

1992

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY



24/11/92

LEGISLATIVE  
LIBRARY

(As presented)

(Mr Moore)

Prostitution Bill 1992

A BILL  
FOR

An Act to regulate certain aspects of prostitution

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I – PRELIMINARY

Short title

1. This Act may be cited as the *Prostitution Act 1992*.

Interpretation

2. (1) In this Act, unless the contrary intention appears –  
"brothel" means premises used or to be used for the purpose of prostitution, but does not include premises–
  - (a) used by one prostitute only, or
  - (b) at which accommodation is normally provided on a commercial basis if the prostitution occurs pursuant to an arrangement initiated elsewhere;

"child" means a person who has not attained the age of 18 years;

"commercial sexual services" means sexual services provided for monetary or material reward (irrespective of whether the reward is, or is to be, paid or given to the prostitute or another person);

- "drug of dependence" means a drug of dependence or a prohibited substance as defined in the *Drugs of Dependence Act 1989*;
- "escort agency" means a business of arranging prostitution, being a business carried on at premises other than a brothel;
- "premises" includes a part of premises;
- "prophylactic" means a condom or other device that is adequate to prevent the transmission of a sexually transmitted disease;
- "prostitute" means a person who provides commercial sexual services;
- "prostitution" means the provision of commercial sexual services;
- "public place" means any street, road, public park within the meaning of the *Public Parks Act 1928*, reserve or any building, premises or other place which the public are entitled to use or which is open to, or used by, the public (whether on payment of money or otherwise);
- "sexually transmitted disease" has the same meaning as in the *Sexually Transmitted Diseases Act 1956*;

(2) A reference in this Act to employing a prostitute shall be read as including a reference to entering into a contract for services with a prostitute for the provision of commercial sexual services.

#### Application of Act to escort agencies

3. (1) This Act applies in relation to an escort agency as if the premises on which the business is carried on were a brothel.
- (2) For the purposes of the application of this Act by virtue of subsection (1) –
- (a) commercial sexual services provided as a consequence of arrangements made in the course of the business of the escort agency shall be taken to have been provided on the premises at which the business is carried on; and
  - (b) a prostitute who provides commercial sexual services as a consequence of those arrangements shall be taken to be employed at the premises by the operator of the escort agency.

## PART II – OFFENCES

### Duress

4. (1) A person shall not, for the purpose of inducing a person to provide or to continue to provide commercial sexual services –
- (a) intimidate, assault or threaten to assault any person;

(b) supply or offer to supply a drug of dependence to any person; or

(c) make a false representation or otherwise act fraudulently.

(2) A person shall not –

(a) intimidate, assault or threaten to assault a person; or

(b) supply or offer to supply a drug of dependence to a person;

for the purpose of inducing any person to provide or continue to provide him or her with payment derived, directly or indirectly, from the provision of commercial sexual services.

Penalty: Imprisonment for 6 years.

#### **Operating etc. a brothel**

5. A person shall not operate or manage a brothel which is situated other than in –

(a) the Division of Hume in Tuggeranong District;

(b) the Division of Fyshwick in Canberra Central District;

(c) the Division of Mitchell in Gunghalin District; or

(d) any other prescribed Division.

Penalty: \$10,000 or imprisonment for 12 months.

#### **Soliciting**

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

Penalty: \$2,000 or imprisonment for 4 months.

(2) A person shall not, for the purpose of offering or procuring commercial sexual services, accost a child in a public place.

Penalty: Imprisonment for 3 years.

#### **Participation of minors**

7. A person shall not cause or permit a child to provide commercial sexual services.

Penalty: Imprisonment for 7 years.

#### **Proceeds of child prostitution**

8. (1) A person shall not receive a payment that he or she knows, or could reasonably be expected to have known, is derived, directly or indirectly, from commercial sexual services provided by a child.

Penalty: Imprisonment for 7 years.

---

(2) Subsection (1) does not apply in relation to a payment received in the ordinary course of a business other than prostitution.

#### Age of child – burden of proof

9. A person is not guilty of an offence against subsection 6 (2), section 7 or subsection 8 (1) if he or she adduces evidence that he or she –

- (a) had taken all reasonable measures to find out the age of the child concerned; and
- (b) believed on reasonable grounds that the child had attained 18 years of age;

and that evidence is not rebutted by the prosecution.

#### Child on premises

10. The operator or manager of a brothel shall not, without reasonable excuse, permit a child to be in the brothel.

Penalty: \$2,000

#### Advertising

11. A person shall not publish, or cause to be published, an advertisement, in printed or electronic form, which offers employment as a prostitute, or the provision of sexual services, at a brothel or escort agency.

Penalty: \$2,000.

#### Infected persons

12. (1) The operator or manager of a brothel or escort agency shall not permit a prostitute infected with a sexually transmitted disease to provide commercial sexual services at the brothel or escort agency.

Penalty: \$2,000.

(2) It is a defence to a prosecution under subsection (1) if it is established that, at the time of the offence, the licensee believed on reasonable grounds –

- (a) that the prostitute had been undergoing regular medical examinations for the purposes of determining whether the prostitute was infected with a sexually transmitted disease; and
- (b) that the prostitute was not infected with a sexually transmitted disease.

(3) In paragraph (2) (a) –

"regular" means not less frequently than once in any two week period.

### Medical examination

13. (1) The operator or manager of a brothel or escort agency shall take reasonable steps to ensure that the fact of a prostitute's attendance at a medical examination or the result of such an examination is not used for the purpose of inducing a person to believe that the prostitute is not infected with a sexually transmitted disease.

(2) A person shall not, for the purpose of prostitution, use his or her attendance at a medical examination or the result of such an examination for the purpose of inducing a person to believe that he or she is not infected with a sexually transmitted disease.

Penalty: \$2,000

### Use of prophylactics

14. (1) The operator or manager of a brothel or escort agency shall take reasonable steps to ensure that no person provides or receives commercial sexual services at the brothel or escort agency, being service which involve vaginal, oral or anal penetration by any means, unless a prophylactic is used.

Penalty: \$5,000

(2) The operator or manager of a brothel shall not discourage the use of prophylactics at the brothel.

Penalty: \$7,500

(3) A person shall not provided or receive commercial sexual services at a brothel or escort agency, being services which involve vaginal, oral or anal penetration by any means, unless a prophylactic is used.

Penalty (for an offence against subsection (3)): \$5,000

## PART III - MISCELLANEOUS

### Regulations

15. (1) The Executive may make regulations, not inconsistent with this Act, prescribing matters -

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision in relation to -

- (a) the cleanliness of brothels;

- (b) the provision, use and laundering of towels and other items of linen;
- (c) hygiene standards for swimming pools, spa baths and sexual aids used in brothels;
- (d) provision of, and hygiene standards for, showers, washing and toilet facilities ~~on~~ in brothels;
- (e) the disposal of prophylactics used ~~on~~ in brothels;
- (f) the inspection of brothels for the purpose of ensuring compliance with this Act and the regulations;
- (g) the provision of information relating to sexually transmitted diseases to prostitutes employed at brothels and to clients;
- (h) safeguarding the health of clients and of prostitutes employed at brothels and escort agencies;
- (i) the provision of assistance to prostitutes in gaining access to job retraining, job skills improvement schemes and further education;
- (j) the size, form and content of advertisements relating to brothels and escort agencies; and
- (k) prescribing penalties not exceeding \$1,000 for offences against the regulations.

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Mr Moore)

Prostitution (Consequential Amendments)  
Bill 1992

---

A BILL  
FOR

An Act to amend certain laws consequent on the  
*Prostitution Act 1992*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

- 5 1. This Act may be cited as the *Prostitution (Consequential Amendments) Act 1992*.

Commencement

2. (1) Sections 1 and 2 and subsection 8 (1) commence on the day on which this Act is notified in the *Gazette*.  
10 (2) The remaining provisions commence on the day on which Part IV of the *Prostitution Act 1992* commences.

Common law offences

3. Any offence at common law relating to prostitution, including keeping a brothel or common bawdy house, ceases to have any force or effect in the Territory.
-

**Crimes Act, 1900—amendment**

4. Section 92N of the Crimes Act, 1900 of the State of New South Wales in its application in the Territory is repealed.

**Police Act 1927—amendments**

5 (1) Section 15 of the *Police Act 1927* is repealed.

(2) Section 17 of the *Police Act 1927* is amended by omitting from paragraph (1) (b) "common prostitute or".

(3) Section 21 of the *Police Act 1927* is amended by omitting from subsection (1) "common prostitute or".

10 **Police Offences Act 1930—amendments**

6. (1) Section 5 of the *Police Offences Act 1930* is amended by omitting the definition of "Brothel".

(2) Sections 18, 19, 19A and 23 of the *Police Offences Act 1930* are repealed.

15 (3) Section 34 of the *Police Offences Act 1930* is amended by omitting "prostitutes or".

**Public Health Act 1928—amendment**

7. Section 6A of the *Public Health Act 1928* is amended by inserting "or the *Prostitution Act 1991*" after "Act".

20 **Venereal Diseases Act 1956—amendments**

8. (1) Section 1 of the *Venereal Diseases Act 1956* is amended by omitting "Venereal" and substituting "Sexually Transmitted".

25 (2) Section 4 of the *Venereal Diseases Act 1956* is amended by omitting "and lymphogranuloma venereum" from the definition of "sexually transmitted disease" and substituting ", lymphogranuloma venereum and any other prescribed disease".

(3) After section 20 of the *Venereal Diseases Act 1956* the following section is inserted:

**Infecting other persons**

30 "20A. A person who is infected with a sexually transmitted disease

shall not knowingly pass that infection to another person.

Penalty: \$1,000."

(4) Section 21 of the *Venereal Diseases Act 1956* is amended by  
5 omitting "which are" and substituting "required or permitted by this Act to  
be prescribed or".

1992

Please note → PROOF

LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

MINUTES OF PROCEEDINGS

No. 36

WEDNESDAY, 18 NOVEMBER 1992

---

- 1 The Assembly met at 10.30 a.m., pursuant to adjournment. The Speaker (Ms McRae) took the Chair and read the Prayer.
  - 2 **PETITIONS:** The Clerk announced that the following Members had lodged petitions for presentation:  
Mrs Grassby, from 21 residents, requesting that the Assembly reject any attempt to permit the establishment of a free-standing abortion clinic in the ACT.  
Mrs Grassby, from 12 residents, requesting that the Assembly ban X-rated videos.  
Petitions received.
  - 3 **PAPERS:** The following papers were presented, by leave:  
Petitions which do not conform with standing orders -  
Availability of X-rated material, and the possession of child pornography (156 interstate residents (Mrs Grassby) and 462 interstate residents (Mr Humphries)).
  - 4 **BUILDING (AMENDMENT) BILL (NO. 2) 1992:** Mr Moore, pursuant to notice, presented a Bill for an Act to amend the *Building Act 1972*.  
Title read by Clerk.  
Mr Moore moved - That this Bill be agreed to in principle.  
Debate adjourned (Mr Connolly - Minister for Urban Services) and the resumption of the debate made an order of the day for the next sitting.
  - 5 **REMAND CENTRES (AMENDMENT) BILL 1992:** Ms Szuty, pursuant to notice, presented a Bill for an Act to amend the *Remand Centres Act 1976*.  
Title read by Clerk.  
Ms Szuty moved - That this Bill be agreed to in principle.  
*Paper:* Ms Szuty, by leave, presented an explanatory memorandum to the Bill.  
Debate adjourned (Mr Connolly - Attorney-General) and the resumption of the debate made an order of the day for the next sitting.
  - 6 **PROSTITUTION BILL 1992:** The order of the day having been read for the resumption of the debate on the question - That this Bill be agreed to in principle -  
Debate resumed.  
Question - That this Bill be agreed to in principle - put.
-

The Assembly voted -

Ayes, 16		Noes, 1
Mr Berry	Mr Humphries	Mr Stevenson
Mrs Carnell	Mr Kaine	
Mr Connolly	Mr Lamont	
Mr Cornwell	Ms McRae	
Mr De Domenico	Mr Moore	
Ms Ellis	Ms Szuty	
Ms Follett	Mr Westende	
Mrs Grassby	Mr Wood	

And so it was resolved in the affirmative - Bill agreed to in principle.

---

*Detail stage*

Clause 1 agreed to.

*New clause -*

Mr Connolly (Attorney-General) moved that the following new clause be inserted in the Bill:  
**Commencement**

"1A. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

"(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

"(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period."

Mr Stevenson moved - That the debate be adjourned.

Question - put.

The Assembly voted -

Ayes, 1	Noes, 16	
Mr Stevenson	Mr Berry	Mr Humphries
	Mrs Carnell	Mr Kaine
	Mr Connolly	Mr Lamont
	Mr Cornwell	Ms McRae
	Mr De Domenico	Mr Moore
	Ms Ellis	Ms Szuty
	Ms Follett	Mr Westende
	Mrs Grassby	Mr Wood

And so it was negatived.

New clause agreed to.

Clause 2 -

On the motion of Mr Connolly, by leave, the following amendments were made together, after debate:

Page 1, subclause (1), insert the following definitions in their respective appropriate alphabetical positions:

"'medical examination' includes the taking of a sample of tissue, blood, urine or other bodily material for medical testing;

'operator' in relation to a brothel or escort agency, includes the owner and the person in day-to-day control of the brothel or escort agency;

'premises used by one prostitute' means premises used by not more than one prostitute other than—

- (a) premises adjacent to or, in the case of town houses, units or apartments, in the same block as, other premises that are used for prostitution;
- (b) premises the provision of commercial sexual services at which is arranged by a person (other than the prostitute) who arranges clients for other prostitutes; or
- (c) premises to which clients are referred by other prostitutes, or from which clients are referred to other prostitutes;

'sexual services' means—

- (a) an act of sexual intercourse as defined in section 92 of the *Crimes Act 1900*;
- (b) the masturbation of one person by another; or
- (c) any activity which involves the use of one person by another for his or her sexual gratification;"

Page 1, subclause (1), line 8, definition of "brothel", omit the definition, substitute the following definition:

"'brothel' means premises used or to be used for the purpose of prostitution, but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs pursuant to an arrangement initiated elsewhere;"

Page 2, subclause (1), line 15, definition of "sexually transmitted disease", omit the definition, substitute the following definition:

"'sexually transmitted disease' means—

- (a) a sexually transmitted disease within the meaning of the *Sexually Transmitted Diseases Act 1956*; or
- (b) the acquired immune deficiency syndrome in any of its stages, including infection with human immuno-deficiency virus."

Clause, as amended, agreed to.

Clause 3 -

On the motion of Mr Connolly the following amendment was made: Page 2, line 20, omit the clause, substitute the following clause:

#### Objects

- "3. The objects of the Act are as follows:
- (a) to safeguard public health;
  - (b) to promote the welfare and occupational health and safety of prostitutes;
  - (c) to protect the social and physical environment of the community by controlling the location of brothels;
  - (d) to protect children from exploitation in relation to prostitution."

Clause, as amended, agreed to.

*New Part IA -*

On the motion of Mr Connolly the following new Part IA was inserted in the Bill, after debate Page 2, line 31, after Part I insert the following new Part:

**PART IA - REGISTRATION****Registrar**

"3A. The Minister may, by instrument, appoint a person who is a public servant to be the Registrar of Brothels and Escort Agencies.

**Functions of Registrar**

"3B. (1) The functions of the Registrar are—

- (a) to maintain a register of information provided under subsection 3C (1); and
- (b) subject to subsection (2)—to make the information available for public inspection.

"(2) The Registrar shall not make available for public inspection information relating to the address of premises used by one prostitute if the prostitute normally resides on those premises.

"(3) Subsection (2) does not prevent inspection of information relating to the address of the premises by—

- (a) a police officer;
- (b) a public servant;
- (c) a prescribed person; or
- (d) a person in a prescribed class of persons;

if the Registrar is satisfied that the person wishes to inspect information relating to the address in order to perform the functions of the person's office.

**Notice of commencement**

"3C. (1) The operator of a brothel or escort agency shall not, without reasonable excuse, fail to give written notice to the Registrar of Brothels and Escort Agencies, within 7 days after—

- (a) the date of commencing operations; or
- (b) the date of commencement of this section;

whichever is later.

"(2) A notice under subsection (1) shall—

- (a) contain the following particulars with respect to the brothel or escort agency:
  - (i) its business name (if any) and address;
  - (ii) the name and residential address of the person in day-to-day control of the business;

- (iii) if the owner is a natural person—his or her name and residential address;
- (iv) if the owner is a corporation—
  - (A) its name and business address; and
  - (B) the name and residential address of each director and each shareholder; and
- (b) be accompanied by the determined fee.

“(3) Where particulars provided in a notice given under subsection (1) become inaccurate, the owner of a brothel or escort agency shall not, without reasonable excuse, fail to give written notice to the Registrar of Brothels and Escort Agencies of the change in particulars within 7 days after the date on which the particulars become inaccurate.

“(4) A person shall not, without reasonable excuse, provide false or misleading information in a notice under subsection (1) or (3).

Penalty:

- (a) in the case of a natural person—\$10,000 or imprisonment for 2 years;
- (b) in the case of a corporation—\$50,000.”.

Clause 4 agreed to.

Clause 5 -

On the motion of Mr Connolly the following amendment was made, after debate: Page 3, line 10, omit the clause, substitute the following clause:

**Operating a brothel**

“5. (1) A person shall not operate a brothel except in a prescribed location.

Penalty:

- (a) in the case of a natural person—\$10,000 or imprisonment for 12 months;
- (b) in the case of a corporation—\$50,000.

“(2) Subsection (1) does not apply to an escort agency or premises used by one prostitute.”.

Clause, as amended, agreed to.

Clause 6 -

On the motion of Mr Connolly the following amendment was made: Page 3, line 22, omit “or imprisonment for 4 months”.

Clause, as amended, agreed to.

Clauses 7 and 8, by leave, taken together and agreed to.

Clause 9 -

On the motion of Mr Connolly the following amendment was made: Page 4, line 3, omit the clause, substitute the following clause:

**Age of child—burden of proof**

“9. It is a defence to a prosecution under subsection 6 (2) or section 7 if it is established that the defendant—

- (a) took reasonable steps to ascertain the age of the child concerned; and
- (b) believed on reasonable grounds that the child had attained 18 years of age.”.

Clause, as amended, agreed to.

## Clause 10 -

On the motion of Mr Connolly the following amendment was made: Page 4, line 12, omit the clause, substitute the following clause:

**Child on premises**

"10. The operator of a brothel or escort agency shall not, without reasonable excuse, permit a child to be on the premises.

Penalty: \$2,000."

Clause, as amended, agreed to.

Clause 11 debated and negatived.

## Clause 12 -

On the motion of Mr Connolly the following amendment was made: Page 4, line 16, omit the clause, substitute the following clauses:

**Infected persons**

"12. The operator of a brothel or escort agency shall take reasonable steps to ensure that a prostitute does not provide commercial sexual services at the brothel or from the escort agency if the prostitute is infected with a sexually transmitted disease.

Penalty:

- (a) in the case of a natural person—\$10,000 or imprisonment for 12 months;
- (b) in the case of a corporation—\$50,000.

**Knowingly infecting**

"12A. A person shall not, at a brothel or elsewhere, provide or receive commercial sexual services if the person knows, or could reasonably be expected to know, that he or she is infected with a sexually transmitted disease.

Penalty: \$5,000 or imprisonment for 6 months."

Clause, as amended, agreed to.

## Clause 13 -

On the motion of Mr Connolly, by leave, the following amendments were made together:

Page 5, subclause (1), line 2, omit "or manager".

Page 5, subclause (1), line 6, after the subclause, insert the following penalty: "Penalty: \$2,000."

Page 5, line 11, add at the end the following subclauses:

(3) Subsections (1) and (2) do not preclude the use by the operator of a brothel or escort agency of an examination by a designated medical practitioner or the results of such an examination for the purpose of satisfying himself or herself that the prostitute is not infected with a sexually transmitted disease.

"(4) In subsection (3)—

designated medical practitioner' means a person registered as a medical practitioner under the *Medical Practitioners Registration Act 1930* and nominated in writing by the Medical Officer of Health for the purpose of this section."

Clause, as amended, agreed to.

## Clause 14 -

On the motion of Mr Connolly, by leave, the following amendments were made together, after debate:

Page 5, subclause (1), line 13, omit "or manager".

Page 5, subclause (1), line 15, omit "service", substitute "services".

Page 5, subclause (3), line 21, omit the subclause, substitute the following subclause:

"(3) A person shall not, at a brothel or elsewhere, provide or receive commercial sexual services that involve vaginal, oral or anal penetration by any means unless a prophylactic is used.

Penalty: \$5,000."

Page 5, line 24, add the following subclause:

"(4) A person shall not, at a brothel or elsewhere, while providing or receiving commercial sexual services that involve oral, anal or vaginal penetration—

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

Penalty (for an offence against subsection (4)): \$5,000."

Clause, as amended, agreed to.

*New clauses -*

On the motion of Mr Connolly the following new clauses were inserted in the Bill: Page 5, line 24, before clause 15, insert the following clauses in Part III:

#### **Evidentiary certificate**

"14A. (1) In proceedings for an offence against this Act, a certificate signed by the Registrar stating that on a specified date a specified brothel or escort agency was or was not registered under Part IA is evidence of the matters so stated.

"(2) For the purposes of subsection (1), a certificate that purports to be signed by the Registrar shall, unless the contrary is proved, be taken to have been so signed.

#### **Entry by police**

"14B. A police officer may enter a brothel or escort agency where the officer believes on reasonable grounds that—

- (a) an offence against section 7, 8 or 10 of this Act has been, is being or is likely to be committed on the premises; and
- (b) it is necessary to enter the premises for the purpose of preventing the commission or repetition of such an offence, investigating such an offence or apprehending an offender.

#### **Fees**

"14C. The Minister may, by notice in writing, determine fees for the purposes of this Act or the regulations."

Clause 15 -

On the motion of Mr Connolly, by leave, the following amendments were made together:

Page 6, paragraph (2) (f), line 8, insert "and escort agencies" after "brothels".

Page 6, paragraph (2) (g), line 11, insert "or from escort agencies" after "brothels".

Page 6, paragraph (2) (h), line 13, insert "from" before "escort agencies".

Clause, as amended, agreed to.

Title agreed to.

---

Question - That this Bill, as amended, be agreed to - put.



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON  
HIV, ILLEGAL DRUGS  
AND  
PROSTITUTION

INTERIM REPORT

PROSTITUTION IN THE ACT

APRIL 1991

LA  
363.44  
AUS

## 2 THE CURRENT POSITION

"The philosophy seems to have been that the male population was entitled, without sanction, to seek the services of prostitutes, but insofar as the morality or health of the community might be compromised by such activity, the target of the law was properly the purveyors and not the customers of the business."<sup>1</sup>

### Introduction

2.1 It is not illegal in the ACT to be a prostitute, nor is it illegal to engage in commercial sexual activity as a prostitute. There are no specific offences punishing those prostitutes who choose to work in brothels (*however see* paragraph 14). Nor is it illegal for a prostitute to work out of home. Procuring a person, whether by force, violence or intimidation, to engage in prostitution against their will is not a specific offence in the ACT (*however see* paragraph 17), except where the person being procured is a child under the age of 16. There are a number of offences, however, that circumscribe the conducting of prostitution in the ACT.

### The law

2.2 The primary law dealing with prostitution in the ACT is the *Police Offences Act 1930* (*see* Appendix F) which defines a brothel, but not prostitution and proscribes the managing or conducting of a brothel or allowing premises to be used as a brothel. It allows for a landlord to terminate a tenant's lease if that lease is being used as a brothel. The Act proscribes soliciting and living on the earnings of prostitution. It also requires shopkeepers and cafe proprietors not to allow prostitutes to remain on their premises.

### Brothels

#### Definition

2.3 Section 5 of the *Police Offences Act* (the Act) provides the following definitions of 'brothel':

5. In this Act, unless the contrary intention appears –

"Brothel" means –

- (a) premises, a vehicle or a caravan to which persons of opposite sexes resort for the purposes of prostitution; or
- (b) premises that are occupied or used, or a vehicle or caravan that is used, by any person or persons for the purposes of prostitution.

'Prostitution' or 'prostitute' are not defined in the Act. There are common law definitions however. The Australian Courts have proffered the following definition of "prostitution":

<sup>1</sup> Pornography and Prostitution in Canada, *op cit*, p. 403

"The ordinary meaning of 'prostitution' is 'the offering of the body to indiscriminate lewdness for hire'. The same or a similar meaning has been applied to the word 'prostitution' in criminal statutes."<sup>(2)</sup>

Managing or conducting a brothel

2.4 Section 18 of the Act provides:

18. A person who—
- (a) manages or conducts a brothel; or
  - (b) is knowingly concerned in the management or conduct of a brothel, is guilty of an offence and is punishable, upon summary conviction, by imprisonment for a period not exceeding twelve months.

For recent convictions under this section see Table 1.

Allowing premises to be used as a brothel

2.5 Section 19 of the Act provides:

19. A person who—
- (a) knowingly permits premises, a vehicle or caravan to be used as a brothel; or
  - (b) leases, lets or sublets premises, knowing that the premises are to be used as a brothel, is guilty of an offence and is punishable, upon summary conviction by imprisonment for a period not exceeding six months.

For recent convictions under this section see Table 1.

2.6 Section 19A, subsections (3) and (4) of the Act provide:

- (3) Where—
- (a) a person is convicted of an offence against section 18 of this Act;
  - (b) the offence was committed in relation to premises used or occupied by the person under a lease, sublease, tenancy, subtenancy or licence;
  - (c) the person who granted the lease, sublease, tenancy, subtenancy or licence—
    - (i) on becoming aware of the conviction of the first-mentioned person, fails to determine the lease, sublease, tenancy, subtenancy or licence; or
    - (ii) having determined the lease, sublease, tenancy, subtenancy or licence, fails to take reasonable steps to prevent the continued occupation or use of the premises by the first-mentioned person; and
  - (d) the first-mentioned person is afterwards convicted of an offence against section 18 of this Act in relation to the same premises.

the person who granted the lease, sublease, tenancy, subtenancy or licence is guilty of an offence unless, before the commission of the offence to which the conviction referred to in paragraph (d) of this subsection relates, he has disposed of his right or title to, or his interest in, the premises.

- (4) A person who commits an offence against the last preceding subsection is punishable, upon conviction, by a fine not exceeding one hundred dollars.

For recent convictions under this section see Table 1.

<sup>2</sup> *Samuels v Bosch* (1972) 127 C.L.R. at 524, per Gibbs J

Determination of lease etc.

2.7 Section 19A, subsections (1) and (2) of the Act provide:

19A.(1) Where—

- (a) a person is convicted of an offence against section 18 of this Act; and
- (b) the person occupies or uses the premises in relation to which the offence was committed under a lease, sublease, tenancy, subtenancy or licence, the person by whom the lease, sublease, tenancy, subtenancy or licence was granted may, by instrument in writing that is delivered to the first-mentioned person or affixed to the premises and which purports to be given under this section, require the first-mentioned person to quit the premises or, in the case of premises used under a licence, to cease to use the premises.

(2) Where notice is delivered in person, or affixed to premises, in pursuance of the last preceding subsection, the lease, sublease, tenancy, subtenancy or licence to which the notice relates is, by force of this section, determined at the expiration of seven days from the date on which the notice is so delivered or affixed.

There appears to have been no actions under these subsections of the Act for a number of years.

*Soliciting*

2.8 Pursuant to paragraph 23(1)(ja) of the Act any person who in any public place persistently solicits or importunes for immoral purposes is guilty of an offence; the penalty for which is imprisonment for three months. For recent convictions under this paragraph see Table 1.

*Living on the earnings*

2.9 Pursuant to paragraph 23(1)(j) of the Act any person who knowingly lives wholly or in part on the earnings of prostitution is guilty of an offence; the penalty for which is imprisonment for three years. For recent convictions under this paragraph see Table 1. The Act further provides, at subsection 23(3):

- (3) Where a male person is proved to live with, or to be habitually in the company of, a prostitute, and has no visible means of support, he shall, for the purposes of paragraph (j) of subsection (1) of this section, unless he satisfies the Court to the contrary, be deemed to be knowingly living on the earnings of a prostitute.

2.10 The committee notes with some concern the explicit sexist nature of this provision, ie the covert implication that only women are prostitutes and the overt statement that only males who live with prostitutes are subject to ignominy, despite major reviews of the Act in 1983 and 1984.

*Discrimination*

2.11 Section 34 of the Act provides:

34 Every person who has or keeps any house, shop, room, or place of public resort wherein provisions, liquor, or refreshments of any kind are sold or consumed (whether they are kept or retained therein or procured elsewhere), who -

(c) knowingly permits or suffers prostitutes or persons of notoriously bad character to meet together and remain therein, shall be guilty of an offence.

Penalty: Ten dollars

No one has ever been convicted under this section of the Act.

Table 1 - ACT arrest and conviction patterns - 1 January 1986 to 27 March 1991

Act and relevant Section Number	No of briefs of evidence prepared	No of convictions recorded	Matters not proceeded with <sup>(1)</sup>	Matters pending before courts
POA <sup>(ii)</sup> Para 18(a)	7	2	4	1
POA Para 18(b)	3	1	2	-
POA Para 19(a)	-	-	-	-
POA Para 19(b)	5	-	-	5
POA Subsec 19A(3)	-	-	-	-
POA Para 23(1)(i)	-	-	-	-
POA Para 23(1)(ja)	-	-	-	-
POA Sec 34	-	-	-	-
Crimes Act <sup>(iii)</sup> Sec 92N	-	-	-	-
Totals	15	3	6	6

Source: Letter from Australian Federal Police, dated 9 April 1991

<sup>(1)</sup> The decisions not to proceed made by DPP in accordance with prosecution policy

<sup>(ii)</sup> Police Offences Act 1930

<sup>(iii)</sup> Crimes Act 1900 of NSW

#### Under age prostitution

12 Under age prostitution is dealt with by the Crimes Act 1900 of NSW as in force in the ACT (and see paragraph 2.17). Section 92N of that Act provides:

92N A person who employs or permits to be employed a person who is under the age of 16 for the purposes of prostitution, is guilty of an offence punishable on conviction by imprisonment for 10 years.

For recent convictions under this section see Table 1.

#### Common law

13 In evidence given before it the committee was informed by the Government Law Office that there is an offence at common law of keeping a brothel or a common bawdy house. <sup>(3)</sup> There have been no convictions in the ACT for keeping a common bawdy house.

Other legal controlsPolice Act

2.14 Under the *Police Act 1927* a magistrate has the authority to issue a warrant to enter and search a house suspected of being a brothel. Section 15 of the Act provides:

15. If it is made to appear to a magistrate, by information on oath, that there is reason to suspect that any house, or part of a house, is used by a person for purposes of prostitution, and that another person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, the magistrate may issue a warrant authorising any constable to enter and search the house and to arrest that other person.

2.15 Pursuant to section 17 of this Act any member of the Police Force may "enter any house, room, or place kept or used for any theatrical or any public entertainment ... or any recreation ground or racecourse" and order any common prostitute found therein to leave.

2.16 Also under the provisions of this Act anyone, with or without a warrant, may apprehend a common prostitute. Subsection 21 (1) provides:

21.(1) Any member of the Police Force, or any other person, with or without a warrant, may apprehend any reputed common prostitute or thief, or any loose, idle, or disorderly person, or any reputed rogue and vagabond or incorrigible rogue who, within view of the member or person, commits any offence against this Act or the *Police Offences Act 1930* of the Territory.

Crimes Act

2.17 Pursuant to the *Crimes Act 1900* of NSW, as it applies in the Territory, it is an offence to abduct or unlawfully detain a person for the purposes of engaging that person in sexual intercourse (section 92M); it is also an offence to employ or to permit the employment of a person under the age of 16 to engage in a sexual act or to be in the presence of people engaging in sexual acts (section 92NA).

Drugs of Dependency Act

2.18 Prostitution is also controlled through the policing of the *Drugs of Dependency Act*. Under the prosecution policy of the Director of Public Prosecutions the possession or use of illegal drugs is an 'aggravating circumstance' that can lead to a prosecution (see paragraph 23).

Leasehold and planning controls

2.19 Other legal measures which can be used, albeit indirectly, to control prostitution include the leasehold system and compliance with such things as lease purpose clauses, and the planning controls of the National Capital Plan and the Territory Plan which specify the kinds of activities that may be permitted in certain areas. In evidence given before the committee, the AFP

indicated the  
Creek. (4)

Public

2.20 It is a  
Public Health  
empower the  
powers in the  
disease but no

Sexual

2.21 The Se.  
Section 5 of thi  
consult a medic  
disease they are  
Should that not  
to apprehend th  
place approved  
leave the place  
Act HIV is not ic

Prosecut

2.22 It has bee  
been upheld. Th  
enforced.

2.23 In 1984 th  
consent of the Fec  
based on a policy  
prosecution simply  
determine if the pr  
the locatio  
whether th  
whether dr  
whether the

<sup>4</sup> Transcript, 29.1.91, p. 49

indicated that they had used the City Area Leases Act to close a brothel operating in Western Creek.<sup>(4)</sup>

#### Public Health (Infectious and Notifiable Diseases) Regulations

2.20 It is also possible to exercise controls over prostitutes through such mechanisms as the Public Health (Infectious and Notifiable Diseases) Regulations which, in certain circumstances empower the Medical Officer of Health to place a person in quarantine and to exercise certain powers in the interests of the public health. These regulations specify AIDS as a notifiable disease but not HIV seropositivity.

#### Sexually Transmitted Diseases Act

2.21 The *Sexually Transmitted Diseases Act 1956* can also be used to control prostitutes. Section 5 of this Act requires anyone who believes they are suffering from an STD to 'forthwith' consult a medical practitioner. Where a person is diagnosed as suffering with or from a venereal disease they are required to submit themselves, pursuant to section 7, to a medical examination. Should that not happen then the Medical Officer of Health may apply to the court for a warrant to apprehend the person (subsection 8(1)); and a person so apprehended may be detained in a place approved by the Medical Officer (subsection (6)). A person so detained is not allowed to leave the place of detention without the consent of the Medical Officer (section 12). Under this Act HIV is not identified as a sexually transmitted disease.

#### Prosecution policy

2.22 It has been made clear to the committee that the law in respect of prostitution has not been upheld. The committee believes that reform is necessary so that the law can be effectively enforced.

2.23 In 1984 the Commonwealth Director of Public Prosecutions (DPP) adopted, with the consent of the Federal Attorney-General, a prosecution policy with regard to ACT prostitution based on a policy of aggravating circumstances. Basically the DPP does not consent to a prosecution simply because there is a *prima facie* case. Regard is had to contextual factors to determine if the prosecution would be in the public interest. Among the factors considered are:

- . the location of the premises, particular whether or not they are in a residential area;
- . whether there have been any complaints from the public about the premises;
- . whether drugs are being used on, or distributed from, the premises;
- . whether there is any evidence that juveniles are being employed; and

<sup>4</sup> Transcript 29.1.91, p. 49