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AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

PROSTITUTION BILL 1991

EXPLANATORY MEMORANDUM

Circulated by authority of Michael Moore, MLA

Presiding Member, Select Committee on HIV, Illegal Drugs and Prostitution

PROSTITUTION BILL 1991

Outline

The Prostitution Bill 1991 gives effect to the recommendations of the first interim report of the Select Committee on HIV, Illegal Drugs and Prostitution entitled *Prostitution in the ACT*. The purpose of the Bill is to control the activity of prostitution by decriminalisation and regulation.

The Bill establishes a Brothel and Escort Agency Licensing Board with the power to grant, renew and, where appropriate, cancel licenses to operate a Brothel or Escort Agency. In addition the Bill makes changes in the law with respect to the involvement of young people in prostitution and makes some changes with respect to the criminal law. The Bill also makes changes to the law in respect of public health and sexually transmitted diseases.

Financial implications

This Bill has no revenue/cost implications in the 1991-92 financial year.

PART I – PRELIMINARY

Short title and Commencement

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill and the commencement dates, which will be notified in the *Gazette*. Part IV of the Act is to commence no later than six months after the commencement of the rest of the Act. This is to allow for certain administrative arrangements to be put in place before the offences under the Act come into force.

Interpretation

Clause 3 provides an interpretation of certain terms used throughout the Bill.

Application of Act to escort agencies

Clause 4 ensures that the Bill applies to escort agencies and clearly defines their activities as the provision of commercial sexual services for the purposes of the Bill.

PART II – BROTHEL AND ESCORT AGENCY LICENSING BOARD

Establishment and membership

Clauses 5 and 6 establish the Brothel and Escort Agency Licensing Board and determine the number of members to be appointed. At least one of the Board must be a woman.

Term of appointment

Clause 7 provides for the appointment of members of the Board as part time members with a period of office not to exceed two years. A member of the Board is eligible to be reappointed for one further term only. That additional term need not, necessarily, be served consecutively.

Leave, disclosure of interest, resignation, termination, acting members

Clauses 8, 9, 10, 11 and 12 provide for members of the Board to be granted leave of absence, require a member to disclose any direct or indirect pecuniary interest in matters to be considered by the Board, provide for a member to resign from the Board, provide for the Minister to terminate the appointment of member, and provide for the Minister to appoint a person to act as Chairperson of the Board and to appoint other acting members.

Convening meetings and meeting procedure

Clauses 13 and 14 make provision for the convening of meetings of the Board and for the meeting procedures to be followed by the Board.

PART III – LICENCES

Application for licence

Clause 15 sets out the requirements necessary to make an application for the grant or renewal of a licence.

Grant of licence

Clause 16 gives the Board power to grant a licence for one year provided it is satisfied certain conditions are met; the applicant must be a natural person; must be at least 18 years old; and must be resident in the Territory. The clause restricts the operation of licensed premises to areas defined in the *City Area Leases Act 1936* as industrial, and requires the payment of a determined fee. It also specifies what information must be endorsed on the licence.

Licence classes

Clause 17 specifies that there are two classes of licence; a class 1 licence allowing for the employment of up to 10 prostitutes at the premises for which the licence is issued and a class 2 licence allowing for the employment of up to 40 prostitutes.

Change of address or premises

Clause 18 requires a licensee to notify the Board of any change of personal address by returning the licence to Board with a written notification of the change; a failure to do so carries a fine of \$500. The Board is required to amend the licence and return it to the licensee. The clause also requires a licensee to notify the Board if it is proposed to operate the brothel or escort agency at premises other than those which have been licensed, specifying the new address and the date on which the licensee proposes to start operating at the new premises; a failure to notify the Board at least 28 days prior to the move carries a fine of \$500. The Board, if satisfied that the site of the new premises conforms with paragraph 16 (1) (b), is required to amend the licence and return it to the licensee.

Surrender, renewal, return and cancellation of licence

Clauses 19, 20, 21 and 22 provide for the surrender, renewal, return and cancellation of licences. A licensee may at any time surrender the licence by notifying the Board in writing and returning the licence to the Board. A licensee may make application for the renewal of a licence and the Board, provided the conditions set out in paragraphs 16 (1) (a) and (b) are met, is required to renew the licence for one year. Where a licensee ceases to be a licensee the licence must be returned to the Board. The Board has power to cancel a licence if the licensee is convicted of an offence any where in Australia punishable by 3 years imprisonment or more. The Board may also cancel a licence if it believes the licensee is employing an illegal entrant as a prostitute or has committed an offence against the Act or the regulations.

Register of Brothels and Escort Agencies

Clause 23 provides for the Board to maintain a register containing the particulars specified in each of the licences granted. On payment of a determined fee a person may inspect the register.

PART IV – OFFENCES

Duress

Clause 24 makes it an offence to use duress on any person to induce them to provide or to continue to provide commercial sexual services, or to provide or to continue to provide payments derived from the provision of commercial sexual services. This clause constitutes a new offence and the penalty reflects to severity of the offence.

Use of premises

Clause 25 makes it an offence for the owner or occupier of premises to allow those premises to be used as an unlicensed brothel or escort agency, or to lease those premises knowing they are to be used as an unlicensed brothel or escort agency. This clause replaces sections 18, 19 and 19A of the *Police Offences Act 1930* which are repealed by the Prostitution (Consequential Amendments) Bill 1991.

Unlicensed premises

Clause 26 makes it an offence to operate a brothel or an escort agency without a licence and also makes it an offence for a person to provide commercial sexual services at an unlicensed brothel or escort agency.

Living off earnings

Clause 27 makes it an offence for a person to live wholly, or in part, on the proceeds of commercial sexual services that were provided at an unlicensed brothel or escort agency.

Excess prostitutes

Clause 28 makes provision for a license to be taken to be inoperative where, at licensed premises, the number of prostitutes employed exceeds the number authorised by the licence.

Soliciting

Clause 29 makes it an offence for any one, in a public place, to accost or solicit a person, or to loiter, for the purpose of offering or procuring commercial sexual services. The purpose of this clause is to make an offence both to seek or to offer commercial sexual services. The clause also constitutes a new offence of accosting a child for the purpose of offering or procuring commercial sexual services, and establishes a penalty of 3 years imprisonment.

Participation of minors

Clause 30 makes it an offence for anyone to cause or permit a child to provide commercial sexual services, and establishes a penalty of 7 years imprisonment. This clause replaces section 92N of the *Crimes Act, 1900* of NSW, as it applies in the Territory, which is repealed by the Prostitution (Consequential Amendments) Bill 1991.

Proceeds of child prostitution

Clause 31 constitutes a new offence of knowingly receiving payment which is derived, directly or indirectly, from child prostitution, and establishes a penalty of 7 years imprisonment. Subclause (2) exempts those payments received in the ordinary course of a business other than prostitution.

Age of child – burden of proof

Clause 32 makes provision for a person to bring forward evidence that all reasonable measures were taken to ascertain the age of the child and that reasonable grounds existed to believe the child was 18 years of age or more. This clause provides some protection to those who genuinely believed the person they were dealing with was not a child.

Child on premises

Clause 33 makes it an offence for a licensee to permit a child to be on the licensed premises without a reasonable excuse.

Display of identifying notice

Clause 34 requires a licensee to conspicuously display, on the licensed premises, a notice that identifies the licensee.

Advertising

Clause 35 prohibits the publishing, in printed or electronic form, of advertisements which offer employment as a prostitute, or the provision of commercial sexual services, at licensed premises.

Infected persons

Clause 36 constitutes a new offence prohibiting the provision of commercial sexual services by a prostitute infected with a sexually transmitted disease, and establishes a penalty of a fine of \$2,000. The licensee must not permit the provision of commercial sexual services by an infected prostitute and an infected prostitute must not provide commercial sexual services. Pursuant to subclause (3) it is a defence for a licensee to claim to have believed on reasonable grounds that the prostitute was undergoing regular medical examinations and was not infected. Subclause (4) defines "regular" as at least once in any two week period.

Medical examination

Clause 37 constitutes a new offence prohibiting the use of attendance at medical examinations, or the results of those examinations, to induce a person to believe a prostitute is not infected with a sexually transmitted disease, and establishes a penalty of a fine of \$2,000. Subclause (1) requires the licensee to take reasonable steps to ensure this does not happen, and subclause (2) proscribes anyone, for the purposes of prostitution, from using attendance at medical examinations, or the results of those examinations, to induce another person to believe they are not infected with a sexually transmitted disease.

Use of prophylactics

Clause 38 constitutes three new offences relating to the use of prophylactics during the provision of commercial sexual services, and establishes penalties of fines ranging from \$5,000 to \$7,500.

Subclause (1) requires the licensee to take reasonable steps to ensure that during the provision of commercial sexual services involving vaginal, oral or anal penetration a prophylactic is used, and establishes a penalty of a fine of \$5,000.

Subclause (2) prohibits the licensee from discouraging the use of prophylactics on the licensed premises, and establishes a penalty of a fine of \$7,500.

Subclause (3) makes it an offence for any person who provides or receives commercial sexual services, at licensed premises, not to use a prophylactic during

the provision of those services which involve vaginal, oral or anal penetration, and establishes a penalty of a fine of \$5,000.

PART V – MISCELLANEOUS

Notice of decision

Clause 39 requires the Board, having made a decision, to give written notice, to affected people, of its decision within 28 days of making the decision.

Review by Tribunal

Clause 40 make provision for people affected by a decision of the Board to seek a review of that decision by the Australian Capital Territory Administrative Appeals Tribunal.

Power of Minister to determine fees

Clause 41 enables the Minister to determine fees for this Act by notice in writing.

Regulations

Clause 42 enables the Executive to make regulations which are not inconsistent with this Act. Pursuant to subclause (2) the regulations may also make provision for the power of the Board; the cleanliness of licensed premises; the provision and laundering of linen and towels; the disposal of used prophylactics; hygiene standards for spas and sexual aids; shower, washing and toilet facilities; the inspection of premises; the provision of information about sexually transmitted diseases; safeguarding the health of people using licensed premises; assistance to prostitutes with access to job retraining; skills improvement and further education; and the advertising of licences premises.