

TASMANIA

SEX INDUSTRY REGULATION BILL 2005

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SCHEDULE 1 – DISQUALIFYING OFFENCES

SEX INDUSTRY REGULATION BILL 2005

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
9 June 2005

(Brought in by the Minister for Justice and Industrial Relations, the Honourable Judith Louise Jackson)

A BILL FOR

An Act to promote the welfare and occupational health and safety of sex workers, to protect children from exploitation in the sex industry, to safeguard public health and to amend the *Criminal Code Act 1924* and the *Police Offences Act 1935*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Sex Industry Regulation Act 2005*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

“application for an additional commercial operator” means an application for approval as an additional commercial operator of a sexual services business under section 12;

“application for registration” means an application for registration of a sexual services business under section 10;

“application for transfer” means an application for approval of the transfer of a sexual services business under section 11;

“authorised person” means –

- (a) the Commissioner of Police or a person authorised by the Commissioner in writing to act as an authorised person for the purposes of this Act; or
- (b) any State Service officer or State Service employee, appointed for the purposes of the *Consumer Affairs Act 1988*, authorised in writing by the Director to act as an authorised person for the purposes of this Act;

“child” means a person under the age of 18 years;

“client” means a person who receives any sexual services in the course of a sexual services business;

“code of practice” means a code of practice approved and in force under section 36;

“commencement day” means the day on which this Act commences;

“commercial operator” means –

- (a) a person who is not a self-employed sex worker and who, whether alone or with another person, operates, owns or is in day-to-day control of a sexual services business; and
- (b) if the person referred to in paragraph (a) is a corporation or a body corporate, a director, within the meaning of the Corporations Act, of that corporation or body corporate;

“Director” means the Director of Consumer Affairs and Fair Trading;

“disqualifying offence” means –

- (a) an offence against a law specified in Part 1, 3 or 4 of Schedule 1; or
- (b) an offence specified in Part 2 of that Schedule –

whether the offence was committed before or after the commencement day;

“prophylactic” means a condom or other device used to prevent the transmission of a sexually transmissible infection;

“register” means the register of sexual services businesses kept by the Director under section 4;

“registration number” means a registration number issued in respect of a sexual services business by the Director under section 16;

“regulations” means regulations made and in force under this Act;

“self-employed sex worker” means –

- (a) a sex worker who solely owns and operates a sexual services business; or
- (b) a sex worker who, together with no more than one other sex worker, neither of whom employs or manages the other, owns and operates a sexual services business;

“sex worker” means a person who provides sexual services in the course of a sexual services business;

“sexual intercourse” means sexual intercourse as defined in section 1 of the *Criminal Code*;

“sexual services” means –

- (a) an act of sexual intercourse; or

- (b) any activity where there is any form of direct physical contact between 2 or more persons for the purpose of the sexual gratification of one or more of those persons including, without limitation, the masturbation of one person by another;

“sexual services business” means a business providing sexual services for fee or reward;

“sexually transmissible infection” means a disease specified as a sexually transmissible infection in Table 1 of the Guidelines for Notifiable Diseases, Human Pathogenic Organisms and Contaminants issued by the Director of Public Health under section 184 of the *Public Health Act 1997*.

- (2) For the purpose of the definition of “commercial operator” in subsection (1), a reference to a commercial operator is taken to include a reference to –
 - (a) a person who determines –
 - (i) when or where a sex worker will work; and
 - (ii) the conditions in which a sex worker will work; and
 - (iii) the amount of money, or proportion of an amount of money, that a sex worker will

receive as payment for sexual services; and

- (b) a person who employs, supervises or is in day-to-day control of any person referred to in paragraph (a).

PART 2 – REGISTRATION OF SEXUAL SERVICES BUSINESSES

Division 1 – Director to keep register

4. Register of sexual services businesses

- (1) The Director is to keep a register of sexual services businesses.
- (2) On approval of any application under this Act and on payment of the prescribed fee, the Director is to enter in the register any information contained in the application that the Director considers appropriate.
- (3) The Director is to enter in the register a registration number issued in respect of a sexual services business.
- (4) The Director is to enter in the register any additional information contained in a notice referred to in Division 3 that the Director considers appropriate.
- (5) If a commercial operator is convicted of a disqualifying offence, the Director is to record in the register a note that the registration of the sexual services business is cancelled.
- (6) If the Director receives a notice of ceasing to operate under section 15, within 21 days after receiving that notice, the Director is to remove any entries in respect of the sexual services business from the register.

5. Inspection of register

- (1) The Director is to make the register available for inspection by any person at the office of the Director during usual business hours and on payment of the prescribed fee.
- (2) Subsection (1) does not apply to information contained in the register relating to self-employed sex workers.
- (3) Subsection (2) does not prevent inspection by an authorised person of information contained in the register relating to self-employed sex workers.
- (4) The Director is to keep a record of the full name, position and date of inspection of all authorised persons who inspect information relating to self-employed sex workers contained in the register.

6. Operation of sexual services business

- (1) A person must not own, operate or exercise day-to-day control of a sexual services business unless that sexual services business is registered in accordance with this Act.

Penalty: In the case of –

- (a) a person who is not a self-employed sex worker, a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 5 years, or both; or

- (b) a person who is a self-employed sex worker, a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 1 year, or both.
- (2) If, on the commencement day, a person is the owner or operator of a sexual services business, or is in day-to-day control of a sexual services business, subsection (1) does not apply to that person until 3 months after the commencement day.

7. Effect of disqualifying offences

- (1) If a person named as a proposed commercial operator in an application for registration, an application for transfer or an application for an additional commercial operator of a relevant sexual services business has been convicted of a disqualifying offence, the Director must not –
 - (a) register the sexual services business; or
 - (b) approve the transfer of the sexual services business; or
 - (c) approve an additional commercial operator of the sexual services business.
- (2) If a person named as a proposed commercial operator in an application for registration, an application for transfer or an application for an additional commercial operator has been charged with a disqualifying offence and the charge has not been finally determined, the Director may refuse to –

- (a) register the sexual services business; or
 - (b) approve the transfer of the sexual services business; or
 - (c) approve an additional commercial operator of the sexual services business.
- (3) The Director may suspend the registration of a sexual services business pending the determination of a charge against the commercial operator of the sexual services business for a disqualifying offence.
- (4) If a commercial operator is convicted of a disqualifying offence, he or she ceases, on the expiration of 30 days after the conviction, to be entitled to own, operate or exercise day-to-day control over a sexual services business.
- (5) If, on the expiration of 30 days after conviction and without reasonable excuse, the commercial operator has not disposed of his or her interest in the sexual services business or has not ceased to operate or exercise day-to-day control over that sexual services business, the Director must cancel the registration of the sexual services business.
- (6) If the Director refuses to register or cancels the registration of a sexual services business, refuses to approve the transfer of a sexual services business or refuses to approve an additional commercial operator of a sexual services business, the Director is to give notice in writing of his or her decision to the –
 - (a) commercial operator; or

- (b) applicant for the transfer of the sexual services business; or
- (c) proposed additional commercial operator; or
- (d) proposed transferee.

8. Commercial operator to be fit and proper person

- (1) On receipt of an application for registration, an application for transfer or an application for an additional commercial operator, the Director must seek an opinion from the Commissioner of Police as to whether a proposed commercial operator is a fit and proper person for the purposes of this Act.
- (2) If a person named in an application referred to in subsection (1) is not, in the opinion of the Commissioner of Police, a fit and proper person to be a commercial operator, the Director may refuse to –
 - (a) register the sexual services business; or
 - (b) approve the transfer of the sexual services business; or
 - (c) approve an additional commercial operator of the sexual services business.
- (3) For the purposes of this section, the Commissioner of Police may take into account any criminal intelligence report or other information about any person applying for registration as a commercial operator relating to alleged criminal activity in the nature of a

disqualifying offence, whether in Tasmania or elsewhere, from which it may be reasonably inferred that the person constitutes a risk to the safety or health of sex workers or their clients.

- (4) If the Director refuses to register, or to approve the transfer of, or an additional commercial operator of, a sexual services business as mentioned in subsection (2), the Director is to notify the applicant, in writing, of his or her decision.
- (5) Any communication between the Director and the Commissioner of Police relating to the question of whether a proposed commercial operator is a fit and proper person for the purposes of this Act is exempt from the provisions of the *Freedom of Information Act 1991*.

9. Transfer of sexual services business

- (1) On application by the commercial operator of a sexual services business, the Director, subject to sections 7 and 8, may approve the transfer of the sexual services business to another person.
- (2) The Director is to give written notice of the approval of, or the refusal to approve, the transfer to the applicant and to the transferee.
- (3) On receipt of the notice and at least 7 days before the day on which he or she intends to commence operation of the sexual services business, the transferee must provide the Director with written notice of the date on which the transferee intends to commence operation of the sexual services business.

Penalty: Fine not exceeding 50 penalty units.

- (4) A commercial operator of a sexual services business must not transfer the business to another person, or allow another person to use the registration number issued to that business, unless an application for transfer of the sexual services business to that person has been approved by the Director.

Penalty: Fine not exceeding 50 penalty units.

Division 2 – Application for registration, application for transfer or application for additional commercial operator

10. Form of application for registration

- (1) An application for registration of a sexual services business is to be in a form approved by the Director and –
 - (a) is to be lodged with the Director; and
 - (b) is to contain any information that the Director may require relating to the following:
 - (i) the name of the sexual services business;
 - (ii) the full name, including any previous name, of each proposed commercial operator or the name, including any previous name, of each self-employed sex worker to be involved in the sexual services business;

- (iii) the date of birth of each proposed commercial operator or each self-employed sex worker to be involved in the sexual services business;
 - (iv) the address, if any, at which the sexual services business will be operated or any other address proposed to be used for the purpose of the sexual services business;
 - (v) the residential address of each proposed commercial operator or each self-employed sex worker to be involved in the sexual services business;
 - (vi) the operation of the sexual services business; and
- (c) is to be accompanied by the prescribed proof of identity of each proposed commercial operator or self-employed sex worker to be involved in the sexual services business; and
- (d) is to be accompanied by the prescribed fee.
- (2) An application for registration under subsection (1) is to be accompanied by an authorisation, in a form approved by the Director, from each person named in the application as a proposed commercial operator to be involved in the sexual services business, allowing the Director to obtain –

- (a) if there is a criminal record for that person, a copy of that criminal record; and
- (b) an opinion from the Commissioner of Police under section 8 as to whether the proposed commercial operator is a fit and proper person for the purposes of this Act.

11. Form of application for transfer

- (1) An application for approval of the transfer of a sexual services business is to be in a form approved by the Director and –
 - (a) is to be lodged with the Director; and
 - (b) is to contain any information that the Director may require relating to the following:
 - (i) the name of the sexual services business;
 - (ii) the full name, including any previous name, of each proposed commercial operator of the sexual services business;
 - (iii) the date of birth of each proposed commercial operator of the sexual services business;
 - (iv) the address, if any, at which the sexual services business will be operated or any other address proposed to be used for the

- purpose of the sexual services business;
 - (v) the residential address of each proposed commercial operator of the sexual services business;
 - (vi) the operation of the sexual services business; and
 - (c) is to be accompanied by the prescribed proof of identity of each proposed commercial operator of the sexual services business; and
 - (d) is to be accompanied by the prescribed fee.
- (2) An application for approval of a transfer under subsection (1) is to be accompanied by an authorisation, in a form approved by the Director, from each proposed commercial operator of the sexual services business, allowing the Director to obtain –
- (a) if there is a criminal record for that proposed commercial operator, a copy of that criminal record; and
 - (b) an opinion from the Commissioner of Police under section 8 as to whether the proposed commercial operator is a fit and proper person for the purposes of this Act.

12. Form of application for additional commercial operator

- (1) A person who is not named in an application for registration or an application for transfer and who proposes to act as an additional commercial operator of any sexual services business must make an application for approval as an additional commercial operator of that sexual services business.
- (2) An application for an additional commercial operator is to be in a form approved by the Director and –
 - (a) is to be lodged with the Director; and
 - (b) is to contain a statement that the existing commercial operator or at least one of the existing commercial operators approves of the proposed additional commercial operator; and
 - (c) is to contain any information that the Director may require relating to the following:
 - (i) the name of the sexual services business;
 - (ii) the full name, including any previous name, of the proposed commercial operator;
 - (iii) the date of birth of the proposed commercial operator;
 - (iv) the address, if any, at which the sexual services business will be operated or any other address

- proposed to be used for the purpose of the sexual services business;
- (v) the residential address of the proposed commercial operator;
 - (vi) the operation of the sexual services business; and
- (d) is to be accompanied by the prescribed proof of identity of the proposed commercial operator; and
- (e) is to be accompanied by the prescribed fee.
- (3) An application for an additional commercial operator under subsection (1) is to be accompanied by an authorisation, in a form approved by the Director, from the proposed additional commercial operator of the sexual services business, allowing the Director to obtain –
- (a) if there is a criminal record for that proposed additional commercial operator, a copy of that criminal record; and
 - (b) an opinion from the Commissioner of Police under section 8 as to whether the proposed additional commercial operator is a fit and proper person for the purposes of this Act.

*Division 3 – Notices***13. Duty to notify charge for disqualifying offence**

If a commercial operator is charged with a disqualifying offence, he or she must, within 7 days, give written notice to the Director of the details of the charge.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.

14. Notice of change of information

(1) In this section –

“registration details” means any information provided to the Director in an application for registration, an application for transfer or an application for an additional commercial operator.

(2) If there is any change in the registration details relating to a commercial operator or a self-employed sex worker, he or she must give written notice of that change to the Director.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

(3) Written notice under subsection (2) is to be given within 7 days after the day on which the registration details changed.

(4) If there are 2 or more commercial operators or 2 self-employed sex workers involved in the

sexual services business, it is sufficient if one of them complies with this section.

15. Notice of ceasing to operate

- (1) If a sexual services business ceases to operate, the commercial operator or a self-employed sex worker who was involved in the sexual services business immediately before it ceased to operate must give written notice of the cessation to the Director within 30 days.

Penalty: Fine not exceeding 10 penalty units.

- (2) If there were 2 or more commercial operators or 2 self-employed sex workers involved in the sexual services business, it is sufficient if one of them complies with this section.

Division 4 – Registration number

16. Issue of registration number

- (1) Subject to this Division, on the registration of a sexual services business, the Director is to issue a registration number in respect of that sexual services business.
- (2) A registration number previously issued under subsection (1) is to remain in force if the Director receives –
 - (a) an application for transfer; or
 - (b) an application for an additional commercial operator.

17. Duty to state registration number in advertisements

In any advertisement relating to a sexual services business, the commercial operator or a self-employed sex worker involved in the sexual services business must state the registration number of the sexual services business.

Penalty: Fine not exceeding 20 penalty units.

18. Offence to display false registration number

A commercial operator or a self-employed sex worker must not display in any advertisement relating to, or in connection with, a sexual services business any registration number other than the registration number issued under section 16 of that sexual services business.

Penalty: Fine not exceeding 50 penalty units.

PART 3 – PLANNING CONTROLS**19. Application of *Land Use Planning and Approvals Act 1993***

Nothing in this Act exempts a person from any requirement to obtain a permit under the *Land Use Planning and Approvals Act 1993* in respect of the operation of a sexual services business.

PART 4 – OFFENCES**20. Disqualifying offences**

- (1) A person who has been convicted of a disqualifying offence must not –
 - (a) act as a commercial operator; or
 - (b) enter or remain on the premises of a sexual services business otherwise than as a bona fide client or as a sex worker.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (2) Subsection (1) does not apply to a person who is lawfully acting as a commercial operator at the time he or she is convicted of a disqualifying offence until 30 days after the date of that conviction.
- (3) Any commercial operator (in this section called “the joint commercial operator”) who is involved in the same sexual services business as a person mentioned in subsection (1) commits an offence if –
 - (a) the commercial operator mentioned in subsection (1) becomes, or continues 30 days after the date of conviction to be, a commercial operator in the sexual services business; and
 - (b) the joint commercial operator knows or must reasonably know that the person who is acting as or continuing as a

commercial operator is a person who has been convicted as mentioned in subsection (1); and

- (c) the joint commercial operator allows that person who has been convicted as mentioned in subsection (1) to be, or to remain on, the premises of a sexual services business otherwise than as a bona fide client or sex worker when the joint commercial operator knows or must reasonably know that the person has been convicted of a disqualifying offence.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.

21. Inducing provision of sexual services

- (1) A person must not, for the purpose of inducing any person to provide, or to continue to provide, sexual services in the course of a sexual services business –
 - (a) intimidate, assault or threaten to assault any person; or
 - (b) supply or offer to supply a prohibited plant, prohibited substance, narcotic substance or restricted substance, as defined in the *Poisons Act 1971*, to any person; or
 - (c) supply or offer to supply a controlled substance, as defined in the *Misuse of Drugs Act 2001*, to any person; or

- (d) administer or cause another person to take any drug or other substance with the intent to stupefy or overpower that person; or
- (e) make a false representation or otherwise act fraudulently; or
- (f) threaten to cause a person to be deported; or
- (g) exert any other form of unreasonable or unfair pressure on any person.

Penalty: Fine not exceeding 1 500 penalty units or imprisonment for a term not exceeding 15 years.

- (2) A person must not, for the purpose of inducing any person to provide or continue to provide him or her with any fee or reward derived, directly or indirectly, from the provision of sexual services –
- (a) intimidate, assault or threaten to assault any person; or
 - (b) supply or offer to supply a prohibited plant, prohibited substance, narcotic substance or restricted substance, as defined in the *Poisons Act 1971*, to any person; or
 - (c) supply or offer to supply a controlled substance, as defined in the *Misuse of Drugs Act 2001*, to any person; or
 - (d) administer or cause another person to take any drug or other substance with the

intent to stupefy or overpower that person; or

- (e) make a false representation or otherwise act fraudulently; or
- (f) threaten to cause a person to be deported; or
- (g) exert any other form of unreasonable or unfair pressure on any person.

Penalty: Fine not exceeding 1 500 penalty units or imprisonment for a term not exceeding 15 years.

22. Soliciting and accosting

- (1) A person must not, for the purpose of offering or procuring sexual services, accost any person, or solicit or loiter, in a public place.

Penalty: Fine not exceeding 20 penalty units.

- (2) A person must not, for the purpose of offering or procuring sexual services, accost a child.

Penalty: Fine not exceeding 300 penalty units or imprisonment for a term not exceeding 3 years, or both.

23. Participation of children

- (1) A person must not procure or otherwise cause or permit a child to provide sexual services in the course of a sexual services business.

Penalty: Imprisonment for a term not exceeding 15 years.

- (2) A person must not receive a fee or reward that he or she knows, or must reasonably be expected to know, is derived, directly or indirectly, from sexual services provided by a child in the course of a sexual services business.

Penalty: Imprisonment for a term not exceeding 15 years.

- (3) Subsection (2) does not apply to a fee or reward received in the ordinary course of a business that is not a sexual services business.
- (4) In a proceeding for an offence against subsection (1) –
- (a) it is not necessary for the prosecution to prove that the accused knew that the person concerned was a child; and
 - (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 of or over the age of 18 years.

24. Extra-territorial application of offences

- (1) If –

- (a) a person does an act or thing referred to in section 21 or 23 outside, or partly outside, Tasmania; and
 - (b) there is a real and substantial link, within the meaning of subsection (2), between doing the act or thing and Tasmania –
section 21 or 23 applies to that act or thing as if it had been done wholly within Tasmania.
- (2) For the purpose of subsection (1), there is a real and substantial link with Tasmania –
- (a) if a significant part of the conduct relating to, or constituting, the doing of the act or thing occurred in Tasmania; or
 - (b) where the act or thing was done wholly outside Tasmania or partly within Tasmania, if substantial harmful effects arose in Tasmania.

25. Child on premises

- (1) A commercial operator of a sexual services business must not permit a child to be on any premises used for the operation of the sexual services business.

Penalty: Fine not exceeding 50 penalty units.

- (2) A self-employed sex worker must not, without reasonable excuse, permit a child to be on any premises used by the self-employed sex worker while sexual services are being provided on those premises.

Penalty: Fine not exceeding 20 penalty units.

26. Commercial operator to be present

A commercial operator of a sexual services business must be present on the premises of that sexual services business at all times when any sexual services are being provided.

Penalty: Fine not exceeding 20 penalty units.

27. Commercial operator to adopt and promote safe sex practices

- (1) A commercial operator must take all reasonable steps –
 - (a) to ensure that no person provides or receives, in the course of a sexual services business, sexual services that involve sexual intercourse, or any other activity with a similar or greater risk of transmitting a sexually transmissible infection, unless a prophylactic is used; and
 - (b) to provide health information, whether oral or written, to sex workers and clients; and
 - (c) to minimise the risk of sex workers and clients acquiring or transmitting a sexually transmissible infection; and
 - (d) to ensure that a prohibited substance as defined in the *Poisons Act 1971* or a controlled substance as defined in the *Misuse of Drugs Act 2001* is not used on the relevant premises; and

- (e) to ensure that no person provides sexual services in the course of a sexual services business while affected by –
- (i) a prohibited substance as defined in the *Poisons Act 1971*; or
 - (ii) a controlled substance as defined in the *Misuse of Drugs Act 2001*.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 500 penalty units; or
 - (b) an individual, a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 5 years, or both.
- (2) Sections 9 and 14B of the *Workplace Health and Safety Act 1995* do not apply in respect of the matters referred to in this section.

28. Sex workers and clients to adopt safe sex practices

- (1) A person must not, in the course of a sexual services business, provide or receive any sexual services that involve sexual intercourse, or any other activity with a similar or greater risk of acquiring or transmitting a sexually transmissible infection, unless a prophylactic is used.

Penalty: Fine not exceeding 500 penalty units.

- (2) A person, while providing or receiving, in the course of a sexual services business, sexual

services that involve sexual intercourse, or any other activity with a similar or greater risk of acquiring or transmitting a sexually transmissible infection, must not –

- (a) discourage the use of prophylactics; or
- (b) misuse, damage or interfere with the efficacy of any prophylactic used; or
- (c) continue to use a prophylactic that he or she knows, or could reasonably be expected to know, is damaged.

Penalty: Fine not exceeding 500 penalty units.

- (3) A person who provides or receives sexual services in the course of a sexual services business must take all reasonable steps to minimise the risk of acquiring or transmitting a sexually transmissible infection.

Penalty: Fine not exceeding 500 penalty units.

- (4) Sections 13, 14B, 16 and 20 of the *Workplace Health and Safety Act 1995* do not apply in respect of the matters referred to in this section.

29. Requirement to display this Act

- (1) A commercial operator must display in a prominent position on the premises, if any, on which a sexual services business is operated –
 - (a) a copy of this Act, the regulations and any code of practice approved under section 36; and

- (b) the registration number issued in respect of that sexual services business; and
- (c) any other information that the Director considers necessary for the purposes of this Act.

Penalty: Fine not exceeding 20 penalty units.

- (2) A sex worker, when providing sexual services in the course of a sexual services business operated by a commercial operator otherwise than at the premises of that sexual services business, must –
 - (a) carry a card clearly displaying the registration number of the sexual services business; and
 - (b) show the card to a client if requested to do so.

Penalty: Fine not exceeding 20 penalty units.

- (3) A self-employed sex worker, when providing sexual services in the course of his or her business, must –
 - (a) carry a card clearly displaying the registration number of the sexual services business; and
 - (b) show the card to a client if requested to do so.

Penalty: Fine not exceeding 20 penalty units.

PART 5 – REVIEWS

30. Reviews

- (1) A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of –
 - (a) a refusal to register, or approve the transfer of, a sexual services business under section 7(2) or section 8(2); or
 - (b) a suspension or cancellation of the registration of a sexual services business under section 7(3) or (5); or
 - (c) a refusal to approve an additional commercial operator under section 7(2) or section 8(2).
- (2) For the purpose of applying for a review, the date when the decision which is the subject of the application was made is taken to be the day on which a notice is received under section 7(6) or section 9(2).
- (3) The following provisions of the *Magistrates Court (Administrative Appeals Division) Act 2001* do not apply to an application to the Magistrates Court (Administrative Appeals Division) for a review of a decision referred to in subsection (1):
 - (a) Division 1 of Part 4;
 - (b) section 21.
- (4) In determining an application for a review of a decision referred to in subsection (1), the

Magistrates Court (Administrative Appeals Division) –

- (a) in order to prevent the disclosure of any criminal intelligence report or other information referred to in section 8(3), is to receive evidence and hear argument in the absence of the public, the applicant for the review and the applicant's representative; and
- (b) may hear evidence from the Commissioner of Police (or his or her nominee) in respect of any such criminal intelligence report or other information; and
- (c) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any such criminal intelligence report or information.

PART 6 – MISCELLANEOUS AND SUPPLEMENTAL**31. Power to arrest without warrant**

- (1) A police officer may arrest, without warrant, a person who the police officer reasonably believes is committing, has committed or is likely to commit an offence against section 21, 22, 23 or 25.
- (2) If a police officer or an authorised officer has reasonable grounds for believing that a person is committing, has committed or is likely to commit an offence under this Act, the police officer or the authorised officer may require that person to give his or her full name, address and date of birth.
- (3) If a police officer has requested a person under subsection (2) to give the person's full name, address and date of birth, the police officer may arrest, without warrant, that person if –
 - (a) that person refuses to give his or her full name, address or date of birth; or
 - (b) the police officer reasonably believes that any name, address or date of birth given by that person is false or incomplete.
- (4) The powers conferred by this section are in addition to the powers of a police officer under the common law.

32. Hindering or obstructing police officers or authorised persons

A person must not hinder or obstruct a police officer or authorised person acting in the exercise of powers conferred by this Act.

Penalty: In the case of –

- (a) a first offence, a fine not exceeding 25 penalty units; and
- (b) a second or subsequent offence, a fine not exceeding 50 penalty units.

33. Entry by police

- (1) A police officer of the rank of sergeant or above or an authorised person may enter without warrant on the premises of a sexual services business if he or she believes on reasonable grounds that –
 - (a) an offence against section 21, 22, 23 or 25 has been, is being or is likely to be committed on the premises; and
 - (b) it is necessary to enter on the premises for the purpose of preventing the commission or repetition of that offence, investigating that offence or apprehending an offender.
- (2) A police officer of the rank of sergeant or above or an authorised person may enter without warrant on any premises if he or she believes on

reasonable grounds that the premises are being used for the purposes of an unregistered sexual services business.

- (3) A police officer of the rank of sergeant or above or an authorised person may use reasonable force if necessary to enter on premises under subsection (1) or (2) and may be accompanied by another person or persons if necessary for the purposes of the entry.
- (4) The powers conferred by this section may be exercised by a police officer below the rank of sergeant if it is necessary to do so in order to prevent the imminent commission of an offence against section 21, 22, 23 or 25.

34. Delegation

The Director may, by instrument in writing, delegate any of his or her functions or powers under this Act, other than this power of delegation, to any other State Service officer or State Service employee.

35. False or misleading information

A person must not, in respect of an application for registration, an application for transfer, an application for an additional commercial operator or any notice given to the Director under this Act –

- (a) give information that the person knows is false or misleading; or

- (b) omit any matter from the notice or application knowing that without that matter the notice or application is false or misleading; or
- (c) fail to disclose relevant information of which the person has knowledge.

Penalty: Fine not exceeding 50 penalty units.

36. Code of practice

- (1) For the purpose of providing practical guidance to commercial operators, self-employed sex workers and any other persons on whom a duty is imposed under this Act, the Minister may approve and publish a code of practice consistent with this Act and relating to the conduct of a sexual services business.
- (2) A code of practice may consist of any code, standard, rule, specification or provision relating to workplace health and safety formulated, prepared or adopted by the Director and may apply, incorporate or refer to any document formulated, amended or published from time to time by any body or authority whether in Tasmania or elsewhere.
- (3) The Minister may approve any revision of the whole or a part of a code of practice or revoke a code of practice.
- (4) The Minister must give notice in the *Gazette* and in 3 daily newspapers published and circulating generally in Tasmania of –
 - (a) the approval of a code of practice; or

- (b) the approval of the revision of the whole or a part of a code of practice; or
 - (c) the revocation of a code of practice.
- (5) A notice under subsection (4) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.
- (6) The Director must cause to be made available for inspection by members of the public without charge during normal office hours a copy of –
 - (a) each approved code of practice; and
 - (b) if an approved code of practice has been revised and the revision has been approved, the approved code of practice as so revised; and
 - (c) if an approved code of practice applies, incorporates or refers to any other document, that other document.
- (7) An approved code of practice and any approved revision of a code of practice have effect on the day on which notice of the approval is published in the *Gazette*.
- (8) An approved code of practice ceases to have effect on the day on which notice of the revocation of the code is published in the *Gazette*.
- (9) A person is not liable to any civil or criminal proceedings merely because he or she has failed to observe any provision of a code of practice approved under this section.

37. Evidentiary provision as to code of practice

If, in any proceedings under this Act, it is alleged that a person contravened a provision of this Act in respect of which an approved code of practice was in effect at the time of the alleged contravention, a document purporting to be that code of practice is admissible in evidence in those proceedings.

38. Application of section 22 of *Workplace Health and Safety Act 1995*

Section 22 of the *Workplace Health and Safety Act 1995* does not apply to a sexual services business registered under this Act.

39. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may be made in relation to one or more of the following:
 - (a) fees and charges to be paid in respect of any matter under this Act;
 - (b) the workplace health and safety of sexual services businesses;
 - (c) the inspection of sexual services businesses to ensure compliance with this Act and any relevant code of practice;

- (d) the size, form and content of advertisements relating to sexual services businesses.
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.

40. Administration of Act

Until provision is made in respect of this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to that Minister in respect of the administration of this Act is the Department of Justice.

PART 7 – CRIMINAL CODE ACT 1924 AMENDED**41. Principal Act**

In this Part, the *Criminal Code Act 1924** is referred to as the Principal Act.

42. Schedule 1 amended (*Criminal Code*)

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting section 128;
- (b) by omitting from section 143(1) “common bawdy-house,”;
- (c) by omitting subsection (2) from section 143.

*No. 69 of 1924

PART 8 – POLICE OFFENCES ACT 1935 AMENDED**43. Principal Act**

In this Part, the *Police Offences Act 1935** is referred to as the Principal Act.

44. Section 8 amended (Begging, imposition, prostitution, &c.)

Section 8 of the Principal Act is amended as follows:

- (a) by omitting paragraph (c) from subsection (1);
- (b) by omitting paragraphs (b) and (c) from subsection (1A).

45. Section 10 amended (Disorderly houses)

Section 10(1) of the Principal Act is amended by omitting paragraph (b).

46. Section 57 amended (Power of police officers to enter certain places)

Section 57(1)(d) of the Principal Act is amended as follows:

- (a) by omitting “common brothel or house for the reception of prostitutes, or any”;

*No. 44 of 1935

s. 46

No.

Sex Industry Regulation

2005

(b) by omitting “loose and”.

SCHEDULE 1 – DISQUALIFYING OFFENCES

Section 3

**PART 1 – OFFENCES UNDER TASMANIAN AND
COMMONWEALTH LAWS**

1. A provision of Part 8 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*.
2. Divisions 2 and 4 of Part IIIA and section 85ZE of the *Crimes Act 1914* of the Commonwealth.
3. Division 270 of Chapter 8, Division 360 of Chapter 9 and Division 400 of Chapter 10 of the *Criminal Code Act 1995* of the Commonwealth.
4. Sections 9, 10, 11, 24, 25, 26, 48, 56, 81, 84 and 85 of the *Firearms Act 1996*.
5. Section 20 of the *HIV/AIDS Preventive Measures Act 1993*.
6. Section 106I of the *Justices Act 1959*.
7. Sections 232A, 233(1) or 233A of the *Migration Act 1958* of the Commonwealth.

8. Sections 20, 21, 26, 27 and 28 of the *Misuse of Drugs Act 2001* and an offence under Part 2 of that Act.
9. Sections 46, 47, 55 and 83B of the *Poisons Act 1971*.
10. Sections 7A and 35(1) and (2) of the *Police Offences Act 1935*.
11. Section 51 of the *Public Health Act 1997*.
12. A law of the Commonwealth, a State or a Territory corresponding to an offence mentioned in Part 1, 3 or 4.
13. A law of the Commonwealth corresponding to section 299 or 300 of the *Criminal Code* relating to an offence mentioned in item 7.

PART 2 – OFFENCES UNDER FOREIGN LAWS

1. Kinds of offences

- (1) An offence that consists of or involves –
 - (a) murder; or
 - (b) torture, abduction or kidnapping; or
 - (c) sexual assault; or

- (d) sexual servitude; or
 - (e) pornography involving a child; or
 - (f) violence, intimidation or coercion relating to prostitution; or
 - (g) causing serious physical harm to another person; or
 - (h) money laundering; or
 - (i) illegal immigration; or
 - (j) supplying illegal drugs; or
 - (k) drug trafficking; or
 - (l) identity fraud.
- (2) An offence that consists of, or involves, in respect of an offence mentioned in subclause (1) –
- (a) aiding and abetting the commission of the offence; or
 - (b) being an accessory after the fact; or
 - (c) attempting to, inciting a person to or conspiring to commit the offence.

PART 3 – OFFENCES UNDER THIS ACT

Column 1	Column 2	Column 3
Item	Section	Description
1.	section 21	duress used to induce person to provide sexual services

Column 1	Column 2	Column 3
2.	section 22(2)	accost child for the purpose of offering or procuring sexual services
3.	section 23(1)	cause or permit child to provide sexual services
4.	section 23(2)	receive proceeds of child prostitution
5.	section 25	permit child on premises of sexual services business
6.	section 27	commercial operator not adopt and promote safe sex practices

PART 4 – OFFENCES UNDER THE *CRIMINAL CODE*

Item number	Part	Chapter	Section
1.	IV	XIV	All
2.	V	XVII	All
3.	V	XVIII	168, 169, 170, 172, 175, 176, 178, 178A, 178B
4.	V	XIX	All
5.	V	XX	All
6.	VI	XXIV, XXV, XXVI, XXVII	All

Item number	Part	Chapter	Section
7.	VI	XXXI	267, 268, 269, 269A, 276, 276AA
8.	VI	XXXIIB	All
9.	VIII	XXXV	All sections which relate to charges listed elsewhere in this Part