

## LEGISLATIVE COUNCIL

## SEX WORK DECRIMINALISATION BILL 2021

(Amendments and New Clause to be proposed in Committee by Mr GRIMLEY)

1. Clause 57, after line 9 insert—
  - '(2) After section 6(a) of the **Business Licensing Authority Act 1998** insert—
    - "(ab) to administer the sex service operator certification provisions in Part 2A; and".'
2. Clause 59, after line 23 insert—
  - '(ab) after paragraph (a) insert—
    - "(ab) a certificate issued under Part 2A; or"; and'.
3. Clause 60, lines 29 and 30, omit all words and expressions on these lines and insert—
  - '(2) In section 22(2) of the **Business Licensing Authority Act 1998**—
    - (a) paragraph (c) is **repealed**; and
    - (b) after paragraph (b) insert—
      - "(d) a certificate issued under Part 2A—"; and
      - (c) after "that Act" insert "or Part".
  - (3) Section 22(5) of the **Business Licensing Authority Act 1998** is **repealed**.
  - (4) After section 22(9) of the **Business Licensing Authority Act 1998** insert—
    - "(10) If a notice is issued under this Part suspending a certificate under Part 2A, the certificate is deemed to be suspended for the purposes of that Part for the licence suspension period."'

## NEW CLAUSE

4. Insert the following new clause after clause 62—

**'62A New Part 2A inserted**

After Part 2 of the **Business Licensing Authority Act 1998** insert—

**"Part 2A—Sex work service provider certificates**

**19A Definitions**

In this Part—

*certificate* means a certificate issued under section 19C;

*operator* means a person who owns, is a financial beneficiary of, or is involved in the management of a sex work service provider;

*sex work service provider* means a business offering or providing sex work services at a premises;

*sex work services* 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.

**19B Operators to hold certificates**

- (1) The operator of a sex work service provider must hold a certificate.

Penalty: 55 penalty units.

- (2) In a proceeding for an offence against subsection (1), if the person charged claims that they are a sex worker at a small owner-operated sex work service provider and not the operator of any business that provides sex work services, it is for the person to satisfy the court on the balance of probabilities of that fact.
- (3) Despite subsection (1), an operator is not required to hold a certificate until the day that is 6 months after the commencement of this section.

**19C Application for, and grant of, certificates**

- (1) An eligible person may apply to the Authority for a certificate.
- (2) The application must be in the prescribed form and be accompanied by the prescribed fee.
- (3) The application must include—
- (a) the applicant's full name, address, occupation and date of birth; and
  - (b) any other names by which the applicant is, or ever has been, known; and
  - (c) the address to which the applicant wishes any certificate and related correspondence to be sent; and
  - (d) a certified copy of the applicant's passport, driver's licence or other official identification containing a photograph of the applicant; and

- (e) a recent photograph of the applicant in the prescribed form and authenticated in the prescribed manner; and
  - (f) state the following information—
    - (i) whether the applicant proposes to operate the sex work service provider in partnership, or otherwise in association, with someone else and if so, the person's name address and occupation and, the person's date of birth; and
    - (ii) the name, address and occupation of the owner of the premises at which the applicant proposes to operate the sex work service provider and, if known to the applicant, the owner's date of birth.
- (4) The Authority must issue a certificate to an applicant if the applicant—
- (a) pays the prescribed fee, supplies a properly completed application form and attaches the required identification and photograph; and
  - (b) is aged 18 years or older; and
  - (c) is not ineligible under section 19D; and
  - (d) is not disqualified under section 19F from holding a certificate.
- (5) If the Authority refuses to issue a certificate to an applicant, the Authority must—
- (a) notify the applicant in writing of the refusal; and
  - (b) give reasons for refusing the applicant; and
  - (c) advise the applicant of the right to a review of the decision under section 19J.

#### **19D Who is ineligible to apply for a certificate?**

A person is ineligible to apply for a certificate if the person—

- (a) is, in the reasonable opinion of the Authority, in all the circumstances, not a suitable person to carry on business as a sex work service provider, having regard to the character, honesty and integrity of the person; or
- (b) is aged under 18 years; or
- (c) is an insolvent under administration; or
- (d) has had a certificate or other authority under this Act or a corresponding law to provide sex work services cancelled in the past 3 years; or
- (e) has had a licence or other authority under the **Sex Work Act 1994** cancelled in the past 3 years; or
- (f) is disqualified from holding a certificate under section 19F.

**19E Exemption for small owner-operated businesses**

- (1) Despite section 19B(1), up to 4 persons may operate a sex work service provider together without holding a certificate.
- (2) An exemption under subsection (1) does not apply if—
  - (a) clients are managed or directed to the sex work service provider 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
  - (b) a person who works in the business directs clients to a sex worker who does not work in the business; or
  - (c) the business being carried on is associated with another sex work service providing business.

**19F Disqualification from holding certificate**

- (1) A person is disqualified from holding a certificate if the person—
  - (a) has been convicted a disqualifying offence specified in subsection (2); or
  - (b) is or has been a member of a declared organisation for the purposes of the **Criminal Organisations Control Act 2012**; or
  - (c) is or has been a declared individual for the purposes of the **Criminal Organisations Control Act 2012**; or
  - (d) is a member of an organisation identified in a corresponding declaration that has been registered under section 86 of the **Criminal Organisations Control Act 2012**; or
  - (e) has been named in a corresponding declaration that has been registered under section 86 of the **Criminal Organisations Control Act 2012**.
- (2) The disqualifying offences referred to in subsection (1) are the following—
  - (a) an offence against Divisions 1, 2 or 2A of Part I of the **Crimes Act 1958** that is punishable by 2 years imprisonment or more;
  - (b) an offence against the **Firearms Act 1996** that is punishable by 4 years imprisonment or more;
  - (c) an offence against Part V of the **Drugs, Poisons and Controlled Substances Act 1981** that is punishable by 2 years imprisonment or more;
  - (d) attempting or conspiring to commit, or being an accessory after the fact to, an offence specified in paragraph (a), (b) or (c);
  - (e) an offence equivalent to an offence specified in paragraph (a), (b), (c) or (d) that was committed in another state or a territory or in New Zealand.

- (3) A person must not make a false statement in relation to any matter referred to in this section in making an application under section 19C, 19G or 19H.

Penalty: 240 penalty units or two years imprisonment or both.

### **19G Annual certificate fee and statement**

- (1) A certificate holder must pay to the Authority the relevant prescribed annual certificate fee on each anniversary of the date that the certificate was granted.
- (2) The annual certificate 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 signed by the certificate holder.
- (4) The statement must contain any information and be accompanied by any documents required by the Authority.

### **19H Change of Circumstances**

- (1) If a certificate holder becomes ineligible under section 19D or disqualified under section 19F to hold a certificate, the certificate holder must notify the Authority as soon as possible after they become aware of that circumstance.
- (2) If a certificate holder notifies the Authority under subsection (1), the Authority must cancel the certificate.

### **19I Process of Authority in issuing annual certificates**

If the Authority receives an application for an annual certificate renewal under section 19G the Authority must adopt the process under section 19C in deciding whether to re-issue a certificate.

### **19J Right of Review**

- (1) An applicant for a certificate may apply to the Tribunal for a review of a decision made by the Authority under section 19C or 19I.
- (2) An application for review under subsection (1) must be lodged with the Tribunal within 28 days after—
  - (a) notice of the decision was given; or
  - (b) if, under section 45 of 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."'