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Prostitution Control and Other Matters Amendment Act 2008†

No. 82 of 2008

[Assented to 11 December 2008]

The Parliament of Victoria enact:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

(a) to amend the Prostitution Control Act 1994—

(i) to provide for relatives of a licensee and approved manager who are involved in the business of the licensee or approved manager to be considered
Part 1—Preliminary

"associates" for the purposes of the Act; and

(ii) to introduce offences relating to a licensee being in effective control of a business; and

(iii) to provide for inspectors under the Act to issue infringement notices for prescribed offences; and

(iv) for other purposes; and

(b) to amend the Second-Hand Dealers and Pawnbrokers Act 1989 to provide for a second-hand dealer or pawnbroker to produce required documents in hard copy form and for other purposes; and

(c) to amend the Energy Legislation Amendment (Retail Competition and Other Matters) Act 2008 to make a minor change relating to the commencement of that Act.

2 Commencement

(1) This Act, other than sections 3(3), 3(4), 4, 5, 6, 7, 8, 10, 13 and 15 comes into operation on the day after the day on which it receives the Royal Assent.

(2) Sections 3(3), 3(4), 4, 5, 6, 7, 8, 10, 13 and 15 come into operation on a day or days to be proclaimed.

(3) If sections 3(3), 3(4), 4, 5, 7(3), 10, 13 and 15 do not come into operation on or before 1 March 2009, they come into operation on that day.

(4) If sections 6, 7(1), 7(2) and 8 do not come into operation on or before 1 January 2010, they come into operation on that day.
PART 2—AMENDMENTS TO PROSTITUTION CONTROL ACT 1994

3 Definitions

(1) In section 3(1) of the Prostitution Control Act 1994, in the definition of brothel, after "business of" insert "offering or".

(2) In section 3(1) of the Prostitution Control Act 1994, in the definition of escort agency—

(a) after "business of" insert "offering or";

(b) after "facilitating the" insert "offer or".

(3) In section 3(1) of the Prostitution Control Act 1994 insert the following definition—

"relative, in relation to a person, means—

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

(b) a parent, son, daughter, brother or sister of the person; or

(c) a parent, son, daughter, brother or sister of the spouse or domestic partner of the person;"

(4) In section 3(1) of the Prostitution Control Act 1994 insert the following definition—

"uninvolved relative means a relative of a person who—

(a) is not, and has never been involved in any business of the person involving prostitution; or

(b) does not propose to be involved in the business that the person proposes to conduct as licensee or supervise as approved manager;".
4 Special provision for small owner-operated businesses

In section 23(3)(b)(i) of the Prostitution Control Act 1994, for "spouse or domestic partner" substitute "relative (other than an uninvolved relative)".

5 Circumstances in which Authority must refuse licence application

(1) In section 37(2)(a) of the Prostitution Control Act 1994, for "spouse or domestic partner" substitute "relative (other than an uninvolved relative)".

(2) In section 37(3)(a) of the Prostitution Control Act 1994, for "spouse or domestic partner" substitute "relative (other than an uninvolved relative)".

6 New sections 42 and 42A inserted

After section 41 of the Prostitution Control Act 1994 insert—

"42 Requirement for licensee to be in effective control of business

(1) A licensee of a brothel must be regularly and usually in charge at the brothel.

Penalty: 60 penalty units.

(2) A licensee of a brothel must give regular and substantial attendance at the brothel.

Penalty: 60 penalty units.

(3) A licensee must properly control and supervise any approved manager appointed in respect of the licensee's business.

Penalty: 60 penalty units."
(4) A licensee must take reasonable steps to ensure that any approved manager, employee, independent contractor or any other person connected with the licensee's business complies with the provisions of this Act and any other laws relevant to the conduct of the business while the licensee is engaged in that business.

Penalty: 60 penalty units.

(5) A licensee must establish procedures designed to ensure that the licensee's business is conducted in accordance with the law and in a suitable manner.

Penalty: 60 penalty units.

(6) A licensee must monitor the conduct of the licensee's business in a manner that will ensure, as far as is practicable, that those procedures are complied with.

Penalty: 60 penalty units.

(7) If a business is run by more than one licensee, each licensee must ensure that at least one licensee is nominated as the licensee in effective control of the business at any one time and notify the Authority in writing of the nomination as soon as is practicable.

Penalty: 60 penalty units.

42A Absence of licensee

(1) A licensee does not commit an offence under section 42(1) or 42(2) if the person complies with this section.
(2) If a licensee of a business is to be absent from the business—

(a) for more than 7 days but less than 30 days, the licensee must notify the Authority in writing of the absence as soon as is practicable and in that notice nominate a licensee or approved manager to be in effective control of the business during the licensee's absence;

(b) for more than 30 days, the licensee must apply in writing to the Authority to appoint a nominated licensee or an approved manager to be in effective control of the business during the licensee's absence.

(3) In determining an application under subsection (2)(b), the Authority must take into account any prescribed matters.

(4) If the Authority is satisfied that a person nominated under subsection (2) is capable of managing the business, it may approve and permit that person to be in effective control of the business for a period specified by the Authority.

7 Licence cancellation

(1) In section 47(1)(g) of the Prostitution Control Act 1994, for "1986." substitute "1986; or".

(2) After section 47(1)(g) of the Prostitution Control Act 1994 insert—

"(h) the licensee is convicted or found guilty of an offence against section 42.".
(3) After section 47(2) of the Prostitution Control Act 1994 insert—

"(3) If at any time while the licence is in force one of the matters referred to in subsection (1) occurs to the licensee, the licensee must give particulars of the matter to the Authority in writing signed by the licensee within 10 days of the matter occurring, unless the licensee has a reasonable excuse.

Penalty: 60 penalty units."

8 Disciplinary action against licensee

(1) After section 48(3)(f) of the Prostitution Control Act 1994 insert—

"(fa) the effective control of the licensed business is not, or is unlikely to remain, with the licensee; or"

(2) After section 48(5) of the Prostitution Control Act 1994 insert—

"(6) For the purposes of subsection (3)(fa), in determining whether a licensee is or is likely to remain in effective control of a licensed business, the Tribunal must consider whether the licensee has complied or is likely to comply with section 42."

9 Disciplinary powers of Tribunal

For section 48A(1)(c) of the Prostitution Control Act 1994 substitute—

"(c) order the licensee to pay into the Fund a penalty not exceeding an amount that is 600 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the Monetary Units Act 2004;"
10 **Circumstances in which Authority must refuse approval or renewal application**

(1) In section 51(2)(a) of the *Prostitution Control Act 1994*, for "spouse or domestic partner" substitute "relative (other than an uninvolved relative)".

(2) In section 51(3)(a) of the *Prostitution Control Act 1994*, for "spouse or domestic partner" substitute "relative (other than an uninvolved relative)".

11 **Entry to unlicensed premises—search warrant**

In section 63(1) of the *Prostitution Control Act 1994*, for "inspector" substitute "senior sergeant".

12 **Regulations**

After section 68(g) of the *Prostitution Control Act 1994* insert—

"(ga) prescribing offences to be infringement offences within the meaning of the *Infringements Act 2006*;

(gb) for the purposes of Parts 2 and 3, prescribing penalties not exceeding 10 penalty units for infringement offences prescribed under paragraph (ga);".

13 **Persons not to have an interest in more than one brothel licence or permit**

(1) In section 75(3)(a) of the *Prostitution Control Act 1994*, for "spouse or domestic partner" substitute "relative (other than an uninvolved relative)".

(2) In section 75(3A)(a) of the *Prostitution Control Act 1994*, for "spouse or domestic partner" substitute "relative (other than an uninvolved relative)".
14 Amendment of permits under the Planning and Environment Act 1987

(1) For section 75A(1)(a) of the Prostitution Control Act 1994 substitute—

"(a) there is an existing permit under the Planning and Environment Act 1987 for the use or development of land for the purposes of—

(i) the operation of a brothel; or

(ii) a massage parlour and the land is used for the purposes of the operation of a brothel; and".

(2) In section 75A(4) of the Prostitution Control Act 1994—

(a) in paragraph (a), for "section 87" substitute "Division 3 of Part 4";

(b) in paragraph (b), for "section 73" substitute "Division 1A of Part 4";

(c) for paragraph (c) substitute—

"(c) an amendment to which section 216 of the Planning and Environment Act 1987 applies;

(d) an amendment under a condition on a permit under the Planning and Environment Act 1987.".

15 Offences under Planning and Environment Act 1987

(1) In section 77(3)(a) of the Prostitution Control Act 1994, for "spouse or domestic partner" substitute "relative (other than an uninvolved relative)".
Part 2—Amendments to Prostitution Control Act 1994

(2) In section 77(3A)(a) of the Prostitution Control Act 1994, for "spouse or domestic partner" substitute "relative (other than an uninvolved relative)".

16 New section 85A inserted

After section 85 of the Prostitution Control Act 1994 insert—

"85A What constitutes evidence of proscribed brothel

(1) For the purposes of section 80(3A), the Magistrates' Court may take the following matters into consideration—

(a) people entering and leaving premises consistent with the use of premises for prostitution services (including number and gender of people and frequency of attendance at premises);

(b) appointments at the premises for what a reasonable person would believe were the purposes of prostitution services;

(c) advertising, where contact details are provided which can be linked to premises offering prostitution services;

(d) books, accounts and other documents that contain information which is consistent with the use of premises for prostitution services;

(e) the arrangement of, or other matters relating to, the premises, including the presence of furniture or other items in the premises that is consistent with the use of the premises for prostitution services."
(2) In any proceeding under this Act in which it is required to establish that sexual services were being offered or provided at a premises, evidence of the presence on premises of materials commonly used in safe sex practices is inadmissible for the purpose of establishing that sexual services were being offered or provided at the premises.”.

17 New section 89A inserted

After section 89 of the Prostitution Control Act 1994 insert—

"89A Power to serve an infringement notice

(1) If a member of the police force or an inspector has reason to believe that a person has committed an offence referred to in subsection (3) or a prescribed offence, he or she may serve an infringement notice on that person.

(2) An offence referred to in subsection (3) and a prescribed offence for which an infringement notice may be served is an infringement offence within the meaning of the Infringements Act 2006.

(3) An infringement notice may be served in respect of an offence against—

(a) section 40A(3);
(b) section 52A(3);
(c) section 58(a);
(d) section 58(b);
(e) section 58(c);
(f) section 59(3)(a);
(g) section 60(1);
(h) section 60(2).
(4) The infringement penalty for an offence referred to in—

(a) subsection (3)(a) is 1 penalty unit;
(b) subsection (3)(b) is 1 penalty unit;
(c) subsection (3)(c) is 2 penalty units;
(d) subsection (3)(d) is 2 penalty units;
(e) subsection (3)(e) is 2 penalty units;
(f) subsection (3)(f) is 2 penalty units;
(g) subsection (3)(g) is 1 penalty unit;
(h) subsection (3)(h) is 1 penalty unit.

18 New section 93 inserted

After section 92 of the Prostitution Control Act 1994 insert—

"93 Prostitution Control and Other Matters Amendment Act 2008

(1) The amendments made to this Act by a relevant provision apply only to offences alleged to have been committed on or after the commencement of that provision.

(2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of a relevant provision, the offence is taken to be alleged to have been committed before the commencement of that provision.

(3) In this section, relevant provision means a provision of any of the following—

(a) section 3;
(b) section 4;
(c) section 13;
Part 2—Amendments to Prostitution Control Act 1994

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19 Disciplinary offences

(1) In item 1 of Schedule 3 to the Prostitution Control Act 1994, after the item relating to section 245 insert—

| "245AB" | (Allowing an unlawful non-citizen to work) |
| 245AC  | (Allowing a non-citizen to work in breach of a visa condition) |
| 245AD  | (Referring an unlawful non-citizen for work) |
| 245AE  | (Referring a non-citizen for work in breach of a visa condition) |

(2) After item 2 of Schedule 3 to the Prostitution Control Act 1994 insert—

"3. An offence against any of the following sections of the Criminal Code Act 1995 of the Commonwealth—

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PART 3—AMENDMENTS TO OTHER ACTS

20 Definitions

In section 3(1) of the Second-Hand Dealers and Pawnbrokers Act 1989 insert the following definition—

"computer means a machine that is capable of recording or storing information electronically;".

21 Police powers generally

(1) After section 25(2) of the Second-Hand Dealers and Pawnbrokers Act 1989 insert—

"(2A) Without limiting subsection (2), if a document required to be produced under subsection (2)(c) is or is part of a transaction record kept under section 20 in an electronically readable form, a member of the police force may require the document to be provided in a readily accessible form—

(a) electronically; or
(b) in a paper form produced from a computer.

(2B) If a person produces a document referred to in subsection (2A), the person must also provide the member of the police force with a prescribed statement verifying that the document provided is a true record of the transaction record at the date of the statement.".
(2) For the penalty at the foot of section 25(3) of the Second-Hand Dealers and Pawnbrokers Act 1989 substitute—

"Penalty: 50 penalty units."

22 Amendment of Energy Legislation Amendment (Retail Competition and Other Matters) Act 2008

In section 2(2) of the Energy Legislation Amendment (Retail Competition and Other Matters) Act 2008, for "1 January 2009" substitute "30 December 2008".
PART 4—REPEAL

23 Repeal of amending Act

This Act is repealed on 1 January 2011.

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: 9 October 2008
Legislative Council: 13 November 2008

The long title for the Bill for this Act was "A Bill for an Act to amend the Prostitution Control Act 1994, the Second-Hand Dealers and Pawnbrokers Act 1989 and the Energy Legislation Amendment (Retail Competition and Other Matters) Act 2008 and for other purposes."