

2002

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PROSTITUTION AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

Circulated by authority of
Jon Stanhope MLA
Attorney General
August 2002

Prostitution Amendment Bill 2002

Outline

The *Prostitution Act 1992* (the “principal Act”) establishes a regulatory framework for the prostitution industry in the Australian Capital Territory. It does this by:

- establishing a registration system for brothels and escort agencies;
- providing that brothels and escort agencies can be located in certain defined suburbs;
- creating certain offences in relation to the conduct of brothel and escort agency operators; and
- ensuring that sex workers in brothels undergo medical examinations.

The measures in this Bill are designed to improve the operation of the principal Act by addressing a number of concerns which have arisen in relation to the definition of “sexually transmitted disease”, confidentiality for private sex workers and the lack of regulatory power to prevent persons who have been convicted of particular offences from being involved in the industry. In particular, the Bill provides:

- an updated definition of “sexually transmitted disease”;
- the Registrar of Brothels and Escort Agencies must not make the names and addresses of sole operators available for public inspection;
- the operator of a brothel or escort agency is required to provide an annual notice to the registrar;
- a person who has been convicted of certain disqualifying offences may not be involved in the ownership or day to day operations of a commercial brothel or commercial escort agency; and
- a person who wishes to become an “interested person” in relation to a commercial brothel or commercial escort agency must provide a police report prior to registration of the brothel or escort agency.

This Bill is drafted on the basis that amendments to the principal Act that are contained in the Statute Law Amendment Bill 2002 introduced into the Legislative Assembly on 9 May 2002 will be made before the amendments contained in this Bill.

Revenue/Cost Implications

The Bill will impose no additional costs on the Territory in relation to regulation of the prostitution industry.

Prostitution Amendment Bill 2002

Notes on Clauses

Clause 1 Name of Act

This clause explains that the title of the Act is the *Prostitution Amendment Act 2002*.

Clause 2 Commencement

This clause provides that the Act will commence on a date to be fixed by the Minister.

Clause 3 Acts Amended

This clause explains that this Act amends the *Prostitution Act 1992*. Consequential changes will also be made to the *Sexually Transmitted Diseases Act 1956* and the *Spent Convictions Act 2000*.

Clause 4 Registration Part 2

This clause replaces the existing Part 2 of the principal Act to strengthen the regulatory aspects of the principal Act. The amended part inserts new sections 4A, 4B, 4C, 4D, 5, 6, 6A, 6B, 7, 7A, 7B and 7C.

Section 4A

Inserts new definitions of certain key words and phrases used in the new Part 2. The new definitions are: annual notice, commercial brothel, commercial escort agency, commercial operator, disqualifying offence, interested person, police report, registration notice, required police report, sole operator, sole operator brothel, sole operator escort agency and the operator.

Section 4B

Establishes the meaning of the term disqualifying offence. A disqualifying offence is relevant for the purposes of the offence in new section 7B. A disqualifying offence can be one of a number of serious criminal offences, including crimes against the person (particularly those relating to children), and offences relating to drug trafficking and money laundering.

Section 4C

Establishes the meaning of the term registration notice. The definition will apply to brothels and escort agencies, and to commercial brothels and commercial escort agencies. The section provides that a registration notice must contain details of a brothel or escort agency's business name and

address, the name and address of each person in day to day control of the business, the name and address of each individual owner of the business. If the owner is a corporation, the registration notice must contain the name and business address of the corporation and the name and address of each director and shareholder.

The section further provides that if the brothel or escort agency is a commercial brothel or commercial escort agency, the registration notice must include a statement about disqualifying offences for each interested person in relation to the brothel or escort agency.

New Section 4D

Establishes the meaning of the term annual notice. The definition will apply to brothels and escort agencies, and to commercial brothels and commercial escort agencies. The section provides that a registration notice must contain details of a brothel or escort agency's business name and address, the name and address of each person in day to day control of the business, the name and address of each individual owner of the business. If the owner is a corporation, the registration notice must contain the name and business address of the corporation and the name and address of each director and shareholder.

The section further provides that if the brothel or escort agency is a commercial brothel or commercial escort agency, the registration notice must include a statement about disqualifying offences for each interested person in relation to the brothel or escort agency.

New Section 5

This section establishes the position of Registrar of Brothels. It replaces existing section 5 of the principal Act.

New Section 6

This section defines the functions of the Registrar. The functions include keeping a register of information provided by operators of brothels and escort agencies. This section replaces existing section 6 of the principle Act.

New Section 6A

This section requires the Registrar to keep a register of information provided by operators of brothels and escort agencies. The Registrar is required to make the information collected available for public inspection. However, the Registrar must not make names and addresses of sole operators available for inspection other than to authorised persons. This section is designed to protect the confidentiality of sole operators who may operate lawfully from their homes and who may be unwilling to operate within the regulatory framework if their names and addresses are available for public inspection.

New Section 6B

This section requires the operator of a brothel or escort agency to provide a registration notice to the Registrar at least 7 days before the brothel or escort agency begins to operate.

If the operator is a commercial operator it must also provide a police report to the Registrar at least

7 days before the brothel or escort agency commences operation.

This provision is supported by new section 4C.

New Section 7

This section requires the operator of a brothel or escort agency to provide an annual notice to the Registrar at before 1 October each year.

This provision is supported by new section 4D.

New Section 7A

This section requires the operator of a brothel or escort agency to notify the Registrar of any change to the particulars in the last notice given to the Registrar within 7 days of those changes occurring.

The section also requires a person who was an operator of a brothel or escort agency that has ceased to operate to notify the Registrar of this fact within 7 days of ceasing to operate.

New Section 7B

This section provides that it is an offence for a person who has been convicted of a disqualifying to become an interested person in relation to a commercial brothel or commercial escort agency. In addition, an interested person who is convicted of a disqualifying offence must not continue to be an interested person in relation to a commercial brothel or commercial escort agency.

The section also imposes an obligation on other interested persons in relation to a commercial brothel or commercial escort agency to ensure that a person who has been convicted of a disqualifying offence does not continue to be, or become, an interested person.

New Section 7C

This section requires a person who wishes to become an interested person in relation to a commercial brothel or commercial escort agency to provide the Registrar with a police report at least 7 days before becoming an interested person.

**Clause 5 Operating a Brothel
Section 9**

Section 9 of the principal Act provides that a person shall not operate a brothel except in a prescribed location. This does not apply for escort agencies or premises used by one prostitute. This new section 9 amends this provision so that the offence applies to both operators and owners where a brothel breaches the location requirements.

**Clause 6 Child on premises
Section 14**

Section 14 of the principal Act provides that it is a criminal offence for an operator of a brothel or escort agency to permit a child to be on the premises. This clause replaces “operator” with “an operator or owner”.

**Clause 7 Infected persons
Section 15**

Section 15 of the principal Act provides that an operator of a brothel or escort agency is required to take reasonable steps to ensure that a prostitute does not work from premises while infected with a sexually transmitted disease. This clause replaces “operator” with “an operator or owner”.

**Clause 8 Medical examination
Section 17 (1)**

Section 17(1) of the principal Act provides that an operator of a brothel or escort agency is required to take reasonable steps to ensure that a prostitute’s attendance at a medical examination is not used to induce a person into believing that the prostitute does not suffer from a sexually transmitted disease. This clause replaces “operator” with “each operator and owner”.

**Clause 9 Medical examination
Section 17 (3)**

This clause removes the requirement for doctors to be nominated by the chief health officer for the purposes of this section. The requirement is no longer considered to be necessary.

As amended, this provision simply provides that an owner or operator of a brothel or escort agency is not prevented from using the examination of a doctor to satisfy himself/herself that a prostitute is not infected with a sexually transmitted disease.

Clause 10 Use of prophylactics
Section 18(1)

Section 18(1) of the principal Act requires an operator of a brothel or escort agency to take reasonable steps to ensure that no sexual services are provided without the use of prophylactics. This clause replaces “operator” with “each operator and owner”.

Clause 11 Use of prophylactics
Section 18(2)

Section 18(2) of the principal Act requires an operator of a brothel or escort agency not to discourage the use of prophylactics. This clause replaces “operator” with “each operator and owner”.

Clause 12 Evidentiary certificate
Section 19 (1)

This clause omits section 19(1) of the principal Act. Section 19(1) permits the use, in evidence, of a certificate signed by the Registrar stating that on a specified date, a specified brothel or escort agency was or was not registered. This provision is unnecessary as the matter is provided for in the *Evidence Act 1995* of the Commonwealth.

Clause 13 New sections 21A and 21B

This clause inserts two new sections in the principal Act.

New Section 21A

This section permits the Registrar to approve forms for the principal Act.

New Section 21B

This section creates an offence of providing false or misleading information in a notice or other document given to the Registrar. This section replaces existing section 7(7) of the principal Act.

Clause 14 New section 23

This section is a transitional provision to allow the operators of brothels and escort agencies at the time of commencement of the amended registration provisions 3 months to comply with the requirements to lodge registration notices, annual notices and police reports.

Clause 15 New schedules 1 to 3

The three new schedules set out the particular offences that are disqualifying offences under section 4B of the Act. Schedule 1 lists disqualifying offences under the *Crimes Act 1900*, schedule 2 lists disqualifying offences under the *Prostitution Act 1992*, and schedule 3 lists disqualifying offences for foreign countries.

Clauses 16 to 24 Dictionary, new definitions

These clauses insert new definitions for the purposes of the Act.

Clause 25 *Sexually Transmitted Diseases Act 1956*, section 4, definition of sexually transmitted disease

This clause amends the definition of “sexually transmitted disease” contained in the *Sexually Transmitted Diseases Act 1956*. This definition is cross referenced in the *Prostitution Act 1992*.

Clause 26 *Spent Convictions Act 2000*, new section 19 (7A)

This clause provides that section 16 of the *Spent Convictions Act 2000* does not apply to a notice or police report under the principal Act. The exclusion of section 16 of the *Spent Convictions Act* is to prevent interested persons from having a lawful excuse not to disclose all previous serious criminal offences. It is not considered appropriate for persons with past serious criminal offences, particularly if those offences relate to crimes against the person (especially those relating to children), drug trafficking and money laundering to be able to lawfully withhold their previous criminal convictions when applying for registration of a brothel or escort agency.

Clause 27 *Spent Convictions Act 2000*, section 19

This clause provides for section 19 of the *Spent Convictions Act 2000* to be renumbered when next republished under the *Legislation Act 2001*

**Schedule 1 Technical amendments –
Prostitution Act 1992**

Amendment 1.1

This amendment makes it clear that the penalty at the foot of section 8 applies to both subsections.

Amendment 1.2

This amendment amends the dictionary as a consequence of the use of new term “sole operator brothel”.

Amendment 1.3

This amendment provides for the principal Act to be renumbered.