

# ***PROSTITUTION CONTROL BILL 2003***

## **EXPLANATORY MEMORANDUM**

### **Part 1 - Preliminary**

This Part contains the title of the Act, the relevant commencement provisions, definitions of terms used in the Act, the objectives of the Act and the relationship the Act has to other written laws.

**Clause 1.** Short title and citation.

**Clause 2.** This clause sets out the commencement provisions.

The Act will come into operation in parts. Initially provisions relating to the establishment of the Board will be enacted. When the Board is in a position to issue licences, the remainder of the Act will be proclaimed and the industry will be subject to the offence and obligation provisions.

**Clause 3.** This clause contains definitions of certain words and terms that are used throughout the Act.

These terms have been defined to ensure the provisions of the Act are interpreted and applied in the manner intended.

**Clause 4.** This defines prostitution for the purposes of the Act. It endeavours to include all services provided by prostitutes without being excessively broad so as to include activities not intended to be covered by this legislation. It does not include activities that may provide sexual stimulation that do not involve contact.

**Clause 5.** This clarifies the meaning of the term “reasonably suspects” as it applies to the Act resolving issues identified by the New South Wales Court of Criminal Appeal in R v Rondo [2001] NSWCCA 540.

**Clause 6.** This details the objectives of the legislation. The legislation seeks to ensure that the prostitution industry is adequately controlled and operates in a manner that ensures the welfare of employees, limits the risk to public health, has minimal impact on the general community and does not involve children.

**Clause 7.** This clarifies that the Act is an addition to existing written laws and does not override them unless it is expressly stated or a provision of another law is inconsistent with this Act.

### **Part 2 – Prostitution Control Board**

This Part provides for the Board’s establishment, functions, staff and finances.

## **Division 1 – Establishment of Board**

This Division establishes the Board and specifies the membership and means of appointment, the Board's constitution and proceedings and the remuneration and allowances provided to its members.

**Clause 8.** This details that the Board will be established as a continuing legal entity that performs the advisory, administrative and licensing functions specified in the Act.

**Clause 9.** This provides that the Board will consist of a chairman appointed by the Governor on the nomination of the Minister responsible for the Act, the Commissioner of Health, the Commissioner of Police and 3 other persons appointed by the Minister responsible for the Act.

**Clause 10.** This details the qualifications and manner of appointment of the three members that are to be appointed by the Minister responsible for the Act.

**Clause 11.** This details the procedures that will be followed to select the appointee who represents local government.

The Western Australian Local Government Association (WALGA) is to be given the opportunity to supply to the Minister responsible for the administration of the *Local Government Act 1995*, a list of 3 persons from whom the member will be selected. If WALGA do not comply with the request for nominees, the Minister may nominate a person.

**Clause 12.** This provides the procedure that must be followed to select the appointee who will provide knowledge and/or experience in matters relating to the prostitution industry.

Nominations will be sought through advertisements in 2 issues of a daily newspaper with statewide circulation.

**Clause 13.** This advises that matters relating to the constitution and proceedings of the Board are prescribed at Schedule 1 of the Act.

**Clause 14.** This advises that the remuneration and allowances to be paid to members of the Board or committees will be decided by the Minister responsible for the Act on the recommendation of the Minister for Public Sector Standards.

## **Division 2 – Functions of Board**

This Division provides for the functions of the Board, the ability of the Board to delegate a power or duty and the ability for the Board to establish committees.

**Clause 15.** This details the functions of the Board. The Board will be an administration and advisory body established to oversee the prostitution industry and ensure the objectives of the Act are achieved.

**Clause 16.** This provides specifics in relation to the Board's education and information functions. The Board will be required to make available education and information on prostitution related issues to all persons involved in the provision of prostitution and the supervision of the industry.

**Clause 17:** This makes it clear that the Board will be empowered to do all lawful things that are necessary or expedient to be done for, or in connection with, the performance of its functions and that in doing so may make any inquiry as considered necessary. This provision is necessary to enable the Board to perform its functions.

**Clause 18.** This details the extent to which the Board can delegate its functions. The Board can delegate some of its functions to persons or committees connected with the Board. To ensure the necessary high level oversight, the Board cannot delegate the power to delegate, grant, revoke or suspend a licence, ban a prostitute from acting as a prostitute, order an investigation or the power to hold a formal inquiry.

**Clause 19.** This provides the Minister responsible for the Act with the ability to give written directions to the Board in relation to the performance of its functions. However, the Minister cannot direct the Board in relation to licensing or approval processes for particular individuals and businesses. Directions given by the Minister to the Board in relation to the performance of its functions must be tabled in Parliament and included in the Board's annual report.

This provision is intended to ensure that the Minister can provide appropriate direction to the Board, whilst providing appropriate limitations that will maintain the Board's autonomy of decision-making in relation to individual cases.

**Clause 20.** This enables the Minister responsible for the Act to access the information of the Board. The Minister will be able to request any information held by the Board so long as it does not enable the identification of an individual unless the individual has first agreed to the disclosure of such information.

This enables the Minister to have access to the information required to appropriately administer the Act whilst protecting the private information of individuals.

**Clause 21:** This enables the Board to establish committees to assist in the performance of its function or to provide advice in relation to businesses involving the provision of prostitution.

The Board will not be limited as to who they can appoint to a committee, except that a committee established to advise in relation to businesses involving the provision of prostitution must have representation from all sectors of the lawful industry.

### **Division 3 – Registrar and staff**

This Division provides for the appointment of a Registrar and staff to attend to the day to day operations of the Board.

**Clause 22.** To assist in the performance of functions under this Act, the Board will be able to appoint a registrar and staff, employ wages staff and engage persons on contract of service under the relevant provisions of the *Public Sector Management Act 1994*.

**Clause 23.** The registrar will be responsible for financial accounting, maintenance of the register and the management of staff involved in assessing licence applications, monitoring prostitution businesses and maintaining the licensing system.

**Clause 24.** The Board will be able to, by arrangement with the relevant employer, second persons. This includes public servants, police officers and employees of state agencies or instrumentalities.

#### **Division 4 – Financial provisions and reporting**

This Division specifies the constitution of the funds of the Board, the account to which funds are to be credited, the provision of the *Financial Administration and Audit Act 1985* relating to the financial administration, audit and reporting of statutory authorities apply and enables the Board to borrow funds.

**Clause 25.** This details the constitution of the funds of the Board. These will consist of money borrowed from the Treasurer, fees received from its licensing function and other moneys lawfully received.

**Clause 26.** This provides that the Board will be able to borrow funds from the Treasurer.

**Clause 27.** This specifies that funds of the Board are to be credited to an account created in accordance with the relevant provisions of the *Financial Administration and Audit Act 1985* and that these funds can only be used to pay the remuneration and allowances of members of the Board and other expenses lawfully incurred by the Board in the performance of its functions.

**Clause 28.** This provides that the provisions of the *Financial Administration and Audit Act 1985* relating to the financial administration, audit and reporting of statutory authorities apply to the Board and its operations. The Board, whilst operating with a large degree of autonomy, is still subject to the stringent financial controls that apply to other Government instrumentalities.

#### **Division 5 – Other provisions about Board**

**Clause 29.** The Board will have a common seal, which can be used in the execution of documents. This is a standard clause for the execution of documents by incorporated bodies.

#### **Part 3 – When licence is required**

This Part provides that a licence is required to carry on a brothel business, a prostitution agency business or for a person who acts as a prostitution manager.

**Clause 30.** It will be an offence to carry on a prostitution business without the necessary licence.

The maximum penalty for operating without a licence is imprisonment for 14 years. Without this licensing requirement it would not be possible for the Board to achieve the objectives of this legislation, particularly in relation to controlling the ownership and operation of brothel or prostitution agency businesses and deterring organised and other crime from being involved or connected with prostitution.

**Clause 31.** It will be an offence to act as a prostitution manager without the necessary licence with a maximum penalty of imprisonment for 5 years.

Without this licensing requirement it would not be possible for the Board to achieve the objectives of this legislation, particularly in relation to regulating and controlling people involved in the management of businesses involving prostitution, deterring organised and other crime in connection with prostitution and preventing children or incapable persons from being involved in the industry.

#### **Part 4 – Licensing provisions**

This Part details the licensing procedures, including the restrictions on granting licenses for brothel operators, prostitution agents and prostitution managers.

#### **Division 1 – General licensing provisions**

This Division details the procedures for applying for a licence, including the information to accompany an application, the duration of a licence, the ability for the Board to apply conditions or restrictions and revoke or suspend a licence.

**Clause 32.** This empowers the Board to issue brothel operator’s licences, prostitution agent’s licences and prostitution manager’s licences, subject to the payment of the prescribed fee for the granting of that licence.

A person who is aggrieved by the decision of the Board in relation to the refusal to grant a licence will have a right of appeal pursuant to clause 184.

**Clause 33.** This clause enables multiple and different categories of licences to be held for example a brothel operator can also be the prostitution manager for that business.

**Clause 34.** This clause provides that an application for a licence is to be accompanied by the prescribed licence fee and is to be in a form and manner that is acceptable to the Board.

**Clause 35.** This clause outlines the information that is necessary to accompany an application such as evidence of the applicant’s age and identity, photographs of the applicant and testimonials.

In the case of a partnership or body corporate, each partner or managerial officer can be required to provide information to ensure that they meet the criteria for a licence. This ensures that the Board is fully informed of all persons involved in the partnership or body corporate that is seeking a licence. Further, this will restrict the use of the corporate veil, trust accounts and webs of corporate bodies and partnerships to hide the interests of undesirable persons.

The requirement to provide proof that the person is a permanent resident in Australia or an Australia resident who ordinarily resides in Western Australia is to enable the Board to limit ownership of brothels and prostitution agencies to Western Australian residents. This will ensure that people cannot avoid the strict liability provisions of the Act by living in another State or Country.

**Clause 36.** To ensure that only appropriate people are operating and managing businesses it is necessary that people applying for licences be positively identified and their antecedents checked.

The Board has the authority to direct, in writing, any applicant for a licence to supply his or her finger and palm prints. This would apply where there is doubt as to the identity of an applicant. The Board cannot licence a person who refuses to provide those prints.

Upon written application, a person who has ceased involvement in the industry can seek to have his or her finger and palm prints destroyed.

**Clause 37.** This establishes criteria under which the Board must refuse an application. The inclusion of such a clause enables the Parliament to ensure that the Board satisfies the expectations and needs of the community in its assessment and granting of licences.

For example, a person who is not deemed to be fit and proper or has been convicted of a Schedule 2 offence or has been declared a drug trafficker will not be granted a licence.

One of the key objectives of this legislation is to prevent the exploitation of children. This requirement ensures that only adults can be licensed to be involved in the prostitution industry.

**Clause 38.** Upon granting a licence, the Board is to issue a licence document to the person. The Board has the flexibility to amend the form of the licence from time to time to facilitate the use of new technologies and to respond to any other changes that impact on the detail required on these licences.

Subclause (2) provides that the Board can determine whether more than one licence can be shown on a single licence document.

**Clause 39.** All licences will remain in effect for up to three years unless cancelled or rescinded. The date the licence expires is to be specified on the licence document.

A person who is aggrieved by a decision of the Board in relation to the term of the licence will have a right of appeal pursuant to clause 184.

**Clause 40.** Subclause (1) provides how an application for renewal is to be made. The Board is to determine the form and manner that best meet its needs in dealing with applications for renewal. An application for renewal is to be accompanied by a renewal fee that is to be prescribed in regulations.

Subclause (2) provides that applications for renewal are to be made 28 days prior to the licence ceasing to have effect. This requirement will allow the Board sufficient time to process the licence and make its determination prior to a licence ceasing to be of effect.

A person who is aggrieved by a decision of the Board in relation to the refusal to grant a renewal of a licence will have a right of appeal pursuant to clause 184.

**Clause 41.** The Board is prohibited from renewing a licence that is required to be revoked.

**Clause 42.** So that the Board can fully inform itself on all relevant matters when determining an application for granting or renewal of a licence, this clause provides that the Board is able to request an applicant to provide further evidence or information in support of the application.

**Clause 43.** This clause provides that the Board may impose conditions or restrictions on a particular licence or amend or remove any existing conditions or restrictions at any time, in writing. This provision enables the Board to set specific conditions and restrictions on

licenses and in doing so consider particular circumstances, such as limiting possible impacts on the local community.

A person who is aggrieved by a decision of the Board to impose a condition or restriction on a licence will have a right of appeal pursuant to clause 184.

**Clause 44.** General conditions or restriction under which licence holders will operate can be prescribed by regulations. These conditions or restrictions may apply to all licences or to a particular class of licence. By having these conditions or restrictions prescribed by regulations, it is possible to ensure their expeditious amendment to meet the changing needs of the industry and the expectations of the community.

Provision has been made for the Board to specifically exempt individuals from some or all of the conditions or restrictions imposed under the regulations, as the Board deems appropriate.

**Clause 45.** This clause provides that a licence is not transferable. One of the key objectives of this legislation is to deter the involvement of criminals and criminal organisations in the industry. Having gone through the process to issue a licence, including positive identification and probity checking, transferring the licence to another individual without the requisite check would defeat one of the principle elements of this legislation.

**Clause 46.** As it is possible for a licence to be lost or destroyed, this clause provides for the issue of a duplicate licence. Due to the cost incurred in processing and producing a duplicate licence, the ability to prescribe a fee in regulations has been provided.

**Clause 47.** As a person's circumstance can change, that person may seek an amendment to a licence. An application for amendment is to be in a form approved by the Board. Due to the cost incurred in processing and producing another licence, the ability to prescribe a fee in regulations has been provided.

Subclause (3) provides that if an application for amendment is refused, the amount of the fee that accompanied the application is to be refunded to the applicant.

Subclause (4) provides the Board with the ability to amend the licence where it is deemed necessary or appropriate such as the addition or removal of conditions. Notification is to be provided to the licence holder in writing.

A person who is aggrieved by a decision of the Board to amend, or refuse to amend, a licence will have a right of appeal pursuant to clause 184.

**Clause 48.** This clause provides that if a person holds a licence on behalf of a partnership or body corporate and ceases to be one of the partners or managerial officers, the licence terminates automatically. A person must provide notification to the board within 7 days of all or any of those circumstance occurring. The penalty for failing to do is \$12 000.

A key objective of this legislation is to deter organised and other crime from involvement in the prostitution industry. Having gone through the process to issue a licence including identification of the applicant and probity checking, it is not acceptable for the licensed person to leave a business and for the licence to remain in effect. This provision is to ensure that partnerships and bodies corporate cannot put forward reputable people to obtain a licence and subsequently remove or replace that person with someone who may not be able to be granted a licence by the Board.

**Clause 49.** This clause provides that the Board may revoke or suspend a licence by giving notice in writing to the licence holder. It may be necessary to suspend a licence whilst the Board undertakes an investigation into a particular matter.

Subclause (2) provides when the Board must revoke a licence. These circumstances are when the Board is no longer satisfied about a matter, or if a matter comes to the attention of the Board that would have prevented the licence being granted in the first instance.

A person who is aggrieved by the decision of the Board in relation to the revocation or suspension of a licence will have a right of appeal pursuant to clause 182.

**Clause 50.** This clause provides that licence holders may notify the Board, in writing, of a change of contact address. Whilst it is desirable for the Board to have a licence holder's current contact address, for example as penalties can be imposed for non-compliance to conditions or restrictions on a licence, those processes are deemed to be served when dispatched by registered post to the last provided address of the licence holder. The responsibility of updating of addresses for the provision of papers etc has been left up to the licence holder rather than placing a statutory compliance provision upon them.

## **Division 2 – Licensing brothel operators**

This Division provides the conditions and restrictions in relation to the licensing of brothel operators.

**Clause 51.** To ensure that the ability to enforce the Act is not limited because the brothel operator is residing in another jurisdiction, the Act provides that a brothel operator's licence can only be granted to a person who ordinarily resides in Western Australia and is either a permanent resident in Australia or an Australian citizen. It is also felt that this encourages hands-on management of the premises and lends itself to better governance of the premises and support to the business manager.

Subclause (2) provides that the person may have the licence on behalf of a partnership provided they are one of the partners and that each of the partners or shareholders is a person who ordinarily resides in Western Australia and is either a permanent resident in Australia or an Australian citizen.

Subclause (3) provides that the person may have the licence on behalf of a body corporate, but only if the body corporate is a proprietary company and the person is a managerial officer of the body corporate. Each managerial officer of the body corporate is to be a person who ordinarily resides in Western Australia and is either a permanent resident in Australia or an Australian citizen.

Subclause (4) enables a person who has a brothel operator's licence that is on behalf of a partnership or body corporate, to transact the brothel business in the name of the partnership or body corporate.

**Clause 52.** Each landholder who has an estate or interest in the land on which a proposed brothel business is to be situated is to provide their consent, in writing, to the land being used for that purpose. Landholders need to be aware of the proposed use for their properties to avoid them unwittingly becoming involved in the prostitution industry.

Without the landholder consent to the land being used as a brothel, the Board cannot issue a licence.



**Clause 53.** The Board cannot grant a brothel operator’s licence unless the Board is satisfied that each necessary consent, approval and exemption has been obtained. This provides clear direction to the applicant that all processes must be complete before the licence is granted and from a Board perspective directs that all matters, such as obtaining the appropriate planning approvals, have been obtained before a licence is granted.

**Clause 54.** Without limiting what may be considered, this clause outlines certain matters that the Board may take in to account before making a decision as to the grant, renewal, amendment, suspension or revocation of a brothel operator’s licence.

The matters include the location of the premises and the identity of any person who has an estate or interest in the land, the hours of business, the number of persons who are or are to act as prostitutes for the business, the number of rooms to be used for the purposes of prostitution and how many brothel operator or prostitution agent licences the same person has or is to have.

This provision endeavours to assist in meeting a key objective of the legislation, which is protecting the social and physical environment of the community by controlling the location of brothels and prostitution agency offices and the carrying on of a businesses involving the provision of prostitution.

**Clause 55.** A brothel operator’s licence is to specify the name of the brothel business, the name of the licensed person, the names of each partner or body corporate where appropriate and the premises that are to be used as a brothel. From an inspectorial or investigative perspective it is expeditious if this information is readily available.

The Board is empowered to consider and impose additional details to be specified on the licence consistent with the Act, as it deems appropriate.

Subclause (2) prevents two or more premises from being specified for use as a brothel in one licence. However, this 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 the one licence document.

### **Division 3 – Licensing prostitution agents**

This Division provides the conditions and restrictions in relation to the licensing of prostitution agents.

**Clause 56.** The rationale behind this clause is akin to Clause 51.

**Clause 57.** The rationale behind this clause is akin to Clause 52.

**Clause 58.** The rationale behind this clause is akin to Clause 53.

**Clause 59.** The rationale behind this clause is akin to Clause 54.

**Clause 60.** The rationale behind this clause is akin to Clause 55.

### **Division 4 – Licensing prostitution managers**

This Division provides the conditions and restrictions in relation to the licensing of prostitution managers

**Clause 61.** A prostitution manager has an important role in the management of brothels and prostitution agencies. Due to the types of requirements placed on them such as under clause 118, which includes the requirement to be present at the brothel or prostitution agency at all times whilst they are acting as the prostitution manager, a prostitution manager's licence can only be granted to a natural person.

**Clause 62.** A prostitution manager's licence is to specify the name of the brothel business or prostitution agency business for which they are licensed to be a manager, the name of the person licensed to be the manager, the name of the brothel operator or prostitution agent and the location of the premises. It is necessary that this information is readily available on such a licence document to assist authorised persons and police in their inspectorial or investigative roles. Whilst all of these details would be readily accessible through the Board during normal business hours, it would be difficult for the inspector, investigator or in the case of complaint, the attending police officer to check them after hours.

The Board is empowered to consider and impose additional details to be specified on the licence consistent with the Act, as it deems appropriate.

Subclause (2) prevents two or more premises being specified in one licence for which a person acts as a prostitution manager. However, this 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 the one licence document.

## **Part 5 – Other obligations and offences**

This Part provides obligations and offences as they relate to persons generally, prostitutes, prostitution drivers and licensed persons.

### **Division 1 – Persons generally**

This Division provides obligations and offences for persons generally in relation to the Act.

**Clause 63.** This provides that a person who invites the services of a prostitute who is prohibited from acting will be liable to a penalty of imprisonment for one year. A prostitute is prohibited from acting if they are a child or an incapable person pursuant to clause 96. The Board may also ban a prostitute if they are a declared drug trafficker or have been found guilty of an offence prescribed in Schedule 2.

This provision is intended to deter persons from using the services of a prostitute prohibited from acting.

**Clause 64.** This provides that seeking a prostitute in or in view or within hearing of a public place will be an offence with a penalty of imprisonment for 7 years if the person sought is a child or an incapable person, and otherwise, imprisonment for 2 years.

This provision has been taken from the *Prostitution Act 2000* and has been expanded to provide for the inclusion of incapable people. The *Prostitution Act 2000* will be repealed when this Act is fully brought into effect.

The presence of street prostitutes and the clients they draw to an area can be upsetting and disruptive to residents and business owners in affected areas. The prostitutes involved may also expose themselves to a greater risk of assault and exploitation than those operating from controlled prostitution businesses. This Bill seeks to ensure that the seeking of and provision of street prostitution services continues to be unlawful.

**Clause 65.** This provides that seeking a client in or in view or within hearing of a public place will be an offence with a penalty of imprisonment for 3 years if the person whom the offender seeks to be a prostitute's client is a child, otherwise imprisonment for one year.

This offence is also taken from the *Prostitution Act 2000*. For the reasons outlined at clause 64, this is required to assist police in controlling street prostitution.

**Clause 66.** This clause provides that a person, except as stated in subsection (2), who provides a place for the purpose of acts of prostitution being performed there, will be liable to imprisonment for 5 years.

The exceptions provided by subclause (2) are premises used as a brothel in accordance with a brothel operator's licence, the principle place of residence of a self-employed sole prostitute or a place provided by a client on a temporary basis for the purpose of acts of prostitution being performed there under an arrangement with a licensed prostitution agency or with a self-employed sole prostitute.

The purpose of this clause is to deter acts of prostitution occurring at premises provided contrary to the Act.

**Clause 67.** This provides that a client who attends a place unlawfully provided, for the purposes of taking part in an act of prostitution, will be liable to a penalty of \$6 000. The purpose of this clause is to deter clients from using unlicensed prostitution businesses and to legislatively support those businesses that have complied with the licensing regime contained within this Act.

**Clause 68.** This clause provides that a person who causes, permits, or seeks to induce a child or incapable person to act, or continue to act, as a prostitute will be liable to imprisonment for 20 years.

This provision has been taken from the *Prostitution Act 2000* and has been expanded to provide for the inclusion of incapable people.

**Clause 69.** This clause provides that a person who obtains payment for prostitution by a child or incapable person will be liable to imprisonment for 14 years.

This provision has been taken from the *Prostitution Act 2000* and has been expanded to provide for the inclusion of incapable people. The *Prostitution Act 2000* will be repealed when this Act is fully brought into effect.

Subclause (3) provides a defence to cover situations where payments are received in the normal course of a business that is unrelated to prostitution. An example of this type of situation may be a property owner unwittingly receiving rent from a person who is receiving income from child prostitution.

**Clause 70.** This clause provides that if any person enters into an agreement under which a child or incapable person is to act as a prostitute the person will be liable to imprisonment for 14 years.

This provision has been taken from the *Prostitution Act 2000* and has been expanded to provide for the inclusion of incapable people.

**Clause 71.** This clause provides that a person who is a child is not to seek the services of prostitute. The penalty for this offence will be \$6 000.

This provision has been taken from the *Prostitution Act 2000*. An example of an offence that this provision is aimed at deterring is where a prospective adult client, or prostitute to avoid prosecution, may use a child as a go between to arrange the services of a prostitute for their own benefit or that of another person.

**Clause 72.** This clause provides that if a person takes part in an act of prostitution where the person knows a child is present, they will face a penalty of \$25 000 for the first offence and a subsequent offence will attract a penalty of 2 years imprisonment and a fine of \$25 000.

This provision is similar to that in the *Prostitution Act 2000*. Importantly, regardless as to where an act of prostitution takes place, or whether that act is legal or illegal, the Act will prohibit the presence or involvement of children.

**Clause 73.** This clause provides that a person will face a penalty of \$25 000 for the first offence and a subsequent offence will attract a penalty of 2 years imprisonment and a fine of \$25 000 if the person allows a child to enter or remain at a place where the person knows or could reasonably be expected to know that an act of prostitution is taking place or that a business is being carried on that involves more than one prostitute in the provision of prostitution.

This offence applies to any person at a prostitution business, legal or illegal, who permits a child to enter or remain on the business premises.

**Clause 74.** This clause provides that a person is not to do anything or refrain from doing anything with the intention of inducing a person to act as prostitute. The penalty will be imprisonment for 14 years, or as a summary conviction penalty, imprisonment for 3 years.

A fundamental objective of the legislation is the protection of persons from exploitation. It is possible for women and children and for males, to be coerced into prostitution through fear of harm, intimidation (pimps), drug dependency (recovery of debt owed), and other such practices against their will.

This clause specifically relates only to adults as children and incapable persons are provided for under clause 68.

**Clause 75.** This clause provides that a person who lives on the earnings of a prohibited prostitute will be liable to imprisonment for one year. This is intended to deter persons of unscrupulous character, who would seek to exploit, through coercion or intimidation, a prohibited prostitute to continue to work in an effort to gain personal benefit.

Subclause (2) provides that the court convicting a person of such an offence may, as well as imposing a penalty for the offence, order the person to pay to the Crown an amount that the court considers appropriate but not more than the benefit derived by the person from the prostitute's earnings. This is seen as a strong disincentive for an individual who would commit an offence of this nature.

**Clause 76.** This clause provides that a person who knows or could reasonably be expected to know that they have a sexually transmissible infection and who invites a person to act as a prostitute for them will be liable to a fine of \$6 000 for a first offence and imprisonment for one year for a subsequent offence.

The Department of Health supports this provision in relation to their public health objectives. The protection of public health as well as the welfare, occupational health and safety of prostitutes are key factors of this legislation. This clause is aimed at deterring a person from using the services of a prostitute whilst infected and as a consequence reduce the potential for the prostitute's exposure to a sexually transmissible infection.

**Clause 77.** This clause provides that a person taking part in an act of prostitution must use a prophylactic that is appropriate for preventing the transmission of bodily fluid from one person to another. The penalty for an offence against this requirement will be \$6 000.

A key objective of this legislation is "to safeguard public health and well being against effects of prostitution". The use of prophylactics is a major safeguard in reducing the risk of sexually transmissible diseases being spread.

**Clause 78.** This clause provides for strict controls on the content and means of publishing advertising relating to prostitution. In breaching these controls a person will face a penalty of \$6 000.

The specific detail as to what will and will not be permitted in the advertisements of prostitution services will be contained in regulations.

Subclause (2) provides that an advertisement can only be broadcast through a newspaper, or via the internet in accordance with the regulations or by other means that are approved by the Board.

Subclause (3) provides that if an advertisement is broadcast or published contrary to this clause then the offence is committed by any person who publishes or broadcasts the advertisement, any person through whose business the advertisement is broadcast or otherwise published and any person who has a licence for the business to which the advertisement relates.

Subclause (4) enables the correct interpretation of the terms "advertisement of prostitution" and "prostitution business licence" for the purposes of this clause.

**Clause 79.** This provision currently exists in the *Prostitution Act 2000*.

This clause provides that a person is not to publish a statement that is intended or likely to induce a person to seek employment in the prostitution industry as a prostitute or in any other capacity in a business involving prostitution. The penalty for contravention of this requirement will be \$60 000.

This clause makes it clear that it is not the intention of the Parliament that the provision of prostitution services be advertised or viewed as a desirable career option.

**Clause 80.** This provision currently exists in the *Prostitution Act 2000*.

Subclause (1) provides that a person is not to promote or publicise or agree to promote or publicise any person as a prostitute or any business involving the provision of prostitution under a contract or arrangement where sponsorship is, or is to be provided by another person.

Subclause (2) provides that a person, whether or not within Western Australia, is not to provide, in Western Australia, a sponsorship under a contract or arrangement of a kind referred to in subsection (1).

An offence against this clause will attract a penalty of \$60 000.

Subclause (3) provides a definition of sponsorship for the purposes of this clause.

This clause provides additional support to the strict controls that have been placed on advertising in previous clauses and ensures that sponsorship cannot be used as a loop-hole to enable the inappropriate advertising of prostitution services.

**Clause 81.** This clause provides that a person who has an involvement with the business of a self-employed sole prostitute will be liable to imprisonment for one year.

A key objective of the legislation is to protect prostitutes from exploitation. This provision is intended to help ensure the independence of self-employed sole prostitutes by not allowing others to become involved in the operation of their business. This will reduce the risk of prostitutes being forced to enter or remain in the industry by persons who are seeking to gain from the activities of the prostitute.

In recognition of their safety and security, subclause (2) provides that a driver who is employed by a self-employed sole prostitute, in accordance with the Act, is not deemed to be involved in the business of a self-employed sole prostitute.

**Clause 82.** This clause provides that a person is not to have an interest in the business of a self-employed sole prostitute. The penalty will be imprisonment for five years, or on summary conviction, imprisonment for three years.

The rationale for the Clause is akin to that for Clause 81.

Subclause (2) defines “interest”. A person has an interest if the person receives or could reasonably be expected to receive any pecuniary or other benefit from the carrying on of a sole operator brothel business or sole operator agency business.

**Clause 83.** This clause provides that a person who, without lawful excuse, possesses another person’s licence document, will face a penalty of imprisonment for one year.

Having gone through the process to issue a licence including the identification of the applicant and a probity check being completed, it is not acceptable for another person who does not have a lawful excuse to be in possession of the licence document. The possession of these documents may enable an offender to deceive clients into believing that they are at a licensed premises or dealing with a licensed person under the Act when this may not be the case.

**Clause 84.** This clause provides that a person is not, without lawful excuse, to wilfully destroy, mutilate, deface or alter a licence document. The penalty for such an offence will be imprisonment for one year. This provision is intended to deter people from defacing or altering licences in an effort to either avoid detection or create a false belief in the mind of another that they may or may not be licensed.

**Clause 85.** This clause provides that a person, who falsely leads another person to believe that they have a valid licence or anything in accordance with a licence, will be liable to imprisonment for one year. For example this provision is intended to protect both clients and prostitutes from being led into falsely believing that a person is licensed and that they

are therefore entering into a lawful licensed business enterprise when in fact they would be obtaining or providing services in an illegal establishment.

**Clause 86.** Subclause (1) provides that records that are required to be held are to be available for inspection. Such records would include the particulars of any person who acts as a prostitute or prostitution driver for the brothel business or prostitution agency business.

Subclause (2) provides that a police officer or other authorised person may require such records to be produced for inspection to enable them to readily obtain information necessary to establish whether a business is operating in accordance with the Act.

Subclause (3) provides that records that are required to be produced are to be in a readable format.

Subclause (4) provides that if a brothel operator, prostitution agent or prostitution manager fails to provide records that are required to be maintained, the person will face a penalty of \$120 000. An agent or employee who fails to provide records that are required to be maintained will face a penalty of \$60 000.

The compilation and retention of records by business owners is required to ensure that they are managing their business in accordance with the requirements of this Act. In relation to the welfare of prostitutes it is of particular importance that appropriate employment records are kept.

**Clause 87.** Subclause (1) provides that a police officer or other authorised person may, for the purposes of performing a function under the Act, request any person who is at a brothel or prostitution agency or any person who is known or is reasonably suspected to have acted as a prostitute, to give identifying particulars such as their name and address.

If a person fails to provide their name, address or other information when requested, or if they give false or misleading information, they will be liable to a penalty of \$6 000 for a first offence and imprisonment for one year for any subsequent offence.

This provision is to assist police officers and other authorised persons to readily identify individuals. An important enabler in the conduct of any investigation is the ability to obtain the name and address of people who are present at that location or are able to provide evidence that will assist in the inquiry or investigation. Without the ability to require the provision of name and address or an offence for providing false particulars there is the potential for an inordinate waste of investigative resources or the potential for evidence to be lost through being unable to locate the individual person or witness again.

**Clause 88.** This clause provides that if a person hinders, delays or obstructs a police officer or other authorised person in the performance of a function under the Act, they will face a penalty of imprisonment for 2 years.

This provision has been taken from the *Prostitution Act 2000* and has been expanded to provide for the inclusion of authorised persons.

In order to be able to rigorously enforce the Act, police and authorised persons must be able to go about their lawful business unhindered. While there is a hindering offence in the *Police Act 1892*, the offence in the Act will apply to both police and authorised persons.

**Clause 89.** This clause provides that a person is not to provide information that the person knows is false or misleading in a material way or likely to deceive in a material way.

**Clause 90.** This clause provides that a person who contravenes certain orders made under Part 6 of the Act will face a penalty of \$6 000 for a first offence and for any subsequent offence, imprisonment for one year.

This offence provision is aimed at deterring a person from contravening an order made under Part 6 of the Act, for example an interim order under clause 135 issued by the Board to a licence holder prohibiting the licence holder from doing anything specified in the order or may impose a condition or restriction which is specified in the order.

**Clause 91.** This clause provides that a person who contravenes a direction by a police officer under clause 155, to move away from a particular place will face a penalty of \$6 000 for a first offence and imprisonment for one year for any subsequent offence.

This provision has been taken from the *Prostitution Act 2000*.

This offence provision is intended to deter people from failing to comply with a lawful direction that requires the person to move away from a place and a surrounding area, specified in the direction, and stay away for a period not exceeding 24 hours. Since enacted in the *Prostitution Act 2000* this ‘move-on’ provision has greatly assisted police in responding to community concerns about street prostitution.

**Clause 92.** Subclause (1) provides that a person is not, without lawful excuse, to refuse or fail to produce a document or other thing required by an authorised person under clause 140 or refuse or fail to attend a formal inquiry under clause 149.

Subclause (2) provides that a person is not to, without lawful excuse, refuse or fail to be sworn or make affirmation when required to do so at a formal inquiry under clause 149, or refuse or fail to answer a question or give information when required to do so under clauses 140 or 149.

The penalty for a first offence is \$6 000 and for a subsequent offence the penalty is imprisonment for one year.

Subclause (3) provides a statutory protection for the individual in that if an individual is required to answer a question, provide information or produce anything in accordance with section 140 or 149, the information that is provided cannot be used in evidence in a civil or criminal proceeding against the individual other than perjury or an offence under clause 89 that relates to providing false or misleading material.

Subclause (4) provides a statutory defence to a charge in that a person is not required to answer a question or provide information that might incriminate the person or render them liable to a penalty. Subparagraph (b) provides that nothing in the Act prevents a person from refusing to answer a question or provide information in respect of which the person claims legal professional privilege.

This provides a defence of “lawful excuse” and specifically retains a person’s right against self-incrimination while also preserving legal professional privilege. The defences under the sections of the Criminal Code Act 1913 relating to mistake of fact, extraordinary emergencies, insanity, intoxication and immature age are therefore available to persons who are genuinely unable to comply with a requirement made pursuant to clause 140 and 149.



“Without lawful excuse” in this context is a compendious method of saying “without an excuse that would appear to a reasonable man to be adequate in the circumstances” *Hancock v Birsa* [1972] WAR 177.

Should a person be charged with an offence of not complying with a requirement made pursuant to clause 164, it will be for the courts to decide whether or not the reasons given for not complying are valid.

**Clause 93.** This clause provides that a person who misbehaves at, or wilfully interrupts the proceedings of, a formal inquiry or wilfully insults the Board or a member of the Board will be liable for a penalty of \$6 000 for a first offence and for a subsequent offence, imprisonment for one year.

This offence is aimed at deterring a person from frustrating the conduct of proceedings before the Board and provides for an offence should a person be disorderly in the private confines of a Board inquiry.

**Clause 94.** This clause provides that a person who is in charge of premises named in a warrant and anyone at the premises under that persons control are to assist the person acting under the warrant. A person who commits an offence against this clause will be liable for a penalty of \$6 000 for a first offence and for a subsequent offence, imprisonment for one year.

This offence is aimed at ensuring the effective and efficient execution of a search warrant, by deterring people who have knowledge or control of the premises, from frustrating the procedure.

**Clause 95.** This clause provides that the clerk or registrar of the court is required to notify the Board if a licensed person is convicted of an offence under the Act or of an offence outlined in Schedule 2 or if a person is convicted of an offence under Part 3, which is carrying on a business involving the provision of prostitution without the necessary licence, or acting as a prostitution manager without the necessary licence.

Schedule 2 offences are serious offences that relate to sex, violence, extortion, threats and child related offences.

This provision will ensure that the Board is made aware of matters that may be relevant to its decisions in relation to the issue or continuance of a person’s licence.

## **Division 2 – Prostitutes**

This Division provides obligations and offences for prostitutes in relation to the Act.

**Clause 96.** Subclause (1) provides that a person who is a child or an incapable person is banned from acting as a prostitute. This provision is in accordance with a key objective of the legislation, which is to prevent children and incapable persons from being involved in prostitution or from being exploited in relation to the provision of prostitution services.

Subclause (2) provides that the Board may ban a person from acting as a prostitute either indefinitely or for a limited period. Reasons for banning may be that the person has been declared a drug trafficker or has been found guilty of a Schedule 2 offence (serious offence relating to sex, violence, extortion, and child related offences) or for any other

reason the Board sees fit. This final rationale has been provided to the Board to ensure they have the necessary flexibility to ban inappropriate persons, however it would need a serious matter to invoke this action and it is subject to appeal provisions under clause 184.

Subclause (3) provides that a person who acts or offers to act as a prostitute while banned under subclause (1) will be liable for a penalty of \$6 000. In any other case, a person who acts or offers to act as a prostitute while banned will face a penalty of imprisonment for 2 years.

**Clause 97.** This clause provides that a person, who acts as a prostitute at a place that is not authorised under this Act, will be liable to a penalty of \$6 000.

This provision is intended to deter prostitutes from working at unlicensed premises.

**Clause 98.** This clause provides that a person who acts as a prostitute for a client who is a child will be liable to a penalty of imprisonment for 2 years.

**Clause 99.** This clause provides that a person who knows, or could reasonably be expected to know, that he or she has a sexually transmissible infection is not to act or offer to act as a prostitute. A person will be liable to a penalty of \$6 000 for a first offence and for a second offence, imprisonment for one year.

This clause is aimed at deterring a person from acting as a prostitute whilst infected and to consequently prevent any risk of spreading the sexually transmissible infection. Clause 179 provides a rebuttable presumption in relation to sexually transmissible infections and also provides clear defences to the prostitute if they are undergoing regular health checks.

**Clause 100.** Subclause (1) provides that a person is not to use the fact that they have had a medical examination, the results of a medical examination or a certificate as to the results of an examination, to imply, in connection with that person acting as a prostitute, that they do not have a sexually transmissible infection. A person who contravenes this will be liable to a penalty of \$3 000.

This provision is necessary because the fact of attendance at a medical examination and the results of any such examination cannot conclusively guarantee that a person does not have a sexually transmissible infection.

Subclause (2) provides an exemption to enable a prostitute to disclose the fact that they have undergone a medical examination and the result of that examination to the licensed brothel operator, prostitution agent or prostitution manager of the prostitution business where the prostitute works or proposes to work.

**Clause 101.** Subclause (1) provides that in order to act as a prostitute at a brothel, the person will be required to enter into a contract of employment with the person who has the brothel operator's licence. Subparagraph (b) provides that whenever the person is acting as a prostitute at the brothel they are acting in the course of their employment under the contract of service. The penalty for non-compliance will be \$3 000.

Subclause (2) is an identical provision that relates to employment at a prostitution agency business.

One of the key objectives of this legislation is "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 worker's compensation laws". These provisions require prostitution businesses to employ prostitutes working for them under a contract of service and are designed to deter unscrupulous persons who would seek to avoid their responsibilities as an employer by using contract provisions therefore negating coverage under industrial, occupational safety and health and workers' compensation legislation.

A self-employed sole prostitute is able to also work for a brothel or prostitution agency. Under subclause (3), a self-employed sole prostitute when working for a brothel or prostitution agency is required to work under a contract of service.

**Clause 102.** This clause provides that a prostitute will be required to notify the Board within 7 days of becoming aware they have a notifiable sexually transmissible infection. The penalty for non-compliance will be \$6 000.

One of the key objectives of this legislation is to safeguard public health and wellbeing against the effects of prostitution. This provision is aimed at reducing the risk of notifiable sexually transmissible infections being spread. Notifiable sexually transmissible infections will be prescribed in regulations.

**Clause 103.** The purpose of this clause is to ensure that self-employed sole prostitutes operate independently. Accordingly, a self-employed sole prostitute will not:

- be permitted to carry on their business from the same place where any other business involving the provision of prostitution is being carried on;
- be able to use the services of another person in a capacity similar to that provided in connection with a prostitution agency business such as a receptionist, however they are able to engage a driver in accordance with the Act; and
- be able to allow another person to have an interest in their business.

The penalty for non-compliance with any of these provisions will be imprisonment for one year.

The protection of prostitutes from exploitation is a key objective of this legislation. Historically the industry has involved "pimps", who use intimidation, coercion and threats to force women into prostitution in order to provide an income for themselves. To prevent this, a self-employed sole prostitute is required to work independently. The prohibition on others being involved in the business of self-employed sole prostitutes is intended to reduce the opportunity for an individual to control one or more self-employed sole prostitutes under the guise of working for the prostitute.

Similarly it is intended to deter people from syndicating a group of self-employed sole prostitutes to avoid brothel or prostitution agency licence fees and associated controls.

**Clause 104.** This clause provides that prior to allowing another person to act as a driver for their sole operator agency business, a self-employed sole prostitute must ensure that the prospective driver has not been declared a drug trafficker or has not been found guilty of a schedule 2 offence. The penalty for an offence will be \$6 000.

This is a measure aimed at protecting self-employed sole prostitutes from employing a person who is unsuitable to undertake the role of prostitution driver.

Under Part 5, Division 3 (Clause 106), it is a requirement that a person cannot be a prostitution driver if they have been declared a drug trafficker under the *Misuse of Drugs Act 1981* or if they have been found guilty of an offence described in Schedule 2. Schedule 2 offences are serious offence relating to sex, violence, extortion and child related offences.

### **Division 3 – Prostitution drivers**

This Division provides obligations and offences for prostitution drivers in relation to the Act.

**Clause 105.** This clause provides that a person acts as a prostitution driver if they are employed in or engaged under any kind of arrangement with a business involving the provision of prostitution, and that person transports a passenger on a journey that the person knows, or could reasonably be expected to know is undertaken for the purpose of the passenger taking part in an act of prostitution.

**Clause 106.** This clause provides that a person cannot act as a prostitution driver if they have been declared a drug trafficker under the *Misuse of Drugs Act 1981* or if they have been found guilty of an offence described in Schedule 2. The penalty for an offence against this clause will be imprisonment for 2 years. This clause is designed to ensure that some level of probity checking is applied to prostitution drivers, as is the case with all other involved in the ownership and management of the industry.

**Clause 107.** This clause is to ensure that a prostitution driver has an appropriate driver's licence under the *Road Traffic Act 1974* for the carriage of persons for hire or reward.

**Clause 108.** Subparagraphs (a) and (b) provide that if a prostitution driver is working for a brothel business or prostitution agency business, that business must be a licensed business. Subparagraph (c) provides that a prostitution driver commits an offence if they transport a prostitute who is prohibited from acting. The penalty will be imprisonment for 2 years.

This provision is aimed at encouraging prostitution drivers to work for lawful businesses.

Subclause (2) provides that a person, in their capacity as a prostitution driver will not be able to enter a place where prostitution takes place unless the prostitution driver reasonably believes the prostitute to be in danger. The penalty will be \$6 000.

This clause is to ensure that a prostitution driver is not involved in the business transactions that occur between the prostitute and the client. By separating the driver from the financial exchange it provides a greater level of empowerment to the prostitute and may reduce the potential for 'pimping'. These outcomes have been balanced against the prostitutes need for security. This clause effectively mirrors current business practices within the industry.

**Clause 109.** This clause provides that a prostitution driver is not permitted to carry a weapon whilst acting as a prostitution driver even if the driver is authorised under another Act, such as the *Security and Related Activities (Control) Act 1996* to carry a weapon. The penalty for non-compliance with this requirement will be \$6 000.

Subclause (3) defines weapon for the purposes of this clause. A weapon means a firearm as defined in section 4 of the *Firearms Act 1973* or a controlled or prohibited weapon as defined in section 3 of the *Weapons Act 1999*.

#### **Division 4 – Licensed persons**

This Division provides obligations and offences for licensed persons in relation to the Act.

**Clause 110.** Subclause (1) provides that a person who does not promptly return a licence document to the Board once that licence is suspended, expires, or otherwise terminates, will be liable to a penalty of \$6 000.

This clause is intended to ensure that licence documents are promptly returned to the Board to limit the risk of the documents being passed on or being used by an unlicensed person.

Subclause (2) provides a defence against a charge of failing to return the licence document if the defendant can satisfy the court that the document has been lost or destroyed.

**Clause 111.** A licensed person who disposes of their licence document to another person or permits another person to use their licence document will be liable to a penalty of imprisonment for one year.

Having gone through the process to issue a licence following positive identification of the applicant and a probity check being made, transferring the licence to another individual without the requisite check would defeat one of the principle elements of this legislation. The possession of these items would allow an offender to deceive clients into believing that they are dealing with a person or business licensed under the Act when this may not be the case.

**Clause 112.** Subclause (1) provides that a licensed person is required to maintain records as prescribed and not knowingly make any false or misleading entry into the records.

The keeping of records (clause 117) is an important factor in any business and in this case these control mechanisms have been set in place by this legislation to ensure that inspectors or investigators are able to examine the records and ascertain if the business is being managed in accordance with the legislation. This provision is intended to deter non-compliance with the legislation and importantly provide an audit trail for prostitutes in relation to their workers' compensation and other employee benefits.

Subclause (2) provides that any records required to be maintained are to be held at the notified premises for a period of 7 years from when the last entry was made. The notified premises are the premises identified in the person's application for a licence, unless the Board has been notified of a change of that premises. Premises where records are held must be within Western Australia. Without the 7-year retention requirement, a person who is no longer licensed could immediately destroy all records.

Subclause (5) provides that a person who was required to hold records and who is no longer licensed can relinquish those records to the Board. This clause takes the onerous responsibility records retention and storage off the operator and provides them with a mechanism to comply with the legislation

The penalty for an offence against this clause is \$120 000.

**Clause 113.** This clause provides that a licensed person who fails to advise the Board within 7 days after becoming aware that a police officer has charged the person with an offence under this Act or the person has been charged or convicted, in this State or elsewhere, with an indictable offence will be liable to a penalty of \$12 000.

A key objective of this legislation is to deter organised and other crime in connection with prostitution. In order to control the industry, the Board must monitor the behaviour of those within it. This clause ensures that the Board is made aware when a person is charged with an offence and enables them to better manage the individuals involved in the industry. It focuses on the interim period between when a person is charged and when convicted, a time period that may be in excess of 2 years. A conviction of any indictable offence would result in cancellation of the person's licence.

**Clause 114.** This clause provides that a licensed person is to give the Board notice in writing of any matter that would have prevented the Board from granting the person's initial licence, within 7 days of becoming aware of the matter. The person will be liable to a penalty of \$12 000 if notification is not provided.

An example of where this provision will apply is where the planning approval of a brothel or prostitution agency is rescinded.

**Clause 115.** This clause provides that a person who fails to comply with a condition or restriction attached to the person's licence will be liable for a penalty of \$60 000.

This clause provides for severe penalties should a licence holder choose to ignore, or deliberately act in contravention of, the conditions or restrictions imposed on their licence.

**Clause 116.** Subclause (1) provides the penalties that a brothel operator or prostitution agent will be liable for if this clause is contravened.

Subclause (2) provides that a brothel operator or prostitution agent will commit an offence and be liable to imprisonment for three years if, when the business is operating:

- there is no prostitution manager present;
- a child is present (first offence will be a fine of \$24 000); or
- a person is in possession of a prohibited drug without lawful excuse.

Subclause (3) provides that a brothel operator or prostitution agent will commit an offence and be liable to a penalty of \$12 000 if they do not ensure that:

- at each entrance to such a business there is a prominent sign stating that the business involves the provision of prostitution, that anyone who enters must be over 18 years of age and anything else required by regulations;
- the licence document is displayed prominently at the business premises and in the case of a brothel, in the reception area;
- all reasonable steps are taken so that the health standards at any business premises are satisfactory;
- all reasonable steps are taken to protect the health of prostitutes and clients, including encouraging prostitutes to have regular health checks; and

- each person licensed as a prostitution manager and each person who acts as a prostitute for the business attends any necessary educational courses.

Subclause (4) provides that a brothel operator or prostitution agent will commit an offence and be liable to a penalty of \$6 000 if they do not meet the following requirements:

- that each person under the control of a prostitution manager is to comply with the Act, regulations and any code of practice;
- that all reasonable steps must be taken to require prostitutes and clients to use prophylactics whenever their use is required; and
- to ensure no use is made of the fact that a person has had a medical examination or the results of any examination to imply that a person does not have any or a particular sexually transmissible infection.

This clause, in making brothel operators and prostitution agents strictly liable for the matters detailed above, is intended to clearly articulate to them the responsibilities that they are responsible for and deter them from abrogating or delegating their responsibilities.

**Clause 117.** Subclause (1) provides that a person who has a brothel operator's licence or prostitution agent's licence will be required to keep a record of the following:

- every person who acts as a prostitute or a prostitution driver for the business;
- any person who has been at the business premises (other than to receive services or as a client);
- details of any educational course a person attends; and
- details of any visit by a police officer or authorised person.

This does not limit what records or particulars are required by regulations to be maintained. The keeping of such records enables the Board to readily obtain necessary information for regulation and control of the industry. Clause 112 provides the penalty for this offence as well as requirements placed on the business proprietor(s) in relation to storage and retention of records.

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

Subclause (4) provides that the medium and format of the returns can be provided for in regulations.

**Clause 118.** Subclause (1) provides that a prostitution manager must always be present when they are acting in their capacity as a prostitution manager for a brothel business or prostitution agency business. The penalty for contravening this requirement will be imprisonment for 2 years.

Subclause (2) provides that a prostitution manager, when acting in that capacity at a brothel or prostitution agency, will be liable to a penalty of \$6 000 if they do not ensure that:

- all reasonable steps are taken to require prostitutes and clients to use prophylactics whenever their use is required;

- no use is made of the fact that a person has had a medical examination or the results of a medical examination or certificate;
- the holder of the brothel operator's or prostitution agent's licence is notified if the manager becomes aware that a prostitute has a sexually transmissible infection;
- each person under their control at the business is to comply with the Act, regulations and any code of practice.

In allowing prostitution businesses to operate legally, the Parliament is cognisant of its duty of care to the community in relation to public health. This clause intends to ensure managers appropriately control and manage the business premises and are strictly liable for adherence to provisions aimed at limiting the risk of the spread of sexually transmissible infections.

Subclause (3) provides that the prostitution manager must be able to be immediately contacted by any prostitute working for the business. If a prostitution manager is not contactable, they will face a penalty of \$6 000. By being able to immediately contact the manager when assistance is required, this is intended assist in providing a safety factor for prostitutes.

**Clause 119.** This clause provides that:

- a brothel operator is to ensure that a prostitute working for that brothel has a contract of service with the brothel operator;
- when working in that capacity, a prostitution manager for a brothel is to ensure that a prostitute working for the brothel has a contract of service entered into with the brothel operator;
- a prostitution agent is to ensure that a prostitute working for that agency has a contract of service with the prostitution agent; or
- when working in that capacity a prostitution manager for a prostitution agency is to ensure that a prostitute working for the agency has a contract of service entered into with the prostitution agent.

Contravention of these provisions will result in an offence with a penalty of imprisonment for one year.

One of the key objectives of this legislation is “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 worker's compensation laws”. This provision and the similar provision that requires prostitutes to have a contract of service with the operator or agent, are designed to deter unscrupulous persons who would seek to avoid their requirements as an employer by coercing prostitutes to work under other contract provisions that negate coverage under industrial, occupational safety and health and workers' compensation legislation.

Subclause (5) provides that prior to entering into a contract of service, the identity of the person who is to act as a prostitute must be verified in accordance with the regulations. Contravention of this provision will result in an offence with a penalty of imprisonment for one year.



It is envisaged that a check, similar to the 100 point check, will be required to be conducted to ensure, for example, that a brothel operator or prostitution agent does not employ a child to work for the premises.

**Clause 120.** This clause provides that a prostitution manager commits an offence if, whilst acting in the capacity of manager, they are affected by alcohol or a prohibited drug. The prostitution manager will be liable to a penalty of \$6 000.

The role of the prostitution manager is pivotal to ensure the business is run in accordance with the provisions of the Act. This provision is intended to deter prostitution managers from abrogating their responsibility due to the effects of alcohol or drugs.

**Clause 121.** This clause provides that a brothel operator or prostitution agent is to provide prophylactics, free of charge, to a person participating in an act of prostitution for their business. Failure to comply with this provision will result in the person being liable to a \$12 000 penalty.

Under the Act, prophylactics are required to be used in acts of prostitution where there is a risk of any defined bodily fluid passing from one person to another. This is to reduce the risk of sexually transmissible diseases being spread. The provision of prophylactics, free of charge, is intended to encourage adherence to this mandatory requirement.

**Clause 122.** This clause provides that a brothel operator, prostitution agent or prostitution manager will face a penalty of \$12 000 if they discourage the use of prophylactics.

Under the Act, prophylactics are required to be used in acts of prostitution where there is a risk of any defined bodily fluid passing from one person to another. This is to reduce the risk of sexually transmissible diseases being spread. Industry has advised that some clients are prepared to pay extra to receive services without the use of prophylactics. Consequently, this clause creates an offence for a licence holder to do anything that could discourage a prostitute or client from using a prophylactic.

**Clause 123.** This clause provides that if a person does not use a prophylactic as required by the Act and this occurs at a brothel or prostitution agency, the person who has the brothel operator's licence or the prostitution agent's licence as well as each person who has a prostitution manager's licence for the business, will commit an offence and face a penalty of \$12 000.

Subclause (3) provides that a person charged with an offence outlined above has a defence if it can be proved that the contravention occurred without the person's consent or connivance and that the person exercised all due diligence, as ought to have been exercised to prevent the contravention.

**Clause 124.** Subclause (1) provides that a person who has a licence as a brothel operator, prostitution agent or prostitution manager commits an offence if they allow a person who has a sexually transmissible infection to act as a prostitute. The penalty for this offence will be imprisonment for 2 years.

Subclause (2) provides that the offence outlined above is only capable of being committed by a prostitution manager whilst the person is acting as a prostitution manager.

Subclause (3) provides that a person charged with an offence under this clause has a defence if it can be proved that the person exercised all due diligence, as ought to have

been exercised to prevent the person from acting as a prostitute for the business, whilst the prostitute had a sexually transmissible infection.

This provision is aimed at influencing brothel operators, prostitution agents and prostitution managers to take all reasonable steps to ensure the prostitutes working for them do not act as prostitutes whilst they have a sexually transmissible infection.

Clause 179 provides a rebuttable presumption in relation to the knowledge of the presence of a sexually transmissible infection as well as a defence to this charge if the operator, agent or manager has introduced sound health management practices for prostitutes.

**Clause 125.** Subclause (1) provides that a person who has a licence, as a brothel operator or prostitution agent, must notify the Board of certain matters, within 7 days of becoming aware of the matter, or face a penalty of \$12 000.

Subclause (2) details what matters constitute a notifiable matter. These are:

- when there is a change in who has an estate or interest in the land where the business premises are situated;
- if the rent at that premises changes;
- if a person concerned with the business commits an indictable offence;
- if a person becomes a managerial officer or shareholder of a body corporate on behalf of which the licence is held; or
- if a prostitute who works for their business has a notifiable sexually transmissible infection.

This provision is intended to require brothel operators and prostitution agents to expeditiously advise the Board of information necessary for the Board to be able to carry out their functions under the Act. The requirement to inform the Board of a person having a notifiable sexually transmissible infection is aimed at allowing the Board to take steps to limit the risk to public health from prostitutes with life threatening sexually transmissible infections such as HIV/AIDS and to facilitate treatment for the prostitute involved.

**Clause 126.** This clause provides that a person who has a licence as a brothel operator, prostitution agent or prostitution manager will be liable to 2 years imprisonment if they directly or indirectly refer a potential client to a self-employed sole prostitute.

By maintaining a clear legislative separation between brothels, agencies, and self-employed sole prostitutes, it is intended to protect the self-employed prostitute from exploitation, as well as prevent brothels and agencies from developing a network of self-employed sole prostitutes outside the provisions of this Act effectively removing those persons from access to the contract of service provisions within clause 119 and enabling the establishment of an unlawful prostitution agency.

**Clause 127.** This clause provides that prior to allowing another person to act as a prostitution driver, a person having a prostitution agent's licence or a prostitution manager's licence must ensure that the prospective driver has not been declared a drug trafficker or has not been found guilty of a Schedule 2 offence. The penalty for an offence will be \$6 000.

Under Part 5, Division 3, it is a requirement that a person cannot be a prostitution driver if they have been declared a drug trafficker under the *Misuse of Drugs Act 1981* or if they have been found guilty of an offence described in Schedule 2. Schedule 2 offences are serious offence relating to sex, violence, extortion and child related offences

## **Part 6 – Supervisory provisions**

This Part details the Board’s supervisory functions, powers of an authorised officer and powers and procedures in relation to the holding of a formal inquiry.

### **Division 1 – Board’s supervisory functions**

This Division places requirements on the Board to maintain records relating to their licensing function and details things the Board may do in the performance of its function and matters that may be raised with the Board by individuals and the Minister responsible for the administration of the Act.

**Clause 128.** The Board is required to keep records in relation to anyone who has, or has applied for, a licence, or anyone who has been found by a court to have acted as a prostitute.

This provision is aimed at ensuring the Board’s records contain information to assist in its licensing and monitoring functions. Sub clause (3) provides that a person who has applied for or been granted a licence may request that that the record be removed after 7 years has elapsed since the unsuccessful applications was made or the persons licence ceased to have effect.

**Clause 129.** This clarifies that it is intended that the Board will have a role in monitoring the prostitution industry. Accordingly, the Board will be able to monitor the activities of people that are suspected of being involved in prostitution and investigate any suspected contravention of the Act or other matter relevant to the Board’s function and is necessary for the Board to meet the objectives of the Act under clause 6.

**Clause 130.** The Board will be able to order a person they reasonably suspect is acting as a prostitute and may have a sexually transmissible infection, to undergo a medical examination. The Board will meet the cost of the examination. The Board will be able to nominate the medical practitioner that will be used to ensure that the individual is referred to a practitioner with appropriate knowledge and experience in the field of sexually transmissible infections.

Under sub-clause (2), the cost of the medical examination will be met by the Board to ensure that no hardship is placed on the individual subject to an order. Should the individual be aggrieved by the order there is provision at sub-clause (3) to make application to the Board to vary or revoke the order.

A key objective of the legislation is to safeguard public health and well being against the effect of prostitution. The Bill does not propose to introduce a statutory requirement for mandatory testing of prostitutes at scheduled intervals. The ability to order a medical examination as provided in this clause is seen as essential for protection of public health and has the full support of the Department of Health.

**Clause 131.** This provides that a person may advise the Board of allegations relating to another person that would warrant the Board using its powers under the Act.

This clause defines the scope of allegations the Board should accept and evaluate. This again clarifies that it is intended that the Board will assume complaint taking and investigative functions that have traditionally been the role of police.

**Clause 132.** The Minister responsible for the Act will be able to bring relevant matters and make recommendations to the Board, in relation to its functions. However, the Board will not be able to be directed to act on such matters.

This clause facilitates the referral of relevant matters from the Minister responsible for the administration of the Act to the Board whilst recognising the Board's independence in discharging its functions under the Act.

**Clause 133.** The Board may, in its own name, initiate proceedings and prosecute offences under the Act other than indictable offences. Prosecution of indictable offences would remain the responsibility of the Director of Public Prosecutions and would be referred by the Board accordingly. This provides the avenue for the Board to ensure such matters are dealt with in the most appropriate manner.

Where the Board has reason to believe that an offence has been committed against any other law, the Bill provides for the appropriate referral of the matter (eg referral to the police for prosecution of simple offences against the *Police Act 1892*).

**Clause 134.** This clause enables the Board to apply to the Supreme or District court for an injunction to prevent any person from doing or failing to do any act that would constitute a contravention (breach) of the Act.

This provision enables the Board to take a proactive action to prevent a breach or to apply for the injunction to reduce the potential for the continuance of a breach of the Act.

**Clause 135.** This provides that the Board will be able to issue an interim order prohibiting or placing conditions or restrictions on a person in relation to the doing of anything specified in the order in the course of an activity that would be an offence under the Act, if the person did not have a licence. The interim order can only be issued for a period of not more than 30 days and whilst it can be varied or revoked during that period the 'end' date of the order cannot be varied.

For example, the Board may consider it appropriate to place a limitation on the hours of operation for a prostitution agency business pending an investigation into complaints about noise or other local impacts of the business. This limitation would be made by the Board in the form of an interim order.

**Clause 136.** This ensures that the power of the Board to make an interim order cannot be delegated to anyone except the chairman of the Board. Once delegated, the chairman can make interim orders in his or her own right as the functions of the Board are similar to the functions of the chairman.

This provision is aimed at limiting the scope of the delegation in relation to this power in recognition of the adverse effect the use of these powers could have on a prostitution business.

**Clause 137.** The Board will be able to appoint a member of staff of the Board to undertake an investigation for a particular matter

This provision is necessary to enable the Board to give a member of staff the status of authorised person during the term of a specific investigation. This provision will provide additional assistance to the Board's full time investigators (authorised persons) as well as enable the Board to utilise staff that may have specific skills or areas of expertise to investigate and prepare reports that may provide direction to the Board.

**Clause 138.** The Board will be able to authorise a member of staff of the Board to have all or any of the functions of an authorised person.

The functions are to be specified in a certificate issued to the member of staff.

Authorised persons appointed under this provision will be required to monitor adherence to the Act, investigate alleged or suspected breaches of the Act and assess applications for licences.

## **Division 2 – Some powers of authorised persons**

This Division details the powers that may be given to an authorised person

**Clause 139.** An authorised person is member of the Board's staff requested to undertake an investigation into a specific matter, or a member of staff designated to perform specified functions on behalf of the Board, or in relation to the inspectoral powers at clause 140, a police officer. The powers of an authorised person appointed by the Board may be limited in their certificate of authority.

An authorised person other than a police officer is required to produce their certificate of authority on demand when exercising any of the powers given to them under this Act.

The ability for the Board to limit the powers of an appointed authorised person is required to ensure that an authorised person appointed to undertake a specific task and function is not provided with powers in excess of those required to perform the task or function.

**Clause 140.** This provides that in the course of their duties, an authorised person, can:

- require a person, in writing, to produce documents and other things;
- inspect the items produced;
- make copies of the items produced and retain them for such reasonable period as the authorised person thinks fit; and
- require a person, orally or in writing, to provide information or answer a question.

This is a power provided to police under the *Prostitution Act 2000* and has been adapted to apply to all authorised officers to reflect the increased scope of this Bill. These powers are essential to enable the adherence to the Act to be appropriately monitored.

This is not an enforcement power and does not include a power of entry.

Even though the provision compels a person to answer questions or produce documents, pursuant to subclauses 92(1) and (2) non-compliance does not constitute an offence, if the person requested has a lawful excuse for their action. Further, subclause 92(3) clarifies that nothing in the Act prevents a person from refusing to provide an answer or

information that would incriminate them. Subclause 92(4) provides that any answer or information they do give is not admissible in Court proceedings against them except those relating to the truth of the information they have disclosed (perjury, wilfully misleading).

Without lawful excuse in this context is a compendious method of saying “without an excuse that would appear to a reasonable man to be adequate in the circumstances” *Hancock v Birsa* [1972] WAR 177.

This provision is consistent and in some way less onerous than similar provisions in many Acts relating to licensing and regulation, which provide that a person must provide answers or information that will incriminate them. Acts with similar powers include the *Auction Sales Act 1973*, *Bread Act 1982*, *Debt Collectors Licensing Act 1964*, *Aerial Spraying Control Act 1966*, *Building and Construction Industry Training Fund and Levy Collection Act 1990*, *Betting Control Act 1954*, *Commercial Tribunal Act 1984*, *Community Services Act 1972*, *Consumer Affairs Act 1971*, *Court Security and Custodial Services Act 1999* and *Credit (Administration) Act 1984*.

**Clause 141.** This provides that in the course of an investigation, an authorised person other than a police officer may, with the approval of the Board, apply to a Justice for a warrant to enter any other place where it is deemed necessary by the Board.

In order to effectively control the industry, ensure the welfare of prostitutes and to establish whether an offence has, or is going to be committed, an authorised person must be able to gain entry to a premises on a needs basis.

The application for the warrant must be in writing setting out the grounds and describing the premises to which entry is sought. The application is to be supported by a statement in writing from the Board, in essence, providing a high-level approval mechanism showing that the Board supports the grounds given by the authorised person and the need for entry under warrant.

**Clause 142.** This provides that a Justice may issue a warrant to an authorised officer other than a police officer if satisfied that there are reasonable grounds for believing that entry to the premises is necessary. A warrant authorises the entry and inspection of the premises named in the warrant and must state the purpose for which it has been issued. The Justice must keep a record of the grounds upon which the warrant was issued.

This provides guidelines to a Justice in relation to the granting of a warrant and ensures that appropriate records are kept regarding the grounds under which a warrant has been issued.

**Clause 143.** This provides that a warrant may be obtained remotely and details the procedures to be followed.

The urgent circumstances under which some investigations are conducted combined with both the remoteness and geographical size of the State dictates the need to develop modern legislation which provides for the making of warrant applications by telephone, facsimile, email, radio and other forms of communication where the applicant considers it necessary.

This provision is based on the power available to police to seek a warrant under the *Prostitution Act 2000*.

**Clause 144.** This provides that a warrant to enter premises may be executed at any time within one month of the warrant being granted and that it is to be produced for inspection on demand as well as detailing when it ceases to have effect.

The need for flexibility is often critical to the success of an investigation and obtaining forensic evidence. In the course of an investigation there are times when a warrant cannot be immediately executed, and accordingly, the Act provides that a warrant does not cease to have effect until one month after issue unless it is executed, or withdrawn by the Justice who issued it. Similar provisions are contained in many other Western Australian statutes including the *Criminal Investigation (Extra-territorial Offences) Act 1987*, *Electoral Act 1907*, *Health Services (Conciliation and Review) Act 1995*, *National Crime Authority (State Provisions) Act 1985*, *Osteopaths Act 1997* and *Rail Safety Act 1998*.

### **Division 3 – Formal inquiry**

This Division provides the Board with the power to hold a formal inquiry and details the associated powers and procedures.

**Clause 145.** This empowers the Board in the performance of its functions to hold a formal inquiry into a matter.

The Board will use this power where it is considered necessary or expedient to enable serious matters to be thoroughly investigated.

**Clause 146.** This clause provides that formal inquiries held by the Board will not generally be held in public except where the Board decides otherwise.

It is an unfortunate fact that, at present, people with criminal backgrounds or associations run some sectors of the prostitution industry. Identification of persons providing evidence or making statements to the Board may leave them open to intimidation from these people. It is also known that a high proportion of the workers involved in the industry do not want their participation to be widely known.

A further justification for the ability to conduct closed inquiries is that some of the issues that will be heard by the Board will involve matters of a controversial and sensational nature. Unfettered release of such information or allegations could have the potential to defame innocent people.

**Clause 147.** This clarifies who can appear on behalf of a person or a body corporate at a formal inquiry of the Board.

A person appearing before the Board can appear personally and a body corporate can be represented by a director or member of the body corporate. However, a legal practitioner or other representative can with the approval of the presiding member of the Board, represent an individual or a body corporate.

Formal inquiries of the Board will not be of a judicial nature and will be conducted with as little formality and technicality and as speedily as the circumstances permit. However in some instances those appearing may consider it in their interest to be represented by another person.

**Clause 148.** This provides that formal inquiries of the Board will not be of a judicial nature and will be conducted with as little formality and technicality and as speedily as the circumstances permit.

This provision is intended ensure proceedings are not overly formal and restricted due to the formalities of the judicial process and enables the use of telephone or video conferencing to obtain evidence.

**Clause 149.** The Board may require the attendance of a person as a witness at a formal inquiry, examine witnesses on oath or affirmation and require a person to produce any document or other thing in the person’s possession or under their control that is relevant to the matter before the Board. The document or thing may be retained for a reasonable period, and the Board may make copies of the document, or any of its contents.

These are standard powers given to an inquiry of a regulatory body. Similar provisions are provided to the Nurses Board, the Psychologists Board of Western Australia and the Biological Control Authority of Western Australia.

### **Part 7 – Planning Controls**

This Part details the planning controls that will apply to premises of licensed persons used as brothels or prostitution agencies.

**Clause 150.** This clause provides the definition of “planning scheme” for the purposes of this Part to ensure the term is interpreted and applied in the manner intended. This is intended to ensure that all planning schemes in use in Western Australia are subject to the planning provisions of the Act.

**Clause 151.** This provides that all existing planning schemes are to be read and have effect as if the provisions set out in Schedule 3 were part of the scheme and are to be implemented accordingly. The provisions of Schedule 3 will prevail to the extent of any inconsistency with an existing scheme.

This is intended to ensure that prostitution premises will be located in areas where there will be minimal adverse impact on the community.

This approach endeavours to overcome problems with legislation in other Australian jurisdictions where some sectors of local governments in those states have not approved licensed prostitution businesses for political and/or moral reasons. The resultant difficulty in obtaining planning approval for prostitution businesses has driven the industry underground and severely impacted on the ability to legalise the industry.

**Clause 152.** This clause provides that a town planning scheme that is made after this Act comes into operation will have to provide for the use of land, if it is for the purposes of prostitution, that is consistent with Schedule 3 of this Act.

**Clause 153.** This clause provides the ‘public release day’ for the purposes of assessing applications under Schedule 3 clause (1)(7) for an exemption from the prescribed planning provisions for a brothel or an attended prostitution agency office existing immediately before the public release day.

These businesses will require a licence to continue.



There are prostitution businesses currently in operation that are managed appropriately with due regard to public health, employee welfare and that have minimal impact and adverse effect on the community. Most if not all of these would not be able to obtain planning approval under the provisions of schedule 3. The Board will be able to consider applications for exemption from the planning requirements from businesses that can prove they existed at the time the *Prostitution Control Bill 2002* was released for public scrutiny and comment.

## **Part 8 – Provisions for police**

This Part details the powers that police have in relation to their functions under the Act.

**Clause 154.** This clause defines certain words and terms that are used throughout this Part. These terms have been defined to ensure the provisions of this Part are interpreted and applied in the manner intended.

**Clause 155.** This provides that a police officer who reasonably suspects that a person has, or intends to commit, an offence in a public place or within view or hearing of a public place, will be able to direct a person to move away from a certain area and stay away from that area for a period of time up to 24 hours.

This provision has been taken from the *Prostitution Act 2000*.

**Clause 156.** This empowers a police officer, who reasonably suspects that an offence against the Act is being committed or that evidence of an offence may be found, will be able to, without a warrant, stop, detain and search anyone or any conveyance.

This provision has been taken from the *Prostitution Act 2000* and is intended to provide police officers with search and seizure powers to effectively control street soliciting and kerb crawling. Clause 177 ensures that the possession of prophylactics cannot be used as evidence in relation to an offence against this Act.

The presence of street prostitutes and the clients they draw to an area is upsetting and disruptive to residents and business owners in affected areas and as such these powers are necessary to enable police to actively investigate offences relative to street prostitution.

**Clause 157.** This empowers a police officer, subject to the approval of a senior police officer, to enter, without a warrant, a place reasonably suspected of being used as a brothel or prostitution agency and search that place and in so doing they may stop, detain and search anyone at place and seize evidence. In relation to a licensed business this power can only be used in relation to the investigation of a suspected offence involving a child or incapable person or of inducing an adult to act as a prostitute detailed at clause 74.

This provision has been derived from the *Prostitution Act 2000* and has been adapted to provide controls on its use and to reflect the increased scope of this Act.

Police experience is that instances will occur where allegations are made that child prostitution, sexual slavery etc is currently occurring. Obtaining evidence to ground a search warrant for such offences is difficult in any instance. Delays in entering a premises where there is an offence of this nature occurring would reduce the probability of sufficient evidence being obtained to sustain a prosecution.

Such a provision is considered essential to allow police officers to ensure compliance with provisions of this Act, however it should be noted that from an operational perspective these powers are only used in extreme circumstances, with police preferring for future court processes, where practicable, to use the provision of a search warrant granted under Clause 159.

**Clause 158.** This provides the process a police officer must follow to obtain approval from a senior officer prior to being able to enter a place without a warrant and requires the senior officer to maintain records of the approval.

**Clause 159.** This enables a justice, who is satisfied that there are reasonable grounds for suspecting that there is something in a place that will afford evidence as to the commission of an offence, to issue a warrant to a police officer to use such force as is necessary to enter, search a place and persons at the place and seize anything the officer reasonably suspects will afford evidence of the commission of an offence.

This provision has been taken from the *Prostitution Act 2000*.

It is considered an essential tool to assist police officers in the enforcement of this Act.

**Clause 160.** This provides that a warrant may be obtained remotely and details the procedures to be followed.

This provision has been taken from the *Prostitution Act 2000*.

The urgent circumstances under which some investigations are conducted combined with both the remoteness and geographical size of the State dictates the need to develop modern legislation which provides for the making of warrant applications by telephone, facsimile, email, radio and other forms of communication where the applicant considers it necessary.

**Clause 161.** This provides the procedures that a police officer must follow when searching a person.

When a police officer searches a person they will be required to be of the same sex as that person. If a police officer of the same sex isn't available then another person of the same sex can undertake the search under the direction of the police officer, or, the person may be detained, for so long as reasonable, until the search can occur. The power of search under this Act does not authorise an examination of body cavities.

This provision has been derived from the *Prostitution Act 2000*.

**Clause 162.** This clause provides for the retention of anything seized that is not forfeited to the Crown whilst it is required for an investigation or prosecution, a matter that is to be dealt with by a juvenile justice team, or if the Commissioner is not satisfied the person is lawfully entitled to possess it. Anything that does not fall within the provisions of this clause must be returned to the person from whom it was seized.

This provision has been taken from the *Prostitution Act 2000*.

**Clause 163.** This enables a court upon convicting a person of an offence, to order that anything relating to that offence can be forfeited to the Crown or delivered to a person lawfully entitled to possess it.

This provides a means of disposing of seized items where it is not appropriate that they be returned to the offender.

This provision has been taken from the *Prostitution Act 2000*.

**Clause 164.** This clause enable a person who claims lawful entitlement to any thing seized and retained under the Act to apply to a court for an order that the thing be delivered to them.

This provision has been taken from the *Prostitution Act 2000*.

The application should be made within 21 days after the thing was seized unless a court has ordered that the thing is to be forfeited or delivered to another person or it is required in relation to proceedings for an offence or a matter to be dealt with by a juvenile justice team.

Where it is required in relation to proceedings for an offence or a matter to be dealt with by a juvenile justice team the application can be made within 21 days of the proceedings or matter that precluded the application being dealt with.

The court must be satisfied on the balance of probabilities that the person making the application is lawfully entitled to it before it may order the thing be delivered into their possession.

If no application is made, or no application has been successful, the thing is forfeited to the Crown.

This clause is to assist in determining the appropriate disposal of seized property.

**Clause 165.** This clause provides for the disposal of property forfeited to the Crown under the Act and empowers the Commissioner of Police to sell, destroy or otherwise dispose of forfeited property.

This provides guidance on the appropriate ways of disposing of forfeited items.

This provision has been taken from the *Prostitution Act 2000*.

**Clause 166.** This provides that the embargo notice provisions of the *Police Act 1892* are applied to this Act.

Embargo notices are used to deal with property items which, but for their size or nature, would have been seized under a warrant. An embargo notice will prohibit a person in possession of these items from selling, leasing, moving, transferring or otherwise dealing with it. Further provisions allow for the person in possession to seek a court order in respect of the property items.

This provision has been taken from the *Prostitution Act 2000*.

**Clause 167.** This empowers the Commissioner of Police to authorise a police officer to act as an undercover officer.

This provision has been derived from the *Prostitution Act 2000*.

The Commissioner must ensure that the police officer is a suitable person to be an undercover officer and may revoke the authorisation, in writing. An undercover officer may do anything specified in the authorisation for the purpose of detecting the commission of an offence. In addition, the clause also allows for the identity or purpose of the undercover officer to be concealed or misrepresented.

In order for the use of undercover officers to be workable, the officer is not considered to be an accomplice and does not commit any offence while performing duties within the authorisation afforded to him/her.

Two controls are placed on the use of this power. The Minister for Police and Emergency Services can request a report from the Commissioner of Police on matters at any time and the Commissioner of Police is required to provide a yearly report to the Minister on the operations of under cover officers which is to be tabled in both Houses of Parliament. Before tabling the annual report may be amended to delete information that might prejudice the safety of a person, an investigation, the proper administration of the Act or reveal the identity of an undercover officer, but reasons for the deletions must be provided.

A problem police have had in previous years is obtaining evidence of offences. There are businesses claiming to provide therapeutic services such as massage that are engaged in the provision of prostitution. One of the only viable investigative tools for obtaining evidence of an offence is through the use of these powers.

**Clause 168.** This clause empowers a police officer to retain a record for the purpose of making copies or notes of that record. A police officer is to issue a receipt to the person from whom the record was taken.

Maintaining records is an important part of the monitoring aspects of this legislation. It is not always viable for the investigator to evaluate the content of the records whilst on the premises. As part of the monitoring functions of the Act, police must have access to records and where necessary, retain or copy those records for specific purposes.

**Clause 169.** This empowers the Commissioner of Police to delegate functions under this Part with the exception of the power of delegation and the requirement to give the Minister a report in writing on the operations of undercover officers after the end of each financial year.

The ability to delegate the power to authorise an officer to act as an undercover officer is limited to a delegation to a police officer of the rank of Assistant Commissioner or above.

A delegation must be in writing to be executed by the Commissioner.

This has been derived from the *Prostitution Act*.

## **Part 9 – Miscellaneous provisions**

This Part details matters relating to evidence, notifications by the Board and appeals, restraining orders and other miscellaneous matters relating to the administration of the Act.

### **Division 1 – Evidence**

This Division details averments and the presumptions that apply in relation to evidence used in proceeding instituted under this Act.

**Clause 170.** This provides that if a person bringing a proceeding for an offence under this Act alleges, as a fact, that a particular thing promoted or publicised prostitution, that statement is taken to be proved unless the contrary is proved.

This clause is intended to ensure that court proceedings are not unnecessarily protracted by the need for the complainant to prove that a particular thing promoted or publicised prostitution. It is, of course, open to the person charged to furnish evidence that the particular thing did not directly or indirectly promote or publicise prostitution. An averment is an allegation within the complaint before the Court that is designed to facilitate proof of fact.

For example, if a person is charged on complaint with an offence contrary to clause 80 (prohibition of certain sponsorships) of the Bill, the complainant may make an averment in the complaint in accordance with this section.

Similar provisions to this exist in the *Crimes At Sea Act 2000*, *Fish Resource Management Act 1994*, *Industrial Relations Act 1979*, *Marketing of Potatoes Act 1946*, *Occupational Safety and Health Act 1984*, *Osteopaths Act 1997* and the *School Education Act 1999*.

**Clause 171.** This provides that in proceedings relating to possession of another person's licence or interfering with a licence, or failure to comply with a request to produce records, the person is presumed to have no lawful excuse unless the contrary is proved.

These are rebuttable presumptions designed to facilitate proof of facts in prosecutions for offences contrary to clauses 83, 84 and 86(4) of the Bill. The presumptions are conclusive until disproved by evidence to the contrary.

A key control mechanism for this legislation is the requirement that people be held accountable and be required to justify their actions. This clause places the onus on persons seeking to rely on a lawful excuse to prove that excuse. This is necessary, as, without this presumption, the prosecution would have to prove beyond reasonable doubt that the person did not have a lawful excuse.

This would be extremely difficult and make enforcement of many of the offences unworkable. In all instances, from an evidentiary perspective, it is far easier for a person to provide a lawful excuse than it is for the prosecution to prove the absence of the same.

**Clause 172.** This clause creates a presumption that a communication or publication of a finding of the Board has been made in good faith, unless the contrary is proven.

This is a rebuttable presumption that is conclusive until disproved by evidence to the contrary. This provision is intended to ensure that persons taking action against the Board in relation to the Board's publication of findings, decisions and reasons, must prove that the person against whom they are taking action, has not acted in good faith.

This provision is aimed at reducing the opportunity for people to frustrate the functioning of the Board through the initiation of spurious or ill-conceived civil actions against the Board's members or staff.

**Clause 173.** If it is relevant whether or not a person was a child in relation to an offence under this Act, it is taken to be conclusively presumed that the person accused of the offence knew the person was a child, unless it is proved that the accused, having taken all reasonable steps to establish the child's age, believed on reasonable grounds that the person was at least 18 years of age.

Without this presumption, the prosecution would have to prove beyond reasonable doubt that the accused did know that the person was child. This would be extremely difficult to prove other than through admission and would make enforcement of many of the offences

unworkable. It places an onus on all persons involved in the prostitution industry to put into place processes and procedures to ascertain through appropriate means the correct age individuals. Any operator who implements reasonable checks and balances will have a clear defence. From an evidentiary perspective it is far easier for a person to prove that they took reasonable steps to ascertain the age of the person than it is to prove the contrary.

This is a rebuttable presumption. For example, this provision would apply to the prosecution of a person for offences contrary to clauses 68, 69, 70, 72 and 73 of the Bill.

This provision has been taken from the *Prostitution Act 2000*.

**Clause 174.** This provides that where a person is accused of receiving a payment, in money or any other form, knowing that it or any part of it was derived from a child or incapable person taking part in an act of prostitution, and that person is residing with the child or incapable person, it is presumed that the person is guilty of an offence contrary to clause 69(1) of the Bill. The accused must therefore show that he or she did not receive any benefit from the child's or incapable persons involvement with prostitution.

This is a rebuttable presumption. The fact that a person lived with a prostitute, who was a child or incapable person at the time of the offence, gives rise to a presumption that the person is guilty of the offence (of obtaining payment for prostitution by a child or incapable person).

Without this presumption, the prosecution would have to prove beyond reasonable doubt that the accused knew that the payment received was derived from the child or incapable person taking part in an act of prostitution. This would be extremely difficult to gather evidence of and in most cases would rely on the admissions of the manager making enforcement of the offence difficult. It is easier for a person to prove that they were unaware that moneys received were obtained from a child or incapable person having taken part in an act of prostitution, than it is for the prosecution to prove the requisite knowledge of the accused.

This presumption will enable the courts to effectively deal with those people who live with a child or incapable person who is a prostitute and gain benefits from the income produced by the child or incapable person.

This provision has been taken from the *Prostitution Act 2000*.

**Clause 175.** If it is proved that a child entered or remained in a brothel or prostitution agency, it is taken to be conclusively presumed that the prostitution manager allowed the child to be on the premises, unless proved otherwise.

This is a rebuttable presumption designed to facilitate proof of an offence contrary to clause 73 of the Bill.

It is important that there is no diminution in the controls that ensure children are not exposed or inadvertently involved in prostitution or related activities. This presumption highlights the responsibility that has been placed on operators of brothels, prostitution agencies and prostitution managers.

Without this presumption, the prosecution would have to prove beyond reasonable doubt that the prostitution manager allowed a child to enter or remain at the brothel or prostitution agency. This would be extremely difficult and make enforcement of the

offence unworkable. It is far easier for the manager to prove that they did not know and could not reasonably have known that a child was present.

**Clause 176.** This provides that, if a person loiters in or frequents a place in circumstances giving reasonable grounds for suspecting that the person has an intention to commit an offence of inviting or receiving a request to act as a prostitute or client, the person is presumed to have had that intention unless the contrary is proven.

This provision has been taken from the *Prostitution Act 2000*. This provision is intended to assist in proceedings related to street prostitution. The presence of street prostitutes and the clients they draw to an area is both upsetting and disruptive to residents and business owners in affected areas.

This is a rebuttable presumption designed to facilitate proof of intent.

Without this presumption, the prosecution would have to prove beyond reasonable doubt that a person was loitering in or frequenting a place with the intention of seeking a person to engage in an act of prostitution. Whereas this would be extremely difficult, in the absence of an admission from the accused, for the prosecution to prove, it would be relatively easy for the person to prove that they did not have that intention, if in fact they were there for another purpose.

Further, in relation to the offence of doing anything with the intention of inducing a child to act or continuing to act as a prostitute, the offender is presumed to have had that intention unless the contrary is proven.

Without this presumption, the prosecution would have to prove beyond reasonable doubt that the person had the intention of inducing a child to act, or continue to act, as a prostitute. Whereas this would be extremely difficult for the prosecution to prove, it would be relatively easy for the person to prove that they did not have the intention, if in fact this was the case.

**Clause 177.** This provides that in proceedings for an offence under this Act, the possession of a prophylactic is not evidence that that person or any other person is involved in prostitution.

Key objectives of this legislation in relation to health are to safeguard public health and well being against the effects of prostitution, and promote the welfare, occupational health and safety of prostitute. This clause is to remove any deterrent for a prostitute to carry or client to use prophylactics.

**Clause 178.** This provides that a person who permits another person to possess their licence is presumed to have allowed the person to use it unless the contrary is proved.

This clause places an onus on the defendant to prove they did not permit another person to use their licence. The intention is to prevent the situation whereby a person licensed with the Board passes the licence onto another person for them to operate within the prostitution industry. Having gone through the process to issue a licence following positive identification of the applicant and a probity check being made, transferring the licence to another individual without the requisite check would defeat one of the principle elements of this legislation.

Without this presumption, the prosecution would have to prove beyond reasonable doubt that the person permitted another person to use their licence. Whilst the burden of proof is

on the license holder to prove that they did not allow another to use it this is relatively easy for them to prove, if in fact that is the case.

**Clause 179.** This provides that pursuant to sub-clause (1), if a person acts as a prostitute whilst they have a sexually transmissible infection, it is conclusively presumed that the prostitute knew about the infection unless it is proved that at the time the person had been undergoing medical examinations and believed on reasonable grounds that the person did not have a sexually transmissible infection.

The intent of this provision is to encourage prostitutes to have regular health checks.

Further, pursuant to sub-clause (2), a licensed brothel operator or prostitution agent who allows a prostitute who has a sexually transmissible infection to act as a prostitute for the business, is presumed to have known that fact unless it is proved that the licensed person believed on reasonable grounds that the prostitute had been undergoing regular medical examinations and did not have a sexually transmissible infection.

The intent of this provision is to encourage operators and agents to monitor whether their prostitutes are having regular health checks.

Clause 99 makes it an offence for a person to act or offer to act as a prostitute if that person knows, or could reasonably be expected to know, that they have a sexually transmissible infection. Clause 124 makes it an offence for a person be allowed to act as a prostitute for the business where the licensed person knows, or could reasonable be expected to know, that the person has a sexually transmissible infection.

The presumptions contained in this clause are designed to facilitate proof of the requisite knowledge, however, the presumption may be easily rebutted by the accused person.

**Clause 180.** This provides that certification of authorisation for an undercover officer, is by way of a certificate signed by the Commissioner of Police and stating that the person named in the certificate was, during a specified period, a police officer acting undercover and was authorised to do anything stated in that certificate.

This clause ensures that proceedings are not frustrated by unnecessary delays in proving all matters contained on the certificate. This is a standard clause provided in legislation where certificates of this nature are allowed. Examples are the certificates of drug analysts under the *Misuse of Drugs Act 1981*, documents signed by the Governor under the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002* and notices under the *Gaming Commission Act 1987*.

This provision currently exists in the *Prostitution Act 2000*.

**Clause 181.** This clause provides that for any proceedings for an offence under this Act, production of a certificate containing a statement and purportedly signed on behalf of the Board is evidence of the facts stated in the certificate. A certificate of the Board relates to matters that include the licence, conditions, restrictions and suspension of a licence. Subclause (4) contains various averments in relation to the Board, notification to a person by the Board of any matter and that a person is a prostitution manager for the purposes of the Act or that a person is or was carrying on a business involving prostitution unless the contrary is proven.

This clause ensures that proceedings are not frustrated by unnecessary delays in proving all elements of the offence. Instead the complainant may rely in certain instances on



certificates, averments and presumptions. This is a common clause provided in regulatory legislation where evidentiary certificates and averments are used. Examples are evidence under the *Betting Control Act 1954*, *Casino Control Act 1984* and the *Gaming Commission Act 1987*.

## **Division 2 – Notification by Board and appeals**

This Division details the requirement that the Board is to give reasons for a decision, when information may be withheld, and matters pertaining to an appeal against a decision of the Board.

**Clause 182.** This provides that where the Board must record and notify the person to whom it relates of the reasons for a decision relating to:

- a refusal to grant or renew a licence;
- a refusal to extend the term of a licence;
- the placing of conditions or restrictions on a licence;
- the amendment or refusal to amend the licence;
- the revocation or suspension of a licence; or
- the banning of a person from acting as a prostitute.

This is intended to provide fairness and transparency to the decisions of the Board. The reasons given will provide the applicant or licence holder with an understanding of the decision and enable them to consider whether the matter should be subject to further consideration.

**Clause 183.** This provides that the Commissioner of Police may direct the Board not to disclose the source and nature of information that the Commissioner has provided to the Board, if the Commissioner is satisfied that the disclosure might prejudice the safety of a person, the effectiveness of an investigation or prosecution of a person for an offence under this Act or the proper administration of this Act or that the disclosure might reveal the identity of a police officer acting as an undercover officer or otherwise be contrary to the public interest.

This is intended to ensure that there is no impediment to the disclosure of information that would assist the Board in performing its functions. Without this provision, police would be unlikely to provide all relevant information to the Board where its disclosure would put people at risk or potentially impact on the effectiveness of investigations or prosecutions. This may have an adverse effect on the ability of the Board to achieve some of the key objectives of the legislation particularly the deterrence of organised and other crime in connection with prostitution and to subsequently protect prostitutes from exploitation.

**Clause 184.** This provides that a person aggrieved by a decision of the Board referred to in clause 182(1) may appeal to the District Court. An appeal is to be in the nature of a rehearing and determined on the material that was before the Board or any additional or fresh evidence as the Court allows. Both the Board and the Commissioner of Police are entitled to be parties to the appeal.

This is intended to provide fairness to applicants and licence holders who are aggrieved at a decision of the Board. It is intended as an interim measure until legislation is progressed to establish the proposed State Administrative Tribunal.

**Clause 185.** This provides that in determining an appeal the Board must supply to the Court all the information the Board had to assist with the decision, even if the information was not disclosed at the request of the Commissioner of Police pursuant to clause 183. The Board or the Commissioner of Police may make, without notice to the appellant and in the absence of the appellant, an application to the District Court Judge that the source and content of the information that the Commissioner of Police requested the Board to withhold pursuant to clause 183, not be disclosed. The Judge may make such order if satisfied that the disclosure might prejudice the safety of a person, the effectiveness of investigation or prosecution of a person for an offence under this Act or the proper administration of this Act or that the disclosure might reveal the identity of a police officer acting as an undercover officer or otherwise be contrary to the public interest.

As advised in relation to clause 183, it is intended that there is no impediment to the disclosure of information that would assist the Board in performing its functions. Without this provision police would be unlikely to provide all relevant information to the Board where its disclosure would put people at risk or potentially impact on the effectiveness of investigations or prosecutions. This may have an adverse effect on the ability of the Board to achieve some of the key objectives of the legislation, particularly the deterrence of organised and other crime in connection with prostitution and to subsequently protect prostitutes from exploitation.

### **Division 3 – Restraining orders**

This Division details provisions relating to applications for and the making of restraining orders under this Act.

**Clause 186.** This provides that if a court finds that a person has committed an offence related to seeking a prostitute or client in a public place, the court will be able to make a restraining order if it considers that the person is likely to commit that offence again.

This provision enables the courts to take actions to protect the community from the adverse effects of street prostitution and has been taken from the *Prostitution Act 2000*.

**Clause 187.** This provides that if a person has been issued with a ‘move on’ notice under clause 155, and then at a later date, outside of the provisions of the notice, continues the behaviour that gave rise to that notice, a police officer may apply to the court for a restraining order.

Whilst the ‘move on’ notice has proven effective by removing prostitutes from the street for a specified period, restraining orders are used as a long-term measure to protect residents and businesses from the adverse effects of street prostitution.

This provision has been taken from the *Prostitution Act 2000*.

**Clause 188.** Courts are not to make a restraining order against a person unless that person is given an opportunity to be heard by the Court. This ensures that a person, against whom a restraining order application has been made, has the opportunity to put forward their response to a matter. This provision ensures that natural justice applies to hearings regarding restraining orders.

Once a restraining order has been made, the Court is able to order that the person, against whom the restraining order is to be made, is to remain at a designated place in order to enable the restraining order to be served. This provision is to ensure the immediate implementation of the order through its service within the confines of the court.

This provision has been taken from the *Prostitution Act 2000* and is consistent with section 63 of the *Restraining Orders Act 1997* that relates to making restraining orders during other proceedings.

**Clause 189.** This clause provides that should a person be found by a Court to have committed an offence of street soliciting or kerb crawling or have been given a move on notice by a police officer in accordance with this Act, the Court may make a restraining order to impose restraints on the lawful activities and behaviour of that person to prevent any further offences from being committed or the likelihood of an offence being committed.

In both instances, the order may restrain the person from being on or near specified premises or locality and/or engaging in behaviour at a specified place, time or in a particular manner. The conditions of the order are effective regardless of whether a person has a legal or equitable right to be at the premises or locality or engage in certain behaviour.

This clause provides the terms and conditions under which a restraining order can be made and is necessary to provide guidance to the court in relation to restraints that can be placed upon a person where it is considered appropriate.

This provision has been taken from the *Prostitution Act 2000* and is consistent with section 63 of the *Restraining Orders Act 1997* that relates to making restraining orders during other proceedings.

**Clause 190.** This provides that a restraining order takes effect when it is served on the person against whom it was made and remains in effect until the period specified in the order or if no period is specified, for one year from the day on which it took effect.

This clause ensures that restraining orders do not remain in place indefinitely.

This provision has been taken from the *Prostitution Act 2000* and is consistent with provisions of the *Restraining Orders Act 1997* relating to a misconduct restraining order.

**Clause 191.** This clause provides that an application to vary or cancel a restraining order may be made by a police officer and with the leave of the Court, the person against whom the order was made.

A person against whom the order is made who seeks leave to make application to have an order varied or cancelled under this provision must disclose all facts known to the person that are material to the case irrespective of whether they are adverse.

The court may refuse the application for leave if it considers not all material facts have been disclosed or based on the facts disclosed there is insufficient reason to vary or cancel the restraining order.

Leave cannot be given unless the court is satisfied there has been a substantial change in relevant circumstances.

Before leave is given, the person who applied for the restraining order (the respondent) is to be notified and given the opportunity to oppose the application for leave.

If leave is given, both the person against whom the order has been made and the respondent can be heard at the hearing of the application to vary or cancel the order.

The court may dismiss the application, make a new restraining order or cancel the existing restraining order.

This provision has been drawn from Part 5 of the *Restraining Orders Act 1997* and is currently in the *Prostitution Act 2000*.

**Clause 192.** This provides that if a person who was entitled to be given an opportunity to be heard, was not present in the Court when the application to vary or cancel the restraining order was disposed of, the clerk of the Court is to notify the person of how the application was disposed of.

This provision has been taken from the *Prostitution Act 2000* and is consistent with provisions of the *Restraining Orders Act 1997*.

**Clause 193.** This clause provides that the cancellation of a restraining order takes effect when another restraining order is made and that new order takes effect or at the conclusion of the hearing at which the order is cancelled.

This clause formalises when the cancellation of a restraining order takes effect.

This provision has been taken from the *Prostitution Act 2000* and is consistent with provisions of the *Restraining Orders Act 1997*.

**Clause 194.** This provides that a restraining order cannot be taken out against a child under 10 years of age. All proceedings with respect of children and restraining orders are to be conducted in the Children's Court.

This clause provides guidance to the courts in relation to restraining orders against children.

This provision has been taken from the *Prostitution Act 2000* and is consistent with provisions of the *Restraining Orders Act 1997*.

**Clause 195.** A restraining order is made for a specific reason. To deter a person from breaching such an order, this clause creates an offence and provides a penalty.

A breach of a restraining order is an offence and attracts a penalty of \$6,000.

This provision has been taken from the *Prostitution Act 2000* and is consistent with provisions of the *Restraining Orders Act 1997*.

**Clause 196.** A person aggrieved by decision relating to a restraining order will be able to appeal against the decision.

This clause identifies the court of appeal for a person who is aggrieved by a decision of a Court relating to the issue of a restraining order.

This provision has been taken from the *Prostitution Act 2000* and is consistent with provisions of the *Restraining Orders Act 1997*.

**Clause 197.** If a court does not have jurisdiction to adjust a family order, then the court cannot make a restraining order that conflicts with that family order.

This clause ensures that restraining orders are not made that conflict with any family order.

This provision has been taken from the *Prostitution Act 2000* and is consistent with provisions of the *Restraining Orders Act 1997*.

#### **Division 4 – Other miscellaneous provisions**

This Division the details matters such as who can make a complaint of an offence, the protection of persons performing functions under the Act, the publication of the Board's findings, decisions and reasons, the exchange of information, confidentiality, the liability for offences committed of an operator or agent, partners and bodies corporate, managerial officers of a body corporate, the summary trial of crimes, the regulation that can be made, the repeal of the *Prostitution Act 2000* and consequential amendment of other Acts and review of the Act.

**Clause 198.** This provides that proceedings for an offence (other than an indictable offence) under this Act may be taken by a police officer or in the name of the Board, by the registrar or any other person authorised in that behalf by the Board. Clause 18 of the Act refers to the delegation powers of the Board.

This clause clarifies who can make a complaint of an offence under the Act and prosecute the matter.

**Clause 199.** This clause provides immunity to designated classes of person acting in good faith in the performance of or purported performance of a function under the Act. The Board and the Crown are relieved of any liability arising from the actions of those persons.

This is a common provision in Western Australian legislation for bodies empowered to perform functions on behalf of the State. Examples include the Authority and staff under the *Armadale Redevelopment Act 2000*, the registrar and staff under the *Births, Deaths and Marriages Registration Act 1998*, the Authority and staff under the *Botanic Gardens and Parks Authority Act 1998*, and officer of the Commission under the *Casino Control Act 1984*, contractors under the *Court Security and Custodial Services Act 1999* and anyone exercising a power under the *Criminal Investigation (Identifying People) Act 2002*.

**Clause 200.** This clause provides protection to a person involved in investigations, inquiries and hearings of the Board as would be afforded a witness or party before the Supreme Court.

Failure to provide protection to people performing these functions or who are concerned in proceedings of the Board may inhibit the Boards ability to obtain the information and evidence it requires in carrying out its functions.

**Clause 201.** This clause provides protection against any action, claim or demand in respect of any communication or publication in good faith of any finding, reasons for decisions of the Board or committee, to the Board and its staff, a committee of the Board and a person involved in the communication or publication. In addition, it allows for the Board to notify a finding, reason or decision to any person who the Board believes should

be aware of the finding, reason or decision and may publish that finding etc. in the Gazette or such other manner as the Board thinks fit.

This is a common provision in Western Australian legislation for bodies performing supervisory functions. Examples of bodies having this protection include the Dental Prosthetists Advisory Committee under the *Dental Prosthetists Act 1985*, the Nurses Board under the *Nurses Act 1992*, the Occupational Therapists Registration Board under the *Occupational Therapists Registration Act 1980* and the Osteopaths Registration Board under the *Osteopaths Act 1997*.

**Clause 202.** This provides that information will be able to be exchanged to any other person for the purposes of the performance of a statutory function that has any connection with the administration of this Act.

The person's employing authority will be required to approve the release of information.

To ensure that the functions and programs of the Board and contributing agencies are not prejudiced by the release of inappropriate information the exchange of information will not be compulsory.

To adequately perform their functions under the Act it is necessary that the various bodies have access to relevant information retained by others performing functions connected with prostitution. Without access to records and information held by the Police Service, the Board would not be able to establish the suitability of applicants. Further, the Department of Health will be reliant on information from the Board to assist in its public health functions.

**Clause 203.** This provides that a person who performs functions under the Act must not record, disclose or make use of information obtained in the course of duty unless otherwise enabled under the Act.

The penalty for this offence will be 5 years imprisonment, if the recording, disclosing 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 or 10 years imprisonment if the value of the detriment or gain was more than \$10 000 or in any other case imprisonment for 2 years.

A person who is or was engaged under a contract for services to perform functions under this Act who, whether directly or indirectly, records, discloses, or makes use of an information contrary to the contract will be liable to a penalty of \$6 000.

This clause has been included to discourage the inappropriate use of information by persons having access to information of the Board. It is also designed to provide a strong message to those involved in the provision of prostitution services that the Government is committed to ensuring that their personal information will be secure, therefore encouraging them to provide the required information to the Board.

This provision has been taken from the *Prostitution Act 2000* and amended to reflect the wider scope of this Act and to increase penalties in recognition of the potential for the information of the Board to be used for corrupt purposes.

**Clause 204.** This provides that where a prostitution manager commits an offence when acting in the capacity of a manager, the brothel operator or prostitution agent is also culpable for the offence.

This clause is intended to ensure that operators and agents ensure their premises are effectively managed and that they do not implement or promote managerial practices or processes which encourage or allow offences by managers.

**Clause 205.** If a person has a licence on behalf of a partnership or body corporate and commits an offence, the other partners or body corporate will also to be treated as having committed the offence, unless it can be proved otherwise.

A defence exists for a partner to show that the offence was committed without the partner's consent or connivance, and that the partner exercised all due diligence to prevent the commission of the offence, given the nature of their functions.

This clause has been included to ensure all partners and members of a body corporate will act in a responsible manner in the management of premises and to prevent the use of a "front person" to hide illegal activities.

**Clause 206.** If a body corporate is found to have committed an offence, any managerial officer of the body will also to be treated as having committed the offence, unless it can be otherwise proved. The onus is on the managerial officer to show that the offence was committed without the persons consent or connivance, and that the managerial officer exercised all due diligence to prevent the commission of the offence.

This clause has been included to contribute a control for all members of a body corporate to act in a responsible manner in the management of premises and to prevent the use of a "front person" to hide illegal activities.

**Clause 207.** This clause provides for summary conviction for indictable offences where the term 'Summary Conviction Penalty', followed by a penalty appears. The offence may be heard before a Court of Petty Sessions where the magistrate may impose the specified penalty.

It is intended that this provision will allow judicial discretion in relation to those indictable offences that have summary conviction penalties and ensure that timely justice is delivered to offenders.

**Clause 208.** The Governor may make regulations in relation to matters that are required or permitted to be prescribed or are necessary or convenient to be presented for giving effect to the purposes of the Act. Specifically, the regulations may contain provisions regarding prescribed places that are not deemed to be public places for the purposes of the Act (e.g. Kalgoorlie brothels), standards for and the provision, use and disposal of prophylactics, the publication of codes of practice, controls on advertising, meetings and proceedings of the Board, the conduct of investigations under Part 6, planning and development standards for businesses involved in the provision of prostitution, matters that can and cannot be taken into account by planning authorities, procedures for the approval of exemptions from planning requirements for existing businesses, sexually transmissible infection and notifiable sexually transmissible infections.

Regulations regarding sexually transmissible infection and notifiable sexually transmissible infections can only be made on 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 infection can only be made if the infection is capable of being transmitted by sexual activity.

Regulations in relation to matters affecting local governments and planning matters can only be made on the recommendation of the Minister responsible for the administration of the *Town Planning and Development Act 1928*.

A regulation may provide a penalty for contravention not exceeding \$6,000.

This provides that lesser matters that do not warrant the detailed consideration of Parliament when amended, such as prophylactic specifications, can be addressed expediently by a change of regulation rather than requiring the matter go through the full Parliamentary process.

**Clause 209.** This clause provides for the Governor to make regulations regarding the making, variation or cancellation of restraining orders and the procedure for hearing such applications.

**Clause 210.** This provides that the *Prostitution Act 2000* will be repealed when this Act comes fully into effect and that other required consequential amendments to other Acts are located in schedule 4 of the Bill.

**Clause 211.** This provides that the Minister responsible for the administration of this Act is to carry out a review of the effectiveness of the operations of the Board, the need for the function of the Board to continue and any other matters the Minister considers relevant to the operation and effectiveness of the Act, as soon as practicable after 3 years from the time the Prostitution Control Board is established. A report of the review must be prepared and be laid on the table in each House of Parliament as soon as practicable after its completion.

This provision is to ensure that this Act is reviewed after a reasonable period of operation to make sure it is achieving its objectives and not causing any undue hardships to any sector of the community.

## **Schedule 1 – Constitution and proceedings of Board**

This Schedule detailed matters relevant to the constitution of the Board

### **Division 1 – Term of office**

This Division provides terms of appointment of members of the Board and procedures for the removal and replacement of an appointed member when an office is vacated.

**Clause 1.** This provides that a member can be appointed for a term not exceeding 3 years and that a member can be re-appointed.

**Clause 2.** This clause provides that a member may resign from office by notice in writing to the responsible Minister or may be removed on grounds relating to:

- mental or physical disability, incompetence, neglect of duty or misconduct that impairs the performance of the member's duties;
- the member is an insolvent under administration, as that term is defined in the *Commonwealth Corporations Act 2001*;
- 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



- 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 prejudice or injury to the Board.

This clause is a standard clause relating to appointed members of Boards, Authorities and Commissions established in Western Australia.

### **Division 2 – Deputies and representatives**

This Division provides for the appointment of deputies to take the place of the chairman or members of the Board should it be necessary.

**Clause 3.** This provides that the Commissioner of Health or the Commissioner of Police may nominate a senior member of their staff to represent them on the Board or at a particular meeting.

This clause is required as, in some circumstances, it may not be practical or possible for the Commissioner of Health or the Commissioner of Police to attend in person.

**Clause 4.** This provides that the Governor, upon the nomination by the Minister, will be able to appoint a deputy to the chairman and the Minister responsible will be able to appoint deputies to the other appointed members of the Board.

This clause is required as, in some circumstances, it may not be practical or possible for Chairman or a member of the Board to attend meetings of the Board.

To ensure the Board maintains the same diversity the qualifications and manner of appointment for the deputies are equivalent to those that apply to the members themselves.

**Clause 5.** This clause provides for a member's deputy to perform the functions of the member when the member is unable to act due to illness, absence or other cause.

It is essential for the smooth operation of the Board that a deputy of a member has the same powers and decision-making abilities as the member.

**Clause 6.** This clause permits the nominees of the Commissioners' of Health and Police or a member's deputy to continue to act as a member if it is necessary to enable them to complete the performance of a function, commenced whilst they were acting as a member.

### **Division 3 – Meetings**

This Division details general procedures for meetings of the Board.

**Clause 7.** This clause determines the presiding member and numbers necessary for a quorum. The procedures for convening meetings and the conduct of business are to be determined by the Board.

**Clause 8.** This clause details the voting procedures of the Board.

A decision of the majority of members at meeting at which there is a quorum is present is to be the decision of the Board. When voting is equally divided the presiding member is to have a casting vote as well as a deliberate vote.

**Clause 9.** This clause permits Board meetings to be conducted by conference phone or other means of instantaneous communication.

As it may not always be practical or possible for each member of the Board to be in the same geographical location for a Board meeting, this clause provides that Board meetings can be held via telephone linkup or some other form of instantaneous communication.

**Clause 10.** This clause provides that the Board must keep an accurate record of each meeting.

#### **Division 4 – Resolution without meeting**

This Division details the means by which the Board can make decisions without actually meeting.

**Clause 11.** This clause enables matters to be considered and passed by the Board without the Board members actually meeting. It provides that a document, stating that a thing has been done or a resolution passed, assented to by not less than 4 members, is to be taken to have been done or passed by a meeting of the Board. Such a document is to be taken as a minute of a meeting of a Board.

This is intended to ensure that urgent decisions are not delayed by a necessity to call all members of the Board together for a meeting.

**Clause 12.** This clause provides that a meeting referred to in clause 11 is considered to have been held on the date on which and the time at which the document was last assented to by a member.

**Clause 13.** This clause provides that separate identical documents are to be taken as one document for the purposes of clause 11.

**Clause 14.** This clause outlines the means by which a member may signify assent for the purposes of clause 11.

#### **Division 5 – Disclosure of interests**

This Division details disclosure member of the Board and committees of the Board must make where they have any direct or indirect interest in a deliberation or decision.

**Clause 15.** This clause provides that a member of the Board must declare any direct or indirect interest in a matter before the Board, and absent themselves from any deliberation or decision of the Board related to that matter, unless the Board otherwise determines.

A penalty of \$6 000 is provided for failure to do so.

**Clause 16.** This clause provides that a member of committee must declare any direct or indirect interest in a matter before the committee, and absent themselves from any deliberation or decision of the committee related to that matter unless the committee otherwise determines.

A penalty of \$6 000 is provided for failure to do so.

**Clause 17.** This clause provides that a member of the Board or committee who has made a disclosure of an interest must not be present during any deliberation for the purpose of making the determination or take part in the making of the determination.

**Clause 18.** This clause provides that a disclosure made by a person under clause 15 or 16 is to be recorded in the minutes of the Board or of the committee.

### **Schedule 2 – Offences relevant to licensing; banning from acting as a prostitute**

The offences in this schedule are serious offences and relate to sex, violence, extortion, threats and child related offences. These offences statutorily ban a person from being able to be licensed by the Board or acting as a prostitution driver and can be taken into consideration by the Board when deciding whether or not to ban a person from acting as a prostitute. The offences are as follows:

#### ***Censorship Act 1996***

s. 60                      Child pornography

#### ***The Criminal Code***

s. 181                      Carnal knowledge of animal  
s. 186                      Occupier or owner allowing certain persons to be on premises for unlawful carnal knowledge  
s. 204A                      Showing offensive material to children under 16  
s. 278 or  
s.279                      Wilful murder  
Murder  
s. 281A                      Infanticide  
s. 320(2) or (3)              Child under 13: Sexual offences against  
s. 321(2) or (3)              Child of or over 13 and under 16: Sexual offences against  
s. 321A(3)                      Child under 16: Sexual relationship with  
s. 324                      Aggravated indecent assault  
s. 325                      Sexual penetration without consent  
s. 326                      Aggravated sexual penetration without consent  
s. 327                      Sexual coercion  
s. 329                      Relatives and the like: Sexual offences by  
s. 330(2) or (3)              Incapable person: Sexual offences against  
s. 332                      Kidnapping  
s. 343                      Child stealing  
s. 396                      Demanding property with threats with intent to steal  
s. 397                      Demanding property with threats with intent to extort or gain  
s. 398                      Attempts at extortion by threats

#### ***Child Welfare Act 1947***

s. 108(1)                      Restriction on employment of children for indecent purposes

### **Schedule 3 – Clause implied in planning schemes**

Following the enactment of this Act each existing planning scheme is to be read, and has effect, as if the clause set out in this schedule were part of the planning scheme and is to be implemented accordingly.

**Clause 1** This provides details of land that can and cannot be used for prostitution purposes. These provisions will apply to brothels and attended prostitution agencies.

**Subclause (1)** This provides that a brothel, or an attended prostitution agency office will not be permitted in a residential zone or precinct.

This provision is intended to ensure that the lifestyle of residents is not disrupted by the activities of a business in close proximity to their home.

**Subclause (2)** A brothel or an attended prostitution agency office is permitted in an industry zone or precinct provided it 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 the use complies with any applicable regulations made under the *Prostitution Control Act 2003*.

This is intended to ensure that legal brothels and attended prostitution agencies are able to be established in locations that will cause minimal disruption to the community.

**Subclause (3)** This provides that 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 unless the person giving the approval is satisfied that 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 the use complies with any applicable regulations made under the *Prostitution Control Act 2003*.

This is intended to give local government discretion to approve the establishment of brothels and prostitution agencies in areas they consider appropriate.

**Subclause (4)** This provides that 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*.

The calculation of distance for the purposes of subclause 1 and 2 may be complex. Older inner city suburbs subject to urban renewal programs have differing needs to newer suburbs. Unless scope is made for older inner city suburbs, local government in those areas may not be able to approve the establishment of brothels and prostitution agencies in locations they consider appropriate.

**Subclause (5)** This clarifies that it is not intended that these provisions relate to a prostitution agency that does not have prostitutes or drivers in attendance and that these places simply act as a telephone call centre.

**Subclause (6)** This provides that a brothel or prostitution agency office that existed at the time the *Prostitution Control Bill 2002* was released for public comment can with approval of the Board be deemed to be a permitted use under the planning scheme.

There are prostitution businesses that have been and are currently in operation that are managed appropriately with due regard to public health, employee welfare and that have minimal impact and adverse effect on the community. Most if not all of these would not be able to obtain planning approval under the provisions of Schedule 3.

To be fair to these businesses, the Board will be able to consider applications for exemption from the planning requirements from those businesses that can prove they existed at the time the *Prostitution Control Bill 2002* was released for public scrutiny and comment.

**Subclause (7)** This provides that applications under subclause (6) are to be in accordance with regulations.

**Subclause (8)** This details matter to be taken into consideration by the Board in considering applications under subclause (6). These include complaints to local government in relation to the premises, proximity to protected use places and other prostitution businesses, likely disruption to residents and businesses, access to the place, parking availability etc.

**Subclause (9)** This clause details words and terms used in this schedule. These include:

**“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 —

- (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;

**“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, 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 —

- (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;

**“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;

**“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;

**“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.

**Subclause (10)** This provides that 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.** This schedule details consequential amendments to other Acts,

### **1. Constitution Acts Amendment Act 1899 amended**

This amends the *Constitution Acts Amendment Act 1899* to include in Schedule V Part 3 the Prostitution Control Board established by the *Prostitution Control Act 2003*.

This is relevant to persons who cannot be members of the legislature when holding certain offices.

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

This amends the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*. to include relevant offences in the *Prostitution Control Act 2003* in schedule 1 item 1 of that Act. Schedule 1 details offences that offences that may be relevant for that Act.

These offences are as follows:

- s. 30 Licence needed to carry on the business of a brothel or prostitution agency
- s. 66 Providing place for prostitution
- 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 a person to act as prostitute
- s. 82 Interest in the business of a self-employed sole prostitute

### **3. Evidence Act 1906 amended**

This amends the *Evidence Act 1906* to bring offences under the *Prostitution Control Act 2003* under the relevant provisions of that Act.

#### **4. *Financial Administration and Audit Act 1985* amended**

This amends the *Financial Administration and Audit Act 1985* to incorporate the operations of Prostitution Control Board under its provisions.

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

This amends the *Freedom of Information Act 1992* to include the Prostitution Control Board as an exempt agency for the purposes of that Act.

Much of the information that will be held by the Board will be of a nature that if made public could be injurious to the person to whom it relates or could reveal information that it is not in the public interest to disclose. This is intended to ensure that inappropriate information is not disclosed under a Freedom of Information application.

#### **6. *Health Act 1911* amended**

This amends the *Health Act 1911* to remove provision that will be redundant when the *Prostitution Control Act 2003* is enacted.

#### **7. *Parliamentary Commissioner Act 1971* amended**

This amends the *Parliamentary Commissioner Act 1971* to enable the Commissioner to conduct an investigation and report on a matter relating to the Board that has been referred by the Parliament pursuant to section 15 of that Act.

#### **8. *Police Act 1892* amended**

This amends the *Police Act 1892* to remove offences relating to a prostitute or a bawdy house that will be redundant when this Act comes into effect.

#### **9. *The Criminal Code* amended**

This amends *The Criminal Code* to remove offences relating to a prostitute or a bawdy house that will be redundant when this Act comes into effect.

#### **10. *Town Planning and Development Act 1928* amended**

This amends the *Town Planning and Development Act 1928* to ensure that local governments do not become liable to pay compensation where a prostitution businesses are injuriously affected by reason of 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 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**

This amends the *Workers' Compensation and Rehabilitation Act 1981* to include as a worker for the purposes of that Act who 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 that brothel and a person who 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 and a person who was not working for a lawful brothel or prostitution agency under contract of service to the operator or agent where it is shown that the person worked under coercion.

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. If a person found to have engaged in serious or wilful misconduct their claim for compensation would be disallowed unless the disability results in death or serious and permanent disablement.

This provision whilst allowing coverage of prostitutes under the *Workers' Compensation and Rehabilitation Act 1981* provides protection to the State against claims from persons who do not operate in accordance with the *Prostitution Control Act*.

## **12. *Young Offenders Act 1994* amended**

This amends the *Young Offenders Act 1994* to include the relevant offences in the *Prostitution Control Act 2003* in schedule 2 which details offences for which a caution cannot be given, and which cannot be referred to a juvenile justice team, and for which a conviction will normally be recorded, and which may lead to the application of the provisions relating to offenders who repeatedly commit offences resulting in detention

These offences are:

- 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; and
- s. 74 Seeking to induce person to act as prostitute.