

Prostitution Control Act 1994

No. 102 of 1994

TABLE OF PROVISIONS

Section

PART 1—PRELIMINARY

1. Purpose
2. Commencement
3. Definitions
4. Objects of Act

PART 2—OFFENCES CONNECTED WITH PROSTITUTION

5. Causing or inducing child to take part in prostitution
6. Obtaining payment for sexual services provided by a child
7. Agreement for provision of sexual services by a child
8. Forcing person into or to remain in prostitution
9. Forcing person to provide financial support out of prostitution
10. Living on earnings of prostitute
11. Allowing child to take part in prostitution
12. Street prostitution (offences by clients)
13. Street prostitution (offences by prostitutes)
14. Exceptions to street prostitution offences
15. Being in, entering or leaving unlicensed brothel
16. Offensive behaviour towards prostitutes
17. Controls on advertising by prostitution service providers
18. Advertising regulations
19. Permitting prostitute infected with a disease to work in a brothel etc.
20. Prostitute working while infected with a disease
21. Consuming liquor in brothel

PART 3—LICENSING SYSTEM

Division 1—Requirement To Be Licensed

22. Prostitution service providers to be licensed
23. Special provisions for small owner-operated businesses
24. Register for businesses to which section 23 applies

Division 2—Prostitution Control Board

25. Prostitution Control Board
26. Functions of Board
27. Procedure and powers of Board
28. Proceedings before Board
29. Determination of questions before Board

30. Proceeding or decision of Board not invalid by reason of vacancy etc.
31. Staff of Board
32. Annual report

Division 3—Applications

33. Application for licence
34. Applications to be made available to the public
35. Notice of application
36. Investigation of application
37. Circumstances in which Board must refuse licence application
38. Matters to be considered in determining suitability of applicant
39. Grant or refusal of licence
40. Amendment of licence
41. Application for renewal of licence
42. Renewal of licence
43. Updating of application
44. Withdrawal of application
45. False or misleading information
46. Requirement to notify changes in information provided

Division 4—Licence Cancellation or Suspension

47. Licence cancellation
48. Licence suspension

Division 5—Approved Managers

49. Personal supervision of business
50. Approval of manager
51. Circumstances in which Board must refuse approval application
52. Grant or refusal of approval
53. Cancellation of approval
54. Suspension of approval

Division 6—Register

55. Licence and approvals register

Division 7—Appeals from Board Decisions

56. Appeal on question of law

Division 8—Offences

57. Licensee not to carry on business with unlicensed partner etc.
58. Power to require licensee, etc. to state name and address
59. Power to require person to state age
60. Display of licence
61. Production of licence or certificate of approval

Division 9—Powers of Entry

62. Entry to licensed premises by police
63. Entry to unlicensed premises—search warrant
64. Entry to unlicensed premises—without search warrant
65. Admissibility of evidence obtained under entry authority

Division 10—Miscellaneous

66. Prostitution Control Board Fund
67. Advisory Committee
68. Regulations

Division 11—Transitional

69. Transitional (licence)
70. Transitional (manager approval)

PART 4—PLANNING CONTROLS ON BROTHELS

Division 1—Definitions

71. Definitions

Division 2—Permits

72. Restriction on certain permit applications
73. Matters to be considered by responsible authority
74. Restriction on granting of permits
75. Persons not to have interest in more than one permit
76. Transitional provision

Division 3—Application of Planning and Environment Act 1987

77. Offences under **Planning and Environment Act 1987**
78. Powers of entry

Division 4—Miscellaneous

79. Regulations

PART 5—PROSCRIBED BROTHELS

80. Declaration of proscribed brothel
81. Publication of declaration
82. Offences with respect to proscribed brothels
83. Police powers with respect to proscribed brothels
84. Rescission of declaration
85. Proof of declaration or rescission

PART 6—GENERAL

86. Offences by bodies corporate
87. Secrecy

- 88. Immunity
- 89. Evidentiary provisions
- 90. Regulations

PART 7—REPEALS AND AMENDMENTS

- 91. Repeal of **Prostitution Regulation Act 1986**
- 92. Repeal of **Town and Country Planning (Miscellaneous Provisions) Act 1961**
- 93. Amendment of **Crimes Act 1958**
- 94. Amendment of **Evidence Act 1958**
- 95. Amendment of **Health Act 1958**
- 96. Amendment of **Magistrates' Court Act 1989**
- 97. Amendment of **Travel Agents Act 1986**
- 98. Amendment of **Vagrancy Act 1966**

SCHEDULES

SCHEDULE 1

MEMBERS OF PROSTITUTION CONTROL BOARD

SCHEDULE 2

CHAIRPERSON OF PROSTITUTION CONTROL BOARD



Victoria

No. 102 of 1994

Prostitution Control Act 1994

[Assented to 13 December 1994]

The Parliament of Victoria enacts as follows:

PART 1—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.

Prostitution Control Act 1994
Act No. 102/1994

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 sub-section (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 sub-section (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 end of that period.

3. Definitions

In this Act—

“Advisory Committee” means the Advisory Committee established by section 67;

“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;

“Board” means the Prostitution Control Board established by section 25;

“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;

“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;

“children’s services centre” has the same meaning as in Part XIA of the **Health Act 1958**;

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

“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 Board, is of a kind that renders the applicant ineligible to hold a licence;

“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 Board Fund;

Prostitution Control Act 1994
Act No. 102/1994

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

“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 National Crime Authority established by the National Crime Authority Act 1984 of the Commonwealth;

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

“member” means chairperson or other member of the Board;

“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 Law;

“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

Prostitution Control Act 1994
Act No. 102/1994

s. 3

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;

“registrar” means registrar of the Board;

“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

Prostitution Control Act 1994
Act No. 102/1994

(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 State school within the meaning of the **Education Act 1958** or any other school within the meaning of Part III of that Act;

“sexual services” includes—

(a) taking part with another person in an act of sexual penetration within the meaning of Subdivisions (8A) to (8G) of Division 1 of Part I of the **Crimes Act 1958**; and

(b) masturbating another person;

“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**.

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;

(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 law enforcement officers, health workers and other social service providers;
- (h) to promote the welfare and occupational health and safety of prostitutes.

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.

Penalty: Imprisonment for 7 years.

- (2) An offence against sub-section (1) is an indictable offence.
- (3) In a proceeding for an offence against sub-section (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.

Penalty: Imprisonment for 7 years.

Prostitution Control Act 1994
Act No. 102/1994

- (2) An offence against sub-section (1) is an indictable offence.
- (3) If in a proceeding for an offence against sub-section (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 sub-section (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

- (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: Imprisonment for 7 years.

- (2) An offence against sub-section (1) is an indictable offence.
- (3) In a proceeding for an offence against sub-section (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 16 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.

Penalty: Imprisonment for 7 years.

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

9. *Forcing person to provide financial support out of prostitution*

- (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

Prostitution Control Act 1994
Act No. 102/1994

- (c) supply or offer to supply a drug of dependence to that other person or any other person.

Penalty: Imprisonment for 7 years.

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

10. *Living on earnings of prostitute*

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

Penalty: Imprisonment for 4 years.

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

- (3) A person is not guilty of an offence against sub-section (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 sub-section (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.

Penalty: Imprisonment for 4 years.

- (2) An offence against sub-section (1) is an indictable offence.
- (3) In a proceeding for an offence against sub-section (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 sub-section (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.

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.

(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 sub-section, 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 sub-section, would

Prostitution Control Act 1994
Act No. 102/1994

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.

- (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 sub-section (1) permitted a prostitute to work as mentioned in that sub-section 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 regular medical examinations, on at least a fortnightly basis, for the purpose of determining whether he or she was infected with a sexually transmitted disease; and
- (b) that the prostitute was not infected with a sexually transmitted disease.

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—
 - (a) he or she had been undergoing regular medical examinations, on at least a fortnightly basis, for the purpose of determining whether he or she was infected with a 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.

Prostitution Control Act 1994
Act No. 102/1994

- (2) If in a proceeding for an offence against sub-section (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.
- (3) This section applies despite anything to the contrary in the **Liquor Control Act 1987** or in any licence or permit granted or having effect under that Act.

PART 3—LICENSING SYSTEM

Division 1—Requirement To Be Licensed

22. *Prostitution service providers to be licensed*

- (1) 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.

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

- (2) In a proceeding for an offence against sub-section (1) 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.
- (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 sub-section (1) is being contravened or is reckless as to whether or not sub-section (1) is being contravened.

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

- (4) An offence against sub-section (1) or (3) is an indictable offence.
- (5) In a proceeding for an offence against sub-section (1) 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.

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 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** if only that person works as a prostitute at those premises or only that person and one other particular person so work;
 - (b) two persons who either jointly or separately carry on such a business at premises in accordance with a permit granted under the **Planning and Environment Act 1987** if only those persons work as prostitutes at those premises.
- (2) An exemption referred to in sub-section (1) does not apply if—
 - (a) clients are managed or directed to the premises or otherwise attended to by a person who does not work at the premises and who performs this function in the course of a business; or
 - (b) a person who works at the premises directs clients to a prostitute who does not work at the premises; or
 - (c) the business being carried on at the premises is associated with another business of a kind referred to in the definition of "brothel" in section 3.
- (3) For the purposes of sub-section (2) (c) businesses are associated if—
 - (a) they are carried on by the same person; or

Prostitution Control Act 1994
Act No. 102/1994

- (b) one business is carried on by a person and the other business is carried on by a person who is—
 - (i) a spouse or defacto partner of that person; or
 - (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 of a kind referred to in the definition of "brothel" in section 3; 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 defacto 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 Law or a director or secretary, or a spouse or defacto partner of a director or secretary, of a related body corporate.

24. Register for businesses to which section 23 applies

- (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 sub-section (whichever occurs first), give to the Board the prescribed particulars in relation to the business.

Penalty: 30 penalty units.

- (2) The registrar must enter in a register any particulars given to the Board in accordance with sub-section (1).
- (3) The register referred to in sub-section (2) may only be inspected by members or staff of the Board or by authorised members of the police force or authorised officers of the responsible authority.
- (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.
- (5) The registrar may make the correction on his or her own initiative or on the application of any person.
- (6) On making a correction the registrar must sign the correction and mark it with the date on which it was made.

Division 2—Prostitution Control Board

25. Prostitution Control Board

- (1) There is established a Board to be known as the Prostitution Control Board.
- (2) The Board consists of 7 members appointed by the Governor in Council on the recommendation of the Minister of whom—

Prostitution Control Act 1994
Act No. 102/1994

- (a) one, who is to be the chairperson, shall have been enrolled for not less than 7 years as a barrister and solicitor of the Supreme Court or of the High Court of Australia;
 - (b) two shall be barristers and solicitors of the Supreme Court or of the High Court of Australia with knowledge, experience and expertise in criminal law, company law or another area of law relevant to the functions of the Board;
 - (c) one shall be a member of the police force of or above the rank of inspector nominated by the Chief Commissioner of Police;
 - (d) three shall be persons with knowledge of the prostitution industry in Victoria or of health, occupational health and safety, enforcement or general community issues relevant to the functions of the Board.
- (3) In recommending people for appointment as Board members, the Minister must have regard to the desirability of ensuring that the Board is comprised of both women and men.
- (4) The chairperson or, in his or her absence, a member appointed by the Board, shall preside at a meeting of the Board.
- (5) Schedule 1 applies to members of the Board.
- (6) Schedule 2 applies to the chairperson.

26. *Functions of Board*

The functions of the Board are—

- (a) to determine licence applications;
- (b) to determine licence renewal applications;
- (c) to determine manager approval applications;
- (d) to determine manager approval renewal applications;
- (e) to review current licences;

- (f) to monitor the operation of prostitution service providers;
- (g) to cause an investigation to be made by the police force of prostitution-related complaints, including complaints from prostitutes;
- (h) to liaise with the police force so as to assist in the carrying out of the functions of the police force in relation to prostitution;
- (i) to refer relevant matters for investigation by the Occupational Health and Safety Authority, the Australian Taxation Office or the Commonwealth Department of Immigration and Ethnic Affairs or any other body;
- (j) to inform the Advisory Council about issues and trends relevant to its functions;
- (k) to assist organisations involved in helping prostitutes to leave the industry;
- (l) to develop educational programmes about the prostitution industry for magistrates, police and community workers;
- (m) to disseminate information about the dangers (including the dangers to health) inherent in prostitution, especially street prostitution.

27. Procedure and powers of Board

- (1) In exercising its functions under this Part the Board—
 - (a) must act fairly and according to equity and good conscience without regard to technicalities or legal forms;
 - (b) is not required to conduct itself in a formal manner;
 - (c) is not bound by rules or practice as to evidence but may inform itself in relation to any matter in any manner that it thinks fit;
 - (d) may declare any person or body to be a party to a proceeding before it;

Prostitution Control Act 1994
Act No. 102/1994

- (e) may refuse to hear any party to a proceeding before it if the Board considers it necessary to do so because of the existence of exceptional circumstances;
 - (f) may determine the manner in which any party to a proceeding before it is to be heard;
 - (g) may refuse to inform any party to a proceeding before it of the case made against that party if the Board considers it necessary to do so because of the existence of exceptional circumstances.
- (2) The Board has the powers conferred by sections 14, 15, 16, 20, 20A and 21A of the **Evidence Act 1958** on a board appointed by the Governor in Council.
 - (3) The Board must comply with any directions given under section 66 (4).
 - (4) Subject to this Act and the regulations, the procedure of the Board is in its discretion.

28. *Proceedings before Board*

- (1) Any hearing conducted by the Board in relation to a matter is to be open to the public unless the Board directs—
 - (a) that the whole or any part of the hearing is to be closed to members of the public; or
 - (b) that only persons or classes of persons specified by it may be present during the whole or any part of the hearing.
- (2) The Board may give a direction under sub-section (1) if satisfied that it is necessary to do so because of the existence of special circumstances.

29. *Determination of questions before Board*

A question before the Board is to be decided according to the opinion of a majority of the members constituting the Board.

30. *Proceeding or decision of Board not invalid by reason of vacancy etc.*

A proceeding or decision of the Board is not invalid only because of a vacancy in the office of a member or a defect or irregularity relating to the appointment of a member or, in the case of a person appointed to act for a member, on the ground that the occasion for that person so acting had not arisen or had ceased.

31. *Staff of Board*

- (1) Subject to the **Public Sector Management Act 1992**, there are to be appointed or employed a registrar of the Board and any other officers and employees that are necessary for the proper functioning of the Board.
- (2) The registrar may by instrument delegate to any person in the public service any power of the registrar under this Part or the regulations, other than this power of delegation.

32. *Annual report*

- (1) The Board must, as soon as practicable after the end of each period of 12 months, prepare a report on its operations during that year and submit the report to the Minister.
- (2) The report must—
 - (a) be prepared in a form and contain information determined by the Board to be appropriate; and
 - (b) comment on the operation of this Act during the relevant period and on its enforcement during that period;
 - (c) contain any other information required by the Minister.
- (3) The Board must include in its annual report a copy of each direction given to it under section 66 (4) in the period to which the report relates.

Prostitution Control Act 1994
Act No. 102/1994

- (4) The Minister must cause each annual report submitted to him or her under this section to be laid before the Legislative Council and the Legislative Assembly within 7 sitting days of the Legislative Council or the Legislative Assembly, as the case may be, after the report has been received by the Minister.

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 Board 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.
- (2) An application—
- (a) must be in writing in the prescribed form;
 - (b) must specify—
 - (i) the name, address, occupation and date of birth—
 - (A) of the applicant; and
 - (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;
 - (ii) any other things that are prescribed.

34. *Applications to be made available to the public*

The Board must make a copy of every application for a licence or for the renewal of a licence that has not yet been determined available at its office for any person to inspect during office hours free of charge.

35. *Notice of application*

- (1) The Board must give notice of an application for a licence or for the renewal of a licence—
 - (a) to the Chief Commissioner of Police; and
 - (b) to the responsible authority; and
 - (c) in a newspaper generally circulating in Victoria.
- (2) A notice under sub-section (1) must invite written objections to the grant or renewal of a licence to the applicant to be sent to the Board before the date specified in the notice.
- (3) In determining the application the Board must consider any objection received by it before the specified date unless it is satisfied that the objection is frivolous, vexatious or irrelevant to the grant or renewal of a licence to the applicant.

36. *Investigation of application*

- (1) The Board must carry out, or cause to be carried out, all investigations and inquiries that it considers necessary to enable it to consider the application properly.
- (2) The Chief Commissioner of Police must cause appropriate inquiries to be made in relation to each application and report the results of those inquiries to the Board.

37. Circumstances in which Board must refuse licence application

- (1) The Board must refuse to grant a licence to a person, or renew the licence of 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 section 47 (1) or (2); or
 - (d) is an associate of a person who 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.
- (2) For the purposes of sub-section (1) (d) a person is an associate of another person if he or she—
 - (a) is a spouse or defacto 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.
- (3) For the purposes of sub-section (1) (e) 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 defacto 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.

38. *Matters to be considered in determining suitability of applicant*

- (1) In determining whether an applicant for a licence or for the renewal of a licence is a suitable person to carry on business as a prostitution service provider, the Board must consider—
 - (a) whether the applicant is of good repute, having regard to character, honesty and integrity;
 - (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 Board 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.

39. *Grant or refusal of licence*

- (1) The Board may grant a licence or refuse to grant a 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 for 3 years unless it is sooner cancelled.
- (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 Board may at any time vary or revoke a condition or restriction set out in a licence or impose a new condition or restriction but the Board cannot vary the period for which a licence remains in force.
- (2) The Board may act under sub-section (1)—
 - (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.
- (3) Nothing in sub-section (1) affects the powers of the Board under Division 4 (Licence Cancellation or Suspension).

41. *Application for renewal of licence*

- (1) A licensee may apply to the Board for renewal of his or her licence.

- (2) An application—
 - (a) must be in writing in the prescribed form;
 - (b) must specify the prescribed matters;
 - (c) must be signed by the licensee;
 - (d) must be accompanied by—
 - (i) the prescribed renewal fee;
 - (ii) any other things that are prescribed.
- (3) A renewal application must be made at least 3 months before the expiry of the licence but not earlier than 6 months before that expiry.

42. *Renewal of licence*

- (1) The Board may renew a licence or refuse to renew a licence.
- (2) On renewing a licence the Board may—
 - (a) renew the licence as then in force; or
 - (b) vary any of the conditions or restrictions to which the licence is subject; or
 - (c) impose new conditions or restrictions on the licence.
- (3) The conditions or restrictions to which a licence is subject must be set out in the licence.
- (4) A renewed licence remains in force for 3 years unless it is sooner cancelled.

43. *Updating of application*

If before a licence application or renewal 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 Board by writing signed by the applicant.

Penalty: 60 penalty units.

Prostitution Control Act 1994
Act No. 102/1994

44. *Withdrawal of application*

- (1) An applicant for a licence or for the renewal of a licence may withdraw his or her application at any time before it has been determined.
- (2) If an application is withdrawn by the applicant, the Board may, at its discretion, refund the whole or part of the application or renewal fee.

45. *False or misleading information*

- (1) A person must not in, or in relation to, an application for a licence or for the renewal of a licence give information that is false or misleading in a material particular.

Penalty: 60 penalty units.

- (2) In a proceeding for an offence against sub-section (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—
 - (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.

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 the renewal of the licence, the licensee must within 10 days after becoming so aware give particulars of the change to the Board by writing signed by the licensee.

Penalty: 60 penalty units.

Division 4—Licence Cancellation or Suspension

47. Licence cancellation

- (1) The Board must cancel a licence if it is satisfied that since the granting or last renewal of the licence—
 - (a) the licensee has been 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 licensee has been 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
 - (c) the licensee has been convicted or found guilty of an offence against section 45 (1); or
 - (d) the licensee has served a sentence of imprisonment, whether in Victoria or outside Victoria.
- (2) The Board may cancel a licence if it is satisfied that since the granting or last renewal of the licence—
 - (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 an offence against section 19 (1), 21 (1) (b), 43, 46 or 49 (1); or

Prostitution Control Act 1994
Act No. 102/1994

- (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 the licence should be cancelled; 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.
- (3) The Board may act under sub-section (1) or (2) of its own initiative or on the application of an authorised member of the police force or an authorised officer of the responsible authority.
- (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.

48. Licence suspension

- (1) The Board may suspend a licence for any period that it thinks fit if it is satisfied that at any time since the granting or last renewal of the licence any of the grounds for cancellation set out in section 47 (2) have existed.
- (2) The Board may act under sub-section (1) of its own initiative or on the application of an authorised member of the police force or an authorised officer of the responsible authority.

- (3) The 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 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 prostitution service providing business must at all times when open for business be personally supervised by the licensee or a manager approved under section 52 (1).
- (2) A licensee or 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 sub-section (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—

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 sub-section (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 sub-section (1); or

Prostitution Control Act 1994
Act No. 102/1994

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

50. *Approval of manager*

- (1) A licensee may at any time apply to the Board for the approval of a person as a manager of the prostitution service providing business or for the renewal of such an approval.
- (2) An application under sub-section (1) must be in writing and be accompanied by the prescribed application fee and any other things that are prescribed.
- (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.
- (4) The Board must give a copy of an application under sub-section (1) to the Chief Commissioner of Police.
- (5) The Board must carry out, or cause to be carried out, all investigations and inquiries that it considers necessary to enable it to consider the application properly.
- (6) The Chief Commissioner of Police must cause appropriate inquiries to be made in relation to each application and report the results of those inquiries to the Board.
- (7) Sections 43 to 45 extend and apply in relation to applications under sub-section (1) in the same way and to the same extent that they do in relation to licence applications and licence renewal applications with any necessary modifications and as if any reference in those sections to an applicant included a reference to the person who is the subject of the application.

51. *Circumstances in which Board must refuse approval application*

- (1) The Board must refuse to approve as a manager of a prostitution service providing business a person whom it is satisfied—

- (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 section 47 (1) or (2); or
 - (d) is an associate of a person who has, within the preceding 5 years, been convicted or found guilty of an offence referred to in paragraph (b); 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 an offence referred to in paragraph (b).
- (2) For the purposes of sub-section (1) (d) a person is an associate of another person if he or she—
- (a) is a spouse or defacto 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.
- (3) For the purposes of sub-section (1) (e) 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 defacto 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

Prostitution Control Act 1994
Act No. 102/1994

- (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.

52. *Grant or refusal of approval*

- (1) The Board may approve of a person as a manager of a prostitution service providing business or refuse to give such an approval.
- (2) If the Board approves of a person as a manager of a prostitution service providing business it must issue a certificate of approval to that person.
- (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 cancelled.
- (4) If at any time while a certificate of approval is in force the licensee or the approved person becomes aware of a change that has occurred in the information provided at any time by the licensee or the approved person in, or in relation to, an application under section 50 (1), the licensee or the approved person must within 10 days after becoming so aware give particulars of the change to the Board by writing signed by him or her.

Penalty applying to this sub-section: 60 penalty units.

53. *Cancellation of approval*

- (1) The Board must cancel an approval under section 52 (1) if it is satisfied that since the issue or last renewal of the certificate of approval—
 - (a) the approved person has been 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 person has been 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
 - (c) the approved person has served a sentence of imprisonment, whether in Victoria or outside Victoria.
- (2) The Board may cancel an approval under section 52 (1) if it is satisfied that since the issue or last renewal of the certificate of approval, the approved person has managed the prostitution service providing business in such a way that it is desirable that his or her approval should be cancelled or the licensee or the approved person has been convicted or found guilty of an offence against section 43 or 45 (1) (as applied by section 50 (7)) or against section 52 (4).
- (3) The Board may act under sub-section (1) or (2) of its own initiative or on the application of an authorised member of the police force.

54. *Suspension of approval*

- (1) The Board may suspend an approval under section 52 (1) for any period that it thinks fit if it is satisfied that at any time since the issue or last renewal of the certificate of approval any of the grounds for cancellation set out in section 53 (2) have existed.
- (2) The Board may act under sub-section (1) of its own initiative or on the application of an authorised member of the police force.

Division 6—Register

55. *Licence and approvals register*

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

Prostitution Control Act 1994
Act No. 102/1994

s. 56

- (a) the granting, renewal, cancellation or suspension of a licence;
 - (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, cancellation or suspension of an approval of a person as a manager of a prostitution service providing business.
- (2) The register referred to in sub-section (1) may be inspected, and a copy of an entry in it obtained, at the office of the Board during office hours—
- (a) free of charge, by 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.
- (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.
- (4) The registrar may make the correction on his or her own initiative or on the application of any person.
- (5) On making a correction the registrar must sign the correction and mark it with the date on which it was made.

Division 7—Appeals from Board Decisions

56. Appeal on question of law

- (1) A party to a proceeding before the Board may appeal to the Supreme Court, on a question of law, from a decision of the Board—

- (a) under section 39 (1) to refuse to grant a licence or to grant a licence subject to a condition or restriction; or
 - (b) under section 40 (1) to vary or revoke a condition or restriction set out in a licence or impose a new condition or restriction; or
 - (c) under section 42 (1) to refuse to renew a licence or to renew a licence subject to a condition or restriction; or
 - (d) under section 47 (1) or (2) or 48 (1) to cancel or suspend a licence; or
 - (e) under section 52 (1) to refuse to approve a person as a manager; or
 - (f) under section 53 (1) or (2) or 54 (1) to cancel or suspend the approval of a person as a manager.
- (2) Section 109 of the **Magistrates' Court Act 1989** applies for the purposes of an appeal under sub-section (1) as if a reference in that section—
- (a) to the Magistrates' Court were a reference to the Board; and
 - (b) to a final order of the Magistrates' Court were a reference to a decision of a kind referred to in sub-section (1).

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.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (2) For the purposes of sub-section (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

Prostitution Control Act 1994
Act No. 102/1994

receiving any income from a business carried on by that person.

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

A licensee or person approved under section 52 (1) 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—

- (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*

- (1) If a member of the police force 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.
- (2) If the member of the police force considers that any particulars supplied by a person in response to a demand under sub-section (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 sub-section (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.

Penalty: 10 penalty units.

- (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.

Penalty: 10 penalty units.

61. *Production of licence or certificate of approval*

A licensee or person approved under section 52 (1) 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 if that member or officer demands him or her to do so.

Penalty: 10 penalty units.

Division 9—Powers of Entry

62. *Entry to licensed premises by police*

- (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 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

Prostitution Control Act 1994
Act No. 102/1994

premises under a power conferred by this section; or

- (b) obstruct a member of the police force in the exercise of such a power.

Penalty: 120 penalty units or imprisonment for 12 months 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 Prostitution Control Board in the form and manner approved by the Board particulars of the exercise of that power.

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 24 (1).
- (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 24 (1), the magistrate may issue a search warrant.
- (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 the 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 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 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 sub-section (2).
- (2) The member of the police force referred to in sub-section (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

Prostitution Control Act 1994
Act No. 102/1994

- (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 Prostitution Control Board; and
 - (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 sub-section (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 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 sub-section (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 sub-section (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 sub-section (5) the matters specified

in section 464A (4) of the **Crimes Act 1958** may be considered.

- (8) For the purposes of sub-section (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*

A court hearing a proceeding for an offence against section 22 (1) 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 is to be established within the Public Account a Trust Fund called the Prostitution Control Board 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;
 - (c) all other money received by the Board.

Prostitution Control Act 1994
Act No. 102/1994

- (3) Subject to any directions given by the Minister under sub-section (4), out of the Fund the Board must pay—
 - (a) the expenses incurred by it in carrying out its functions; and
 - (b) any other expenses incurred in the administration of this Act.
- (4) The Minister may give to the Board written directions in relation to the purposes for which the Board may spend money in exercising its functions and the extent to which the Board may spend money for any particular purpose.

67. *Advisory Committee*

- (1) There shall be an Advisory Committee consisting of persons appointed by the Governor in Council on the recommendation of the Minister to advise the Minister on issues related to the regulation and control of the prostitution industry in Victoria.
- (2) The Advisory Committee may seek information from the Board about relevant issues and trends.
- (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.
- (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 Sector Management Act 1992** (except Part 9 or in accordance with Part 8) does not apply to a member in respect of the office of member.

68. Regulations

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

- (a) the procedure of the Board;
- (b) matters or things to be included in, or to accompany, applications made under this Part;
- (c) particulars of matters required to be given or reported to the Board;
- (d) requirements to be complied with by a prostitution service provider to ensure the safety of persons working in the business;
- (e) matters to be considered by the Board in determining the suitability of an applicant for a licence;
- (f) prescribing fees;
- (g) prescribing forms;
- (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.

Prostitution Control Act 1994
Act No. 102/1994

(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) Sub-section (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—

(i) the period allowed by section 56 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 1986 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 Full Court expires without an appeal having been brought or, if an appeal to the Full Court is brought, it is discontinued or abandoned or is finally disposed of.

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) Sub-section (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;
 - (b) if the Board refuses to approve of that person as a manager on the application—
 - (i) the period allowed by section 56 for appealing to the Supreme Court expires without an appeal having been instituted;
 - or

Prostitution Control Act 1994
Act No. 102/1994

- (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 1986 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
 - (D) it is dismissed and the period allowed by rules of court for appealing to the Full Court expires without an appeal having been brought or, if an appeal to the Full Court is brought, it is discontinued or abandoned or is finally disposed of.

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 exempted under section 23 (1) from the requirement to hold a licence.

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) 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 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;

Prostitution Control Act 1994
Act No. 102/1994

- (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 sub-section (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 permit*

- (1) A person must not have at any one time an interest in more than one permit granted by a responsible authority for a use or development of land for the purposes of the operation of a brothel.

Penalty: 100 penalty units.

- (2) For the purposes of sub-section (1), a person has an interest in a permit if the permit was granted to that person or an associate of that person, whether alone or jointly with any other person.
- (3) For the purposes of this section two persons are associated if one is—
 - (a) a spouse or defacto partner of the other; or
 - (b) a business partner of the other; or
 - (c) a person who has entered into a business arrangement or relationship with the other in respect of the use, occupation, management or otherwise of land; 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 Law.

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.

Prostitution Control Act 1994
Act No. 102/1994

s. 77

- (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—
 - (i) not more than 60 penalty units for a first offence; or
 - (ii) not more than 90 penalty units for a second or subsequent offence; and
 - (b) if the contravention or failure constituting the offence is of a continuing nature, a further penalty of not more than 6 penalty units for each day during which the contravention or failure continues after the conviction or finding.
- (2) If a person is convicted or found guilty of an offence referred to in sub-section (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 sub-section (2) two persons are associated if one is—
 - (a) a spouse or defacto partner of the other; or
 - (b) a business partner of the other; or

- (c) a person who has entered into a business arrangement or relationship with the other in respect of the use, occupation, management or otherwise of land; or
- (d) directly receiving any income derived from a business carried on by the other; or
- (e) a body corporate and the other—
 - (i) is a director or secretary of the body corporate or a spouse or defacto 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
- (f) a body corporate and the other is a related body corporate within the meaning of section 9 of the Corporations Law or a director or secretary, or a spouse or defacto partner of a director or secretary, of a related 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.

Prostitution Control Act 1994
Act No. 102/1994

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—
 - (a) on the application of an authorised member of the police force, that a person carrying on business as a prostitution service provider in contravention of section 22 (1) is making those premises available for the purpose of prostitution; or
 - (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 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.
- (2) An authorised officer of the responsible authority may only apply under sub-section (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 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.

- (3) The Magistrates' Court may only make a declaration under sub-section (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.
- (4) For the purposes of sub-section (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 sub-section (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)—
 - (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.

Prostitution Control Act 1994
Act No. 102/1994

- (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 sub-section (1) (b) cannot be promptly effected, the notice may be sufficiently served for the purposes of that sub-section 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 sub-section (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 sub-section (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.

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 sub-section (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 sub-section (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.
- (5) In a proceeding for an offence against sub-section (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 sub-section (1) applies; or
 - (b) pass through or over any other land or building in order to enter those premises—

Prostitution Control Act 1994
Act No. 102/1994

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 sub-section (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—
 - (a) made available for the purpose of prostitution by a person carrying on business in contravention of section 22 (1); or
 - (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 sub-section (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 sub-section (1) on an application made under sub-section (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 sub-section (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 sub-section (1) is evidence and, in the absence of evidence to the contrary, is proof that the declaration or rescission was duly made.

PART 6—GENERAL

86. *Offences by bodies corporate*

If a body corporate commits an offence against this Act, any officer of the body corporate who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for it, irrespective of whether the body corporate has itself been prosecuted for, or convicted or found guilty of, the offence.

87. *Secrecy*

- (1) The following are bound by sub-section (2):
 - (a) a member of the Board or of the Advisory Committee;
 - (b) a member of the police force;
 - (c) any person appointed or employed subject to the **Public Sector Management Act 1992** or any

Prostitution Control Act 1994
Act No. 102/1994

s. 88

- other person whose services are being made use of by the Board or the Advisory Committee.
- (2) A person bound by this sub-section must not directly or indirectly, except in the course of legal proceedings or 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.

- (3) Nothing in sub-section (2) prevents a person bound by that sub-section from producing a document or divulging information to a member or officer of a law enforcement agency who is exercising a power or performing a function under or in connection with this Act.

88. Immunity

- (1) A person bound by section 87 (2) 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.
- (2) If a person bound by section 87 (2) 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 sub-section (1), attach to the person because of that act or omission attaches instead to the Crown.

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 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.

Prostitution Control Act 1994
Act No. 102/1994

s. 90

- (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 sub-paragraphs (i) and (ii); and
 - (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 sub-paragraphs (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.

PART 7—REPEALS AND AMENDMENTS

91. *Repeal of Prostitution Regulation Act 1986*

The Prostitution Regulation Act 1986 is repealed.

No. 124/1986.
Amended by
Nos 16/1987,
45/1987,
48/1988,
12/1989,
57/1989,
8/1991,
23/1994 and
31/1994.

92. *Repeal of Town and Country Planning (Miscellaneous Provisions) Act 1961*

The Town and Country Planning (Miscellaneous Provisions) Act 1961 is repealed.

No. 6849.
Reprinted to
No. 97/1987.

Prostitution Control Act 1994
Act No. 102/1994

s. 93

No. 6231.
Reprinted to
No. 49/1991.
Subsequently
amended by
Nos 65/1991,
81/1991,
13/1992,
12/1993,
19/1993,
41/1993,
60/1993,
120/1993 and
129/1993.

93. Amendment of Crimes Act 1958

In Subdivision (8C) of Division 1 of Part I of the
Crimes Act 1958 after section 49 insert—

“49A. Facilitating sexual offences against children

- (1) Subject to this section, a person who in Victoria makes travel arrangements for another person or does or omits to do any other act that aids, facilitates or contributes to in any way whatever the commission by another person of an offence against this Subdivision (other than this section) or against Division 2 of Part IIIA of the Crimes Act 1914 of the Commonwealth or against a law in force only in a place outside Victoria the necessary elements of which consist of or include elements which, if present or occurring in Victoria, would constitute an offence against this Subdivision (other than this section) is guilty of an indictable offence and liable to level 2 imprisonment.
- (2) For a person to be guilty of an offence against sub-section (1) the person—
 - (a) must make the travel arrangements or do or omit to do the other act with a view to personal gain or gain for another person; and
 - (b) must—
 - (i) intend that the conduct would aid, facilitate or contribute to the commission of an offence of the type committed by the other person; or
 - (ii) be reckless as to whether or not the conduct would aid, facilitate or contribute to the

commission of an offence of the type committed by the other person.”.

94. Amendment of Evidence Act 1958

After section 37C of the Evidence Act 1958 insert—

‘37D. Video link evidence from overseas in certain proceedings

- (1) This section applies to a legal proceeding that relates (wholly or partly) to a charge for an offence against section 49A (1) of the Crimes Act 1958.
- (2) The court may, on the application of a party to the legal proceeding, direct that a witness give evidence by video link if—
 - (a) the witness will give the evidence from outside Australia; and
 - (b) the witness is not a defendant in the proceeding; and
 - (c) the facilities required by sub-section (3) are available or can reasonably be made available; and
 - (d) the court is satisfied that attendance of the witness at the court to give the evidence would—
 - (i) cause unreasonable expense or inconvenience; or
 - (ii) cause the witness psychological harm or unreasonable distress; or
 - (iii) cause the witness to become so intimidated or distressed that his or her reliability as a witness would be significantly reduced; and
 - (e) the court is satisfied that it is consistent with the interests of

No. 6246.
Reprinted to
No. 8/1991.
Subsequently
amended by
Nos 78/1991,
81/1991,
12/1993,
60/1993,
74/1993,
125/1993,
23/1994,
31/1994 and
33/1994.

Prostitution Control Act 1994
Act No. 102/1994

justice that the evidence be taken by video link.

- (3) A witness can give evidence under a direction under this section only if the courtroom or other place in Victoria where the court is sitting (“the Victorian point”) and the place where the evidence is given (“the overseas point”) are equipped with video facilities that—
 - (a) enable all persons at the Victorian point that the court considers appropriate, to see and hear the witness give the evidence; and
 - (b) enable all persons at the overseas point that the court considers appropriate, to see and hear appropriate persons at the Victorian point.
- (4) The place where a witness gives evidence under a direction under this section is to be taken to be part of the courtroom or other place in Victoria where the court is sitting while the witness is there for the purpose of giving evidence.
- (5) An oath or affirmation to be sworn or made by a witness who is to give evidence under a direction under this section may be administered either—
 - (a) by means of the video link, in as nearly as practicable the same way as if the witness were to give the evidence at the courtroom or other place in Victoria where the court is sitting; or
 - (b) at the direction of, and on behalf of, the court at the place where the witness is to give the evidence by a person authorised by the court.

- (6) A court may make any orders that are just for the payment of expenses incurred in connection with the giving of evidence under a direction by the court under this section.
- (7) This section does not prevent any other law, or any rule or regulation made under any other law, about taking evidence of a witness outside Australia from applying for the purposes of a proceeding to which this section applies.
- (8) Nothing in this section limits the application of section 37A, 37B or 37C to a charge for an offence against section 49A (1) of the Crimes Act 1958.’

95. Amendment of Health Act 1958

In section 3 of the Health Act 1958—

(a) for the definition of “brothel” substitute—

“brothel” has the same meaning as in the Prostitution Control Act 1994;’;

(b) in the definition of “prostitution” for “Prostitution Regulation Act 1986” substitute “Prostitution Control Act 1994”.

No. 6270.
Reprinted to No. 59/1991. Subsequently amended by Nos 40/1993, 42/1993, 84/1993, 125/1993, 126/1993, 19/1994, 23/1994 and 52/1994.

96. Amendment of Magistrates’ Court Act 1989

In Schedule 4 to the Magistrates’ Court Act 1989, for items 44 to 48 substitute—

“43. Causing or inducing child to take part in prostitution

Offences under section 5 (1) of the Prostitution Control Act 1994.

No. 51/1989. Reprinted to No. 49/1991. Subsequently amended by Nos 81/1991, 90/1991, 69/1992, 83/1992, 12/1993, 67/1993, 71/1993, 129/1993, 18/1994, 21/1994 and 33/1994.

Prostitution Control Act 1994
Act No. 102/1994

s. 97

44. *Obtaining payment for sexual services provided by a child*

Offences under section 6 (1) of the **Prostitution Control Act 1994.**

45. *Agreement for provision of sexual services by a child*

Offences under section 7 (1) of the **Prostitution Control Act 1994.**

46. *Forcing person into or to remain in prostitution*

Offences under section 8 (1) of the **Prostitution Control Act 1994.**

47. *Forcing person to provide financial support out of prostitution*

Offences under section 9 (1) of the **Prostitution Control Act 1994.**

48. *Living on earnings of prostitute*

Offences under section 10 (1) of the **Prostitution Control Act 1994.**

48A. *Allowing child to take part in prostitution*

Offences under section 11 (1) of the **Prostitution Control Act 1994.**

48B. *Prostitution service providers to be licensed*

Offences under section 22 (1) or (3) of the **Prostitution Control Act 1994.**

97. *Amendment of Travel Agents Act 1986*

- (1) In section 20 (1) of the **Travel Agents Act 1986**, after paragraph (d) insert—

Prostitution Control Act 1994
Act No. 102/1994

s. 98

“(da) the licensee has been convicted of an offence against section 49A (1) of the **Crimes Act 1958** or section 50DA or 50DB of the Crimes Act 1914 of the Commonwealth; or”.

(2) In section 21 of the **Travel Agents Act 1986**, after sub-section (1) insert—

“(1A) Despite sub-section (1) if, after compliance with section 20, the Authority is satisfied that the licensee has been convicted of an offence against section 49A (1) of the **Crimes Act 1958** or section 50DA or 50DB of the Crimes Act 1914 of the Commonwealth, it must disqualify the licensee (or, if the licence has been surrendered, the former licensee) in accordance with sub-section (2).”.

98. Amendment of Vagrancy Act 1966

No. 7393.
Reprinted to
No. 92/1990.

Sections 10, 11, 12 and 12A of the **Vagrancy Act 1966** are repealed.

Prostitution Control Act 1994
Act No. 102/1994

SCHEDULES

SCHEDULE 1

Section 25 (5)

MEMBERS OF PROSTITUTION CONTROL BOARD

1. A member—
 - (a) holds office for the term (not exceeding 3 years) specified in the instrument of appointment;
 - (b) is eligible for re-appointment;
 - (c) not being the chairperson, is entitled to be paid the remuneration and allowances (if any) fixed in respect of him or her by the Governor in Council.
2. The **Public Sector Management Act 1992** (except Part 9 or in accordance with Part 8) does not apply to a member in respect of the office of member.
3. The Governor in Council may at any time remove or suspend a member from office.
4. The Governor in Council may, in the instrument of appointment of a member, specify terms and conditions of appointment.
5. A member may resign from office by delivering to the Governor a signed letter of resignation.
6. The office of a member becomes vacant if he or she—
 - (a) becomes bankrupt; or
 - (b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
 - (c) becomes incapable of performing the duties of office; or
 - (d) is removed or resigns from office.
7. If the term of office of a member expires at a time when he or she is engaged in the determination of a matter by the Board, the period of appointment of that member continues until that matter has been determined by the Board.
8. If a member is ill or absent or is unable or unwilling for any reason to act as a member in respect of any particular matter before the Board, the Governor in Council may appoint an eligible person to act for that member during the illness or absence or in respect of that particular matter, as the case requires.
9. A person appointed to act for a member while so acting—
 - (a) has all the powers and may perform all the duties of the member for whom he or she is acting; and

Prostitution Control Act 1994
Act No. 102/1994

Sch. 1

SCHEDULE 1—*continued*

- (b) is entitled to be paid the remuneration and allowances (if any) to which the member for whom he or she is acting would have been entitled for performing those duties; and
 - (c) subject to this clause, is subject to the same terms and conditions of appointment as the member for whom he or she is acting.
10. If a person has been appointed to act for a member and that appointment ends at a time when the acting member is engaged in the determination of a matter by the Board, the period of appointment of that person continues until that matter has been determined by the Board.
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Prostitution Control Act 1994
Act No. 102/1994

SCHEDULE 2

Section 25 (6)

CHAIRPERSON OF PROSTITUTION CONTROL BOARD

1. The chairperson—
 - (a) holds office as chairperson for the term for which he or she holds office as a member;
 - (b) is eligible for re-appointment as chairperson;
 - (c) is entitled to be paid the remuneration and allowances (if any) fixed in respect of him or her by the Governor in Council.
2. The **Public Sector Management Act 1992** (except Part 9 or in accordance with Part 8) does not apply to the chairperson in respect of the office of chairperson.
3. The Governor in Council may at any time remove or suspend the chairperson from the office of chairperson.
4. The Governor in Council may, in the instrument of appointment of the chairperson, specify terms and conditions of appointment.
5. The chairperson may resign from the office of chairperson by delivering to the Governor a signed letter of resignation.
6. If the chairperson is ill or absent or is unable or unwilling for any reason to act as chairperson in respect of any particular matter before the Board, the Governor in Council may appoint another member (other than the member referred to in section 25 (2) (c)) to act for the chairperson during the illness or absence or in respect of that particular matter, as the case requires.
7. A person appointed to act for the chairperson while so acting—
 - (a) has all the powers and may perform all the duties of the chairperson; and
 - (b) is entitled to be paid the remuneration and allowances (if any) to which the chairperson would have been entitled for performing those duties; and
 - (c) subject to this clause, is subject to the same terms and conditions of appointment as the chairperson.
8. If a person has been appointed to act for the chairperson and that appointment ends at a time when the acting chairperson is engaged in the determination of a matter by the Board, the period of appointment of

Prostitution Control Act 1994
Act No. 102/1994

Sch. 2

SCHEDULE 2—*continued*

that person as acting chairperson continues until that matter has been determined by the Board.

NOTES

1. *Minister's second reading speech—*

Legislative Assembly: 21 October 1994

Legislative Council: 29 November 1994

2. 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 make consequential amendments to certain other Acts and for other purposes."
3. Section headings appear in bold italics and are not part of the Act. (See **Interpretation of Legislation Act 1984**.)