

Prostitution Bill 2011 – Summary of Key Clauses

The Prostitution Bill 2011 is intended to be stand alone legislation governing prostitution in Western Australia. The bill seeks to impose a strong regulatory and enforcement framework on prostitution in Western Australia, and is primarily designed to assist police in responding to public complaints and closing down unlawful prostitution businesses in residential areas.

Key matters to be addressed include:

Licensing

- Individual prostitutes, managers of brothels and operators of brothels will be required to possess a valid licence, and conduct business from premises approved for that purpose via local government planning processes. *[clause 42]; [clause 43]; [clause 44]*
- Managers, operators and self-employed prostitutes will be required to display licenses in places from which their business is being conducted. *[clause 17]*
- Applications for operator's licenses and manager's licenses will be required to be accompanied by documents verifying the applicant's identity and age, residential and contact addresses, and providing evidence of relevant planning approvals. *[clause 47]*
- Operators and managers will be required to be at least 18, an Australian citizen or permanent resident, ordinarily resident in Western Australia; have no relevant criminal offences and otherwise be of good standing. *[clause 47]; [clause 52]*
- Applications for a prostitute's licenses will be required to be accompanied by documents verifying the applicant's identity and age; and where they propose to conduct business as a self-employed prostitute, be accompanied by evidence of planning approval. *[clause 48]*
- Prostitute's licenses will be only issued to people who are at least 18, are an Australian citizen or permanent resident, ordinarily resident in Western Australia. *[clause 48]*
- Stringent probity checks, including palm prints and fingerprints, will apply in relation to all operator and manager license applications, but only where considered reasonably necessary in relation to prostitute's license applications. *[clause 49]*
- License holders will be required to comply with conditions prescribed or imposed by the Department of Racing, Gaming and Liquor. *[clause 55]; [clause 60]*

Planning and Development Controls

- Licenses will not be granted to prostitution businesses unless they can show that they have been granted planning approval by the relevant local government authority. *[clause 47]; [clause 48]*
- Land in a residential area or special use area will not be permitted to be used for any prostitution business in any circumstances. *[clause 74]*
- Land in places other than residential areas or special use areas may be used for prostitution business where planning approval is granted by the responsible planning authority. *[clause 75]*

- Outside of the City of Perth area, land which is not in a residential area but is nevertheless within 100m of a residence, or 200m of a protected place, will not be permitted to be used for any prostitution business in any circumstances. *[clause 76]*
- Within the City of Perth area, land which is not in a residential area but is nevertheless in an area that contains a significant number of dwellings, or is within 100m of a protected place, or land which comprises a building that contains a dwelling; must not be used for any prostitution business in any circumstance. *[clause 76]*
- Planning schemes may not be amended to override these rules, for example, to make prostitution businesses a prohibited use in areas other than residential or special use areas, or permit applications in residential areas. *[clause 74]; [clause 75]*
- Existing inappropriately situated businesses may be permitted to continue to operate for up to 18 months, but only if the Department of Racing Gaming & Liquor is satisfied that the business has not been causing disturbance or interfering with the amenity of the area. *[clause 166]*

Enforcement

- Conducting any form of prostitution business outside the licensed scheme, or, in relation to potential clients, entering or remaining in an unlawful prostitution business without lawful excuse, will be a criminal offence. *[clause 9]; [clause 10]; [clause 13]; [clause 42]; [clause 43]; [clause 44]*
- Police will have the power to enter premises, other than residences, which they reasonably suspect are being used to conduct prostitution businesses, without a warrant. *[clause 92]*
- Police will, upon receipt of complaints, have the power to issue closure notices restricting access to premises which they reasonably suspect are being used for unlawful prostitution, or on their own initiative where serious offences have occurred. These notices will be required to be considered by a court before being made permanent. *[Part 7; Division 7]*
- Existing evidentiary presumptions in relation to kerb crawling and street walking will continue to apply. *[clause 144]*
- Strong evidentiary presumptions will apply that persons are operating or managing a prostitution business where grounds exist for suspecting such an activity. *[clause 149]*
- Police will have the power to make barring notices, and prohibition orders similar to those contained in the *Liquor Control Act 1988*, to deal with dangerous or undesirable persons working in or attending brothels. *[Part 7 Division 5]; [Part 7 Division 6]*
- License numbers will be required to be displayed in any advertisements for prostitution *[clause 24]*.
- There will be a strong evidentiary presumption against persons who unlawfully place advertisements which could be reasonably suspected to be for a prostitution business. *[clause 145]*

- The State Government will possess an absolute discretion to reject a particular license application, or direct that licenses not be issued in relation to particular areas of the state. *[Part 6; Division 9]*

Protecting vulnerable people

- A person who engages in an act of prostitution with a person who they knew, or could reasonably be expected to have known was being coerced commits an offence punishable by up to 14 years imprisonment, or, where the prostitute was a child or incapable person, imprisonment for up to 20 years. *[clause 14]*
- Prostitutes working within the licensed system will have an absolute right to refuse to take part in acts of prostitution, and persons who operate or manage a prostitution business will be required to display information to that effect. *[clause 12]; [clause 25]; [clause 26]*
- There will be a positive obligation on persons who operate or manage prostitution businesses to ensure that children do not work within the business, or permit children to be on the premises of the business. *[clause 36]; [clause 38]*
- A person who causes, permits or induces a child to act as a prostitute commits a crime punishable by imprisonment of up to 14 years. *[clause 33]*
- The penalty for acting as an unlicensed prostitute is such that infringement notices may be issued for offences pursuant to the *Criminal Procedure Act 2004*. *[clause 44]*
- The Commissioner of Police will have the power to provide information regarding clients who have been issued with barring notices to operators or managers, if it is considered necessary to minimise the risk of harm or injury to any person. *[clause 118]*

Health

- It will be an offence for a person to engage in an act of prostitution without using a condom (or other appropriate barrier to STIs). *[clause 28]*
- There is a positive obligation on operators and managers to issue condoms free of charge to workers, and ensure that their workers do not engage in acts of prostitution without using a condom (or other appropriate barrier to STIs). *[clause 28]*
- Operators and managers must take all reasonable steps to display health information to clients and to workers. *[clause 32]*
- Advertisements or statements made must not imply that a person is not infected, or is unlikely to be infected with a sexually transmitted infection. *[clause 29]*
- Possession of condoms cannot be used as evidence in connection with prosecutions for unlicensed prostitution. *[clause 153]*