



AUSTRALIAN CAPITAL TERRITORY

Prostitution Act 1992

No. 64 of 1992

An Act to regulate certain aspects of prostitution

[Notified in ACT Gazette S 208: 1 December 1992]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Prostitution Act 1992*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) 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 provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

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

“brothel” means premises used or to be used for the purpose of prostitution, but does not include premises 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;

“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);

“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;

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

“operator” in relation to a brothel or escort agency, includes the owner and the person in day-to-day control of the brothel or escort agency;

“premises” includes a part of premises;

“premises used by one prostitute” means premises used by not more than one prostitute other than—

- (a) premises adjacent to or, in the case of town houses, units or apartments, in the same block as, other premises that are used for prostitution;
- (b) premises the provision of commercial sexual services at which is arranged by a person (other than the prostitute) who arranges clients for other prostitutes; or
- (c) premises to which clients are referred by other prostitutes, or from which clients are referred to other prostitutes;

“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;

“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);

“sexual services” means—

- (a) an act of sexual intercourse as defined in section 92 of the *Crimes Act 1900*;
- (b) the masturbation of one person by another; or
- (c) any activity which involves the use of one person by another for his or her sexual gratification;

“sexually transmitted disease” means—

- (a) a sexually transmitted disease within the meaning of the *Sexually Transmitted Diseases Act 1956*; or
- (b) the acquired immune deficiency syndrome in any of its stages, including infection with human immuno-deficiency virus.

(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.

Objects

4. The objects of the Act are as follows:

- (a) to safeguard public health;
- (b) to promote the welfare and occupational health and safety of prostitutes;
- (c) to protect the social and physical environment of the community by controlling the location of brothels;
- (d) to protect children from exploitation in relation to prostitution.

PART II—REGISTRATION

Registrar

5. The Minister may, by instrument, appoint a person who is a public servant to be the Registrar of Brothels and Escort Agencies.

Functions of Registrar

6. (1) The functions of the Registrar are—

- (a) to maintain a register of information provided under subsection 7 (1); and
- (b) subject to subsection (2)—to make the information available for public inspection.

(2) The Registrar shall not make available for public inspection information relating to the address of premises used by one prostitute if the prostitute normally resides on those premises.

(3) Subsection (2) does not prevent inspection of information relating to the address of the premises by—

- (a) a police officer;
- (b) a public servant;
- (c) a prescribed person; or
- (d) a person in a prescribed class of persons;

if the Registrar is satisfied that the person wishes to inspect information relating to the address in order to perform the functions of the person's office.

Notice of commencement

7. (1) The operator of a brothel or escort agency shall not, without reasonable excuse, fail to give written notice to the Registrar of Brothels and Escort Agencies, within 7 days after—

- (a) the date of commencing operations; or
- (b) the date of commencement of this section;

whichever is later.

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

- (a) contain the following particulars with respect to the brothel or escort agency:
 - (i) its business name (if any) and address;
 - (ii) the name and residential address of the person in day-to-day control of the business;
 - (iii) if the owner is a natural person—his or her name and residential address;

- (iv) if the owner is a corporation—
 - (A) its name and business address; and
 - (B) the name and residential address of each director and each shareholder; and
- (b) be accompanied by the determined fee.

(3) Where particulars provided in a notice given under subsection (1) become inaccurate, the owner of a brothel or escort agency shall not, without reasonable excuse, fail to give written notice to the Registrar of Brothels and Escort Agencies of the change in particulars within 7 days after the date on which the particulars become inaccurate.

(4) A person shall not, without reasonable excuse, provide false or misleading information in a notice under subsection (1) or (3).

Penalty:

- (a) in the case of a natural person—\$10,000 or imprisonment for 2 years;
- (b) in the case of a corporation—\$50,000.

PART III—OFFENCES

Duress

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

- (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;

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.

Operating a brothel

9. (1) A person shall not operate a brothel except in a prescribed location.

Penalty:

- (a) in the case of a natural person—\$10,000 or imprisonment for 12 months;
- (b) in the case of a corporation—\$50,000.

(2) Subsection (1) does not apply to an escort agency or premises used by one prostitute.

Soliciting

10. (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.

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

Penalty: Imprisonment for 3 years.

Participation of minors

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

Penalty: Imprisonment for 7 years.

Proceeds of child prostitution

12. (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

13. It is a defence to a prosecution under subsection 10 (2) or section 11 if it is established that the defendant—

- (a) took reasonable steps to ascertain the age of the child concerned; and

- (b) believed on reasonable grounds that the child had attained 18 years of age.

Child on premises

14. The operator of a brothel or escort agency shall not, without reasonable excuse, permit a child to be on the premises.

Penalty: \$2,000.

Infected persons

15. The operator of a brothel or escort agency shall take reasonable steps to ensure that a prostitute does not provide commercial sexual services at the brothel or from the escort agency if the prostitute is infected with a sexually transmitted disease.

Penalty:

- (a) in the case of a natural person—\$10,000 or imprisonment for 12 months;
- (b) in the case of a corporation—\$50,000.

Knowingly infecting

16. A person shall not, at a brothel or elsewhere, provide or receive commercial sexual services if the person knows, or could reasonably be expected to know, that he or she is infected with a sexually transmitted disease.

Penalty: \$5,000 or imprisonment for 6 months.

Medical examination

17. (1) The operator of a brothel or escort agency 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 the prostitute is not infected with a sexually transmitted disease.

Penalty: \$2,000.

(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.

Penalty: \$2,000.

(3) Subsections (1) and (2) do not preclude the use by the operator of a brothel or escort agency of an examination by a designated medical practitioner or the results of such an examination for the purpose of satisfying himself or herself that the prostitute is not infected with a sexually transmitted disease.

(4) In subsection (3)—

“designated medical practitioner” means a person registered as a medical practitioner under the *Medical Practitioners Registration Act 1930* and nominated in writing by the Medical Officer of Health for the purpose of this section.

Use of prophylactics

18. (1) The operator of a brothel or escort agency shall take reasonable steps to ensure that no person provides or receives commercial sexual services at the brothel or escort agency, being services which involve vaginal, oral or anal penetration by any means, unless a prophylactic is used.

Penalty: \$5,000.

(2) The operator or manager of a brothel shall not discourage the use of prophylactics at the brothel.

Penalty: \$7,500.

(3) A person shall not, at a brothel or elsewhere, provide or receive commercial sexual services that involve vaginal, oral or anal penetration by any means unless a prophylactic is used.

Penalty: \$5,000.

(4) A person shall not, at a brothel or elsewhere, while providing or receiving commercial sexual services that involve oral, anal or vaginal penetration—

- (a) misuse, damage or interfere with the efficacy of any prophylactic used; or
- (b) continue to use a prophylactic that he or she knows, or could reasonably be expected to know, is damaged.

Penalty (for an offence against subsection (4)): \$5,000.

PART IV—MISCELLANEOUS

Evidentiary certificate

19. (1) In proceedings for an offence against this Act, a certificate signed by the Registrar stating that on a specified date a specified brothel or escort agency was or was not registered under Part II is evidence of the matters so stated.

(2) For the purposes of subsection (1), a certificate that purports to be signed by the Registrar shall, unless the contrary is proved, be taken to have been so signed.

Entry by police

20. A police officer may enter a brothel or escort agency where the officer believes on reasonable grounds that—

- (a) an offence against section 11, 12 or 14 of this Act has been, is being or is likely to be committed on the premises; and
- (b) it is necessary to enter the premises for the purpose of preventing the commission or repetition of such an offence, investigating such an offence or apprehending an offender.

Fees

21. The Minister may, by notice in writing, determine fees for the purposes of this Act or the regulations.

Regulations

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

- (a) required or permitted by this Act to be prescribed; or
- (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—

- (a) the cleanliness of brothels;
- (b) the provision, use and laundering of towels and other items of linen;
- (c) hygiene standards for swimming pools, spa baths and sexual aids used in brothels;
- (d) provision of, and hygiene standards for, showers, washing and toilet facilities in brothels;

- (e) the disposal of prophylactics used in brothels;
- (f) the inspection of brothels and escort agencies for the purpose of ensuring compliance with this Act and the regulations;
- (g) the provision of information relating to sexually transmitted diseases to prostitutes employed at brothels or from escort agencies and to clients;
- (h) safeguarding the health of clients and of prostitutes employed at brothels and from escort agencies;
- (i) the provision of assistance to prostitutes in gaining access to job retraining, job skills improvement schemes and further education;
- (j) the size, form and content of advertisements relating to brothels and escort agencies; and
- (k) prescribing penalties not exceeding \$1,000 for offences against the regulations.

[Presentation speech made in Assembly on 8 April 1992]

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