing given to the chairman.
- 10 (3) A nominee, while representing the Commissioner of Health or the Commissioner of Police, is to be taken to be a member of the Board.

4. Appointment of deputies of other members

- 15 (1) The Governor may, on the nomination of the Minister in accordance with subclause (2) —
- (a) appoint a person to be the deputy of the chairman; and
 - (b) terminate such an appointment at any time.
- (2) The Minister is to consult the chairman before nominating a person for appointment as the deputy of the chairman.
- (3) The Minister may in accordance with this clause —
- 20 (a) appoint a person to be a deputy of an appointed member, other than the chairman; and
 - (b) terminate such an appointment at any time.
- (4) A deputy of a member to whom section 10(a) applies is to be a person nominated in accordance with section 10(a).
- 25 (5) A deputy of a member to whom section 10(b) applies is to be a medical practitioner.
- (6) A deputy of a member to whom section 10(c) applies is to be appointed after the Minister has complied with section 12.

5. Functions of deputies under clause 4

- (1) A member's deputy under clause 4 —
- 5 (a) may, subject to clause 7(1)(a) in the case of the chairman's deputy, perform the functions of the member when the member is unable to act by reason of illness, absence or other cause; and
- (b) while doing so, is to be taken to be a member of the Board.
- (2) No act or omission of a person acting in place of another under this clause is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.
- 10

6. When nominees and deputies may continue to act

- (1) This clause applies if —
- 15 (a) a nominee of the Commissioner of Health or the Commissioner of Police; or
- (b) a member's deputy under clause 4,
- has commenced but not completed the performance of a function under this Act while clause 3(3) or 5(1)(b) applied to him or her.
- (2) Despite any provision of this Act, the nominee or deputy may, with the approval of the Board in writing, continue to act as a member after clause 3(3) or 5(1)(b) ceased to apply to him or her if it is necessary or expedient to do so to complete the performance of the function.
- 20

Division 3 — Meetings

7. General procedure

- (1) At a meeting of the Board —
- 25 (a) the chairman or, if the chairman is not present (whether or not the chairman's deputy is present), the Commissioner of Health or his or her nominee under clause 3, is to preside;
- (b) if no one is presiding under paragraph (a), a member elected by the members present is to preside.

Schedule 1 **Constitution and proceedings of Board**

- (2) A quorum —
- (a) for a meeting of the Board other than a formal inquiry is 4 members; and
 - (b) for a formal inquiry is 3 members.

5 (3) The procedure for convening meetings of the Board and the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

8. Voting

- 10 (1) A decision of the majority of members at a meeting of the Board at which a quorum is present is the decision of the Board.
- (2) If the votes of members present at a meeting and voting are equally divided the member presiding at the meeting is to have a casting vote as well as a deliberative vote.

9. Holding meetings remotely

15 The presence of a person at a meeting of the Board need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

10. Minutes

20 The Board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the Board and of each resolution passed by the Board.

Division 4 — Resolution without meeting

11. Resolution may be passed without meeting

- 25 (1) If a document —
- (a) containing a statement to the effect that —
 - (i) an act, matter or thing has been done; or
 - (ii) a resolution has been passed,
- is sent or given to all members of the Board; and

(b) is assented to by not less than 4 members of the Board,
that act, matter, thing or resolution is to be taken as having been done
at or passed by a meeting of the Board.

5 (2) If a document is assented to in accordance with subclause (1), the
document is to be taken as a minute of a meeting of the Board.

12. When meeting taken to have been held

A meeting referred to in clause 11 is to be taken as having been
held —

10 (a) if the members assented to the document on the same day, on
the day on which the document was assented to and at the
time at which the document was last assented to by a
member; or

15 (b) if the members assented to the document on different days, on
the day on which, and at the time at which, the document was
last assented to by a member.

13. Separate identical documents may be used

Two or more separate documents in identical terms each of which is
assented to by one or more members of the Board are to be taken to
constitute one document for the purposes of clause 11.

20 **14. How assent may be signified**

(1) A member of the Board may signify assent to a document for the
purposes of clause 11 —

(a) by signing the document; or

(b) by notifying the Board of the member's assent —

25 (i) in person;

(ii) by post;

(iii) by facsimile transmission;

(iv) by telephone; or

30 (v) by any other method of written, audio or audiovisual
communication.

- (2) If a member of the Board signifies assent to a document otherwise than by signing the document, the member must by way of confirmation sign the document at the next meeting of the Board attended by that member.
- 5 (3) A failure to comply with subclause (2) does not invalidate the act, matter, thing or resolution to which the document relates.

Division 5 — Disclosure of interests

15. Disclosure of interests by Board members

10 A member of the Board who has a direct or indirect interest, other than as a member, in a matter before the Board —

- (a) must, as soon as possible after the person is aware of the matter, disclose the nature of the interest to the Board; and
- (b) must not unless the Board otherwise determines take part in a deliberation or decision of the Board with respect to the matter.
- 15

Penalty: \$6 000.

16. Disclosure of interests by committee members

20 A member of a committee, or a person referred to in section 21(5), who has a direct or indirect interest, other than as a member or adviser in a matter before the committee —

- (a) must, as soon as possible after the person is aware of the matter, disclose the nature of the interest to the committee; and
- (b) must not unless the committee otherwise determines take part in a deliberation or decision of the committee with respect to the matter.
- 25

Penalty: \$6 000.

17. Exclusion of person from determination under clause 15(b) or 16(b)

5 For the purposes of making a determination under clause 15(b) or 16(b) in relation to a person who has made a disclosure of an interest, the person who made the disclosure must not —

- (a) be present during any deliberation for the purpose of making the determination; or
- (b) take part in the making of the determination.

18. Disclosure to be recorded in minutes

10 A disclosure made by a person under clause 15 or 16 is to be recorded in the minutes of the Board or the committee.

Schedule 2 — Offences relevant to licensing; banning from acting as a prostitute

[s. 37(1)(b), 95(a)(ii), 96(2)(b), 104(b), 106(b), 127(b)]

An offence under any of the following enactments:

5 *Censorship Act 1996*

s. 60

The Criminal Code

s. 181

s. 186

10 s. 204A

s. 278 or 279

s. 281A

s. 320(2) or (3)

s. 321(2) or (3)

15 s. 321A(3)

s. 324, 325, or 326

s. 327

s. 329

s. 330(2) or (3)

20 s. 332

s. 343

s. 396, 397, or 398

Child Welfare Act 1947

s. 108(1)

Schedule 3 — Clause implied in planning schemes

[s. 151, 152, 153, 208(2)(m)]

1. Use of land for prostitution purposes

- 5 (1) The use of land in a residential zone or precinct for the purpose of a brothel, or an attended prostitution agency office, is a use that is not permitted by the scheme.
- 10 (2) The use of land in an industry zone or precinct for the purpose of a brothel or an attended prostitution agency office is a use permitted by the scheme if, at the time the relevant brothel business or prostitution agency business commences to be carried on —
- (a) the land is not within 300 metres, or such lesser distance as is permitted in the particular case by the person responsible for implementing the scheme, of a protected use place; and
- 15 (b) the use complies with any applicable regulations made under the *Prostitution Control Act 2003*.
- (3) The use of land other than land referred to in subclause (1) or (2) for the purpose of a brothel or an attended prostitution agency office is a use not permitted by the scheme unless planning approval has been given under the scheme, and planning approval is not to be given
- 20 unless the person giving the approval is satisfied that —
- (a) the land is not within 300 metres, or such lesser distance as is permitted in the particular case by the person responsible for implementing the scheme, of a protected use place; and
- 25 (b) the use complies with any applicable regulations made under the *Prostitution Control Act 2003*.
- (4) For purposes of subclause (2) or (3), the distance between the land used or proposed to be used as a brothel or an attended prostitution agency office, and a protected use place is to be calculated in accordance with regulations made under the *Prostitution Control Act 2003*.
- 30 (5) A prostitution booking office is an office within the meaning of the scheme but an attended prostitution agency office is not.
- (6) If, immediately before the public release day, land was used for the purpose of a brothel or an attended prostitution agency office and the

- land has continued to be used for that purpose until the commencement of the *Prostitution Control Act 2003* section 151(1), despite anything in subclause (1), (2), or (3) but subject to the approval of the Board, the use of the land for that purpose is a use permitted by the scheme until —
- 5
- (a) the buildings used as the business premises are totally destroyed or their value is reduced to less than 25% of their former value;
 - 10 (b) the buildings used as the business premises are extended or otherwise altered, except as necessary for carrying out repairs or maintenance, without obtaining any planning approval that is required; or
 - 15 (c) any buildings other than those that were being used immediately before the public release day are used as, or as part of, the business premises.
- (7) An application for the approval of the Board under subclause (6) is to be in accordance with any applicable regulations made under the *Prostitution Control Act 2003*.
- 20 (8) In considering an application for approval under subclause (6) the Board is to liaise with the local government of the district in which the land is located and is to consider —
- 25 (a) whether the brothel or attended prostitution agency office (the “office”) has been the subject of complaints from residents or occupiers in the area;
 - (b) whether the brothel or office is near or within view from a protected use place;
 - 30 (c) whether the operation of the brothel or office causes a disturbance in the neighbourhood when taking into account noise and vehicular and pedestrian traffic and other disturbances created by other brothels or attended prostitution agency offices operating in the neighbourhood at similar hours of operation;
 - 35 (d) whether the operation of the brothel or office causes a disturbance in the neighbourhood because of its size and the number of people working in it;
 - (e) whether suitable access has been provided to the brothel or office;

- 5
- (f) whether sufficient off-street parking has been provided if it would be appropriate to have off-street parking in the circumstances;
- (g) whether the operation of the brothel or office interferes with the amenity of the neighbourhood;
- (h) any matter that the Board is required by regulations made under the *Prostitution Control Act 2003*; and
- 10 (i) any other matter that the Board thinks is relevant and that is consistent with the regulations made under the *Prostitution Control Act 2003*.
- (9) In this clause —
- 15 **“attended prostitution agency office”** means a prostitution agency office at or outside which persons who act as prostitutes or prostitution drivers for the prostitution agency business carried on from that office attend in person;
- “child care premises”** means premises that are kept for the provision of a child care service, as defined in the *Community Services Act 1972* section 3 —
- 20 (a) under a licence or permit referred to in section 17A of that Act; or
- (b) under an exemption given under section 17D of that Act.
- “educational establishment”** means land used for the purposes of education and includes land used for a school, tertiary institution, business college, academy, or other educational centre;
- 25 **“industry zone or precinct”** means a zone or precinct, however described, in which the predominant uses are —
- (a) manufacturing industries and the storage and distribution of goods; or
- (b) light and service industries and associated uses,
- 30 except that it does not include land in a strategic industry zone or precinct;
- “place of worship”** means land used for religious activities, and includes land used for a church, chapel, mosque, synagogue, or temple;

“premises” means land, and includes any building or structure on the land;

“prostitution booking office” means a prostitution agency office that —

- 5 (a) is not a brothel or an attended prostitution agency office; and
- (b) is not used as a place where any business or activity other than the prostitution agency business is carried on;

10 **“protected use place”** means an educational establishment, child care premises or other place regularly frequented by children for recreational or cultural activities, a place of worship, or land in a residential zone or precinct;

15 **“public release day”** means the day specified under the *Prostitution Control Act 2003* section 153 as the public release day for the purposes of this clause;

“residential zone or precinct” means a zone or precinct, however described, in which the predominant use is residential;

20 **“strategic industry zone or precinct”** means a zone or precinct, the land in which is an industrial area of State significance, that is intended to accommodate higher order industrial uses, which may include the use of land for offensive or potentially hazardous industrial or storage facilities.

- (10) A term used in this clause that is given a meaning by the *Prostitution Control Act 2003* has the same meaning in this clause.

Schedule 4 — Consequential amendments to other Acts

[s. 210(2)]

1. Constitution Acts Amendment Act 1899 amended

5 (1) The amendment in this clause is to the *Constitution Acts Amendment Act 1899**.

[* *Reprinted as at 8 June 2001.*
For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 72, and Acts Nos. 24 and 25 of 2001, 5, 20, and 30 of 2002.]

10 (2) Schedule V Part 3 is amended by inserting before the item commencing “The Psychologists Board of Western Australia” the following —

“

15 The Prostitution Control Board established by the *Prostitution Control Act 2003*

”.

2. Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002 amended

20 (1) The amendment in this clause is to the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002**.

[* *Act No. 21 of 2002.*]

(2) Schedule 1 item 1 is amended by inserting after “s. 50(1)” the following —

“

25 *Prostitution Control Act 2003*

s. 30

s. 66

s. 68

s. 69

30 s. 70

s. 74

s. 82

”.

3. Evidence Act 1906 amended

(1) The amendments in this clause are to the *Evidence Act 1906**.

[* Reprinted as at 4 January 2001.

For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 121, and Acts Nos. 3 and 27
of 2002.]

(2) Section 36A(1) is amended in the definition of “sexual offence” by deleting paragraph (a) and inserting instead the following paragraph —

“
(a) under section 186 or 191(1) of *The Criminal Code* or section 68, 70, 74, 76, 96(3), 98, or 99 of the *Prostitution Control Act 2003*;
”.

(3) Schedule 7 is amended as follows:

(a) in Part A clause 1(1)(a), by deleting “section of the *Prostitution Act 2000*” and inserting instead —

“ provision of the *Prostitution Control Act 2003* ”;

(b) in Part B, by deleting the reference to the *Prostitution Act 2000* and the items relating to that Act and inserting instead —

Prostitution Control Act 2003

64	Seeking prostitute in or in view or within hearing of public place
65	Seeking client in or in view or within hearing of public place
68	Causing, permitting, or seeking to induce child or incapable person to act as prostitute
69	Obtaining payment for prostitution by a child or incapable person
70	Agreement for prostitution by a child or incapable person
72	No prostitution where child present

73	Allowing child to be at place where prostitution involved
75	Living on earnings of prohibited prostitute
96(3) if the ban is because of section 96(1)(a) or (b)	Acting as a prostitute while a child or incapable person
98	Acting as a prostitute for a child
99	Persons with certain health conditions not to act as prostitutes
116(1) if the requirement contravened was a requirement of section 116(2)(b)(i)	Having brothel operator's licence or prostitution agent's licence for premises at which child or incapable person present

”.

4. Financial Administration and Audit Act 1985 amended

- (1) The amendment in this clause is to the *Financial Administration and Audit Act 1985**.

5 [* Reprinted as at 16 September 2002.
For subsequent amendments see Acts Nos. 30 and 38 of 2002.]

- (2) Schedule 1 is amended by inserting in the appropriate alphabetical position the following item —

“ Prostitution Control Board ”.

10 **5. Freedom of Information Act 1992 amended**

- (1) The amendment in this clause is to the *Freedom of Information Act 1992**.

15 [* Reprinted as at 3 March 2000.
For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 144, and Act No. 21 of 2002.]

- (2) Schedule 2 is amended by inserting after the item “The Parole Board.” the following item —

“ The Prostitution Control Board. ”.

6. Health Act 1911 amended

(1) The amendments in this clause are to the *Health Act 1911**.

[* Reprinted as at 31 March 2000.

For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 163.]

(2) Section 303(1) is amended by deleting “, subject, however, to the provisions of the next succeeding section”.

(3) Section 304 is repealed.

(4) Section 310(2) is repealed.

7. Parliamentary Commissioner Act 1971 amended

(1) The amendment in this clause is to the *Parliamentary Commissioner Act 1971**.

[* Reprinted as at 16 March 2001.]

(2) Schedule 1 is amended by inserting in its appropriate alphabetical position the following item —

“

The Prostitution Control Board under the *Prostitution Control Act 2003*, except to the extent that the matter concerned has been referred to the Commissioner for investigation and report under section 15 of this Act and relates to a matter other than a matter described in section 19(2) of that Act.

”.

8. Police Act 1892 amended

(1) The amendments in this clause are to the *Police Act 1892**.

[* Reprinted as at 12 January 2001.

For subsequent amendments see Act No. 6 of 2002.]

(2) Section 42 is amended as follows:

(a) by deleting “common prostitute, or reputed thief,” and inserting instead —

“ reputed thief ”;

- (b) by deleting “common prostitute, reputed thief,” and inserting instead —
“ reputed thief ”.
- 5 (3) Section 47 is amended by deleting “reputed common prostitute, thief,” and inserting instead —
“ reputed thief or ”.
- (4) Section 65(7) is amended by deleting “, prostitutes,”.
- (5) Section 65(8) is repealed.
- (6) Section 65(9) is amended by deleting “or known prostitutes”.
- 10 (7) Sections 76F and 76G are repealed.
- (8) Section 84(1) is amended by deleting “prostitutes or”.
- (9) Section 122 is amended by deleting “disorderly house, house of ill-fame, brothel, or bawdy-house, or”.
- 9. The Criminal Code amended**
- 15 (1) The amendments in this clause are to *The Criminal Code**.
[* Reprint 10 as at 7 February 2003 see the Schedule to the Criminal Code Act 1913 appearing as Appendix B to the Criminal Code Compilation Act 1913.]
- (2) Section 191 is amended as follows:
- 20 (a) by deleting paragraphs (2), (3), and (4) and “or” after each of those paragraphs;
- (b) in paragraph (5), by deleting “any of the above purposes;” and inserting instead —
“ the purpose described in paragraph (1), ”.
- 25 (3) Section 209 is repealed.
- (4) Section 213 is repealed.

10. Town Planning and Development Act 1928 amended

- (1) The amendment in this clause is to the *Town Planning and Development Act 1928**.

[* Reprinted as at 3 November 2000.

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 382, and Act No. 25 of 2001.]

- (2) After section 12(1) the following subsection is inserted —

“

- (1a) Compensation is not payable for land or property being injuriously affected by reason of —

(a) any provisions in a town planning scheme that, either alone or together with other provisions, satisfy a requirement of the *Prostitution Control Act 2003* Part 7; or

(b) the clause that, because of the *Prostitution Control Act 2003* section 151(1), is to be read, and has effect, as if it were part of a town planning scheme.

”.

11. Workers' Compensation and Rehabilitation Act 1981 amended

- (1) The amendments in this clause are to the *Workers' Compensation and Rehabilitation Act 1981**.

[* Reprinted as at 14 September 2001.]

- (2) After section 10A the following section is inserted —

“

10B. Exclusion of certain prostitutes

- (1) In this Act, “**worker**” does not include —

(a) a person employed to act as a prostitute unless —

(i) the person acts as a prostitute at a brothel as an employee under a contract

of service entered into with the person who has the brothel operator's licence for the brothel;

5

(ii) the person acts as a prostitute through a prostitution agency business under a contract of service entered into with the person who has the prostitution agent's licence for the business; or

10

(iii) it is shown that the person worked under coercion;

or

(b) a self-employed sole prostitute.

(2) In subsection (1) —

15

“act as a prostitute”, “brothel”, “prostitution agency business” and “self-employed sole prostitute” each has the meaning given to the term in the *Prostitution Control Act 2003* section 3.

”.

20

(3) Section 22 is amended as follows:

(a) by inserting before “If it is proved” the subsection designation “(1)”;

(b) by inserting at the end of the section the following subsection —

25

“

(2) If a worker who is employed to act as a prostitute fails to comply with a provision of the *Prostitution Control Act 2003*, that failure amounts to serious and wilful misconduct for the purposes of subsection (1)(c) unless the claimant proves that there was a reasonable excuse for the failure.

30

”.

12. Young Offenders Act 1994 amended

(1) The amendments in this clause are to the *Young Offenders Act 1994**.

[* Reprinted as at 8 December 2000.

For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 423.]

(2) Schedule 2 is amended by deleting the heading relating to the
Prostitution Act 2000 and the items under that heading and inserting
instead —

“

2A. Prostitution Control Act 2003

s. 64 Seeking prostitute in or in view or within
hearing of public place

s. 68 Causing, permitting, or seeking to induce
child or incapable person to act as
prostitute

s. 69 Obtaining payment for prostitution by a
child or incapable person

s. 70 Agreement for prostitution by a child or
incapable person

s. 74 Seeking to induce person to act as
prostitute

”.

10

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
act as a prostitute.....	3, Sch. 4, cl. 11(2)
act as a prostitution driver.....	3
act as a prostitution manager.....	3
act of prostitution	3
advertisement of prostitution	3, 78(4)
appointed member	3
attended prostitution agency office.....	Sch. 3, cl. 1(9)
authorised person	3
being involved in prostitution	177(2)
Board.....	3
bodily fluid	3
broadcast.....	78(4)
brothel	3
brothel business.....	3
business premises	3
chairman	3
child.....	3
child care premises	Sch. 3, cl. 1(9)
client.....	3, 4
Commissioner	154(1)
Commissioner of Health.....	3
Commissioner of Police.....	3
committee	3
contact address	3
conveyance	154(1)
defendant	178
document	3
educational establishment.....	Sch. 3, cl. 1(9)
employing authority.....	202(6)
engaging in illegal conduct	134(2)
existing planning scheme.....	151(3)
family order	197(2)
formal inquiry	3
Full Court.....	196(7)
incapable person.....	3
indictable offence	113(2)
industry zone or precinct	Sch. 3, cl. 1(9)
information	20(5)
interest	82(2)

Defined Terms

investigator	3
involvement in a contravention	134(3)
juvenile justice team	154(1)
land-holder	52(2), 57(2)
legal practitioner	3
licence	3
licensed	3
licensed person	124(1), 179(2)
licensing decision	54(2), 59(2)
managerial officer	3
medical examination	3
medical practitioner	3
member of staff	3
member of the Board	3
mental illness	3
Minister	167(11)
notifiable matter	125(2)
notifiable sexually transmissible infection	3
notified premises	112(3)
offence	154(1)
offender	64(4), 65(4)
office	Sch. 3, cl. 1(8)
place	3
place of worship	Sch. 3, cl. 1(9)
planning scheme	150
premises	Sch. 3, cl. 1(9)
prescribed activity	135(3)
principal place of residence	3
prohibited drug	3
prophylactic	3
proprietary company	3
prostitute	3, 4, 179(2)
prostitution	3
prostitution agency business	3
prostitution agency office	3
prostitution booking office	Sch. 3, cl. 1(9)
prostitution business licence	54(2), 59(2), 78(4)
prostitution-related function	89(2)
prostitution-related issues	16(3)
protected use place	Sch. 3, cl. 1(9)
public place	3
public release day	Sch. 3, cl. 1(9)
reasonably suspects	3
registrar	3
relevant charge	164(3)

Defined Terms

relevant juvenile justice team matter	164(3)
remote communication	3
residential zone or precinct	Sch. 3, cl. 1(9)
respondent.....	191(4)
retention period	112(3)
self-employed sole prostitute	3
sexually transmissible infection	3
sole operator agency business	3
sole operator brothel business	3
sponsorship	80(3)
strategic industry zone or precinct.....	Sch. 3, cl. 1(9)
undercover officer	167(11)
weapon	109(3)