

Version No. 058
Prostitution Control Act 1994
No. 102 of 1994

Version incorporating amendments as at 12 February 2008

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The Parliament of Victoria enacts as follows:

PART I—PRELIMINARY

1 Purpose

The main purpose of this Act is to seek to control prostitution in Victoria. The Act also amends the **Crimes Act 1958** to create a new offence related to child sex tourism and amends the **Travel Agents Act 1986** to provide for the disqualification of licensed travel agents who are convicted of offences against that provision or the similar provisions contained in the Crimes Act 1914 of the Commonwealth.

2 Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation within the period of 6 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the day of that period.

s. 3

3 Definitions

(1) In this Act—

Advisory Committee means the Advisory Committee established by section 67;

approved manager means a person who holds an approval of the Authority under section 52 as a manager of a prostitution service providing business;

assault has the same meaning as in section 31(1) of the **Crimes Act 1958**;

authorised member of the police force means a member of the police force who is—

- (a) of or above the rank of sergeant; or
- (b) authorised in writing by the Chief Commissioner of Police to enforce Parts 3 to 5;

authorised officer of the responsible authority means an officer of the responsible authority who is authorised in writing by the responsible authority to enforce Parts 4 and 5;

Authority means the Business Licensing Authority established under the **Business Licensing Authority Act 1998**;

S. 3 amended by No. 27/2001 s. 8(Sch. 6 item 5.2) (ILA s. 39B(1)).

S. 3(1) def. of *approved manager* inserted by No. 47/1997 s. 4, amended by No. 52/1998 s. 194(a).

S. 3(1) def. of *Authority* inserted by No. 52/1998 s. 194(b).

S. 3(1) def. of *Board* repealed by No. 52/1998 s. 194(c).

* * * * *

brothel means any premises made available for the purpose of prostitution by a person carrying on the business of providing prostitution services at the business's premises;

building means building or other structure permanently affixed to land, other than land covered with water, but does not include—

S. 3(1) def. of *building* inserted by No. 73/1996 s. 69.

- (a) a building or structure that is of a temporary nature or that is readily capable of being moved or transported from place to place; and
- (b) a vehicle within the meaning of the **Road Safety Act 1986**; and
- (c) a railway locomotive or railway rolling stock; and
- (d) a vessel within the meaning of the **Marine Act 1988**; and
- (e) an aircraft of any type;

caretaker's house means a dwelling on a site occupied by—

- (a) the owner or manager of an industry, business or community or religious establishment conducted on the site; or
- (b) a person who has care of any building on the site in which such an industry, business or establishment is conducted or of any plant on the site used in the conduct of that industry, business or establishment;

child means a person under the age of 18 years;

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S. 3(1) def. of *children's services centre* substituted by No. 53/1996 s. 60.

children's services centre means any premises or place where a children's service within the meaning of the **Children's Services Act 1996** operates;

S. 3(1) def. of *director* amended by No. 44/2001 s. 3(Sch. item 94.1).

director, in relation to a body corporate, has the same meaning as in section 9 of the Corporations Act;

S. 3(1) def. of *Director of Fair Trading* inserted by No. 52/1998 s. 194(b), substituted by No. 17/1999 s. 40, repealed by No. 35/2000 s. 49(b).

* * * * *

S. 3(1) def. of *disqualifying offence* amended by No. 52/1998 s. 194(d).

disqualifying offence, in relation to an application for a licence, means—

- (a) an indictable offence; or
- (b) an offence which, if committed in Victoria, would have been an indictable offence—

that, in the opinion of the Authority, is of a kind that renders the applicant ineligible to hold a licence;

S. 3(1) def. of *domestic partner* inserted by No. 27/2001 s. 8(Sch. 6 item 5.1).

domestic partner of a person means an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a

person who provides domestic support and personal care to the person—

- (a) for fee or reward; or
- (b) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

drug of dependence has the same meaning as in the **Drugs, Poisons and Controlled Substances Act 1981**;

entry authority means writing issued in accordance with the procedure set out in section 64(2);

escort agency means a business of providing, or facilitating the provision of, prostitution services to persons at premises not made available by the agency;

Fund means the Prostitution Control Fund;

S. 3(1) def. of ***Fund*** amended by No. 52/1998 s. 194(e).

hospital means public hospital, private hospital or denominational hospital within the meaning of the **Health Services Act 1988**;

insolvent under administration means—

- (a) a person who is an undischarged bankrupt; or
- (b) a person for whom a debt agreement has been made under Part IX of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if the debt agreement has

S. 3(1) def. of ***insolvent under administration*** inserted by No. 101/1998 s. 10(1).

not ended or has not been terminated;
or

- (c) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if the terms of the deed have not been fully complied with; or
- (d) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if a final payment has not been made under that composition;

S. 3(1) def. of *inspector* inserted by No. 44/1999 s. 4(1).

inspector means an inspector appointed under the **Fair Trading Act 1999**;

S. 3(1) def. of *law enforcement agency* amended by No. 52/2003 s. 52(Sch. 1 item 10).

law enforcement agency means—

- (a) the police force of Victoria or of any other State or of the Northern Territory;
or
- (b) the Australian Federal Police; or
- (c) the Australian Crime Commission established by the Australian Crime Commission Act 2002 of the Commonwealth;

S. 3(1) def. of *lease* inserted by No. 44/1999 s. 4(1).

lease includes a sub-lease and an agreement for a lease or sub-lease;

licence means a licence granted under Part 3 authorising the holder to carry on business as a prostitution service provider;

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S. 3(1) def. of
member
repealed by
No. 52/1998
s. 194(c).

office hours means between the hours of
9.00 a.m. and 5.00 p.m. on any day other
than—

- (a) a Saturday or Sunday; or
- (b) a day appointed under the **Public
Holidays Act 1993** as a public holiday
in the relevant place;

officer, in relation to a body corporate, has the
meaning given by section 82A of the
Corporations Act;

S. 3(1) def. of
officer
amended by
No. 44/2001
s. 3(Sch.
item 94.1).

owner means the person for the time being
entitled to receive the rent of the land with
respect to which the word is used or who
would be entitled to receive the rent if the
land were let at a rent;

payment includes any form of commercial
consideration;

prostitution means the provision by one person to
or for another person (whether or not of a
different sex) of sexual services in return for
payment or reward;

prostitution service provider means a person
carrying on a business of a kind referred to in
the definitions in this section of *brothel* and
escort agency;

public place has the same meaning as in the
Summary Offences Act 1966;

publish means—

- (a) insert in a newspaper or other publication; or
- (b) disseminate by broadcast, telecast or cinematograph; or
- (c) exhibit by means of posters, film or videotape; or
- (d) send or deliver to any person by any means whatever; or
- (e) throw or leave upon premises in the occupation of any person; or
- (f) bring to the notice of the public or any member of the public by any other means whatever;

S. 3(1) def. of
Registrar
substituted by
No. 52/1998
s. 194(f).

Registrar means the Registrar of the Authority appointed under the **Business Licensing Authority Act 1998**;

relevant financial interest, in relation to a business, means—

- (a) any share in the capital of the business; or
- (b) any entitlement to receive any income derived from the business; or
- (c) any entitlement to receive any payment as a result of money advanced to the business;

relevant position, in relation to a business, means the position of director, manager or other executive position or secretary, however that position is designated;

relevant power, in relation to a business, means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

- (a) to participate in any directorial, managerial or executive decision in the business; or
- (b) to elect or appoint any person to any relevant position in the business;

responsible authority has the same meaning as in the **Planning and Environment Act 1987**;

school means a Government school or non-Government school within the meaning of the **Education and Training Reform Act 2006**;

S. 3(1) def. of *school* substituted by No. 24/2006 s. 6.1.2(Sch. 7 item 32).

sexual penetration has the same meaning as in Subdivisions (8A) to (8G) of Division 1 of Part I of the **Crimes Act 1958**;

S. 3(1) def. of *sexual penetration* inserted by No. 44/1999 s. 4(2).

sexual services includes—

- (a) taking part with another person in an act of sexual penetration; and
- (b) masturbating another person; and
- (c) permitting one or more other persons to view any of the following occurring in their presence—
 - (i) two or more persons taking part in an act of sexual penetration;
 - (ii) a person introducing (to any extent) an object or a part of their body into their own vagina or anus;

S. 3(1) def. of *sexual services* substituted by No. 44/1999 s. 4(3).

(iii) a person masturbating himself or herself or two or more persons masturbating themselves or each other or one or more of them—

in circumstances in which—

(iv) there is any form of direct physical contact between any person viewing the occurrence and any person taking part in the occurrence; or

(v) any person viewing the occurrence is permitted or encouraged to masturbate himself or herself while viewing—

and, for the purposes of this definition, a person may be regarded as being masturbated whether or not the genital part of his or her body is clothed or the masturbation results in orgasm;

sexually transmitted disease means—

(a) a disease or condition prescribed by the regulations to be a sexually transmitted disease; or

(b) HIV as defined by section 3 of the **Health Act 1958**;

spouse of a person means a person to whom the person is married;

S. 3(1) def. of *spouse* inserted by No. 27/2001 s. 8(Sch. 6 item 5.1).

the Director means the Director within the meaning of the **Fair Trading Act 1999**;

S. 3(1) def. of *the Director* inserted by No. 35/2000 s. 49(a).

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

S. 3(1) def. of *Tribunal* inserted by No. 52/1998 s. 194(b).

vagina includes—

S. 3(1) def. of *vagina* inserted by No. 44/1999 s. 4(2).

- (a) the external genitalia; and
 - (b) a surgically constructed vagina.
- (2) For the purposes of the definition of ***domestic partner*** in subsection (1)—
- (a) in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case;
 - (b) a person is not a domestic partner of another person only because they are co-tenants.

S. 3(2) inserted by No. 27/2001 s. 8(Sch. 6 item 5.2).

3A Admission charge constitutes payment for sexual services

S. 3A inserted by No. 44/1999 s. 5.

If—

- (a) admission to any premises is or may be procured by the payment of an admission fee or charge or the making of a donation of any kind; and
- (b) sexual services are provided at those premises in the ordinary course of a business carried on at those premises without any further payment or reward being sought for the provision of those services—

the payment of the admission fee or charge or the making of the donation must be taken to be payment for the provision of the sexual services, whether or not entertainment or a service of any

other kind is provided at those premises without any further payment or reward being sought for it.

4 Objects of Act

The objects of this Act are—

- (a) to seek to protect children from sexual exploitation and coercion;
- (b) to lessen the impact on the community and community amenities of the carrying on of prostitution-related activities;
- (c) to seek to ensure that criminals are not involved in the prostitution industry;
- (d) to seek to ensure that brothels are not located in residential areas or in areas frequented by children;
- (da) to seek to ensure that no one person has at any one time an interest in more than one brothel licence or permit;
- (e) to maximise the protection of prostitutes and their clients from health risks;
- (f) to maximise the protection of prostitutes from violence and exploitation;
- (g) to ensure that brothels are accessible to inspectors, law enforcement officers, health workers and other social service providers;
- (h) to promote the welfare and occupational health and safety of prostitutes.

S. 4(da)
inserted by
No. 44/1999
s. 6(1).

S. 4(g)
amended by
No. 44/1999
s. 6(2).

PART 2—OFFENCES CONNECTED WITH PROSTITUTION

5 Causing or inducing child to take part in prostitution

- (1) A person must not cause or induce a child to take part in an act of prostitution, whether as the prostitute or as the client or in any other capacity, or to continue to take part in such acts.

S. 5(1)
amended by
No. 48/1997
s. 70(1).

Penalty: Level 5 imprisonment (10 years maximum).

- (2) An offence against subsection (1) is an indictable offence.
- (3) In a proceeding for an offence against subsection (1)—
- (a) it is not necessary for the prosecution to prove that the accused knew that the person concerned was a child; but
 - (b) it is a defence to the charge for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned was aged 18 years or more.

6 Obtaining payment for sexual services provided by a child

- (1) A person must not receive a payment (except in the ordinary course of a business unrelated to prostitution) knowing that it or any part of it has been derived, directly or indirectly, from sexual services provided by a child.

S. 6(1)
amended by
No. 48/1997
s. 70(2).

Penalty: Level 4 imprisonment (15 years maximum).

-
- (2) An offence against subsection (1) is an indictable offence.
 - (3) If in a proceeding for an offence against subsection (1) it is proved that the accused was residing with a prostitute who was a child, the accused must be presumed to be guilty of the offence in the absence of proof to the contrary.
 - (4) In a proceeding for an offence against subsection (1)—
 - (a) it is not necessary for the prosecution to prove that the accused knew that the person concerned was a child; but
 - (b) it is a defence to the charge for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned was aged 18 years or more.

7 Agreement for provision of sexual services by a child

S. 7(1)
amended by
No. 48/1997
s. 70(3).

- (1) A person must not enter into or offer to enter into an agreement under which a child is to provide sexual services to or for that person or another person in return for payment or in exchange for drugs of dependence.

Penalty: Level 4 imprisonment (15 years maximum).
- (2) An offence against subsection (1) is an indictable offence.

-
- (3) In a proceeding for an offence against subsection (1)—
- (a) it is not necessary for the prosecution to prove that the accused knew that the person who was to provide the sexual services was a child; but
 - (b) if the person concerned was aged 17 years or more at the time the offence is alleged to have been committed, it is a defence to the charge for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned was aged 18 years or more.

8 Forcing person into or to remain in prostitution

- (1) A person must not with intent to induce another person aged 18 years or more to engage or continue to engage in prostitution—
- (a) assault or threaten to assault that other person or any other person; or
 - (b) intimidate that other person or any other person; or
 - (c) supply or offer to supply a drug of dependence to that other person or any other person; or
 - (d) make a false representation or use any false pretence or other fraudulent means.

S. 8(1)
amended by
No. 48/1997
s. 70(4).

Penalty: Level 5 imprisonment (10 years maximum).

- (2) An offence against subsection (1) is an indictable offence.

9 Forcing person to provide financial support out of prostitution

S. 9(1)
amended by
No. 48/1997
s. 70(5).

- (1) A person must not with intent to induce another person aged 18 years or more to provide or continue to provide him or her with a payment or payments derived, directly or indirectly, from prostitution engaged in by that other person—
- (a) assault or threaten to assault that other person or any other person; or
 - (b) intimidate that other person or any other person; or
 - (c) supply or offer to supply a drug of dependence to that other person or any other person.

Penalty: Level 5 imprisonment (10 years maximum).

- (2) An offence against subsection (1) is an indictable offence.

10 Living on earnings of prostitute

S. 10(1)
amended by
No. 48/1997
s. 70(6).

- (1) A person must not knowingly live wholly or in part on, or derive a material benefit from, the earnings of prostitution.

Penalty: Level 6 imprisonment (5 years maximum).

- (2) An offence against subsection (1) is an indictable offence.

- (3) A person is not guilty of an offence against subsection (1) only because of deriving income as a prostitution service provider if—

- (a) there has been granted, and is in force, any licence required under Part 3 to authorise the person who is carrying on the business to carry on that business; and

-
- (b) there has been granted, and is in force, any permit required under the **Planning and Environment Act 1987** for the use or development of the land for the purposes of the business.
- (4) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that he or she did not hold a relevant position (whether in his or her own right or on behalf of any other person) in the prostitution service providing business or exercise a significant influence over or with respect to the management or operation of that business.

11 Allowing child to take part in prostitution

- (1) A person who owns or occupies any premises or who manages or assists in the management of any premises must not allow a child to enter or remain on the premises for the purpose of taking part in an act of prostitution, whether as the prostitute or as the client or in any other capacity.

S. 11(1)
amended by
No. 48/1997
s. 70(7).

Penalty: Level 5 imprisonment (10 years maximum).

- (2) An offence against subsection (1) is an indictable offence.
- (3) In a proceeding for an offence against subsection (1)—
- (a) it is not necessary for the prosecution to prove that the accused knew that the person concerned was a child; but
- (b) it is a defence to the charge for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the

person concerned was aged 18 years or more.

- (4) If in a proceeding for an offence against subsection (1) it is proved—
- (a) that a child was on premises used for the purposes of the operation of a brothel and in respect of which a permit is required under the **Planning and Environment Act 1987** for their use or development for those purposes; and
 - (b) that the child was on those premises for the purpose of taking part in an act of prostitution—

the accused must be presumed to have allowed the child to enter or remain on those premises for that purpose unless the accused satisfies the court on the balance of probabilities that he or she did not know, and could not reasonably have known, that a child was on those premises for that purpose at the time the offence is alleged to have been committed.

S. 11A
inserted by
No. 99/1995
s. 26.

11A Child over 18 months not to be in brothel

S. 11A(1)
amended by
No. 44/1999
s. 31(1).

- (1) A person who carries on a business of a kind referred to in the definition of *brothel* in section 3 or who assists in the management of that business must not allow a child over the age of 18 months to enter or remain in a brothel at which that business is carried on for any purpose whatsoever.

Penalty: Level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

-
- (2) In a proceeding for an offence against subsection (1)—
- (a) it is not necessary for the prosecution to prove that the accused knew that the person concerned was a child over the age of 18 months; but
 - (b) it is a defence to the charge for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned was aged 18 years or more or under 18 months.

12 Street prostitution (offences by clients)

- (1) A person must not for the purpose of, or with the intention of, inviting or soliciting any person to prostitute himself or herself with him or her or another person or of being accosted by or on behalf of a prostitute, intentionally or recklessly loiter in or near—
- (a) a place of worship; or
 - (b) a hospital; or
 - (c) a school, kindergarten or children's services centre; or
 - (d) a public place regularly frequented by children and in which children are present at the time of the loitering.

Penalty: For a first offence—30 penalty units or imprisonment for 3 months;

For a second offence—60 penalty units or imprisonment for 6 months;

For a subsequent offence—90 penalty units or imprisonment for 9 months.

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- (2) A person must not—
- (a) loiter in or frequent a public place for the purpose of, or with the intention of, inviting or soliciting any person to prostitute himself or herself with him or her or another person or of being accosted by or on behalf of a prostitute; or
 - (b) in a public place invite or solicit any person to prostitute himself or herself with him or her or another person.

Penalty: For a first offence—10 penalty units or imprisonment for 1 month;
For a second offence—30 penalty units or imprisonment for 3 months;
For a subsequent offence—60 penalty units or imprisonment for 6 months.

13 Street prostitution (offences by prostitutes)

- (1) A person must not for the purpose of prostitution intentionally or recklessly solicit or accost any person or loiter in or near—
- (a) a place of worship; or
 - (b) a hospital; or
 - (c) a school, kindergarten or children's services centre; or

(d) a public place regularly frequented by children and in which children are present at the time of the soliciting, accosting or loitering.

Penalty: For a first offence—10 penalty units or imprisonment for 1 month;

For a second offence—30 penalty units or imprisonment for 3 months;

For a subsequent offence—60 penalty units or imprisonment for 6 months.

(2) A person must not for the purpose of prostitution solicit or accost any person or loiter in a public place.

Penalty: For a first offence—5 penalty units or imprisonment for 1 month;

For a second offence—15 penalty units or imprisonment for 3 months;

For a subsequent offence—25 penalty units or imprisonment for 6 months.

14 Exceptions to street prostitution offences

(1) An act done in a brothel or in any premises on which an escort agency carries on business which, but for this subsection, would constitute an offence against section 12 or 13 does not constitute an offence against that section if the act is not visible to a person in a public place outside the brothel or those premises.

(2) An act done by a member of the police force or other person which, but for this subsection, would constitute an offence against section 12 or 13 or render him or her an accomplice to the commission of such an offence does not have that consequence if the act is done under written instructions given in relation to a particular case

by a member of the police force not below the rank of senior sergeant.

15 Being in, entering or leaving unlicensed brothel

A person must not be found, without reasonable excuse, in or entering or leaving a brothel in respect of which there is not in force any licence required under Part 3.

Penalty: For a first offence—10 penalty units or imprisonment for 1 month;

For a second offence—30 penalty units or imprisonment for 3 months;

For a subsequent offence—60 penalty units or imprisonment for 6 months.

16 Offensive behaviour towards prostitutes

A person must not in or near a public place with the intention of intimidating, insulting or harassing a prostitute—

(a) behave in an indecent, offensive or insulting manner; or

(b) use threatening, abusive or insulting words.

Penalty: 30 penalty units or imprisonment for 3 months.

17 Controls on advertising by prostitution service providers

(1) A person must not publish or cause to be published an advertisement for prostitution services that—

(a) describes the services offered; or

(b) contravenes the regulations.

Penalty: 40 penalty units.

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- (2) A person must not cause an advertisement for prostitution services to be broadcast or televised.

Penalty: 40 penalty units.

- (3) A person must not publish or cause to be published a statement which is intended or likely to induce a person to seek employment—

(a) as a prostitute; or

(b) in a brothel or with an escort agency or any other business that provides prostitution services.

Penalty: 40 penalty units.

- (4) A prostitution service provider or any other business that provides prostitution services must not publish or cause to be published an advertisement for the business that—

(a) uses (either alone or in combination with any other word or words or letters) the words "massage", "masseur", "remedial" or any other words that state or imply that the business provides massage services; or

(b) holds the business out either directly or by implication as a provider of massage services.

Penalty: 40 penalty units.

- (5) If in a proceeding for an offence against this section it is proved to the court that—

(a) an advertisement has been published for or relating to a brothel, escort agency or any other business that provides prostitution services; and

- (b) a person is the owner or occupier of the premises on which the brothel, escort agency or that other business is carried on—

that person must, in the absence of proof to the contrary, be presumed to have caused the advertisement to be published.

18 Advertising regulations

The Governor in Council may make regulations for or with respect to—

- (a) the size, form and content of advertisements for prostitution services or any class of prostitution services;
- (b) prohibiting the advertising—
- (i) in a specified publication or specified class of publication; or
 - (ii) in a specified manner—
- of advertisements for prostitution services or any class of prostitution services;
- (c) generally prescribing any other matter or thing required or permitted by section 17 to be prescribed or necessary to be prescribed to give effect to section 17.

19 Permitting prostitute infected with a disease to work in a brothel etc.

- (1) A person who—
- (a) is a prostitution service provider; or
 - (b) manages a brothel or an escort agency or any other business that provides prostitution services—

must not permit a prostitute to work (whether under a contract of service or a contract for services) in a brothel or for the escort agency or other business during any period in which he or

she knows that the prostitute is infected with a sexually transmitted disease.

Penalty: 50 penalty units.

- (2) If it is proved to a court that a person referred to in subsection (1) permitted a prostitute to work as mentioned in that subsection during a period in which the prostitute was infected with a sexually transmitted disease, that person must be presumed to have known that the prostitute was so infected unless that person proves that at the time the offence is alleged to have been committed that person believed on reasonable grounds—

(a) that the prostitute had been undergoing—

(i) regular blood tests, on at least a quarterly basis, for HIV (as defined by section 3 of the **Health Act 1958**) and each other sexually transmitted disease for which blood tests are appropriate; and

(ii) regular swab tests, on at least a monthly basis, for the purpose of determining whether he or she was infected with any other sexually transmitted disease; and

(b) that the prostitute was not infected with a sexually transmitted disease.

S. 19(2)(a)
substituted by
No. 99/1995
s. 27(1).

20 Prostitute working while infected with a disease

- (1) A person must not work as a prostitute during any period in which he or she knows that he or she is infected with a sexually transmitted disease.

Penalty: 20 penalty units.

- (2) If it is proved to a court that a person worked as a prostitute during a period in which he or she was infected with a sexually transmitted disease, he or she must be presumed to have known that he or

she was so infected unless he or she proves that at the time the offence is alleged to have been committed—

S. 20(2)(a)
substituted by
No. 99/1995
s. 27(2).

- (a) that he or she had been undergoing—
 - (i) regular blood tests, on at least a quarterly basis for HIV (as defined by section 3 of the **Health Act 1958**) and each other sexually transmitted disease for which blood tests are appropriate; and
 - (ii) regular swab tests, on at least a monthly basis, for the purpose of determining whether he or she was infected with any other sexually transmitted disease; and
- (b) he or she believed on reasonable grounds that he or she was not infected with a sexually transmitted disease.

21 Consuming liquor in brothel

- (1) A prostitution service provider must not—
 - (a) sell, supply or consume liquor at a brothel; or
 - (b) permit liquor to be sold, supplied or consumed at a brothel.

Penalty: 100 penalty units.

- (2) If in a proceeding for an offence against subsection (1)(b) it is proved to the court that liquor was sold, supplied or consumed at a brothel, the prostitution service provider must, in the absence of proof to the contrary, be presumed to have permitted the liquor to be sold, supplied or consumed.

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- (3) This section applies despite anything to the contrary in the **Liquor Control Reform Act 1998** or in any licence or permit granted or having effect under that Act.

S. 21(3)
amended by
No. 44/1999
s. 31(2).

21A Operating brothel other than in a building

S. 21A
inserted by
No. 73/1996
s. 70.

- (1) A person must not carry on business as a prostitution service provider of a kind referred to in the definition of *brothel* in section 3 at premises—
- (a) for which there is not in force a permit granted under the **Planning and Environment Act 1987** for their use or development for the purposes of the operation of a brothel; and
- (b) that are not a building or part of a building.

Penalty: 360 penalty units or imprisonment for 3 years or both.

- (2) An offence against subsection (1) is an indictable offence.
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PART 3—LICENSING SYSTEM

Division 1—Requirement to be licensed

22 Prostitution service providers to be licensed

S. 22(1)
amended by
Nos 48/1997
s. 70(8),
44/1999
s. 7(1)(2).

(1) A person must not knowingly or recklessly carry on business as a prostitution service provider—

(a) without holding a licence; or

S. 22(1)(b)
amended by
No. 47/1997
s. 5.

(b) in breach of any condition of a licence; or

S. 22(1)(c)
inserted by
No. 47/1997
s. 5.

(c) when a licence is suspended.

Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

S. 22(1A)
inserted by
No. 44/1999
s. 8(1).

(1A) A person must not carry on business as a prostitution service provider—

(a) without holding a licence; or

(b) in breach of any condition of a licence; or

(c) when a licence is suspended.

Penalty: Level 7 fine (240 penalty units maximum).

S. 22(2)
amended by
No. 44/1999
s. 8(2).

(2) In a proceeding for an offence against subsection (1) or (1A) it is a defence to the charge for the accused to prove that he or she was exempted by section 23 from the requirement to hold a licence.

(2A) In a proceeding for an offence against subsection (1A) it is a defence to the charge for the accused to prove that, at the time of the conduct constituting the offence, the accused was under a mistaken but honest and reasonable belief about facts which, had they existed, would have meant that the conduct would not have constituted an offence against that subsection.

S. 22(2A)
inserted by
No. 44/1999
s. 8(3).

(3) A person must not assist in the carrying on of a prostitution service providing business at a time when he or she knows that subsection (1) is being contravened or is reckless as to whether or not subsection (1) is being contravened.

S. 22(3)
amended by
Nos 48/1997
s. 70(9),
44/1999
s. 7(3).

Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

(4) An offence against subsection (1) or (3) is an indictable offence.

(5) In a proceeding for an offence against subsection (1), (1A) or (3) evidence of the presence on premises of materials commonly used in safe sexual practices is inadmissible for the purpose of establishing that a prostitution service provider carried on business on those premises.

S. 22(5)
amended by
No. 44/1999
s. 8(4).

23 Special provisions for small owner-operated businesses

(1) Subject to this section, the following are exempt from the requirement to hold a licence—

(a) a person carrying on a business as a prostitution service provider—

S. 23(1)(a)
substituted by
No. 99/1995
s. 28(1).

(i) of a kind referred to in the definition of *brothel* in section 3 at premises in accordance with a permit granted under the **Planning and Environment Act 1987**; or

s. 23

(ii) of a kind referred to in the definition of *escort agency* in section 3; or

(iii) of a kind referred to in both subparagraphs (i) and (ii)—

if only that person works as a prostitute in that business or only that person and one other particular person so work;

S. 23(1)(b) substituted by No. 99/1995 s. 28(1).

(b) two persons who either jointly or separately carry on such a business if only those persons work as prostitutes in that business.

(2) An exemption referred to in subsection (1) does not apply if—

S. 23(2)(a) amended by No. 99/1995 s. 28(2)(a) (i)–(iii).

(a) clients are managed or directed to the premises or otherwise attended to by a person who does not work in the business and who performs this function in the course of another business; or

S. 23(2)(b) amended by No. 99/1995 s. 28(2)(b).

(b) a person who works in the business directs clients to a prostitute who does not work in the business; or

S. 23(2)(c) amended by No. 99/1995 s. 28(2)(c)(i)(ii).

(c) the business being carried on is associated with another prostitution service providing business, whether of the kind referred to in the definition of *brothel* or *escort agency* in section 3 or of both kinds.

(3) For the purposes of subsection (2)(c) businesses are associated if—

(a) they are carried on by the same person; or

(b) one business is carried on by a person and the other business is carried on by a person who is—

S. 23(3)(b)(i) amended by No. 27/2001 s. 8(Sch. 6 item 5.3).

(i) a spouse or domestic partner of that person; or

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- (ii) a business partner of that person; or
- (iii) a person who has entered into a business arrangement or relationship with that person in respect of that person's business as a prostitution service provider; or
- (iv) directly receiving any income derived from the business carried on by the other; or
- (c) one business is carried on by a body corporate and the other business is carried on by a person who—
- (i) is a director or secretary of the body corporate or a spouse or domestic partner of such a director or secretary; or
- (ii) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the body corporate and thereby is able or will be able to exercise a significant influence over or with respect to the management or operation of that business; or
- (iii) holds or will hold any relevant position (whether in his or her own right or on behalf of any other person) in the business of the body corporate; or
- (iv) is a related body corporate within the meaning of section 9 of the Corporations Act or a director or secretary, or a spouse or domestic partner of a director or secretary, of a related body corporate.
- S. 23(3)(b)(iii) amended by No. 99/1995 s. 28(3).**
- S. 23(3)(c)(i) amended by No. 27/2001 s. 8(Sch. 6 item 5.3).**
- S. 23(3)(c)(iv) amended by Nos 27/2001 s. 8(Sch. 6 item 5.3), 44/2001 s. 3(Sch. item 94.2).**

24 Register for businesses to which section 23 applies

S. 24(1)
amended by
No. 52/1998
s. 195(a).

- (1) A person who intends to rely on an exemption under section 23 must, before commencing to carry on business or as soon as practicable after the commencement of this subsection (whichever occurs first), give to the Authority the prescribed particulars in relation to the business.

Penalty: 30 penalty units.

S. 24(2)
amended by
No. 52/1998
s. 195(a)(b).

- (2) The Registrar must enter in a register any particulars given to the Authority in accordance with subsection (1).

S. 24(3)
amended by
Nos 52/1998
s. 195(a)(c),
35/2000
s. 49(c).

- (3) The register referred to in subsection (2) may only be inspected by the Director, by members or staff of the Authority or by authorised members of the police force or authorised officers of the responsible authority.

S. 24(4)
amended by
No. 52/1998
s. 195(b).

- (4) The Registrar may correct an error or omission in the register by—

- (a) inserting an entry; or
- (b) amending an entry; or
- (c) omitting an entry—

if he or she decides that the correction is necessary.

S. 24(5)
amended by
No. 52/1998
s. 195(b).

- (5) The Registrar may make the correction on his or her own initiative or on the application of any person.

S. 24(6)
amended by
Nos 47/1997
s. 6(1),
52/1998
s. 195(b).

- (6) On making a correction the Registrar must record in the register the date on which it was made.

- (7) The Authority, on the application of a person whose name appears in the register, may direct the Registrar to omit that person's entry from the register with effect from the date on which the application was received by the Authority.
- (8) On omitting an entry the Registrar must record in the register the date with effect from which the omission was made.

S. 24(7)
inserted by
No. 47/1997
s. 6(2),
amended by
No. 52/1998
s. 195(a)(b).

S. 24(8)
inserted by
No. 47/1997
s. 6(2),
amended by
No. 52/1998
s. 195(b).

Division 2—The Authority and the Director

Pt 3 Div. 2
(Heading)
substituted by
No. 52/1998
s. 196,
amended by
No. 35/2000
s. 49(d).

Pt 3 Div. 2
(ss 25–32)
amended by
Nos 99/1995
s. 29, 47/1997
ss 7–11,
46/1998
s. 7(Sch. 1),
substituted as
Pt 3 Div. 2
(Heading and
ss 25–27) by
No. 52/1998
s. 196.

25 Functions of Authority

S. 25
substituted by
No. 52/1998
s. 196.

The functions of the Authority under this Act are—

- (a) to determine licence applications;
- (b) to determine manager approval applications;
- (c) to liaise with the police force so as to assist the police force in carrying out its functions in relation to prostitution;

- (d) to refer relevant matters for investigation by the WorkCover Authority, the Australian Taxation Office or the Commonwealth Department of Immigration and Ethnic Affairs or any other body;
- (e) to inform the Advisory Committee about issues and trends relevant to its functions.

S. 26 substituted by No. 52/1998 s. 196, amended by No. 35/2000 s. 49(e).

26 Functions of Director

The functions of the Director under this Act are—

- (a) to refer to the police force for investigation prostitution-related complaints, including complaints from prostitutes;
- (b) to liaise with the Authority and the police force so as—
 - (i) to assist the Authority in carrying out its functions under this Act; and
 - (ii) to assist the police force in carrying out its functions in relation to prostitution;
- (c) to refer relevant matters for investigation by the WorkCover Authority, the Australian Taxation Office or the Commonwealth Department of Immigration and Ethnic Affairs or any other body;
- (d) any other functions conferred on him or her by or under this Act.

S. 26(d) inserted by No. 101/1998 s. 11(1).

27 Delegation by Director

The Director may, by instrument, delegate to—

- (a) the Authority; or
- (b) the Registrar; or
- (c) any person engaged or appointed under section 7(2) or 15 of the **Business Licensing Authority Act 1998**; or

S. 27 substituted by No. 52/1998 s. 196, amended by No. 35/2000 s. 49(e).

- (d) any person or class of person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act—

S. 27(d) substituted by No. 35/2000 s. 49(f), amended by No. 108/2004 s. 117(1) (Sch. 3 item 165.1).

any function or power of the Director under this Act other than this power of delegation.

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Ss 27A–32 repealed by No. 52/1998 s. 196.

Division 3—Applications

33 Application for licence

- (1) A natural person aged 18 years or more who is not already a licensee may apply to the Authority for a licence authorising him or her to carry on business as a prostitution service provider, whether of the kind referred to in the definition of *brothel* in section 3 or as an escort agency or both.

S. 33(1) amended by No. 52/1998 s. 197(1).

- (2) An application—

- (a) must be in writing in the form approved by the Authority;

S. 33(2)(a) amended by No. 52/1998 s. 197(2).

- (b) must specify—

- (i) the name, address, occupation and date of birth—

- (A) of the applicant; and

S. 33(2)(d)(ia)
inserted by
No. 47/1997
s. 12.

S. 33(3)
inserted by
No. 99/1995
s. 30(1),
amended by
No. 52/1998
s. 197(1).

S. 33(4)
inserted by
No. 99/1995
s. 30(1),
amended by
No. 52/1998
s. 197(1).

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- (B) of the owner of the premises on which the applicant intends to carry on the business or, if the owner is a body corporate, of each director and the secretary of the body corporate;
- (ii) the address of the premises at which, and the name or names under which, the applicant intends to carry on the business;
- (iii) whether the applicant intends to carry on the business in partnership with, or otherwise in association or conjunction with, another person;
- (iv) any other matters that are prescribed;
- (c) must be signed by the applicant;
- (d) must be accompanied by—
- (i) the prescribed application fee;
- (ia) the prescribed licence fee;
- (ii) any other things that are prescribed.
- (3) An applicant must consent to having his or her fingerprints taken by an officer of the Authority or an authorised member of the police force.
- (4) The Authority may refuse to consider an application for a licence if the applicant refuses to allow his or her fingerprints to be taken.

34 Applications to be made available to the public

The Authority must make a copy of that part of an application for a licence that has not yet been determined that contains the matters specified under section 33(2)(b)(i), (ii) and (iii) available at its office for any person to inspect during office hours free of charge.

S. 34 substituted by No. 52/1998 s. 198, amended by No. 44/1999 s. 9.

35 Notice of application

(1) The Authority must give notice of an application for a licence—

(a) to the responsible authority; and

(b) in a newspaper generally circulating in Victoria.

(2) A notice under subsection (1) must invite written submissions on the grant of a licence to the applicant to be sent to the Authority before the date specified in the notice.

(3) In determining the application the Authority must consider any submission received by it before the specified date unless it is satisfied that the submission is frivolous, vexatious or irrelevant to the grant of a licence to the applicant.

S. 35 substituted by No. 52/1998 s. 199.

36 Application to be referred to Director and the Chief Commissioner

(1) The Authority must, except in the prescribed circumstances, give any details that the Authority considers relevant in respect of each application for a licence to the Director and the Chief Commissioner of Police.

S. 36 amended by No. 99/1995 s. 30(2), substituted by No. 52/1998 s. 199.

S. 36(1) amended by No. 35/2000 s. 49(e).

s. 36A

- (2) The Authority must refer any fingerprints taken under section 33(3) to the Chief Commissioner of Police and must not itself keep a copy of those fingerprints.
- (3) The Chief Commissioner of Police, on receiving details of the application, must make any inquiries in relation to the application that the Chief Commissioner of Police considers appropriate.
- (4) The Chief Commissioner, after receiving the results of the inquiries, must report to the Authority.
- (5) The Director may report to the Authority on any matter he or she considers relevant in respect of an application for a licence.
- (6) A report under subsection (4) or (5) may include recommendations.

S. 36(5)
substituted by
No. 101/1998
s. 11(2),
amended by
No. 35/2000
s. 49(e).

S. 36(6)
inserted by
No. 101/1998
s. 11(2).

S. 36A
inserted by
No. 52/1998
s. 199.

36A Consideration of application

- (1) The Authority must consider every application for a licence.
- (2) In considering an application for a licence, the Authority may—
 - (a) conduct any inquiries it thinks fit;
 - (b) require an applicant to provide any further information that the Authority thinks fit in the manner required by the Authority;
 - (c) seek advice and information on the application from any other person or body or source it thinks fit.
- (3) The Authority may engage or appoint any person to assist it in considering an application.

- (4) The Authority may refuse to grant a licence to a person if the person does not provide the further information required within a reasonable time of the requirement being made.
- (5) The Authority may postpone its consideration of an application for a licence until such time as it considers appropriate.
- (6) The Authority is not required to conduct a hearing to determine whether to grant a licence or refuse to grant a licence.

37 Circumstances in which Authority must refuse licence application

- (1) The Authority must refuse to grant a licence to a person whom it is satisfied—
 - (a) is not a suitable person to carry on business as a prostitution service provider; or
 - (b) has, within the preceding 5 years, been convicted or found guilty of a disqualifying offence; or
 - (c) has, within the preceding 5 years, had a licence granted to him or her cancelled under Division 4; or
 - (d) is an associate of a person who has, or of a body corporate which has, within the preceding 5 years, been convicted or found guilty of a disqualifying offence; or
 - (e) is an associate of a body corporate a director or secretary of which has, within the preceding 5 years, been convicted or found guilty of a disqualifying offence; or
 - (f) is an insolvent under administration; or

S. 37(1)
amended by
No. 52/1998
s. 200(a)(b).

S. 37(1)(c)
amended by
No. 47/1997
s. 13.

S. 37(1)(d)
amended by
No. 44/1999
s. 10(1).

S. 37(1)(e)
amended by
No. 52/1998
s. 200(c).

S. 37(1)(f)
inserted by
No. 52/1998
s. 200(c).

Prostitution Control Act 1994
No. 102 of 1994

s. 37

S. 37(1)(g)
inserted by
No. 52/1998
s. 200(c).

(g) is a represented person within the meaning of the **Guardianship and Administration Act 1986**.

(2) For the purposes of subsection (1)(d) a person is an associate of another person if he or she—

S. 37(2)(a)
amended by
No. 27/2001
s. 8(Sch. 6
item 5.3).

(a) is a spouse or domestic partner of that other person; or

(b) is a business partner of that other person; or

S. 37(2)(c)
amended by
No. 44/1999
s. 10(2).

(c) 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(3)
amended by
No. 44/1999
s. 10(3)(a).

(3) For the purposes of subsection (1)(d) or (e) a person is an associate of a body corporate if he or she—

S. 37(3)(a)
amended by
No. 27/2001
s. 8(Sch. 6
item 5.3).

(a) is a director or secretary of the body corporate or a spouse or domestic partner of such a director or secretary; or

(b) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the body corporate and thereby is able or will be able to exercise a significant influence over or with respect to the management or operation of that business; or

S. 37(3)(c)
amended by
No. 44/1999
s. 10(3)(b).

(c) holds or will hold any relevant position (whether in his or her own right or on behalf of any other person) in the business of the body corporate; or

(d) has entered into a business arrangement or relationship or a lease with the body corporate in respect of a prostitution service providing business.

S. 37(3)(d)
inserted by
No. 44/1999
s. 10(3)(b).

(4) Subsection (1)(f) applies to a person who is an insolvent under administration within the meaning of paragraph (b) of the definition of *insolvent under administration* in section 3 only if the person became an insolvent under administration within the meaning of that paragraph on or after the commencement of section 10 of the **Licensing and Tribunal (Amendment) Act 1998**.

S. 37(4)
inserted by
No. 101/1998
s. 10(2).

38 Matters to be considered in determining suitability of applicant

(1) In determining whether an applicant for a licence is a suitable person to carry on business as a prostitution service provider, the Authority must consider—

S. 38(1)
amended by
No. 52/1998
s. 201(a)(b).

(a) whether the applicant is of good repute, having regard to character, honesty and integrity;

(ab) whether, on account of any report made to it or any information provided to it or otherwise in the Authority's possession, a person who would be an associate of the applicant for the purposes of section 37(1)(d) is of good repute, having regard to character, honesty and integrity;

S. 38(1)(ab)
inserted by
No. 44/1999
s. 11.

(b) whether the applicant has, or is or will be able to obtain, financial resources that are adequate to ensure the financial viability of the business;

(c) whether the applicant has sufficient business ability to establish and maintain a successful business;

- (d) whether the applicant will have in place arrangements to ensure the safety of persons working in the business that are adequate and comply with the prescribed requirements or the conditions or restrictions that might be set out in a licence;
- (e) whether the proposed business structure is sufficiently transparent to enable all associates of the applicant (whether natural persons or bodies corporate) to be readily identified for the purposes of section 37;
- (f) any other matters that are prescribed.

- (2) The Authority must not class a person as not being a suitable person to carry on business as a prostitution service provider only because he or she has worked as a prostitute.

S. 38(2)
amended by
No. 52/1998
s. 201(b).

39 Grant or refusal of licence

- (1) The Authority must grant a licence to an applicant if it is satisfied that the applicant is eligible for the grant of the licence.
- (2) A licence may be granted subject to the conditions or restrictions set out in the licence which may include, in the case of an escort agency, requiring a specified type of communication system to be made available to, and used by, persons working in the business.
- (3) A licence remains in force until it is surrendered, suspended or cancelled.

S. 39(1)
substituted by
No. 52/1998
s. 202(1).

S. 39(3)
amended by
No. 47/1997
s. 14,
substituted by
No. 52/1998
s. 202(2).

(4) A licence—

- (a) is personal to the licensee;
- (b) is not transferable to any other person;
- (c) does not vest by operation of law in any other person.

40 Amendment of licence

(1) The Authority may at any time vary or revoke a condition or restriction set out in a licence or impose a new condition or restriction.

S. 40(1)
substituted by
No. 52/1998
s. 203(1).

(1A) The conditions and restrictions to which a licence is subject must be set out in the licence.

S. 40(1A)
inserted by
No. 52/1998
s. 203(1).

(2) The Authority may act under subsection (1)—

S. 40(2)
amended by
No. 52/1998
s. 203(2).

(a) of its own initiative; or

(b) on the application of the licensee; or

(c) on the application of an authorised member of the police force or the Director.

S. 40(2)(c)
amended by
Nos 101/1998
s. 11(3)(a),
35/2000
s. 49(e).

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S. 40(3)
amended by
No. 47/1997
s. 15,
repealed by
No. 52/1998
s. 203(3).

40AA Endorsement of licence

(1) If under section 40 or 48A, a condition or restriction is imposed on a licence or varied or revoked, the Authority may require the licensee to produce the licence for endorsement of or variation or revocation of the condition or restriction.

S. 40AA
inserted by
No. 52/1998
s. 204.

s. 40A

S. 40AA(2)
amended by
No. 44/1999
s. 31(3).

(2) A licensee must comply with a requirement under subsection (1).

Penalty: Level 10 fine (10 penalty units maximum).

S. 40A
inserted by
No. 47/1997
s. 16.

40A Surrender of licence

S. 40A(1)
amended by
No. 52/1998
s. 205(1).

(1) Subject to subsection (2), a licensee may at any time by notice in writing to the Authority surrender the licence.

S. 40A(2)
amended by
No. 52/1998
s. 205(2).

(2) If the Tribunal has determined to conduct an inquiry under section 48 in relation to a licensee, the licensee may not, without leave of the Tribunal, surrender the licence unless the Tribunal has determined to take action under section 48A or has determined not to take any such action.

S. 40A(3)
amended by
Nos 52/1998
s. 205(1),
44/1999
s. 31(4).

(3) The person who held a licence that has been surrendered must return the licence to the Authority within 14 days of surrendering it.

Penalty: Level 10 fine (10 penalty units maximum).

S. 41
amended by
No. 47/1997
s. 17,
substituted by
No. 52/1998
s. 206.

41 Cancelled or suspended licence must be returned

If a licence is suspended or cancelled under this Act, the person to whom the licence was issued must return the licence to the Authority within 7 days of becoming aware of the suspension or cancellation.

Penalty: 25 penalty units.

S. 42
amended by
No. 47/1997
s. 18,
repealed by
No. 52/1998
s. 207.

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43 Updating of application

If before a licence application is determined the applicant becomes aware of a change that has occurred in the information provided at any time by the applicant in, or in relation to, the application, the applicant must within 10 days after becoming so aware give particulars of the change to the Authority by writing signed by the applicant.

Penalty: Level 9 fine (60 penalty units maximum).

S. 43
amended by
Nos 52/1998
s. 208(a)(b),
44/1999
s. 31(5).

44 Withdrawal of application

- (1) An applicant for a licence may withdraw his or her application at any time before it has been determined.
- (2) If an application for a licence is withdrawn by the applicant or rejected by the Authority, the Authority—
 - (a) may, at its discretion, direct the refund of the whole or part of the application fee; and
 - (b) must direct the refund of the licence fee—
that accompanied the application.

S. 44(1)
amended by
No. 52/1998
s. 209(1).

S. 44(2)
substituted by
Nos 47/1997
s. 19, 52/1998
s. 209(2).

45 False or misleading information

- (1) A person must not in, or in relation to, an application for a licence or a statement under section 46A give information that is false or misleading in a material particular.

Penalty: Level 9 fine (60 penalty units maximum).

- (2) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds—

S. 45(1)
amended by
Nos 52/1998
s. 210, 44/1999
s. 31(6).

- (a) in the case of false information—that the information was true; or
- (b) in the case of misleading information—that the information was not misleading.

S. 46
amended by
Nos 52/1998
s. 211(a)(b),
44/1999
s. 31(7).

46 Requirement to notify changes in information provided

If at any time while a licence is in force the licensee becomes aware of a change that has occurred in the information provided at any time by the licensee in, or in relation to, an application for the licence or a statement under section 46A, the licensee must within 10 days after becoming so aware give particulars of the change to the Authority by writing signed by the licensee.

Penalty: Level 9 fine (60 penalty units maximum).

S. 46A
inserted by
No. 47/1997
s. 20,
substituted by
No. 52/1998
s. 212.

46A Annual licence fee and statement

- (1) A licensee must pay to the Authority the relevant prescribed annual licence fee on each anniversary of the date that the licence was granted.
- (2) An annual licence fee may be paid at any time in the 6 weeks before it falls due.
- (3) The payment must be accompanied by a statement in respect of the year up to the date that the payment is made that is in a form approved by the Authority and that is signed by the licensee.
- (4) The statement must contain any information and be accompanied by any documents required by the Authority.

S. 46B
inserted by
No. 52/1998
s. 212.

46B Extension of time

- (1) On payment of any fee required by the regulations, a person may apply to the Authority for an extension of time or a further extension of time in which to comply with section 46A.

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- (2) The Authority may grant the application if it is made before the date in relation to which the extension is sought.

46C Failure to comply with section 46A

S. 46C
inserted by
No. 52/1998
s. 212.

- (1) If the licensee fails to comply with section 46A, the Authority must give the licensee a written notice stating that unless the licensee complies with that section and also pays to the Authority the late payment fee or late lodgement fee required by the regulations by the date specified in the notice, the licence will be cancelled.
- (2) The date specified in the notice must be at least 14 days after the date on which the notice is given to the licensee.
- (3) If the licensee has not complied with section 46A and paid the late payment fee or late lodgement fee by the date specified in the notice, the licence is automatically cancelled.

46D Production of information to Authority

S. 46D
inserted by
No. 44/1999
s. 12.

- (1) The Authority may require a licensee to answer any question or provide information relating to the business of the licensee as a prostitution service provider that the Authority reasonably requires to carry out its functions in relation to that licensee.
- (2) A licensee must not refuse or fail, without reasonable excuse, to comply with a requirement made by the Authority under this section.
- Penalty: Level 10 fine (10 penalty units maximum).
- (3) Nothing in this section limits any requirement imposed on a licensee by or under section 46 or 46A.

s. 46E

S. 46E
inserted by
No. 44/1999
s. 12.

46E Rule against self-incrimination does not apply

- (1) A licensee is not excused from answering a question or providing information under section 46D on the ground that the answer or the information might tend to incriminate the licensee.
- (2) Before a licensee is required by the Authority to answer a question, the Authority must inform the licensee that if they claim, before answering the question, that the answer might tend to incriminate them, the answer is not admissible in evidence in any criminal proceedings, other than in proceedings in respect of the falsity of the answer.
- (3) If the licensee claims, before answering a question, that the answer might tend to incriminate the licensee, the answer is not admissible in evidence in any criminal proceedings, other than in proceedings in respect of the falsity of the answer.

Pt 3 Div. 4
(Heading)
substituted by
No. 47/1997
s. 21.

Division 4—Licence cancellation and disciplinary action

47 Licence cancellation

S. 47(1)
amended by
Nos 47/1997
s. 22(1),
52/1998
s. 213(a)(b),
substituted by
No. 44/1999
s. 13.

- (1) A licence is automatically cancelled if at any time after it is granted—
 - (a) the licensee is convicted or found guilty of an offence against the **Drugs, Poisons and Controlled Substances Act 1981** or against a law of another State or of a Territory of the Commonwealth which the Governor in Council, by Order published in the Government Gazette, declares to be a law that makes provision substantially similar to the provisions of that Act or against a

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- corresponding law within the meaning of that Act; or
- (b) the licensee is convicted or found guilty of an offence that is set out in Schedule 3; or
 - (c) the licensee is convicted or found guilty of an indictable offence punishable by imprisonment for 12 months or more or of an offence which, if committed in Victoria, would have been an indictable offence punishable by imprisonment for 12 months or more; or
 - (d) the licensee is convicted or found guilty of an offence against section 45(1); or
 - (e) the licensee serves a sentence of imprisonment, whether in Victoria or outside Victoria; or
 - (f) the licensee becomes an insolvent under administration; or
 - (g) the licensee becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**.
- (2) For the purposes of subsection (1), a conviction or finding of guilt takes effect at the conclusion of the proceeding for the offence, whether on appeal or otherwise, or at the end of any appeal period, whichever is the later.

S. 47(2)
amended by
No. 73/1996
s. 71,
repealed by
No. 47/1997
s. 22(2),
new s. 47(2)
inserted by
No. 44/1999
s. 13.¹

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s. 48

S. 47(3)
amended by
No. 47/1997
s. 22(3),
substituted by
No. 52/1998
s. 213(2),
amended by
No. 101/1998
s. 11(3)(b),
repealed by
No. 44/1999
s. 13.

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S. 47(3A)
inserted by
No. 52/1998
s. 213(2),
repealed by
No. 44/1999
s. 13.

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- (4) The cancellation of a licence has no effect on any permit in force under the **Planning and Environment Act 1987** for a use or development of land for the purposes of the licensed business or on any action which might be taken under that or any other Act or law in respect of a contravention of a condition of such a permit.

S. 48
substituted by
No. 47/1997
s. 23.

48 Disciplinary action against licensee

S. 48(1)
substituted by
No. 52/1998
s. 214(1),
amended by
Nos 101/1998
s. 11(3)(b),
35/2000
s. 49(e).

- (1) The Director, the Chief Commissioner of Police or an authorised officer of the responsible authority may apply at any time to the Tribunal to conduct an inquiry to determine whether there are grounds for taking action under section 48A against a licensee.

S. 48(2)
repealed by
No. 52/1998
s. 214(2).

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- (3) There are grounds for taking action under section 48A if the Tribunal is satisfied that—
- (a) any use or development of land for the purposes of the licensed business is or was in contravention of a condition of a permit granted under the **Planning and Environment Act 1987**; or
 - (b) the licensee has been convicted or found guilty of any offence against this Act or the regulations; or
 - (c) the licensee has been convicted or found guilty of an offence against the regulations made under section 146 of the **Health Act 1958**; or
 - (d) the licensed business has been managed in such a way that it is desirable that action should be taken against the licensee; or
 - (da) the licensee has, at any time after the commencement of section 14 of the **Prostitution Control (Amendment) Act 1999**, knowingly or recklessly permitted the involvement in the management or operation of the licensed business of a person who, within the preceding 5 years, had been convicted or found guilty of an offence which the Authority could reasonably treat as a disqualifying offence if the person were an applicant for a licence; or
 - (e) an offence under the **Drugs, Poisons and Controlled Substances Act 1981** or an indictable offence punishable by imprisonment for 12 months or more has been committed on premises at which the licensee is carrying on business as a prostitution service provider; or

S. 48(3)
amended by
No. 52/1998
s. 214(3)(a).

S. 48(3)(d)
amended by
No. 52/1998
s. 214(3)(b).

S. 48(3)(da)
inserted by
No. 44/1999
s. 14.

s. 48A

- (f) the licensee has been charged with any offence referred to in—
 - (i) section 47(1)(a), (b) or (c); or
 - (ii) paragraph (b), (c) or (e) of this subsection; or
 - (iii) Schedule 3; or
- (g) the licensee has contravened this Act or the regulations.

S. 48(4)
repealed by
No. 52/1998
s. 214(2).

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- (5) If an application for a disciplinary inquiry is made, an inquiry must not start within 30 days of when the application for the inquiry is made unless—

S. 48(5)(a)
amended by
No. 52/1998
s. 214(4).

- (a) the person who made the application or the licensee applies to the Tribunal for the inquiry to be started within that time; and

S. 48(5)(b)
amended by
No. 52/1998
s. 214(4).

- (b) the Tribunal is satisfied that there are exceptional circumstances.

S. 48A
inserted by
No. 47/1997
s. 23.

48A Disciplinary powers of Tribunal

S. 48A(1)
amended by
No. 52/1998
s. 215(1)(a)(b).

- (1) In addition to any other powers of the Tribunal under this Act it may, if satisfied that there are grounds for taking action against a licensee under this section, by order do one or more of the following—
 - (a) reprimand the licensee;

Prostitution Control Act 1994
No. 102 of 1994

s. 48A

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- * * * * *
- (c) order the licensee to pay into the Fund a penalty of up to \$10 000; S. 48A(1)(b) repealed by No. 52/1998 s. 215(1)(c).
- (d) impose any condition or restriction on the licence;
- (e) require the licensee to enter into an undertaking to perform, or not to perform, certain tasks to be specified in the undertaking;
- (f) require the licensee to comply within, or for, a specified time with a requirement specified by the Tribunal; S. 48A(1)(f) amended by No. 52/1998 s. 215(1)(e).
- (g) cancel the licence or suspend the licence for a specified period not exceeding one year; S. 48A(1)(g) substituted by No. 52/1998 s. 215(1)(f).
- (h) order that the licensee be ineligible to hold a licence or be an approved manager either permanently or temporarily.
- (2) Despite anything to the contrary in subsection (1), the only action that the Tribunal may take solely on the ground set out in section 48(3)(f) is to suspend the licence. S. 48A(2) amended by No. 52/1998 s. 215(2).
- (3) If the Tribunal orders the payment of an amount under subsection (1)(c)— S. 48A(3) amended by Nos 52/1998 s. 215(2), 44/1999 s. 31(8).
- (a) it may order that the amount be paid by a specified date; and
- (b) if the amount is not paid by that date, it may suspend the licence until the amount is paid and set a final payment date; and
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s. 48A

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- (c) if the amount has not been paid by that final date, it may cancel the licence; and
- (d) it may extend any period of time it sets under paragraph (a) or (b) at any time.
- S. 48A(4)
amended by
No. 52/1998
s. 215(2).
- (4) The Tribunal may suspend or cancel a licence under subsection (3) without giving the licensee a chance to be heard.
- (5) Subject to subsection (6), a suspension imposed on a licensee under subsection (1) solely on the ground set out in section 48(3)(f) remains in force until the licence—
- (a) is surrendered; or
- (b) is cancelled.
- S. 48A(5)(b)
amended by
No. 52/1998
s. 215(3).
- S. 48A(5)(c)
repealed by
No. 52/1998
s. 215(3).
- * * * * *
- S. 48A(6)
amended by
No. 52/1998
s. 215(2).
- (6) The Tribunal must immediately remove a suspension referred to in subsection (5) if—
- (a) the charge is withdrawn; or
- (b) the licensee is not found guilty of the offence on the hearing and determination of the charge; or
- (c) any finding of guilt made, and any conviction recorded, on the hearing and determination of the charge is set aside on appeal.
- (7) The cancellation or suspension of a licence has no effect on any permit in force under the **Planning and Environment Act 1987** for a use or development of land for the purposes of the
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licensed business or on any action which might be taken under that or any other Act or law in respect of a contravention of a condition of such a permit.

Division 5—Approved managers

49 Personal supervision of business

- (1) A licensed business of a kind referred to in the definition in section 3 of *brothel* must at all times when open for business be personally supervised by the licensee or an approved manager.
- (2) A licensee or approved manager who is not on the premises at which the business is being carried on at a particular time cannot be regarded as personally supervising the business at that time.
- (3) If subsection (1) is contravened with respect to a licensed prostitution service providing business—
 - (a) the licensee; and
 - (b) the approved manager (if any) whose duty it was to personally supervise the business at the relevant time—

S. 49(1)
amended by
Nos 99/1995
s. 31, 47/1997
s. 24(1).

S. 49(2)
amended by
No. 47/1997
s. 24(2).

are each guilty of an offence and liable to a penalty of not more than 60 penalty units or imprisonment for not more than 6 months.

- (4) In a proceeding for an offence against subsection (3), it is a defence to the charge for the accused to prove that at the time the offence is alleged to have been committed—
 - (a) the accused did not know and could not reasonably have known that the business was open for business and was not being personally supervised as required by subsection (1); or

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(b) the accused believed on reasonable grounds that the business was being personally supervised as required by subsection (1).

50 Approval of manager

S. 50(1) substituted by No. 47/1997 s. 25(1), amended by No. 52/1998 s. 216(1).

(1) A person may at any time apply to the Authority for approval of himself or herself as a manager of a prostitution service providing business or for the renewal of such an approval.

(2) An application under subsection (1) must be in writing and be accompanied by the prescribed application fee and any other things that are prescribed.

S. 50(2A) inserted by No. 99/1995 s. 30(3), amended by Nos 47/1997 s. 25(2), 52/1998 s. 216(1).

(2A) An applicant under subsection (1) must consent to having his or her fingerprints taken by an officer of the Authority or an authorised member of the police force.

S. 50(2B) inserted by No. 99/1995 s. 30(3), amended by Nos 47/1997 s. 25(3), 52/1998 s. 216(1).

(2B) The Authority may refuse to consider an application under subsection (1) if the applicant refuses to allow his or her fingerprints to be taken.

(3) A renewal application must be made at least 3 months before the expiry of the approval but not earlier than 6 months before that expiry.

S. 50(4) repealed by No. 52/1998 s. 216(2).

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S. 50(5) repealed by No. 52/1998 s. 216(2).

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(5A) The Authority must refer any fingerprints taken under subsection (2A) to the Chief Commissioner of Police and must not itself keep a copy of those fingerprints.

S. 50(5A) inserted by No. 99/1995 s. 30(4), amended by No. 52/1998 s. 216(1).

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S. 50(6) repealed by No. 52/1998 s. 216(2).

(7) Sections 36, 36A, 43, 44 and 45, extend and apply to applications under subsection (1) in the same way and to the same extent as they do in relation to licence applications with any necessary modifications.

S. 50(7) amended by No. 47/1997 s. 25(4), substituted by No. 52/1998 s. 216(3).

51 Circumstances in which Authority must refuse approval or renewal application

(1) The Authority must refuse to approve as a manager of a prostitution service providing business, or refuse to renew such an approval of, a person whom it is satisfied—

S. 51(1) amended by Nos 52/1998 s. 217(a), 44/1999 s. 15(1)(a).

- (a) is not of good repute, having regard to character, honesty and integrity; or
- (b) has, within the preceding 5 years, been convicted or found guilty of an offence which would be a disqualifying offence if the person were applying for a licence; or
- (c) has, within the preceding 5 years, had a licence granted to him or her cancelled under Division 4; or
- (d) is an associate of a person who has, or of a body corporate which has, within the preceding 5 years, been convicted or found guilty of an offence referred to in paragraph (b); or

S. 51(1)(c) amended by No. 47/1997 s. 26.

S. 51(1)(d) amended by No. 44/1999 s. 15(1)(b).

Prostitution Control Act 1994
No. 102 of 1994

s. 51

S. 51(1)(e)
amended by
No. 52/1998
s. 217(b).

(e) is an associate of a body corporate a director or secretary of which has, within the preceding 5 years, been convicted or found guilty of an offence referred to in paragraph (b); or

S. 51(1)(f)
inserted by
No. 52/1998
s. 217(b).

(f) is an insolvent under administration; or

S. 51(1)(g)
inserted by
No. 52/1998
s. 217(b).

(g) is a represented person within the meaning of the **Guardianship and Administration Act 1986**.

(2) For the purposes of subsection (1)(d) a person is an associate of another person if he or she—

S. 51(2)(a)
amended by
No. 27/2001
s. 8(Sch. 6
item 5.3).

(a) is a spouse or domestic partner of that other person; or

(b) is a business partner of that other person; or

(c) has entered into a business arrangement or relationship with that other person in respect of a prostitution service providing business.

S. 51(3)
amended by
No. 44/1999
s. 15(2)(a).

(3) For the purposes of subsection (1)(d) or (e) a person is an associate of a body corporate if he or she—

S. 51(3)(a)
amended by
No. 27/2001
s. 8(Sch. 6
item 5.3).

(a) is a director or secretary of the body corporate or a spouse or domestic partner of such a director or secretary; or

(b) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the body corporate and thereby is able or will be able to exercise a

significant influence over or with respect to the management or operation of that business; or

- (c) holds or will hold any relevant position (whether in his or her own right or on behalf of any other person) in the business of the body corporate; or
- (d) has entered into a business arrangement or relationship with the body corporate in respect of a prostitution service providing business.

S. 51(3)(c)
amended by
No. 44/1999
s. 15(2)(b).

S. 51(3)(d)
inserted by
No. 44/1999
s. 15(2)(b).

52 Grant or refusal of approval or renewal ²

- (1) The Authority may approve, or renew the approval, of a person as a manager of a prostitution service providing business or refuse to give such an approval or renewal.
- (1A) An approval, or renewal of an approval, may be given subject to conditions or restrictions.
- (2) If the Authority approves, or renews the approval, of a person as a manager of a prostitution service providing business it must issue a certificate of approval to that person.
- (2A) Any conditions or restrictions to which an approval or renewal of an approval is subject must be set out in the certificate of approval.
- (3) A certificate of approval remains in force for 3 years from the date on which it was issued or renewed unless it is sooner surrendered or cancelled.

S. 52(1)
amended by
Nos 52/1998
s. 218(1),
44/1999
s. 16(1)(a)(b).

S. 52(1A)
inserted by
No. 44/1999
s. 16(2).

S. 52(2)
amended by
Nos 52/1998
s. 218(1),
44/1999
s. 16(3).

S. 52(2A)
inserted by
No. 44/1999
s. 16(4).

S. 52(3)
amended by
No. 47/1997
s. 27(1).

s. 52AA

S. 52(4)
amended by
Nos 47/1997
s. 27(2),
52/1998
s. 218(1),
44/1999
s. 31(9).

- (4) If at any time while a certificate of approval is in force the licensee or the approved manager becomes aware of a change that has occurred in the information provided at any time by the licensee or the approved manager in, or in relation to, an application under section 50(1), the licensee or the approved manager must within 10 days after becoming so aware give particulars of the change to the Authority by writing signed by him or her.

Penalty applying to this subsection: Level 9 fine (60 penalty units maximum).

S. 52(5)
inserted by
No. 44/1999
s. 16(5).

- (5) An approved manager must comply with any conditions or restrictions to which an approval or renewal of an approval is subject.

Penalty: Level 9 fine (60 penalty units maximum).

S. 52AA
inserted by
No. 44/1999
s. 17.

52AA Amendment of approval

- (1) The Authority may at any time vary or revoke a condition or restriction to which an approval or renewal of an approval under section 52(1) is subject or impose a new condition or restriction on the approval.
- (2) The Authority may act under subsection (1)—
- (a) of its own initiative; or
 - (b) on the application of the approved manager; or
 - (c) on the application of an authorised member of the police force or the Director.

S. 52AA(2)(c)
amended by
No. 35/2000
s. 49(e).

52AB Endorsement of certificate of approval

S. 52AB
inserted by
No. 44/1999
s. 17.

- (1) If under section 52AA or 54A, a condition or restriction is imposed on an approval or renewal of an approval or such a condition is varied or revoked, the Authority may require the approved manager to produce the certificate of approval for endorsement of or variation or revocation of the condition or restriction.
- (2) An approved manager must comply with a requirement under subsection (1).

Penalty: Level 10 fine (10 penalty units maximum).

52A Surrender of approval

S. 52A
inserted by
No. 47/1997
s. 28.

- (1) Subject to subsection (2), an approved manager may at any time by notice in writing to the Authority surrender the approval.
- (2) If the Tribunal has determined to conduct an inquiry under section 54 in relation to an approved manager, the approved manager may not, without leave of the Tribunal, surrender the approval unless the Tribunal has determined to take action under section 54A or has determined not to take any such action.
- (3) The person who held an approval that has been surrendered must return the certificate of approval to the Authority within 14 days of surrendering it.

S. 52A(1)
amended by
No. 52/1998
s. 219(1).

S. 52A(2)
amended by
No. 52/1998
s. 219(2).

S. 52A(3)
amended by
Nos 52/1998
s. 219(1),
44/1999
s. 31(10).

Penalty: Level 10 fine (10 penalty units maximum).

S. 53
amended by
Nos 47/1997
s. 29(1)–(3),
52/1998
s. 220(1)(2),
101/1998
s. 11(3)(c),
substituted by
No. 44/1999
s. 18.

53 Cancellation of approval

- (1) An approval under section 52(1) is automatically cancelled if at any time after it is granted or last renewed—
 - (a) the approved manager is convicted or found guilty of an offence against the **Drugs, Poisons and Controlled Substances Act 1981** or against a law of another State or of a Territory of the Commonwealth which the Governor in Council, by Order published in the Government Gazette, declares to be a law that makes provision substantially similar to the provisions of that Act or against a corresponding law within the meaning of that Act; or
 - (b) the approved manager is convicted or found guilty of an offence that is set out in Schedule 3; or
 - (c) the approved manager is convicted or found guilty of an indictable offence punishable by imprisonment for 12 months or more or of an offence which, if committed in Victoria, would have been an indictable offence punishable by imprisonment for 12 months or more; or
 - (d) the approved manager serves a sentence of imprisonment, whether in Victoria or outside Victoria; or
 - (e) the approved manager becomes an insolvent under administration; or
 - (f) the approved manager becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**.

- (2) For the purposes of subsection (1), a conviction or finding of guilt takes effect at the conclusion of the proceeding for the offence, whether on appeal or otherwise, or at the end of any appeal period, whichever is the later.

54 Disciplinary action against approved manager

S. 54 substituted by No. 47/1997 s. 30.

- (1) The Director, the Chief Commissioner of Police or an authorised officer of the responsible authority may apply at any time to the Tribunal to conduct an inquiry to determine whether there are grounds for taking action under section 54A against an approved manager.

S. 54(1) substituted by No. 52/1998 s. 221(1), amended by Nos 101/1998 s. 11(3)(d), 35/2000 s. 49(e).

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S. 54(2) repealed by No. 52/1998 s. 221(2).

- (3) There are grounds for taking action under section 54A if the Tribunal is satisfied that—

S. 54(3) amended by No. 52/1998 s. 221(3)(a).

- (a) the approved manager has been convicted or found guilty of any offence against this Act or the regulations; or
- (b) the approved manager has been convicted or found guilty of an offence against the regulations made under section 146 of the **Health Act 1958**; or
- (c) the prostitution providing business has been managed in such a way that it is desirable that action should be taken against the approved manager; or
- (d) an offence under the **Drugs, Poisons and Controlled Substances Act 1981** or an indictable offence punishable by imprisonment for 12 months or more has

S. 54(3)(c) amended by No. 52/1998 s. 221(3)(b).

s. 54A

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- been committed on premises of which the approved manager is manager; or
- (e) the approved manager has been charged with any offence referred to in—
- (i) section 53(1)(a) or (b); or
 - (ii) paragraph (a), (b) or (d) of this subsection; or
 - (iii) Schedule 3; or
- (f) the approved manager has contravened this Act or the regulations.

S. 54(4)
repealed by
No. 52/1998
s. 221(2).

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S. 54(5)
repealed by
No. 52/1998
s. 221(2).

* * * * *

S. 54A
inserted by
No. 47/1997
s. 30.

54A Disciplinary powers of Tribunal

S. 54A(1)
amended by
No. 52/1998
s. 222(1)(a)(b).

- (1) In addition to any other powers of the Tribunal under this Act it may, if satisfied that there are grounds for taking action against an approved manager under this section, by order do one or more of the following—

- (a) reprimand the approved manager;

S. 54A(1)(b)
repealed by
No. 52/1998
s. 222(1)(c).

* * * * *

S. 54A(1)(c)
amended by
No. 52/1998
s. 222(1)(d).

- (c) order the approved manager to pay into the Fund a penalty of up to \$10 000;
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- (d) impose any condition or restriction on the approval;
- (e) require the approved manager to enter into an undertaking to perform, or not to perform, certain tasks to be specified in the undertaking;
- (f) require the approved manager to comply within, or for, a specified time with a requirement specified by the Tribunal; **S. 54A(1)(f) repealed by No. 52/1998 s. 222(1)(e).**
- (g) cancel the approval or suspend the approval for a specified period not exceeding one year; **S. 54A(1)(g) substituted by No. 52/1998 s. 222(1)(f).**
- (h) order that the approved manager be ineligible to hold an approval or be a licensee either permanently or temporarily.
- (2) Despite anything to the contrary in subsection (1), the only action that the Tribunal may take solely on the ground set out in section 54(3)(e) is to suspend the approval. **S. 54A(2) amended by No. 52/1998 s. 222(2).**
- (3) If the Tribunal orders the payment of an amount under subsection (1)(c)— **S. 54A(3) amended by Nos 52/1998 s. 222(2), 44/1999 s. 31(11).**
- (a) it may order that the amount be paid by a specified date; and
- (b) if the amount is not paid by that date, it may suspend the approval until the amount is paid and set a final payment date; and
- (c) if the amount has not been paid by that final date, it may cancel the approval; and
- (d) it may extend any period of time it sets under paragraph (a) or (b) at any time.
- (4) The Tribunal may suspend or cancel an approval under subsection (3) without giving the approved manager a chance to be heard. **S. 54A(4) amended by No. 52/1998 s. 222(2).**
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Prostitution Control Act 1994
No. 102 of 1994

s. 54A

(5) Subject to subsection (6), a suspension imposed under subsection (1) solely on the ground set out in section 54(3)(e) remains in force until the approval—

(a) is surrendered; or

(b) is cancelled.

S. 54A(5)(b)
substituted by
No. 52/1998
s. 222(3).

S. 54A(5)(c)
repealed by
No. 52/1998
s. 222(3).

* * * * *

(6) The Tribunal must immediately remove a suspension referred to in subsection (5) if—

(a) the charge is withdrawn; or

(b) the approved manager is not found guilty of the offence on the hearing and determination of the charge; or

(c) any finding of guilt made, and any conviction recorded, on the hearing and determination of the charge is set aside on appeal.

S. 54A(6)
amended by
No. 52/1998
s. 222(2).

(7) The cancellation or suspension of an approval has no effect on any permit in force under the **Planning and Environment Act 1987** for a use or development of land for the purposes of the prostitution service providing business managed by the approved manager or on any action which might be taken under that or any other Act or law in respect of a contravention of a condition of such a permit.

54B Cancelled or suspended approval must be returned

S. 54B
inserted by
No. 44/1999
s. 19.

If an approval under section 52(1) is suspended or cancelled under this Act, the person to whom the certificate of approval was issued must return it to the Authority within 7 days of becoming aware of the suspension or cancellation.

Penalty: Level 10 fine (10 penalty units maximum).

Division 6—Register

55 Licence and approvals register

(1) The Registrar must enter in a register full particulars of—

S. 55(1)
amended by
No. 52/1998
s. 223(1).

(a) the granting, surrender, cancellation or suspension of a licence;

S. 55(1)(a)
amended by
Nos 47/1997
s. 31(1)(a),
52/1998
s. 223(2)(a).

(aa) any statements lodged under section 46A;

S. 55(1)(aa)
inserted by
No. 52/1998
s. 223(2)(b).

(b) the address of the premises at which a prostitution service providing business is being or is to be carried on;

(c) the granting, renewal, surrender, cancellation or suspension of an approval of a person as a manager of a prostitution service providing business.

S. 55(1)(c)
amended by
No. 47/1997
s. 31(1)(b).

Prostitution Control Act 1994
No. 102 of 1994

s. 55

S. 55(2)
amended by
No. 52/1998
s. 223(3)(a).

S. 55(2)(a)
amended by
Nos 52/1998
s. 223(3)(b),
35/2000
s. 49(e).

(2) The register referred to in subsection (1) may be inspected, and a copy of an entry in it obtained, at the office of the Authority during office hours—

(a) free of charge, by the Director, an authorised member of the police force or an authorised officer of the responsible authority;

(b) on payment of the prescribed fee, by any other person.

S. 55(3)
amended by
No. 52/1998
s. 223(1).

(3) The Registrar may correct an error or omission in the register by—

(a) inserting an entry; or

(b) amending an entry; or

(c) omitting an entry—

if he or she decides that the correction is necessary.

S. 55(4)
amended by
No. 52/1998
s. 223(1).

(4) The Registrar may make the correction on his or her own initiative or on the application of any person.

S. 55(5)
amended by
Nos 47/1997
s. 31(2),
52/1998
s. 223(1).

(5) On making a correction the Registrar must record in the register the date on which it was made.

Division 7—Applications for review

Pt 3 Div. 7
(Heading and
s. 56)
amended by
No. 47/1997
s. 32(a)–(d),
substituted by
No. 52/1998
s. 224.

56 Applications for review

S. 56
substituted by
No. 52/1998
s. 224.

- (1) A person whose interests are affected by a decision of the Authority under section 39, 40, 52 or 52AA may apply to the Tribunal for review of that decision.
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 56(1)
amended by
No. 44/1999
s. 20.

Division 8—Offences

57 Licensee not to carry on business with unlicensed partner etc.

- (1) A licensee must not carry on business as a prostitution service provider in partnership with, or otherwise in association with, a person who is not also licensed to carry on that business.

S. 57(1)
amended by
No. 44/1999
s. 31(12).

Penalty: Level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum) or both.

- (2) For the purposes of subsection (1) a person carries on a business in association with another person if he or she would be an associate of that person for the purposes of section 37(1)(d) or (e) or is directly receiving any income from a business carried on by that person.

S. 58
amended by
Nos 47/1997
s. 33, 44/1999
s. 21(1).

58 Power to require licensee, etc. to state name and address

A licensee or approved manager must not, in response to a request to state his or her name and address made to him or her at his or her place of business by a member of the police force or an inspector—

- (a) refuse or fail to comply with the request; or
- (b) state a name that is false in a material particular; or
- (c) state an address other than the full and correct address of his or her ordinary place of residence or business.

Penalty: 20 penalty units.

59 Power to require person to state age

S. 59(1)
amended by
No. 44/1999
s. 21(2).

- (1) If a member of the police force or an inspector has reason to believe that a person in a brothel appears to be under the age of 18 years, he or she may demand particulars of the person's age.

S. 59(2)
amended by
No. 44/1999
s. 21(3).

- (2) If the member of the police force or the inspector considers that any particulars supplied by a person in response to a demand under subsection (1) are false, he or she may require the person to give satisfactory evidence of the correctness of the particulars.

- (3) A person must not—
- (a) refuse or fail to give particulars of his or her age; or
 - (b) give any false particulars of his or her age; or
 - (c) supply any false evidence as to his or her age—

in response to a demand under subsection (1).

Penalty: 20 penalty units.

60 Display of licence

- (1) A licensee must keep his or her licence displayed in a conspicuous place near the front entrance to his or her place of business as a prostitution service provider.

S. 60(1)
amended by
No. 44/1999
s. 31(13).

Penalty: Level 10 fine (10 penalty units maximum).

- (2) A licensee must not display on the premises at which he or she carries on business as a prostitution service provider a document falsely purporting to be a licence.

S. 60(2)
amended by
No. 44/1999
s. 31(13).

Penalty: Level 10 fine (10 penalty units maximum).

61 Production of licence or certificate of approval

A licensee or approved manager must not, without reasonable excuse, refuse or fail to produce his or her licence or certificate of approval to an authorised member of the police force or an authorised officer of the responsible authority or an inspector if that member, officer or inspector demands him or her to do so.

S. 61
amended by
Nos 47/1997
s. 34, 44/1999
s. 31(13),
44/1999
s. 21(4)(a)(b).

Penalty: Level 10 fine (10 penalty units maximum).

s. 61A

Division 8A—Inspection Powers

Pt 3 Div. 8A
(Heading and
ss 61A–61Z)
inserted by
No. 44/1999
s. 22.

61A Definitions

S. 61A
inserted by
No. 44/1999
s. 22.

In this Division—

Consumer Act has the same meaning as it has in
the **Fair Trading Act 1999**;

S. 61A def. of
*Consumer
Act*
inserted by
No. 35/2000
s. 49(g).

financial institution means—

- (a) an authorised deposit-taking institution
within the meaning of the Banking Act
1959 of the Commonwealth; or
- (b) a body approved by the Governor in
Council by Order published in the
Government Gazette;

licensee, except in section 61C, includes—

- (a) a person whose licence has been
surrendered or cancelled within the last
3 years; and
- (b) a person whose licence is suspended;

occupier in relation to any premises, means a
person who appears to be of or over 16 years
of age and who appears to be in control of
the premises;

S. 61A def. of
OFTBA Act
repealed by
No. 35/2000
s. 49(h).

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61B Production of identity card

S. 61B
inserted by
No. 44/1999
s. 22.

An inspector must produce his or her identity card for inspection—

- (a) before exercising a power under this Division or Division 8 other than a requirement made by post; and
- (b) at any time during the exercise of a power under this Division or Division 8, if asked to do so.

Penalty: Level 10 fine (10 penalty units maximum).

61C Accounts and other documents available for inspection

S. 61C
inserted by
No. 44/1999
s. 22.

- (1) A licensee must at all reasonable times at each premises at which that licensee carries on business as a prostitution service provider keep all documents relating to the business carried on at those premises that came into existence within the last 7 years available for inspection by an inspector in a form in which they can be readily and expeditiously inspected by an inspector.

Penalty: Level 10 fine (10 penalty units maximum).

- (2) If the licence of a licensee has been surrendered or cancelled within the last 3 years, the former licensee must make all documents relating to the former business that came into existence within the last 7 years available for inspection by an inspector in a form and at a place where they can be readily and expeditiously inspected by an inspector.

Penalty: Level 10 fine (10 penalty units maximum).

s. 61D

- (3) If the licence of a licensee is suspended, the suspended licensee must during the period of the suspension make all documents relating to the business of the suspended licensee that came into existence within the last 7 years available for inspection by an inspector in a form and at a place where they can be readily and expeditiously inspected by an inspector.

Penalty: Level 10 fine (10 penalty units maximum).

S. 61D
inserted by
No. 44/1999
s. 22.

61D Licensees to produce documents and answer questions

- (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector may require a licensee at a time and place specified by the inspector—
- (a) to answer orally or in writing any questions put by the inspector relating to the licensee's business as a prostitution service provider;
 - (b) to supply orally or in writing information required by the inspector relating to that business;
 - (c) to produce to the inspector specified documents or documents of a specified class relating to that business.
- (2) A power conferred on an inspector by this section is in addition to, and does not take away from, a power conferred on an inspector under Division 8.

S. 61E
inserted by
No. 44/1999
s. 22.

61E Third parties to produce documents and answer questions relating to specified business

For the purpose of monitoring compliance with this Act or the regulations, an inspector may require any person who has possession, custody or control of documents relating to a licensee's business as a prostitution service provider—

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- (a) to answer orally or in writing any questions put by the inspector relating to the licensee's business as a prostitution service provider;
 - (b) to supply orally or in writing information required by the inspector relating to that business;
 - (c) to produce to the inspector specified documents or documents of a specified class relating to that business.

61F Department Heads, police and public authorities to produce information to inspectors

S. 61F
inserted by
No. 44/1999
s. 22.

- (1) For the purpose of monitoring compliance with this Act or the regulations, the Director or an inspector may request a specified public body within a time specified by the Director or inspector—
 - (a) to answer orally or in writing any questions put by the inspector relating to a licensee's business as a prostitution service provider;
 - (b) to supply orally or in writing information required by the inspector relating to that business.
- (2) An inspector can only make a request under subsection (1) with the written consent of the Director.
- (3) A specified public body must comply with a request under subsection (1).
- (4) In this section *specified public body* means—
 - (a) a Department Head within the meaning of the **Public Administration Act 2004**; or

S. 61F(1)
amended by
No. 35/2000
s. 49(e).

S. 61F(2)
amended by
No. 35/2000
s. 49(e).

S. 61F(4)(a)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 165.1).

s. 61G

- (b) a public statutory authority; or
- (c) a municipal council; or
- (d) the Chief Commissioner of Police.

S. 61G
inserted by
No. 44/1999
s. 22.

61G Certain other specified persons or bodies to produce information

S. 61G(1)
amended by
No. 35/2000
s. 49(e).

- (1) For the purpose of monitoring compliance with this Act or the regulations, the Director or an inspector may require a specified person or body within a time specified by the Director or inspector—
 - (a) to answer orally or in writing any questions put by the inspector relating to a licensee's business as a prostitution service provider;
 - (b) to supply orally or in writing information required by the inspector relating to that business.

S. 61G(2)
amended by
No. 35/2000
s. 49(e).

- (2) An inspector can only make a requirement under subsection (1) with the written consent of the Director.
- (3) In this section *specified person or body* means—
 - (a) a person who is a publisher of a publication; or
 - (b) a person who is the owner or operator of a broadcasting service; or
 - (c) a person who is the owner or operator of a telecommunications service; or
 - (d) a person who is the owner or operator of a postal service; or
 - (e) a financial institution.

61H Powers on production of documents

- (1) If any documents are produced to an inspector under section 61D or 61E, the inspector may—
- (a) inspect the documents or authorise a person to inspect the documents;
 - (b) make copies of, or take extracts from, the documents;
 - (c) seize the documents if the inspector considers the documents necessary for the purpose of obtaining evidence for the purpose of any proceedings under this Act or the regulations;
 - (d) seize the documents if the inspector—
 - (i) considers the documents necessary for the purpose of obtaining evidence for the purpose of any proceedings under any Consumer Act; and
 - (ii) believes on reasonable grounds, that it is necessary to seize the documents in order to prevent their concealment, loss or destruction or their use in the contravention of any Consumer Act;
 - (e) secure any seized documents against interference;
 - (f) retain possession of the documents in accordance with this Division.
- (2) An inspector must not require a person to produce a document at a place other than the person's place of business or an office of the Director without the consent of the person.

S. 61H
inserted by
No. 44/1999
s. 22.

S. 61H(1)(d)(i)
amended by
No. 35/2000
s. 49(j).

S. 61H(1)(d)(ii)
amended by
No. 35/2000
s. 49(j).

S. 61H(2)
amended by
No. 35/2000
s. 49(i).

s. 61I

S. 61I
inserted by
No. 44/1999
s. 22.

61I Order requiring supply of information and answers to questions

S. 61I(1)
amended by
No. 35/2000
s. 49(e).

- (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector, with the written approval of the Director, may apply to the Magistrates' Court for an order requiring any person at a time and place specified by an inspector—
 - (a) to answer orally or in writing any questions put by an inspector relating to a licensee's business as a prostitution service provider; or
 - (b) to supply orally or in writing information required by an inspector in relation to a licensee's business as a prostitution service provider.

S. 61I(2)
amended by
No. 35/2000
s. 49(e).

- (2) If the Magistrates' Court is satisfied on the basis of evidence presented by the Director that the order is necessary for the purpose of monitoring compliance with this Act or the regulations, the Court may grant the order sought.
- (3) An order under this section must state a day, not later than 28 days after the making of the order, on which the order ceases to have effect.
- (4) An inspector who executes an order under this section must, as soon as practicable after that execution, notify the Magistrates' Court in writing of the time and place of execution of the order.

S. 61J
inserted by
No. 44/1999
s. 22.

61J Entry or search with consent

- (1) For the purpose of monitoring compliance with this Act and the regulations, an inspector, with the consent of the occupier of the premises, may—
 - (a) enter and search any premises;

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- (b) seize anything found on the premises which the inspector believes on reasonable grounds to be connected with a contravention of this Act or the regulations;
 - (c) examine and take and keep samples of any goods found on the premises which the inspector believes on reasonable grounds to be connected with a contravention of this Act or the regulations;
 - (d) inspect and make copies of, or take extracts from, any document found on the premises.
- (2) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector has—
- (a) produced his or her identity card for inspection; and
 - (b) informed the occupier—
 - (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any sample of goods or any copy of, or extract from, a document found on the premises during the search; and
 - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
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s. 61J

**S. 61J(3)
amended by
No. 35/2000
s. 49(e).**

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- (3) If an occupier consents to an entry and search, the inspector who requested consent must before entering the premises ask the occupier to sign an acknowledgment in the form approved by the Director stating—
- (a) that the occupier has been informed of the purpose of the search and that anything seized or taken in the search with the consent of the occupier may be used in evidence in proceedings; and
 - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search; and
 - (c) that the occupier has consented to such an entry and search; and
 - (d) the date and time that the occupier consented.
- (4) If an occupier consents to the seizure or taking of any thing during a search under this section, the inspector must before seizing or taking the thing ask the occupier to sign an acknowledgment stating—
- (a) that the occupier has consented to the seizure or taking of the thing; and
 - (b) the date and time that the occupier consented.
- (5) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the inspector leaves the premises.
- (6) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or taking of the thing.
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61K Entry without consent or warrant

- (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector may (with the assistance, if necessary, of another inspector or a member of the police force) do all or any of the following—
- (a) enter and search any premises at which a licensee is carrying on business at any time that the premises are open for business or between the hours of 9 a.m. and 5 p.m.;
 - (b) seize or secure against interference anything that the Director or inspector believes on reasonable grounds to be connected with a contravention of this Act or the regulations that is found on or in the premises;
 - (c) inspect and make copies of, or take extracts from, any document kept on the premises.
- (2) An inspector must not enter or search any premises under subsection (1) unless, before that entry, the inspector has produced his or her identity card for inspection by the occupier of the premises.

S. 61K
inserted by
No. 44/1999
s. 22.

S. 61K(1)(b)
amended by
No. 35/2000
s. 49(e).

61L Search warrants

- (1) An inspector, with the written approval of the Director, may apply to a magistrate for the issue of a search warrant in relation to particular premises for the purpose of monitoring compliance with this Act or the regulations.
- (2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of the inspector that the warrant is necessary for the purpose of monitoring compliance with this Act or the regulations, the magistrate may issue a search warrant, in

S. 61L
inserted by
No. 44/1999
s. 22.

S. 61L(1)
amended by
No. 35/2000
s. 49(e).

accordance with the **Magistrates' Court Act 1989**, authorising an inspector named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—

- (a) to enter the premises specified in the warrant, if necessary by force; and
 - (b) to do all or any of the following—
 - (i) search for;
 - (ii) seize;
 - (iii) secure against interference;
 - (iv) examine and inspect;
 - (v) make copies of, or take extracts from—
a thing or things of a particular kind named or described in the warrant and which the inspector believes, on reasonable grounds, to be connected with a contravention of this Act or the regulations.
- (3) A search warrant issued under this section must state—
- (a) the purpose for which the search is required; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

61M Announcement before entry

S. 61M
inserted by
No. 44/1999
s. 22.

- (1) On executing a search warrant, the inspector executing the warrant—
- (a) must announce that he or she is authorised by the warrant to enter the premises; and
 - (b) if the inspector has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

61N Details of warrant to be given to occupier

S. 61N
inserted by
No. 44/1999
s. 22.

- (1) If the occupier is present at premises where a search warrant is being executed, the inspector must—
- (a) identify himself or herself to the occupier; and
 - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
- (a) identify himself or herself to a person (if any) at the premises; and
 - (b) give to the person a copy of the warrant.

s. 61O

S. 61O
inserted by
No. 44/1999
s. 22.

61O Seizure of things not mentioned in the warrant

A search warrant under section 61L authorises an inspector executing the search warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize or take a sample of any thing which is not of the kind described in the warrant if—

- (a) the inspector believes, on reasonable grounds, that the thing—
 - (i) is of a kind which could have been included in a search warrant issued under this Division; or
 - (ii) will afford evidence about the contravention of any Consumer Act; and
- (b) in the case of seizure, the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act or any other Consumer Act.

S. 61O(a)(ii)
amended by
No. 35/2000
s 49(j).

S. 61O(b)
amended by
No. 35/2000
s 49(j).

S. 61P
inserted by
No. 44/1999
s. 22.

61P Embargo notice

- (1) An inspector executing a search warrant who is authorised by that warrant to seize any thing may, if the thing cannot, or cannot readily, be physically seized and removed, issue an embargo notice in the form approved by the Director—
 - (a) by causing a copy of the notice to be served on the occupier; or

S. 61P(1)
amended by
Nos 35/2000
s. 49(e),
103/2004 s. 60.

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- (b) if the occupier cannot be located after all reasonable steps have been taken to do so, by affixing a copy of the notice to the thing in a prominent position.
- (2) A person who knows that an embargo notice relates to a thing and who—
- (a) sells; or
 - (b) leases; or
 - (c) without the written consent of the inspector who issued the embargo notice, moves; or
 - (d) transfers; or
 - (e) otherwise deals with—
- the thing or any part of the thing is guilty of an offence and liable to a penalty not exceeding 10 penalty units.
- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that the defendant moved the thing or the part of the thing for the purpose of protecting and preserving it.
- (4) Despite anything in any other Act, a sale, lease, transfer or other dealing with a thing in contravention of this section is void.

61Q Copies of seized documents

- (1) If an inspector retains possession of a document taken or seized from a person under this Division, the inspector must give the person, within 21 days of the seizure, a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under subsection (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

S. 61Q
inserted by
No. 44/1999
s. 22.

s. 61R

S. 61R
inserted by
No. 44/1999
s. 22.

61R Retention and return of seized documents or things

- (1) If an inspector seizes a document or other thing under this Division, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
 - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 61S extending the period during which the document or thing may be retained.

S. 61S
inserted by
No. 44/1999
s. 22.

61S Magistrates' Court may extend 3 month period

- (1) An inspector may apply to the Magistrates' Court within 3 months after seizing a document or other thing under this Division for an extension of the period for which the inspector may retain the document or thing.
- (2) The Magistrates' Court may order such an extension if it is satisfied that retention of the document or other thing is necessary—
 - (a) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or
 - (b) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.

- (3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

61T Requirement to assist inspector during entry

S. 61T
inserted by
No. 44/1999
s. 22.

To the extent that it is reasonably necessary to determine compliance with this Act or the regulations, an inspector exercising a power of entry under this Division who produces his or her identity card for inspection by the occupier of the premises or an agent or employee of the occupier may require that person—

- (a) to give information to the inspector, orally or in writing; and
- (b) to produce documents to the inspector; and
- (c) to give reasonable assistance to the inspector.

61U Refusal or failure to comply with requirement

S. 61U
inserted by
No. 44/1999
s. 22,
amended by
No. 35/2000
s. 49(e).

A person must not refuse or fail, without reasonable excuse, to comply with a requirement of the Director or an inspector under this Division.

Penalty: Level 10 fine (10 penalty units maximum).

61V Rule against self-incrimination does not apply

S. 61V
inserted by
No. 44/1999
s. 22.

- (1) A person is not excused from answering a question or producing a document under this Division on the ground that the answer or document might tend to incriminate the person.
- (2) Before a person is required by an inspector to answer a question, the inspector must inform the person that if they claim, before answering the question, that the answer might tend to incriminate them, the answer is not admissible in evidence in any criminal proceedings, other than in proceedings in respect of the falsity of the answer.

s. 61W

- (3) If the person claims, before answering a question, that the answer might tend to incriminate them, the answer is not admissible in evidence in any criminal proceedings, other than in proceedings in respect of the falsity of the answer.

S. 61W
inserted by
No. 44/1999
s. 22.

61W Offence to give false or misleading information

A person must not—

- (a) give information to an inspector under this Division that the person believes to be false or misleading in any material particular; or
- (b) produce a document to an inspector under this Division that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: Level 10 fine (10 penalty units maximum).

S. 61WA
inserted by
No. 2/2008
s. 60(Sch.
item 9.1).

61WA Powers of court if requirement to produce information not complied with

- (1) Subject to subsection (3), if the Director is satisfied that a person has, without reasonable excuse, failed to comply with a requirement under section 61G, the Director may certify that failure to a court.
- (2) Subject to subsection (3), if an inspector is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of the inspector under section 61D, 61E, 61G or 61T, the inspector may certify that failure to a court.
- (3) The Director or an inspector cannot certify a failure to a court under subsection (1) or (2) if the person to whom the failure relates has been charged with an offence against section 61U.

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- (4) If the Director or an inspector so certifies under subsection (1) or (2), the court may inquire into the case and may order the person to comply with the requirement within the period specified by the court.
- (5) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence against section 61U in respect of that failure.

61X Application of provisions relating to inspections

S. 61X
inserted by
No. 44/1999
s. 22.

Sections 120, 135, 136, 137, 138 and 139 of the **Fair Trading Act 1999** apply (with any necessary modifications) in relation to the exercise or attempted exercise of a power of an inspector under this Division as if any reference in those sections to Part 10 of that Act were a reference to this Division.

61Y Service of documents

S. 61Y
inserted by
No. 44/1999
s. 22.

- (1) A written requirement by an inspector under this Division may be given personally or by registered post to a person—
- (a) at the last known place of business, employment or residence of the person; or
 - (b) in the case of a body corporate, at the registered office of the body corporate.
- (2) A person who provides a document or information in response to a requirement of an inspector under this Division may send that document or information to the Director by registered post.

S. 61Y(2)
amended by
No. 35/2000
s. 49(k).

s. 61Z

S. 61Z
inserted by
No. 44/1999
s. 22.

61Z Confidentiality

- (1) An inspector must not, except to the extent necessary to carry out the inspector's functions under this Division, give to any other person, whether directly or indirectly, any information acquired by the inspector in carrying out those functions.

Penalty: Level 10 fine (10 penalty units maximum).

- (2) Subsection (1) does not apply to the giving of information—
 - (a) to a court or tribunal in the course of legal proceedings; or
 - (b) pursuant to an order of a court or tribunal; or
 - (c) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or Territory or of the Commonwealth; or
 - (d) to the Authority; or
 - (e) with the written authority of the Director; or
 - (f) with the written authority of the person to whom the information relates.

S. 61Z(2)(e)
amended by
No. 35/2000
s. 49(e).

Division 9—Powers of entry

62 Entry to licensed premises by police

S. 62(1)
amended by
No. 99/1995
s. 32(1).

- (1) A member of the police force of or above the rank of inspector (accompanied by any other member or members of the police force that he or she considers necessary) may at any time enter and inspect any premises at which a licensee, or a person exempted by section 23 from the

requirement to hold a licence, is carrying on business as a prostitution service provider.

- (2) If entry is refused or delayed, the member or members of the police force may break, enter and inspect the premises.
- (3) A person must not—
 - (a) prevent or attempt to prevent a member of the police force from entering or inspecting premises under a power conferred by this section; or
 - (b) obstruct a member of the police force in the exercise of such a power.

S. 62(3)
amended by
No. 44/1999
s. 31(14).

Penalty: Level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum) or both.

- (4) The member of the police force in charge of the operation must, within 7 days after exercising a power conferred by this section, report to the Director and the Authority in the form and manner approved by the Director or the Authority (as the case requires) particulars of the exercise of that power.
- (5) Nothing in this section authorises a member of the police force to enter and inspect a part of any premises that is used solely as a residence unless the occupier of the residence has consented in writing to the entry and inspection.

S. 62(4)
amended by
Nos 52/1998
s. 225(a)(b),
35/2000
s. 49(e).

S. 62(5)
inserted by
No. 99/1995
s. 32(2).

63 Entry to unlicensed premises—search warrant

- (1) A member of the police force of or above the rank of inspector may apply to a magistrate for the issue of a search warrant in relation to particular premises if the member believes on reasonable grounds that a person is carrying on business at those premises as a prostitution service provider in contravention of section 22(1) or (1A) or 24(1).

S. 63(1)
amended by
No. 44/1999
s. 23.

s. 63

S. 63(2)
amended by
No. 44/1999
s. 23.

(2) If the magistrate to whom the application is made is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that a person is carrying on business at the premises as a prostitution service provider in contravention of section 22(1) or (1A) or 24(1), the magistrate may issue a search warrant.

S. 63(3)
amended by
No. 44/1999
s. 23.

(3) A search warrant issued under this section must be directed to the applicant for it and must authorise him or her to enter the premises, or the part of premises, named or described in the warrant to search for any article, thing or material of a kind named or described in the warrant which there is reasonable ground to believe will afford evidence as to the commission of an offence against section 22(1) or (1A) or 24(1).

(4) In addition to any other requirement, a search warrant issued under this section must state—

- (a) any conditions to which the warrant is subject; and
- (b) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
- (c) a date, not being later than 7 days after the date of issue of the warrant, on which the warrant ceases to have effect.

(5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.

(6) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

64 Entry to unlicensed premises—without search warrant

- (1) If outside office hours a member of the police force of or above the rank of inspector believes on reasonable grounds that a person is carrying on business at particular premises as a prostitution service provider in contravention of section 22(1) or (1A) or 24(1) and that relevant evidence is likely to be lost if entry to the premises is delayed until a search warrant is obtained, the member may authorise entry to the premises in accordance with the procedure set out in subsection (2).
- (2) The member of the police force referred to in subsection (1) must—
- (a) in writing—
 - (i) set out the grounds for the belief—
 - (A) that an unlicensed person is carrying on business at the premises as a prostitution service provider; and
 - (B) that relevant evidence is likely to be lost if entry to the premises is delayed until a search warrant is obtained; and
 - (ii) name or describe the premises; and
 - (iii) name the member or members of the police force being authorised to enter the premises; and
 - (b) without delay transmit a copy of the writing by facsimile machine to the office of the principal registrar of the Magistrates' Court and to the office of the Authority; and

S. 64(1)
amended by
No. 44/1999
s. 23.

S. 64(2)(b)
amended by
No. 52/1998
s. 226.

S. 64(4)(a)
amended by
No. 44/1999
s. 23.

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- (c) issue to the member or members of the police force named in the writing a copy of it signed by the authorising member of the police force.
- (3) No entry to premises is authorised under this section until after the requirements of subsection (2) have been complied with.
- (4) An entry authority authorises the member or members of the police force named in it—
- (a) to break, enter and search the premises named or described in the warrant for any article, thing or material which there is reasonable ground to believe will afford evidence as to the commission of an offence against section 22(1) or (1A) or 24(1); and
 - (b) to bring the article, thing or material before the Magistrates' Court so that the matter may be dealt with according to law; and
 - (c) to arrest any person apparently having possession, custody or control of the article, thing or material.
- (5) The member or members of the police force acting under an entry authority must cause any person arrested under subsection (4)(c) to be brought before a bail justice or the Magistrates' Court within a reasonable time of being arrested to be dealt with according to law.
- (6) A person arrested under subsection (4)(c) may be discharged from custody on bail under section 10 of the **Bail Act 1977**.
- (7) In determining what constitutes a reasonable time for the purposes of subsection (5) the matters specified in section 464A(4) of the **Crimes Act 1958** may be considered.
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- (8) For the purposes of subsection (4)(b) an article, thing or material that is bulky or cumbersome may be brought before the Magistrates' Court by giving evidence on oath to the Court as to the present whereabouts of the article, thing or material and by producing a photograph of it.
- (9) The Magistrates' Court may direct that any article, thing or material seized under an entry authority be returned to its owner, subject to any condition that the Court thinks fit, if in the opinion of the Court it can be returned consistently with the interests of justice.
- (10) A person acting under an entry authority is not to be taken to be a trespasser from the beginning only because of a defect or error in it.

65 Admissibility of evidence obtained under entry authority

S. 65
amended by
No. 44/1999
s. 23.

A court hearing a proceeding for an offence against section 22(1) or (1A) or 24(1) must rule as inadmissible as part of the prosecution case any evidence obtained under an entry authority if the court is satisfied that the requirements of section 64 were not complied with.

Division 10—Miscellaneous

66 Prostitution Control Board Fund

- (1) There shall be kept in the Trust Fund under the **Financial Management Act 1994**, a trust account to be called the Prostitution Control Fund.
- (2) Into the Fund must be paid—
 - (a) all fees paid under this Act;
 - (b) all fines or penalties paid in respect of an offence against this Act;

S. 66(1)
substituted by
No. 52/1998
s. 227(1).

Prostitution Control Act 1994
No. 102 of 1994

s. 67

S. 66(2)(c)
substituted by
No. 52/1998
s. 227(2).

(c) all other money received by the Authority
under this Act;

S. 66(2)(d)
inserted by
No. 52/1998
s. 227(2).

(d) all other money required under this Act to be
paid into the Fund.

S. 66(3)
amended by
Nos 99/1995
s. 33(1),
47/1997 s. 35,
substituted by
No. 52/1998
s. 227(3).

(3) Subject to any directions given by the Minister
under subsection (4), the following may be paid
out of the Fund—

(a) any fees paid under this Act that, in
accordance with this Act or the regulations,
are required to be refunded; and

(b) the costs and expenses incurred in the
administration of this Act.

S. 66(4)
amended by
No. 52/1998
s. 227(4)(a)(b).

(4) The Minister may give to the Authority written
directions in relation to the purposes for which the
Authority may spend money in exercising its
functions under this Act and the extent to which
the Authority may spend money for any particular
purpose.

67 Advisory Committee

S. 67(1)
substituted by
No. 52/1998
s. 228(1).

(1) There shall be appointed an Advisory Committee
consisting of persons appointed by the Governor
in Council on the recommendation of the
Minister.

S. 67(1A)
inserted by
No. 52/1998
s. 228(1),
amended by
No. 44/1999
s. 24(1)(a).

(1A) The functions of the Advisory Committee are to
advise the Minister on—

S. 67(1A)(a)
amended by
No. 44/1999
s. 24(1)(b).

(a) issues related to the regulation and control of
the prostitution industry in Victoria;

Prostitution Control Act 1994
No. 102 of 1994

s. 67

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| (b) the general operation of the prostitution control industry in Victoria; | S. 67(1A)(b)
amended by
No. 44/1999
s. 24(1)(c). |
| (c) liaison with the police force so as to assist the police force in carrying out its functions in relation to prostitution; | S. 67(1A)(c)
amended by
No. 44/1999
s. 24(1)(d). |
| (d) the reference of relevant matters for investigation by the WorkCover Authority, the Australian Taxation Office or the Commonwealth Department of Immigration and Ethnic Affairs or any other body; | S. 67(1A)(d)
amended by
No. 44/1999
s. 24(1)(e). |
| (e) assistance for organisations involved in helping prostitutes to leave the industry; | S. 67(1A)(e)
amended by
No. 44/1999
s. 24(1)(f). |
| (f) the development of educational programmes about the prostitution industry for magistrates, police and community workers; | S. 67(1A)(f)
amended by
No. 44/1999
s. 24(1)(g). |
| (g) the dissemination of information about the dangers (including dangers to health) inherent in prostitution, especially street prostitution. | S. 67(1A)(g)
amended by
No. 44/1999
s. 24(1)(h). |
| (2) The Advisory Committee may seek information from the Authority about relevant issues and trends. | S. 67(2)
amended by
No. 44/1999
s. 24(2). |
| (3) The members of the Advisory Committee shall include— | |
| (a) persons with knowledge of the prostitution industry in Victoria; and | |
| (b) persons who are representative of religious or community interests. | |
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- (4) In recommending people for appointment as Committee members, the Minister must have regard to the desirability of ensuring that the Committee is comprised of both women and men.
- (5) A member is appointed for the term (not exceeding 5 years) specified in the instrument of appointment and is eligible for re-appointment.
- (6) A member is entitled to any travelling and other allowances approved by the Minister in respect of him or her.
- (7) The Governor in Council shall appoint one of the members as chairperson.
- (8) The Governor in Council may remove a member from office.
- (9) The Committee may regulate its own meeting procedure.
- (10) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

S. 67(10)
substituted by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 165.2),
80/2006
s. 26(Sch.
item 87).

S. 67(11)
inserted by
No. 52/1998
s. 228(2),
repealed by
No. 44/1999
s. 24(3).

S. 67(12)
inserted by
No. 52/1998
s. 228(2).

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- (12) The Advisory Committee must, as soon as practicable after the end of each year, prepare a report on its operations during that year and submit it to the Minister.

68 Regulations

The Governor in Council may make regulations for or with respect to—

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| * | * | * | * | * | S. 68(a)
repealed by
No. 52/1998
s. 229(a). |
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| (b) matters or things to be included in, or to accompany, applications made under this Part; | | | | | |
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| (c) particulars of matters required to be given or reported to the Authority; | | | | | |
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| (d) requirements to be complied with by a prostitution service provider to ensure the safety of persons working in the business; | | | | | |
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| (e) matters to be considered by the Authority in determining the suitability of an applicant for a licence; | | | | | |
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| (f) prescribing fees; | | | | | |
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| (fa) the refund, in whole or in part, of fees paid under this Act; | | | | | |
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| (g) prescribing forms; | | | | | |
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| (h) generally prescribing any other matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part. | | | | | |

Division 11—Transitional

69 Transitional (licence)

- (1) In this section *appointed day* means the day on which section 22(1) comes into operation.
- (2) A person who immediately before the appointed day was—
 - (a) carrying on a business of a kind referred to in the definition of *brothel* in section 3 in respect of which there was or were then in force such permit or permits as was or were then required under the **Planning and Environment Act 1987** to authorise the use of the land for the purposes of that business; or
 - (b) carrying on business as an escort agency—
must, on and from that day, be deemed to hold a licence.
- (3) Subsection (2) ceases to apply to a person on the expiry of 3 months beginning with the appointed day unless the person has during that period applied under section 33 for a licence in which case it ceases to apply on whichever of the following events occurs last—
 - (a) the Board grants a licence on the application;
 - (b) if the Board refuses to grant a licence on the application at any time before the commencement of section 224 of the **Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998**—
 - (i) the period allowed by section 56 (as in force immediately before that commencement) or clause 13 of Schedule 2 to the **Tribunals and Licensing Authorities (Miscellaneous**

S. 69(3)(b)
amended by
No. 44/1999
s. 25(1)(a).

S. 69(3)(b)(i)
amended by
No. 44/1999
s. 25(1)(b).

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- Amendments) Act 1998** for appealing to the Supreme Court expires without an appeal having been instituted; or
- (ii) if an appeal to the Supreme Court is instituted—
- (A) it is withdrawn; or
- (B) a Master refuses the application for an order under Rule 58.09 of the General Rules of Procedure in Civil Proceedings 1996 and the period allowed by rules of court for appealing to a Judge against the refusal expires without an appeal having been brought or, if an appeal is brought, it is withdrawn or the refusal to make the order is affirmed; or
- (C) it is heard and determined by a Judge and the case is remitted to the Board for re-hearing with or without any direction in law and, on the remittal, the Board grants a licence or again refuses to grant a licence; or
- (D) it is dismissed and the period allowed by rules of court for appealing to the Court of Appeal expires without an appeal having been brought or, if an appeal to the Court of Appeal is brought, it is discontinued or abandoned or is finally disposed of;
- (c) if the Authority refuses to grant a licence on the application at any time on or after the commencement of section 224 of the
- S. 69(3)(b)
(ii)(B)
amended by
No. 47/1997
s. 36(1).**
- S. 69(3)(b)
(ii)(D)
amended by
No. 47/1997
s. 36(2).**
- S. 69(3)(c)
inserted by
No. 44/1999
s. 25(1)(c).**

**Tribunals and Licensing Authorities
(Miscellaneous Amendments) Act 1998—**

- (i) the period allowed by section 56 for applying to the Tribunal for review of that decision expires without an application having been made; or
- (ii) if an application for review is made to the Tribunal—
 - (A) it is withdrawn; or
 - (B) it is dismissed or struck out by the Tribunal and the period allowed by section 148 of the **Victorian Civil and Administrative Tribunal Act 1998** for appealing from that decision expires without an application for leave to appeal having been made.

70 Transitional (manager approval)

- (1) In this section *appointed day* means the day on which section 49(1) comes into operation.
- (2) A person who immediately before the appointed day was managing on behalf of another person a business of a kind referred to in section 69(2) must, on and from that day, be deemed to hold an approval under section 52(1).
- (3) Subsection (2) ceases to apply to a person on the expiry of 3 months beginning with the appointed day unless the licensee has during that period applied under section 50(1) for the approval of that person as a manager of the prostitution service providing business in which case it ceases to apply on whichever of the following events occurs last—
 - (a) the Board approves of that person as a manager on the application;

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- (b) if the Board refuses to approve of that person as a manager on the application at any time before the commencement of section 224 of the **Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998**—
- (i) the period allowed by section 56 (as in force immediately before that commencement) or clause 13 of Schedule 2 to the **Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998** for appealing to the Supreme Court expires without an appeal having been instituted; or
- (ii) if an appeal to the Supreme Court is instituted—
- (A) it is withdrawn; or
- (B) a Master refuses the application for an order under Rule 58.09 of the General Rules of Procedure in Civil Proceedings 1996 and the period allowed by rules of court for appealing to a Judge against the refusal expires without an appeal having been brought or, if an appeal is brought, it is withdrawn or the refusal to make the order is affirmed; or
- (C) it is heard and determined by a Judge and the case is remitted to the Board for re-hearing with or without any direction in law and, on the remittal, the Board approves, or again refuses to approve, of that person as a manager; or
- S. 70(3)(b) amended by No. 44/1999 s. 25(2)(a).
- S. 70(3)(b)(i) amended by No. 44/1999 s. 25(2)(b).
- S. 70(3)(b)(ii)(B) amended by No. 47/1997 s. 37(1).

s. 70

S. 70(3)(b)
(ii)(D)
amended by
No. 47/1997
s. 37(2).

(D) it is dismissed and the period allowed by rules of court for appealing to the Court of Appeal expires without an appeal having been brought or, if an appeal to the Court of Appeal is brought, it is discontinued or abandoned or is finally disposed of;

S. 70(3)(c)
inserted by
No. 44/1999
s. 25(2)(c).

(c) if the Authority refuses to approve of that person as a manager on the application at any time on or after the commencement of section 224 of the **Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998**—

(i) the period allowed by section 56 for applying to the Tribunal for review of that decision expires without an application having been made; or

(ii) if an application for review is made to the Tribunal—

(A) it is withdrawn; or

(B) it is dismissed or struck out by the Tribunal and the period allowed by section 148 of the **Victorian Civil and Administrative Tribunal Act 1998** for appealing from that decision expires without an application for leave to appeal having been made.

PART 4—PLANNING CONTROLS ON BROTHELS

Division 1—Definitions

71 Definitions

Words and expressions used in this Part have the same meanings as they have in the **Planning and Environment Act 1987**.

Division 2—Permits

72 Restriction on certain permit applications

Despite anything to the contrary in the **Planning and Environment Act 1987**, an application for a permit for a use or development of land for the purposes of the operation of a brothel may only be made by—

- (a) a licensee; or
- (b) a person or two persons intending to rely on an exemption under section 23(1) from the requirement to hold a licence.

S. 72(b)
amended by
No. 99/1995
s. 34.

73 Matters to be considered by responsible authority

Without limiting section 60 of the **Planning and Environment Act 1987**, before deciding on an application for a permit for a use or development of land for the purposes of the operation of a brothel, the responsible authority must consider—

- (a) any other brothel in the neighbourhood;
- (b) the effect of the operation of a brothel on children in the neighbourhood;
- (c) except in the case of land within the area of the City of Melbourne bounded by Spring, Flinders, Spencer and LaTrobe Streets, whether the land is within 200 metres of a

S. 73(c)
amended by
No. 99/1995
s. 35.

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- place of worship, hospital, school, kindergarten, children's services centre or of any other facility or place regularly frequented by children for recreational or cultural activities and, if so, the effect on the community of a brothel being located within that distance of that facility or place;
- (d) other land use within the neighbourhood involving similar hours of operation and creating similar amounts of noise or traffic (including pedestrian traffic);
 - (e) any guidelines about the size or location of brothels issued by the Minister administering the **Planning and Environment Act 1987**;
 - (f) the amenity of the neighbourhood;
 - (g) the provision of off-street parking;
 - (h) landscaping of the site;
 - (i) access to the site;
 - (j) the proposed size of the brothel and the number of people that it is proposed will be working in it;
 - (k) the proposed method and hours of operation of the brothel.

74 Restriction on granting of permits

- (1) The responsible authority must refuse to grant a permit for a use or development of land for the purposes of the operation of a brothel if—
 - (a) the land is within an area that is zoned by a planning scheme as being primarily for residential use; or
 - (b) the land is within 100 metres or, in the case of land within the area of the City of Melbourne bounded by Spring, Flinders,

- Spencer and LaTrobe Streets, 50 metres of a dwelling other than a caretaker's house; or
- (c) except in the case of land within the area of the City of Melbourne bounded by Spring, Flinders, Spencer and LaTrobe Streets, the land is within 200 metres of a place of worship, hospital, school, kindergarten, children's services centre or of any other facility or place regularly frequented by children for recreational or cultural activities; or
 - (d) unless there exists special circumstances as set out in guidelines issued by the Minister administering the **Planning and Environment Act 1987**, more than 6 rooms in the proposed brothel are to be used for prostitution.
- (2) For the purposes of subsection (1) distances are to be measured according to any route which reasonably may be used in travelling.
- (3) Despite section 71, in this section *development* does not include—
- (a) the exterior alteration or exterior decoration of a building; and
 - (b) the demolition or removal of a building or works.

75 Persons not to have interest in more than one brothel licence or permit

- (1) A person must not have at any one time—
- (a) an interest in more than one current licence authorising the carrying on of a business of a kind referred to in the definition of *brothel* in section 3, including a deemed licence arising by force of section 69 authorising the carrying on of such a business; or

S. 75(1)
substituted by
No. 99/1995
s. 36(1),
amended by
No. 48/1997
s. 70(10),
substituted by
No. 44/1999
s. 26.

- (b) an interest in more than one unexpired permit granted for the use of land for the purposes of the operation of a brothel, being a permit under which the use has started.

Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

S. 75(2)
amended by
No. 99/1995
s. 36(2),
substituted by
No. 44/1999
s. 26.

- (2) For the purposes of subsection (1)—
- (a) a person has an interest in a licence if the licence was granted to, or is deemed to be held by, the person or an associate of that person; and
- (b) a person does not have an interest in a licence granted to, or deemed to be held by, a business partner of that person if the licence or deemed licence authorises the business partner to carry on a prostitution service providing business at the same premises as those at which that person is authorised to carry on such a business by a licence granted to, or deemed to be held by, that person; and
- (c) a person does not have an interest in a licence granted to, or deemed to be held by, another person only because the person is an approved manager of a prostitution service providing business carried on by the other person under the authority of that licence or deemed licence; and
- (d) a person has an interest in a permit if the permit was granted in respect of land owned or leased by that person or an associate of that person, whether alone or jointly with any other person.

Prostitution Control Act 1994
No. 102 of 1994

s. 75

(3) For the purposes of this section two persons are associated if one is—

S. 75(3)
substituted by
No. 44/1999
s. 26.

(a) a spouse or domestic partner of the other; or

S. 75(3)(a)
amended by
No. 27/2001
s. 8(Sch. 6
item 5.3).

(b) a business partner of the other; or

(c) a person who has, or a person who is an associate of a body corporate which has, entered into a business arrangement or relationship with the other or with a body corporate of which the other is an associate—

(i) in respect of the use, occupation, management or otherwise of land; or

(ii) that enables or will enable the person, or a body corporate of which the person is an associate, to exercise a significant influence over or with respect to the management or operation of a prostitution service providing business carried on by the other or by a body corporate of which the other is an associate; or

(d) directly receiving any income derived from a business carried on by the other; or

(e) a body corporate and the other is a related body corporate within the meaning of section 9 of the Corporations Act; or

S. 75(3)(e)
amended by
No. 44/2001
s. 3(Sch.
item 94.2).

(f) a person who is a lessee or sub-lessee of land used for the purposes of the operation of a brothel that is owned or leased by the other

or by a body corporate of which the other is an associate; or

(g) a body corporate and the other is an associate of the body corporate.

S. 75(3A)
inserted by
No. 44/1999
s. 26.

(3A) For the purposes of subsection (3)(c), (f) and (g) a person is an associate of a body corporate if he or she—

S. 75(3A)(a)
amended by
No. 27/2001
s. 8(Sch. 6
item 5.3).

(a) is a director or secretary of the body corporate or a spouse or domestic partner of such a director or secretary; or

(b) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the body corporate and thereby is able or will be able to exercise a significant influence over or with respect to the management or operation of that business; or

(c) holds or will hold any relevant position (whether in his or her own right or on behalf of any other person) in the business of the body corporate.

S. 75(4)
inserted by
No. 99/1995
s. 36(3),
amended by
No. 11/2001
s. 3(Sch.
item 60).

(4) For the purposes of this section two persons are not associated only because one has borrowed money from the other (being an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth) and the repayment of the debt is secured by a mortgage over or in respect of land owned by the debtor.

S. 75(5)
inserted by
No. 99/1995
s. 36(3).

(5) An offence against subsection (1) is an indictable offence.

75A Amendment of permits under the Planning and Environment Act 1987

S. 75A
inserted by
No. 12/2000
s. 3.

- (1) If—
- (a) a permit has been issued under the **Planning and Environment Act 1987** for the use or development of land for the purposes of the operation of a brothel; and
 - (b) an application or request for the amendment of that permit is made; and
 - (c) the amendment would have the effect of expanding or extending the use or development of the land for the purposes of the operation of the brothel—

the responsible authority or the Tribunal (as the case requires) must determine the application or request for the amendment in accordance with this Part as if it were an application for a permit for the use or development of the land for the purposes of the operation of a brothel.

- (2) This section applies to the amendment of a permit whether the permit was granted before, on or after 14 June 1995.
- (3) If an application or request for an amendment of a permit was made but not determined before the commencement of section 3 of the **Prostitution Control (Planning) Act 2000**, that application must be determined in accordance with this section.
- (4) In this section—
- amendment* means—
- (a) an amendment under section 87 of the **Planning and Environment Act 1987**;
 - (b) an amendment under section 73 of the **Planning and Environment Act 1987**;

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- (c) an amendment under section 62(3) of the **Planning and Environment Act 1987** to plans, drawings or other documents approved under a permit.

76 Transitional provision

- (1) An application for a permit that was made under the **Planning and Environment Act 1987** before the commencement of this Division but which had not been determined before that commencement must be determined under that Act as affected by this Division.
- (2) An application, in accordance with a condition of the permit, for an extension of a temporary use permit granted under the **Planning and Environment Act 1987** before the commencement of this Division must be determined under that Act as if this Act had not been enacted, whether the application is made before or after the commencement of this Division.

Division 3—Application of Planning and Environment Act 1987

77 Offences under Planning and Environment Act 1987

- (1) Despite section 127 of the **Planning and Environment Act 1987**, a person who is convicted or found guilty of an offence against section 126 of that Act in relation to land used or developed for the purposes of the operation of a brothel is liable to—

- (a) a penalty of not more than 1200 penalty units; and

S. 77(1)(a)
substituted by
No. 28/2000
s. 21(1).

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- (b) if the contravention or failure constituting the offence is of a continuing nature, a further penalty of not more than 60 penalty units for each day during which the contravention or failure continues after the conviction or finding. **S. 77(1)(b) amended by No. 28/2000 s. 21(2).**
- (2) If a person is convicted or found guilty of an offence referred to in subsection (1), the court may declare that the person or an associate of the person is not eligible, for a period of up to 10 years specified by the court, to hold a permit granted by a responsible authority under the **Planning and Environment Act 1987** for a use or development of land for the purposes of the operation of a brothel.
- (3) For the purposes of subsection (2) two persons are associated if one is— **S. 77(3) substituted by No. 44/1999 s. 27.**
- (a) a spouse or domestic partner of the other; or **S. 77(3)(a) amended by No. 27/2001 s. 8(Sch. 6 item 5.3).**
- (b) a business partner of the other; or
- (c) a person who has, or a person who is an associate of a body corporate which has, entered into a business arrangement or relationship with the other or with a body corporate of which the other is an associate—
- (i) in respect of the use, occupation, management or otherwise of land; or
- (ii) that enables or will enable the person, or a body corporate of which the person is an associate, to exercise a significant influence over or with respect to the management or operation of a
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s. 77

prostitution service providing business carried on by the other or by a body corporate of which the other is an associate but not including an arrangement or relationship under which the person is or will be an approved manager of the business; or

(d) directly receiving any income derived from a business carried on by the other; or

(e) a body corporate and the other is a related body corporate within the meaning of section 9 of the Corporations Act; or

(f) a person who is a lessee or sub-lessee of land used for the purposes of the operation of a brothel that is owned or leased by the other or by a body corporate of which the other is an associate; or

(g) a body corporate and the other is an associate of the body corporate.

(3A) For the purposes of subsection (3)(c), (f) and (g) a person is an associate of a body corporate if he or she—

(a) is a director or secretary of the body corporate or a spouse or domestic partner of such a director or secretary; or

(b) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the body corporate and thereby is able or will be able to exercise a significant influence over or with respect to

S. 77(3)(e)
amended by
No. 44/2001
s. 3(Sch.
item 94.2).

S. 77(3A)
inserted by
No. 44/1999
s. 27.

S. 77(3A)(a)
amended by
No. 27/2001
s. 8(Sch. 6
item 5.3).

the management or operation of that
business; or

- (c) holds or will hold any relevant position
(whether in his or her own right or on behalf
of any other person) in the business of the
body corporate.

78 Powers of entry

Section 134(1) of the **Planning and
Environment Act 1987** (what must be done
before entry) does not apply to an entry of land
that an authorised person believes on reasonable
grounds is being used for the purposes of the
operation of a brothel.

Division 4—Miscellaneous

79 Regulations

The Governor in Council may make regulations
for or with respect to any matter or thing required
or permitted by this Part to be prescribed or
necessary to be prescribed to give effect to this
Part.

PART 5—PROSCRIBED BROTHELS

80 Declaration of proscribed brothel

(1) The Magistrates' Court may declare premises to be a proscribed brothel if it is satisfied on the balance of probabilities—

S. 80(1)(a) substituted by No. 44/1999 s. 28(1).

(a) on the application of an authorised member of the police force, that—

S. 80(1)(a)(i) amended by No. 22/2001 s. 4(1).

(i) a business of a kind referred to in the definition of *brothel* in section 3 is being carried on at those premises or has been carried on at those premises at any time during the period of 14 days immediately before the date of the filing of the application; and

(ii) there is not in force—

(A) a licence authorising a person to carry on such a business at those premises; or

(B) if those premises are not a building or part of a building, a permit granted under the **Planning and Environment Act 1987** for the use or development of those premises for the purposes of the operation of a brothel; or

S. 80(1)(ab) inserted by No. 73/1996 s. 72(1), repealed by No. 44/1999 s. 28(1).

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- (b) on the application of an authorised officer of the responsible authority, that they are being used for the purposes of the operation of a brothel or have been so used at any time during the period of 14 days immediately before the date of the filing of the application and that there has not been granted, or is not in force, in respect of them any permit required under the **Planning and Environment Act 1987** for their use or development for those purposes.
- S. 80(1)(b) amended by No. 22/2001 s. 4(2).
- (2) An authorised officer of the responsible authority may only apply under subsection (1)(b) with respect to premises that he or she believes on reasonable grounds are being used for the purposes of the operation of a brothel at the date of the filing of the application or have been so used at any time during the period of 14 days immediately before the date of the filing of the application and that there has not been granted, or is not in force, in respect of them any permit required under the **Planning and Environment Act 1987** for their use or development for those purposes.
- S. 80(2) amended by No. 22/2001 s. 4(3).
- (3) The Magistrates' Court may only make a declaration under subsection (1) if it is satisfied that notice of the application was at least 72 hours before the hearing—
- (a) served on the owner or occupier of the premises which are the subject of the application; or
- (b) published in a newspaper generally circulating in the area in which the premises are situated.

S. 80(3A)
inserted by
No. 47/1997
s. 38.

S. 80(3B)
inserted by
No. 44/1999
s. 28(2).

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- (3A) On the hearing of an application under subsection (1), the Magistrates' Court may take into consideration any evidence which it considers credible or trustworthy in the circumstances.
- (3B) The Magistrates' Court must dismiss an application under subsection (1)(a) to the extent that it is based on there not being in force a licence authorising a person to carry on at the premises which are the subject of the application a business of a kind referred to in the definition of *brothel* in section 3 if the owner or occupier of those premises proves that he or she is exempted by section 23 from the requirement to hold a licence.
- (4) For the purposes of subsection (3)(a) a notice is sufficiently served on the owner or occupier of premises if it is posted in a prepaid letter addressed to "the owner" or "the occupier" (without name or further description) and bearing such an address or description of the premises as should ensure the delivery of the letter at those premises.
- (5) A declaration under subsection (1) may be made for an unlimited period or for a period specified by the Magistrates' Court and the declaration remains in force accordingly unless it is sooner rescinded.

81 Publication of declaration

- (1) As soon as possible after the making of a declaration under section 80(1) the Chief Commissioner of Police (if the application for it was made by a member of the police force) or the responsible authority (if the application for it was made by one of its officers)—

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- (a) must cause a notice of the making of the declaration to be published on two days in a newspaper generally circulating in the area in which the premises are situated; and
 - (b) must cause a notice of the making of the declaration to be served personally on the owner or the occupier, or a mortgagee, of the premises; and
 - (c) must cause a copy of the declaration to be posted up at or near to the entrance to the premises so as to be visible and legible to any person entering them.
- (2) If, in the opinion of the Chief Commissioner or an authorised officer of the responsible authority (as the case requires), personal service as required by subsection (1)(b) cannot be promptly effected, the notice may be sufficiently served for the purposes of that subsection by posting it in a prepaid letter addressed to "the owner" or "the occupier" (without name or further description) and bearing such an address or description of the premises as should ensure the delivery of the letter at those premises.
- (3) A person must not cover, remove, deface or destroy a copy of a declaration posted up under subsection (1)(c).
- Penalty: 60 penalty units or imprisonment for 6 months.
- (4) In a proceeding under this Part the production of a copy of a newspaper containing a notice published under subsection (1)(a) is evidence and, in the absence of evidence to the contrary, is proof that the notice was duly published in that newspaper on the date appearing on that newspaper.
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82 Offences with respect to proscribed brothels

- (1) A person must not be found in or entering or leaving premises in respect of which there is in force a declaration declaring those premises to be a proscribed brothel notice of the making of which was published in accordance with section 81(1)(a).

Penalty: 60 penalty units or imprisonment for 12 months.

- (2) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that he or she was in or entering or leaving the premises in ignorance of the making of the declaration or for some lawful purpose.
- (3) In a proceeding for an offence against subsection (1), the accused cannot as a defence to the charge rely on the fact that—
- (a) the Chief Commissioner of Police or the responsible authority (as the case requires) has failed to comply with section 81(1); or
 - (b) a declaration posted up under section 81(1)(c) has been covered, removed, defaced or destroyed.
- (4) If any premises in respect of which there is in force a declaration declaring those premises to be a proscribed brothel are used as a brothel at any time after service of notice of the making of the declaration on the owner or occupier in accordance with section 81(1)(b), the owner or occupier (as the case requires) is guilty of an offence and liable to a penalty of not more than 120 penalty units or to imprisonment for not more than 12 months.

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- (5) In a proceeding for an offence against subsection (4) it is a defence to the charge for the accused to prove that he or she took all reasonable steps to prevent the premises being used as a brothel.

83 Police powers with respect to proscribed brothels

- (1) An authorised member of the police force may without warrant apprehend and take before a bail justice or the Magistrates' Court to be dealt with according to law any person whom he or she finds in or entering or leaving premises in respect of which there is in force a declaration declaring those premises to be a proscribed brothel notice of the making of which has been published in accordance with section 81(1)(a).
- (2) An authorised member of the police force may at any time—
- (a) enter any premises to which subsection (1) applies; or
 - (b) pass through or over any other land or building in order to enter those premises—
- and for that purpose may break open doors, windows or partitions on those premises or do any other acts on those premises that may be necessary.
- (3) An authorised member of the police force exercising a power under subsection (2) must, on request, produce—
- (a) evidence of his or her status as an authorised member of the police force; and
 - (b) a copy of the declaration declaring the premises to be a proscribed brothel.

84 Rescission of declaration

(1) The Magistrates' Court may rescind a declaration made under section 80(1) and may do so on any terms, conditions, limitations or restrictions that it thinks fit which may include the giving of security to ensure that the premises are not again—

S. 84(1)(a)
substituted by
No. 44/1999
s. 28(3).

(a) used for the carrying on of a business of a kind referred to in the definition of *brothel* in section 3 in contravention of section 22(1) or (1A) or 21A(1); or

S. 84(1)(ab)
inserted by
No. 73/1996
s. 72(2),
repealed by
No. 44/1999
s. 28(3).

* * * * *

(b) used for the purposes of the operation of a brothel without there being in force in respect of them any permit required under the **Planning and Environment Act 1987** for their use or development for those purposes.

(2) The Magistrates' Court may act under subsection (1) on the application of—

(a) the owner or the occupier, or a mortgagee, of the declared premises; or

(b) an authorised member of the police force; or

(c) an authorised officer of the responsible authority.

(3) The Magistrates' Court may only rescind a declaration under subsection (1) on an application made under subsection (2)(a) if it is satisfied that notice of the application was at least 72 hours before the hearing served on a superintendent or inspector of police stationed within the police

district in which the declared premises are situated
and on the responsible authority.

85 Proof of declaration or rescission

- (1) The Magistrates' Court must cause notice of the making of a declaration under section 80(1) or of its rescission under section 84(1) to be published in the Government Gazette.
 - (2) Notice of rescission published under subsection (1) must include any terms, conditions, limitations or restrictions imposed by the Court.
 - (3) In a proceeding under this Part the production of a copy of the Government Gazette containing a notice published under subsection (1) is evidence and, in the absence of evidence to the contrary, is proof that the declaration or rescission was duly made.
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PART 6—GENERAL

S. 86
substituted by
No. 103/2004
s. 61.

86 Who may bring proceedings for offences?

- (1) Proceedings for an offence against this Act may only be brought by—
 - (a) the Director; or
 - (b) a person authorised by the Director for the purposes of this section; or
 - (c) a member of the police force.
- (2) In proceedings for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceedings was authorised to bring the proceedings.
- (3) Subsection (1) does not apply to proceedings for an indictable offence.

S. 86A
inserted by
No. 103/2004
s. 61.

86A Application of Fair Trading Act 1986

S. 86A(1)
amended by
Nos 17/2007
s. 36(Sch.
item 11.1),
2/2008
s. 60(Sch.
item 9.2).

- (1) Sections 143 and 144 and Division 2 of Part 11 (except sections 152A and 155) of the **Fair Trading Act 1999** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Fair Trading Act 1999** were a reference to this Act.

S. 86A(1A)
inserted by
No. 17/2007
s. 36(Sch.
item 11.2).

- (1A) For the purposes of subsection (1), section 153 of the **Fair Trading Act 1999** applies as if a reference in that section to Part 2, 2A, 2B, 3, 4, 5 or 6 of the **Fair Trading Act 1999** were a reference to this Act.

(2) For the purposes of subsection (1), section 154 of the **Fair Trading Act 1999** applies as if a reference to prescribed proceedings were a reference to—

(a) proceedings for an offence against a provision of this Act (except Division 8A of Part 3); or

(b) proceedings on an application for an injunction under section 149, 149A, 150, 151A or 151B of the **Fair Trading Act 1999** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except Division 8A of Part 3); or

(c) proceedings on an application for an order under section 158, or for damages under section 159, of the **Fair Trading Act 1999** (as applied by subsection (1)).

S. 86A(2)(b)
amended by
No. 17/2007
s. 36(Sch.
item 11.3).

87 Secrecy

(1) The following are bound by this section—

(a) a member of the Advisory Committee;

(b) a member of the police force;

(c) any person employed under Part 3 of the **Public Administration Act 2004** or any other person whose services are being made use of by the Advisory Committee.

S. 87(1)
amended by
No. 99/1995
s. 37(1).

S. 87(1)(a)
amended by
No. 52/1998
s. 230(a).

S. 87(1)(c)
amended by
Nos 46/1998
s. 7(Sch. 1),
52/1998
s. 230(b),
108/2004
s. 117(1)
(Sch. 3
item 165.3).

s. 87

S. 87(2)
amended by
No. 99/1995
s. 37(2)(a)(b).

- (2) A person bound by this section must not directly or indirectly, except in the exercise of powers or performance of functions under or in connection with this Act, make a record of, or divulge to any person, any information concerning a person acquired in the exercise of those powers or performance of those functions.

Penalty: 60 penalty units.

S. 87(3)
substituted by
No. 99/1995
s. 37(3).

- (3) Nothing in subsection (2) prevents a person bound by this section from—
- (a) producing a document containing specified information, or divulging specified information, to such persons as the Minister directs if the Minister certifies that it is necessary in the public interest that the document should be so produced or the information should be so divulged; or
 - (b) producing a document containing information, or divulging information, to a prescribed authority or a prescribed class of person or the holder of a prescribed office; or
 - (c) producing a document containing information, or divulging information, to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it.

S. 87(4)
inserted by
No. 99/1995
s. 37(3).

- (4) An authority or person to whom a document containing information is produced or information is divulged under subsection (3), and a person or employee under the control of that authority or person, is subject, in respect of that information, to the same rights, privileges, obligations and liabilities under this section as if that authority, person or employee were a person performing functions under this Act and had acquired the

information in the performance and those functions.

- (5) Subject to subsections (6) and (7), a person bound by this section is not, except for the purposes of this Act, required—

S. 87(5)
inserted by
No. 99/1995
s. 37(3).

- (a) to produce in a court a document that has come into his or her possession or under his or her control; or
- (b) to divulge to a court any information that has come to his or her notice—

in the exercise of powers or performance of functions under or in connection with this Act.

- (6) If—

S. 87(6)
inserted by
No. 99/1995
s. 37(3).

- (a) the Minister certifies that it is necessary in the public interest that specified information should be divulged to a court; or
- (b) a person to whom information relates has expressly authorised it to be divulged to a court—

a person bound by this section may be required—

- (c) to produce in the court any document containing the information; or
- (d) to divulge the information to the court.

- (7) A person bound by this section may be required—

S. 87(7)
inserted by
No. 99/1995
s. 37(3).

- (a) to produce in a court a document that has come into his or her possession or under his or her control; or
- (b) to divulge to a court any information that has come to his or her notice—

if the court is hearing and determining an indictable offence, including a committal proceeding into an indictable offence and a summary hearing of an indictable offence.

S. 87(8)
inserted by
No. 99/1995
s. 37(3).

(8) In this section—

court includes any tribunal, authority or person
having power to require the production of
documents or the answering of questions;

produce includes permit access to.

88 Immunity

S. 88(1)
amended by
No. 52/1998
s. 231(1).

(1) A member of the police force is not personally
liable for anything necessarily or reasonably done
or omitted to be done in good faith—

- (a) in the exercise of a power or the performance
of a function under or in connection with this
Act; or
- (b) in the reasonable belief that the act or
omission was in the exercise of a power or
the performance of a function under or in
connection with this Act.

S. 88(2)
amended by
No. 52/1998
s. 231(2).

(2) If a member of the police force does or omits to
do anything—

- (a) negligently in the exercise of a power or
performance of a function under or in
connection with this Act; or
- (b) in the reasonable belief that the act or
omission was in the exercise of a power or
the performance of a function under or in
connection with this Act—

and the act or omission is necessary or reasonable
in the exercise or intended exercise of that power
or the performance or intended performance of
that function, any liability that would, but for
subsection (1), attach to the person because of that
act or omission attaches instead to the Crown.

88A Destruction of fingerprints etc.

S. 88A
inserted by
No. 99/1995
s. 38.

- (1) The Chief Commissioner of Police must destroy any fingerprints obtained by the Authority or an authorised member of the police force under this Act and referred to the Chief Commissioner, and any record, copy or photograph of them, or cause them to be destroyed as soon as he or she has no further use for them.

S. 88A(1)
amended by
No. 52/1998
s. 232.

Penalty: 10 penalty units.

- (2) The Chief Commissioner of Police is to be considered to have no further use for fingerprints when—

- (a) they were obtained in connection with an application for a licence or the approval, or renewal of the approval, of a person as a manager of a prostitution service providing business and the application is refused; or
- (b) the licence or approval in connection with which they were obtained is cancelled or not renewed.

S. 88A(2)(a)
amended by
No. 44/1999
s. 29.

- (3) A person who in connection with an application for a licence or the approval, or renewal of the approval, of a person as a manager of a prostitution service providing business has possession of fingerprints obtained by the Authority or an authorised member of the police force under this Act, or of a record, copy or photograph of them, must deliver them to the Chief Commissioner of Police, in accordance with his or her directions, so as to enable the Chief Commissioner to comply with subsection (1).

S. 88A(3)
amended by
Nos 52/1998
s. 232, 44/1999
s. 29.

Penalty: 10 penalty units.

89 Evidentiary provisions

- (1) If—
- (a) a person's age at a particular time is material in any proceeding for an offence against this Act; and
 - (b) it is asserted on behalf of the prosecution that the person was at that time under the age of 18 years—

it must be presumed, in the absence of evidence to the contrary, that the person's age at that time was the age that is so asserted.

- (2) A certificate in the prescribed form purporting to be signed by the registrar certifying as to any matter that appears in or can be deduced from the register referred to in section 24 or 55(1) is admissible in evidence in any proceeding and, in the absence of evidence to the contrary, is proof of the matters contained in it.
- (3) A certificate purporting to be signed by the Chief Commissioner of Police certifying that a member of the police force named in it is an authorised member of the police force within the meaning of this Act is admissible in evidence in any proceeding and, in the absence of evidence to the contrary, is proof of the matter contained in it.
- (4) A certificate purporting to be issued by the responsible authority certifying that an officer of the responsible authority named in it is an authorised officer of the responsible authority within the meaning of this Act is admissible in evidence in any proceeding and, in the absence of evidence to the contrary, is proof of the matter contained in it.

S. 89(2)
amended by
No. 47/1997
s. 39.

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- (5) Section 141 of the **Planning and Environment Act 1987** (evidence of planning scheme provisions and permits) applies to proceedings under this Act in the same manner and to the same extent as it applies to proceedings under that Act.

90 Regulations

- (1) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (2) Regulations made under this Act may be made—
- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State; or
 - (iii) as specified in both subparagraphs (i) and (ii); and

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- (b) so as to require a matter affected by the regulations to be—
- (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
- (c) so as to apply, adopt or incorporate any matter contained in any document whatsoever whether—
- (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at the time the regulations are made or at any time before then; and
- (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
- (e) so as to provide in a specified case or class of case for the exemption of people or things or a class of people or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
- (f) so as to impose a penalty not exceeding 40 penalty units for a contravention of the regulations.

S. 90(2)(e)
amended by
No. 99/1995
s. 39.

S. 90(2)(f)
inserted by
No. 99/1995
s. 39.

PART 7—TRANSITIONAL PROVISIONS

Pt 7
(Heading and
ss 91–98)
substituted as
Pt 7
(Heading and
s. 91) by
No. 47/1997
s. 40.

91 Prostitution Control (Amendment) Act 1997

S. 91
substituted by
No. 47/1997
s. 40.

- (1) The Prostitution Control Board is to be taken to be the same body in spite of changes to its structure made by the **Prostitution Control (Amendment) Act 1997** and no act, proceeding, matter or thing is to be affected because of those changes of structure.
- (2) The amendments made by section 6 of the **Prostitution Control (Amendment) Act 1997** to section 24(6) apply with respect to any application made before the commencement of section 6 by a person whose name appears in the register referred to in section 24 for the omission of that person's entry from the register in addition to each application made after that commencement.
- (3) The amendments made by section 22 of the **Prostitution Control (Amendment) Act 1997** to section 47(1) apply only in relation to a licensee who has been convicted or found guilty of an offence to which section 47(1)(ab) refers that occurred after the commencement of section 22.
- (4) The amendments made by section 29 of the **Prostitution Control (Amendment) Act 1997** to section 53(1) apply only in relation to an approved manager convicted or found guilty of an offence to which section 53(1)(ab) refers that occurred after the commencement of section 29.

New s. 92
inserted by
No. 44/1999
s. 30.

92 Prostitution Control (Amendment) Act 1999

- (1) The amendments of section 22 of this Act made by sections 7 and 8 of the **Prostitution Control (Amendment) Act 1999** apply only to offences alleged to have been committed after the commencement of those sections.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates of which one is before and one is on or after the day of commencement of sections 7 and 8 of the **Prostitution Control (Amendment) Act 1999**, the offence is alleged to have been committed before that commencement.
- (3) The amendments of this Act made by sections 10 and 11 of the **Prostitution Control (Amendment) Act 1999** apply to—
 - (a) applications for a licence made before the commencement of those sections but not determined at that commencement; and
 - (b) applications for a licence made after that commencement.
- (4) The amendments of this Act made by sections 12 and 22 of the **Prostitution Control (Amendment) Act 1999** apply to and with respect to licensees and the licences of licensees, whether the licence was granted before or after the commencement of those sections.
- (5) Subject to subsection (6), the amendments of this Act made by section 13 of the **Prostitution Control (Amendment) Act 1999** apply to and with respect to licensees and the licences of licensees, whether the licence was granted before or after the commencement of that section.

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- (6) The amendments of section 47 of this Act made by section 13 of the **Prostitution Control (Amendment) Act 1999** do not affect any application made to the Tribunal under section 47(1) before the commencement of section 13 of that Act that had not been finally determined before that commencement and any such application shall be determined as if that section of that Act had not come into operation.
- (7) The amendments of this Act made by sections 15 and 16(1), (2) and (3) of the **Prostitution Control (Amendment) Act 1999** apply to—
- (a) applications for an approval or the renewal of an approval made before the commencement of those sections but not determined at that commencement; and
 - (b) applications for an approval or the renewal of an approval made after that commencement.
- (8) Subject to subsection (9), the amendments of this Act made by sections 16(4) and (5), 17, 18 and 19 of the **Prostitution Control (Amendment) Act 1999** apply to and with respect to approved managers and the approvals of approved managers, whether the approval was granted or renewed before or after the commencement of those sections.
- (9) The substitution of a new section 53 of this Act made by section 18 of the **Prostitution Control (Amendment) Act 1999** does not affect any application made to the Tribunal under section 53(1) before the commencement of section 18 of that Act that had not been finally determined before that commencement and any such application shall be determined as if that section of that Act had not come into operation.
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- (10) The amendment of section 77 of this Act made by section 27 of the **Prostitution Control (Amendment) Act 1999** applies only with respect to declarations made by a court under section 77(2) of this Act after the commencement of section 27 of that Act.
- (11) The amendments of section 80 of this Act made by section 28(1) and (2) of the **Prostitution Control (Amendment) Act 1999** apply only with respect to applications made under section 80(1)(a) of this Act after the commencement of section 28(1) and (2) of that Act.
- (12) The amendment of section 84(1) of this Act made by section 28(3) of the **Prostitution Control (Amendment) Act 1999** applies to—
- (a) applications under section 84 of this Act made before the commencement of section 28(3) of that Act but not determined at that commencement; and
 - (b) applications under section 84 of this Act made after that commencement.

Ss 92–98
repealed by
No. 47/1997
s. 40.

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Prostitution Control Act 1994
No. 102 of 1994

Sch. 1

SCHEDULES

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Sch. 1
amended by
Nos 47/1997
s. 41, 46/1998
s. 7(Sch. 1),
repealed by
No. 52/1998
s. 233.

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Sch. 2
amended by
Nos 47/1997
s. 42, 46/1998
s. 7(Sch. 1),
repealed by
No. 52/1998
s. 233.

SCHEDULE 3

Sections 47(1) and 53(1)

DISCIPLINARY OFFENCES

1. An offence against any of the following sections of the Migration Act 1958 of the Commonwealth—

<i>Section</i>	<i>Description of offence</i>
233	(Persons concerned in bringing non-citizens into Australia in contravention of Act or harbouring illegal entrants)
234	(False papers etc.)
235	(Offences in relation to work)
236	(Offences relating to visas)
240	(Offence to arrange marriage to obtain permanent residence)
241	(Offence to arrange pretended de facto relationship to obtain permanent residence)
242	(Offence to arrange interdependency relationship to obtain permanent residence)
243	(Offences relating to an application for permanent residence because of marriage or de facto relationship)
244	(Offences relating to application for permanent residence because of interdependency)
245	(Offences of making false or unsupported statements)
280	(Restrictions on giving of immigration assistance)
281	(Restriction on charging fees for immigration assistance)
282	(Restriction on charging fees for immigration representatives)
283	(False representation that a person is a registered agent)
284	(Restriction on self-advertising of the giving of immigration assistance)
285	(Restriction on other advertising of immigration assistance)

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No. 102 of 1994

Sch. 3

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2. An offence against the following section of the Crimes Act 1914 of the Commonwealth—

<i>Section</i>	<i>Description of offence</i>
29B	(False representation).

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 21 October 1994

Legislative Council: 29 November 1994

The long title for the Bill for this Act was "A Bill to reform the law relating to prostitution, to repeal the **Prostitution Regulation Act 1986** and the **Town and Country Planning (Miscellaneous Provisions) Act 1961**, to amend the **Crimes Act 1958**, the **Evidence Act 1958** and the **Travel Agents Act 1986** and to make consequential amendments to certain other Acts and for other purposes."

The **Prostitution Control Act 1994** was assented to on 13 December 1994 and came into operation as follows:

Sections 1, 2 on 13 December 1994: section 2(1); rest of Act on 13 June 1995: section 2(3).

2. Table of Amendments

This Version incorporates amendments made to the **Prostitution Control Act 1994** by Acts and subordinate instruments.

Miscellaneous Acts (Health and Justice) Amendment Act 1995, No. 99/1995

Assent Date: 5.12.95
Commencement Date: 5.12.95
Current State: All of Act in operation

Children's Services Act 1996, No. 53/1996

Assent Date: 3.12.96
Commencement Date: S. 60 on 1.6.98: Government Gazette 28.5.98 p. 1189
Current State: This information relates only to the provision/s amending the **Prostitution Control Act 1994**

Miscellaneous Acts (Further Omnibus Amendments) Act 1996, No. 73/1996

Assent Date: 17.12.96
Commencement Date: Pt 20 (ss 68–73) on 17.12.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Prostitution Control Act 1994**

Prostitution Control (Amendment) Act 1997, No. 47/1997

Assent Date: 11.6.97
Commencement Date: Ss 4–43 on 28.10.97: Government Gazette 9.10.97 p. 2820
Current State: This information relates only to the provision/s amending the **Prostitution Control Act 1994**

Sentencing and Other Acts (Amendment) Act 1997, No. 48/1997

Assent Date: 11.6.97
Commencement Date: S. 70 on 1.9.97: s. 2(2)
Current State: This information relates only to the provision/s amending the **Prostitution Control Act 1994**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Prostitution Control Act 1994**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998 (as amended by No. 101/1998)

Assent Date: 2.6.98
Commencement Date: Ss 193–233 on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Prostitution Control Act 1994**

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Licensing and Tribunal (Amendment) Act 1998, No. 101/1998

Assent Date: 1.12.98
Commencement Date: Pt 5 (ss 10, 11) on 1.2.99: Government Gazette
24.12.98 p. 3204
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999

Assent Date: 18.5.99
Commencement Date: S. 40 on 1.9.99: Government Gazette 19.8.99 p. 1901
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

Prostitution Control (Amendment) Act 1999, No. 44/1999

Assent Date: 8.6.99
Commencement Date: Ss 4(1), 7–11, 13–20, 23–25, 27–31 on 8.6.99: s. 2(1);
ss 4(2)(3), 5, 6(1), 26 on 1.9.99: s. 2(3); ss 6(2), 12, 21,
22 on 1.2.00: s. 2(5)
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

Prostitution Control (Planning) Act 2000, No. 12/2000

Assent Date: 18.4.00
Commencement Date: 19.4.00: s. 2
Current State: All of Act in operation

Planning and Environment (Amendment) Act 2000, No. 28/2000

Assent Date: 30.5.00
Commencement Date: S. 21 on 31.5.00: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

Business Registration Acts (Amendment) Act 2000, No. 35/2000

Assent Date: 6.6.00
Commencement Date: S. 49 on 19.6.00: Government Gazette 15.6.00 p. 1248
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

**Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001,
No. 11/2001**

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 60) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

Prostitution Control (Proscribed Brothels) Act 2001, No. 22/2001

Assent Date: 29.5.01
Commencement Date: 30.5.01: s. 2
Current State: All of Act in operation

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Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 8(Sch. 6 item 5) on 28.6.01: Government Gazette
28.6.01 p. 1428
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 94) on 15.7.01: s. 2
Current State: All of Act in operation

Australian Crime Commission (State Provisions) Act 2003, No. 52/2003

Assent Date: 16.6.03
Commencement Date: S. 52(Sch. 1 item 10) on 17.6.03: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

Fair Trading (Enhanced Compliance) Act 2004, No. 103/2004

Assent Date: 21.12.04
Commencement Date: Ss 60, 61 on 22.12.04: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 165) on 5.4.05: Government
Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 32) on 1.7.07: Government
Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006,
No. 80/2006**

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 87) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

Fair Trading and Consumer Acts Amendment Act 2007, No. 17/2007

Assent Date: 29.5.07
Commencement Date: S. 36(Sch. item 11) on 30.5.07: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

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Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08

Commencement Date: S. 60 (Sch. item 9) on 12.2.08: s. 2(1)

Current State: This information relates only to the provision/s
amending the **Prostitution Control Act 1994**

3. Explanatory Details

¹ S. 47(2)(f) (*repealed*): Section 73 of the **Miscellaneous Acts (Further Omnibus Amendments) Act 1996**, No. 73/1996 reads as follows:

73 Transitional provision

The Principal Act as amended by section 71 applies in relation to—

- (a) contraventions of that Act irrespective of whether they occurred before or after the commencement of that section; and
- (b) licences irrespective of whether they were granted before or after the commencement of that section.

² S. 52: The amendment made to section 52 by section 218(2) of the **Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998**, No. 52/1998 was repealed, as from 1 July 1998, by section 21(c) of the **Licensing and Tribunal (Amendment) Act 1998**, No. 101/1998.