

TASMANIA

SEX INDUSTRY OFFENCES BILL 2005

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SEX INDUSTRY OFFENCES BILL 2005

(Brought in by Lin Thorp)

A BILL FOR

An Act to impose certain restrictions on the operation of sexual services businesses in order to protect children and sex workers from exploitation in the sex industry, to safeguard public health, to amend the *Criminal Code Act 1924*, the *Evidence (Children and Special Witnesses) Act 2001*, the *Justices Act 1959* and the *Police Offences Act 1935* and for related purposes

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 Offences Act 2005*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

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

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

“commercial operator” means –

- (a) a person who is not a self-employed sex worker and who, whether alone or with another person, operates, owns, manages 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;

“commercial sexual services business” means a sexual services business operated or managed by a commercial operator;

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

“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 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 a reference to –
- (a) a person who determines any one or more of the following:
 - (i) when or where a sex worker will work;
 - (ii) the conditions in which a sex worker will work;
 - (iii) the amount of money, or proportion of an amount of money, that a sex worker will receive as payment for sexual services; or
 - (b) a person who employs, supervises or is in day-to-day control of any person referred to in paragraph (a).

**PART 2 – OFFENCES IN RESPECT OF SEXUAL
SERVICES BUSINESSES**

**4. Persons not to be commercial operators of sexual
services businesses**

A person must not be a commercial operator of a sexual services business.

Penalty: Fine not exceeding 800 penalty units or imprisonment for a term not exceeding 8 years, or both.

5. Persons not to receive commercial sexual services

(1) In this section –

“commercial sexual services” means sexual services provided by a sex worker in a commercial sexual services business.

(2) A person must not knowingly receive commercial sexual services.

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

(3) Proceedings may not be instituted against a person for knowingly receiving commercial sexual services contrary to subsection (2) –

(a) if the person gives evidence in court, if called to do so by the prosecution, that he or she received those commercial sexual services; or

- (b) if the person agrees to give evidence in court, that he or she received those commercial sexual services, but is not called to do so by the prosecution.
- (4) For the purpose of any time limit imposed by any Act on the taking of proceedings under subsection (2), the period within which proceedings may be instituted commences on the day the alleged offender is called by the prosecution to give evidence in court.

6. Prosecution witnesses not required to disclose sources of information

A person who is giving evidence for the prosecution in any proceedings for an offence against this Act is not required to disclose –

- (a) that he or she has received any information; or
- (b) the nature of any information that he or she has received; or
- (c) the name of a person from whom the witness has received any information.

7. Offences against sex workers

- (1) A person must not –
 - (a) intimidate, assault or threaten to assault a sex worker; 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 a sex worker; or

- (c) supply or offer to supply a controlled substance, as defined in the *Misuse of Drugs Act 2001*, to a sex worker; or
- (d) administer to a sex worker, or cause a sex worker to take, any drug or other substance with the intent to stupefy or overpower that sex worker.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 5 years, or both.

- (2) A person must not, for the purpose of inducing any person to provide or continue to provide sexual services in a sexual services business or 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 in 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 to another person, 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, or both.

- (3) A person who is indicted for but found not guilty of an offence under subsection (2) may be convicted of an offence under subsection (1) if the evidence in the proceedings on the indictment establishes that the person committed an offence under subsection (1).

8. Soliciting and accosting

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

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

9. Participation of children

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

10. Extra-territorial application of offences

(1) If –

- (a) a person does an act or thing referred to in section 7 or 9 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 7 or 9 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.

11. Children on premises

- (1) A self-employed sex worker must not, without reasonable excuse, proof of which lies on that sex worker, permit a child under his or her care 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.

- (2) A person must not, without reasonable excuse, proof of which lies on that person, permit a child under his or her care to be on any premises used by that person while he or she is receiving sexual services from a self-employed sex worker.

Penalty: Fine not exceeding 20 penalty units.

12. Sex workers and clients to adopt safe sex practices

- (1) A person must not, in 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 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 a sexual services business must take

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all reasonable steps to minimise the risk of acquiring or transmitting a sexually transmissible infection.

Penalty: Fine not exceeding 500 penalty units.

PART 3 – POWERS OF POLICE OFFICERS**13. 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 4, 7, 8, 9 or 14.
- (2) If a police 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 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.

14. Hindering or obstructing police officers

A person must not hinder or obstruct a police officer 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.

15. Entry by police officers

- (1) A police officer of the rank of sergeant or above may enter premises without warrant if he or she believes on reasonable grounds that –
 - (a) an offence against section 4, 7, 8(2) or 9 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) For the purposes of subsection (1)(b), investigating an offence includes –
 - (a) searching premises; and
 - (b) photographing premises; and

- (c) visually recording premises; and
 - (d) seizing evidence.
- (3) A police officer of the rank of sergeant or above may use reasonable force if necessary to enter on premises under subsection (1) and may obtain any assistance that is reasonable and necessary in the circumstances.
- (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 4, 7, 8(2) or 9.
- (5) As soon as practicable after a police officer below the rank of sergeant exercises a power conferred by this section, he or she must notify a police officer of the rank of sergeant or above of the exercise of that power.

16. Premises not to be used for commercial sexual services businesses

- (1) If the Commissioner of Police reasonably believes that a person is operating or managing a commercial sexual services business in or from premises, the Commissioner of Police may serve an order on any one or more of the following persons requiring the person to cease operating or managing the commercial sexual services business:
 - (a) the owner of those premises;

- (b) a person who the Commissioner of Police reasonably believes leases or otherwise occupies the premises.
- (2) If the owner of premises served with an order under subsection (1)(a) leases the premises referred to in the order to a third party or allows a third party to occupy the premises, he or she must immediately –
 - (a) serve the order on the third party; and
 - (b) inform the Commissioner of Police of the name and address of the third party.

Penalty: Fine not exceeding 100 penalty units.

- (3) If a person served with an order under subsection (1)(b) is not the occupier of the premises referred to in the order, he or she must immediately notify the Commissioner of Police of that fact.
- (4) The service of an order under subsection (1) or (2) allows either party to a lease agreement to terminate the lease agreement without being in breach of that agreement.
- (5) If, 7 days after the service of an order under subsection (1), the Commissioner of Police reasonably believes that a commercial sexual services business is still operating in or from the premises referred to in the order, he or she may –
 - (a) issue a notice forbidding entry to the premises, without the permission of the Commissioner of Police; and

- (b) cause a copy of the notice referred to in paragraph (a) to be affixed to those premises; and
 - (c) publish a copy of that notice in the public notices section of a daily newspaper circulating in the area where the premises are located.
- (6) A person must comply with a notice affixed to premises under subsection (5).

Penalty: Fine not exceeding 500 penalty units.
- (7) It is a defence to a charge under subsection (6) for a person to establish that the premises are the person's usual residential premises.
- (8) A person must not remove or tamper with a notice referred to in subsection (5).

Penalty: Fine not exceeding 500 penalty units.
- (9) If the Commissioner of Police is satisfied that a commercial sexual services business is not, or is no longer, operating in or from premises in respect of which a notice has been issued under subsection (5)(a), he or she must revoke the issue of the notice.
- (10) If the Commissioner of Police revokes the issue of a notice under subsection (9), he or she may –
 - (a) cause the notice to be removed from those premises; and
 - (b) publish a revocation of the notice in the public notices section of a daily newspaper circulating in the area where the premises are located.

17. Revocation of orders to cease operating commercial sexual services businesses

- (1) A person on whom an order is served under section 16(1) or (2) may apply to a magistrate for a revocation of the order.
- (2) For the purpose of an application under subsection (1), the Commissioner of Police is taken to be the respondent to the application.
- (3) In the hearing of an application for revocation of an order, a magistrate may do the following if the Commissioner of Police requests the magistrate to do so:
 - (a) hear evidence from the Commissioner of Police, or his or her nominee, in respect of any criminal intelligence upon which his or her reasonable belief under section 16(1) was formed, in the absence of the public, the applicant and the applicant's representative in order to prevent the disclosure of that criminal intelligence;
 - (b) ensure that, in giving the reasons for his or her decision or otherwise, the magistrate does not disclose the existence or content of any such criminal intelligence.
- (4) A magistrate may revoke an order if the applicant establishes that a commercial sexual services business is not operating in or from the premises referred to in the order.

18. Power of police officers at or above rank of sergeant to require financial information

- (1) A police officer at or above the rank of sergeant who reasonably believes that a person is a commercial operator may require the person to state the source of any income including that appearing in any financial records relating to the person.
- (2) A person must not, in respect of any information given to a police officer under subsection (1) –
 - (a) give information that the person knows is false or misleading; or
 - (b) fail to give relevant information of which the person has knowledge.

Penalty: Fine not exceeding 10 penalty units.

PART 4 – MISCELLANEOUS AND SUPPLEMENTAL**19. Protection from liability**

No liability attaches to the Crown for an act or omission done in good faith in the performance or exercise, or purported performance or exercise, of a function, power or duty under this Act.

20. Regulations

The Governor may make regulations for the purposes of this Act.

21. 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 5 – CRIMINAL CODE ACT 1924 AMENDED**22. Principal Act**

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

23. Principal Act amended

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 6 – EVIDENCE (CHILDREN AND SPECIAL
WITNESSES) ACT 2001 AMENDED**

24. Principal Act

In this Part, the *Evidence (Children and Special Witnesses) Act 2001** is referred to as the Principal Act.

25. Section 3 amended (Interpretation)

The definition of “prescribed proceeding” in section 3 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “35(3) of the *Police Offences Act 1935*” and substituting “35(3) of the *Police Offences Act 1935*; or”;
- (b) by inserting the following paragraph after paragraph (d):
 - (e) a proceeding in which a person has been charged with a crime under section 4, 7, 8(2) or 9 of the *Sex Industry Offences Act 2005*;

*No. 79 of 2001

PART 7 – JUSTICES ACT 1959 AMENDED**26. Principal Act**

In this Part, the *Justices Act 1959** is referred to as the Principal Act.

27. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting after paragraph (b) in the definition of “affected person” the following paragraph:

- (c) a crime under section 4, 7, 8(2) or 9 of the *Sex Industry Offences Act 2005*;

*No. 77 of 1959

PART 8 – POLICE OFFENCES ACT 1935 AMENDED**28. Principal Act**

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

29. 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);
- (c) by omitting subsection (2).

30. Section 10 amended (Disorderly houses)

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

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

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

*No. 44 of 1935

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