

## Prostitution Control (Amendment) Bill

### EXPLANATORY MEMORANDUM

- Clause 1 sets out the purpose of the Act.
- Clause 2 states:
- (1) sections 1 and 2 come into operation upon receiving Royal Assent;
  - (2) subject to sub-clause (3), the remaining provisions come into operation on a day to be proclaimed; and
  - (3) if a provision has not come into operation before 1 July 1998, it comes into operation on that day.
- Clause 3 identifies the **Prostitution Control Act 1994** as the Principal Act.
- Clause 4 inserts a definition of "approved manager" in section 3.
- Clause 5 amends section 22(1) to make it an offence for a person to carry on business as a prostitution service provider while his or her licence is suspended.
- Clause 6 amends section 24 to enable a person appearing on the Register of prostitution service providers exempt from the licensing requirement to apply to the Board to have his or her entry omitted from this Register.
- Clause 7 amends section 25 which deals with the constitution of the Board.
- Sub-clause (1) amends section 25(2) to provide for the power to appoint a deputy chairperson who is required to have the same qualifications as the chairperson.
- Sub-clause (2) substitutes a new section 25(4) for sections 25(4) and (4A) which provides that matters before the Board are to be determined by a quorum of at least three members, one of whom must be either the chairperson or the deputy chairperson. The chairperson or deputy chairperson will have a discretion to impanel additional members in a matter.
- Clause 8 amends section 26 to add to the list of the functions of the Board the disciplining of licensees and approved managers and changes the incorrect reference from "Council" to "Committee".

- Clause 9 repeals section 27(2).
- Clause 10 inserts three new sections in the Principal Act which are similar to clauses used in other licensing Acts such as the **Motor Car Traders Act 1986** and the **Estate Agents Act 1980**.
- The new section 27A sets out the rules relating to appearances before the Board. Section 27B sets out the rules relating to evidence before the Board. Section 27C sets out what constitutes contempt of the Board.
- Clause 11 amends section 31 of the Principal Act to provide for a power to appoint deputy registrars who are to have, subject to the direction of the Registrar, the powers of the Registrar under the Principal Act.
- Clause 12 amends section 33 to expressly refer to a licence fee payable as well as the initial application fee (both of which are to accompany the application).
- Clause 13 makes an amendment to section 37(1)(c) which is consequential to the amendments made in clause 22.
- Clause 14 amends section 39(3) as a consequence of the amendments in clause 16.
- Clause 15 amends section 40(3) to refer to "Disciplinary Action" as a consequence of the amendments in clause 23.
- Clause 16 inserts a new section 40A into the Principal Act to allow a licensee to surrender his or her licence by notice in writing to the Board, unless, where the Board has determined to hold an inquiry under section 48 in relation to that licensee, the licensee has either leave of the Board or the Board has decided to act under section 48A, or determined not to act under that section.
- Clause 17 amends section 41(2)(d) to provide for the more accurate reference to the prescribed "application fee" and the "licence fee".
- Clause 18 amends section 42(4) to refer to the new surrender power in section 40A.
- Clause 19 amends section 44(2) to provide that where a licence application is withdrawn or rejected, the Board:
- (a) may, at its discretion, refund the application fee; and
  - (b) must refund any licence fee—
- that accompanied the licence application.

Clause 20 inserts a new section 46A that requires licensees to submit annual statements to the Board within ten days of the anniversary date of the granting of the licence.

Clause 21 changes the heading of Division 4 of Part 3 as a consequence of the amendments in clause 23.

Clause 22 (1) adds a new paragraph (ab) to section 47(1) so as to provide that the Board must cancel a licence where the licensee has been convicted or found guilty of the offences set out in Schedule 3;

(2) repeals section 47(2); and

(3) amends section 47(3) as a consequence of the amendment in the preceding sub-clause.

Clause 23 sets out the proposed sections containing the new disciplinary options in respect of licensees.

The substituted section 48 sets out the circumstances in which the Board may hold an inquiry to determine whether disciplinary action ought to be taken.

The new section 48A sets out the Board's various options in relation to what disciplinary action can be taken against a licensee.

Clause 24 amends section 49 as a consequence of the amendment in clause 4.

Clause 25 amends section 50 to enable a person to apply for his or her own manager approval or approvals, rather than the application having to be made on his or her behalf by the licensee.

Clause 26 amends section 51 as a consequence of the amendments in clauses 21 and 23.

Clause 27 makes amendments to sections 52(3) and 52(4) as a consequence of amendments made in clauses 28 and 4 respectively.

Clause 28 inserts a new section 52A into the Principal Act to allow a manager to surrender his or her certificate of approval by notice in writing to the Board, unless, where the Board has determined to hold an inquiry under section 54 in relation to that manager, the manager has either leave of the Board or the Board has decided to act under section 54A, or determined not to act under that section.

Clause 291(1) amends section 53(1) by:

- (a) making an amendment to section 53(1)(a) as a consequence of the amendment in clause 4;
  - (b) adding a new paragraph (ab) so as to provide that the Board must cancel an approval where the manager has been convicted or found guilty of the offences set out in Schedule 3;
  - (c) and (d), making amendments to sections 53(1)(b) and (c) as a result of the amendment in clause 4;
- (2) repealing section 53(2); and
- (3) amending section 53(3) as a consequence of the amendment in preceding sub-clause.

Clause 30 sets out the proposed new sections containing the new disciplinary options in respect of approved managers.

The substituted section 54 sets out the circumstances in which the Board may hold an inquiry to determine whether disciplinary action ought to be taken.

The new section 54A sets out the Board's various options in relation to what disciplinary action can be taken against an approved manager.

Clause 31 (1) amends section 55(1) to refer to the new surrender power in the proposed new section 52A; and

(2) amends section 55(5) so that it more appropriately refers to "record" rather than "sign" in a computer Register.

Clause 32 amends section 56 to enable the licensee or approved manager to appeal to the Supreme Court on a question of law in respect of a Board's decision in relation to the new cancellation powers in section 47 and 53 and the new disciplinary options in 48A and 54A.

Clause 33 amends section 58 as a consequence of the amendment in clause 4.

Clause 34 amends section 61 as a consequence of the amendment in clause 4.

Clause 35 makes a technical amendment to section 66(3)(aa).

Clause 36 updates the reference to the General Rules of Procedure in Civil Proceedings 1996 and changes the references to the "Full Court" to the "Court of Appeal".

- Clause 37 amends section 70 to change the same references described in clause 36.
- Clause 38 inserts a new section 80(3A) to allow a Magistrate in the proscribed brothel hearings under this section to take into consideration any evidence he or she considers credible or trustworthy in the circumstances.
- Clause 39 amends section 89 to allow the Registrar to issue certificates in respect of the Register under section 24.
- Clause 40 substitutes a new set of transitional provisions in respect of the amendments contained in this Bill.
- Clause 41 amends Schedule 1 so that it refers to the deputy chairperson as well as the chairperson as a result of the amendments in clause 7.
- Clause 42 amends Schedule 2 so that it refers to the deputy chairperson as well as the chairperson as a result of the amendments in clause 7.
- Clause 43 inserts a new Schedule 3 for the purposes of sections 47(1)(ab) and 53(1)(ab) inserted by clauses 22 and 29 respectively. The Schedule lists offences against the Migration Act 1958 (Commonwealth) and the Crimes Act 1914 (Commonwealth) for which a licensee or approved manager has his or her licence or approval cancelled where he or she has been convicted or found guilty of any of these offences.

