THE PROSTITUTION CONTROL AND OTHER MATTERS AMENDMENT BILL 2008

The purpose of the Prostitution Control and Other Matters Amendment Bill 2008 is to assist the agencies responsible for enforcing the Prostitution Control Act 1994 (‘the Act’) and its Regulations in their role in enforcing the law in relation to brothel owners and operators who fail to obtain the necessary licences and permits.

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This D-Brief is part of a series of papers produced by the Library’s Research Service. D-Briefs are intended to provide a snapshot overview of upcoming bills and topics of interest to Members of Parliament.
1. Introduction

On 9 October 2008 the Minister for Consumer Affairs, the Hon. Tony Robinson MLA gave the second reading speech for the Prostitution Control and Other Matters Amendment Bill 2008 (Vic) (‘the Bill’). In his second reading speech, the Minister identified the main purpose of the Bill as to assist the agencies responsible for enforcing the Prostitution Control Act 1994 (‘the Act’) and its Regulations in their role in enforcing the law in relation to brothel owners and operators who fail to obtain the necessary licences and permits.

The agencies responsible for the regulation and law enforcement related to prostitution are Consumer Affairs Victoria (CAV), local councils and Victoria Police. One of the main objectives of the Bill amends the Act to allow these agencies to prove that sexual services were offered, rather than provided. This is important since several local councils had resorted to controversial methods of obtaining evidence in order to prove that illegal brothels were operating within their municipality.

The main provisions of the Bill are to amend the Prostitution Control Act 1994 to:

- amend the definition of brothel and escort agency to include premises that offer (rather than provide) sexual services;
- clarify the kinds of evidence that agencies can use to show that sexual services were on offer when seeking an order to declare a premises an illegal brothel;
widen the range of police members (to the rank of senior sergeant) who may apply for a warrant to search suspected illegal brothel premises; and
introduce an effective control test for licensees to ensure that the person who has met the licence requirements is the person effectively controlling the business.

The Bill also amends the Second-Hand Dealers and Pawnbrokers Act 1989 to clarify the powers of police to obtain hard copy records from electronic record-keeping systems under that Act, during general inspections.

2. Background

This section provides a background to the legislation of prostitution in Victoria, with particular emphasis on legislation related to planning regulations and brothel keeping. It does not focus on the criminal, social or health aspects of prostitution-related legislation since the Bill is primarily focused on regulating brothels and brothel ownership. This section also briefly examines the recent background to the Bill, including the role of local councils.

Legislative Background

Legislation relating to prostitution has been addressed in many Acts such as the Crimes Act 1958, the Health Act 1958, the Vagrancy Act 1966 (repealed), the Planning and Environment Act 1987 and the Summary Offences Act 1966. The regulation of prostitution has fallen mainly into the categories of criminal, health and town planning legislation. There are also Commonwealth Acts that regulate prostitution, particularly with regards to sexual slavery and immigration. As will be discussed below, the states and territories of Australia differ in their approach to prostitution with some jurisdictions legalising approved brothels and others maintaining a criminalised approach to the sex industry.

Victoria has had a long history of legislating against prostitution. Various Acts have addressed the issue of prostitution. The Police Offences Act 1891 made it an offence to be seen ‘importuning for immoral purposes’ (s. 7(2)). The procuring of females was also a criminal offence under the Crimes Act 1891 (s. 14 and s. 15). Later, the Police Offences Act 1907 included living off the earnings of prostitution (s. 5) and brothel keeping (s. 6) as offences. It also included the offence of letting a house to a tenant knowing that it would be used by the tenant as ‘a disorderly house or house of ill-fame and repute’ (s. 6).

In 1928 soliciting, behaving ‘riotously’ in public, ‘pimping’, and prostitutes assembling in ‘refreshment houses’ were offences incorporated into the Police Offences Act. The Vagrancy Act also addressed the issue of prostitution, brothels and ‘disorderly houses’, making it an offence for one to keep or assist in the management of a brothel (s. 11).

In 1984 the Victorian Government considered legalising some forms of prostitution. This was largely in reaction to concerns over the prevalence of street prostitution in areas like St Kilda and concerns over ‘massage parlours’ operating without

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In July 1983 the Victoria Police Vice Squad estimated that there were 149 massage parlours in Melbourne, of which only 17 had valid permits. Massage parlours were recognised as a legitimate land use but were subject to local council planning controls. As brothels were illegal, many brothels were operating as massage parlours.

The Working Party (on Location of Brothels) to the Minister for Planning and Environment conducted an inquiry in 1983 into planning legislation and brothels. The Report was not intended to make moral or social judgements about prostitution but was focused on examining existing planning controls on the location of ‘massage parlours’, which councils had difficulty in regulating. The Report argued that town planners needed to recognise that ‘massage parlours’ were operating as brothels.

The Working Party Report recommended that brothels should be accepted as a legitimate land use subject to town planning regulations. They also recommended that prostitution-related activities should not constitute criminal offences in a brothel with a valid planning permit and noted that there should be an amnesty period of six to twelve months to allow existing massage parlours to obtain planning consent or relocate with planning consent.

As a result of the Working Party’s Report, the Planning (Massage Parlours) Bill 1984 was introduced in the Legislative Council, but later received many amendments, including a change in name to the Planning (Brothels) Bill 1984. This Bill made brothels with planning permits legal. It primarily addressed the control of the location of brothels, restricted persons convicted of certain offences to hold permits and abolished offences for prostitution-related activities occurring in brothels. The Planning (Brothels) Act 1984 was the first Australian legislation which explicitly attempted to regulate prostitution.

Another report which has been influential in the development of prostitution-related legislation in Victoria is the Inquiry Into Prostitution (the ‘Neave Report’). The Neave Report followed the Working Party’s report and the legalisation of brothels in Victoria, therefore it was able to offer somewhat tentative and early analysis into the effect of the legislation on aspects such as brothel advertisement and permit applications. It was also able to identify practical problems with the legislation, expressed by an increase in escort agencies to avoid an arduous planning application process. As identified in the Neave Report, escort agency work can pose significantly higher risks for prostitutes since the worker typically goes to the home or hotel rented by the

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2 The Melbourne Metropolitan Planning Scheme defined ‘massage parlour’ in 1975 as ‘any building or part of any building used for the purpose of body massage by a person other than a person registered [as a physiotherapist] whether or not it is used solely for that purpose’. Melbourne Metropolitan Planning Ordinance, Part 1, CI.2.

3 See Report by a Working Party to the Minister for Planning and Environment on the Location of Massage Parlours (1983) Melbourne, Department of Planning and Environment.


5 ibid., p. 153.


7 The Neave Report, commissioned by the then Attorney-General the Hon. J. Kennan and led by Marcia Neave, was requested to examine and report on the social, economic, legal and health aspects of prostitution and make recommendations accordingly. The Report made 91 recommendations to the Victorian Government in 1985.

client and therefore it is difficult to screen or monitor clients. The Neave Report also identified the difficulty in enforcing the current law of prostitution-related offences.

In response to the Neave Report, further regulation of the sex industry was undertaken with the *Prostitution Regulation Act 1986*. Its objectives were to protect young people from sexual exploitation, to protect adult prostitutes from violence and intimidation, to protect the community from nuisance and disturbance caused by prostitution-related activities and to establish adequate controls over the operators and managers or brothels. This Act did not make any comment on escort agencies.

Importantly, the Prostitution Regulation Act required the personal supervision of a brothel by a licensed operator or an approved manager (s. 17). It also established a Brothel Licensing Board to determine applications for licences to operate brothels, approve persons as brothel managers, review licences and to liaise with the police force in these matters (s. 19). Furthermore, the licensee was not to operate the brothel with an unlicensed partner (s. 16).

The Prostitution Regulation Act was repealed by the *Prostitution Control Act 1994*, which is the current Act in place to oversee the regulation and control of prostitution.

**Current Legislation**

The *Prostitution Control Act 1994* was introduced by then Attorney-General Jan Wade after setting up a working party in 1992 to examine the effectiveness of the Prostitution Regulation Act. The objectives of the Prostitution Control Act are to minimise the harms associated with prostitution by:

- seeking to protect children;
- lessening the community impacts of prostitution-related activities;
- ensuring criminals are not involved in the prostitution industry;
- ensuring that brothels are not located in residential areas or areas frequented by children;
- ensuring that no one person has at any one time an interest in more than one brothel licence or permit;
- promoting public health of prostitutes and their clients;
- protecting prostitutes from violence and exploitation;
- ensuring that brothels are accessible to inspectors, law enforcement officers, health workers and other social service providers; and
- promoting the welfare and occupational health and safety of prostitutes.

This Act kept many of the provisions of the former Act that consolidated legislation pertaining to prostitution, such as with regards to street prostitution, maintaining a licensing Board (renamed in the new legislation as the Prostitution Control Board) and controlling the advertisement of prostitution.

There were also some important additions. For example, the objectives of the Act were much broader in focus than the earlier Act. The Act also made it an offence to intimidate, insult or harass a prostitute in a public place (s. 15) and it made it an offence for a prostitution service provider to allow the consumption of liquor in a brothel (s. 21). Furthermore, the Act made special provisions for 'small owner-operated businesses' (s. 23).

In 2004 the Bracks Government increased licence fees for prostitution service providers, which was the first fee increase since the Act came into force. Since its implementation, the Act has been amended more than twenty-five times and has

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9 ibid., p. 57.
evolved to incorporate further the realities of prostitution and prostitution service providers, such as the inclusion of escort agencies as prostitution service providers.

Brothel owners need to be registered, licensed and hold the relevant planning permit. A person must not ‘knowingly or recklessly carry on business as a prostitution service provider’ without holding a licence, in breach of any condition of a licence or when a licence has been suspended. A person who ‘knowingly and recklessly’ carries on a prostitution business faces a maximum of 5 years imprisonment or a fine of 600 penalty units or both (Level 6 fine) (s. 22(1)). A lesser penalty is reserved for persons who are unlicensed or carry on a business in breach of their licence conditions who are not knowing or reckless in operating such a service (Level 7 fine (240 penalty units) (s. 22(1A)).

Despite the consequences for the operation of an illegal brothel, conviction rates are low. Since the introduction of the Act in 1994, there have only been a few owners of illegal brothels that have been prosecuted. The first person in Victoria to be convicted of running an illegal brothel was in 2004. In this instance, Stonnington Council collaborated with Victoria Police, the Department of Immigration, Centrelink, the Sheriff's Office and the Australian Taxation Office to expose the illegal brothel. The owner was required to pay more than $50,000 in fines and legal costs.

**Enforcing the Legislation**

In enforcing the above objectives the Act empowers councils, CAV (through the Business Licensing Authority) and Victoria Police to enter suspected illegal brothels or make an application to the Magistrates’ Court to declare a premises as a proscribed brothel. Currently, it is difficult for local councils, Victorian Police and CAV to prove that an illegal brothel is operating. As the Minister noted, the current practice for local councils is to hire a private investigator to obtain sexual services from a suspected illegal brothel premises, without which it is difficult to construct a ‘sound legal case’ that the premises is operating as an illegal brothel.

The Act set up the Prostitution Control Board (PCB) which was then replaced in 1999 by the Business Licensing Authority ('the Authority' in the Act) which is an independent statutory body that administers licensing and registration for prostitution service providers, among other businesses. According to the Consumer Affairs Annual Report 2006-07, 15 applications for brothels or escort agency licences were lodged in 2006-07 with the Authority and the total number of prostitution service providers on the register was 149, down 1.32 per cent from the previous year.

In Victoria, anyone who provides sexual services to someone else in return for payment or reward is a Prostitution Service Provider and must register with the Authority. ‘Small owner-operated providers’ of one or two people working from one premises must also register with the Authority, however they are not required to be licensed.

Permits must still be applied for at the local council level for all brothel owners in keeping with the Planning and Environment Act 1987 (s. 60) even if they are exempt from licensing requirements under small business provisions. The restrictions in

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11 Consumer Affairs Victoria is not extended this right unless voluntary agreement is given or a search warrant obtained. Consumer Affairs Victoria has inspectors that conduct ongoing monitoring of brothels in compliance with the Act.
place in section 73 of the Prostitution Control Act specify where brothels cannot be located (i.e. such as in the proximity of places of worship, hospitals, schools, kindergartens and places frequented by children).

Victoria also has a Prostitution Control Act Ministerial Advisory Committee which is an independent statutory body advising the Minister for Consumer Affairs on issues relating to the prostitution industry, its regulation and control. This Committee was established under the Act (s. 67) and comprises twelve members from Government, industry and the community.

**Background to the Bill**

Since Victoria Police disbanded its Vice Squad in 1996, there has been some uncertainty between the bodies responsible for regulating prostitution as to whether the responsibility for investigating illegal brothels should rest with CAV, Victoria Police or local councils. Australian Adult Entertainment Industry spokesperson William Albon claimed that the illegal brothel industry was flourishing because no agency in Victoria wanted to tackle it. He said that ‘police say it is a planning issue, councils say it is a police issue, and the CAV just sits on its hands and hopes it goes away.’

Local councils, in particular, have struggled in proving the existence of illegal brothels. An illegal brothel in Port Phillip Council was closed in August 2007 after the council hired a private investigator. The tenants were fined $62,000. The Port Phillip Mayor Janet Bolitho was quoted as saying that the responsibility on local councils to shut down illegal brothels was too onerous.

Legal fees for councils can cost ratepayers thousands of dollars therefore resorting to using private investigators to help prove their case in court was deemed to be a more certain way for councils to win court cases against illegal brothels. In cases where councils had employed private investigators to obtain sexual services, councils were consistently successful and usually had their legal costs awarded. However, questions have been raised in two recent decisions by Magistrates over the legality of this method. One case in the Melbourne Magistrates’ Court failed because the private investigator had not had sex.

Without resorting to this method, local councils had to give two days notice before an authorised officer entered a suspected illegal brothel, which gave the premises time to pack up and move elsewhere or remove evidence. Also, councils can close down illegal brothels only under provisions of the Planning and Environment Act.

*The Age* reported that at least six Melbourne councils confirmed in January 2007 that they had paid private investigators to visit illegal brothels. Councils were beginning to stop this practice in 2007 and lobby the State Government to make changes to the Act so that CAV would take a greater role in enforcing the law with regards to illegal brothels.

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19 ibid.
CAV has been criticised in the media and by local councils for their efforts in enforcing the Act.\textsuperscript{20} In 2007, the \textit{Herald Sun} exposed an illegal brothel that was operating in Bourke Street less than 50 metres from the offices of CAV. The Minister was quoted in the \textit{Herald Sun} as saying that this development had acted as ‘a catalyst’ prompting further legislation against what had been a long-running problem.\textsuperscript{21}

\section*{3. The Bill in Detail}

\textbf{Effective Control of Business}

The Bill sets out requirements for the licensee of a brothel to be in effective control of a business. There are already restrictions in the Prostitution Control Act placed on who can obtain a licence to establish a brothel, therefore these proposed amendments are intended to further ensure that the person who has met the requirements for obtaining a prostitution service provider licence \textit{is} the person in charge and controlling the business.

Specifically, a licence can be given to any person who satisfies certain requirements, including that the applicant:

- is at least 18 years of age (s. 33);
- is not already a licensee (multi-ownership is illegal) (s. 33);
- be a ‘suitable person’ to carry on business as a prostitution service provider (s. 37(1)(a));
- has not been found guilty or convicted of an indictable (‘disqualifying’) offence in the last five years which, in the Authority’s opinion, renders them ineligible (s. 37(1)(b));
- has not had a prostitution provider’s licence cancelled in the last five years (s. 37(1)(c));
- is not an associate of a person who has, or of a body corporate which has, within the last preceding five years, been convicted or found guilty of a disqualifying offence (s. 37(1)(d));\textsuperscript{22}
- is not an associate of a body corporate a director or secretary of which has, or of a body corporate which has, within the last preceding five years, been convicted or found guilty of a disqualifying offence (s. 37(1)(e));\textsuperscript{23} and
- is not an insolvent under administration (i.e. a person who is an undischarged bankrupt) (s. 37(1)(f)).

In applying for a licence, an applicant must also consent to having his or her fingerprints taken by an officer of the Authority or an authorised member of the police

\textsuperscript{20} ibid.
\textsuperscript{22} An associate of another person (as in s. 37(1)(d)) is defined as a spouse or domestic partner of that other person, a business partner of that other person or has entered into a business arrangement or relationship or a lease with that other person in respect of a prostitution service providing business (s. 37(2)).
\textsuperscript{23} A person is an associate of a body corporate if he or she:
- is a director or secretary of the body corporate (or the spouse of domestic partner);
- holds any relevant financial interest or power in the business, or is able to exercise a significant influence over the management or operation of the business; or
- holds or will hold any relevant position in the business; or
- has entered a business arrangement or relationship or a lease with the body corporate in respect of a prostitution service providing business (see s. 37(3)).
force (s. 33(3)). The applicant must also not be a represented person within the meaning of the *Guardianship and Administration Act 1986* (s. 37(1)(g)).

In section 38 of the Act, suitability of the applicant to carry on a business as a prostitution service provider requires that the Authority consider whether:

- the applicant is of good repute (having regard to character, honesty and integrity);
- their associate/s is/are also of good repute;
- the applicant can ensure the financial viability of the business;
- the applicant has sufficient business skills;
- the applicant will have in place arrangements to ensure the safety of employees; and
- the proposed business structure is sufficiently transparent to enable all associates of the applicant to be readily identified, among other matters.

The Bill goes further in ensuring tighter regulation of licensees by inserting a new section after section 41 (clause 6) that requires a licensee of a brothel to:

- be regularly and usually in charge at the brothel;
- give regular and substantial attendance at the brothel;
- properly control and supervise any approved manager appointed in respect of the licensee’s business;
- take reasonable steps to ensure that any approved manager, employee, independent contractor or any other person connected with the licensee’s business complies with the provisions of this Act and any other laws relevant to the conduct of the business while the licensee is engaged in that business;
- establish procedures designed to ensure that the licensee’s business is conducted in accordance with the law and in a suitable manner;
- monitor the conduct of the licensee’s business in a manner that will ensure, as far as is practicable, that those procedures are complied with; and
- ensure that at least one licensee is nominated as the licensee in effective control of the business at any one time and notify the Authority in writing of the nomination as soon as is practicable (if the business is run by more than one licensee).

As mentioned above, there are already provisions within the Act that require the personal supervision of a brothel or escort agency by the licensed operator or approved manager, therefore the above section in the Bill would be in addition to provisions already contained within the Act.

Section 49 of the Act states that a licensed business must at all times when open for business be personally supervised by the licensee or an approved manager. The maximum penalty for the offence of not personally supervising the business is 60 penalty units or 6 months imprisonment. This type of provision has been contained within prostitution legislation since the Prostitution Regulation Act in 1986.

The Bill extends the legislation to require the licensee to be in effective control of business, rather than the business being supervised and run by an approved manager. Clause 6 of the Bill further prevents persons who are not intending to effectively control the business from obtaining licences on behalf of other persons who might not be able to for reasons such as unsuitability or recent criminal convictions. While there are already provisions within the Act that are intended to prevent criminal involvement in the prostitution industry, with regards to criminal convictions of licensees and their associates and relatives, this addition in the Bill further ensures that persons applying for licenses intend to control the business.
Each of the above requirements detailing supervision and attendance obligations, while related, are regarded as potentially separate offences and are allocated 60 penalty units for non-compliance. A licensee who is convicted or found guilty of an offence described above (of being not in effective control of business) may have their licence automatically cancelled at any time (clause 7 of the Bill).

**Disciplinary Powers of the Tribunal**

Clause 8 of the Bill allows for disciplinary action against the licensee to be taken by the Victorian Civil and Administrative Tribunal (the ‘Tribunal’ in the Act) for the offence of failing to be in effective control of business. Clause 8 also allows the Tribunal to make a judgement over whether the licensee is likely to comply with the requirement of being in effective control of business. The penalties that the Tribunal can impose on licensees (to pay the Prostitution Control Fund) are also increased in clause 9 from a static $10,000 (in s. 48A(1)(c) of the Act) to a maximum of 600 times the value of a penalty unit (currently over $68,000).

**Licence Cancellation**

Other offences or changes in circumstances which may result in licence cancellation include if the licensee:

- is convicted of an offence against the *Drugs, Poisons and Controlled Substances Act 1981*;
- is convicted of an offence set out in Schedule 3 of the Act (offences against the Commonwealth *Migration Act 1958*);
- is convicted of other offences punishable by imprisonment for 12 months or more (or would be punishable for 12 months in Victorian law) or serves a prison sentence (in Victoria or elsewhere);
- is found guilty of providing false or misleading information (s. 45(1));
- becomes an insolvent under administration; or
- becomes a represented person within the meaning of the Guardianship and Administration Act 1986.

The Bill adds a provision in clause 7 that if any of the above occur to the licensee, including that the licensee is charged with not being in effective control of business, they must give particulars of the matter to the Authority in writing signed by the licensee within 10 days of the matter occurring, unless the licensee has a reasonable excuse.

The penalty units for failing to keep the Authority informed of offences or changes in circumstances is 60 penalty units. Again, in this provision, the onus is placed on the licensee to inform the Authority of changes in circumstance, from notifying of a conviction to notifying that the licensee has become a guardian.

**Absence of Licensee from Business**

Further provisions contained in the Bill address the temporary absence of the licensee from the business. The licensee must keep the Authority informed in writing of when the licensee is to be absent from the business if this absence is for a period of longer than 7 days. If the absence is between 7 and 30 days, the licensee must

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24 For the year ending 30 June 2009, the penalty unit is $113.42 as set by the Treasury under section 5(3) of the *Monetary Units Act 2004*.

notify the Authority in writing and nominate a licensee or approved manager to be in effective control of the business during this time.

If the absence from the business is for more than 30 days, the licensee must apply in writing to the Authority to appoint a nominated licensee or an approved manager to be in effective control of the business during the licensee’s absence. The Authority must approve the application on being satisfied that the nominated licensee is ‘capable’ of managing the business after taking ‘any prescribed matters’ into account in determining an application.

Evidence of Proscribed Brothels
The Bill inserts a new section into the Act allowing the Magistrates’ Court to take certain matters into consideration as ‘evidence’ that would suggest or indicate that a particular premises is being used for prostitution services. The Magistrates’ Court may take the following matters into consideration as constituting evidence:
- people entering and leaving the premises (particularly the number and gender of persons frequenting the premises);
- appointments at the premises that a ‘reasonable person’ would believe were for the purposes of prostitution services;
- advertising where contact details provided are linked to premises offering prostitution services;
- books, accounts and other documents that contain information that is consistent with the use of premises for prostitution services; and
- the arrangement of furniture and other items that is consistent with the use of the premises for prostitution services (such as beds in every room).

The Minister noted, in his second reading speech, that obtaining much of what is considered as constituting evidence in the Bill would not require attendance on the premises (for example, evidence of people entering and leaving the premises, appointments made for prostitution services at the premises, and advertising). The other types of evidence that would require attendance ‘would stop far short of the need to purchase services’, the Minister stated.26

The Bill emphasises that in any proceeding under this Act in which it is required to establish that sexual services were being offered or provided at a premises, evidence of the presence on the premises of materials commonly used in safe sex practices is inadmissible for the purpose of establishing that sexual services were being offered or provided at the premises (clause 16). Presumably this is so as to not discourage safe sex practices.

Clause 3 of the Bill also makes changes to the definition of brothel and escort agency in the Act to describe a business that offers prostitution services rather than a business that provides prostitution services.

The Role of the Police
The Bill makes it easier for local councils and members of the police force to regulate prostitution by changing the evidentiary requirements to proving the operation of an illegal brothel. The Bill also assists the police in their ability to serve infringement notices and obtain search warrants.

In facilitating this, the Bill changes the rank of police members who can apply for a warrant to search suspected illegal brothels from ‘inspector’ to ‘senior sergeant’, thereby widening the range of police members who can obtain search warrants. The

Minister identified in his second reading speech that illegal brothel operators are quick to relocate and the restrictions on the rank of officer who could apply for a search warrant had previously compromised the ability of officers to enforce the law with regards to illegal brothels.27

The Bill allows members of the police force to serve infringement notices in respect of prescribed offences not exceeding 10 penalty units, such as a cancelled licence not being surrendered within 14 days, giving a false name to an officer, failing to display a licence in a conspicuous place near the front entrance of the business and possessing a false licence (clause 17).

4. Prostitution Legislation in Other Jurisdictions

The regulatory regime for the sex industry varies from state to state. Brothels are legal in Queensland, Western Australia and New South Wales. Like Victoria, the regulatory regime in Queensland and Western Australia requires local council approval as well as licensing by a licensing authority, whereas only local council approval is required in New South Wales. Brothels are illegal in South Australia and the Northern Territory. Commercially operated brothels are illegal in Tasmania, as opposed to self employed sex workers.

New South Wales

New South Wales’ most recent legislation in this area was the *Brothels Legislation Amendment Act 2007*, which amended the *Environmental Planning and Assessment Act 1979* and the *Restricted Premises Act 1943* and was designed to ‘strengthen enforcement measures to enable local councils and other authorities to more quickly and effectively take action against brothels that are operating unlawfully’. 28

Like the Bill currently before the Victorian Parliament, the NSW legislation introduced provisions to simplify the burden of proof on the part of councils or authorities seeking to prove that a premises is operating as an illegal brothel. Councils may now rely on circumstantial evidence as a basis for seeking an order of closure to the Land and Environment Court. Examples of circumstantial evidence include (but are not limited to):

- evidence related to persons entering and leaving the premises, including number, gender and frequency, that is consistent with the use of the premises for prostitution;
- evidence of appointments with persons at the premises for the purpose of prostitution that are made through the use of telephone numbers or other contact details that are publicly advertised;
- evidence of information in books and accounts that is consistent with the use of the premises for prostitution; and
- evidence of the arrangement of, or other matters relating to, the premises, or the furniture, equipment or articles in the premises, that is consistent with the use of the premises for prostitution. 29

Queensland

Queensland’s prostitution industry is governed by the *Prostitution Act 1999*. Section 80 of Queensland’s Prostitution Act relates to the personal supervision of a licensed brothel and includes the same penalties that are contained within the Victorian

27 ibid.
29 *Brothels Legislation Amendment Act 2007* (NSW).
legislation. As in the Victorian legislation it requires that ‘a licensed brothel must at all
times when open for business be personally supervised by the licensee or an
approved manager’ (s. 80(1)).

Police at the rank of inspector have the power to enter and search licensed brothels in Queensland’s legislation. Inspectors may also authorise police officers of a lower rank to conduct searches (carrying the requisite authorisation).

Western Australia
Western Australia recently made further provisions to its prostitution legislation through the Prostitution Amendment Act 2008 Pt.2 (WA), which are yet to be proclaimed as at the latest reprint of the Prostitution Act 2000.

The provisions are similar to those contained in the Queensland and Victorian legislation in relation to the personal supervision of business operators or managers. The penalty for a manager who is not present at the place ‘at all times during which the business is being carried on at or from the place’ is $24,000 for a first offence and 3 years imprisonment for a second or subsequent offence (s. 21O). This section does not apply to an individual sex worker or a small owner-operated business.

Any police officer may be granted a warrant of search and seizure if a justice is satisfied that there are reasonable grounds for suspecting that there is in a place anything that will afford evidence as to the commission of an offence (s. 27).

South Australia
In South Australia, brothels are illegal under Part 6 of the Summary Offences Act 1953. The offence of keeping and managing a brothel or receiving money paid in a brothel in respect of prostitution has a maximum penalty of $1250 or 3 months imprisonment for a first offence and $2500 or 6 months imprisonment for a subsequent offence (s. 28). The South Australian legislation also states that ‘a person who acts or behaves as master or mistress, or as a person having the control of management, of a brothel will, for the purposes of this section, be taken to keep that brothel, whether he or she is or is not the keeper’ (s. 28(2)).

Permitting a premises to be used as a brothel is also an offence that carries the same penalties as keeping and managing a brothel (s. 28). The Act states that a person who lets or sublets a premises knowing that they are to be used as a brothel is also guilty of an offence (s. 28(a)).

Only a police officer of or above the rank of inspector may at any time enter and search a suspected brothel or authorise in writing the search of any brothel by any other police officer (s. 32).

Northern Territory
Brothels are also illegal in the Northern Territory under the Prostitution Regulation Act 2004, although the monetary penalties are much greater than those prescribed in the South Australian legislation. Keeping or managing a brothel (s. 4) carries a

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30 Prostitution Act 1999 (QLD). Queensland also has provisions about the relatives of licensees and managers of brothels, which is comparable to the new provisions in the Victorian Bill. Essentially, this provision in both Queensland’s legislation and the current Victorian Bill declares that relatives of licensees or approved managers who are involved in the business are to be considered associates for the purposes of the Act.

31 Prostitution Act 2000 (WA).
penalty of $20,000. Allowing a premises to be used as a brothel (as the owner, landlord or occupier of the premises) also carries a $20,000 penalty (s. 5).\textsuperscript{32}

**Tasmania**

In Tasmania, a person must not be a commercial operator of a business that provides sexual services under section 4 of the *Sex Industry Offences Act 2005*. The penalty for a commercial operator is a fine not exceeding 800 penalty units or imprisonment for a term not exceeding 8 years or both.\textsuperscript{33}

Section 5(2) states that a person must not knowingly receive commercial sexual services. The penalty for the client is 100 penalty units or imprisonment for a term not exceeding one year. While brothels are illegal, the Act requires that persons in a sexual services business, both the client and sex worker, still adopt safe sex practices and use prophylactics where there is a risk of acquiring or transmitting a sexual transmissible infection (s. 12(1)).

Similar to the Victorian legislation, the Tasmanian legislation has a provision to protect sex workers from abuse, stating in section 7 that a person must not:

(a) intimidate, assault or threaten to assault a sex worker; or  
(b) supply or offer to supply a prohibited plant, prohibited substance, narcotic substance or restricted substance, as defined in the *Poisons Act 1971*, to a sex worker; or  
(c) supply or offer to supply a controlled substance, as defined in the *Misuse of Drugs Act 2001*, to a sex worker; or  
(d) administer to a sex worker, or cause a sex worker to take, any drug or other substance with the intent to stupefy or overpower that sex worker.

The penalty for offences against sex workers is not to exceed 500 penalty units or 5 years imprisonment or both.

A police officer of or above the rank of sergeant may search a premises without warrant (s. 15).

5. References


\textsuperscript{32} *Prostitution Regulation Act 2004* (NT).  
\textsuperscript{33} *Sex Industry Offences Act 2005* (Tas).


Report by a Working Party to the Minister for Planning and Environment on the Location of Massage Parlours (1983) Melbourne, Department of Planning and Environment.


**Relevant Legislation**

*Brothels Legislation Amendment Act 2007 (NSW)*  
*Health Act 1958 (Vic)*  
*Planning and Environment Act 1987 (Vic)*  
*Prostitution Act 2000 (WA)*  
*Prostitution Amendment Act 2008 Pt.2 (WA)*  
*Prostitution Control Act 1994 (Vic)*  
*Prostitution Control Regulations 2006 (Vic)*  
*Prostitution Regulation Act 2004 (NT)*  
*Second-Hand Dealers and Pawnbrokers Act 1989 (Vic)*  
*Sex Industry Offences Act 2005 (Tas)*  
*Summary Offences Act 1953 (SA)*
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