



THE PROSTITUTION BILL 1999

INTRODUCTION

The Prostitution Bill 1999 was introduced into the Queensland Parliament on 10th November 1999 by the Hon T A Barton MLA, Minister for Police and Corrective Services. The legislation proposes a new regulatory regime to be adopted in Queensland to govern the provision of prostitution services and sexually explicit adult entertainment. This paper surveys the various regimes that currently exist in the other Australian jurisdictions.

BACKGROUND

During the conduct of the Fitzgerald Inquiry, much evidence was heard regarding the link that existed in Queensland between organised crime and the provision of prostitution services. As a result, the Criminal Justice Commission (CJC) was commissioned to investigate the question of how best to deal with this issue and made certain recommendations regarding reform. The CJC model proposed that Queensland adopt an approach that would involve a combination of measures including the use of criminal sanctions to control street soliciting and illegal brothels, the requirement for the licensing of legal brothels and probity checks of owners and operators, the registration of all workers in the industry and the use of planning and development schemes to control the operation of the legal brothels.¹ However, the Goss Government, in adopting the advice of the Parliamentary Criminal Justice Committee of the time,² rejected this proposal in favour of a much more restricted approach. The amendments were introduced by the *Prostitution Laws Amendment Act 1992* (Qld) which amended the Queensland *Criminal Code*.

The regime established by those amendments continues to regulate prostitution services in Queensland today. The current position is that sole operators may work lawfully from their own homes or from other premises. However, they must operate alone and cannot employ, or be provided assistance by, another person, for example, to provide security services.³

Workers who operate through escort agencies, massage parlours, brothels, or who solicit from the street are working illegally in Queensland. In addition, because prostitution is defined so broadly in Queensland, certain sexually explicit or adult entertainment can be considered prostitution activity and, therefore, illegal under the Queensland *Criminal Code*.⁴

ISSUES ARISING FROM THE REGULATION OF PROSTITUTION IN QUEENSLAND

With respect to the Queensland legislation as it currently stands, the issue has arisen as to whether the legislation is effective in addressing the concerns of the sex workers themselves. Many commentators have argued that, because the key concern at the time of the 1992 amendments was to ensure the prevention of any participation by organised crime in the provision of prostitution services in Queensland, the issues of ensuring the health and safety of the workers were not given as high a priority as they should have.⁵ It is argued that this is evidenced, for example, in the prohibition on solo workers being able to employ another person or merely have the assistance of another person to help them in the operation of their business. This leaves workers vulnerable to violence and threatens their personal security. Anecdotal evidence suggests there has been an increase in the incidence of violence against sex workers in Queensland since the introduction of these laws.⁶

Therefore, there has been renewed consideration of the benefits decriminalisation can bring, namely, in an improvement in the living and working conditions for Queensland sex workers. Decriminalisation expands the scope for legal work in the prostitution industry and, once the work is legal, it becomes easier for workers to seek assistance from health and welfare service providers and from the legal system if the worker becomes a victim of crime, especially where that crime involves violence.⁷

The prostitution industry can be exploitative, especially of the sex workers themselves, as many find themselves forced into the industry as a result of

poverty, lack of employment skills or education, or a dependency on drugs. The additional threat of criminal sanctions may provide an incentive for workers to find an alternative source of income. However, it is also true that many workers are not in this situation and regard their work as a legitimate business for which they are entitled to the same rights as other workers.⁸ In addition, one commentator has stated that:

*If prostitution is largely a symptom of social injustice, and if prostitutes are already in a situation of sexual and economic inequality, punishing them further [by the application of criminal laws] seems both cruel and pointless.*⁹

The continued criminalisation of prostitution, it is argued, means that its illegal status forces the industry to co-exist with other illegal activities and makes it more difficult to break the link between organised crime and prostitution.¹⁰

MODELS IN OTHER STATES

An examination of the regulatory schemes currently in operation around Australia reveals a variety of systems that rely on a combination of:

1. Licensing Models;
2. Registration Models; and
3. Town Planning and Development Models.

A Licensing Model – Victoria and the Northern Territory

This model generally requires operators and managers of businesses providing prostitution services to hold licences in order to do so. In the process of granting a licence, the State conducts background checks on the individuals proposed to be involved in the running of the prostitution business. In doing so, the State is better able to monitor these people and ensure the exclusion from the industry of any “*organised crime identities and other unscrupulous operators*”.¹¹ Victoria and the Northern Territory both operate licensing systems to regulate the provision of prostitution services.

In Victoria, a person wishing to carry on a prostitution business must be licensed and is approved by the Business Licensing Authority. A brothel or escort agency operating with only one or two persons is exempt from these licensing requirements but the business must register with the licensing authority prior to commencing operation.¹²

The Northern Territory allows for legalised licensed escort agencies. The operator and the manager must

both be licensed. All workers are to be certified that they are free from conviction for any disqualifying offence. An individual escort worker is not required to hold a certificate but cannot provide sexual services from home.¹³

The success of these systems, however, depends on how transparent the financial affairs of the operations are and that the licensed individuals are, in fact, the real operators of the businesses.¹⁴ Police in Victoria have reported that problems have arisen in that it has been difficult to conduct exhaustive background checks of licence applications because of resource constraints.¹⁵

The administration costs of this model can be high and so licence fees are generally charged. There is the argument that by doing so the State could be accused of “*living off the earnings of prostitution*”.¹⁶ In response, one commentator has suggested an alternative in the employment of a negative licensing system. Professor Neave states:

*This approach would permit any adult person to own or manage a brothel, but would enable police to seek a court order excluding a person from association with prostitution on the ground that the person’s record has shown that he or she is unsuitable.*¹⁷

A problem also identified in Victoria is that if the costs to operate legally are too high or background checks too stringent, operators may choose to continue to operate illegally.¹⁸

A Registration Model - ACT

This type of system generally requires all participants in the prostitution industry to register their details with a government agency in order to operate legally in the industry. This is the situation in the Australian Capital Territory where the owners and managers of escort agencies and brothels are required to register with the Registrar of Brothels and Escort Agencies within 7 days of commencing business.¹⁹

Sole operators, allowed to operate from home, are also required to be registered.²⁰ The information in the register must be updated annually.²¹

The explanation for the establishment of the register stated:

The purpose of the register then, is to create a public record regarding the ACT’s sex industry and to make the industry open and above board, so that any criminal infiltration of the industry can be detected. This approach was seen as imposing minimal

*resource requirements on government and operators. It is not a licensing system because although there are penalties for not providing information for the register, the business itself is not rendered illegal by failure to provide that information.*²²

The problem with this model is that no background checks are required and, therefore, it is difficult to ensure ‘undesirables’ do not get involved in the provision of prostitution services. However, the aim of this system is simply to ensure a greater visibility of the industry making it easier for the police, health and workplace health and safety officials to monitor.²³

A Planning Scheme Model – Victoria, ACT, NSW

The aim of this system is that, through the use of town planning and development schemes, the impact of legal prostitution operations on the local community can be minimised. The schemes can also be used to protect the health and safety of the community, clients and the sex workers. For example, to control the design and character of the premises used and deal with issues of:

*traffic generation, parking and hours of operation can be controlled by local governments by including design standards ... which can be relied upon to refuse an inappropriate development application or to apply reasonable and relevant conditions on an approval.*²⁴

However, this system alone does nothing to assist the authorities from excluding those considered ‘unsuitable’ from running the prostitution operation.

Victoria, the ACT and NSW all employ town planning and development regimes to govern the regulation of the prostitution operations in their jurisdictions. In Victoria, an application for a planning permit is required to operate a brothel but not an escort agency.²⁵ Councils in Victoria must consider the location of any other brothels in the area, and that the proposed brothel is 200m from a place of worship, school, kindergarten, children’s services centre or other place regularly frequented by children. In addition, a council must refuse an application where the proposed brothel is in a residential area or 100 m from a dwelling or 200m from a school, church, hospital etc.²⁶ In the ACT, it is an offence to locate a brothel, but not an escort agency or sole operator, outside a prescribed location.²⁷ In New South Wales, brothels are allowed to operate where they have council planning approval. Escort agencies are allowed to operate

without planning approval. Sole workers operating from home may require council approval.²⁸ Brothels are regulated under Local Environment Plans (LEP). Where an LEP does not prohibit a brothel, councils must consider an application for a brothel like any other permissible development.²⁹ The local community is able to make complaints to local councils when a brothel “*is having a detrimental effect in the neighbourhood*”. A local council may also apply to the Land and Environment Court to have such a brothel closed down.³⁰

In particular, the South Sydney Council’s brothel policy has been acknowledged as a leader in this area. The Council’s policy opposes the establishment of red light areas but argues that it is not appropriate to have brothels located in “*isolated and unpopulated*” areas like industrial zones. This is primarily because industrial areas:

... are poorly serviced at night with little if any public transport, poor lighting and no public surveillance. As workplaces, they pose major safety hazards for both sex workers and their clients and have the potential to provide a focus for illegal activities and the development of ‘no-go’ areas. Additionally, buildings on industrial sites are unlikely to be suitable for lease for such a ‘commercial’ purpose.

*[Therefore,] ... to reduce the risk of associated crime or disturbance, brothels should be located in commercial areas in places which are well lit and have good public surveillance through high levels of occupation in surrounding premises. They also require easy but discreet access to meet the needs of their clients and protect the sensibilities of vulnerable members of the public.*³¹

Other Jurisdictions – WA, SA and Tasmania

The laws currently regulating prostitution in Western Australia, South Australia and Tasmania enforce a criminal law approach. However, all these jurisdictions are at various stages of the reform process.³² In Western Australia, the police there implement a ‘Containment Policy’ to the prostitution industry. This policy permits 13 premises to operate, in the metropolitan area and others to operate in Kalgoorlie, where the businesses adhere to requirements for the registration of workers, a prohibition on alcohol or drugs on the premises, regular health checks and no juvenile involvement.³³ However, a policy such as this leaves police officers open to allegations of corruption.³⁴ New prostitution

laws are to be put before the WA Parliament before Christmas.³⁵

PROPOSED QUEENSLAND PROSTITUTION MODEL

The model proposed by the Prostitution Bill 1999 is a similar combination of regulatory models to that currently in force in Victoria but with additional provisions designed to counter some of the problems that have emerged with the prostitution laws in that State. The model proposed will, therefore, combine a licensing and planning scheme to regulate a legal industry with an increase in the use of the criminal law sanctions to reduce illegal prostitution activity, especially that of street soliciting.

The government has argued the need for change and, in particular, for the provision of licensed brothels. The basis to the proposed policy change is that licensed brothels:

- 1) provide a safer work environment for staff and clients;
- 2) allow workers to receive peer support;
- 3) relieve workers of the responsibilities of running a business;
- 4) provide an access point for health and other services providers; and
- 5) ensure that it is easier to monitor and control safe sex practices so as to safeguard the health and safety of the workers in the industry and the community as a whole.³⁶

In particular, the framework of the legislation is to be guided by five principles:

- 1) *Ensuring the quality of life for local communities;*
- 2) *Safeguarding against corruption and organised crime;*
- 3) *Addressing social factors which contribute to involvement in the sex industry;*
- 4) *Ensuring a healthy society; and*
- 5) *Promoting safety.*³⁷

Under the proposed new laws in Queensland, legal prostitution will be restricted to small licensed brothels and individual sex workers.

Brothels will be restricted to:

- a maximum of 5 working rooms;
- between 2 and 10 staff at the brothel at any one time. The restrictions on staff numbers will include sex workers, ancillary staff, such as receptionists and cleaners, and other employees including contractors.³⁸

Also, no street signage identifying the premises as a brothel will be allowed. (**Clause 69**)

Holders of licences will be subject to stringent background checks (See **Part 3, Div 1, Sub-div 1** of the Bill). In addition, licensees will only be able to hold one brothel licence at a time (**Clause 9**). They will not be able to hold a liquor licence as well as the brothel licence (**Clause 8**) and, if they have been convicted of a disqualifying offence (which includes certain offences under the Criminal Code and federal immigration laws), they will not be entitled to a brothel licence in Queensland (**Clause 8 and Schedules 1 and 2**).

Solo operators will be able to employ a person to assist them, including an authorised security person under the *Security Providers Act 1993* (Qld).³⁹

The licensing scheme will be administered by a Prostitution Licensing Authority (PLA) and planning issues will be administered by local authorities.

Members of the proposed PLA will include an independent chairperson, who is to be a well-respected community member, representatives of the Queensland Police Service and the Queensland Crime Commission, a representative from the Health or Medical field, a senior legal practitioner and a representative from the Local Government Association of Queensland (**Clause 102**).

The PLA's role will be to:

- decide licensee and approved manager applications;
- monitor the provision of prostitution through brothels;
- be responsible for disciplinary matter with respect to licensees and managers;
- take complaints;
- liaise with police in relation to administration and enforcement;
- collect fees; and
- provide information to government agencies (**Clause 101**).

An application must be refused if the applicant is not considered to be a suitable person, has been convicted of running a brothel, has an interest in another brothel or holds a licence under the *Liquor Act 1992* (Qld) (**Clauses 16 and 17**). The PLA must also consider whether approval would cause an area to become a 'red light district' which is prohibited by the proposed scheme (**Clause 16**). Certain other matters such as the individual's character, skills and relevant financial issues should also be considered (**Clause 17**).

Application fees will be set at \$1000; licence fees will be set at \$5000 for the licence and then \$1000 per room in the brothel. An annual fee of \$5000 will

also then be payable for each licence holder.⁴⁰ The licence will be for one year and is not transferable to any other person (**Clause 19**). Funds received through the payment of these fees will go to administer this Act and in contributions to philanthropic causes. It is expected that these causes will be in some way connected to prostitution.⁴¹

Provisions will be available to allow, when necessary, to have certain premises declared prohibited brothels, that is, where prostitution is being carried out on the premises without a brothel licence and not within the planning regulations set down by the local authority (**Clauses 65-72**). Given the problems encountered in Victoria, that is, landlords often turning a blind eye to what is occurring on their premises, very strict guidelines will be imposed forbidding any person from being on the premises after the issuing of such a declaration unless they can prove it is for a lawful purpose and the owner or occupier will be liable regardless of who is involved in recommencing the operations.⁴² It will, however, be a defence for the person to show that they took all reasonable steps to prevent the premises being used as a brothel (**Clause 69**). In addition, the declared premises may not, during the duration of the declaration, be used for any other purpose including any lawful purpose.⁴³

To assist local governments fulfil their role, under the proposed scheme, they will be given

*... a detailed set of requirements to assess applications to establish a brothel in industrial areas. This is to be handled by local governments in accordance with normal processes for code assessable applications. Local governments will be required to conduct an impact assessment process before making a decision in relation to an application to establish a brothel in a commercial area.*⁴⁴

A local authority has the right to prohibit the establishment of brothels entirely where the town has a population of 25,000 or less.⁴⁵ A brothel may not be established within 200 metres of residential areas, places of worship hospitals, schools, kindergartens or other places frequented by children.⁴⁶

Sexually Explicit Adult Entertainment

This entertainment is currently dealt with in the same manner as prostitution offences. The proposed new section 103E of the *Liquor Act 1992* (Qld) will state that

an adult entertainment code is to be developed to prescribe the live entertainment

*that may be performed for an audience, by an adult performing an act of an explicit sexual nature on licensed premises or premises to which a general purpose permit or restricted club permit relates under an adult entertainment permit.*⁴⁷

Adult entertainment does not include the performance of sexual intercourse or other 'sexual act'. Compliance with this permit will be monitored by the Liquor Licensing Division within the Department of Tourism, Sport and Racing, and the Queensland Police Service.⁴⁸

Police Powers

Police will be permitted to enter and inspect a licensed brothel at any time when the brothel is open for business but subject to certain conditions. These are that:

- 1) Only police above the rank of Inspector, or those with the written permission of an Inspector or higher ranking officer, will be able to exercise this power; and
- 2) The PLA will keep a register of any police entry into licensed brothel of which the police are required to inform them.⁴⁹

The legislation is due to commence on the 1 July 2000 (**Clause 2**) and the Criminal Justice Commission will be responsible for "monitoring and reporting on how effectively the framework is achieving its objectives and will conduct a full review after 3 years of the legislation's operation" (**Clause 141**).

DEFINITIONS

Prostitution (current definition in sections 229D and 229E of the *Queensland Criminal Code*) – Engaging in a sexual act with another person under an arrangement of a commercial character. Engaging in a sexual act is further defined as:

- Allowing a sexual act to be done to the person's body;
- Doing a sexual act to the person's own body or to the body of another person; or
- Otherwise engaging in an act of an indecent nature with another person.

Brothels – Businesses that supply prostitution services provided by two or more workers operating from the same premises

Escort Agencies – Businesses that make arrangements for the provision of prostitution services at premises other than the business premises, that is, usually at the client's home or at a motel.

Massage Parlours – Businesses where the massage services provided often involve sexual activity in limited forms, such as masturbation.

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