

DRAFT BILL FOR PUBLIC COMMENT

**The Government proposes to introduce into Parliament
a Bill to make provisions about prostitution and for
related purposes.**

This draft Bill has been prepared for public comment but
it does not necessarily represent the Government's
settled position.

Prostitution Bill 2011

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**Schedule 1 — Offences relevant to
granting, renewing operator's or
manager's licence**

Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

Prostitution Bill 2011

**A draft for public comment of
A Bill for**

An Act —

- **to make provisions about prostitution and for related purposes;
and**
- **to repeal the *Prostitution Act 2000*, the *Prostitution Amendment Act 2008* and the *Prostitution (Restraining Orders) Regulations 2000*; and**
- **to amend certain other Acts as a consequence of the enactment of this Act.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Prostitution Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act, unless the contrary appears —

act as a prostitute means to take part, as a prostitute, in an act of prostitution;

act of prostitution means anything the doing of which amounts to prostitution;

CEO means the chief executive officer of the Department;

child means a person who is under 18 years of age;

client has the meaning given in section 4;

Commissioner means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

confidential police information means any information or document classified by the Commissioner as confidential under section 85(1);

Department means the department of the Public Service principally assisting the Minister in the administration of Part 6;

document includes any tape, disk or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

dwelling means a place or a part of a place that is ordinarily used for human habitation and it does not matter that it is from time to time uninhabited but —

- (a) a place is not a dwelling; and
- (b) a part of a place is not a dwelling,

merely because temporary or casual sleeping facilities are provided there;

in, in relation to a place, includes at or on the place;

-
- 1 **licence** means an operator’s licence, a manager’s licence or a
2 prostitute’s licence;
- 3 **licence holder** means the holder of a manager’s licence, an
4 operator’s licence or a prostitute’s licence;
- 5 **manage**, in relation to a prostitution business, means undertake
6 the immediate management, direction or control of the conduct
7 of the prostitution business;
- 8 **manager** means a person who manages a prostitution business;
- 9 **officer**, in relation to a proprietary company, means —
- 10 (a) a director or secretary of the company; or
- 11 (b) a person who exercises or exerts control or influence
12 over the company, or is in a position to do so; or
- 13 (c) a person who is a shareholder of the company;
- 14 **operate**, in relation to a prostitution business, means —
- 15 (a) whether alone or with others, own, operate or conduct
16 the prostitution business; or
- 17 (b) employ, engage, supervise or direct any person who
18 undertakes the immediate management, direction or
19 control of the conduct of the prostitution business; or
- 20 (c) employ, engage, supervise or direct any person who acts
21 as a prostitute in the prostitution business; or
- 22 (d) exercise or exert, or be in a position to exercise or exert,
23 control or substantial influence over the manner in
24 which the prostitution business is conducted;
- 25 **operator** means a person who operates a prostitution business;
- 26 **owner**, in relation to land, means each registered proprietor of
27 the land;
- 28 **place** means anywhere at all, and includes anywhere in or on
29 something that is moving or can move;
- 30 **prescribed** means prescribed by regulation;
- 31 **proprietary company** has the meaning given in the
32 *Corporations Act 2001* (Commonwealth) section 9;
- 33 **prostitute** has the meaning given in section 4;
- 34 **prostitution business** means a business involving one or more
35 persons taking part in, or being available to take part in, acts of
36 prostitution whether the acts of prostitution take place in the
37 place from which the business is conducted or elsewhere;

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1 *self-employed prostitute* means a person who solely owns,
2 operates and conducts a prostitution business in which —
3 (a) only that person takes part in acts of prostitution with
4 clients of the business; and
5 (b) that person has full control over his or her individual
6 earnings from taking part in acts of prostitution;
7 *work* includes to work under a contract of employment or a
8 contract for services.

9 **4. Prostitution**

10 When this Act refers to *prostitution* it means prostitution in
11 which payment is consideration for the sexual stimulation of a
12 person (the *client*) by means of physical contact between the
13 client and another person (the *prostitute*), or between either of
14 them and anything controlled by or emanating from the other,
15 and it is irrelevant whether payment is in money or any other
16 form.

17 **5. Delegation of CEO's functions**

- 18 (1) The CEO may delegate to a person any power or duty of the
19 CEO under another provision of this Act.
20 (2) The delegation must be in writing signed by the CEO.
21 (3) A person to whom a power or duty is delegated under this
22 section cannot delegate that power or duty.
23 (4) A person exercising or performing a power or duty that has been
24 delegated to the person under this section is to be taken to do so
25 in accordance with the terms of the delegation unless the
26 contrary is shown.
27 (5) Nothing in this section limits the ability of the CEO to perform
28 a function through an officer or agent.

29 **6. Delegation of Commissioner's functions**

- 30 (1) The Commissioner may delegate to a person any power or duty
31 of the Commissioner under another provision of this Act except
32 a function given by section 85(1), 118 or 141(7).
33 (2) The Commissioner may delegate the Commissioner's functions
34 under section 85(1) to a police officer of or above the rank of
35 Assistant Commissioner of Police.

- 1 (3) The Commissioner may delegate the Commissioner’s functions
2 under section 118 to a police officer of or above the rank of
3 Inspector.
- 4 (4) The delegation must be in writing signed by the Commissioner.
- 5 (5) A person to whom a power or duty is delegated under this
6 section cannot delegate that power or duty.
- 7 (6) A person exercising or performing a power or duty that has been
8 delegated to the person under this section is to be taken to do so
9 in accordance with the terms of the delegation unless the
10 contrary is shown.
- 11 (7) Nothing in this section limits the ability of the Commissioner to
12 perform a function through an officer or agent.

13 **7. Service etc. of documents**

14 If a provision of this Act requires that a notice or copy of an
15 order is to be given, served or sent the notice or copy of the
16 order may be given, served or sent in accordance with the
17 *Interpretation Act 1984* section 76.

1 **Part 2 — General provisions about prostitution**

2 **8. Term used: public place**

3 In this Part —

4 **public place** means —

- 5 (a) any place to which the public, or any section of the
6 public, have or are permitted to have access whether on
7 payment or otherwise; or
- 8 (b) a school, university or other place of education, other
9 than a part of it to which neither students nor the public
10 usually have access; or
- 11 (c) a privately owned place that is unoccupied or is
12 occupied by a person who is not an owner of the place
13 and does not have the authority of an owner.

14 **9. Seeking prostitute in or in view of or within hearing of**
15 **public place**

- 16 (1) A person must not, in or in the view or within hearing of a
17 public place, seek another person to act as a prostitute.
- 18 (2) A person who contravenes subsection (1) is guilty of a crime if
19 the person whom the offender seeks to act as a prostitute, or any
20 of them if there are more than one, is a child.
- 21 Penalty:
- 22 (a) for a simple offence, imprisonment for 2 years;
23 (b) for a crime, imprisonment for 7 years.
- 24 (3) For the purposes of subsection (1), a person (the *offender*) seeks
25 another person to act as a prostitute if the offender —
- 26 (a) invites or requests another person to act as a prostitute;
27 or
- 28 (b) loiters in or frequents a place for the purpose of, or with
29 the intention of —
- 30 (i) inviting or requesting another person to act as a
31 prostitute; or
- 32 (ii) receiving an invitation for another person to act
33 as a prostitute.
- 34 (4) It makes no difference —
- 35 (a) whether or not the offender is the prospective client; or

- 1 (b) whether or not a particular person is sought to act as a
2 prostitute; or
- 3 (c) whether the offender makes or intends to make the
4 invitation or request directly or through someone else to,
5 or intends to receive the invitation directly or through
6 someone else from, the person whom the offender seeks
7 to act as a prostitute.

8 **10. Seeking client in or in view or within hearing of public place**

- 9 (1) A person must not, in or in the view or within hearing of a
10 public place, seek another person to be a prostitute's client.
11 Penalty:
- 12 (a) if the person whom the offender seeks to be a
13 prostitute's client, or any of them if there are more
14 than one, is a child, imprisonment for 3 years;
- 15 (b) in any other case, imprisonment for one year.
- 16 (2) For the purposes of subsection (1), a person (the *offender*) seeks
17 another person to be a prostitute's client if the offender —
- 18 (a) invites or requests another person to be a prostitute's
19 client; or
- 20 (b) loiters in or frequents a place for the purpose of, or with
21 the intention of —
- 22 (i) inviting or requesting another person to be a
23 prostitute's client; or
- 24 (ii) receiving an invitation for another person to be a
25 prostitute's client.
- 26 (3) It makes no difference —
- 27 (a) whether or not the offender, or any particular person, is
28 the prospective prostitute; or
- 29 (b) whether or not a particular person is sought to be a
30 client; or
- 31 (c) whether the offender makes or intends to make the
32 invitation or request directly or through someone else to,
33 or intends to receive the invitation directly or through
34 someone else from, the person whom the offender seeks
35 to be a prostitute's client.

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1 **11. Seeking to induce person to act as prostitute**

- 2 (1) A person must not —
- 3 (a) assault or threaten to assault anyone; or
- 4 (b) intimidate anyone; or
- 5 (c) supply or offer to supply to anyone a prohibited drug as
- 6 defined in the *Misuse of Drugs Act 1981* section 3(1); or
- 7 (d) make a false representation or use any false pretence or
- 8 other fraudulent means; or
- 9 (e) use any power or authority arising out of —
- 10 (i) any occupational or vocational position held by
- 11 the person; or
- 12 (ii) any relationship existing, or that used to exist,
- 13 between the person and anyone;
- 14 or
- 15 (f) make an accusation or disclosure (whether true or
- 16 false) —
- 17 (i) of any offence committed by anyone; or
- 18 (ii) of any other misconduct that is likely to damage
- 19 seriously the reputation of anyone; or
- 20 (iii) that anyone is unlawfully in Australia;
- 21 or
- 22 (g) do anything else, or refrain from doing anything,
- 23 with the intention of inducing another person who is not a child
- 24 to act, or continue to act, as a prostitute or to surrender the
- 25 proceeds of acting as a prostitute.

- 26 (2) A person who contravenes subsection (1) is guilty of a crime.
- 27 Penalty: imprisonment for 10 years.
- 28 Summary conviction penalty: imprisonment for 3 years.

29 **12. Refusal to take part in act of prostitution**

- 30 (1) Despite anything in a contract to take part in an act of
- 31 prostitution, a person may, at any time, refuse to take part in, or
- 32 to continue to take part in, an act of prostitution.
- 33 (2) The fact that a person has entered into a contract to take part in
- 34 an act of prostitution does not of itself constitute consent for the
- 35 purposes of the criminal law if he or she does not consent, or
- 36 withdraws his or her consent, to taking part in a sexual act.

- 1 (3) Nothing in this section affects a right (if any) to rescind or
 2 cancel, or to recover damages for, a contract for taking part in
 3 an act of prostitution that is not undertaken.

4 **13. Persons not to be in prostitution business place unless**
 5 **licences of operator and manager, or self-employed**
 6 **prostitute, displayed**

7 A person must not enter or remain in a place from which the
 8 person knows or could be reasonably expected to know that a
 9 prostitution business is being conducted unless —

- 10 (a) the person knows, or it is reasonable for the person to
 11 assume, that each of section 17(1), (2) or (4), as is
 12 relevant to the case, is being complied with; or
 13 (b) the person has a lawful excuse for entering or remaining
 14 in the place.

15 Penalty:

- 16 (a) for a first offence, a fine of \$6 000;
 17 (b) for a second or subsequent offence, a fine of \$6 000
 18 or imprisonment for one year.

19 **14. Prohibition on acts of prostitution with person in sexual**
 20 **servitude**

21 (1) A person must not take part in an act of prostitution as a client if
 22 the prostitute is being compelled by another person to take part
 23 in the act of prostitution.

24 (2) A person who contravenes subsection (1) is guilty of a crime if
 25 the person knows or could be reasonably expected to know that
 26 the prostitute is being compelled to take part in the act of
 27 prostitution.

28 Penalty:

- 29 (a) for a simple offence, imprisonment for 2 years;
 30 (b) for a crime —
 31 (i) if the prostitute is a child or an incapable
 32 person, imprisonment for 20 years;
 33 (ii) otherwise, imprisonment for 14 years.

34 (3) In subsection (2) —

35 ***incapable person*** means a person who, because of intellectual
 36 disability, mental illness, brain damage or senility, is
 37 incapable —

- 38 (a) of understanding the nature and effect of an act of
 39 prostitution; or

s. 15

1 (b) of guarding himself or herself against sexual
2 exploitation.

3 **15. Promoting employment in prostitution industry**

4 A person must not publish or cause to be published a statement
5 that is intended or likely to induce a person to —

- 6 (a) seek work as, or act as, a prostitute; or
7 (b) seek work in any other capacity in a prostitution
8 business.

9 Penalty: a fine of \$50 000.

10 **16. Prohibition of certain sponsorships**

11 (1) In this section —

12 *sponsorship* includes —

- 13 (a) a scholarship, prize, gift or other like benefit; and
14 (b) any financial arrangement (other than a bona fide
15 contract of employment or a bona fide contract for
16 services) for directly promoting or publicising a person
17 or business as referred to in subsection (2)(a) or (b)
18 through any medium.

19 (2) A person must not, in this State, promote or publicise, or agree
20 to promote or publicise —

- 21 (a) any person as a prostitute; or
22 (b) any prostitution business,

23 under a contract, or an arrangement (whether or not legally
24 binding), under which a sponsorship is provided, or to be
25 provided, by another person.

26 Penalty: a fine of \$50 000.

27 (3) A person (whether inside or outside this State) must not provide,
28 or agree to provide, in this State a sponsorship under a contract
29 or arrangement of a kind referred to in subsection (2).

30 Penalty: a fine of \$50 000.

Part 3 — Conducting a prostitution business

17. Display of licence

(1) Each operator of a prostitution business that is being conducted from a place must ensure that the current licence of each operator of the business or a certified copy of the licence is displayed at the place —

(a) so that it is visible to a person on entering the place; and

(b) at all times during which the business is being conducted from the place, whether or not the, or any other, operator is at the place.

Penalty: a fine of \$12 000.

(2) A manager of a prostitution business that is being conducted from a place must ensure that the manager's current licence or a certified copy of the licence is displayed at the place when the manager is managing the business so that it is visible to a person on entering the place.

Penalty: a fine of \$12 000.

(3) Subsections (1) and (2) do not apply to a self-employed prostitute.

(4) A self-employed prostitute who conducts a prostitution business from a place mentioned in section 48(2) must ensure that his or her current prostitute's licence or a certified copy of the licence is displayed at the place when the person is conducting the business from the place so that it is visible to a person on entering the place.

Penalty: a fine of \$2 000.

(5) Subsection (4) applies whether or not another self-employed prostitute conducts a prostitution business from the same place.

(6) A person must not alter or deface a licence.

Penalty: a fine of \$12 000.

18. Operator limited to one prostitution business

A person must not operate more than one prostitution business from any place in this State at the same time.

Penalty:

(a) for a first offence, a fine of \$24 000;

s. 19

1 (b) for a second or subsequent offence, imprisonment for
2 3 years.

3 **19. Operator or manager must be present**

4 (1) A person who operates a prostitution business must ensure that
5 an operator of the business who is an individual, or a manager
6 of the business, is present at the place from which the business
7 is conducted at all times during which the place is open for
8 business.

9 Penalty:

10 (a) for a first offence, a fine of \$24 000;

11 (b) for a second or subsequent offence, imprisonment for
12 3 years.

13 (2) A person who manages a prostitution business must be at the
14 place from which the business is conducted at all times during
15 which the person is managing the business.

16 Penalty:

17 (a) for a first offence, a fine of \$24 000;

18 (b) for a second or subsequent offence, imprisonment for
19 3 years.

20 **20. Prostitute must be an employee or contractor and licensed**

21 A person who manages or operates a prostitution business must
22 ensure that a person (the *prostitute*) does not act as a prostitute
23 in the business unless —

24 (a) the prostitute has entered into a contract of service with,
25 or been engaged to work for the purposes of the business
26 under a contract for services by, a person who operates
27 the business; and

28 (b) whenever acting as a prostitute for the business, the
29 prostitute is acting in the course of his or her
30 employment or engagement under that contract; and

31 (c) the prostitute holds a current prostitute's licence.

32 Penalty: a fine of \$50 000.

33 **21. Manager not to act as prostitute on same shift**

34 (1) A person who holds a manager's licence and a prostitute's
35 licence must not manage a prostitution business during any
36 period in which the person takes part in, or is available to take
37 part in, an act of prostitution for the prostitution business.

38 Penalty: a fine of \$50 000.

1 (2) Subsection (1) does not apply to a self-employed prostitute.

2 **22. Prostitution business not to operate from licensed premises**

3 A person must not operate a prostitution business from licensed
4 premises as defined in the *Liquor Control Act 1988* section 3(1).

5 Penalty: a fine of \$50 000.

6 **23. Limit on number of prostitution businesses to be conducted
7 from a place**

8 A self-employed prostitute must not conduct his or her
9 prostitution business from a place if —

- 10 (a) a prostitution business other than that of another
11 self-employed prostitute is conducted from the place; or
12 (b) more than one other self-employed prostitute conducts a
13 prostitution business from the place.

14 Penalty: a fine of \$50 000.

15 **24. Advertising, signage restrictions**

16 (1) A person must not publish, or authorise the publication of, an
17 advertisement —

- 18 (a) for a prostitution business; or
19 (b) to the effect that a particular person is available to act as
20 a prostitute,

21 unless the advertisement is permitted under subsection (2) and
22 whichever of subsection (3) or (4) that applies in the case.

23 Penalty: a fine of \$50 000.

24 (2) An advertisement is permitted if it —

- 25 (a) appears on a webpage, in a directory or in the classified
26 advertisement section of a newspaper or periodical; and
27 (b) is in accordance with the regulations.

28 (3) An advertisement for a prostitution business other than that of a
29 self-employed prostitute is permitted if it displays the licence
30 number of an operator or a manager of the business.

31 (4) An advertisement for one or 2 self-employed prostitutes is
32 permitted if it displays the licence number of each
33 self-employed prostitute who is the subject of the advertisement.

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- 1 (5) The regulations may provide for the following matters —
- 2 (a) the content (whether statements, words or images) that
- 3 cannot be the subject of, or must be included in —
- 4 (i) advertisements mentioned in subsection (1); or
- 5 (ii) signs for prostitution businesses;
- 6 (b) the dimensions and colour of advertisements mentioned
- 7 in subsection (1) that appear in a directory or in the
- 8 classified advertisement section of a newspaper or
- 9 periodical;
- 10 (c) the location, display, dimensions and colour of, and
- 11 material constituting, signs for prostitution businesses;
- 12 (d) the colour of, and other means of attracting attention in
- 13 relation to, buildings in which prostitution businesses
- 14 are conducted.
- 15 (6) It is a defence to a charge of an offence under subsection (1) for
- 16 the accused to prove that he or she believed on reasonable
- 17 grounds that the advertisement that is the subject of the charge
- 18 was not, as is applicable in the case —
- 19 (a) for a prostitution business; or
- 20 (b) to the effect that a particular person is available to act as
- 21 a prostitute.
- 22 (7) Subsection (6) —
- 23 (a) applies to an accused who is alleged to have published
- 24 the advertisement that is the subject of the charge; but
- 25 (b) does not apply to an accused who is alleged to have
- 26 authorised the publication of the advertisement that is
- 27 the subject of the charge.

28 **25. Obligations of operators and managers as to information**

29 **about right of refusal**

30 A person who operates or manages a prostitution business must

31 display information prominently in any place from which the

32 business is conducted regarding the right of a prostitute to

33 refuse to take part in, or continue to take part in, an act of

34 prostitution.

35 Penalty: a fine of \$12 000.

1 **26. Refusal to work as prostitute does not affect entitlements**

2 (1) In this section —

3 *refuse* means refuse to take part in acts of prostitution in
4 general, rather than a refusal to take part in a particular act of
5 prostitution or at a particular time.

6 (2) A person’s entitlements under the *Workers’ Compensation and*
7 *Injury Management Act 1981* may not be lost or affected in any
8 way by his or her being capable of working as a prostitute if he
9 or she refuses to do, or to continue to do, that kind of work.

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1 **Part 4 — Minimising risk of acquiring, transmitting**
2 **sexually transmissible infections**

3 **27. Terms used**

4 In this Part —

5 ***bodily fluid*** means semen, vaginal secretions, saliva or blood;

6 ***sheath*** means a condom, dam or other physical barrier that —

7 (a) prevents the transmission of bodily fluid from one
8 person to another; and

9 (b) meets the prescribed standards (if any);

10 ***STI*** means a prescribed sexually transmissible infection or a
11 prescribed blood borne virus;

12 ***STI-risk contact*** means any of the following —

13 (a) direct contact between any part of the genital or anal
14 area of one person and any part of the genital or anal
15 area of another person;

16 (b) direct contact between the genital or anal area of one
17 person and the mouth area (including the lips or tongue)
18 of another person.

19 **28. Suitable sheath must be provided, used in certain acts of**
20 **prostitution**

21 (1) For the purposes of this section, a sheath is suitable for a
22 particular kind of STI-risk contact if it is designed to prevent the
23 bodily fluid of a person having that kind of contact from going
24 on to any part of the body of another person.

25 (2) A person must not take part in an act of prostitution that
26 involves a particular kind of STI-risk contact without using a
27 sheath that is suitable for that kind of contact.

28 Penalty: a fine of \$10 000.

29 (3) Each person who operates or manages a prostitution business
30 must ensure that there is issued, free of charge, to each
31 prostitute working for the business and each client a sheath that
32 is suitable for each particular kind of STI-risk contact that may
33 be involved in an act of prostitution that the prostitute and client
34 take part in.

35 Penalty: a fine of \$12 000.

1 (4) Each person who operates or manages a prostitution business
2 must take all reasonable steps to ensure that a prostitute working
3 for the business does not take part in an act of prostitution that
4 involves a particular kind of STI-risk contact unless the
5 prostitute uses a sheath that is a suitable for that kind of contact.
6 Penalty: a fine of \$12 000.

7 (5) Subsections (3) and (4) do not apply to a self-employed
8 prostitute.

9 **29. No representations as to STI infection status**

10 (1) A person must not, for the purpose of taking part in an act of
11 prostitution, state or imply that a medical examination of that
12 person means that he or she is not infected, or is not likely to be
13 infected, with an STI.

14 Penalty: a fine of \$10 000.

15 (2) A person who manages or operates a prostitution business must
16 not state or imply that a medical examination of a prostitute
17 working for the business means that the prostitute is not
18 infected, or is not likely to be infected, with an STI.

19 Penalty: a fine of \$12 000.

20 (3) Subsection (1) applies to a self-employed prostitute but
21 subsection (2) does not.

22 **30. Prohibition on certain acts of prostitution for persons with**
23 **STI**

24 (1) A person who has an STI must not take part in an act of
25 prostitution involving STI-risk contact.

26 Penalty:

27 (a) for a first offence, a fine of \$20 000;

28 (b) for a second or subsequent offence, imprisonment for
29 3 years.

30 (2) A person must not permit or encourage another person to act as
31 a prostitute and engage in an act of prostitution involving
32 STI-risk contact if the first-mentioned person knows, or could
33 reasonably be expected to know, that the other person has an
34 STI.

35 Penalty:

36 (a) for a first offence, a fine of \$20 000;

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Part 4 Minimising risk of acquiring, transmitting sexually transmissible infections

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1 (b) for a second or subsequent offence, imprisonment for
2 3 years.

3 (3) It is a defence to a charge of an offence under subsection (2) for
4 the accused to prove that he or she exercised all due diligence as
5 ought to have been exercised having regard to the nature of the
6 accused's functions in a prostitution business and to all the
7 circumstances to prevent a person whom the accused knows, or
8 could reasonably be expected to know, has an STI, from acting
9 as a prostitute in the prostitution business.

10 (4) For the purposes of subsection (1) and (2) it makes no
11 difference whether or not a sheath is used in the act of
12 prostitution involving STI-risk contact.

13 **31. Further minimising risk of STI acquisition, transmission**

14 (1) A person who takes part in an act of prostitution must take all
15 other reasonable steps to minimise the risk of acquiring or
16 transmitting an STI.

17 Penalty: a fine of \$10 000.

18 (2) Each person who manages or operates a prostitution business
19 must take all other reasonable steps to minimise the risk of a
20 prostitute working for the business, or in the case of a
21 self-employed prostitute, himself or herself, or a client of the
22 business acquiring or transmitting an STI.

23 Penalty:

24 (a) if the person is a self-employed prostitute, a fine of
25 \$10 000;

26 (b) otherwise, a fine of \$12 000.

27 **32. Obligations of operators and managers as to health**
28 **information**

29 (1) In this section —

30 **health information** means information —

31 (a) about minimising the risk of acquiring or transmitting
32 STIs and the treatment of STIs; and

33 (b) that has been provided or recommended by the
34 department of the Public Service principally assisting in
35 the administration of the *Health Act 1911* or an Act that
36 repeals and substantially replaces that Act.

- 1 (2) Each person who operates or manages a prostitution business —
2 (a) must take all reasonable steps to give health information
3 (whether oral or written) to clients of the business; and
4 (b) except in the case of a self-employed prostitute, must
5 take all reasonable steps to give health information
6 (whether oral or written) to prostitutes working for the
7 business; and
8 (c) must display health information prominently in any
9 place from which the business is conducted.
10 Penalty: a fine of \$10 000.
- 11 (3) Subsection (2)(c) does not apply to a self-employed prostitute
12 unless that person exercises, or is able to exercise, (whether
13 solely or in common with others) control over who is allowed to
14 be at the place from which the business is conducted.

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Part 5 — Children

33. Causing, permitting or seeking to induce child to act as prostitute

(1) A person must not cause or permit a child to act, or continue to act, as a prostitute.

(2) A person must not do anything with the intention of inducing a child to act, or continue to act, as a prostitute.

(3) A person who contravenes subsection (1) or (2) is guilty of a crime.

Penalty: imprisonment for 14 years.

34. Obtaining payment for prostitution by a child

(1) A person must not receive a payment, in money or any other form, knowing that it or any part of it has been derived, directly or indirectly, from a child taking part in an act of prostitution, whether as a prostitute or as a client.

(2) A person who contravenes subsection (1) is guilty of a crime.

Penalty: imprisonment for 14 years.

(3) It is a defence to a charge of an offence under subsection (1) for the accused to prove that the payment was received in the ordinary course of a business unrelated to prostitution.

35. Agreement for prostitution by a child

(1) A person must not enter into, or offer to enter into, an agreement under which a child is to act as a prostitute, whether for that person or anyone else.

(2) A person who contravenes subsection (1) is guilty of a crime.

Penalty: imprisonment for 14 years.

36. Prostitution in place where child present

(1) A person must not take part, whether as a prostitute or as a client, in an act of prostitution in a place where the person knows that a child is present.

Penalty:

(a) for a first offence, a fine of \$24 000;

(b) for a second or subsequent offence, imprisonment for 3 years.

1 (2) For the purposes of subsection (1), the place extends as far as
2 the limits up to which either a prostitute or a client taking part in
3 the act of prostitution exercises, or is able to exercise, control
4 over who is allowed to be there.

5 (3) It makes no difference whether control is, or is able to be,
6 exercised solely or in common with others.

7 **37. Allowing child to be in place involving prostitution**

8 A person must not allow a child to enter or remain in a place at
9 or from which the person knows or could be reasonably
10 expected to know —

11 (a) an act of prostitution is, or may be, taking place; or

12 (b) a prostitution business is being conducted.

13 Penalty:

14 (a) for a first offence, a fine of \$24 000;

15 (b) for a second or subsequent offence, imprisonment for
16 3 years.

17 **38. Obligations of prostitution business operators in relation to**
18 **children**

19 (1) A person who operates a prostitution business must ensure that
20 a child does not work as a prostitute for the business.

21 (2) A person who contravenes subsection (1) is guilty of a crime.

22 Penalty: imprisonment for 5 years.

23 Summary conviction penalty: imprisonment for 3 years.

24 (3) A person who manages or operates a prostitution business must
25 ensure that no child is present in a place at which an act of
26 prostitution is, or may be, taking place.

27 Penalty:

28 (a) for a first offence, a fine of \$24 000;

29 (b) for a second or subsequent offence, imprisonment for
30 3 years.

31 **39. Acting as a prostitute for a child**

32 A person must not act as a prostitute for a client who is a child.

33 Penalty: imprisonment for 9 months.

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- 1 **40. Child not to seek services of prostitute**
- 2 (1) A child must not seek another person to act as a prostitute.
- 3 Penalty: a fine of \$2 000.
- 4 (2) For the purposes of subsection (1), a child seeks another person
- 5 to act as a prostitute if the child —
- 6 (a) invites or requests another person to act as a prostitute;
- 7 or
- 8 (b) loiters in or frequents a place for the purpose of, or with
- 9 the intention of —
- 10 (i) inviting or requesting another person to act as a
- 11 prostitute; or
- 12 (ii) receiving an invitation for another person to act
- 13 as a prostitute.
- 14 (3) It makes no difference —
- 15 (a) whether or not the child is the prospective client; or
- 16 (b) whether or not a particular person is sought to act as a
- 17 prostitute; or
- 18 (c) whether the child makes or intends to make the
- 19 invitation or request directly or through someone else to,
- 20 or intends to receive the invitation directly or through
- 21 someone else from, the person whom the child seeks to
- 22 act as a prostitute.

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Part 6 — Licensing

Division 1 — Preliminary

41. Term used: responsible planning authority

In this Part —
responsible planning authority, in relation to a place, means the responsible planning authority, as defined in section 73, for the planning scheme, as defined in that section, that applies to the place.

Division 2 — Licences required for certain activities involving prostitution

42. Operators to be licensed

- (1) A person who is an individual must not operate a prostitution business unless he or she holds a current operator’s licence.
Penalty: a fine of \$50 000 or imprisonment for 3 years.
- (2) Subsection (1) does not apply to a self-employed prostitute.
- (3) A company must not operate a prostitution business unless —
 - (a) it is a proprietary company; and
 - (b) all of its shareholders are individuals; and
 - (c) at least one of its officers holds a current operator’s licence on behalf of the company.Penalty: a fine of \$250 000.

43. Managers to be licensed

- (1) A person must not manage a prostitution business unless he or she holds a current manager’s licence.
Penalty: a fine of \$50 000 or imprisonment for 3 years.
- (2) Subsection (1) does not apply to a self-employed prostitute.

44. Prostitutes to be licensed

- (1) A person who has reached 18 year of age must not act as a prostitute unless he or she holds a current prostitute’s licence.
Penalty: a fine of \$6 000.
- (2) A self-employed prostitute must not —
 - (a) operate his or her prostitution business from; or

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- 1 (b) take part in an act of prostitution at,
2 a place where the prostitute exercises, or is able to exercise,
3 (whether solely or in common with others) control over who is
4 allowed to be at the place unless the prostitute holds a current
5 prostitute's licence that allows the business to be conducted
6 from that place.
7 Penalty: a fine of \$6 000.

8 **45. Limitation on numbers of licences**

- 9 (1) The CEO may limit the number of each kind of licence that can
10 be issued whether generally or for a particular area of the State
11 or during a particular period.
12 (2) The regulations may provide for the following matters —
13 (a) the matters to which the CEO must have regard when
14 making a decision under subsection (1);
15 (b) the procedure for determining which persons are to be
16 issued licences if the number of eligible persons seeking
17 a licence exceeds the number of licences that can be
18 issued.

19 **Division 3 — Licence applications**

20 **46. Who may apply for a licence or renewal**

- 21 (1) An applicant for an operator's licence for a prostitution business
22 or for the renewal of an operator's licence for a prostitution
23 business must be an individual who is —
24 (a) an operator of the prostitution business; or
25 (b) an officer of a proprietary company that is an operator of
26 the prostitution business, the shareholders of which are
27 all individuals.
28 (2) An applicant for a manager's licence or for the renewal of a
29 manager's licence must be an individual.
30 (3) An applicant for a prostitute's licence or for the renewal of a
31 prostitute's licence must be an individual.

32 **47. Application for operator's or manager's licence or renewal**

- 33 (1) Subsection (2) applies to an application for any of the
34 following —
35 (a) an operator's licence for a prostitution business;

- 1 (b) the renewal of an operator’s licence for a prostitution
2 business;
- 3 (c) a manager’s licence;
- 4 (d) the renewal of a manager’s licence.
- 5 (2) An application must —
- 6 (a) be made to the CEO in a manner and form approved by
7 the CEO; and
- 8 (b) be accompanied by any document or information
9 specified in the form for either or both of the
10 following —
- 11 (i) verifying the applicant’s identity and age;
- 12 (ii) relating to any other matter referred to in
13 section 52;
- 14 and
- 15 (c) give details of the applicant’s residential and contact
16 addresses; and
- 17 (d) be accompanied by the prescribed fee (if any).
- 18 (3) An application for an operator’s licence for a prostitution
19 business must also —
- 20 (a) state the name and address of each other person with
21 whom the applicant will operate the prostitution
22 business; and
- 23 (b) state the address of the place from which the prostitution
24 business is proposed to be conducted; and
- 25 (c) be accompanied by evidence of the responsible planning
26 authority’s approval for the prostitution business to be
27 conducted from that place.

28 **48. Application for prostitute’s licence or renewal**

- 29 (1) An application for a prostitute’s licence or the renewal of a
30 prostitute’s licence must —
- 31 (a) be made to the CEO in a manner and form approved by
32 the CEO; and
- 33 (b) be accompanied by any document or information
34 specified in the form for either or both of the
35 following —
- 36 (i) verifying the applicant’s identity and age;
- 37 (ii) relating to any other matter referred to in
38 section 53;

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- 1 and
- 2 (c) be accompanied by the prescribed fee (if any).
- 3 (2) An application by a self-employed prostitute for a prostitute's
- 4 licence who proposes to conduct a prostitution business from a
- 5 place where the applicant exercises, or is able to exercise,
- 6 (whether solely or in common with others) control over who is
- 7 allowed to be at the place must also —
- 8 (a) state the address of the place; and
- 9 (b) state whether or not another self-employed prostitute
- 10 will conduct a prostitution business from the same place;
- 11 and
- 12 (c) be accompanied by evidence of the responsible planning
- 13 authority's approval for the prostitution business to be
- 14 conducted from the place.

15 **49. Taking of fingerprints and palm prints**

- 16 (1) In this section —
- 17 *applicant*, in the case of an application for an operator's licence
- 18 or the renewal of an operator's licence made by an officer of a
- 19 proprietary company, includes —
- 20 (a) each other applicant (if any); and
- 21 (b) each other person who is an officer of the company; and
- 22 (c) each other person about whom the CEO is notified
- 23 under section 67(1).
- 24 (2) The CEO may in writing require an applicant for a licence or
- 25 the renewal of a licence to attend a place and there have his or
- 26 her fingerprints and palm prints taken by —
- 27 (a) a police officer; or
- 28 (b) a person of a class specified in the regulations for the
- 29 purposes of this subsection.
- 30 (3) Subsection (2) does not apply to an applicant for a prostitute's
- 31 licence or the renewal of a prostitute's licence unless the CEO
- 32 reasonably suspects that a matter relating to the applicant's
- 33 identity has not been disclosed in the application.
- 34 (4) The CEO does not have to consider an application, or consider
- 35 it further, until there is compliance with each requirement under
- 36 subsection (2) relevant to the application.
- 37 (5) An application for the issue or renewal of a licence must set out
- 38 an election to be made by the applicant as to whether any

- 1 fingerprints and palm prints taken from the applicant under this
2 section, and any copy of them —
- 3 (a) can be kept by the Commissioner indefinitely; or
4 (b) must be dealt with in accordance with subsections (9)
5 and (10).
- 6 (6) The fingerprints and palm prints of an applicant who makes an
7 election referred to in subsection (5)(a) must be kept by the
8 Commissioner in accordance with that election and, unless the
9 applicant subsequently changes the election, subsections (9)
10 and (10) do not apply in respect of those prints or copies.
- 11 (7) Before making an election referred to in subsection (5) the
12 applicant must be informed as to the following matters —
- 13 (a) that the prints taken may be compared with or put in a
14 forensic database, as defined in the *Criminal*
15 *Investigation (Identifying People) Act 2002* section 61;
16 (b) that the prints taken may provide evidence that could be
17 used in court against the applicant;
18 (c) that the applicant may subsequently change an election
19 made under subsection (5) by notifying the
20 Commissioner;
21 (d) that the applicant may obtain legal advice before
22 deciding whether or not to have the prints taken and
23 making an election under subsection (5);
24 (e) such other matters as may be prescribed.
- 25 (8) The information in subsection (7) may be provided in writing.
- 26 (9) If an election is made under subsection (5)(b), then the
27 Commissioner must cause fingerprints and palm prints taken
28 under this section and any copy of them to be destroyed —
- 29 (a) if the relevant licence is not granted or renewed; or
30 (b) when the relevant licence ceases to have effect.
- 31 (10) If a review is available under section 142, the destruction of
32 fingerprints and palm prints under subsection (9) is not required
33 until —
- 34 (a) the time for applying for a review has expired; and
35 (b) if an application for a review is made, it has been
36 determined in a way that does not result in the issue or
37 continuation of the relevant licence.

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1 (11) If a person subsequently changes an election made under
2 subsection (5) and elects that prints taken must be dealt with in
3 accordance with subsections (9) and (10), and the time for
4 destroying the prints under those provisions has already passed,
5 the Commissioner must cause the prints and any copy of them
6 to be destroyed as soon as is practicable after the election is
7 changed.

8 **50. Further information relevant to application**

9 (1) An applicant for a licence or the renewal of a licence must
10 provide the CEO with any additional document or information
11 that the CEO requires, in any particular case, that is or could be
12 relevant to making a decision on the application.

13 (2) If the CEO requires under subsection (1) that an additional
14 document or information be provided, the CEO does not have to
15 consider the application, or consider it further, until the
16 applicant complies with the requirement.

17 **51. Report of Commissioner**

18 (1) The CEO must send to the Commissioner a copy of each
19 application for a report on the eligibility and suitability of the
20 applicant for a licence or the renewal of a licence.

21 (2) The Commissioner must provide a report to the CEO as soon as
22 practicable after receipt of the copy of the application or such
23 longer period as is agreed between the Commissioner and the
24 CEO.

25 **52. Issue, renewal of operator's or manager's licence**

26 (1) Subsection (2) applies to an application for any of the
27 following —

- 28 (a) an operator's licence for a prostitution business;
29 (b) the renewal of an operator's licence for a prostitution
30 business;
31 (c) a manager's licence;
32 (d) the renewal of a manager's licence.

33 (2) The CEO may issue a licence to, or renew the licence of, an
34 applicant if satisfied that the applicant —

- 35 (a) has complied with section 47; and
36 (b) is an individual who has reached 18 years of age; and

- 1 (c) is either an Australian citizen or is permanently resident
2 in Australia; and
- 3 (d) is ordinarily resident in Western Australia; and
- 4 (e) has no charge pending of an alleged offence under the
5 law of this State, the Commonwealth, another State or a
6 Territory that involves an act of violence against the
7 person or involves a victim who was a child or incapable
8 person; and
- 9 (f) has not been declared under the *Misuse of Drugs*
10 *Act 1981* section 32A to be a drug trafficker; and
- 11 (g) has not been found guilty of an offence —
12 (i) set out in Schedule 1; or
13 (ii) under the law of the Commonwealth, another
14 State or a Territory, that the CEO considers to be
15 substantially similar to an offence set out in
16 Schedule 1;
- 17 and
- 18 (h) has not been convicted, in this or another State or a
19 Territory, of any indictable offence, including an offence
20 under a law of the Commonwealth, any other State or a
21 Territory, that is triable by jury that the CEO considers
22 would make it inappropriate for the CEO to issue the
23 licence; and
- 24 (i) has not had a licence issued under this Act to the
25 applicant revoked within the period of 5 years before the
26 application is made; and
- 27 (j) is not the subject of a violence restraining order as
28 defined in the *Restraining Orders Act 1997* section 3;
29 and
- 30 (k) complies with any other prescribed matter.
- 31 (3) In subsection (2)(e) —
32 ***incapable person*** means a person who, because of intellectual
33 disability, mental illness, brain damage or senility, is
34 incapable —
- 35 (a) of understanding the nature of the act the subject of the
36 charge against the accused person; or
- 37 (b) of understanding the nature and effect of an act of
38 prostitution; or
- 39 (c) of guarding himself or herself against sexual
40 exploitation.

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- 1 (4) On an application for an operator’s licence for a prostitution
2 business the CEO may issue an operator’s licence if also
3 satisfied that —
- 4 (a) the responsible planning authority has given its approval
5 for the prostitution business to be conducted from the
6 place stated in the application under section 47(3)(b);
7 and
- 8 (b) the approval is in accordance with the provisions of
9 Division 8.
- 10 (5) On an application for an operator’s licence, or the renewal of an
11 operator’s licence for a prostitution business the CEO may issue
12 or renew the operator’s licence if also satisfied that the applicant
13 will not hold an operator’s licence for another prostitution
14 business or a manager’s licence during the currency of the
15 operator’s licence if issued or renewed.
- 16 (6) On an application for a manager’s licence, or the renewal of a
17 manager’s licence the CEO may issue or renew the manager’s
18 licence if also satisfied that the applicant will not hold an
19 operator’s licence during the currency of the manager’s licence
20 if issued or renewed.
- 21 (7) If an application for an operator’s licence or the renewal of an
22 operator’s licence is made by one or more officers of a
23 proprietary company on behalf of the company, the CEO may
24 issue a licence or renew the licence if satisfied, with respect to
25 each other person who is an officer of the company —
- 26 (a) of any matter referred to in this section of which the
27 CEO would need to be satisfied if that person were an
28 applicant; and
- 29 (b) that each of those persons who has been required under
30 section 49(2) to have his or her fingerprints or palm
31 prints taken has complied with the requirement.
- 32 (8) The CEO must not issue or renew a licence under this section
33 unless the CEO is satisfied as to each of the matters referred to
34 in this section that applies to the particular application.

35 **53. Issue, renewal of prostitute’s licence**

- 36 (1) The CEO may issue a prostitute’s licence to, or renew the
37 prostitute’s licence of, an applicant if satisfied that —
- 38 (a) the applicant has complied with section 48; and

- 1 (b) the applicant is an individual who has reached 18 years
2 of age; and
- 3 (c) the applicant is either an Australian citizen or is
4 permanently resident in Australia; and
- 5 (d) the applicant has not had a licence issued under this Act
6 to the applicant revoked within the period of 5 years
7 before the application is made; and
- 8 (e) the applicant complies with any other prescribed matter.
- 9 (2) On an application for a prostitute's licence by a self-employed
10 prostitute mentioned in section 48(2) the CEO may issue a
11 prostitute's licence if also satisfied that —
- 12 (a) the responsible planning authority has given its approval
13 for the prostitution business to be conducted from the
14 place stated in the application under section 48(2)(a);
15 and
- 16 (b) the approval is in accordance with the provisions of
17 Division 8.
- 18 (3) The CEO must not issue or renew a licence under this section
19 unless the CEO is satisfied as to each of the matters referred to
20 in this section that applies to the particular application.

21 **54. Reasons for refusal to issue, renew licence**

- 22 (1) The CEO must —
- 23 (a) record the grounds on which a decision to refuse to issue
24 or renew a licence is based, and the reasons for the
25 decision; and
- 26 (b) as soon as is practicable after making the decision, give
27 to the person to whom the decision relates written notice
28 of the decision, together with those grounds and reasons,
29 and the person's right of review under section 142.
- 30 (2) Nothing in subsection (1) requires or authorises the CEO to
31 disclose confidential police information.

32 **Division 4 — Licence conditions**

33 **55. Conditions generally**

- 34 (1) A licence is subject to —
- 35 (a) any conditions imposed by the CEO under section 60;
36 and
- 37 (b) any other conditions imposed under this Act.

1 (2) The regulations may provide for conditions of licences.

2 **56. Prescribed conditions about where acts of prostitution may**
3 **or may not take place**

4 (1) In this section —

5 ***approved place*** means —

- 6 (a) the place from which is conducted the prostitution
7 business that is the subject of an operator’s licence; or
8 (b) the place from which is conducted the prostitution
9 business that is the subject of the prostitute’s licence of a
10 self-employed prostitute mentioned in section 48(2); or
11 (c) a prescribed place or place in a prescribed class of
12 places.

13 (2) Without limiting section 55(2), the regulations may prescribe a
14 condition of a licence —

- 15 (a) that prohibits the holder of an operator’s licence or a
16 manager’s licence arranging for a prostitute who works
17 for the business that is the subject of the licence to take
18 part in an act of prostitution at a place that is not an
19 approved place; or
20 (b) that prohibits the holder of a prostitute’s licence taking
21 part in an act of prostitution at a place that is not an
22 approved place.

23 **57. Condition as to change of location of business**

24 (1) It is a condition of the licence of every operator and every
25 self-employed prostitute mentioned in section 48(2) that there
26 must be no change in the location of the place from which the
27 prostitution business is conducted without the approval of the
28 CEO.

29 (2) An application for the CEO’s approval under subsection (1)
30 must be accompanied by —

- 31 (a) evidence of the responsible planning authority’s
32 approval for the prostitution business to be conducted
33 from the new place; and
34 (b) the prescribed fee (if any).

- 1 (3) The CEO must not approve a change in the location of the place
2 from which the prostitution business is conducted unless the
3 CEO is satisfied that —
- 4 (a) the licence holder has the responsible planning
5 authority's approval for the prostitution business to be
6 conducted from the new place; and
- 7 (b) the approval is in accordance with the requirements of
8 Division 8; and
- 9 (c) it is otherwise appropriate to approve the change.

10 **58. Conditions as to size of business**

11 It is a condition of the licence of every operator and every
12 self-employed prostitute mentioned in section 48(2) that —

- 13 (a) the place from which the prostitution business is
14 conducted must not have more than 6 rooms in which
15 persons may take part in acts of prostitution; and
- 16 (b) no more than 9 persons act, or are available to act, as
17 prostitutes at the place at the same time; and
- 18 (c) no more than 13 staff comprising each operator present,
19 the manager, each person mentioned in paragraph (b),
20 and each other person who works for the business, are at
21 the place at the same time.

22 **59. Conditions as to records to be kept**

23 It is a condition of the licence of every operator other than a
24 self-employed prostitute that the operator must keep, for the
25 prescribed period, records of —

- 26 (a) the licence number of each prostitute who enters into a
27 contract of service with, or is engaged to work for the
28 purposes of the business under a contract for services
29 by, a person who operates the business; and
- 30 (b) the start and finish dates for each of those contracts.

31 **60. Conditions imposed by CEO**

- 32 (1) The CEO may impose conditions on a licence —
- 33 (a) when issuing or renewing the licence; or
- 34 (b) during the currency of the licence.
- 35 (2) The CEO may vary or revoke conditions imposed under this
36 section on the CEO's own initiative or on application of the
37 licence holder.

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- 1 (3) An application of a licence holder must be accompanied by the
2 prescribed fee (if any).
- 3 (4) Without affecting the generality of the CEO's discretion to
4 impose conditions under this section, the CEO may impose
5 conditions —
- 6 (a) which the CEO considers to be in the public interest; or
7 (b) which the CEO considers desirable in order to minimise
8 the offence, annoyance, disturbance or inconvenience
9 that might be caused to those who reside or work in the
10 vicinity of a place from which the prostitution business
11 is conducted, or to persons in or making their way to or
12 from a place of public worship, hospital or school, in
13 consequence of activities at the place or the conduct of
14 those making their way to or from the place.
- 15 (5) The imposition, variation or revocation of a condition during the
16 currency of the registration of a person does not take effect until
17 written notice, including reasons for the decision, and notice of
18 the person's right of review under section 142, has been given
19 to the person.
- 20 (6) Nothing in subsection (5) requires or authorises the CEO to
21 disclose confidential police information.

22 **61. Compliance with conditions**

- 23 (1) A person to whom a licence is issued must not contravene a
24 condition of the licence.
25 Penalty: a fine of \$50 000.
- 26 (2) Each officer of a proprietary company who holds an operator's
27 licence on behalf of the company must ensure that the
28 conditions of the licence are not contravened.
29 Penalty: a fine of \$50 000.

30 **Division 5 — Other matters about licences**

31 **62. Duration of licence**

- 32 (1) A licence may be issued or renewed for a period not exceeding
33 3 years.
- 34 (2) The duration of a licence must be stated in the licence.
- 35 (3) If a licence is renewed after, but within 28 days of, the day on
36 which it expired, the renewal is to be taken for all purposes to

1 have taken effect on the day immediately after the day on which
2 the licence expired.

3 **63. Licence not transferable**

4 A licence is not transferable.

5 **64. Register of licence holders**

6 (1) The CEO must keep an accurate and up to date register, in such
7 manner and form as the CEO determines, of all holders of —

- 8 (a) current and former operator’s licences; and
9 (b) current and former manager’s licences; and
10 (c) current prostitute’s licences.

11 (2) In respect of each licence holder mentioned in section 64(1)(a)
12 and (b) the CEO must record —

- 13 (a) the name of the licence holder; and
14 (b) the business address or other address of the licence
15 holder; and
16 (c) the conditions imposed under section 60 that are current;
17 and
18 (d) details of the suspension or revocation of a licence of the
19 licence holder under section 69; and
20 (e) such other information, if any, as is prescribed.

21 (3) In respect of each licence holder mentioned in section 64(1)(a)
22 the CEO must also record —

- 23 (a) the name and address of any other person with whom
24 the operator operates or operated the operator’s
25 prostitution business; and
26 (b) the address of the place from which the operator’s
27 prostitution business is or was conducted.

28 (4) In respect of each licence holder mentioned in section 64(1)(c)
29 the CEO must record —

- 30 (a) the name of the licence holder; and
31 (b) the conditions imposed under section 60 that are current;
32 and
33 (c) details of the suspension or revocation of a licence of the
34 licence holder under section 69; and

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- 1 (d) in the case of a self-employed prostitute mentioned in
2 section 48(2), the address of the place from which the
3 prostitute's prostitution business is conducted; and
4 (e) such other information, if any, as is prescribed.
- 5 (5) The CEO must cause to be removed from the register all the
6 details about the holder of a prostitute's licence that no longer
7 has effect as soon as practicable after the licence ceases to have
8 effect.

9 **65. Inspection of register**

- 10 (1) In this section —
11 *officer* means —
12 (a) a police officer; or
13 (b) a person of a class specified in the regulations for the
14 purposes of this definition.
- 15 (2) The register must be available for inspection by an officer
16 during normal office hours.
- 17 (3) The register may be made available electronically for inspection
18 by an officer.
- 19 (4) An officer may, on application to the CEO in respect of the
20 register or an entry in the register, and payment of the fee
21 prescribed by the regulations, if any, obtain a certified copy of
22 the register or the entry.
- 23 (5) No fee is payable under subsection (4) if the application is made
24 by a police officer for the purpose of performing a function of a
25 police officer under this Act.

26 **66. Licence document**

- 27 (1) A licence that is issued or renewed must contain prescribed
28 particulars.
- 29 (2) The CEO must give the licence holder a new licence if the CEO
30 renews a licence.
- 31 (3) The CEO may, on payment of the prescribed fee, if any, issue a
32 certified copy of a licence to the holder of the licence.
- 33 (4) If a licence is suspended or revoked the person who was the
34 holder of the licence must, as soon as practicable after the
35 suspension or revocation, return the licence document to the
36 CEO.
- 37 Penalty: a fine of \$6 000.

1 (5) Subsection (4) does not apply if the person has a reasonable
2 excuse.

3 **67. CEO to be notified of certain matters affecting licences**

4 (1) A person who holds an operator's licence must give the CEO
5 notice in writing of any notifiable matter as defined in
6 subsection (2) within 7 days after becoming aware of the matter.
7 Penalty: a fine of \$24 000 or imprisonment for 2 years.

8 (2) In subsection (1) —
9 **notifiable matter**, in relation to a prostitution business, means
10 any of the following —

11 (a) a charge of the commission of an offence under this Act
12 being made against —

13 (i) an operator or a manager of the business; or

14 (ii) a proprietary company that operates a
15 prostitution business or any officer of the
16 company;

17 (b) a charge of the commission of an indictable offence
18 being made against —

19 (i) an operator or a manager of the business; or

20 (ii) a proprietary company that operates a
21 prostitution business or any officer of the
22 company;

23 (c) if a proprietary company operates a prostitution
24 business, a person ceasing to be an officer of the
25 company or a person, not already an officer of the
26 company, becoming an officer of the company, and that
27 person's name and address;

28 (d) a change in the name or address of any of the operators
29 or officers of the business;

30 (e) the name and address of any person who joins the
31 business as an the operator or who exercises or exerts, or
32 is in a position to exercise or exert, control or substantial
33 influence over the manner in which the business is
34 conducted.

35 (3) A person who holds a manager's licence or a prostitute's licence
36 must give the CEO notice in writing of any notifiable matter as
37 defined in subsection (4) within 7 days after becoming aware of
38 the matter.

39 Penalty: a fine of \$24 000.

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- 1 (4) In subsection (3) —
- 2 *notifiable matter*, in relation to a licence holder, means any of
- 3 the following —
- 4 (a) a charge of the commission of an offence under this Act
- 5 being made against the licence holder;
- 6 (b) a charge of the commission of an indictable offence
- 7 being made against the licence holder;
- 8 (c) a change in the name or address of the licence holder.

9 **Division 6 — Suspension or revocation of licence**

10 **68. Powers of CEO**

- 11 (1) The CEO may for the purposes of determining whether or not a
- 12 licence should be suspended or revoked —
- 13 (a) require a person to produce to the CEO any document or
- 14 other thing concerning the determination that is in the
- 15 possession or under the control of the person; and
- 16 (b) inspect any document or other thing produced to the
- 17 CEO and retain it for such reasonable period as the CEO
- 18 thinks fit, and make copies of a document or any of its
- 19 contents; and
- 20 (c) require a person —
- 21 (i) to give the CEO such information as the CEO
- 22 requires; and
- 23 (ii) to answer any question put to that person,
- 24 in relation to the determination.
- 25 (2) A requirement made under subsection (1)(a) —
- 26 (a) must be made by notice in writing given to the person
- 27 required to produce the document or other thing; and
- 28 (b) must specify the time at or within which the document
- 29 or other thing must be produced; and
- 30 (c) may, by its terms, require that the document or other
- 31 thing required be produced at a place and by means
- 32 specified in the requirement; and
- 33 (d) where the document required is not in a readable format,
- 34 must be treated as a requirement to produce —
- 35 (i) the document itself; and
- 36 (ii) the contents of the document in a readable
- 37 format.

- 1 (3) A requirement made under subsection (1)(c) —
- 2 (a) may be made orally or by notice in writing served on the
- 3 person required to give information or answer a
- 4 question, as the case may be; and
- 5 (b) must specify the time at or within which the information
- 6 must be given or the question must be answered, as the
- 7 case may be; and
- 8 (c) may, by its terms, require that the information or answer
- 9 required —
- 10 (i) be given orally or in writing; or
- 11 (ii) be given at or sent or delivered to a place
- 12 specified in the requirement; or
- 13 (iii) in the case of written information or answers be
- 14 sent or delivered by means specified in the
- 15 requirement; or
- 16 (iv) be verified by statutory declaration.
- 17 (4) If under subsection (1)(a) the CEO requires a person to produce
- 18 any document or other thing concerning the determination that
- 19 is in the possession or under the control of the person, the CEO
- 20 must inform that person that the person is required under this
- 21 Act to produce the document or thing.
- 22 (5) If under subsection (1)(c) the CEO requires a person to give
- 23 information or answer a question, the CEO must inform that
- 24 person that the person is required under this Act to give the
- 25 information or answer the question.

26 **69. Suspension or revocation of a licence**

- 27 (1) The CEO may by notice given to a licence holder revoke the
- 28 licence if —
- 29 (a) the CEO —
- 30 (i) is no longer satisfied as to any matter about
- 31 which the CEO would be required to be satisfied
- 32 before issuing the licence; or
- 33 (ii) is satisfied that the licence holder has breached a
- 34 provision of this Act, whether or not a
- 35 prosecution has commenced; or
- 36 (iii) comes to know of any other matter that would
- 37 prevent the CEO from issuing the licence if an
- 38 application were only then being made for it;
- 39 and

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- 1 (b) the CEO has informed the licence holder that the CEO is
2 considering revoking the licence and given the licence
3 holder a reasonable opportunity to be heard or make
4 written representations.
- 5 (2) The CEO may by notice given to a licence holder suspend the
6 licence for a period specified in the notice if the CEO has
7 informed the licence holder that the CEO is considering
8 suspending or revoking the licence, as is applicable to the case,
9 and given the licence holder a reasonable opportunity to be
10 heard or make written representations.
- 11 (3) The suspension or revocation of a licence does not take effect
12 until written notice of it, including the reasons for the decision
13 to suspend or revoke the licence, and notice of the person's right
14 of review under section 142(1), has been given to the person.
- 15 (4) Nothing in subsection (3) requires or authorises the CEO to
16 disclose confidential police information.
- 17 (5) A licence is of no effect while it is suspended.

18 **Division 7 — Offences relating to licences**

19 **70. False or misleading information**

- 20 (1) A person must not do any of the things set out in
21 subsection (2) —
- 22 (a) in relation to an application under this Part; or
23 (b) in relation to the compliance, or purported compliance,
24 with a requirement under section 50(1) to give the CEO
25 a document or information.
- 26 Penalty: a fine of \$24 000 or imprisonment for 2 years.
- 27 (2) The things to which subsection (1) applies are —
- 28 (a) making a statement which the person knows is false or
29 misleading in a material particular; or
- 30 (b) making a statement which is false or misleading in a
31 material particular, with reckless disregard as to whether
32 or not the statement is false or misleading in a material
33 particular; or
- 34 (c) providing, or causing to be provided, information that
35 the person knows is false or misleading in a material
36 particular; or
- 37 (d) providing, or causing to be provided, information that is
38 false or misleading in a material particular, with reckless

1 disregard as to whether the information is false or
2 misleading in a material particular.

3 **71. Offences in relation to determination under section 68**

4 (1) Where under section 68 a person is required to give any
5 information, answer any question, or produce any document or
6 thing that person must not, without reasonable excuse (proof of
7 which lies on the person) —

- 8 (a) fail to give that information or answer that question at or
9 within the time specified in the requirement; or
10 (b) give any information or answer that is false in any
11 particular; or
12 (c) fail to produce that document or thing at or within the
13 time specified in the requirement.

14 Penalty: a fine of \$24 000 or imprisonment for 2 years.

15 (2) It is a defence to a charge of an offence under subsection (1)(a)
16 or (c) for the accused to prove —

- 17 (a) that, in the case of an alleged offence arising out of a
18 requirement made orally under section 68, the CEO did
19 not, when making the requirement, inform the accused
20 that he or she was required under this Act to give the
21 information or answer the question, as the case may be;
22 or
23 (b) that, in the case of an alleged offence arising out of a
24 requirement made by notice in writing under section 68,
25 the notice did not state that he or she was required under
26 this Act to give the information, answer the question, or
27 produce the document or thing, as the case may be; or
28 (c) that the time specified in the requirement did not afford
29 the accused sufficient notice to enable him or her to
30 comply with the requirement; or
31 (d) that, in any case, the CEO did not, before making the
32 requirement, have reasonable grounds to believe that
33 compliance with the requirement would assist the CEO
34 in making the determination.

35 **72. Incriminating information, questions or documents**

36 An individual is not excused from complying with a
37 requirement under section 68 on the ground that the answer to a
38 question or the production of a document or other thing might

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1 incriminate the individual or render the individual liable to a
2 penalty, but neither —
3 (a) an answer given by the individual that was given to
4 comply with the requirement; nor
5 (b) the fact that a document or other thing produced by the
6 individual to comply with the requirement was
7 produced,
8 is admissible in evidence in any civil or criminal proceedings
9 against the individual other than proceedings for an offence
10 under section 71(1)(b).

11 **Division 8 — Planning and development controls**

12 **73. Terms used**

13 In this Division —

14 *planning scheme* means any of the following —

- 15 (a) a planning scheme as defined in the *Planning and*
16 *Development Act 2005* section 4(1);
17 (b) a redevelopment scheme as defined in the *Armadale*
18 *Redevelopment Act 2001* section 3;
19 (c) a redevelopment scheme as defined in the *East Perth*
20 *Redevelopment Act 1991* section 3;
21 (d) a master plan as defined in the *Hope Valley-Wattleup*
22 *Redevelopment Act 2000* section 3(1);
23 (e) a redevelopment scheme as defined in the *Midland*
24 *Redevelopment Act 1999* section 3;
25 (f) a redevelopment scheme as defined in the *Subiaco*
26 *Redevelopment Act 1994* section 3;
27 (g) an interim development order as defined in the *Planning*
28 *and Development Act 2005* section 4(1);

29 *residential area* means an area, zone or precinct, however
30 described, in which the use of land for residential purposes is
31 permitted by the applicable planning scheme without the need
32 for development approval, as long as any development
33 standards in the scheme that apply to the use are complied with;

34 *responsible planning authority*, in relation to —

- 35 (a) a local planning scheme as defined in the *Planning and*
36 *Development Act 2005* section 4(1), means the local
37 government which is responsible for the local planning
38 scheme; or

- 1 (b) an improvement scheme as defined in the *Planning and*
2 *Development Act 2005* section 4(1), means the WAPC;
3 or
4 (c) a region planning scheme as defined in the *Planning and*
5 *Development Act 2005* section 4(1), means the WAPC;
6 or
7 (d) a redevelopment scheme as defined in the *Armadale*
8 *Redevelopment Act 2001* section 3, means the Armadale
9 Redevelopment Authority established under that Act; or
10 (e) a redevelopment scheme as defined in the *East Perth*
11 *Redevelopment Act 1991* section 3, means the East Perth
12 Redevelopment Authority established under that Act; or
13 (f) a master plan as defined in the *Hope Valley-Wattleup*
14 *Redevelopment Act 2000* section 3(1), means the
15 Western Australian Land Authority established under
16 the *Western Australian Land Authority Act 1992*
17 section 5(1); or
18 (g) a redevelopment scheme as defined in the *Midland*
19 *Redevelopment Act 1999* section 3, means the Midland
20 Redevelopment Authority established under that Act; or
21 (h) a redevelopment scheme as defined in the *Subiaco*
22 *Redevelopment Act 1994* section 3, means the Subiaco
23 Redevelopment Authority established under that Act; or
24 (i) a local interim development order as defined in the
25 *Planning and Development Act 2005* section 4(1),
26 means the local government responsible for the
27 enforcement of the order; or
28 (j) a regional interim development order as defined in the
29 *Planning and Development Act 2005* section 4(1),
30 means the WAPC or local government exercising the
31 powers of the WAPC;

32 **special use area** means an area, zone or precinct, however
33 described, in which land may be used only for purposes
34 specified in the applicable planning scheme as “special use”;

35 **WAPC** means the Western Australian Planning Commission
36 established by the *Planning and Development Act 2005*
37 section 7.

38 **74. No prostitution businesses in residential or special use areas**

- 39 (1) Land in a residential area or special use area must not be used
40 for the purposes of a prostitution business.

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- 1 (2) Subsection (1) applies despite the provisions of any planning
2 scheme.
- 3 (3) A provision in a planning scheme that is inconsistent with
4 subsection (1) is of no effect to the extent of the inconsistency.
- 5 (4) For the purposes of section 52(4)(a), 53(2)(a) or 57(3)(a), a
6 responsible planning authority's approval for a prostitution
7 business to be conducted from a place has no effect to the extent
8 that the place is in a residential area or special use area.

9 **75. Prostitution business in areas other than residential or**
10 **special use areas**

- 11 (1) Land in a place other than a residential area or special use area
12 may be used for the purposes of a prostitution business if —
- 13 (a) a development application is made for approval to use
14 the land for that purpose; and
- 15 (b) the responsible planning authority's decision on the
16 application permits the land to be used for that purpose.
- 17 (2) Subsection (1) applies despite the provisions of any planning
18 scheme.
- 19 (3) A provision in a planning scheme that is inconsistent with
20 subsection (1) is of no effect to the extent of the inconsistency.
- 21 (4) A planning scheme may require that a development application
22 that is made for approval to use land for the purposes of a
23 prostitution business must be advertised in accordance with the
24 provisions of the *Planning and Development Act 2005*,
25 including regulations made under that Act, relating to the
26 advertisement of development applications.
- 27 (5) Nothing in this section affects a requirement under Part 6
28 Division 2 for a person to hold a licence in relation to the
29 prostitution business.

30 **76. City of Perth provisions**

- 31 (1) In this section —
- 32 ***caretaker's dwelling*** means a dwelling on the same land as, and
33 occupied by a supervisor of, a building, operation or plant;
- 34 ***City of Perth inner zone*** means the area of land in the Perth
35 local government district that is bounded by the Mitchell
36 Freeway to the west, Newcastle Street to the north, Victoria
37 Avenue and Lord Street to the east and the Swan River to the

- 1 south, but does not include the area of land that is bounded by
2 Fitzgerald Street, Aberdeen Street, Shenton Street and James
3 Street;
- 4 ***protected place*** means a hospital or other prescribed place or a
5 place used for education, worship, the care or recreation of
6 children, or for a prescribed purpose.
- 7 (2) Land in the City of Perth inner zone must not be used for the
8 purposes of a prostitution business if —
- 9 (a) the land is in an area that is not a residential area but is,
10 in the opinion of the City of Perth, an area that contains
11 a significant number of dwellings; or
- 12 (b) the distance between the prostitution business and any
13 protected place, wherever situated, is less than 100 m; or
- 14 (c) the land comprises a building that contains a dwelling
15 other than a caretaker’s dwelling.
- 16 (3) Land in a place other than the City of Perth inner zone must not
17 be used for the purposes of a prostitution business if —
- 18 (a) the distance between the prostitution business and any
19 residence (other than a caretaker’s dwelling), wherever
20 situated, is less than 100 m; or
- 21 (b) the distance between the prostitution business and any
22 protected place, wherever situated, is less than 200 m.
- 23 (4) Neither subsection (2) nor (3) applies to land that is in a
24 residential area or special use area in which case section 74(1)
25 applies.
- 26 (5) For the purposes of subsection (2) or (3) the distance between a
27 protected place or a residence and a prostitution business must
28 be measured between —
- 29 (a) the boundary of the land on which the protected place or
30 residence is built that is closest to the prostitution
31 business; and
- 32 (b) the wall of the building from which the prostitution
33 business is conducted or proposed to be conducted that
34 is closest to the protected place or residence.
- 35 (6) Subsections (2) and (3) apply despite the provisions of any
36 planning scheme.
- 37 (7) A provision in a planning scheme that is inconsistent with
38 subsection (2) or (3) is of no effect to the extent of the
39 inconsistency.

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Division 9 Governor's powers as to licences in certain areas and licence applications

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- 1 (8) For the purposes of section 52(4)(a), 53(2)(a) or 57(3)(a), a
2 responsible planning authority's approval for a prostitution
3 business to be conducted from a place has no effect to the extent
4 that the approval is inconsistent with subsection (2) or (3).

5 **Division 9 — Governor's powers as to licences in certain areas**
6 **and licence applications**

7 **77. Terms used**

8 In this Division —

9 ***no licence area order*** means an order made under section 78(1);

10 ***order*** means a no licence area order or a particular applicant
11 order;

12 ***particular applicant order*** means an order made under
13 section 79(1).

14 **78. No licence area order**

15 (1) The Governor may, for any reason, make an order that the CEO
16 must not issue a licence to any person to operate or manage a
17 prostitution business in an area of the State that is specified in
18 the order.

19 (2) Before a no licence area order is made the Minister must publish
20 in the *Gazette*, at least 14 days before the day on which the
21 order is proposed to be made, notice of the intention to make the
22 order so that persons likely to be aggrieved by the order may
23 make representations in writing to the Minister.

24 (3) A no licence area order takes effect on the day on which it is
25 published in the *Gazette*.

26 **79. Particular applicant order**

27 (1) The Governor may for any reason, after an application for a
28 licence is made but before the licence is issued, make an order
29 that the CEO must not issue the licence to the applicant.

30 (2) Before a particular applicant order is made the Minister must, at
31 least 14 days before the day on which the order is proposed to
32 be made, give notice of the intention to make the order to the
33 applicant so that the applicant may make representations in
34 writing to the Minister.

35 (3) A particular applicant order takes effect on the day on which it
36 is given to the CEO.

1 (4) A copy of a particular applicant order must be given to the
2 applicant before the expiry of the period of 7 days after the
3 order is given to the CEO but a failure to do so does not affect
4 the effect of the order.

5 **80. Effect of orders**

- 6 (1) A no licence area order has effect according to its tenor
7 even if —
- 8 (a) land that is in the area of the State that is the subject of
9 the order may, under Division 8, be used for the
10 purposes of a prostitution business; and
- 11 (b) the responsible planning authority —
- 12 (i) has given, in accordance with Division 8, its
13 approval for a prostitution business to be
14 conducted from a place in the area; or
- 15 (ii) would have given, in accordance with
16 Division 8, its approval for a prostitution
17 business to be conducted from a place in the
18 area, but for the order.
- 19 (2) A particular applicant order has effect according to its tenor
20 even if the CEO would have issued a licence to the applicant
21 under section 52(2), but for the order.

22 **81. Orders not open to disallowance, challenge**

- 23 (1) An order is not subsidiary legislation for the purposes of the
24 *Interpretation Act 1984*.
- 25 (2) An order made or purportedly made may not be challenged,
26 appealed against, reviewed, quashed or called into question on
27 any grounds whatsoever before any court, tribunal, body or
28 person in any legal proceedings, or restrained, removed or
29 otherwise affected by proceedings for any injunctive,
30 declaratory or other relief, remedy or order whether by way of
31 prerogative writ or otherwise.
- 32 (3) Subsection (2) does not limit judicial review for jurisdictional
33 error.

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Part 7 — Enforcement

2

Division 1 — Preliminary

3

82. Term used: authorised person

4

In this Part —

5

authorised person means a person designated under

6

section 87(1) as an authorised person.

7

83. Reasonable force

8

A police officer may use any force that is reasonably necessary,

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and may call on any assistance necessary, in order to exercise a

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power under this Part.

11

84. Hindering performance of functions

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A person must not delay, obstruct or otherwise hinder a police

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officer or any other person in the performance of any function

14

that the police officer or other person has under this Act.

15

Penalty: imprisonment for 2 years.

16

Division 2 — Information and reports

17

85. Confidential police information

18

(1) The Commissioner may, for the purposes of this section,

19

classify any information or document held by the Commissioner

20

as confidential.

21

(2) The CEO must not publish or disclose to any person any

22

confidential police information that is provided by the

23

Commissioner to the CEO for the purposes of this Act.

24

(3) Subsection (2) applies despite any other provision of this Act

25

but does not apply to prevent the CEO from disclosing

26

confidential police information to —

27

(a) a court or the State Administrative Tribunal; or

28

(b) a person to whom the Commissioner authorises its

29

disclosure.

30

(4) If the CEO makes a decision solely or partly on the basis of

31

confidential police information —

32

(a) to refuse to issue or renew a licence; or

33

(b) to impose, vary or revoke a licence condition; or

- 1 (c) to suspend or revoke a licence; or
2 (d) to make a prohibition order under section 110 or an
3 order varying or revoking a prohibition order;
4 (e) to refuse to give approval under section 166 or about the
5 imposition of a condition on an approval,

6 the CEO is not required to give any reasons for the decision
7 other than that the decision is made in the public interest.

8 (5) In any proceedings under this Act (other than proceedings for an
9 offence), a court or the State Administrative Tribunal —

- 10 (a) must, on the application of the Commissioner, take all
11 reasonable steps to maintain the confidentiality of
12 confidential police information, including steps —
13 (i) to receive evidence and hear argument about
14 confidential police information in private and in
15 the absence of any party to the proceedings other
16 than the CEO or the Commissioner or their
17 representatives; and
18 (ii) to prohibit the publication of evidence about
19 confidential police information;
20 and
21 (b) may take evidence consisting of or relating to
22 confidential police information by way of an affidavit of
23 a member of the Police Force of or above the rank of
24 Superintendent.

25 **86. Reports to CEO on licensing matters**

26 In addition to providing to the CEO reports under section 51(2),
27 the Commissioner may, at any time, provide the CEO
28 information and give the Commissioner's opinion about any of
29 the following —

- 30 (a) whether a licence holder continues to be eligible or
31 suitable to hold the licence;
32 (b) the imposition, variation or revocation of licence
33 conditions;
34 (c) the suspension or revocation of a licence.

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Division 3 — Authorised persons

87. Authorised persons

- (1) The CEO may, by instrument in writing, designate a public service officer employed in the Department as an authorised person for the purposes of this Act.
- (2) A person may be designated to be an authorised person for a fixed or indefinite period.
- (3) The CEO may, by instrument in writing, revoke a designation at any time.

88. Identity cards

- (1) The CEO must give an identity card to each person designated by the CEO as an authorised person.
- (2) An identity card must —
 - (a) identify the person as an authorised person; and
 - (b) contain a recent photograph of the person.
- (3) A person must, within 14 days of ceasing to be an authorised person, return the person’s identity card to the CEO.
Penalty: a fine of \$5 000.
- (4) Subsection (3) does not apply if the person has a reasonable excuse.
- (5) An authorised person must carry his or her identity card at all times when exercising powers or performing functions as an authorised person.

89. Production or display of identity card

- (1) An authorised person may exercise a power in relation to someone only if —
 - (a) the authorised person first produces the authorised person’s identity card for the other person’s inspection; or
 - (b) the authorised person has the identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised person may exercise the power and then produce the identity

1 card for inspection by the person at the first reasonable
2 opportunity.

3 **90. Limitation on powers of authorised person**

- 4 (1) An authorised person must act —
5 (a) in accordance with the CEO’s directions; and
6 (b) subject to any limitation on the powers of that person
7 mentioned in subsection (2).
- 8 (2) The powers of an authorised person may be limited —
9 (a) under a condition specified in the person’s instrument of
10 designation as an authorised person; or
11 (b) by written notice given by the CEO to the person.
- 12 (3) The CEO may, at any time, revoke or vary a condition of
13 designation mentioned in subsection (2)(a) or a notice
14 mentioned in subsection (2)(b).

15 **Division 4 — Enforcement powers**

16 **91. Terms used**

- 17 (1) In this Division —
18 ***compliance purposes*** means any one or more of the
19 following —
20 (a) monitoring whether a provision of this Act has been, or
21 is being, complied with;
22 (b) investigating a suspected contravention of a provision of
23 this Act;
- 24 ***juvenile justice team*** means a juvenile justice team under the
25 *Young Offenders Act 1994* Part 5 Division 2.
- 26 (2) For the purposes of this Division a person is lawfully entitled to
27 possess something if —
28 (a) the person owns it or is authorised by the owner to
29 possess it; and
30 (b) the possession is not prohibited by law or is authorised,
31 justified or excused by law.

1 **92. Police officer, authorised person, may enter place for certain**
2 **purposes**

3 (1) For compliance purposes a police officer may, without a
4 warrant and at any time, enter a place if the officer reasonably
5 suspects that —

- 6 (a) the place is not a dwelling; and
7 (b) a prostitution business is being conducted from the
8 place.

9 (2) An authorised person may, without a warrant and at any time,
10 enter a place from which a prostitution business is conducted
11 and that is the subject of a licence to ascertain whether —

- 12 (a) each person operating the prostitution business holds a
13 current operator's licence or, in the case of a
14 self-employed prostitute, a current prostitute's licence;
15 or
16 (b) the person managing the prostitution business at the time
17 holds a current manager's licence and is present at the
18 place; or
19 (c) any person who acts, or who is available to act, as a
20 prostitute in the prostitution business holds a current
21 prostitute's licence; or
22 (d) each of section 17(1), (2) or (4), as is relevant to the
23 case, is being complied with.

24 (3) A police officer or an authorised person who enters a place
25 under subsection (1) or (2) may require a person at the place
26 apparently operating, managing or working for a prostitution
27 business to give the police officer or authorised person his or
28 her name and address and provide proof of his or her identity.

29 (4) A police officer who enters a place under subsection (1) may —

- 30 (a) search the place and inspect any articles and records
31 kept there; and
32 (b) stop, detain and search anyone at the place; and
33 (c) seize anything that the police officer suspects on
34 reasonable grounds will afford evidence as to the
35 commission of an offence.

1 **93. Obstructing person exercising power under s. 92**

- 2 (1) A person must not prevent or attempt to prevent —
- 3 (a) a police officer from entering a place under
- 4 section 92(1); or
- 5 (b) an authorised person from entering a place under
- 6 section 92(2); or
- 7 (c) otherwise obstruct or impede a police officer or
- 8 authorised person in the exercise of his or her powers
- 9 under section 92.
- 10 (2) If required under section 92(3) by a police officer or authorised
- 11 person to give the police officer or authorised person his or her
- 12 name and address or provide proof of his or her identity, a
- 13 person must not fail to give the police officer or authorised
- 14 person his or her name and address or provide proof of his or
- 15 her identity.
- 16 Penalty: a fine of \$24 000 or imprisonment for 2 years.

17 **94. Powers to obtain information**

- 18 (1) A police officer may, for compliance purposes —
- 19 (a) require a person to produce to the police officer any
- 20 document or other thing that is in the possession or
- 21 under the control of the person; and
- 22 (b) inspect any document or other thing produced to the
- 23 police officer and retain it for such reasonable period as
- 24 the police officer thinks fit, and make copies of a
- 25 document or any of its contents; and
- 26 (c) require a person —
- 27 (i) to give the police officer such information as the
- 28 police officer requires; and
- 29 (ii) to answer any question put to that person.
- 30 (2) A requirement made under subsection (1) to produce a
- 31 document or other thing —
- 32 (a) must be made in writing given to the person required to
- 33 produce the document or other thing; and
- 34 (b) must specify the time at or within which the document
- 35 or other thing must be produced; and
- 36 (c) may, by its terms, require that the document or other
- 37 thing required be produced at a place and by means
- 38 specified in the requirement; and

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- 1 (d) where the document required is not in a readable format,
2 must be treated as a requirement to produce —
3 (i) the document itself; and
4 (ii) the contents of the document in a readable
5 format.
- 6 (3) A requirement made under subsection (1) to give information or
7 answer a question —
8 (a) may be made orally or in writing served on the person
9 required to give information or answer a question, as the
10 case may be; and
11 (b) must specify the time at or within which the information
12 must be given or the question must be answered, as the
13 case may be; and
14 (c) may, by its terms, require that the information or answer
15 required —
16 (i) be given orally or in writing; or
17 (ii) be given at or sent or delivered to a place
18 specified in the requirement; or
19 (iii) in the case of written information or answers, be
20 sent or delivered by means specified in the
21 requirement; or
22 (iv) be verified by statutory declaration.
- 23 (4) If under subsection (1) the police officer requires a person to
24 give information or answer a question, the police officer must
25 inform the person that the person is required under this Act to
26 give the information or answer the question.

27 **95. Failure to comply with requirements under s. 94**

- 28 (1) A person must not, without lawful excuse, refuse or fail to
29 produce a document or other thing as required under section 94.
30 Penalty: imprisonment for 2 years.
- 31 (2) A person must not, without lawful excuse, refuse or fail to
32 answer a question or otherwise give information when required
33 to do so under section 94.
34 Penalty: imprisonment for 2 years.
- 35 (3) Where an individual is required under section 94 to answer a
36 question or otherwise give information or produce anything,
37 none of the following is admissible in evidence in any civil or
38 criminal proceedings against the individual other than

- 1 proceedings for perjury or for an offence arising from the false
2 or misleading nature of the answer or information given —
- 3 (a) an answer given by the individual that was given to
4 comply with the requirement;
- 5 (b) the fact that any information that was given by the
6 individual to comply with the requirement was given;
- 7 (c) the fact that anything that was produced by the
8 individual to comply with the requirement was
9 produced.
- 10 (4) Nothing in this Act prevents —
- 11 (a) an individual from refusing to answer a question or
12 otherwise give information or produce a document or
13 other thing because the answer or information might, or
14 the document or thing contains information that might,
15 incriminate the individual or render the individual liable
16 to a penalty; or
- 17 (b) a person refusing to answer a question or otherwise give
18 information or produce a document or other thing
19 because the answer or information would relate to, or
20 the document or thing contains information in respect of
21 which the person claims legal professional privilege.

22 **96. Police direction to move on**

- 23 (1) A police officer who has reason to suspect that a person has
24 committed, or intends to commit, an offence under section 9
25 or 10 in relation to a public place may, in writing in a form
26 approved by the Commissioner, direct the person to move away
27 from that place and a surrounding area specified in the direction,
28 and stay away from it for a period of not more than 24 hours
29 specified in the direction.
- 30 (2) A person must not, without lawful excuse, contravene a
31 direction given under subsection (1).
- 32 **Penalty:**
- 33 (a) for a first offence, a fine of \$6 000;
- 34 (b) for a second or subsequent offence, imprisonment for
35 one year.

1 **97. Detain, search and seize without warrant**

2 (1) In this section —

3 *conveyance* means anything used or capable of being used to
4 transport people or goods by air, land or water, and it does not
5 matter how it is propelled or that it may ordinarily be stationary;

6 *offence* means an offence under this Act.

7 (2) A police officer may without a warrant stop, detain and search
8 anyone whom the police officer suspects on reasonable grounds
9 to be —

10 (a) committing an offence; or

11 (b) carrying anything that will afford evidence as to the
12 commission of an offence.

13 (3) A police officer may without a warrant stop, detain and search
14 any conveyance where the police officer suspects on reasonable
15 grounds that there is —

16 (a) anyone who is committing an offence; or

17 (b) anything that will afford evidence as to the commission
18 of an offence.

19 (4) The power to stop and detain a conveyance includes the power
20 to detain anyone in or on the conveyance for as long as is
21 reasonably necessary to search the conveyance even though,
22 until the conveyance has been searched, the person may not be
23 suspected of anything because of which the person can be
24 detained under subsection (2).

25 (5) A police officer may without a warrant seize anything that the
26 police officer suspects on reasonable grounds will afford
27 evidence as to the commission of an offence.

28 **98. Detain, search and seize with warrant**

29 (1) If a justice is satisfied that there are reasonable grounds for
30 suspecting that there is in a place anything that will afford
31 evidence as to the commission of an offence under this Act, the
32 justice may grant a warrant of search and seizure in relation to
33 that place.

34 (2) A warrant under subsection (1) authorises any police officer at
35 any time, with such assistance as the police officer thinks
36 necessary and with such force as is reasonably necessary —

37 (a) to enter the place at any time; and

38 (b) to search the place; and

- 1 (c) to stop, detain and search anyone at the place; and
2 (d) to seize anything that the police officer suspects on
3 reasonable grounds will afford evidence as to the
4 commission of an offence under this Act.
- 5 (3) The authority given by a warrant lapses at the end of a period of
6 30 days after it was granted and, until it lapses or the purpose
7 for which it was given is satisfied, the authority it gives may be
8 exercised from time to time unless the warrant expressly limits
9 that authority.
- 10 **99. Warrant may be obtained remotely**
- 11 (1) An application for a warrant under section 98 may be initially
12 submitted by telephone, fax, radio or another form of
13 communication if the applicant considers it necessary because
14 of urgent circumstances or the applicant's remote location.
- 15 (2) Before submitting an application under this section, the
16 applicant must prepare a written application setting out the
17 grounds for seeking the warrant and describing the place to
18 which the warrant relates.
- 19 (3) If an application is submitted under this section, the information
20 in the written application required by subsection (2) must be
21 verified by affidavit and, if it is necessary to do so, the
22 application may be submitted before the affidavit has been
23 sworn.
- 24 (4) When issuing a warrant upon an application submitted under
25 this section, the justice must —
- 26 (a) complete and sign the warrant; and
27 (b) inform the applicant of the terms of the warrant and the
28 date on which and the time at which it was signed; and
29 (c) record on the warrant the reasons for issuing the
30 warrant; and
31 (d) send a copy of the warrant to the applicant.
- 32 (5) If a warrant is issued upon an application submitted under this
33 section, the applicant may complete a form of warrant in the
34 terms indicated by the justice under subsection (4)(b) if the
35 applicant writes on it the name of the justice who issued the
36 warrant and the date on which, and the time at which, it was
37 signed.
- 38 (6) If the applicant completes a form of warrant in accordance with
39 subsection (5), the applicant must send to the justice who signed

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1 the warrant, not later than the day next following the day on
2 which the warrant ceases to have effect, the form of warrant
3 completed by the person and the affidavit sworn in connection
4 with the warrant.

5 (7) On receiving the documents referred to in subsection (6), the
6 justice must attach them to the warrant signed by the justice and
7 deal with the documents in the manner in which the justice
8 would have dealt with the affidavit if the application for the
9 warrant had not been submitted under this section.

10 (8) A form of warrant completed in accordance with subsection (5)
11 must be treated as the warrant itself.

12 **100. Provisions about searching a person**

13 (1) In this section —

14 *medical practitioner* means a person who is registered under the
15 *Health Practitioner Regulation National Law (Western*
16 *Australia)* in the medical profession;

17 *registered nurse* means a person who is registered under the
18 *Health Practitioner Regulation National Law (Western*
19 *Australia)* in the nursing and midwifery profession whose name
20 is entered on Division 1 of the Register of Nurses kept under
21 that Law as a registered nurse.

22 (2) A police officer cannot conduct a search of a person under this
23 Part unless of the same sex as the person searched.

24 (3) If a police officer of the same sex as the person to be searched is
25 not immediately available to conduct the search, another police
26 officer may —

27 (a) cause the search to be conducted, under the direction of
28 a police officer, by another person of the same sex as the
29 person to be searched; or

30 (b) detain the person for as long as is reasonably necessary
31 for the person to be searched in accordance with this
32 section; or

33 (c) convey or conduct the person to a place where the
34 person can be searched in accordance with this section.

35 (4) Nothing in this Part authorises a search by way of an
36 examination of the body cavities of a person unless it is
37 conducted under subsection (6) by a medical practitioner or a
38 registered nurse.

- 1 (5) A police officer may arrange for a medical practitioner or
2 registered nurse nominated by the police officer to examine the
3 body cavities of the person to be searched and may —
4 (a) detain the person until the arrival of that medical
5 practitioner or registered nurse; or
6 (b) convey or conduct the person to that medical
7 practitioner or registered nurse.
- 8 (6) A medical practitioner or registered nurse may conduct an
9 examination arranged by a police officer under subsection (5)
10 and no action lies against the medical practitioner or registered
11 nurse in respect of anything reasonably done for the purposes of
12 the examination.

13 **101. Retaining something seized but not forfeited**

- 14 (1) This section applies to anything seized under this Act that —
15 (a) is not forfeited to the Crown; and
16 (b) a court has not ordered to be delivered to a person under
17 section 102(1)(b) or 103(6).
- 18 (2) A police officer may retain anything to which this section
19 applies if —
20 (a) it is required —
21 (i) for the investigation of an offence under this Act
22 or the prosecution of someone for an offence
23 under this Act; or
24 (ii) for the purposes of a matter that is being dealt
25 with by a juvenile justice team;
26 or
27 (b) no person has satisfied the Commissioner that the person
28 is lawfully entitled to possess it.
- 29 (3) Anything to which this section applies that cannot be retained
30 under subsection (2) must be returned to the person from whom
31 it was seized.

32 **102. Forfeiture and delivery on conviction**

- 33 (1) A court convicting a person of an offence under this Act may
34 order that —
35 (a) anything relating to the offence, whether or not it has
36 been seized and retained by a police officer under this
37 Act, is forfeited to the Crown; or

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- 1 (b) anything relating to the offence that has been seized and
2 retained by a police officer under this Act be delivered
3 to another person who is lawfully entitled to possess it.
- 4 (2) A person claiming to be lawfully entitled to possess anything in
5 respect of which an order may be made under subsection (1)(b)
6 may, in connection with the making of an order —
- 7 (a) be heard in the proceedings for the offence; and
8 (b) make an application under the *Criminal Procedure*
9 *Act 2004* section 71 as if the person were a party to the
10 prosecution for the offence; and
11 (c) appeal against the order under the *Criminal Appeals*
12 *Act 2004* Part 2.

13 **103. Forfeiture and delivery other than on conviction**

- 14 (1) A person claiming to be lawfully entitled to possess anything
15 seized and retained under this Act may, if the application is not
16 prevented by subsection (2) and the last day for applying has not
17 passed, apply to the Magistrates Court for an order that the thing
18 be delivered to the person.
- 19 (2) An application cannot be made under subsection (1) for an order
20 for the delivery of anything if —
- 21 (a) an order has been made under section 102(1) for its
22 forfeiture or delivery; or
23 (b) a relevant juvenile justice team matter that has
24 commenced has not been finally disposed of by the
25 team; or
26 (c) a relevant charge that has been laid has not been
27 withdrawn or heard and determined.
- 28 (3) In subsection (2) —
29 **relevant charge** means a charge of an offence to which the thing
30 that was seized relates;
31 **relevant juvenile justice team matter** means a matter to which
32 the thing that was seized relates that is or was being dealt with
33 by a juvenile justice team.
- 34 (4) The last day for applying for an order under subsection (1) is the
35 21st day after the day on which the thing was seized unless the
36 last day for applying is postponed by subsection (5).
- 37 (5) If, for any part of the time when an application could otherwise
38 be made in accordance with subsection (4), the making of the

1 application is prevented by subsection (2)(b) or (c), the last day
2 for applying (whether under subsection (4) or as postponed by
3 this subsection) is postponed until the 21st day after the day on
4 which the making of the application ceases to be prevented by
5 subsection (2)(b) or (c).

6 (6) On an application under subsection (1), the court may order that
7 the thing seized be delivered to the person making the
8 application if the court is satisfied on the balance of
9 probabilities that the person is lawfully entitled to possess it.

10 (7) The court may adjourn the application if it is satisfied that the
11 thing seized should, for the time being, continue to be retained
12 because it is required for a reason described in
13 section 101(2)(a).

14 (8) If the last day for applying under subsection (1) for an order for
15 the delivery of a thing has passed and either no application has
16 been made or each application made has been dealt with without
17 ordering that the thing be delivered to a person, that thing is
18 forfeited to the Crown.

19 **104. Disposal of thing forfeited**

20 (1) If anything is forfeited to the Crown under this Act, the
21 Commissioner may direct that it be sold, destroyed, or otherwise
22 disposed of, as the Commissioner thinks fit, unless
23 subsection (2) prevents the Commissioner from giving the
24 direction.

25 (2) If anything is forfeited to the Crown —

26 (a) by an order under section 102(1)(a); or

27 (b) after an order dismissing an application under
28 section 103(1),

29 the Commissioner is not to give a direction under subsection (1)
30 before the expiration of the time allowed for instituting an
31 appeal against the order or, if an appeal is lodged within that
32 time, before the determination of the appeal.

33 **105. Powers to assist seizing things**

34 The *Criminal Investigation Act 2006* sections 146 to 150, with
35 any necessary changes, apply to and in respect of seizing a thing
36 that is or may be seized under this Act.

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Division 5 — Prohibition orders

106. Terms used

In this Division —

employer includes a person who engages another person to work under a contract for services;

prohibition order means an order made under section 110;

relevant person means the person who, as the case requires, is the subject of —

- (a) an application under section 107; or
- (b) a prohibition order;

specified means specified in a prohibition order.

107. Commissioner may apply for prohibition orders

The Commissioner may apply to the CEO in a form approved by the CEO for an order to be made in respect of a person that —

- (a) prohibits the relevant person from working for —
 - (i) a specified business involving the provision of prostitution; or
 - (ii) a prostitution business of a specified class; or
 - (iii) any prostitution business;
- or
- (b) prohibits the relevant person from entering —
 - (i) a specified place from which a prostitution business is conducted; or
 - (ii) a place from which a prostitution business of a specified kind is conducted; or
 - (iii) any place from which a prostitution business is conducted.

108. Evidence in support of application

- (1) An application under section 107 must —
 - (a) set out the reasons in support of the Commissioner’s opinion that a prohibition order should be made in respect of the relevant person; and
 - (b) set out any other information and be accompanied by any document that the Commissioner considers relevant to the application.

- 1 (2) Without limiting subsection (1), the Commissioner is authorised
2 to include in or with the application —
- 3 (a) details of any criminal convictions of the relevant person
4 for offences under the law of the Commonwealth or a
5 State or Territory; and
- 6 (b) any information that the Commissioner has regarding
7 any involvement, or suspected involvement, of the
8 relevant person in serious and organised crime as
9 defined in the *Australian Crime Commission (Western*
10 *Australia) Act 2004* section 3(1).

11 **109. Relevant person to be given notice of application**

- 12 (1) The CEO must give the relevant person a written notice that —
- 13 (a) states that the application has been made and explains
14 the proposed effect of the order applied for; and
- 15 (b) describes the information and documents provided in
16 support of the application; and
- 17 (c) informs the relevant person that he or she will be given a
18 reasonable opportunity to make submissions or to be
19 heard in relation to the application.
- 20 (2) Nothing in subsection (1) requires or authorises the CEO to
21 disclose confidential police information.

22 **110. CEO may make prohibition orders**

- 23 (1) The CEO may dispose of the application —
- 24 (a) by making a prohibition order; or
- 25 (b) by dismissing the application; or
- 26 (c) at the request of the Commissioner — by discontinuing
27 the application.
- 28 (2) The CEO may make a prohibition order that —
- 29 (a) prohibits the relevant person from working for —
- 30 (i) a specified business involving the provision of
31 prostitution; or
- 32 (ii) a prostitution business of a specified class; or
- 33 (iii) any prostitution business;
- 34 or
- 35 (b) prohibits the relevant person from entering —
- 36 (i) a specified place from which a prostitution
37 business is conducted; or

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- 1 (ii) a place from which a prostitution business of a
2 specified kind is conducted; or
3 (iii) any place from which a prostitution business is
4 conducted.
- 5 (3) The CEO may make a prohibition order only if satisfied that it
6 is in the public interest to do so after —
7 (a) having given the relevant person a reasonable
8 opportunity to make submissions or to be heard in
9 relation to the application; and
10 (b) having regard to —
11 (i) any information or document provided by the
12 Commissioner in or with the application; and
13 (ii) any information or document provided by the
14 relevant person under paragraph (a).
- 15 (4) A prohibition order has effect subject to such terms or
16 conditions as the CEO thinks fit and specifies in the order.

17 **111. Term of prohibition orders**

- 18 (1) The CEO must specify in a prohibition order the term for which
19 the prohibition order remains in force.
- 20 (2) The term cannot be for less than one year or more than 5 years
21 after it is made, but an application may be made for a further
22 prohibition order.

23 **112. Applications to vary or revoke prohibition orders**

- 24 (1) The Commissioner or the relevant person may apply to the CEO
25 in a form approved by the CEO for an order varying or revoking
26 a prohibition order.
- 27 (2) If the application is made —
28 (a) by the Commissioner, the relevant person is the
29 respondent; or
30 (b) by the relevant person, the Commissioner is the
31 respondent.
- 32 (3) The application must —
33 (a) set out the reasons in support of the applicant's opinion
34 that the prohibition order should be varied or revoked;
35 and

- 1 (b) set out any other information and be accompanied by
2 any document that the applicant considers relevant to the
3 application.

4 **113. Respondent to be given notice of application**

5 (1) The CEO must give the respondent a written notice that —

- 6 (a) states that the application under section 112 has been
7 made and explains the proposed effect of the order
8 applied for; and
9 (b) describes the information and documents provided in
10 support of the application; and
11 (c) informs the respondent that he or she will be given a
12 reasonable opportunity to make submissions or to be
13 heard in relation to the application.

14 (2) Nothing in subsection (1) requires or authorises the CEO to
15 disclose confidential police information.

16 **114. CEO may vary or revoke prohibition orders**

17 (1) The CEO may dispose of an application under section 112 —

- 18 (a) by making an order that varies or revokes a prohibition
19 order; or
20 (b) by dismissing the application; or
21 (c) at the request of the applicant — by discontinuing the
22 application.

23 (2) The CEO may make an order varying or revoking a prohibition
24 order only if satisfied that it is in the public interest to do so —

- 25 (a) having given the respondent a reasonable opportunity to
26 make submissions or to be heard in relation to the
27 application; and
28 (b) having regard to —
29 (i) any information or document provided by the
30 applicant in or with the application; and
31 (ii) any information or document provided by the
32 respondent under paragraph (a).

33 **115. Notification of orders**

34 (1) If the CEO makes a prohibition order, the CEO must give a
35 copy of the order —

- 36 (a) to the relevant person; and

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- 1 (b) to the Commissioner; and
- 2 (c) if the order is made under section 110(2)(a) and the
- 3 CEO is aware that the relevant person is working for a
- 4 business to which the order applies — to the relevant
- 5 person’s employer.
- 6 (2) If the CEO makes an order varying or revoking a prohibition
- 7 order, the CEO must give a copy of the order —
- 8 (a) to the applicant and the respondent; and
- 9 (b) if a copy of the prohibition order that was varied or
- 10 revoked was given to the relevant person’s employer
- 11 under subsection (1)(c), to that employer.
- 12 (3) The CEO is also to give to a person mentioned in
- 13 subsection (1)(a) or (2)(a) written notice of the reasons for the
- 14 decision to make the order, and the person’s right of review
- 15 under section 142.
- 16 (4) Nothing in subsection (3) requires or authorises the CEO to
- 17 disclose confidential police information.

18 **116. Compliance with prohibition order**

- 19 (1) A person who is given a copy of a prohibition order under
- 20 section 115(1)(a) must comply with the order.
- 21 Penalty: a fine of \$10 000.
- 22 (2) A person who is given a copy of a prohibition order under
- 23 section 115(1)(c) must not allow the relevant person to continue
- 24 working for a business to which the order applies in
- 25 contravention of the order.
- 26 Penalty: a fine of \$10 000.

27 **Division 6 — Barring notices**

28 **117. Terms used**

29 In this Division —

30 *approved* means approved by the Commissioner;

31 *notice* means a notice under section 118(1);

32 *specified* means specified in a notice.

- 1 **118. Barring notices by Commissioner**
- 2 (1) The Commissioner may give a notice to a person prohibiting the
- 3 person from entering —
- 4 (a) a specified place from which a prostitution business is
- 5 conducted; or
- 6 (b) a place from which a prostitution business of a specified
- 7 kind is conducted; or
- 8 (c) any place from which a prostitution business is
- 9 conducted.
- 10 (2) The Commissioner may give a notice only if the Commissioner
- 11 believes, on reasonable grounds, that the person has, in a place
- 12 from which a prostitution business is conducted —
- 13 (a) been violent or disorderly; or
- 14 (b) contravened a provision of any written law.
- 15 (3) The notice must be in an approved form.
- 16 (4) The Commissioner is also to give with a notice the reasons for
- 17 the decision to give the notice, and the person’s right of review
- 18 under section 142.
- 19 (5) Nothing in subsection (4) requires or authorises the
- 20 Commissioner to disclose confidential police information.
- 21 (6) The notice has effect from the day the notice is given to the
- 22 person until the earliest of —
- 23 (a) a specified day; or
- 24 (b) if the notice is revoked under subsection (9) — the day
- 25 that the notice of revocation is given to the person; or
- 26 (c) if the decision to give the notice is set aside on review
- 27 under section 142 — the day of that decision.
- 28 (7) The specified day cannot be more than 12 months after the day
- 29 on which the notice is given to the person.
- 30 (8) A person who is given a notice must not enter a place in
- 31 contravention of the notice.
- 32 Penalty: a fine of \$10 000.
- 33 (9) The Commissioner may revoke a notice by giving to the person
- 34 a notice of revocation in an approved form.

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- 1 (10) The Commissioner —
- 2 (a) may give a copy of a notice to any person who holds an
- 3 operator's licence or a manager's licence if the
- 4 Commissioner is of the opinion that it is necessary to do
- 5 so to minimise the risk of harm or injury to any person;
- 6 and
- 7 (b) must give to a person given a copy of a notice under
- 8 paragraph (a), a copy of a notice of revocation
- 9 concerning that notice.

10 **Division 7 — Closure notices and closure orders**

11 **119. Terms used**

12 In this Division —

13 *closure notice* means a notice issued under section 120;

14 *closure offence provision* means section 11(1), 14(1), 33(1)

15 or (2), 34(1) or 35(1);

16 *closure order* means an order made under section 125(2);

17 *specified* means specified in a closure notice or closure order.

18 **120. Closure notice for interim closure of certain places**

19 A police officer may issue a notice —

- 20 (a) to prohibit any person, other than a person who owns or
- 21 regularly occupies a specified place, from entering or
- 22 remaining in the place; or
- 23 (b) to prohibit a specified visitor or specified class of visitor
- 24 to a specified place from entering or remaining in the
- 25 place.

26 **121. Requirements for issue of closure notice**

27 (1) A closure notice may be issued in relation to a specified place if

28 the issuing police officer believes on reasonable grounds —

- 29 (a) that an offence under, or an act of prostitution in
- 30 circumstances mentioned in, a closure offence
- 31 provision —
- 32 (i) has occurred in the specified place; or
- 33 (ii) is occurring in the specified place; or
- 34 (iii) is likely to occur in the specified place if a
- 35 closure order is not made in relation to the place;
- 36 and

- 1 (b) that the making of a closure order is necessary to
2 prevent any offence under, or any act of prostitution in
3 circumstances mentioned in, a closure offence provision
4 from occurring in the specified place.
- 5 (2) A closure notice may be issued in relation to a specified place
6 if —
- 7 (a) the issuing police officer believes on reasonable
8 grounds —
- 9 (i) that a prostitution business is being conducted
10 from the specified place; and
- 11 (ii) that no person holds a licence that allows the
12 business to be conducted from the specified
13 place;
- 14 and
- 15 (b) the Commissioner of Police has received a written
16 complaint alleging that a prostitution business is being
17 conducted from the specified place —
- 18 (i) from the Department; or
19 (ii) from a local government; or
20 (iii) from 3 unrelated adults.
- 21 (3) In subsection (2)(b)(iii) —
- 22 **3 unrelated adults** means 3 adults each of whom —
- 23 (a) resides in different dwellings; and
24 (b) is not —
- 25 (i) a child or step-child; or
26 (ii) a parent or step-parent; or
27 (iii) a sibling or step-brother or step-sister; or
28 (iv) an aunt or uncle; or
29 (v) a spouse or former spouse; or
30 (vi) a de facto partner or former de facto partner,
31 of either of the other 2 adults.
- 32 (4) A closure notice cannot be issued unless a police officer who is
33 an Assistant Commissioner, the Deputy Commissioner or the
34 Commissioner authorises, orally or in writing, the issue of the
35 notice.
- 36 (5) An authority under subsection (4) given orally must be
37 confirmed in writing as soon as is practicable.

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- 1 (6) A closure notice cannot be issued unless —
- 2 (a) an application has been made to the Magistrates Court
- 3 for a closure order in relation to the specified premises;
- 4 and
- 5 (b) reasonable steps have been taken to establish the identity
- 6 of each person who —
- 7 (i) owns, or regularly occupies, the specified place;
- 8 or
- 9 (ii) owns, or regularly occupies, another place that is
- 10 adjacent to the specified place whose access to
- 11 the other place would be impeded if a closure
- 12 order is made in relation to the specified place;
- 13 and
- 14 (c) reasonable steps have been taken to inform each person
- 15 mentioned in paragraph (b) of the date, time and place
- 16 of the hearing of the application for a closure order in
- 17 relation to the specified place.

18 **122. Content of closure notice**

- 19 (1) A closure notice must —
- 20 (a) be in a form approved by the Commissioner; and
- 21 (b) state either or both of the following —
- 22 (i) that a person, other than a person who owns, or
- 23 regularly occupies a specified place, must not
- 24 enter or remain in the place;
- 25 (ii) that a specified visitor or specified class of
- 26 visitor to a specified place must not enter or
- 27 remain in the place;
- 28 and
- 29 (c) state that failure to comply with the notice is an offence;
- 30 and
- 31 (d) specify the matters mentioned in section 121(1)(a)
- 32 and (b) or 121(2)(a) and (b) that are relevant to the case;
- 33 and
- 34 (e) state the date, time and place of the hearing of the
- 35 application for a closure order in relation to the specified
- 36 place; and
- 37 (f) state that failure to comply with a closure order is an
- 38 offence.

1 (2) If section 121(2)(b)(iii) applies in a case, it is not necessary to
2 specify in the closure notice the identities of the 3 unrelated
3 adults.

4 **123. Service of closure notice**

- 5 (1) A closure notice is of no effect unless a copy of it —
- 6 (a) is affixed to a prominent part of the specified place and
7 to each door to the place; and
- 8 (b) is given —
- 9 (i) to at least one person who owns or regularly
10 occupies the place; and
- 11 (ii) to at least one person who regularly occupies
12 each of the other places that is adjacent to the
13 specified place whose access to the other place
14 would be impeded if a closure order is made in
15 relation to the specified place.

16 (2) The CEO must be given a copy of each closure notice.

17 **124. Duration of closure notice**

18 A closure notice has effect when section 123(1) has been
19 complied with until the application for the closure order in
20 relation to the specified premises is finalised.

21 **125. Provisions about making closure order**

22 (1) The Magistrates Court must endeavour to ensure that the first
23 listing date for an application for a closure order is not more
24 than 7 days after the application is made.

25 (2) On an application for a closure order in relation to a specified
26 place the Magistrates Court may order either or both of the
27 following —

- 28 (a) that a person, other than a person who owns, or regularly
29 occupies the specified place, must not enter or remain in
30 the place;
- 31 (b) that a specified visitor or specified class of visitor to the
32 specified place must not enter or remain in the place.

33 (3) The Magistrates Court may make a closure order if it is satisfied
34 (on the balance of probabilities) —

- 35 (a) that an offence under, or an act of prostitution in
36 circumstances mentioned in, a closure offence
37 provision —
- 38 (i) has occurred in the specified place; or

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- 1 (ii) is occurring in the specified place; or
2 (iii) is likely to occur in the specified place if a
3 closure order is not made in relation to the place;
4 and
5 (b) that the making of a closure order is necessary to
6 prevent any offence under, or any act of prostitution in
7 circumstances mentioned in, a closure offence provision
8 from occurring in the specified place.
- 9 (4) The Magistrates Court may make a closure order if it is satisfied
10 (on the balance of probabilities) —
11 (a) that a prostitution business is being conducted from the
12 specified place; and
13 (b) that no person holds a licence that allows the business to
14 be conducted from the specified place.
- 15 (5) The Magistrates Court is not to make a closure order unless it is
16 satisfied —
17 (a) that reasonable steps have been taken to establish the
18 identity of each person who —
19 (i) owns, or regularly occupies, the specified place;
20 or
21 (ii) owns, or regularly occupies, another place that is
22 adjacent to the specified place whose access to
23 the other place would be impeded if a closure
24 order is made in relation to the specified place;
25 and
26 (b) that reasonable steps have been taken to inform each
27 person mentioned in paragraph (a) of the date, time and
28 place of the hearing of the application.
- 29 (6) If a court makes a closure order it may make such ancillary
30 orders as it thinks appropriate in relation to —
31 (a) restrictions on access to a specified part or parts of a
32 specified place; or
33 (b) restrictions on access by a specified person or specified
34 class of persons including a person who owns, regularly
35 occupies, or visits a specified place; or
36 (c) any other matter relevant to the enforcement of the
37 order.

1 **126. Term of closure order**

2 (1) The court must specify in a closure order the term for which the
3 closure order remains in force.

4 (2) The term cannot be for more than 6 months after it is made.

5 (3) An application may be made for the term of a closure order to
6 be extended but the extended term cannot be for more than
7 6 months after the original closure order was made.

8 **127. Breach of a closure notice, closure order**

9 A person must not enter or remain in a place in contravention of
10 a closure notice or a closure order.

11 Penalty: a fine of \$12 000 or imprisonment for one year.

12 **Division 8 — Restraining orders**

13 **128. Term used: restraining order**

14 In this Division, unless the contrary intention appears —
15 *restraining order* means a restraining order made under
16 section 129 or 130.

17 **129. Restraining order to prevent further offence**

18 A court may make a restraining order if the court —

19 (a) finds that a person has committed —

20 (i) an offence under section 9 or 10; or

21 (ii) an offence under this Act that is prescribed for
22 the purposes of this section;

23 and

24 (b) is satisfied that, unless restrained, the person is
25 subsequently likely to commit an offence of a similar
26 kind; and

27 (c) considers that making the order would be appropriate in
28 the circumstances.

29 **130. Restraining order against person who could be required to**
30 **move on**

31 (1) If circumstances arise that would give sufficient grounds for a
32 police officer to give a person a direction under section 96 and
33 that person has previously been given a direction under that

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1 provision, the police officer may apply for a restraining order
2 against the person.

- 3 (2) The application must be made —
- 4 (a) if the person against whom the order is sought is a child,
5 to the Children’s Court; or
- 6 (b) otherwise, to the Magistrates Court.
- 7 (3) If the court to which the application is made considers it
8 appropriate in the circumstances to do so, it may make a
9 restraining order.

10 **131. Provisions about making the order**

- 11 (1) A court is not to make a restraining order against a person
12 unless the person has been given an opportunity to be heard on
13 the matter.
- 14 (2) If a restraining order has been, or is about to be, made against a
15 person and the person is present, the court may, in order to
16 facilitate service of the restraining order, order the person to
17 remain in a place designated by the court for a period of not
18 more than one hour until the order is served on the person.

19 **132. Terms of restraining order**

- 20 (1) If the restraining order is made under section 129, it may
21 impose any restraints on the lawful activities and behaviour of
22 the person against whom it is made that the court considers
23 appropriate to prevent the person from subsequently committing
24 an offence similar in kind to the offence the person is found to
25 have committed or from subsequently giving a police officer
26 grounds for giving the person a direction under section 96.
- 27 (2) If the restraining order is made under section 130, it may
28 impose any restraints on the lawful activities and behaviour of
29 the person against whom it is made that the court considers
30 appropriate to prevent the person from subsequently giving a
31 police officer grounds for giving the person a direction under
32 section 96.
- 33 (3) Without limiting the restraints that may be imposed, the order
34 may restrain the person against whom it is made from —
- 35 (a) being in or near a specified place or in a specified
36 locality or place; or

- 1 (b) engaging in behaviour of a specified kind, either at all or
2 in a specified place, at a specified time, or in a specified
3 manner.
- 4 (4) In subsection (3) —
5 *specified* means specified in the order.
- 6 (5) A restraint may be imposed absolutely or on any terms the court
7 considers appropriate.
- 8 (6) A restraining order may restrain the person against whom it is
9 made from entering or remaining in a place, or restrict the
10 person's access to a place, even if the person has a legal or
11 equitable right to be there.

12 **133. Duration of restraining order**

- 13 (1) A restraining order takes effect when it is served on the person
14 against whom it is made or, if a later time is specified in the
15 order, at that time.
- 16 (2) Unless it is cancelled sooner, a restraining order remains in
17 effect for the period specified in the order or, if no period is
18 specified, for one year from the day on which it took effect.

19 **134. Variation or cancellation**

- 20 (1) An application for the court to vary or cancel a restraining order
21 may be made by a police officer nominated by the
22 Commissioner or, with the leave of the court, by the person
23 against whom the order was made.
- 24 (2) The application must be made —
25 (a) if the person against whom the order was made is a
26 child, to the Children's Court; or
27 (b) otherwise, to the Magistrates Court,
28 and must be accompanied by an affidavit in support of the
29 application.
- 30 (3) If subsection (1) requires the leave of the court for an
31 application to be made, an application seeking leave must be
32 accompanied by an affidavit disclosing all facts material to the
33 application, whether supporting or adverse to the application,
34 that are known to the applicant.
- 35 (4) Neither the application nor the affidavit can be served on the
36 person upon whose application the restraining order was made

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- 1 (the *respondent*) unless the court orders under subsection (6)
2 that they must be served on the respondent.
- 3 (5) Even though the giving of leave may not be prevented by
4 subsection (7), the court may refuse the application for leave if
5 it considers that —
- 6 (a) the affidavit does not disclose everything required by
7 subsection (3) to be disclosed; or
- 8 (b) the facts disclosed by the affidavit do not give sufficient
9 reason to vary or cancel the restraining order.
- 10 (6) Before the court grants an application for leave it must —
- 11 (a) order that a copy of the application and accompanying
12 affidavit be served on the respondent; and
- 13 (b) give the respondent an opportunity to oppose the
14 application for leave.
- 15 (7) Leave is not to be given unless the court is satisfied there has
16 been a substantial change in the relevant circumstances since the
17 restraining order was made.
- 18 (8) The person against whom a restraining order was made and the
19 respondent must be given an opportunity to be heard at the
20 hearing of an application to vary or cancel the order.
- 21 (9) At the hearing of the application to vary or cancel a restraining
22 order, the court may receive as evidence any record of evidence
23 given or affidavit filed in connection with an application for
24 leave mentioned in subsection (3).
- 25 (10) The court may dispose of the application to vary or cancel a
26 restraining order by —
- 27 (a) dismissing the application; or
- 28 (b) making a new restraining order in addition to the
29 original restraining order; or
- 30 (c) cancelling the original restraining order with or without
31 making a new restraining order.
- 32 (11) Anything in this Division that applies to a restraining order
33 made in the first instance also applies to a new restraining order
34 made under this section.

35 **135. Court to notify parties of decision**

36 If a person who was entitled to be given an opportunity to be
37 heard was not present when the court disposed of the

1 application to vary or cancel a restraining order, the registrar
2 must notify the person of how the application was disposed of.

3 **136. When cancellation takes effect**

4 The cancellation of a restraining order has effect —

- 5 (a) if another restraining order is made when the original
6 order is cancelled, at the time the new order takes effect;
7 or
8 (b) otherwise, at the conclusion of the hearing at which the
9 order was cancelled.

10 **137. Provisions about children**

- 11 (1) A restraining order must not be made against a child who is
12 under 10 years of age.
- 13 (2) In an application to vary or cancel a restraining order against a
14 child, the *Young Offenders Act 1994* section 45 applies as if the
15 matter were proceedings for an offence.
- 16 (3) If the Children’s Court hears an application for a restraining
17 order under section 130 against a person or an application to
18 vary or cancel a restraining order against a person in the belief
19 that the person is a child when in fact the person is not a
20 child —
- 21 (a) as soon as it becomes aware the person is not a child, the
22 Children’s Court must transfer the matter to the
23 Magistrates Court; and
- 24 (b) the Children’s Court proceedings are not, for that
25 reason, invalidated; and
- 26 (c) an order made by the Children’s Court before it became
27 aware the person was not a child, is as valid and has the
28 same effect as if it had been made by the Magistrates
29 Court.
- 30 (4) If the Magistrates Court hears an application for a restraining
31 order under section 130 against a person or an application to
32 vary or cancel a restraining order against a person in the belief
33 that the person is not a child when in fact the person is a
34 child —
- 35 (a) as soon as it becomes aware the person is a child, the
36 Magistrates Court must transfer the matter to the
37 Children’s Court; and

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- 1 (b) the Magistrates Court proceedings are not, for that
2 reason, invalidated; and
- 3 (c) an order made by the Magistrates Court before it
4 became aware the person was a child, is as valid and has
5 the same effect as if it had been made by the Children's
6 Court.
- 7 (5) If a court transfers a matter to another court under this section,
8 the registrar of each court must give effect to the transfer.

9 **138. Order not to conflict with family order**

10 If a court does not have jurisdiction to adjust a family order,
11 within the meaning of the *Restraining Orders Act 1997*
12 section 5, the court is not to make a restraining order that
13 conflicts with that family order.

14 **139. Regulations relating to restraining order applications**

15 The regulations may provide for —

- 16 (a) the making of applications for the making, variation or
17 cancellation of restraining orders; and
- 18 (b) the making of applications seeking leave to make an
19 application for the variation or cancellation of
20 restraining orders; and
- 21 (c) the procedure on the hearing of such applications.

22 **140. Breach of restraining order**

23 A person must not contravene a restraining order made against
24 the person.

25 Penalty: a fine of \$5 000.

26 **Division 9 — Undercover officers**

27 **141. Undercover officers**

28 (1) In this section —

29 **Minister** means the Minister responsible for the administration
30 of the *Police Act 1892*;

31 **offence** means an offence under this Act;

32 **undercover officer** means a police officer acting as an
33 undercover officer under this section.

- 1 (2) The Commissioner may, in writing, authorise a police officer to
2 act as an undercover officer and may in writing revoke that
3 authority.
- 4 (3) Before authorising a police officer to act as an undercover
5 officer the Commissioner must ensure that the police officer is a
6 suitable person to have the functions of, and the immunity given
7 to, an undercover officer.
- 8 (4) The identity or purpose of an undercover officer may, for the
9 time being, be concealed or misrepresented for the purpose of
10 detecting the commission of an offence.
- 11 (5) An undercover officer may do anything specified in the
12 authorisation given by the Commissioner for the purpose of
13 detecting the commission of an offence.
- 14 (6) If an undercover officer does anything as described in
15 subsection (5) —
- 16 (a) the Commissioner and the undercover officer do not
17 commit an offence and are not liable as a party to an
18 offence committed by another person; and
- 19 (b) the undercover officer's evidence in any proceedings
20 against another person for an offence in connection with
21 which the undercover officer did anything as described
22 in subsection (5) is not the evidence of an accomplice.
- 23 (7) The Commissioner is required, whenever requested to do so by
24 the Minister, to give the Minister a report in writing containing
25 such particulars of the activities of undercover officers as the
26 Minister requires.

1 **Part 8 — Review by State Administrative Tribunal**

2 **142. Review**

- 3 (1) A person who is aggrieved by a decision of the CEO —
4 (a) to refuse to issue or renew a licence; or
5 (b) about the imposition, variation or revocation of a licence
6 condition; or
7 (c) to suspend or revoke a licence; or
8 (d) to make a prohibition order under section 110 or an
9 order varying or revoking a prohibition order; or
10 (e) to refuse to give approval under section 166 or about the
11 imposition of a condition on an approval,

12 may apply to the State Administrative Tribunal for a review of
13 the decision.

14 (2) The Commissioner is a party to a review under subsection (1).

15 (3) A person who is aggrieved by a decision of the Commissioner
16 to give a barring notice under section 118(1) may apply to the
17 State Administrative Tribunal for a review of the decision.

18 (4) Subsection (3) applies only if the notice —

- 19 (a) has effect for one month or longer; or
20 (b) has effect for any shorter period that, when added to the
21 period of any barring notice previously given to the
22 person in respect of the place or a place of the particular
23 class (as the case requires) that is the subject of the
24 notice, results in the person being prohibited from that
25 place or that class of place for longer than one month in
26 any 12 month period.

Part 9 — Evidence

143. Allegations in prosecution notices

(1) In this section —

specified means specified in the prosecution notice.

(2) In proceedings for an offence under this Act, an allegation in the prosecution notice that at a specified time a licence of a specified kind was or was not in effect in relation to a specified person is to be taken to be proved in the absence of evidence to the contrary.

(3) In proceedings for an offence under section 17(1), (2) or (4), 18, 19(1) or (2), 20, 21(1), 22, 23, 25, 28(3) or (4), 29(2), 31(2), 32(2) or 38(1) or (3), an allegation in the prosecution notice that a specified person was operating, managing or conducting a prostitution business is to be taken to be proved in the absence of evidence to the contrary.

(4) In proceedings for an offence under section 16(2) or (3), an allegation in the prosecution notice that a contract or arrangement was for the promotion or publicising of a specified person as a prostitute or a specified prostitution business is to be taken to be proved in the absence of evidence to the contrary.

144. Presumptions about intention

(1) If, in proceedings for an offence under section 9(1) or 10(1), it is proved that the accused was loitering in or frequenting a place in circumstances giving reasonable grounds for suspecting that the accused had an intention described in section 9(3)(b) or 10(2)(b), it is to be presumed that the accused had that intention unless the contrary is proved.

(2) If, in proceedings for an offence under section 33(2), it is proved that the accused was doing something in circumstances giving reasonable grounds for suspecting that the person had an intention described in section 33(2), it is to be presumed that the accused had that intention unless the contrary is proved.

145. Presumptions about nature of advertisements

(1) If, in proceedings for an offence under section 24(1), it is proved that there are reasonable grounds for suspecting that an advertisement was —

(a) for a prostitution business; or

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- 1 (b) to the effect that a particular person is available to act as
2 a prostitute,
3 it is to be presumed that the advertisement was for a prostitution
4 business, or to the effect that a particular person is available to
5 act as a prostitute, unless the contrary is proved.
- 6 (2) Subsection (1) —
- 7 (a) applies if the accused is alleged to have authorised the
8 publication of the advertisement that is the subject of the
9 charge; but
- 10 (b) does not apply if the accused is alleged to have
11 published the advertisement that is the subject of the
12 charge.

13 **146. Accused presumed to know if person is a child**

14 If, in proceedings for an offence under this Act, it is relevant
15 whether or not a person was a child, it is to be conclusively
16 presumed that the accused knew that the person was a child
17 unless it is proved that, having taken all reasonable steps to find
18 out the age of the person concerned, the accused believed on
19 reasonable grounds, at the time the offence is alleged to have
20 been committed, that the person concerned had reached 18 or
21 more years of age.

22 **147. Person residing with child prostitute presumed to receive
23 payment**

24 If in proceedings for an offence under section 34(1) it is proved
25 that, at the time of the offence, the accused was residing with a
26 prostitute who was a child, the accused is presumed to be guilty
27 of the offence unless the contrary is proved.

28 **148. Accused presumed to have allowed presence of child**

29 If, in proceedings for an offence under section 37, it is proved
30 that a child was in a place at a particular time, the accused is
31 conclusively presumed to have allowed the child to enter or
32 remain in the place unless it is proved that the accused did not
33 know, and could not reasonably have known, that a child was in
34 the place at that time.

1 **149. Presumptions about operating or managing prostitution**
2 **business without licence**

3 If, in proceedings for an offence under section 42(1) or (3)
4 or 43(1), it is proved that the accused was present at a place
5 and —

6 (a) the content, or manner of publication, of an
7 advertisement gave reasonable grounds for suspecting
8 that —

9 (i) a prostitution business was being conducted at
10 the place; or

11 (ii) a particular person was available to act as a
12 prostitute at the place;

13 or

14 (b) also present in or outside the place were one or more
15 persons who had been convicted of, or dealt with by
16 way of infringement notice for, an offence under
17 Part 2, 3, 5 or 6 of this Act or under the *Prostitution*
18 *Act 2000* Part 2 or 3; or

19 (c) the content, or manner, of a communication given by a
20 person at the place gave reasonable grounds for
21 suspecting that that person or another person was
22 available to take part in an act of prostitution, whether at
23 the place or elsewhere,

24 it is to be presumed that the accused was operating or managing
25 a prostitution business, as is relevant to the case, unless the
26 contrary is proved.

27 **150. Certificate evidence about licences**

28 (1) In this section —

29 *specified* means specified in a certificate.

30 (2) For the purposes of any proceedings under this Act, a certificate
31 purporting to be signed by the CEO or any person authorised by
32 the CEO for that purpose and stating any of the following —

33 (a) that on a specified date or during a specified period a
34 person specified in the certificate was or was not the
35 holder of an operator's licence, a manager's licence or a
36 prostitute's licence;

37 (b) any condition imposed under section 60 in respect of a
38 specified licence;

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1 (c) any other matter contained in the register at any time in
2 respect of a specified licence or specified person,
3 is evidence of the facts stated in the certificate.

4 **151. Certificate that undercover officer was authorised**

5 A certificate purporting to be signed by the Commissioner or
6 any person authorised by the Commissioner for that purpose and
7 stating that the person named in that certificate was, at the time
8 or during the period specified in that certificate —

9 (a) a police officer acting as an undercover officer under
10 section 141; and

11 (b) authorised to do anything stated in the certificate,

12 is evidence of the facts stated in the certificate.

13 **152. Presumptions about authority to do certain things**

14 (1) In the absence of evidence to the contrary, proof is not required
15 in any proceedings for an offence under this Act —

16 (a) that the prosecutor is authorised to commence the
17 prosecution; or

18 (b) that the prosecutor has the Commissioner's approval if
19 required under section 154(2); or

20 (c) that a signature on the prosecution notice alleging the
21 offence is the signature of a person authorised to
22 commence the prosecution.

23 (2) In the absence of evidence to the contrary, proof is not required
24 in any proceedings under this Act —

25 (a) that what purports to be a certificate under section 150
26 or 151, is the certificate that it purports to be; or

27 (b) of the signature or proof that the person signing was a
28 person who could give the certificate.

29 (3) For the purposes of any proceedings under this Act, it is not
30 necessary to prove the appointment or authorisation of —

31 (a) the CEO;

32 (b) the Commissioner, an Assistant Commissioner or
33 Deputy Commissioner of Police or any other police
34 officer;

1 (c) an authorised person as defined in section 82,
2 and a signature purporting to be the signature of such an office
3 holder is evidence of the signature it purports to be.

4 **153. Possession of quantity of sheaths not evidence of offence**

5 (1) In this section —

6 *being involved in prostitution* includes the following —

- 7 (a) taking part in, or seeking to take part in, an act of
8 prostitution;
- 9 (b) inviting or otherwise seeking another person to take part
10 in an act of prostitution;
- 11 (c) being involved in any business through which
12 prostitution is provided.

13 (2) In proceedings for an offence under this Act, evidence relating
14 to a person's possession of any quantity of sheaths as defined in
15 section 27 is not, of itself, evidence of that person, or any other
16 person, being involved in prostitution.

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Part 10 — General provisions

154. Prosecutions

- (1) A prosecution for an offence under this Act can be commenced only by a police officer.
- (2) A prosecution for an offence under section 42(1) or (3) or 43(1) requires the approval of the Commissioner if the prosecutor intends to rely on one or more of the presumptions under section 149.
- (3) Subsections (1) and (2) do not limit the functions of the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991* section 11.
- (4) All prosecutions for simple offences under this Act must be heard in a court of summary jurisdiction constituted by a magistrate.

155. Penalties for bodies corporate

The provision in this Act of a penalty for a body corporate does not affect the operation of the *Sentencing Act 1995* section 40(5) in relation to an offence under this Act that does not provide for a penalty for a body corporate.

156. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for a person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

157. Exchange of information between State authorities

- (1) A State authority specified in subsection (4) may disclose to another State authority specified in subsection (4) any information that is, or could reasonably be expected to be,

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- 1 relevant to the performance of a function of the State authority
2 to which the information is disclosed.
- 3 (2) If an administrative head mentioned in subsection (4), in
4 writing, requests another administrative head mentioned in
5 subsection (4) to disclose any information, the administrative
6 head receiving the request must comply with the request.
- 7 (3) Nothing in this section requires or authorises the disclosure of
8 confidential police information.
- 9 (4) The State authorities specified in this subsection are —
- 10 (a) the CEO (who is the administrative head) and persons
11 employed in the Department; and
- 12 (b) the Commissioner (who is the administrative head),
13 police officers, and persons employed in the department
14 of the Public Service principally assisting in the
15 administration of the *Police Act 1892*; and
- 16 (c) the chief executive officer of the department of the
17 Public Service principally assisting in the administration
18 of the *Young Offenders Act 1994* (who is the
19 administrative head) and persons employed in that
20 department; and
- 21 (d) the chief executive officer of the department of the
22 Public Service principally assisting in the administration
23 of the *Children and Community Services Act 2004* (who
24 is the administrative head) and persons employed in that
25 department.
- 26 (5) The authority given by this section to disclose information
27 applies even though the disclosure may be contrary to any duty
28 of confidentiality imposed by law or otherwise arising and
29 whether or not the duty of confidentiality arose before this Act
30 commenced but, without limiting the authority given by this
31 section to disclose information, a person to whom confidential
32 information is disclosed under this section is bound by the same
33 duty of confidentiality as applied to the person making the
34 disclosure.
- 35 (6) A person making a disclosure under this section incurs no civil
36 or criminal liability as a result of the disclosure, and is not to be
37 regarded for any purpose as being in breach of the duty of
38 confidentiality.

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1 **158. Confidentiality**

2 (1) A person who is or has been engaged in the performance of
3 functions under this Act must not, directly or indirectly, record,
4 disclose or make use of any information obtained in the
5 performance of those functions except —

- 6 (a) in the course of duty; or
7 (b) as required or allowed by this Act or any other written
8 law; or
9 (c) for the purpose of proceedings for an offence under this
10 Act; or
11 (d) with the written authority of the person to whom the
12 information relates; or
13 (e) in prescribed circumstances.

14 Penalty: a fine of \$5 000.

15 (2) Subsection (1) does not apply to the disclosure of statistical or
16 other information that could not reasonably be expected to lead
17 to the identification of any person to whom it relates.

18 **159. Liability of managerial officer for offence by body corporate**

19 (1) In this section —
20 *managerial officer* means —

- 21 (a) a director or secretary of the body; or
22 (b) a person who exercises or exerts control or influence
23 over the body, or is in a position to do so; or
24 (c) a person who at any time takes responsibility for the
25 management of a business conducted by the body; or
26 (d) a person who is a shareholder of the body, if the body is
27 a proprietary company.

28 (2) If a body corporate is found to have committed an offence under
29 this Act, each person who is a managerial officer of the body is
30 to be treated as having committed the offence unless the person
31 proves that —

- 32 (a) the offence was committed without the person's consent
33 or connivance; and
34 (b) the person exercised all such due diligence to prevent
35 the commission of the offence as ought to have been
36 exercised having regard to the nature of the person's
37 functions and to all the circumstances.

1 **160. Liability of operator for offence by manager**

- 2 (1) If a person who holds a manager’s licence commits an offence
3 under this Act as the holder of that licence, each person who
4 holds an operator’s licence for the prostitution business
5 concerned is to be treated as having committed the offence and
6 is liable to the penalty prescribed for the offence committed by
7 the person who holds the manager’s licence.
- 8 (2) A person who holds an operator’s licence for a prostitution
9 business is not to be treated as having committed the offence as
10 mentioned in subsection (1) if the person proves that —
- 11 (a) the offence was committed without the person’s consent
12 or connivance; and
- 13 (b) the person exercised all such due diligence to prevent
14 the commission of the offence as ought to have been
15 exercised having regard to the nature of the person’s
16 functions and to all the circumstances.

17 **161. Regulations**

- 18 (1) The Governor may make regulations prescribing all matters that
19 are required or permitted by this Act to be prescribed or are
20 necessary or convenient to be prescribed for giving effect to the
21 purposes of this Act.
- 22 (2) The regulations may provide that contravention of a regulation
23 is an offence, and provide, for an offence against the
24 regulations, a penalty not exceeding a fine of \$6 000.

25 **162. Review of Act**

- 26 (1) The Minister must carry out a review of the operation and
27 effectiveness of this Act as soon as is practicable after the third
28 anniversary of the commencement of this section.
- 29 (2) The Minister must prepare a report based on the review and, as
30 soon as is practicable after the report is prepared, cause it to be
31 laid before each House of Parliament.

1 **Part 11 — Repeals, transitional provisions**

2 **Division 1 — Repeals**

3 **163. Prostitution legislation repealed**

4 (1) These Acts are repealed:

5 (a) the *Prostitution Act 2000*;

6 (b) the *Prostitution Amendment Act 2008*.

7 (2) The *Prostitution (Restraining Orders) Regulations 2000* are
8 repealed.

9 **Division 2 — Transitional provisions arising from the**
10 **enactment of the *Prostitution Act 2011***

11 **164. Terms used**

12 In this Division —

13 *commencement day* means the day on which section 163(1)
14 comes into operation;

15 *repealed Act* means the *Prostitution Act 2000*.

16 **165. Duration of licences issued in first year**

17 Despite section 62(1), licence that is issued in the period ending
18 12 months after commencement day may be issued for a period
19 not exceeding 3 years and 6 months.

20 **166. Planning requirements as to existing prostitution businesses**

21 (1) Despite sections 74, 75 and 76, land may be used for the
22 purposes of a prostitution business in accordance with the
23 approval of the CEO under this section.

24 (2) Subsection (1) does not apply to a prostitution business operated
25 by a self-employed prostitute.

26 (3) An application for the CEO's approval under this section must
27 be made —

28 (a) before the expiry of 3 months from commencement day;
29 and

30 (b) in the prescribed manner.

31 (4) The CEO may approve the use of land for the purposes of a
32 prostitution business, despite sections 74, 75 and 76, for a

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- 1 period not exceeding 18 months from commencement day, if
2 the CEO is satisfied —
- 3 (a) that the land was being used for the prostitution business
4 as at commencement day and had been so used on a
5 continuous basis since 6 September 2008 or earlier; and
- 6 (b) having regard to all the matters mentioned in
7 subsection (5), that the business is being, and will
8 continue to be, managed appropriately.
- 9 (5) In considering an application the CEO must liaise with the local
10 government of the district in which the land is located and the
11 Commissioner with regard to —
- 12 (a) whether the way in which the business has been
13 conducted has been the subject of complaints from
14 persons living or working in the area; and
- 15 (b) whether the way in which the business is conducted
16 causes, or is likely to cause, disturbance in the
17 neighbourhood; and
- 18 (c) whether conducting the business interferes, or is likely
19 to interfere, with the amenity of the neighbourhood.
- 20 (6) If a person applies for an operator’s licence to operate the
21 business (whether or not on behalf of a company) and the CEO
22 decides to refuse to issue the licence, an approval under this
23 section ceases to have effect when —
- 24 (a) the period for a review of the decision under section 142
25 expires without an application for a review being made;
26 or
- 27 (b) a review of the decision is finalised and the decision is
28 upheld.
- 29 (7) The regulations may provide for matters relating to dealing with
30 applications including the imposition of conditions on an
31 approval and giving notice of the right of review under
32 section 142.
- 33 (8) The regulations cannot require or authorise the CEO to disclose
34 confidential police information.

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Part 11 Repeals, transitional provisions

Division 2 Transitional provisions arising from the enactment of the Prostitution Act 2011

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1 **167. Licensing requirements for operators of existing**
2 **prostitution businesses**

- 3 (1) In this section —
4 *existing prostitution business* means a prostitution business that
5 may be the subject of an application under section 166.
- 6 (2) Sections 17(1) and 42(1) and (3)(c) do not apply to an operator
7 of an existing prostitution business if, within 3 months from
8 commencement day, an application is made for an operator's
9 licence for the business, until the later of the following
10 events —
11 (a) the licence is issued;
12 (b) the CEO decides to refuse to issue the licence and the
13 period for a review of the decision under section 142
14 expires without an application for a review being made;
15 (c) a review of a decision to refuse to issue the licence is
16 finalised.
- 17 (3) Sections 47(3)(c) and 52(4)(a) do not apply to an application for
18 an operator's licence for an existing prostitution business.
- 19 (4) Section 62(1) does not apply to an operator's licence for an
20 existing prostitution business and instead, the duration of the
21 licence is not to exceed the period during which an approval
22 under section 166 in relation to the business has effect.

23 **168. Restraining orders**

- 24 (1) A restraining order that was made under section 37 of the
25 repealed Act and that was in effect immediately before
26 commencement day is, on and from commencement day, to be
27 taken to be a restraining order made under section 129 on the
28 terms applying to the restraining order immediately before
29 commencement day.
- 30 (2) A restraining order that was made under section 38 of the
31 repealed Act and that was in effect immediately before
32 commencement day is, on and from commencement day, to be
33 taken to be a restraining order made under section 130 on the
34 terms applying to the restraining order immediately before
35 commencement day.
- 36 (3) An application for a restraining order, or to vary or cancel a
37 restraining order, that had been made under Part 5 of the
38 repealed Act, but not finalised before commencement day is, on

1 and from commencement day, to be taken to be an application
2 for a restraining order, or to vary or cancel a restraining order,
3 as is relevant to the case, under Part 7 Division 8.

4 (4) An appeal under section 47 of the repealed Act that was started,
5 but not finalised, before commencement day must be dealt with
6 as if the repealed Act had not been repealed by section 163(1),
7 and a restraining order that is made or varied as a result of such
8 an appeal is to be taken to be a restraining order under Part 7
9 Division 8 on the terms applying to it when made or varied on
10 the appeal.

11 (5) Subsections (1) and (2) apply only to restraining orders under
12 the repealed Act that are not the subject of an appeal mentioned
13 in subsection (4).

14 **169. Undercover officers**

15 An authority under section 35 of the repealed Act to act as an
16 undercover officer that was in effect immediately before
17 commencement day is, on and from commencement day, to be
18 taken to be an authority under section 141(2) on the terms
19 applying to the authority immediately before commencement
20 day.

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Part 12 — Amendments to other Acts

170. Community Protection (Offender Reporting) Act 2004 amended

- (1) This section amends the *Community Protection (Offender Reporting) Act 2004*.
- (2) In Schedule 2 delete the item relating to the *Prostitution Act 2000* and insert:

Prostitution Act 2011

- s. 33 Causing, permitting, or seeking to induce child to act as prostitute
- s. 34 Obtaining payment for prostitution by a child

171. Criminal Code amended

- (1) This section amends *The Criminal Code*
- (2) Delete sections 190 and 191.
- (3) In section 192(1)(b) delete “girl, who is not a common prostitute or of known immoral character,” and insert:

girl

- (4) In section 557K(1) in the definition of *child sex offender* delete paragraph (h) and insert:

- (h) an offence committed under the *Prostitution Act 2011* section 9(1), 10(1), 33, 34, 35 or 39 that was committed against or in respect of a child; or

-
- 1 **172. Evidence Act 1906 amended**
- 2 (1) This section amends the *Evidence Act 1906*.
- 3 (2) In section 36A(1) in the definition of *sexual offence*:
- 4 (a) delete paragraph (a) and insert:
- 5
- 6 (a) under *The Criminal Code* section 186 or the
- 7 *Prostitution Act 2011* section 11, 35 or 39; or
- 8
- 9 (b) after each of paragraphs (b) and (ba) insert:
- 10
- 11 or
- 12
- 13 (3) In the Second Schedule Part 1 delete “s. 191 Procuration”.
- 14 (4) In Schedule 7 Part A clause 1(1)(a) delete “*Prostitution Act 2000*”
- 15 and insert:
- 16
- 17 *Prostitution Act 2011*
- 18
- 19 (5) In Schedule 7 Part B in the item relating to *The Criminal Code*
- 20 delete “191 Procuration”.
- 21 (6) In Schedule 7 Part B delete the item relating to the *Prostitution*
- 22 *Act 2000* and insert:
- 23
- Prostitution Act 2011*
- | | |
|-------|---|
| 9(1) | Seeking prostitute in or in view of or within hearing of public place |
| 10(1) | Seeking client in or in view or within hearing of public place |
| 33 | Causing, permitting, or seeking to induce child to act as prostitute |
| 34 | Obtaining payment for prostitution by a child |
| 35 | Agreement for prostitution by a child |
| 36 | Prostitution in place where child present |

s. 173

37 Allowing child to be in place involving prostitution

39 Acting as a prostitute for a child

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173. *Liquor Control Act 1988* amended

(1) This section amends the *Liquor Control Act 1988*.

(2) In section 115(1)(b) delete “thief, prostitute” and insert:

thief

(3) In section 115(4a)(e) delete “prostitute.”.

174. *Western Australian College of Teaching Act 2004* amended

(1) This section amends the *Western Australian College of Teaching Act 2004*.

(2) In Schedule 2 item 1 delete “s. 191 Procuring person to be prostitute etc.”.

(3) In Schedule 2 delete item 2 and insert:

2. *Prostitution Act 2011*

s. 15 Promoting employment in prostitution industry

s. 33 Causing, permitting, or seeking to induce child to act as prostitute

s. 34 Obtaining payment for prostitution by a child

s. 35 Agreement for prostitution by a child

s. 36 Prostitution in place where child present

s. 37 Allowing child to be in place involving prostitution

s. 39 Acting as a prostitute for a child

16

1 **175. Workers' Compensation and Injury Management Act 1981**
2 **amended**

3 (1) This section amends the *Workers' Compensation and Injury*
4 *Management Act 1981*.

5 (2) After section 11A insert:
6

7 **12A. Exclusion of certain prostitutes**

8 (1) In this Act —

9 *worker* does not include —

10 (a) a prostitute who does not hold a current
11 prostitute's licence and who does not work
12 under coercion; or

13 (b) a self-employed prostitute.

14 (2) In subsection (1) the following terms have the meaning
15 given to them in the *Prostitution Act 2011* section 3 —

16 *licence*

17 *prostitute*

18 *self-employed prostitute*
19

20 (3) In section 22 delete "If it" and insert:
21

22 (1) If it
23

24 (4) At the end of section 22 insert:
25

26 (2) The failure by a worker who is a prostitute to comply
27 with the *Prostitution Act 2011* section 28(2), 29(1),
28 30(1) or 31(1) amounts to serious and wilful
29 misconduct for the purposes of subsection (1)(c) unless
30 the claimant proves that there was a reasonable excuse
31 for the failure.
32

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1 **176. Working with Children (Criminal Record Checking) Act 2004**
2 **amended**

3 (1) This section amends the *Working with Children (Criminal*
4 *Record Checking) Act 2004*.

5 (2) In Schedule 2 delete the item relating to the *Prostitution*
6 *Act 2000* and insert:

7

Prostitution Act 2011

s. 33 Causing, permitting, or seeking to induce
child to act as prostitute

s. 34 Obtaining payment for prostitution by a
child

s. 35 Agreement for prostitution by a child

8

9 **177. Young Offenders Act 1994 amended**

10 (1) This section amends the *Young Offenders Act 1994*.

11 (2) In Schedule 2 delete item 2A and insert:

12

2A. Prostitution Act 2011

s. 11 Seeking to induce person to act as
prostitute

s. 33 Causing, permitting, or seeking to induce
child to act as prostitute

s. 34 Obtaining payment for prostitution by a
child

s. 35 Agreement for prostitution by a child

13

**Schedule 1 — Offences relevant to granting, renewing
operator's or manager's licence**

[s. 52(2)(g)]

The offences for the purposes of section 52(2)(g)(i) and (ii) are as follows:

Censorship Act 1996 (repealed)

s. 60

Child Welfare Act 1947 (repealed)

s. 108(1)

Children and Community Services Act 2004

s. 192(1) or (2)

*Classification (Publications, Films and Computer Games) Enforcement
Act 1996*

the deleted s. 60

s. 101

The Criminal Code

s. 181

s. 186

s. 187

s. 204A

s. 204B

s. 217

s. 218

s. 219

s. 220

s. 278

s. 279

s. 281A

s. 297

s. 320(2) or (3)

s. 321(2) or (3)

Prostitution Bill 2011

Schedule 1 Offences relevant to granting, renewing operator's or manager's licence

- 1 s. 321A(4)
 - 2 s. 324
 - 3 s. 325
 - 4 s. 326
 - 5 s. 327
 - 6 s. 329
 - 7 s. 330(2) or (3)
 - 8 s. 331B
 - 9 s. 331C
 - 10 s. 331D
 - 11 s. 332
 - 12 s. 333
 - 13 s. 338A
 - 14 s. 338B
 - 15 s. 338C
 - 16 s. 343
 - 17 s. 396
 - 18 s. 397
 - 19 s. 398
 - 20 s. 409
 - 21 s. 563A
 - 22 *Criminal Property Confiscation Act 2000*
 - 23 s. 50(1)
 - 24 *Criminal Code Act 1995* (Commonwealth)
 - 25 s. 480.4
 - 26 s. 480.5
 - 27
 - 28
 - 29
-

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
3 unrelated adults	121(3)
act as a prostitute.....	3
act of prostitution	3
applicant.....	49(1)
approved	117
approved place	56(1)
authorised person	82
being involved in prostitution	153(1)
bodily fluid.....	27
caretaker's dwelling	76(1)
CEO	3
child	3
City of Perth inner zone	76(1)
client	3, 4
closure notice	119
closure offence provision	119
closure order	119
commencement day	164
Commissioner	3
compliance purposes.....	91(1)
confidential police information.....	3
conveyance.....	97(1)
Department.....	3
document.....	3
dwelling	3
employer	106
existing prostitution business	167(1)
health information.....	32(1)
in	3
incapable person	14(3), 52(3)
juvenile justice team	91(1)
licence	3
licence holder.....	3
manage	3
manager.....	3
managerial officer	159(1)
medical practitioner	100(1)
Minister	141(1)
no licence area order	77
notice.....	117
notifiable matter	67(2), (4)
offence	97(1), 141(1)
offender.....	9(3), 10(2)
officer.....	3, 65(1)
operate.....	3
operator	3
order.....	77
owner	3
particular applicant order	77

Defined Terms

place.....	3
planning scheme	73
prescribed.....	3
prohibition order	106
proprietary company	3
prostitute	3, 4, 20
prostitution.....	4
prostitution business	3
protected place	76(1)
public place.....	8
refuse.....	26(1)
registered nurse	100(1)
relevant charge.....	103(3)
relevant juvenile justice team matter	103(3)
relevant person.....	106
repealed Act	164
residential area	73
respondent.....	134(4)
responsible planning authority.....	41, 73
restraining order.....	128
self-employed prostitute.....	3
sheath	27
special use area	73
specified	106, 117, 119, 132(4), 143(1), 150(1)
sponsorship	16(1)
STI	27
STI-risk contact.....	27
undercover officer.....	141(1)
WAPC.....	73
work	3

WESTERN AUSTRALIA

Prostitution Bill 2011

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill to make provisions about prostitution and for related purposes.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

All submissions should be forwarded to:

prostitution_reform_feedback@justice.wa.gov.au

or

Prostitution Reform Feedback
Department of the Attorney General
GPO Box F317, PERTH 6841

The closing date for submissions is **Friday 29 July 2011.**