

Sex Work and Other Acts Amendment Act 2011
No. 73 of 2011

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Victoria

Sex Work and Other Acts Amendment Act 2011[†]

No. 73 of 2011

[Assented to 6 December 2011]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to amend the **Sex Work Act 1994**—
 - (i) to assign and clarify responsibility for the monitoring, investigation and enforcement of provisions of that Act; and

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- (ii) to continue the ban on street prostitution; and
 - (iii) to make other miscellaneous amendments; and
- (b) to amend the **Confiscation Act 1997** to broaden the range of offences relating to illegal sex work to which that Act will apply; and
- (c) to amend the **Confiscation Amendment Act 2010**—
- (i) in relation to declarations of property interests and applications for exclusion from civil forfeiture; and
 - (ii) to extend the default commencement day of that Act.

2 Commencement

- (1) This Act (except Division 1 of Part 2 and Part 3) comes into operation on the day after the day on which this Act receives the Royal Assent.
 - (2) Subject to subsection (3), Division 1 of Part 2 and Part 3 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 before 1 October 2012, it comes into operation on that day.
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PART 2—AMENDMENTS TO THE SEX WORK ACT 1994

Division 1—Division of functions and other matters

3 Definitions

In section 3(1) of the **Sex Work Act 1994**—

- (a) for the definition of *disqualifying offence*
substitute—

"disqualifying offence means—

- (a) an indictable offence; or
(b) an offence which, if committed in
Victoria, would have been an
indictable offence;"
- (b) in the definition of *entry authority*, after
"section 64(2)" **insert** "or 78B(2)".

See:
Act No.
102/1994.
Reprint No. 7
as at
1 January
2011
and
amending
Act Nos
1/2010 and
65/2010.
LawToday:
www.
legislation.
vic.gov.au

4 Exceptions to street sex work offences

- (1) In section 12(1) and (2) of the **Sex Work Act 1994**, for "A person" **substitute** "Subject to section 14, a person".
- (2) In section 13(1) and (2) of the **Sex Work Act 1994**, for "A person" **substitute** "Subject to section 14, a person".

5 Functions of Director

- (1) For section 26(a) of the **Sex Work Act 1994**
substitute—

- "(a) to monitor compliance with and investigate
and prosecute alleged contraventions of—
- (i) sections 11A, 17, 18A, 19, 20 and 21;
and
- (ii) Part 3 (other than sections 22(1)(a),
22(1A)(a) and 22(3) to the extent that
that subsection relates to an offence
against section 22(1)(a) or 22(1A)(a));
and

-
- (iii) Part 6 and any provisions applied by Part 6; and
- (iv) the regulations;
- (ab) to refer to the Chief Commissioner of Police for investigation any allegation, complaint or information that, in the opinion of the Director, may involve—
- (i) a contravention of a provision of this Act for which the Director has no prosecutorial functions; or
- (ii) the operation of a brothel at premises for which there is not in force the requisite planning permit under the **Planning and Environment Act 1987**; or
- (iii) an organised crime offence within the meaning of the **Major Crime (Investigative Powers) Act 2004** relating to the sex work industry, whether or not the Director has prosecutorial functions in relation to that allegation, complaint or information;
- (ac) if a referral is made under paragraph (ab), to provide to the Chief Commissioner of Police all information in the possession of the Director that, in the opinion of the Director, is relevant to the referred matter;"
- (2) After section 26(b) of the **Sex Work Act 1994** insert—
- "(ba) to coordinate the exercise of the functions of the Director under paragraph (a) and the functions of the police force in relation to sex work;"
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6 Circumstances in which Authority must refuse licence application

(1) For section 37(1)(b) of the **Sex Work Act 1994** **substitute**—

"(b) has been convicted or found guilty of a disqualifying offence that renders the grant of a licence to that person against the public interest, having regard to—

- (i) the nature of the offence; and
- (ii) the date on which the offence was committed; or".

(2) In section 37(1)(d) and (e) of the **Sex Work Act 1994**, after "disqualifying offence" **insert** "referred to in paragraph (b)".

7 Disciplinary action against licensee

In section 48(3)(da) of the **Sex Work Act 1994**, for "an offence which the Authority could reasonably treat as a disqualifying offence if the person were an applicant for a licence" **substitute** "a disqualifying offence that would, if the person were an applicant for a licence, be an offence referred to in section 37(1)(b)".

8 Circumstances in which Authority must refuse application or renewal application

In section 51(1)(b) of the **Sex Work Act 1994**, for "an offence which would be a disqualifying offence if the person were applying for a licence" **substitute** "a disqualifying offence that would, if the person were an applicant for a licence, be an offence referred to in section 37(1)(b)".

9 New sections 78A, 78B and 78C inserted

After section 78 of the **Sex Work Act 1994**
insert—

**78A Entry to premises without planning
permit—search warrant**

- (1) A member of the police force of or above the rank of senior sergeant 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 the premises are being used for the purposes of the operation of a brothel in contravention of section 126 of the **Planning and Environment Act 1987**.
 - (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 the premises are being used for the operation of a brothel in contravention of section 126 of the **Planning and Environment Act 1987**, the magistrate may issue a search warrant.
 - (3) Section 63(3), (4), (5) and (6) apply to an application for a search warrant under this section as if in section 63(3)—
 - (a) a reference to "or vehicle" (wherever occurring) were omitted; and
 - (b) a reference to "section 22(1) or (1A) or 24(1)" were a reference to "section 126 of the **Planning and Environment Act 1987**".
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78B Entry to premises without planning permit—without search warrant

- (1) If outside office hours the Chief Commissioner of Police believes on reasonable grounds that premises are being used for the purposes of the operation of a brothel in contravention of section 126 of the **Planning and Environment Act 1987** and that relevant evidence is likely to be lost if entry to the premises is delayed until a search warrant is obtained, the Chief Commissioner may authorise entry to the premises in accordance with the procedure set out in subsection (2).
- (2) The Chief Commissioner of Police must—
- (a) in writing—
 - (i) set out the grounds for the belief—
 - (A) that the premises are being used for the purposes of the operation of a brothel in contravention of section 126 of the **Planning and Environment Act 1987**; 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

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- (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
 - (c) issue to the member or members of the police force named in the writing a copy of it signed by the Chief Commissioner.
- (3) Section 64(3), (4), (5), (6), (7), (8), (9) and (10) apply to an entry authority under this section as if—
- (a) a reference in section 64(3) to "the requirements of subsection (2)" were a reference to "the requirements of section 78B(2)"; and
 - (b) a reference in section 64(4)(a) to "section 22(1) or (1A) or 24(1)" were a reference to "section 126 of the **Planning and Environment Act 1987**".

78C Admissibility of evidence obtained under authority

A court hearing a proceeding for an offence against section 126 of the **Planning and Environment Act 1987** 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 78B and section 64(3), (4), (5), (6), (7), (8), (9) and (10), as applied by section 78B, were not complied with.'

10 Declaration of proscribed brothel

- (1) In section 80(1)(a)(ii)(B) of the **Sex Work Act 1994** **omit** "if those premises are not a building or part of a building,".
- (2) In section 80(2) of the **Sex Work Act 1994**—
 - (a) after "An" **insert** "authorised member of the police force or an";
 - (b) for "subsection (1)(b)" **substitute** "subsection (1)(a)(ii)(B) or (b)".
- (3) After section 80(3AA) of the **Sex Work Act 1994** **insert**—

"(3AB) Without limiting subsection (3A), evidence which may be taken into consideration includes evidence that the premises to which the application relates have been used for the purposes of the operation of a brothel during a period before the 14 day period to which the application relates."

11 Who may bring proceedings for offences?

- (1) For section 86(1) of the **Sex Work Act 1994** **substitute**—

"(1) Subject to subsection (1A), proceedings for an offence against this Act or the regulations may only be brought by a member of the police force.

Note

Proceedings for an offence against section 126 of the **Planning and Environment Act 1987** in relation to land used for the purposes of the operation of a brothel may be brought by a member of the police force under that Act.
- (1A) Proceedings for an offence against a provision referred to in section 26(a) or the regulations may be brought by—

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- (a) the Director; or
- (b) a person authorised by the Director for the purposes of this section."
- (2) For section 86(3) of the **Sex Work Act 1994** substitute—
- "(3) Subsections (1) and (1A) do not apply to a proceeding for an indictable offence in which a direct indictment is filed."

12 New section 95 inserted

After section 94 of the **Sex Work Act 1994** insert—

"95 Sex Work and Other Acts Amendment Act 2011

- (1) Section 37 as amended by section 6 of the **Sex Work and Other Acts Amendment Act 2011** applies to applications under section 33 made on or after the commencement of section 6 of that Act.
- (2) Section 48(3)(da) as amended by section 7 of the **Sex Work and Other Acts Amendment Act 2011** applies to applications under section 48(1) made on or after the commencement of section 7 of that Act.
- (3) Section 51(1)(b) as amended by section 8 of the **Sex Work and Other Acts Amendment Act 2011** applies to applications under section 50(1) made on or after the commencement of section 8 of that Act."

13 Name change of Department of the Commonwealth

In sections 25(d), 26(c) and 67(1A)(d) of the **Sex Work Act 1994**, for "Commonwealth Department of Immigration and Ethnic Affairs" substitute "Department of Immigration and Citizenship of the Commonwealth".

Division 2—Banning notices

14 Report by Chief Commissioner

- (1) In section 21L(1) of the **Sex Work Act 1994**—
- (a) for "the operational period of this Part" **substitute** "each calendar year";
 - (b) paragraph (f) is **repealed**;
 - (c) in paragraph (g), for "area." **substitute** "area;"
 - (d) after paragraph (g) **insert**—
 - "(h) the number of persons charged with an offence against section 21G(1) or (2);
 - (i) the number of infringement notices served by members of the police force under section 21J(1)."
- (2) In section 21L(3) of the Principal Act, for "operational period of this Part" **substitute** "calendar year to which the report relates".
- (3) In section 21L(5) of the Principal Act—
- (a) for "**1958**;" **substitute** "**1958**.";
 - (b) the definition of *operational period of this Part* is **repealed**.

15 Sunset provision

In section 21M of the **Sex Work Act 1994**, for "the anniversary of the coming into operation of Part 11 of the **Justice Legislation Further Amendment Act 2010**" **substitute** "1 January 2014".

**PART 3—AMENDMENTS TO THE CONFISCATION
ACT 1997**

16 Schedule 1

See:
Act No.
108/1997.
Reprint No. 5
as at
26 September
2007
and
amending
Act Nos
12/2008,
34/2008,
52/2009,
68/2009,
69/2009,
56/2010,
63/2010,
68/2010 and
29/2011.
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For clause 17 of Schedule 1 to the **Confiscation Act 1997 substitute—**

- "17. An offence against any of the following provisions of the **Sex Work Act 1994—**
- (a) section 17(1) (publishing or causing to be published advertisement for sex work services);
 - (b) section 17(2) (causing advertisement for sex work services to be broadcast or televised);
 - (c) section 17(3) (publishing or causing to be published statement to induce persons to seek employment in sex work);
 - (d) section 17(4) (advertising as provider of massage services);
 - (e) section 22(1A) (sex work service providers to be licensed);
 - (f) section 57(1) (licensee carrying on business with unlicensed partner)."

17 Schedule 2

After clause 2(b) of Schedule 2 to the **Confiscation Act 1997 insert—**

- "(ba) section 60AB (sexual servitude) where—
- (i) only one offence is charged and the value of the commercial sexual services provided is \$50 000 or more; or

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- (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined value of the commercial sexual services provided is \$75 000 or more;
 - (bb) section 60AC (aggravated sexual servitude) where—
 - (i) only one offence is charged and the value of the commercial sexual services provided is \$50 000 or more; or
 - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined value of the commercial sexual services provided is \$75 000 or more;
 - (bc) section 60AD (deceptive recruiting for commercial sexual services) where—
 - (i) only one offence is charged and the value of the commercial sexual services to which the deception relates is \$50 000 or more; or
 - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined value of the commercial sexual services to which the deceptions relate is \$75 000 or more;
-

- (bd) section 60AE (aggravated deceptive recruiting for commercial sexual services) where—
- (i) only one offence is charged and the value of the commercial sexual services to which the deception relates is \$50 000 or more; or
 - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined value of the commercial sexual services to which the deceptions relate is \$75 000 or more;".

18 New sections 185 and 186 inserted

After section 184 of the **Confiscation Act 1997** insert—

"185 Sex Work and Other Acts Amendment Act 2011—Schedule 1 offences transitional provision

- (1) Clause 17 of Schedule 1, as substituted by section 16 of the **Sex Work and Other Acts Amendment Act 2011**, applies to an offence alleged to have been committed on or after the commencement of section 16 of that Act.
 - (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one on or after the commencement of section 16 of the **Sex Work and Other Acts Amendment Act 2011**, the offence is alleged to have been committed before that commencement.
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186 Sex Work and Other Acts Amendment Act 2011—Schedule 2 offences transitional provision

- (1) Clause 2(ba) of Schedule 2, as inserted by section 17 of the **Sex Work and Other Acts Amendment Act 2011**, applies to an offence alleged to have been committed on or after the commencement of section 17 of that Act.
 - (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one on or after the commencement of section 17 of the **Sex Work and Other Acts Amendment Act 2011**, the offence is alleged to have been committed before that commencement."
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**PART 4—AMENDMENTS TO THE CONFISCATION
AMENDMENT ACT 2010**

See:
Act No.
68/2010.
Victorian
Statute Book:
www.
legislation.
vic.gov.au

**19 Commencement of Confiscation Amendment
Act 2010**

In section 2(2) of the **Confiscation Amendment Act 2010**, for "1 January 2012" substitute "1 April 2012".

20 Repeal of sections 9, 10 and 11

Sections 9, 10 and 11 of the **Confiscation Amendment Act 2010** are repealed.

21 Repeal of proposed section 36Q and 36R(2)

(1) In section 49 of the **Confiscation Amendment Act 2010**, proposed section 36Q of the **Confiscation Act 1997** is repealed.

(2) In section 49 of the **Confiscation Amendment Act 2010**—

(a) in proposed section 36R(1) of the **Confiscation Act 1997**, for "Subject to subsection (2), a person" substitute "A person";

(b) proposed section 36R(2) of the **Confiscation Act 1997** is repealed.

(3) In section 49 of the **Confiscation Amendment Act 2010**, in proposed section 36S(1) of the **Confiscation Act 1997**, for "section 36R(1), (2) or (3)" substitute "section 36R(1) or (3)".

22 Determination of application for exclusion from civil forfeiture restraining order

In section 49 of the **Confiscation Amendment Act 2010**—

(a) for proposed section 36V(1)(b)(i) of the **Confiscation Act 1997** substitute—

"(i) the applicant was not, in any way, involved in the commission of the Schedule 2 offence; and"; and

(b) proposed section 36V(3) of the **Confiscation Act 1997** is repealed.

23 Determination of application for exclusion from civil forfeiture order

In section 49 of the **Confiscation Amendment Act 2010**—

(a) for proposed section 40B(1)(b)(i) of the **Confiscation Act 1997** substitute—

"(i) the applicant was not, in any way, involved in the commission of the Schedule 2 offence; and"; and

(b) proposed section 40B(3) of the **Confiscation Act 1997** is repealed.

24 Repeal of Confiscation Amendment Act 2010

In section 71 of the **Confiscation Amendment Act 2010**, for "1 January 2013" substitute "1 April 2013".

PART 5—MISCELLANEOUS

25 Repeal of amending Act

This Act is **repealed** on 1 October 2013.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 12 October 2011

Legislative Council: 10 November 2011

The long title for the Bill for this Act was "A Bill for an Act to amend the **Sex Work Act 1994**, the **Confiscation Act 1997** and the **Confiscation Amendment Act 2010** and for other purposes."