



Australian Capital Territory

Prostitution Amendment Act 2002

Act 2002 No 35

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Australian Capital Territory

Prostitution Amendment Act 2002

Act 2002 No 35

An Act to amend the *Prostitution Act 1992*, and for other purposes

*Notified under the Legislation Act 2001 on 8 October 2002
(see www.legislation.act.gov.au)*

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

1 Name of Act

This Act is the *Prostitution Amendment Act 2002*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see *Legislation Act 2001*, s 79).

3 Acts amended

- (1) This Act (other than sections 25, 26 and 27) amends the *Prostitution Act 1992*.

Note The *Prostitution Act 1992* is amended in the body of this Act and in sch 1.

- (2) Section 25 amends the *Sexually Transmitted Diseases Act 1956*.

- (3) Sections 26 and 27 amend the *Spent Convictions Act 2000*.

**4 Registration
Part 2**

substitute

Part 2 Registration

Division 2.1 Interpretation

4A Definitions for pt 2

In this part:

annual notice—see section 4D.

commercial brothel means a brothel other than a sole operator brothel.

commercial escort agency means an escort agency other than a sole operator escort agency.

commercial operator means an operator of a commercial brothel or commercial escort agency.

disqualifying offence—see section 4B.

interested person, in relation to a commercial brothel or commercial escort agency, means any of the following:

- (a) each operator;
- (b) each owner who is an individual;
- (c) each director of an owner that is a corporation.

police report, for a person, is a report by a police officer about the person's criminal record made on a form that—

- (a) contains a consent by the person to a police officer making inquiries about the person's criminal record; and

- (b) contains imprints of the fingers and palms of both hands of the person.

Note If a form is approved under s 21A (Approved forms) for a police report, the form must be used.

registration notice—see section 4C.

required police report, in relation to a commercial brothel or commercial escort agency, means a police report for each interested person in relation to the brothel or escort agency.

sole operator means a prostitute who—

- (a) solely owns and operates the business of a sole operator brothel; or
- (b) solely owns and operates a sole operator escort agency.

sole operator brothel means a brothel—

- (a) the premises of which are premises used by a single prostitute; and
- (b) the business of which is solely owned and operated by the single prostitute.

sole operator escort agency means an escort agency solely owned and operated by a single prostitute.

the operator, of a commercial brothel or commercial escort agency—

- (a) if there is only 1 operator of the brothel or escort agency—the operator; or
- (b) if there are 2 or more operators of the brothel or escort agency—each operator.

4B Meaning of *disqualifying offence*

- (1) In this part:

disqualifying offence means—

-
- (a) an offence against any of the following:
- (i) a provision of the *Crimes Act 1900* mentioned in schedule 1;
 - (ii) a provision of this Act mentioned in schedule 2;
 - (iii) the *Proceeds of Crime Act 1991*, section 74 (Money laundering);
 - (iv) the *Drugs of Dependence Act 1989*, section 164 (about sale or supply of a drug of dependence or a prohibited substance (other than cannabis));
 - (v) the *Drugs of Dependence Act 1989*, section 165 (about sale or supply of cannabis); or

Note A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1900*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

- (b) an offence against a law of the Commonwealth, a State or another Territory corresponding to an offence mentioned in paragraph (a); or
- (c) an offence against a law of the Commonwealth, a State or another Territory corresponding to a provision of the *Crimes Act 1900*, part 9 in relation to an offence mentioned in paragraph (a); or
- (d) an offence against the *Migration Act 1958* (Cwlth), section 232A (Organising bringing groups of non-citizens into Australia), section 233 (1) (about bringing etc non-citizens into Australia in contravention of the Act) or section 233A (Other offences relating to groups of non-citizens etc); or
- (e) an offence against a Commonwealth law corresponding to a provision of the *Crimes Act 1900*, part 9 in relation to an offence mentioned in paragraph (d); or

- (f) an offence against a law of a foreign country of a kind mentioned in schedule 3.
- (2) To remove any doubt, this section applies to offences committed before or after the commencement of this section.

4C Meaning of *registration notice*

- (1) In this part:

registration notice, in relation to a brothel or escort agency, means a written notice containing the following particulars in relation to the brothel or escort agency:

- (a) its business name (if any) and address;
- (b) the name and home address of each person in day-to-day control of the brothel or escort agency;
- (c) if the owner (or an owner) of the brothel or escort agency is an individual—the name and home address of each individual who is an owner;
- (d) if the owner (or an owner) of the brothel or escort agency is a corporation—the following for each corporation that is an owner:
 - (i) its name and business address;
 - (ii) the name and home address of each director and each shareholder.

Note 1 A fee may be determined under s 21 (Determination of fees) for a notice under this section.

Note 2 If a form is approved under s 21A (Approved forms) for a notice, the form must be used.

- (2) If the brothel or escort agency is a commercial brothel or commercial escort agency, the registration notice must also state, for each interested person in relation to the brothel or escort agency, whether or not the person has been convicted, or found guilty, of a disqualifying offence.

4D Meaning of *annual notice*

(1) In this part:

annual notice, in relation to a brothel or escort agency, means a written notice containing the following particulars in relation to the brothel or escort agency:

- (a) its business name (if any) and address;
- (b) the name and home address of each person in day-to-day control of the brothel or escort agency;
- (c) if the owner (or an owner) of the brothel or escort agency is an individual—the name and home address of each individual who is an owner;
- (d) if the owner (or an owner) of the brothel or escort agency is a corporation—the following for each corporation that is an owner:
 - (i) its name and business address;
 - (ii) the name and home address of each director and each shareholder.

Note 1 A fee may be determined under s 21 (Determination of fees) for a notice under this section.

Note 2 If a form is approved under s 21A (Approved forms) for a notice, the form must be used.

(2) If the brothel or escort agency is a commercial brothel or commercial escort agency, the annual notice must also state, for each interested person in relation to the brothel or escort agency, whether or not the person has been convicted, or found guilty, of a disqualifying offence.

Division 2.2 Registrar, register and notices

5 Registrar of Brothels and Escort Agencies

The chief executive must appoint a public servant as the Registrar of Brothels and Escort Agencies.

Note 1 For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see *Legislation Act 2001*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

6 Functions of registrar

The functions of the registrar are—

- (a) to keep a register of information provided by operators of brothels and escort agencies, and to make the register available for public inspection, in accordance with this Act; and
- (b) to exercise any other function given to the registrar under this Act or any other Territory law.

6A Register

- (1) The registrar must keep a register of information provided by operators of brothels and escort agencies in notices under this part.
- (2) Subsection (1) does not require the registrar to include or keep in the register information about a brothel or escort agency that has ceased to operate.
- (3) The registrar must make information in the register available for public inspection.
- (4) However, the registrar must not make the names or addresses of sole operators available for public inspection.
- (5) Subsection (4) does not prevent inspection of names or addresses of sole operators by an authorised person if the registrar is satisfied that

the person wishes to inspect them in the exercise of the person's functions.

(6) In this section:

authorised person means—

- (a) a police officer; or
- (b) a public servant; or
- (c) a person prescribed under the regulations.

6B Registration notice etc to be given to registrar

(1) The operator of a brothel or escort agency must not, without reasonable excuse, fail to give the registrar a registration notice for the brothel or escort agency and, if the operator is a commercial operator, the required police report at least 7 days before the brothel or escort agency begins to operate.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) If there are 2 or more operators of a commercial brothel or commercial escort agency, it is sufficient if 1 of them complies with subsection (1) in relation to the brothel or escort agency.

7 Annual notices

(1) The operator of a brothel or escort agency must not, without reasonable excuse, fail to give the registrar an annual notice for the brothel or escort agency before 1 October in each year.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) If there are 2 or more operators of a commercial brothel or commercial escort agency, it is sufficient if 1 of them complies with subsection (1) in relation to the brothel or escort agency in relation to a year.

7A Other notices to be given by operators and former operators

- (1) If any of the particulars in the notice (or last notice) given to the registrar under this part by the operator (or an operator) of a brothel or escort agency change, the operator must not, without reasonable excuse, fail to give written notice to the registrar of the new particulars within 7 days after the day the particulars change.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) If a brothel or escort agency ceases to operate, the person who was the operator immediately before it ceased to operate (a *former operator*) must not, without reasonable excuse, fail to give written notice to the registrar of the cessation within 7 days after the day of the cessation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) If there are 2 or more operators or former operators of a commercial brothel or commercial escort agency, it is sufficient if 1 of them complies with a requirement under this section in relation to the brothel or agency.

- (4) In this section:

particulars includes the statement required by section 4C (2) or 4D (2).

Division 2.3 Interested people—offences

7B Interested person—disqualifying offence

- (1) A person who has been convicted or found guilty of a disqualifying offence must not—
- (a) become an interested person in relation to a commercial brothel or commercial escort agency; or

- (b) continue to be an interested person in relation to a commercial brothel or commercial escort agency.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) Any other interested person (the *other interested person*) in relation to a commercial brothel or commercial escort agency commits an offence if—

- (a) an interested person mentioned in subsection (1) becomes, or continues to be, an interested person in relation to the brothel or escort agency; and
- (b) the other interested person knows that, or is reckless as to whether, a person who becomes, or continues to be, an interested person in relation to the brothel or escort agency is an interested person mentioned in subsection (1).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

7C Police report to be given before person becomes interested person

A person must not, without reasonable excuse, fail to give the registrar a police report for the person at least 7 days before the person becomes an interested person in relation to a brothel or escort agency.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**5 Operating a brothel
Section 9**

substitute

9 Brothels—other than in prescribed location

- (1) A person must not operate a brothel other than in a prescribed location.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) Each owner of a brothel that operates other than in a prescribed location commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) This section does not apply to an escort agency or premises used by a single prostitute.

**6 Child on premises
Section 14**

omit

The operator

substitute

An operator or owner

**7 Infected persons
Section 15**

omit

The operator

substitute

Each operator and owner

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

omit

The operator

substitute

Each operator and owner

9 Section 17 (3)

substitute

- (3) This section does not prevent the use by an operator or owner of a brothel or escort agency of an examination by a doctor, or the results of an examination by the doctor, to satisfy himself or herself that a prostitute is not infected with a sexually transmitted disease.

**10 Use of prophylactics
Section 18 (1)**

omit

The operator

substitute

Each operator and owner

11 Section 18 (2)

omit

The operator

substitute

An operator or owner

**12 Evidentiary certificate
Section 19**

omit

13 New sections 21A and 21B

insert

21A Approved forms

- (1) The registrar may, in writing, approve forms for this Act.

Note For other provisions about forms, see *Legislation Act 2001*, s 255.

- (2) If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

21B False or misleading information

A person must not, without reasonable excuse, in relation to a notice or any other document given to the registrar under this Act—

- (a) give information that the person knows is false or misleading in a material particular; or
- (b) omit anything without which the document is, to the person's knowledge, misleading in a material particular; or
- (c) fail to disclose a material fact of which the person has knowledge.

Maximum penalty: 50 penalty units.

14 New section 23

insert

23 Transitional—registration notices etc for existing commercial brothels and commercial escort agencies

- (1) This section applies to the operator of a commercial brothel or commercial escort agency if the brothel or escort agency—
 - (a) was operating before the commencement of this section; and

- (b) does not cease to operate within 3 months after the commencement.
- (2) Section 6B (Registration notice etc to be given to registrar) applies to the operator as if the brothel or escort agency had begun to operate 3 months after the commencement of this section.
- (3) This section expires on the expiry day.
- (4) In this section:

expiry day means the first day after the 6 month period beginning on the commencement of this section.

15 New schedules 1 to 3

insert

Schedule 1 Disqualifying offences—Crimes Act 1900

(see s 4B, def *disqualifying offence*, par (a) (i))

column 1 item	column 2 section	column 3 description
1	12	murder
2	19	intentionally inflicting grievous bodily harm
3	20	recklessly inflicting grievous bodily harm
4	22	assault with intent to commit certain indictable offences
5	32 (1) (a)	make demand with threat to kill or inflict grievous bodily harm
6	32 (2) (a)	make demand with threat to endanger health etc
7	35	stalking
8	36	torture
9	38	kidnapping
10	51	sexual assault in the first degree
11	52	sexual assault in the second degree
12	53	sexual assault in the third degree
13	54	sexual intercourse without consent

column 1	column 2	column 3
item	section	description
14	55	sexual intercourse with young person
15	57	act of indecency in the first degree
16	58	act of indecency in the second degree
17	59	act of indecency in the third degree
18	60	act of indecency without consent
19	61	acts of indecency with young people
20	62	incest and similar offences
21	63	abduction
22	64	employment of young people for pornographic purposes
23	65	possession of child pornography
24	79	sexual servitude offences
25	80	deceptive recruiting for sexual services

Schedule 2 Disqualifying offences—this Act

(see s 4B, def *disqualifying offence*, par (a) (ii))

column 1	column 2	column 3
item	section	description
1	8	duress used to induce person to provide commercial sexual services
2	9	brothel operating other than in prescribed location
3	10 (2)	accost a child for the purpose of offering or getting commercial sexual services
4	11	cause or permit child to provide commercial sexual services
5	12	receive proceeds of child prostitution
6	14	permit child on premises
7	15	obligations when prostitute infected with sexually transmitted disease

column 1	column 2	column 3
item	section	description
8	17	obligations in relation to medical examination of prostitute
9	18	obligations about use of prophylactics

Schedule 3 Disqualifying offences—foreign countries

(see s 4B, def *disqualifying offence*, par (f))

1 Kinds of offences

- (1) An offence that consists of or involves—
 - (a) murder; or
 - (b) torture, abduction or kidnapping; or
 - (c) sexual assault; or
 - (d) sexual servitude; or
 - (e) child pornography; or
 - (f) violence, intimidation or coercion related to prostitution; or
 - (g) causing serious physical harm to another person; or
 - (h) money laundering; or
 - (i) illegal immigration; or
 - (j) supplying illegal drugs.
- (2) An offence that consists of, or involves, in relation to an offence mentioned in subclause (1)—
 - (a) aiding and abetting the commission of the offence, or
 - (b) being an accessory after the fact; or
 - (c) attempting, inciting a person, or conspiring, to commit the offence.

16 Dictionary, new definitions

insert

annual notice, for part 2 (Registration)—see section 4D.

commercial brothel, for part 2 (Registration)—see section 4A.

commercial escort agency, for part 2 (Registration)—see section 4A.

commercial operator, for part 2 (Registration)—see section 4A.

disqualifying offence, for part 2 (Registration)—see section 4B.

17 Dictionary, definition of *employing*

substitute

employed—a prostitute is *employed* at a brothel or from an escort agency if the prostitute provides commercial sexual services at the brothel, or from the escort agency, under a contract of service or a contract for services.

18 Dictionary, new definition of *interested person*

insert

interested person, for part 2 (Registration)—see section 4A.

19 Dictionary, definition of *operator*

substitute

operator, of a brothel or escort agency, includes a person in day-to-day control of the brothel or escort agency.

20 Dictionary, new definition of *police report*

insert

police report, for part 2 (Registration)—see section 4A.

21 Dictionary, definition of *registrar*

substitute

registrar means the Registrar of Brothels and Escort Agencies under section 5.

22 Dictionary, new definitions

insert

registration notice, for part 2 (Registration)—see section 4C.

required police report, for part 2 (Registration)—see section 4A.

23 Dictionary, definition of *sexually transmitted disease*

substitute

sexually transmitted disease—see the *Sexually Transmitted Diseases Act 1956*, section 4 (Interpretation).

Note Under the *Sexually Transmitted Diseases Act 1956*, s 4 a ***sexually transmitted disease*** is chancroid, chlamydial disease, donovanosis, gonorrhoea, HIV/AIDS, lymphogranuloma venereum, syphilis or a disease prescribed by regulations under that Act.

24 Dictionary, new definitions

insert

sole operator, for part 2 (Registration)—see section 4A.

sole operator brothel, for part 2 (Registration)—see section 4A.

sole operator escort agency, for part 2 (Registration)—see section 4A.

the operator, for part 2 (Registration)—see section 4A.

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

substitute

sexually transmitted disease means—

- (a) chancroid, chlamydial disease, donovanosis, gonorrhoea, HIV/ AIDS, lymphogranuloma venereum or syphilis; or
- (b) a disease prescribed under the regulations.

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

insert

- (7A) Section 16 does not apply to a notice or police report under the *Prostitution Act 1992*, part 2 (Registration).

27 Spent Convictions Act 2000, section 19

renumber subsections when Act next republished under Legislation Act 2001

Schedule 1 Technical amendments

(see s 3)

[1.1] Section 8 (1), penalty

insert

Maximum penalty: imprisonment for 6 years.

Explanatory note

This amendment makes it clear that the penalty applies to both subsections (1) and (2), in line with current drafting practice.

[1.2] Dictionary, definition of *premises used by 1 prostitute*

omit

by 1 prostitute

substitute

by a single prostitute

Explanatory note

This amendment is consequential on the new definition of *sole operator brothel* for part 2 and the amendment of section 9.

[1.3] Prostitution Act—renumbering

renumber provisions when Act next republished under Legislation Act 2001

Explanatory note

Because of the substitution of part 2, the omission of section 19 and the insertion of new sections 21A and 21B, the provisions of the Act need to be renumbered.

Endnotes

Republications of amended laws

- 1 For the latest republication of amended laws, see www.legislation.act.gov.au.

Penalty units

- 2 The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

[Presentation speech made in Assembly on 29 August 2002]

I certify that the above is a true copy of the Prostitution Amendment Bill 2002 which was passed by the Legislative Assembly on 24 September 2002.

Clerk of the Legislative Assembly

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