

# **PROSTITUTION LAWS AMENDMENT BILL 1992**

## **EXPLANATORY NOTES**

### **PART 1—PRELIMINARY**

*Clause 1*—Short title. Provides for the Act to be referred to as the *Prostitution Laws Amendment Act 1992*.

*Clause 2*—Commencement. The Act will commence on a day to be proclaimed.

### **PART 2—AMENDMENT OF CRIMES (CONFISCATION OF PROFITS) ACT 1989**

*Clause 3*—Amended Act. This provision provides for the *Crimes (Confiscation of Profits) Act 1989* to be amended as set out in this part.

*Clause 4*—Interpretation. The definition of “serious offence” is amended to enable the *Crimes (Confiscation of Profits) Act 1989* to be applied with respect to indictable offences, regardless of whether the offence is dealt with on indictment or summarily.

### **PART 3—AMENDMENT OF CRIMINAL CODE**

*Clause 5*—Amended Act. Provides for the Criminal Code to be amended.

*Clause 6*—Amendment of s.1 (Construction of terms). This clause inserts a reference to the following terms and where the definition of those terms can be located in the *Criminal Code*:

“**sexual act**” as defined by section 229D;

“**intellectually impaired person**” as defined by section 229F; and

“**prostitution**” as defined by section 229E.

*Clause 7*—Amendment of s.216 (Abuse of intellectually impaired persons). Section 216 of the *Criminal Code* is amended to delete the definition of an intellectually impaired person contained in that section due to the circular nature of that definition. The new definition of an intellectually impaired person will be contained within the new s.229F.

*Clause 8*—Replacement of s.217 (Procuration). The clause amends s.217 of the *Criminal Code* by redrafting the offence in a gender neutral manner which will apply regardless of a person's moral character. The provisions which relate to prostitution have been repealed from this section and a new offence placed in the Chapter 22A in relation to prostitution. A definition of “procure” has been inserted that is intended to avoid a clash between interpretation of the law and contemporary sexual mores.

*Clause 9*—Replacement of s.218 (Procuring defilement of Woman by Threats, or Fraud, or Administering Drugs). The clause amends s.218 of the *Criminal Code* by redrafting the offence in a gender neutral manner which will apply regardless of a persons moral character or previous employment as a prostitute.

*Clause 10*—Insertion of new Chapter 22A. This provision enables the creation of a new chapter in the *Criminal Code* for prostitution specific offences. This chapter will contain the following provisions:

**229C Definitions:** This provision defines “arrangement”, “address”, “capacity”, “control”, “entity”, “participate”, “place”, “premises” and “publish” for the purposes of this chapter. The definition of participation includes conduct dealt with by paragraphs (b) and (c) of section 7 of the Code, which defines who is a party to an offence. The definition does not mention “procuring”, which is dealt with in a separate section, or actually engaging in prostitution.

**229D Meaning of Sexual Act:** This provision defines a sexual act to ensure all acts having a sexual nature are included when the courts consider whether prostitution has occurred. Read with section 229E, the essential ingredients for a sexual act in prostitution are 2 persons of either gender participating in sexual intercourse or some other indecent act, which may or may not involve physical contact between the persons.

**229E Meaning of Prostitution:** This provision clarifies that prostitution occurs when a person engages in a sexual act under an arrangement of a commercial character ( whether the arrangement is initiated with the person or another person and whether the pecuniary or other reward under the arrangement is to be received by the person or another person).

**229F Meaning of an intellectual impaired person:** This definition was developed consistent with the definition of a person with a disability contained in the *Disability Services Act 1992*. The definition replaces the cyclical definition which is contained within s.216 of the *Criminal Code*.

**229G Procuring Prostitution:** This section creates the offence of procuring for prostitution and will apply regardless of a person's moral character or previous employment as a prostitute.

**229H Participating in provision of prostitution:** This new provision provides for an offence of any person who organises, facilitates or controls the provision of prostitution. Examples contained within the provision amply demonstrate the proposed operation of this new offence. However, the examples given are not exhaustive and are to be used in a manner consistent with s.14D of the *Acts Interpretation Act 1954*. This section is not intended to cover the actions of health service providers in the direct provision of health services.

**229I Persons found in etc, places reasonably suspected of being used for prostitution:** A new offence which penalises any person, without reasonable excuse, found in or leaving premises reasonably suspected of being used for prostitution. The term, 'being used for the purpose of prostitution by 2 or more prostitutes reflects the law as stated in *Ferricks v Guzikowski [1992] 1 Qd.R.150*.

The offence applies to clients, prostitutes and any other person found in or leaving the premises or place, however, a person with a reasonable excuse, such as health workers would not commit the offence. The section provides that the prosecution must negate any reasonable excuse raised by an accused in order to gain a conviction.

**229J Certificate of discharge for s.229G offence:** This provision enables a person charged with an offence under the provisions of the proposed s.229G to be discharged without conviction providing that person gives evidence to the court in relation to prostitution or prostitution associated offences in connection with those premises. The person may make application to the court to have any identifying particulars suppressed.

This provision will enable evidence of prostitution to be obtained as well as evidence against the organisers, facilitators and controllers of prostitution.

**229K Having an interest in premises used for the purposes of prostitution etc:** This section provides an offence for any person who knowingly owns, rents or otherwise has an interest in any premises used for prostitution by 2 or more persons. The provision is wide and will include those persons who have a capacity of control within a company that owns or has an interest (as defined in the *Acts Interpretation Act 1954*) in any premises used for prostitution.

A police officer will be able to serve a written warning on any owner, etc. to the effect that the premises are being used for prostitution. This warning may then be used in evidence to substantiate that person's knowledge in relation to the premises.

If the premises are rented, the owner, etc. is also empowered to require the persons using the premises for prostitution to vacate the premises. If persons using the premises for prostitution, without reasonable excuse, fail to leave the premises, they commit an offence.

**229L Permitting minor etc. to be at place used for prostitution:** This provides a new offence of permitting a person under the age of 18 years or a person with an intellectual disability to be at a place used for prostitution by 2 or more persons. The law as stated in *Ferricks v Guzikowski [1992] 1 Qd.R.150*, applies to this offence.

**229M Police Officer may require person to provide name and address etc.:** This provision enables a police officer to demand a person's name, address and date of birth in relation to all offences committed against chapter 22A of the *Criminal Code* dealing with prostitution.

**229N Evidence that place is being used for prostitution:** This section precludes the use of condoms and other safe sex practice material as evidence in offences against Chapter 22A of the *Criminal Code*.

**229O Non-compellability of health service providers:** People who provide health services to prostitutes can not be compelled to give evidence for an offence against Chapter 22A of the *Criminal Code*.

**229P Summary Proceedings:** This section provides that an offence against Chapter 22A of the *Criminal Code* may be heard summarily at the election of the defendant.

*Clause 11*—Omission of s.231 (Bawdy Houses). This provision repeals the outdated offence of keeping a bawdy House.

*Clause 12*—Amendment of s.235 (Acting as Keeper of Bawdy Houses, Gaming Houses, Betting Houses and Lotteries). This provision repeals references from this section which relate to prostitution.

## **PART 4—AMENDMENT OF VAGRANTS, GAMING, AND OTHER OFFENCES ACT 1931**

*Clause 13*—Amended Act. This clause provides for the amendment of the *Vagrants, Gaming and Other Offences Act 1931*.

*Clause 14*—Replacement of s.1 (Short title and Parts of Act). This is a technical amendment to update the provisions of the *Vagrants, Gaming and Other Offences Act 1931*.

*Clause 15*—Amendment of s.2. The definition of “prostitution” and “place” are placed into this section and are given the same meaning as they have in the *Criminal Code*. Other amendments of a technical nature are also made to update the provisions of the *Vagrants, Gaming and Other Offences Act 1931*.

*Clause 16*—Omission of s.3 (Repeal Schedule). The section is omitted. This is an amendment of a technical nature.

*Clause 17*—Omission of s.5 (Prostitutes, etc). This outdated provision is repealed.

*Clause 18*—Omission of s.8 (Keepers of premises for purposes of prostitution). This outdated provision is repealed.

*Clause 19*—Omission of s.8A (Persons using massage rooms etc., for prostitution or soliciting). This outdated provision is repealed.

*Clause 20*—Omission of s.8B (Warrant to enter premises). This outdated provision is repealed.

*Clause 21*—Omission of s.9 (Lodging-house keepers permitting prostitution). This outdated provision is repealed.

*Clause 22*—Omission of s.10 (Return of inmates of suspected houses). This outdated provision is repealed.

*Clause 23*—Amendment of s.11. References to prostitution are removed from this section as they are no longer required.

*Clause 24*—Insertion of new Part 2A. This provision creates a new part in the *Vagrants, Gaming and Other Offences Act 1931* which deals with prostitution. These provisions are set out below.

**18A Public Soliciting for purposes of prostitution:** This provision prohibits soliciting for prostitution in a public place. The offence is gender neutral and covers prostitutes, clients or persons acting on behalf of prostitutes or clients.

**18B Advertisement relating to prostitution:** This provision prohibits advertising by whatever means for any activity in connection with prostitution including the prostitution activities of sole prostitutes.

The section enables a police officer to serve a written warning that the advertisement is for prostitution and this warning may be later used in evidence if the offending advertisement continues.

**18C Nuisance connected with prostitution:** This section will enable action to be taken when the conduct of people associated with lawful prostitution activities cause unreasonable annoyance to another person or unreasonable disruption to privacy of another person. It is not necessary to prove the place was being used for prostitution only the reasonable suspicion for believing the place is being used for prostitution.

This new section applies primarily for the purpose of protecting persons who reside or work in the vicinity of a place reasonably suspected of being used for the purpose of prostitution.

*Clause 25*—Amendment of s.38 (Where offender may be arrested). This section is amended by omitting the reference to s.5 from this section as s.5 has been repealed.

*Clause 26*—Amendment of s.55 (Facilitation of proof). Section 55(iv) and (vi) are omitted from s.55 as they are no longer required for the new offence provisions since s.5 has been repealed.

*Clause 27*—Replacement of s.58 (Regulations). Omit section 58 and insert the following new provisions:

**56 Police officer may require person to provide name and address etc:** This provision inserts a new section which enables a police officer to demand a person's name, address and date of birth in relation to offences committed against section 18A, 18B or 18C of the *Vagrants, Gaming and Other Offences Act 1931* dealing with prostitution.

**57 Additional power of arrest:** This section enables a police officer to arrest a person for an offence against section 18A, 18B or 18C of the *Vagrants, Gaming and Other Offences Act 1931* dealing with prostitution.

**58 Regulations:** This provision inserts a new regulation making provision and is a technical amendment to update the Act.

*Clause 28*—Omission of schedule. This is a technical amendment which deletes the schedule to the *Vagrants, Gaming and Other Offences Act 1931*.