

1991
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Moore)

Prostitution Bill 1991

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Application of Act to escort agencies

**PART II—BROTHEL AND ESCORT AGENCY
LICENSING BOARD**

5. Establishment
6. Membership
7. Term of appointment
8. Leave of absence
9. Disclosure of interest
10. Resignation
11. Termination of appointment
12. Acting Members
13. Convening meetings
14. Procedure at meetings

PART III—LICENCES

15. Application for licence
16. Grant of licence
17. Licence classes

Job No.: 1991/37

TABLE OF PROVISIONS—continued**Section**

- 18. Change of address or premises
- 19. Surrender of licence
- 20. Renewal of licence
- 21. Return of licence to Board
- 22. Cancellation of licence
- 23. Register of Brothels and Escort Agencies

PART IV—OFFENCES

- 24. Duress
- 25. Use of premises
- 26. Unlicensed premises
- 27. Living off earnings
- 28. Excess prostitutes
- 29. Soliciting
- 30. Participation of minors
- 31. Proceeds of child prostitution
- 32. Age of child—burden of proof
- 33. Child on premises
- 34. Display of identifying notice
- 35. Advertising
- 36. Infected persons
- 37. Medical examination
- 38. Use of prophylactics

PART V—MISCELLANEOUS

- 39. Notice of decision
- 40. Review by Tribunal
- 41. Power of Minister to determine fees
- 42. Regulations

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THE LEGISLATIVE ASSEMBLY
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Prostitution Bill 1991

A BILL

FOR

**An Act to regulate brothels, escort agencies and
certain aspects of prostitution**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Prostitution Act 1991*.

Commencement

2. (1) Parts I, II, III and V commence on the day on which this Act is notified in the *Gazette*.
(2) Part IV commences on a day fixed by the Minister by notice in the
10 *Gazette*.
(3) If Part IV has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that Part, by force of this subsection, commences on the first day after the end of that period.

15 **Interpretation**

3. (1) In this Act, unless the contrary intention appears—

Job No.: 1991/37

"Board" means the Brothel and Escort Agency Licensing Board established by section 5;

"brothel" means premises used or to be used for the purpose of prostitution, but does not include premises—

- 5 (a) used by one prostitute only; or
- (b) at which accommodation is normally provided on a commercial basis if the prostitution occurs pursuant to an arrangement initiated elsewhere;

"child" means a person who has not attained the age of 18 years;

10 "commercial sexual services" means sexual services provided for monetary or material reward (irrespective of whether the reward is, or is to be, paid or given to the prostitute or another person);

15 "determined fee" means the fee determined by the Minister under section 41 for the purposes of the provision in which the expression occurs;

"drug of dependence" means a drug of dependence or a prohibited substance as defined in the *Drugs of Dependence Act 1989*;

"escort agency" means a business of arranging prostitution, being a business carried on at premises other than a brothel;

20 "licence" means a licence granted under section 16;

"licensed premises" means premises the address of which is specified in a licence pursuant to paragraph 16 (2) (b);

"licensee" means a person who holds a licence;

"member" means a member of the Board;

25 "premises" includes a part of premises;

"prophylactic" means a condom or other device that is adequate to prevent the transmission of a sexually transmitted disease;

"prostitute" means a person who provides commercial sexual services;

"prostitution" means the provision of commercial sexual services;

30 "public place" means any street, road, public park within the meaning of the *Public Parks Act 1928*, reserve or any building, premises or other place which the public are entitled to use or which is open to, or used by, the public (whether on payment of money or otherwise);

"sexually transmitted disease" has the same meaning as in the *Sexually Transmitted Diseases Act 1956*;

"Tribunal" means the Australian Capital Territory Administrative Appeals Tribunal.

- 5 (2) A reference in this Act to employing a prostitute shall be read as including a reference to entering into a contract for services with a prostitute for the provision of commercial sexual services.

Application of Act to escort agencies

- 10 4. (1) This Act applies in relation to an escort agency as if the premises on which the business is carried on were a brothel.

(2) For the purposes of the application of this Act by virtue of subsection (1)—

- 15 (a) commercial sexual services provided as a consequence of arrangements made in the course of the business of the escort agency shall be taken to have been provided on the premises at which the business is carried on; and
- (b) a prostitute who provides commercial sexual services as a consequence of those arrangements shall be taken to be employed at the premises by the operator of the escort agency.

20 PART II—BROTHEL AND ESCORT AGENCY LICENSING BOARD

Establishment

5. There is established a board by the name of the Brothel and Escort Agency Licensing Board.

25 Membership

6. (1) The Board shall consist of 3 members appointed in writing by the Minister, one of whom shall be appointed as Chairperson.

(2) At least 1 member shall be a woman.

30 (3) The appointment of a member is not invalid because of a defect or irregularity in connection with the member's appointment.

(4) The performance of the functions, or the exercise of the powers, of the Board is not affected only by reason of a vacancy in the membership of the Board.

Term of appointment

- 35 7. (1) The members shall be appointed as part-time members.

(2) A member holds office—

(a) for such period not exceeding 2 years as is specified in the instrument of appointment; and

5 (b) on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined in writing by the Minister.

(3) A member is eligible for reappointment once only.

Leave of absence

10 8. The Minister may grant leave of absence to a member on such terms and conditions as the Minister considers appropriate.

Disclosure of interest

15 9. (1) A member who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure under subsection (1) shall be noted in the record of the meeting and, unless the Minister or the Board otherwise determines, the member shall not—

20 (a) be present during any deliberation of the Board with respect to that matter; or

(b) take part in any decision of the Board with respect to that matter.

(3) A member shall not—

25 (a) be present during any deliberation of the Board for the purpose of considering whether to make a determination under subsection (2) in relation to that member; or

(b) take part in the making by the Board of such a determination.

Resignation

10. A member may resign his or her office by written notice delivered to the Minister.

30 **Termination of appointment**

11. (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) If a member—

35 (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors

or makes an assignment of remuneration for the benefit of those creditors;

- (b) is absent, except on leave granted under section 8, from 2 consecutive meetings of the Board;
- 5 (c) fails, without reasonable excuse, to comply with an obligation imposed by section 9; or
- (d) is convicted of an offence under the law of the Territory or of a State or another Territory punishable by imprisonment for 1 year or more;

10 the Minister shall, by written notice served on the member, terminate the appointment of the member.

Acting Members

12. (1) The Minister may appoint a person to act as Chairperson—

- 15 (a) during a vacancy in the office of Chairperson (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chairperson is absent from the Territory or is unable to—
 - (i) perform the duties of the office; or
 - (ii) attend meetings of the Board.

20 (2) The Minister may appoint a person to act as a member—

- (a) during a vacancy in the membership of the Board (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when a member is acting as Chairperson, absent from the Territory or is unable to attend meetings of the Board;

25 but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(3) Anything done by or in relation to a person purporting to act under subsection (1) or (2) is not invalid because—

- 30 (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Convening meetings

13. The Chairperson shall convene such meetings of the Board as the Chairperson considers necessary for the efficient performance of its functions.

5 **Procedure at meetings**

14. (1) The Chairperson—

- (a) shall preside at all meetings of the Board; and
- (b) may determine the procedure to be followed at or in connection with any meeting.

10 (2) The Board shall keep a record in writing of its proceedings.

PART III—LICENCES**Application for licence**

15. An application for a licence shall—

- (a) be in writing signed by the applicant; and
- 15 (b) specify—
 - (i) the full name and residential address of the applicant;
 - (ii) whether the applicant proposes to operate a brothel, an escort agency or a brothel and escort agency;
 - 20 (iii) the address at which the applicant proposes to operate the brothel or escort agency;
 - (iv) if the applicant proposes to operate the brothel or escort agency under a business name—that business name;
 - (v) whether the application is for a class 1 or class 2 licence;
 - (vi) such other particulars as are prescribed.

25 **Grant of licence**

16. (1) The Board shall grant a licence for a period of 12 months if satisfied that—

- (a) the applicant for the licence—
 - (i) is a natural person;
 - 30 (ii) has attained 18 years of age;
 - (iii) is resident in the Territory;

- (iv) has not, within 8 years before the date of the application, been convicted of an offence under the law of the Territory or of a State or another Territory punishable by imprisonment for 3 years or more;
- 5 (v) has not had a licence cancelled within 3 years before the date of the application; and
- (vi) will comply with this Act and the regulations in relation to the operation of licensed premises;
- 10 (b) the premises of the proposed brothel or escort agency are on land to which section 8A of the *City Area Leases Act 1936* applies; and
- (c) the determined fee has been paid.
- (2) A licence shall specify—
 - (a) the full name and address of the licensee;
 - 15 (b) the address of the premises in respect of which the licence is granted;
 - (c) whether it is a class 1 or class 2 licence;
 - (d) the period for which the licence is granted; and
 - (e) such other particulars (if any) as are prescribed.

Licence classes

- 20 17. (1) A class 1 licence authorises the employment of a maximum of 10 prostitutes at the licensed premises.
- (2) A class 2 licence authorises the employment of a maximum of 40 prostitutes at the licensed premises.

Change of address or premises

- 25 18. (1) If a change occurs in the address of a licensee, the licensee shall, within 14 days, lodge the licence with the Board together with written notification of the change.

Penalty: \$500.

- 30 (2) Where a licensee proposes to operate a brothel or escort agency at premises other than the licensed premises, the licensee shall lodge the licence with the Board together with written notification of the proposed change specifying—
 - (a) the address of those other premises; and
 - 35 (b) the date on which the licensee proposes to commence operating the brothel or escort agency at those other premises;

no later than 28 days before that date.

Penalty: \$500.

(3) On receiving a notification under subsection (1), the Board shall amend the licence accordingly and return it to the licensee.

- 5 (4) On receiving a notification under subsection (2), the Board shall amend the licence accordingly if satisfied that the premises specified in the notification are on land to which section 8A of the *City Area Leases Act 1936* applies and the Board shall, in any event, return the licence to the licensee.

10 **Surrender of licence**

19. (1) A licensee may surrender the licence by giving written notice of surrender to the Board.

- 15 (2) The surrender of a licence takes effect on the date the notice of surrender is given, or on such later date as may be specified in the notice for that purpose.

Renewal of licence

20. (1) An application for the renewal of a licence shall be in writing signed by the licensee.

- 20 (2) On application for the renewal of a licence, the Board shall, if satisfied with respect to the matters referred to in paragraphs 16 (1) (a) and (b) and that the determined fee has been paid, renew the licence for a period of 12 months commencing on the day on which, but for its renewal, the licence would have expired.

Return of licence to Board

- 25 21. Upon ceasing to be a licensee, a person shall not, without reasonable excuse, fail to return his or her licence to the Board.

Penalty: \$1,000.

Cancellation of licence

22. The Board may cancel a licence if—

- 30 (a) the licensee is convicted of an offence under the law of the Territory or of a State or another Territory punishable by imprisonment for 3 years or more; or
- (b) the Board believes on reasonable grounds that the licensee—
- 35 (i) has employed a prostitute who is an illegal entrant within the meaning of the *Migration Act 1958* of the Commonwealth; or

- (ii) has committed an offence against this Act or the regulations.

Register of Brothels and Escort Agencies

5 23. (1) The Board shall cause to be kept a register, to be known as the Register of Brothels and Escort Agencies.

(2) The Board shall enter in the register, with respect to each licence granted, the particulars specified in the licence.

(3) A person may, upon payment of the determined fee, inspect the register.

10 PART IV—OFFENCES

Duress

24. (1) A person shall not, for the purpose of inducing a person to provide or to continue to provide commercial sexual services—

- 15 (a) intimidate, assault or threaten to assault any person;
(b) supply or offer to supply a drug of dependence to any person; or
(c) make a false representation or otherwise act fraudulently.
- (2) A person shall not—
(a) intimidate, assault or threaten to assault a person; or
(b) supply or offer to supply a drug of dependence to a person;
- 20 for the purpose of inducing any person to provide or continue to provide him or her with payment derived, directly or indirectly, from the provision of commercial sexual services.

Penalty: Imprisonment for 6 years.

Use of premises

- 25 25. The owner or occupier of premises shall not—
(a) knowingly permit those premises to be used as a brothel or escort agency; or
(b) lease those premises knowing that the premises are to be used as a brothel or escort agency;
- 30 if a licence is not in force in respect of those premises.

Penalty: \$10,000 or imprisonment for 12 months.

Unlicensed premises

26. (1) A person shall not operate a brothel or escort agency in respect of which no licence is in force.

Penalty: \$10,000 or imprisonment for 12 months.

5 (2) A person shall not provide commercial sexual services in a brothel or escort agency in respect of which no licence is in force.

Penalty (for an offence against subsection (2)): \$1,000.

Living off earnings

10 27. A person shall not live wholly or in part on the proceeds of commercial sexual services provided at a brothel or escort agency in respect of which no licence is in force.

Penalty: Imprisonment for 6 months.

Excess prostitutes

15 28. Where the number of prostitutes employed at licensed premises exceeds the maximum number authorised by the licence, then, for the purposes of subsection 26 (1) and section 27, no licence shall be taken to be in force in respect of those premises.

Soliciting

20 29. (1) A person shall not, for the purpose of offering or procuring commercial sexual services, accost any person, or solicit or loiter, in a public place.

Penalty: \$2,000 or imprisonment for 4 months.

(2) A person shall not, for the purpose of offering or procuring commercial sexual services, accost a child in a public place.

25 Penalty: Imprisonment for 3 years.

Participation of minors

30 30. A person shall not cause or permit a child to provide commercial sexual services.

Penalty: Imprisonment for 7 years.

Proceeds of child prostitution

31. (1) A person shall not receive a payment that he or she knows, or could reasonably be expected to have known, is derived, directly or indirectly, from commercial sexual services provided by a child.

Penalty: Imprisonment for 7 years.

(2) Subsection (1) does not apply in relation to a payment received in the ordinary course of a business other than prostitution.

Age of child—burden of proof

5 32. A person is not guilty of an offence against subsection 29 (2), section 30 or subsection 31 (1) if he or she adduces evidence that he or she—

- (a) had taken all reasonable measures to find out the age of the child concerned; and
- 10 (b) believed on reasonable grounds that the child had attained 18 years of age;

and that evidence is not rebutted by the prosecution.

Child on premises

33. A licensee shall not, without reasonable excuse, permit a child to be on the licensed premises.

15 Penalty: \$2,000.

Display of identifying notice

34. A licensee shall ensure that a notice identifying the licensee is displayed conspicuously on the licensed premises.

Penalty: \$500.

20 **Advertising**

35. A person shall not publish, or cause to be published, an advertisement, in printed or electronic form, which offers employment as a prostitute, or the provision of sexual services, at licensed premises.

Penalty: \$2,000.

25 **Infected persons**

36. (1) A licensee shall not permit a prostitute infected with a sexually transmitted disease to provide commercial sexual services at the licensed premises.

Penalty: \$2,000.

30 (2) A prostitute shall not provide commercial sexual services if he or she knows, or could reasonably be expected to have known, that he or she is infected with a sexually transmitted disease.

Penalty: \$2,000.

(3) It is a defence to a prosecution under subsection (1) if it is established that, at the time of the offence, the licensee believed on reasonable grounds—

5 (a) that the prostitute had been undergoing regular medical examinations for the purpose of determining whether the prostitute was infected with a sexually transmitted disease; and

(b) that the prostitute was not infected with a sexually transmitted disease.

(4) In paragraph (3) (a)—

10 “regular” means not less frequently than once in any two-week period.

Medical examination

37. (1) A licensee shall take reasonable steps to ensure that the fact of a prostitute's attendance at a medical examination or the result of such an examination is not used for the purpose of inducing a person to believe that
15 the prostitute is not infected with a sexually transmitted disease.

(2) A person shall not, for the purpose of prostitution, use his or her attendance at a medical examination or the result of such an examination for the purpose of inducing a person to believe that he or she is not infected with a sexually transmitted disease.

20 Penalty: \$2,000.

Use of prophylactics

38. (1) A licensee shall take reasonable steps to ensure that no person provides or receives commercial sexual services at the licensed premises, being services which involve vaginal, oral or anal penetration by any means,
25 unless a prophylactic is used.

Penalty: \$5,000.

(2) A licensee shall not discourage the use of prophylactics on the licensed premises.

Penalty: \$7,500.

30 (3) No person shall provide or receive commercial sexual services at licensed premises, being services which involve vaginal, oral or anal penetration by any means, unless a prophylactic is used.

Penalty (for an offence against subsection (3)): \$5,000.

PART V—MISCELLANEOUS**Notice of decision**

39. (1) Where the Board makes a decision—

- (a) refusing to grant or renew a licence;
- 5 (b) cancelling a licence; or
- (c) refusing to amend a licence;

the Board shall, within 28 days of the decision, give notice in writing of the decision to the person whose interests are affected.

(2) A notice under subsection (1) shall—

- 10 (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and
- 15 (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

(3) The validity of a decision referred to in subsection (1) shall not be taken to have been affected by a failure to comply with subsection (2).

20 **Review by Tribunal**

40. Application may be made to the Tribunal for a review of a decision referred to in section 39.

Power of Minister to determine fees

- 25 41. The Minister may, by notice in writing, determine fees for the purposes of this Act.

Regulations

42. (1) The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- 30 (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision in relation to—

- 5
- (a) the powers of the Board for the purpose of giving effect to this Act or the regulations;
- (b) the cleanliness of licensed premises;
- (c) the provision, use and laundering of towels and other items of linen;
- (d) hygiene standards for swimming pools, spa baths and sexual aids used in licensed premises;
- (e) provision of, and hygiene standards for, showers, washing and toilet facilities on licensed premises;
- 10
- (f) the disposal of prophylactics used on licensed premises;
- (g) the inspection of licensed premises for the purposes of ensuring compliance with this Act and the regulations;
- (h) the provision of information relating to sexually transmitted diseases to prostitutes employed at licensed premises and to clients;
- 15
- (i) safeguarding the health of clients and of prostitutes employed at licensed premises;
- (j) the provision of assistance to prostitutes in gaining access to job retraining, job skills improvement schemes and further education;
- 20
- (k) the size, form and content of advertisements relating to licensed premises; and
- (l) prescribing penalties not exceeding \$1,000 for offences against the regulations.